

USA S. 1829-782

HC letter
7/22/00
Comments
11/22/04 *rc*

Robert L. Ehrlich, Jr.
Governor

Michael S. Steele
Lt. Governor



Martin G. Madden
Chairman

Ren Serey
Executive Director

**STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS**

1804 West Street, Suite 100, Annapolis, Maryland 21401
(410) 260-3460 Fax: (410) 974-5338
www.dnr.state.md.us/criticalarea/

November 22, 2004.

Ramona Plociennik
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road
Annapolis, Maryland 21401

Re: Variance 2004-0477-V 8919 LLC C/O James Robinson

Dear Ms. Plociennik:

Thank you for providing information on the above referenced variance. The applicant is requesting a variance to permit a dwelling with less setbacks and Buffer than required. The property is designated a Limited Development Area (LDA) and is currently undeveloped.

Providing this property is properly grandfathered, this office does not oppose the variance. Based on the information provided, the current variance request for Lot 1 is identical to the variances granted in the previous case for this property, Case No. 2000-0229-V. We recommend that the conditions of the previous variance be applied to the current variance.

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,

A handwritten signature in cursive script that reads "Julie V. LaBranche".

Julie V. LaBranche
Natural Resource Planner

AA 361-00

spot and
zed
required.

very point
cles leaving
action entrance.

MENT OF ENVIRONMENT
ENT ADMINISTRATION

NCE POST,
5' INTO

IGHT OF
55 F

TH IN

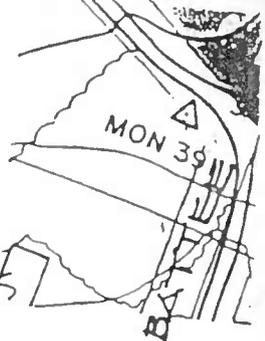
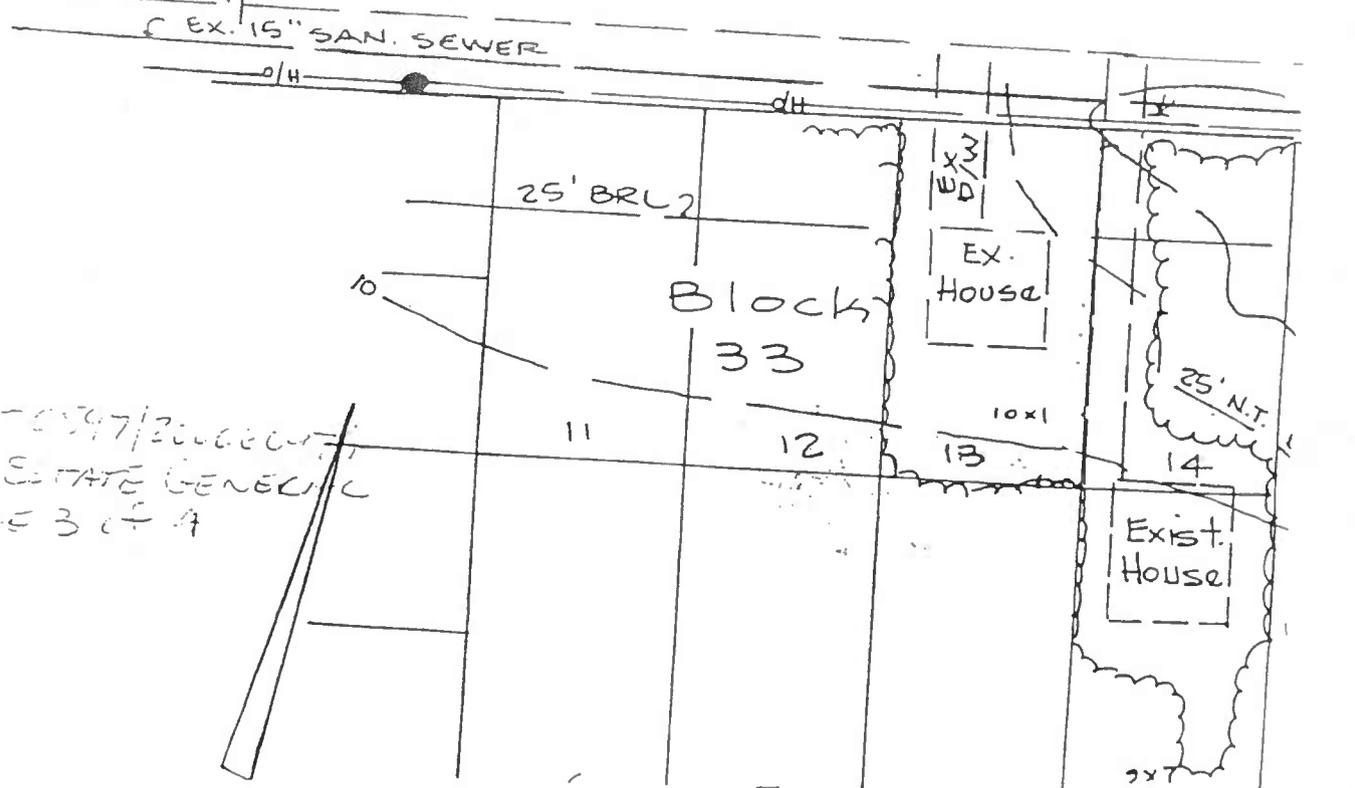
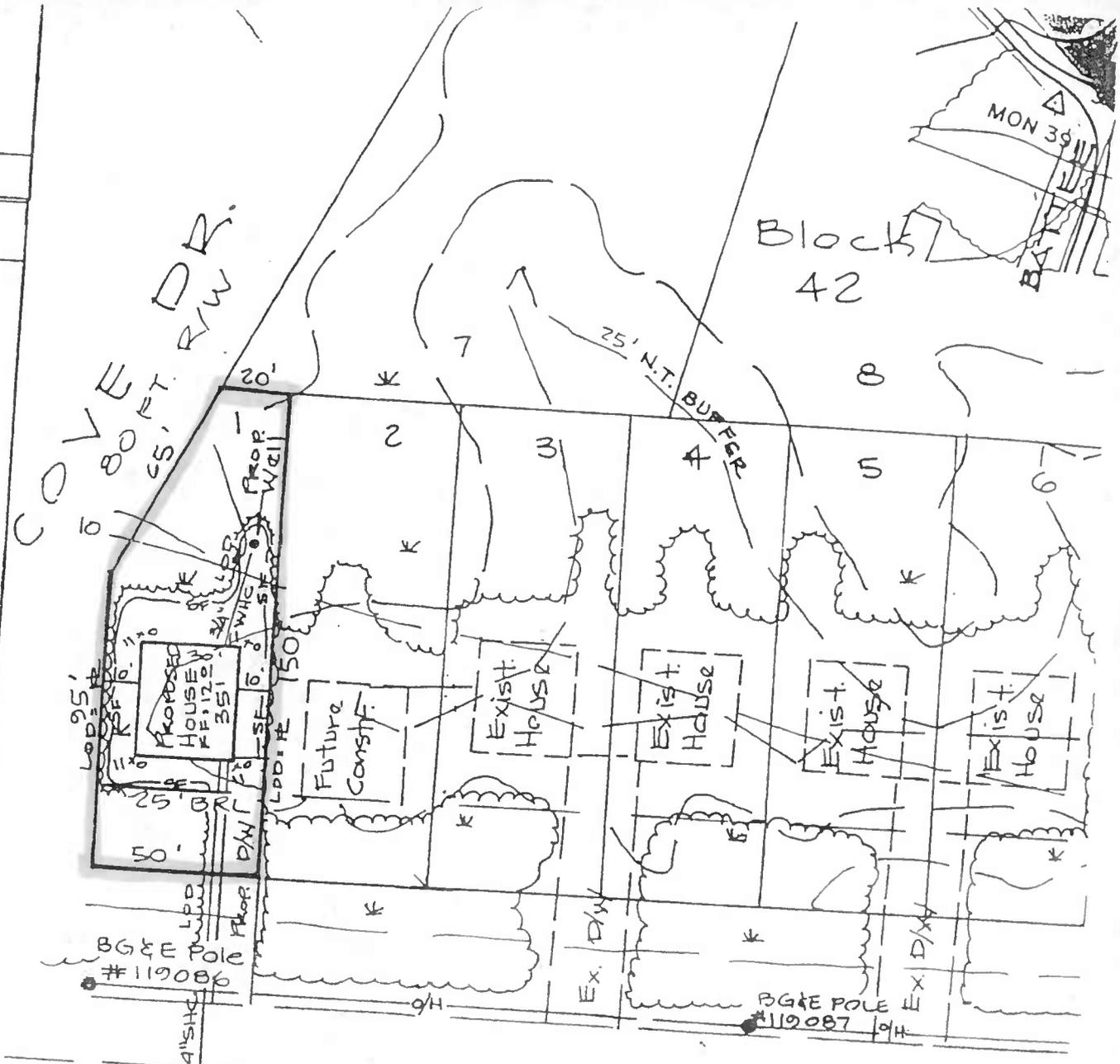
ST SECTION
20' ABOVE

UNDISTURBED
GROUND

T DRIVEN A
16' INTO



meter
be
st.
es
ts



PHONE 410-266-6199 ARINA
410-841-6119 BALT
410-266-8862 FAX

LAND SURVEYORS - PLANNERS
19 LORETTA AVENUE
ANNAPOLIS, MARYLAND 21401

DAVID E. JAMES, SR.
PROJECT MANAGER

99-0-0097/2000000
REAL ESTATE GENERAL
PAGES 3 of 4

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

**CASE NUMBERS 2000-0228-V, 2000-0229-V, 2000-0230-V
2000-0231-V, 2000-0233-V, 2000-0234-V, 2000-0235-V AND 2000-0238-V**

IN RE: REAL ESTATE GENERAL, LIMITED, ET AL

SEVENTH ASSESSMENT DISTRICT

DATE HEARD: SEPTEMBER 7, 2000

ORDERED BY: STEPHEN M. LeGENDRE, ADMINISTRATIVE HEARING OFFICER

ZONING ANALYST: PATRICIA A. MILEY

DATE FILED: SEPTEMBER 13, 2000

PLEADINGS

Real Estate General, Limited, et al, the applicants, seek variances to permit dwellings with less setbacks and buffer than required on properties located along the south side of Gwynne Avenue, south of Berkley Manor Lane (2000-0228-V); the north side of Gwynne Avenue, north of Battee Drive (2000-0229-V); the north side of Gwynne Avenue, west of Berkley Street (2000-0230-V); and on the south side of Gwynne Avenue, west of Berkley Street (2000-0231-V, 2000-0233-V, 2000-0234-V, 2000-0235-V, and 2000-0238-V). The locale is Churchton.

PUBLIC NOTIFICATION

The cases were 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 applications as owning land that is located within 175' of the properties was notified by mail, sent to the address furnished with the applications. James C. Robinson testified that the properties were 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 matter concerns eight unimproved building sites in Franklin Manor Beach as follows:

1. 2000-0228-V is for Lots 1 & 14, Block 31 and contains 9,100 square feet.

2. 2000-0229-V is for Lot 1, Block 42 and contains 6,675 square feet.
3. 2000-0230-V is for Lot 2 in Block 40 and contains 7,500 square feet.
4. 2000-0231-V is for Lots 7 & 20, Block 32 and contains 9,000 square feet.
5. 2000-0233-V is for Lots 9 & 22, Block 32 and contains 9,000 square feet.
6. 2000-0234-V is for Lots 11 & 24, Block 32 and contains 9,000 square feet.
7. 2000-0235-V is for Lots 12 & 25, Block 32 and contains 9,000 square feet.
8. 2000-0238-V is for Lots 6 & 19, Block 32 and contains 9,000 square feet.

The sites are zoned R-5 residential with the Chesapeake Bay Critical Area designation as Limited Development Area (LDA). The proposal calls for the construction of a new single-family dwelling on each property. The dwellings are proposed within nontidal wetlands and with less than the required buffer to nontidal wetlands. For Case No. 2000-0228-V, the dwelling is proposed with a 13-foot side street setback from Berkley Street. For Case No. 2000-0229-V, the dwelling is proposed with a 10-foot side street setback from Cove Road.

The Anne Arundel County Code, Article 28, Section 1A-104(a)(1) establishes a minimum 20-foot buffer surrounding nontidal wetlands. Section 2-506(a) requires corner lots to maintain a side building line 20 feet from and parallel to the side street line or right-of-way. Accordingly, each lot requires a variance to disturb nontidal wetlands and the associated buffer. Case No. 2000-0228-V requires a side street setback variance in the amount of seven feet. Finally, Case No. 2000-0229-V requires a side street setback variance in the amount of 10 feet.

Patricia A. Miley, a zoning analyst with the Office of Planning and Zoning,

testified that the properties are buildable lots by virtue of correspondence from the former Department of Planning and Code Enforcement dated July 24, 1995 and June 15, 1999. The nontidal wetlands are extensive. The witness reported that the Chesapeake Bay Critical Area Commission expressed concern about drainage, stormwater management and tree removal and recommended mitigation at a 3:1 ratio and a nontidal wetlands and waterways letter of authorization from the Maryland Department of the Environment. With respect to the setback variances, she observed that the lots in question are nonconforming with respect to width. By way of conclusion, she supported the applications, with the same conditions that are reflected in the agency comments.

Mr. Robinson testified that where possible, the lots will be served by joint driveways, sometimes in connection with lots the subject of prior variance approval by this office. He further indicated that the woodland remaining will be placed in a Forest Conservation Easement.

Ed Brown, the applicants' engineer, testified that the proposals minimize the extent of clearing, grading and filling. The applicants will address drainage and stormwater management at the time of building permits. He agreed with the requested mitigation. There was no adverse public comment concerning the applications.

Upon review of the facts and circumstances, including my prior familiarity

with similar applications by these applicants in the neighborhood¹, I find and conclude that the applicants are entitled to conditional relief to the code. The extent of nontidal wetlands and the narrowness of the two corner lots require variances to avoid an unnecessary hardship and to enable the applicants to develop the lots. A strict interpretation of the Critical Area criteria would deny the applicants the right to develop these lots with single-family homes. Conversely, the granting of the variances does not confer any special privilege that the program typically denies. There was no suggestion that the requests result from the actions by the applicants; nor do they arise from land use on neighboring property. Finally, with conditions, the variances will not adversely affect Critical Area resources, and will harmonize with the general spirit and intent of the program. I am also satisfied that the variances are the minimum necessary to afford relief. The side street setback variances are similar to others approved in the neighborhood. With appropriate conditions, the granting of the variances will 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.

ORDER

PURSUANT to the application of Real Estate General, Limited, et al, petitioning for variances to permit dwellings with less setbacks and buffer than required; and

¹See, Case Nos. 1999-0157-V through 1999-0163-V (July 16, 1999).

PURSUANT to the advertising, posting of the property, and public hearing and in accordance with the provisions of law, it is this 13th day of September, 2000,

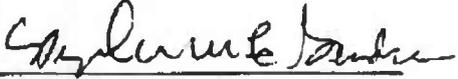
ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicants are hereby **granted** variances as follows:

1. For Case No. 2000-0228-V, a variance to permit a single-family home in nontidal wetlands and the associated buffer, and a variance of seven feet to the 20-foot side street setback.
2. For Case No. 2000-0229-V, a variance to permit a single-family home in nontidal wetlands and the associated buffer and a variance of 10-feet to the 20-foot side street setback.
3. For Case Nos. 2000-0230-V, 2000-0231-V, 2000-0233-V, 2000-0234-V, 2000-0235-V and 2000-0238-V, a variance to permit single-family homes in nontidal wetlands and the associated buffer.

The foregoing variances are subject to the following conditions:

- A. The applicants shall adhere to the permits from the Nontidal Wetlands Division of the Maryland Department of the Environment.
- B. The applicants shall provide drainage satisfactory to the Permit Application Center.
- C. The applicant shall consolidate lots as required by the Permit Application Center.
- D. The building permits are subject to approval by the Health Department.

- E. The applicants shall provide joint driveways as shown on the site plan.
- F. All woodland remaining in accordance with the approved site plan shall be placed in a Forest Conservation Easement benefitting and enforceable by Anne Arundel County. In the event the County will not accept such responsibility, then any nonprofit entity established for environmental preservation may be utilized.
- G. These conditions are in addition to and in amplification of the conditions contained in a letter dated July 24, 1995 from Stephen R. Cover to Edward Brown. 7
- H. The applicant shall provide mitigation at a 3:1 ratio for the clearing within the nontidal wetlands.


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.



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

July 26, 2000

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

RE: Variances 2000-0228-V, 2000-0229-V, 2000-0230-V, 2000-0231-V, 2000-0233-V, 2000-0234-V, 2000-0235-V, 2000-0238-V □ Real Estate General

Dear Mr. Dooley:

Thank you for providing information on the above referenced variance applications. The applicant is requesting variances to permit dwellings with less setbacks and Buffer than required. The properties are designated LDA and are currently undeveloped.

Provided these lots are properly grandfathered, this office does not oppose the siting of a single family dwelling on them. However, we recommend lot consolidation wherever possible. Impacts of development should be minimized and the variances requested the minimum to provide relief. The proposed houses should be designed to have the smallest footprint possible to minimize the clearing, grading and filling of non-tidal wetlands. The issue of drainage and stormwater management should be addressed. As many trees as possible should be retained on site. We recommend mitigation at a 3:1 ratio for the extensive clearing proposed within the non-tidal wetlands on each lot. Also, appropriate authorization should be obtained from the Maryland Department of the Environment prior to any final approvals.

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: AA361-00

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