

IN THE MATTER OF	*	BEFORE THE CECIL COUNTY
THE APPLICATION OF	*	BOARD OF APPEALS
TIMOTHY WARD KREIDER	*	CASE NO.: 4295
	*	
	*	
(Variance – NAR)		

* * * * *

OPINION

The Cecil County Board of Appeals (the “Board”) is now asked to consider the application of Timothy Ward Kreider (the “Applicant”), for a variance of five feet to the 110 foot Critical Area Buffer for construction purposes at the subject property located at 393 Charter Hall Rd., Perryville, MD 21903 being designated as Parcel 542, on Tax Map 35 in Cecil County Election District 5 (the “Property”), in an area presently zoned Northern Agricultural-Residential (NAR). The Property is located within the Resource Conservation Area of the Critical Area (the “RCA”) and the 100-year Floodplain. The Property is owned by the Applicant, who properly signed Application 4295 (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 RCA 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 RCA 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 RCA.
 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 Critical Area.
 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 and testified before the Board on July 22, 2024, in support of the Application. The Applicant provided the following testimony:

- The Applicant is building a new dwelling on the Property to replace the existing dwelling, which had fallen into a state of disrepair.

- The new dwelling is being constructed in the same location as the previous dwelling, but will be slightly larger, including a deck which will encroach five feet into the Critical Area Buffer.
- Both the previous dwelling and the new dwelling include a deck on the waterward side of the house.
- The previous dwelling has been demolished, and the Applicant is unsure of the exact dimensions of the old deck.
- The previous dwelling existed on the Property for fifty years and did not have any negative impact on the environment.
- The Applicant has not received any complaints or objections from neighboring property owners to his proposed new dwelling.
- The Applicant has contracted with David Stoltzfus of Hilltop Decks to construct the deck.
- Mr. Stoltzfus has indicated to the Applicant that the proposed deck is of standard design, with the exception of a cut-out to accommodate a tree which would otherwise have to be removed.
- The proposed deck will extend twelve feet waterward from the proposed dwelling.
- The Applicant desires a twelve foot deck to maximize his use and enjoyment of the Property, but the Applicant acknowledges that the deck could be smaller, and requested the Board consider a smaller variance, if the one requested is deemed to be too large.

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

- The new dwelling is currently under construction.

- The new dwelling is slightly larger than the previous dwelling, but will sit the same distance from the waterline.
- The Applicant is unable to locate the new dwelling farther landward to accommodate the proposed deck size because construction is already underway.
- The Applicant demolished the previous dwelling in 2020.
- The Applicant believes that the previous dwelling was constructed in the 1960s.
- The Applicant believes that the previous dwelling always had a deck.
- The proposed deck does not include a concrete patio underneath.
- The proposed deck is on the waterward side of the dwelling.
- The Applicant roughly estimates that the deck on the previous dwelling was ten feet.

No additional witnesses spoke in favor or in opposition of the Application. 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 did receive written comments.

The Division of Planning and Zoning received written comments from Ms. Susan Makhoulf, on behalf of the Maryland Critical Area Commission (the "CAC") in opposition to the Application. Ms. Makhoulf testified that the Applicant is able to construct a deck elsewhere on the dwelling which would not require a variance, and that the mere convenience of constructing a deck in the buffer is insufficient to establish an "unwarranted hardship", as required by the variance standards. Ms. Makhoulf testified that if the variance is granted, required mitigation must be implemented through an approved buffer

management plan, and any mitigation areas must be permanently protected from future development.

In response to the comments from Ms. Makhlof and the CAC, the Applicant provided the following testimony:

- A previous contractor, whom the Applicant has since fired, may have erred in placing the dwelling too close to the water, requiring a variance to construct the desired deck.

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

1. Special conditions or circumstances do not exist that are unique to the Property or structure. The Board finds that the location the Applicant chose to construct the dwelling does not create a circumstance that is unique and unusual in a manner different from the nature of the surrounding properties, such that the uniqueness or peculiarity causes the NAR and the RCA overlay zoning provisions to impact disproportionately upon the Property.
2. The Applicant has not overcome the presumption of non-conformance set forth in County and State law² and has not established an unwarranted hardship justifying a substantial and urgent need for the variance. The Board finds that denial of the variance, and thus denying the Applicant the ability to construct the desired deck, would not deny the Applicant a use of his Property commonly enjoyed by other property owners in the RCA sufficient to justify a substantial and urgent need for the variance.

² See Cecil County Zoning Ordinance § 306(3)(f); COMAR 27.01.12.04(A); Md. Code Ann. Nat. Resources § 8-1808(d)(3)(ii)

3. The circumstances giving rise to the need for the variance are self-imposed. The Board finds that the Applicant chose to construct the dwelling in its location, and thus the condition requiring the variance is self-imposed.
4. The variance is not the minimum variance that will make possible the reasonable use of land, building, or structures. The Board finds that the Applicant could construct a smaller deck on the dwelling, or a deck on a different side of the dwelling without the need for a variance. The Board finds that denying the Applicant the ability to construct the desired deck at the desired location does not deny the Applicant reasonable use of the land, building, or structure.
5. Literal enforcement of the provisions within the Critical Area would not deprive the Applicant of the use of the Property. The Board finds that denying the Applicant the ability to construct the desired deck at the desired location does not deny the Applicant reasonable use of the Property.
6. Approving the variance would confer a special privilege upon the Applicant that would be denied to other owners of like property within the RCA. The Board finds that other owners of similar properties in the RCA commonly enjoy livable houses with or without decks within the zoning requirements.

For the reasons stated, by unanimous vote, the Board is not satisfied that the criteria set forth in Section 306 of the Ordinance have been met, and the application is therefore **DENIED**.

Date

8/20/24

Mark Saunders, Chairman

BOARD OF APPEALS APPLICATION
CECIL COUNTY, MARYLAND

RECEIVED

MEET. MONTH: June 2024

FILE NO. 4295

MAY 13 2024

THIS REQUEST IS FOR:

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

Cecil County DLUDS

Division of Planning & Zoning

DATE FILED: 5/13/24

AMOUNT PD: \$200

ACCEPTED BY: JB

A. APPLICANT INFORMATION - ALL APPLICANTS MUST SIGN

TIMOTHY WARD KREIDER

APPLICANT NAME - PLEASE PRINT CLEARLY

393 C PO BOX 422

CHARLESTOWN MD 21814

ADDRESS

CITY

STATE

ZIP CODE

APPLICANT SIGNATURE

347-944-7524

PHONE NUMBER

B. PROPERTY OWNER INFORMATION - ALL PROPERTY OWNERS MUST SIGN

TIMOTHY WARD KREIDER

PROPERTY OWNER NAME - PLEASE PRINT CLEARLY

393 CHARTER HALL ROAD PERRYVILLE MD 21903

ADDRESS

CITY

STATE

ZIP CODE

PROPERTY OWNER SIGNATURE

347-944-7524

PHONE NUMBER

C. PROPERTY INFORMATION

393 CHARTER HALL ROAD

PROPERTY ADDRESS

05

ELECTION DIST.

034914

ACCT. NUMBER

0035 0542

2.78

#ACRES

NAR

ZONE

TAX MAP

BLOCK

PARCEL

LOT #

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

I AM REQUESTING A 5-FOOT VARIANCE IN THE 110' CRITICAL AREA BUFFER IN ORDER TO ADD A DECK TO MY HOUSE.

* A 5' Variance to the 110-ft ~~2000~~ Critical Area Buffer.

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?

If yes, Pertinent provision of the Chesapeake Bay Critical Area Program:

Is property in the 100 year Floodplain?

Is property an Agricultural Preservation District?

✓ YES

NO

196.3 ✓ YES

NO

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 XI Part I Section 176; Art XVII Part I Section 306.

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

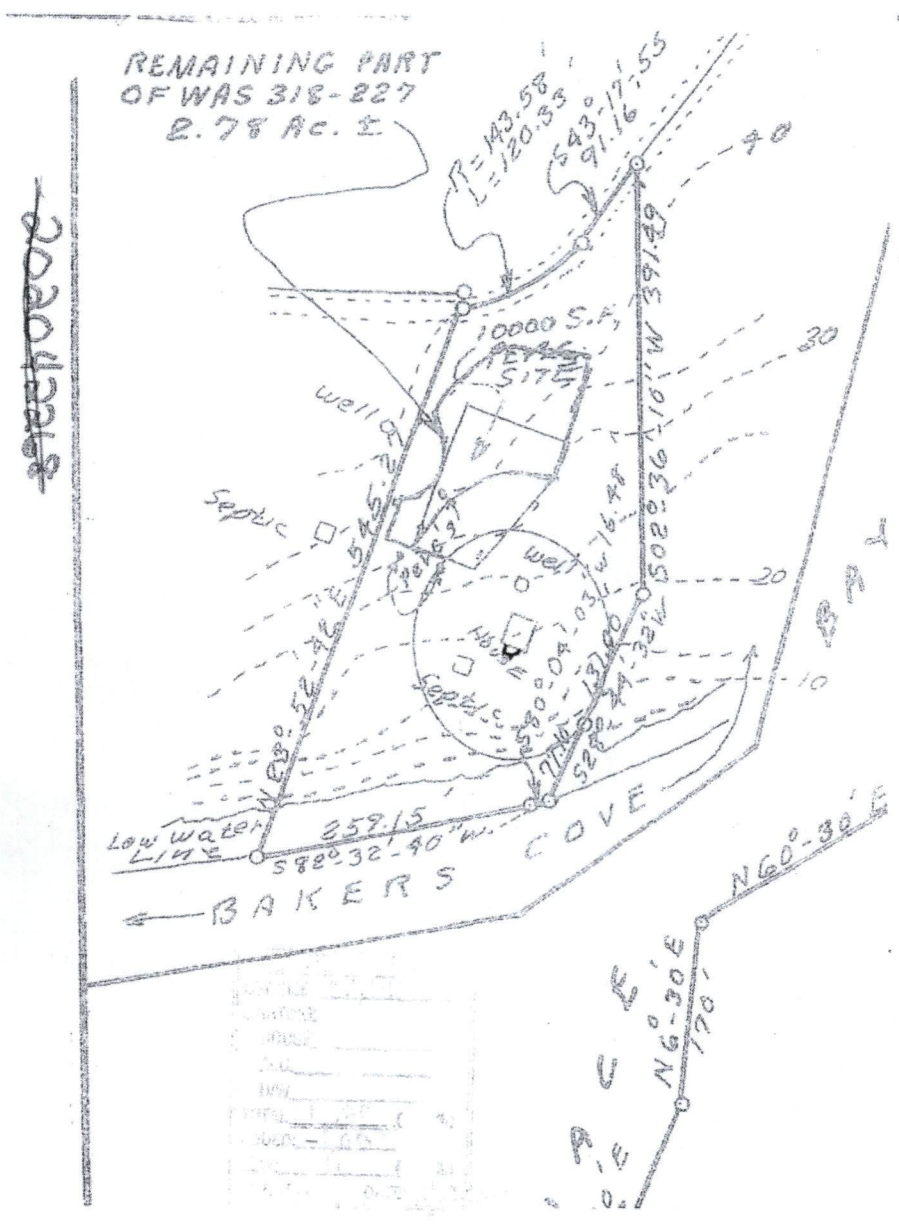
I. SPECIAL EXCEPTION FOR A MANUFACTURED HOME - Please fill out the following information:

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: _____



393 Chestnut Hall Rd
 Poyonville MD 21003