

QC 400-99  
VAR

Francis, Jim  
05-99-01

USA\_S-1829\_521

Comments 8/10/99 AMZ

See QC  
211-99

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

December 22, 1999

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

**RE: 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 in order to construct a swimming pool within the 100-foot Buffer. The approximately 0.33 acre property is located on the Chester River in the Critical Area, designated as a Limited Development Area (LDA) and mapped a Buffer Exemption Area (BEA). The Queen Anne's County Code (Section 14-153(d)) states that new development or redevelopment . . . will not be permitted in the Buffer Exemption Area unless the applicant can demonstrate an the Planning Director finds that there is no feasible alternative. In addition, the BEA program requires that the Buffer intrusion is the least necessary. The applicant has revised the original variance application by reducing the size of the impervious pool/apron area from 25' by 53' to 16' by 38', thus minimizing the area of Buffer intrusion. Commission staff concur that there is not other feasible location for the pool on the property.

The Queen Anne's County Code requires mitigation when impacts in the Buffer are permitted under the special provisions for Buffer Exempted Areas. (Section 14-153.)

- (1) Any development in the Buffer Exemption Area approved under the provisions of this subsection shall be mitigated as follows:
- (i) the extent of the lot or parcel shoreward of the new development or redevelopment shall be required to remain, or shall be established and maintained in natural vegetation; and
  - (ii) natural vegetation of an area twice the extent of the impervious surface must be created on the property or other similar location approved by the Planning Director.

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



Ms. Swinson  
Page two  
December 22, 1999

The required mitigation must be designated under a development agreement or other instrument and recorded. If the required mitigation cannot be achieved on-site or off-site, then the person will be required to pay a fee-in-lieu to be used for planting in the Critical Area (Section 14-153e).

Commission staff do not oppose the granting of the administrative variance as proposed if mitigation is required as a condition of approval. We recommend the planting of native trees and shrubs to meet the mitigation requirement. 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 M. Zankel  
Natural Resources Planner

cc: QA 211-99

**RECEIVED**  
JUN 25 1999

To: <u>Susan</u>	From: <u>Vivian</u>
Co./Dept:	Co. <u>QAC Pd 2</u>
Phone #	Phone #
Fax #	Fax #

Queen Anne's  
Administrative Services Department

Q.A. COUNTY PLANNING & ZONING

05-99-01-Revisee

**Part I. Applicant / Property Owner Information**

Applicant Name Jim & Diane Francis

Mailing Address 19205 Autumn Maple Lane

Gaithersburg MD 20879

Daytime Phone (240)-694-2002

If the applicant is not the property owner, please provide the following:

Property Owner Name \_\_\_\_\_

Mailing Address \_\_\_\_\_

Daytime Phone \_\_\_\_\_

**Part II. Property Description and Location**

Tax Map 58 Grid 2 Parcel 569 Lot 28

Zoning \_\_\_\_\_ Critical Area Designation \_\_\_\_\_

Lot/Parcel Size .33 acre Subdivision Name (if applicable) Long Point

Date lot/parcel was created \_\_\_\_\_

Name of Adjacent Road Long Point Road

Private or Public Water Private Private or Public Sewer Public

Is property waterfront? Yes X No \_\_\_\_\_

If property is waterfront, adjacent waterbody Chester River

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### Part III. Project Description

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

Swimming pool and deck for residential home.

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### 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 are no side yards. The front yard consists of a gravel driveway. The front yard is not feasible as it is very close to the street and traffic. We have three young children that this would not be safe for. Additionally the neighbors in this area do not think this would be safe or visually appealing for the neighborhood. It could have a negative impact on property values. Thus, the backyard, which is fenced in, is the only safe, feasible location for the pool.

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### 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. We are willing to pay the cost of moving this pipe closer to the house to construct the pool. We are also willing to build the pool as close to our house as is structurally safe. This distance should be at least 8 feet according to Mike Savage, a building inspector with MDIA (Easton, MD) However our house is 75 feet from the water so the result is that the pool is just over 50 feet from the 2 of 8 water.

---

**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 3 other homes in Long Point have pools.
- These pools are situated as close as 23 feet from the water.
- Our pool would be over 50 feet from the water.
- There is no other feasible 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. We are not violating the 50 foot buffer.

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**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.**

- We purchased the house in December 1998.
- The home was already situated as the diagram outlines.
- The current owners took no action create this problem. We are willing to pay the cost of moving a sewer pipe to locate the pool as close to our house as is structurally safe.

008

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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 over 50 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.

The pool is needed for activities with our three children as they grow older. It will be in a safe location and used for family activities to keep our children out of harms way and away from other potential negative influences growing up. Additionally, it will be used for recommended exercise for Jim as he has a weak lower back and needs to swim for proper exercise and other health benefits.

Applicant(s) Signature

Date

Jim Francis  
Debbie Francis

6/5/99  
6/5/99

000

**Part VII. Affidavit as to Owners of Adjoining Properties**

*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 address 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 &amp; Address as per Assessment Records</u>
1. <u>Lot 27</u>	<u>Dean N. and Ellen P. Radcliffe-Brewer</u> <u>1004 Long Point Rd</u> <u>Groesbeville, MD 21638</u>
2. <u>Lot 29</u>	<u>George and Karen Sutler</u> <u>3705 Idolstone Lane</u> <u>Bowie, MD 20715</u>
3. _____	_____
4. _____	_____
5. _____	_____

(Use additional sheet(s) 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.

Jin Francis / Denise Francis  
Applicants and/or their Agent or Attorney

6/5/99  
Date

@010

CHESAPEAKE BAY CRITICAL AREA COMMISSION  
45 CALVERT STREET, 2ND FLOOR  
ANNAPOLIS, MD 21401

NOTIFICATION OF PROJECT APPLICATION

Jurisdiction: Queen Anne's County, MD Date: June 4, 1999

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

Local Case Number: \_\_\_\_\_

Project Location/Address: 1006 Long Point Rd

Tax Map 58 Block 2 Parcel 569 Lot 28

Type of application:  
(Select all applicable)

- SUBDIVISION
- SITE PLAN
- VARIANCE:  
Bulk/Height/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

Site Inventory of Area Only in the Critical Area

IDA ACRES _____	AREA DISTURBED: _____
LDA ACRES _____ <u>0.33</u>	# LOTS CREATED: _____
RCA ACRES _____	LOT SIZE RANGE FROM: _____ TO: _____
TOTAL ACRES IN CRITICAL AREA: _____	AVERAGE LOT SIZE: _____
AGRICULTURAL LAND: _____	# DWELLING UNITS: _____
EXISTING FOREST/WOODLAND/TREES: _____	FOREST/WOODLAND/TREES REMOVED: _____
EXISTING IMPERVIOUS SURFACE: _____	PROPOSED IMPERVIOUS SURFACE: _____
GROWTH ALLOCATION DEDUCTED: _____	TOTAL IMPERVIOUS SURFACE: _____
RCA to LDA: _____	
RCA to IDA: _____	HEARING DATE: _____
LDA to IDA: _____	

2180

Local Jurisdiction Contact Person: Vivian J. Swinson Telephone No: (410)

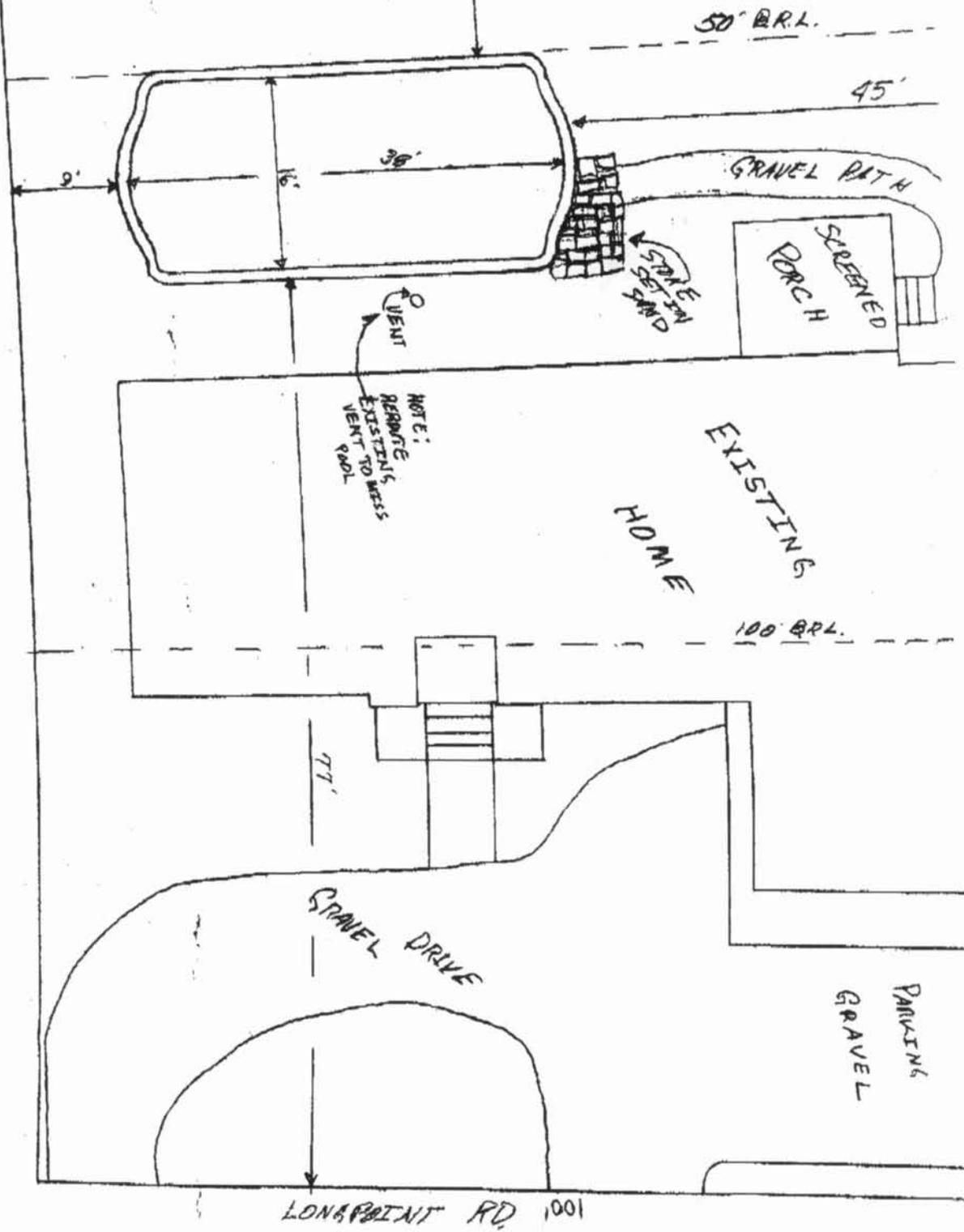
758-4088 Response from CAC Required by: \_\_\_\_\_

Part VIII. Administrative Variance Application Checklist

16' / 32'

D. and

Apron?  
is any, how  
does county req.  
stone, in sand  
pr. 1.2m



LONGPOINT RD 1001

346-89

LAW OFFICES OF  
**JOSEPH A. STEVENS**

114 West Water Street, Centreville, Maryland 21617  
410-758-4600 (TEL) 410-758-3555 (FAX)

**RECEIVED**  
OCT 25 1999

JOSEPH A. STEVENS  
CYNTHIA M. MULLIGAN

October 25, 1999

QUEEN ANNE'S CO.  
PLANNING & ZONING

Steven Kaii-Ziegler  
Planning Director  
Queen Anne's County Department  
of Planning & Zoning  
107 N. Liberty Street  
Centreville, Maryland 21617

**RECEIVED**  
DEC 13 1999  
CHESAPEAKE BAY  
CRITICAL AREA COMMISSION

Re: Mr. and Mrs. James Francis  
05-99-01 Revised Administrative Variance Application

Dear Mr. Kaii-Ziegler:

On April 1, 1999, Mr. & Mrs. James Francis submitted an Administrative Variance Application for the construction of a swimming pool on their property located at 1006 Long Point Road (Lot 28 - Long Point Subdivision). The application was denied and a second "revised" application was then submitted by the Francis' on May 1, 1999. This letter, as well as exhibits attached hereto, hereby amends the Francis' revised application by providing additional information to assist in establishing that the requirements to receive an administrative variance for the construction of a pool are met. As you know, we have been retained to assist the Francis' in this matter.

By way of background, the subject property is located at Parcel 569, Tax Map 58, Grid 2, Lot 28 in the Long Point Subdivision and consists of approximately .33 acres (the "Property"). The Property is located in the Chesapeake Bay Critical Area (Critical Area) designated as a Limited Development Area (LDA) and is mapped Buffer Exemption Area (BEA) under the County's Critical Area program. Over 60% of the Property is within 100' Critical Area Buffer.

Lot 28 was created in 1960 as part of the original Long Point subdivision, predating State and County Critical Area laws. (See Plat 2 - LONG POINT, March 1959, recorded in the Land Records for Queen Anne's County at Plat Book T.S.P. 001, Page 73, attached hereto as Exhibit A.) The house was constructed in 1974, also predating the local and State Critical Area laws and the house itself is located almost entirely within the 100' Critical Area Buffer.

In their initial application, the Francis' submitted a plan whereby the pool would be constructed only 40' landward of the Chester River. In their revised application, the Francis' have

Steven Kaii-Ziegler  
October 25, 1999  
Page Two

submitted a plan to relocate their pool 10' closer to their house which will allow them to still meet minimum setback provisions as well as construction safety guidelines for a structurally sound location. (See revised Pool Location Plan attached hereto as Exhibit B). In order to locate the pool closer to the house thereby reducing the impact to the buffer, the Francis' are relocating their sewer line entirely (which runs horizontally through their back yard) and will reduce the pool's size from 25' by 53' to 16' by 38'.

The revised plan is the only other alternative that exists for location of the pool. There are virtually no side yards on the Francis Property. The pool cannot be located in the front yard because it consists of a gravel driveway and small parking area. In addition, the house is situated in close proximity to Long Point Road, and the restrictive covenants and conditions of Long Point subdivision arguably prevent the location of the pool in the front yard. See the restrictive covenants and conditions attached hereto as Exhibit C.

By reducing the size of their pool, moving it as far from the shore and as close to the house as possible and relocating their sewer line, the Francis' meet the requirements of Code of Public Laws of Queen Anne's County, *Environmental Protection*, as set out in Section 14-166 as follows:

1. **A literal enforcement of the subtitle would result in an unnecessary hardship as a result of specified conditions which hardship is not shared by owners of other property in the same development area;**

Construction of pools is a regular development activity in the LDA. Applications for the construction of pools in the Buffer Exempt Area are generally approved when there exists no other practical alternative. In its May 5, 1999 letter to Ms. Swinson of your department, the Chesapeake Bay Critical Area Commission (hereinafter "CBCAC") stated that the legal standard of unwarranted hardship is clearly set out in the Court of Special Appeals decisions of *White v. North*, 121 Md.App. 196 (1998) and *North v. St. Mary's*, 99 Md.App. 502 (1994) to mean that an unwarranted hardship results only when denial of an applicant's request would result in a denial of reasonable use of the site. The CBCAC then goes further to suggest that any accessory structure (especially a swimming pool) is an unreasonable use and, therefore, does not constitute an unwarranted hardship.

Whether or not a pool is a reasonable use is not a question for the CBCAC, but rather for the zoning authority as the Court of Appeals has held in the case of *Belvoir Farms Homeowners Ass'n v. North*, 355 Md.App. 259, 734 A.2d 227 (1999). In that case, as well as the recent reversal of the Court of Special Appeals' decision in *White v. North* (above), the Court of Appeals held that the question of whether a property owner is being denied a reasonable and significant use initially will be a determination of the zoning agency, which "possesses the necessary expertise to decide what is reasonable and significant."

Steven Kaii-Ziegler  
October 25, 1999  
Page Three

Moreover, in the recent *White v. North*, \_\_ Md. \_\_, \_\_ A.2 \_\_ (1999) [No. 85, 1998 Term, filed September 14, 1999], which reversed the decision of the Court of Special Appeals, the Court addressed the specific Critical Area provisions which require an examination of whether a property owner is being denied rights commonly enjoyed by other property owners. (See *White v. North* attached hereto as Exhibit D). The Court held that in determining whether or not an unwarranted hardship exists, the zoning authority, when considering whether a grant of a variance would confer a right commonly enjoyed by others, must consider *all* similar uses in the neighboring area, "whether permitted as of right under the general ordinance or whether they resulted from other variance grants, or are legal nonconforming uses, or were established in any other proper manner."

We ask that the Department take notice of four (4) other variances or appeals which resulted in the construction of pools in the Buffer within the LDA. Those variances or appeals are as follows: (1) Theodore and Martha Baker, Case No. AV5-97-01 variance is similar to the requested Francis variance in that almost the entire Baker property was within the Critical Area Buffer and the lot was created prior to the effect of Chesapeake Bay Critical Area Program; (2) Administrative Variance 04-98-2, Mr. and Mrs Edward Roberts the entire property was not within the Buffer, yet the variance was granted; (3) Board of Appeals Case A-129, William and Frances Cairns in which the entire property was not within the Buffer, however, the Board found that because the site was Buffer Exempt and the pool would be located landward of existing structures, that the pool did not require a variance under the County Code. The effect of the Cairns decision resulted in a house and pool being constructed on a lot larger than that of Applicant.

Finally, the Board of Appeals in V-406 granted a variance to Greg and Susan Mill to construct a pool within the 100' Buffer. The Critical Area Commission appealed, but dismissed the case after a final decision was rendered by the Court of Appeals in *White*.

Research of the records of the Department of Planning and Zoning reveals that since January 1, 1998 at least twenty-six pool permits were issued to properties located in the L.A. The building permit numbers are as follows: Z-99-0212; Z-99-0054; Z-98-1876; Z-98-0978; Z-98-0693; Z-98-0724; Z-98-0473; Z-98-1000; Z-98-1622; Z-98-0278; Z-98-1854; Z-98-1225; Z-98-0594; Z-98-1262; Z-98-1901; Z-98-0017; Z-98-1261; Z-98-1700; Z-98-0523; Z-98-1001; Z-98-1311; Z-98-1229; Z-98-1177; Z-98-0963; Z-98-0971; Z-98-0838. Although most of the permits stated above were for pools not located within the Buffer, some of the permits included pools within the Buffer Exempt areas.

In particular, Z-98-1622 was issued for a pool in the Governor Grason subdivision within 100 feet of tidal wetlands in a Buffer Exempt area. In Queen Anne's Colony Z-98-1225 was issued for a pool, again, within a Buffer Exempt area. And in the Kent Narrows Z-98-0017 was issued for a pool within a Buffer Exempt area.

The foregoing information constitutes substantial evidence that the literal enforcement of the 100' Buffer for the construction of a pool will create an unnecessary hardship and that such hardship is not shared by owners of other property within the L.A., nor has such hardship been shared by other properties that are located within the Buffer. I am aware of no instance where a pool has been outright denied to an applicant where the applicant has no other location alternative for said pool. In fact, variances have been granted for pools within Buffer areas when where is no other practical alternative to locating the pool due to site constraints for properties less incumbered by the Buffer than the Applicant's.

**2. Those conditions are peculiar to the property involved;**

Lot 28 of the Long Point Subdivision was created in 1960 and predates Critical Area law. Further, the house was constructed in 1974 which also predates the State and County Critical Area laws. It is impossible to locate the pool in the front yard because of the proximity to Long Point Road, the fact that the front yard consists of a gravel driveway and parking area. Location of the pool in the front yard is impractical for both safety and aesthetic reasons.

**3. Those conditions are not the result of any action taken by the applicant;**

The Applicants have done nothing to the Property nor proposed any action which would precipitate the need for the variance. As previously stated, the subdivision was created in 1960 and the house built in 1974. Applicants purchased the property in 1998.

**4. The variance will not be contrary to the public interest or the policies, goals, objectives of the Critical Area law, and Program;**

The Critical Area Law or Program does not outright prohibit pools within the Buffer, but rather limits the construction of improvements within the Buffer to circumstances where there is no other practical alternative. If the law was intended to prohibit any improvement in the Buffer but for a single dwelling on a lot, it would so state. The law does not distinguish between what type of improvements are appropriate in the Buffer, but rather examines the physical circumstances associated with the property that precipitate the need for improvements in the Buffer.

**5. The variance will not confer upon the applicant any special privilege denied to other owners of like property and/or structures in the Critical Area;**

Granting of the variance for the location of the pool within the Buffer will not confer any special privileges denied to other owners of like property and structures in the neighboring area. In fact, if the variance is not granted, it will deny the Applicant a privilege which has been granted to other property owners in the neighborhood whose lots are similarly situated. There are other

Steven Kaii-Ziegler  
October 25, 1999  
Page Five

properties in the Long Point subdivision with improvements situated as close as 23 feet from the water. Applicants are proposing a pool that is located over 50 feet from the water.

**6. The variance will not adversely affect water quality or adversely impact fish, wildlife or plant habitats within the Critical Area;**

The Francis' property had very little plant habitat at the time of purchase. There are no mature trees and but small shrubs have been planted. Additionally extensive planting mitigation required as part of any construction within the Buffer will likely result in improvements to water quality and plant habitat.

**7. The variance is the minimum deviation from the provisions of the subtitle that will make possible the reasonable use of land or structures; and,**

The variance will make possible the reasonable use of the land by permitting only a dwelling and a pool on the Property. The Applicant will locate the pool as far from tidal wetlands as possible while still complying with required setbacks as well as locating the pool as close to the house as is structurally sound. The Applicant has reduced the size of the pool from that which was originally proposed.

**8. The granting of the variance will be in harmony with the general purpose and intent of this subtitle and the Queen Anne's County Critical Area Program, and the variance will not result in a use not permitted in the applicable development area or an increase in the applicable density limitations.**

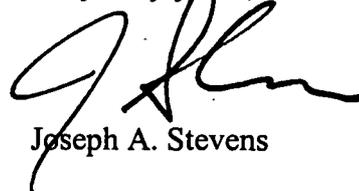
The information submitted by the Francis' in their revised application and previously addressed herein provides the necessary evidence for the Department of Planning and Zoning to make Finding # 8.

The foregoing information demonstrates that a literal enforcement of the 100' Buffer for the construction of a pool will create an unnecessary hardship and that such hardship is not shared by owners of other property in the area granted with identical uses. I am aware of no instance where a pool has been outright denied to an applicant where the applicant has no other location alternative for said pool. The Francis' have clearly taken all necessary steps in order to minimize the impact to the Buffer and to deny them a variance will deny them a reasonable use of their property.

Steven Kaii-Ziegler  
October 25, 1999  
Page Six

Thank you for the opportunity to amend the Francis' application for an administrative variance.

Very truly yours,

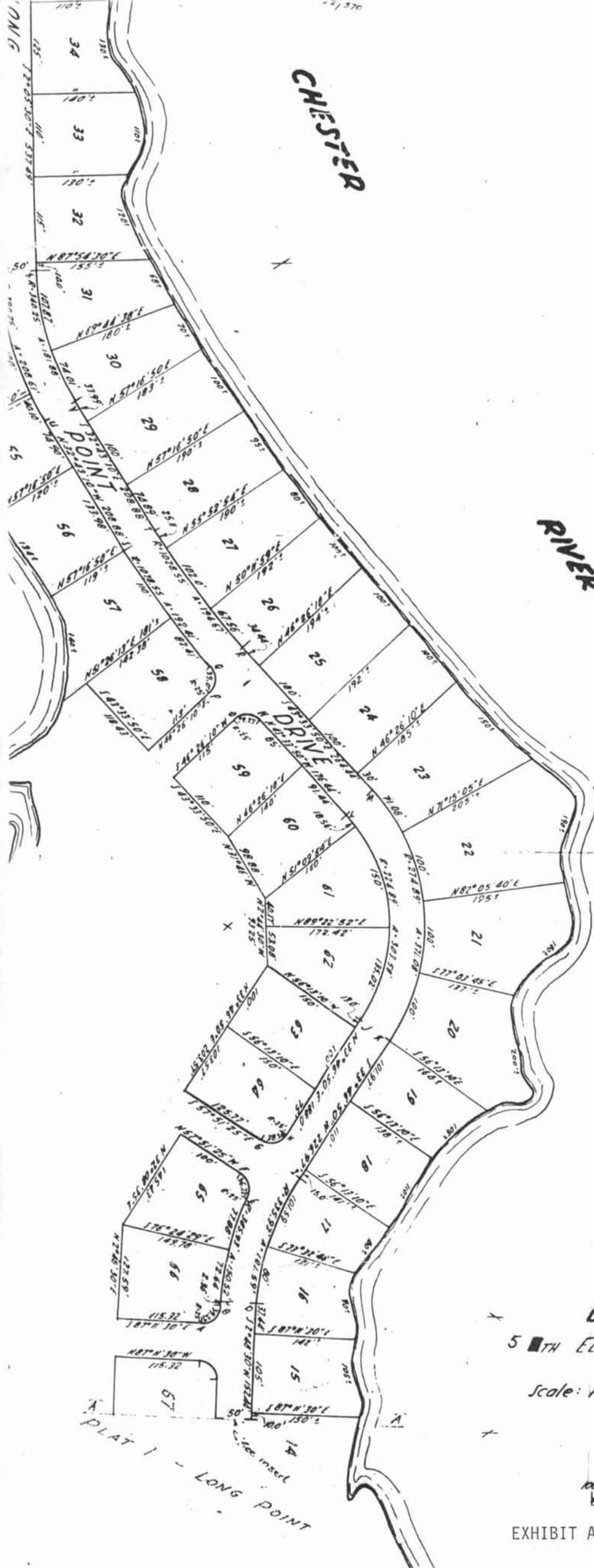
A handwritten signature in black ink, appearing to read 'J. Stevens', written over the typed name 'Joseph A. Stevens'.

Joseph A. Stevens

Enclosures

JAS/epw

cc: James and Diane Francis, w/o encl.  
Susan Zendel, CBCAC, w/encl.



ENGINEER'S CERTIFICATE

I hereby certify that the plan shown hereon is correct: that it is a subdivision of part of the land conveyed by Mary Stichel to Kent Narrows Land & Development Co., Inc. by deed dated and recorded among the Land Records of Queen Annes County, Maryland in Liber Folio

*John W. Boutwell, Jr.*  
 JOHN W. BOUTWELL, JR.  
 REG. LAND SURVEYOR # 2285

3/27/59  
 DATE

Let's ~~lots 59, 60, 61, 62, 63, 64, 65~~ <sup>PRM</sup> 59, 60, 61, 62, 63, 64, 65 and 66 are unsuitable for building purposes until such time necessary improvements are made to permit individual sewer systems in compliance with the Queen Annes County Health Department Specifications.

The requirements of the Queen Annes County Health Department have been met in preparing this plat.

*Carolina A. Callahan, M.D.*  
 HEALTH OFFICER

March 20, 1960  
 DATE

I do hereby certify that the land shown hereon has been laid out and the plat thereof prepared in accordance with the provisions of the law relating to the subdivision of land known as House Bill 459, Chapter 1016 of the Act of 1945 and subsequent Acts amendatory thereto and also Section No. 322 of Article No. 18 of the code of Public Local Laws of Maryland (entitled Queen Anne's County Sub-titled: Plats).

3/25/60

*John W. Boutwell, Jr.*  
 John W. Boutwell, Jr.  
 Reg. Land Surveyor # 2

PLAT 2

LONG POINT

5<sup>TH</sup> ELECTION DISTRICT, QUEEN ANNES CO., MARYLAND

Scale: 1" = 100'

March, 1959

JOHN W. BOUTWELL, JR.  
 REG. LAND SURVEYOR  
 ANNAPOLIS, MARYLAND



EXHIBIT A

CHESAPEAKE BAY  
CRITICAL AREA COMMISSION

OCT 27 1999

RECEIVED



DEPARTMENT OF PLANNING AND ZONING  
QUEEN ANNE'S COUNTY

107 N. LIBERTY STREET  
CENTREVILLE, MARYLAND 21617

211-99  
400-99

SZ

410-758-4088 Permits  
410-758-3972 Fax  
410-758-1255 Planning  
410-758-2905 Fax

January 31, 2000

Mr. & Mrs. James A. Francis  
19205 Autumn Maple Lane  
Gaithersburg, MD 20879



**RE: ADMINISTRATIVE VARIANCE #05-99-01 (revised)**

Dear Mr. & Mrs. Francis:

On the October 25, 1999 the Department of Planning and Zoning gave notice that application had been made by James A. And Diane S. Francis, Case No. AV-05-99-01 (revised), requesting an administrative variance so as to permit construction of a swimming pool within the 100' Critical Area Buffer as defined in Title 14, Environmental Protection, Subtitle 1. of the Chesapeake Bay Critical Area Act of Queen Anne's County, adopted June 4, 1996. The property is known and designated as Part of Parcel 569, Lot 28 of the Long Point Subdivision, on Zoning Map 58, fronting on Long Point Road and located in the Fifth Election District of Queen Anne's County, Maryland. The property is further set forth and designated on the Queen Anne's County Sectional Map No 58, Part of Parcel 569, being located in an NC-15 zoning district and entirely within an LDA Critical Area district.

With regard to the administrative variance, §14-168, Title 14, Environmental Protection, of the Queen Anne's County Code authorizes delegation of Board of Appeals authority as specified in §14-161 to the Planning Director to apply the standards for variances specified in §14-166.

§14-166 and §14-168 of the Environmental Protection Element of the Queen Anne's County Code set forth limitations with respect to administrative variances and conditions on administrative variances which the Department must consider.

**ADMINISTRATIVE VARIANCE FOR CONSTRUCTION OF A 16' X 38' SWIMMING POOL.**

The Department has given careful consideration to the limitations, guides and standards as set forth in the Environmental Protection Element of the Queen Anne's County Code and in particular to the provisions of §14-166 and hereby grants the requested administrative variance for the swimming pool for the following reasons:

1. The Department finds that a literal enforcement of this Ordinance would result in unwarranted hardship as a result of specified conditions which hardship is not

shared by owners of other properties in the same development area. Department records indicates this lot was created in 1960; and the subject property was developed with a single-family residence in 1974, an act that predates the Critical Area law. The property fronts on the Chester River and has Buffer exemption status. The proposed 16' X 38' swimming pool will be located approximately 50ft from the mean high waterline and shoreward of the existing structure. It is therefore the Department's position that a literal enforcement of this Ordinance would severely limit the applicants' ability to use this property for residential purposes.

2. The Department finds that the conditions are peculiar to the property involved for the reasons stated in Paragraph 1, above.
3. The Department finds that the conditions are not the result of any actions taken by the applicants since the applicants purchased the property after it had been improved with a single-family residence. The current property owners took possession of this property in December of 1998. The increase of impervious cover is a result of the applicants completing construction of the pool. It is the Department's position that the applicants have initiated no action that would contribute to the existing condition. Failure to grant the variance would severely limit any residential use of the property.
4. The Department finds that this administrative variance will not be contrary to the public interest or the policies, goals and objectives of the Environmental Protection Element of the County Code and the Queen Anne's County Critical Area Program. The variance will not be contrary to public interest because impacts to the Buffer have been minimized. The applicants have decreased the size of the pool from 25' X 53' to 16' X 38' deleting the patio thus minimizing the area of buffer intrusion. The proposed improvements are modest in nature and encroach into the Buffer fifty (50) feet. The property is not adjacent to any habitat protection areas. No nontidal wetlands or forest/developed woodlands will be impacted by this proposal.

§14-168(c)(ii) of the Environmental Protection Element of the County Code requires that any new impervious surfaces being created in the Buffer must be offset by the planting of two (2) trees. These trees must be of native species, be at least six feet high and either container grown or balled and burlapped. §14-168(c)(5) of the Environmental Protection Element of the County Code stipulates that any required reforestation or mitigation or offset areas shall be designated under a development agreement or other instrument and recorded among the Land

Records of Queen Anne's County. For the purpose of satisfying this requirement, the Department will accept an authorized surety (bond, letter of credit or cash deposit) as stipulated in §14-180 through §14-190 of the Environmental Protection Element of the County Code. As a result of the required Buffer mitigation planting, the approval of the proposed variance will not contribute to cumulative impacts of such structures on the Chesapeake Bay and therefore is consistent with the general spirit and intent of the Critical Area Program.

5. The Department finds that this administrative variance will not confer upon the applicants any special privileges denied to others of like property and/or structures within the Critical Area, since the granting of this variance is based on the special conditions existing and applicable to the subject property.
6. The Department finds that this administrative variance will not adversely affect water quality or adversely impact fish, wildlife or plant habitats within the Critical Area. The proposed development activity is of very modest scale and only violates the provisions of the Buffer restrictions in that it results in the minimal creation of impervious surfaces. Planning staff's review of the application indicates the proposed development will also not impact any known Habitat Protection Areas (HPAs). The Department, cognizant of this factor, has attached conditions to the variance to offset/minimize impacts to the Buffer.
7. The Department finds that the variance is the minimum deviation from the provisions of the Environmental Protection Element of the County Code that will make possible the reasonable use of land and/or structures. The Department finds that there does not appear to be any other development alternative that would minimize, to a greater degree, impacts to the Buffer. The Department finds that this is a reasonable use of the land and that proposed impacts to the Buffer are modest in nature and have been minimized to the extent possible.
8. The Department finds that the granting of this variance will be in harmony with the general purposes and intent of the Environmental Protection Element of the County Code and the Queen Anne's County Critical Area Program and the variance will not result in a use not permitted in the applicable Critical Areas development area (LDA) or an increase in applicable density limitations. In this regard it should be pointed out that the density of development and minimum lot size is permitted within LDA development areas in addition to being governed by applicable provisions of the Queen Anne's County Zoning Ordinance. The subject property contains approximately .33 acres of land which, according to the residential density standards permitted within an NC-15 zoning district, would permit a maximum of 1 dwelling unit. Therefore, the density proposed is well within that permitted in both

the zoning district and within the LDA district. Existing and proposed impervious area constitute less than 19% of the subject property, which is less than is permitted within the LDA on lots smaller than a quarter acre. The relatively low proposed density and modest administrative variance request would appear to be in compliance with the general purposes and intent of the Critical Area Program and Environmental Protection Element of the County Code and minimizes impacts to the Buffer.

**CONDITIONS**

The granting of this administrative variance to the 100' Critical Area Buffer shall be conditioned upon the following:

1. The applicant shall plant two (2) trees on site to fulfill the Buffer offsetting requirements. The trees to be planted must be six feet tall, of native species and container grown or balled and burlapped.
2. The applicants shall be required to provide a performance guarantee in the form of a letter of credit, bond or cash deposit to satisfy the requirements of §14-168(c)(5) of the Environmental Protection Element of the County Code for reforestation and mitigation of offset areas. Questions relating to the administration of performance guarantees should be directed to Vivian Swinson of the Zoning Division at 410-758-4088.

Please contact our Zoning Division at 410-758-4088 concerning your pending building permit (Z-99-0238). Should you have any additional questions relating to this matter, please do not hesitate to contact me.

Sincerely,



Steven Kai-Ziegler, AICP  
Planning Director

SKZ:vjs

CC: Susan M. Zankel	Vivian Swinson
Permit Office	Joseph Stevens
Mr. & Mrs. Dean Brewer	Mr. & Mrs. George Sutler

SEARCHED INDEXED  
SERIALIZED FILED  
MAY 11 2005  
COUNTY CLERK



DEPARTMENT OF PLANNING AND ZONING  
QUEEN ANNE'S COUNTY

107 N. LIBERTY STREET  
CENTREVILLE, MARYLAND 21617

11-95  
525-96  
504-99  
636-99  
SZ  
410-758-4088 Permits  
410-758-3972 Fax  
410-758-1255 Planning  
410-758-2905 Fax

January 31, 2000

Mr. Jody Schulz  
222 Schulz Lane  
Chester, MD 21619

RECEIVED

FEB 7 2000

CHESAPEAKE BAY  
CRITICAL AREA COMMISSION

RE: ADMINISTRATIVE VARIANCE #04-99-7

Dear Mr. Schulz:

On December 1, 1999 the Department of Planning and Zoning gave notice that application had been made by Jody J. Schulz, Case No. AV 04-99-07, requesting an administrative variance so as to permit construction of an addition to dwelling within the 100' Critical Area Buffer as defined in Title 14, Environmental Protection, Subtitle 1. of the Chesapeake Bay Critical Area Act of Queen Anne's County, adopted June 4, 1996. The property is known and designated as Parcel 478, on Zoning Map 57, fronting on Kirwans Landing Road and located in the Fourth Election District of Queen Anne's County, Maryland. The property is further set forth and designated on the Queen Anne's County Sectional Map No. 57, Parcel 478, being located in a Countyside zoning district and entirely within a RCA Critical Area district.

With regard to the administrative variance, §14-168, Title 14, Environmental Protection, of the Queen Anne's County Code authorizes delegation of Board of Appeals authority as specified in §14-161 to the Planning Director to apply the standards for variances specified in §14-166.

§14-166 and §14-168 of the Environmental Protection Element of the Queen Anne's County Code set forth limitations with respect to administrative variances and conditions on administrative variances which the Department must consider.

**ADMINISTRATIVE VARIANCE FOR CONSTRUCTION OF A 1915 square foot addition to dwelling.**

The Department has given careful consideration to the limitations, guides and standards as set forth in the Environmental Protection Element of the Queen Anne's County Code and in particular to the provisions of §14-166 and hereby grants the requested administrative variance for the addition to the existing residence for the following reasons:

1. The Department finds that a literal enforcement of this Ordinance would result in unwarranted hardship as a result of specified conditions which hardship is not shared by owners of other properties in the same development area. Staff reports indicates this lot was created in 1984 the subject property was developed with a single-family residence in approximately 1988, an act that predates the Critical Area law. The property fronts on Kirwans Creek and is not mapped buffer exempt. The proposed 1915 square foot addition to the residence will be located approximately 83ft to tidal wetlands; the existing structure is 50ft. It is therefore the Department's position that a literal enforcement of this Ordinance would severely limit the applicants' ability to use this property for residential purposes.
2. The Department finds that the conditions are peculiar to the property involved for the reasons stated in Paragraph 1, above.
3. The Department finds that the conditions are not the result of any actions taken by the applicants, when the property was developed the setback from the water was 50ft. The increase of impervious cover is a result of the applicants completing the addition to the dwelling for added space needed for a growing family. It is the Department's position that the applicants have initiated no action that would contribute to the existing condition. Failure to grant the variance would severely limit any residential use of the property.
4. The Department finds that this administrative variance will not be contrary to the public interest or the policies, goals and objectives of the Environmental Protection Element of the County Code and the Queen Anne's County Critical Area Program. The variance will not be contrary to public interest because impacts to the Buffer have been minimized. The applicants propose to improve the property by constructing a 1915 square foot addition to the residence. The proposed improvements are modest in nature and encroach into the Buffer seventeen (17) feet. The property is adjacent to a historic waterfowl staging area. No nontidal wetlands or forest/developed woodlands will be impacted by this proposal.

§14-168(c)(ii) of the Environmental Protection Element of the County Code requires that any new impervious surfaces being created in the Buffer must be offset by the planting of seven (7) trees. These trees must be of native species, be at least six feet high and either container grown or balled and burlapped. §14-168(c)(5) of the Environmental Protection Element of the County Code stipulates that any required reforestation or mitigation or offset areas shall be designated under a development agreement or other instrument and recorded among the Land Records of Queen Anne's County. For the purpose of

satisfying this requirement, the Department will accept an authorized surety (bond, letter of credit or cash deposit) as stipulated in §14-180 through §14-190 of the Environmental Protection Element of the County Code. As a result of the required Buffer mitigation planting, the approval of the proposed variance will not contribute to cumulative impacts of such structures on the Chesapeake Bay and therefore is consistent with the general spirit and intent of the Critical Area Program.

The staff report indicates that the applicant has more than meet the mitigation requirements by planting twenty-four (24) 8ft to 12ft black pines within the 100ft buffer prior to making application for variance. Therefore this department is satisfied that mitigation requirements have been met and that no bonding requirements will not be needed.

5. The Department finds that this administrative variance will not confer upon the applicants any special privileges denied to others of like property and/or structures within the Critical Area, since the granting of this variance is based on the special conditions existing and applicable to the subject property.
6. The Department finds that this administrative variance will not adversely affect water quality or adversely impact fish, wildlife or plant habitats within the Critical Area. The proposed development activity is of very modest scale and only violates the provisions of the Buffer restrictions in that it results in the minimal creation of impervious surfaces. Planning staff's review of the application indicates the proposed development will also not impact any known Habitat Protection Areas (HPAs). The Department, cognizant of this factor, has attached conditions to the variance to offset/minimize impacts to the Buffer.
7. The Department finds that the variance is the minimum deviation from the provisions of the Environmental Protection Element of the County Code that will make possible the reasonable use of land and/or structures. The Department finds that there does not appear to be any other development alternative that would minimize, to a greater degree, impacts to the Buffer. The Department finds that this is a reasonable use of the land and that proposed impacts to the Buffer are modest in nature and have ben minimized to the extent possible.
8. The Department finds that the granting of this variance will be in harmony with the general purposes and intent of the Environmental Protection Element of the County Code and the Queen Anne's County Critical Area Program and the variance will not result in a use not permitted in the applicable Critical Areas development area (RCA) or an increase in applicable density limitations. In this regard it should be pointed out that the density of development and minimum lot

size is permitted within RCA development areas in addition to being governed by applicable provisions of the Queen Anne's County Zoning Ordinance. The subject property contains approximately 17.64 acres of land which, according to the residential density standards permitted within an Countryside zoning district, would permit a maximum of 1 dwelling unit. Therefore, the density proposed is well within that permitted in both the zoning district and within the RCA district. Existing and proposed impervious area constitute less than of the subject property, which is less than is permitted within the RCA. The relatively low proposed density and modest administrative variance request would appear to be in compliance with the general purposes and intent of the Critical Area Program and Environmental Protection Element of the County Code and minimizes impacts to the Buffer.

Please contact our Zoning Division at 410-758-4088 concerning your pending building permit (B-99-1465). Should you have any additional questions relating to this matter, please do not hesitate to contact me.

Sincerely,



Steven Kaii-Ziegler, AICP  
Planning Director

SKZ:vjs

CC: Susan M. Zankel  
Vivian Swinson/Permit Office  
Bruce & Karin Larsen  
William & Mary Tankersley  
Charles & Nancy Staudinger  
James Pfisterer  
Lisa Diehl  
Charle & Kala Larrimore  
Sheldon & Linda Siegle  
Tracy Schulz  
Wm. Paige & Catherine Larrimore  
Michael & Brenda Simpson

J:\DATA\VIVIAN\VARIANCE\SHCULZ.07



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

RECEIVED

MAY 06 1999

Q.A. COUNTY PLANNING & ZONING

May 5, 1999

Ms. Vivian Swinson  
Department of Planning and Zoning  
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.

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

Exhibit E

Ms. Vivian Swinson  
May 5, 1999  
Page two

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 impervious surfaces and 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 or impervious surfaces 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

May 5, 1999

Page three

(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.

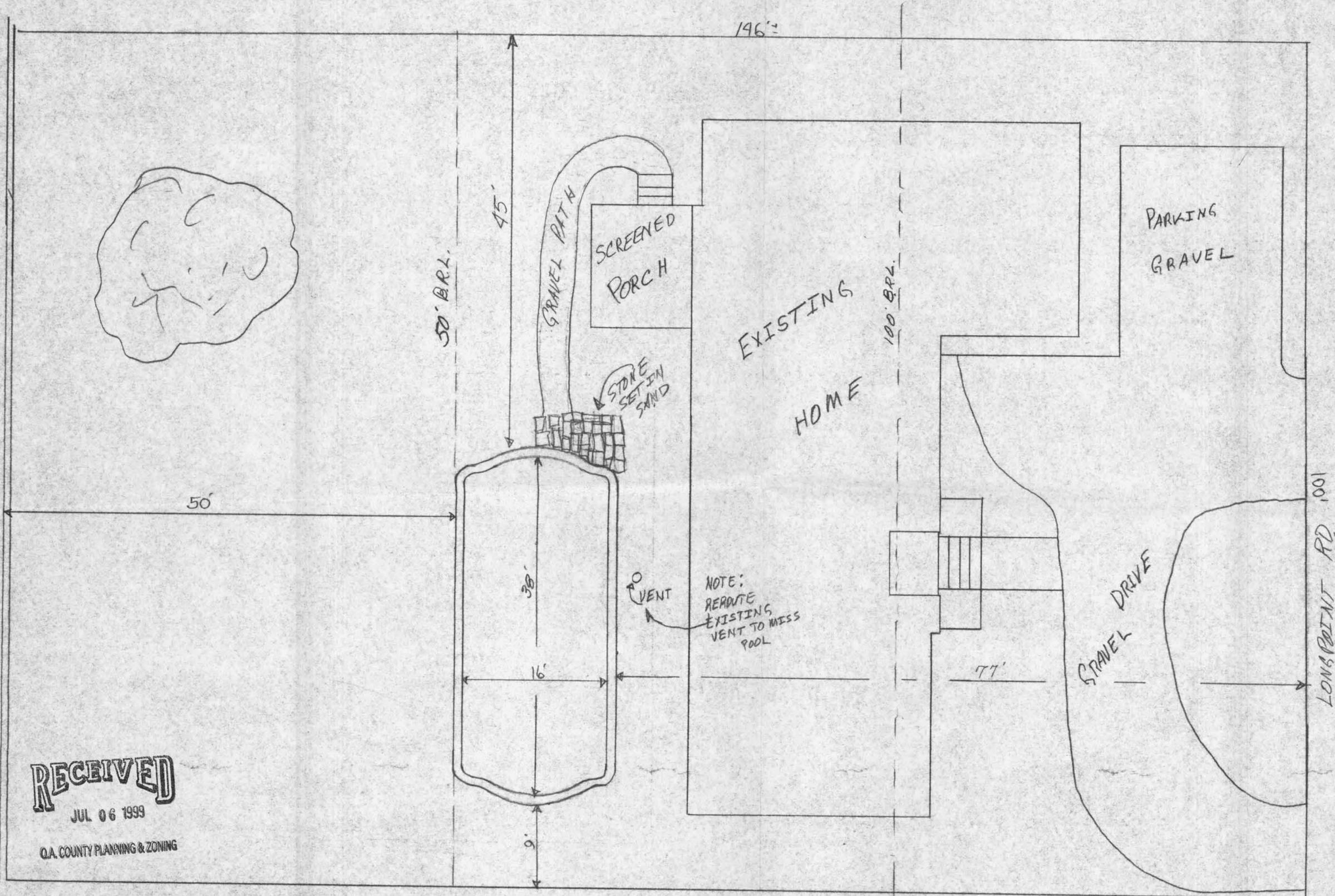
Thank you for the opportunity to comment. Please include this letter in your file and submit it as a part of the record for variance. Please notify the Commission in writing of the decision made in this case. If you have any questions concerning these comments, please call me at (410) 260-7019.

Sincerely,



Susan McConville  
Natural Resources Planner

cc: Ren Sercy  
QA 211-99



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JUL 06 1999

Q.A. COUNTY PLANNING & ZONING

**RECEIVED**

DEC 18 1999

CHESPEAKE BAY  
CRITICAL AREA COMMISSION

POOL LOCATION PLAN  
JIM & DIANE FRANCIS  
1006 LONG POINT ROAD  
GRASONVILLE, MD. 1/8"=1'