

CS 618-99
VAR

Elder, Stephen
1002

MSA, S-1829-401

LC comments
12-14/99
efred:mar/10

BOARD OF APPEALS FOR CHARLES COUNTY, MARYLAND

IN THE MATTER OF THE PETITION OF
STEPHEN G. ELDER TO CONSTRUCT
A SINGLE FAMILY DWELLING IN THE
CRITICAL AREA BUFFER

Docket #1002

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DECISION AND ORDER

This matter came before the Board of Appeals for a hearing on January 11, 2000, at 7:00 p.m., in the Commissioners' Meeting Room of the County Government Building, La Plata, Charles County, Maryland, for a Variance to construct a Single Family Dwelling in the Critical Area Buffer in accordance with Article XIX, Section 416 of the Charles County *Zoning Ordinance*.

A quorum of Board Members was present for, and participated in, the hearing. The notice of the hearing was properly advertised, adjacent property owners notified, and the property was posted in accordance with the applicable regulations. The Applicant, Stephen G. Elder, and William Thomlinson represented the case.

Based upon the testimony presented at the hearing, along with the Petition, and the standards set forth by the *Zoning Ordinance*, and considering the proposed use on the health, safety, welfare, and interest of the general public, the Board of Appeals makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Applicant, Stephen G. Elder, is the owner of a 6.658 acre parcel of land

(19)

located at 10380 Bluff Point Road, Nanjemoy, Charles County Maryland, Tax Map 61, Parcel 13, Grid 23, in the 3rd Election District. This parcel of land is zoned AC, Agricultural Conservation and is located in the RCZ, Resource Conservation Zone, a designation within the Chesapeake Bay Critical Area.

2. A partially-constructed dwelling is located within the 100-foot Chesapeake Bay Critical Area Buffer and an existing wooden pier extends over a tidal marsh into Nanjemoy Creek. The subject property contains a large area of tidal marsh and a tributary stream that flows into the marsh and eventually into Nanjemoy Creek. As required by the Zoning Ordinance, the Critical Area Buffer has been expanded to include the area surrounding the stream.
3. The Applicant is seeking a variance from the Critical Area Buffer requirements, for the construction of a single family dwelling and sewage disposal system within the 100-foot Critical Area Buffer. The intent of the proposed development is to complete the construction of the dwelling that was initiated under a building permit issued in 1981, prior to the establishment of the Chesapeake Bay Critical Area law. The Applicant claims that there are no reasonable areas on the property outside the Critical Area Buffer on which to locate the house. No forest is to be disturbed for the completion of the dwelling, although the installation of the sewage disposal area at its proposed location would require 1,850 ft.² of forested Buffer to be disturbed.
4. Special conditions do exist on this property and the strict application of the

Zoning Ordinance would result in unusual practical difficulties to the property owner, with respect to achieving full compliance with the Critical Area Buffer requirements. There is no reasonable alternative for the location of the dwelling outside the Buffer and the completion of the dwelling would improve the existing environmental conditions through the removal of construction debris and rehabilitation of the deteriorating structure.

5. Because the parcel is grandfathered from Critical Area density restrictions and the rehabilitation of the structure would help minimize existing environmental impacts, the Chesapeake Bay Critical Area Commission does not oppose the granting of this variance for the completion of the partially-built dwelling. However, to avoid new impacts to the Buffer and to protect the water quality of Nanjemoy Creek, all efforts should be made to locate the proposed sewage disposal area outside the Buffer. Therefore, the Commission does not oppose the variance requested, with the condition that alternative sites outside of the Buffer be explored for the location of the sewage disposal area and that proper mitigation is provided.

6. Due to the expansive tidal marsh and intermittent stream on the site, the property is almost exclusively comprised of the Critical Area Buffer and a variance would be required in order to construct a new dwelling on the site. In addition, the construction of the existing partially-built structure was permitted by Charles County in 1981 and completion of this dwelling would improve the existing environmental conditions on the site. Denial of this

variance would therefore result in a hardship not generally shared by other owners of residential properties in the Critical Area.

7. Adjacent properties within the Cedar Lane subdivision contain dwellings within the 100-foot Critical Area Buffer. Were it not for extenuating circumstances at the time of construction, the existing structure on the Elder property would have been completed and no variance would be required. Therefore, the strict enforcement of the Zoning Ordinance would deny the Applicant the ability to utilize the same setback line from the water as shared by other owners of property in the area.
8. Granting of the requested variance would not confer special privileges upon the Applicant, but would merely allow the completion of a dwelling that was previously permitted by Charles County in 1981. With respect to setback distance from the water, the location of the existing structure is similar to those on surrounding properties.
9. No self-imposed conditions exist on the property.
10. The Applicant does not claim greater profitability or lack of knowledge of the restrictions as a justification for a variance in this case.
11. If the sewage disposal area is moved to a location outside the Buffer, the granting of this variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat in the Critical Area. However, installation of the sewage disposal area at its proposed location would require clearing 1,850 ft.² of forest within the Critical Area Buffer and could adversely affect

the water quality of Nanjemoy Creek and impair the habitat protection functions of the Buffer. The site plan indicates adequate areas outside the Buffer to locate the proposed sewage disposal system. Locating the sewage disposal area in a non-Buffer areas would eliminate the need to clear forested land and would protect the water quality of Nanjemoy Creek. Planning Staff and Critical Area Commission staff recommended that the applicant provide mitigation for any disturbance to the Buffer at a ratio of 3:1 in order to minimize any additional Buffer impacts. Mitigation planting should occur within the Buffer between the house and the water, where there are existing runoff and erosion concerns.

12. By utilizing and minimizing the existing house foundation, the Applicant has not proposed to increase impervious surfaces closer to mean high water than the existing structure. However, the proposed sewage disposal area has not been located as far back from tributary streams as possible. All efforts should be made to locate the sewage disposal area out of the Buffer and further away from the tributary stream.
13. Although the site contains greater than 15 percent existing forest cover, mitigation planting will be required for any disturbance to non-Buffer forested areas at no less than an equal area basis. Planning Staff and Critical Area staff recommended that any new impervious surface or vegetation disturbance within the Buffer be mitigated at no less than a 3:1 ratio. Mitigation plantings at this ratio are necessary to insure that the habitat

protection and water quality functions of the Buffer are not impaired.

ORDER

Based upon the above Findings of Fact and Conclusions of Law, it is, this
14th day of February, 2000, by the Board of Appeals for Charles
County, Maryland

ORDERED, that the request for Variance is hereby APPROVED, subject to
the following conditions:

1. The Applicant shall test alternative septic disposal sites outside the Buffer, near the area marked "proposed well" on the current site plan. If percs are not acceptable in this area then the applicant may locate the septic disposal area as is shown on the current site plan that was submitted to the Board.
2. The Applicant will provide mitigation plantings at a 3:1 ratio for any new impervious surface generated or vegetation removed within the Critical Area Buffer and at a 1:1 ratio for any disturbance to vegetation outside of the Buffer. All required plantings should occur in the Buffer between the house and the tidal marsh.

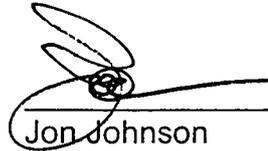
**BOARD OF APPEALS FOR
CHARLES COUNTY, MARYLAND**



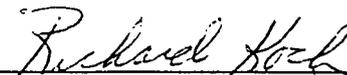
A. J. Perk, Chairman



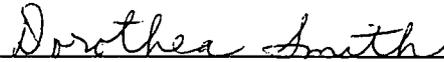
Ken White, Vice Chairman



Jon Johnson



Richard Koch



Dorothea Smith



Lisa Ralston, Clerk

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Judge John C. North, II
Chairman

Ren Serey
Executive Director

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

December 14, 1999

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

Mr. Douglas G. Wetmore
Charles County Planning Department
P.O. Box B
La Plata, MD 20646

RE: Variance #1002, Stephen Elder

Dear Mr. Wetmore:

Thank you for providing information on the above referenced variance application. The applicant is requesting a variance to permit construction of a home within the Critical Area Buffer. The property is designated RCA and is developed with a dirt road and a partially constructed dwelling, including footers and some walls.

Provided this parcel is properly grandfathered, this office does not oppose the siting of a single family dwelling on it. However, new impacts should be minimized as much as possible. The property is constrained by the Critical Area Buffer from both the tidal wetlands as well as the stream which crosses the property. Given that the existing home site has already been cleared and graded (as we observed on our site visit on December 13, 1999), it seems that allowing rehabilitation and completion of the structure already there would help minimize new impacts to the Buffer. We recommend that new disturbance not be permitted to intrude any further into the Buffer than already exists.

We recommend that alternative sites, out of the Buffer and already cleared, be explored for the septic system. For example, would it be possible to move the well to a different location and move the septic system into the area that is already cleared? The distance between the stream and the septic system should be maximized, while also minimizing clearing (and subject to Health Department approval).

This office does not oppose the variance requested, provided that impacts are minimized and appropriate mitigation is provided. We recommend mitigation for all new disturbance at a 3:1 ratio. This mitigation should occur within the Buffer between the house and the water. As noted during our site visit, there is ample opportunity to stabilize and restore the Buffer.

Thank you for the opportunity to review and comment on this variance application. Please include this letter in your file and submit it as part of the record for this variance. Also, please notify the Commission in writing of the decision made in this case. If you have any questions or would like additional information, please contact me at (410) 260-7035.

Sincerely,

LeeAnne Chandler

LeeAnne Chandler
Natural Resources Planner

cc: CS618-99

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

RECEIVED

VARIANCE REQUEST

DEC 7 1999

Request:

CHESAPEAKE BAY
CRITICAL AREA COMMISSION

The Applicant, Stephen G. Elder is requesting a variance to the Charles County Critical Area program, for the construction of a single family detached residence located within the Chesapeake Bay Critical Area Buffer.

Background and Justification:

The property was recorded on November 30, 1970 (P.B. 15; P. 88). Subsequently a Site Plan and Single Family Site Plan were approved by Charles County in 1981. In addition, a sewage easement was approved by the Health Department. Construction began under the building permit (Permit No. 701169), with the construction of the foundation. Due to unforeseen circumstances construction was not completed.

The Applicant proposes to utilize the existing foundation for the construction of their residence. In addition, the Applicant is proposing a smaller home, in order to minimize impacts, while still addressing their needs. The utilization of the existing foundation is appropriate whereas the house is located to avoid and minimize disturbance in the Critical Area. Except for the installation of the septic disposal, within the existing sewage easement, no forest is proposed to be disturbed. In addition to the reforestation utilizing native trees for compensation of forest removed for the septic system, the Applicant is proposing voluntary supplemental landscaping. As illustrated on the Site Plan, the landscaping is proposed to increase the buffer adjacent to the shoreline, while also providing an aesthetic setting for the home.

Variance Application

Item VI-Chesapeake Bay Critical Area Requirements

A. The Granting of this variance will not adversely affect water quality, adversely impact fish, wildlife, or plant habitat within the Critical Area. The granting of the variance is consistent with the spirit and intent of the County's Critical Area law.

B. As indicated, the variance request is not based upon conditions or circumstances which were self-created, or self-imposed, nor does this request arise from conditions of circumstances related to other parcels. This request reflects existing conditions of the property and the Applicant's attempt to minimize impact, while still allowing for the utilization of the lot.

C. The reasons set forth in this application justify the variance. As indicated, the variance is the minimum variance that will make possible the reasonable use of the

land, and existing foundations. The Applicant has proposed to reduce the building footprint from that originally proposed by the previous property owner, in the spirit of minimizing impacts to the Critical Area, while still providing for their needs.

D. The Granting of the Variance to the buffer requirements results in new impervious areas being located as far back from Mean High Tide, Tidal Wetlands, and Tributary Streams, as is feasible.

1. Reforestation is proposed on the site to offset disturbed forested woodlands on an equal basis. The location of the forested area is shown adjacent to slopes and the shoreline.

2. Since the woodlands on-site exceed fifteen percent of the parcel, afforestation is not required. However, the Applicant is proposing supplemental landscaping, and has identified the shoreline, as well as the existing buffer as appropriate areas for this to be provided.

3. The Applicant is intending to provide additional landscaping, in addition to the reforestation required, as a mitigation measure related to expanding habitat protection areas, as indicated in the Charles County Critical Area Program.

F. The Granting of this variance will be in harmony with the general purpose and intent of the Zoning Ordinance. The construction of the residential dwelling is not a prohibited use in this zone. The construction of the dwelling will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

Impervious:
 54 s.f. x 50% = 2,027 s.f.
 s.f. (Foundation)

Impervious:
 54 s.f. x 50% = 2,617 s.f.
 s.f. (incl. porch & carport)
 x 50% = 234 s.f.

ed Area = 9,973 s.f.

Charles County Critical Area Program, for the Construction of a
 ched residence within the Critical Area Buffer.

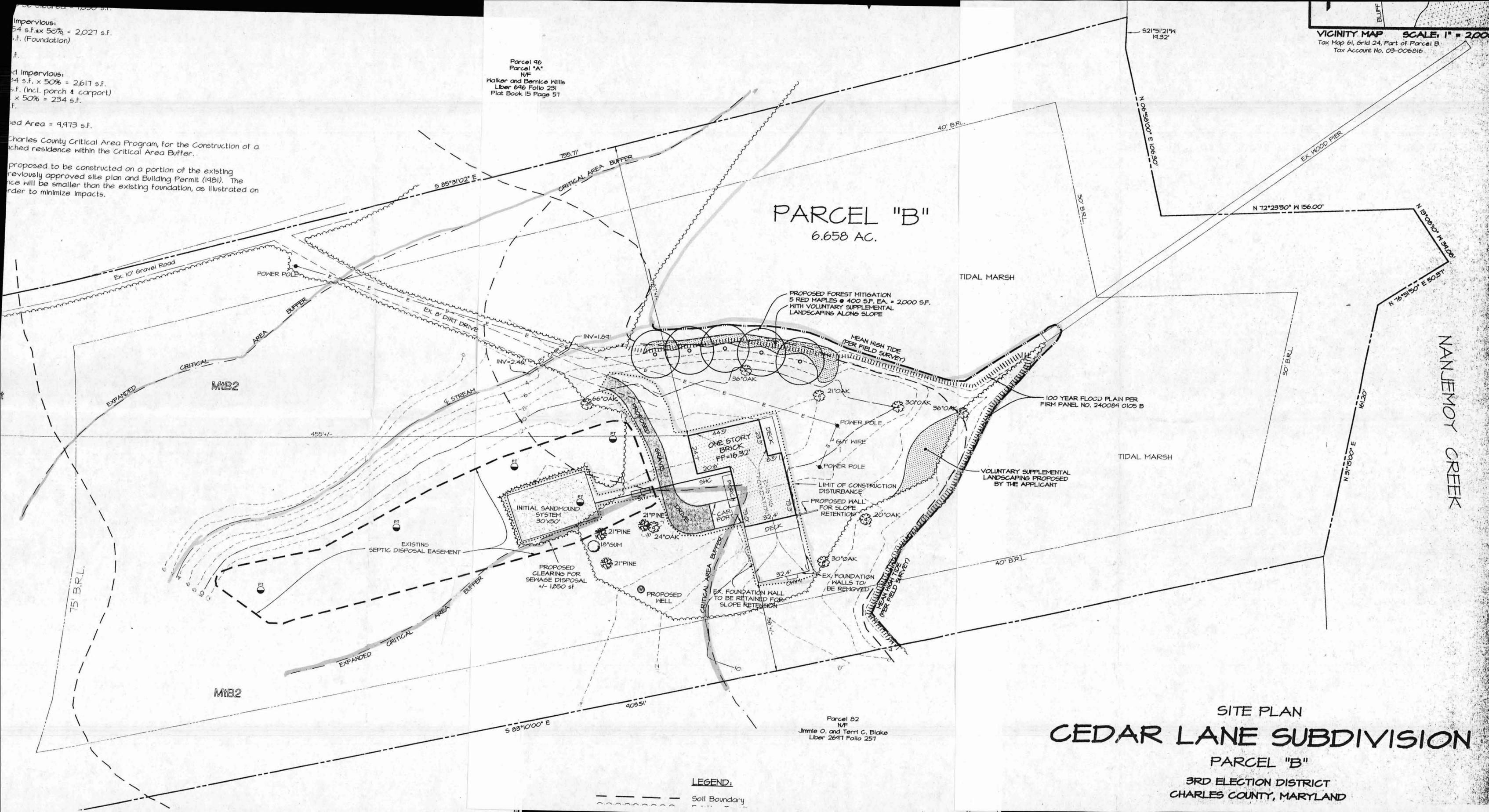
proposed to be constructed on a portion of the existing
 reviously approved site plan and Building Permit (1981). The
 nce will be smaller than the existing foundation, as illustrated on
 rder to minimize impacts.

VICINITY MAP SCALE: 1" = 200'
 Tax Map 61, Grid 24, Part of Parcel B
 Tax Account No. 03-006816

Parcel 96
 Parcel "A"
 N/F
 Walker and Bernice Willis
 Liber 646 Folio 231
 Plat Book 15 Page 51

PARCEL "B"
 6.658 AC.

NANJEMOY CREEK



LEGEND:

Soil Boundary

SITE PLAN
CEDAR LANE SUBDIVISION
 PARCEL "B"
 3RD ELECTION DISTRICT
 CHARLES COUNTY, MARYLAND