

BC 653-99
VAR

Nichols/Pettie

MSA-S-1829-299

MEL
BC 4/12/04



Baltimore County
Department of Environmental Protection
and Resource Management

Office of the Director
401 Bosley Avenue, Suite 416
Towson, Maryland 21204

November 3, 1999

Mr. Clarence Nichols
Ms. Francine Pettie
950A Thompson Blvd.
Baltimore, MD 21221

Re: 950A Thompson Blvd.
Critical Area Administrative Variance

Dear Mr. Nichols & Ms. Pettie:

The Department of Environmental Protection and Resource Management (DEPRM) has received your variance request to construct an additional impervious parking pad, thus exceeding allowable impervious surface limits at the above referenced address. The Director of DEPRM may grant a variance to the Chesapeake Bay Critical Area regulations in accordance with regulations adopted by the Critical Area Commission concerning variances as set forth in COMAR 27.01.11. There are five (5) criteria listed in COMAR 27.01.11 that shall be used to evaluate the variance request. All five of the criteria must be met in order to approve the variance.

The first criterion requires that special conditions exist that are peculiar to the land or structure, and that literal enforcement of the regulations would result in unwarranted hardship. The property in question is part of the Frascchetti Property, a minor subdivision approved in 1992 which is in the Limited Development Area (LDA) of the Chesapeake Bay Critical Area (CBCA). As such, the lot is subject to impervious surface requirements of 15%. Impervious surfaces without the additional parking area equal 7.2% of the site. The additional 2795 square feet of parking would increase impervious areas to 19.9%. Alternatives exist to use a pervious material such as driveway pavers or engineered stone design (examples enclosed) or to reduce the project scope. Therefore, this criterion has not been met.

The second criterion requires that a literal enforcement of the regulations would deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area. You already have a reasonably sized macadam parking pad for your use. The proposed parking addition would exceed allowable impervious surface limits. Other properties in the Critical Area

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Ms. Francine Pettie
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would be required to strictly adhere to impervious surface limit requirements. Therefore, you are not being deprived of a right commonly enjoyed by other properties in similar areas within the Critical Area, and this criterion has not been met.

The third criterion requires that granting of a variance will not confer upon an applicant any special privilege that would be denied to other lands or structures within the Critical Area. For the same reasons as noted above, granting of this variance will confer upon you a privilege that would be denied to other lands or structures within the Critical Area. Therefore, this criterion has not been met.

The fourth criterion requires that a variance 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 non-conforming, on any neighboring property. The additional parking pad currently exists and was placed on the property prior to seeking County approvals. Therefore, this after-the-fact variance request is the result of actions by you, the applicants.

The fifth criterion requires that granting of the variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area, and that the granting of the variance will be in harmony with the general spirit and intent of the Critical Area regulations. While exceeding the impervious surface requirements on one property may not adversely affect water quality, the cumulative impacts of exceeding impervious surface limits on several properties can result in adverse water quality impacts. For this reason, granting the requested variance would not be consistent with the spirit and intent of the Critical Area regulations, and this criterion has not been met.

Based upon our review, it is this Department's findings that all of the above criteria have not been met, and the requested variance is hereby denied in accordance with 26-453(o) of the Baltimore County Code.

If you do not concur with the above decision, you may file an appeal with the Baltimore County Board of Appeals within thirty (30) calendar days of the date of this letter. The appeal must be in writing and state concisely why you believe the decision was improper. Address the appeal to the Baltimore County Board of Appeals and send it to the address listed below, accompanied by a \$75.00 check payable to Baltimore County Government to cover the appeal fee.

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Environmental Impact Review
Baltimore County Department of
Environmental Protection and Resource Management
401 Bosley Avenue, Suite 416
Towson, Maryland 21204
Attention: Ms. Patricia M. Farr

If you have questions regarding this project, please contact Mr. Keith Kelley
at 410-887-3980.

Sincerely,



George G. Perdikakis
Director

GGP: KDK

c: Ms. Meredith Lathbury, CBCA Commission
Mr. Leroy H. List
Mr. Jeff Perlow, PDM

Attachments
Kdk#6/nichols

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) 974-2426 Fax: (410) 974-5338

October 20, 1999

Mr. Keith Kelley
Department of Environmental Protection
and Resource Management
401 Bosley Avenue, Suite 416
Towson, Maryland 21204-4488

RE: Nichols/Pettie Property - Impervious Surfaces Variance Request (#99-15)

Dear Mr. Kelley:

Thank you for the opportunity to review the above referenced variance request. The applicant is seeking an after-the-fact variance for a macadam parking pad that exceeds the 15% impervious surfaces limitation. The property contains 0.5 acres in a designated Limited Development Area (LDA). Prior to the construction of the parking pad, the property contained 7.2% (1,570 square feet) of impervious surfaces. The property now contains 19.9% (4,365 square feet) of impervious surfaces. The application indicates that the driveway is used by four property owners, but the macadam actually lies on two properties, the Nichols/Pettie property and the Railey property (#99-12). We oppose the variance request because it appears that alternatives are available that would eliminate the need for a variance. In order to obtain a variance, the applicant must show that he or she has suffered an unwarranted hardship. We do not believe that the applicant has satisfied this test because alternatives are available.

New impervious surfaces impact the environment by altering natural drainage patterns, impeding infiltration, increasing runoff velocity, removing vegetation, and negatively impacting groundwater discharge. We strongly urge the applicant to consider alternative paving materials such as turf-block grid pavers, or remove existing impervious surfaces to accommodate the additional paving. The applicant could also utilize parking strips that would provide a solid place for parking vehicles without paving over the entire surface (see attached).

Please include this letter in the record for variance request. Please notify the Commission in writing of the decision made in this case. If you have any questions regarding these comments, please do not hesitate to contact me at (410) 260-7123.

Sincerely,

A handwritten signature in cursive script, appearing to read "Meredith E. Lathbury".

Meredith E. Lathbury
Natural Resources Planner
MEL/jjd

cc: Roy List, DEPRM
BC 530-99

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

TTY FOR DEAF ANNAPOLIS-974-2609 D.C. METRO-586-0450

27E13

99-15

ADMINISTRATIVE VARIANCE APPLICATION - CHESAPEAKE BAY CRITICAL AREA REGULATIONS

Part A: Applicant/Property Owner Information.

Property Address 950A Thompson Blvd. Subdivision _____
Baltimore, MD 21221

Applicant (s) Clarence Nichols & Francine Pettie Phone No. (410)391-4945

Mailing Address 950A Thompson Blvd.
Baltimore, MD 21221

City Baltimore State MD Zip Code 21221

Property Owner (s) Clarence Nichols & Francine Pettie Phone No. (410)391-4945

Mailing Address 950A Thompson Blvd.
Baltimore, MD 21221

City Baltimore State MD Zip Code 21221

Part B. Property and Critical Area Information.

after-the-fact

(NOTE: LEAVE BLANK. THIS BLOCK WILL BE FILED IN BY DEPRM PERSONNEL)

Permit/SC No. _____ to construct a moeodam ^{parking pad} ~~driveway~~ thus exceeding allowable

CA Designation (s): IDA LDA RCA Acreage/Lot Size 0.5A ^{impervious surface}

Existing Impervious Surfaces 1570 square ft. 7.2 percent of porperty _____

Proposed Impervious Surfaces 4365 square ft. 19.9 percent of porperty _____

Water: public private public Sewer: private

Waterfront? yes _____ no Waterbody _____

Is the proposed activity within the 100 foot buffer? yes _____ no

Is the proposed activity within the limits of Habitat Protection Areas, tidal wetlands,

or nontidal wetlands/associated buffers? yes _____ no

If so, list type (s) _____

Is the proposed activity within forest or developed woodland? yes _____ no

Variance Type (s): impervious surface limit variance _____ other variance _____

Section (s) of Code from which variance is being requested 26-453

Reviewer Kent Kelly Date 10/5/99

CHESAPEAKE BAY CRITICAL AREA REGULATIONS

ADMINISTRATIVE VARIANCE APPLICATION INSTRUCTIONS AND INFORMATION

Part C. Project Description

Briefly describe the proposed project or activity for which a variance is requested.

To pave the previous gravel driveway, shared by four families, with asphalt.

Part D. Alternates to Variance Request.

Briefly describe any alternates to requesting a variance which you considered, and why these alternates are not feasible.

(1) Gravel Driveway: The gravel driveway was the cause of numerous problems for all four families. Whenever we had rain the driveway would wash out due to the problems with drainage in the area. The effect of the driveway washing out would be potholes and puddles. As a result the potholes and puddles cause damage to the vehicles. Due to the poor drainage in the area the water would stagnate, in the holes in turn this attracted swarms and gnates and other pathogens carrying insects.

(2) Dirt Driveway: Dirt driveways are not only messy but unsafe also. Like gravel driveways, mud tends to shift and creat potholes and puddles that can also cause significant damage to vehicels as well as unhealthy living conditions.

(3) Concrete Driveway: Concrete is imprevious just like asphalt. With the driveway being long, concrete, is not as cost effective as asphalt.

Part E. Variance Provisions of the Critical Area Criteria (COMAR 27.01.11)

Briefly explain any special conditions or circumstances which exist that peculiar to the land or structure and how a literal enforcement of the provisions of the regulations relative to these conditions or circumstances would result in unwarranted hardship.

Proir to paving the driveway there were problems with residential flooding, and water was stagnating on the property. This in turn caused a serious problem with pathogen carrying insects. Since paving the driveway the water has been draining towards the main street and into the calvert.

Briefly explain how a literal interpretation of the Critical Area regulations will deprive you (the property owner) of rights commonly enjoyed by other properties in similar areas within the Critical Area.

A literal interpretation of the Critical Area regulations will deprive us (the property

owner) of rights commonly enjoyed by other property owners in similar areas. The fact that numerous property owners have the same type of asphalt driveways in the Critical Area. These property owners with asphalt driveways have benefited from having an asphalt driveway over a gravel or dirt driveway without causing harm to the Critical Area.

Briefly explain how granting of the variance will not confer upon you (the property owner) any special privilege that would be denied by the Critical Area regulations to other lands or structures within the Critical Area.

Granting of this variance will not confer any special privilege upon us (the property owner) that would be denied by the Critical Area Regulations to other homeowners that fall under the Critical Area purview. As previously stated before several other homeowners in our neighborhood also have asphalt driveways.

Briefly explain how the variance request is not based upon you (the property owner), and how the request does not arise from any conditions related to land or building use, either permitted or nonconforming, on any neighboring property.

The four separate homeowners that used the gravel driveway decided to pave the driveway due to the problems with the gravel driveway. All four homeowners paid one fourth of the cost to pave the driveway. We were told that each property was within 5,000 square feet of impervious area, so we were under the impression that we did not need a permit. We were not informed of the Critical Area Regulations by the previous homeowner or the real estate agent. Due to being uninformed we (the homeowners) did not know that asphaltting the driveway fell under the Critical Area Regulations. Although, ignorance is not a legal excuse, we believe that by being uninformed by the proper authorities to be relevant in this situation.

Briefly describe how granting of the variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area, and how granting of the variance will be in harmony with the general spirit and intent of the Critical Area regulations. Include any proposed mitigative measures to minimize impact to these resources.

We believe that the granting will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area. Granting of the variance allows and directs the water that would stagnate in the yards and driveway to flow towards the culvert located across the main street. Before asphaltting the driveway the water was not draining properly. This caused the trees and plants that we had planted to die from the land being saturated with water. With the asphalt driveway the water drains properly, now the trees and plants have a chance to grow. Thus we have planted about thirty trees and bushes, and we have planned to plant several more. As homeowners we believe we are taking mitigative measures to minimize impact to the Critical Area resources.

Part F. Additional Information.

Use this space to provide any other information about the site or project pertinent to this variance request. Attach additional sheets if necessary.

We recently had a survey done showing that the driveway that comes down to our house, and is shared by three other neighboring properties. This survey shows that the driveway is not part of our property as the inspector believes. When we told him (Mr. Roy List), he said that we needed to have a survey. We did have a survey done showing where our property runs beside the asphalt driveway. We have supplied Mr. List with a copy of the survey. Without half of the driveway being included as part of our impervious area, we believe that we do not exceed the Critical Area regulations.

Francine Pettie 8/7/99
Applicant Signature Date

Clarence Nichols 8/7/99
Applicant Signature Date

Francine Pettie 8/7/99
Property Owner Signature Date

Clarence Nichols 8/7/99
Property Owner Signature Date

RECEIVED

OCT 13 1999

CHESAPEAKE BAY
CRITICAL AREA COMMISSION