

USA S. 1829.405

QC 09-99
VAR

Mill, Greg
V-406

Letter DMC
D/25/99

- Get copies of
- hearing exhibits
- transcript

BC 09-99

J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL
CARMEN F. SHEPHERD
DEPUTY ATTORNEY GENERAL
DONNA HILL STATON
DEPUTY ATTORNEY GENERAL



JOSEPH P. GILL
ASSISTANT ATTORNEY GENERAL
PRINCIPAL COUNSEL
MARIANNE D. MASON
ASSISTANT ATTORNEY GENERAL
DEPUTY COUNSEL
PAMELA D. ANDERSEN
PAMELA P. QUINN
STUART G. BUSSERT, II
SHAUN P. K. FENLON
BEVERLY J. CIHAN
CHRISTINE K. McSHERRY
RACHEL PAPPAPOTIS
ASSISTANT
ATTORNEYS GENERAL
SHARA MERVIS ALPERT
STAFF ATTORNEY

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF NATURAL RESOURCES

FAX NO.:

(410)260-8364

WRITER'S DIRECT DIAL NO.:

(410)260-8351
mmason@dnr.state.md.us

October 15, 1999

Mr. Scott MacGlashan, Clerk
Circuit Court for Queen Anne's County
Court House
Centreville, Maryland 21617

RECEIVED
OCT 22 1999
CHESAPEAKE BAY
CRITICAL AREA COMMISSION

RE: *John C. North, II, v. Board of Appeals for Queen Anne's County, Case # V-406* Gregory R. and Susan B. Mill, Civil No. 7068

Dear Mr. MacGlashan:

Please accept for filing the enclosed Stipulation of Dismissal in this proceeding pursuant to Rule 2-506. Please bring this Stipulation to the attention of the Court at your earliest possible convenience, as the oral argument in this case is scheduled for October 19, 1999. Kindly notify me when the Court has signed the Order of Dismissal. Thank you for your assistance.

Very truly yours,

Marianne D. Mason
Marianne D. Mason
Deputy Counsel

cc: John C. North, II ✓
Patrick E. Thompson
Joseph A. Stevens.

IN THE CIRCUIT COURT FOR QUEEN ANNE'S COUNTY

PETITION OF:

JOHN C. NORTH, II, CHAIRMAN,
CHESAPEAKE BAY CRITICAL AREA
COMMISSION
45 Calvert Street
Annapolis, Maryland 21401

FOR JUDICIAL REVIEW OF THE DECISION
OF THE:
BOARD OF APPEALS OF QUEEN ANNE'S COUNTY
107 N. Liberty Street
Centreville, Maryland 21617

CASE No.
7068

IN THE CASE OF:

V-406-Request for Variance to the
Critical Area buffer requirements
Gregory R. and Susan B. Mill

* * * * *

STIPULATION OF DISMISSAL

Pursuant to Rule 2-506 (a)(2), John C. North, II, Chairman, Chesapeake Bay Critical Area Commission ("Chairman North"), the County Commissioners of Queen Anne's County ("County"), and Gregory R. Mill and Susan B. Mill ("Mr. and Mrs. Mill") (collectively "the parties"), by their undersigned attorneys, file this Stipulation of Dismissal of the above action and in support thereof say as follows:

1. Chairman North filed a Petition for Judicial Review in this matter on May 24, 1999. The County and Mr. and Mrs. Mill filed Responses to the Petition. All parties have filed their Memoranda of Law. Oral argument is scheduled for October 19, 1999.
2. The issues raised in this case have been resolved to the satisfaction of all the parties to this appeal. Accordingly, the parties agree to the voluntary dismissal of this matter.
3. The parties agree that each will bear its own expenses of litigation, and that

Petitioner will pay the court costs of this action.

WHEREFORE, for the reasons set forth above, and pursuant to this Stipulation of Dismissal, the parties respectfully request this Honorable Court to enter an Order of Dismissal of the above-captioned action, with prejudice.

Respectfully submitted,
J. JOSEPH CURRAN, JR.,
ATTORNEY GENERAL OF MARYLAND



Marianne D. Mason
Assistant Attorney General
580 Taylor Avenue
Annapolis, Maryland 21401
(410) 260-8351
Attorneys for John C. North, II



Patrick E. Thompson
Foster, Braden, Thompson & Palmer
102 East Main Street Suite 203
Stevensville, Maryland 21666
(410) 643-4000
Attorney for County Commissioners of Queen
Anne's County



Joseph A. Stevens
114 W. Water Street
Centreville, Maryland 21617
(410) 758-4600
Attorney for Gregory R. and Susan B. Mill

IN THE CIRCUIT COURT FOR QUEEN ANNE'S COUNTY

PETITION OF:

JOHN C. NORTH, II, CHAIRMAN,
CHESAPEAKE BAY CRITICAL AREA
COMMISSION
45 Calvert Street
Annapolis, Maryland 21401

FOR JUDICIAL REVIEW OF THE DECISION
OF THE:
BOARD OF APPEALS OF QUEEN ANNE'S COUNTY

CASE NO.
7068

IN THE CASE OF:

V-406-Request for Variance to the
Critical Area buffer requirements
Gregory R. and Susan B. Mill

* * * * *

ORDER

Upon consideration of the parties' Joint Stipulation of Dismissal of the above-captioned action, it is this _____ day of _____, 1999,

ORDERED, that pursuant to Maryland Rule 2-506, the above-captioned action is hereby DISMISSED, with prejudice. Costs to be paid by Petitioner.

JUDGE

Copies to:

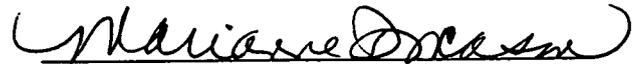
Marianne D. Mason

Joseph A. Stevens

Patrick E. Thompson

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT, on this 18th day of October, 1999, I sent a copy of the foregoing Stipulation of Dismissal by U.S. mail, first class postage prepaid, to Joseph A. Stevens, Esquire, 114 W. Water Street, Centreville, Maryland 21617 and to Patrick E. Thompson, Esquire, 102 East Main Street, Suite 203, Stevensville, Maryland 21666.



Marianne D. Mason

QC 09-99 Rev



THE BOARD OF APPEALS
OF QUEEN ANNE'S COUNTY

107 N. LIBERTY STREET
CENTREVILLE, MARYLAND 21617

410-758-1255 PLANNING
410-758-2905 FAX

May 28, 1999

TO ALL INTERESTED PARTIES:

RE: NOTICE OF FILING OF PETITION FOR JUDICIAL REVIEW

Petition of John C. North, II, Chairman, Chesapeake Bay Critical Area
Commission
For Judicial Review of the Decision of the Queen Anne's County Board of
Appeals
Before the Board of Appeals of Queen Anne's County
Case No. V-406 - Gregory R. & Susan B. Mill
Request for Variance to the Critical Area Buffer Requirements for construction of
a swimming pool in the 100-ft. Buffer.

Dear Interested Party:

A petition for judicial review has been filed in the above matter. It was filed on May 24, 1999 in the Circuit Court for Queen Anne's County, Maryland under Civil Action No. 7068. It was received by the undersigned Clerk to the Board of Appeals on May 27, 1999.

If you wish to oppose the petition filed by John C. North, II, Chairman, you must file a response with the Court within 30 days of the date of this notice, unless the Court shortens or extends the time.

Sincerely,

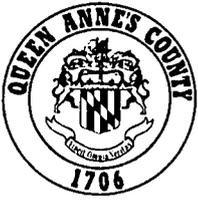
Cathy Maxwell
Clerk

CC: Board of Appeals File No. V-406

RECEIVED

JUN 2 1999

CHESAPEAKE BAY
CRITICAL AREA COMMISSION



THE BOARD OF APPEALS
OF QUEEN ANNE'S COUNTY

107 N. LIBERTY STREET
CENTREVILLE, MARYLAND 21617

410-758-1255 PLANNING
410-758-2905 FAX

May 28, 1999

Mr. Scott MacGlashan, Clerk of Court
Circuit Court for Queen Anne's County
Court House
Centreville, Maryland 21617

RE: Civil Action No. 7068

Dear Mr. MacGlashan:

Enclosed is Certificate of Compliance for the above case.

Thank you.

Sincerely,

Cathy Maxwell
Clerk

Enc.

JOHN C. NORTH, II, CHAIRMAN
CHESAPEAKE BAY CRITICAL
AREA COMMISSION

*
*
*
*

IN THE
CIRCUIT COURT
FOR
QUEEN ANNE'S COUNTY

VS.

BOARD OF APPEALS OF QUEEN
ANNE'S COUNTY
Defendant

*
*
*

CASE NO. V-406

*

CIVIL ACTION NO. 7068

* * * * *

CERTIFICATE OF COMPLIANCE

I hereby certify that on the 28th of May, 1999 I mailed by regular mail to all parties to the agency proceeding a notice that informed them that (1) a petition for review had been filed, the date of the filing, the name of the Court, the civil action number, and (2) notified them that if they wish to oppose the petition, they must file a response with the Circuit Court within thirty (30) days after the date that the notice was mailed unless the Court shortens or extends the time. The following persons were notified:

- John C. North, II, Chairman, Chesapeake Bay Critical Area Commission,
45 Calvert St., Annapolis, MD 21401
- J. Joseph Curran, Jr., Esq., Attorney General of Md., Dept. of Natural Resources,
580 Taylor Ave., Annapolis, MD 21401
- Marianne D. Mason, Esq., Assistant Attorney General of Md., Dept. of Natural
Resources, 580 Taylor Ave., Annapolis, MD 21401
- Gregory R. & Susan B. Mill, 2704 Sherman Dr., Chester, MD 21619
- Joseph A. Stevens, Esq., PO Box 146, Centreville, MD 21617
- Pierson C. & Sarah L. Jones, PO Box 29, Crumpton, MD 21629
- Paul Miller, 1773 Harbor Dr., Chester, MD 21619
- Marion R. Leaverton, 200 Woodbury Farm Lane, Queenstown, MD 21658
- Wayne L. Gardner, 1312 Roe Rd., Sudlersville, MD 21668
- William D. Moore, 400 Pier Rd., Stevensville, MD 21666
- Robert B. Friday, 1905 Roberta Dr., Chester, MD 21619
- J. Donald Braden, Esq., 102 E. Main St., Suite 203, Stevensville, MD 21666
- Michael R. Foster, Esq., 102 E. Main St., Suite 203, Stevensville, MD 21666
- Patrick E. Thompson, Esq., 102 E. Main St., Suite 203, Stevensville, MD 21666
- Christopher F. Drummond, Esquire, 119 Lawyers Row, Centreville, MD 21617
- Steven Kaii-Ziegler, Director, Dept. of Planning & Zoning, 107 N. Liberty St.,
Centreville, MD 21617
- James H. Barton, III, Zoning Administrator, Dept. of Planning & Zoning, 107 N. Liberty
St., Centreville, MD 21617

Frank Lynch, Zoning Inspector, Dept. of Planning & Zoning, 107 N. Liberty St.,
Centreville, MD 21617



Cathy Maxwell, Clerk
Queen Anne's County Board of Appeals

THE CIRCUIT COURT FOR QUEEN ANNE'S COUNTY

PETITION OF :
JOHN C NORTH II, CHAIRMAN, CHESAPEAKE BAY CRITICAL AREA COMMISSION :
FOR JUDICIAL REVIEW :
OF THE DECISION OF THE : Civil # 7068
QUEEN ANNE'S COUNTY BOARD OF APPEALS :
IN THE CASE OF :
BOA CASE V 406 :

: : : :

NOTICE OF FILING OF PETITION FOR JUDICIAL REVIEW

TO THE ADMINISTRATIVE AGENCY NAMED ABOVE:

In accordance with Rule 7-202, you are notified that the attached petition for judicial review of an order or action of your agency was filed in this Court on **MAY 24, 1999**, and assigned the above civil action number for judicial review.

You are required to give written notice promptly by ordinary mail to all parties to the referenced agency proceeding. That notice must set forth (1) that the petition for judicial review has been filed, the date of the filing, the name of this Court, the civil action number and (2) that a party wishing to oppose the petition must file a response in this Court within 30 days after your notice is mailed unless the Court shortens or extends the time.

You are further required to file with this Court, within 5 days after mailing such notice, a certificate of compliance with the requirements of the preceding paragraph, showing the date of the agency's notice and the names and addresses of the persons to whom it was mailed.

SCOTT MACGLASHAN, Clerk

By: /s/ Valerie T. Ruth
Deputy Clerk

May 25, 1999

RECEIVED
MAY 27 1999

QUEEN ANNE'S CO.
PLANNING & ZONING

IN THE CIRCUIT COURT FOR QUEEN ANNE'S COUNTY

*

PETITION OF:

JOHN C. NORTH, II, CHAIRMAN,
CHESAPEAKE BAY CRITICAL AREA
COMMISSION
45 Calvert Street
Annapolis, Maryland 21401

*

*

FOR JUDICIAL REVIEW OF THE DECISION
OF THE:
BOARD OF APPEALS OF QUEEN ANNE'S COUNTY
107 N. Liberty Street
Centreville, Maryland 21617

*

CIVIL
ACTION
No. 7068

*

IN THE CASE OF:

BOA Case V-406 - --Request for Variance
to the Critical Area buffer requirements
for construction of a swimming pool in the 100-foot Buffer-
Gregor R. and Susan B. Mill and Pierson C. and Sarah L. Jones
(Zoning Certificate No. Z-98-2017)

*

* * * * *

PETITION FOR JUDICIAL REVIEW

John C. North, II, Chairman, Chesapeake Bay Critical Area Commission
("Chairman North") by his attorneys, J. Joseph Curran, Jr., Attorney General of
Maryland, and Marianne D. Mason, Assistant Attorney General, pursuant to Rule 7-201,
files this Petition for Judicial Review and states:

1. Chairman North hereby requests judicial review of the April 26, 1999 decision of the
Board of Appeals of Queen Anne's County in Case No. V- 406 (Zoning Certificate No.
Z-98-2017 --Pool). This decision granted a variance to the Critical Area buffer
requirements to permit Gregory R. and Susan B. Mill and Pierson C. and Sarah L. Jones

RECEIVED
CLERK OF COURT
MAY 23 11 28 AM '99
QUEEN ANNE'S COUNTY

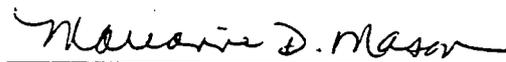
to construct a new swimming pool in the Critical Area Buffer on a lot at 518 Victoria Way, Stevensville, Maryland in Case No. V-406.

2. Chairman North was not a party to the agency proceeding. Chairman North has authority to note this appeal and has standing to file this appeal pursuant to Annotated Code of Maryland , Natural Resources Article, §8-1812 (a) and (c).

Respectfully submitted,

J. JOSEPH CURRAN, JR.

ATTORNEY GENERAL OF MARYLAND



Marianne D. Mason
Assistant Attorney General
Department of Natural Resources
580 Taylor Avenue
Annapolis, Maryland 21401
(410) 260-8351

Attorneys for John C. North, II,
Chairman, Critical Area Commission

9-99

SMC

JOSEPH CURRAN, JR.
ATTORNEY GENERAL
CARMEN F. SHEPHERD
DEPUTY ATTORNEY GENERAL
DONNA HILL STATON
DEPUTY ATTORNEY GENERAL



JOSEPH P. GILL
ASSISTANT ATTORNEY GENERAL
PRINCIPAL COUNSEL
MARIANNE D. MASON
ASSISTANT ATTORNEY GENERAL
DEPUTY COUNSEL
PAMELA D. ANDERSEN
PAMELA P. QUINN
STUART G. BUPPERT, II
SHAUN P. K. FENLON
BEVERLY J. CIHAN
CHRISTINE K. McSHERRY
RACHEL PAPPAFOTIS
ASSISTANT
ATTORNEYS GENERAL
SHARA MERVIS ALPERT
STAFF ATTORNEY

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF NATURAL RESOURCES

FAX NO.:
(410) 260-8364

WRITER'S DIRECT DIAL NO.:
(410) 260-8351
mmason@dnr.state.md.us

May 18, 1999

Mr. Scott McGlashan, Clerk
Circuit Court for Queen Anne's County
100 Court House Square
Centreville, Maryland 21617

Dear Mr. McGlashan:

RE: Petition of John C. North, II, Chairman, Chesapeake Bay Critical Area Commission, for Judicial Review of the Decision of the Board of Appeals of Queen Anne's County in Case #V-406 Variance to Permit Construction of New Swimming Pool in the 100-foot Critical Area Buffer: Gregory R. and Susan B. Mill and Pierson C. and Sarah L. Jones, Civil Action No. _____

Dear Mr. McGlashan:

Please accept for filing the enclosed Petition for Judicial Review in this proceeding pursuant to Rule 7-202. Enclosed with the original Petition is a copy for the Board of Appeals of Queen Anne's County, pursuant to Rule 7-202 (d). Also enclosed is an extra copy of the petition for you to date-stamp and return to me in the self-addressed envelope after the petition has been filed.

Pursuant to Courts and Judicial Proceedings Article, §7-202 (b), Annotated Code of Maryland (1998 Repl. Vol.), the State is exempt from Circuit Court filing fees. Thank you for your assistance in this matter.

Very truly yours,
Marianne D. Mason
Marianne D. Mason

cc: Hon. John C. North, II
Susan McConville

RECEIVED
MAY 24 1999
CHESAPEAKE BAY
CRITICAL AREA COMMISSION

IN THE CIRCUIT COURT FOR QUEEN ANNE'S COUNTY

*

PETITION OF:

JOHN C. NORTH, II, CHAIRMAN,
CHESAPEAKE BAY CRITICAL AREA
COMMISSION
45 Calvert Street
Annapolis, Maryland 21401

*

*

FOR JUDICIAL REVIEW OF THE DECISION
OF THE:
BOARD OF APPEALS OF QUEEN ANNE'S COUNTY
107 N. Liberty Street
Centreville, Maryland 21617

*

CIVIL
ACTION
No. _____

*

IN THE CASE OF:

BOA Case V-406 - --Request for Variance
to the Critical Area buffer requirements
for construction of a swimming pool in the 100-foot Buffer-
Gregor R. and Susan B. Mill and Pierson C. and Sarah L. Jones
(Zoning Certificate No. Z-98-2017)

*

* * * * *

PETITION FOR JUDICIAL REVIEW

John C. North, II, Chairman, Chesapeake Bay Critical Area Commission
("Chairman North") by his attorneys, J. Joseph Curran, Jr., Attorney General of
Maryland, and Marianne D. Mason, Assistant Attorney General, pursuant to Rule 7-201,
files this Petition for Judicial Review and states:

1. Chairman North hereby requests judicial review of the April 26, 1999 decision of the Board of Appeals of Queen Anne's County in Case No. V- 406 (Zoning Certificate No. Z-98-2017 --Pool). This decision granted a variance to the Critical Area buffer requirements to permit Gregory R. and Susan B. Mill and Pierson C. and Sarah L. Jones

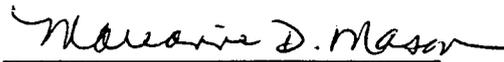
to construct a new swimming pool in the Critical Area Buffer on a lot at 518 Victoria Way, Stevensville, Maryland in Case No. V-406.

2. Chairman North was not a party to the agency proceeding. Chairman North has authority to note this appeal and has standing to file this appeal pursuant to Annotated Code of Maryland , Natural Resources Article, §8-1812 (a) and (c).

Respectfully submitted,

J. JOSEPH CURRAN, JR.

ATTORNEY GENERAL OF MARYLAND



Marianne D. Mason
Assistant Attorney General
Department of Natural Resources
580 Taylor Avenue
Annapolis, Maryland 21401
(410) 260-8351

Attorneys for John C. North, II,
Chairman, Critical Area Commission

RECEIVED

MAY 24 1999

CRITICAL AREA COMMISSION
CHESAPEAKE BAY

JULY 9, 1999

CIVIL ACTION NO. 7068
BOARD OF APPEALS CASE NO. V-406

STATE OF MARYLAND, QUEEN ANNE'S COUNTY, TO WIT:

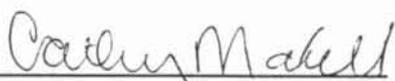
I HEREBY CERTIFY that the following are all the original papers
filed in:

Case No. V-406 entitled:

PETITION OF JOHN C. NORTH, II, CHAIRMAN, CHESAPEAKE
BAY CRITICAL AREA COMMISSION

vs.

THE BOARD OF APPEALS OF QUEEN ANNE'S COUNTY,
Defendant, in the proceedings before the Board of Appeals of Queen
Anne's County.


Cathy Maxwell, Clerk
Board of Appeals of
Queen Anne's County

IN THE MATTER OF
THE APPEAL FROM THE DECISION
OF THE BOARD OF APPEALS OF
QUEEN ANNE'S COUNTY

IN THE CIRCUIT COURT
FOR QUEEN ANNE'S COUNTY
STATE OF MARYLAND

IN CASE NO. V-406

Civil Action No. 7068

* * * * *

RECORD

1. **Board's Exhibit No. 1** - Certificate of Publication of Notice of Hearing for Case No. V-406.
2. **Board's Exhibit No. 2** - Certificate of Posting of Property and One (1) photograph of posting notice presented by the Planning and Zoning Administrator of Queen Anne's County in Case No. V-406.
3. **Board's Exhibit No. 3** - Notification List.
4. **Following Applicant's Exhibits:**
 - A. **Applicant's Exhibit No. 1** - Board of Appeals Application for Case No. V-406 filed 12/31/98.
 - B. **Applicant's Exhibit No. 2** - Residential Contract of Sale dated 10/28/98.
 - C. **Applicant's Exhibit No. 3** - Deed to the subject property dated 8/25/66 (CWC28/602).
 - D. **Applicant's Exhibit No. 4** - Queen Anne's Co. Zoning Maps with subject property identified in yellow.
 - E. **Applicant's Exhibit No. 5** - Site Plan of Lot 6A Bay City, by Paul K. Miller & Asso., Inc., dated 12/98.
 - F. **Applicant's Exhibit No. 6** - Letter dated 1/25/99 to Cathy Maxwell from the Chesapeake Bay Critical Area Commission.
 - G. **Applicant's Exhibit No. 7** - Letter dated 1/6/99 to Mr. & Mrs. Greg Mill from the Dept. of the Army.

- H. **Applicant's Exhibit No. 8** - Building Permit #B-98-2016 (house permit) dated 12/23/98; and Zoning Certificate #Z-98-2017 (pool permit) dated 12/23/98.
 - I. **Applicant's Exhibit No. 9** - Letter dated 12/28/98 to Mr. & Mrs. Gregory R. Mill from Francis C. Lynch, Zoning Inspector.
 - J. **Applicant's Exhibit No. 10** - Administrative Subdivision Plat entitled, "Lots 3A & 6A Block 32 Bay City", by Steven H. Jupitz, Surveyor, dated 11/94.
 - K. **Applicant's Exhibit No. 11** - Plat entitled, "Site Plan, Grading and Sediment Control Plan, Lot 6A, Block 32, Bay City", by Paul K. Miller & Assoc., Inc., dated 1/99.
 - L. **Applicant's Exhibit No. 12** - Photographs identified as "12A, 12B, 12D, and 12E".
 - M. **Applicant's Exhibit No. 13** - Letter dated 8/1/97 to Mr. & Mrs. Theodore Baker from Steven Kaii-Ziegler (with attachments) regarding Administrative Variance #5-97-01.
 - N. **Applicant's Exhibit No. 14** - Letter dated 9/25/98 to Mr. & Mrs. Robert Edwards from Steven Kaii-Ziegler (with attachments) regarding Administrative Variance #04-98-1.
 - O. **Applicant's Exhibit No. 15** - Excerpts of the Minutes of the Board of Appeals of Queen Anne's County in Case No. A-129 dated 9/14/98.
 - P. **Applicant's Exhibit No. 16** - Letter dated 3/25/99 to the Board of Appeals of Queen Anne's Co. from Joseph A. Stevens, Esq. (with attachments).
- 5. **Planning & Zoning Staff Report** prepared by Francis C. Lynch, Zoning Inspector, dated 1/15/99.
 - 6. **Transcript of Testimony** of the witnesses taken down and transcribed by Cathy Maxwell, Clerk to the Board of Appeals, at the public hearing held on 2/25/99, and Open Meeting held on 4/22/99, and made a part of the minutes of said hearing.
 - 7. **Excerpts of the Minutes of the Board of Appeals of Queen Anne's County** given at the Executive Meeting held on 4/22/99.

Frank Lynch, Zoning Inspector, Dept. of Planning & Zoning, 107 N. Liberty St.,
Centreville, MD 21617



Cathy Maxwell, Clerk
Queen Anne's County Board of Appeals

IN THE MATTER OF
THE APPLICATION OF

BOARD OF APPEALS OF
QUEEN ANNE'S COUNTY

AEM

Greg R. Mill

Susan B. Mill

CASE NUMBER: 1-406

Please check one:

Property Owner _____ Contract Purchaser X Lessee _____

Applicant's Phone No.:

Agent: Joseph A. Stevens, Esq. (410) 758-4600

H: _____ W: _____

Name, Address and Phone No. of Applicant

TO THE BOARD OF APPEALS OF QUEEN ANNE'S COUNTY:

1. Application is hereby made for: (Check one)

_____ Appeal from the County Zoning Administration

X Variance (CRITERIA ATTACHED. PLEASE READ CAREFULLY)

_____ Conditional Use

2. Description of Property:

a) Election District 4 Sectional Zoning Map 56

b) Name of Subdivision BAY CITY

c) Parcel No. 421 Block No. 32 Lot No. 6A

d) Abutting or binding roads Victoria Drive

e) Acres or Size of Property 32,474 sq.ft.

f) Improved or Unimproved Unimproved

g) Zoning District NC-20 Critical Areas District LDA

3. Relief requested.

Please state with specificity the relief which you request and the facts upon which you base this request:

The Buffer as defined in Section 14-111 of the QAC Code

encompasses almost the entire Lot 6A: A variance is request-

ed from Section 14-151 of the said QAC Code to allow the

construction of a single family dwelling, pool and shed, most

of which will be located within the Buffer.

4. State the name, address and Phone No. of the record owner of the property involved. If Applicant is not the record owner, also state your status with regard to the property.

Pierson C. Jones, P.O. Box 29, Crumpton, MD 21628

Owner's Phone No.: H: 410/778-4265 W: 410/348-5128

5. Names and addresses of persons to be summoned as witness or notified of hearing (please circle one):

Frances C. Lynch, Department of Planning and Zoning,

107 N. Liberty Street, Centreville, MD 21617

6. Previous Applications. If this property has previously been the subject of a prior application, state the name, date, the number of the application and the results thereof.

N/A

7. a) Documents required for submission. Please attach hereto the following documents: **FAILURE TO ATTACH ANY REQUIRED DOCUMENT WILL SUSPEND THE APPLICATION PROCESS UNTIL SUBMISSION. DOCUMENTS MAY NOT BE ALTERED OR AMENDED AT THE TIME OF THE HEARING WITHOUT APPROVAL OF THE BOARD.**

- x 1. Eight copies of this Application, including eight copies of "Affidavit As To Owners of Adjoining Property" (attached).
- x 2. Two copies of the most recent deed to property.
- x 3. One copy of the sectional zoning map.
- x 4. One copy of tax map if parcel is not identified on sectional zoning map.
- x 5. One copy of correspondence from the Department of Planning and Zoning.

- x 6. One copy of Notification of Project Application form (attached) if property is located within the Critical Area.
- x 7. One copy of correspondence from the Critical Area Commission, if applicable.
- N/A 8. One copy of correspondence from the Queen Anne's County Health Department, if applicable.
- N/A 9. One copy of soil conservation permit, if applicable.
- N/A 10. Eight copies of site plan, concept plan or sketch plan required by Section 9300 and 9400 of the Queen Anne's County Zoning Ordinance.
- N/A 11. One copy of Army Corps of Engineers and Dept. of Natural Resources permits, if applicable. (these permits shall be required to be obtained and introduced for the record for all applications involving structures in navigable waters and requiring Army Corps of Engineers and Dept. of Natural Resources permits).
- N/A 12. Any other documents necessary for project approval pursuant to Section 7203 of the Queen Anne's County Zoning Ordinance.
- N/A 13. One copy of correspondence from Queen Anne's County Sanitary District, if applicable.
- x 14. One copy of building or use permit, if applicable.
- x 15. Any other documents necessary for project approval pursuant to Section 7000 of the Queen Anne's County Chesapeake Bay Critical Area Ordinance.

I CERTIFY, that a copy of the within Application was filed with the Queen Anne's County Board of Appeals on this 31 day of Dec , 19 98 .

I do solemnly declare and affirm under the penalties of perjury that the contents of the foregoing application are true and correct to the best of my personal knowledge, information and belief.



 Applicant
 or his/her or their Attorney

AFFIDAVIT AS TO OWNERS OF ADJOINING PROPERTY

Instructions

The applicants must attach a portion of the Queen Anne's County Tax Map setting forth the applicant's property. The applicant should color their property in red. All adjoining property owners should be listed below by parcel number (as set forth on the tax map), owner's name and addresses as per the records of the Department of Assessments and Taxation located at 120 Broadway, Centreville, Maryland 21617.

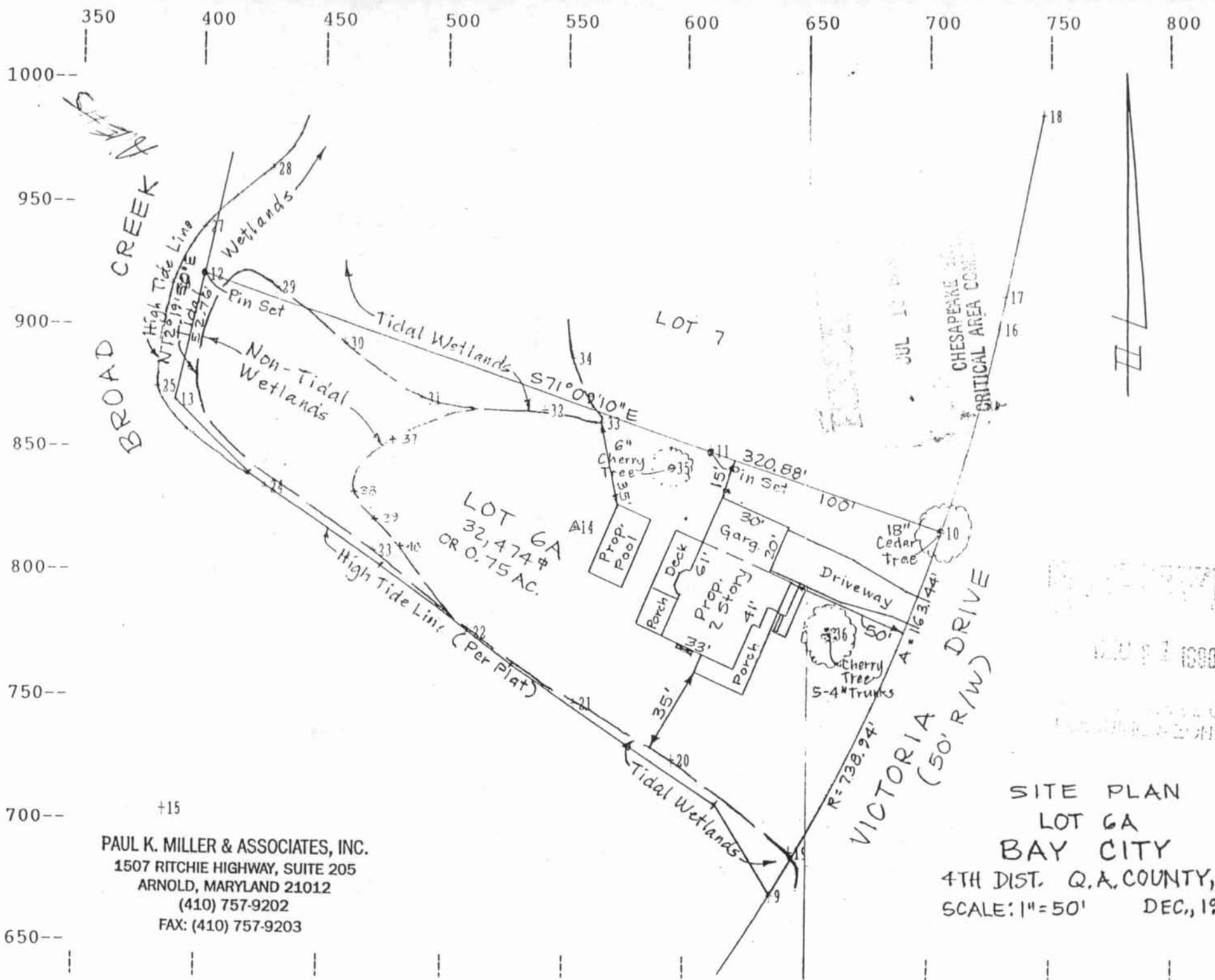
<u>Parcel Number</u>	<u>Owner's Name & Address as per Assessment Records</u>
1. <u>421 Lot 3A</u>	<u>Mees, Rodney & Cheryl</u> <u>524 Victoria Drive, Stevensville, MD 21666</u>
2. <u>421 Lots 7&8</u>	<u>Bachman, Robert & Maria</u> <u>514 Victoria Drive, Stevensville, MD 21666</u>
3. <u>422 Lot 6</u>	<u>Sprucebank, John & Margaret</u> <u>905 Blankstone Road, Glen Burnie, MD 21060</u>
4. <u>422 Lot 7</u>	<u>Countryside Builders, Inc.</u> <u>400 Quail Run, Centreville, MD 21617</u>
5. _____	_____

(Use additional sheet if necessary)

The undersigned applicant does solemnly declare and affirm under the penalties of perjury that the contents of the foregoing Affidavit as to Owners of Adjoining Property is true and correct to my personal knowledge, information and belief.



Applicants and/or their Agent or Attorney



+15
 PAUL K. MILLER & ASSOCIATES, INC.
 1507 RITCHIE HIGHWAY, SUITE 205
 ARNOLD, MARYLAND 21012
 (410) 757-9202
 FAX: (410) 757-9203

SITE PLAN
 LOT 6A
 BAY CITY
 4TH DIST. Q.A. COUNTY, MD.
 SCALE: 1" = 50' DEC., 1998

RECEIVED
 JUL 10 1998
 ENGINEERING CO.
 ENGINEERING



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

HAKE

RECEIVED

January 25, 1999

JAN 29 1999

Ms. Cathy Maxwell
Department of Planning and Zoning
Queen Anne's County
107 N. Liberty Street
Centerville, Maryland 21617

Q.A. COUNTY PLANNING & ZONING

RE: Mill property - Buffer Variance (# V-406)

Dear Ms. Maxwell:

Thank you for providing me with information on the above referenced variance application. I understand that the applicant is seeking a variance from the County's Buffer requirements [Section 14-151 (a) of the County's Environmental Protection Code] for the construction of a single family dwelling and swimming pool. The County prohibits "new development activities, including clearing of existing natural vegetation, erection of structures... or other impervious surfaces" in the 100-foot Buffer [Section 14-151(a)]. The applicant proposes to construct a single family dwelling on an unimproved grandfathered lot designated as a Limited Development Area (LDA). The property is not located in a mapped Buffer Exemption Area under the County's Critical Area Program. According to the application, the lot is located almost entirely within the 100-foot Buffer to Broad Creek and associated tidal wetlands. In addition to the single family dwelling with associated driveway, garage, and porches, the applicant has proposed construction of a pool in the Buffer.

Commission staff do not oppose the granting of the variance for the construction of a single family dwelling on the grandfathered lot. However, Commission staff do not support the granting of a variance for the construction of the proposed swimming pool. Any person who seeks a variance to the Queen Anne's County Critical Area Program must satisfy the variance standards specifically listed in Section 14-166 of the Queen Anne's County Zoning Ordinance. All standards must be met in order for a variance to be granted. It is the opinion of this office that while the variance standards can be met in the case of the proposed single family dwelling, all of the five variance standards have not been met in the case of the proposed swimming pool. Below is an outline and analysis of the application of the required standards to this case.

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

1. Section 14-166(1) and (2) addresses site features that are unique to the subject property or structure and the unwarranted hardship resulting from denial of the variance. The legal standard of "unwarranted hardship" in the context of the variances to Critical Area standards is set forth clearly by the Court of Special Appeals in White v. North, 121 Md. App. 196 (1998) and North v. St. Mary's County, 99 Md. App. 502 (1994). Unwarranted hardship results only when denial of an applicant's request would result in denial of reasonable use of the site. Based on our review of the application, this condition appears to have been met for the single family dwelling. The construction of a single home would allow reasonable use of the property. In the case of the pool, this condition has not been met. The denial of an accessory structure would not result in an unwarranted hardship.
2. Section 14-166(1) also addresses the rights of the variance applicant with respect to the rights commonly shared by other owners of property within the Critical Area. All property owners within the Critical Area and within the LDA are similarly limited by the County and the State Critical Area requirements regarding new development activity within the Buffer. Therefore, the granting of the variance for the dwelling and denial of this variance for the swimming pool will not deprive the property owner of rights shared by other owners of property in the Critical Area.
3. Section 14-166(5) addresses special privileges that may be conferred upon an applicant with the granting of a variance when such privileges would be denied other owners of like properties and/or structures within the Critical Area. The granting of a variance for a pool clearly would confer upon this property owner a special privilege because other similarly situated properties may not locate new accessory structures within the Buffer.
4. Section 14-166(3) addresses conditions or circumstances that are self-imposed and conditions or circumstances related to adjacent properties. This condition appears to have been met.
5. Section 14-166(6) addresses adverse impacts to water quality and fish, wildlife, or plant habitat that may result from the granting of the variance and the consistency of the variance approval with the spirit and intent of the County's Critical Area Program. This office has consistently supported the grandfathering provisions set forth in the COMAR 27.01.02.07B., that allow for the construction a single family dwelling on a grandfathered lot. Furthermore this office has consistently opposed the placement of accessory structures, including swimming pools, in the 100-foot Buffer. In two cases decided under the Critical Area variance standards, the Maryland Court of Special Appeals has held that denial of a variance for the construction of accessory structures in the 100-foot Buffer would not result in unwarranted hardship to the applicant. See North v. St. Mary's County, 99 Md. App. 502 (1994) (gazebo in Buffer); and White v. North, 121 Md. App. 196 (1998) (swimming pool in Buffer). The Buffer is a designated Habitat Protection

Ms. Cathy Maxwell
January 25, 1999
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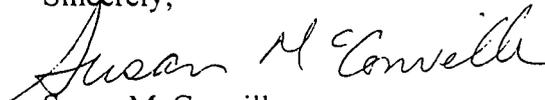
area designed to act as both a natural filter for runoff and provide habitat to both terrestrial and aquatic species. The ability of the Buffer to achieve these functions is reduced by structures such as the pool in this case. This proposed pool by itself may seem inconsequential to the health and welfare of the Bay and the ecosystems it supports, but allowing one would be to allow thousands that would have a detrimental effect of the Bay.

6. Section 14-166(7) requires that the variance request is the minimum deviation from the provisions of the County's Critical Area Ordinance that will achieve a reasonable use of land or structures. In our opinion this standard has not been met. The construction of the swimming pool within the 100-foot Buffer is not necessary to achieve a reasonable use of the land. The property owner would attain reasonable use with the construction of a single family dwelling, but would exceed the minimum deviation standard with the construction of the accessory pool.
7. Section 14-166(8) requires that a variance be granted only if it is in harmony with the general purpose of the Critical Area Ordinance and the County Program, and if the variance does not result in a prohibited use or an increase in the applicable density limits. We are not opposed to locating accessory structures outside of the 100-foot Buffer as long as they meet other zoning restrictions. However, we believe the issuance of a variance for the pool in this case is inconsistent with the general intent of the County's Ordinance and Program to prohibit new non-grandfathered development activities in the Buffer.

In summary, the Commission staff recommends that the Board approve the variance for the construction of the single family dwelling in the Buffer. The Commission staff recommends that the Board deny the variance for the swimming pool because the proposed accessory structure does not meet all of the County's variance standards and because the structure is not a water-dependent structure.

Thank you for the opportunity to comment. Please include this letter in your file and submit it as a part of the record for variance. Please notify the Commission in writing of the decision made in this case. If you have any questions concerning these comments, please call me at (410) 260-7019.

Sincerely,


Susan McConville
Natural Resources Planner

cc: Marianne D. Mason, Esq., Assistant Attorney General
QA 662-99

JOSEPH A. STEVENS

Attorney at Law

March 25, 1999

AE#16
P.O. Box 146
114 West Water Street
Centreville, Maryland 21617
410.758.4600
410.758.3555 (fax)

Board of Appeals of
Queen Anne's County
107 N. Liberty St.
Centreville, Maryland 21617

Re: Case No. V-406 Variance for House and Pool

Dear Board Members:

On February 25, 1999 I appeared before the Board of Appeals of Queen Anne's County ("Board") on behalf of Mr. and Mrs. Gregory R. Mill (the "Applicant") to request a variance to locate a house and pool within the Chesapeake Bay Critical Area Buffer ("Buffer"). The Board granted the variance for the house as well as associated structures such as a deck, but deferred any decision on the variance for the pool until additional information was submitted by the Applicant. Herein this letter, as well as the exhibits attached thereto, I am providing the additional information to assist in establishing that the Applicant has met its burden of proof in order to receive a variance for the pool.

By way of background, and as reflected in the record from the hearing, the subject property is located at Parcel 421, Tax Map 56, Lot 6A in the Bay City subdivision and consists of approximately 32,000 square feet (the "Property"). The Property was originally part of four lots which were recombined into two lots, the Property being one of those two lots. See Applicant Exhibit 10. The Property abuts tidal wetlands on three sides and as a result almost the entire Property is within the Buffer. The Applicant had requested, and the Board granted, a variance to locate a single family dwelling on the Property. The dwelling is located within the Buffer, but is as far away from the edge of tidal wetland as possible while still meeting required front and side yard setbacks.¹ In effect, the Applicant could not locate a house, pool or any accessory structures on this Property without being in the Buffer.

There was substantial evidence presented to the Board depicting the Property's uniqueness in that it is surrounded on three sides by tidal wetland and that the entire Property, but for a few square feet, is within the Buffer. The question then turns to whether the uniqueness of the Property combined with the prohibition on development in the Buffer creates an unwarranted hardship that would deny the Applicant a reasonable use of their Property which is permissible and shared by other properties in the same development area i.e. limited development area (LDA). *White v. North*, 121 Md. App. 196 (1998).

¹ Evidence showed that the dwelling could have been located slightly closer to Victoria Drive and still been within required setbacks but would still have been the same distance from tidal wetland, while requiring the removal of one of only two existing trees on the Property.



Judge John C. North, II
Chairman

Ren Serey
Executive Director

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January 25, 1999

Ms. Cathy Maxwell
Department of Planning and Zoning
Queen Anne's County
107 N. Liberty Street
Centerville, Maryland 21617

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



Ms. Cathy Maxwell
January 25, 1999
Page two

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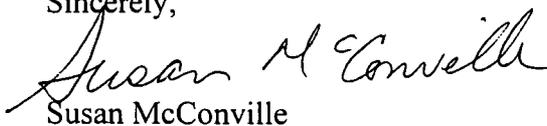
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