SM 500-99 Wellington, William
VAR 99-1784

MSA_S_1829_596

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

September 22, 1999

Ms. Christine Holmberg
Department of Planning and Zoning
P O Box 3000
Leonardtown, Maryland 20650

RE: VAR #99-1784, William Wellington
CBCAC # 500-99

Dear Ms. Holmberg:

Thank you for providing information on the referenced project. The applicant is seeking approval of a variance to construct a single family dwelling located in the 100-foot Buffer, exceed the impervious surface limitations, and clear more than 30% of the forest resource on the property.

Staff have no objection to the granting of this variance as the lot is small in size and the house is as far out of the Buffer as possible while still allowing for the septic reserve area to be located as far landward as possible. The General Assembly changed the impervious surface limitations to allow more flexibility on grandfathered lots of this size. According to the new legislation, the property owner of a 11,500 sf. lot is allowed 31.25% impervious surfaces. Therefore, staff have no objection to the proposed amount (25.4%) of impervious surface on this lot. If a variance request is approved to allow the applicant to clear more than 30% of the existing forest on the property, we recommend that the applicant be required to mitigate adverse impacts to water quality and enhance habitat within the Buffer. In accordance with St. Mary's County Zoning Ordinance (Article III), we recommend that the applicant provide 3:1 mitigation for the area of clearing in the Critical Area. Mitigation plantings should occur onsite, if possible, and native species should be used.

Thank you for the opportunity to comment. Please include this letter in your file and submit it as part of the record for the variance. Also, please notify the Commission in writing of the decision made in this case. If you have any questions, you can contact me at (410) 260-7073.

Sincerely yours,

Tracy Batchelder

Tracy Batchelder
Natural Resources Planner
TTB/jjd

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

99-1784

LOT AREA (INCLUDING 1/2 R/W	11,500 S.F.
IMPERVIOUS SURFACE ALLOWED @ 25%	2875 S.F.
R/W AREA	3000 S.F.
LOT AREA	10,000 S.F.

PROPOSED:

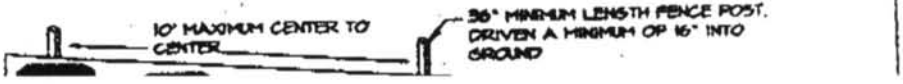
ON SITE

HOUSE & GARAGE	=	1988 S.F.
DECKS/PORCHES	=	218 S.F.
CONCRETE PAD	=	200 S.F.
DRIVEWAY(-1/2 R/W)	=	520 S.F.

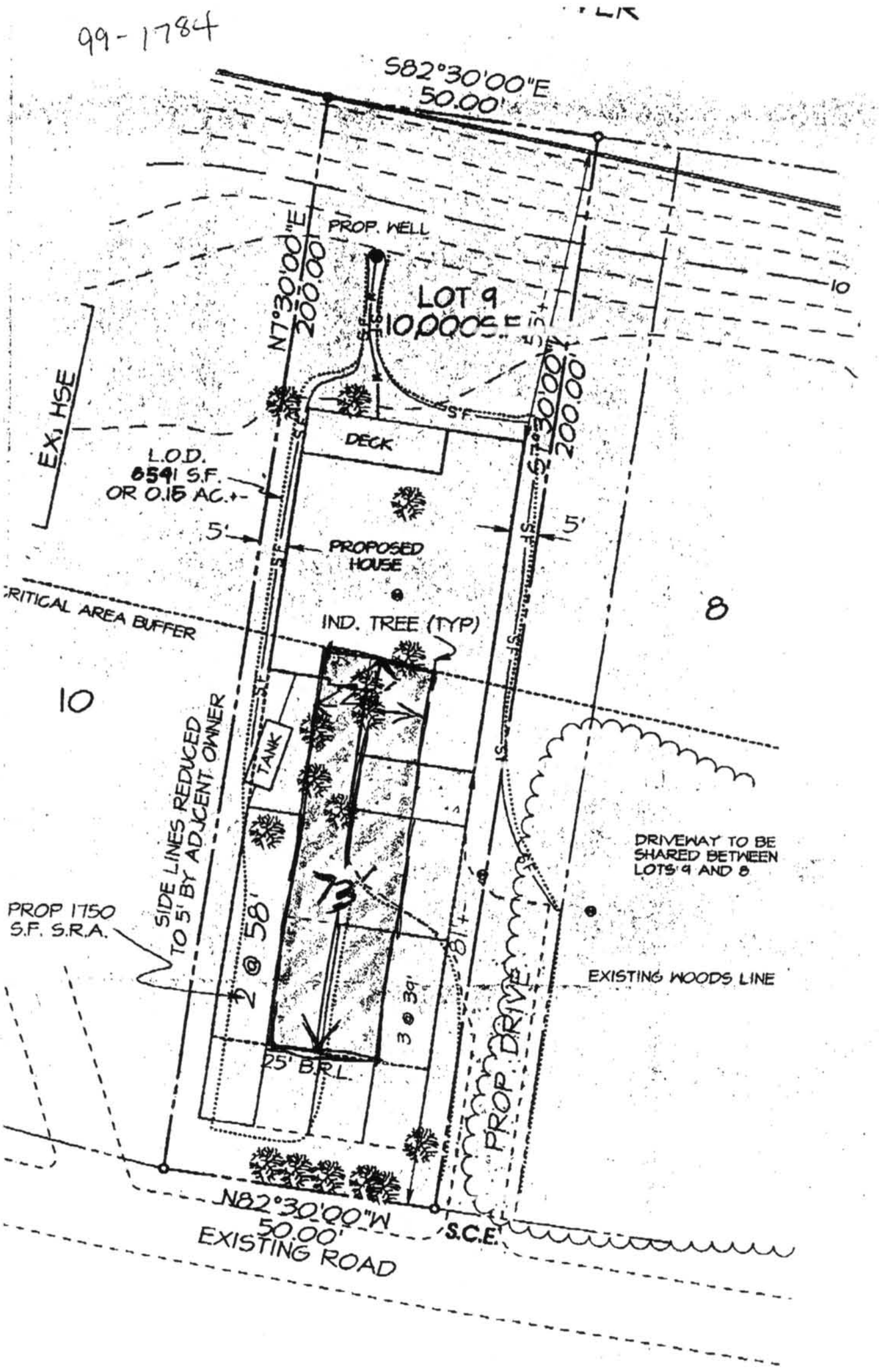
2926 S.F. TOTAL OR 25.4%

10 TREES TO BE CLEARED ON SITE
AND 440 S.F. CLEARED ON R/W
220 FOR THIS LOT AND 220 FOR LOT 8 OR 2% CLEARING

DETAIL 22 - SILT FENCE



99-1784


S82°30'00"E
50.00'
PROP. WELL
N7°30'00"E
200.00'
LOT 9
10,000 S.F.
S7°30'00"W
200.00'
EX. HSE
DECK
L.O.D.
6541 S.F.
OR 0.15 AC.+-
5'
5'
PROPOSED HOUSE
CRITICAL AREA BUFFER
IND. TREE (TYP)
10
8
TANK
SIDE LINES REDUCED TO 5' BY ADJACENT OWNER
DRIVEWAY TO BE SHARED BETWEEN LOTS 9 AND 8
PROP 1750 S.F. S.R.A.
2 @ 58'
73'
81'+-
3 @ 39'
EXISTING WOODS LINE
25' B.R.L.
PROP DRIVE
N82°30'00"W
50.00'
S.C.E.
EXISTING ROAD

ST. MARY'S COUNTY GOVERNMENT
DEPARTMENT OF PLANNING AND ZONING
P. O. BOX 653 • 22740 WASHINGTON STREET • LEONARDTOWN, MARYLAND 20650

MEMORANDUM

TO: Board of Appeals
FROM: Jon R. Grimm, Director
DATE: 9/21/99

SUBJECT: VAAP #99-1784, William Wellington
Board of Appeals Meeting of September 23, 1999

I. DEVELOPMENT DATA

REQUEST: Variances from Section 38.2.13, Section 38.2.10 and Section 38.2.9 of the Zoning Ordinance to allow the construction of a single-family dwelling and appurtenances within the 100 foot Critical Area Buffer, clearing over 30% and impervious surface exceeding 25%, respectively

OWNER: William Wellington

LOCATION: Patuxent Avenue, California

TAX MAP: 35 BLOCK: 1 PARCEL: 1
(Lot 9, Levering's Subdivision)

ELECTION DISTRICT 8th ACREAGE: 10,000 square feet

ZONING: RL (LDA overlay) USE: Vacant

II. APPLICABLE REGULATIONS:

1. Section 38.2.13 of the St. Mary's County Zoning Ordinance prescribes:

   a. A minimum 100-foot buffer expanded for steep slopes, etc. landward from the mean high water line of all tidal water, tributary streams and tidal wetlands shall be maintained.

   b. New development activities, including structures, roads, parking areas and other impervious surfaces, septic systems, or mining and related facilities will not be permitted in the BUFFER unless these facilities are associated with water dependent facilities and are the only feasible alternative to satisfy

the requirements of the proposed development.

2. Because the proposed construction requires placement of the well closer than 50 feet to mean high water,, as well as variances from other sections of the Zoning Ordinance, the application must be heard by the Board of Appeals.

3. Section 38.2.10.e.2.g states that, in the Limited Development Area and Resource Conservation Area, all forests removed must be replaced on not less than an equal basis. The developer "may clear or develop more forest than otherwise permited to be disturbed only if the total forest area removed from forest use does not exceed 30 percent of any forest or developed woodland." Developed woodland shall be conserved to the greatest extent possible.

4. Section 38.2.9 identifies the situations in the LDA where a 25% maximum amount of impervious surface is permissible. These instances include parcels or lots of no greater than 0.5 acre in size which were either in residential use or zoned for residential purposes on or before 12/1/85. Levering's Subdivision was zoned residential as of 12/1/85.

III. STAFF COMMENTS:

1. The applicant is proposing to construct a new single-family dwelling and access driveway with a footprint of approximately 2,926 square feet. The new construction includes a house and garage footprint of 1,988 square feet, 218 square feet devoted to decks/porches, and a 200 square foot concrete pad. The total proposed impervious surfaces in the Buffer is 615 sq. ft. At its closest point, the new construction will be located approximately 55' from the rear lot line and the Patuxent River. Only the house and rear deck and well are proposed to be located within the 100' Critical Area Buffer. The lot is effectively divided in half by the Buffer. The property is a lot of record predating the Critical Area regulations.

2. The proposed well and water line will be located 28 feet from mean high water. The septic tank and drainfields will be located outside of the Critical Area Buffer between the proposed dwelling and the front lot line.

3. According to the site plan, the property contains 17 individual trees. Ten of the 17 trees (59% of the site's developed woodland resources) will be removed due to construction. As noted in the above section, a maximum of 30% of clearing of woodland resources is permitted in the LDA overlay district.

4. Approximately 29.26% of the lot is proposed to be covered by impervious surfaces;

the standard for the Limited Development Area is a maximum of 25% impervious under the current zoning ordinance. The Critical Area regulations were amended by the state legislature to allow 31.25% of the property to be covered by impervious surfaces.

5. Attachment #3 is the applicant's Letter of Intent dated August 12, 1999 addressing the standards for variance. Staff analysis of the applicant's compliance with the standards is provided below:

Per Section 38.2(7) of the Zoning Ordinance (Critical Area District Regulations, 90-02), Variances: The following standards for variance are provided:

a. That special conditions or circumstances exist that are peculiar to the land or structure involved and that a literal enforcement of the provisions of the Critical Area program would result in unwarranted hardship.

Staff concurs with the Letter of Intent in that special conditions and circumstances exist that are peculiar to this request. Specifically, the narrowness of the lot, combined with the location of water and sewer utilities on the adjoining lots (with their related setbacks), predetermines the location for the same facilities on the subject lot which are located outside of the Critical Area Buffer. Therefore, the building site proposed is the only feasible location for construction on the lot, and a literal enforcement of the provisions of the Critical Area program would result in an unwarranted hardship and denial of all building rights on the existing lot.

b. That the literal interpretation of the Critical Area program and related ordinances will deprive the landowner rights commonly enjoyed by other properties in similar areas within the Critical Area.

The literal interpretation of the Critical Area program would result in the denial of a building permit being issued for this lot which would deprive this lot owner the rights commonly enjoyed by other properties in similar areas within the Critical Area.

c. That the granting of a variance will not confer upon the land owner any special privilege that would be denied by the Critical Area program to other lands or structures within the Critical Area that are of a similar nature and/or circumstance.

Staff finds that the granting of this variance would not confer upon this

applicant any special privileges. Other landowners facing similar circumstances would be afforded the opportunity to file for a variance.

d. That the variance request is not based upon conditions or circumstances which are the result of actions by the land owner, nor that the request arises from any condition relating to land or building use, either permitted or nonconforming, on any neighboring property.

As the creation of the lot predates the Critical Area Ordinance, staff finds this request is not a condition or circumstance which was a result of actions by the landowner. While staff recognizes that the development on the adjacent lot dictates the location of the septic system and well on the subject property, a conventional size house with necessary appurtenance could not be built on this property without a variance. Health Department regulations require a 50 foot setback between septic systems and wells, 10 foot setbacks for both from property lines, and 30 foot setback between wells and structures. Therefore, staff finds that development on adjacent lots does not entirely cause the variance.

e. That the granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area, and that the granting of a variance will be in harmony with the general spirit and intent of the Critical Area program.

In the Letter of Intent, the applicant points out that very little clearing is required during construction, and that by placing the septic system at the front of the lot, as far away from the waterfront as possible, any impacts on water quality will be minimized. According to the site plan, 6,541 square feet, or 0.15 acre, is proposed to be disturbed on the lot. Staff would agree that placing the septic system at the front of the lot aids in minimizing the water quality impacts.

Staff finds that should variances be granted, a Critical Area Buffer Planting Agreement and Planting Plan are necessary to moderate potential impacts to water quality. A Planting Agreement should be developed in accordance with Seciton 38.2.7.a.2 of the Zoning Ordinance, which states that planted mitigation on the site per square foot of the variance granted shall occur at no less than a three to one basis or as recommended by the Department of Planning and Zoning. Staff believes that this finding, and imposition of the same as a condition of approval, is in keeping with the general intent of the Critical Area Program because planting on this lot will assist in maintaining

and improving the functions of the Buffer.

Staff finds the mitigation necessary to compensate for the removal of trees above the 30% threshold, as well as the additional impervious surface, can be accomplished within the terms of the Planting Agreement. So as to not greatly overburden the applicant, staff finds it appropriate to only use the more stringent of the planting requirements, which would be removal of greater than 30% of the tree resources, and not double count mitigation for impervious surfaces which are to be place where the clearing is proposed.

f. That the variance is the minimum relaxation of the provisions of this ORDINANCE necessary to achieve a reasonable use of land or structures.

Staff finds the proposed dwelling is a modestly-sized home with a small footprint size of approximately 2,000 square feet, and that it will be a house of similar size and character to those found in the immediate neighborhood. The applicant also proposes to share an entrance and drive with the future owners of lot 8. The clearing proposed is only for the construction of the single-family dwelling and will be mitigated through a planting agreement. Staff concludes that the lot is severely constrained due to the location of water and sewage facilities and its narrow width. Waivers have been obtained from adjacent landowners to reduce the required side yard setback to five feet on both sides, in order to accommodate construction of the home. Based on all of these factors, staff finds the variance requested is the minimum relaxation necessary to achieve a reasonable use of the property.

Per Section 66.02(3) of the St. Mary's County Zoning Ordinance, Standards for Variance:

a. Because of the particular physical surroundings such as exceptional narrowness, shallowness, size, shape, or topographical conditions of the specific property involved, unnecessary hardship or practical difficulty to the owner would result (as distinguished from a mere inconvenience) if the strict letter of the regulations were to be carried out.

At 50' in width, staff finds the lot to be extremely narrow. The narrowness of the lot, combined with sloping topography which occurs to the rear of the property, limits the placement of a dwelling and related utilities. Staff finds this criterion to be met by the subject application.

b. The conditions upon which a petition for a variance is based are unique to the property for which the variance is sought, and are not applicable,

generally, to other property within the same zoning classification.

Staff finds that the conditions upon which a variance are sought are unique to the subject property and are not applicable, generally, to other property within the same zoning classification. Due to the combination of well and septic setback requirements and the narrowness of the property, the only location for a dwelling is where the applicant is proposing one.

c. The purpose of the variance is not based exclusively upon reasons of convenience, profit or caprice.

Staff finds this application to be a reasonable request necessary to support a residential use of the legally recorded property and is therefore not for convenience, profit, or caprice.

d. The alleged difficulty or hardship is caused by this ORDINANCE and has not been created by any person presently having an interest in the property.

Staff finds this difficulty is caused by the combination of the Buffer restrictions, clearing threshold, and impervious surface limitations of the Critical Area Ordinance which became effective after the recordation of the lot. The required yard setbacks leave only a development envelop of 73 ft. by 20 ft., without the granting of the variances. Staff agrees with the applicant that the difficulty or hardship has not been created by the present owners of the property.

e. The granting of the variation will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located, and the character of the district will not be changed by the variance.

Staff concludes that the granting of the variation will not be detrimental to the public welfare or injurious to other property in the neighborhood, and that the character of the district will not be altered by the variance. The applicant has stated in the Letter of Intent that the dwelling will be an asset to the community and will be constructed in character with the surrounding area.

f. The proposed variation will not impair an adequate supply of light and air to adjacent property or substantially increase the congestion of the public streets, or increase the danger of fire, or endanger the public safety, or substantially diminish or impair property values within the neighborhood.

Staff believes the proposed variation will not impair an adequate supply of light and air to adjacent property or substantially increase congestion, danger to fire, or endanger public safety. Further, staff believes the structure will complement the residential character of the neighborhood. The applicant notes in the Letter of Intent that both adjoining landowners have consented to waivers of side building restriction lines (permitted by the Zoning Ordinance) to enable the dwelling to be constructed on this lot. Based on the above, staff concludes that the variation will neither impair adjacent property nor diminish property values within the neighborhood.

g. Such grant or variance shall comply, as nearly as possible, in every respect with the spirit, intent, and purpose of the COMPREHENSIVE PLAN - it being the purpose of this provision to authorize the granting of variation only for reasons of unnecessary hardship or practical difficulty as distinguished from variations sought by applicants.

Staff finds that the applicant has demonstrated that an unnecessary hardship exists for the construction of a single-family home within the Critical Area 100-foot Buffer. Based on the above analysis, staff finds the request does not violate the spirit, intent, or purpose of the Comprehensive Plan. It is a modestly sized improvement on a residential waterfront lot. Given the circumstances noted in this application, staff concludes that a variance may be granted because the Ordinance has caused an unnecessary hardship and practical difficulty for the lot owner.

IV. STAFF RECOMMENDATION: Adoption of the findings of this staff report and approval of variances from Section 38.2.13, Section 38.2.10 and Section 38.2.9 to construct a single-family home within the 100' Buffer, subject to the following condition:

1. The applicant shall execute a Planting Agreement with the Department of Planning and Zoning prior to the issuance of a Building Permit.

ATTACHMENT #1 -- Location Map

ATTACHMENT #2	--	Site Plan
ATTACHMENT #3	--	Letter of Intent
ATTACHMENT #4	–	Planting Agreement

99-1784