

IN THE MATTER OF	*	BEFORE THE CECIL COUNTY
THE APPLICATION OF	*	BOARD OF APPEALS
SETH HINDER	*	CASE NO.: 4283
	*	

(Variance – RR)

* * * * *

OPINION

The Cecil County Board of Appeals (the “Board”) is now asked to consider the application of Seth Hinder (the “Applicant”), for a variance of two feet from the fifty-foot no disturbance buffer from mean high water, a variance of one foot from the northern ten-foot building restriction line, a variance of twenty feet from the fifty-foot front setback and a variance of twenty-three feet from the thirty-five-foot height restriction for construction purposes at the subject property located at 55 Tower Rd., Chesapeake City, MD 21915 being designated as Lot 7, Parcel 83, Block 12 on Tax Map 46 in Cecil County Election District 2 (the “Property”), in an area presently zoned Rural Residential (“RR”). The Property is located within the Critical Area and the 100-year Floodplain. The Property is owned by Vincent Hubach and Eugenia Ellen Wechsler Hubach (the “Owners”), both of whom properly signed the Application.

Under the provisions of Article XVII, Part I, Section 306(1) of the Cecil County Zoning Ordinance (the “Ordinance”), Variances, as defined in Article II, Part I, Section 12 of the Ordinance, may be granted by the Board, and where, due to special features of a site or other circumstances, literal enforcement of provisions relating to the Critical Area District would result in unwarranted hardship to a property owner, the Board may grant a variance in the Critical Area District. An Unwarranted

Hardship is defined as the denial of “reasonable and significant use of the entire parcel or lot for which the variance is requested.” (Md. Code Ann. Nat Resources § 8-1808(d)(1))¹

Critical Area Law is codified in Section 8 of the Natural Resources Article of the Maryland Annotated Code, and the Board must consider the Critical Area Variance standards as set forth in COMAR 27.01.12.

COMAR 27.01.12 prohibits a local jurisdiction from granting a variance in the Critical Area unless the Applicant overcomes the presumption of non-conformance set forth in § 8-1808(d)(3)(ii) and satisfies the following variance requirements:

- A. The variance request is based on 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 the 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 RR 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 the Ordinance to other properties in the RR zone.
- D. The variance request does not arise from any condition related to land or building use, either permitted or non-conforming, on any neighboring property.
- E. The variance is the minimum variance that will make possible the reasonable use of land, building, or structures.

¹ All references to the Maryland Annotated Code are to the Natural Resources Article unless otherwise specified.

F. The Board shall not grant variances in the Critical Area District (the “Critical Area”) unless the decision is based on the following criteria:

1. Strict enforcement of the provisions within the Critical Area would deprive the Applicant of rights commonly shared by other owners of property in the Limited Development Area (“LDA”) of the Critical Area.
2. The granting of a variance will not confer upon the Applicant any special privilege that would be denied to other owners of like property within the LDA.
3. 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 that are related to adjacent parcels.
4. The granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area, and that the granting of the variance will be consistent with the spirit and intent of Cecil County’s Critical Area Program and associated ordinances as well as state law and regulations adopted under Title 8, Subtitle 18 of the Natural Resources Article and COMAR 27.01.
5. Greater profitability or lack of knowledge of restrictions shall not be considered as sufficient cause for a variance.

The Applicant appeared with the Owners and their legal counsel, Jay Emery, and testified before the Board on April 22, 2024, in support of his Application for a variance of two feet from the fifty-foot no disturbance buffer from mean high water, a variance of one foot from the northern ten-foot building restriction line, a variance of twenty feet from the fifty-foot front setback and a variance of twenty-three feet from the thirty-five-foot height restriction for construction purposes.

The Applicant provided the following testimony:

- The Property has unique structures which were built in 1913. All structures on the Property predate Cecil County Zoning laws.
- All structures on the Property currently have the same size, location, and footprint as they did when they were originally built in 1913.
- The Property is in a state of disrepair, and the Owners wish to renovate and improve the Property.
- The proposed renovations would not increase the footprint of the structures on the Property.
- The requested variances are required in order to do the renovations because the structures on the Property are a non-conforming use.
- The Owners intend to use the tower on the Property as their full-time residence.
- Due to the topography of the Property, approximately 18-20 feet of the tower is visible from the street.
- There are special conditions unique to this Property which necessitate the variance.
- The variances requested are the minimum necessary to achieve the Owner's goal of using the Property as their primary residence.
- If the Board grants the variances, the Board would not be conferring upon the Owners any special privilege which is not enjoyed by owners of neighboring properties.
- A literal enforcement of the setback requirements would deprive the Owners of their right to use the Property.
- The proposed renovations are required for the structures on the Property to be habitable.
- The proposed renovations would have no negative effect on the public health, safety, or welfare. The renovations would make the Property safer.

- The necessity of the variances is not caused by any situation or condition that the Owners or Applicant have caused to exist.

In response to questions from the Board, the Applicant provided the following testimony:

- The Owners are not proposing to increase the height of any of the structures and would only be adding to the existing square footage to the extent necessary to construct an elevator in the tower.
- The Owners and Applicant have been in contact with appropriate County departments regarding the proposed renovations.
- The structures on the Property are a non-conforming use that predates County zoning laws.
- The Owners intend to use the tower as their full-time residence and use the cottage as a guest house.
- The Property is on the Maryland Historical Trust Inventory Form for State Historic Site Survey. This list is for information and record purposes only and does not constitute any infringement of individual property rights – it does not impose any restrictions on what the Owners wish to do with the Property.
- The elevator proposed in the renovations would be an internal elevator and is necessary for medical reasons.
- Eighteen neighbors provided emails to the Owners in support of the Application.

Ms. Patricia Woods, of 32 Tower Point Rd. testified in favor of the Application. Ms. Woods testified that she supports the Application because the proposed renovations would make the Property safer for neighborhood children, would improve property values in the area, and would be beneficial for the community in general.

Aaron Harding, Division Chief of the Planning and Zoning Division of the Department of Land Use and Development Services testified that the Division of Planning and Zoning received

comments from Susan Makhoul, a Natural Resources Planner for the Critical Area Commission, who stated that the proposed renovations do not require a critical area variance as long as the County considers the existing structures to be legally non-conforming. In addition to the existing tower and elevated deck and skywalks, the allowable lot coverage in the Limited Development Area is 5,640 square feet; any changes in the project scope, design, or impact will require additional review.

From the evidence presented, the Board makes the following findings of facts:

1. The Board is satisfied with the Applicant's testimony that a strict enforcement of the provisions within the Critical Area would result in unwarranted hardship that is not generally shared by owners of property in the LDA. The Board finds that the structures on the Property are legally non-conforming pre-existing structures, and that strict enforcement of the Critical Area provisions would require their removal. Requiring the Applicant to demolish all the structures on the Property and construct a new, conforming dwelling on the Property in order for it to be livable would constitute an unwarranted hardship.

2. Strict enforcement of the provisions within the Critical Area would deprive the Applicant of rights commonly shared by other owners of property in the LDA. As stated above, strict enforcement of the Critical Area provisions would require the removal of the non-conforming structures and leave the Owners without a home. As owners of property in the Critical Area generally enjoy the right to live on their property, a strict enforcement of Critical Area provisions would deprive the Owners of that right.

3. Approving the variance would not confer a special privilege upon the Applicant that would be denied to other owners of like property within the LDA. The Board finds that the structures on the Property are legally non-conforming, and the renovations proposed would not materially enlarge, expand, or extend the non-conformance.

4. The proposed variances are the minimum required to allow the Owners reasonable use of the Property. The Board finds that the proposed renovations are the minimum required to allow the Owners to live at the Property; the Board notes that the elevator contained in the proposed renovations may expand the footprint of the structure marginally, but it is required for medical reasons.

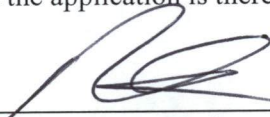
5. The variance request is not based upon conditions or circumstances that are self-created or self-imposed. The Board finds that the non-conforming structures on the Property existed in that state prior to the Owners' purchase of the Property.

6. The Board finds that there is no evidence that granting the variances will adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area.

7. The Board finds that the variances are consistent with the spirit and intent of the County's Critical Area Program and that the Applicant has overcome the presumption of nonconformance established in § 8-1808(d)(3)(ii) and Section 306(3)(d) of the Ordinance.

For the reasons stated, by unanimous vote, the Board is satisfied that the criteria set forth in Section 306 of the Ordinance have been met, and the application is therefore **GRANTED**.

5/20/24
Date


Mark Saunders, Chairman

**BOARD OF APPEALS APPLICATION
CECIL COUNTY, MARYLAND**

MEET. MONTH: April 2024
FILE NO. 4253

RECEIVED

THIS REQUEST IS FOR:

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

MAR 21 2024

DATE FILED: 3/21/24
AMOUNT PD: \$200
ACCEPTED BY: JB

A. APPLICANT INFORMATION - ALL APPLICANTS MUST SIGN

Cecil County DLUDS

SETH HINDER *Division of Planning & Zoning*

APPLICANT NAME - PLEASE PRINT CLEARLY

5 SOUTH MAIN STREET **BEL AIR** **MD** **21014**

ADDRESS CITY STATE ZIP CODE

410-983-1239

APPLICANT SIGNATURE PHONE NUMBER

B. PROPERTY OWNER INFORMATION - ALL PROPERTY OWNERS MUST SIGN

VINCENT HUBACH & EUGENIA ELLEN WECHSLER HUBACH

PROPERTY OWNER NAME - PLEASE PRINT CLEARLY

55 TOWER ROAD **CHESAPEAKE CITY** **MD** **21915**

ADDRESS CITY STATE ZIP CODE

610-220-6333

PROPERTY OWNER SIGNATURE PHONE NUMBER

C. PROPERTY INFORMATION

55 TOWER ROAD CHESAPEAKE CITY, MD 21915 **2** **007452**

PROPERTY ADDRESS ELECTION DIST. ACCT. NUMBER

46 **12 N/A** **83** **7** **0.5899** **25696 RR**

TAX MAP BLOCK PARCEL LOT# #ACRES ZONE

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

The purpose of this application is to request relief for the 10' side and 40' front setbacks in the RR zone, and 50' no disturbance buffer and 110' expanded buffer for the existing frame tower and proposed addition to the frame tower. Please see attached documents for additional information.

A 2' variance of the 50' no disturbance buffer, a 10' ft variance of the northern side building restriction line, and a 20' variance of the building restriction line along Tower Road for construction purposes.

E. On an attached sheet, PLEASE submit a sketch of the property indicating the proposed project. Show distances from the front, side and rear property lines and the dimensions of the project.

F. LAND USE DESIGNATION

- Is property in the Critical Area? YES NO
- If yes, Pertinent provision of the Chesapeake Bay Critical Area Program: LDA
- Is property in the 100 year Floodplain? YES NO
- Is property an Agricultural Preservation District? YES NO

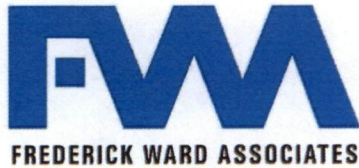
If property is located in the Critical Area, all provisions and requirements must be met as outlined in Article XVII, Part I, II & III of the Zoning Ordinance.

G. PROVISION OF ZONING ORDINANCE: Art XVII Part I section 311; Art. XI Part I Section 195

H. SPECIAL EXCEPTION RENEWAL - PREVIOUS FILE NO. & CONDITIONS FOR APPROVAL: _____

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: _____



5 South Main Street
P.O. Box 727
Bel Air, Maryland 21014
410-838-7900

www.frederickward.com

Dear Zoning Administrator,

Purpose of Application:

The applicant and property owner are requesting variances for existing structures located inside the side setback of the northeastern property line, the front setback, and the 50' no disturbance buffer for the existing frame tower.

Below are justifications for the variance request for 55 Tower Road Chesapeake City, MD 21915.

1. 50' No Disturbance Buffer: We request a reduction of 2' feet from the 50' no disturbance buffer, down to 48' from the mean high water mark. There is no new building development, redevelopment, or clearing proposed in the 50' no disturbance buffer. The proposed addition to the tower is located outside of the 50' no disturbance buffer. The existing tower was constructed in or before 1932 and represents an existing condition. The western most corner of the existing tower extends 1.9'+/- into the 50' no disturbance buffer as an existing condition (totaling 6 sq. ft.+/-).
2. 10' Side Setback: We request a reduction of 1' from the northern 10' side setback, down to 9'. There is no new building development or clearing proposed in the 10' side setback. The proposed addition to the tower is located outside of the 10' side setback. The existing tower was constructed in or before 1932 and represents an existing structure. The northern most corner of the tower resides 0.1'+/- inside the 10' side yard setback as an existing condition. (Article IV: Schedule of Zone Regulations, Page 134)
3. 40' Front Setback: We request a reduction of 20' to the 40' front setback on Tower Road, down to 20' from the right of way line. There is no new building development proposed in the 40' front setback. The existing frame dwelling is an accessory structure and was constructed in or before 1932 and represents an existing condition. The southernmost corner of the frame dwelling resides 19.3'+/- inside of the 40' front yard setback as an existing condition. (Article IV: Schedule of Zone Regulations, Page 134)

Special circumstances of the existing conditions and environmental restrictions of the property did not result from actions of the applicant/property owner. The applicant/property owner has designed the layout of the proposed addition, parking area, and mitigation plantings to protect as much of the environmental features as reasonable while achieving the goals of the project. The granting of these variances requested will not confer to the applicant/property owner any special privilege that is denied by the zoning ordinance to other lands, structures, or buildings in the same zone. The principle structures located on the property were erected prior to any neighboring dwellings and therefore predate any claim for special privilege that may be argued by neighboring existing structures.



08/31/2023

Dear Tom Welch,

The trees that were removed on 43 & 55 Tower Rd were storm damaged, dead, diseased, or dying. Two additional trees were removed because of their danger and damage to the existing structures. Please refer to the plan for details.

The property has also had a long period of landscape and overgrowth neglect. This neglect has fostered the growth of invasive and poisonous species of plants and scrub. The removal of this growth is necessary for the promotion of healthy growth of native and new ground stabilizing plantings for the overall benefit of the property.

Additionally, there were numerous large limbs and very large branches that were detached from their trees and laying in precarious positions within surrounding trees creating several dangerous conditions. These branches and limbs were removed as well as the numerous large limbs and very large branches scattered throughout the property. It is my understanding that most if not all these conditions were present on the property before the new owners took possession.

There is a very large quantity of bamboo and other invasive plants on the property. The invasive plants will be removed, and the bamboo will be cut flush with the grade to provide ground stabilization until native ground cover and stabilization plantings can be done.

New indigenous trees, shrubs, plantings, and grass will be added to the property once the work fixing up the structures is completed.

Sincerely,

A handwritten signature in black ink, appearing to read "Miguel", with a long, sweeping horizontal line extending to the right.

Miguel Perez-Avila

State of Maryland

Tree Expert License #2377

