

November 26, 2024

John Canoles  
Eco-Science Professionals Inc.  
P.O. Box 5006  
Glen Arm, MD 21257

Re: 311 Saint Georges Road  
Critical Area Administrative Variance  
Tracking #07-24-4172

Dear John Canoles:

A request for a variance from the Baltimore County Code Article 33 Environmental Protection and Sustainability, Title 2 Critical Area was received on September 16, 2024. The request seeks a variance to allow a new dwelling to be constructed within the expanded Critical Area buffer and to have a principal structure setback of less than 35 feet from the proposed Critical Area Easement (CAE). The 31,245-sf waterfront lot is located within a Limited Development Area (LDA) of the Chesapeake Bay Critical Area. A single-family dwelling previously existed on the property and was razed in 2022. There are 1,711 sf of existing impact within the buffer, consisting of a stone construction accessway. The proposed project will result in 2,355 sf of permanent structure and 4,487 sf of maintained lawn to provide yard space for the proposed dwelling. The principal structure setback off the proposed CAE will vary between 20 and 35 feet. Approximately 8,148 sf of forest exists on the property, not including a large bamboo stand, as well as a small non-tidal wetland. No forest or wetland impacts are proposed, and the only clearing of vegetation proposed is of invasive bamboo.

The Director of the Department of Environmental Protection and Sustainability 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. A special condition exists in that the majority of the subject property is located within the Critical Area buffer. The property's irregular shape, the existence of a nontidal wetland in the southern portion of the property, as well as the presence of erodible soils increases the area of the Critical Area buffer on the property beyond the standard 100-foot buffer off the mean high tide line at the property's waterfront. Impact to the buffer would be unavoidable for any proposed development

of the subject property. Since Critical Area regulations do not allow construction of any kind within the buffer without an approved variance, the property owners are significantly limited in any development of this property. Additionally, the property's unique configuration limits the amount of space available for a dwelling and usable yard, and full compliance with the 35-foot principal structure setback requirement would impose additional limitations to the size of any proposed dwelling. To disallow construction of the proposed dwelling within the buffer or the reduction of the principal structure setback would be an unwarranted hardship due to the severe limitations on implementing any kind of development on this property. 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. Allowing the construction of the proposed dwelling would allow for the use of this property as other properties are used or could be used in the immediate area. 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. Construction within the Critical Area buffer when the property is so encumbered has been granted elsewhere in the immediate area. The granting of this variance will not confer upon the applicant any 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. The granting of this variance will not directly impact any streams, wetlands, or forest. Additionally, mitigation has been proposed in the form of the removal of an extensive stand of invasive bamboo within the buffer. The proposed dwelling will be built in the same location as the previous dwelling, with the same areas maintained as mowed lawn as were previously in addition to a portion of the bamboo eradication area. 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.

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 construction of a new dwelling within the Critical Area buffer and a reduction of the principal structure setback, which will be consistent with the surrounding neighborhood as all neighboring properties contain single family dwellings. Appropriate mitigation will be provided for the proposed impact. 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.

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 be added to all future plans for this property:

“A variance (tracking #07-24-4172) was granted by Baltimore County Department of Environmental Protection and Sustainability from Chesapeake Bay Critical Area requirements to allow construction of a new dwelling within the 100-foot Critical Area Buffer, as well as a reduction of the principal structure setback off the proposed Critical Area Easement from 35 feet to as little as 20 feet in some areas.”

2. Mitigation for the 2,355 sf of new proposed impact to the Critical Area buffer must be mitigated at a 3:1 ratio, resulting in a mitigation requirement of 7,065 sf. Some of the mitigation requirement will be fulfilled by the removal of the 1,711 sf of existing buffer impact, which is either to be replaced with the new impact or converted to maintained lawn. The remaining mitigation requirement after the proposed impact removal is 5,354 sf and can be provided through the removal of the existing invasive bamboo stand and onsite planting of the Critical Area buffer where possible, in accordance with COMAR 27.01.09.01-2(L). An approved Critical Area Management Plan (CAMP) detailing the proposed mitigation planting is required prior to permit approval. A security equal to 110% the cost of implementing the CAMP must be posted with the Department of Environmental Protection and Sustainability prior to permit approval.
3. A Critical Area Easement (CAE) will be required to protect all proposed buffer mitigation plantings. The CAE must be recorded with the appropriate Declaration of Protective Covenants in the Land Records of Baltimore County prior to approval of any building permits. Be sure to show the proposed easement boundary on the CAMP.

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).

