

Letter 4/30 AMC

MSA_S-1829-493

QC 211-99 Long Point
VAR James & Diane Francis

See
QC 400-99

See
QC 191-91

Thomas Ewing et al

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 10, 1999

Ms. Vivian Swinson
Department of Planning and Zoning
Queen Anne's County
107 N. Liberty Street
Centreville, Maryland 21617

**RE: Long Point (Francis Property)- Administrative Variance application
#05-99-01**

Dear Ms. Swinson:

Thank you for providing me with information on the above referenced administrative variance application. The applicant is seeking a variance from the County's Buffer requirements of the County's Environmental Protection Code §14-166 in order to construct a swimming pool within the 100-foot buffer on this property mapped Buffer Exemption Area (BEA) under the County's Critical Area program.

The property located on the Chester River includes 0.41 acres in the Critical Area designated as a Limited Development Area (LDA) and mapped as a BEA. The County's BEA program requires that new development or redevelopment shall minimize the disturbance in the Buffer to the least necessary. The applicant proposes the addition of 1325 square feet in the 100-foot Buffer. The 25' by 53' pool and impervious deck are proposed shoreward of the existing house and 50 from the water.

The Law

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. Five of these standards also appear in the Critical Area Criteria (COMAR 27.01.11) which form the basis for the local program. All variance standards must be met in order for a variance to be granted. It is the opinion of this office that all of the variance standards have not been met in this case. Below is an outline and analysis of the application of the required standards.

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

Ms. Vivian Swinson
August 10, 1999
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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. There is nothing unique about this property. It is typical of many lots mapped as BEA and designated as LDA in the County. 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. This office firmly believes that denial of the accessory structure would not result in an unwarranted hardship.
2. Section 14-166(1) addresses the rights of the variance applicant with respect to the rights commonly shared by other owners of property within the same management area within the Critical Area. Denial of this variance will not deprive the property owner of rights shared by other property owners in the Limited Development Area mapped as Buffer Exemption Areas. All owners of like properties in Queen Anne's County within the Critical Area are similarly limited by the County's Critical Area requirements regarding new development activity within the Buffer. Therefore, the 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 swimming 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. It appears that the applicant has met this standard.
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 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)

Ms. Vivian Swinson
August 10, 1999
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(swimming pool in Buffer). The Buffer is a designated Habitat Protection 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 impervious surface and density limits. 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.

Commission staff cannot support the granting of a variance for the construction of the swimming pool as proposed. The Commission staff recommends that the administrative variance for the swimming pool be denied because the proposed accessory structure does not meet all of the County's variance standards or the County's policy for development in the Buffer in a BEA.

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 Zankel
Natural Resources Planner

cc: Regina Esslinger
QA 211-99

Judge John C. North, II
Chairman



Ren Serey
Executive Director

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

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May 5, 1999

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Queen Anne's County
107 N. Liberty Street
Centreville, Maryland 21617

**RE: Long Point - Administrative Variance application
#05-99-01**

Dear Ms. Swinson:

Thank you for providing me with information on the above referenced administrative variance application. The applicant is seeking a variance from the County's Buffer and impervious surface requirements of the County's Environmental Protection Code §14-166 in order to construct a swimming pool within the 100-foot buffer on this property mapped Buffer Exemption Area (BEA) under the County's Critical Area program.

The property includes 0.41 acres in the Critical Area designated as a Limited Development Area (LDA) and mapped as a BEA. The County's BEA program requires that new development or redevelopment shall minimize the disturbance in the Buffer to the least necessary. According to the application, the existing area of impervious surface on the property is 2180 square feet. The applicant proposes the addition of 1325 square feet in the 100-foot Buffer. The 25' by 53' pool and impervious deck are proposed shoreward of the existing house and 40 from the water.

The Law

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. These standards also appear in the Critical Area Criteria (COMAR 27.01.11) which form the basis for the local program. All five standards must be met in order for a variance to be granted. It is the opinion of this office that all of the five variance standards have not been met in this case. Below is an outline and analysis of the application of the required standards.

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



Ms. Vivian Swinson
May 5, 1999
Page two

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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)

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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: Ren Serey
QA 211-99

QC 211-99

NOTIFICATION OF PROJECT APPLICATION

Jurisdiction: Queen Anne's County, MD

Date: April 1, 1999

Name of Project (site name, subdivision name or other): Long Point

Local Case Number: _____

Project Location/Address: 1006 Long Point Road

Tax Map 58

Block 2

Parcel 569

Lot 28

Type of application:
(Select all applicable)

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

Type of Project:
(Select all applicable)

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

Current Use:
(Select all applicable)

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

Describe Proposed Use of Project Site: Swimming pool for residential home

3125 = 558125

Site Inventory of Area Only in the Critical Area

| | |
|--|--|
| IDA ACRES _____ | AREA DISTURBED: _____ |
| LDA ACRES <u>✓</u> | # LOTS CREATED: _____ |
| RCA ACRES _____ | LOT SIZE RANGE FROM: _____ TO: _____ |
| TOTAL ACRES IN CRITICAL AREA: <u>.41</u> | AVERAGE LOT SIZE: _____ |
| AGRICULTURAL LAND: <u>0</u> | # DWELLING UNITS: _____ |
| EXISTING FOREST/WOODLAND/TREES: <u>0</u> | FOREST/WOODLAND/TREES REMOVED: _____ |
| EXISTING IMPERVIOUS SURFACE: <u>2180</u> | PROPOSED IMPERVIOUS SURFACE: <u>1325</u> |
| GROWTH ALLOCATION DEDUCTED: _____ | TOTAL IMPERVIOUS SURFACE: <u>3505</u> |
| RCA to LDA: _____ | HEARING DATE: <u>N/A</u> |
| RCA to IDA: _____ | |
| LDA to IDA: _____ | |

BEA

Strong

4117859.6

Local Jurisdiction Contact Person: Vivian J. Swinson

7584088

Telephone No: (410)

758-4088

Response from CAC Required by: 4-30-99

Part VIII. Administrative Variance Application Checklist

191-91

Part III. Project Description

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

Swimming pool and deck for residential home.

25' x 53' pool & deck

Part IV. Alternatives to Variance Request

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

- House is situated 75' feet back from the water.
- There is a sewer pipe 11-12' feet from the house running across the backyard. (See attached diagram).
- The pool cannot be built where the sewer pipe is.
- There are no side yards.
- Thus there are no reasonable alternative locations for the pool.

Part V. Variance Provisions of Queen Anne's County Environmental Protection Code §14-166

Please describe any special conditions or circumstances that exist that are peculiar to the property or structure and how a literal enforcement of the regulations relative to these conditions or circumstances would result in unwarranted hardship.

- There is a sewer pipe in the backyard which is 11-12' feet from the house and runs approximately parallel to the house across most of the backyard (See attached diagram). Thus its impossible to design a pool layout that is 50' feet or more from the water.

RECEIVED

APR 23 1999

Please describe how a literal interpretation of the Environmental Protection Code will deprive you of rights commonly enjoyed by other properties in similar areas within the Critical Area.

- At least 2 other homes in Long Point have pools.
- These pools are situated as close as 20' feet from the water.
- Our pool would be 40' feet from the water.
- There is no other location for our pool.

Please describe how granting of the variance will not confer upon you any special privilege that would be denied by the Critical Area regulations to other properties or structures within the Critical Area.

As stated above, other owners in the area already have this privilege. This is not a special privilege for us.

Please describe how the variance request is not based upon conditions or circumstances which are the result of actions by you, and how the request does not arise from any condition related to property or building use, either permitted or nonconforming, on any neighboring property.

- Home was purchased by current owner in December 1998.
- The home and sewer pipe were already situated as the diagram outlines.
- The current owners took no actions to create this problem.

Please describe how the granting of this variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area, and how the granting of this variance will be in harmony with the general spirit and intent of the Critical Area regulations.

The pool and deck will be 40' feet from the waters edge. There will be no runoff from the pool into the river. There will be no other disturbance to the property. There is a grass buffer between the pool and the river.

Part VI. Additional Information

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

Applicant(s) Signature

Date

James L. Francis
Deane S. Francis

4/1/99
4/1/99