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STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS

November 8, 2024

Mr. Andrew Cheney Jr.
St. Mary's County Government
Department of Land Use and Growth Management
P.O. Box 653
Leonardtown, Maryland 20650

Re: 17581 Whitestone Dr, Tall Timbers; Hallgren Variance
Local case number VAAP 24-0666

Dear Mr. Cheney,

Our office is in receipt of the above-referenced variance application to disturb the expanded Critical Area Buffer and exceed the allowable lot coverage limitations at 17581 Whitestone Dr in Tall Timbers MD. The property is a 1.42-acre waterfront lot that is entirely located within the Critical Area on lands designated Resource Conservation Area (RCA). This property is improved by a 1,942 square-foot garage and 4,905 square foot driveway. The 2,537 square-foot principal dwelling that existed completely with the Buffer prior to the adoption of St. Mary's County Critical Area Program was destroyed by a fire on April 24, 2024. The applicant is requesting to rebuild the primary dwelling unit at a reduced footprint in the Buffer. As part of the proposed rebuild, the applicant proposes to install a new recreational pool which would be located within the Buffer.

In accordance with COMAR 27.01.02.07 A., a local jurisdiction shall permit the continuation, but not necessarily the intensification or expansion of any use in existence on the date of program approval, unless the use has been abandoned for more than 1 year or is otherwise restricted by existing local ordinances. Therefore, a variance is not required for the applicant to rebuild the primary dwelling at a reduced footprint within the Buffer. However, a variance is required for the applicant to install a new pool within the Buffer as this would be a new accessory use on the property and would not conform with the St. Mary's County Critical Area Program.

Opposition to Variance Request

This office is opposed to this variance request for the installation of a pool in the Buffer. Maryland's Critical Area law provides that variances to a local jurisdiction's Critical Area program may only be granted if the Board of Appeals finds that an applicant has satisfied the

burden to prove that the request meets each and every one of the variance standards under COMAR 27.01.12.[1] Furthermore, State law establishes the presumption that a proposed activity for which a Critical Area variance is requested does not conform to the purpose and intent of the Critical Area law and County's Critical Area Program. The Board must make an affirmative finding that the applicant has overcome this presumption, based on the competent and substantial evidence presented from the applicant. This office finds that the variance requests fail to meet each of the variance standards, as described below.

1. *Due to special features of the site or special conditions or circumstances peculiar to the applicant's land or structure, a literal enforcement of the local Critical Area program would result in an unwarranted hardship to the applicant;*

   State law defines "unwarranted hardship" to mean that, without the requested variance, an applicant shall be denied reasonable and significant use of the entire parcel or lot. This office does not consider, nor has it previously considered, a pool in the Critical Area Buffer to be a right guaranteed to property owners under the County's Critical Area program, particularly where the need for a Critical Area variance can be eliminated altogether. A property has reasonable and significant use of their entire parcel without the accessory use of a pool. Furthermore, this request cannot meet this variance standard because the lot is large enough such that the applicant has reasonable and significant use of the property to construct the pool without impacting the Buffer. For example, there is space to build the pool adjacent to the garage on the property that is outside the Buffer and is currently lawn. Building the pool in that area would not cause further impacts to the existing forest on the property or the Buffer. and would conform with the County's Critical Area program and eliminate the need for a variance altogether. Therefore, denying this variance request for the pool would not result in an unwarranted hardship.

2. *A literal interpretation of the local Critical Area program would deprive the applicant of a use of land or a structure permitted to others in accordance with the provisions of the local Critical Area program;*

   Denying the request to construct a pool in the Critical Area Buffer would not deprive the applicant of a use of land or a structure permitted to others in accordance with the provisions of the local Critical Area program. This office does not consider, nor has it previously considered, a pool in the Critical Area Buffer to be a right guaranteed to property owners under the County's Critical Area program, particularly where the need for a Critical Area variance can be eliminated altogether. Therefore, the applicants are not being deprived of a use of land or structure permitted to others.

3. *The granting of the variance would not confer upon the applicant any special privilege that would be denied by the local Critical Area program to other lands or structures in accordance with the provisions of any local Critical Area program;*

   The granting of this variance would confer a special privilege upon the applicants. The St. Mary's County's Comprehensive Zoning Ordinance and the State Critical Area regulations place strict limits on disturbance to the Critical Area Buffer in order to meet the goals of the

[1] The Board of Appeals is required to apply the variance standards as provided in State law. The variance standards contained in Article 2, Section 24.4 of the St. Mary's County Zoning Ordinance have not been updated to reflect current State law. Therefore, this evaluation is based on the variance standards in COMAR 27.01.12.04.

Critical Area law. Approval of this variance would grant the applicants a special privilege that would be denied by others within the Critical Area, as no individual is permitted to construct a pool within the Buffer.

We recognize the proposed reduction in lot coverage within the Buffer with this redevelopment plan. However, such a reduction does not confer upon the applicant the right to construct an accessory structure such as a pool within the Buffer. While the proposed dwelling is necessary for reasonable and significant use of the lot; a pool is not. This office has previously opposed similar variance requests from others for a pool in the Buffer, particularly where the need for a Critical Area variance can be eliminated altogether; therefore, granting these applicants' request would absolutely confer upon the applicants a special privilege that would be denied to others.

4. *The variance request is not based upon conditions or circumstances that are the result of actions by the applicant;*

   Based on the information provided, it appears that the applicants meet this standard.

5. *The variance request does not arise from any conforming or nonconforming condition on any neighboring property;*

   Based on the information provided, it appears that the applicants meet this standard.

6. *The granting of the variance would not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the jurisdiction's local Critical Area; and*

   The Critical Area law and regulations are designed to foster more sensitive development for shoreline areas to minimize damage to water quality and habitat. Re-establishing lot coverage in the Buffer, especially for a pool that will be approximately 66 feet from tidal waters, would increase runoff, which carries with it pollutants that will negatively impact the water quality and habitat of the Potomac River, a tributary to the Chesapeake Bay. Overall, the cumulative impact of development activity in the Buffer, even if each individual development activity is relatively small, has a substantial and negative impact on the Chesapeake Bay. Therefore, granting this variance would adversely impact water quality and habitat within the Critical Area.

7. *The granting of the variance would be in harmony with the general spirit and intent of the Critical Area law, the regulations in this subtitle, and the local Critical Area program.*

   Ecologically sensitive areas such as the Critical Area Buffer are purposefully protected within the Critical Area regulations and the County's Critical Area program because of their importance in meeting the goals of the Critical Area law. The goals of the Critical Area law are to (1) minimize adverse impacts on water quality that result from development, (2) conserve fish, wildlife, and plant habitat, (3) establish land use policies that accommodate development while recognizing that development adversely affects the first two goals, (4) reduce vulnerability to the impacts of climate change and incorporate measures to improve the resiliency of the Bay and its tributaries, and (5) ensure an equitable distribution of the burdens and benefits of development, mitigation, restoration, conservation, and adaptation to climate change within the Critical Area. Granting a variance to allow the construction of a

pool within the Critical Area Buffer and within 66 feet of tidal waters would not be in harmony with the spirit and intent of the Critical Area law.

In requesting a variance, the applicants bear the burden of demonstrating that each and every one of the variance standards have been met, including the standard of unwarranted hardship. The applicants have failed to meet five of the seven variance standards as described above; therefore, this variance should be denied.

Please include this letter of opposition in your file and submit it as part of the record for this variance. Also, in accordance with Natural Resources Article §8-1808(d)(6)(i), please provide the Commission with a copy of the Board of Appeals' written decision regarding this variance application within 10 working days after a written decision has been issued. If you have any questions, please feel free to contact me at 410-260-3479 or kathryn.hayden@maryland.gov.

Sincerely,

Kathryn Hayden

Kathryn Hayden
Natural Resources Planner

File: SM 0257-24
CC: Charlotte Shearin, Critical Area Commission
Stacy Clements, St. Mary's County
Amanda Yowell, St. Mary's County
Amber Harding, St. Mary's County