

March 28, 2024

Jeffrey Schaufert  
1322 E. Riverside Ave  
Essex, MD 21221

Re: Critical Area Administrative Variance  
1322 E. Riverside Ave  
Tracking Number 07-24-4067

Dear Jeffrey Schaufert:

A request for a variance from the Baltimore County Code Article 33, Title 2 Chesapeake Bay Critical Area Protection was received by this Department (Environmental Protection and Sustainability, or DEPS) on February 7, 2024. The request seeks a variance to construct a 900-square foot (sf) detached garage within the 100-foot buffer. The grandfathered lot is in a Limited Development Area of the Chesapeake Bay Critical Area (CBCA) and is waterfront with a 100-foot buffer encompassing the majority of the property. The approximately 1.1-acre property contains approximately 3,316 sf of lot coverage, or 7%. Two existing sheds and stored tires and debris within 25 feet of the tidal wetland will be removed as part of the project. The sheds and stored materials are 300 sf and 100 sf, respectively. The variance will also grant continued use of the existing lawn area. Ultimately, the proposed garage would add 500 sf of new lot coverage and allow establishment of on-site buffer mitigation plantings within a historically maintained area of wetland.

The Director of DEPS may grant a variance to the CBCA 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. This property uniquely includes open water to the west and tidal wetland on the north portion of the property. As a result, almost all of the property is within the 100-foot buffer. The existing home was built in the 1920's, predating CBCA regulations. The home contains minimal storage, which the owners hope to offset by building this garage. A strict adherence to buffer regulations would deny the property owner beneficial use of the property and would result in 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. Literal enforcement of the regulations would deny the applicant the ability to construct any structures on the majority of the property. All of the other waterfront homes on this road contain Modified Buffer Area along their waterfront, which allows some amount of lenience when considering construction and modifications. This lot is the only waterfront lot on the road designated as non-modified buffer. This variance would grant a use of this property that others in the immediate area enjoy. 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. Many other properties on the road have existing impacts within the 100-foot buffer and are much closer to open water than the work proposed on the subject property. The proposed work is more than 200 feet from open water, though within 100 feet of the tidal wetland. 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. The primary structure was built in the 1920's prior to CBCA regulations. The variance request is a result of the location of tidal wetlands and the Critical Area buffer encompassing the majority of the property. Therefore, 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; 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 new garage will add lot coverage to the property, which is less than the 15% allowed by CBCA regulations. The garage will be built farther from the wetland than two existing sheds proposed for removal. This will allow approximately 400 sf of impact to be removed, partially compensating for additional lot coverage. Buffer mitigation plantings will be installed at the wetland edge to compensate for buffer impact. There are no impacts to forest, wetlands, or streams associated with this variance. 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 construction of a detached garage that will be consistent with the surrounding neighborhood and there will be no impacts to forest, wetlands, or streams. New buffer impact will be mitigated at a rate of 3:1 using on-site plantings. 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 #07-24-4067) was granted by Baltimore County Department of Environmental Protection and Sustainability from Chesapeake Bay Critical Area requirements to construct a 900 square foot detached garage. Mitigation for the buffer impacts will be addressed by native plantings on-site.”
2. Critical Area buffer impacts must be mitigated at a 3:1 ratio (2,700 sf), less 400 sf of shed/debris removal for 2,300 sf. A Critical Area Management Plan (CAMP) must be submitted to our office for review and approval prior to building permit approval. The CAMP must detail mitigation requirements, planting plan and specifications, and notes on tree planting maintenance and security release.
3. An Environmental Agreement and planting security must be submitted prior to building permit approval.

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.

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 Marie Brady 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/mvb

c: Susan Makhoulf, Critical Area Commission (via email)

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
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_____ Printed Name	_____ Date	_____ Printed Name	_____ Date
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