

**ST. MARY'S COUNTY GOVERNMENT
OFFICE OF THE COUNTY ATTORNEY**

*Buffy Giddens, Deputy County Attorney
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Commissioners of St. Mary's County
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MEMORANDUM

TO: Board of Appeals

CC: Courtney Jenkins, Deputy Director of Land Use & Growth Management
Buffy Giddens, Deputy County Attorney
Kevin Norris, Esq.

FROM: John Sterling Houser, Assistant County Attorney

RE: VAAP 22-1484, Okoniewski Property; Setback Variance for Pier Access Ramp,
"Retaining Wall"

DATE: March 9, 2023

Members of the Board of Appeals,

This memorandum concerns VAAP 22-1484, Okoniewski Property, a request for (1) an after-the-fact variance from the County's Critical Area regulations for a wooden ramp providing access to an existing pier and (2) an after-the-fact variance from the side yard setbacks for a shed.

During this matter's initial hearing on January 12, several members of the Board asked whether a variances should be required for what was referred to as a "retaining wall" that was part of the pier access ramp, as well as a separate side yard setback for the ramp. Given the continuance being granted to perform a survey of the Okoniewski property, staff offered, and the Board accepted, to review its initial determinations these variances would not be required.

For the reasons stated below, the Department of Land Use & Growth Management concluded its initial assessment was correct, and that separate variances are not required.

The "Retaining Wall" / Railing

One of the pictures in the Applicants' presentation depicted a wooden structure lying under and landward of the Applicants' access ramp. Upon consultation with the permit technicians who initially reviewed this matter, this structure was initially considered a "railing." It physically adjoins the proposed ramp is a structural component of it, and not a separate, independent structure on its own. As a necessary component of the pier access ramp this development is already part of the variance being requested.

Additional Side Yard Setback Variance

An additional question was raised whether a separate side yard setback variance would be required for the access ramp.

Comprehensive Zoning Ordinance § 61.7.4.a states the following improvements may be located in the yards preserved by required setbacks:

“Open or unenclosed decks or platforms, not including a permanently roofed-over porch; awnings and canopies, provided they do not extend or project into the yard more than six feet; steps that are necessary for access to a permitted building or for access to a lot from a street or alley; chimneys projecting into the yard; recreational equipment; laundry drying equipment; approved free-standing signs; arbors and trellises; flag poles; window unit air conditioners projecting into the required yard; and fences or walls subject to applicable height restrictions are permitted in yards.” (Emphasis added).

The CZO does not require a variance for any of the improvements covered above, even if located within the yards meant to be preserved by required setbacks.

/s/John Sterling Houser
John Sterling Houser
Assistant County Attorney