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### NOTIFICATION OF ZONING HEARING EXAMINER'S DECISION

**DATE OF DECISION:** October 3, 2016  
**HEARING EXAMINER:** Robert F. Kahoe, Jr.  
**RE:** Zoning Appeal Case No. 5868  
**APPLICANTS:** Simon & Catherine Grant  
**LOCATION:** 4318 Foxglove Court, Belcamp  
**REQUEST:** Variance to permit a deck within the limited area of disturbance to the Critical Area Management Area boundaries in the R4 Urban Residential District

Enclosed is an official copy of the Hearing Examiner's decision relative to the above referenced case.

The Hearing Examiner's decision shall become final **OCTOBER 24, 2016**.

This decision shall be considered a recommended opinion to the Harford County Council, sitting as The Board of Appeals, if a written request for Final Argument before the Harford County Council is filed by the close of business on above date by the Applicant, Applicant's Attorney, Opponents, People's Counsel, or a person aggrieved who was a party to the proceedings before the Hearing Examiner. In addition, any Board Member, upon written notice to the Council Administrator, may request final argument.

COUNTY COUNCIL OF HARFORD COUNTY

**Mylia A. Dixon**  
Council Administrator

Enclosure

cc: Applicant/Attorney; People's Counsel; Department of Planning and Zoning

**APPLICANTS:** Simon & Catherine Grant

**BEFORE THE**

**REQUEST:** Variance to permit an addition within the 100 foot Critical Area Buffer in the R3 Urban Residential District

**ZONING HEARING EXAMINER**

**FOR HARFORD COUNTY**

**BOARD OF APPEALS**

**HEARING DATE:** August 29, 2016

**Case No. 5868**

### **ZONING HEARING EXAMINER'S DECISION**

**APPLICANTS:** Simon & Catherine Grant

**LOCATION:** 4318 Foxglove Court, Belcamp  
Tax Map: 62 / Grid: 1E / Parcel: 811 / Lot: 392  
First (1<sup>st</sup>) Election District

**ZONING:** R4 / Urban Residential District

**REQUEST:** Variance, pursuant to Section 267-63M of the Harford County Code, to permit a deck within the Limited Area of Disturbance as required by amendments to the Critical Area Management Area boundaries in the R4/Urban Residential District.

#### **TESTIMONY AND EVIDENCE OF RECORD:**

The subject parcel is an approximately one-quarter acre lot, improved by a two-story, Colonial type dwelling. Much of the subject parcel, as well as many surrounding parcels, are designated Limited Areas of Disturbance, created pursuant to State Critical Area Legislation.

The co-Applicant, Simon Grant, testified that he and his wife, Catherine, have owned the property for approximately 12 years. The property is improved by an attached garage on the northeast side, a small, free-standing utility shed to the rear of the parcel (and improperly within the Limited Area of Disturbance), and a 12 foot by 20 foot elevated deck attached to the rear of the house.

Mr. Grant and his wife wish to expand the deck, essentially doubling it in size by adding a 12 foot by 20 foot addition, also elevated. Mr. Grant states that virtually all of his back yard is encumbered by the Limited Area of Disturbance designation which prohibits any construction or improvement. Due to the topography of the property, which is quite severe, there is furthermore no level area on his property within which he could build a patio or similar amenity.

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Other properties in his neighborhood have similar decks, stated Mr. Grant. No neighbor has objected to his proposal. He states that the construction of the requested deck would have no impact on groundcover. Its only connection to the ground would be the construction of 3 posts that would have no impact on the sparse grown cover in that area.

Mr. Grant has also preliminarily agreed to a mitigation plan which will require him to mitigate by additional plantings the impact of the deck. No trees or other significant vegetation will be removed by the construction of the deck.

Next for the Department of Planning and Zoning testified Jennifer R. Wilson. Ms. Wilson testified that much of the parcel, including virtually all of the rear yard of the parcel, has a Limited Area of Disturbance designation. She and the Department feel that the variance is necessary since much of the parcel is so encumbered. “The proposal will require minimal disturbance and there will be no adverse impacts to the Critical Area.”

The Department and Ms. Wilson further believe that the property is unique. Ms. Wilson states, “The rear yard of the subject parcel is almost entirely encumbered by the Limited Area of Disturbance. Additionally, the entire property slopes significantly to the southwest.”

Accordingly, the Department recommends approval, with conditions.

The State of Maryland Critical Area Commission has indicated, by a letter to file, that it has no objection to the request, provided the Applicants undertake a 3:1 mitigation plan to offset the footprint of the proposed deck expansion.

No evidence or testimony was presented in opposition.

### **APPLICABLE LAW:**

Section 267-63H of the Harford County Code states:

*“Variances.*

- (1) Variances from the provisions of this section may only be granted if, due to special features of a site or other circumstances, implementation of this section or a literal enforcement of its provisions would result in unwarranted hardship [See Subsection H(5) below] to an applicant.*
- (2) All applications for variances shall be reviewed by the Director of Planning for conformance with applicable provisions of this section, and a written report shall be provided to the Board of Appeals.*
- (3) An application for a variance to legalize a violation of this section, including any unpermitted structure or development activity, may not be accepted unless the Department of Planning and Zoning first issues a notice of violation for the violation, per Subsection P.*

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- (4) *In granting a variance, the Board shall issue written findings demonstrating that the requested approval complies with each of the following conditions:*
- (a) *That special conditions or circumstances exist that are peculiar to the land or structure within the County's Critical Area, and a literal enforcement of the Critical Area Program would result in an unwarranted hardship.*
  - (b) *That a literal interpretation of the provisions of this section will deprive the applicant of rights commonly enjoyed by other properties in similar geographic and land use management areas within the Critical Area.*
  - (c) *That the granting of a variance will not confer upon the applicant any special privilege that would be denied by this section to other lands or structures within the Critical Area.*
  - (d) *That the variance request is not based upon conditions or circumstances which are the result of actions by the applicant, nor does the request arise from any condition relating to land or building use, either permitted or nonconforming, on any neighboring property.*
  - (e) *That the granting of a variance will not adversely affect water quality or adversely impact fish, wildlife or plant habitat within the Critical Area, and the granting of the variance will be in harmony with the spirit and intent of this section.*
  - (f) *That all identified habitat protection areas on or adjacent to the site have been protected by the proposed development and implementation of either on-site or off-site programs.*
  - (g) *That the variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.*
- (5) *For purposes of this subsection, "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. In considering whether unwarranted hardship exists, the County must consider the following:*

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- (a) *The County 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 the Natural Resources Article, Title 8, Subtitle 18, COMAR Title 27, and the requirements of the County's Critical Area Program.*
- (b) *If the variance request is based on conditions or circumstances that are the result of actions by the applicant, the County shall consider that fact.*
- (c) *An applicant has the burden of proof and the burden of persuasion to overcome the presumption of nonconformance established in Subsection H(5)(a) above.*
- (d) *Based on competent and substantial evidence, the County shall make written findings as to whether the applicant has overcome the presumption of nonconformance as established above.*
- (e) *With due regard for the person's experience, technical competence and specialized knowledge, the written findings may be based on evidence introduced and testimony presented by:*
  - [1] *The applicant;*
  - [2] *The County or any other government agency; or*
  - [3] *Any other person deemed appropriate by the County.*
- (6) *If an activity or structure for which a variance is requested commenced without permits or approvals, and does not meet each of the variance criteria under this subsection, the variance request shall be denied and the structure must be removed or relocated and the affected resources restored.*
- (7) *All applications for variance requests shall be filed in writing in accordance with § 267-9D (Board of Appeals, Filings) of the Zoning Code, as amended. Notice of all variance requests and copies of applications filed in accordance with this section shall be sent to the Chesapeake Bay Critical Area Commission within 10 calendar days of filing with the Department of Planning and Zoning. A copy of the recommendation of the hearing examiner or of the Board in acting on the variance shall be sent to the Commission within 10 days.*
- (8) *A permit for the activity that was the subject of the variance application may not be issued until the applicable thirty-day appeal period has elapsed.”*

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### FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The Applicants own and reside on a parcel that essentially cannot be further improved due to the reach of a designated Limited Area of Disturbance created by the State Critical Areas legislation. While the Applicants have a 12 foot by 20 foot elevated deck off the rear of their house, any other improvement on the balance of the property is prohibited by the existence of the Limited Area of Disturbance and also, physically, by its steep, downward topography.

Understandably, the Applicants wish to make the best use of their parcel and establish additional recreational space. They propose to do so by expanding their existing deck by 12 foot by 20 feet extension. The proposal is modest in size and scope and, according to the co-Applicant, would be no different from many other decks in the neighborhood.

In truth, the proposal is a fairly limited one, one which will help the Applicants utilize a difficult parcel, and at the same time should have no impact on either the Critical Area, the neighbors or the neighborhood. Three posts only will be required to be constructed to hold the deck. There is no significant existing vegetation which will be disturbed. The Applicants have agreed to mitigate impact on a 3:1 basis.

The Applicants meet all statutory requirements of Harford County Code Section 267-63H, as follows:

- (1) *Variances from the provisions of this section may only be granted if, due to special features of a site or other circumstances, implementation of this section or a literal enforcement of its provisions would result in unwarranted hardship (see Subsection H(5) below) to an applicant.*

The inability of the Applicants to construct such a modest addition without a variance is an unwarranted hardship.

- (2) *All applications for variances shall be reviewed by the Director of Planning for conformance with applicable provisions of this Section. A written report shall be provided to the Board of Appeals.*

This provision has been complied with.

- (3) *An application for a variance to legalize a violation of this section, including any unpermitted structure or development activity, may not be accepted unless the Department of Planning and Zoning first issues a notice of violation for the violation, per Subsection P.*

Not applicable.

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- (4) *In granting a variance, the Board shall issue written findings demonstrating that the requested approval complies with each of the following conditions:*
- (a) *That special conditions or circumstances exist that are peculiar to the land or structure within the County's Critical Area, and a literal enforcement of the Critical Area Program would result in an unwarranted hardship.*

The “Limited Area of Disturbance” is unique to the Riverside subdivision of Belcamp and was the result of a growth allocation. Because of its extent, the Limited Area of Disturbance also affects the Applicants to a greater extent than most other property owners in the area.

- (b) *That a literal interpretation of the provisions of this section will deprive the applicant of rights commonly enjoyed by other properties in similar geographic and land use management areas within the Critical Area.*

Others within the Applicants’ neighborhood and, indeed, throughout Harford County, have outdoor decks and other recreational amenities similar to that proposed by the Applicants. To deny the requested variance will deprive the Applicants of the right to enjoy such a commonly held amenity.

- (c) *That the granting of a variance will not confer upon the applicant any special privilege that would be denied by this section to other lands or structures within the Critical Area.*

No special privilege is being conferred upon the Applicants.

- (d) *That the variance request is not based upon conditions or circumstances which are the result of actions by the applicant, nor does the request arise from any condition relating to land or building use, either permitted or nonconforming, on any neighboring property.*

The request is not based upon actions of the Applicants.

- (e) *That the granting of a variance will not adversely affect water quality or adversely impact fish, wildlife or plant habitat within the Critical Area, and the granting of the variance will be in harmony with the spirit and intent of this section.*

The Applicants have agreed to comply with a 3:1 mitigation plan. Construction of the deck will not impact, even without the mitigation plan, to any significant degree existing vegetation, nor will it create any negative impact on the Critical Areas.

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- (f) *That all identified habitat protection areas on or adjacent to the site have been protected by the proposed development and implementation of either on-site or off-site programs.*

The Applicants will minimize any impact by applying a 3:1 mitigation plan as established by the Department of Planning and Zoning.

- (g) *That the variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part I or the public interest.*

There is no evidence that any adverse impact will result if the requested variance is granted.

- (5) *For purposes of this subsection, "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. In considering whether unwarranted hardship exists, the County must consider the following:*

- (a) *The County 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 the Natural Resources Article, Title 8, Subtitle 18, COMAR Title 27, and the requirements of the County's Critical Area Program.*

- (b) *If the variance request is based on conditions or circumstances that are the result of actions by the applicant, the County shall consider that fact.*

- (c) *An applicant has the burden of proof and the burden of persuasion to overcome the presumption of nonconformance established in Subsection H(5)(a) above.*

- (d) *Based on competent and substantial evidence, the County shall make written findings as to whether the applicant has overcome the presumption of nonconformance as established above.*

- (e) *With due regard for the person's experience, technical competence and specialized knowledge, the written findings may be based on evidence introduced and testimony presented by:*

[1] *The applicant;*

[2] *The County or any other government agency; or*

[3] *Any other person deemed appropriate by the County.*

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For reasons set forth above, it is found that the Applicants would suffer an “unwarranted hardship” if the variance is not granted. The Applicants would be denied a reasonable and significant use of their entire parcel, which would be the construction of a commonly used residential amenity of a modest size and having no significant impact.

**CONCLUSION:**

Accordingly, for the above reasons, it is recommended that the requested variance be granted, subject to the following conditions:

1. The Applicants shall obtain all necessary applicable permits and inspections for the proposed deck.
2. The Applicants shall submit a mitigation plan for the proposed addition. The mitigation shall be provided at a ratio of 3:1. The mitigation plan shall be submitted for review and approval prior to building permit application.
3. The existing shed must be relocated outside of the limited area of disturbance and the area allowed to revegetate.

Date: October 3, 2016



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ROBERT F. KAHOE, JR.  
Zoning Hearing Examiner

**Any appeal of this decision must be received by 5:00 p.m. on OCTOBER 24, 2016.**