

JOHN A. OLSZEWSKI, JR. County Executive

PAUL M. MAYHEW
Managing Administrative Law Judge
MAUREEN E. MURPHY
Administrative Law Judge

May 15, 2023

Adam Schiavi & Christina Miller – <u>adam.schiavi@gmail.com</u> 3505 Bay Drive Middle River, MD 21220

RE:

Petition for Administrative Variance

Case No. 2023-0080-A Property: 3505 Bay Drive

#### Dear Petitioners:

Enclosed please find a copy of the decision rendered in the above-captioned matter.

Pursuant to Baltimore County Code § 32-3-401(a), "a person aggrieved or feeling aggrieved" by this Decision and Order may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Office of Administrative Hearings at 410-887-3868.

Sincerely.

PAUL M. MAYHEW

Managing Administrative Law Judge

for Baltimore County

PMM:dlw Enclosure IN RE: PETITION FOR ADMIN. VARIANCE (3505 Bay Drive)

15<sup>th</sup> Election District 5<sup>th</sup> Council District

Adam Schiavi & Christina Miller

Petitioners

BEFORE THE

OFFICE OF ADMINISTRATIVE

HEARINGS FOR

BALTIMORE COUNTY

\* CASE NO. 2023-0080-A

**OPINION AND ORDER** 

This matter comes before the Office of Administrative Hearings ("OAH") as a Petition for Administrative Variance filed by the legal owners of the property, Adam Schiavi and Christina Miller ("Petitioners"). The Petitioners are requesting Variance relief from the Baltimore County Zoning Regulations ("BCZR") §§ 1A04.3.B.2.b and 301.1 A, to permit a 6.5 ft. side lot line setback in lieu of 37.5 ft. for an open projection (deck extension). The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioners' Exhibit 1.

The Zoning Advisory Committee ("ZAC") comments were received and are made part of the record of this case. A ZAC comment was received from the Department of Environmental Protection and Sustainability ("DEPS"), dated April 25, 2023, indicating that Petitioners must comply with the goals of the State-mandated Critical Area Law in the BCZR § 500.14.

The Petitioners having filed a Petition for Administrative Variance and the subject property having been posted on April 21, 2023 and May 3, 2023, and there being no request for a public hearing, a decision shall be rendered based upon the documentation presented.

The Petitioners have filed the supporting affidavits as required by § 32-3-303 of the Baltimore County Code ("BCC"). Based upon the information available, there is no evidence in

the file to indicate that the requested variance would adversely affect the health, safety or general welfare of the public and should therefore be granted. In the opinion of the Administrative Law Judge, the information, photographs, and affidavits submitted provide sufficient facts that comply with the requirements of § 307.1 of the BCZR. Furthermore, strict compliance with the BCZR would result in practical difficulty and/or unreasonable hardship upon the Petitioners.

Pursuant to the posting of the property and the provisions of both the BCC and the BCZR, and for the reasons given above, the requested variance should be granted.

THEREFORE, IT IS ORDERED, this <u>15<sup>th</sup></u> day of **May**, 2023, by the Administrative Law Judge for Baltimore County, that the Petition for Variance relief from the Baltimore County Zoning Regulations ("BCZR") §§ 1A04.3.B.2.b and 301.1 A, to permit a 6.5 ft. side lot line setback in lieu of 37.5 ft. for an open projection (deck extension), be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

- Petitioners may apply for their appropriate permits and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at her own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners would be required to return, and be responsible for returning, said property to its original condition.
- Petitioners must comply with the DEPS ZAC comment, dated April 25, 2023; a copy of which is attached hereto and made a part hereof.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

PAUL M. MAYHEW

Managing Administrative Law Judge

for Baltimore County

PMM:dlw

## ADMINISTRATIVE ZONING PETITION FOR ADMINISTRATIVE VARIANCE – OR – ADMINISTRATIVE SPECIAL HEARING

To the Office of Administrative Hearings for	Permits, Approvals and Inspections Baltimore County for the property located at:
Address 3505 Bay Drive Middle	Pour - Las Daring la 12
141.4011100100	
	nd Christma Miller
Owner(s) Printed Name(s) 7 2(0001 SCOTICE V/ CO	na Crivistina Militer
(SELECT THE HEARING(S) BY MARKING $\underline{X}$ AT THE APPROP	RIATE SELECTION(S) AND ADDING THE PETITION REQUEST)
For Administrative Variances, the Affidavit on the reverse of this Petition	form must be completed and notarized.
nereot, nereby petition for an:	unty and which is described in the plan/plat attached hereto and made a part
1. ADMINISTRATIVE VARIANCE from Section(s) 1464.3. B.	.2.b. & 301.1. A. to permit a 6.5 - foot of 37.5 feet for an open projection
Side lot line schook in lieu	of 37.5 feet for an open projection
(leck extension).	, , ,
of the zoning regulations of Baltimore County, to the zoning law of Baltimore	∍ County,
2ADMINISTRATIVE SPECIAL HEARING to approve a waiver pursu	ant to Section 32-4-107(b) of the Baltimore County Code: (indicate type of
work in this space: i.e., to raze, alter or construct addition to building)	,
of the zoning regulations of Baltimore County, to the zoning law of Baltimore	e County.
Properly is to be posted and advertised as prescribed by the zoning regulating was agree to pay expenses of above petition(s), advertising, posting, etc. a	ons.  Indicate the property of the state of
Baltimore County adopted pursuant to the zoning law for Baltimore County.	and to the second by the second second and restrictions of
Owner(s)/Petitioner(s):	
Adam/Schiavi Chris	tina Miller
The Mark All All All All All All All All All Al	Tipe or Print //
SIIII COMMANDE	
	alure # 2
3505 Bay Drive Middle Riv	er MD
Mailing Address 212-20 / 305-788-5663 / 0	State
2(220) 303 788 3663 , Q Zip Code Telephone #'s (Cell and Home)	dam. schiavi @ gmail. com
, , , , , , , , , , , , , , , , , , , ,	Lilian Address
Attorney for Owner(s)/Petitioner(s):  NONE	Representative to be Contacted:
Name - Type or Print	
7,900 0.1 1.11.1	Name - Type of Final
Signature	Signature
Mailing Address City State	Mailing Address City State
Cip Code Telephone # Email Address	Zip Code Telephone # Email Address
A PUBLIC HEARING having been formally demanded and/or found to b	e required, it is prejeted by the Office of Administrative Hearings for
Baltimore County, this day of, learing, advertised, and re-posted as required by the zoning regulations of E	that the subject matter of this petition be set for a public
is a many, distributed, and to-posited as required by the zoning regulations of t	zaminore odulity.
	Administrative Law Judge for Baltimore County
Case Number 202 3 - 0080 - A Filling Date 4 111 17	
Case Number 2023 - 0080 - A Filling Date 4 111 13	2023 Estimated Posting Date 4/23/2023 Reviewer MT

The zoning regulation states that any structure must be 37 feet from the property line. This is a long narrow property, measuring only 50 feet in width with the lateral side of the house currently 12 feet from the property line. Pre-existing decks on the front and back of the house are flush with this lateral edge, 12 feet from the property line. Our modification extends the front deck another 5 feet from the house laterally in order to accommodate safe and mandatory access for maintenance to 2 battery back-up units for a solar panel project. As the property is in a flood zone, it is required that these units be at least 9 feet off the ground (3 feet above the surface of a six foot-high deck platform) thus necessitating an elevated deck with a railing. These requirements are rational and justifiable as they are designed to minimize the risk of electrical fire in the event of flooding thereby promoting public welfare, and ensure the safety of anyone providing maintenance to the units. The parent company for the solar panels, Tesla, adheres to these strict safety guidelines. The battery back-up units cannot be placed on the front or the back of the house as this is prohibited by the location of windows and doors. Effectively, the back-up units can ONLY be placed on the side of the house and elevated off the ground which warrants construction of a deck. Given the dimensions of the property, the only option is a structure less than 37 feet from the property line.

Our aspiration for solar power is multifactorial. As we are at the end of the electrical power line that runs through a heavily wooded area, we experience frequent power outages due to downed lines. Currently we supplement with natural gas, which is expensive and prone to large and unpredictable price fluctuations. We aspire to convert our energy usage to solar, a more reliable and environmentally friendly form of power. We chose to live in this location on the Chesapeake because of its natural beauty and feel this modest deck extension should be subject to variance in order to facilitate responsible energy usage and stewardship of the natural surroundings. The deck is built in the smallest permissible dimensions and integrates seamlessly into the overall aesthetically pleasing nature of the façade of the house. Rejection of this application for variance would effectively preclude the emergence of solar power in the vast majority of homes in our area which are similarly in a flood zone with narrow property boundaries; a ruling of that nature would be at odds with incentivized objectives for the advancement of green energy alternatives at state and national levels.

We respectfully request a variance and thank you for your time and consideration.

Adam Schiavi & Christina Miller

3505 Bay Drive, Middle River, MD 21220

#### Zoning Property Description for 3505 Bay Drive

Beginning at a point on the south side of Bay Dr. which is 13 feet wide at the distance of 986 feet west of the centerline of the nearest improved intersecting street Chesapeake Rd. which is 18 feet wide.

Being Lot NO. 13, Plat 3, subdivision of Lot 197, Plat 1, of the Property of Bowleys Quarters Company of Baltimore County recorded among the Land Records of Baltimore County in Plat Book WPC Nol 7, folio 78. Being known and designated as 3505 Bay Drive

Being the same property which, by Deed dated June 23, 2009, and recorded in the Land Records of the County of Baltimore, Maryland, in Liber SM28284, Folio 422, was granted and conveyed by Gary W. Waiker unto Gary W. Waicker and Diane L Waicker, in fee simple.

## BALTIMORE COUNTY DEPARTMENT OF PERMITS, APPROVALS AND INSPECTIONS ZONING REVIEW OFFICE

### **ADMINISTRATIVE VARIANCE INFORMATION SHEET AND DATES**

Case N	umber:	2023	3-0080	A Address	3509	Bay	Dr.	
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# DEPARTMENT OF PERMITS, APPROVALS AND INSPECTIONS ZONING REVIEW OFFICE

#### ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

The Baltimore County Zoning Regulations (BCZR) require that notice be given to the general public/ neighboring property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property (responsibility of the legal owner/petitioner) and placement of a notice in a newspaper of general circulation in the County, both at least twenty (20) days before the hearing.\*

Zoning Review will ensure that the legal requirements for advertising are satisfied. However, the legal owner/petitioner is responsible for the costs associated with these requirements. The newspaper will bill the person listed below for the advertising. This advertising is due upon receipt and should be remitted directly to the newspaper.

#### OPINIONS MAY NOT BE ISSUED UNTIL ALL ADVERTISING COSTS ARE PAID.

For Newspaper Advertising:
Case Number: 2023-0080-A
Property Address: 3505 Bay Dr. Middle River MD 21220
Legal Owners (Petitioners): Adam Schiavi and Christina Miller
Contract Purchaser/Lessee: N/A
PLEASE FORWARD ADVERTISING BILL TO:
Name: Company/Firm (if applicable): /toam Schravi
Address: 3505 Bay Dr. Middle RIVER MD 2420
Telephone Number: 305 - 788 - 5643

<sup>\*</sup>Failure to advertise and/or post a sign on the property within the designated time will result in the Hearing request being delayed. The delayed Hearing Case will be cycled to the end of pending case files and rescheduled in the order that it is received. Also, a \$250.00 rescheduling fee may be required after two failed advertisings and/or postings.

#### **Inter-Office Correspondence**

**KECRIVED** - APR 26 2023



TO:

Hon. Paul M. Mayhew; Managing Administrative Law Judge

Office of Administrative Hearings

FROM:

Jeff Livingston, Department of Environmental Protection and

Sustainability (EPS) - Development Coordination

DATE:

April 25, 2023

SUBJECT:

DEPS Comment for Zoning Item

# 2023-0080-A

Address:

3505 BAY DR

Legal Owner: Adam Schiavi, Christina Miller

Zoning Advisory Committee Meeting of April 24, 2024.

EPS has reviewed the subject zoning petition for compliance with the goals of the Statemandated Critical Area Law listed in the Baltimore County Zoning Regulations, Section 500.14. Based upon this review, we offer the following comments:

1... Minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands;

The subject property is located within a Limited Development Area (LDA) and a Modified Buffer Area (MBA) and is subject to Critical Area requirements. The applicant is seeking approval to permit a 6.5-foot side lot line setback in lieu of 37.5 feet for an open projection (deck extension). The proposed development must meet LDA requirements and the 15% afforestation requirement. If the proposed development can comply with the lot coverage restrictions and the 15% afforestation requirement, the relief requested can result in minimal adverse impacts to water quality.

2. Conserve fish, plant, and wildlife habitat;

> This is a waterfront lot with a 100-foot Critical Area buffer extending onto the property from Middle River. The buffer consists of a maintained grass lawn. Based on the site plan, it appears the proposed deck extension will be located outside the buffer. Meeting the MBA requirements, lot coverage requirements,

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and the 15% afforestation requirement will aid in the conservation of fish, plant, and wildlife habitat in the watershed.

3. Be consistent with established land use policies for development in the Chesapeake Bay Critical Area, which accommodate growth and also address the fact that, even if pollution is controlled, the number, movement and activities of persons in that area can create adverse environmental impacts.

If the proposed development can be designed to meet the MBA, lot coverage, and afforestation requirements, the relief requested will be consistent with established land-use policies.

Reviewer: Gris Batchelder

#### INTEROFFICE CORRESPONDENCE

**DATE:** April 25, 2023

TO:

Peter Gutwald, Director

Department of Permits, Approvals

FROM:

Vishnu Desai, Supervisor

Bureau of Development Plans Review

**SUBJECT:** Zoning Advisory Committee Meeting

For April 17, 2023

Item No. 2023-0070-SPH

The Bureau of Development Plans Review has reviewed the subject zoning items and we have the following comments.

#### DPW&T Response:

The proposed 30' x 60' utility shed is located in a tidal Zone AE special hazard area per FEMA FIRM 2400100465F dated 9/26/08. The proposed utility shed is 1800 square feet. Baltimore County Building Code dated 2015 Part 124.3 (3) prohibits accessory structures greater than 900 square feet. The Administrative Variance must be denied unless the structure size is reduced.

VKD: cen cc: file

#### INTEROFFICE CORRESPONDENCE

**DATE:** April 25, 2023

TO:

Peter Gutwald, Director

Department of Permits, Approvals

FROM:

Vishnu Desai, Supervisor

Bureau of Development Plans Review

SUBJECT:

**Zoning Advisory Committee Meeting** 

For April 17, 2023 Item No. 2023-0076-A

The Bureau of Development Plans Review has reviewed the subject zoning items and we have the following comments.

Prior to building permit application, the petitioner shall contact the Office of DPW&T, to determine the Flood Protection Elevation so that the floor elevation can be set

VKD: cen cc: file

### INTEROFFICE CORRESPONDENCE

TO:

Peter Gutwald, Director

**DATE:** April 25, 2023

Department of Permits, Approvals

FROM:

Vishnu Desai, Supervisor

Bureau of Development Plans Review

**SUBJECT:** Zoning Advisory Committee Meeting

For April 17, 2023

Item No. 2023-0071-A, 0073-A, 0074-A, 0077-A & 0078-A

The Bureau of Development Plans Review has reviewed the subject zoning items and we have no comments.

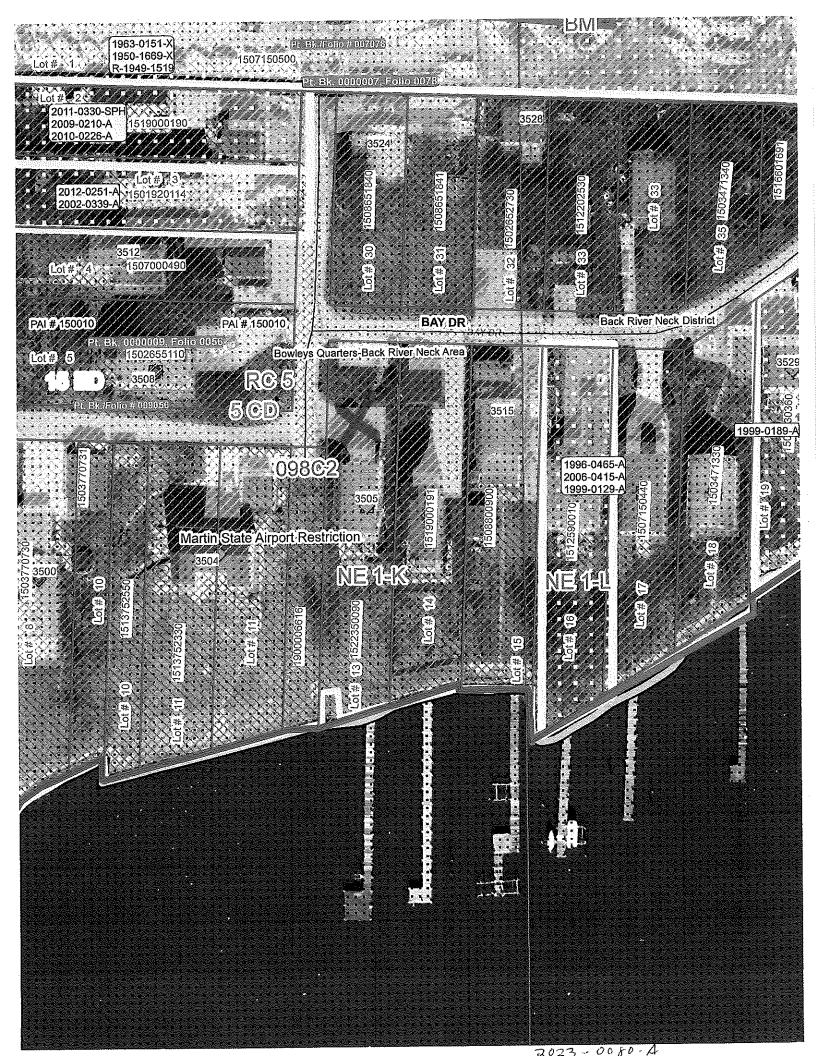
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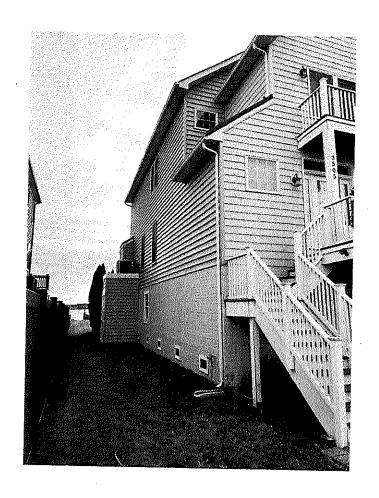
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# 2023 - 0080-A

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3505 Bay Dr. site of deck extension. This is the east side of the house. The front of the house is facing north. Proposed extension will connect to the platform that the existing staircase leads too.

