

County Commissioners Hearing Room

400 High Street
Chestertown, Maryland

AGENDA

Monday, February 27, 2023

5:00 p.m.

Members of the public are welcome to attend meetings in person or listen to the meeting via the audio-only phone number and conference identification number listed below.

1. Dial **1-872-239-8359**
2. Enter Conference ID: **520 025 151#**

Members of the public are asked to mute their phones/devices, until the Commission Chair opens the floor for comment.

MINUTES

November 21, 2022

APPLICATIONS FOR REVIEW:

23-06 Raymond D’Esposito – Variance – Front Yard Setback
28519 Spring Road – Second Election District – Critical Area Residential (CAR)

22-74 Phillip Gray – Buffer Variance
23550 Canvasback Road – Third Election District – Critical Area Residential (CAR)

GENERAL DISCUSSION

ADJOURN

APPLICANT OR REPRESENTATIVE MUST BE PRESENT

**APPLICANTS ARRIVING MORE THAN 10 MINUTES AFTER THE SCHEDULED HEARING WILL NOT BE HEARD
AND WILL BE RESCHEDULED AT THE APPLICANT’S EXPENSE.**

Meetings are conducted in Open Session unless otherwise indicated. All or part of the Board of Appeals meetings can be held in closed session under the authority of the MD Open Meetings Law by vote of the members. Breaks are at the call of the Chairman. Meetings are subject to audio and video recordings.

All applications will be given the time necessary to assure full public participation and a fair and complete review of all projects. Agenda items are subject to change due to cancellations. Other business without assigned times may be discussed during the meeting.



Board of Zoning Appeals
Department of Planning, Housing, and Zoning

MINUTES

Meeting: Kent County Board of Zoning Appeals
 Date: November 21, 2022
 Time: 5:00 P.M.
 Location: County Commissioners Hearing Room, 400 High Street, Chestertown, Maryland

Agenda Item	Sitting for the Board	Action Taken	Vote
<p>22-80 Green's Septic and Excavation, LLC – Special Exception</p> <p>The applicant is requesting a special exception to operate a septic maintenance and excavation business except for the associated office uses on a property zoned Village. A new pole building will be constructed to store equipment used for the business. The property is located at 10252 Fairlee Road, Chestertown.</p> <p>The Kent County Planning Commission forwarded a favorable recommendation to the Board of Appeals in regard to this application.</p> <p><u>Applicant/Representative</u> Steven Green, property owner, and Harry Smith Jr., LS, Delmarva Survey, were sworn in and presented a summary of the case.</p> <p><u>Public Comment</u> No correspondence was received on this application.</p> <p><u>Planning Staff</u> Carla Gerber, AICP, Deputy Director of Planning was sworn in.</p>	<p>Dr. Albert Townshend, Chairman</p> <p>Joan Horsey, Member</p> <p>John Massey, Member</p> <p>David Hill, Alternate Member</p> <p>Mr. Christopher Drummond, Attorney for the Board</p> <p>Campbell Safian, Clerk</p>	<p>Mr. Massey made a motion to approve the special exception for Green's Septic and Excavation, LLC, located at 10252 Fairlee Road based on the testimony that was presented, both in writing and orally, with the one condition that the final site plan approval be granted by the Planning Commission. The special exception will lapse after the expiration of one year if no substantial construction in accordance with the plans herein presented occurs.</p> <p>The motion was seconded by Ms. Horsey; the motion passed with all in favor.</p>	<p>Unanimous Approval</p>
<p>MINUTES: October 17, 2022</p>	<p align="center">DRAFT</p>	<p>Dr. Townshend moved to approve the minutes. Mr. Massey seconded the motion; the motion passed with all in favor.</p>	<p>Approved</p>

Agenda Item	Sitting for the Board	Action Taken	Vote ⁴
Adjourn		Ms. Horsey made a motion to adjourn the meeting, and Mr. Massey seconded the motion; the motion passed with all in favor. The meeting adjourned at 5:20 p.m.	Unanimous Approval

 Dr. Albert Townshend, Chairman

/s/ Campbell Safian
 Campbell Safian, Planning Specialist

DRAFT



Planning Commission
Department of Planning, Housing, and Zoning

February 2, 2023

Dr. Al Townshend
Kent County Board of Appeals
400 High Street
Chestertown, MD 21620

RE: 23-06 Raymond D'Esposito – Variance (Front Yard Setback)

Dear Dr. Townshend,

At its meeting on February 2, 2023, the Kent County Planning Commission reviewed the application of Raymond D'Esposito, requesting a variance of 37.5 feet from the required 50-foot front yard setback to construct a 20-foot by 18-foot carport 12.5 feet from the front property line. Due to the size, shape, and topography of the parcel, the principal structure was granted an administrative variance to be placed 30 feet from the front yard as construction elsewhere was not feasible. The property is unique in that it has a waterfront view but is without a shoreline, thus the road-side portion of the property is considered the front yard. The proposed carport is to be placed over and at the end of the existing driveway in front of the principal structure, and the small increase in lot coverage will be mitigated with plantings in the buffer area that extends into the yard. Many of the surrounding parcels are waterfront properties, and the roadside portion of those parcels is considered the rear yard, for which the setback for accessory structures is 5 feet. Thus, this structure would not be out of character in the neighborhood. This 0.451-acre property is located at 28519 Spring Road in the Second Election District and is zoned Critical Area Residential (CAR).

Following discussion, the Planning Commission voted to make a favorable recommendation for the variance of 37.5 feet from the required 50-foot front yard setback to construct a 20-foot by 18-foot carport 12.5 feet from the front property line. The Planning Commission recommends the following conditions should the Board of Appeals grant approval:

- Buffer enhancement to offset the increase in lot coverage is to be implemented within two growing seasons and is to be maintained to ensure survivability.
- The variance will lapse after the expiration of one year if no substantial construction in accordance with the plans herein presented occurs.

The decision was based on the following findings of fact:

- A variance will not cause a substantial detriment to adjacent or neighboring properties nor change the character of the neighborhood or district. Many of the nearby properties, which are waterfront, have accessory structures that are close to the roadside property line.
- The *variance* is consistent with the *Comprehensive Plan* and the general intent of the Ordinance.
- The practical difficulty is due to the property's limited size, configuration, and steep slopes, severely limiting the location in which the proposed structure can be placed. This difficulty was not the making of the owner.

- The environmental impact is minimal, and the increase in lot coverage is to be mitigated through plantings in the buffer.
- Garages and carports are a common feature of residential properties, and a literal interpretation of this Ordinance would deprive the applicant the right commonly enjoyed by other properties in similar areas.
- The granting of a variance will not confer upon the applicant any special privilege that would be denied by this Ordinance to other lands or structures.

Sincerely,
Kent County Planning Commission

A handwritten signature in cursive script, appearing to read "Joe Hickman".

Joe Hickman
Chair

FJH/mc

cc: Raymond D'Esposito

To: Kent County Board of Appeals
From: Mark Carper, Associate Planner
Meeting: February 27, 2023
Subject: Raymond D’Esposito
Variance – Front Yard

Executive Summary

REQUEST BY THE APPLICANT

Mr. Raymond D’Esposito is requesting a variance of 37.5 feet from the required 50-foot front yard setback to construct a 20-foot by 18-foot carport.

PUBLIC PROCESS

Per Article IX, Section 2.2 of the Kent County *Land Use Ordinance*, the Planning Commission shall review and make a recommendation to the Board of Appeals for variances. The Board of Appeals may authorize variances from the yard ... requirements so as to relieve practical difficulties or other injustices arising out of the strict application of the provisions of this Ordinance.

SUMMARY OF THE STAFF REPORT

The principal dwelling was constructed as a replacement in 2014, for which a 20-foot variance was granted to place it 30 feet from the front property line. The property is unique in that it has a waterfront view but is without a shoreline, is irregular in shape, and is steeply sloped save for one portion in the northwest corner near to the road, which is where the home was constructed. This 0.451-acre property is located at 28519 Spring Road in the Second Election District and is zoned Critical Area Residential (CAR).

The proposed 20-foot by 18-foot carport is to be placed over and at the end of the existing driveway, and it will increase the lot coverage by 60 square feet from the portions extending beyond the sides of the drive. At 1,922 square feet, the resultant lot coverage will be well below the allowable maximum. A buffer enhancement plan for the installation of 60 square feet of plantings in the buffer will be required.

STAFF RECOMMENDATION

Staff recommends forwarding a favorable recommendation to the Board of Appeals for approval of the setback variance with the following conditions:

- Buffer enhancement to offset the increase in lot coverage is to be implemented within two growing seasons and is to be maintained to ensure survivability.
- The variance will lapse after the expiration of one year if no substantial construction in accordance with the plans herein presented occurs.

PRELIMINARY STAFF REPORT

TO: Kent County Board of Appeals
 SUBJECT: #23-06 – Raymond D’Esposito
 Variance – Front Yard Setback
 DATE: February 22, 2023

DESCRIPTION OF PROPOSAL

Mr. Raymond D’Esposito is requesting a variance of 37.5 feet from the required 50-foot front yard setback to construct a 20-foot by 18-foot carport 12.5 feet from the front property line. The principal dwelling was constructed as a replacement in 2014, for which a 20-foot administrative variance was granted to place it 30 feet from the front property line. The property is unique in that it has a waterfront view but is without a shoreline, is irregular in shape, and is steeply sloped save for one portion in the northwest corner near to the road, which is where the home was constructed. Many of the surrounding parcels are waterfront properties, and the roadside portion of those yards is considered the rear yard, for which the setback for accessory structures is 5 feet. This 0.451-acre property is located at 28519 Spring Road in the Second Election District and is zoned Critical Area Residential (CAR).

The proposed 20-foot by 18-foot carport is to be placed over and at the end of the existing driveway, and it will increase the lot coverage by 60 square feet from the portions extending beyond the sides of the drive. At 1,922 square feet, the resultant lot coverage will be well below the allowable maximum. A buffer enhancement plan for the installation of 60 square feet of plantings in the buffer will be required.

RELEVANT ISSUES

I. Permitted and Accessory Uses

- A. *Applicable Law:* Article V, Section 5.4 of the Kent County Land Use Ordinance lists the permitted accessory uses and structures within the Critical Area Residential district.
- B. *Staff and TAC Comments:* The applicant is proposing to construct a customary residential accessory structure.

II. Density, Height, Width, Bulk, and Fence Requirements

- A. *Applicable Law:* Article V, Section 5.5 of the *Kent County Land Use Ordinance* establishes the density, height, width, bulk, and fence requirements for the Critical Area Residential District.

Minimum Yard

Front	50 feet
Side	15 feet
Rear	30 feet

Accessory residential structures in the rear yard

Side	3 feet
Rear	5 feet

- B. *Staff and TAC Comments:* The existing replacement home was permitted following the granting of an administrative variance to place it 20 feet within the required 50-foot front yard setback. The driveway extends from the front of the home toward the road and provides the only feasible

location for placement of the proposed structure. Because of its dimensions, the carport is to be constructed 12.5 feet from the front property line.

III. Variance

- A. *Applicable Law*: Article IX, Section 2.2, Variances of the Kent County *Land Use Ordinance* authorizes the Board of Appeals to grant variances from the yard (front, side, or rear), ...so as to relieve practical difficulties or other injustices arising out of the strict application of the provisions of this Ordinance.

In order to grant a *variance*, the Board of Appeals must find all of the following:

- a. That the *variance* will not cause a substantial detriment to adjacent or neighboring property.
- b. That the *variance* will not change the character of the neighborhood or district.
- c. That the *variance* is consistent with the *Comprehensive Plan* and the general intent of this Ordinance.
- d. That the practical difficulty or other injustice was caused by the following:
 - i. Some unusual characteristic of size or shape of the property.
 - ii. Extraordinary topographical or other condition of the property.
 - iii. The use or *development* of property immediately adjacent to the property, except that this criterion shall not apply in the *Critical Area*.
- e. That the practical difficulty or other injustice was not caused by the applicants own actions.
- f. ...
- g. In considering an application for a *variance*, the Board shall consider the reasonable use of the entire parcel or lot for which the *variance* is requested.
- h. In considering an application for a *variance*, the Board of Appeals shall presume that the specific *development* activity in the Critical Area that is subject to the application and for which a *variance* is required does not conform with the general purpose and intent of this Ordinance and the Critical Area Law.
- i. The Board may consider the cause of the *variance* request and if the *variance* request is the result of actions by the applicant, including the commencement of *development* activity before an application for a *variance* has been filed.

B. *Staff and TAC Comments*:

- A variance will not cause a substantial detriment to adjacent or neighboring properties nor change the character of the neighborhood or district. Many of the nearby properties, which are waterfront, have accessory structures that are close to the roadside property line.
- The *variance* is consistent with the *Comprehensive Plan* and the general intent of this Ordinance.
- The practical difficulty is due to the property's limited size, configuration, and steep slopes, severely limiting the location in which the proposed structure can be placed. This difficulty was not the making of the owner.
- The environmental impact is minimal, and the increase in lot coverage is to be mitigated through plantings in the buffer.
- Garages and carports are a common feature of residential properties, and a literal interpretation of this Ordinance would deprive the applicant the right commonly enjoyed by other properties in similar areas.
- The granting of a variance will not confer upon the applicant any special privilege that would be denied by this Ordinance to other lands or structures.

STAFF RECOMENDATION

Staff recommends forwarding a favorable recommendation to the Board of Appeals for approval of the 37.5-foot front yard variance to construct an 20' x 18' carport 12.5 feet from the front property line. Staff further recommends the following:

- Buffer enhancement to offset the increase in lot coverage is to be implemented within two growing seasons and is to be maintained to ensure survivability.
- The variance will lapse after the expiration of one year if no substantial construction in accordance with the plans herein presented occurs.

BOARD OF APPEALS APPLICATION

Kent County Department of Planning, Housing and Zoning

Kent County Government Center
400 High Street • Chestertown, MD 21620
410-778-7423 (phone) • 410-810-2932 (fax)

IN THE MATTER OF THE APPLICATION OF:
(Name, Address and Telephone Number of Applicant)

Raymond D'Esposito
28519 Spring Ad
Kennedyville, MD 21645
410-348-5973

Email: desposito.ray@gmail.com

For Office Use Only:

Case Number/Date Filed:
Filed by:
Applicant:
Planning Commission:
Hearing:
Parties Notified:
Notice in Paper:
y Posted:

Please provide the email of the one person who will be responsible for responding to comments. Only this person will be contacted by staff and will be the person responsible for forwarding the comments or requests for additional information to any other interested parties. EMAIL:

TO THE KENT COUNTY BOARD OF APPEALS: In accordance with Article 1X Section 2.2

of the Kent County Zoning Ordinance, as amended, request is hereby made for:

Appealing Decision of Kent County Zoning Administrator X Variance
Special Exception Nonconforming Use

DESCRIPTION OF PROPERTY INVOLVED:

Located on: (Name of Road, etc.) 28519 Spring Ad
In the Prec- 02001 Election District of Kent County.

Size of lot or parcel of Land: 0.451
Map: 0006 Parcel: 0309 Lot #: Deed Ref: EHP00063/0455

List buildings already on property: primary dwelling & shed

If subdivision, indicate lot and block number:
If there is a homeowner's association, give name and address of association:

PRESENT ZONING OF PROPERTY: Residential

DESCRIPTION OF RELIEF REQUESTED: (List here in detail what you wish to do with property that requires the Appeal Hearing.) Build carport over driveway

If appealing decision of Zoning Administrator, list date of their decision:

If Applicant is not owner, please indicate your interest in this property: _____

Has property involved ever been subject to a previous application? NO

If so, please give Application Number and Date: _____

PLEASE FILL IN BELOW, OR ATTACH HERETO, A SKETCH OF THIS PROPERTY.

List all property measurements and dimensions of any buildings already on the property.

Put distances between present buildings or proposed buildings and property lines.

NAMES OF ADJOINING PROPERTY OWNERS:

Owner(s) on the North: David/Janice Stump
28540 Spring Ad

Owner(s) on the South: _____

Owner(s) to the East: John/Stephanie Clatworthy
13932 Turners Point Ad

Owner(s) to the West: Leah McKenzie
28513 Spring Ad

Homeowners Association, name and address, if applicable: _____

BY SIGNING THIS APPLICATION, I GRANT MEMBERS AND ALTERNATE OF THE BOARD OF ZONING APPEALS THE RIGHT TO ENTER ONTO THE PROPERTY FOR THE PURPOSE OF VIEWING THE SITE OF THE APPLICATION OR APPEAL.

Ray D'Esposito
Signature of Owner/Applicant/Agent or Attorney

12/30/22
Date

Please file this form at 400 High Street, Chestertown, MD 21620 accompanied by **\$350.00** filing fee made payable to the **County Commissioners of Kent County**. The filing fee for appeals of a Zoning Administrator's decision is \$250.00. If you have any questions, please contact the Clerk at 410-778-7467.

NOTICE: Neither the Board of Appeals nor the Planning Department is required to make out this Application. If the Planning Department assists you, it cannot be held responsible for its contents.

Applicants arriving more than 10 minutes after the scheduled hearing will not be heard and will be re-scheduled at the applicant's expense.

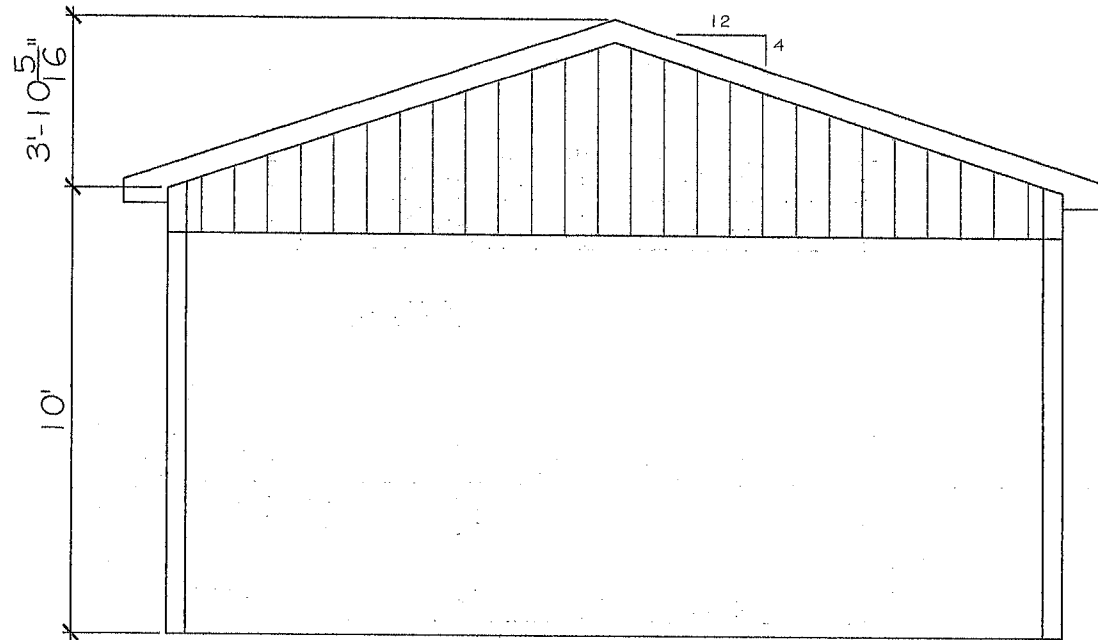
Narrative

Ray D'Esposito
28519 Spring Road
Kennedyville, MD 21645

Due to the size, unusual shape, and topography of my property, it is unfeasible to construct a detached carport over my existing drive without encroaching on the front yard setback. Because of these characteristics, a previous variance was granted just to construct my current home. Many of my neighbors have carports, garages, and sheds placed close to the road, I am asking for a variance to construct a common element on my property in the only place possible. I have I have talked to a couple of my adjoining neighbors about the proposal, and they have no objection. I am willing to plant small trees or bushes if needed to offset the small increase in lot coverage in the Critical Area.

28519 Spring Road





GABLE ELEVATION

DELMARVA
POLE BUILDING SUPPLY INC.
317 N. LAYTON AVE
WYOMING, DE 19934
(302) 698-3636



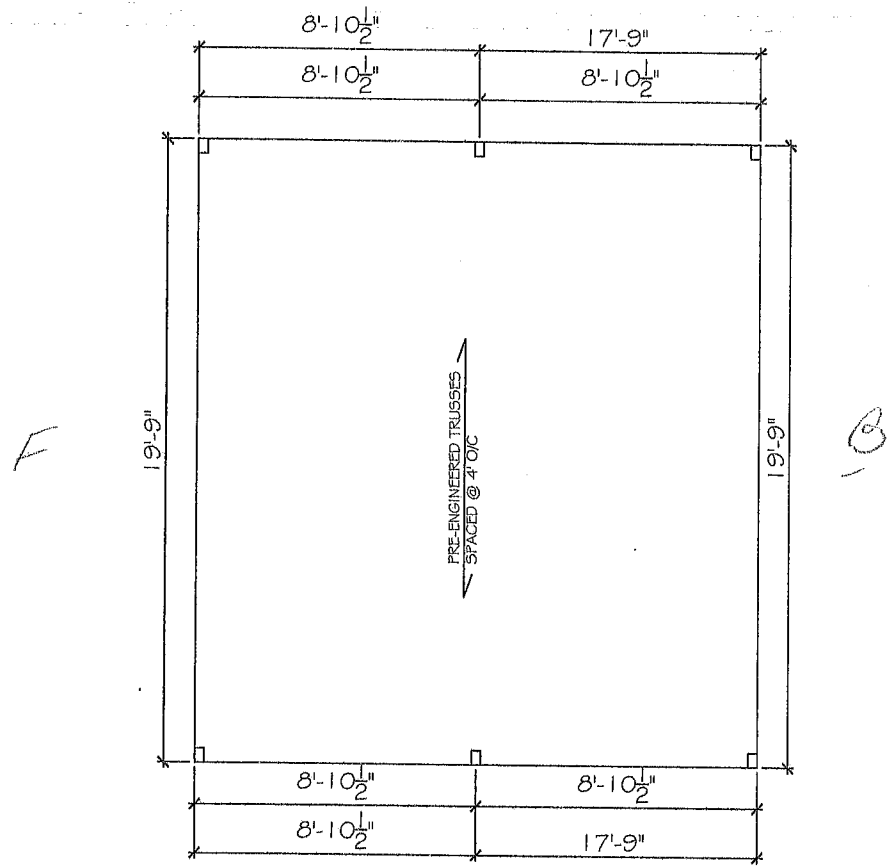
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09-26-2022
Technician:
J. Stubbs
Reviewed By:
J. Stubbs
Scale:

Date:	Modification:

RAY DESPOSITO
28519 SPRING ROAD
KENNEDYVILLE, MD 21645

Sheet

A2



FLOOR PLAN

DELMARVA
 POLE BUILDING SUPPLY INC.
 317 N. LAYTON AVE
 WYOMING, DE 19934
 (302) 698-3636



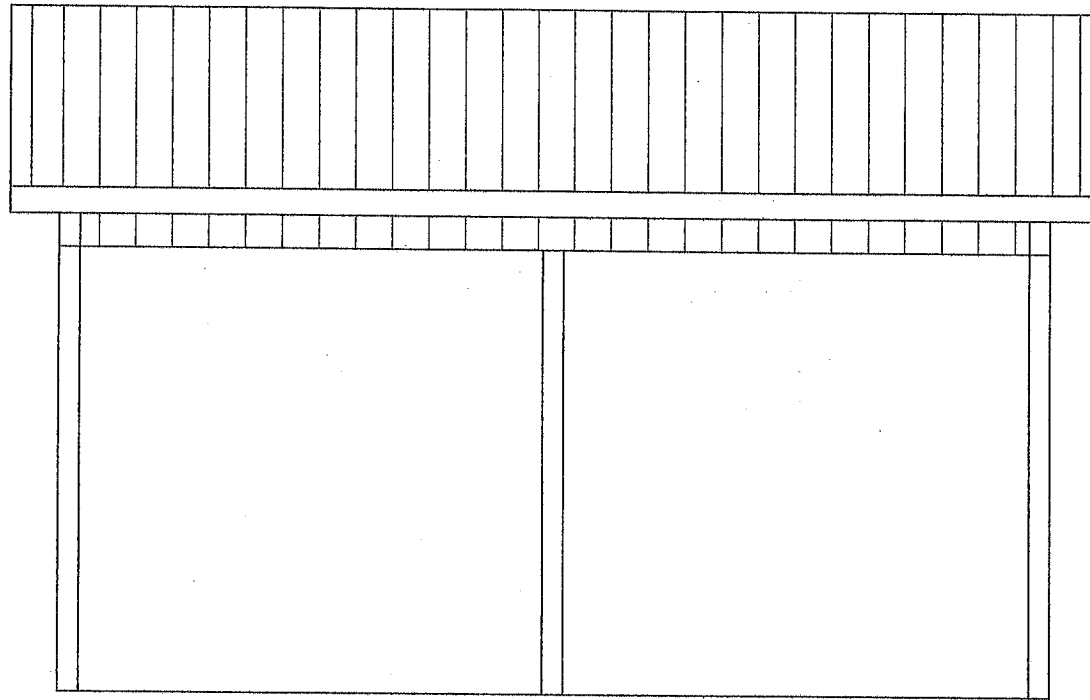
Date:
09-26-2022
 Technician:
J. Stubbs
 Reviewed By:
J. Stubbs
 Scale:
1/4"=1'

Date:	Modification:

RAY DESPOSITO
 28519 SPRING ROAD
 KENNEDYVILLE, MD 21645

Sheet
A1

*H-P Printer settings
 scale - custom 66%
 paper size - letter*



EAVE ELEVATION

DELMARVA
POLE BUILDING SUPPLY INC.
317 N. LAYTON AVE
WYOMING, DE 19934
(302) 698-3636



Date:
09-26-2022
Technician:
J. Stubbs
Reviewed By:
J. Stubbs
Scale:

Date:	Modification:

RAY DESPOSITO
28519 SPRING ROAD
KENNEDEVILLE, MD 21645

Sheet

A3



Planning Commission
Department of Planning, Housing, and Zoning

February 2, 2023

Dr. Al Townshend
 Kent County Board of Appeals
 400 High Street
 Chestertown, MD 21620

RE: 22-74 Phillip and Una Gray – Variance (Development in Buffer)

Dear Dr. Townshend,

At its meeting on February 2, 2023, the Kent County Planning Commission reviewed the application of Phillip and Una Gray, requesting a buffer variance to construct a 448 square foot deck and a 30 square foot stairway. The entirety of the principal structure and the proposed deck are in the 100-foot buffer, and the proposed deck is to be on the waterward side. Lot coverage currently exceeds the permitted limit and must come into compliance with Critical Area regulations. A sufficient amount of existing lot coverage must be removed in order to accommodate the proposed additions. Mitigation at 3:1 for permanent disturbance is required. The purpose of the proposed deck is to improve access to exterior amenities of the property for one of the applicants for whom mobility is limited. The 1.529-acre property is located at 23550 Canvasback Road in the Third Election District and is zoned Critical Area Residential (CAR).

Following discussion, the Planning Commission voted to make a favorable recommendation for the buffer variance to construct a deck with stairs. The Planning Commission recommends the following conditions should the Board of Appeals grant approval:

- The site plan is updated prior to the Board of Appeals hearing to show removal of existing lot coverage to bring the property into compliance with the 15% lot coverage limit.
- Buffer mitigation of 3:1 for the permanent disturbance to include the 30 square feet for the proposed steps and the area required for the footings to support the proposed deck.
- The variance will lapse after the expiration of one year if no substantial construction in accordance with the plans herein presented occurs.

The decision was based on the following findings of fact:

- The practical difficulty is that the entirety of the principal structure is within the 100-foot buffer.
- The permanent disturbance proposed, which is to be mitigated at 3:1, will have negligible impact. The granting of the variance will be in harmony with the general spirit and intent of the Critical Area Law and Kent County regulations. Lot coverage will be brought into compliance with Critical Area Law.
- The granting of the variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat.
- Other homes in the area, also within the 100-foot buffer, have attached decks that extend waterward. Authorization of the variance will not be a substantial detriment to adjacent property, and the character of the district will not be changed.
- Decks are a common feature of waterfront homes, and a literal interpretation of this Ordinance would

deprive the applicants the rights commonly enjoyed by other properties in similar areas.

- Without a variance, the applicant would be deprived of use of a structure permitted to others in accordance with the provisions of the critical area program.

Sincerely,
Kent County Planning Commission

A handwritten signature in cursive script that reads "Joe Hickman".

Joe Hickman
Chair

FJH/mc

cc: Phillip Gray

Wes Moore
Governor

Aruna Miller
Lt. Governor



Charles C. Deegan
Chairman

Katherine Charbonneau
Executive Director

**STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS**

January 27, 2023

Mr. Mark Carper
Department of Planning, Housing and Zoning
Kent County
400 High Street
Chestertown, Maryland 21620

**Re: Phillip and Uma Gray - Revised
Buffer Variance Request (22-74)
23550 Canvasback Road
(TM 27, P 504)**

Dear Mr. Carper:

Thank you for submitting information regarding the above-referenced Buffer variance request. The applicant requests a Buffer variance to construct a deck and an accompanying staircase on a parcel 1.53 acres in size, located on lands designated as Resource Conservation Area (RCA) and zoned Critical Area Residential (CAR). The entire principal structure and the proposed deck and stairway are located in the Critical Area Buffer. The proposed development activities comprise a 14' by 32' deck with gaps to allow water to pass freely and therefore is not defined as lot coverage per Natural Resources Article § 8-1808(17). However, the footings are considered permanent disturbance to the Buffer. In addition, the applicant proposes to construct a 5' by 6' staircase, which is defined as lot coverage per Natural Resources Article § 8-1808(17). No clearing is proposed. The existing lot coverage is 10,209 square feet (sf) (15.3%). The proposed lot coverage is 10,239 sf (15.4%); however, the permitted lot coverage for a property of this size is 9,997 sf (15%).

This office cannot support a variance that requests exceeding the 15% lot coverage limit. However, in speaking with the County, it is our understanding that prior to the variance hearing, the applicant will update the site plan to show removal of existing lot coverage so that the property will be in conformance with the 15% lot coverage limit. This is why a lot coverage variance is not requested by the applicant. Therefore, our comments are based on the understanding that the lot will conform to the 15% lot coverage limit and that only a Buffer variance is required. We ask that a copy of this revised plan be submitted to this office as soon as it is available.

Maryland's Critical Area Law provides that variances to a local jurisdiction's Critical Area program may be granted only if the Board of Appeals finds that an applicant has satisfied the burden to prove that the request meets each and every one of the State's variance standards, which can be found in Kent County Land Use Article, Article 9, §2.2. Furthermore, State law establishes the presumption that a proposed activity for which a Critical Area variance is sought does not conform to the purpose and intent of the Critical Area law. In order for the Board of Appeals to grant this variance, the applicant must address, and the Board of Appeals must find that each and every one of the County's

KC Phillip and Uma Gray Buffer Variance

January 27, 2023

Page 2


variance standards, including the standard of unwarranted hardship, are met. Unwarranted hardship is defined as such “that without a variance, an applicant would be denied reasonable and significant use of the *entire* parcel or lot for which the variance is requested.”

In this case, the Board must consider whether the applicant can meet the standard of unwarranted hardship and whether the variance request is the minimum necessary to provide relief. Specifically, the Board must determine whether the applicant has the opportunity to construct the deck and stairway in a manner that minimizes permanent disturbance to the Buffer and whether the proposed and existing lot coverage on a parcel comprising 1.53 acres is also minimized given that the existing and proposed improvements are located in the Critical Area Buffer.

We do not oppose this Buffer variance request if the applicant removes the equivalent amount of proposed lot coverage to conform with the 15% lot coverage limit, as noted above. Mitigation at a 3:1 ratio is required for permanent Buffer disturbance as per COMAR 27.01.09.01-2. Locating the plantings between the improvements and the shoreline is recommended to maximize water quality benefits. The applicant shall provide a Buffer Management Plan as per COMAR 27.01.09.01-3 to the County for review and approval that includes species, size, spacing and schedule of plantings, and maintenance activities and survivability assurance.

Please include this letter in your file and submit it as part of the record for the variance and notify the Commission of the decision made in this case. Again, thank you for the opportunity to review and provide comments. As requested above, please provide the updated site plan that shows that the site will conform to the 15% lot coverage limit as soon as it is available. If you have any questions, please feel free to contact me at 410-260-2481 or tay.harris@maryland.gov.

Sincerely,



Tay E. Harris

File: KC 19-23

To: Kent County Board of Appeals
From: Mark Carper, Associate Planner
Meeting: February 27, 2023
Subject: Phillip and Una Gray
Variance – Buffer

Executive Summary

REQUEST BY THE APPLICANT

Phillip and Una Gray are requesting a buffer variance to construct 448 square feet of exterior decking attached to their dwelling and 30 square feet of stairway to this deck, all within the 100-foot Critical Area buffer.

PUBLIC PROCESS

Per Article IX, Section 2.2 of the Kent County *Land Use Ordinance*, the Planning Commission shall review and make a recommendation to the Board of Appeals for variances. The Board of Appeals may authorize variances from ... buffer requirements so as to relieve practical difficulties or other injustices arising out of the strict application of the provisions of this Ordinance.

SUMMARY OF THE STAFF REPORT

The entirety of the principal structure and the proposed deck are in the 100-foot buffer, and the proposed deck is to be on the waterward side. The 1.529-acre property is located at 23550 Canvasback Road in the Third Election District and is zoned Critical Area Residential (CAR).

The existing lot coverage is in excess of the 15% allowed, and the property will need to come into compliance with Critical Area regulations. Following the Planning Commission meeting, the applicant updated the site plan to reflect the removal of existing lot coverage to bring the property into compliance and to include the required 3:1 buffer mitigation.

The purpose of the proposed deck is to improve access to exterior amenities of the property for one of the applicants for whom mobility is limited. The house sits on a slope with the main living area on the top floor where there is also the main entry door. The existing entryway porch looks landward and into the woods. Access to the proposed deck would be from that porch. The shoreline is accessible by a steep pathway, which is unmanageable by the occupant.

STAFF RECOMMENDATION

Staff recommends approval of the buffer variance with the following conditions:

- Buffer mitigation of 3:1 for the permanent disturbance to include the 30 square feet for the proposed steps and the area required for the footings to support the proposed deck.
- The variance will lapse after the expiration of one year if no substantial construction in accordance with the plans herein presented occurs.

PRELIMINARY STAFF REPORT

TO: Kent County Board of Appeals
 SUBJECT: #22-74 – Phillip and Una Gray
 Variance – Buffer
 DATE: February 22, 2023

DESCRIPTION OF PROPOSAL

Phillip and Una Gray are requesting a buffer variance to construct 448 square feet of exterior decking attached to their dwelling and 30 square feet of stairway to this deck. The entirety of the principal structure and the proposed decking are in the 100-foot buffer, and the proposed decking is to be on the waterward side. The 1.529-acre property is located at 23550 Canvasback Road in the Third Election District and is zoned Critical Area Residential (CAR).

The decking will have adequate spacing between the boards for water to pass through and will not count as additional lot coverage. The proposed 30 square feet of steps as well as the area of footings required to support the deck is considered permanent disturbance and is lot coverage. According to the site plan, the existing lot coverage of 10,209 square feet is in excess of the 15% limit (9,997 square feet) for this property. Lot coverage must come into compliance with Critical Area regulations, and a sufficient amount of existing lot coverage must be removed to meet this requirement while accommodating the proposed additions. This includes 212 square feet of current coverage, 30 square feet for the proposed steps, and the amount of area necessary for the footings to support the proposed deck. The mitigation requirement for permanent disturbance in the buffer is 3:1 of plantings within the buffer.

Following the Planning Commission meeting, the applicant updated the site plan to reflect the removal of 255 square feet of lot coverage to bring the property into compliance and to include the required buffer mitigation.

The purpose of the proposed deck is to improve access to exterior amenities of the property for one of the applicants for whom mobility is limited. The house sits on a slope with the main living area on the top floor where there is also the main entry door. The existing entryway porch looks landward and into the woods. Access to the proposed deck would be from that porch. The shoreline is accessible by a steep pathway, which is unmanageable by the occupant.

RELEVANT ISSUES

I. Development in the Buffer

- A. *Comprehensive Plan*: “Maintain, enforce and if necessary, strengthen existing regulations for floodplains and buffers.” (Page 86)
- B. *Applicable Law*: Article V, Section 2.7.B.3.a of the Kent County Land Use Ordinance establishes the standards for development in the buffer:

3.a. Development in the Buffer

- i. Development activities, including structures, roads, parking areas, and other impervious surfaces, mining, and related activities, or septic systems shall not be permitted within the minimum 100-foot buffer. This restriction does not apply to water-dependent facilities that meet the criteria set forth below.

- ii. New or expanded development activities may be permitted in the minimum 100- foot buffer, provided:
 - a) The use is water dependent.
 - b) The project meets a recognized private right or public need.
 - c) Adverse effects on water quality and fish, plant, or wildlife habitats are minimized.
 - d) In so far as possible, non-water dependent structures or operations associated with water dependent projects or activities are located outside the minimum 100-foot buffer.

C. *Staff and TAC Comments:*

- Development activity of this nature is not permitted in the buffer; therefore, the applicant has applied for a buffer variance to construct 448 square feet of exterior decking attached to their dwelling and 30 square feet of stairway to this deck.
- The existing lot coverage exceeds the allowable amount and will need to be reduced to reach compliance with Critical Area regulations.
- The Critical Area Commission (CAC) has reviewed this application and does not oppose the buffer variance. The CAC recommends that the required 3:1 mitigation be located between the improvements and the shoreline to maximize water quality benefits. Furthermore, the CAC recommends that a revised site plan showing compliance with lot coverage requirements be provided prior to the Board of Appeals hearing.
- Following the Planning Commission meeting, the applicant updated the site plan to reflect the removal of 255 square feet of lot coverage to bring the property into compliance and to include the required buffer mitigation.

II. Variance

- A. *Applicable Law:* Article IX, Section 2.2, Variances of the Kent County *Land Use Ordinance* authorizes the Board of Appeals to grant variances from the ... buffer requirements so as to relieve practical difficulties or other injustices arising out of the strict application of the provisions of this Ordinance.

...

In the Critical Area, for a variance of 15% slope, impervious surface, or buffer requirements, it being the purpose of this provision to authorize the granting of variation only for reasons of demonstrable and exceptional unwarranted hardship as distinguished from variations sought by applicants for purposes or reasons of convenience, profit, or caprice.

In order to grant a *variance*, the Board of Appeals must find all of the following:

- a. That the *variance* will not cause a substantial detriment to adjacent or neighboring property.
- b. That the *variance* will not change the character of the neighborhood or district.
- c. That the *variance* is consistent with the *Comprehensive Plan* and the general intent of this Ordinance.
- d. That the practical difficulty or other injustice was caused by the following:
 - i. Some unusual characteristic of size or shape of the property.
 - ii. Extraordinary topographical or other condition of the property.
 - iii. The use or *development* of property immediately adjacent to the property, except that this criterion shall not apply in the *Critical Area*.
- e. That the practical difficulty or other injustice was not caused by the applicants own actions.
- f. That within the *Critical Area* for *variances* of 15% *slope, impervious surface, or buffer* requirements:

- i. The granting of a *variance* will be in harmony with the general spirit and intent of the *Critical Area Law* and the *regulations* adopted by Kent County
- ii. That the granting of a *variance* will not adversely affect water quality or adversely impact fish, wildlife, or *plant habitat*.
- iii. That the application for a *variance* will be made in writing with a copy provided to the *Critical Area Commission*.
- iv. That the strict application of the Ordinance would produce an *unwarranted hardship*.
- v. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity.
- vi. The authorization of such *variance* will not be a substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the *variance*.
- vii. That a literal interpretation of this Ordinance deprives the applicant of rights commonly enjoyed by other properties in similar areas within the *Critical Area* of Kent County.
- viii. That the granting of a *variance* will not confer upon an applicant any special privilege that would be denied by this Ordinance to other lands or *structures*.
- ix. Due to special features of a site, or special conditions or circumstances peculiar to the applicant's land or *structure*, a literal enforcement of this Ordinance would result in *unwarranted hardship* to the applicant.
- x. The Board of Appeals finds that the applicant has satisfied each one of the *variance* provisions.
- xi. Without the *variance*, the applicant would be deprived of a use of land or a *structure* permitted to others in accordance with the provisions of the critical area program.
- g. In considering an application for a *variance*, the Board shall consider the reasonable use of the entire parcel or lot for which the *variance* is requested.
- h. In considering an application for a *variance*, the Board of Appeals shall presume that the specific *development* activity in the Critical Area that is subject to the application and for which a *variance* is required does not conform with the general purpose and intent of this Ordinance and the Critical Area Law.
- i. The Board may consider the cause of the *variance* request and if the *variance* request is the result of actions by the applicant, including the commencement of *development* activity before an application for a *variance* has been filed.

B. *Staff and TAC Comments:*

- The Comprehensive Plan advocates for the maintenance, enforcement, and, if necessary, strengthening of existing regulations for floodplains and buffers. The intent of the Ordinance is to set the standards for variances from certain enumerated provisions.
- The practical difficulty is that the entirety of the principal structure is within the 100-foot buffer.
- The proposed decking will allow for water to freely flow through, and the permanent disturbance proposed, which is to be mitigated at 3:1, will have negligible impact. The granting of the variance will be in harmony with the general spirit and intent of the Critical Area Law and Kent County regulations.
- The granting of the variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat.
- Based on aerial imagery, it appears that other homes in the area also within the 100-foot buffer have attached decks that extend waterward.
- Authorization of the variance will not be a substantial detriment to adjacent property, and the character of the district will not be changed.

- Decks are a common feature of waterfront homes, and a literal interpretation of this Ordinance would deprive the applicants the rights commonly enjoyed by other properties in similar areas.
- Without a variance, the applicant would be deprived of use of a structure permitted to others in accordance with the provisions of the critical area program.
- The Critical Area Commission has reviewed the application and is not opposed to a variance.

STAFF RECOMENDATION

Staff recommends forwarding a favorable recommendation to the Board of Appeals for approval of the buffer variance to construct 448 square feet of exterior decking attached to the dwelling and 30 square feet of stairway to this deck, all within the 100-foot Critical Area buffer. Staff further recommends the following:

- Buffer mitigation of 3:1 for the permanent disturbance to include the 30 square feet for the proposed steps and the area required for the footings to support the proposed deck.
- The variance will lapse after the expiration of one year if no substantial construction in accordance with the plans herein presented occurs.

BOARD OF APPEALS APPLICATION

Kent County Department of Planning, Housing and Zoning

Kent County Government Center
400 High Street • Chestertown, MD 21620
410-778-7423 (phone) • 410-810-2932 (fax)

IN THE MATTER OF THE APPLICATION OF:
(Name, Address and Telephone Number of Applicant)

PHONE 610 322 6292
PHILIP GRAY
23550 CANVASBACK RD
CHESTERTOWN MD 21620
Email: PHILGRAY11750@GMAIL.COM

For Office Use Only:

Case Number/Date Filed:
Filed by:
Applicant:
Planning Commission:
Date of Hearing:
Parties Notified:
Notice in Paper:
Property Posted:

Please provide the email of the one person who will be responsible for responding to comments. Only this person will be contacted by staff and will be the person responsible for forwarding the comments or requests for additional information to any other interested parties. EMAIL: PHILGRAY11750@GMAIL.COM

TO THE KENT COUNTY BOARD OF APPEALS: In accordance with Article Section

of the Kent County Zoning Ordinance, as amended, request is hereby made for:

Appealing Decision of Kent County Zoning Administrator Variance
Special Exception Non-conforming Use

DESCRIPTION OF PROPERTY INVOLVED:

Located on: (Name of Road, etc.) 23550 CANVASBACK RD CHESTERTOWN MD 21620
In the Election District of Kent County.

Size of lot or parcel of Land:

Map: 0027 Parcel: 0504 Lot #: Deed Ref:

List buildings already on property: HOME AND GARAGE

If subdivision, indicate lot and block number:

If there is a homeowner's association, give name and address of association:

PRESENT ZONING OF PROPERTY:

DESCRIPTION OF RELIEF REQUESTED: (List here in detail what you wish to do with property that requires the Appeal Hearing.) BUILD DECK

If appealing decision of Zoning Administrator, list date of their decision:

Present owner(s) of property: PHILIP + UNA GRAY Telephone: 610 322 6292

If Applicant is not owner, please indicate your interest in this property: _____ 29

Has property involved ever been subject to a previous application? No

If so, please give Application Number and Date: _____

PLEASE FILL IN BELOW, OR ATTACH HERETO, A SKETCH OF THIS PROPERTY.

List all property measurements and dimensions of any buildings already on the property.

Put distances between present buildings or proposed buildings and property lines.

NAMES OF ADJOINING PROPERTY OWNERS:

Owner(s) on the North: _____

Owner(s) on the South: _____

Owner(s) to the East: _____

Owner(s) to the West: _____

Homeowners Association, name and address, if applicable: _____

BY SIGNING THIS APPLICATION, I GRANT MEMBERS AND ALTERNATE OF THE BOARD OF ZONING APPEALS THE RIGHT TO ENTER ONTO THE PROPERTY FOR THE PURPOSE OF VIEWING THE SITE OF THE APPLICATION OR APPEAL.

Philip Gray _____ 9.19.22
Signature of Owner/ Applicant/ Agent or Attorney Date

Please file this form at 400 High Street, Chestertown, MD 21620 accompanied by **\$350.00** filing fee made payable to the **County Commissioners of Kent County**. If you have any questions, please contact the Clerk at 410-778-7467.

NOTICE: Neither the Board of Appeals nor the Planning Office is required to make out this Application. If the Planning Department assists you, it cannot be held responsible for its contents.

Applicants arriving more than 10 minutes after the scheduled hearing will not be heard and will be re-scheduled at the applicant's expense.

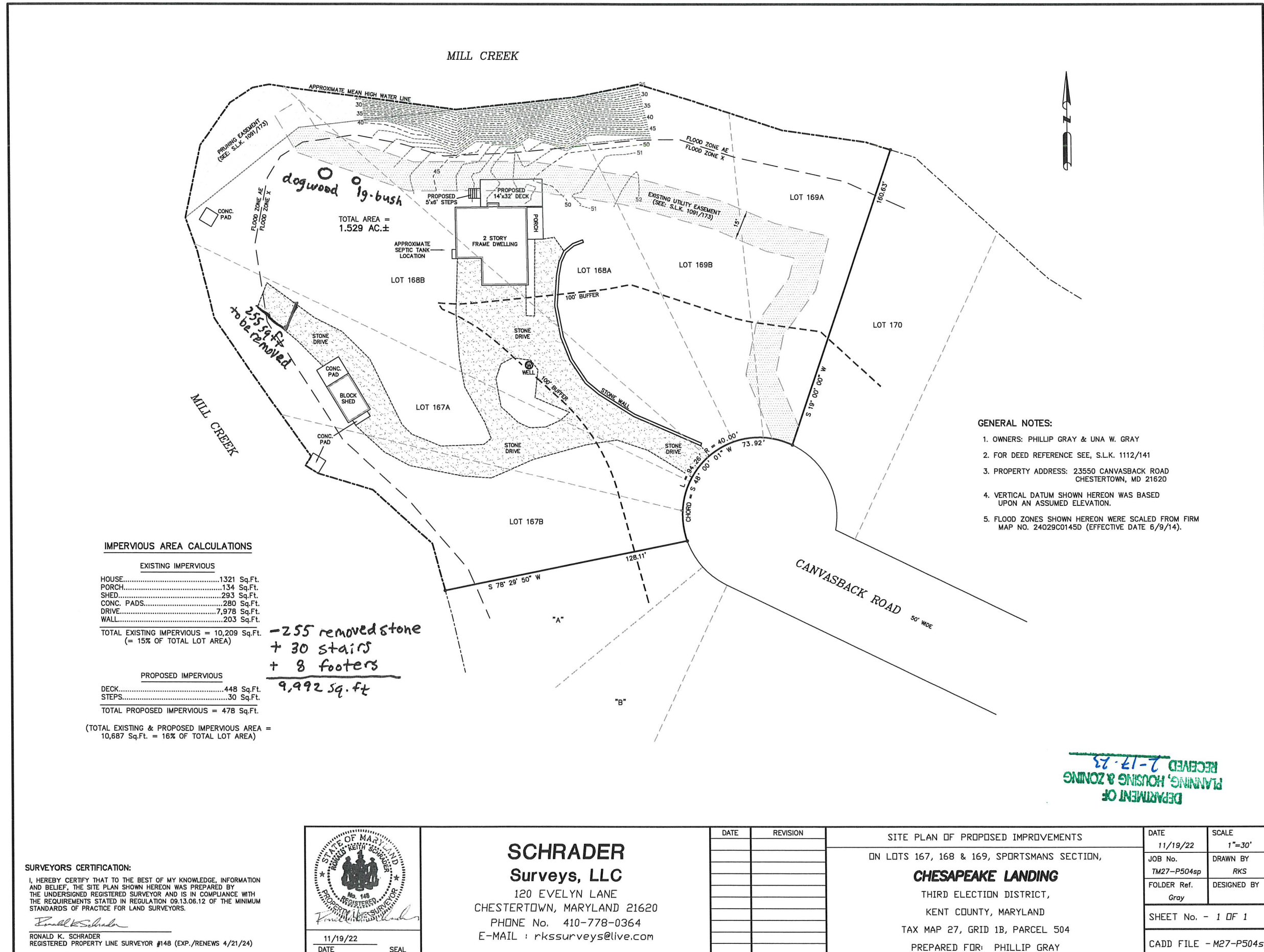
Narrative

To whom it may concern,

The request for a variance to build a deck at 23550 canvasback Road is being filed as the property sits on a slope with no other practical location for a deck. The main living area is on the top floor with the main entrance on the east side, and there is a walkout basement with entryways on the south, where there is parking, and west sides. There is a steep pathway to the west to the shoreline.

My wife has rheumatoid arthritis and is not able to climb many stairs, and this deck in its requested position would enable her to enjoy the newly purchased home and water view in our retirement. Access to the deck from the home would be from the porch on the main floor.

It would be built using quality materials and in the style matching both house and neighborhood without causing any detriment to adjacent properties. The deck will have small gaps between the planks, allowing for rainwater to easily pass through, and it will be out of view from the drive and neighboring properties.



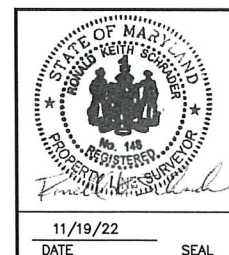
- GENERAL NOTES:**
- OWNERS: PHILLIP GRAY & UNA W. GRAY
 - FOR DEED REFERENCE SEE, S.L.K. 1112/141
 - PROPERTY ADDRESS: 23550 CANVASBACK ROAD CHESTERTOWN, MD 21620
 - VERTICAL DATUM SHOWN HEREON WAS BASED UPON AN ASSUMED ELEVATION.
 - FLOOD ZONES SHOWN HEREON WERE SCALED FROM FIRM MAP NO. 24029C0145D (EFFECTIVE DATE 6/9/14).

RECEIVED 2-17-23
 PLANNING, HOUSING & ZONING
 DEPARTMENT OF

SURVEYORS CERTIFICATION:

I, HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF, THE SITE PLAN SHOWN HEREON WAS PREPARED BY THE UNDERSIGNED REGISTERED SURVEYOR AND IS IN COMPLIANCE WITH THE REQUIREMENTS STATED IN REGULATION 09.13.06.12 OF THE MINIMUM STANDARDS OF PRACTICE FOR LAND SURVEYORS.

Ronald K. Schrader
 RONALD K. SCHRADER
 REGISTERED PROPERTY LINE SURVEYOR #148 (EXP./RENEWS 4/21/24)



SCHRADER
Surveys, LLC
 120 EVELYN LANE
 CHESTERTOWN, MARYLAND 21620
 PHONE No. 410-778-0364
 E-MAIL : rkssurveys@live.com

DATE	REVISION

SITE PLAN OF PROPOSED IMPROVEMENTS
 ON LOTS 167, 168 & 169, SPORTSMANS SECTION,
CHESAPEAKE LANDING
 THIRD ELECTION DISTRICT,
 KENT COUNTY, MARYLAND
 TAX MAP 27, GRID 1B, PARCEL 504
 PREPARED FOR: PHILLIP GRAY

DATE	SCALE
11/19/22	1"=30'
JOB No. TM27-P504sp	DRAWN BY RKS
FOLDER Ref. Gray	DESIGNED BY
SHEET No. - 1 OF 1	
CADD FILE - M27-P504sp	

Philip Gray

23550 Canvasback Road



North side of home, where deck is to be placed





South side of home



West side of home



East side of home

