

AA 230-00
VAR

Reisinger, Michael
0158

USA-S-1829-737

YC letter
4/1/00

Judge John C. North, II
Chairman



Ren Sere
Executive Director

STATE OF MARYLAND
CHESAPEAKE BAY CRITICAL AREA COMMISSION

1804 West Street, Suite 100, Annapolis, Maryland 21401
(410) 260-3460 Fax: (410) 974-5538

September 26, 2000

Mr. Kevin Dooley
Anne Arundel County Department of Planning and Code Enforcement
2664 Riva Road, MS 6301
Annapolis, MD 21401

RE: Variance 2000-0325-V, Michael and Julie Reisinger

Dear Mr. Dooley:

Thank you for providing information on the above referenced variance application. The applicant is requesting a variance to permit a dwelling addition with less setbacks and Buffer than required. The property is designated LDA, is Buffer Exempt and is currently developed with a house and a frame "beach house" structure.

This office often does not oppose additions which provide a reasonable expansion of living space. The proposed addition is substantial in size and the resulting dwelling will have a footprint of nearly 6000 square feet. At the same time, the addition does not intrude further into the Buffer than the existing structures. In the course of any redevelopment, impacts should be minimized and the variance requested the minimum to provide relief. Have any alternative designs been explored to provide expansion and perhaps a connection between the two structures but with less impacts to the Buffer? If the project is approved, we recommend that stormwater management be addressed in some way. It seems that roof drains from such a large area could potentially cause erosion along the slopes towards the water. Lastly, mitigation should be provided for the new impervious within the Buffer at a 2:1 ratio and the new impervious outside the Buffer at a 1:1 ratio in accordance with the County Zoning Ordinance. The Buffer should be a priority location for the plantings.

Thank you for the opportunity to provide comments. Please include this letter in your file and submit it as part of the record for this variance. Also, please notify the Commission in writing of the decision made in this case.

Sincerely,

LeeAnne Chandler

LeeAnne Chandler
Natural Resources Planner

cc: AA479-00

RECEIVED
SEP 29 2000

SEP 29 2000

Branch Office: 31 Creamery Lane, Easton, MD 21601
410 822-9047 Fax: (410) 820-5593

PLANNING & ZONING DEPARTMENT

ANNE ARUNDEL COUNTY
PERMIT APPLICATION CENTER

INTER-OFFICE CORRESPONDENCE

October 16, 2000

TO: Suzy Diffenderfer, Zoning Division
FROM: Bill Love, Environmental Site Review, PAC *BLove*
SUBJECT: Reisinger, Michael, 2000-0325-V

I have reviewed the applicant's proposal and recommend approval with the following conditions:

- 1) The applicant provide reforestation for 15% of the land area -or- 2 to 1 for new impervious area within the 100-foot buffer and 1 to 1 for new impervious outside the 100-foot buffer, whichever is greater .
- 2) Forest mitigation shall occur within the 100-foot buffer.
- 3) The applicant shall place all reforestation areas within a conservation easement.
- 4) Stormwater management shall be by infiltration, if possible.

Cc: Frank Ward, Director, Permit Application Center
Lois Villemaire, Zoning



Judge John C. North, II
Chairman

Ren Serey
Executive Director

STATE OF MARYLAND
CHESAPEAKE BAY CRITICAL AREA COMMISSION

1804 West Street, Suite 100, Annapolis, Maryland 21401

June 14, 2000

(410) 260-3460

Fax: (410) 974-5338

Mr. Kevin Dooley
Anne Arundel County Department of Planning and Code Enforcement
2664 Riva Road, MS 6301
Annapolis, MD 21401

RE: Variance 2000-0158-V, Michael Reisinger - FOLLOW UP COMMENTS

Dear Mr. Dooley:

After a discussion with Mr. Reisinger, I would like to follow up on my previous comments on the above referenced variance application. During our discussion, Mr. Reisinger indicated that several of the concerns expressed in my previous letter were the result of some errors on the site plan submitted with the application. In particular, he indicated that the proposed mulch paths would be removed from the plans. One would be replaced with a wooden walkway and the other would be eliminated. In addition, he indicated that the macadam area close to the water was also supposed to be removed. He further explained that the location of the house was constrained by the septic location and the existence of several specimen trees on site.

As stated previously, this office does not oppose redevelopment of this lot. Based on my discussion with the applicant, it seems that at least some of our previous concerns have been alleviated. The final site plan should contain the corrections mentioned above and a re-calculation of total impervious surfaces. The proposed house is of significant size and it should be placed as far as possible from the water, subject to the location of the septic system. Mitigation should be provided for clearing and new impervious surfaces in accordance with the County Zoning Ordinance. Areas where impervious surfaces are removed and the Buffer should be priority locations for plantings.

Thank you for the opportunity to comment. Please include this letter in your file and submit it as part of the record for this variance. Also, please notify the Commission in writing of the decision made in this case.

Sincerely,

LeeAnne Chandler
Natural Resources Planner

cc: AA230-00

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

Judge John C. North, II
Chairman



Ren Serey
Executive Director

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

June 1, 2000

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

Mr. Kevin Dooley
Anne Arundel County Department of Planning and Code Enforcement
2664 Riva Road, MS 6301
Annapolis, MD 21401

RE: Variance 2000-0158-V, Michael Reisinger

Dear Mr. Dooley:

Thank you for providing information on the above referenced variance application. The applicant is requesting a variance to permit a dwelling with less setbacks and Buffer than required. The property is designated LDA, is Buffer Exempt, and is currently developed with a single family dwelling (to be replaced) and several accessory structures.

This office does not oppose redevelopment of the lot. However, in the course of redevelopment, impacts must be minimized as much as possible. The proposed house is of significant size and is proposed to be located only 44 feet from the water. It seems that the house could be redesigned and shifted to be located at least partially outside of the Buffer. Also, the proposed level of impervious surface exceeds the 15% permitted, though it is 32 square feet less than currently exists. While we certainly encourage removal of impervious coverage, it seems impractical to have only mulch walkways to the house. Also, the paved area between the house and the macadam area near the water is going to be removed. What is the purpose of the macadam area if there is no access to it? Again, it appears that the redevelopment of this lot should be redesigned to minimize impacts. Mitigation should be provided for clearing and new impervious surfaces in accordance with the County Zoning Ordinance. Areas where impervious surfaces are removed and the Buffer should be priority locations for plantings.

Thank you for the opportunity to comment. Please include this letter in your file and submit it as part of the record for this variance. Also, please notify the Commission in writing of the decision made in this case.

Sincerely,


LeeAnne Chandler
Natural Resources Planner

cc: AA230-00

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

McCRONE

- Engineering
- Environmental Sciences
- Construction Services
- Land Planning & Surveying

June 27, 2000

Ms. LeeAnne Chandler
Chesapeake Bay Critical Area Commission
45 Calvert Street, 2nd Floor
Annapolis, Maryland 21401

RE: Variance 2000-0158-V, Michael Reisinger

Dear Ms. Chandler:

Thank you for providing feedback on the referenced variance application. The purpose of this letter is to respond to your comments of June 1, 2000.

As stated in your letter, impacts should be minimized as much as possible and we concur with your office on this matter. You stated that the house could be redesigned and shifted to be located at least partially out of the buffer. The proposed handicapped accessible house has 3,500 square feet of living space which includes an attached garage and porch area all designed for wheel chair access for the occupant. The difficulty in doing what you are proposing is as follows:

- 1) The primary and backup septic areas are located at the rear of the site as far from the shoreline as possible. In addition, in order to meet the State's 10,000 sf septic area requirement and required distances from steep slopes, the septic area needs to be located at the higher elevations of the site towards Forest Beach Road. This is one of the key reasons why the proposed house is located where it is. Keep in mind that the proposed septic system will replace an antiquated system that would not meet today's health and environmental standards.
- 2) To avoid steep slope disturbance, preserve champion trees, and have a viable septic system, the house needs to be constructed at the location of the existing house.

Our client is in agreement that his proposal has less impervious area than what exists today. This, in turn, should result in less environmental impact. Your comment about the mulch walkways is well taken. Our client is proposing to install a pervious boardwalk like walkway on the front side of the house and eliminate the rear walkway while still maintaining a reduction in impervious area as well.

Finally, the elimination of the macadam area is to reduce impervious area on the site and provide more green area immediately adjacent to the water. This will make the waterfront area more attractive and environmentally sensitive within the buffer. We think this is a substantial improvement over what exists today.

If you have any further questions on these issues, please feel free to give me a call at 410-267-8621.

Sincerely,



Steven R. Cover, AICP
Director of Planning
McCrone, Inc.

Cc: Kevin Dooley
Michael Reisinger
John Proctor
Matt Morgan

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

NOTIFICATION OF PROJECT APPLICATION

Jurisdiction: Anne Arundel

Date: APRIL 5, 2000

Name of Project (site name, subdivision name, or other): MICHAEL D. AND JULIE REISINGER AND FREDERICK FISKE

Local case number: 2000-0158-V

Project location/Address: 423 FOREST BEACH ROAD, ANNAPOLIS, MD 21401

Tax map# 46

Block# 10

Lot# 4

Parcel# 130

Type of application:
(Select all applicable)

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

Type of Project:
(Select all applicable)

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

Current Use:
(Select all applicable)

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

Describe Proposed use of project site: TEAR DOWN EXISTING SMALL HOUSE AND BUILD NEW HOUSE IN ITS PLACE. HOUSE IS ENTIRELY WITHIN 100-FOOT BUFFER.

SITE INVENTORY OF AREA ONLY IN THE CRITICAL AREA

TOTAL ACRES IN CRITICAL AREA: 1.675^{PP}

IDA ACRES: — AREA DISTURBED: 0.3 Ac

LDA ACRES: 1.675^{PP} # LOTS CREATED: 0

RCA ACRES: — # DWELLING UNITS: 1 (1 Ex, 1 Prop)

AGRICULTURAL LAND: —

EXISTING FOREST/WOODLAND/TREES: 0.62 FOREST/WOODLAND/TREES REMOVED: 0.125

FOREST/WOODLAND/TREES CREATED: TO BE DETERMINED

EXISTING IMPERVIOUS SURFACE: 0.3 PROPOSED IMPERVIOUS SURFACE: 0.3
(32 S.F. REDUCTION)

TOTAL IMPERVIOUS SURFACE: 0.3

GROWTH ALLOCATION DEDUCTED: N/A

RCA to LDA: — RCA to IDA: — LDA to IDA: —

RECEIVED

MAY 4 2000

Local Jurisdiction Contact person: _____

Telephone Number: _____

Response from Commission required by: _____

Hearing Date: _____
CHESAPEAKE BAY CRITICAL AREA COMMISSION



SEE ENVIRONMENTAL
SERVICES, INC.

CHESAPEAKE BAY CRITICAL AREA REPORT

Frederick N. Fiske-Michael and Julie Reisinger Property

422 Forest Beach Road
Annapolis, MD 21401

Application for 422 Forest Beach Road
Tax Map 46; Grid 10; Parcel 130; Lot 4
Anne Arundel County Zoning: R1
Critical Area Designation: LDA

RECEIVED

March, 2000

MAY 4 2000

CHESAPEAKE BAY
CRITICAL AREA COMMISSION

I. Purpose of Variance

The applicants own a 1.675[±]-acre lot bordering on the west side of Mill Creek in the St. Margarets area of Anne Arundel County. The entire property is located within the Chesapeake Bay Critical Area and has an LDA land use designation. See Vicinity Map and County Critical Map at the end of this report. The property and adjoining properties are also mapped as "Buffer Exempt" by Anne Arundel County.

The site is currently improved with a small house that is located completely inside the 100-foot Buffer from tidal waters, measured from both the shoreline of Mill Creek and from a small cove on the adjoining property.

The applicant is proposing to remove the old house and build a single-family home with attached garage and install a new well and septic system. Because of the narrowness of the lot and the need to place the septic system and drain fields on the upper portion of the lot, the proposed house will necessarily be within the 100-foot buffer from tidal waters.

County staff has determined that the complete tear-down of the house does not fall within the conditional exemptions of the Buffer Exemption criteria, and therefore a variance to Article 28, §1A-104 (a) of the County code requires that requires, in the Critical Area, an undisturbed 100-foot Buffer from tidal waters.

This report is based on the March, 2000, Variance Plan by McCrone, Inc., a copy of which is enclosed in the pocket at the end of this report.

II. Critical Area Narrative - Site Description

The applicants' 1.875-acre (72,984 square foot) parcel is a waterfront lot, accessed by a long driveway from Forest Beach Road. It is long and narrow, and extends out to a point on Mill Creek. A small existing house sits within the 100-foot Buffer that extends both from the main shoreline of the creek and also from a small cove to the north of the house. This house is proposed to be completely removed and replaced with a new house. The required new septic drain fields occupy much of the remainder of the lot that is not steep slopes, and this prevents moving the house back further from the shoreline. By removing such existing driveway and patio, the total impervious coverage will be slightly reduced.

Soils mapped on the lot in the County Soil Survey include the Collington-urban land complex, 0-5% slopes (CpuB) mapping unit on the flatter western end of the lot and the Monmouth fine sandy loam (MvE) along the shoreline; however, much of the area is less steep than mapped, including the area of the existing and proposed houses.

III. Critical Area Narrative

A. Existing and Proposed Vegetation Coverage:

Existing Conditions: The site is slightly less than one-half woodland and one-half lawn, with smaller areas of impervious coverage and vine-covered brush.

Proposed Conditions: Tree clearing is required for the new septic drain fields plus a small area for construction or the new house. 5,456 square feet of tree cover would be cleared, which is approximately 20.2% removal.

B. Stormwater and Water Quality:

Existing Conditions: No stormwater management is currently present on this site, but also no erosion conditions are present.

Proposed Conditions: Removal of existing impervious coverage (a patio and ornamental fountain and a portion of driveway) will slightly reduce impervious coverage on the lot, and therefore no stormwater management will be required. The impervious coverage will be reduced from 12,625 square feet to 12,591 square feet.

C. Aquatic Resources:

Existing Conditions: Water quality and aquatic resources in Mill Creek are probably somewhat degraded by the existing development, sod farming, and runoff from Route 50/301..

Proposed Conditions: With sediment control and a slight reduction in impervious coverage on the site, no adverse impacts on aquatic resources are anticipated as a result of redevelopment of this lot.

D. Forest Clearing and Impervious Coverage

Existing Conditions: Tree and forest cover is 26,972 square feet, or just under one-half of the lot. Existing impervious coverage is 12,623 square feet, or 17%. The necessarily long driveway accounts for a significant portion of this impervious coverage.

Proposed Conditions: Approximately 5,456 square feet of tree clearing is proposed, or 20.2% of the cover on the lot. Impervious coverage is proposed to be reduced by 32 square feet with the redevelopment of the lot.

E. Habitat Protection Areas

Existing Conditions: The subject property contains "habitat protection areas" in the form of the 100-foot Buffer, within which the existing house and a boat house are located.

Proposed Conditions: A variance is being requested to the new house and attached garage within the Buffer, basically covering the footprint of the existing house and other existing impervious coverage.

IV. Conclusions

The requested variance is necessary to provide a new house on this site, given its long and narrow shape and the necessary new septic drain fields and necessary setbacks from house, well, septic tank, grinder pump, and drain fields. Removal of existing impervious surfaces will make for a small net decrease in impervious coverage, and should have a new beneficial impact of fish, wildlife, and plant habitat and water quality.

V. Site Investigation

A site investigation to obtain data to prepare this Critical Area Report was conducted on March 8, 2000, by Eric E. See of See Environmental Services, Inc.

REFERENCES

Anne Arundel County, Department of Planning & Code Enforcement. Critical Area Map #21.

Kirby, R. M. and E. D. Matthews, 1973. Soil Survey of Anne Arundel County, Maryland. U.S. Government Printing Office, Washington D.C.

McCrone, Inc., 2000. Variance Site Plan.

Reed, Porter, 1988. National List of Plant Species that Occur in Wetlands: Northeast (Region 1). Biological Report 88 (26.1)

U.S. Geological Survey, 1957/1979. South River 7.5 Minute Quadrangle.

257-99
AA 230-00

RECEIVED

OCT 30 2000

CHESAPEAKE BAY
CRITICAL AREA COMMISSION

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 2000-0325-V

IN RE: MICHAEL REISINGER

THIRD ASSESSMENT DISTRICT

DATE HEARD: OCTOBER 17, 2000

ORDERED BY: STEPHEN M. LeGENDRE, ADMINISTRATIVE HEARING OFFICER

ZONING ANALYST: SUZANNE DIFFENDERFER

DATE FILED: OCTOBER 25, 2000

PLEADINGS

Michael Reisinger, the applicant, seeks a variance (2000-0325-V) to permit a dwelling addition with less buffer than required on property located along the east side of Forest Beach Road, east of Browns Woods Road, Annapolis.

PUBLIC NOTIFICATION

The case was advertised in accordance with the County Code. The file contains the certification of mailing to community associations and interested persons. Each person designated in the application as owning land that is located within 175' of the property was notified by mail, sent to the address furnished with the application. Mr. Reisinger testified that the property was posted for more than 14 days prior to the hearing. I find and conclude that the requirements of public notice have been satisfied.

FINDINGS AND CONCLUSIONS

This case concerns property with a street address of 422 Forest Beach Road, Annapolis. The property comprises 2.061 acres and is zoned R-1 residential with a Chesapeake Bay Critical Area designation as Limited Development Area (LDA). This is a waterfront lot on Mill Creek. The improvements include a one and one-half story building (40' X 52.5') and a two-story dwelling (34' X 36'). The applicant proposes to connect the structures with a 40' X 82' addition. Part of the addition falls within the 100-foot Chesapeake Bay Critical Area buffer. New

construction will occur 60 feet from Mill Creek.

The Anne Arundel County Code, Article 28, Section 1A-104(a)(1) establishes a minimum 100-foot buffer landward from tidal waters. Accordingly, the proposal necessitates a buffer variance in the amount of 40 feet.

Suzanne Diffenderfer, a zoning analyst with the Office of Planning and Zoning, described the property as irregular in shape, bordering on Mill Creek along two sides, and predominately planted in a treed lawn. The witness indicated that the addition is not as close to the water as the existing one and one-half story building. It does not require the removal of any trees and will result in 7.9 percent impervious coverage. The witness submitted the written comments of the Chesapeake Bay Critical Area Commission dated September 26, 2000 (Attachment 1) and correspondence from the Environmental Division dated October 16, 2000 (Attachment 2). She stated that the Environmental Division's comments have been satisfied. By way of conclusion, she supported the application, conditioned on mitigation for the new impervious surfaces within the buffer at a 2:1 ratio and the new impervious surfaces outside the buffer at a 1:1 ratio.

Area residents John Proctor and Darin Naugle testified in support of the application. Carol Tuohey, who resides adjacent to the site, expressed a number of concerns, including that the large structure will block her view and increase the already intensive use of the site with the potential for runoff to the water.

Steve Cover, the applicant's engineering consultant, contended that Ms.

Tuohey's view is already partially obscured by the existing structures. He added that the proposed use constitutes a permissible single-family dwelling. He contended that the relief is minimized because the construction is further from the water than the existing one and one-half story building and will produce far less than the maximum 15% impervious coverage.

Mr. Reisinger added that the proposed footprint is not out of character with other homes in the community. In this regard, he submitted numerous photographs of substantial waterfront homes in the community.

Finally, Ms. Diffenderfer added that the alternative of removing the one and one-half story building would require greater limits of disturbance than the proposed addition.

I visited the site and the neighborhood. The one and one-half story building on the waterfront is in poor condition. I have no doubt that its removal would be a substantial undertaking. The neighborhood is a mixture of housing types, sizes and ages. There is certainly no structure in the immediate area approaching the size of the dwelling requested by the applicant. The Tuohey residence is more or less in a line with both the existing two-story house and the existing one and one-half story building.

The standards for granting variances are contained in Section 11-102.1. Under subsection (b), for a property in the Critical Area, a variance to the Critical Area program requirements may be granted only after determining that (1) due to unique physical conditions, peculiar to the lot, a strict implementation of the

program would result in an unwarranted hardship to the applicant; (2) a literal interpretation of the program will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area; (3) the granting of the variance will not confer on the applicant any special privilege that would be denied by the program to other lands within the Critical Area; (4) the variance request is not based on circumstances resultant of actions by the applicant and does not arise from conditions relating to land use on neighboring property; and (5) the granting of the variance will not adversely affect water quality or adversely impact fish, wildlife or plant habitat within the Critical Area and will be in harmony with the general spirit and intent of the program. Under subsection (c), any variance must be the minimum necessary to afford relief; and its grant may not alter the essential character of the neighborhood, substantially impair the appropriate use or development of adjacent property, or be detrimental to the public welfare.

In Anne Arundel County, Critical Area variances are measured against the unwarranted hardship standard. The issue is whether the denial of the application is a denial of "reasonable and significant use." Belvoir Farms Homeowners Association, Inc., v. North, 355 Md. 259 (1999). The factors enumerated in the variance statute "cannot be construed individually to overrule a finding of unwarranted hardship... ." White v. North, 356 Md. 31 (1999).

Upon review of the facts and circumstances, I find and conclude that the applicant is entitled to modified, conditional relief from the code. This property

satisfies the test of unique physical conditions, consisting of an irregular lot with water on two sides, such that a strict implementation of the Critical Area program would result in an unwarranted hardship to the applicant. As noted, both the two-story dwelling and the one and one-half story building lie wholly within the buffer. It follows that a literal interpretation of the program will deprive the applicant of the opportunity to expand either structure. Conversely, a variance for an addition between the structures does not appear to confer on the applicant a special privilege the program typically denies. There is no suggestion that the request results from the actions by the applicant or from land use on neighboring property. Finally, with appropriate conditions, the granting of a modified variance will not adversely impact Critical Area resources and will harmonize with the general spirit and intent of the program.

The more objectionable aspect of this case is the extent of the relief. There has been no attempt to minimize the variance. Instead, the applicant has filled the area between the two structures and even expanded laterally beyond both structures. The substantial addition - the footprint of the addition is larger than the sum of the footprints of the two structures it bridges - will result in an enormous dwelling. A smaller addition joining the structures will reduce the buffer impacts from the new construction without requiring the greater limits of disturbance associated with demolishing the one and one-half story building. After due consideration, I have modified the variance to permit a dwelling addition measuring 36.5' X 42'. The modification increases the buffer to 65 feet and

reduces the variance to 35 feet. Given that the use will continue to be residential in nature, the granting of the modified variance will not alter the essential character of the neighborhood. I further find that the granting of the modified variance will not *substantially* impair the use or development of adjacent property or cause a detriment to the public welfare. The approval is subject to the conditions in the Order.

ORDER

PURSUANT to the application of Michael Reisinger, petitioning for a variance to permit a dwelling addition with less setbacks and buffer than required; and

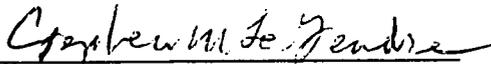
PURSUANT to the advertising, posting of the property, and public hearing and in accordance with the provisions of law, it is this 25 day of October, 2000,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicant is hereby **granted** a **modified** buffer variance of 35 feet to permit a dwelling addition.

The foregoing variance is subject to the following conditions:

1. The site plan is revised to reduce the addition to 36.5' X 42'.
2. The applicant shall provide reforestation at a 2:1 ratio for new impervious surfaces within the buffer and at a 1:1 ratio for new impervious surfaces beyond the buffer.

3. Mitigation shall occur within the buffer and the reforested area shall be subjected to a conservation easement.
4. The applicant shall provide stormwater management satisfactory to the Permit Application Center.
5. There shall be no further expansion of the dwelling.


Stephen M. LeGendre
Administrative Hearing Officer

NOTICE TO APPLICANT

Within thirty (30) days from the date of this Decision, any person, firm, corporation, or governmental agency having an interest therein and aggrieved thereby may file a Notice of Appeal with the County Board of Appeals.

Further, Section 11-102.2 of the Anne Arundel County Code states:

A variance granted under the provisions of this Article shall become void unless a building permit conforming to the plans for which the variance was granted is obtained within one year of the grant and construction is completed within two years of the grant.

If this case is not appealed, exhibits must be claimed within 60 days of the date of this order, otherwise they will be discarded.

251-99
230-10

RECEIVED

JUL 5 2000

CHESAPEAKE BAY
CRITICAL AREA COMMISSION

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 2000-0158-V

IN RE: MICHAEL REISINGER

THIRD ASSESSMENT DISTRICT

DATE HEARD: JUNE 29, 2000

ORDERED BY: STEPHEN M. LeGENDRE, ADMINISTRATIVE HEARING OFFICER

ZONING ANALYST: KEVIN DOOLEY

DATE FILED: JULY 3, 2000

PLEADINGS

Michael Reisinger, the applicant, seeks a variance (2000-0158-V) to permit a dwelling with less setbacks and buffer than required on property located along the south side of Forest Beach Road, east of Browns Woods Road, Annapolis.

PUBLIC NOTIFICATION

The case was advertised in accordance with the County Code. The file contains the certification of mailing to community associations and interested persons. Each person designated in the application as owning land that is located within 175' of the property was notified by mail, sent to the address furnished with the application. Mr. Reisinger testified that the property was posted for more than 14 days prior to the hearing. I find and conclude that the requirements of public notice have been satisfied.

FINDINGS AND CONCLUSIONS

This case concerns property with a street address of 428 Forest Beach Road, Annapolis. The property comprises 1.675 acres and is zoned R-1 residential with a Chesapeake Bay Critical Area designation as Limited Development Area (LDA). The applicant proposes to raze the existing one and one-half story dwelling (footprint 1,196 square feet) and construct a new two-story dwelling (45' X 78', inclusive of integral 3-car garage). The existing dwelling is located 37 feet from Mill Creek; the new dwelling will be 44 feet from Mill Creek. As a result of the

removal of portions of existing areas covered in concrete, gravel and macadam, impervious coverage will decrease from 13,830 square feet (19.32 percent) to 7,974 square feet (11.14 percent).

The Anne Arundel County Code, Article 28, Section 1A-104(a)(1) requires a minimum 100-foot buffer landward from the mean high-water line of tidal waters. Accordingly, the proposal necessitates a variance of 56 feet.

Kevin Dooley, a zoning analyst with the Department of Planning and Code Enforcement, testified that the property is unusual in shape, much longer than it is wide. It is sited on a point, and substantially impacted by the Critical Area buffer. Additionally restrictions in the development of the site include a stand of large trees and the septic area to the rear of the dwelling. The witness supported the application, conditioned on mitigation at a 2:1 ratio based on the footprint of the new dwelling, with the plantings maximized between the dwelling and the water.

Steve Cover, the applicant's land planning consultant, testified that the proposal generally complies with the Critical Area variance standards and concurred in Mr. Dooley's requested condition.

Eric See, the applicant's environmental consultant, submitted a revised site plan and Critical Area report reflecting the post development impervious area calculations.

John Proctor, the potential homeowner, testified that the proposed footprint includes 8-foot porches on three sides to provide handicapped access. The applicant submitted letters in support of the request from several neighbors.

Joaquin Marquez, a resident of Forest Beach Road, testified in support of the application. There was no adverse testimony.

Upon review of the facts and circumstances, I find and conclude that the applicant is entitled to relief from the code. In view of the site constraints (configuration of the lot, proximity to water, mature trees and septic area), a strict implementation of the Critical Area program would result in an unwarranted hardship. To literally interpret the program will deprive the applicant the right to redevelop the property with a single-family dwelling, a right commonly enjoyed by other properties in similar areas within the Critical Area. Conversely, the granting of the variance will not confer any special privilege that the program typically denies to other lands. There was nothing to suggest that the request is based on circumstances resultant of actions by the applicant; nor does it arise from conditions relating to land use on neighboring property. Finally, with mitigation, the granting of the variance will not adversely affect water quality or adversely impact fish, wildlife or plant habitat within the Critical Area and will be in harmony with the general spirit and intent of the program. I further find that the variance is the minimum necessary to afford relief. Although the proposed dwelling is far from insubstantial, the construction is further from the water than the existing dwelling and the proposal results in a significant net reduction in impervious coverage. There was nothing to suggest that the granting of the variance will alter the essential character of the neighborhood, substantially impair the appropriate use or development of adjacent property, or be detrimental to the

public welfare. The approval shall be subject to the condition in the Order.

ORDER

PURSUANT to the application of Michael Reisinger, petitioning for a variance to permit a dwelling with less setbacks and buffer than required; and

PURSUANT to the advertising, posting of the property, and public hearing and in accordance with the provisions of law, it is this 3rd day of July, 2000,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicant is hereby **granted** a variance of 56 feet to the Critical Area buffer to permit a dwelling in accordance with the revised site plan.

The forgoing variance is subject to the condition that the applicant shall provide mitigation at a 2:1 ratio based on the proposed dwelling footprint, with plantings maximized within the buffer between the dwelling and the shoreline.


Stephen M. LeGendre
Administrative Hearing Officer

NOTICE TO APPLICANT

Within thirty (30) days from the date of this Decision, any person, firm, corporation, or governmental agency having an interest therein and aggrieved thereby may file a Notice of Appeal with the County Board of Appeals.

Further, Section 11-102.2 of the Anne Arundel County Code states:

A variance granted under the provisions of this Article shall become void unless a building permit conforming to the plans for which the variance was

granted is obtained within one year of the grant and construction is completed within two years of the grant.

If this case is not appealed, exhibits must be claimed within 60 days of the date of this order, otherwise they will be discarded.

