

AA 147-99
VAR

Key Federal Savings
99-0100

MSA_51829-57

LH
6/6/24
9/23/89

Area program requirements may be granted if (1) due to features of the site, a strict implementation of the program would result in an unwarranted hardship to the applicant; (2) a literal interpretation of the program will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area; (3) the granting of the variance will not confer on the applicant any special privilege that would be denied by the program to other lands within the Critical Area; (4) the variance request is not based on circumstances resultant of actions by the applicant and does not arise from conditions relating to land use on neighboring property; and (5) the granting of the variance will not adversely affect water quality or adversely impact fish, wildlife or plant habitat within the Critical Area and will be in harmony with the general spirit and intent of the program. Under subsection (c), any variance must be the minimum necessary to afford relief; and its grant may not alter the essential character of the neighborhood, substantially impair the appropriate use or development of adjacent property, or be detrimental to the public welfare.

Upon review of the facts and circumstances, I find and conclude that the applicant is entitled to relief from the code. As a general rule, the creation of new lots cannot give rise to the need for a variance. In this case, the applicant started out with 12 lots, but due to the antiquated lot law, was obligated to combine lots. The applicant initially sought to cluster six lots; however, the administrative plat created only four, with the Reserved Parcel. The clear intent was to re-subdivide the Reserved Parcel into two lots. See, letter dated February 17, 1992, from John

L. Butschky to Stephen V. Callahan: "the balance of Key Federal land is being 'Reserved' for a future subdivision that will be reviewed under regular subdivision regulations, not an administrative process." Given these circumstances, a strict implementation of the County's Critical Area Program would result in an unwarranted hardship. To literally interpret the program would deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area of the County to be developed with a single-family residence. Conversely, the granting of the variance does not confer any special privilege that the program denies to other lands. I find that the request does not result from circumstances caused by the applicant; nor does it arise from conditions relating to land use on neighboring property. Finally, with conditions, the approval will not be adverse to water quality or adversely impact fish, wildlife or plant habitat within the Critical Area and will be in harmony with the general spirit and intent of the program.

I also find that the variance is the minimum necessary to afford relief. The only impact here is to cross nontidal wetlands. The permitting agencies have issued the authorizations. There is nothing to suggest that the granting of the variance will alter the essential character of the neighborhood, substantially impair the appropriate use or development of adjacent property, or be detrimental to the public welfare. The approval shall be subject to the conditions in the Order.

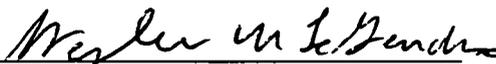
ORDER

PURSUANT to the application of Key Federal Savings Bank, petitioning for a variance to permit an access drive with less buffer than required; and

PURSUANT to the advertising, posting of the property, and public hearing and in accordance with the provisions of law, it is this 30th day of June, 1999,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicant is hereby **granted** a variance to permit disturbance of the nontidal wetland and its buffer for access. The foregoing variance is subject to the following conditions:

1. One driveway access shall be used under joint easement to cross the wetlands.
2. The applicant shall adhere to the applicable state and federal permits.
3. The applicants shall comply with all other Critical Area criteria.


Stephen M. LeGendre
Administrative Hearing Officer

NOTICE TO APPLICANT

Within thirty (30) days from the date of this Decision, any person, firm, corporation, or governmental agency having an interest therein and aggrieved thereby may file a Notice of Appeal with the County Board of Appeals.

Further, Section 11-102.2 of the Anne Arundel County Code states:

A variance granted under the provisions of this Article shall become void unless a building permit conforming to the plans for which the variance was

Judge John C. North, II
Chairman



Ren Serey
Executive Director

**STATE OF MARYLAND
CHESAPEAKE BAY CRITICAL AREA COMMISSION**

45 Calvert Street, 2nd Floor, Annapolis, Maryland 21401
(410) 260-7516 Fax: (410) 974-5338

April 23, 1999

Mr. Kevin Dooley
Anne Arundel County Department of Planning and Code Enforcement
2664 Riva Road, MS 6301
Annapolis, Maryland 21401

Re: Key Federal Savings Bank
1999-0100-V

Dear Mr. Dooley:

I would like to comment on the above-referenced request to permit an access driveway through a nontidal wetland and the 25-foot buffer to that wetland. The applicant should be seeking permits from the Maryland Department of the Environment (MDE), Nontidal Wetlands Division concerning disturbance to the nontidal wetland and the buffer. We defer to that office concerning nontidal wetland issues. If the MDE issues a permit and the variance is granted, mitigation should be as prescribed by MDE.

However, an alternative exists that may avoid need for disturbance to the wetlands. An alternative access point might be through lot 3R if that property owner is willing to provide a right-of-way. If not, provided these lots are properly grandfathered and development can otherwise be accommodated on this site without the need for other variances, we recommend the access drive be redesigned so that only one driveway serves both lots in order to minimize disturbance.

Thank you for the opportunity to comment. Please include this letter in your file and submit it as part of the record for variance. Please notify the Commission of the decision made in this case.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lisa A. Hoerger".

Lisa A. Hoerger
Environmental Specialist

cc: AA 562-98

Branch Office: 31 Creamery Lane, Easton, MD 21601
(410) 822-9047 Fax: (410) 820-5093

CHESAPEAKE BAY CRITICAL AREA COMMISSION
45 CALVERT STREET, 2ND FLOOR
ANNAPOLIS, MD 21401

AA 147-99

NOTIFICATION OF PROJECT APPLICATION

Jurisdiction: WHE ARUNDEL

Date: 3/3/99

Name of Project (site name, subdivision name, or other): SEPARATION OF THE BAY (RESERVED PARCEL)

Local case number: 1999-0100-V Key Federal Savings Bank

Project location/Address: 1621 SWAG HARBOR ROAD

Tax map# 69

Block# 18

Lot# RESERVED PARCEL Parcel# 559

Type of application:
(Select all applicable)

- SUBDIVISION
- SITE PLAN
- VARIANCE:
 - Buffer Slope
 - Imp. Surf. Other
- SPECIAL EXCEPTION
- CONDITIONAL USE
- REZONING
- GRADING PERMIT
- BLDG PERMIT
- INTRAFAMILY
- GROWTH ALLOCATION

Type of Project:
(Select all applicable)

- RESIDENTIAL
- COMMERCIAL
- WATER DEPENDENT FACILITY/PIER/MARINA
- INDUSTRIAL
- MIXED USE
- REDEVELOPMENT
- SHORE EROSION PROTEC.
- AGRICULTURE
- OTHERS _____
- e.g. PUD

Current Use:
(Select all applicable)

- COMMERCIAL
- RESIDENTIAL
- AGRICULTURE
- FOREST/BUFFER/ WOODLAND
- INDUSTRIAL
- INSTITUTIONAL
- OPEN SPACE/RECRE.
- SURFACE MINING
- VACANT
- WATER DEPENDENT FACILITY/PIER/MARINA

Describe Proposed use of project site: Two SINGLE FAMILY Lots
access drive w/ 100' buffer

SITE INVENTORY OF AREA ONLY IN THE CRITICAL AREA

TOTAL ACRES IN CRITICAL AREA: 17.139

IDA ACRES	_____	AREA DISTURBED:	_____
<u>LDA</u> ACRES	<u>6.504</u>	# LOTS CREATED:	<u>2</u>
<u>RCA</u> ACRES	<u>10.635</u>	# DWELLING UNITS:	<u>2</u>

AGRICULTURAL LAND: _____

EXISTING FOREST/WOODLAND/TREES: 10.163 FOREST/WOODLAND/TREES REMOVED: 7.7%

FOREST/WOODLAND/TREES CREATED: _____

EXISTING IMPERVIOUS SURFACE: 0 PROPOSED IMPERVIOUS SURFACE: 15%

TOTAL IMPERVIOUS SURFACE: _____

GROWTH ALLOCATION DEDUCTED: _____

RCA to LDA: _____ RCA to IDA: _____ LDA to IDA: _____

once Penny when sub? Buffer up? just for existing into? letter from DCD?

2.57-1570

Local Jurisdiction Contact person: PENNY CHALKLEY
Telephone number: 410-222-2459
Response from Commission required by: _____ Hearing Date: _____

Introduction

On January 5, 1998 McCarthy and Associates, Inc., conducted a Critical Area Survey of the property known as Cedarhurst on the Bay. The site is located on Snug Harbor Road in Anne Arundel County, Maryland (figure 1). The property has been subdivided into four building lots and one Reserved Parcel. The Reserved Parcel, which comprises 17.139 acres, is the subject of this survey. The survey was conducted in accordance with requirements set forth by Anne Arundel County for a Minor Subdivision, using the Short Form criteria.

Forest Cover

The Reserved Parcel consists of upland forest and tidal marsh. The upland forest is dominated by Virginia Pine (*Pinus virginiana*), Loblolly Pine (*Pinus taeda*), Sweet Gum (*Liquidambar styraciflua*), and Southern Red Oak (*Quercus falcata*). The trees are estimated to be 25 - 40 years old and in good condition. The shrub/sapling layer is fairly dense and is dominated by Black Cherry (*Prunus serotina*), American Holly (*Ilex opaca*), and young canopy species.

Vine species on site consist of Japanese Honeysuckle (*Lonicera japonica*), Greenbrier (*Smilax rotundifolia*), and Wild Grape (*Vitis spp.*). Herbaceous species consist of Wild Onion (*Allium canadense*). Other herbaceous species may be present but were not observable due to the time of year.

The Reserved Parcel contains 17.139 acres of forest. Of this forested area, 0.69 acres (30,056 s.f.) is proposed to be disturbed for the construction of two houses and associated driveways. This forest disturbance is equal to 4% of the total forested area.

Wild Animals

Wild animals observed during the site visit are considered typical for this area and are listed in the table that follows.

<u>Common Name</u>	<u>Scientific Name</u>
Eastern Crow	<i>Corvus brachyrhyncos</i>
Gray Squirrel	<i>Sciurus carolinensis</i>
Blue Jay	<i>Cyanocitta cristata</i>
Cardinal	<i>Richmondia cardinalis</i>
House Finch	<i>Carpodacus purpureus purpureus</i>
English Sparrow	<i>Passer domesticus domesticus</i>

Stormwater Management

Stormwater management for the site will be accomplished through the use of private infiltration trenches on each lot.

Impervious Cover

The Reserved Parcel currently contains no impervious area. Proposed impervious area will consist of rooftops and driveways (12,197 s.f.) and will be less than 2% of total site area.