

KC 251-05  
VAR

Kraft, William  
05-44

MSA-S-1829-5001

LH  
Comment  
4/18/05

11/10/10  
File originally  
cleared.  
D.S.

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/](http://www.dnr.state.md.us/criticalarea/)

April 18, 2005

Ms. Amy Moredock  
Kent County Planning and Zoning  
Kent County Government Center  
400 High Street  
Chestertown, Maryland 21620

Re: William & Arlene Kraft – 05-44

Dear Ms. Moredock:

I have received the above-referenced variance request for review and comment. The applicants propose to remove an existing dwelling and replace it within the 100-foot Buffer. Provided this lot is properly grandfathered, this office does not oppose this request. I have outlined my comments and recommendations below.

While I have not had the opportunity to visit this site; it is my understanding that the site is completely within the 100-foot Buffer due to the shoreline of the creek and an adjacent wetland; therefore, the only opportunity to minimize impacts is to keep the footprint as close to the original footprint as possible. It appears the applicant has kept the footprint to a minimum.

This office does not oppose the requested variance provided the County is satisfied that the applicant can demonstrate minimization. If the Board of Appeals finds the applicant is entitled to relief we recommend the applicant provide mitigation at a 3:1 ratio on site to the extent possible.

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

Sincerely,

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

Lisa A. Hoerger  
Natural Resources Planner

cc: KC 251-04

EC 251-05

**BEFORE THE KENT COUNTY BOARD OF APPEALS**

IN THE MATTER OF

KENT COUNTY, MARYLAND

WILLIAM & ARLENE KRAFT

APPEAL NO. 05-44

.....  
A hearing was held before the Board of Appeals on Monday, May 16, 2005, in the Commissioners' Hearing Room, Kent County Government Center, Chestertown, Maryland. Sitting for the Board were Bobby G. Harvey, Albert Townshend and Charlotte Staelin, Alternate. Alice S. Ritchie served as attorney for the Board and Anna Riggin was Clerk.

**DECISION**

The Board has before it the Application of William and Arlen Kraft, 5061 Hillmont Drive, Rock Hall, requesting a variance to construct a replacement dwelling within the 100' Critical Area buffer and a variance to the side yard setbacks on property located on Hillmont Drive in the Fifth Election District, Kent County, Maryland. Public notice was given, and the property was posted in a conspicuous manner. All interested persons were given an opportunity to be heard in a public hearing held on Monday, May 16, 2005. The Board, having read and considered all matters filed in the proceedings and evidence offered, having studied the specific property and the neighborhood, and having deliberated in a public hearing, decides as follows:

**FINDINGS OF FACT**

The Board finds from the evidence before it and the testimony given in open hearing the following facts. The subject property is waterfront, 0.23 acre lot entirely in the 100' Critical Area buffer due to shoreline of Herrington Creek and an adjacent wetland. It is zoned Critical Area District. The Applicants have owned the property for some time; there is an existing dwelling which was significantly damaged in the hurricane, Isabel. They propose replacing their damaged 1358 square foot dwelling with a two story dwelling with a foot print of 1120 square foot. They will retain a 400' front deck to the water and add 3' to the rear of the house. Therefore it will be slightly larger than the existing house. They believe they must remove one tree to get in to do construction. The surrounding neighborhood is residential, with larger homes, and wetlands. The proposed side setbacks will be 13.12 to the west property line and 5.49 to the east property line. These setbacks are approximately the setbacks of the existing dwelling. They are in conversation with their neighbor to the east to adjust the property line to give Applicants sufficient property to meet setback requirements.

The Board received a letter, dated May 12, 2005, from the Kent County Planning Commission, Elizabeth H. Morris, Chairman, which stated that the Commission, at their May 5, 2005, meeting had voted unanimously to make a favorable recommendation of a variance to buffer and to the side setback variances. Gail Owens, Director of the Office of Planning and

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31610-0067  
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Zoning for Kent County testified that staff recommends approval. The Applicants are required, if they make improvements of more than 50% of value, to meet floodplain requirements. Elevation of the house requires some expansion of the footprint to gain access to the structure. If in construction trees must be removed that may necessitate mitigation, however it would be covered in a buffer management plan which would be part of the building permit process. The Critical Area Commission has been notified of this project and replied with a letter, dated April 18, 2005. The Commission does not oppose the variance, provided the County is satisfied the applicant has demonstrated minimization.

### CONCLUSIONS OF LAW

Critical Area Residential District regulations found in Article V, Section 5.7.B.3 (i) of the Kent County Land Use Ordinance, 2003 (hereafter referred to as Ordinance) prohibit all buffer development activities including structures. Article V, Section 2.7.B.3 (d) permits dwellings existing as of April 12, 1988 and in the minimum 100 foot-foot buffer may be expanded provided all opportunities for expansion outside of the minimum 100-foot buffer are exhausted, new construction is not closer to mean high tide or the edge of tidal wetlands than the existing dwelling or the average line of neighboring properties, and an area of natural vegetation equal to 3 times the footprint of the expansion shall be planted in the 100-foot buffer. Article IX, Section 2.2.3 a-f of the Ordinance grants the Board of Appeals the power to authorize, upon application, variances to buffer requirements of the Ordinance. Further, Article IX, directs the purposes and considerations necessary to the granting of variances. Specifically in Section 2.2 of Article IX, The Board is authorized to grant variances so as to relieve practical difficulties or other injustices arising out of the strict application of the provisions of the Ordinance and a variance shall comply, as nearly as possible, in every respect to the spirit, intent, and purpose of this Ordinance, it being the purpose of the variance provision to authorize the granting of variation only for reasons of demonstrable practical difficulties as distinguished from variation sought for purposes or reasons of convenience, profit or caprice. In the Critical Area, which is this instance, for a variance to the buffer requirements it is the purpose of the provision to authorize the granting of variation only for reasons of demonstrable and exceptional unwarranted hardship as distinguished from variations sought by applicants for purposes or reasons of convenience, profit, or caprice. The unwarranted hardship standard is equivalent to the denial of reasonable and significant use of the property, and whether a property owner is being denied reasonable and significant use of his property is a question of fact. Belvoir Farms v. North, 355 Md. 259, 734 A.2d 227 (1999).

The Board finds that given that the existing parcel is entirely within the Critical Area Buffer, the Applicants would suffer an unwarranted hardship if they did not have a variance rebuild their house in the buffer. That the shape and location of the parcel in the 100-foot buffer creates demonstrable and exceptional unwarranted hardship as distinguished from variations sought by applicants for purposes or reasons of convenience, profit or caprice and denial of the variance would deprive the Applicant of reasonable and significance use of his land. Further, the granting of the variance to the buffer will be in harmony with the general spirit and intent of the Critical Area Law and regulations adopted by Kent County, it will not adversely affect water quality or adversely impact fish, wildlife, plant habitat, it is not shared generally by other properties in the same zoning district, not be a substantial detriment to adjacent property, the

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character of the district will not be changed by the granting of the variance, the literal interpretation of the Ordinance would deprive the Applicants of rights commonly enjoyed by other properties in similar areas within the Critical Area of Kent County and not confer upon the Applicants any special privilege that would be denied by the Ordinance to other lands or structures.

The side setback requirement is found at Article V, Section 5.5, and is fifteen (15) feet. The shape of the lot is long and narrow and presents a practical difficulty to meeting the required setbacks. The Board grants the variances requested for the side setbacks, two (2) feet to the west and ten (10) feet to the east. The Board grants the east setback variance of ten feet with the stipulation that the variance will be null and void when and if the Applicants adjust their east side property line to meet regulations and accommodate a shed and part of the deck that presently encroach on the neighbors property. These variances will not cause a substantial detriment to adjacent or neighboring property, not change the character of the neighborhood or district, and are consistent with the Comprehensive Plan and the general intent of the Ordinance.

IT IS THEREFORE, this 20th day of June, 2005 ORDERED that the application for a variance be and is hereby granted, subject to the following conditions:

1. If a tree or trees are removed mitigation of 1:1 is done, and that
2. A buffer management plan be implemented if required by the Office of Planning and Zoning, and
3. The standard condition that the variances granted will lapse after the expiration of one year if no substantial construction in accordance with the plans herein presented occurs.

KENT COUNTY BOARD OF APPEALS

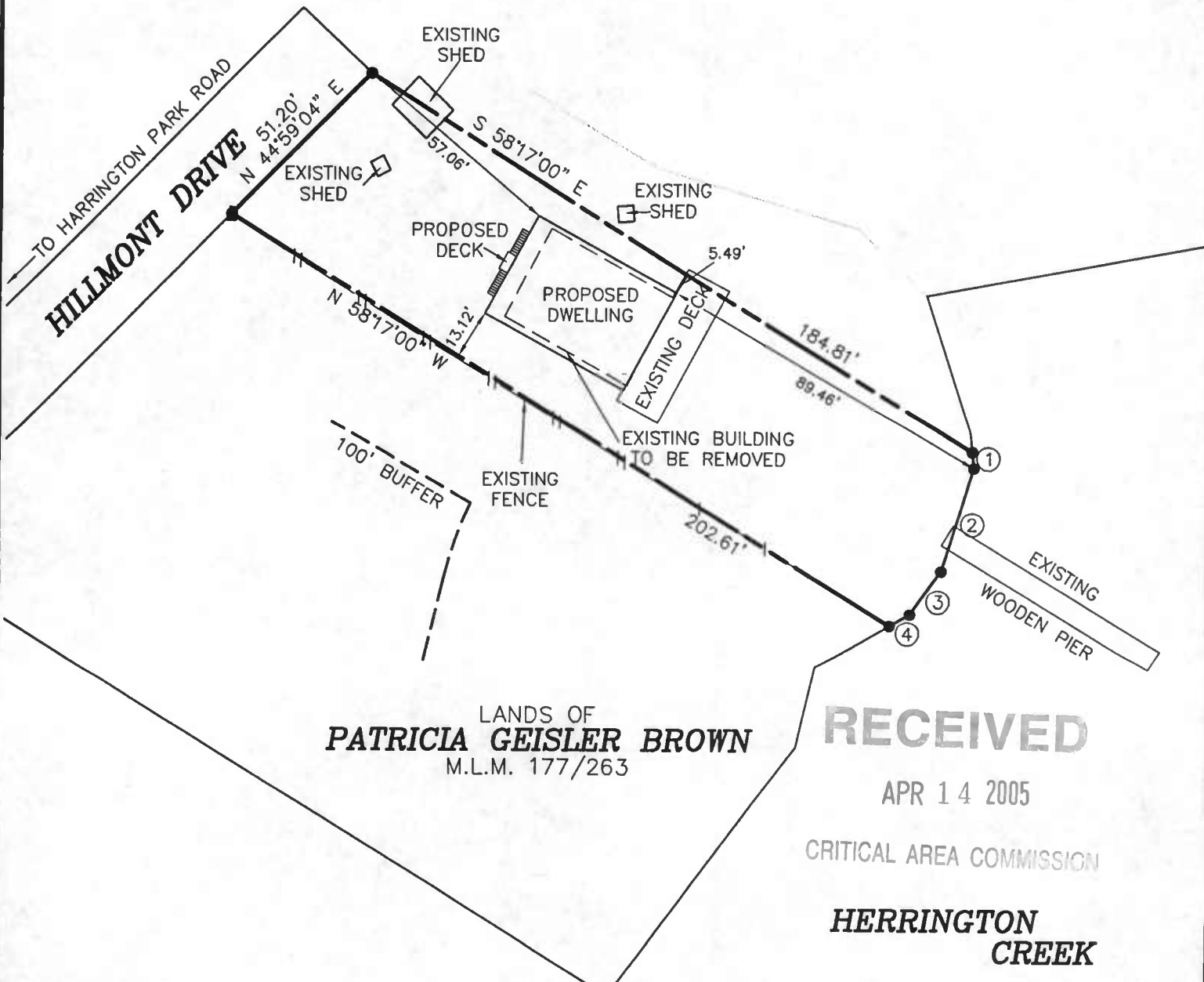
Charlotte D. Steach  
Bobby King  
Albert S. Brown

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LANDS OF  
**WALTER A. SIMMONS, et ux.**  
 E.H.P. 58/771



LANDS OF  
**PATRICIA GEISLER BROWN**  
 M.L.M. 177/263

**RECEIVED**

APR 14 2005

CRITICAL AREA COMMISSION

**HERRINGTON CREEK**

COURSES AND DISTANCES ALONG APPROXIMATE SHORELINE		
LINE	BEARING	DISTANCE
1	S 05°56'07" E	4.25'
2	S 17°07'15" W	28.23'
3	S 35°14'00" W	13.89'
4	S 59°41'23" W	5.99'

PROPERTY OWNER: WILLIAM R. KRAFT, et ux.  
 PROPERTY ADDRESS: 5061 HILLMONT DRIVE  
 ROCK HALL, MARYLAND 21661

FOR DEED REFERENCE SEE: M.L.M. 46/391

PROPOSED DWELLING

ON THE LANDS OF

**WILLIAM R. KRAFT, et ux.**

FIFTH ELECTION DISTRICT, KENT COUNTY

MARYLAND

**MICHAEL SCOTT INC.**  
 207 MAPLE AVENUE CHESTERTOWN, MD 21620 (410)778-2310

DRAWN BY DFS  
 SCALE 1"=40'  
 DATE 04-01-05  
 JOB NO. 4001  
 FOLDER K-516

PLANNING OFFICE

APR 13 2005