

December 9, 2024

Stephen & Lisa Durst  
2124 Rosalie Avenue  
Baltimore, MD 21221

Re: 2124 Rosalie Avenue  
Critical Area Administrative Variance  
Tracking Number 07-24-4212

Dear Stephen & Lisa Durst:

A request for a variance from the Baltimore County Code Article 33 Environmental Protection and Sustainability (DEPS), Title 2 Critical Area was received on October 18, 2024. The request seeks a variance to allow impact to approximately 921 square feet (sf) of Modified Buffer Area (MBA) to replace failing, wooden retaining walls within 25 feet of the water on your property at 2124 Rosalie Avenue. The grandfathered lot contains an existing dwelling and is within the Limited Development Area of the Chesapeake Bay Critical Area. There are no forests, streams, or wetlands impacted by the proposed work.

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. The existing retaining walls were installed on the property prior to the CBCA effective date and are in disrepair. The existing walls serve to support the steep slopes along the rear of the home and down to the water's edge. Literal enforcement of the regulations would prevent replacement of the failing retaining wall and result in an unwarranted hardship; therefore, this criterion has been 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. Literal enforcement of the regulations would prevent the replacement of the failing retaining walls and deny the applicant the ability to safely utilize the waterfront on their property. This variance would allow the replacement of the failing retaining

wall to correct a safety and erosion issue. A similar variance would be granted to another property owner under similar circumstances. Therefore, this criterion is 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 ability to replace the existing retaining walls and to safely access the waterfront on their property is not a special privilege that would be denied to other lands or structures within the Critical Area. 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. This variance is not based upon conditions or circumstances which are the result of actions by the applicant and/or property owners. 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 variance did not arise from any conforming or nonconforming condition on a neighboring property, and this 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, and that the granting of the variance will be in harmony with the general spirit and intent of the Critical Area regulations. With implementation of the conditions outlined below, granting of this variance will not adversely affect water quality, or adversely impact fish, wildlife, or plant habitat. Additionally, the erosion control offered by a replacement to the declining retaining walls already present on the property would provide enhanced water quality benefits by better holding soils in place and by providing space for native plantings offered as mitigation. Therefore, this criterion has been met.

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 granting of this variance will allow the replacement of existing retaining walls in decline, which would prevent erosion within 25 feet of the water. Additionally, planting mitigation has been offered at a 3:1 ratio, which further improves water quality and habitat opportunities on the property. As such, we find that the granting of this variance would be in harmony with the general spirit and intent of the Critical Area law. Therefore, this criterion has been 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 subsequent plans for this development project:

“A variance (tracking #07-24-4212) was granted by Baltimore County Department of Environmental Protection and Sustainability from Chesapeake Bay Critical Area requirements to allow the replacement of failing retaining walls within 25 feet of the water.”

2. Obtain a Baltimore County permit to replace the retaining walls within 90 days of variance approval.
3. Mitigation for the impacts within the Critical Area buffer must be provided at 3:1 ratio. A planting plan was submitted with the variance application. Please provide a revised planting plan addressing all of EIR’s comments (see enclosed) with your permit application. Plantings should be installed no later than May 15, 2025. If the work to replace the retaining walls is not complete by this date, please contact EIR in writing to request an extension. No easement recordation or planting securities are required.

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 subject of the variance application until the applicable 30-day appeal period has elapsed pursuant to COMAR 27.01.12.07 C.

Please have the party responsible for meeting the conditions of this variance sign the statement on the following page and then return a signed copy of this 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 this project.

If you have questions regarding this project, please contact Art Garcia 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,

Horacio Tablada  
Director

HT/AYG

Enclosure: EIR Planting Plan Comments

Stephen & Lisa Durst  
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We have read and agree to implement the above requirements to bring our property into compliance with Chesapeake Bay Critical Area regulations.

\_\_\_\_\_  
Signature                                      Date

\_\_\_\_\_  
Signature                                      Date

\_\_\_\_\_  
Printed Name                                      Date

\_\_\_\_\_  
Printed Name                                      Date