

October 23, 2024

Donald Atkins
5803 Lytle Rd.
White Marsh MD 21162

Re: 2402 Holly Neck Road
Essex MD 21221
Critical Area Administrative Variance
Tracking Number 07-24-4168

Dear Donald Atkins:

The Department of Environmental Protection and Sustainability (DEPS) has completed a review of the variance request for the construction of a pier to serve the above referenced property. The property is located within a Limited Development Area in the Chesapeake Bay Critical Area. The variance request proposes to construct a residential pier more than 25 percent the width of the waterway. Based on the approximate 320-foot width of Sue Creek in this area, a pier is restricted to a distance of 80-feet waterward. The applicant proposes to construct a pier 160-feet waterward to provide the depths needed at low tide for boat operation, and to lessen impacts on submerged aquatic vegetation and estuarine habitat. The pier connection to land has been located to minimize disturbance to the shoreline.

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 exist that are peculiar to the land or structure, and that literal enforcement of the regulations would result in unwarranted hardship. Because of the shallow water depth at low tide, and the presence of submerged aquatic vegetation in this area of Sue Creek, placing a boat slip within 80-feet would not be viable for operation of motor boats, and would result in greater impacts to submerged aquatic vegetation and the habitat it provides. If the 160-foot pier is not allowed, the applicant would not have adequate water depth for the boat slip, and operation of a boat with minimal impacts to the waterway. The applicant would be denied a reasonable use of this residential property. This represents an unwarranted hardship. Therefore, the first criterion is met.

The second criterion requires that a literal enforcement of the regulations 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. Other residential property owners in the Critical Area with similar waterway constraints enjoy uses of piers like that proposed in this application. Therefore, the second criterion has been met.

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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. Other property owners with similar Critical Area waterway constraints would be granted variance approval to construct a pier as proposed for this site. Therefore, this criterion has been met.

The fourth criterion requires that a variance is not based upon conditions or circumstances which are the result of actions by the applicant. No activity has taken place that 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. The request for the variance involves the constraints for construction of a pier on the area of Sue Creek adjacent to this property, and is not related to any conditions on adjacent properties. Therefore, the fifth criterion is 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. Constructing a pier with boat slips in deeper water will allow for less impact to submerged aquatic vegetation habitat, and will allow for less waterway impact in the operation of a boat. As a result, granting of this variance will not adversely affect water quality, or adversely impact fish, wildlife, or plant habitat while following waterway construction requirements.

The seventh criterion requires that the granting of the variance would be in harmony with the general spirit and intent of the Critical Area law. The construction of the pier must comply with all Critical Area requirements for residential pier construction, and all state and local waterway construction requirements. By meeting these requirements, the granting of the variance request will be in harmony with the general spirit and intent of the Critical Area 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. This note must be added to all future plans:

“A variance (Tracking Number 07-24-4168) was granted by Baltimore County Department of Environmental Protection and Sustainability from Chesapeake Bay Critical Area requirements to allow the construction of a pier 160-foot waterward in lieu of the required maximum 80-foot waterward limit to allow adequate water depth for boat operation and to minimize impacts to submerged aquatic vegetation habitat. Conditions were placed on this approval to minimize water quality impacts.”

2. State and federal approvals for the construction of the pier must be obtained and provided to this office before approval of a Baltimore County pier permit.

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3. The pier access on land must comply with all Critical Area buffer requirements. A Critical Area management plan may be required.

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 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

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I/We have read and agree to implement the above requirements to bring this property, 2402 Holly Neck Rd., Essex MD 21221, into compliance with Chesapeake Bay Critical Area laws and regulations.

Signature of Property Owner	Date	Printed Name of Property Owner
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