

CE 177-07 Grant, Alastair
VAR 3314

4/10

Comments JR
4/3/07

51829-6520

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/

December 14, 2007

Mr. Joseph Johnson
Cecil County Department of Planning and Zoning
129 East Main Street
Elkton, MD 21921

Re: Variance File #3314 – Alistair M. Grant

Dear Mr. Johnson:

Thank you for providing information on the above referenced variance. This case has been remanded by the Circuit Court to the Cecil County Board of Appeals for a full evidentiary hearing. The applicant is requesting a variance to build a 228 square foot deck in a designated Buffer Exemption Area (BEA). It is the understanding of this office that the applicant has constructed the deck under a building permit issued by Cecil County.

This office is opposed to granting this variance request because the applicant may further minimize the shoreward extent of the proposed structure and the applicant has not met all the variance standards. In this situation, the lot is 0.68 acres in size and developed with a single family home, driveway and pool partially within the 110-foot Buffer. Section 195.3(c) of the Cecil County Zoning Ordinance states new development must minimize the shoreward extent of impervious surfaces in so far as possible and in no case should new structures be located shoreward of the defined BEA setback line. In this case, the applicant may set the deck further away from shore and in line with the existing setback. Additionally, in order to receive a variance, the applicant must meet all of the standards specified for a variance in the Critical Area.

In 2002 and 2004, the General Assembly strengthened the Critical Area Law, and reiterated its commitment to the Chesapeake Bay Critical Area's water quality and wildlife habitat values, especially emphasizing the importance of the 100-foot Critical Area Buffer. In particular, the General Assembly reaffirmed the stringent standards, which an applicant must meet in order for a local jurisdiction to grant a variance to the Critical Area law. The State law provides that variances to a local jurisdiction's Critical Area program may be granted **only** if the Board of Appeals finds that an applicant has satisfied its burden to prove that the applicant meets each one of the county's variance standards, including the standard of "unwarranted hardship." The General Assembly defined that term as follows: "without the variance, the applicant would be denied reasonable and significant use of the entire parcel or lot." Furthermore, the State law establishes presumption that a proposed activity for which a Critical Area variance is requested does not conform to the purpose and intent of the Critical

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Area law. The Board must make an affirmative finding that the applicant has overcome this presumption, based on the evidence presented.

In this instance, the applicant is proposing to construct a deck adjacent to their dock. The applicant currently has a single family home with a driveway and a pool. Thus, the applicant has reasonable use of the entire property or lot. The variance to the 110-foot Buffer cannot be granted unless the applicant proves, and the Board of Appeals finds, that without the variance, the applicant would suffer an unwarranted hardship, that is “denial of reasonable and significant use of the entire parcel or lot.” We do not believe that this standard is met, and accordingly the variance should be denied. I have discussed each one of the County’s variance standards below as it pertains to this site:

Section 306.2.e(1) *That special conditions or circumstances exist that are peculiar to the land or structure within the jurisdiction’s Critical Area program that would result in an unwarranted hardship to the applicant.*

Currently, the lot is developed with a single family home, a pool, and patio area within the Buffer. As stated above, the General Assembly defined “unwarranted hardship” to mean that the applicant must prove that, without the requested variance, he would be denied reasonable and significant use of **the entire parcel or lot**. Based on this information, we do not believe that the County has evidence on which to base a favorable finding on this factor for the deck as the applicant is able to use the property for residential purposes and current conditions of the property allow for outdoor enjoyment.

Section 306.2.e(2) *That a literal interpretation of this subtitle or the local 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 local jurisdiction.*

The applicant has a reasonable use of this property for residential purposes, and therefore, would not be denied a right commonly enjoyed by neighboring properties. Therefore, denial of a variance for the accessory deck would not deny the applicants a right commonly enjoyed.

Section 306.2.e(3) *The granting of a variance will not confer upon an applicant any special privilege that would be denied by this subtitle or the local Critical Area program to other lands or structures within the jurisdiction’s Critical Area.*

If the variance is granted, it would confer upon the applicant a special privilege that would be denied to others in this area, as well as in similar situations in the County’s Critical Area. The applicant has the burden of proof and the burden of persuasion to overcome the presumption that his proposed variance does not conform to the Critical Area Law. We do not believe the applicant has overcome this burden.

Section 306.2.e(4) *The variance request is not based upon conditions or circumstances, which are the result of the actions, by the applicant, nor does the request arise from any condition conforming, on any neighboring property.*

In order to meet this standard, the applicant must present evidence as to why the deck could not be located within the defined BEA setback. The application forwarded to this office did not include any information regarding how this standard is met.

Mr. Joseph Johnson
Variance Case – Grant
December 14, 2007
Page 3 of 3

Section ³206.8.e(5) *The granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the jurisdiction'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 and the regulations.*

In contrast, granting of this variance is not in harmony with the general spirit and intent of the Critical Area law and regulations. Critical Area law is meant to temper the cumulative effects of development in the Buffer. As this property is already improved with multiple additions in the Buffer, it would not be in the general spirit and intent of Critical Area law to grant this variance.

This letter has addressed five of the relevant variance standards. Based on the information provided, none of the five variance standards are met. The County and State law provide that in order to grant a variance, the applicant must meet and satisfy each and every variance standard. This applicant has failed to meet all of the County standards. This office recommends that the Board deny the applicant's request for this variance and require the applicant to move the deck to meet the BEA setback.

Thank you for the opportunity to provide comments. Please include this letter in your file and submit it as part of the record for this variance. Also, please notify the Commission in writing of the decision made in this case.

Sincerely,

Kate Schmidt
Natural Resources Planner

Cc: CE 177-07

V77-07

IN THE MATTER OF
THE APPLICATION OF
CAMERON FOCKLER, INC.
(Variance)

BEFORE THE CECIL COUNTY
BOARD OF APPEALS
FILE NO.: 3314

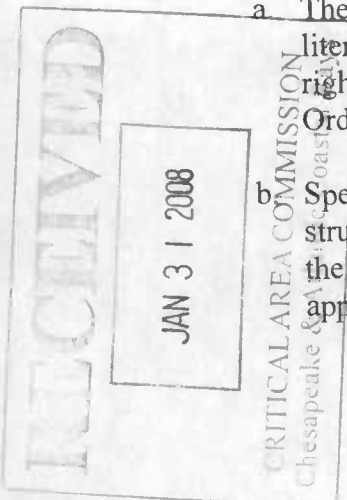
OPINION

Application of Cameron Fockler, Inc. for a variance from the requirements of the Zoning Ordinance pertaining to the critical area buffer requirements within the 110' buffer zone for construction purposes at property located at 50 Plum Shore Road, North East, in an area presently zoned Suburban Residential (SR).

Under the provisions of Article XVII, Part I, Section 306, Paragraph 1, variances, as defined in Article II, may be granted by the Board of Appeals. In addition, due to special features of a site or other circumstances where a literal enforcement of the provisions relating to the Critical Area District would result in unwarranted hardship to the property owner, the Board of Appeals may grant a variance of the Critical Area District. *An unwarranted hardship means that without a variance, an applicant would be denied reasonable and significant use of the entire parcel or lot for which the variance is requested.* (Italics added)

Paragraph 2 of Section 306 requires the Board to examine all facts of the case and render a decision based upon the following criteria:

- a. The variance request is based upon a situation where, because of special conditions, a literal enforcement of the provisions of the Ordinance would deprive the applicant of a right commonly enjoyed by other parties in the same zone under the terms of this Ordinance.
- b. Special conditions and circumstances exist that are peculiar to the land, buildings or structures involved, and that are not applicable to other lands, buildings, or structures in the same zone, such conditions and circumstances not being the result of actions by the applicant.



- c. The granting of the variance will not confer upon the applicant any special privileges that are denied by this Ordinance to other properties in the same zone.
 - d. The variance request does not arise from any condition related to land or building use, either permitted or non-conforming, on any neighborhood property.
 - e. Variance requests in the Critical Area District shall not be granted unless the decision is based on the following additional criteria:
 - (1) Special conditions or circumstances exist that are unique to the subject property or structure and a strict enforcement of the provisions within the Critical Area District would result in unwarranted hardship that is not generally shared by owners of property in similar management areas (i.e., IDA, LDA, RCA) of the Critical Area.
 - (2) Strict enforcement of the provisions within the Critical Area District would deprive the property owner of rights commonly shared by other owners of property in similar management areas within the Critical Area District.
 - (3) The granting of a variance will not confer upon an applicant any special privilege that would be denied to other owners of like property and/or structures within the Critical Area District.
 - (4) The variance request is not based upon conditions or circumstances that are self-created or self-imposed, nor does the request arise from conditions or circumstances either permitted or non-conforming that are related to adjacent parcels.
 - (5) The granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area District, and that the granting of the variance will be consistent with the spirit and intent of the County's Critical Area Program and associated ordinances as well as state law and regulations adopted under Subtitle 18 of the Natural Resources Article of the Annotated Code of Maryland and COMAR 20.01.
 - (6) Greater profitability or lack of knowledge of the restrictions shall not be considered as sufficient cause for a variance.
3. A variance in the Critical Area District will not be granted by the Board of Appeals unless and until:
- b. The Board of Appeals shall find that the reason set forth in the application justifies the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of land, building, or structures. In making this determination for variance requests in the Critical Area District, the Board of Appeals shall consider the following as tantamount to a minimum variance:

- (1) The granting of a variance to the yard and/or Buffer requirements results in new structures or impervious surfaces being located as far back from Mean High Water Line, tidal wetlands, or tributary streams in Critical Area as is feasible; and,
- (2) The applicant takes steps to mitigate impacts, insofar as possible, including:
 - i. Reforestation on the site to offset disturbed forested or developed woodlands on at least an equal area basis;
 - ii. Afforestation of areas of the site to that at least fifteen (15) percent of the gross site is forested; and,
 - iii. Implementation of any mitigation measures that relate to Habitat Protection Areas, Threatened or Endangered Species, or Species in Need of Conservation, and Plant and Wildlife Habitats, as delineated in the Cecil County Critical Area Program, recommended by state and/or County agencies, are included as conditions of approval.
- (3) The Board of Appeals shall further find that the granting of the variance will be in harmony with the general purpose and intent of this Ordinance, shall not result in a use not permitted in the zone in which the property subject to variance is located, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
- (4) For variances in the Critical Area District, the Board of Appeals shall find that the granting of the variance will be in harmony with the general purpose and intent of this Ordinance and the Cecil County Critical Area Program and shall not result in a use not permitted in the management area (i.e., IDA, LDA, RCA) or an increase in the number of permitted dwelling units (i.e., density limits) in which the property subject to the variance is located, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
- (5) In addition and to the extent possible based on best available information, all property owners immediately contiguous to the application shall be notified by Certified Mail and be furnished a copy of the said application.
- c. In granting the variance, the Board of Appeals may prescribe such conditions and safeguards as it deems appropriate that comply with the intent of this Ordinance and the Cecil County Critical Area Program. Violations of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this Ordinance and punishable under Section 340 of this Ordinance.
- d. In considering an application for a variance, the County shall presume that specific development activity in the Critical Area that is subject to the application and for which a variance is required does not conform with the general purpose and intent of Natural

Resources Article, Title 8, Subtitle 18, COMAR Title 27, and the requirements of the County's Critical Area Program.

- e. If the variance request is based on conditions or circumstances that are the result of actions by the applicant, including the commencement of development activity before an application for a variance has been filed, the County may consider that fact.
- f. An applicant has the burden of proof and the burden of persuasion to overcome the presumption of nonconformance established in paragraph d above.
- g. Based on competent and substantial evidence, the County shall make written findings as to whether the applicant has overcome the presumption of nonconformance as established above.
- h. With due regard for the person's experience, technical competence, and specialized knowledge, the written findings may be based on evidence introduced and testimony presented by:
 - (1) The Applicant;
 - (2) The County or any other government agency; or
 - (3) Any other person deemed appropriate by the County.

This is the second time this application has been heard by the Board. The initial application was heard and granted by the Board on April 24, 2007. Applicant's building permit was issued on May 29, 2007 and Applicant constructed a 19' x 12' landing area for the existing dock.

Subsequent to the above approval the Chesapeake Bay Critical Area Commission filed an appeal. A hearing was held before the Honorable Christian M. Kahl and by Order dated November 5, 2007 this application was remanded back to the Board of Appeals for a full evidentiary hearing.

As noted above the property owner, Alistair Grant, testified regarding the history of this application. Mr. Grant further testified that this landing area was necessary since there are steep slopes on his property and this was the only shaded water side area to allow for a flat landing

area to sit and enjoy his view of the bay. Mr. Grant stated that he did not believe the structure would have any adverse environmental impact. There are spaces between the decking boards and there is no concrete slab underneath the platform. No trees were removed and over the years the property owners have planted numerous trees and shrubs on their property.

Representatives from the Chesapeake Bay Critical Area testified in opposition to the requested variances. These witnesses outlined the history of the Critical Area Law and the strict standards required under the law before a variance can be granted.

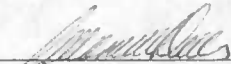
From the evidence presented the Board is not satisfied that the criteria set forth in Section 306 has been met and makes the following findings:

1. The Board further does not find any unwarranted hardship that would deny Applicant reasonable and significant use of the entire parcel for which the variance is requested. The property currently is improved with a single family dwelling and pool. Thus the Board finds that Applicant has reasonable use of the entire parcel.
2. That strict enforcement of the provisions within the Critical Area District will not deprive the property owner of rights commonly shared by other owners of property in similar management areas within the Critical Area District. As noted above the Board finds Applicant has a reasonable use of his property for residential purposes.
3. That the granting of a variance will confer upon an applicant a special privilege that would be denied to other owners of like property and/or structures within the Critical Area District.
4. That the variance request is based upon conditions or circumstances that are self-created or self-imposed, and the request does not arise from conditions or circumstances either permitted or non-conforming that are related to adjacent parcels.

The only evidence offered by Applicant regarding the location of the platform is that the location is the only shaded water side area.

For the reasons stated, a motion to disapprove the application was made and seconded. The Board voted 2 in favor of the motion and 2 opposed to the motion. No other motions were made. Section 298.6.b of the Zoning Ordinance requires a minimum vote of 3 members of the Board to decide in favor of the Applicant. As a result the application is hereby **DENIED**.

Date: 1/29/08



William Dallas, Acting Chairman

TRUE COPY

 1-30-08

IN THE MATTER OF
THE APPLICATION OF
CAMERON FOCKLER, INC.
(Variance)

BEFORE THE CECIL COUNTY
BOARD OF APPEALS
FILE NO.: 3314

OPINION

Application of Cameron Fockler, Inc., on behalf of the property owner, Alistar M. Grant, for a variance from the Zoning Ordinance pertaining to the critical area buffer requirements within the 110' buffer zone for construction purposes on property located at 50 Plum Shore Road, North East, in the Fifth Election District, in an area presently zoned Suburban Residential (SR).

Under the provisions of Article XVII, Part I, Section 306, Paragraph 1, variances, as defined in Article II, may be granted by the Board of Appeals. In addition, due to special features of a site or other circumstances where a literal enforcement of the provisions relating to the Critical Area District would result in unwarranted hardship to the property owner, the Board of Appeals may grant a variance of the Critical Area District. An unwarranted hardship means that without a variance, an applicant would be denied reasonable and significant use of the entire parcel or lot for which the variance is requested.

Paragraph 2 of Section 306 requires the Board to examine all facts of the case and render a decision based upon the following criteria:

- a. The variance request is based upon a situation where, because of special conditions, a literal enforcement of the provisions of the Ordinance would deprive the applicant of a right commonly enjoyed by other parties in the same zone under the terms of this Ordinance.
- b. Special conditions and circumstances exist that are peculiar to the land, buildings or structures involved, and that are not applicable to other lands, buildings, or structures in the same zone, such conditions and circumstances not being the result of actions by the applicant.

- c. The granting of the variance will not confer upon the applicant any special privileges that are denied by this Ordinance to other properties in the same zone.
 - d. The variance request does not arise from any condition related to land or building use, either permitted or non-conforming, on any neighborhood property.
 - e. Variance requests in the Critical Area District shall not be granted unless the decision is based on the following additional criteria:
 - (1) Special conditions or circumstances exist that are unique to the subject property or structure and a strict enforcement of the provisions within the Critical Area District would result in unwarranted hardship that is not generally shared by owners of property in similar management areas (i.e., IDA, LDA, RCA) of the Critical Area.
 - (2) Strict enforcement of the provisions within the Critical Area District would deprive the property owner of rights commonly shared by other owners of property in similar management areas within the Critical Area District.
 - (3) The granting of a variance will not confer upon an applicant any special privilege that would be denied to other owners of like property and/or structures within the Critical Area District.
 - (4) The variance request is not based upon conditions or circumstances that are self-created or self-imposed, nor does the request arise from conditions or circumstances either permitted or non-conforming that are related to adjacent parcels.
 - (5) The granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area District, and that the granting of the variance will be consistent with the spirit and intent of the County's Critical Area Program and associated ordinances as well as state law and regulations adopted under Subtitle 18 of the Natural Resources Article of the Annotated Code of Maryland and COMAR 20.01.
 - (6) Greater profitability or lack of knowledge of the restrictions shall not be considered as sufficient cause for a variance.
3. A variance in the Critical Area District will not be granted by the Board of Appeals unless and until:
- b. The Board of Appeals shall find that the reason set forth in the application justifies the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of land, building, or structures. In making this determination for variance requests in the Critical Area District, the Board of Appeals shall consider the following as tantamount to a minimum variance:

- (1) The granting of a variance to the yard and/or Buffer requirements results in new structures or impervious surfaces being located as far back from Mean High Water Line, tidal wetlands, or tributary streams in Critical Area as is feasible; and,
 - (2) The applicant takes steps to mitigate impacts, insofar as possible, including:
 - i. Reforestation on the site to offset disturbed forested or developed woodlands on at least an equal area basis;
 - ii. Afforestation of areas of the site to that at least fifteen (15) percent of the gross site is forested; and,
 - iii. Implementation of any mitigation measures that relate to Habitat Protection Areas, Threatened or Endangered Species, or Species in Need of Conservation, and Plant and Wildlife Habitats, as delineated in the Cecil County Critical Area Program, recommended by state and/or County agencies, are included as conditions of approval.
 - (3) The Board of Appeals shall further find that the granting of the variance will be in harmony with the general purpose and intent of this Ordinance, shall not result in a use not permitted in the zone in which the property subject to variance is located, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
 - (4) For variances in the Critical Area District, the Board of Appeals shall find that the granting of the variance will be in harmony with the general purpose and intent of this Ordinance and the Cecil County Critical Area Program and shall not result in a use not permitted in the management area (i.e., IDA, LDA, RCA) or an increase in the number of permitted dwelling units (i.e., density limits) in which the property subject to the variance is located, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
 - (5) In addition and to the extent possible based on best available information, all property owners immediately contiguous to the application shall be notified by Certified Mail and be furnished a copy of the said application.
- c. In granting the variance, the Board of Appeals may prescribe such conditions and safeguards as it deems appropriate that comply with the intent of this Ordinance and the Cecil County Critical Area Program. Violations of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this Ordinance and punishable under Section 340 of this Ordinance.
 - d. In considering an application for a variance, the County shall presume that specific development activity in the Critical Area that is subject to the application and for which a variance is required does not conform with the general purpose and intent of Natural

Resources Article, Title 8, Subtitle 18, COMAR Title 27, and the requirements of the County's Critical Area Program.

- c. If the variance request is based on conditions or circumstances that are the result of actions by the applicant, including the commencement of development activity before an application for a variance has been filed, the County may consider that fact.
- f. An applicant has the burden of proof and the burden of persuasion to overcome the presumption of nonconformance established in paragraph d above.
- g. Based on competent and substantial evidence, the County shall make written findings as to whether the applicant has overcome the presumption of nonconformance as established above.
- h. With due regard for the person's experience, technical competence, and specialized knowledge, the written findings may be based on evidence introduced and testimony presented by:
 - (1) The Applicant;
 - (2) The County or any other government agency; or
 - (3) Any other person deemed appropriate by the County.

The property owner desires to construct a 19' x 12' ground level deck adjacent to her existing dock. The deck would be used for sitting. Applicant has young grandchildren and does not want the grandchildren sitting on the dock. The proposed deck will be pervious

Carl Walbeck appeared and testified in favor of the application.

No one appeared in opposition to the application.

From the evidence presented the Board is satisfied that the criteria set forth in Section 306 has been met and makes the following findings:

- 1. The variance request is based upon a situation where because of special conditions (the need to have an area to sit near her existing dock) a literal enforcement of the provisions of the Ordinance would deprive the Applicant of a right commonly enjoyed by other properties in the same zone under the terms of this Ordinance.

2. The Board further finds unwarranted hardship that would deny Applicant reasonable and significant use of the entire parcel for which the variance is requested.
3. The Board finds that Applicant met his burden of proof of demonstrating that the ground level pervious deck can not be located at any other location and be used in conjunction with Applicant's existing dock.
4. That the granting of the variance will not confer upon the Applicant special privileges that are denied by this Ordinance to other properties in the same zone.
5. That strict enforcement of the provisions within the Critical Area District will deprive the property owner of rights commonly shared by other owners of property in similar management areas within the Critical Area District.
6. That the variance request is not based upon conditions or circumstances that are self-created or self-imposed.

For the reasons stated, by unanimous vote, the application for a critical area buffer variance is hereby **GRANTED**.

Date: 5/29/07

David Willis
David Willis, Chairman

TRUE COPY

Jack Dempsey 5-30-07

IN THE CIRCUIT COURT FOR CECIL COUNTY

PETITION OF:
MARGARET MCHALE,
Chair, Critical Area Commission

FOR JUDICIAL REVIEW OF THE DECISION
OF THE CECIL COUNTY BOARD OF APPEALS

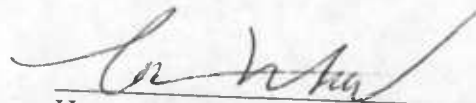
CASE NO.: C-07-201 AA

IN THE CASE OF:
In the Matter of the Application of
CAMERON FOCKLER, INC.
File No.: 3314

ORDER

Upon consideration of the record, memorandums and arguments of counsel, it is this
5th day of November, 2007 by the Circuit Court for Cecil County,

ORDERED that the above captioned matter is hereby **REMANDED** to the Cecil County
Board of Appeals for a full evidentiary hearing.



Honorable Christian M. Kahl

**COPIES SENT TO
ALL COUNSEL AND
UNREPRESENTED PARTIES**

07 NOV -6 AM 9: 35

TRUE COPY
TEST William L. Brueckman

William L. Brueckman, Clerk

H. A. BAYNES
ATTORNEY AT LAW
100 WEST MAIN STREET
P.O. BOX 21921
CECIL COUNTY, MD 21021
PHONE: 410-398-6333

RECEIVED

NOV 07 2007

CECIL COUNTY OFFICE OF
PLANNING & ZONING

CIRCUIT COURT FOR CECIL COUNTY
William L. Brueckman
Clerk of the Circuit Court
Courthouse, 2nd Floor
129 E. Main Street
Elkton, MD 21921-

TTY for Deaf: (410)-398-2097

Civil Equity(410)996-5377 Civil Law(410)996-5369 MD Toll Free 1(888)287-0576

11/07/07

Case Number: 07-C-07-000201 AA
Date Filed: 06/21/2007
Status: Closed/Inactive
Judge Assigned: To Be Assigned,
Location :
CTS Start : 06/21/07 Target : 12/17/08

In the Matter of Margaret McHale

C A S E H I S T O R Y

OTHER REFERENCE NUMBERS

Description	Number
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Case Folder ID	C07000201V01

INVOLVED PARTIES

Type Num	Name(Last,First,Mid,Title)	Addr Str/End	Pty. Disp. Addr Update	Entered
PET 001	McHale, Margaret		CT DO 11/05/07	06/21/07
		Party ID: 0151860		
	Capacity : Chair			
Mail:	Critical Area Commission	06/21/07		06/21/07 DPB
	1801 West Street, Suite 100			
	Annapolis, MD 21401			
	Serve On: Margaret McHale, Chair			
Attorney:	0027066 Gansler, Douglas	Appear: 06/21/2007		06/21/07
	Attorney General			
	300 West Preston Street			
	Suite 302			
	Baltimore, MD 21201			
	(410)767-6023			
	0803385 Canedo, Sandra K	Appear: 06/21/2007		06/21/07

Assistant Attorney General Department Of Natural Resources
 1804 West Street
 Suite 100
 Annapolis, MD 21401
 (410)260-3466

0811287 Dise, Marianne E Appear: 06/21/2007 06/21/07
 Assistant Attorney General Department Of Natural Resources
 1804 WEST ST
 SUITE 100
 Annapolis, MD 21401
 (410)260-3466

Type Num	Name(Last,First,Mid,Title)	Addr Str/End	Pty. Disp. Addr Update	Entered
ADA 001	Cecil County Board Of Appeal		CT DO 11/05/07	06/21/07
		Party ID: 0151861		
	Mail: 129 East Main Street Office Of Planning & Zoning Elkton, MD 21921	06/21/07		06/21/07 DPB
	Attorney: 0015513 Baynes, Keith A Keith A. Baynes, Esquire, P.A. 210 E Main St Elkton, MD 21921 (410)398-6333		Appear: 07/12/2007	07/12/07
ITP 001	Cameron Fockler Inc		CT DO 11/05/07	06/21/07
		Party ID: 0151862		
	Capacity : On Behalf Of Mail: 29 South Main Street Suite B North East, MD 21901	06/21/07		06/21/07 DP8
	Attorney: 0016979 Fockler, Karl H Fockler & Fockler 205 East Main Street Elkton, MD 21921 (410)398-3030		Appear: 07/18/2007	07/18/07
ITP 002	Grant, Alistar M		CT DO 11/05/07	06/21/07
		Party ID: 0151868		
	Mail: 110 N. Duke Street Apt. #404 Lancaster, PA 17602	06/21/07		06/22/07 DPB

CALENDAR EVENTS

Date	Time	Fac	Event Description	Text SA	Jdg Day	Of Notice	User ID
Result			ResultDt By Result Judge	Rec			
10/30/07	01:30P	I	Hearing		CMK	01 /01	DAW DAW
	Held/Concluded		10/30/07 E C.Kahl	N			

DISPOSITION HISTORY

Disp Date	Disp Code	Description	Stage Code	Description	Activity User	Date
11/05/07	D0	Decree or Order	CT	AFTER TRIAL/HEARING	DAW	11/06/07

JUDGE HISTORY

JUDGE ASSIGNED	Type	Assign Date	Removal	RSN
TBA To Be Assigned.	J	06/21/07		

DOCUMENT TRACKING

Num/Seq	Description	Filed	Entered	Party	Jdg Ruling	Closed	User ID
0001000	Payments Received 6/21/07 Cost To Be Assessed At The End Of The Case: dpb.	06/21/07	06/21/07	000	TBA	06/21/07	DPB DPB
0002000	Petition for Judicial Review	06/21/07	06/22/07	PET001	TBA	11/05/07	DPB DAW
0002001	Response to Petition	07/12/07	07/12/07	ADA001	TBA	11/05/07	DAW DAW
0002002	Response to Petition	07/18/07	07/18/07	ITP001	TBA	11/05/07	DAW DAW
0003000	Notice of Administrative Judicial Review Issued	06/22/07	06/22/07	PET001	TBA	06/22/07	DPB
0004000	Affidavit of Service	07/02/07	07/02/07	000	TBA	07/02/07	DPB
0005000	Administrative Agency Record Received (waiting for Transcript)	07/05/07	07/06/07	ADA001	TBA	11/05/07	DAW DAW
0006000	Administrative Agency Transcript Received	08/06/07	08/06/07	ADA001	TBA	11/05/07	DAW DAW

Num/Seq Description	Filed	Entered	Party	Jdg Ruling	Closed	User ID
0007000 Notice of Record Issued	08/06/07	08/06/07	ADA001	TBA	08/06/07	DAW
0008000 Notice of Assignment Issued	08/07/07	08/07/07	000	TBA	08/07/07	DAW
0009000 Motion to Dismiss	08/10/07	08/14/07	ADA001	ORL Denied	09/06/07	DAW DAW
0009001 Response to Motion to Dismiss	08/27/07	08/28/07	ITP001	TBA	11/05/07	DAW DAW
0010000 Memorandum of Petitioner	08/30/07	08/30/07	PET001	TBA	08/30/07	DAW
0011000 Memorandum of Administrative Agency	10/17/07	10/17/07	ADA001	TBA	10/17/07	DAW
0012000 Motion to Strike Memorandum of Administrative Agency	10/23/07	10/23/07	PET001	TBA	11/05/07	DAW DAW
0012001 Response to Motion to Strike Memorandum	10/24/07	10/24/07	ADA001	TBA	11/05/07	DAW DAW
0013000 Permission of the Court to Present Argument	10/30/07	11/06/07	ITP001	TBA	11/05/07	DAW DAW
0014000 Order of Court passed and filed. This case is remanded to the Board of Appeals for a full evidentiary hearing	11/06/07	11/06/07	000	CMK Ruled	11/05/07	DAW

TICKLE

Code Tickle Name	Status Expires	#Days	AutoExpire	GoAhead	From Type	Num Seq
1YRT One Year Tickle (Jud	CANCEL 06/20/08	365	no	no	DAAR D	002 000
SLIL Set List - Informati	CLOSED 07/05/07	0	no	no	DAAR D	005 000
SLMR Set List For Motions	EXPIRE 08/28/07	18	no	no	DANS D	009 000

DOUGLAS F. GANSLER
Attorney General

KATHERINE WINFREE
Chief Deputy Attorney General

JOHN B. HOWARD, JR.
Deputy Attorney General



STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF NATURAL RESOURCES

JOSEPH P. GILL
Assistant Attorney General
Principal Counsel

SHAUN P.K. FENLON
RACHEL L. EISENHAUER
ROGER H. MEDOFF
SHARA MERVIS ALPERT
SAUNDRA K. CANEDO
PAUL J. CUCUZZELLA
KRISTEN O. MANEVAL
Assistant Attorneys General

FAX NO.: 410-260-8364

WRITER'S DIRECT DIAL NO.
(410) 260-8356
scanedo@oag.state.md.us

August 29, 2007

Mr. William Brueckman, Clerk of the Court
Circuit Court for Cecil County
129 East Main Street
Elkton, Maryland 21921

RE: Petition of Margaret McHale, Chair, Critical Area Commission for the Chesapeake and Atlantic Coastal Bays for Judicial Review of Decision of the Cecil County Board of Appeals in the Case of Cameron Fockler, Inc., on Behalf of Alistair M. Grant.
Civil Action No.: 07-C-07-000201AA

Dear Mr. Brueckman:

Enclosed for filing please find Memorandum of Petitioner in the above referenced case.
Thank you for your assistance.

Sincerely,

A handwritten signature in cursive script, appearing to read "Saundra K. Canedo".

Saundra K. Canedo
Assistant Attorney General

Enclosures

cc: Counsel of Record

**IN THE CIRCUIT COURT OF MARYLAND
FOR CECIL COUNTY**

PETITION OF: *
MARGARET MCHALE,
Chair, Critical Area Commission for *
the Chesapeake and Atlantic Coastal Bays *

FOR JUDICIAL REVIEW OF
THE DECISION OF: * Civil Action No.: 07-C-07-000201AA
THE CECIL COUNTY BOARD
OF APPEALS *

IN THE CASE OF: *
No. 3314
CAMERON FOCKLER, INC. ON *
BEHALF OF ALISTAIR M. GRANT *

* * * * *

MEMORANDUM OF PETITIONER

Petitioner Margaret McHale, Chair, Critical Area Commission for the Chesapeake and Atlantic Coastal Bays (“Critical Area Commission”) by her attorneys, Douglas F. Gansler, Attorney General of Maryland and Sandra K. Canedo and Marianne E. Dise, Assistant Attorneys General, pursuant to Rule 7-207, files this Memorandum.

INTRODUCTION

Petitioner Critical Area Commission seeks reversal of the May 29, 2007 Decision of the Cecil County Board of Appeals (“Board”), in which the Board granted a variance to the 110-foot Critical Area Buffer requirements of the County’s and State’s Critical Area Law. The Board’s decision authorizes the Applicants to construct a deck in the legally-protected waterfront Buffer. In its decision granting the variance, the Board erred as a matter of law by failing to apply, or even to mention, the State-mandated variance requirement of “unwarranted hardship;” by failing to apply all of the variance standards

required by the County's Critical Area law; and by failing to make the written findings required by the State Law and County Code. Consequently, this Court should reverse the Board.

PROCEEDINGS BY BOARD OF APPEALS

A hearing was held by the Cecil County Board of Appeals in the matter of a variance application by Cameron Fockler, Inc. on behalf of Alistair M. Grant (collectively, the "Applicants") on April 24, 2007. At the hearing, Mr. O'Donnell for Cameron Fockler, Inc. on behalf of Alistair Grant testified that the Grants want to build a small deck by their dock so the grandkids can be out there and play. Transcript of Board hearing, April 24, 2007 ("Tr.") at 3. A member of the public, Mr. Walbeck testified in favor of the variance stating, "they have even a better view of the North East River . . . and they would like to be able to enjoy that better." Tr. at 6 and 7. The Critical Area Commission submitted a three page comment letter addressing five of the County's variance standards that are not met by this variance application¹. The Board incorrectly summarized the letter's entirety by simply quoting the concluding paragraph which stated,

In conclusion, it is our position that, unless the Board finds, by competent and substantial evidence, that the applicant has met the burden of proof to overcome the presumption of non-conformance, and the burden to prove that the applicant has met each one of the County's variance standards, the Board must deny the application for variance to the buffer.

Tr. at 7; Critical Area Commission letter dated April 3, 2007 at 3. The letter specifically discussed unwarranted hardship and the Commission staff concluded that, "we do not

¹ The letter was addressed to Mr. Joseph Johnson, at the Cecil County Office of Planning and Zoning and dated April 3, 2007. The letter refers to a 100-foot Buffer, but the Cecil County Code requires a 110-foot Critical Area Buffer.

believe that the County has evidence on which to base a favorable finding on this factor for the deck as the applicant is able to use the property for residential purposes.” Critical Area Commission letter at 2.

The Applicants requested a variance for the proposed detached deck because they wanted to locate the deck in the 110-foot Critical Area Buffer. Consistent with State law, the Cecil County Critical Area law prohibits the construction of new impervious surfaces (including decks) in the Buffer. See Annotated Code of Maryland (“Code”), Natural Resources Article 8-1808(c)(vii). The State law (Nat. Res. Art. 8-1808(d)(4)(ii), and the County Code require that the Applicants satisfy each and every variance standard in order to be granted a variance.² See, County Code, Article XVII, Part I, §306. In addition, State and County law alike require the Board to make written findings to support its decision on a variance application. Nat. Res. §8-1808(d)(3)(ii); County Code, Art. XVII, §306.3.g.

In this case, the Board erroneously granted the variance, while applying neither the unwarranted hardship standard nor any other applicable variance standard. No testimony was proffered by the Applicant which would support a finding of unwarranted hardship, other than the statement that, “they don’t want the kids playing around on the dock.” Tr. at 5. Even if this testimony is accepted as true, inability to supervise one’s children or grandchildren is not an unwarranted hardship and the law does not allow the

² The County Code does not follow the precise language of the State law, requiring “each and every” standard be met; however, the language of the County variance standards explicitly states, “[V]ariance requests in the Critical Area District *shall not* be granted unless the decision is based on the following additional criteria.” (emphasis added) County Code, Article XVII, Part I, Section 306. In any event, the Court of Special Appeals has held that the language of the State law in Nat. Res. Art. 8-1808 is mandatory for all Critical Area variances. *Becker v. Anne Arundel County*, 174 Md. App. 114, 136 (2007).

Board to grant a variance for this reason. In Critical Area cases, the General Assembly has mandated that a variance **may not be granted** unless the applicant establishes by competent and substantial evidence that the applicant will suffer an “unwarranted hardship.” The General Assembly has defined “unwarranted hardship” as “without a variance, an applicant would be denied reasonable and significant use of the entire parcel or lot for which the variance is requested.” Code, Nat. Res. Art. 8-1808(d)(4)(i).

The State legislature has assigned both the burden of proof and the burden of persuasion to the Applicants in Critical Area variance cases. Code, Nat. Res. Art. 8-1808(d)(3). These burdens, and the standards for Critical Area variances, are not optional. As the Court of Special Appeals recently held: “The criteria contained in [Natural Resources Article] 8-1808, including the criteria for granting a variance, are mandatory.” *Becker v. Anne Arundel County*, 174 Md. App. at 136. In the present case, the Cecil County Board failed to ensure that Applicants provided evidence to meet those burdens and to support the findings required by law. Moreover, the Board failed to make the written findings required by law (“a local jurisdiction shall make written findings”), Code, Nat. Res. Art. 8-1808(d)(3)(ii). The Board also erred as a matter of law by failing to require the Applicants to overcome the statutory presumption of non-conformance with the general purpose and intent of the critical area law (“In considering an application for a variance, a local jurisdiction shall presume that the specific development activity in the critical area ... for which a variance is required does not conform with the general purpose and intent of this subtitle ... and the requirements of the local jurisdiction’s program.”) Nat. Res. Art. 8-1808(d)(2)(i).

BACKGROUND OF CRITICAL AREA ACT

In an effort to protect the Chesapeake Bay from further decline, the General Assembly enacted Chapter 794 of the Laws of 1984, the Chesapeake Bay Critical Area Protection Program, Md. Code Ann. Nat. Res. II, §8-1801 et seq. (the "Critical Area Law"). In doing so, the General Assembly made findings that:

(2) The shoreline and adjacent lands constitute a valuable, fragile, and sensitive part of this estuarine system, where human activity can have a particularly immediate and adverse impact on water quality and natural habitats; . . .

(4) Human activity is harmful in these shoreline areas, where the new development of nonwater-dependent structures or the addition of impervious surfaces is presumed to be contrary to the purpose of this subtitle, because these activities may cause adverse impacts, of both an immediate and a long-term nature, to the Chesapeake and Atlantic Coastal Bays, and thus it is necessary wherever possible to maintain a buffer of at least 100 feet landward from the mean high water line of tidal waters, tributary systems, and tidal wetlands; . . .

(8) The restoration of the Chesapeake and the Atlantic Coastal Bays and their tributaries is dependent, in part, on minimizing further adverse impacts to the water quality and natural habitats of the shoreline and adjacent lands, particularly in the buffer;

(9) The cumulative impact of current development and of each new development activity in the buffer is inimical to these purposes; and

(10) There is a critical and substantial State interest for the benefit of current and future generations in fostering more sensitive development activity in a consistent and uniform manner along shoreline areas of the Chesapeake and Atlantic Coastal Bays and their tributaries so as to minimize damage to water quality and natural habitats.

Code, NR §8-1801(a). As required by the Critical Area Law, each affected local government, including Cecil County developed a Resource Protection Program – or "Critical Area Program" – which is implemented "on a cooperative basis between the State and local governments." Code, NR §8-1808(b)(2). Cecil County administers its Critical Area Program subject to the oversight of the Critical Area Commission.

VARIANCES TO THE CRITICAL AREA LAW

Relevant here, Cecil County law requires the Applicants to apply for and receive a variance to the Critical Area Program before the Applicants could build the proposed deck in the 110-foot Buffer. The State Law mandates that when local zoning boards consider Critical Area variance applications, the Boards must presume that the requested project “does not conform with the general purpose and intent of this subtitle, regulations adopted under this subtitle, and the requirements of the local jurisdiction’s program.” Code, NR §8-1808(d)(2)(i).³ The variance applicant bears the burden of proof and the burden of persuasion to overcome this statutory presumption. Code, NR §8-1808(d)(3). In this case, despite the utter dearth of supporting evidence, the Board concluded that the Applicants overcame the presumption of nonconformance as required by the Critical Area Act and Article XVII, Part I, Section 306 of the County Zoning Ordinance. Bd. Decision at 3-4.

In addition to overcoming the presumption of non-conformance, an applicant must meet all of the County’s enumerated variance standards, including that of unwarranted hardship. County Code, Art. XVII, Part I, §306.1. The County Code specifically incorporates the Critical Area Act’s definition of “unwarranted hardship.” “Unwarranted hardship means that without a variance, an applicant would be denied reasonable and significant use of the *entire* parcel or lot for which the variance is requested.” (emphasis added). *Id.* This definition was added to the State law, Natural

³ Cecil County has adopted this presumption as part of the County’s ordinance. County Code, Art. XVII, Part I, §306.3.d.

Resources Article 8-1808 in 2004, and it is intentionally strict. See 2004 Laws of Md., ch.526.

The Cecil County Code establishes specific criteria for Critical Area variances.⁴ Each of these standards must be satisfied. Moreover, the State Critical Area Act provides that “a local jurisdiction shall make *written* findings as to whether the applicant has overcome the presumption of non-conformance” and also, a variance to a local jurisdiction’s critical area program may not be granted unless “the applicant has satisfied each one of the variance provisions.” NR §8-1808(d)(3)(ii) and (4)(ii). In the case before this Court, the Board made **no** findings, and none of the testimony at the hearing even touched on the relevant statutory standards. Thus, the Board’s decision is facially deficient.

The Court of Special Appeals has held that when reviewing an administrative agency’s conclusion of law, “no deference is given to the agency’s conclusions.” *Layton v. Howard County Bd. of Appeals*, 171 Md. App. 137, 173-174 (2006), quoted in *Becker v. Anne Arundel County*, 174 Md. App. 114, 138 (2007). Further, it is well-settled that “a reviewing court may not uphold an agency’s decision if a record of the facts on which the agency acted or a statement of reasons for its action is lacking.” *Becker*, *id.* at 138. The Court of Special Appeals explained that “[f]indings of fact must be meaningful and cannot simply repeat statutory criteria, broad conclusory statements, or boilerplate resolutions.” *Becker*, *id.* at 139, quoting *Bucktail, L.L.C. v. County Council of Talbot County*, 352 Md. 530, 553 (1999). See also, *Ocean Hideaway Condominium Association v. Boardwalk Plaza Venture*, 68 Md.App. 650, 661 (1986). The Ocean Hideaway Court

⁴ The Board Decision at 1 - 4 sets forth the text of the county variance standards.

elaborated its reasoning for requiring findings in quoting *Gough v. Board of Zoning Appeals*, 21 Md.App. 697, 702 (1974):

Given express findings, the court can determine whether the findings are supported by substantial evidence, and whether the findings warrant the decision of the board. If no findings are made, and if the court elects not to remand, its clumsy alternative is to read the records, speculate upon the portions which probably were believed by the board, guess at the conclusions drawn from credited portions, construct a basis for decision, and try to determine whether a decision thus arrived at should be sustained.

Ocean Hideaway at 662. In this case, the Board did not provide any basis upon which this Court could ascertain how, or indeed whether, the Board analyzed each variance standard. Instead, the Board merely quoted each standard in the County Code. A review of the record in this case leads to only one conclusion: the Board's Decision was based on numerous and serious errors of law. Accordingly, this Court should reverse the Board.

QUESTION PRESENTED

Did the Board err as a matter of law, by failing to apply the standard of unwarranted hardship; by failing to require the Applicants to meet the burden of satisfying each variance standard of the Cecil County Code; and by failing to make the written findings required by state and county law?

ARGUMENT

The Board erred as a matter of law by failing to apply the standard of unwarranted hardship; by failing to require the Applicants to meet all of the variance standards; and by failing to make the written findings required by the County Code.

This Court's review is "limited to determining if there is substantial evidence in the record as a whole to support the agency's findings and conclusions, and to determine

if the administrative decision is based upon an erroneous conclusion of law.” *Board of Physician Quality Assurance v. Banks*, 354 Md. 59, 67-68 (1999), citing *United Parcel v. People’s Counsel*, 336 Md. 569 (1994). In this case, the record is devoid of evidence to support the Board’s decision to grant the variance for a deck in the Buffer. The Applicants did not provide one shred of evidence that could possibly support any findings regarding the satisfaction of any of the variance standards. With virtually no written findings⁵ (other than the mere recitation of the County standards), the Board’s Decision is facially deficient as a matter of law. *Bucktail v. Talbot County*, 352 Md. at 553.

Moreover, the Board made reversible errors of law by failing to apply the statutory standard of unwarranted hardship, and by failing to require that the Applicants satisfy each one of the variance standards. The Board found an “unwarranted hardship that would deny Applicants reasonable and significant use of the entire parcel for which the variance is requested.” Bd. Decision at 5. However, the Board did not explain what constitutes the unwarranted hardship. The record of the hearing contains no mention of the unwarranted hardship standard, yet, somehow the Board managed to make that finding without any evidence proffered by the Applicants. *Id.* Failure of a variance application to meet just one of the variance standards requires this Court to reverse the Board, but in this case, the Applicants failed to meet **any** of the standards. Yet, the Board nevertheless approved the variance. The Board’s Decision is clearly erroneous, and it must be reversed.

⁵ For the burden of proof requirement, the Board found “that Applicant met his burden of proof of demonstrating that the . . . deck can not be located at any other location **and** be used in conjunction with Applicant’s existing dock.” (emphasis added) Bd. Decision at 5.

A. Applicants provided no evidence to meet the burden of proof and persuasion that they satisfied each of the variance standards.

1. Applicants failed to prove that denial of a variance for their deck in the Buffer would cause an “unwarranted hardship” as defined by the General Assembly.

Under the State and County Critical Area law cited on pages ___ of this Memorandum, a variance applicant must prove that, without the specific requested variance, that he will be denied “reasonable and significant use of the entire parcel or lot for which the variance is requested,” and thus, will suffer an “unwarranted hardship.” Code, NR §8-1808(d)(1); County Code, Art. XVII, Part I, §306. This standard is intentionally strict, and the General Assembly expressly required that it be applied by every local Board of Appeals in Critical Area variance cases. *Becker v. Anne Arundel County*, 174 Md. App. 114, 124 (2007). In the instant case, the Applicants presented no evidence on which the Board could have based a finding that the Applicants would be denied reasonable and significant use of the entire property without this variance⁶. In fact, the record supports a finding to the contrary: Applicants currently enjoy more than reasonable and significant use of their property.

The property contains a house, driveway, pool and patio. Critical Area Commission letter at 1. Clearly, the record provides undisputed evidence that Applicants do, in fact, enjoy reasonable and significant use of the property. The language of the State Critical Area Act narrowly defines unwarranted hardship. The legal test is whether without a variance, an applicant will be denied reasonable and significant use of his *entire* lot or parcel. (emphasis added.). The Applicants did not even allege, much less

⁶ The Court of Special Appeals has previously held that, “[A]lthough unwarranted hardships may be alleged, those hardships must be such as would preclude . . . from developing their lot.” *Citrano*, 123 Md.App. at 241.

carry the burden to prove that he would suffer an unwarranted hardship. The need for the deck at the water's edge was characterized as a place for the grandkids to play without being on the dock since the dock does not have a railing. Tr. at 5. Clearly, the General Assembly did not anticipate that location of a deck in the Critical Area Buffer would satisfy the unwarranted hardship standard merely because the Applicants wanted to avoid placing a railing on the dock.

It is quite disturbing that the Board granted this variance without any mention of the unwarranted hardship during the hearing. This was the opportunity for the Applicants to make their case, to satisfy the burdens of proof and persuasion and meet the variance standards. There was no evidence proffered which would satisfy the requirements of either the State or County laws or criteria for unwarranted hardship. The Applicants enjoy numerous reasonable uses of the property. The Board erred as a matter of law, because the Board did not apply the definition of unwarranted hardship as required by the General Assembly in Code, NR 8-1808(d)(1) and by the County Code, Art. XVII, Part I, §306.1. For this reason alone, the Board should be reversed.

2. Denial of a deck in the 110-foot Buffer will not deprive Applicants of a right commonly enjoyed by others under the County Critical Area program. Allowing such construction would grant a special privilege to the Applicants.

Other than the Board's statement in its Decision that, without the granting of this variance, the applicant would be deprived of rights commonly enjoyed by others, there is no evidence in the record to support a finding on this variance factor. Bd. Decision at 1 and 4. It is unclear what 'right' the Applicants are claiming, as there is no 'right' to build any new non-water dependent structure in the 110-foot Buffer. Indeed, The Critical Area

program expressly prohibits new impervious structures in the Buffer. Code of Maryland Regulations (COMAR) 27.01.09.01C.

In 2002, the General Assembly amended the Critical Area law to expressly require that, in determining if a variance applicant would be denied a 'right commonly enjoyed by others', the comparison had to be made to "a use of land or a structure permitted to others in accordance with the provisions of the critical area program." 2002 Laws of Md. Ch. 431, 432; Code, Nat. Res. Art. 8-1808(d)(4)(iii). Thus, in order for this standard to be met, there must be some evidence presented to the Board for them to consider whether or not this is a right that is commonly enjoyed by others. Here, the Board simply had no evidence that other persons enjoy the right to place a deck in the Buffer under the Cecil County Critical Area program. The reality is that there is no **right** under the Critical Area program to place a deck in the Buffer. The Board erred as a matter of law, and the Board should be reversed.

3. Applicants failed to prove that a variance for a deck in the Buffer would not adversely affect fish, wildlife, or plant habitat, and that the variance would be in harmony with the spirit and intent of the Critical Area program.

The Applicants did not submit any evidence from which the Board could make a finding required under the County's ordinance that the variance would not cause an adverse effect on fish, wildlife, or plant habitat, and that the variance would be in harmony with the spirit and intent of the County's Critical Area program. Instead, the Board merely reiterated the variance standard and failed to provide any supporting evidence or cite to testimony that there would be no adverse impact. Bd. Decision at 2 and 4. Although the Board did note that the Applicants testified that they did not want the grandkids sitting on the dock, (Bd. Decision at 4) this is not the standard. The new

deck would introduce more impervious surface into the 110-foot Buffer, and the General Assembly has specifically found that “each new development activity in the buffer is inimical” to the purposes of the Critical Area law. Code, Nat. Res. Art. 8-1801(a)(9). The Applicants did not rebut this legislative finding. The standard is whether, without the deck in the Buffer, the Applicant will be denied reasonable and significant use of the entire property or lot. The Board did not apply this mandated standard, and the Board should be reversed.

B. The Board failed to make the written findings required by State and County law.

The Board’s Decision is fatally flawed, because the Decision does not contain written findings as required by the Code, NR §8-1808(d). In a recent Critical Area variance case, the Court of Special Appeals reiterated this principle: “A reviewing court may not uphold an agency’s decision if a record of the facts on which the agency acted or a statement of reasons for its action is lacking.” *Becker v. Anne Arundel County*, 174 Md. App. 114, 138 (2007). An applicant for a variance to the Critical Area Act bears a heavy burden to prove that application of the law will result in an unwarranted hardship and that the proposed variance meets each of the legislatively-prescribed standards.

In Critical Area variance cases, the burden is placed on the Applicant. Code, Nat. Res. Art. 8-1808(d). Recently, the Supreme Court reaffirmed this long-standing principle: The burdens of proof and persuasion “have and should be assigned to the plaintiff who generally seeks to change the present state of affairs and who therefore naturally should be expected to bear the risk of failure of proof or persuasion.” *Schaffer ex. rel Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528, 534 (2005), quoting C. Mueller & L. Kirkpatrick, *Evidence* §3.1, p. 104 (3d ed. 2003). In the present case, the Applicants

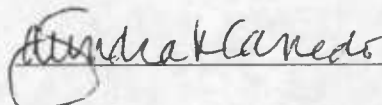
had the obligation to submit evidence sufficient to carry this burden. They did not meet their burdens of proof and persuasion on any of the statutory variance standards. The Board failed to make the required written findings to support its Decision. The Board's Decision to grant the Critical Area variance is incorrect as a matter of law and this Honorable Court should reverse the Board.

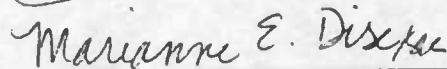
CONCLUSION

For the reasons and authorities cited above, the Critical Area Commission respectfully requests this Honorable Court to reverse the decision of the Cecil County Board of Appeals.

Respectfully submitted,

DOUGLAS F. GANSLER
Attorney General of Maryland



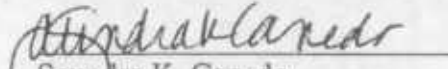


Sandra K. Canedo
Marianne E. Dise
Assistant Attorneys General
Department of Natural Resources
580 Taylor Avenue, C-4
Annapolis, Maryland 21401
(410) 260-8356
*Attorneys for Margaret McHale, Chair,
Critical Area Commission for the
Chesapeake and Atlantic Coastal Bays*

August 29, 2007

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21 th day of August 2007, I sent a copy of the foregoing Memorandum of Law via U.S. Mail, postage prepaid to: Keith Baynes, Attorney for the Board of Appeals, 210 East Main Street, Elkton, Maryland 21921.


Saundra K. Canedo

DOUGLAS F. GANSLER
Attorney General

KATHERINE WINFREE
Chief Deputy Attorney General

JOHN B. HOWARD, JR.
Deputy Attorney General



MARIANNE E. DISE
Assistant Attorney General
Principal Counsel

SAUNDRA K. CANEDO
Assistant Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
CRITICAL AREA COMMISSION FOR THE
CHESAPEAKE AND ATLANTIC COASTAL BAYS

FAX NO. (410) 974-5338

WRITER'S DIRECT DIAL NO. (410) 260-3466
mdisc@oag.state.md.us

August 24, 2007

Mr. William Brueckman, Clerk of the Court
Circuit Court for Cecil County
Court House
129 East Main Street
Elkton, Maryland 21921

Re: *Petition of Margaret McHale, Chair, Critical Area Commission for the Chesapeake and Atlantic Coastal Bays for Judicial Review of Decision of the Cecil Count Board of Appeals, In the Case of: Cameron Fockler Civil No. 07-C-07-000201AA*

Dear Mr. Brueckman:

Enclosed please find for filing in the above-referenced case the Petitioner's Response to Motion to Dismiss.

Thank you for your assistance.

Very truly yours,

A handwritten signature in cursive script that reads "Marianne E. Dise".

Marianne E. Dise
Assistant Attorney General

Enclosure

cc: Counsel of Record

**IN THE CIRCUIT COURT OF MARYLAND
FOR CECIL COUNTY**

PETITION OF:

MARGARET MCHALE, *
Chair, Critical Area Commission for *
the Chesapeake and Atlantic Coastal Bays *

**FOR JUDICIAL REVIEW OF *
THE DECISION OF THE *
CECIL COUNTY BOARD *
OF APPEALS ***

Civil Action No. 07-C-07-000201 AA

**IN THE CASE OF *
Case No. 3314, *
Cameron Fockler, Inc. ***

* * * * *

RESPONSE TO MOTION TO DISMISS

Petitioner, Margaret McHale, Chair of the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, (“Chair McHale”) by her attorneys, Douglas F. Gansler, Attorney General of Maryland, and Marianne E. Dise and Sandra K. Canedo, Assistant Attorneys General, hereby responds to Respondent Board of Appeals of Cecil County’s Motion to Dismiss.

Statement of Facts

On June 21, 2007, Chair McHale filed a Petition for Judicial Review of the Cecil County Board of Appeals (the “Board”) Decision granting Cameron Fockler, Inc., on behalf of Alistar M. Grant, a variance to the 110-foot Critical Area Buffer to allow for the construction of a deck. The Board held a public hearing on the variance application on April 24, 2007 and did not issue its written decision, in the form of an Opinion, until May 29, 2007. The Petition for judicial review was filed on June 21, 2007, well in advance of the thirty-day time limit in Md. Rule 7-203.

On August 9, 2007, the Respondent filed a Motion to Dismiss (received by the Commission on August 14, 2007), claiming that the Petition was filed “beyond the thirty (30)

day provision provided by Maryland Rule 7-203.” See Motion to Dismiss ¶5. For the reasons and authorities that follow, the County is incorrect as a matter of law, and the Motion should be denied.

Law and Argument

Pursuant to Maryland Rule 7-203, “a petition for judicial review shall be filed within 30 days after the latest of: (1) the date of the order or action of which review is sought; (2) the date the administrative agency sent notice of the order or action to the petitioner, if notice was required by law to be sent to the petitioner.” Here, the written decision (“the Opinion”) of the Cecil County Board of Appeals is dated May 29, 2007. Because that is the date of the Board’s decision, the Rules provide that a Petition for judicial review is timely if filed by June 28, 2007. Respondent acknowledges that the Petitioner filed on June 21, 2007 (Motion to Dismiss ¶5). By the terms of Rule 7-203, and the *applicable, enforceable* Cecil County Zoning Ordinance, Art. XVI, Section 298.7B, the Petition was clearly filed within the 30-day time limit.

Respondent’s Motion is based on an alleged recent amendment to the Cecil County Zoning Ordinance, Art. XVI Sec. 298.7B. Under the amended ordinance, according to Respondent, the date of the Board’s public hearing (April 24th) becomes the “date of decision,” notwithstanding that the Board’s written Order/Opinion was not issued until a month later! (Motion to Dismiss, ¶¶ 2 and 4.) Setting aside the serious due process concerns that would be raised if such an interpretation were upheld, the Respondent’s argument must fail for the very simple reason that the purported amendment to Section 298.7B is *not effective in the Critical Area*. The County did not submit the new ordinance to the Critical Area Commission for review and approval, and accordingly, the revised ordinance cannot, as a matter of State law, be effective in the Critical Area. See Affidavit of Ren Serey, attached hereto as Exhibit A. In essence, the County is asking this Court to apply an unenforceable ordinance as a means to circumvent the

Chair's right under State Critical Area law to review this variance decision.

While the December, 19, 2006 amendments to the Cecil Zoning ordinance may govern the Zoning Board's process elsewhere in Cecil County, the new procedures have not been adopted as part of the Critical Area program, and thus are not effective in the Critical Area. *Kent Island Defense League, LLC v. Queen Anne's County Board of Elections*, 145 Md. App. 684, 693, *cert. denied*, 371 Md. 615 (2002) (rejecting plaintiffs' argument that the local critical area ordinance was a zoning ordinance, enacted under the county's zoning authority: "Amendments to the County Critical Area program ...are not zoning matters...the ordinances were part of the implementation of a State program. ...") The December 19, 2006 amendments to Section 298.7B at issue in this case were not merely zoning matters, but were part of the County's implementation of the Critical Area Program. Accordingly, it is incorrect as a matter of law to claim, as Respondent does, that the date of the Board's decision was April 24, 2007. This could only be true if the December 19, 2006 amendments to the Ordinance had been submitted to, and approved by, the Critical Area Commission. They were not, and the revised ordinance is not applicable within the Critical Area.

While each local jurisdiction implements its own critical area program, the State law provides that the programs themselves, and the implementation of those programs, are "subject to State criteria and oversight." Code, Nat. Res. II §8-1801(b)(2). As the Court of Special Appeals stated, "[t]he Commission was designed to be an oversight committee." *North v. Kent Island Limited Partnership*, 106 Md. App. 92, 106 (1995). Each local Critical Area Program, including Cecil County's program, had to be approved by the Critical Area Commission before the County could begin to implement and enforce its program. See Code, Nat. Res. II §8-1809(a)(i) ("Each local jurisdiction shall submit to the Commission a written statement of its intent...to develop a critical area protection program to control the use and development of...the

Critical Area located within its territorial limits.”) Cecil County chose to implement and enforce its own Critical Area Program, and this Program was approved by the Commission in 1988. See Affidavit of Ren Serey.

Among the required elements of a Critical Area Program are “new or amended zoning ordinances or regulations” and “provisions for granting a variance to the local jurisdiction’s critical area program.” Code, Nat. Res. II §8-1808(c)(1)(iii); (c)(1)(xiii). Cecil County’s Ordinance Article XVI, the procedures for the Board of Appeals, was submitted to and approved by the Critical Area Commission as part of the Cecil County Critical Area Program in 1988, and amendments to that ordinance were approved in 1993 and 1994. See Affidavit of Ren Serey, Exhibit A.

The Critical Area law expressly states that no change to a local program is enforceable until such time as it is approved by the Critical Area Commission. Code, Nat. Res. II §8-1809(h): “A program may not be amended except with the approval of the Commission.” Although Respondent asserts that the Board of County Commissioners for Cecil County amended Article XVI, Section 298.7B on December 19, 2006, this purported amendment was not submitted to the Critical Area Commission. If the County wanted the amended ordinance to become part of its Critical Area program, and to be effective in Critical Area variance cases, the County needed to submit the amendments to the State for approval, pursuant to Code, Nat. Res. II §8-1809(h): “Each local jurisdiction may propose program amendments and program refinements to its adopted program.” This, the County simply did not do. See Affidavit of Ren Serey, Exhibit A. Because the County did not follow the State law, the County may not implement the amended version of Section 298.7B in this case, or in any other Critical Area case. “[A] program may not be amended except with the approval of the Commission.” Code, Nat. Res. II §8-1809(h)(1) and (i).

In addition to receiving approval of a program change before it is deemed effective and enforceable, local jurisdictions “shall establish notification procedures to permit Commission review of findings made in the granting of variances.” COMAR 27.01.11.01B. The current, approved, Cecil County Ordinance provides, “The Board shall then decide the matter within thirty-five (35) days from the time of hearing, such decision to become effective as of the date the decision is signed by the Chairman of the Board of Appeals or his designee.” Cecil County Zoning Ordinance Article XVI, Section 298.7.B (Attachment 1 to Serey Affidavit). This version of the ordinance governs Board decisions in Critical Area cases. This ordinance allows Cecil County to comply with the Critical Area notification requirements while also providing the Critical Area Commission with an opportunity to review the findings made in the granting of the variance.

In considering the role of the Critical Area Commission with regard to oversight of local governments’ implementation of Critical Area programs, the Courts have been steadfast in holding that the General Assembly gave the Commission the responsibility to approve local Critical Area program amendments to ensure consistency and uniformity throughout the Critical Area. See *North v. Kent Island, id.* and *Kent Island Defense League, id.* (“The ordinances were enacted pursuant to a public general law....they are not purely local in origin or effect. Any change to the County’s Critical Area program has a potential effect on the entire Critical Area.”) *Kent Island Defense League, id.* at 695. As in the *Kent Island Defense League* case, the purported amendment to the Cecil County ordinance Sec. 298.7B is not a “purely local” zoning ordinance amendment, but is an attempt to change the Cecil County Critical Area program. This change is ineffective until approved by the Critical Area Commission. It is well-settled that a local government may not unilaterally change part of its Critical Area program by disguising the change as an ordinary zoning ordinance amendment.

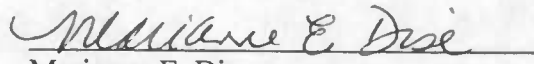
In order for the Cecil County ordinance change of December 19, 2006, to be effective as part of the Cecil County Critical Area program, the County must submit the proposed change to the Critical Area Commission for review and approval. This was not done. Cecil County has not submitted any Zoning Board procedural changes to the Critical Area Commission since conducting a comprehensive review and update of its Zoning Ordinance that was approved by the Critical Area Commission in 1993 and 1994. See Affidavit of Ren Serey, Exhibit A. Any subsequent change to the ordinance passed by the County Commissioners is inoperative within the Critical Area until it is approved by the Critical Area Commission.


Conclusion

For the foregoing reason, the Cecil County Board of Appeals' Motion to Dismiss should be denied.

Respectfully submitted,

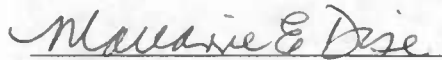
DOUGLAS F. GANSLER
Attorney General of Maryland


Marianne E. Dise


Sandra K. Canedo
Assistant Attorneys General
Department of Natural Resources
Critical Area Commission
1804 West Street Suite 100
Annapolis, MD 21401
(410) 260-3466
Attorneys for Margaret McHale, Chair
Critical Area Commission for the
Chesapeake and Atlantic Coastal Bays

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of August 2007, I sent a copy of the foregoing Memorandum in Opposition to Motion to Dismiss via U.S. Mail, postage prepaid to: Keith Baynes, Attorney for Respondent Board of Appeals, 210 East Main Street, Elkton, Maryland 21921.



Marianne E. Dise

**IN THE CIRCUIT COURT OF MARYLAND
FOR CECIL COUNTY**

PETITION OF:

MARGARET MCHALE,
Chair, Critical Area Commission for
the Chesapeake and Atlantic Coastal Bays

*
*

**FOR JUDICIAL REVIEW OF
THE DECISION OF THE
CECIL COUNTY BOARD
OF APPEALS**

*
Civil Action 07-C-07-000201AA
*

IN THE CASE OF

Case No. 3314
Cameron Fockler, Inc.

*

* * * * *

AFFIDAVIT OF REN SEREY

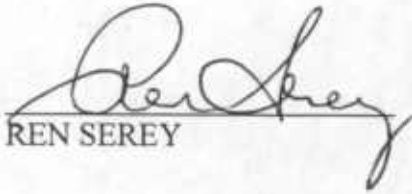
I, Ren Serey, do hereby state as follows:

1. I am over the age of 18 and am competent to testify to the following matters which are based upon my personal knowledge.
2. I am the Executive Director of the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays.
3. In my capacity as Executive Director, I am responsible to maintain the official records and files of the Critical Area Commission, including the files containing the official, approved Critical Area Program of Cecil County, Maryland.
4. The Critical Area Commission approved the Cecil County Critical Area Program on May 18, 1988.
5. The Cecil County Critical Area Program was amended in 1993 and 1994 as a result of the required six-year comprehensive review.
6. Attached to my Affidavit as Attachment "1" is the official copy of Cecil County's Critical Area Zoning Ordinance, Section 298. This Ordinance was submitted to and approved by the Critical Area Commission as an amendment to the Cecil County Program on December 1, 1993 and July 6, 1994.

7. To date, Cecil County has not requested approval of any additional changes to Section 298 of its Zoning Ordinance.

I HEREBY SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALITIES OF PERJURY THAT THE FOREGOING STATEMENT IS TRUE AND CORRECT.

8/24/07
DATE


REN SEREY

CECIL COUNTY ZONING ORDINANCE

Adopted: June 29, 1993

Effective: July 1, 1993

*Amended: November 23, 1993
January 4, 1994
February 15, 1994*

Board of County Commissioners for Cecil County:

W. Edwin Cole, Jr.

A. Marie Cleek

Grayson L. Abbott, Jr.

Attachment 1

Part II Board of Appeals

Section 298. Board of Appeals Established

1. Pursuant to Article 66 B, Code of Public General Laws of Maryland, a Board of Appeals is hereby established, which shall consist of five (5) members to be appointed by the County Commissioners.
2. The County Commissioners shall designate one (1) alternate member for the Board of Appeals, who shall sit on the Board in the absence of any member of the Board.
3. The terms of any existing Board of Appeals members duly appointed under the terms of a previous Zoning Ordinance shall continue for the duration of that term. However, beginning in August 1994, in order to stagger the terms of the Board of Appeals members, one (1) regular member and the alternate member of the Board of Appeals shall be appointed for one (1) year terms; two (2) regular members shall be appointed for two (2) year terms; and two (2) regular members shall be appointed for three (3) year terms. Each member shall then serve three (3) year terms. Vacancies shall be filled by appointment by the County Commissioners for the unexpired portion of the term. The Board shall elect one (1) of its five (5) regular members as Chairman, whose term as Chairman shall be three (3) years. A member of the Board of Appeals may be replaced by the County Commissioners if such member fails to attend three (3) or more consecutive meetings of the Board, or fails to attend six (6) meetings in any calendar year.
4. The Board of Appeals shall have the following powers and duties:
 - a. To hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by the Zoning Administrator or any other administrative official in the enforcement of this ordinance.
 - b. To hear and decide special exceptions as provided in Article XVII, Part II of this Ordinance.
 - c. To authorize upon application a variance from the provisions of this Ordinance, as provided in Section 306 herein.

In exercising the above powers, the Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination which has been appealed from, to the extent that such action is consistent with the provisions of this Ordinance.

The applicant for a special exception or variance and the appellant in an appeal shall have the burden of proof (including the burden of going forward with the evidence and the burden of persuasion) of all questions of fact.

5. Proceedings of the Board of Appeals.

- a. Meetings of the Board of Appeals shall be held as scheduled by the Chairman and at such other times as the Board may determine. The Chairman, or in his absence, the acting Chairman, may administer oaths and compel the attendance of witnesses.
- b. The staff of the Office of Planning and Zoning shall be present during all deliberations by the Board of Appeals and shall answer such questions and render such advice and assistance as may be appropriate to the action being taken, but such staff shall not participate in the decision of the Board beyond the submitting of a staff recommendation as to the action proposed to be taken in each case.
- c. The Board of Appeals shall adopt such other rules of procedure as it deems appropriate provided such rules are consistent with the provisions of this Ordinance and with applicable State enabling legislation.
- d. The Board of Appeals shall keep minutes of its proceedings, showing the vote of each member upon question, or if absent or failing to vote indicating such fact, and shall keep records of its official actions.
- e. The deliberations of the Board of Appeals shall be open to the public, but public participation shall be limited to periods during which testimony is permitted.

6. Quorum and Voting.

- a. Three (3) members of the Board shall constitute a quorum for the conducting of business.
- b. A minimum vote of three (3) members of the Board shall be required to reverse any order, requirement, decision, or determination of the administrative official, or to decide in favor of the applicant on any manner upon which it is required to pass under this Ordinance, or to effect any variation in the application of this Ordinance.

←
MHC-HHC

7. Hearings, Appeals, Notices.

- a. Appeals to the Board of Appeals shall be filed within fifteen (15) days of the signing of the decision from which the appeal is taken. Appeals shall be filed with the Office of Planning and Zoning and with the Board of Appeals and shall specify the grounds thereof. The Office of Planning and Zoning shall forthwith transmit to the Board of Appeals all papers constituting the record upon which the action appealed was taken.
- b. The Board of Appeals shall fix a reasonable time for the hearing of appeals and requests for variances and special exceptions, give public notice thereof as well as due notice to the parties in interest, and hold the public hearing within sixty (60) days from the date of request of appeal notice was filed. At least fifteen (15) days notice of the time and place of such hearing shall be published in a newspaper of general circulation in the County. At the hearing, any party may appear in person or by agent or attorney. The Board shall then decide the matter within thirty-five (35) days from the time of hearing, such decision to become effective as of the date the decision is signed by the Chairman of the Board of Appeals or his designee.

Part III Other Administrative Provisions

Section 299. Zoning Administrator

1. The administration and enforcement of the provisions of this Ordinance shall be, except as otherwise specified in this Ordinance, within the scope of responsibility of the Director, Office of Planning and Zoning. Within this office, there is hereby established the position of County Zoning Administrator. The Director, Office of Planning and Zoning shall recommend a person to fill the position of County Zoning Administrator and the County Commissioners shall appoint a person to this position.
2. The Zoning Administrator shall be a regular County employee. He shall perform such duties and responsibilities in the administration and enforcement of this Ordinance as are hereinafter set forth, and such other duties as may be assigned by the Director.
3. The Zoning Administrator may be provided with such assistance in the carrying out of his responsibilities under this Ordinance as may be sanctioned by the County Commissioners.
4. It shall be the duty of the Zoning Administrator to administer and enforce the provisions of this Ordinance. If the Zoning Administrator shall find that any of the provisions of this Ordinance are being violated, he shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it. He shall order discontinuance of illegal use of land,

BOARD OF APPEALS APPLICATION
CECIL COUNTY, MARYLAND

MEET. MONTH: April 2007
 FILE NO. 3314

THIS REQUEST IS FOR:

- SPECIAL EXCEPTION RENEWAL ()
 SPECIAL EXCEPTION ()
 VARIANCE ()
 APPEAL ()

RECEIVED

MAR 15 2007

DATE FILED: 3-15-07
 AMOUNT PD: \$ 200.00
 ACCEPTED BY: Cliff Houston

OK # 4935

A. APPLICANT INFORMATION

CECIL COUNTY OFFICE OF
 PLANNING & ZONING

Cameron Fackler, LTD
 APPLICANT NAME - PLEASE PRINT CLEARLY
29 South Main St, Ste B North East MD 21901
 ADDRESS CITY STATE ZIP CODE
[Signature]
 APPLICANT SIGNATURE 410-287-4900
 PHONE NUMBER

B. PROPERTY OWNER INFORMATION

Alistair M Grant
 PROPERTY OWNER NAME - PLEASE PRINT CLEARLY
110 N. Duke Street, APT 404 Lancaster PA 17602
 ADDRESS CITY STATE ZIP CODE
[Signature]
 PROPERTY OWNER SIGNATURE 717-393-3245
 PHONE NUMBER

C. PROPERTY INFORMATION

50 Plum Spire Rd. North East MD 5 010977
 PROPERTY ADDRESS ELECTION DIST. ACCT. NUMBER
36 3 440 N/A .687 SR
 TAX MAP # BLOCK PARCEL LOT# #ACRES ZONE

D. PURPOSE OF APPLICATION - Indicate reasons why this application should be granted. (attach separate sheet if necessary)

Easy of access to the water
The deck will be ground level & provides less impact
The deck will be used as a sitting area. They have
young grand children & for safety would prefer them not
sitting on the existing deck - variance to place a structure in the
critical area buffer

E. LAND USE DESIGNATION

Is property in the Critical Area? Y YES NO
 If yes, Pertinent provision of the Chesapeake Bay Critical Area Program: SEZ. 195 - 3.c.
 Is property in the 100 year Floodplain? YES X NO
 Is property an Agricultural Preservation District? YES X NO

If property is located in the Critical Area, all provisions and requirements must be met as outlined in Article XVII, Part I, II & III of the Zoning Ordinance.

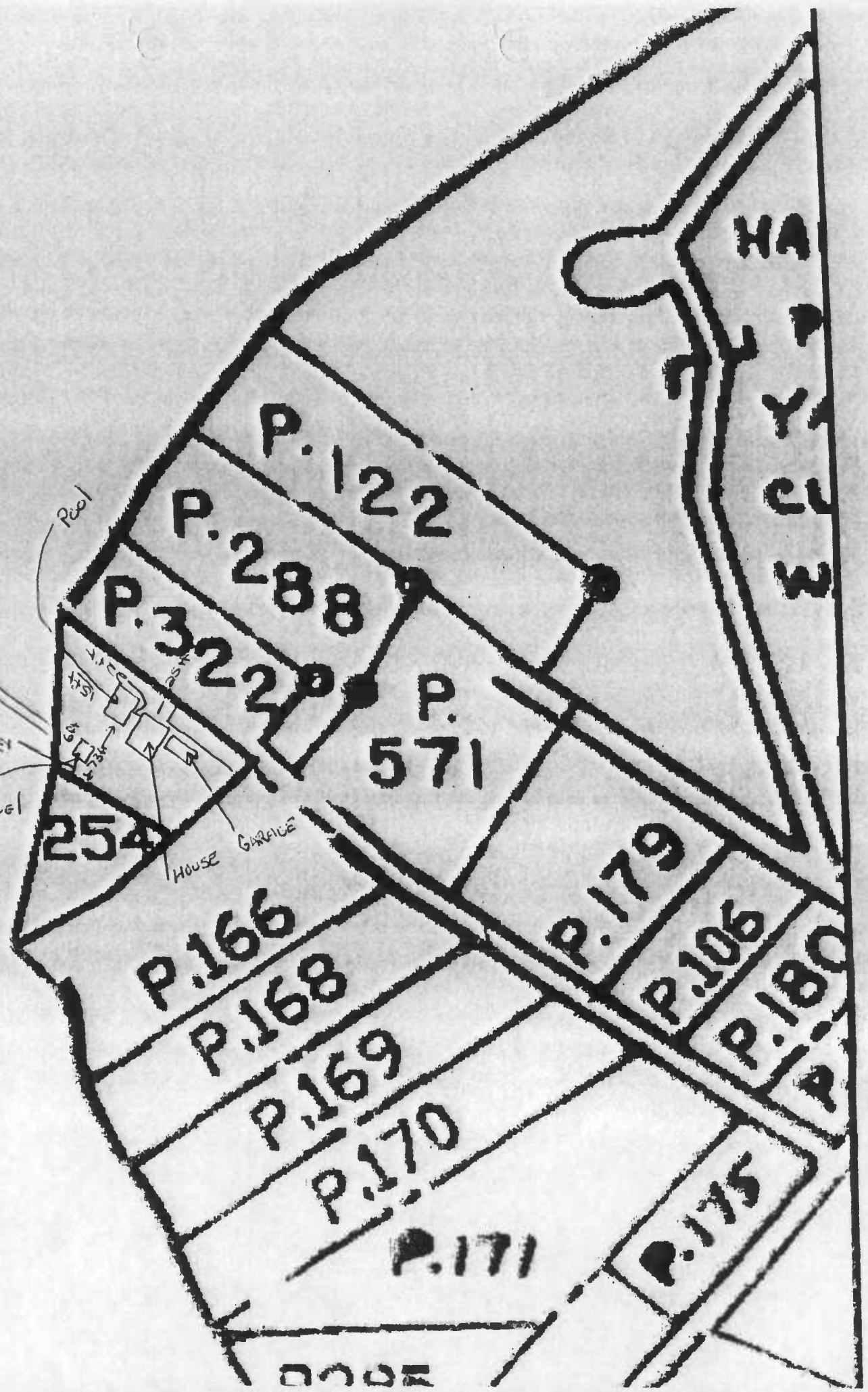
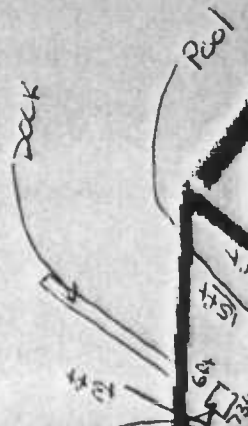
G. PROVISION OF ZONING ORDINANCE: Section 300

H. SPECIAL EXCEPTION RENEWAL - PREVIOUS FILE NO. & CONDITIONS FOR APPROVAL: N/A

I. SPECIAL EXCEPTION FOR A MANUFACTURED HOME - Please fill out the following information:

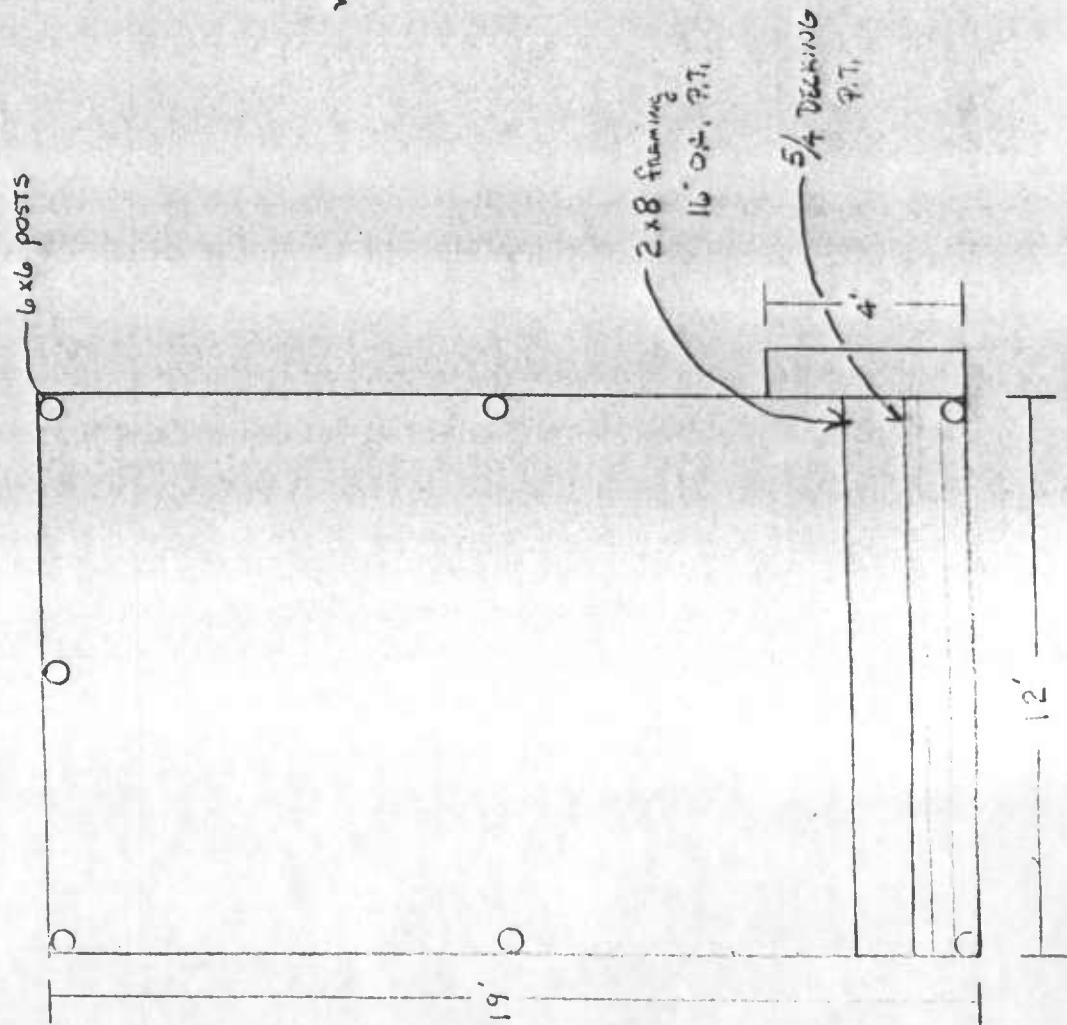
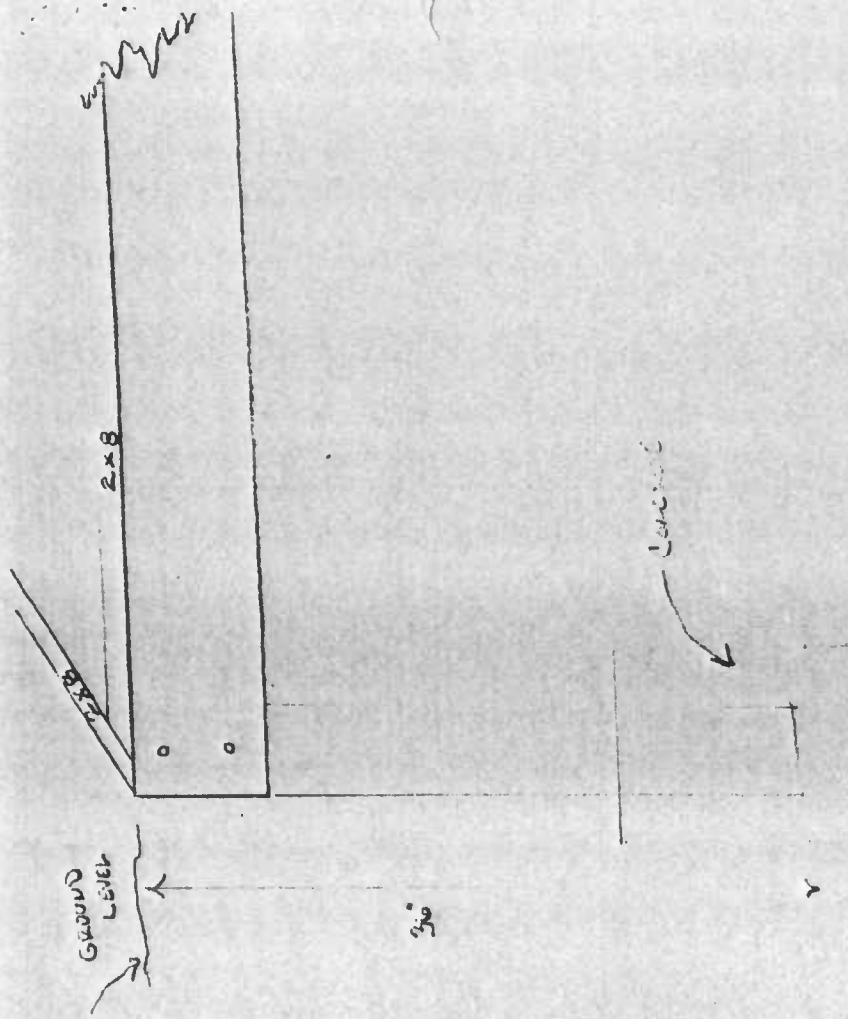
Will unit be visible from the road? _____ If yes, distance: _____
 Will unit be visible from adjoining properties? _____ If yes, distance: _____
 Distance to nearest manufactured home: _____ Size/Model/Year of Unit: _____
 Number of units on property at present time: _____

12x19
GROUND LEVEL
DECK
(PROPOSED)



HA
P
Y
C
W

DOOR



Grant Variance



0 25 50 100 Feet

B&A

1 inch equals 50 feet

