RE: An Appeal from a Decision of the Administrative Hearing Officer and the Office of Planning and Zoning	*	**BEFORE THE**
	*	**COUNTY BOARD OF APPEALS**
	*	**OF ANNE ARUNDEL COUNTY**
MICHELLE CLANCY, DAVID HOFF, & MARIA SCHRUM	*	**CASE NO.: BA 15-25V & 16-25A (2024-0222-V, Mod#17713)**
Petitioners	*	**Hearing Date: June 3, 2025 & July 8, 2025**

MEMORANDUM OF OPINION

Summary of Pleadings

This is an appeal of a decision from the Administrative Hearing Officer denying variances to allow an accessory structure (freestanding deck) with new lot coverage nearer to the shoreline than the existing principal structure, disturbance to slopes of 15% or greater and with less setbacks than required, and the denial of a modification to Article 17-6-403, disturbance to the 25-foot Steep Slopes Buffer, on property known as 942 Long Cove Road, Glen Burnie.

Summary of Evidence

Ms. Maria Schrum, one of the Petitioners, is the co-owner of the subject property known as 942 Long Cove Road, Glen Burnie. She and Mr. Hoff purchased the property in 2019. The property previously had an attached deck on the waterfront side of the dwelling. This deck was removed in order to replace the failing septic system. Because of the physical constrictions of the property, the replacement septic system and the drainage fields are located in the area of the previous deck. When the Petitioners began the process of replacing the previous deck, they learned from the Health Department that they are unable to place a deck on the drainage field. The subject property was in distress when the Petitioners purchased it. In addition to the failing septic, they had to replace the existing pier and replace the retaining walls. The retaining walls

on the waterfront are in a tiered configuration to help reduce the load and prevent further erosion onsite. The original pier was constructed in 1986 and showed signs of decay. The Petitioners were able to receive an in-kind replacement for the pre-existing pier. As part of the County's justification for denial of the variances and modifications, they referred to the rooftop deck over the boathouse as a waterfront deck and therefore a reasonable and significant use. The Petitioners disagreed with this assessment as the roof is 40 steps up, not enclosed, and does not have access to electric or water. The Petitioners do not use the space for outdoor entertainment because of safety concerns for their small children. The Petitioners' proposal is for a freestanding deck on the right-hand side of the waterfront when facing the home. The Petitioners contend there are no reasonable alternatives onsite to locate a deck. The deck is the smallest size the Petitioners would be able to functionally use to accommodate a table, chairs, and grill. The subject property is undersized and narrow. Ms. Schrum does not believe that the property has steep slopes as they have installed the tiered retaining walls. There are other freestanding decks throughout the community. The Petitioners believe that strict implementation of the Critical Area Program would result in unwarranted hardship given the physical characteristics of the property. The Petitioners and their contractor are researching options for other types of foundations for the proposed deck to reduce the need for soil disturbance. The proposed deck will be made of spaced decking to allow rainwater to permeate through to the soil. The retaining walls currently have French drains to allow stormwater runoff to collect and seep into the soils as opposed to running off directly into the creek. The deck will not disrupt wildlife or vegetation, and the Petitioners are adding additional plants. The Office of Planning and Zoning made recommendations to use the ground level lawn as entertaining space. Because of the location of the septic and drain fields, the Petitioners believe this can cause damage to the concrete holding tanks for the septic system. There are no other locations on the site to place the deck or relocate the septic system.

Mr. Steve Fitzgerald testified on behalf of the Petitioners. He is a neighbor and is in favor of the application.

Ms. Betsy Weaver testified on behalf of the Petitioners. She is a neighbor and is in favor of the application.

Mr. David Weaver testified on behalf of the Petitioners. He is a neighbor and is in favor of the application.

Ms. Linda Dumsha testified on behalf of the Petitioners. She is a neighbor and is in favor of the application.

Mr. Chris Dumsha testified on behalf of the Petitioners. He is a neighbor who has lived in the community his whole life and is in favor of the application.

Ms. Jennifer Lechner testified on behalf of the County. Ms. Lechner works for the Office of Planning and Zoning ("OPZ"). The Petitioners are seeking to construct a freestanding detached deck on top of a tiered waterfront slope. The structure will be as close as 20 feet from the mean high-water line, five feet from the side lot line necessitating variances of 20 feet and two feet, respectively. The deck will create 200 square feet of new lot coverage nearer to the shoreline than the principal structure and will disturb slopes of 15% or greater necessitating Critical Area variances. OPZ recommends denial of the Petitioners application. The Petitioners already have a reasonable and significant use of the subject property and no property within the Buffer Modification Area ("BMA") may add new lot coverage nearer to the shoreline than the closest façade of the existing principal structure. Ms. Lechner believes there are alternative locations on the site for the proposed improvement, therefore; it cannot be considered the minimum necessary to afford relief. The property is currently improved with a house, shed, tiered retaining walls and pier with a multi-level deck.

Mr. Adam Brown testified on behalf of the County. Mr. Brown works on the County's Critical Area Team. The Petitioners are seeking a modification for the disturbance to the 25-foot steep slope buffer. The Petitioners' proposal is to construct a 10-foot by 20-foot detached deck on the steep slopes and newer lot coverage in the 100-foot buffer in the BMA. He recommended denial of the modification application. The Petitioners are unable to demonstrate an unnecessary hardship as they currently have a deck on the waterfront, and the Petitioners have not minimized the environmental impacts present on the property. The location of the deck would present a public health and safety concern being on a slope. The modification would nullify the intent and purpose of this article as the previous variance was denied under Article 18.

Ms. Maria Schrum testified on rebuttal that using outdoor furniture on the top deck, retaining walls and grassy lawn is not functional.

All testimony was stenographically recorded and the recording is available to be used for the preparation of a written transcript of the proceedings.

Findings and Conclusion

The Petitioners are seeking approval of three variances and one modification to permit the construction of an accessory structure, a freestanding deck, on a waterfront property designated as Limited Development Area ("LDA") within the Chesapeake Bay Critical Area and mapped within a Buffer Modification Area ("BMA"). The property is currently improved with a single-family dwelling, shed, water access steps, pier with platforms/decks, and associated facilities. Normally, the Critical Area Program provides for a minimum setback from the mean high-water line of 100 feet. For property within the BMA, however, the required setback is modified to prohibit new lot coverage nearer to the shoreline than the closest façade of the existing principal structure. § 17-8-702(b). The first variance would permit the construction of the new freestanding deck on slopes of 15% or greater within the Critical Area. The proposed

freestanding deck would be located on the waterfront side of the property. The second variance would be for 200 square feet of new lot coverage nearer to the shoreline than the principal structure. § 17-8-702(b)(1). The third variance would permit the proposed accessory structure as close as 20 feet from the mean high-water line, and five feet from the side lot line. The Code § 18-4-601 provides that the minimum setbacks for accessory structures in an R2 District is 40 feet from the mean high-water line and seven feet from the side lot line. The Petitioners are requesting variances to § 18-4-601 of 20 feet from mean high-water line and two feet from the side lot line. Lastly, § 17-6-404 as part of the County's General Development Provisions establishes "[d]evelopment may not occur within steep slopes or within 25 feet of the top of the steep slopes…" The Petitioners are seeking a modification to allow the proposed freestanding deck to be constructed within the 25-foot steep slopes buffer.

Variance to the Critical Area Program

We turn our attention to the Petitioners' request for variances to impact steep slopes and for new lot coverage nearer to the shoreline than the closest façade of the existing principal structure. To impact steep slopes and for new lot coverage nearer to the shoreline than the closest façade of the existing principal structure, the Petitioners must obtain variances to the Critical Area Program which requires the Petitioners to satisfy the extensive list of requirements set out in the Anne Arundel County Code (the "Code"). *See* Code, § 3-2-207. An applicant for a variance to the Critical Area Program must meet each and every one of the conjunctive variance requirements of the Code. *See id.* If an applicant fails to meet even one of the criteria, the request must be denied.

The Petitioners must first show that "because of certain unique physical characteristics, such as exceptional topographical conditions peculiar to and inherent in the particular lot, or irregularity, narrowness, or shallowness of lot size and shape, strict implementation of the

County's critical area program … would result in unwarranted hardship." *Id.* § 3-2-207(b)(1). An unwarranted hardship "means 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." Md. Natural Resources Code Ann. § 8-1808(d)(2). The subject property is a rectangular shaped lot located in the R2 – Residential District. Despite its regular shape, the subject lot is undersized for properties within the R2 as it is only 10,824 square feet in area and 50 feet in width. Properties within the R2 must have a minimum lot area of 20,000 square feet and 80 feet in width. This results in the subject lot being narrower than required in this zoning district and the overall lot size further restricts the available developable area on the subject property. Given the narrowness and shallowness of the lot size and shape we find there are exceptional topographical conditions inherent in this particular lot. We do not, however, find that the Petitioners will be denied a reasonable and significant use of the entire parcel if the variances are denied. The evidence presented shows that the Petitioners currently enjoy a waterfront lot with a pier and elevated platform deck above the pier. Further, the subject property has numerous accessory amenities including sheds, a firepit, tables and chairs all which support the Petitioners' stated purpose of outdoor entertainment. Therefore, we do not find that the Petitioners will suffer an unwarranted hardship if denied these variances.

The Petitioners next must establish that "[a] literal interpretation of COMAR, 27.01, Criteria for Local Critical Area Program Development or the County's critical area program and related ordinances will deprive the applicant of rights commonly enjoyed by other properties in similar areas as permitted in accordance with the provisions of the critical area program within the critical area of the County." *Id.* § 3-2-207(b)(2)(i). The Petitioners' witnesses testified to the enjoyment of an amenity such as a deck on a waterfront lot being a right commonly enjoyed by the neighboring properties. We agree that such a deck is commonly enjoyed. We also agree with

the County's contention that the Petitioners already enjoy a deck on the waterfront. The elevated platform above the Petitioners' pier from all objective reasoning is a deck. Despite, the Petitioners' dissatisfaction with it as a usable space for them, it is a deck. Decks do not require electricity or running water to qualify as a deck or usable outdoor space. This is a point that the Petitioners are merely wrong in their opinion. Therefore, we do not find that the denial of the Petitioners' request would deny them a right commonly enjoyed by other properties in similar areas because the Petitioners are already enjoying that right commonly held.

Likewise, the Petitioners must show that "[t]he granting of a variance will not confer on an applicant any special privilege that would be denied by COMAR, 27.01, the County's critical area program to other lands or structures within the County critical area, or the County's bog protection program to other lands or structures within a bog protection area." *Id.* § 3-2-207(b)(3). As we previously discussed, we find that a deck is an amenity commonly enjoyed, but to allow multiple decks and in particular a freestanding deck forward of the front façade within the BMA and located directly on top of a slope of 15% or greater would confer a special privilege on the Petitioners. Especially when scant evidence was provided to the contrary. The Critical Area Program has been specifically implemented to restrict and prohibit needless development in these sensitive areas. The Petitioners' proposed development is not a right commonly enjoyed by other properties similarly situated and therefore if granted it would result in the Petitioners being conferred a specifical privilege. Therefore, we find that the Petitioners have failed to meet this requirement.

The Petitioners also must establish that "[t]he variance request is not based on conditions or circumstances that are the result of actions by the applicant, including the commencement of development before an application for a variance was filed" and "does not arise from any condition relating to land or building use on neighboring property." *Id.* § 3-2-207(b)(4). No

evidence was presented that the Petitioners created the need for the variances nor was there evidence that the neighboring properties caused the need for variance relief. Unfortunately for the Petitioners, when they purchased the subject property, it was already suffering from a failed septic system. As a result, the Petitioners had to install a newer system to service the home and the system and drain fields severely limit the usable area that the Petitioners can enjoy. Nonetheless, we do not find these unfortunate circumstances attribute negative motive on behalf of the Petitioners. Therefore, we find that the Petitioners have met this requirement.

The next burden that the Petitioners must overcome is to show that "[t]he granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the County's critical area or a bog protection area" and "will be in harmony with the general spirit and intent of the County's critical area program or bog protection program." *Id.* § 3-2-207(b)(5). By virtue of the implementation of the County's Critical Area Program along with the special and specific provisions related to the BMA and LDA respectively, it is presumed that all development nearer to the shoreline than the front façade of the principal dwelling, as well as disturbance to steep slopes, will adversely impact water quality and impact fish, wildlife, and plant habitat. The stated purpose of these regulations is to hold the line of all future development in areas within the Critical Area which are already highly developed. The Petitioners have the burden of overcoming this, and here the Petitioners have failed to provide any persuasive evidence. Therefore, we find that the Petitioners have failed to meet their burden on this criterion.

The subject property is not within the County's bog protection area and thus, Code Section 3-2-207(b)(6) does not apply and need not be addressed.

The Petitioners' next burden is to establish that they have, through "competent and substantial evidence . . . overcome the presumption contained in the Natural Resources Article, §

8-1808(d)(2), of the State Code." *Id.* § 3-2-207(b)(7). Under the above cited section of the Natural Resources Article, it is presumed "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 subtitle, regulations adopted under this subtitle, and the requirements of the local jurisdiction's program." Md. Code Ann., Natural Resources § 8-1808(d)(2)(i). Simply put, the Petitioners failed to provide any evidence or expert testimony to rebut the presumption. Therefore, we find that the Petitioners have failed to meet this criterion.

Next, the Petitioners have the burden of proving that "the variance is the minimum variance necessary to afford relief." Code § 3-2-207(e)(1). It has been long established that unwarranted variances cannot be the minimum necessary to afford relief. Here, it is plainly obvious that the Petitioners already enjoy the amenities that they are claiming to be denied by the strict implementation of the Code. The Petitioners already have a deck located on the waterfront. Furthermore, the Petitioners have failed to prove the threshold requirement for a Critical Area variance along with many of the other criteria. As previously stated, simply failing to prove one criterion necessitates denial. Throughout the Petitioners have failed and therefore, this relief cannot be considered the minimum necessary and the Petitioners have failed to meet their burden on this requirement.

In addition, the Petitioners must show that the variance will not "alter the essential character of the neighborhood or district in which the lot is located." *Id.* § 3-2-207(e)(2)(i). The Petitioners provided testimony that there are other freestanding decks located on the waterfront in this community, albeit unclear if they were issued building permits and therefore legal, we do not believe the proposed development would alter the essential character of the neighborhood. The Petitioners have met their burden on this requirement.

The Petitioners must also show that "the granting of a variance will not substantially impair the appropriate use or development of adjacent property." *Id.* § 3-2-207(e)(2)(ii). The adjacent lots are residentially improved waterfront lots. Thus, no adjacent properties will have their development impacted—they are developed. Accordingly, the appropriate use or development of adjacent properties will not be substantially impaired following development of the subject property.

The Petitioners' next hurdle requires them to show that "the granting of the variance will not reduce forest cover in the limited development and resource conservation areas of the critical area." *Id.* § 3-2-207(e)(2)(iii). The Petitioners must also establish that "the granting of the variance will not be contrary to acceptable clearing and replanting practices required for development in the critical area or a bog protection area." *Id.* § 3-2-207(e)(2)(iv). Despite no evidence being presented, given the proposed area of development was recently disturbed to install retaining walls to stabilize the slopes, there is no concern that the proposed development will reduce forest cover or be contrary to acceptable clearing and replacing practices required. Therefore, the Petitioners have met their burden.

Lastly, the Petitioners convinced us that "the granting of the variance will not be detrimental to the public welfare." *Id.* § 3-2-207(e)(2)(v). The purpose behind the enactment of the Critical Area law as well as the adoption of and implementation of the County's Critical Area Program is to preserve the sensitive Chesapeake Bay watershed and promote the general public welfare in protecting this valuable resource. To permit development in this area where unwarranted would be detrimental to the public welfare and contrary to the purpose of the legislation entirely. As the Petitioners have failed to meet their burdens of proof and persuasion on a multitude of the criterion, to say this development would not be detrimental to the public

welfare would be nonsensical. Therefore, we find that the Petitioners have failed to meet their burden.

Bulk Regulation Variance

The Anne Arundel County Code § 18-4-601 provides that the minimum setbacks for accessory structures in an R2 – Residential District is 40 feet from the mean high-water line, and seven feet from the side lot lines. The proposed development would be 20 feet from the mean high-water line at its closest point and five feet from the side lot line. As a result, the Petitioners are seeking variances of 20 feet and two feet respectively to allow a freestanding deck.

The Board of Appeals may grant a variance when strict compliance with the Zoning Ordinance, in this case Code § 18-4-601, would result in practical difficulties or unnecessary hardship. Code, § 3-2-207(a). Provided the spirit of the law is observed, public safety is secured, and substantial justice is done, a variance may be granted upon an affirmative finding that (1) "because of certain unique physical conditions, such as irregularity, narrowness or shallowness of lot size and shape, or exceptional topographical conditions peculiar to and inherent in the particular lot, there is no reasonable possibility of developing the lot in strict conformance with" the regulation; OR (2) "because of exceptional circumstances other than financial considerations, the grant of a variance is necessary to avoid practical difficulties or unnecessary hardship, and to enable the applicant to develop the lot." *Id.* As previously discussed above, we do find that there are unique physical conditions, in particular narrowness and shallowness of the lot size and shape. However, we do not find that there is no reasonable possibility of developing the lot in strict conformance. As stated above, we believe that the Petitioners already enjoy a reasonable and significant use of the subject property as they currently enjoy a pier with elevated platform deck, shed, firepit, numerous tables and chairs all located on the waterfront. Likewise, we do not find there are any exceptional circumstances that require the granting of the variance

to avoid practical difficulties or unnecessary hardship. The Petitioners already enjoy a deck on the waterfront. The lack of electricity or running water to the elevated deck does not create practical difficulty. The Petitioners already enjoy ample outdoor space and amenities. Therefore, we do not believe that the Petitioners have met the burden of proof on the threshold requirements.

Despite the Petitioners' inability to meet the requirements for the threshold criterion, for clarity and completeness of the record, we shall address the additional criteria established in Code § 3-2-207(e). The burden of proof and persuasion rests firmly with the Petitioners to meet all the criteria.

First, the Petitioners have the burden of proving that "the variance is the minimum variance necessary to afford relief." Code § 3-2-207(e)(1). The Petitioners provided testimony that the location of the proposed deck is dictated primarily by the restriction of the replacement septic system. While that may be true, the Petitioners have failed to convince us that the variance is necessary *ab initio*. From what the evidence shows, the Petitioners are seeking this relief merely as a convenience and not a necessity. As such, the Code requires variance relief only when necessary, rather than for convenience. From the evidence provided in its totality we have a variance that is unwarranted and therefore cannot be the minimum necessary to afford relief. Therefore, the Petitioners have failed to meet this requirement.

Next, the Petitioners must show that the variance will not "alter the essential character of the neighborhood or district in which the lot is located." *Id.* § 3-2-207(e)(2)(i). As stated above, the Petitioners provided testimony that there are other freestanding decks located on the waterfront in this community, with the same reservations about the legality of the other decks, the evidence before us would suggest that the Petitioners have met their burden.

The Petitioners must also show that "the granting of a variance will not substantially impair the appropriate use or development of adjacent property." *Id.* § 3-2-207(e)(2)(ii). The adjacent lots are residentially improved waterfront lots, even though the requested relief is for setback variances. In consideration of the support from the neighbors, we do believe that the Petitioners have met their burden, and this relief would not substantially impair the appropriate use or development of the adjacent property.

The variance will neither "reduce forest cover in the limited development and resource conservation areas of the critical area" nor "be contrary to acceptable clearing and replanting practices required for development in the critical area or a bog protection area." § 3-2-207(e)(2)(iii)-(iv). As previously stated, there is no evidence that this development would reduce forest cover or be contrary to acceptable clearing or replanting. Therefore, the Petitioners have met these criteria.

Finally, the Petitioners must show that the request is not detrimental to the public welfare. *Id.* §3-2-207(e)(2)(v). Once again, as previously stated, the totality of the evidence presented shows that the requested variance is unwarranted. Variances not supported by evidence cannot be supported and are therefore detrimental to the public welfare. The Petitioners have failed to meet this requirement.

Modification

The Petitioners are seeking a modification to disturb the 25-foot steep slope buffer as described in Article 17-6-404 of the Anne Arundel County Code. Section 17-6-404 indicates that "[d]evelopment may not occur within steep slopes or within 25 feet of the top of the steep slopes where the onsite and offsite contiguous area of the steep slopes is greater than 20,000 square feet unless development will facilitate stabilization of the slope or the disturbance is necessary to allow connection to a public utility." Code § 17-6-404. To receive a modification, the Board

must find that the Petitioners have met all 5 criteria established in § 17-2-108(a). Failure to meet just one criterion requires that the modification is denied. For clarity of analysis, we shall address each requirement individually.

First, the Petitioners must show that "practical difficulties or unnecessary hardship will result from strict application of this article or, for a modification relating to forest conservation, unwarranted hardship will result due to special features of the site or other circumstances" § 17-2-108(a)(1). The disturbance to the 25-foot steep slope buffer does not relate to forest conservation, therefore the unwarranted hardship standard does not apply. Here, as with the variance requests, we do not find that the Petitioners will experience practical difficulties or unnecessary hardships from strict application of this article of the Code. In particular, the Petitioners already enjoy numerous outdoor amenities such as the pier, shed, firepit, tables and chairs, and most notably the elevated platform above the pier. The platform above the pier, simply put, is a deck. Regardless of the Petitioners' intentions for usage, it is a deck, and the Petitioners already enjoy the relief they are seeking. Just because the Petitioners want a more convenient amenity does not create a practical difficulty or unnecessary hardship that would in turn necessitate relief from the strict application of the Code. For these reasons, we find that the Petitioners have failed to meet their burden of proof.

Next, the Petitioners need to demonstrate that the purposes of this article, including minimization and mitigation of environmental impacts using clustering or other available design alternatives to preserve the character of the impacted area, will be served by an alternative proposal. § 17-2-108(a)(2). The Petitioners' planned development is located directly on the top of the steep slopes without any consideration of the slopes themselves or attempts to mitigate. By the Petitioners' own admission all consideration on the development is centered around the

impact to the septic and its drain fields. Therefore, we find that the Petitioners failed to meet their burden on this criterion.

The Petitioners must also prove that the modification is not detrimental to the public health, safety, or welfare or injurious to other properties. § 17-2-108(a)(3). There was substantial support from the neighbors and other members of this community, and this suggests that the development will not be injurious to other properties. Otherwise, the Petitioners have failed to provide adequate evidence to support that this modification is not detrimental to the public health, safety, or welfare. Therefore, we find that the Petitioners failed to meet their burden of proof and persuasion.

The Petitioners have the burden of showing that the modification does not have the effect of nullifying the intent and purpose of this article, the General Development Plan, or Article 18 of this Code. § 17-2-108(a)(4). The intent and purpose of Subtitle 4 of Article 17 Section 6 is to protect sensitive environmental features. Specific to this case is to direct development away from the top of steep slopes. Here, the Petitioners' request is for exactly that, to develop directly on the top of the steep slopes without any regard for the 25-foot buffer. To permit this development without any evidence or justification would in fact nullify this section of the Code. Therefore, absent compelling evidence and expert testimony to convince otherwise, the Petitioners have utterly failed to prove their burden on this criterion.

Evidence was provided that notice was mailed to all owners of property located within 300 feet of the affected property as established in § 17-2-108(a)(5). The Petitioners provided no evidence to support compliance with this requirement. Therefore, the Petitioners have failed to meet their burden of proof.

We find that in total the Petitioners have failed to meet their burden of proof and persuasion to justify the requested variances. The Petitioners ultimately carry the burden of proof

and that burden cannot be shifted or delegated to the County. The evidence provided by the Petitioners consisted of photos showing the excellent work that was performed in replacing an aging dilapidated pier, and the implementation of retaining walls to stabilize the slopes. Further, the Petitioner provided testimony regarding the hurdles they had to overcome to navigate this process with the County and presented several neighbors who are in support of the development. Nonetheless, the Petitioners carry an onerous burden which requires factual evidence to support the application and sufficient expert testimony to sway this Board that a deviation from the strict application of the Code is not only permissive but is necessary. It brings the Board no joy to deny this relief, but the Petitioners have utterly failed to convince us otherwise.

ORDER

For the reasons set forth in the foregoing Memorandum of Opinion, it is this 19th day of SEPT., 2025, by the County Board of Appeals of Anne Arundel County, ORDERED, that the Critical Area variance to disturb slopes of 15% or greater is hereby **DENIED**; and it is further ORDERED, that the Critical Area variance to permit new lot coverage nearer to the shoreline than the front façade of the principal dwelling is hereby **DENIED**; and it is further, ORDERED that the variance to the setback requirements detailed in the bulk regulations is hereby **DENIED**; and it is further ORDERED, that the request for a modification to disturb the 25-foot buffer to the top of steep slopes is hereby **DENIED**.

Any appeal from this decision must be in accordance with the provisions of Section 604 of the Charter of Anne Arundel County, Maryland.

If this case is not appealed, exhibits must be claimed within 90 days of the date of this Order; otherwise, they will be discarded.

Any notice to this Board required under the Maryland Rules shall be addressed as follows: Anne Arundel County Board of Appeals, Arundel Center, P.O. Box 2700, Annapolis, Maryland 21404, ATTN: Deana L. Bussey, Clerk.

NOTICE: This Memorandum of Opinion does not constitute a building or grading permit and may be valid for a limited time period. In order for the applicant to construct or retain any structures allowed by this opinion, or to perform or retain any grading allowed by this opinion, the applicant must apply for and obtain the necessary building or grading permit and any other approval that may be required to perform the work described herein within the time allotted by law or regulation.

COUNTY BOARD OF APPEALS
OF ANNE ARUNDEL COUNTY

Lade R. Akinbolaji, Vice Chair

William A. Dax, Member

James R. Estepp, Member

John R. Fury, Member

(Anthony V. Lamartina, Member, did not participate in this appeal.)

DISSENT

I respectfully disagree with the opinion of the majority. Time and time again I see in applications submitted to the County that little effort is expended to investigate and assist the members of the public, rather the County's preferred course of action is to dictate and deny. Specifically, dictate where and how much development and use of one's own property they may have, and deny any requests that deviate from the County's chosen relief. This case is no different. Most concerning is the testimony and efforts of both Ms. Lechner and Mr. Brown to perpetuate this problem. Ms. Lechner took it upon herself to design an alternative site for the location of the Petitioners' requested relief, all at the same time failing to investigate the other site constraints that may exist, such as the septic system that the Petitioners were required to replace, thus negating all the work that Ms. Lechner performed. Next, Mr. Brown testified to the concerns the County has regarding development directly on top of the steep slopes and the impact to the 25-foot buffer while in questioning from the Board, acknowledges that once retaining walls are installed the slopes are stabilized. It stands to reason that the concerns regarding the steep slopes upon stabilization are eliminated, however here, the County maintains that despite the Petitioners' efforts they are still not permitted to utilize the waterfront of their property as it may impact slopes that have already been remediated. This is a continuation of the inconsistency that residents of this County face constantly when attempting to engage in reasonable development. This is inexcusable and must be changed.

Darrin Michael Jacobs, Chair

DISSENT

I disagree with the opinion of the majority. I find that there was sufficient evidence to support the granting of the Petitioners' requested relief. Most convincing is the evidence presented that other properties within the immediate community enjoy free standing decks as the Petitioners are requesting. To deny the requested relief as the County is asking would deny the Petitioners a right commonly enjoyed and would result in an unwarranted hardship as there is no possibility of further development absent the requested variances and modifications. For these reasons, I must dissent.

Phillip D. Bissett, Member