

January 27, 2025

Kelly Drake  
49 Clipper Road  
Essex, MD 21221

Re: 49 Clipper Road  
Critical Area Administrative Variance  
Tracking Number 07-24-4214

Dear Kelly Drake:

A request for a variance from the Baltimore County Code Article 33 Environmental Protection and Sustainability (DEPS), Title 2 Critical Area was received on November 1, 2024. The request seeks a variance to allow impact to 304 square feet (SF) of the Critical Area Buffer in order to build a deck on the rear of the existing dwelling on the subject property. In addition, the variance request seeks approval for the continued existing use of the dwelling and yard area within the Buffer. The property is located in the Intensely Developed Area of the Chesapeake Bay Critical Area (CBCA). The existing improvements, including the single-family home, existed before the effective date of CBCA regulations and the buffer encompasses almost the entire property. The proposed impacts would have no direct impact to streams, wetlands, or forest.

The Director of DEPS may grant a variance to the Chesapeake Bay Critical Area regulations in accordance with regulations adopted by the Critical Area Commission concerning variances as set forth in COMAR 27.01.12.04. There are seven (7) criteria listed in COMAR 27.01.12.04 that shall be used to evaluate the variance request. All seven of the criteria must be met in order to approve the variance.

The first criterion requires that special conditions exist that are peculiar to the land or structure, and that literal enforcement of the regulations would result in unwarranted hardship. The lot is almost entirely encumbered by the required Critical Area Buffer, and it would be impossible to construct improvements on the waterfront side of the property without impacting the buffer. To disallow impact within the Critical Area Buffer 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 a deck on the waterfront side of the existing home. This variance would allow for the use of this property as other properties are used in the immediate area. A similar variance would be granted to another property owner under similar circumstances. Therefore, this criterion is met.

The third criterion requires that granting of a variance will not confer upon an applicant any special privilege that would be denied to other lands or structures within the CBCA. Many homes elsewhere in the CBCA have wooden decks in the Buffer. The granting of this variance will not confer upon the applicant any special privilege that would be denied to other lands or structures within the Critical Area. Therefore, this criterion has been met.

The fourth criterion requires that a variance is not based upon conditions or circumstances which are the result of actions by the applicant. This variance is not based upon conditions or circumstances which are the result of actions by the applicant and/or property owners. Therefore, the fourth criterion has been met.

The fifth criterion requires that the variance request does not arise from any conforming or nonconforming condition on any neighboring property. The variance did not arise from any conforming or nonconforming condition on a neighboring property, and this criterion has been met.

The sixth criterion requires that granting of the variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area, and that the granting of the variance will be in harmony with the general spirit and intent of the Critical Area regulations. The proposed impacts would have no direct impact to streams, wetlands, or forest. With implementation of the conditions outlined below, granting of this variance will not adversely affect water quality, or adversely impact fish, wildlife, or plant habitat. 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 wooden, open-gap deck that will be consistent with the surrounding neighborhood. Mitigation will be provided for the impact within the buffer. 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:

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1. This note must be added to all subsequent plans for this development project:

“A variance (tracking #07-24-4214) was granted by Baltimore County Department of Environmental Protection and Sustainability from Chesapeake Bay Critical Area requirements to allow impact to the 100-foot Critical Area Buffer in order to construct a wooden, 304 square-foot deck and the continued use of the existing dwelling and yard within the Buffer.”

2. Mitigation for the impacts within the Critical Area buffer must be provided at 3:1 ratio (912 square feet). An approved final Critical Area Management Plan (CAMP) detailing all proposed mitigation is required prior to permit approval. Mitigation should be provided pursuant to COMAR 27.01.09.01-2.L (see enclosed).

Changes in site layout may require submittal of revised plans and an amended variance request. Please be advised that Baltimore County may not issue a permit for the activity that was subject of the variance application until the applicable 30-day appeal period has elapsed pursuant to COMAR 27.01.12.07 C.

Please have the party responsible for meeting the conditions of this variance sign the statement on the following page and then return a signed copy of this letter to this Department. Failure to return a signed copy of this letter may result in delays in processing of permits or other development plans for this project.

If you have questions regarding this project, please contact Art Garcia at 410-887-3980.

This variance is approved by the Director of the Department of Environmental Protection and Sustainability on \_\_\_\_\_. Any changes to site layout may require submittal of revised plans and a new variance request.

Sincerely,

Horacio Tablada  
Director

HT/ayg

c: Michael Macon, Critical Area Commission (via email)

Enclosure: COMAR 27.01.09.01-2.L - Buffer Planting Credits

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

_____ Signature	_____ Date	_____ Signature	_____ Date
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_____ Printed Name	_____ Date	_____ Printed Name	_____ Date
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