

AA 380-05
VAR

Piera, Kathy
0173

MSA-S-1329-4662

Letter mp.
7/20/05

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/

VIA FAX

August 1, 2006

Ms. Lori Rhodes
Anne Arundel County Office of Planning and Zoning
2664 Riva Road
Annapolis, Maryland 21401

Re: Kathy Piera Variance
2005-0173-V

Dear Ms. Rhodes:

I am writing in regard to the above-referenced variance application for after-the-fact approval of a carport, driveway extension and path system. The Critical Area Commission opposes the requests for the carport and driveway extension.

From a review of the information provided, it appears that the applicant enjoys reasonable and significant use of the property by way of the existing residence, garage, pool and deck. The carport and driveway extension have added new impervious surfaces to the Critical Area Buffer and to steep slopes. Variances for disturbance to these features can be properly granted only upon a showing by the applicant that all variance standards have been met, including the standard that unwarranted hardship would result from the denial of the requests. Given the existing uses of the property, it is our opinion that the applicant cannot satisfy the necessary standards.

Please include this letter in the record for this case and notify the Commission regarding the Board's decision. Thank you.

Sincerely,

A handwritten signature in black ink that reads "Ren Serey".

Ren Serey
Executive Director

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/

July 19, 2005

Ms. Liz West
Anne Arundel County
Dept. of Planning and Code Enforcement
2664 Riva Road
Annapolis, MD 21401

**RE: Kathy Piera Variance
2005 - 0173 - V**

Dear Ms. West:

Thank you for providing information on the referenced project. The applicant is seeking a variance for an already constructed carport attached to the south side of the existing home; and, stepping stones and pavers to the eastern pier, the pool and new impervious portions of the extended driveway. All mentioned improvements are located within the 100' Buffer.

Based on the information provided, this office offers the following comments regarding the development proposal.

1. There appears to be impervious surface surrounding the pool. The site plan submitted for a previous Variance request (Case # 2001-0075-V) does not show impervious surface around the pool. Please clarify if this is part of the current variance or when it was approved.
2. As measured, the deck appears to exceed the footprint of the house as shown on the 2001 site plan.

Pg.2

Please provide us with the additional information and we may have further comments. If you have any questions feel free to contact me at (410) 260-3460.

Sincerely,

A handwritten signature in cursive script that reads "Michael A. Paone". The signature is written in black ink and is positioned above the typed name.

Michael A. Paone
Program Planner

cc: AA380-05

**Statement in Support of Variance Application
Ms. Kathy Piera Property
880 Holly Landing Road, West River, Maryland 20778**

The applicant is the owner of approximately 8.8 acres of land that borders Smith Creek, Johns Creek and the West River ("Property"). The Property is a waterfront lot formed by a peninsula located at 880 Holly Landing Road in West River, Maryland. The Property is zoned Residential Low Density and classified as Resource Conservation Area under the Critical Area law. The Property is primarily improved with two (2) residential dwellings. The easternmost dwelling is the subject of this variance application and will be referred to as the "main house." The other dwelling on the Property ("Dwelling B") is located about 270' northwest of the main house.

The Property is further improved with a macadam drive, a carport attached to the main house, an in ground swimming pool and piers. The main house and detached pool house/ garage, located further inland, are located approximately 58 feet apart with the swimming pool located between them. The Property is designated as Buffer Exempt since the peninsula was previously improved with a dwelling and swimming pool prior to being recently reconstructed.

The in ground swimming pool and patio are located as close as 20 feet from the mean high water mark of Smith Creek. The main house is located approximately 45 feet from the mean high water line of West River and 35 feet from the mean high water line of Smith Creek. The existing two (2) piers are located 1.) at the eastern tip of the peninsula extending out into the West River in an easterly direction, and 2.) at the northern shore of the eastern tip of the peninsula extending out into the Smith Creek in a northerly direction. The Property's improvements, except for Dwelling B and most of the gravel road, are located wholly within the 100-foot Critical Area Buffer ("Buffer").

X The applicants seek approval of an already constructed carport attached to the south side of the main house; and, stepping stones and pavers to the eastern pier, the pool and new impervious portions of the extended driveway all located in the Buffer. The purpose of the carport is to make the main house more accessible and to provide a sheltered entrance to the main house for applicant's family, particularly elderly and disabled members of the owner's extended family.

In order to facilitate the proposed improvements, a Critical Area Buffer Variance is requested. The proposed carport will be located 18 feet from the mean high water line of the West River at its closest point. Article 28, §1A-104(a)(1) of the Anne Arundel County Code ("Code") requires a minimum 100-foot buffer to the mean high water line. Therefore, a variance of 82 feet is required. Notably, the applicable portion of the Property is mapped as Buffer Exempt. Furthermore, the amount of impervious surfaces added by this request including the walkways will not exceed 15% in accordance with Code, Article 28, §1A-105(b)(1). The previous impervious area was 24,696 sq. ft. and the requested additional imperious area (including the carport, drive extension and stepping stones) is 1,770 sq. ft. for a total of 26,466 sq. ft. or 6.9% of the total land area of the Property. Additionally, a yard setback variance to the RLD setback requirements is requested.

The property was the subject of a variance for a shed in Case Number 2001-0075-V.

RECEIVED

JUN 1 2005

CRITICAL AREA COMMISSION

RECEIVED
NOV 29 2006
CRITICAL AREA COMMISSION
Chesapeake & Atlantic Coastal Bays

RE: An Appeal From A Decision Of The
Administrative Hearing Officer

KATHY PIERA

Petitioner

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF ANNE ARUNDEL COUNTY
* CASE NO.: BA 125-05V
* (2005-0173-V)
* Hearing Dates: April 18, 2006
* August 1, 2006
*

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 variances to permit construction of a carport and gravel driveway with fewer setbacks and buffer than required and with disturbance to steep slopes, as well as from Condition #1 (the carport addition and driveway shall be removed with the areas re-vegetated) on the granting of a buffer variance and variance to disturb steep slopes to permit paths per the site plan, on property known as 880 Holly Landing Road, West River.

Summary of Evidence

Ms. Jennifer Piera, the Petitioner, testified that she has owned the subject property since 1993. The subject property was improved with two houses when she purchased the property. The house used as her residence was redeveloped. She and her family moved into the house in 2003; the construction was completed in 2004. The subject property is a long peninsula with three points. The property has always been used for residential purposes. The West River can be seen from the rear of the carport. The carport is the primary subject of the requested variances. There are four paths that are the subject of the conditional variance. The carport makes the house more accessible for her children and her elderly parents. Her parents require a

great deal of help getting in and out of the house. Ms. Piera is willing to give up other structures on the property, such as the well house, in exchange for the carport. There are three other homes in the area that have garages. She previously appeared before this Board to request variances for a shed on the property. Ms. Piera stated that she was unaware that a permit was needed for the carport because it was not enclosed. She has a garage that is approximately 50' from the house. The garage is not attached to the home; it is an unsafe structure that is used for storage and to house an old Jeep. They store their cars in the carport. They built the carport for safety and protection from the weather. The carport was built by friends of the family without a permit. The gravel driveway went in at the same time the carport was built. The driveway is 30' long; it stops at the existing road. The reconstructed house was built on the same footprint as the previous house, except for the new deck. The deck required a permit. The carport adds to the footprint of the house. The size of the carport could have been reduced; it could have been placed in front of the house without disturbing steep slopes or near the river. There is no driveway in front of the house. The entire property is within the Critical Area (CA). Ms. Piera, on recall, testified that she does not own the property; her in-laws own the property. Her in-laws will be moving in soon.

Mr. Michael Werner, expert engineer, testified that he was contacted by the Piera's to prepare a variance plan. The subject property is a legal lot. He was brought in after the carport was constructed. It does not look like there are any steep slopes near the carport or the gravel driveway. There is a 6 to 10' drop near the water. The land was replenished by a stone revetment, giving the Petitioner a few more feet of land. Mitigation is necessary for the requested variances. Four foot wide strips would be removed from the 24 foot gravel driveway and replaced with a pervious surface such as mulch. The existing shed and well house with its accessory patio and sidewalk would also be removed. The site complies with the impervious

coverage requirements of the Anne Arundel County Code (Code); the site is approximately 8.7 acres, 6.94% is impervious. The Petitioner has agreed to reforest in conservation easements. Drainage travels through a natural ravine that will be re-vegetated and returned to wetland status. There would be a 1.23 acre increase in forest cover. Property zoned Residential Low Density (RLD) requires a 50 foot front yard setback. The County told the Petitioner that the subject property had three front yards. The carport is 18 feet from the water and needs a variance of 32 feet. The area is buffer exempt because pre-existing houses were placed on the peninsula points. A denial of the requested variances would deny the Petitioner the same rights other property owners enjoy in buffer exempt areas. If the mitigation is approved, the environment would be better off than it is today. The reduction in impervious surface, the reforestation and the enhancement of a natural storm water filtration system will improve the water quality.

Mr. Eric See, an expert environmental planner, testified that he prepared the CA report and the revisions that included reforestation. The carport is inside the 100' buffer, located next to the principal house. The Petitioner has proposed almost 1¼ acres of reforestation. The CA criteria permit up to 15% of impervious surface; but, there would be only 6.92% of impervious surface on this site once the well house and patio are removed. Granting the variances would not adversely affect fish and wildlife. The subject property is classified as a Resource Conservation Area (RCA). The requested variances are consistent with the general spirit and intent of the CA program. If the requested variances are denied and the carport has to be removed, the Petitioner would not reforest. The Petitioner needs a variance of 75' to perfect the carport because it is only 25' from the shoreline.

Mr. Robert Nilsen, a neighbor, testified that the subject property has been a problem since 1999. The house at issue was built in 1999. Someone showed up on the property with a backhoe and the previous house was demolished within a day. There have been 13 zoning

violations on the subject property. The Petitioner asks for forgiveness, not permission to build. The Petitioner claims to be ignorant of the zoning laws, but has been before the Administrative Hearing Officer (AHO) on two prior occasions to ask for variances. It is disheartening to see other citizens go through the lawful variance process when the Petitioner has failed to do so on several occasions. The AHO's decision should be upheld.

Mr. Bob Gallagher, the Protestants' representative, submitted into evidence a prior decision of this Board, dated January 28, 1999, concerning the denial of two variances on the same property, with the Petitioner's brother as the Petitioner in the prior case. The Petitioner has knowledge of the zoning laws.

Ms. Lori Rhodes, a planner with the Office of Planning and Zoning (OPZ), testified that the Petitioner requested a variance to perfect the construction of a dwelling addition and a gravel driveway with fewer setbacks and buffer than required and with disturbance to slopes of 15% or greater. The subject property is located in the Shady Oaks Manor subdivision. It is zoned RLD. The property is improved with two dwellings, a pool, three piers and several accessory structures. The carport at issue measures 24 feet by 32 feet and the driveway measures approximately 80 feet by 20 feet. In addition, the driveway is new disturbance in the CA buffer and on steep slopes. *See Code, Article 18, Section 13-104.* A 100' buffer landward is required from the mean high water line of tidal waters. *See id.* When there are contiguous sensitive areas, the buffer must be expanded to protect the sensitive areas. The Petitioner's carport and driveway are completely within the buffer. Lots within the RLD district have a 50' minimum front yard setback. The carport is 18' from the mean high water line; thus, a variance of 32' is requested. Variances are also requested since the carport and driveway create new impervious surface in the CA and because they are located within the expanded buffer. There is a garage located 60' from the carport. A carport could have been located elsewhere on the property

without the need for a variance. The property is buffer exempt because, at the time of mapping, a principal structure existed within the buffer. The Soil Conservation District (SCD), the Anne Arundel County Development Review Division and the OPZ recommend denying the requested variances.

Mr. Anthony Piera testified that his mother is Kathy Piera and Jennifer is his sister-in-law. His mother's name was used to file all of the applications, but she has no interest in the property. Mr. Piera has the authorization to speak for his parents.

Ms. Teresa Nilsen, a neighbor, testified that it appears that the main concern of the Petitioner is the safety of the Petitioner's children. If that is the case, she does not understand why there is not a fence around the pool.

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 Petitioner has requested variances to perfect the construction of a carport and a gravel driveway within the CA. The Petitioner needs variances to disturb within the expanded buffer; to disturb steep slopes; place new impervious surface within the CA and a variance of 32' to the required 50' minimum front yard setback. The subject property is a waterfront lot, it is zoned RLD and classified as RCA. To grant the requested variances, the Petitioner must satisfy an extensive list of requirements set out in the Code. *See* Article 3, Section 1-207. The requirements established for variances within the CA are exceptionally difficult to overcome. In order for this Board to grant a variance, each and every Code requirement must be satisfied; failure to meet even one requirement results in a mandatory denial.

The Petitioner must first establish "that because of certain unique physical conditions, such as exceptional topographical conditions peculiar to and inherent in the particular lot or

irregularity, narrowness, or shallowness of lot size and shape, strict implementation of the County's critical area program . . . would result in an unwarranted hardship." Code, § 3-1-207(b)(1). The subject property is a peninsula, has steep slopes of 15% or greater and is located within the expanded buffer which are unique physical conditions. However, there would not be any unwarranted hardship if the Code is strictly applied. The subject property has a garage located 60' away from the primary dwelling. The main house was reconstructed several years ago without a carport or garage included in the site plans. If the lack of a carport creates an unwarranted hardship, we believe the Petitioner created the hardship when the carport was not included in the reconstruction plans. In addition, the site plan and testimony offered by the County confirms that there are other locations on the property where a carport could have been located without the necessity of a variance or with fewer variances. Accordingly, we find that there would not be an unwarranted hardship if the Code were strictly enforced.

The Petitioner next must establish that "[a] literal interpretation of COMAR, 27.01, Criteria for Local Critical Area Program Development or the County's critical area program and related ordinances will deprive the applicant of rights commonly enjoyed by other properties in similar areas as permitted in accordance with the provisions of the critical area program within the critical area of the County." *Id.* § 3-1-207(b)(2)(i). The Petitioner testified that there are other homes in the community that have garages and denying her the right to have a carport would deny her a right enjoyed by others. However, this property already has a garage. The Petitioner would simply like more. Here, she asks this Board to perfect a carport that was built without permits and violates several Code provisions. It would be inappropriate and contrary to law to find that the Petitioner would be deprived of rights commonly enjoyed by others if the variances were denied. There are several legal accessory structures on the property, including a garage that is sufficiently large enough to accommodate two vehicles (See, Petitioner's Exhibit

4, photo 4). Even if the garage is in disrepair, it can be fixed to provide vehicular cover. As such, we find that the Petitioner would not be denied any rights enjoyed by others in similar areas.

Next, the Petitioner must show that “[t]he granting of a variance will not confer on an applicant any special privilege that would be denied by COMAR, 27.01, the County’s critical area program to other lands or structures within the County critical area.” *Id.* §3-1-207(b)(3). Allowing the Petitioner to perfect the carport and driveway would confer a special privilege. As we previously addressed, both the carport and the driveway were built without the necessary permits and approvals. Moreover, there is an existing garage on the property. It is not the fault of the County or this Board that the Petitioner failed to include an attached garage or carport in the site plans when the house was reconstructed or site the carport to the rear of the dwelling where ample room exists. Accordingly, we find that granting the requested variance would confer a special privilege on the Petitioner.

The Petitioner also must establish that “[t]he variance request is not based on conditions or circumstances that are the result of actions by the applicant, including the commencement of development before an application for a variance was filed, and does not arise from any condition relating to land or building use on any neighboring property.” *Id.* §3-1-207(b)(4). The requested variances are necessary because the Petitioner failed to get the proper permits and approvals before constructing the carport and gravel driveway in contravention of the Critical Area Program. The carport could have been constructed in other locations without a variance. There is nothing inherent in this site that creates the conditions by which the variances are necessary. The need for the variances is based on the arrogance of the Petitioner in placing the structure where desired, rather than following County law. Therefore, we find that the Petitioner created the need for the requested variances.

The next burden that the Petitioner must overcome is to show that “[t]he granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the County’s critical area . . . and will be in harmony with the general spirit and intent of the County’s critical area program.” *Id.* §3-1-207(b)(5). Mr. Werner testified that the property would have better water quality if the proposed mitigation were installed. Mr. See stated that there would not be any adverse impact on the fish and wildlife in the area with the variances. However, we disagree. The requested variances would not be “in harmony with the general spirit and intent of the County’s critical area program.” The Ann. Code of Maryland requires this Board to presume “that the specific development activity in the critical area that is subject to the application and for which a variance is required does not conform with the general purpose and intent of this subtitle, regulations adopted under this subtitle, and the requirements of the local jurisdiction's program.” Md. Code Ann., Natural Resources §8-1808(d)(2)(i). While this property is completely within the expanded buffer; the carport could have been constructed in another location without multiple variances. The availability of alternative locations and the existence of a garage on site make it clear that the requested variances fail to conform to the purpose and intent of both State and County law.

Because the subject property is not within the County’s bog protection area, Section 3-1-207(b)(6) is inapplicable and need not be addressed.

The Petitioner’s next burden is to establish that through “competent and substantial evidence, [they] ha[ve] overcome the presumption contained in the Natural Resources Article, § 8-1808(d)(2), of the State Code.” *Id.* § 3-1-207(b)(7). As stated previously, it is presumed “that the specific development activity in the critical area that is subject to the application and for which a variance is required does not conform with the general purpose and intent of this subtitle, regulations adopted under this subtitle, and the requirements of the local jurisdiction's

program.” Md. Code Ann., Natural Resources §8-1808(d)(2)(i). The Petitioner’s property is completely within the expanded buffer; however, the carport could have been constructed in another location with fewer variances. The availability of alternative locations and the existence of a garage make it clear that the requested variances do not conform to the purpose and intent of both State and County law.

Next, the Petitioner has the burden of proving that “the variance is the minimum variance necessary to afford relief.” Code, § 3-1-207(c)(1). The site plan shows and the County testified that there are existing, alternate locations for a carport that would not require as many variances to the Code. When alternative locations on the property are so clearly available, as here, it is impossible for a variance request to represent the “minimum necessary”.

The Petitioner must also establish that “the granting of the variance will not alter the essential character of the neighborhood or district in which the lot is located.” *Id.* § 3-1-207(c)(2)(i). There are various accessory structures throughout the surrounding community. Thus, it is our finding that granting the requested variances would not affect the character of the neighborhood.

In addition, the Petitioner must show that “the granting of the variance will not substantially impair the appropriate use or development of adjacent property.” *Id.* § 3-1-207(c)(2)(ii). The subject property is a peninsula. Thus, we find that there would not be any interference with the appropriate use or development of adjacent property because under the circumstances there is no adjacent property.

The Petitioner’s next hurdle requires a showing that “the granting of the variance will not reduce forest cover in the limited development and forest conservation areas of the critical area and will not be contrary to acceptable clearing and replanting practices required for development in the critical area.” *Id.* § 3-1-207(c)(2)(iii)(iv). The Petitioner proposes to mitigate 150:1 if this

A
Board grants the requested variance. Although the additional forestation and planting would be an excellent addition to the CA, the damage has already been done when the Petitioner built without the necessary permits and permissions. Therefore, we find that a reduction in forest cover and unacceptable clearing have already taken place and any plans to mitigate after the fact damage are not due the consideration of this Board in this appeal.

Lastly, the Petitioner must show that "the granting of the variance will not be detrimental to the public welfare." *Id.* § 3-1-207(c)(2)(v). The zoning regulations of the Code were created to provide uniform regulations to protect the land and the citizens of the County. Similarly, the Critical Area Program was created to promote the health of the Bay and all the citizens. Permitting structures that do not adhere to these regulations for the mere convenience of the applicant is contrary to the health, safety, and welfare of the public. The granting of the requested variances would be detrimental to the public welfare and reward the illegal actions of this property owner.

A
The Petitioner has also requested a setback variance that must satisfy the requirements of a standard variance request. *See id.* § 3-1-207. As we addressed in the previous analysis, there are exceptional physical conditions on the property; however, the conditions on the property have not hindered the development nor have they created an unnecessary hardship to the Petitioner. *See id.* § 3-1-207(a)(1)(2). The applicant could comply with the regulations, but chooses not to. A personal choice by an applicant to violate the regulations where there is no compelling need, inherent in the property, is not a valid basis for a variance case. The variance requirements under sections 3-1-207(c)(1) and (2) are the same for both a standard and a CA variance request. The above CA analysis is applicable here as a part of the standard variance analysis.

ORDER

For the reasons set forth in the foregoing Memorandum of Opinion, it is this 27TH day of NOVEMBER, 2006, by the County Board of Appeals of Anne Arundel County, ORDERED, that the Petitioner's requests for:

- 1) A Variance to disturb the 100' expanded buffer, *see* § 18-13-104 ;
- 2) A Variance to disturb steep slopes of 15% or greater, *see id.* § 17-8-201;
- 3) A Variance to place new impervious surface in the Critical Area closer to the shoreline than the existing principal structure, *see id.* § 17-8-702 (b);
- 4) A Variance of 32' to the required 50' minimum front lot line setback, *see id.* §18-4-401; and
- 5) Relief from Condition #1 of the opinion of the Administrative Hearing Officer (that the carport addition and driveway shall be removed with the areas re-vegetated);

are hereby **DENIED**, the Petitioner shall remove the carport addition and driveway and re-vegetate the area.

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 90 days of the date of this Order; otherwise, they will be discarded.

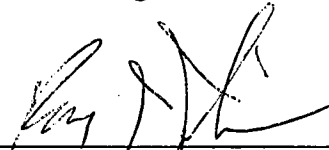
Any notice to this Board required under the Maryland Rules shall be addressed as follows: Anne Arundel County Board of Appeals, Arundel Center, P.O. Box 2700, Annapolis, Maryland 21404, ATTN: Mary M. Leavell, Clerk.

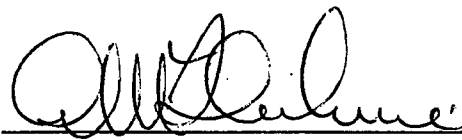
COUNTY BOARD OF APPEALS
OF ANNE ARUNDEL COUNTY




Anthony V. Lamartina, Chairman


John W. Boring, Member


Ray J. Jicka, Member


Arnold W. McKechnie, Member


William Moulden, Member


Vance N. Remillard, Member

(Michael Topper, Vice Chairman, did not participate in this appeal.)

0099 98
0272 98
0380 05

RECEIVED

NOV 7 2005

CRITICAL AREA COMMISSION

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBERS 2005-0173-V

IN RE: KATHY PIERA

SEVENTH ASSESSMENT DISTRICT

DATE HEARD: SEPTEMBER 29, 2005

ORDERED BY: STEPHEN M. LeGENDRE, ADMINISTRATIVE HEARING OFFICER

PLANNER: LIZ WEST

DATE FILED: NOVEMBER , 2005

PLEADINGS

Kathy Piera, the applicant, seeks a variance (2005-0173-V) to permit a dwelling addition with less setbacks and buffer than required and with disturbance to steep slopes and a driveway and paths with less buffer than required and with disturbance to steep slopes on property located along the east side of Holly Landing Road, east of Muddy Creek Road, West River

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. Anthony Piera testified that the property was posted on September 15, 2005. I find and conclude that the requirements of public notice have been satisfied.

FINDINGS AND CONCLUSIONS

The applicant owns a single-family residence with a street address of 880 Holly Landing Road, in the subdivision of Shady Oaks Manor, West River. The property comprises 8.77 acres and is zoned RLD Residential Low Density with a Chesapeake Bay Critical Area designation as Resource Conservation Area (RCA). This is a waterfront lot with frontages on the West River, Jones Creek and Smith

Creek. The property is mapped as a buffer modification area. The applicant seeks to perfect a carport addition (24 by 32 feet), a driveway (80 by 20 feet) and four impervious paths.¹ The carport and driveway are located closer to West River than the dwelling and lie in the Chesapeake Bay Critical Area buffer as expanded for steep slopes and on steep slopes. The carport is 18 feet from what is considered the front lot line. Paths 3 and 4 are also closer to water than the dwelling. Finally, Path 4 is located in the expanded buffer and on steep slopes.

Anne Arundel County Code, Article 27, Section 27-13-104(a) creates a minimum 100-foot buffer from tidal waters. The buffer expands to include all lands within 50 feet of contiguous steep slopes. However, Section 27-13-104(b) creates a buffer modification area for lots created before December 1, 1985 on which the existing pattern of development precludes the 100-foot buffer from performing its protective functions. Under Article 26, Section 26-8-702(b), new impervious surfaces shall not be placed closer to the shoreline than the existing principal dwelling. Section 26-8-201 prohibits disturbances on slopes of 15 percent or greater in the RCA. Finally, Section 27-4-401 requires lots in the RLD district to maintain a minimum setback of 50 feet from the front lot line.

Accordingly, the carport and driveway require buffer variances and variances to disturb steep slopes. The carport also requires a variance of 32 feet to the front

¹ Path 1 (8 stepping stones, 12 feet) extends from the pool to the main driveway; Path 2 (8 stepping stones, 30 feet) connects the side of the dwelling to the pool; Path 3 (56 stepping stones, 140 feet) extends from the dwelling to the principal pier and Path 4 (75 square feet of brick pavers) connects the pool to the secondary pier.

setback. Path 4 requires a buffer variance and a variance to disturb steep slopes. And finally, Path 3 requires a buffer variance.

Liz West, a planner with the Office of Planning and Zoning, testified that the dwelling was reconstructed in 2004.² With respect to the carport and driveway, the witness questioned the hardship because these items could have been incorporated in the reconstructed dwelling; the applicants already enjoy various accessory structures, including a garage within 60 feet of the carport; approximately one-half the property is not steep slopes or expanded buffer; and the request is considered self-created based on the proximity of the pool and the garage to the dwelling. Paths 1, 2 and 3 did not require clearing, are not located on steep slopes and add negligible impervious area. However, Path 4 crosses some of the steepest slopes and could have been constructed of pervious decking to minimize the runoff to Smith Creek. The witness summarized the agency comments. The Chesapeake Bay Critical Area Commission requested clarification concerning the pool and decking. The County's Development Review Division opposed the application on the grounds that any hardship is self-created. By way of ultimate conclusion, Ms. West opposed the variances for the carport, driveway and Path 4 but offered no objection to the balance of the application.

On cross-examination by counsel to the applicant, Ms. West agreed that the pool and garage predate the reconstruction of the dwelling and that a carport

² The property received a variance to perfect a shed in the buffer under Case No. 2001-0075-V (May 18, 2001).

located outside of the buffer would necessarily be accessory to rather than part of the principal dwelling.

Anthony Piera submitted a series of photographs depicting the existing conditions in 1998 and the present conditions. The location of the pool and decking is unchanged; Path 3 is in the same location as a preexisting stone path; and Path 4 is in the same location as a preexisting barbeque and propane tanks. The witness indicated that the purpose of the carport is improved access as well as protection from the elements. Jennifer Piera testified that the carport is an unanticipated need; in particular, the carport allows safer access for the children when severe lightening strikes the property.

Michael Werner, the applicant's engineering consultant, testified that approximately 75 linear feet of the property has eroded along the West River shoreline. Impervious coverage is less than the allowance (6.9 – 7.0 percent versus 15 percent). The witness believes that the variance standards are satisfied. In particular, the relocation of the carport out of the buffer would constitute a hardship given that the dwelling preexisted in the same general location. His analysis is the same for the other improvements. However, he conceded that Path 4 could have been pervious.

Eric See, an environmental consultant to the applicant, submitted a Critical Area report and testified that the variance standards are satisfied because the project includes mitigation and stormwater management. The witness also

suggested that the removal of the carport and Path 4 would disturb the buffer to little advantage.

Teresa and Robert Nilsen, who reside in Shady Oaks on Jones Creek, opposed the application. Among other objections, the construction is unpermitted, the impervious surfaces harm the Critical Area, the paths are not replacement-in-kind and the reconstructed dwelling expanded the preexisting dwelling.

I visited the site and the neighborhood. A gravel driveway extends from a paved circular driveway to the carport addition. The grade falls away from the carport addition with the edge closest to water supported by a stone retaining wall. At the time of my visit, a car was parked on the gravel drive. Other vehicles were parked on the lawn inside the driveway loop. There was a spa and a barbecue grill under the carport. The four paths were all stable. The garage was being used for household storage.

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 applicant to develop the lot. Under subsection (b), for a property in the Critical Area, a variance to the Critical Area program requirements may be granted only after determining that (1) due to unique physical conditions, peculiar to the lot, a strict implementation of the

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

The last time this property was before this office, the applicant was granted conditional relief to perfect a storage shed to house the oil furnace and hot water heater. At the time of the approval, the applicant's burden was to show that the criteria are "generally met." In the interim, Chapter 432 of the 2002 Session of the General Assembly has changed her burden. Now, she must show that each and every criterion is met. If the evidence is lacking as to any criteria, then the variance must be denied.

Despite the lower burden applicable to the prior case, the relief was reluctantly approved. In this case, I am constrained to deny the relief with respect to the carport and driveway. Unlike the prior case, there is no showing that the carport addition and gravel driveway are amenities commonly enjoyed by other properties in similar areas of the critical area. This is especially the case when the applicant has already reconstructed a substantial dwelling and enjoys a detached garage and paved circular drive in close proximity to the residence. Despite the claim of unanticipated needs and safer access, the granting of the variances for the carport and gravel driveway represent a special privilege that the program typically denies. I further find that the variances for the carport and driveway do not harmonize with the spirit and intent of the program, represent more than the minimum relief, and their grant would be detrimental to the public welfare. Because the applicant has not met her burden of proving all of the variance criteria with respect to the carport and gravel driveway, the denial of the variances does not deny reasonable use and is not an unreasonable hardship.

Considering the paths, access to water is typically afforded to other properties rather than a special privilege. Mr. Piera submitted a photograph depicting a preexisting stone path in the same general location as Path 3. He testified without contradiction that Path 4 is in the same location as a preexisting barbecue and propane tank. The paths were installed without clearing and are modest in scope. Even though Path 4 traverses steep slopes, conversion to

perviousness would cause far greater disturbance to a stabilized area in close proximity to water. I further find that the granting of the variances for the paths harmonizes with the spirit and intent of the program. Finally, the variances for the paths represent the minimum relief and their grant will not alter the essential character of the neighborhood, the use or development of adjacent property or the public welfare. The approval is subject to the conditions in the Order.

ORDER

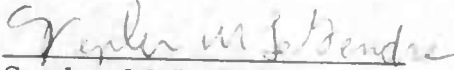
PURSUANT to the application of Kathy Piera, petitioning for a variance to permit a dwelling addition with less setbacks and buffer than required and with disturbance to steep slopes and a driveway and paths with less buffer than required and with disturbance to steep slopes; and

PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is this 1st day of November, 2005,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicant is **granted** a buffer variance and variance to disturb steep slopes to permit paths in accordance with the site plan. The approval is subject to the following conditions:

1. The carport addition and driveway shall be removed with the areas revegetated.
2. The applicant shall provide mitigation at a 3:1 ratio for the area of the four paths.

FURTHER ORDERED, that the applicant is **denied** variances for the carport and gravel driveway.

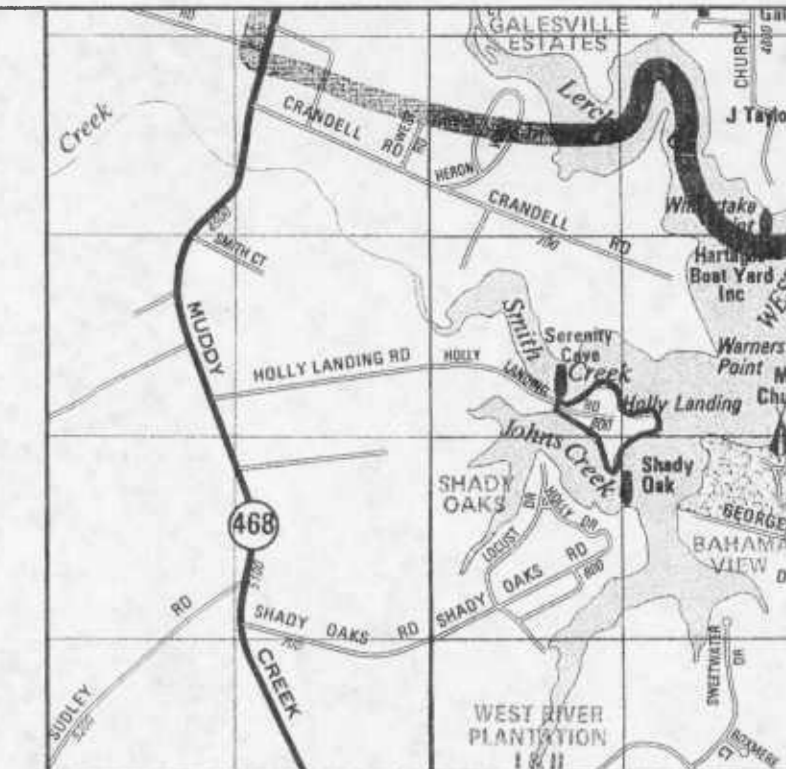

Stephen M. LeGendre
Administrative Hearing Officer

NOTICE TO APPLICANT

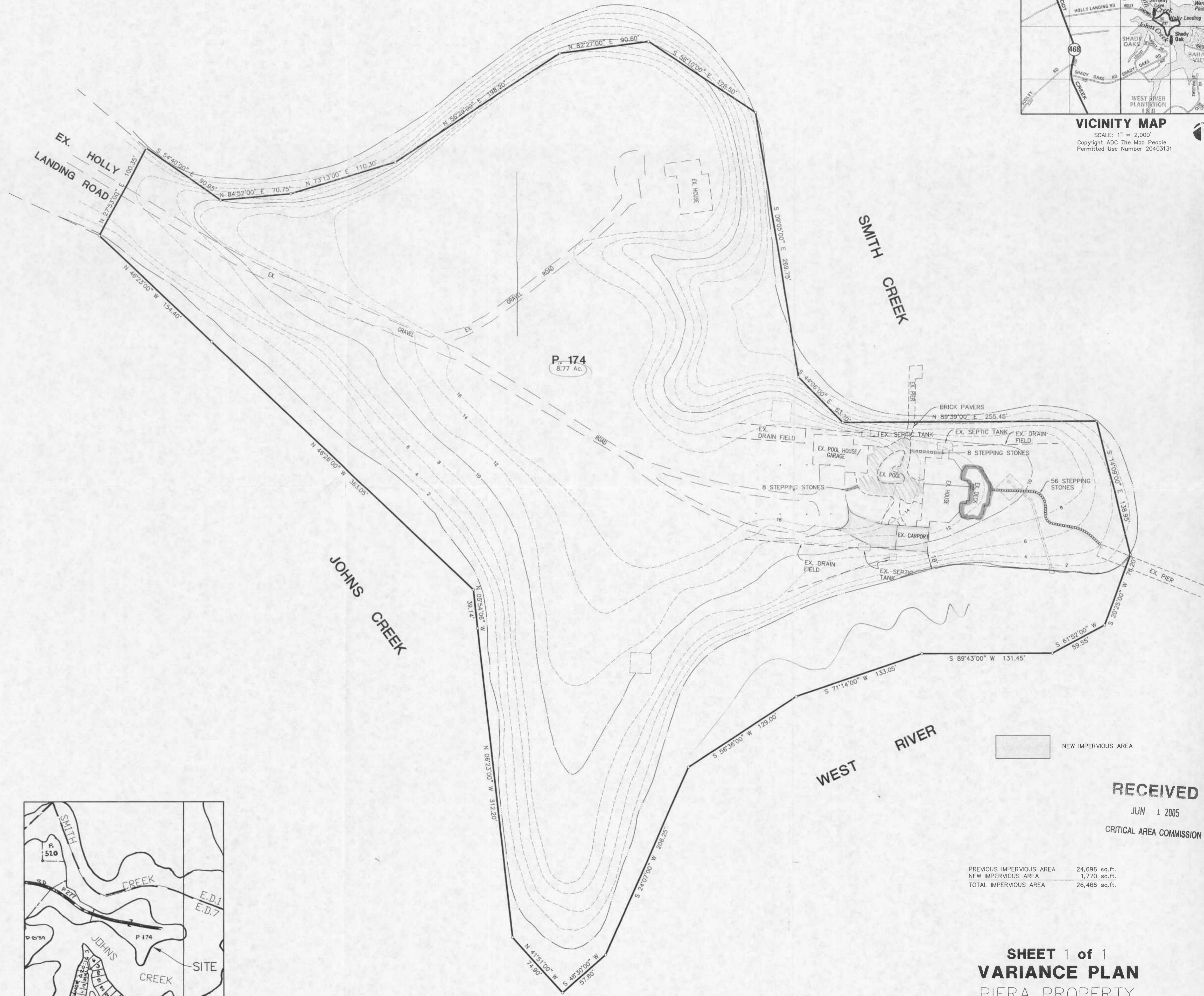
Within thirty days from the date of this Decision, any person, firm, corporation, or governmental agency having an interest therein and aggrieved thereby may file a Notice of Appeal with the County Board of Appeals.

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.

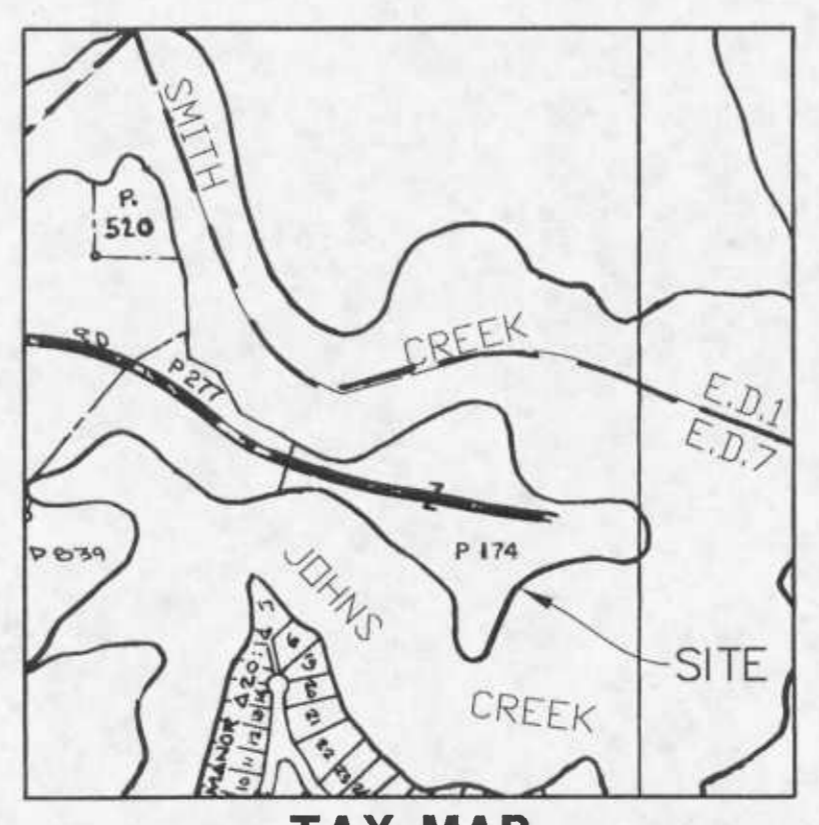
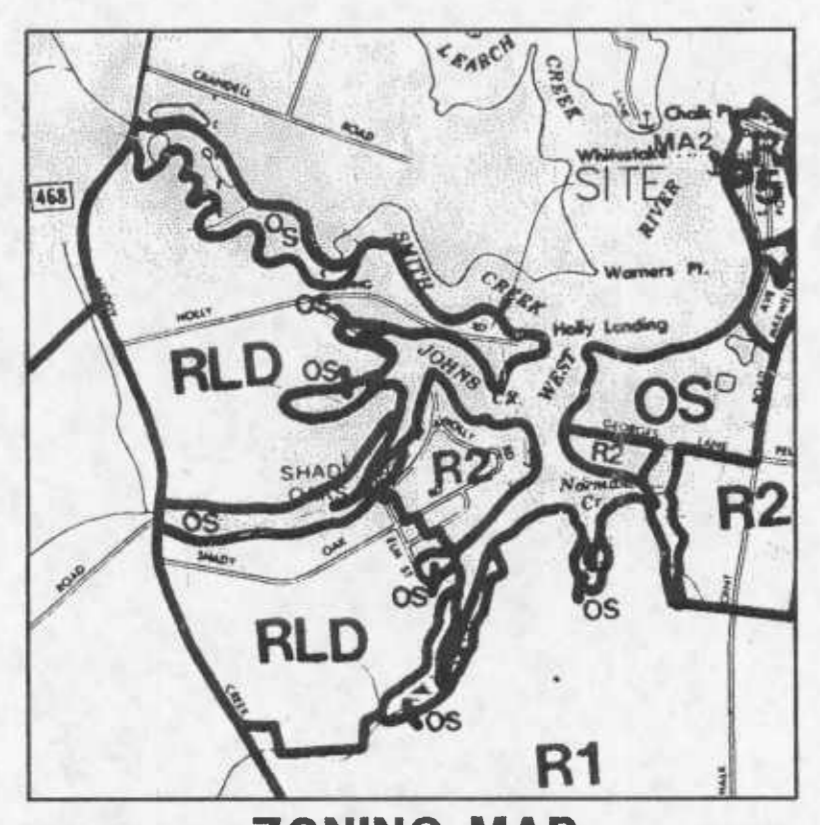
If this case is not appealed, exhibits must be claimed within 60 days of the date of this Order, otherwise that will be discarded.



VICINITY MAP
 SCALE: 1" = 2,000'
 Copyright ADC The Map People
 Permitted Use Number: 20403131



PROPERTY OWNERS WITHIN 175'
 PARCEL 277
 CHRISTINE M. CROSS
 834 HOLLY LANDING ROAD
 WEST RIVER, MD 20778
 7-000-00983000
 DEED REF: 12363/548



NEW IMPERVIOUS AREA

RECEIVED
 JUN 1 2005
 CRITICAL AREA COMMISSION

PREVIOUS IMPERVIOUS AREA	24,696 sq.ft.
NEW IMPERVIOUS AREA	1,770 sq.ft.
TOTAL IMPERVIOUS AREA	26,466 sq.ft.

SHEET 1 of 1
VARIANCE PLAN
 PIERA PROPERTY

SEVENTH DISTRICT ANNE ARUNDEL COUNTY, MARYLAND
 SCALE: 1"=50' MARCH, 2005
 TAX MAP 69 BLOCK 13 PARCEL 174



303 Najoles Road - Suite 114
 Millersville, MD 21108-2512
 Phone: 410-987-6901

RECEIVED
 JUN 1 2005
 CRITICAL AREA COMMISSION