

QC 778-05 : Fillah, Fred
VAR 110008

MSA-S-1829-5147

PC 1/31/06
(also testified 2/9/06)

0778-05

Robert L. Ehrlich, Jr.
Governor



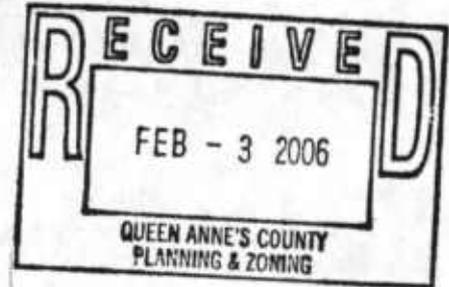
Martin G. Madden
Chairman

Michael S. Steele
Lt. Governor

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/



*Lee Anne,
decision
attached
copy*

January 31, 2006

Ms. Cathy Maxwell
Queen Anne's County, Dept. of Planning and Zoning
160 Coursevall Drive
Centreville, MD 21617



RE: Variance - Fred J. Fillah, V-110008

MAR 16 2006

Dear Ms. Maxwell:

CRITICAL AREA COMMISSION

Thank you for providing information on the above referenced variance. The applicant is requesting a variance to permit the construction of a patio, retaining wall, and walkway within the Buffer. The property is 2.8 acres in size, is sparsely vegetated, and is designated as a Resource Conservation Area (RCA). It is currently developed with a large single-family dwelling, attached indoor swimming pool, multiple decks and patios, septic system, and well. In addition, the walkway and half of the patio area and retaining wall have already been constructed.

In 2002 and 2004, the Maryland General Assembly strengthened the Critical Area Law and reiterated its commitment to protection of the Chesapeake Bay Critical Area's water quality and wildlife habitat values. In particular, the General Assembly reaffirmed the stringent standards, which an applicant must meet in order for a local jurisdiction to grant a variance to the Critical Area Law. The State law provides that variances to a local jurisdiction's Critical Area Program may be granted only if a zoning board finds that an applicant has satisfied its burden to prove that the applicant meets each one of the County's variance standards, including that of "unwarranted hardship". The General Assembly defined that term as follows: "without the variance, the applicant would be denied reasonable and significant use of the entire parcel or lot". Furthermore, the State law establishes a presumption that a proposed activity for which a Critical Area variance is requested does not conform to the purpose and intent of the Critical Area law.

The Board must make an affirmative finding that the applicant has overcome this presumption, based on the evidence presented. In this case, the applicant is proposing to complete construction of 500 square feet of patio at the water's edge within the Buffer. The applicant must present competent and material evidence to satisfy the burden of proof on each of the

variance standards described below. Under law established by the General Assembly, even if there is nowhere else on the lot to site the patio, the variance cannot be granted unless the applicant proves and the Board finds that, without the variance, the applicant would suffer an unwarranted hardship, that is, "denial of reasonable and significant use of the entire parcel or lot". We do not believe that this standard is met in this case and accordingly, the variance should be denied. I have discussed each one of the standards below as it pertains to this site:

1. *That special conditions or circumstances exist that are peculiar to the land or structure within the jurisdiction's Critical Area Program that would result in an unwarranted hardship to the applicant.* As stated above, the General Assembly defined "unwarranted hardship" to mean that the applicant must prove that, without the requested variance, the applicant would be denied reasonable and significant use of **the entire parcel or lot**. As indicated above, the applicant has significant use of the lot. Expansive patios outside of the Buffer already exist. Based on the information in our file, we do not believe that the County has evidence on which to base a favorable finding in this factor.
2. *That a literal interpretation of this subtitle or the Critical Area Program and related ordinances will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area of the local jurisdiction.* The applicant has reasonable use of this property for residential purposes and therefore, she would not be denied a right commonly enjoyed by neighbors. In addition, accessory structures, such as patios, are not permitted in the Buffer. Even if other properties have patios, certain structures that existed prior to December 1, 1985 or the effective date of the Queen Anne's County Critical Area regulations are considered grandfathered and do not convey a right for similar structures to be built in the future. The General Assembly made this clear in the 2002 amendments to the Critical Area Law, as discussed above. We do not believe that the applicant has met this standard.
3. *The granting of a variance will not confer upon the applicant any special privilege that would be denied by this subtitle or the local Critical Area Program to other lands or structures within the jurisdiction's Critical Area.* If a variance is granted, it would confer upon the applicant a special privilege that would be denied to others in this area, as well as in similar situations in the County's Critical Area. To grant a variance to place development within the Buffer would confer a special privilege on the applicant. The applicant has the burden of proof and the burden of persuasion to overcome the presumption that the proposed variance does not conform to the Critical Area Law. We do not believe that the applicant has overcome this burden.

Ms. Cathy Maxwell

January 31, 2006

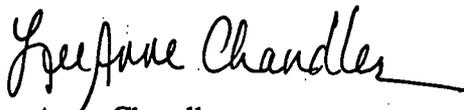
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4. *The variance request is not based upon conditions or circumstances which are the result of the actions by the applicant, nor does the request arise from any condition conforming, on any neighboring property. The variance request is based upon circumstances that are a result of actions by the applicant as construction was started without any permits or needed approvals. Please note that the amendments from 2004 specifically state that the Board may consider the fact that the request is based on conditions that are the result of actions by the applicant, including the commencement of development activity before the application for a variance was filed, in their consideration of this request.*
5. *If granting of a variance will not adversely affect water quality or adversely affect fish, wildlife, or plant habitat within the jurisdiction's Critical Area and the granting of the variance will be in harmony with the general spirit and intent of the Critical Area Law and the regulations. In contrast, the granting of this variance is not in harmony with the general spirit and intent of the Critical Area Law and regulations. It appears that at least 500 square feet of new development and consequential disturbance to the land will occur, which results in increased stormwater and sediment runoff and the loss of essential infiltration opportunities.*

In conclusion, it is our position, that the applicant has not met the burden of proof to overcome the presumption of nonconformance, nor the burden to prove that each one of the County's variance standards have been met. We recommend that the Board of Appeals deny this application and compel restoration of the site. Restoration should include revegetating the area with trees and shrubs to help restore functions to the Buffer.

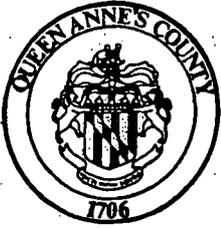
Thank you for the opportunity to provide comments. Please include this letter in your file and submit it as part of the record for this variance. Also, please notify the Commission in writing of the decision made in this case.

Sincerely,



LeeAnne Chandler
Science Advisor

cc: QC778-05



**BOARD OF APPEALS
OF
QUEEN ANNE'S COUNTY
160 COURSEVALL DR.
CENTREVILLE, MARYLAND 21617
410-758-1255**

410-758-4088 Permits
410-758-3972 Fax
410-758-1255 Planning
410-758-2905 Fax
410-758-2126 TDD

March 15, 2006

Mr. & Mrs. Fred J. Fillah
328 Wye Harbor Dr.
Queenstown, MD 21658

**RE: BOARD OF APPEALS CASE NO. V-110008
VARIANCE TO CONSTRUCT WALKWAY, PATIO AND
RETAINING WALL WITHIN 100 FT. CRITICAL AREA BUFFER
SEDIMENT CONTROL PERMIT NO. S05-0274**

Dear Mr. & Mrs. Fillah:

Enclosed are the Board's formal Decision and the Excerpts of the Minutes from the 2/9/06 hearing. Your request for a variance from §14-1-11 (Definition Buffer) of Chapter 14 of the Code of Public Laws of Queen Anne's Co. (1996 ED), to construct a walkway, patio and retaining wall within the 100 ft. Critical Area Buffer was approved in part and denied in part. The Board **granted** the variance for the walkway. The Board **denied** the variance for the patio and retaining walls and they will have to be removed.

Also you are required to present to the Dept. of Planning & Zoning a satisfactory landscaping plan to mitigate the effects of the variance for the walkway.

Please contact our Permit Dept. at 410-758-4088 concerning your pending permit

Sincerely,

Cathy Maxwell
Clerk

Enc.

CC: Robert Schuerholz
LeeAnne Chandler
Stephen H. Kehoe, Esq.
James H. Barton
Ed Davis
Bd. Members
Gene Palmatary
Permit Dept.

IN THE MATTER OF
THE APPLICATION OF
FRED J. FILLAH and
JODY A. FILLAH

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BOARD OF APPEALS
OF
QUEEN ANNE'S COUNTY
Case No. V-110008

FINDINGS AND DECISION

This matter came before the Board of Appeals for hearing on Thursday, February 9, 2006 at 5:45 p.m., at Board of Appeals office at 160 Coursevall Drive, Centreville, MD 21617, to hear and decide the application of FRED J. and JODY A. FILLAH (the "Applicants"), being Case No. V-110008. All legal requirements pertaining to the filing of this application and notice of public hearing were substantiated and there were no objections made to the jurisdiction of this Board. This matter was heard by William D. Moore, Chairman, Kenneth R. Scott, Vice Chairman and Howard Dean, Member, of the Board of Appeals of Queen Anne's County.

RELIEF REQUESTED

The Applicants have requested a Variance from strict application of §14-1-11, of the *Code of Public Laws of Queen Anne's County, 1996 ED.*, (definition of "buffer") to construct a walkway, patio and retaining wall within the 100 ft. Critical Area Buffer.

PROPERTY DESCRIPTION

The property which is the subject of this application consists of a 2.8 acres, more or less and is located at 328 Wye Harbor Drive, Queenstown, MD, in the Wye Harbor Subdivision, Fifth Election District, NC-1 Zoning District in the RCA (Resource Conservation Area), Critical Area District, Sectional Zoning Map 59, Parcel 191, Block 7, Lot 12.

PLANNING AND ZONING

Gene Palmatary spoke on behalf of the Department of Planning & Zoning. He stated that the Department received a report that construction was taking place on the shoreline of the subject property in violation of the Critical Area Ordinance. An inspection determined that there was a structure within the Critical Area. He noted that there was a retaining wall that was 32' long and 2' high and a flagstone walkway on sand 23' from the mean high water line. He stated that the impervious area that the wall would encompass would be 58 square feet. He also noted that impervious area of the walkway was 1,100 square feet. He stated that no permits were issued for this construction and advised the applicants that they would need to seek a variance.

FACTUAL FINDING

Fred Fillah spoke on behalf of the application. He said that he and his wife enjoy landscaping and are always looking for landscaping projects on their property. He stated that the thought never occurred to him that a structure without footers would require permission. He stated that he had an elderly uncle for whom it was necessary to have a walkway in order to

access the pier on the property. He also stated that the pier was not visible from the existing deck located near the house but outside the Critical Area Buffer. He stated that the walkway was made of keystone block and sand and that water passed through it. He was cognizant of the Critical Area laws and stated that he would like for plantings that would better absorb the rainwater because of the construction. He also noted that new homes were being built with poured concrete boat ramps. He said that the patio area (one half of which had been constructed) was surrounded by crepe myrtles. He also pointed out that the walkway was in place at least a year and a half before he started construction of the retaining walls and patio. He stated that water runs into a gully that acts like a bog.

Robert Scheurholz spoke on behalf of the application. Mr. Scheurholz stated that he is the Fillahs' next door neighbor and supports the critical area laws. He stated that he has, over the years, opposed projects where water quality would be adversely affected. He suggested that the Critical Area law is good in some respects but not in others. He noted, by way of example, that the 100' buffer is insufficient for a parking lot that is located 100' from the mean high water line. He stated that in the particular instance of this case the buffer is unnecessary and noted that the sand, grass and weeds growing between the flagstones would have an infiltration in fact absorbing water in most circumstances. He stated that any adverse affects by heavy rain could easily be taken care of by appropriate ground cover within the 100' buffer. He felt that the 100' buffer as applied to the Fillahs' construction project is far too excessive and described it as "absurd."

Ed Davis, another neighbor of the Fillahs, also spoke in support of the application. He stated that he agreed with Mr. Scheurholz and that the 58 square feet of impervious cover and a 2.8 acre parcel of property is a small percentage of land at issue. He also echoed the Fillahs' concerns about child safety to be able to watch them on the pier from the patio area.

OPPOSITION

LeeAnne Chandler, Science Advisor, of the Critical Area Commission spoke in opposition to the application. Ms. Chandler stated that the buffer is key to providing habitat and structures of any kind take away opportunities to create or restore habitat. She noted that space occupied by the buffers for repairing a habitat. She said that the safety concerns that the Fillahs raised can be addressed in other ways and suggested that they merely put Adirondack chairs on their lawn.

Ms. Chandler stated that the key concern under the Critical Area law is whether there is unwarranted hardship without the variance. She noted that unwarranted hardship means making use of the entire lot. She stated that there is nothing peculiar about the subject property and that the rights of other property owners are still subject to the same Critical Area prohibitions. She pointed out that some of the uses of other properties were in existence prior to 1985 when the Critical Areas law was passed. She argued that the granting of the variance in this particular instance would create a special privilege not enjoyed by other property owners. She stated that since part of the patio, retaining wall and walkway have been partially built, that they be removed. She stated that any mitigation of disturbance be at a 3 to 1 ratio

and as such, it would be incumbent on the property owners to come up with a planting buffer management plan that would be satisfactory to the local Department of Planning and Zoning.

REBUTTAL TESTIMONY

In rebuttal, Mr. Fillah said there is a great deal of wildlife on the property for the ground hogs, gophers, nutria and foxes. Mr. Scheurholz stated that there is a wildlife refuge across the water from the subject property, and that when a tree falls, mud balls often run off into the river. He questioned whether the wildlife refuge or the Fillahs' proposed landscape was better for water quality.

Ms. Chandler stated that the unwarranted hardship is a difficult standard and contended that Fillahs have it meadowed.

BOARD'S DECISION

The Board of Appeals of Queen Anne's County grants the variance in part and denies the variance in part. The Board will grant the variance with respect to the walkway to the water because the walkway can be used to accommodate a disabled family member and is in accordance with Mastandrea v. North, 361 Md. 107, 760 A.2d 677 (2000). The Board denies the variance with respect to the patio and retaining walls and the patio and retaining walls will have to be removed. As to the walkway, the Board finds:

A. That a literal enforcement of Chapter 14-1 would result in unnecessary hardship of the specified conditions which hardship is not shared by owners of other properties in the same development area.

- B. Those conditions are peculiar to the property involved.
- C. The conditions are not the result of any action taken by the applicant.
- D. The variance will not be contrary to the public interest or the policies, goals, and objections of Chapter 14-1 in the Queen Anne's County Critical Area Program.

E. The variance will not confer upon the applicant any special privilege denied to other owners of like properties or structures within the Critical Area.

F. The variance will not adversely effect water quality or adversely impact fish, wildlife or planned habitats within the Critical Area.

G. The variance is the minimum deviation from the provisions of Chapter 14-1 that would make possible reasonable use of land or structures.

H. Granting of the variance will be in harmony with the general purpose and intent of Chapter 14-1 and the Queen Anne's County Critical Area Program and the variance will not result in a use not permitted in the applicable development area and are an increase in the applicable density limitations.

As to the patio and retaining wall, the Board finds:

A. That a literal enforcement of Chapter 14-1 would not result in an unnecessary hardship as a result of the specified conditions, which hardship is not shared by other owners in the same development area.

B. That the conditions are not peculiar to the subject property of all.

C. The conditions are the result of action taken by the applicant.

D. The variance will be contrary to the public interest or policies, goals and objectives of Chapter 14-1 in the Queen Anne's County Critical Area Program.

E. The variance will confer upon the applicant as special privilege denied to other owners of like property and/or structure within the Critical Area.

F. The variance will adversely affect water quality or adversely affect fish, wildlife or plant habitats within the Critical Area.

G. The variance would not be the minimum deviations from the provisions of Chapter 14.1 and that the applicant can make a reasonable use of the land or structures without the variance.

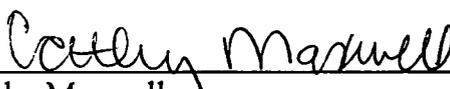
H. The granting of the variance would not be in harmony with the general purpose and intent of Chapter 14-1 and the Queen Anne's County Critical Area Program and the variance.

The applicant must present to the Queen Anne's County Department of Planning and Zoning a satisfactory landscaping plan to mitigate the effects of the variance for the walkway granted herein.

STATE OF MARYLAND
QUEEN ANNE'S COUNTY

I HEREBY CERTIFY that the foregoing is a true and correct copy of the Finding and Decision of the executive meeting of the Board of Appeals of Queen Anne's County held on Thursday, February 22, 2006, and that the said minutes now remain on file in the Board's office.

In testimony whereof, I have hereunto subscribed my name this 15th day of March, 2006.



Cathy Maxwell
Clerk



Stephen H. Kehoe
Attorney for Board of Appeals



**BOARD OF APPEALS
OF
QUEEN ANNE'S COUNTY
160 COURSEVALL DR.
CENTREVILLE, MARYLAND 21617
410-758-1255**

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**EXCERPTS OF THE MINUTES OF THE
BOARD OF APPEALS
OF QUEEN ANNE'S COUNTY**

CASE NO: V-110008
APPLICANT: Fred J. & Jody A. Fillah
HEARING DATE: 2/9/06
REQUESTING: A variance from §14-1-11 (Definition Buffer) of Chapter 14 of the Code of Public Laws of Queen Anne's Co. (1996 ED), to construct a walkway, patio and retaining wall within the 100 ft. Critical Area Buffer. Located at 328 Wye Harbor DR., Wye Harbor Subdivision, near Queenstown, 5th E.D., Map 59, Parcel 191, Lot 12, zoned NC-1 and RCA.

IN ATTENDANCE: William D. Moore, Chairman; Kenneth R. Scott, Vice-Chairman; Howard A. Dean, Member; Stephen H. Kehoe, Esq., Attorney for the Board; Cathy Maxwell, Clerk to the Board; Gene Palmatary, Zoning Inspector; Fred J. & Jody A. Fillah, Applicants; LeeAnne Chandler, Critical Area Commission.

CHAIRMAN: Does the Board see a need for an executive session.

SCOTT: I'd like to ask him a question.

CHAIRMAN: We have a motion to go into executive session and seek legal advice from our Counsel. Do we have a second.

DEAN: Second.

FRED FILLAH: Can I say one more thing. If it's a matter of improving the habitat or the infiltration, I've wanted to do that since day one since we found out there is a problem. And it can be done, it can be improved. It's a matter of bringing in trees where trees have fallen in. I like landscaping, I have no problem with trees. We can improve the habitat immensely if that's important. So for me, are we trying to uphold a rule or are we trying to improve the habitat. If we're truly trying to do that, I think that's the decision you're going to have to make and that's the thing that supercedes the law is are we going to go and improve the habitat on my property. I'm motivated to do that. I don't have a problem with that. It's what I've been doing since I moved in.

DEAN: I have a question. How wide is this whole thing? How long? 550 sq. feet.

JODY FILLAH: The bigger patio, I think it's like 20 ft.

CHAIRMAN: We have a motion to go into executive session for legal advice. All in favor, Aye (all in favor).

CHAIRMAN: Case V-110008 is now back in session after a brief session for legal advice. Mr. Kehoe was very helpful in the area of the questions we had. Do we have a motion.

SCOTT: I was thinking we should split this into two different categories when we say our motions. One for the walkway itself and then another one for the patio area down near the water.

KEHOE: Two patios.

SCOTT: The two patios, the split patio area on both sides of the walkway down near the water. We feel the walkway is needed for handicap access down to the water and probably a good thing to have if you have people in wheelchairs. The patios themselves might be a little too much.

CHAIRMAN: Then there was legal advice given according to the handicap walkway and Mr. Kehoe will put that in his minutes. We'll do the walkway first and these are the criteria.

KEHOE: Do you find that a literal enforcement of Chapter 14:1 would result in unnecessary hardship as a result of the specified conditions, which hardship is not shared by owners of other property in the same development area.

CHAIRMAN: Yes.

SCOTT: Yes.

DEAN: Yes.

KEHOE: Are those conditions are peculiar to the property involved.

CHAIRMAN: Yes.

SCOTT: Yes.

DEAN: Yes.

KEHOE: Do you find those conditions are not the result of any action taken by the applicant.

CHAIRMAN: Yes.

SCOTT: Yes.

DEAN: Yes.

KEHOE: Do you find that the variance will not be contrary to the public interest or policies, goals and objectives of Chapter 14:1 and the Queen Anne's Co. Critical Area Program.

CHAIRMAN: Yes.

SCOTT: Yes.

DEAN: Yes.

KEHOE: Do you find the variance will not confer upon the applicant any special privilege denied to other owners of like property and/or structures within the Critical Area.

CHAIRMAN: Yes.

SCOTT: Yes.

DEAN: Yes.

KEHOE: Do you find the variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitats within the Critical Area.

CHAIRMAN: Yes.

SCOTT: Yes.

DEAN: Yes.

KEHOE: Do you find the variance is the minimum deviation from the provisions of Chapter 14:1 that will make possible the reasonable use of the land and/or structures.

CHAIRMAN: Yes.

SCOTT: Yes.

DEAN: Yes.

KEHOE: Do you find that the granting of the variance will be in harmony with the general purpose and intent of Chapter 14:1 and the Queen Anne's Co. Critical Area Program and the variance will not result in a use not permitted in the applicable development area or an increase in the applicable density limitations.

CHAIRMAN: Yes.

SCOTT: Yes.

DEAN: Yes.

KEHOE: As to the patios. Do you find that a literal enforcement of Chapter 14:1 would result in unnecessary hardship as a result of the specified conditions which hardship is not shared by owners of other property in the same development area.

CHAIRMAN: No.

SCOTT: No.

DEAN: No.

KEHOE: Do you find that the conditions are peculiar to the property involved.

CHAIRMAN: No.

SCOTT: No.

DEAN: No.

KEHOE: Do you find that the conditions are not the result of any action taken by the applicant.

CHAIRMAN: No.

SCOTT: No.

DEAN: No.

KEHOE: Do you find the variance will not be contrary to the public interest or policies, goals and objectives of Chapter 14:1 and the Queen Anne's Co. Critical Area Program.

CHAIRMAN: No.

SCOTT: No.

DEAN: No.

KEHOE: Do you find the variance will not confer upon the applicant any special privilege denied to other owners of like property and/or structures within the Critical Area.

CHAIRMAN: No.

SCOTT: No.

DEAN: No.

KEHOE: Do you find the variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitats within the Critical Area.

CHAIRMAN: No.

SCOTT: No.

DEAN: No.

KEHOE: Do you find the variance is the minimum deviation from the provisions of Chapter 14:1 that will make possible the reasonable use of the land or structures.

CHAIRMAN: No.

SCOTT: No.

DEAN: No.

KEHOE: Do you find the granting of the variance will be in harmony with the general purpose and intent of Chapter 14:1 and the Queen Anne's Co. Critical Area Program and the variance will not result in a use not permitted in the applicable development area or an increase in the applicable density limitations.

CHAIRMAN: No.

SCOTT: No.

DEAN: No.

CHAIRMAN: We've heard the criteria. Do we have a motion.

SCOTT: I'm confused on how to word it.

KEHOE: I think you might want to make a motion to grant the variance in part and to deny it in part. Grant it with respect to the walkway, but deny it with respect to the patios. And the mitigation issue, do you want to include that in your motion.

SCOTT: I make a motion in two parts. One, that the walkway down to the water inside the critical area be permitted due to handicap reasons. And be mitigated 3-to-1.

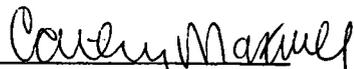
KEHOE: I think with a planting plan subject to approval by Queen Anne's Co.

SCOTT: With a planting plan subject to approval by Queen Anne's Co. And then the second part, the two patio areas down by the water area be removed and it be restored back to the conditions previously.

CHAIRMAN: We have a motion by Mr. Scott.

DEAN: Second

CHAIRMAN: Seconded by Mr. Dean. All in favor, Aye. (all in favor). Let the record show it was approved in part for the walkway, and denied in part for the two patios. There will be a written decision forthcoming. I declare this hearing adjourned.


Cathy Maxwell, Clerk

2/10/06

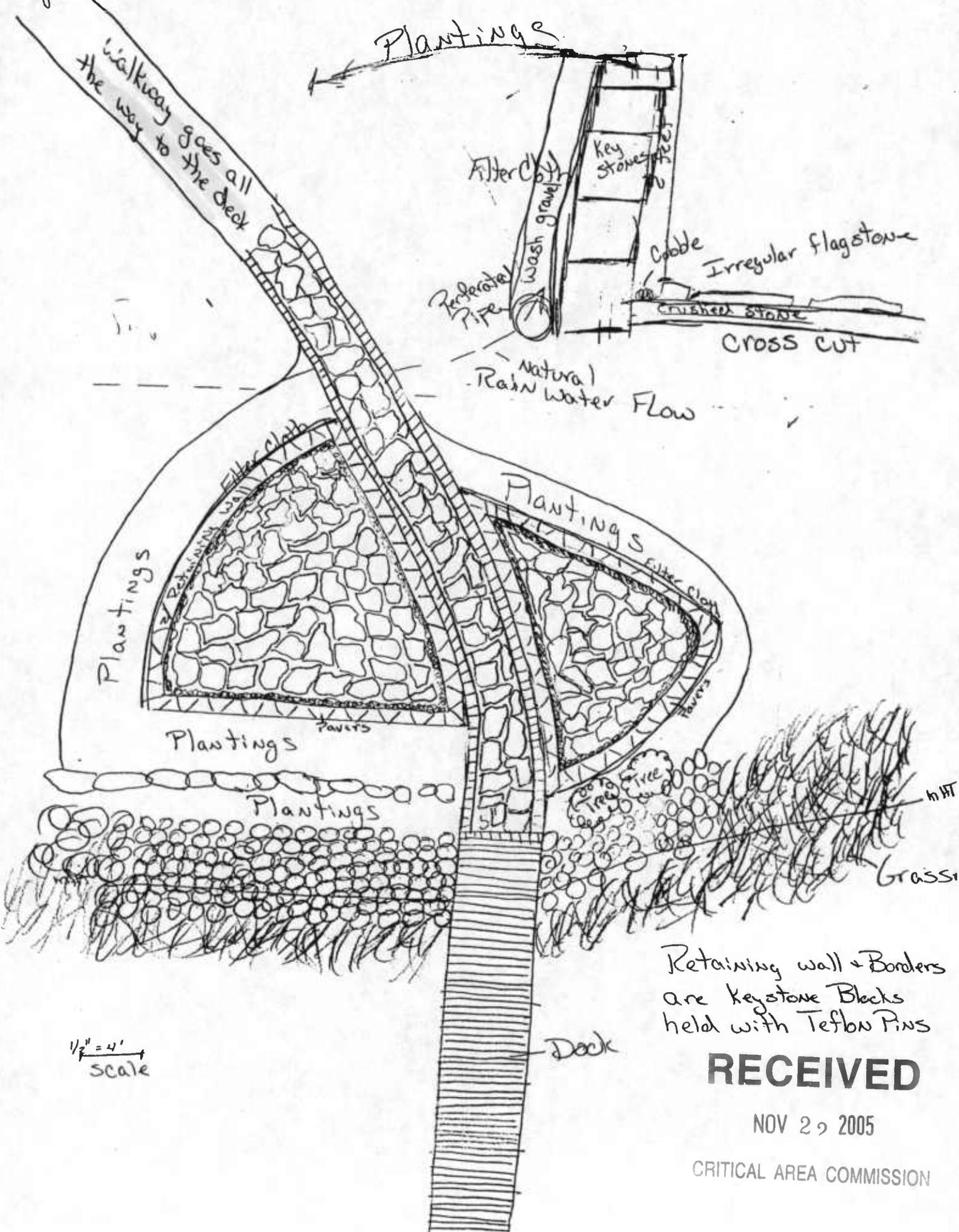
Date

CC: Fred. J. & Jody A. Fillah
Ed Davis
Bd. Members
Gene Palmatary
Permit Dept.

Robert Schuerholz
LeeAnne Chandler
Stephen H. Kehoe, Esq.
James H. Barton

Proposed permeable driveway

1" = 1'



Retaining wall + Borders are keystone Blocks held with Teflon Pins

RECEIVED

NOV 29 2005

CRITICAL AREA COMMISSION

MEMORANDUM

To: Stan Causey, MDE, Tidal Wetlands Division

From: LeeAnne Chandler, Critical Area Commission

Date: January 31, 2006

RE: MDE Permit Application #06-WL-0415 (200566000), Fred Fillah

This office has received a copy of the permit application for the project referenced above. Specifically, the applicant is requesting a permit to construct a stone revetment within a maximum of 10 feet channelward of the mean high water line for the purpose of shore erosion control. We would like to bring several issues to your attention.

1. Commission staff visited the site during the course of review for a requested local after-the-fact variance to complete construction of patios at the water's edge within the Buffer. The hearing date for the variance is Thursday, February 9th, 2006. For your information, our comments on the variance are included with this memo. In addition, please be aware that there may be another outstanding Buffer violation on the property (specifically a shed and driveway within the Buffer to the tidal marsh that lies along the eastern edge of the property) that is being brought to the attention of the County.
2. At the site visit, there was noticeable erosion present, especially along the western end of the property. However, there was also visible *Spartina* present. We do not oppose placement of protective stones at the toe of the existing bank, but we do have some concerns about proposed wholesale bank grading. The few trees that remain in the Buffer are within the area that is proposed for grading.
3. The drawing provided with the application does not clearly show the variability in the shoreline as to the severity of the erosion and the need for any grading at all. Also, the northern end of the property (the foot of the "L") actually fronts on what is shown on maps as a high marsh/scrub/shrub tidal wetland. It seems that once the property turns the corner, the fetch across the river and wind effects certainly change in a way that would effect the erosion rate.
4. We recommend that the applicant be required to provide surveyed, professionally prepared plans for this proposal. As indicated above, the length of the revetment and the proposed grading are our major issues of concern. We recognize that some structural protection measures are warranted on some parts of the shoreline but have significant concerns about the extent and scale of the proposal.

Thank you for the opportunity to comment. If you have any questions or concerns, or would like to discuss these issues further, please contact me at (410) 260-3477.

cc: Jim Barton, Zoning Administrator

MERLIN Online Map

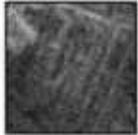
Wetlands DNR

Wetlands - DNR Queen_NE

-  Palustrine
-  Riverine
-  Estuarine
-  Palustrine
-  Upland

Photo 1998 1m

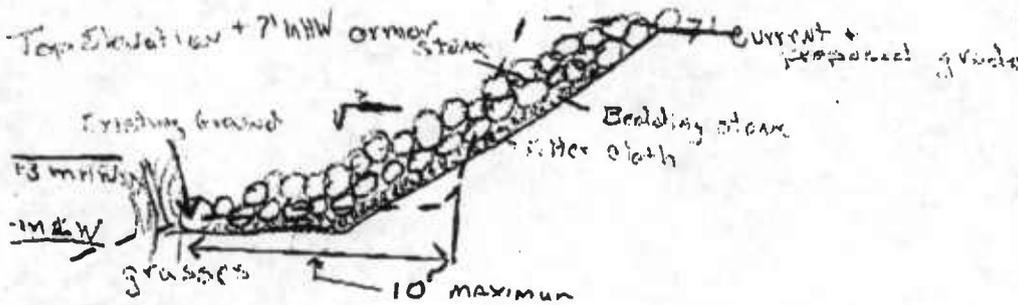
Queenstown NE 3.75' B/W 1998



N 144125.07m E 472603.14m

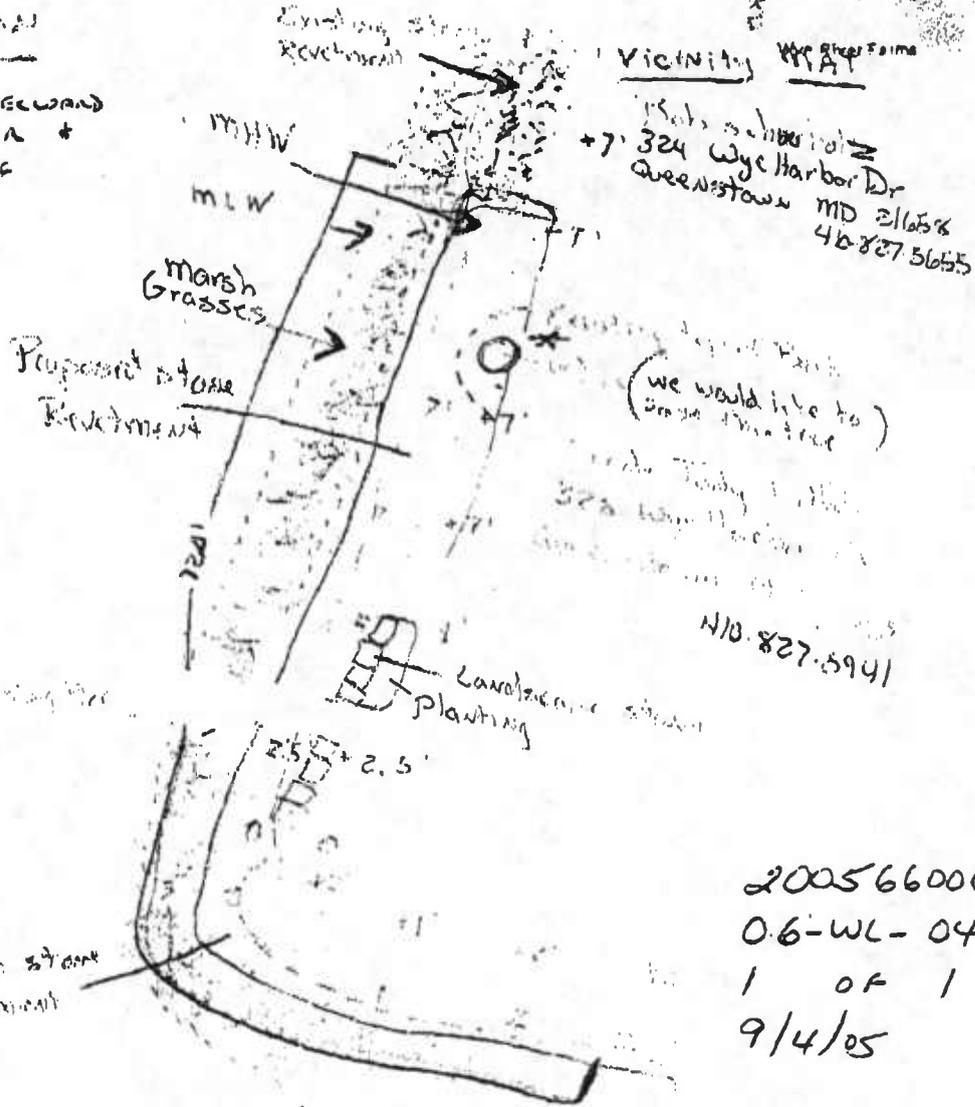
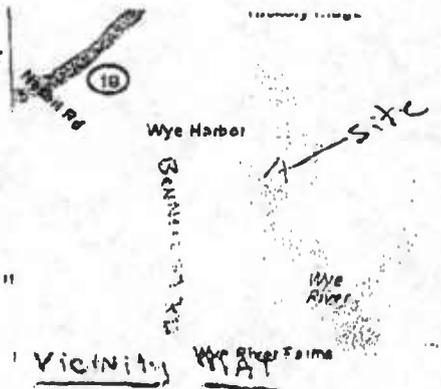


Coordinates at center of image in Maryland State Plane, NAD 1983 meters
2005, Maryland Department of Natural Resources, www.mdmerlin.net
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Revetment Section

MAXIMUM 10' CHANNELWARD
 OF MEAN HIGH WATER +
 LANDWARD OF EXISTING
 MARSH GRASSES



200566000
 06-WL-0415
 1 OF 1
 9/4/05

- 1 Tidal Range is 2'-3'
- 2 soundings are feet water to MHW
- 3 Revetment will extend no further outward than necessary to protect the marsh grasses
- 4 Top of Bank will pull back to maintain a 2:1 slope.
- 5 Would like help to save a large oak tree

Bill Proctor
 331 Wye Harbor Dr.
 Queenstown MD 21658
 410-827-7813

Bulkhead
Proposed stone
Revetment
 In Wye River
 near Saddle Creek
 Queen Anne County, MD
 Applied by Stan Causey

Permit Application Screening Form

Tracking No:

Applicant:

County: ADC Map: Ed:

Project Type:

Waterbody:

Fed. Nav. Channel?

Location

State Plane 83 Meters: N E

Latitude/Longitude 83: N W

DOQQ:

Critical Area/1000' Buffer?

100 yr Floodplain? Floodway?

Reference Information

FEMA FIRM Index: Taxmap:

Watershed:

Resource and Heritage Areas

NWI?

DNR Wetlands?

MHT?

Sens/Endg Sp?

WSSC? SAV?

Screened By: Date Screened: