

December 2, 2024

Devin Leary  
Human & Rohde, Inc.  
512 Virginia Ave.  
Towson MD 21286

Re: 2407 Beach Ave.  
Essex, MD 21221  
Critical Area Administrative Variance  
Tracking Number 07-24-4198

Dear Devin Leary:

The Department of Environmental Protection and Sustainability (DEPS) has completed a review of the variance request for proposed development on the above referenced property. The property (14,200 square feet above mean high tide) is located within a Limited Development Area and a Modified Buffer Area in the Chesapeake Bay Critical Area. The request proposes to construct a replacement dwelling 57 feet from mean high tide instead of the 86-foot setback from mean high tide required by the Critical Area Modified Buffer Area regulations. There are no proposed direct impacts to waterways or wetlands, and there is no impact to forest or developed woodlands.

The Director of DEPS may grant a variance to the Chesapeake Bay Critical Area regulations in accordance with regulations adopted by the Critical Area Commission concerning variances as set forth in COMAR 27.01.12.04. There are seven (7) criteria listed in COMAR 27.01.12.04 that shall be used to evaluate the variance request. All seven of the criteria must be met in order to approve the variance.

The first criterion requires that special conditions or circumstances exist that are peculiar to the land or structure, and that literal enforcement of the regulations would result in an unwarranted hardship. The lot associated with this variance request was created prior to the effective date of the Critical Area law and the Modified Buffer Area regulations. The lot is about 140-feet deep and 94-feet wide and must adhere to a minimum roadside setback of 20-feet for the dwelling. A 20-foot setback allows for a practical driveway on a road that is not conducive to on street parking. The Modified Buffer Area regulations require an 86-foot setback from the water, and this setback makes more than 60% of the lot unavailable for construction of the proposed house. In addition, the required setback leaves about 30 feet of depth for construction of a house when considering the roadside setback. The proposed dwelling can meet all other Critical Area requirements with mitigation, and is generally in line with adjacent dwellings when considering the curve in the shoreline. When considering the site constraints and that the proposal can meet all other Critical Area requirements, not allowing the construction of the proposed dwelling represents an unwarranted hardship for the property owner. Therefore, the first criterion has been met.

Devin Leary  
2407 Beach Ave.  
Essex, MD 21221  
Critical Area Administrative Variance  
Tracking Number 07-24-4198  
Page 2

The second criterion requires that a literal enforcement of the regulations would deprive the applicant of a use of land or structure permitted to others. Property owners in the Critical Area with similar site constraints have been granted approval for the location of a dwelling as proposed for this property. Literal enforcement of the regulations would deprive the applicant of rights enjoyed by others with these unusual conditions. Therefore, the second criterion has been met.

The third criterion requires that granting of a variance will not confer upon an applicant any special privilege that would be denied to other lands or structures within the Critical Area. The proposed impacts to the Critical Area buffer for construction of a replacement dwelling on the referenced property would not be denied to similar properties with similar constraints. Therefore, the third criterion has been met.

The fourth criterion requires that a variance is not based upon conditions or circumstances that are the result of actions by the applicant. The applicant has not created any condition, or conducted any work on the property, that has required this variance request. Therefore, the fourth criterion has been met.

The fifth criterion requires that the variance request does not arise from any conforming or nonconforming condition on any neighboring property. This variance request involves the proposed construction of a replacement dwelling in relation to the constraints on the referenced property. The request does not arise from any condition relating to land or building use, either permitted or non-conforming, on any neighboring property. Therefore, the fifth criterion has been met.

The sixth criterion requires that granting of the variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area. The construction of the replacement dwelling with a reduced setback from mean high tide can meet all other Critical Area requirements. Mitigation will be required to minimize water quality impacts. Therefore, the proposed buffer impacts will not adversely affect water quality, and will result in minimal adverse impacts to plants, fish, or wildlife with mitigation.

The seventh criterion requires that the granting of the variance will be in harmony with the general spirit and intent of the Critical Area laws and regulations. The construction of a replacement dwelling on this property with a reduced setback from mean high tide must comply with all Critical Area requirements. The proposed development meets lot coverage requirements, and must mitigate for all buffer disturbances. By meeting these requirements, the granting of the variance request will be in harmony with the general spirit and intent of the Critical Area laws and regulations and the seventh criterion can be met.

Based upon our review, this Department finds that the above criteria have been met, or will be met through implementation of the conditions outlined below. Therefore, the requested variance is hereby approved in accordance with Section 33-2-205 of the Baltimore County Code with the following conditions:

1. The following note must appear on all plans associated with this project:

Devin Leary  
2407 Beach Ave.  
Essex, MD 21221  
Critical Area Administrative Variance  
Tracking Number 07-24-4198  
Page 3

“A variance (Tracking Number 07-24-4198) was granted by the Baltimore County Department of Environmental Protection and Sustainability from Baltimore County Code Article 33, Title 2, Chesapeake Bay Critical Areas Protection to construct a replacement dwelling 57 feet from mean high tide instead of the 86-foot setback from mean high tide required by the Critical Area Modified Buffer Area regulations. Conditions were placed on this variance to reduce water quality impacts.”

2. The impacts to the Critical Area buffer from the reduced setback from mean high tide must be mitigated at a 3:1 ratio which results in a total mitigation requirement of 4,368 square feet (3 x 1,456 square-feet). In order to satisfy this mitigation requirement, the applicant must maximize the planting of native trees and shrubs on the property. The property owner must pay a fee-in-lieu for any mitigation that cannot be met with the planting. Please note, mitigation for impacts to the buffer not associated with this variance request will be required per the Modified Buffer Area regulations.
3. A Critical Area Management Plan must be submitted that outlines the details of the mitigation required for the proposed development. This plan must be approved prior to any permit approvals.

It is the intent of this Department to approve this variance subject to the above conditions. Changes in site layout may require submittal of revised plans and an amended variance request. Please be advised that Baltimore County may not issue a permit for the activity that was the subject of the variance application until the applicable 30-day appeal period has elapsed pursuant to COMAR 27.01.12.07 C.

The property owner(s) must sign the statement at the end of this letter, and then return the signed letter to this Department. Failure to return a signed copy of this letter may result in delays in processing of permits or other development plans for the subject property, and/or may render this variance null and void.

If you have questions regarding this project, please contact Paul Dennis at 410-887-3980.

This variance is approved by the Director of the Department of Environmental Protection and Sustainability on \_\_\_\_\_. Any changes to site layout may require submittal of revised plans and a new variance request.

Sincerely yours,

Horacio Tablada  
Director

HT: pad

c: Jonathan Coplin, Critical Area Commission

Devin Leary  
2407 Beach Ave.  
Essex, MD 21221  
Critical Area Administrative Variance  
Tracking Number 07-24-4198  
Page 4

I/We have read and agree to implement the above requirements to bring my/our property into compliance with Baltimore County Code Article 33, Environmental Protection And Sustainability, Title 2, Chesapeake Bay Critical Areas Protection.

---

Property Owner Signature(s)	Property Owner Printed Name(s)	Date
-----------------------------	--------------------------------	------