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- CA 598-07
VAR

Morris - Nunley
07-3475

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Martin O'Malley
Governor
Anthony G. Brown
Lt. Governor



Margaret G. McHale
Chair
Ren Serey
Executive Director

**STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS**
1804 West Street, Suite 100, Annapolis, Maryland 21401
(410) 260-3460 Fax: (410) 974-5338
www.dnr.state.md.us/criticalarea/

October 17, 2007

Ms. Roxana Whitt
Calvert County Department of Planning and Zoning
150 Main Street
Prince Frederick, Maryland 20678

Re: Variance 07-3475 Morris-Nunley

Dear Ms Whitt:

Thank you for providing information regarding the above mentioned variance request. The applicant seeks an after-the-fact variance to permit two retaining walls and steps within the 100-Buffer, 100-foot cliff setback, and slopes greater than 15%. The property is currently developed with a single family dwelling and it is classified as a Limited Development Area (LDA).

It does not appear that the unpermitted structures create more Buffer and steep slope disturbance than would have been allowed for the purpose of repairing and stabilizing the eroding cliff face if the applicants had applied for the necessary Calvert County permits in advance. For this reason, this office does not oppose granting the requested variances to allow the retaining walls to remain. However, the construction of the structures in the Buffer, slopes greater than 15% and cliff setback prior to obtaining proper approval is a Critical Area violation that we recommend the applicant mitigate at a 4:1 ratio for the total area of disturbance. These mitigation plantings should be provided in the Buffer on the property to the extent feasible. It appears that planting can be done in the areas between the bulkhead and retaining walls, and the plantings should first be located here to maximize erosion control and water quality benefits in the Critical Area Buffer. We also recommend that if the variances are granted, the applicant be required to make any necessary modifications to the retaining walls so that they are constructed in a manner that is consistent with Calvert County's engineering specifications for such structures.

Thank you for the opportunity to provide comments regarding this variance request. Please include this letter within the file and submit it as a part of the record for this variance. In addition, please notify the Commission in writing of the decision made in this case. If you have any questions, please call me at 410-260-3482.

Ms. Whitt
October 17, 2007
Page Two

Sincerely,

A handwritten signature in dark ink, appearing to read 'Amber Widmayer', written in a cursive style.

Amber Widmayer
Natural Resource Planner
cc: CA 598-07

CALVERT COUNTY BOARD OF APPEALS

Case No. 07-3475

Public Hearing
November 1, 2007
December 6, 2007

Craig Morris and Pamela Nunley have applied (after-the-fact) for a variance in the 100' waterfront buffer requirement; a variance in the steep slopes requirement; and a variance in the cliff setback requirement for construction of retaining walls. The property is located at 261 Chesapeake Avenue, Prince Frederick (Tax Map 22, Block 2, Lot 2R, Dares Beach) and is zoned RD Residential District.

AUTHORITY OF THE BOARD OF APPEALS

The jurisdiction of the Board of Appeals is based on Article 66B of the Annotated Code of Maryland, as amended, and Article 11 of the Calvert County Zoning Ordinance. Article 11 Section 1.01.B of the Calvert County Zoning Ordinance provides that the Board of Appeals shall have the authority to grant variances from the Critical Area requirements of Section 8-1 of the Ordinance.

TESTIMONY & EVIDENCE PRESENTED

1. The case was presented November 1, 2007 before Board of Appeals members Mr. Michael Reber, Chairman, Dr. Walter Boynton, Vice Chairman, and Mr. Michael Redshaw (the Board). Mr. Craig Morris was present at the hearing.
2. A Staff Report including photographs taken on site was entered into the record at the November hearing and marked Staff Exhibit No. 1.
3. The following Applicant Exhibits were dated and entered into the record at the November hearing:
 - Exhibit No. 1 – Application
 - Exhibit No. 2 – Plat of Subject Property
 - Exhibit No. 3 – Photographs (5 each)
 - Exhibit No. 4 – Letter dated November 1, 2007 to Roxana Whitt from C. Craig Morris and Pamela J. Nunley (with Exhibits A-F)

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4. The following correspondence was entered into the record at the November hearing:
 - Letter dated October 17, 2007 from Amber Widmayer, Chesapeake Bay Critical Area Commission
 - Memo dated October 23, 2007 from Stephanie Taylor, Calvert County Engineering Bureau
5. The following person testified at the November hearing:
 - Amber Widmayer, Chesapeake Bay Critical Area Commission, 1804 West Street, Suite 100, Annapolis, MD 21401
6. The Board deferred action at the November hearing pending a site visit.
7. The Board visited the site between the November and December hearings.
8. The matter was again presented December 6, 2007 before Mr. Michael Reber, Chairman, Dr. Walter Boynton, Vice Chairman, and Mrs. Lisa Sanders, member (the Board). Mr. Craig Morris was present at the hearing.

FINDINGS OF FACT

Based on the application, site visit, and testimony and evidence presented at the hearings, the Board makes the following Findings of Fact:

1. The property consists of .28 acre and is located atop a cliff between Chesapeake Avenue and the Chesapeake Bay. It is developed with a 2-story house with a deck on the rear. The house is situated no more than 40 feet from the cliff edge.
2. The applicants purchased the property in 2003, not long before Hurricane Isabel. At the time of purchase, there was a bulkhead at the shoreline, and a retaining wall on the cliff face above it. The cliff face was severely eroded by the storm, creating a threat to the improvements on the property. The owners have since constructed two retaining walls above the bulkhead, with earthen backfill, to stabilize the slope. The cliff slope is very steep and is vegetated with a mixture of native plants and exotics that have established themselves there. Small patches of erosion are still visible in some places, but the cliff is primarily stable at present.
3. The owners sought advice from many sources regarding stabilization of the cliff, including Maryland Department of Natural Resources and an engineering firm whose design was implemented in the construction. A second retaining wall was added to

provide a higher degree of stabilization and was deemed to be far superior than rebuilding with a single retaining wall. A straight, wooden staircase was replaced on the slope. The owners have not constructed additional decks or staircases, and all structures are wooden and pervious, including the stairs. A pervious gravel terrace lies between the bulkhead and the 1st retaining wall as was recommended by the Maryland Department of Natural Resources guidelines.

4. The owners could be subjected to additional significant erosion without the level of protection provided with the two retaining walls.

CONCLUSIONS

Based on the above findings of fact, the Board makes the following conclusions:

1. The Board concludes that it has the authority to grant the subject variances from the Critical Area requirements of Section 8-1 of this Ordinance.
2. The Board concludes that the applicant has overcome the presumption of nonconformance as required in Section 11-1.01.B.2 & 3 of the Zoning Ordinance.
3. The Board concludes that the applicant has met each of the following variance standards:
 - a. The variance will not result in injury to the public interest; and
 - b. Granting the variance will not adversely affect the implementation of the Comprehensive Plan; and
 - c. the variance is the minimum adjustment necessary to afford relief from the regulations; and
 - d. special conditions or circumstances exist that are peculiar to the land or structure within Calvert County and that a literal enforcement of provisions within the County's Critical Area Program would result in unwarranted hardship; and
 - e. a literal interpretation of the Critical Area Legislation and the Calvert County Critical Area Program and related ordinances will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area of the County; and
 - f. the granting of a variance will not confer upon an applicant any special privilege that would be denied by the Calvert County Critical Area Program to other lands or structures within the County's Critical Area; and
 - g. the variance request is not based upon conditions or circumstances

which are the result of actions by the applicant, nor does the request arise from any condition relating to land or building use, either permitted or non-conforming, on any neighboring property.

- h. the granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the County's Critical Area, and that the granting of the variance will be in harmony with the general spirit and intent of the Critical Area law.

ORDER

It is hereby ordered, by a unanimous decision that a variance (after-the-fact) in the 100' waterfront buffer requirement; the variance in the steep slopes requirement; and the variance in the cliff setback requirement for construction of retaining walls as requested by Craig Morris and Pamela Nunley be **GRANTED SUBJECT TO THE FOLLOWING CONDITIONS:**

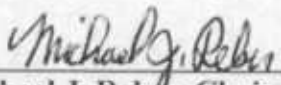
1. All permits and approvals required by the Calvert County Zoning Ordinance and the Department of Planning and Zoning and those required by any other departments, agencies, commissions, boards or entities, in accordance with County, State and Federal law, must be obtained before commencing the development activity approved by this Order.
2. Mitigation requirements are waived because most of the slope is revegetated; however, the applicants must work with the Department of Planning and Zoning to develop a planting plan to control slope erosion and to eradicate the kudzu that has invaded the slope.
3. In accordance with Article 11-1.01.F.3 of the Calvert County Zoning Ordinance any violation of conditions imposed by the Board of Appeals shall be considered a violation of the Ordinance and subject to the enforcement provisions of Article 1-7.

APPEALS

In accordance with Section 6 of the Calvert County Board of Appeals Rules of Procedure, "any party to a case may apply for a reconsideration of the Board's decision no later than 15 days from the date of the Board's Order."

In accordance with Section 11-1.07 of the Calvert County Zoning Ordinance, Board of Appeals decisions may be appealed to the Circuit Court of Calvert County by (1) any person aggrieved by any decision of the Board of Appeals or (2) any taxpayer, or (3) any officer, department, board or bureau of Calvert County. Such appeal shall be taken according to the Maryland Rules as set forth in Maryland Rules, Title 7, Chapter 200, as amended from time to time, within 30 days of the Board of Appeals Order.

Entered: December 21 2007
Pamela P. Helic, Clerk



Michael J. Reber, Chairman

