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Abunassar, Jamil
0169

USA-S-1829-744

Letter LC

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Public well

Judge John C. North, II
Chairman



Ren Serey
Executive Director

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

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November 21, 2000

Mr. Anthony V. Lamartina, Chairman
Anne Arundel County Board of Appeals
Arundel Center
Annapolis, Maryland 21401

RE: Variance 2000-0169-V (BA67-00V), Jamil Abunassar

Dear Chairman Lamartina:

I am writing on behalf of the Chesapeake Bay Critical Area Commission to state the Commission's opposition to the above referenced variance application. This is the third variance request on this non-grandfathered lot. The property owner has applied for a variance to permit a pool with less setbacks and Buffer than required. The property is designated IDA and is currently developed with a large house, driveway, attached decks, a pier and a large illegal detached deck in the Buffer.

On behalf of the Chesapeake Bay Critical Area Commission, I offer the following comments and recommendations:

I Enough is Enough

The Abunassar lot was created via subdivision in 1990, after the County's Critical Area Program was established. By a notation on the subdivision plat, this lot was allowed a total of 630 square feet of impervious surface within the Buffer, for reasons that are not explainable. In 1994, the applicant requested the first variance for placement of the dwelling with 624 square feet of impervious surface within the Buffer. The variance was granted with the following condition, "there shall be no intrusion in the 100-foot Buffer beyond that shown on the Applicant's site plan submitted with his application: the northwest corner of the home shall be 80 feet from the shoreline, the southeast corner of the home shall be 88 feet from the shoreline...". An additional condition also stated, "Impervious surface coverage in the Buffer shall not exceed the 624 square feet shown on the site plan." See Decision dated February 21, 1995 attached as Exhibit 1.

Despite these limitations on their variance approval, the applicant built the house (which now appears to be closer to the shoreline than depicted on the approved site plan) and then requested

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Mr. Anthony V. Lamartina, Chairman

November 21, 2000

Page 2

another variance for construction of substantial decking on the back of the house. The decking would intrude another 10 feet into the Buffer. In 1996, the Administrative Hearing Officer granted the variance primarily because the decks would be pervious and the ground underneath them would be kept in a natural state. See Decision dated May 24, 1996 attached as Exhibit 2. Moreover, the applicant's 1996 Critical Area report (attached as Exhibit 3) submitted with the application stated, "The entire length of the eastern property boundary (108 feet) is bulkheaded along the Chesapeake Bay. A forested Buffer (average width of 30 feet) to the Chesapeake Bay also exists along the length of that boundary." By October 2000, this forested Buffer had mysteriously disappeared.

Now the applicant has returned, asking the County to make yet another exception to the Critical Area rules and for permission to ignore the subdivision plat notes and the condition in the previous variance approval. A variance allows an exception to the general zoning ordinance, and this Board has a duty to evaluate carefully the applicant's compliance with the County's standards in Article 3 § 2-107(b). This lot was created after the County's Critical Area Program was in place. As such, development of the lot should have been held to the standards created by the Critical Area Law. Allowing yet another variance on this lot removes all effectiveness of the Critical Area regulations.

II Granting of this Variance would give the Applicant a Special Privilege

Throughout the County and the State's Critical Area, development of newly created lots occurs in a manner that is consistent with the Critical Area regulations. Granting of a third variance to this applicant would confer a special privilege because all property owners of non-grandfathered lots within the Critical Area are prohibited from disturbing the 100-foot Buffer.

III A Swimming Pool is Not a Right Commonly Enjoyed

The subject property is located in a four-lot subdivision, adjacent to the established community of Columbia Beach. There are no pools within the applicant's subdivision or the entirety of Columbia Beach. Clearly, a swimming pool is not a right commonly enjoyed. In the hearing before the administrative hearing officer, the applicant had to look to another zip code to find such pools. Even then, there was no evidence that those pools were on non-grandfathered lots.

IV The Applicant's Actions Are Not Consistent with the Spirit and Intent of the Critical Area Law

Beginning with the first variance application, the applicant has not complied with the conditions of approval nor with the County's Critical Area Program. As stated previously, the applicant built his house closer to the shoreline (as measured on the current site plan) than approved. The

He built the house with sliding glass doors leading to nowhere. He had every intention of having decks but did not disclose that at the first hearing.

variance application for the house repeatedly stated that, "No vegetation is planned to be removed from the 25-foot Buffer to tidal waters, which is currently entirely forested." Indeed, 1985 aerial photographs of the site show full forest cover along the shoreline. Mysteriously, there is no longer a forested Buffer along the shoreline. As indicated in the current Critical Area report signed by the applicant dated January 4, 2000, "There are six Sweet Gum trees and one holly tree on the front (waterside) of the lot; the balance of the lot is maintained as a lawn." Although the applicant proposes to reforest part of the Buffer in mitigation for construction of the pool, the Board should see this "offer" for what it is -- a ploy to distract from the fact that the applicant has illegally removed the forested Buffer.

the fact is that he already illegally removed the Buffer.

In addition, the applicant is in violation of the Critical Area regulations and the notes on the subdivision plat for construction of a large impervious deck with a "tiki-bar" and covered eating area. No permits were obtained nor was a variance requested for the deck. At the hearing before the Administrative Hearing Officer, Mr. Abunassar testified that he considers the free-standing decks in the Buffer as "summer furniture" rather than structures because they are stowed away in the winter." Commission staff conducted a site visit on Wednesday, November 15, 2000. Perhaps some of the actual furniture is stowed away in the winter but the decks are clearly permanent impervious structures. Indeed, the applicant's environmental consultant testified to the Hearing Officer that the decks create additional impervious coverage in the Buffer. Therefore, the applicant has already illegally exceeded his allowed impervious coverage. This is another example of the applicant's disregard for the County's rules.

V Self-Created Hardship

The applicant purchased this property in its undeveloped state in 1991. He chose the design, size, and location of the dwelling. He chose to use his impervious "credit" for the dwelling. A different house design and location could have made a pool possible. The applicant was fully aware of the restrictions on this lot at the time of purchase (at the first variance hearing, Mr. Abunassar testified that he had noted on the plat that he could create 630 square feet of impervious surface in the Buffer). This is not a case of a grandfathered lot with a grandfathered dwelling. In the last five years, the applicant has developed this property to its full potential. He should have considered potential future desires for accessory structures when planning for the dwelling. The "hardship" which he now claims clearly was created by a lack of planning on his part.

VI Approval of this Variance Would Not be Consistent with the Spirit and Intent of the Critical Area Law

The stated goals of the Critical Area Program are "to minimize adverse impacts on water quality that results from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands" and "to conserve fish, wildlife, and plant habitat." Approval of the

Mr. Anthony V. Lamartina, Chairman
November 21, 2000
Page 4

requested variance will contribute to the cumulative impact of impervious surfaces to water quality. Specifically, since 1994 when the property was in an undeveloped stated, pollutant loadings in the form of Phosphorous increased 12% when the house, driveway and walks were built. The illegal decks increased pollutant loadings 23.5% over the undeveloped conditions. Approval of this pool will cause an increase in pollutant loadings of 41.1% since 1994. In Intensely Developed Areas (which this property is designated), the regulations require a 10% decrease in pollutant loadings. Permitting a 41% increase is in direct conflict with the goals of the County's Critical Area Program.

VII This Request is Not the Minimum to Provide Relief, Would Alter the Character of the Neighborhood, and Would be Detrimental to Public Welfare

The Administrative Hearing Officer found that the original variance request was the minimum to provide relief. The current request is obviously not the minimum. A pool would clearly introduce a change in the character of the neighborhood because there are no other pools in the area. Approval of this pool would open the door to many similar requests. The three other lots in this subdivision would need variances for pools. If pools are allowed in this subdivision, why not the adjacent community of Columbia Beach? The 30 or so waterfront lots in that community would also need variances for pools. The effect of this pool is a 41% increase in pollutant loadings to the adjacent Chesapeake Bay. A 41% increase on one lot may seem insignificant but a 41% increase overall is highly detrimental. The General Assembly already made findings that the cumulative impact of development is injurious to the restoration of the Chesapeake Bay. Approval of this pool and by association many others would be harmful to public welfare and the health of the Chesapeake Bay.

Again, the Commission urges the Board of Appeals to deny this variance request. This is a non-grandfathered lot. Approval of the request would be contrary to the plat notes of the subdivision, would violate the conditions of a prior variance approval and would be in direct conflict with the County's Critical Area Program.

Thank you for the opportunity to comment. Please include this letter in the official record for this variance. Also, please notify the Commission in writing of the decision made in this case.

Respectfully yours,



LeeAnne Chandler
Natural Resources Planner

cc: Marianne D. Mason, Esq.
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RE: An Appeal for a Variance to the Zoning Regulations

BEFORE THE
COUNTY BOARD OF APPEALS
OF ANNE ARUNDEL COUNTY

JAMIL & ADRIENNE ABUNASSAR

Petitioner

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CASE NO. BA 67-00V
(2000-0169-V)

MAY 7 2001

Hearing Date: November 21, 2000

CHESAPEAKE BAY
CRITICAL AREA COMMISSION
MEMORANDUM OF OPINION

Summary of Pleadings

This is an appeal from a decision of the Administrative Hearing Officer. This appeal is taken from the denial of a variance to permit a pool with fewer setbacks and buffer than required. The property is located 60 feet along the north side of Columbia Cove Court, 160 feet east of Columbia Beach Road, Shady Side.

Summary of Evidence

Mr. Jamil Abunassar, the Petitioner, testified that he resides on the subject property. The property is located on a cul-de-sac and was subdivided in 1990. There were four lots and one reserved parcel created. His property, known as lot three, is smaller than lots one and two. The property is within the R2 zone and is designated as within the IDA of the Critical Area. Due to the required building restriction line and the Critical Area buffer, it was difficult to place a house on the subject property. Mr. Abunassar testified that his lot has less impervious surface than his neighbors. He has modified his variance request so that the proposed pool would be set back 60 feet from the water. The witness explained that his request for a variance is based on the unique status of his lot due to the building envelope, the topography and the narrow, irregular and shallow shape of his lot. His neighbors could construct a pool on their properties since those lots have adequate area outside the Critical Area. Mr. Abunassar explained that his neighbor on lot two obtained a variance to build a garage. He believes that the denial of his request for a variance would result in an unwarranted hardship against him. He also believes that the literal

interpretation of the County Code would deprive him of a right commonly enjoyed by other properties in similar areas in the Critical Area. All other lots in his subdivision could have a pool outside the buffer. While there are no pools within the subdivision at this time, he argued that the Code does not limit the comparison to adjacent properties, but rather to similar areas. He described other properties that had received variances for pools within the buffer. The need for the variance was created by the developer in the creation of the lot. The proposed pool location would not disturb any trees. The pool would be small and the minimum necessary to afford relief to the Petitioner. The pool cannot be relocated further from the water's edge. On questioning, Mr. Abunassar explained that this property had been the subject of other variances requests. The proposed pool would measure by 20 by 30 feet, including the deck.

Ms. Adrienne Abunassar, the co-Petitioner, testified that the proposed pool would be kidney shaped with decking surrounding the pool. It would not create more than 600 square feet of additional impervious area. She explained they had difficulty in designing a house due to her arthritic knees. Most of the living space was required to be on the first floor. They did not design the lot to include a pool because the County had told them that it would be impossible to construct a pool on the lot.

Mr. Eric See, an expert in environmental planning and Chesapeake Bay Critical Area environmental issues, testified that the area for the proposed pool is a well-maintained lawn. The property slopes to the west at one to three percent from the Bay. Water leaving the subdivision crosses Columbia Beach Road and enters the tidal marshes. The lot elevation is approximately eight feet, which is high for the Shady Side area, and is relatively well drained. No trees would be removed to accommodate the proposed pool. If the Board were to require a three to one mitigation for new impervious surfaces within the Critical Area, there would be an increase in forest cover. That would more than offset any runoff from this tiny structure. While the pool will constitute additional impervious surface, Mr. See does not believe that the pool will significantly reduce the infiltration of water into the ground since the land is relatively flat and has good quality soil. The decking around the pool could be made of a pervious surface, such as wood planking, that would reduce the quantity of impervious surface

on the property. He does not believe that there would be any adverse impacts to water quality, fish or wildlife habitat.

Mr. Clifford Gabus, a neighbor, testified that in 1998 he requested a variance to construct a two-story garage for additional living space. He had considered requesting a pool at that time, but due to the needs of his children and storage space, he opted for a garage instead. He has considered removing the garage after the kids are gone and placing a pool on his property. He does not believe that the Abunassars are requesting a variance that would detract from the neighborhood. All the neighbors would be able to enjoy the pool. He believes that there would be no adverse effects from the pool.

Mr. Randy Kiser, a neighbor, testified that he does not object to the proposed pool. He does not believe the pool would be detrimental to the value or use of their property. It would be in keeping with the neighborhood. A swimming pool is commonly found in residential communities. He would like to construct a pool on his property. Mr. Kiser explained that the neighbors purchased the reserve parcel within the community. They would be willing to forgo any development or impervious surface on that property if the Abunassars could construct their swimming pool.

Mr. Craig Porter, a resident within the subdivision, testified that he has no objection to the variance for the construction of a pool. He described the topographic elevations within the neighborhood. The reserve parcel has an elevation of approximately 4.75 feet above the mean high water level. It floods frequently. The neighbors purchased the parcel because they did not desire the construction of house on the parcel.

Ms. LeeAnne Chandler, a planner with the Critical Area Commission, testified that she conducted a site visit in June prior to the hearing before the Administrative Hearing Officer and another on November 15, 2000. She also examined the information pertaining to the 1994 to 1996 variance requests on the property. In reviewing the information on the old variance requests, she noticed on the site plans that raised questions. She obtained a 1985 aerial photograph of the property. The aerial photo shows the property as forested. The first variance imposed a condition that there would be no intrusion into the 100-foot buffer beyond that shown on the applicant's original site plan. It further had the condition that

impervious coverage in the buffer would not exceed the 624 square feet shown on that site plan. The second variance request was for decks on the property. She believes that the second variance request was approved since the decks would be pervious and the vegetation underneath would remain. In the 1996 Critical Area report submitted by the Petitioners, she noted that a forested buffer (with an average width of 30 feet) to the Chesapeake Bay existed along the length of the eastern boundary of the property. When she visited the site there were very few trees on the property. During her site visit in November 2000, she noted that the property was developed with a substantially sized home, a gravel driveway and a walkway to the side of the house. Behind the house was maintained as a lawn with a couple of trees along the shoreline. There was a large landscaped planter area and a large detached deck within the buffer. She believes that the detached deck is closer to the water than the proposed pool. There were several small structures on top of the deck. The underlying deck was a permanent, impervious structure. The decks measure approximately 433 square feet. No permits or variances have been obtained for the decks. She drove through the subject neighborhood as well as several other communities in Shady Side. She did not find any other waterfront swimming pools in either Columbia Beach or Cedarhurst. She noted that wildlife was present in an adjacent cove. Since the property is located within the IDA, the Petitioner is required to reduce pollutants from the site by ten percent over the pre-developed state. She analyzed the property for pollutant loading. She determined that the pre-development pollutant load for the property, with no impervious surface, was .17 pounds of phosphorous per year. With the house and driveway in place, her calculations showed that the phosphorous would increase to .19 pounds per year or 12 percent more than the pre-developed state. After adding the decks within the buffer, her calculations showed a phosphorous load of .21 pounds per year or 23.5 percent more than the undeveloped state. With the addition of 600 square feet impervious surface proposed for the pool, the pollutant load would increase to .24 pounds per year or a 41 percent increase over the pre-developed state. This property is not grandfathered and was not in existence when the Critical Area regulations were adopted. She believes that the grant of this variance would give the applicants a special privilege. Every other property owner of a non-grandfathered lot is prohibited from placing any development within the 100-foot buffer. A

swimming pool is not a right commonly enjoyed by others. There are no swimming pools in this subdivision or in the adjacent communities. The nearest waterfront pools are located within another zip code. One of the main goals of the Critical Area Program is to minimize adverse impacts to water quality. She believes that the proposed pool will impact water quality. There should be a ten percent decrease in pollutant loading to the Bay within the IDA, not a 41 percent increase. This increase is in direct conflict with the County's Critical Area Program. With regard to the offer of forest mitigation, she believes that the evidence shows that the Petitioners have cleared the buffer. Offering to reforest the lot now seems to be ploy to detract from what they have already done. She requested that the variance be denied.

Ms. Suzanne Diffenderfer, a planner with the Office of Planning and Zoning, testified that she concurred with the Critical Area Commission's recommendation to deny the request for a variance to construct a pool.

Ms. Adrienne Abunassar testified in rebuttal. She questioned whether the ten percent pollutant loading had been applied to her neighbor's variances that had been granted. She also noted that the decks in her yard are pervious. The vegetation underneath continues to grow. She does not believe that she should be limited to showing that there are pools only within her four-lot subdivision. When they purchased the lot in 1990, the lot was as it exists today. She has not cleared any of the forest from the site. She did not obtain a permit for the deck at the water's edge because she thought it was not required.

All testimony was stenographically recorded and the recording is available to be used for the preparation of a written transcript of the proceedings.

Findings and Conclusions

The subject property is a waterfront parcel within the R2-Residential zone and is designated as within the Intensely Developed Area ("IDA") of the Critical Area. The Code provides that there shall be a minimum 100-foot buffer landward from the mean high water line of tidal waters, tributary streams and tidal wetlands. See, Anne Arundel County Code (the "Code"), Article 28, Zoning, Section 1A-104(a)(1). Petitioners propose to construct a 20 by 30 foot pool in the front or waterfront side of their property in the

required buffer. Thus, they are requesting the grant of a variance to permit the construction of a pool within the required buffer from tidal water as provided in the Critical Area Program.

In order to obtain the requested variance, the Petitioners must show that the denial of the request will result in an "unwarranted hardship". See, Belvoir Farms Homeowners Association, Inc. v. North, 355 Md. 259, 734 A.2d 227 (1999). The Court has made clear that the "unwarranted hardship" standard is less restrictive than an unconstitutional taking standard. However, the key to determining whether an unwarranted hardship exists is whether an applicant would be denied a "reasonable and significant use" of the applicant's property if the permission requested were not granted. We do not conclude that the denial of the requested variance would not result in an unwarranted hardship on the Petitioners.

Since the Courts' review of this matter, the Anne Arundel County Council adopted Council Bill No. 12-00 that amended the County's Critical Area Program. As part of that amendment, the standards for the grant of a variance were revised to provide that variances might be granted where "certain unique physical conditions, such as exception topographical conditions peculiar to and inherent in the particular lot, or irregularity, narrowness, or shallowness or lot size and shape" would result in an unwarranted hardship to the applicant. Code, Art. 3, Section 2-107(b)(1).

The lot is nearly flat and slightly irregular in shape. However, the lot comprises 15,000 square feet and we find that it is sufficiently large that the shape of the lot does not prevent the development thereof. This parcel was created in 1990, following the adoption of the initial Critical Area Program. The plat restricts the property to no more than 630 feet of impervious surface within the required Critical Area buffer. In 1995, a variance was granted to permit the placement of a portion of the dwelling within the buffer. The variance was restricted to permit no further intrusion into the 100 foot buffer apart from the 624 square feet of impervious surface created by the construction of the then proposed home. The property is presently improved with a rather large home, decks (approved pursuant to a second variance granted in 1996), a porch, driveway and walkways. (See, Petitioner's Exhibit 2). Thus, we find that there

are no unique physical conditions of this property that prevent its development. The property is well developed.

The Petitioners now propose the construction of a 600 square foot, in-ground swimming pool. The pool will be constructed in the front yard of this waterfront lot. This property is included in the Critical Area buffer since it is immediately adjacent to the waters of the Chesapeake Bay. The proposed location of the pool would place additional impervious surface just 60 feet from the water's edge. This waterfront property contains an independent means of providing swimming and water recreation at a shoreline. We find that these residents would not be denied a reasonable use of their property by the denial of the requested variance since they have the easy option of utilizing open, natural water as a recreational area—a mere 60 feet from the proposed pool. The intent of the Critical Area regulations is to limit the impacts around the waters of the Bay. If the requested variance were granted, the immediate (not expanded) buffer required to be maintained around the Bay waters would be directly impacted by additional, unnecessary impervious surface. We believe that the denial of an additional, recreational water use on their property would not constitute a denial of a reasonable and significant use of the property.

In keeping with the guidance of the Court of Appeals in White v. North, 356 Md. 31, 736 A.2d 1072 (1999), the also Board finds that the additional criteria of Code, Art. 3, Section 2-107 have not been “generally met” to reach the finding that the denial of the requested variance would not result in the denial of a reasonable and significant use and, therefore, an unwarranted hardship to the Petitioner.

A literal interpretation of the County's Critical Area Program will not deprive the Petitioners of rights commonly enjoyed by other properties. See, Code, Art. 3, Section 2-107(b)(2). While we understand the desire of the public to have water-based recreational facilities, this property has one of nature's best waterways immediately adjacent to the property. The entirety of this property is within sight of the Chesapeake Bay. A property, such as this site, located immediately on the water is denied no

recreational use by the denial of the variance. There is more than ample area to swim and play in the water without the grant of the variance and the resulting additional impervious area within the buffer.

The granting of the requested variances will also confer on the Petitioners a special privilege that would be denied by COMAR, Title 27, Subtitle 01 or the County's Critical Area Program. See, Code, Art. 3, Section 2-107(b)(3). The Abunassars would be granted the ability to place impervious surface (denied by the Critical Area Program) in the buffer without a need to do so. As stated, the family already enjoys a significant recreational water resource at the edge of the property. Additionally, the property was previously granted variances to intrude into the buffer with the dwelling and decks. Thus, the development of the site already impacts the buffer with impervious surface.

The regulations protecting the Chesapeake Bay and its tributaries were adopted prior to the creation of this lot. The Petitioners were well aware of the "hardship" caused by the restrictions of the Critical Area Program prior to their purchase of the property. We believe that the "hardship" in this case, which is really just the desire to have an alternative water-based recreational facility on this parcel, is self-created. See, Code, Art. 3, Section 2-107(b)(4)(i).

For similar reasons, we also find that the requested variance is not the minimum necessary to afford relief to the Petitioners. See, Code, Art. 3, Section 2-107(c)(1). The Abunassars are requesting permission to construct a pool in their waterfront yard. This yard gives them direct access to the natural water of the Bay. The Petitioners would need to traverse a mere 60 additional feet to obtain direct access to all the recreational features of the waters of the Chesapeake. Direct access to the Bay would not only provide the swimming and play recreation of a pool, but also provide the Petitioners with boating, crabbing, fishing, etc. Therefore, the variance cannot be the minimum necessary if the use already exists on site. Further, if the Petitioners truly required a pool for their use of the property, there is sufficient area on the lot outside the buffer to construct a pool, albeit at the expense of house size. Any property owner must pick and choose the amenities for their property based on the size of the parcel and their level of their interest in a particular improvement. Here, the Petitioners sacrificed the entirety of the developable portion of the site for a large home. In addition, the

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CHESAPEAKE BAY
CRITICAL AREA COMMISSION

subdivision plat permitted more than 600 square feet of impervious surface within the buffer. The Petitioners could have constructed the now sought 600 square foot pool with their in-buffer impervious allowance. They did not and cannot now be immune to the regulations based simply on their desire to use more intensely the buffer. Also, this site has been the subject of two previous variance requests. These earlier approvals limited the amount of impervious surface on site. We believe that the granting of the now requested, third variance would violate the conditions imposed as part of the earlier approvals.

Additionally, we find that the grant of the requested variance would alter the essential character of the neighborhood. See, Code, Art. 3, Section 2-107(c)(2)(i). The Petitioners propose the construction of a pool in the front yard of their home and presented examples of pools on waterfront lots. There were no examples of such pools within this subdivision or adjacent subdivisions, however. We believe that the inclusion of a pool in violation of the Critical Area standards adopted prior to the subdivision of this land would alter the essential character of this community from one constructed with sensitivity to the Chesapeake Bay and its tributaries under the more current regulations, to one more like the older communities constructed with less environmental sensitivity. While the neighborhood is residential and pools are commonly found in residential neighborhoods, we believe, that the inclusion of a pool in the front yard of the property would not be consistent with the character of this neighborhood. A pool within the buffer on a waterfront lot is simply not an expected use in this or other communities developed subsequent to the adoption of the Critical Area regulations and is not found in this subdivision or adjacent subdivisions.

If the Petitioners' request was granted, we believe that the environment will be harmed. Approval of the variance will contribute to the cumulative impact of impervious surfaces on water quality. We find persuasive the testimony of the Critical Area Commission's witness relative to phosphorous loading on site. The requested variance would increase impervious surface within the Buffer, further increasing pollutant loading. We note that this property is within the Intensely Developed Area of the Critical Area. As such, the regulations require a 10% decrease in pollutant loadings. We are also troubled by the lack of vegetation on this property. In 1996, the variance application stated that the eastern property boundary along the Bay was forested to an average depth of 30 feet. This buffer has mysteriously disappeared. While the Petitioners now

propose reforestation to mitigate the impacts from the pool, this reforestation offer would simply replace trees previously, and possibly illegally, removed. These Petitioners have also constructed a large impervious deck and covered eating area within the buffer. This decking does not appear on the site plan. We question the Petitioners' concern for the environment and respect for the regulations. For these reasons, the Board finds that the grant of the requested variance to these Petitioners will adversely affect water quality, fish, wildlife or plant habitat, will not be acceptable to clearing and replanting practices in the Critical Area and will not be in harmony with the general spirit and intent of the Critical Area Program. See, Code, Art. 3, Section 2-107(b)(5)(i), Section 2-107(c)(2)(iii) and Section 2-107(b)(5)(ii).

Similarly, we conclude that the approval of a variance to permit the requested pool in the buffer will be detrimental to the public welfare. See, Code, Art. 3, Section 2-107(c)(2)(iv). The pool will result in additional impervious area on property that has already been granted variances to violate the required buffer. The proposed pool is adjacent to the waterfront and will not provide needed water recreation where there is no opportunity for the same near the property.

We do note, however, that the purported "need" for the variance on this site does not arise from any condition relating to land or building use on any neighboring property. See, Code, Art. 3, Section 2-107(b)(4)(ii). The need for this variance is based on the interaction of the Code criteria with the specific conditions of this site. Additionally, the proposed pool will not substantially impair the appropriate use or development of adjacent properties. See, Code, Art. 3, Section 2-107(c)(2)(ii). The adjoining properties are residentially developed.

The standard set by the Court is the White opinion is to ensure that the additional criteria of Code, Art. 3, Section 2-107 have been "generally met" to reach the finding that the denial of the requested variance would result in the denial of a reasonable and significant use and, therefore, an unwarranted hardship to the Petitioner. We believe that the Petitioners have failed to meet the criteria to obtain the requested variance to the Critical Area Program. Here, the Petitioners meet only two of the required criteria. This variance is hereby denied. These homeowners will continue to have a reasonable and

significant use of their property that includes all types of water recreation within the natural waters of the Chesapeake Bay.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 4th day of MAY, 2001, by the County Board of Appeals of Anne Arundel County, ORDERED, that the Petitioners' request for a variance of 40 feet to the required 100 foot minimum buffer from the tidal waters for the construction of a pool is hereby denied.

Any appeal from this decision must be in accordance with the provisions of Section 604 of the Charter of Anne Arundel County, Maryland.

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

Any notice to this Board required under the Maryland Rules shall be addressed as follows: Anne Arundel County Board of Appeals, Arundel Center, P.O. Box 2700, Annapolis, Maryland 21404, ATTN: Mary M. Leavell, Clerk.

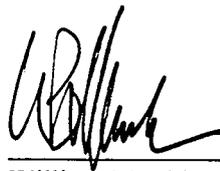
COUNTY BOARD OF APPEALS
OF ANNE ARUNDEL COUNTY


Anthony V. Lamartina, Chairman

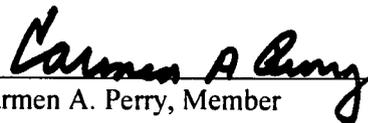

Christopher H. Wilson, Vice-Chairman


C. Ann Abruzzo, Member


William C. Knight, III, Member



William Moulden, Member



Carmen A. Perry, Member

(Robert P. Pratz, former Member, and Ray J. Jicka, Member, did not participate in this hearing.)

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IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 2000-0169-V

IN RE: JAMIL AND ADRIENNE ABUNASSAR

SEVENTH ASSESSMENT DISTRICT

DATE HEARD: JULY 11, 2000

ORDERED BY: STEPHEN M. LeGENDRE, ADMINISTRATIVE HEARING OFFICER

ZONING ANALYST: SUZANNE DIFFENDERFER

DATE FILED: JULY 21, 2000

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CRITICAL AREA COMMISSION

PLEADINGS

Jamil and Adrienne Abunassar, the applicants, seek a variance (2000-0169-V) to permit a pool with less setbacks and buffer than required on property located along the north side of Columbia Cove Court, east of Columbia Beach Road, Shady Side.

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. Abunassar testified that the property was posted for at least 14 days prior to the hearing. I find and conclude that the requirements of public notice have been satisfied.

FINDINGS AND CONCLUSIONS

The applicants own a single-family residence located at 1502 Columbia Cove Court, in the subdivision of Columbia Cove, Shady Side. The property comprises 15,001 square feet and is zoned R-2 residential with a Chesapeake Bay Critical Area designation as Intensely Developed Area (IDA). This is a waterfront lot on the Chesapeake Bay. The applicants propose to construct a 20' X 30' swimming pool 40 feet from the shoreline.

The Anne Arundel County Code, Article 28, Section 1A-104(a)(1) establishes a minimum 100-foot buffer landward from the mean high-water line of tidal waters. Accordingly, the proposal necessitates a buffer variance of 60 feet.

Suzanne Diffenderfer, a zoning analyst with the Office of Planning and Zoning, testified that the property is Lot 3 of a four-lot subdivision platted in 1990. The subdivision plat contains a note as follows:

Any lateral expansion or additional impervious coverage, within the Buffer is prohibited except as provided below:

- a) After existing buildings are removed, reconstruction and impervious coverage will be allowed, in the Buffer according to the following schedule:

Lot 1 - 40 sq. ft.

Lot 2 - 1,264 sq. ft.

Lot 3 - 630 sq. ft.

Lot 4 - 630 sq. ft.

The applicants received a conditional variance under Case No. V-495-94 (February 21, 1995) authorizing their dwelling 80 feet from the bay. The findings in the 1995 decision reflect that Mr. Abunassar purchased the property in reliance on creating 630 square feet of impervious coverage in the buffer. The findings further recite that "(h)e has now found that it is physically impossible to fit a residence on the property without intruding into the buffer by 630 square feet." Opinion at 3. The conditions of the Order prohibited intrusions in the buffer beyond that shown on the site plan and restricted impervious surface coverage in

the buffer to 624 square feet as shown on the site plan. In Case No. 1996-0109-V (May 21, 1996), the applicants received an additional variance to the buffer to permit pervious decking.¹ Finally, the witness stated that the site plan also depicts two freestanding roofed decks within the buffer which have received neither variances nor building permits.

Ms. Diffenderfer contended that the proposed construction will exceed the permitted coverage; is not water dependent; and does not comport with the spirit and intent of the Critical Area program to minimize human activity in the buffer. She submitted the adverse comments from the Chesapeake Bay Critical Area Commission (Attachment 1). Ms. Diffenderfer concluded that the property has been developed to its full potential and recommended that the application should be denied.

Mr. Abunassar testified that the 1995 variance allowed the proper positioning of the dwelling. The neighboring lots received similar approvals. He considers the freestanding decks in the buffer "summer furniture" rather than structures because they are stowed away in the winter.

Concerning the merits of the pool application, he conceded that there are no other pools in this small subdivision nor the adjacent community. He objected to the limited comparison and offered photographs and descriptions for seven pools

¹The deck variance also authorized a combined side yard variance which was apparently exceeded.

located in the Critical Area buffer in his tax assessment district.² Mr. Abunassar observed that Lot 2 in his subdivision received a variance to the buffer to permit a dwelling addition within the impervious coverage allowed by the plat note. See, In Re: Clifford and Ellen Gabus, 1998-0295-V (October 28, 1998). Additionally, Lot 1 received a variance of 49 feet to the buffer to allow the construction of a single-family dwelling. See, In Re: Norma Courtois, Case No. 1996-0176-V (July 22, 1996). Finally, the witness contended that the proposal will not cause any runoff to the bay.

Eric See, the applicants' environmental consultant, testified that the area in question constitutes a mowed lawn. With reforestation, the proposal will have no adverse impacts. The witness suggested that the situation is similar to the approved pool variance for In Re: Michael and Marie Gallatin, Case No. 1999-0408-V (March 24, 2000). In response to my inquiry, he conceded that the roofed

²The witness provided information with respect to the pools as follows:

1. The recently completed Herrington Harbor Marina pool, Tracys Landing, replaced an old cottage. The witness contended that the buffer impacts of the new construction far exceed the impacts of the prior construction.
2. The pool at 851 Cedar Drive, Deale, is located behind the bulkhead. Although the date of installation is unknown, the principal structure was built in 1996.
3. The recently constructed pool at 613 Deale Road, Deale, is sited 26 feet from the water. (This structure is the subject of the decision by this office in Case No. 1999-0276-V (September 27, 1999).
4. The pool at 6026 Parker Creek Drive, Deale, is located near the bulkhead. The date of installation is unknown; the principal structure was built in 1987.
5. The pool at 5727 Blaine Road, Churchton, is located 27 feet from the water. The date of installation is unknown; the principal structure was built in 1965.
6. The pool at 809 Cedar Drive, Deale, is located 25 feet from the bulkhead. The installation is fairly recent, with the principal structure build in 1997.
7. The pool at 800 Cedar Drive, Deale, is located in the buffer. It was reconstructed on an unknown date; the principal structure was built in 1950.

freestanding decks create additional impervious coverage in the buffer during their seasonal use.

Area residents Randy Kiser, Ellen Sherman and Norma Courtois all testified in support of the application. There was no adverse public testimony.

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 if (1) due to features of the site or other circumstances, a strict implementation of the program would result in an unwarranted hardship to the applicants; (2) a literal interpretation of the program will deprive the applicants 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 applicants 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 applicants 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).

In White v. North, the Court of Appeals provided guidance with respect to two of the variance factors. First, in deciding whether the variance confers a right commonly enjoyed, I am to consider “existing uses . . . established in any . . . proper manner” rather than just uses under variance procedures. Second, in deciding whether the variance does not confer a special privilege, I am to consider “*all* similar uses in the neighboring area.” Id at 52 (underscoring added).

The record in this case establishes that the area is devoid of swimming pools. Even considering the larger tax assessment district, there is limited information on how and when the seven pools came into existence. Even assuming they were established in some proper manner, there is insufficient basis to conclude that the proposed pool confers a right commonly enjoyed. Furthermore, even considering all the pools, it still appears that the variance confers a special privilege. In this case, the applicants are bound by a condition of a previous approval which specifically forbids any other impervious coverage. There was nothing to indicate a similar limitation for any of the other pools.

The next factor is whether the need for relief results from the applicants’ own acts or from conditions relating to land use on neighboring property. There

was nothing to suggest that this is a case of self-created hardship.

Considering the final subsection (b) criteria, although the proposed pool will have little impact, I do not believe that it comports with the general spirit and intent of the program. It is true that the area in question is planted in lawn and is not forested. But the simple fact remains that the applicants have already exceeded their allowed coverage on a seasonal basis. They should not be permitted more coverage in perpetuity. Compare, *In Re: Mark and Nancy McLean*, Case No. 2000-0026 (April 6, 2000) (variance for pool with greater impervious coverage and on steep slopes denied.)

Turning to the subsection (c) criteria, I am confident that the request does not represent the minimum relief. This is a very substantial pool very close to the water. While the addition of a pool would appear to introduce a change in the character of the neighborhood, it would not substantially impact the use or development of adjacent property. Finally, after due consideration of the entire record, I believe that the granting of the variance will be detrimental to the public welfare. This office does not lightly waive conditions of prior approvals; nor does it typically approve variances that are inconsistent with platted restrictions.

Because I find that the criteria are not generally met, I believe that the denial of the application is not an unwarranted hardship. Stated otherwise, the denial of the pool is not the denial of a reasonable and significant use. Accordingly, the request shall be denied.

ORDER

PURSUANT to the application of Jamil and Adrienne Abunassar, petitioning for a variance to permit a pool 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 21st day of July, 2000,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicants' request is hereby **denied**.


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.

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



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
(410) 260-3460 Fax: (410) 974-5338

ANNE ARUNDEL CO.
RECEIVED

June 13, 2000

JUN 16 2000

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

PLANNING & CODE ENFORCEMENT

RE: Variance 2000-0169-V, Jamil & Adrienne Abunassar

Dear Mr. Dooley:

Thank you for providing information on the above referenced variance application. The applicant is requesting a variance to permit a pool with less setbacks and Buffer than required. The property is designated IDA and is currently developed with a large single family dwelling.

This office opposes the variance requested. This proposal does not meet the required standards, individually or in general, for granting of a variance within the Critical Area. We believe that denial of the variance does not create an unwarranted hardship for the applicant. As stated in *Belvoir Farms V. North*, 355 Md. 259 (1999), the unwarranted hardship standard, and its similar manifestations, are equivalent to the denial of reasonable and significant use of the property. The use of the entire property must be considered when determining whether a property owner has been denied reasonable and significant use of his property. In this case the applicant enjoys the use for which the property is zoned, i.e., a residence, as well as access to the water via a large pier. Use of the property as a whole should be considered, rather than whether a particular structure is a reasonable and significant use. If the entirety of the property and other factors in this case are examined, it is clear that denial of the variance would not constitute an unwarranted hardship.

This property is located in what appears to be a four lot subdivision, adjacent to the community of Columbia Beach. During a site visit and drive through the neighborhood, there were no pools observed at all, either within the Columbia Cove subdivision or within the larger community of Columbia Beach. A swimming pool is not a right commonly enjoyed. Rather, the granting of this variance would confer a special privilege to the applicant. Installation of a pool would disturb what remains of the Buffer. Similarly, it appears that if neighboring waterfront property owners proposed swimming pools, they also would need variances from the Buffer and setback requirements. Approval of a swimming pool in this community would open the door to many similar requests.

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

Mr. Kevin Dooley
June 12, 2000
Page 2

Granting of this variance would not be consistent with the spirit and intent of the Critical Area Law and Criteria. The State Criteria and the County's Zoning Ordinance expressly prohibit new development activities in the Buffer, except for water-dependent facilities. Allowing a swimming pool in the Buffer does not meet the spirit and intent of the Critical Area Law to minimize the effects of human activity in the valuable and sensitive shoreline Buffer. As referenced in the Belvoir case, the Court of Appeals of Maryland found that variances should not be lightly granted. They noted:

The need sufficient to justify an exception must be substantial and urgent and not merely for the convenience of the applicant, inasmuch as the aim of the ordinance is to prevent exceptions as far as possible, and a liberal construction allowing exceptions for reasons that are not substantial and urgent would have the tendency to cause discrimination and eventually destroy the usefulness of the ordinance. See *Belvoir Farms v. North*, 355 Md. 259 (1999).

As stated previously, the applicants already enjoy reasonable use of the property. There is no unwarranted hardship in this case. A pool would be very unusual in this neighborhood and is not a standard amenity. A pool is not a right commonly enjoyed. Granting of this variance would confer a special privilege to this applicant.

In addition, I would like to bring an additional issue to your attention. This property was the subject of another variance request in 1996 (Case No. 1996-0109-V). That request was for the attached decks and patio on the back of the house. Between 1996 (when the previous site plan was drawn) and 2000, it appears that illegal structures were placed within the Buffer absent a variance. As can be seen on the current site plan, there are freestanding decks located only 20 feet from the water. The site plan from 1996 does not show these structures. This office has not received any information on these decks. During the site visit, it appeared that these decks have roofs over them (one appears to be a "tiki bar" type structure and the other appears to be a covered sitting area). We recommend that the applicant remove these illegal structures or obtain an after-the-fact variance. This office could not support such a variance request. The variance granted in 1996 allowed the applicants to construct a 10' x 59' first floor deck and a 28' x 5.5' second story deck on the back of their house. Any additional disturbance or decks within the Buffer is beyond the minimum variance necessary to provide relief.

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 request. Also, please notify the Commission in writing of the decision made in this case.

Sincerely,



LeeAnne Chandler
Natural Resources Planner

cc: Marianne D. Mason, Esq.
AA237-00

RECEIVED

FEB 22 1995

ROANOKE BAY
COUNTY BOARD OF COMMISSIONERS

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER V495-94

IN RE:

JAMIL ABUNASSAR

Seventh Assessment District

Date Heard: February 7, 1995

OPINION BY: PERKINS, TEMPORARY ADMINISTRATIVE HEARING OFFICER

DATE FILED: February 21, 1995

Variance for House
AA743-94

PLEADINGS

The Applicant, Jamil Abunassar, (hereinafter referred to as the "Applicant") is petitioning for a Variance to permit the construction of a single family dwelling to be set back 20 feet from the rear property line (a variance of five feet from the required 25 rear yard setback) and to be set back 80 feet from the shoreline of the Chesapeake Bay (a variance from Section 1A-104(a)(1) of the Zoning Regulations which requires a minimum 100 foot buffer landward from the mean high water line of tidal waters in the Chesapeake Bay Critical Area). The property fronts approximately 60 feet on the north side of Columbia Cove Court, approximately 210 feet east of Columbia Beach Road in the Columbia Cove, Shady Side area.

PUBLIC NOTIFICATION

The Temporary Administrative Hearing Officer reviewed the file and found that copies of the required newspaper publications were present in the file. Douglas Musser testified that two signs (one on the street side and one on the waterfront) had been posted on the property for over two weeks as required by Section 11-107(b) of the Zoning Regulations.

FINDINGS

Suzanne Schappert testified on behalf of the Department of Planning and Code Enforcement and submitted a report and recommendation. Ms. Schappert said that this property comprises 15,001 square feet, is undeveloped, is zoned R2, Residential, and is in the Intensely Development Area of the Chesapeake Bay Critical

Area. The Applicant proposes to construct a single family dwelling to be located 80 feet from the shoreline of the Chesapeake Bay and the closest point of the dwelling to the shoreline. In addition, the home will be located 20 feet from Columbia Cove Court at the closest point. Ms. Schappert noted that this waterfront lot was subdivided in 1989 before enactment of the present Critical Area regulations. Notes on the plat indicate that 630 square feet of impervious area are allowed within the 100 foot buffer. Further, the plat notes a rear building restriction line of 20 feet. Ms. Schappert noted that the site is of irregular shape and is below the minimum lot requirements of the R2, Residential zone with regard to lot area and width. She felt the creation of this lot in 1989 and the subsequent change of the law resulted in exceptional circumstances which justify the grant of a variance. Further, a strict implementation of the Critical Area law would deprive the owner of rights commonly enjoyed by other properties in similar areas by denying him the right to develop his property. Subject to conditions, she recommended approval.

Jamil Abunassar testified that in 1991 when they purchased this property, they noted on the plat that they could create 630 square feet of impervious surface coverage in the 100 foot buffer. Relying on this, the Applicant purchased the lot. He has now found that it is physically impossible to fit a residence on the property without intruding into the buffer by 630 square feet. The home he proposes to build is consistent with the cost and size of other homes in this small community.

Douglas Musser, Environmental Consultant, noted that when this subdivision was created, it was done with the expectation that there would be some building coverage in the 100 foot buffer area. Thus, the notation on the subdivision plat permitting the 630 square feet of development within the buffer.

General Findings

Section 11-102.1(a) of the Zoning Regulations permits this Hearing Officer to grant a variance after making one of the following two findings: (1) because of certain unique physical conditions, there is no reasonable possibility of developing the property in strict conformance with the Zoning Regulations or, (2) because of exceptional circumstances (other than financial considerations), the grant of a variance is necessary to avoid practical difficulties or unnecessary hardship and to enable the development of the property.

The Applicant has designed a reasonably sized home to be located on this oddly shaped and below standard lot. In order to minimize intrusion into the 100 foot buffer, the home has been set back 20 feet rather than 25 feet from the rear (street) property line. This meets the building restriction line as shown on the subdivision plat approved in 1989. The Applicant has shown exceptional circumstances to justify the grant of the five foot variance from the required 25 foot rear yard setback.

With regard to property located in the Critical Area, under Section 11-102.1 (b), a variance to the requirements of the County

Critical Area Program may be granted after the following determinations:

(1) due to the features of a site or other circumstances, other than financial consideration, strict implementation of the County's critical area program would result in an unwarranted hardship to the applicant;

(2) a literal interpretation of the Code of Maryland Regulations, Title 27, Subtitle 01, Criteria for Local Critical Area Program Development, or the County critical area program and related ordinances will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the critical area of the County;

(3) the granting of a variance will not confer on an applicant any special privilege that would be denied by COMAR, Title 27, Subtitle 01 or the County critical area program to other lands or structures within the County critical area;

(4) the variance request:

(i) is not based on conditions or circumstances that are the result of actions by the applicant; and

(ii) does not arise from any condition relating to land or building use, either permitted or non-conforming, on any neighboring property; and

(5) the granting of a variance:

(i) will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the County's critical area; and

(ii) will be in harmony with the general spirit and intent of the County critical area program.

The Applicant's lot was subdivided in 1989 before enactment of the current Critical Area regulations. The plat states that there can be some development within the 100 foot Critical Area buffer. The size and location of this property prohibits reasonable development without the grant of a variance from the buffer requirement. This will permit the Applicant to build a home that complies with restrictions on the subdivision plat. The strict

application of the buffer requirement would result in an unwarranted hardship to the Applicant.

I find that the granting of this variance will not be inconsistent with the spirit and intent of the Critical Area program, and will not adversely affect water quality or adversely impact fish, wildlife or plant habitat. With conditions, the granting of the variance will not be contrary to acceptable clearing and replanting practices required for development in the Critical Area.

Section 11-102.1(c) of the Zoning Regulations requires this Hearing Officer make further findings before any variance may be granted. As required by that subsection, I find:

Based upon the homes constructed in this community, the home which the Applicant proposes to build is a reasonably sized home. Based on this, I find that the variances requested are the minimum necessary to afford the Applicant relief.

This single family home will be in keeping with other construction in this residential neighborhood. I find that the granting of the variance will not alter the essential character of the neighborhood or district; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

CONCLUSION

I find that the Applicant has satisfied all conditions of Section 11-102.1.

ORDER

Pursuant to the application for variances on the property as described in the application, and pursuant to the advertising, posting of the property, and a public hearing, all in accordance with the provisions of law, it is this 21 day of February, 1995 ORDERED by the Temporary Administrative Hearing Officer of Anne Arundel County, that the application for variances is granted subject to the following conditions:

1. There shall be no intrusion in the 100 foot buffer beyond that shown on the Applicant's site plan submitted with his application: the northwest corner of the home shall be 80 feet from the shoreline, the southeast corner of the home shall be 88 feet from the shoreline, the northwest corner of the alcove shall be 88 feet from the shoreline, and the southeast corner of the alcove shall be 92 feet from the shoreline.

2. Impervious surface coverage in the buffer shall not exceed the 624 square feet shown on the site plan (not including the well shown on the site plan).

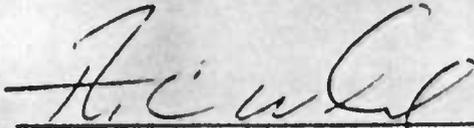
3. To the extent the Applicant removes forest area, reforestation shall be done on site on a 1 to 1 basis.

4. Stormwater management shall be addressed as per Article 21, Title 3, Subtitle 2, Section 3-203 of the Anne Arundel County Code.

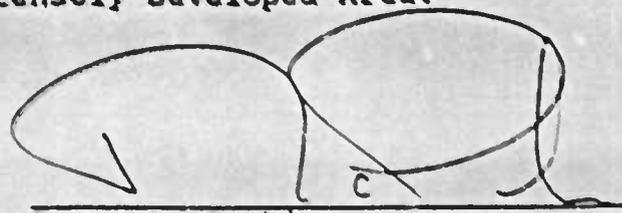
5. All floodplain issues shall be addressed as per Article 21 title 1 of the Anne Arundel County Code.

6. The Applicant shall meet the 10 percent pollution reduction requirements of the Intensely Developed Area.

READ AND APPROVED:



Robert C. Wilcox
Administrative Hearing Officer



Roger A. Perkins
Temporary 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.

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

Section 11-102. of the Zoning Regulations states:

A Variance granted under the provisions of this Article shall become void unless a building permit conforming to 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.

JUDGE JOHN C. NORTH, II
CHAIRMAN
410-822-9047 OR 410-874-2418
410-820-9993 FAX

SARAH J. TAYLOR, PhD
EXECUTIVE DIRECTOR
410-874-2418 x24
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WESTERN SHORE OFFICE
43 CALVERT ST., 2ND FLOOR
ANNAPOLIS, MARYLAND 21401

EASTERN SHORE OFFICE
31 CREAMERY LANE
EASTON, MARYLAND 21801

STATE OF MARYLAND
CHESAPEAKE BAY CRITICAL AREA COMMISSION

December 27, 1994

Mr. Kevin Dooley
MS 6402
Office of Planning and Code Enforcement
2664 Riva Road
Annapolis, Maryland 21404

Dear Mr. Dooley:

I would like to comment on Variance 495-94, the property of Jamil and Adrienne Abunassar. The applicants propose to construct a single family dwelling that would partially intrude into the 100 foot Buffer. From the site plan provided it appears that the house can be pulled closer to the road to avoid additional impacts to the 100 foot Buffer. The application acknowledges a plat note which apparently allows the subject lot (lot 3) to have 630 square feet of impervious surface in the 100 foot Buffer after existing buildings are removed. In instances such as this, the Program controls rather than the plat note. Therefore, the 630 square feet in question is subject to the same criteria as the other 624 square feet for which a variance is being requested. The 630 square feet should also be part of the variance for disturbance to the 100 foot Buffer.

A plantings plan is recommended since the proposed development is within an IDA. All potential runoff must be reduced by 10% in order to achieve the water quality goals of the Critical Area Program. This plan should be submitted prior to the issuing of any variances.

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

Sincerely,

A handwritten signature in cursive script that reads "Lisa A. Hoerger".

Lisa A. Hoerger
Environmental Specialist

cc: Ms. Regina A. Esslinger
AA743-94

AM 1143-94

**ENVIRONMENTAL
RESOURCE
SERVICES INC.**



1486 Snug Harbor Rd. Shady Side, MD 20764 Phone (410)867-2003 Fax (301)261-3967

APPLICANT: Jamil and Adrienne Abunassar

SUBJECT: CHESAPEAKE BAY CRITICAL AREA REPORT
1502 Columbia Cove Court
Shady Side, MD 20764
Lot 3, Columbia Cove Subdivision
Tax Map 69; Block 24; Parcel 0518

The subject report addresses items listed in Section 3 of the Anne Arundel County, Chesapeake Bay Critical Area Report Check List. Included as enclosures herewith are the required vicinity map and site plan. A copy of the Chesapeake Bay Critical Area Commission Notification of Project Application is also provided as an enclosure.

The objective of the variance is to impact 624 square feet within the 100-foot buffer to tidal waters and derives from passage of Critical Area Bill 61-93. Note 8 of the record plat (attached hereto), which was recorded April 27, 1990, states that 630 square feet of the 100-foot buffer may be disturbed for the subject lot. The applicant is proposing impacts in the 100-foot buffer totaling some 624 square feet, to be mitigated with additional approved plantings that would exceed Anne Arundel County reforestation requirements.

The project lies entirely within an Intense Development Area (IDA) of the Chesapeake Bay Critical Area. Currently, the entire project site is being mowed and maintained in a residential fashion and is approximately 40 percent forested with overstory trees only. The entire length of the eastern property boundary (108 feet) is bulkheaded along the Chesapeake Bay. A forested buffer (average

width 30-feet) to the Chesapeake Bay also exists along the length of that boundary. The balance of the property is surrounded by residential lots which are being maintained as private lawns.

As noted, the site is approximately 40 percent wooded. It is characterized by young overstory trees scattered throughout the property. The majority of this 'wooded area' is located within 40 feet of the tidal limits of the Chesapeake Bay. These trees are identified on the enclosed site plan (scale: 1"=40') and include red maple (Acer rubrum), black locust (Robinia pseudoacacia), choke cherry (Prunus virginiana), and sweetgum (Liquidambar styraciflua).

Pollutants from stormwater runoff would be filtered by the existing on-site forest vegetation as well as by the proposed reforestation. In addition to the existing on-site vegetation and the required reforestation, the applicants are proposing, as part of their reforestation agreement with the County, that a row of arrow-wood shrubs (Viburnum dentatum) be planted. This is a species native to the area and, as a part of the reforestation agreement, would include some 21 shrubs in addition to the required reforestation. A bond would be held by Anne Arundel County for a period of two years to ensure survival of the approved plantings as shown on the (attached) reforestation plan.

The existence of poorly drained soil (Othello silt loam) in the project area does not enable a infiltration stormwater management system. In lieu thereof, it is expected that required on-site plantings, together with the directing of roof leaders to the rear of the site towards the proposed plantings, would satisfy the requirement that pollutants that might be incurred by the proposed development be reduced by 10 percent. Since an Anne Arundel County grading permit would be required for the project, construction impacts would be minimized in accordance with county standards. No steep slopes exist on the site.

The size of the site is equal to 15,001 square feet, all of which is located in an IDA of the Chesapeake Bay Critical Area. The total wooded area on the site is equal to some 6,000 square feet (40 percent of the overall land area). While there is currently no impervious coverage on this site the Columbia Cove Subdivision does include impervious coverage in the form of a street (Columbia Cove Court) and an existing residence. The proposed improvements would add 2,730 square feet of impervious coverage (18 percent of the overall site area); it is noted that this is well below standards set forth for an area designated for intense development - or even limited development (25 percent).

Removal of vegetation within the 100-foot buffer would be limited to one immature red maple, as well as two deteriorated black locust trees. No vegetation is planned to be removed from the 25-foot buffer to tidal waters, which is currently entirely forested. Habitat protection areas, with the exception of the Chesapeake Bay, do not exist on the site; this conclusion has been derived both from the nature of the surrounding neighborhood as well as the current on-site maintenance techniques that are being employed. No wetlands, tidal or nontidal, were identified on the site.

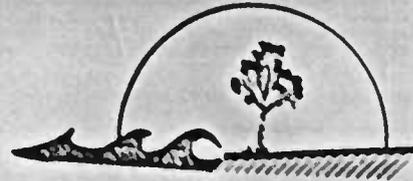
ENCLOSURES:

- (1) Vicinity Map
- (2) Site Plan
- (3) CBCAC Notification
- (4) Record Plat
- (5) Reforestation Plan (Proposed)

ENVIRONMENTAL
RESOURCE
SERVICES INC.

1486 Snug Harbor Rd. Shady Side, MD 20764

Phone (410)867-2003 Fax (301)261-3067



November 14, 1994

Office of Planning and Zoning
Heritage Office Center
2664 Piva Road
P.O. Box 2700
Annapolis, MD 21404

Applicant: Jamil & Adrienne Abunassar

Subject: 1502 Columbia Cove Court
Shady Side, MD 20764
Lot 3; Columbia Cove Subdivision
Tax Map 69; Block 4; Parcel 523

This letter provides brief background information in support of a variance request for creation of the subject single family residence, of which some 624 square feet would be located within the 100-foot buffer to tidal water. It is noted that Note 8 of the applicable record plat, as recorded April 27, 1990, allows 630 square feet of impervious coverage impact in that buffer. The site is located entirely within an Intense Development Area (IDA) of the Chesapeake Bay Critical Area.

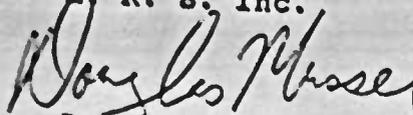
Inasmuch as it is proposed to reforest the site to an extent exceeding county requirements, with no plan for removal of any of the vegetation within the 25-foot (fully planted) tidal wetland buffer, this project is considered to cause only minimal impact to the Critical Area. The existing Critical Area IDA classification, as well as the basic nature of the surrounding neighborhood, further support a conclusion that this constitutes a valid request.

The variance being requested for the proposed construction addresses only an additional 624 square feet of impervious coverage in the 100-foot buffer for which, as noted, 630 square feet is allowed by the record plat. Overall improvements planned for the property comprise creation of a single family residence on an existing, buildable (15,001 square foot) waterfront lot. Excluding the 630 square feet for which buffer zone impact is allowed, actual available buildable area is only 2,733 square feet; of that total the subject project would utilize 1,606 square feet. All of the proposed improvements satisfy Chesapeake Bay Critical Area standards for an Intense Development Area.

Planning and Zoning
November 14, 1994
Page Two

It is hoped that this information will prove to be sufficient to enable completion of the subject property review. However, should it be determined that additional data is required, please do not hesitate to contact me at (410) 867-2003.

Sincerely,
E. R. S. Inc.



Douglas Musser
Environmental Technician

Enclosure: Critical Area Report

CHESAPEAKE

OWNER'S DEDICATION

We, James E. and Vicki A. Weaver, owners of the property shown and described hereon, hereby adopt this plan of subdivision, establish the minimum building restriction lines and dedicate the widening strip to public use, such widening strip to be deeded to Anne Arundel County, Md, upon request. There are no suits, actions of law, leases, liens, mortgages, trusts, easements or rights of way affecting the property included in this plan of subdivision, except as shown, hereon and all parties in interest thereto, have, hereunto, affixed their signatures, indicating their assent to this plan. The requirements of Section 5-106 of the Annotated Code of Md. shall be met, as far as they relate to the making of this plat and the setting of the markers.

<u>James E. Weaver</u>	<u>3-27-90</u>	<u>Vicki A. Weaver</u>	<u>3-27-90</u>
James E. Weaver	Date	Vicki A. Weaver	Date

*PRIVATE ROAD STATEMENT

The private, common use right of way, shown hereon, is hereby dedicated for ingress and egress of the owners of the abutting properties. It shall not be acceptable for petition and is a maintenance responsibility of the abutting property owners. It shall be improved to D.A. Co. Public Road Standards with any further subdivision approval of the properties abutting thereon.

NOTES

1. Weaver (No. 3335) to major subdivision process, street trees and street lights was granted by letter from Planning and Zoning, dated October 10, 1985.
2. Stormwater Management shall be addressed, per critical area criteria, with any future building or grading permits. (See Note #1)
3. All access shall be from private rights-of-way and not directly onto Columbia Beach Road.
4. The Reserved Parcel is not a buildable lot and is subject to future subdivision review.
5. This property is within the Chesapeake Bay Critical Area and is classified Intensive Development.
6. No vegetation is to be removed, trimmed or cleared, in the Buffer, without an approved Buffer Management Plan. (Including lawn mowing)
7. Any future grading or building permits will require stormwater management to comply with the 10% rule, and shall also "sensitive Areas criteria"
8. Any lateral expansion or additional impervious coverage, within the Buffer, is prohibited, except as provided below:
 - a. After existing buildings are removed, reconstruction and impervious coverage will be allowed, in the Buffer, according to the following schedule:

Lot 1	-	40 sq. ft.
Lot 2	-	1264 sq. ft.
Lot 3	-	630 sq. ft.
Lot 4	-	630 sq. ft.

DAY

S 20° 01' 16" E 7.35'
 S 15° 53' 43" E 1.94'
 P.K. Nail Set
 Timber Bulkhead

15° 25' 27" E 505' 08' 53" W
 4133' 4"

Proposed REFORESTATION PLAN

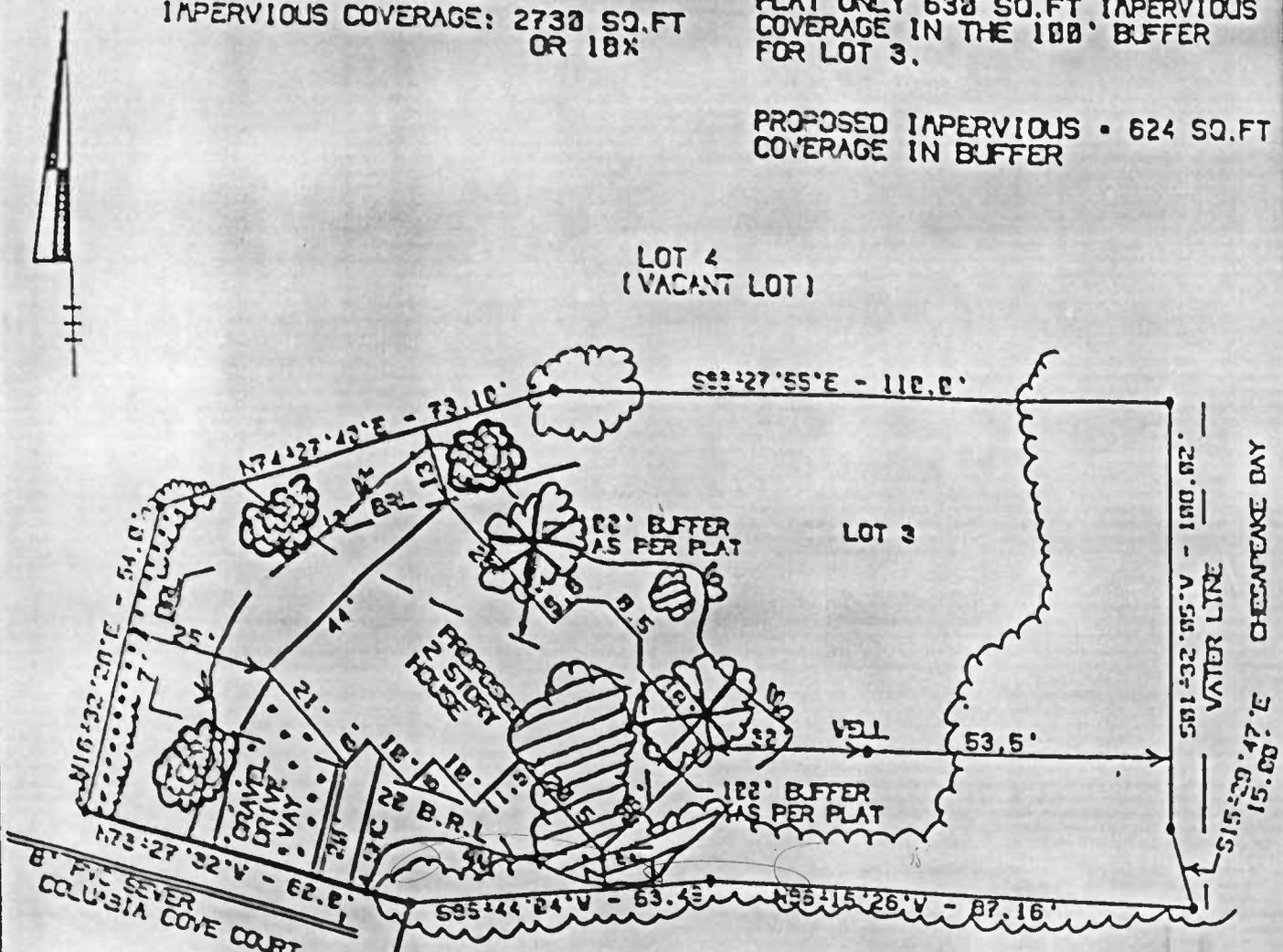
SCALE: 1" = 30'

LOT AREA: 15,021 SQ.FT
 IMPERVIOUS COVERAGE: 2730 SQ.FT
 OR 18%

AS PER NOTE #8 OF RECORD
 PLAT ONLY 630 SQ.FT IMPERVIOUS
 COVERAGE IN THE 100' BUFFER
 FOR LOT 3.

PROPOSED IMPERVIOUS = 624 SQ.FT
 COVERAGE IN BUFFER

LOT 4
 (VACANT LOT)



LEGEND

- Existing tree line
- Proposed shrubs (21)
- Existing tree cover to be removed
- Dead Black Locust
- Proposed Loblolly Pine (3)

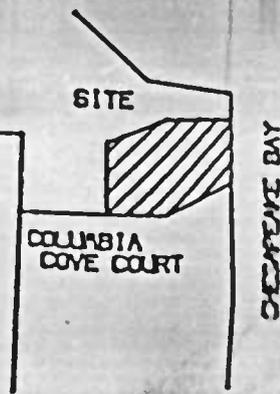
COLUMBIA COVE

LOT 3
 1522 COLUMBIA COVE COURT
 SHADY SIDE, MD 20764

RECEIVED

DEC 15 1984

CHESAPEAKE BAY
 ENVIRONMENTAL CONSULTANTS



SITE PLAN

SCALE: 1" = 40'

LOT AREA: 15001 SQ.FT

EXISTING IMPERVIOUS AREA TABULATIONS

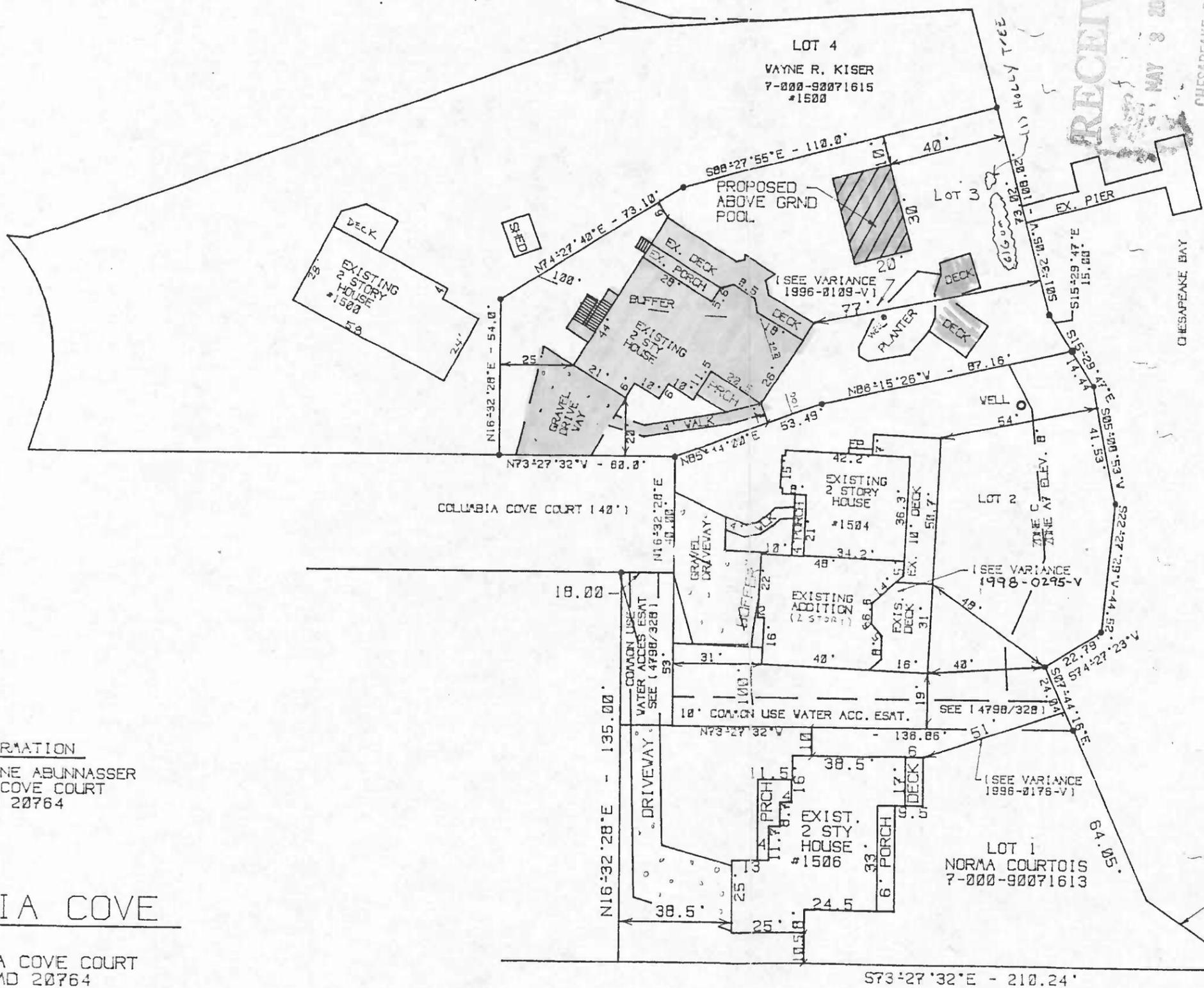
HOUSE = 2574 SQ.FT
DRIVE & WALK = 1083 SQ.FT

IMPERVIOUS COVERAGE: 3657 SQ.FT
OR 24.4%

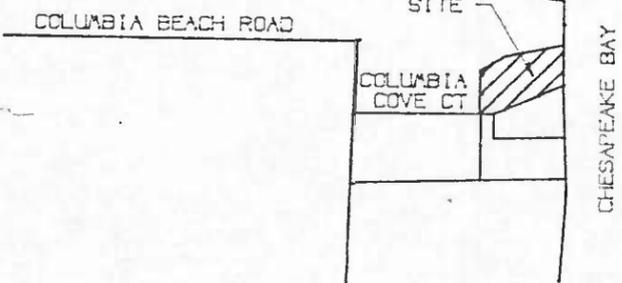
PROPOSED IMPERVIOUS AREA TABULATIONS

POOL = 600 SQ.FT

TOTAL IMPERVIOUS COVERAGE: 4257 SQ.FT
OR 28.4%



RECEIVED
MAY 3 2000
CHESAPEAKE BAY
CRITICAL AREA COMMISSION



APPLICANT INFORMATION

JAMIL & ADRIENNE ABUNNASSER
1502 COLUMBIA COVE COURT
SHADY SIDE, MD 20764
(410) 867-7225

COLUMBIA COVE

LOT 3
1502 COLUMBIA COVE COURT
SHADY SIDE, MD 20764

228
195



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
(410) 260-3460 Fax: (410) 974-5338

June 13, 2000

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

RE: Variance 2000-0169-V, Jamil & Adrienne Abunassar

Dear Mr. Dooley:

Thank you for providing information on the above referenced variance application. The applicant is requesting a variance to permit a pool with less setbacks and Buffer than required. The property is designated IDA and is currently developed with a large single family dwelling.

This office opposes the variance requested. This proposal does not meet the required standards, individually or in general, for granting of a variance within the Critical Area. We believe that denial of the variance does not create an unwarranted hardship for the applicant. As stated in *Belvoir Farms V. North*, 355 Md. 259 (1999), the unwarranted hardship standard, and its similar manifestations, are equivalent to the denial of reasonable and significant use of the property. The use of the entire property must be considered when determining whether a property owner has been denied reasonable and significant use of his property. In this case the applicant enjoys the use for which the property is zoned, i.e., a residence, as well as access to the water via a large pier. Use of the property as a whole should be considered, rather than whether a particular structure is a reasonable and significant use. If the entirety of the property and other factors in this case are examined, it is clear that denial of the variance would not constitute an unwarranted hardship.

This property is located in what appears to be a four lot subdivision, adjacent to the community of Columbia Beach. During a site visit and drive through the neighborhood, there were no pools observed at all, either within the Columbia Cove subdivision or within the larger community of Columbia Beach. A swimming pool is not a right commonly enjoyed. Rather, the granting of this variance would confer a special privilege to the applicant. Installation of a pool would disturb what remains of the Buffer. Similarly, it appears that if neighboring waterfront property owners proposed swimming pools, they also would need variances from the Buffer and setback requirements. Approval of a swimming pool in this community would open the door to many similar requests.

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



Mr. Kevin Dooley
June 12, 2000
Page 2

Granting of this variance would not be consistent with the spirit and intent of the Critical Area Law and Criteria. The State Criteria and the County's Zoning Ordinance expressly prohibit new development activities in the Buffer, except for water-dependent facilities. Allowing a swimming pool in the Buffer does not meet the spirit and intent of the Critical Area Law to minimize the effects of human activity in the valuable and sensitive shoreline Buffer. As referenced in the Belvoir case, the Court of Appeals of Maryland found that variances should not be lightly granted. They noted:

The need sufficient to justify an exception must be substantial and urgent and not merely for the convenience of the applicant, inasmuch as the aim of the ordinance is to prevent exceptions as far as possible, and a liberal construction allowing exceptions for reasons that are not substantial and urgent would have the tendency to cause discrimination and eventually destroy the usefulness of the ordinance. See *Belvoir Farms v. North*, 355 Md. 259 (1999).

As stated previously, the applicants already enjoy reasonable use of the property. There is no unwarranted hardship in this case. A pool would be very unusual in this neighborhood and is not a standard amenity. A pool is not a right commonly enjoyed. Granting of this variance would confer a special privilege to this applicant.

In addition, I would like to bring an additional issue to your attention. This property was the subject of another variance request in 1996 (Case No. 1996-0109-V). That request was for the attached decks and patio on the back of the house. Between 1996 (when the previous site plan was drawn) and 2000, it appears that illegal structures were placed within the Buffer absent a variance. As can be seen on the current site plan, there are freestanding decks located only 20 feet from the water. The site plan from 1996 does not show these structures. This office has not received any information on these decks. During the site visit, it appeared that these decks have roofs over them (one appears to be a "tiki bar" type structure and the other appears to be a covered sitting area). We recommend that the applicant remove these illegal structures or obtain an after-the-fact variance. This office could not support such a variance request. The variance granted in 1996 allowed the applicants to construct a 10' x 59' first floor deck and a 28' x 5.5' second story deck on the back of their house. Any additional disturbance or decks within the Buffer is beyond the minimum variance necessary to provide relief.

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 request. Also, please notify the Commission in writing of the decision made in this case.

Sincerely,



LeeAnne Chandler
Natural Resources Planner

cc: Marianne D. Mason, Esq.
AA237-00