

MSA-3-1829-4555

Comments

1/18/05 RL

Comments

6/14/05 RL

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/

June 15, 2005

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

Re: Variance 2004-0555-V Kirk and Helen Diehl

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 than required and a lot with less width than required. The property is designated an Intensely Developed Area (IDA) and is currently developed with a single-family dwelling. This office received a revised site plan for review on June 1, 2005.

This office has no comment on the setback or the lot width variances. We have the following comments regarding the subdivision and development proposal for Parcel 764, Lot 9.

- 1) As stated in the variance application, the applicant proposes to subdivide this 0.53 acre property to create Lots 9A and 9B; Lot 9B will be a waterfront lot. Following subdivision, Lots 9A and 9B will not be grandfathered under the Anne Arundel County Critical Area Program. Development of new lots in the Critical Area should comply with the provisions of the Zoning Ordinance pertaining to development in an IDA, including provisions that prohibit development within the Buffer. As shown on the revised site plan, the proposed dwelling and garage on Lot 9B are located outside the Buffer.
- 2) The topography of Lot 9 is not shown on the revised site plan. As shown on the previous site plan provided, the topography of the site is flat with a maximum elevation of approximately 4 feet on proposed Lot 9B. The 100-foot Buffer is shown on the revised site plan as measured from the field located approximate mean high water line. Due to the topography of the site and because the original and the revised application did not include an environmental report,

Ramona Plociennik
Variance 2004-0555-V Kirk and Helen Diehl
June 15, 2005
Page 2

this office recommends that the applicant provide information about whether a field investigation for the presence of tidal wetlands was performed. Given the site conditions, this information may be necessary to determine whether the location of the Buffer is accurate and, if wetlands are present, to define a reasonable development envelope on Lot 9B outside the Buffer.

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 15-05 Diehl revised site plan

Robert L. Ehrlich, Jr.
Governor



Martin G. Madden
Chairman

Michael S. Steele
Lt. Governor

Ren Serey
Executive Director

**STATE OF MARYLAND
CRITICAL AREA COMMISSION
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1804 West Street, Suite 100, Annapolis, Maryland 21401
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January 18, 2005

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

Re: Variance 2004-0555-V Kirk and Helen Diehl

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 than required and a lot with less width than required. The property is designated an Intensely Developed Area (IDA) and is currently developed with a single-family dwelling.

This office has no comment on the setback or the lot width variances. We have the following comments regarding the subdivision proposal (Parcel 764, Lot 9).

- 1) As stated in the variance application, the applicant proposes to subdivide this 0.53 acre property to create Lots 9A and 9B; Lot 9B will be a waterfront lot. Following subdivision, Lots 9A and 9B will not be grandfathered under the Anne Arundel County Critical Area Program. Development of new lots in the Critical Area should comply with the provisions of the Zoning Ordinance pertaining to development in an IDA, including provisions that prohibit development within the Buffer.
- 2) As shown on the site plan provided, the topography of the site is flat with a maximum elevation of approximately 4 feet on proposed Lot 9B. The 100-foot Buffer is shown on the site plan provided as measured from the field located approximate mean high water line. Due to the topography on the site, was the property field verified for the presence of tidal wetlands (private tidal wetlands or high marsh)? Given the site conditions, this information may be necessary to determine whether the location of the Buffer is accurate and, if wetlands are present, to define a reasonable development envelope on Lot 9B outside the Buffer. We

Ramona Plociennik
Variance 2004-0555-V Kirk and Helen Diehl
January 18, 2005
Page 2

recommend that the applicant provide information as to whether wetlands are present on the site and a revised site plan if necessary.

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 15-05

0015 05

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 2005-0226-V

IN RE: KIRK AND HELEN DIEHL

THIRD ASSESSMENT DISTRICT

DATE HEARD: AUGUST 25, 2005

ORDERED BY: STEPHEN M. LeGENDRE, ADMINISTRATIVE HEARING OFFICER

PLANNER: PATRICIA A. COTTER

DATE FILED: SEPTEMBER 22, 2005

RECEIVED

SEP 27 2005

PITCAL AREA COMMISSION

PLEADINGS

Kirk and Helen Diehl, the applicants, seek a variance (2005-0226-V) to permit a dwelling with less setbacks than required on property located along the east side of Cottage Drive, northeast of River Road, Arnold.

PUBLIC NOTIFICATION

The hearing notice was posted on the County's web site 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 feet of the property was notified by mail, sent to the address furnished with the application. Mr. Diehl testified that the property was posted for more than 14 days prior to the hearing. I find and conclude that the requirements of public notice have been satisfied.

FINDINGS AND CONCLUSIONS

The applicants own a single-family residence with a street address of 709 Cottage Drive, in the Ferry Point subdivision, Arnold. The property comprises 23,200 square feet and is zoned R-5 residential with a Chesapeake Bay Critical Area designation as Intensely Developed Area (IDA). This is a waterfront lot on the Magothy River. The proposal calls for the construction of a two-story

dwelling and attached garage.¹ (The existing dwelling and detached garage would be retained as accessory structures.)

Anne Arundel County Code, Article 27, Section 27-4-701 requires principal structures in the R-5 district to maintain side yards seven feet wide with a combined width of 20 feet. Accordingly, the new dwelling requires a variance of two feet to the south side setback and 8 feet to the combined side yard width.

Patricia A. Cotter, a planner with the Office of Planning and Zoning, testified that the property is below the minimum width for the district. It is long and narrow and the existing improvements are nonconforming to the setbacks. Based on the original proposal, the witness questioned the extent of the relief. In this regard, the need for the variances for the new dwelling result from the location and design of the garage addition (22 X 45 feet). There were no adverse agency comments. By way of conclusion, Ms. Cotter opposed the application as filed.

James Luff, a professional land surveyor employed by the applicants, testified that the subdivision was platted in 1919 and includes many reconfigured lots and lots with multiple dwellings. There are also some large buildings in the neighborhood. The design includes a side entry garage to improve the view from the dwelling toward the road and for enhanced safety to the applicants. The request is considered comparable to other properties that have received variances.

¹ The applicants originally requested a dwelling ninety feet long with a south side yard measuring three feet and a north side yard measuring seven feet. On September 19, 2005, the applicants revised the request to reduce the length of the dwelling to 78 feet and increase the south side yard to 5 feet. (Attachment A)

Mr. Diehl provided a series of photographs showing other waterfront properties with nonconforming setbacks. The garage has been attached to the dwelling to leave space for a future pool to the rear. The garage includes room for an elevator shaft because the dwelling must be raised above flood elevation. The existing dwelling is three feet from the south side setback.

Ms. Diehl testified that the applicants seek to build the new dwelling in line with the adjacent waterfront homes.

David Kelly, who resides on the adjacent property to the south, testified in support of the application.

I visited the site and the neighborhood. This is a well-maintained property. Access is across a gravel drive, past a one-story, two-car garage to the two-story, refurbished bungalow. The property is planted in a level lawn all the way to the water. Mr. Kelly's dwelling and several other dwellings to the south are significantly closer to the water than the applicants' existing home. Some of the properties to the south appear to be developed with multiple structures, although it is impossible to determine from inspection from the road whether the properties have been subdivided. An abandoned dwelling to the north is in line with Mr. Kelly's dwelling. The next property to the north (Moorings on the Magothy) includes several units close to the water.

The standards for granting variances are contained in Section 27-16-305. Under subsection (a), a zoning variance may be granted only after determining either (1) unique physical conditions, peculiar to the lot, such that there is no

reasonable possibility of developing the lot in strict conformance with the code; or (2) exceptional circumstances such that the grant of a variance is necessary to avoid an unnecessary hardship, and to enable the applicants to develop the lot. 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.

Although the matter is not free from doubt, I find and conclude that the applicants are entitled to conditional relief from the code. This property minimally satisfies the test of unique physical, consisting of its narrow width, such that there is no reasonable possibility of development in strict conformance with the code. The more problematic aspect of the application is that the property is already developed with a dwelling and detached garage. I would be hard pressed to approve a use variance to permit two dwellings on a single lot. But the code does not proscribe the conversion of the existing dwelling to an accessory structure. Indeed, but for the setback issue, the applicants would be eligible for a building permit so long as they satisfied the requirements imposed by the County's Permit Application Center for the conversion of the existing home to accessory status.

I further find that the revised proposal minimizes the extent of the relief. Provided that the conversion of the existing dwelling to accessory status is effective and irreversible, the granting of the variance will not alter the essential

character of the residential neighborhood, substantially impair the use or development of adjacent property or constitute a detriment to the public welfare. The approval is subject to the conditions in the Order.

ORDER

PURSUANT to the application of Kirk and Helen Diehl, petitioning for a variance to permit a dwelling with less setbacks 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 22ND day of September, 2005,

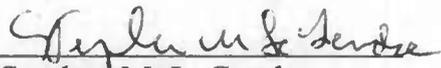
ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicants are hereby **granted a modified** variance of two feet to the south side setback and 8 feet to the combined side yard width. The approval is subject to the following conditions:

1. The site plan shall be revised to reduce the length of the dwelling to 78 feet and increase the south side setback to 5 feet.
2. As a condition of occupancy of the new dwelling, the applicants shall convert the existing dwelling to an accessory structure in accordance with the requirements of the Permit Application Center.
3. The accessory structure shall not be habitable and shall not be eligible for reconversion to habitable living space.

4. No further expansion of the dwelling is allowed and no new accessory storage structures are allowed.

5. The applicants shall provide water quality improvements as determined by the Permit Application Center.

6. The conditions of the Order run with the land and are binding on the applicants' successors and assigns.


Stephen M. LeGendre
Administrative Hearing Officer

NOTICE TO APPLICANT

Within thirty 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 27-16-405(a) provides that a variance expires by operation of law unless the applicant obtains a building permit within one year. Thereafter, the variance shall not expire so long as construction proceeds in accordance with the permit.

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

**REVISION REQUEST
TO CASE NUMBER 2005-0226-V**

Attachment A

**Kirk & Helen Diehl
709 Cottage Drive
Arnold, Maryland 21012
(410) 544-5922**

REQUEST

We would like to make a revision to the original plan that was submitted to the Office of Planning and Zoning. The original request was for a variance to permit a dwelling with less setbacks than required.

Lot Description: Our waterfront lot, located on the Magothy River, is buffer exempt. The lot is classified as Intense Development Area (IDA) and as such allows us up to 40% impervious coverage (which equals 9,280 square feet). Our property consists of 23,200 square feet and is zoned R5 residential.

REVISION

- Increase the side yard setback request for the attached garage from 3 feet to 5 feet
- Reduce the overall length of the dwelling and attached garage from 90 feet to 78 feet
- Reduce the number of bays on the attached garage from 3 to 2. This would leave total garage space of 20 by 33 - of which the first 10 feet will be used for the elevator and shaft. The actual garage space will now only be 20 by 23, slightly smaller than a normal 2-car garage.
- This would also reduce the impervious coverage by 320 square feet making it 16% total coverage out of the allowance of 40%.

The lot is long and narrow and the Architect has designed a home and garage that is in full characteristic of this type of property.

CURRENT DWELLING

The current home and detached garage is proposed to remain. However, the house will be turned into an accessory/garage structure once full occupancy has been approved for the new dwelling, and future plans will include the removal/destruction of the detached garage.

Thank you for accepting our request to make a change to our original variance request.

McCCRONE

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

June 3, 2005

Pam Cotter
Anne Arundel County Department of
Planning and Zoning
2664 Riva Road
Annapolis, MD 21401

**Re: VARIANCE REQUEST APPLICATION
VARIANCE #2005-0226-V
KIRK W. AND HELEN I. DIEHL LANDS
FERRY POINT ON MAGOTHY RIVER, LOT 9
TAX MAP 32, GRID 12, PARCEL 764
TAX ACCOUNT NUMBER 03-000-24375400**

Dear Ms. Cotter:

On behalf of our clients, Kirk W. Diehl and Helen I. Diehl, we would like to request a variance for building setback on the above referenced parcel of land. The property is recorded among the land records of Anne Arundel County in Liber 12695, folio 174 and is a part of the subdivision entitled "Ferry Point on Magothy River" and is recorded among the Land Records of Anne Arundel County, Maryland in Plat Book WNW 17, page 64.

The subject property is zoned R5 and lies within the IDA designation of the Chesapeake Bay Critical Area, and is buffer exempt.

The lot is served by public water and sewer systems.

Kirk and Helen Diehl own Lot 9 (also known as Parcel 764) of the subdivision known as "Ferry Point on Magothy River" in Arnold, Maryland. The lot is improved by an existing two-story house and detached garage. The purpose of this variance request is to allow the Diehl's' to build a single family residence on Cottage Drive, while converting the existing cottage to an accessory structure as per the recommendations and direction given by Frank Ward.

We request a variance for Article 28, Title 2, Subtitle 5, Section 2-506 of the Zoning Ordinance, which refers to the minimum side yard setbacks of seven (7) feet (minimum) and twenty (20) feet (in aggregate). We would request that the minimum side yard setback be reduced from seven (7) feet to 3.00.

Pam Cotter
June 3, 2005
Page two

We believe there is justification for the granting of this variance. The subdivision, "Ferry Point on Magothy River", was platted in September of 1919 and recorded at Plat Book WNW 17, page 64 (copy of plat attached). The lots were established as fifty (50) feet wide, fronting on a twenty (20) foot right-of-way, and running to the waters of the Magothy River. Since these lots were created thirty-three years prior to the enactment of the Anne Arundel County Zoning Ordinance, none of the properties meet the minimum lot width of sixty (60) feet for the current R5 zoning. Further, these existing recorded lot widths make it difficult to meet the side yard setbacks as listed in the current zoning ordinance. Also, many of these homes were built prior to the enactment of the current zoning ordinance.

The Diehl's' are almost alone in this situation, as only three other property owners in proximity share the same lot configuration. These adjoining lot owners also face the same hardships by virtue of the fact that all of the lots in this subdivision were created long before the current zoning. In addition, the restrictions on the subject property are further exacerbated by the County's zoning regulations, which require that the sideyard setback be increased on a pro rata basis for length over fifty (50) feet. Because these existing lots are long and narrow, proposed structures are necessarily long in an effort to conform to the size of the lot. A variance is necessary to allow the proposed structure to be built, but more specifically to the garage configuration. In this situation, a side-entry garage is more aesthetically pleasing and conforms to the streetscape. As designed, this structure would hide the view of the garage from the street.

Further justification for the request is the change in the neighborhood that has occurred since the subdivision was established in 1919. Immediately to the north and west is the condominium development known as "The Moorings on the Magothy". In addition, to the south the original lots 1, 2, 3, 4, and 5 have been re-subdivided into smaller lots.

The requests stated in this letter are the minimum efforts necessary to relieve the hardships the Diehl's are presently being confronted with in their pursuit of a building permit for their proposed dwelling.

As there is no proposed intensive site development to either the existing lot, granting of the abovementioned variance will not alter the essential character of the surrounding neighborhood. In fact, it will bring their home in line with the dwellings (currently being or intending to be re-built) on either side of their lot.

Granting of this variance will not impair the appropriate use or development of the adjacent properties (both structures currently being re-built).

Granting of this variance will not reduce forest cover, since none exist. The site is not located in the LDA or RCA designated areas of The Chesapeake Bay Critical Area zone.

As there is no proposed development, granting of this variance will not contradict and clearing and replanting practices in the Critical Area.

Pam Cotter
June 3, 2005
Page three

Granting of this variance will not be detrimental to the public.

Granting of this waiver request will not affect the intent or purpose of the General Development Plan of this County nor will it endanger the public safety.

If you have any questions or need additional information, do not hesitate to contact us.

Very truly yours,

McCRONE, INC.

James M. Luff

James M. Luff, L.S.

Attachments



McCCRONE

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

~~AA13104~~
Revised !!

May 13, 2005

RECEIVED

JUN 1 2005

CRITICAL AREA COMMISSION

Pam Cotter
Anne Arundel County Department of
Planning and Zoning
2664 Riva Road
Annapolis, MD 21401

2004-0572-V / AA 15-05

Re: **VARIANCE REQUEST APPLICATION** 2004-0555-V
KIRK W. AND HELEN I. DIEHL LANDS
FERRY POINT ON MAGOTHY RIVER, LOT 9
TAX MAP 32, GRID 12, PARCEL 764
TAX ACCOUNT NUMBER 03-000-24375400

Dear Ms. Cotter:

On behalf of our clients, Kirk W. Diehl and Helen I. Diehl, we would like to request a variance for building setback on the above referenced parcel of land. The property is recorded among the land records of Anne Arundel County in Liber 12695, folio 174 and is a part of the subdivision entitled "Ferry Point on Magothy River" and is recorded among the Land Records of Anne Arundel County, Maryland in Plat Book WNW 17, page 64.

The subject property is zoned R5 and lies within the IDA designation of the Chesapeake Bay Critical Area, and is buffer exempt.

The lot is served by public water and sewer systems.

Kirk and Helen Diehl own Lot 9 (also known as Parcel 764) of the subdivision known as "Ferry Point on Magothy River" in Arnold, Maryland. The lot is improved by an existing two-story house and detached garage. The purpose of this variance request is to allow the Diehl's' to build a single family residence on Cottage Drive, while converting the existing cottage to an accessory structure as per the recommendations and direction given by Frank Ward.

We request a variance for Article 28, Title 2, Subtitle 5, Section 2-506 of the Zoning Ordinance, which refers to the minimum side yard setbacks of seven (7) feet (minimum) and twenty (20) feet (in aggregate). We would request that the minimum side yard setback be reduced from seven (7) feet to 3.00.

Pam Cotter

~~February 15, 2005~~ May 13, 2005

Page two

We believe there is justification for the granting of this variance. The subdivision, "Ferry Point on Magothy River", was platted in September of 1919 and recorded at Plat Book WNW 17, page 64 (copy of plat attached). The lots were established as fifty (50) feet wide, fronting on a twenty (20) foot right-of-way, and running to the waters of the Magothy River. Since these lots were created thirty-three years prior to the enactment of the Anne Arundel County Zoning Ordinance, none of the properties meet the minimum lot width of sixty (60) feet for the current R5 zoning. Further, these existing recorded lot widths make it difficult to meet the side yard setbacks as listed in the current zoning ordinance. Also, many of these homes were built prior to the enactment of the current zoning ordinance.

The Diehl's' are almost alone in this situation, as only three other property owners in proximity share the same lot configuration. These adjoining lot owners also face the same hardships by virtue of the fact that all of the lots in this subdivision were created long before the current zoning. In addition, the restrictions on the subject property are further exacerbated by the County's zoning regulations, which require that the sideyard setback be increased on a pro rata basis for length over fifty (50) feet. Because these existing lots are long and narrow, proposed structures are necessarily long in an effort to conform to the size of the lot. A variance is necessary to allow the proposed structure to be built, but more specifically to the garage configuration. In this situation, a side-entry garage is more aesthetically pleasing and conforms to the streetscape. As designed, this structure would hide the view of the garage from the street.

Further justification for the request is the change in the neighborhood that has occurred since the subdivision was established in 1919. Immediately to the north and west is the condominium development known as "The Moorings on the Magothy". In addition, to the south the original lots 1, 2, 3, 4, and 5 have been re-subdivided into smaller lots.

The requests stated in this letter are the minimum efforts necessary to relieve the hardships the Diehl's are presently being confronted with in their pursuit of a building permit for their proposed dwelling.

As there is no proposed intensive site development to either the existing lot, granting of the abovementioned variance will not alter the essential character of the surrounding neighborhood. In fact, it will bring their home in line with the dwellings (currently being or intending to be re-built) on either side of their lot.

Granting of this variance will not impair the appropriate use or development of the adjacent properties (both structures currently being re-built).

Granting of this variance will not reduce forest cover, since none exist. The site is not located in the LDA or RCA designated areas of The Chesapeake Bay Critical Area zone.

As there is no proposed development, granting of this variance will not contradict and clearing and replanting practices in the Critical Area.

Granting of this variance will not be detrimental to the public.

Pam Cotter

~~February 15, 2005~~ May 13, 2005

Page three

Granting of this waiver request will not affect the intent or purpose of the General Development Plan of this County nor will it endanger the public safety.

If you have any questions or need additional information, do not hesitate to contact us.

Very truly yours,

McCRONE, INC.

James M. Luff / Ja

James M. Luff, L.S.

Attachments

RECEIVED

JUN 1 2005

CRITICAL AREA COMMISSION

McCRONE

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

CRITICAL AREA REPORT

Variance Site Plan

For Kirk W. Diehl
Kirk W. Diehl and Helen I. Diehl Lands
709 Cottage Drive, Arnold, Maryland

Tax Map 32, Grid 12,
Parcel 764, Lot 9

Critical Area Designation: IDA (Intense Development Area)
Zoning: R5

October 26, 2004

INTRODUCTION

Kirk and Helen Diehl own 0.53 acres located on Cottage Drive. The lot contains an existing two-story house with a detached garage in Arnold, Maryland. The Diehls' wish to undergo the subdivision process and divide their existing 22,934.79 square foot waterfront lot into an undeveloped waterfront lot comprised of 15,782.61 square feet and a lot fronting Cottage Drive containing 7,152.18 square feet with the existing residence and garage. The property is completely within the Chesapeake Bay Critical Area, with an Intense Development Area (IDA) land use designation and buffer exempt status.

Utilizing the variance process of Anne Arundel County, it is proposed to adjust the side yard building restrictions from a seven (7) foot minimum with twenty (20) feet in aggregate to a 2.88 foot minimum with 11.32 feet in aggregate. It is also proposed to adjust the minimum lot width from sixty (60) feet to forty (40) feet and to allow for a pier to exist on a lot without a primary dwelling structure.

The property is served by a public sewer system and a private well. All systems are located in the Chesapeake Bay Critical Area and no disturbance for these systems is required at this time.

This report is based on a 2004 site plan and subdivision plan by McCrone, Inc., a copy of which is enclosed with this report.

CRITICAL AREA REPORT

SITE DESCRIPTION

The site consists of a fifty (50) foot by approximately four hundred and sixty (460 +/-) foot waterfront lot, situated on Cottage Drive (a 50 foot right-of-way) and the Magothy River. The property is Lot 9 of a subdivision entitled "Ferry Point on Magothy River" and the plat is recorded among the Land Records of Anne Arundel County in Plat Book WNW 17, page 64. The property is zoned R5, residential use, and is proposed to be subdivided into two lots.

The subject property is not a forested lot though there are a few individual trees on the lot. As there is no proposed development at this time, no comments regarding mitigation of disturbance to the site is necessary.

Any development within the County must be designed in accordance with the County's new stormwater management regulations. This program requires an intensive review of the site and development of proposed management measures for future building.

The site includes impervious surface coverage in the form of a two-story frame house, detached garage, and some concrete pads. The total coverage amounts to 1,705.5 square feet; 1,653.9 square feet in building coverage and 51.6 square feet in concrete coverage. As there is no proposed development at this time, these numbers will not change upon the granting of the requested variances or upon subdivision approval.

There are no habitat protection areas on the subject property, including: expanded buffers, steep slopes of 15% or greater, or any type of rare or endangered species of vegetation or animal.

McCRONE

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

October 27, 2004

Lois Villemaire
Anne Arundel County Department of
Planning and Zoning
2664 Riva Road
Annapolis, MD 21401

Re: VARIANCE REQUEST APPLICATION
KIRK W. AND HELEN I. DIEHL LANDS
FERRY POINT ON MAGOTHY RIVER, LOT 9
TAX MAP 32, GRID 12, PARCEL 764
TAX ACCOUNT NUMBER 03-000-24375400

Dear Ms. Villemaire:

On behalf of our clients, Kirk W. Diehl and Helen I. Diehl, we would like to request a variance for lot width, building setbacks and the existence of a pier (accessory use) on a lot without a primary dwelling unit on the above referenced parcel of land. The property is recorded among the land records of Anne Arundel County in Liber 12695, folio 174 and is a part of the subdivision entitled "Ferry Point on Magothy River" and is recorded among the Land Records of Anne Arundel County, Maryland in Plat Book WNW 17, page 64.

The subject property is zoned R5 and lies within the IDA designation of the Chesapeake Bay Critical Area, and is buffer exempt.

The lot is served by public water and sewer systems.

Kirk and Helen Diehl own Lot 9 (also known as Parcel 764) of the subdivision known as "Ferry Point on Magothy River" in Arnold, Maryland. The lot is improved by an existing two-story house and detached garage. The purpose of this variance request is to allow the Diehl's' to divide their existing 22,934.79 square foot lot. One proposed lot being 15,782.61 square feet on the Magothy River side and the other being a 7,152.18 square foot lot fronting on Cottage Drive, an existing fifty (50) foot public right-of-way.

We request a variance for Article 28, Title 2, Subtitle 5, Section 2-508 of the Zoning Ordinance, which refers to the required minimum lot width at the front building line as sixty (60) feet. We would request that the current sixty (60) foot requirement be reduced by twenty (20) feet to forty (40) feet for the lot fronting on Cottage Drive. The variance for the waterfront lot would be a reduction from the required sixty (60) feet to fifty (50)

Lois Villemaire
October 27, 2004
Page two

feet, which is the width of the existing lot.

Also, we request a variance for Article 28, Title 2, Subtitle 5, Section 2-506 of the Zoning Ordinance, which refers to the minimum side yard setbacks of seven (7) feet (minimum) and twenty (20) feet (in aggregate). We would request that the minimum side yard setback be reduced from seven (7) feet to 2.88 feet and the aggregate width from twenty (20) feet to 11.32 feet for the proposed lot on Cottage Drive.

We request a variance for Article 28, Title 2, Subtitle 5, Section 2-502 a-6 of the Zoning Ordinance, which refers to the permitted use of a pier only as an accessory use to a dwelling unit on a lot (the proposed waterfront lot would not have a principal structure at the time of subdivision).

We believe there is justification for the granting of this variance. The subdivision, "Ferry Point on Magothy River", was platted in September of 1919 and recorded at Plat Book WNW 17, page 64 (copy of plat attached). The lots were established as fifty (50) feet wide, fronting on a twenty (20) foot right-of-way, and running to the waters of the Magothy River. Since these lots were created thirty-three years prior to the enactment of the Anne Arundel County Zoning Ordinance, none of the properties meet the minimum lot width of sixty (60) feet for the current R5 zoning. Further, these existing recorded lot widths make it difficult to meet the side yard setbacks as listed in the current zoning ordinance. Also, many of these homes were built prior to the enactment of the current zoning ordinance.

The Diehl's' are almost alone in this situation, as only three other property owners in proximity share the same lot configuration. These adjoining lot owners also face the same hardships by virtue of the fact that all of the lots in this subdivision were created long before the current zoning. In addition, the restrictions on the subject property are further exacerbated by the County's zoning and subdivision regulations. Currently, Anne Arundel County Zoning Ordinance states, "Each lot shall have eighteen (18) feet of frontage on an approved street or dedicated right-of-way" (Art. 26. 3-107(b)). Because of the unique nature of the long, narrow lots in Ferry Point, this action proves difficult but is not impossible. For the proposed waterfront lot to have a frontage on Cottage Drive, the lot has been designed as a "stove pipe" lot, which creates the necessary eighteen (18) foot frontage on a public road. However, this action creates more stringent side yard setbacks on a lot that already has a residence sited too far to one side to meet the current setbacks. Again, this is a result of the age of the subdivision in conjunction with the fact that the existing house was built in 1931. By this design, the proposed lot fronting Cottage Drive will become narrower than the existing fifty (50) foot wide lot. By reducing the minimum side yard setbacks from a seven (7) foot minimum with twenty (20) feet in aggregate to a 2.88 foot minimum with 11.32 feet in aggregate, and reducing the minimum lot width at the front building line from sixty (60) feet to forty (40) feet, the division of the existing lot could move forward.

The creation of the proposed waterfront lot would also result in a residential lot with no primary structure while having the existing pier as an accessory structure. To require that the pier be removed to meet the requirements of the Zoning Ordinance would be

Lois Villemaire
October 27, 2004
Page three

unreasonable. Also, there could be a negative impact to the waters of the Magothy River and the surrounding property owners created by the removal of the pier. The noise generated by these tasks is loud and the work could de-stabilize any aquatic vegetation existing around the existing pier. This is not a precedent setting action, as there are existing subdivisions on record that have allowed accessory uses to remain without a principal structure (see attachment).

Further justification for the request is the change in the neighborhood that has occurred since the subdivision was established in 1919. Immediately to the north and west is the condominium development known as "The Moorings on the Magothy". In addition, to the south the original lots 1, 2, 3, 4, and 5 have been re-subdivided into smaller lots.

The requests stated in this letter are the minimum efforts necessary to relieve the hardships the Diehl's are presently being confronted with in their pursuit of the division of their property, which is consistent with other development that has occurred in the area.

As there is no proposed intensive site development to either the existing lot or the proposed lots, granting of the abovementioned variances will not alter the essential character of the surrounding neighborhood.

Granting of this variance will not impair the appropriate use or development of the adjacent properties.

Granting of this variance will not reduce forest cover, since none exist. The site is not located in the LDA or RCA designated areas of The Chesapeake Bay Critical Area zone.

As there is no proposed development, granting of this variance will not contradict and clearing and replanting practices in the Critical Area.

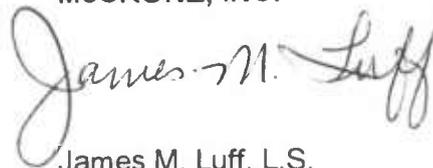
Granting of this variance will not be detrimental to the public.

Granting of this waiver request will not affect the intent or purpose of the General Development Plan of this County nor will it endanger the public safety.

If you have any questions or need additional information, do not hesitate to contact us.

Very truly yours,

McCRONE, INC.


James M. Luff, L.S.



Attachments

VARIANCE RELIEF SOUGHT:

1. Reduce the sideyard setback from thirteen (13) feet to three (3) feet to allow entry into the proposed garage. Also, it will pertain to the existing building restriction encroachment by the existing accessory buildings.

GENERAL NOTES

1. This site was previously recorded in Liber 12695, Folio 174. This subdivision is recorded in WNW 17/64.
2. The coordinate basis for this project is NAD 83 datum.
3. This site is served by public water and public sewer systems.
4. This site is located within the area of 100 year flood (Zone A9, El. 8') and the area of 100 year coastal flood with velocity (Zone V11, El. 10') , as shown on FEMA FIRM Map 24008 0028 C, effective May 2, 1983.
5. This site is located within the critical area designated IDA and is buffer exempt.
6. # denotes house number.
7. All existing structures to remain.

ZONING & SETBACKS

Tax Map 32 - Grid 12 - Parcel 764

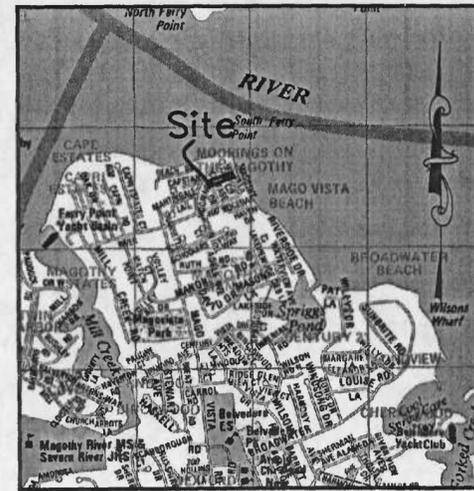
Zoning - R5 --- Residential District

Building Restriction Lines

Front: 25'
Rear: 20'
Side: 7' each / 20' total

Critical Area Information:

This site is located within the Intense Development Area (IDA) of the Chesapeake Bay Critical Area and is buffer exempt.



VICINITY MAP

Scale --- 1"=2000'

Copyright ADC The Map People
Permitted Use No. 20402107



MCCORNE

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CONSTRUCTION SERVICES

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email: annap@mccrone-inc.com
Web Site: www.mccrone-inc.com

ANNAPOLIS CENTREVILLE ELKTON PRINCE FREDERICK SALISBURY

DATE	Feb. 2005
JOB NUMBER	C1020355
SCALE	1" = 40'
DRAWN BY	S. Bissett
DESIGNED BY	N/A
APPROVED BY	J. Luff
FOLDER REFERENCE	861

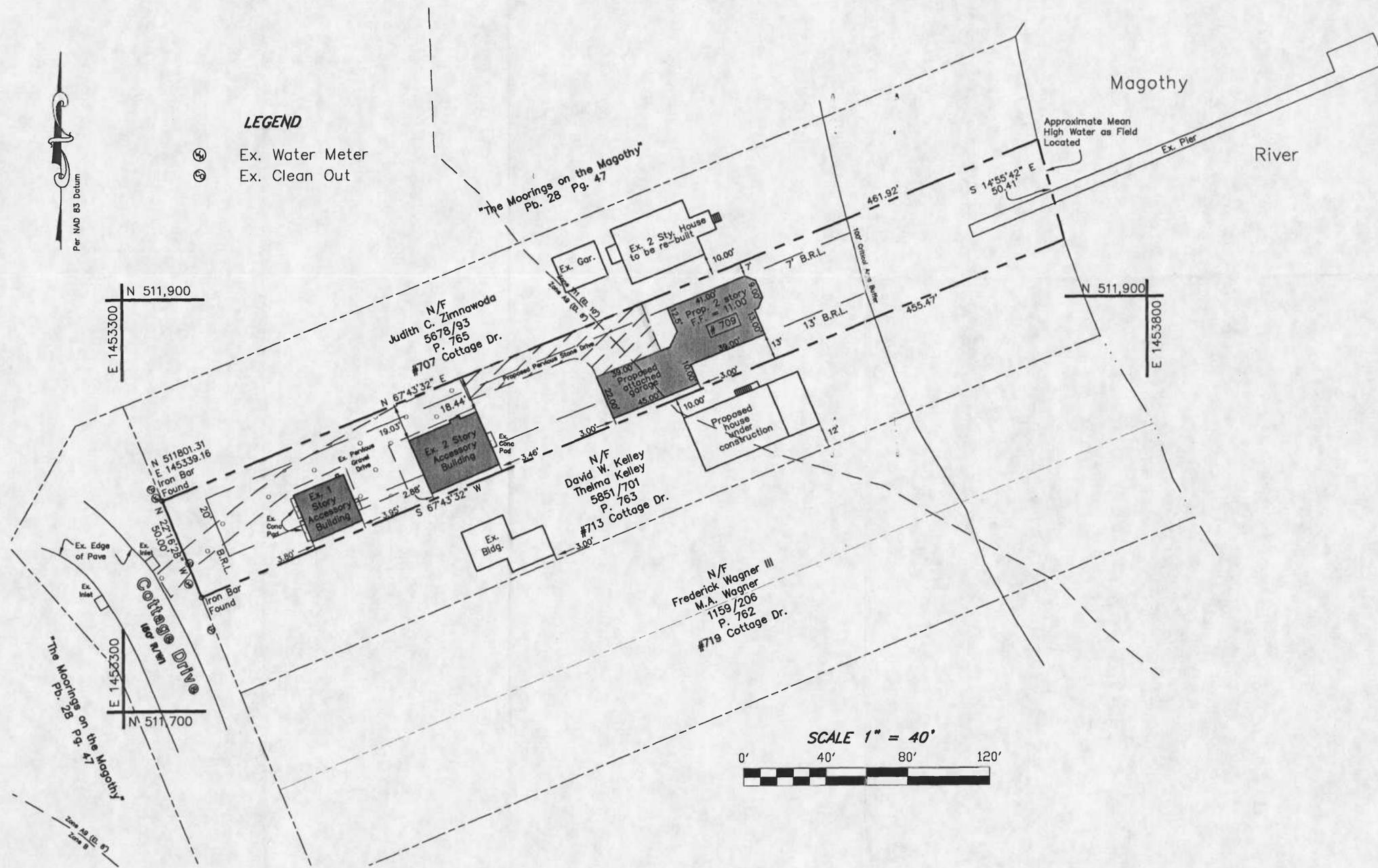
Variance Site Plan
Kirk and Helen Diehl Lands
709 Cottage Drive
Tax Map 32, Block 12, Parcel 764, Lot 9
Third District, Anne Arundel County, Maryland

SHEET NO. 1 of 1
FILE NO. C1020355



LEGEND

- ⊕ Ex. Water Meter
- ⊙ Ex. Clean Out



RECEIVED
JUN 1 2005
CRITICAL AREA COMMISSION

VARIANCE RELIEF SOUGHT:

1. Allow for the minimum lot width of 60' to be reduced to 40 feet on Lot 9A and 50 feet on Lot 9B.
2. Revise the existing side yard setbacks for the existing house on Lot 9A from 7 feet with 20 feet in aggregate to a 2.88 foot minimum with 11.32 feet in aggregate.
3. Allow for a pier to exist on a lot without a dwelling unit.

GENERAL NOTES

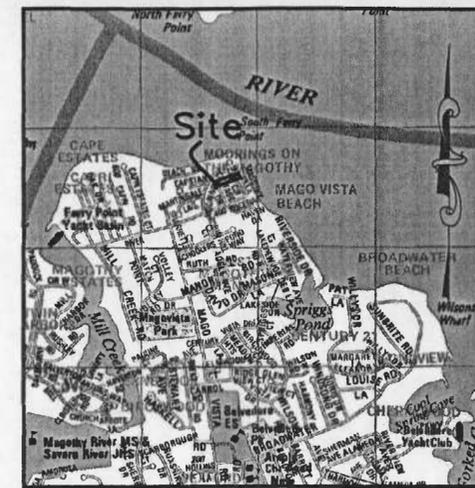
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5. This site is located within the critical area designated IDA and is buffer exempt.
6. # [] denotes house number.
7. All existing structures to remain.

ZONING & SETBACKS

Tax Map 32 - Grid 12 - Parcel 764
 Zoning - R5 - Residential District
 Building Restriction Lines
 Front: 25'
 Rear: 20'
 Side: 7' each / 20' total

Critical Area Information:

This site is located within the Intense Development Area (IDA) of the Chesapeake Bay Critical Area and is buffer exempt.



VICINITY MAP

Scale -- 1"=2000'

Copyright ADC The Map People
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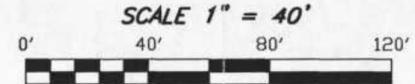
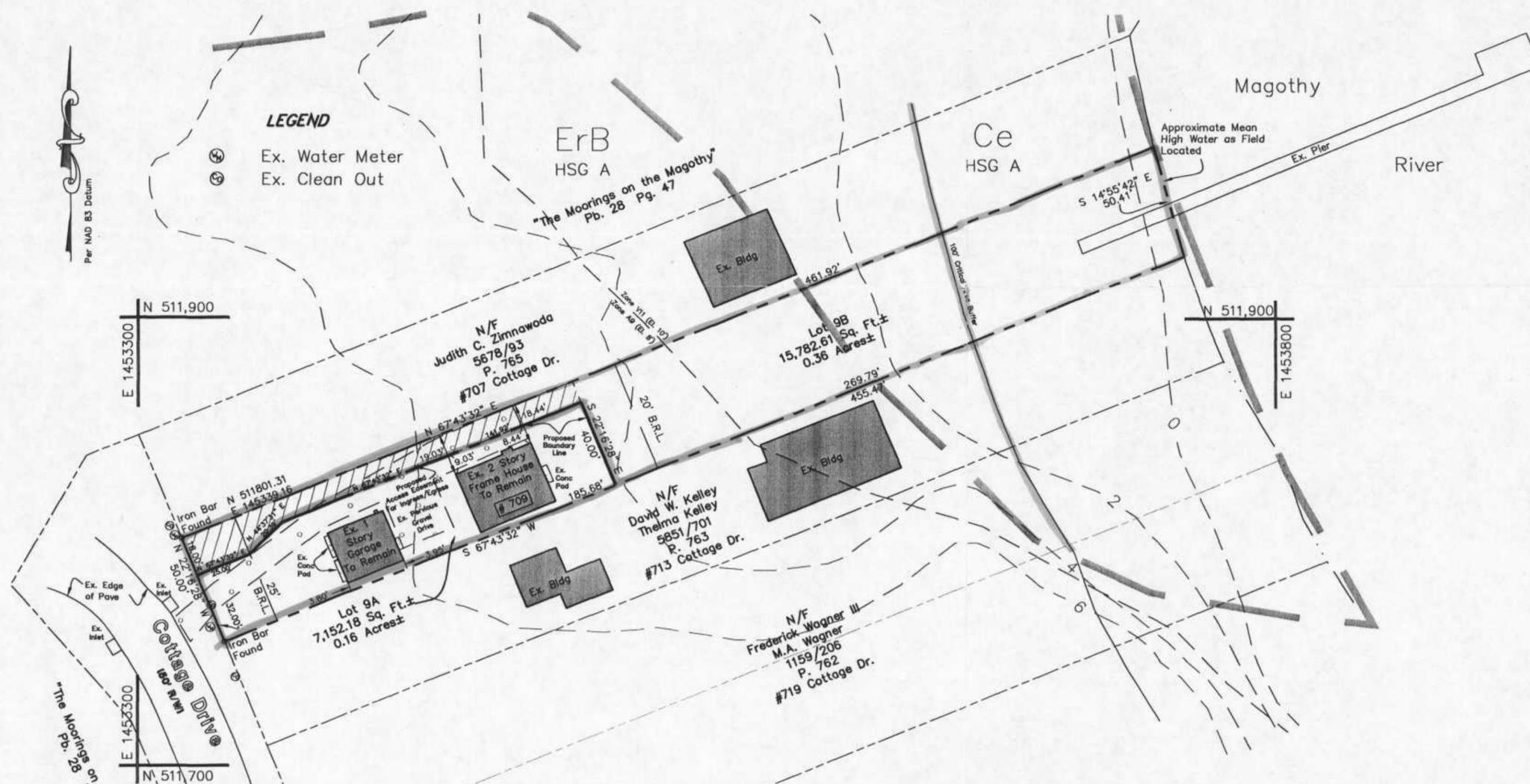
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ANNAPOLIS CENTREVILLE ELKTON PRINCE FREDERICK SALISBURY

DATE	Sept. 2004
JOB NUMBER	C1020355
SCALE	1" = 40'
DRAWN BY	S. Bissett
DESIGNED BY	N/A
APPROVED BY	J. Luff
FOLDER REFERENCE	861

Critical Area Plan
Kirk and Helen Diehl Lands
 709 Cottage Drive
 Tax Map 32, Block 12, Parcel 764, Lot 9
 Third District, Anne Arundel County, Maryland

SHEET NO. 1 of 1
 FILE NO. C1020355



AREA TABULATIONS

Proposed Lot 9A	7,152.18 sq. ft.	0.16± Acres
Proposed Lot 9B	15,782.61 sq. ft.	0.36± Acres
Existing Lot 9	22,934.79 sq. ft.	0.53± Acres

OWNERS/DEVELOPERS CERTIFICATE
I, certify that iron pipes, marked thus \odot , and concrete monuments marked thus \blacksquare , will be set in accordance with the Subdivision Regulations of Anne Arundel County, Maryland.

James W. Rogers Jr. 1/6/99
James W. Rogers Jr.
Date

OWNERS DEDICATION

I, James W. Rogers, Jr., owner of the property shown and described hereon, hereby adopt this plan of subdivision, establish the minimum building restriction lines and dedicate the streets, alleys, walkways and other easements, widening strips and floodplains, to public use; such lands to be deeded to Anne Arundel County or the state highway administration, as may be appropriate, on 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, unless noted, and all parties in interest thereto have herewith affixed their signatures, indicating their assent and willingness to join in this plan of subdivision.

James W. Rogers Jr. 1/5/99 W. S. H.
James W. Rogers Jr. W. S. H.
Date Witness

We assent to this plan of Subdivision:

[Signature]
FOR B.B.T.
MD. REGIONAL PRESIDENT



SURVEYOR'S CERTIFICATE

I hereby certify that the plat shown hereon is correct, that it represents a survey of the property by the surveyor or prepared under the surveyor's direct supervision, and that it is a subdivision of part of the lands conveyed by Nancy S. Cox to James W. Rogers Jr., by deed dated March 2, 1988, recorded in the land records of Anne Arundel County, Maryland in 110r 4558 folio 286. The requirements of Section 3-108, the Real Property Article, Annotated Code of Maryland, 1988 replacement volume, (as supplemented) as far as they relate to the making of this plat and the setting of markers have been complied with.

[Signature] 3/15/99
Surveyor
7/5/99



GENERAL NOTES

- Zoning: RA
- Tax Map: 58 Parcel: 153
- Building setbacks:
Front: 40'
Side: 15' (40' total)
Rear: 35'
- House Numbers shown thus: \odot Exclusive 20' Easement: 06114
- Total Lot Area: 2.834 Ac. (including easement)
Total Platted Area: 2.835 Ac. (including easement)
- Deed Reference: L.4558 P.286
- Lot 1 of the James W. Rogers Jr. Property has no further subdivision potential under Bill 70-89. Parcel 153 has future family conveyance potential.
- Lot 1 is two (2) acres and therefore is exempt from storm water management per Article 21, Subtitle 21, Sec. 3-20(a)5.
- ADMINISTRATIVE FOREST CONSERVATION NOTE:
This site may be subject to county Tree Bill 71-24 and the Forest Conservation Act requirements of grading and/or building permit.
- 9A. OSD/REC Fees paid 4/20/99 CR 179841F (\$175.00)

PRIVATE NON-COUNTY ROAD STATEMENT.

The 40' Use-in-common Right-of-way and 20' Easement exclusive to lot and Residue are private roadways and are intended to provide access to and from Lot 1 and parcels 153, 150 & 151. The owners of these lots are responsible for maintenance of the roadway and are not eligible to receive county services to lot owners abutting county roads. Further subdivision or acceptance into the county road system may be accomplished only if the private roadway is improved to county road standards at the owners expense. Maintenance agreement not required at this time due to disagreement by Right of Way users. See letters on file at P.A.C.E.

WAIVER NOTE:

Waiver N° 4713 to legalize without going through minor subdivision process was granted by the Department of Planning and Code Enforcement on Jan 4, 1993, subject to the submittal of an Administrative plat.

Waiver N° 5417 dated August 2, 1975, was granted by the Department of Planning and Code Enforcement, permitting the payment of a fee to be used for school construction and other public improvements in lieu of meeting the requirements of Article 26, Section 2-416 of the Anne Arundel County Code. However, Waiver and payment of fees not required because of Board of Education approval of school adequacy on 11/4/98.

PUBLIC IMPROVEMENT NOTE

Road, utility or storm damage requirements will be addressed and must be met, as required, prior to the issuance of a building permit.

ADVANCED SURVEYS INC.
5443 SO. MD. BLVD.
WAYSON'S CORNER
LOTHIAN MD. 20711
(410) 741-5530, (410) 257-2277
(301) 627-6712

The requirements of Anne Arundel County Health Department have been met in preparing this plat for individual water wells and septic tanks.
[Signature]
3/4/99
Date
County Health Officer
Anne Arundel Co.

APPROVED: 3-3-99
Date
[Signature]
Richard J. Wilentz
Planning & Code Enforcement Director
Anne Arundel Co.

MS 1998-138
*** ADMINISTRATIVE PLAT**
PART OF THE
JAMES W. ROGERS JR.
PROPERTY
TAX MAP 58 GRID 16 PARCEL 153
1ST DISTRICT ANNE ARUNDEL CO. MD.
SCALE 1"=100' 2P CASE 120716 OCT 1992
REVISION: JAN 1999

BOOK PAGE PLAT No.

MSA SSM 1235-7352

