

AA 294-99
VAR

Felix/Washington
99-0226

MSA_51829-124

LH
6/4/99

Comment

LH

8/20/99

NOT SOL

Comments



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

August 25, 1999

Ms. Pam Miley
Anne Arundel County Department of Planning and Code Enforcement
2664 Riva Road, MS 6301
Annapolis, Maryland 21401

Re: Felix/Washington - Jordan Drive
1999-0226V, 1999-0227V

Dear Ms. Miley:

I have received a revised plan for the above-referenced project that requests less setbacks and Buffer. The applicant has completed a field determination of the wetlands and discovered that a 25-foot buffer to nontidal wetlands is required in addition to the 100-foot Buffer to tidal wetlands.

I have contacted the Nontidal Wetlands Division of the Maryland Department of the Environment to learn the location of the edge of nontidal wetlands on these lots. Apparently, the edge of the nontidal wetlands begins at the existing tree line. In regard to nontidal wetland impacts, this office defers to MDE. I understand a letter dated July 20, 1999 from Ms. Noble to Mr. Helfrich (enclosed) explains conditions for approval, although a permit had not yet been secured.

As stated in my previous letter of June 4, 1999 (enclosed), provided these lots are properly grandfathered, this office does not oppose development of these lots. In regard to the 100-foot Buffer, both lots are completely within the Buffer. Since the lots are contiguous and under the same ownership, we recommend that the County and applicant consider combining lots and building one dwelling instead of two dwellings.

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,

Lisa A. Hoerger
Natural Resources Planner

Enclosures

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





MARYLAND DEPARTMENT OF THE ENVIRONMENT
 2500 Broening Highway • Baltimore Maryland 21224
 (410) 631-3000 • 1-800-633-6101 • http://www.mde.state.md.us

Parris N. Glendening
 Governor

Maryland Department of the Environment
 Water Management Administration
 Nontidal Wetlands and Waterways Division
 2500 Broening Highway
 Baltimore, MD 21224
 (410) 631-8094

Jane T. Nishida
 Secretary

July 20, 1999

Michael Helfrich
 Gamma Engineering
 844 West Street
 Annapolis, MD 21401

Nontidal Wetlands Number: 99-NT-0236
 Application Tracking Number: 199963788
 Project: James single family lots, AA County
 Contact Person: Christi N. Noble
 Phone: 410-631-8094

Dear Mr. Helfrich:

The Nontidal Wetlands and Waterways Division of the Water Management Administration (WMA) has received sufficient information to make a final decision on the joint Federal/State application for the project listed above. A favorable decision has been made to issue a Nontidal Wetlands and Waterways Letter of Authorization (LOA) and Water Quality Certification (WQC) for the proposed activity. Prior to issuance of the LOA and WQC this office will need the following item addressed:

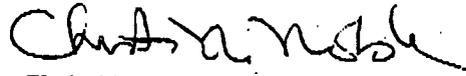
- 1.) The lots are within the Critical Area line, therefore, mitigation on a 2:1 ratio will be required for the impact of 594.36 sq ft. Please provide explanation on why the variance for lot 2 cannot be decreased to bring house closer to the road and out of the wetland. If a variance cannot be obtained, payments can be made to the Nontidal Wetlands Compensation Fund (approximately \$1542.24 for 0.0272ac), or possibly to a consolidated mitigation site in Shady Side, managed by Doug Musser.
- 2.) Submit two copies of the final construction plans for the project. The plans must include the limits of any nontidal wetlands, nontidal wetland buffers, and waters of the State (including the 100-year floodplain), limits of disturbance, "Best Management Practices for Working in Nontidal Wetlands" (attached), a sequence of construction, and approved erosion and sediment control plans. The copies of the plans will be reviewed and, once approved, distributed to the Compliance Program of the WMA and to the applicant as an attachment to the LOA and WQC.

Once the information is received and determined sufficient, the LOA and WQC will be issued. We will authorize the applicant to conduct the activity specified provided that conditions and best management practices which will be a part of the authorization and certification are met.

RECEIVED
 AUG 16 1999
 CRITICAL AREA COMPLIANCE

If you have any questions, please contact me at (410)631-8094

Sincerely,



Christi N. Noble
Environmental Specialist
Nontidal Wetlands and Waterways Division

Cc: Felix James, landowner
Penny Chalkley, AA County PACE
Andrew Der, MDE
Judy Broersma-Cole, MDE

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Washington { 1556-95
318-97
613-97
227-98
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229-98
Felix James { 294-99
Washington { 295-99

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SEP 20 1999

CHESAPEAKE BAY
CRITICAL AREA COMMISSION

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBERS 1999-0226-V AND 1999-0227-V

IN RE: STEVE WASHINGTON AND FELIX JAMES

SEVENTH ASSESSMENT DISTRICT

DATE HEARD: AUGUST 5, 1999

ORDERED BY: STEPHEN M. LeGENDRE, ADMINISTRATIVE HEARING OFFICER

ZONING ANALYST: LAWRENCE BURKINS

DATE FILED: SEPTEMBER 14th, 1999

PLEADINGS

Steve Washington and Felix James are the applicants in these companion cases concerning properties in Shady Side. In Case No. 1999-0226-V, the applicants seek a variance to permit a dwelling with less setbacks and buffer on property located along the east side of Jordan Drive, south of Butternut Street. In Case No. 1999-0227-V, the applicants make the same request on property located along the south side of Jordan Drive, south of Butternut Street.

PUBLIC NOTIFICATION

The cases were advertised in accordance with the provisions of the County Code. At a hearing convened on August 4, 1999, Mr. Washington testified that the properties were posted for 13 days. Mr. Washington was instructed to leave the posting in place pending continuance of the hearing until September 9, 1999.

FINDINGS AND CONCLUSIONS

These cases concern unimproved Lot 1 (22,234 square feet, Case No. 1999-0227-V) and Lot 2 (22,122 square feet, Case No. 1999-0226-V) in Block 39 of the subdivision of Avalon Shores, Shady Side. The zoning is R-5 residential and OS Open Space. These nonwaterfront lots are classified as Limited Development Area (LDA) and Resource Conservation Area (RCA) for purposes of the Chesapeake Bay Critical Area Program. The applicants seek to develop each lot with a single-family dwelling with less buffer to tidal and nontidal wetlands and

reduced front setbacks. For Lot 1, the applicants propose site disturbance within 36 feet of tidal wetlands and a setback of 16 feet from nontidal wetlands. For Lot 2, the applicants are proposing site disturbance 21 feet from tidal wetlands and a setback of 2 feet from nontidal wetlands. In both cases, the applicants are proposing front setbacks of 20 feet.

The Anne Arundel County Code, Article 28, Section 1A-104(a)(1) establishes a minimum 100-foot buffer from tidal wetlands. There is also a 25-foot buffer to nontidal wetlands. Section 2-506(a) requires a minimum front yard depth of 25 feet. Accordingly, the proposal requires variances as follows:

Case No. 1999-0227-V:

1. A variance of 64 feet to the buffer to tidal wetlands.
2. A variance of 9 feet to the buffer to nontidal wetlands.
3. A variance of 5 feet to the front setback.

Case No. 1999-0226-V:

1. A variance of 79 feet to the buffer to tidal wetlands.
2. A variance of 23 feet to the buffer to nontidal wetlands.
3. A variance of 5 feet to the front setback.

Lawrence Burkins, Administrator of Current Planning, testified at the second hearing that the properties are legal lots recorded prior to the Critical Area legislation and the zoning ordinance. The middle to rear of each lot is impacted by tidal wetlands. The dwellings have been sited with reduced front setbacks to minimize the impact to the Critical Area resources. In the circumstances, he

supported the applications, conditioned on compliance with the Environmental Division's comments dated June 30, 1999.

Michael Helfrich, the applicants' engineer, indicated his acceptance of the conditions, and acknowledged the need for Health Department approval of the well locations. There was no adverse testimony concerning the applications.

Upon review of the facts and circumstances, I find and conclude that the applicants are entitled to conditional relief from the code. Considering the Critical Area variances, due to the extent of the tidal and nontidal wetlands, a strict implementation of the County's Critical Area Program would result in an unwarranted hardship to the applicants. To literally interpret the program would deprive the applicants of the right commonly enjoyed by other properties in similar areas within the Critical Area of the County to be developed with single-family dwellings. Conversely, the granting of the variance will not confer on the applicants any special privilege that the program denies to other lands within the Critical Area. There was nothing to suggest that the request results from actions by the applicants; nor does it arise from conditions relating to land use on neighboring property. Finally, with appropriate conditions, the granting of the variances 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.

Considering the zoning variances, I find and conclude that the Critical Area resources constitute unique physical conditions, peculiar to the properties, such

that there is no reasonable possibility of developing the lots in strict conformance with the code.

Considering both the Critical Area and zoning variances, I find that the variances are the minimum necessary to afford relief. There was nothing to suggest that the granting of the variances 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 Steve Washington and Felix James, petitioning for variances to permit dwellings with less setbacks and 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 14th day of September, 1999,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicants are hereby **granted** the following variances:

Case No. 1999-0227-V:

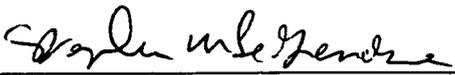
1. A variance of 64 feet to the buffer to tidal wetlands.
2. A variance of nine feet to the buffer to nontidal wetlands.
3. A variance of five feet to the front setback.

Case No. 1999-0226-V:

1. A variance of 79 feet to the buffer to tidal wetlands.
2. A variance of 23 feet to the buffer to nontidal wetlands.
3. A variance of five feet to the front setback.

The foregoing variances are subject to the following conditions:

- A. A grading permit shall be required.
- B. Mitigation for forest clearing shall be required at a 3:1 ratio.
- C. All remaining woodlands and wetlands shall be subject to a conservation easement.
- D. The applicants shall provide stormwater management satisfactory to PACE.
- E. The limits of disturbance shall be staked prior to permit approval.
- F. The applicants shall comply with the County Floodplain Ordinance.
- G. Impervious coverage shall not exceed 25 percent on each lot.
- H. The building permits shall be subject to the approval of the Health Department.


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 granted is obtained within one year of the grant and construction is completed within two years of the grant.

If this case is not appealed, exhibits must be claimed within 60 days of the date of this order, otherwise they will be discarded.

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

June 4, 1999

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

Re: Steve Washington & James Felix
1999-0226-V, 1999-0227-V

Dear Mr. Dooley:

I have received the above-referenced request to permit a dwelling that will require less setbacks and Buffer. This office offers no comment regarding the setback issue. Provided this lot is properly grandfathered, we do not oppose a dwelling on this lot. The County should consider having the applicant combine his lots since they are adjacent to minimize impacts to the Buffer. In any case, the applicant should configure the dwelling(s) to minimize the variance to the 100-foot Buffer. Also, mitigation at a 3:1 ratio with native species is recommended for all new disturbances to the Buffer.

The environmental report accompanying this application indicated that impervious coverage will not exceed 25%. These lots are limited to 5,445 square feet of impervious coverage. A note on the plat would alert future homeowners to this limitation. Also, a note should be added to the plat so that future homeowners will be aware of the 100-foot Buffer and that no clearing or accessory structures are permitted within the Buffer.

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
Planner

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

