

TC 742-05 Backcreek Capital, LLC  
VAR 1406

MSA-S-1829-5343

Comments 12/14/05  
KJH

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/)

December 14, 2005

Ms. Mary Kay Verdery  
Talbot County Office of Planning and Zoning  
11 N. Washington Street  
Courthouse  
Easton, Maryland 21601

Re: Appeal #1406  
Backcreek Capital, LLC

Dear Ms. Verdery:

This letter provides the comments of the Critical Area Commission on the above-referenced variance. Based on the information provided to us, we strongly oppose a variance in this case.

The applicant is requesting approval to construct an approximately 3,600 square foot building in order to accommodate the construction of an automotive repair shop. In addition, approximately 10,524 square feet of parking is proposed. The property is currently undeveloped and is designated a Limited Development Area (LDA). The proposed construction of the repair shop and parking on this undeveloped site will result in a developed parcel which is approximately 46% impervious. This far exceeds the 15% limit on impervious surface for LDA parcels under State law. State law provides that the impervious surface area limit for this parcel is *15% or 5,445 square feet, whichever is greater.*

On October 17, 2005, Commission staff provided comments on the site plan component of this proposal. We have not changed these comments. To reiterate: the parcel is currently undeveloped, and the proposed improvements far exceed the impervious surface area limits permitted in State Law (Natural Resources Article 8-1808.3) and in the Talbot County Zoning Ordinance. We believe that growth allocation will be necessary in order to allow development of the property as proposed. As such, we strongly oppose the granting of a variance.

As you know, the General Assembly strengthened the Critical Area variance standards in 2002 and 2004. In order to grant a variance, the Board of Appeals must make findings that the applicant has proved that he meets each one of the enumerated variance standards. Moreover, the legislature specifically required the local Boards of Appeal to evaluate variance requests under the presumption 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" the State law, Critical Area Criteria, and the local Critical Area program. Annotated Code of Maryland, Natural Resources Article § 8-1808(d)(2)(i). I have addressed each of the County's variance standards below:

Mary Kay Verdery  
Backcreek Capital, LLC  
December 14, 2005

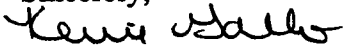
1. *That special conditions or circumstances exist that are peculiar to the land or structure within the jurisdiction's Critical Area program that would result in an unwarranted hardship to the applicant.* While this site may not be large enough to accommodate the size of this proposed structure and parking lot, it does appear possible to develop the property within the permitted impervious surface area limits (15% or 5,445 square feet). Because denial of the variance would not deprive the applicant of reasonable and significant use of the entire parcel, the standard of unwarranted hardship cannot be met.
2. *That a literal interpretation of this subtitle or the local 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 General Assembly placed the impervious surface limits in State law. There is no "right" to exceed these limits. On an undeveloped parcel, this office does not support similar variance requests to exceed the impervious surface area limits, unless the applicant presents the extraordinary circumstance in which he can meet each and every one of the variance standards. The information provided to us falls far short of meeting the variance standards. Moreover, the General Assembly and the County's zoning ordinance provide a process for applicants who wish to develop LDA parcels with a large amount of impervious surface. Growth Allocation is the mechanism by which the County may accommodate this development request. We reiterate that the granting of a variance to exceed impervious surface limits on an undeveloped parcel is not appropriate.
3. *The granting of a variance will not confer upon an 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 the 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. Again, the General Assembly placed the impervious surface limits in State law, and the applicant would receive a special privilege if the County allowed him to exceed these limits.
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.* It appears that the applicant has met this standard.
5. *The granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the jurisdiction's Critical Area, and that the granting of the variance will be in harmony with the general spirit and intent of the Critical Area law and the regulations.* The granting of a variance to exceed the impervious surface area limits in State and County law on an undeveloped parcel is directly in contrast with the general spirit and intent of the Critical Area law and regulations. This is especially true where, as in this case, an alternative exists through the appropriate award of growth allocation. Impervious surface areas beyond those permitted in the law severely exacerbate the amount of stormwater runoff and sedimentation that occurs post-development on any given parcel. The granting of variance in this case will generate a quantity of sediment and stormwater runoff that is detrimental to water quality, as well as, fish, wildlife and plant habitat within the County's Critical Area.

Mary Kay Verdery  
Backcreek Capital, LLC  
December 14, 2005

In conclusion, it is our position that, unless the Board finds, by competent and substantial evidence, that the applicant has met the burden of proof to overcome the presumption of non-conformance, and the burden to prove that the applicant has met each one of the County's variance standards, the Board must deny the applicant's request for a variance as proposed.

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. If you have any questions, please contact me at 410-260-3482.

Sincerely,



Kerrie L. Gallo  
Natural Resources Planner  
TC742-05  
TC682-05

cc: Marianne D. Mason, Assistant Attorney General

J. JOSEPH CURRAN, JR.  
ATTORNEY GENERAL  
DONNA HILL STATON  
DEPUTY ATTORNEY GENERAL  
MAUREEN M. DOVE  
DEPUTY ATTORNEY GENERAL



STATE OF MARYLAND  
OFFICE OF THE ATTORNEY GENERAL

DEPARTMENT OF NATURAL RESOURCES

JOSEPH P. GILL  
ASSISTANT ATTORNEY GENERAL  
PRINCIPAL COUNSEL  
MARIANNE D. MASON  
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STUART G. BUPPERT, II  
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March 27, 2006

Clerk of the Circuit Court  
Talbot County Circuit Court  
Courthouse  
11 North Washington Street  
Easton, Maryland 21601

RE: Petition of Martin G. Madden, Chairman, Critical Area Commission for the  
Chesapeake and Atlantic Coastal Bays for Judicial Review of Decision of the  
Talbot County Board of Appeals in Case No. 1406, Backcreek Capital, LLC.

Dear Clerk:

Enclosed for filing is a Stipulation of Dismissal with Prejudice in the above referenced  
case.

Thank you for your assistance in this matter.

Very truly yours,

A handwritten signature in cursive script that reads "Marianne D. Mason".

Marianne D. Mason  
Assistant Attorney General

IN THE CIRCUIT COURT OF MARYLAND FOR TALBOT COUNTY

PETITION OF: \*  
MARTIN G. MADDEN \*  
FOR JUDICIAL REVIEW OF THE \*  
DECISION OF THE \*  
TALBOT COUNTY BOARD OF APPEALS \*

IN THE CASE OF: \*  
CASE NO. 1406 \*  
BACKCREEK CAPITAL, INC. \*

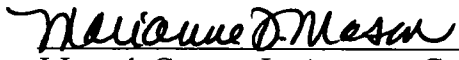
Case No.:20-C-06-5586

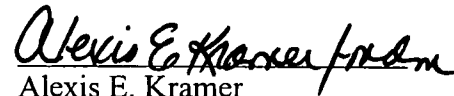
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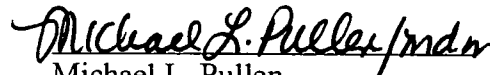
STIPULATION OF DISMISSAL WITH PREJUDICE

Pursuant to Rule 2-506(a), the parties, by their respective counsel, hereby stipulate that this action is dismissed with prejudice.

Respectfully submitted,

  
J. Joseph Curran, Jr. Attorney General  
Marianne D. Mason  
Assistant Attorney General  
Department of Natural Resources  
580 Taylor Avenue C-4  
Annapolis, Maryland 21401  
(410) 260-8351  
*Attorneys for Petitioner,  
Martin G. Madden, Chairman  
Critical Area Commission for the  
Chesapeake and Atlantic Coastal Bays*

  
Alexis E. Kramer  
Ewing, Deitz, Fountain & Kehoe PA.  
16 South Washington Street  
Easton, Maryland 21601  
(410) 822-1988  
*Attorneys for Respondent,  
Backcreek Capital, LLC*

  
Michael L. Pullen  
Talbot County Attorney  
11 North Washington Street  
Easton, Maryland 21601  
(410) 770-8092  
*Attorney for Talbot County Maryland*

DATED: March 27, 2006

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of March, 2006, a copy of the foregoing Stipulation of Dismissal With Prejudice was sent via U.S. mail to each of the attorneys of record listed below.



Marianne D. Mason

Alexis E. Kramer  
Ewing, Deitz, Fountain & Kehoe PA.  
16 South Washington Street  
Easton, Maryland 21601  
(410) 822-1988  
*Attorneys for Respondent,  
Backcreek Capital, LLC*

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11 North Washington Street  
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(410) 770-8092  
*Attorney for Talbot County Maryland*

Regina

MINUTES OF PUBLIC HEARING  
TALBOT COUNTY BOARD OF APPEALS  
Appeal No. 1406

Pursuant to due notice, a public hearing was held by the Talbot County Board of Appeals at the Bradley Meeting Room, Court House, South Wing, 11 North Washington Street, Easton, Maryland, beginning at 7:30 p.m., December 19, 2005, on the application of **BACKCREEK CAPITAL, LLC** ("Applicant"). The Applicant is requesting a variance of the maximum 2,000 square foot gross floor area for a total of 3,600 square feet to construct a 60' x 60' automobile service and repair shop. In addition, the Applicant is requesting a variance of the allowable 15% impervious surface coverage limit for a total of 45.6% impervious surface. The property is located at 6211 Tilghman Island Road, Tilghman, Maryland 21671 in the Village Center/Critical Area (VC/CA) zone. The Applicant is the property owner. The application is made in accordance with Chapter 190 Zoning, Article IV, §190-19; Article XII, §190-93E(6)(c)[1][a][i]; and Article XIV, §190-104 of the Talbot County Code ("Zoning Ordinance").

Present at the hearing were Board of Appeals members Paul Shortall, Jr., Chairman, Phillip Councill, Jr., Vice Chairman, Jack K. Sun, Phillip Jones, and Rush Moody, Jr. The Applicants were represented by Alexis Kramer, Esquire, 16 South Washington Street, Easton, Maryland. Glenn D. Klakring was the attorney for the Board of Appeals.

It was noted for the record that all members of the Board had visited the site.

The following exhibits were offered and entered into evidence as Board's Exhibits as indicated:

Total area of 3 lots = ~71 acres  
15% = 4,639 #

If you took 25% of each lot, the total imp. surface allowed = ~8,000 #

Board allowed 10,404 # (not counting areas of previous pavers)



1. Application for variance.
2. Copy of a portion of the Talbot County tax map with the property highlighted.
3. Notice of Public Hearing.
4. Certificate of publication of the Notice of Public Hearing from the Star-Democrat.
5. Notice of hearing with a list of nearby property owners attached thereto.
6. Copy of variance requirements from the Ordinance with the Applicant's response to each applicable requirement.
7. Planning Office Staff Memorandum. The staff recommended certain conditions should the application be approved.
8. Sign Maintenance Agreement and Affidavit.
9. Site plan.
10. Planting plan.
11. Floor plan.
12. Letter from the Critical Area Commission dated December 14, 2005. The Commission opposes the application.
13. Letter from the State Highway Administration dated November 3, 2005.
14. Impervious surface calculations.
15. Letter from David Clarke, dated November 7, 2005.
16. Letter from Russell Dize.
17. Letter from Edward Bridges, dated December 12, 2005.

18. Letter from Douglas Fluharty, dated December 14, 2005.
19. Letter from Edward and Fanoula Sullivan, dated November 22, 2005.
20. Letter from Jerry Barrow.
21. Petition in support of variance (four pages).

In his opening statement Mr. Kramer said that the Applicant wishes to expand his two-bay automotive repair business on Tilghman Island. The Applicant's business is growing. There are only two automotive repair shops in Tilghman. The other is a small shop offering different services.

The first witness was the owner, Mark B. Bridges. He owns the business with his wife. They repair cars, trucks, boats, and small motorized items such as lawn mowers. Their business is currently located at 5801 Tilghman Island Road, across from the bank in Tilghman. It is in a 52' x 30' rented building with only three doors. The doors only open to eight feet and the building has a ceiling of only nine feet. The ceiling height restricts the height at which vehicles can be lifted for underside repairs. Because of those limitations much of the repair work has to be accomplished outside in the weather. The property has insufficient parking and he has to rent an overflow parking area.

Mr. Bridges believes that one reason for his success is the convenience of having a local repair shop in Tilghman. He can work on most, if not all, models of cars through the 2005 model year. He has all the required computerized equipment to analyze problems in late model cars. There is only one other mechanic shop on the Island.

The owner of his present building does not want to sell the property. He looked throughout Tilghman for a suitable site to relocate and expand his shop. He finally found and purchased the

subject three contiguous lots. He paid a total of \$345,000.00 for the three lots. He wishes to delete the lot lines making them all one lot.

He is proposing a six-bay building for his shop on the combined three lots. Although he employs only one other mechanic, he needs the additional bays to store disassembled vehicles waiting for parts from Easton. It usually takes most of one day for the delivery of necessary parts from Easton to Tilghman. With the extra bays they can continue to work on other cars without reassembling and moving vehicles awaiting parts. Each bay will have a separate entrance. In addition, the plans are for 15 parking spaces for customer vehicles and for Mr. Bridges and his employee.

The rear and side yard parking lot will be surrounded by a six-foot fence to screen it from the roadway and from neighboring residential properties. Storm water management ponds will be inside the fence for safety and aesthetic purposes. From the street passers by will only see the front of the shop and some parking spaces proposed for the front of the building. The only vehicles outside the fence during nonbusiness hours will be those left for repair or pick up after hours. He has designed a planting plan which will use more than 100 new plants to landscape the property.

He has had much support from the Tilghman community for his planned shop. He offered three additional letters from local residents supporting the application. They were admitted as Applicant's Exhibits A, B, and C. He said that there is no other land available in Tilghman for his proposed shop.

The next witness was Mary Kay Verdery, Talbot County Assistant Planning Officer. She said

that all of Tilghman is within the Critical Areas and of the three zones in Tilghman only the VC zone permits mechanic shops. Individually, the three lots would be permitted a 25% impervious surface coverage as they are each less than one half acre but combined they are only permitted coverage of 15%. She said that the growth allocation option would not be appropriate based on the property's critical area designation. She said that the proposed building will not exceed the allowable impervious surface coverage but when combined with the proposed parking area the whole project will.

Chris Wooters, C & R Professional Surveyors, Cordova, Maryland, testified next. He was hired by the Applicant to design a storm water management plan for the site. His plan is designed to contain runoff from a "two-year" rain event. The runoff would be contained in the ponds on the property. The runoff would then gradually flow from the site at the same rate as currently exists from the unimproved property. The water held in the ponds would ultimately flow into the normal drainage along Tilghman Island Road. It would not drain onto the surrounding properties. He said that the storm water plan for the proposed project would cause less runoff than if all three lots were developed individually.

Edward Sullivan, 21475 Club Road, Tilghman, Maryland, testified in support of the application. He is a regular customer of the Applicant. He said that Applicant provides a necessary service to the residents of Tilghman who would otherwise have to get their cars and other motorized equipment to St. Michaels or Easton for regular service and repair. Having such a reliable business in Tilghman saves both time and resources.

Ed Bridges, McDaniel, Maryland, also spoke in support of the application. He is Mark

Bridges' father. He said that it would be a loss to the Tilghman community if his had to move his business to another location.

Thereafter, at the request of the Applicant, the Board recessed the meeting to permit the Applicant to consider modifications to the application in response to concerns regarding the requested amount of impervious surface.

After a 20-minute recess the meeting reopened and Mr. Kramer requested permission to modify the application by reducing the amount of impervious surface requested in the application. The proposed reduction involved eliminating unnecessary parking spaces and utilizing pervious pavers for certain other areas. The Applicant proposed to remove three planned parking spaces on the southwest corner and replace that area with seeded lawn. The Applicant also said that all six proposed parking spaces on the front of the lot would be made with pervious pavers as would three of the six spaces on the south side of the building. The remaining three would have to remain as impervious as they are needed for vehicles larger than the typical passenger car. In addition, the Applicant outlined certain other areas planned for impervious stone surfacing which would be modified to pervious pavers. The net result was that the Applicant would be requesting a variance for a total impervious surface of 10,404 square feet. As the proposed changes did not significantly change the nature of the request but, on the other hand, substantially reduced the proposed impervious surface area, the Board of Appeals permitted the modification of the application.

Mr. Kramer then summarized the application and urged that the Board of Appeals act favorably on the requested variances, as modified.

The Board then considered the application. Mr. Sun said that in his opinion the Applicant had made a case for the granting of the variances. Mr. Jones noted that he is a strong supporter of the goals of the Chesapeake Bay Critical Area laws and he believes that the proposed variances, as modified, should be granted. He said that balancing the community needs with the goals of the critical areas laws weighs in favor of approving the request. Otherwise the large, but unincorporated Tilghman community might be denied an economically necessary service. Citizens of the community would incur increased costs and expend more resources to obtain the similar services further away. Mr. Moody said that the Applicant had met all of the requirements necessary for the Board to grant the requested variance. He felt that the growth allocation process would not be appropriate in this particular case. Mr. Councill said that the failure to grant the requested variances would result in a waste of resources.

Thereafter, upon motion duly made and seconded, the Board of Appeals made the following findings of fact and law:

1. All legal requirements pertaining to a public meeting were met.
2. Special conditions or circumstances exist that are peculiar to the land or structure such that a literal enforcement of the provisions of the Ordinance would result in unwarranted hardship to the property owner. Although it is an unincorporated village, Tilghman, is a small but vibrant community with many local services, such as a school and fire department, and local businesses, such as community stores. Due to its proximity to the Chesapeake Bay and its tributaries, the community is entirely

within the Critical Area. The village has historically been made up of small lots and land available for business use is severely limited. The services provided by the Applicant to the community go beyond simple convenience to the citizens of that community, yet, absent the requested variances, the business is not economically viable. There does not appear to be any alternative location in the community which would permit such a small repair facility without the necessity of requesting the same variances. Were the requested variances denied, not only would the Applicant suffer an unwarranted hardship but the community would as well.

3. A literal interpretation of the Ordinance will deprive the property owner of rights commonly enjoyed by other property owners in the same zone. Tilghman is a historic community that was developed well before the Critical Area restrictions were enacted by the Maryland General Assembly. Because they predate those restrictions, many of the properties in the village exceed those restrictions. The Board believes that the Applicant has met all of the requirements for the requested variances. Given an identical application with the same circumstances by another property owner, that owner would also enjoy the same rights.
4. The granting of the variances will not confer upon the property owner any special privilege that would be denied by the Ordinance to other owners of lands or structures in the same zone.
5. The request is not based on conditions or circumstances which are the result of

actions by the property owner nor does the request arise from any condition relating to land or building use, either permitted or nonconforming, on any neighboring property.

6. The granting of the variances within the Critical Area will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat and granting of the variance will be in harmony with the general spirit and intent of the Critical Area Law, the Talbot County Critical Area Plan and the regulations adopted in the Ordinance. The Applicant has presented a viable storm water management program for the property that will result in the same runoff from the property as exists now in its unimproved state. This "neutral" impact on water quality and sedimentation is consistent with the general spirit and intent of the Critical Area law. Were the three lots to be developed individually, it is possible that the overall result would be inconsistent with the spirit and intent of the Critical Area law.
7. The variances do not exceed the minimum adjustment necessary to relieve the unwarranted hardship.

HAVING MADE THE FOREGOING FINDINGS OF FACT AND LAW, IT IS, BY THE  
TALBOT COUNTY BOARD OF APPEALS,

RESOLVED, that the Applicant, **BACKCREEK CAPITAL, LLC** (Appeal No. 1406) is  
**GRANTED** the requested variances for the proposed vehicle repair shop consistent with the evidence presented to the Board of Appeals. The Applicant must present a new site plan to the Planning Office



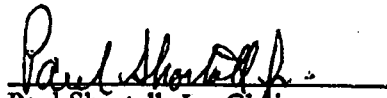
consistent with the changes suggested by the Applicant reducing the overall impervious surface to 10,404 square feet.


The variances granted by this decision will lapse and become null and void eighteen months following the date of this opinion, unless, prior to the expiration date, construction is commenced and diligently pursued toward completion.


The vote of the Board was five to zero in favor of the motion to grant the requested variances.

GIVEN OVER OUR HANDS, this 9th day of January, 2006.

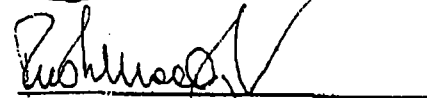
TALBOT COUNTY BOARD OF APPEALS

  
Paul Shortall, Jr., Chairman

  
Phillip Councill, Jr., Vice-Chairman

  
Jack K. Sun

  
Phillip Jones

  
Rush Moody, Jr.

## VARIANCE REQUIREMENTS

APPEAL NO. 1406

HEARING DATE 12/19/05

PLANNING COMMISSION REVIEW DATE N/A

- 19.14 Administration - Talbot County Code
- (b) Power of the Board of Appeals (2)
  - (2) Appeals
  - (3) Variances

Variances - To authorize upon appeal in specific cases such variance from the terms of this ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this ordinance shall not be granted unless and until the applicant has demonstrated that:

- (a) Special conditions or circumstances exist that are peculiar to the land or structure such that a literal enforcement of the provisions of this Ordinance result in unwarranted hardship to the property owner;

Applicant Response:

*Mr. and Mrs. Bridges currently operate a small automotive mechanic's shop, Bridges Automotive, LLC, ("Bridges Automotive") located at 5801 Tilghman Island Road, Tilghman Island, Maryland. Since opening, the demand by the Tilghman Island and surrounding community for convenient automotive repair and maintenance has expanded exponentially. As the current location for Bridges Automotive is too small, it can no longer adequately service the community. To ensure that the entire community can readily access a reliable and convenient mechanic's shop, Mr. and Mrs. Bridges seek to build a mechanic's shop which can accommodate all personal and commercial vehicles on Tilghman Island and the immediate surrounding vicinity.*

*Currently, other than Bridges Automotive, Tilghman Island only has one additional automotive repair shop, Covington's Garage. Covington's Garage, however, offers services that differ from Bridges Automotive. The next closest full-service automotive garage is in St. Michaels, which is an approximately 28 mile round trip. St. Michaels, however, does not have a mechanic's shop which can repair large commercial vehicles. In such cases, the larger commercial vehicles must be driven or towed to Easton for repairs, which is an approximately 50 mile round trip.*

*In their decision to build a new mechanic's shop, Mr. and Mrs. Bridges, understood that a single, small lot could not possibly accommodate a garage which could meet the needs and demands of their customers and the community. Accordingly, Mr. and Mrs. Bridges purposely purchased three lots ("Lots") so that a large mechanic's shop could be constructed. Mr. and Mrs. Bridges propose to construct a six bay garage which would be equipped to repair and maintain the latest model vehicles and larger commercial vehicles. (See attached Automotive Shop Floor Plan, Bridges Project, dated August 4, 2005.) As the Lots are located in the Village Center Zone, a mechanic's shop is a permitted use.*

*( However, due to Tilghman Island's unique geographical configuration, i.e., narrowness of the*

*Island, special circumstances exist that are peculiar to the land, i.e., no property on Tilghman Island escapes the critical area classification. As such, every property owner is captive to the stringent impervious surface guidelines. This in turn makes any commercial development in Tilghman Island quite difficult. In addition to the extremely limited commercial zones, any property zoned commercial must contend with the rigorous critical area limitations.*

*These stringent guidelines are particularly harsh for a property owner who wishes to construct a mechanic's shop. Any mechanic's shop will require a large impervious footprint. For example, in this application, six vehicles and large trucks can be repaired in the proposed shop at any one time. For a shop to contain six vehicles at one time, the impervious footprint will, obviously, be quite large. Also, parking and driveway requirements for a mechanic's shop will require a large impervious surface allotment. Ample parking is needed to accommodate not only employees and customers, but vehicles parked outside awaiting repairs or waiting for parts. At any one time, it is possible that several vehicles will be parked outside the shop awaiting the shipment of parts. Further, due to the requirement that each bay door have a driveway to access the shop, a mechanic's shop will require additional impervious surface to allow a vehicle to enter the bay door to access the lift inside the shop.*

*If a suitably sized mechanic's shop cannot be located outside Tilghman Island, there can be virtually no hope to locate a mechanic's shop on Tilghman Island proper. Any mechanic's shop in Tilghman will encounter the stringent maximum impervious coverage limitation. As a result, no adequately sized mechanic's shop will be available for the residents of Tilghman Island and the nearby community.*

*Additionally, Tilghman Island has only three zones: RC, RAC, and VC. A mechanic's shop, however, is a permitted use only in the VC zone. It is not a permitted use in either the RC or RAC zone. If Mr. and Mrs. Bridges cannot obtain a variance to build an adequate mechanic's shop in the VC zone, there is no possibility of constructing a mechanic's shop in either of the other two zones.*

*It should also be remembered that the property at issue is actually three separate lots, each less than a ½ acre. Under §190-93.e.(6)(c)[1][a][i][A], of the Talbot County Zoning Ordinance, "lots ½ acre or less in size which existed on or before December 1, 1985, are limited to 25% of the parcel or lot in man-made impervious surfaces". As such, if the three lots were being developed separately, the impervious coverage of each lot would be 25%. However, since Mr. and Mrs. Bridges are combining the three lots into a single lot, the maximum impervious surface area is reduced to 15%. Mr. and Mrs. Bridges' efforts to construct an adequately sized and modern mechanic's shop by combining the three lots in to one lot has worked to their detriment by reducing the maximum allowed impervious surface coverage to 15%.*

*As recounted above, special circumstances also exist that require the garage to be larger than*

*2000 square feet. For Mr. and Mrs. Bridges to accommodate the growing demand for convenient and timely automotive repairs, a mechanic's shop in the Tilghman Island vicinity is greatly needed.*

*Without a full-service garage, families and businesses will be forced to travel to St. Michaels and Easton.*

*It should also be remembered that the mechanic shop that Mr. and Mrs. Bridges are constructing has a smaller footprint than if three separate buildings were constructed on the three individual lots. General Table of Land Use Regulations, § 190-19, states that the use "shall not exceed 2,000 square feet of gross floor area." Under this regulation, three individual lot owners could each construct a 2,000 square foot building on each of the three lots, totaling a possible 6,000 square feet. Mr. and Mrs. Bridges, however, are constructing one building totaling 3,600 square feet.*

*In view of the fact that any commercial garage will require a large impervious footprint and the need for a mechanic's shop with a greater than 2,000 square foot gross floor area, enforcement of the maximum impervious surface coverage and the 2,000 gross floor area are unwarranted hardships on the Bridges.*

- (b) A literal interpretation of this Ordinance will deprive the property owner of rights commonly enjoyed by other property owners in the same zone;

Applicant Response:

*Mr. and Mrs. Bridges' proposed mechanic's shop is not excessive and is not overly obtrusive. A commercial garage requires greater impervious coverage to accommodate vehicles in the shop, customer and employee parking, vehicles outside the shop waiting for repairs, and to provide a driveway for each bay.*

*In fact, Mr. and Mrs. Bridges have deprived themselves of rights commonly enjoyed by other property owners in the same zone. As argued above, if the three lots were owned by three separate individuals, each owner could construct a building with a 2,000 square feet gross floor area. Because Mr. and Mrs. Bridges have sought to conjoin the three lots as one lot, they have deprived themselves of rights commonly enjoyed by any other three lot owners, i.e., to construct three buildings with 2,000 square feet gross floor area. Instead, one single building is proposed consisting of a total of 3,600 square feet gross floor area.*

*Further, the Bridges have made every attempt to minimize the visual effect of the mechanic's shop. The landscape plan demonstrates that the shop will be surrounded by and concealed with numerous trees, shrubs, and perennials. Additionally, the back half of the three lots, including the mechanic's shop, will be enclosed in a slated chain link fence. When closed, the fence will conceal the shop and any outside vehicles from the view of the public.*

*Literal enforcement of the Ordinance would deprive the Bridges of the right to have construct an adequately sized mechanic's shop.*

- c) The granting of a variance will not confer upon the property owner any special privilege that would be denied by this Ordinance to other owners of lands or structures within the same zone;

Applicant Response:

*Mr. and Mrs. Bridges are not seeking a special privilege. They seek merely to construct a mechanic's shop which will satisfactorily serve the Tilghman Island community. The Bridges' application in no manner denies any privileges that contiguous property owners may have. In fact, as argued above, Mr. and Mrs. Bridges have, in essence, reduced their rights in comparison to any three individual lot owners. By joining the three lots in to one lot, the Bridges are now limited to maximum 2000 square feet gross floor area. If the lots were owned by three separate lot owners, three separate buildings could be constructed totaling 6,000 square feet gross floor area. As such, the Bridges have negatively impacted their own rights. Concomitantly, the Bridges have potentially reduced the environmental impact on the three lots. Instead of a three buildings of 2,000 square feet, there will be a single shop consisting of 3,600 square feet. The granting of the variance will not confer upon Mr. and Mrs. Bridges any special privilege.*

- d) The variance request is not based on conditions or circumstances which are the result of actions by the property owner nor does the request arise from any condition relating to land or building use, either permitted or nonconforming, on any neighboring property;

Applicant Response:

*Mr. and Mrs. Bridges were not involved in the subdivision of the three small lots, nor in the initial development of this property. The variance requests arise out of Tilghman Island's unique geographical configuration, i.e., narrowness of the Island. The narrowness is particular to the Island and results in the entire Island being situated in the critical area. There is nowhere on the Island where the Bridges will not be impacted by the critical area requirements. The conditions and circumstances which required Mr. and Mrs. Bridges to seek a variance are the dearth of commercial property available and the ubiquitous critical area requirements. This variance is certainly not the result of conditions and circumstances brought about by Mr. and Mrs. Bridges. Lastly, this request does not arise from any condition on any neighboring property.*

- (e) The granting of a variance within the Critical Area will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat and granting of the variance will be in harmony with the general spirit and intent of the Critical Area Law, the Talbot County Critical Area Plan and the regulations adopted in this Ordinance; and

Applicant Response:

*The granting of the variance will not adversely affect water quality or impact fish, wildlife, or plant habitat. Two separate stormwater management ponds will be situated on the property. The ponds will help ensure that water quality and plant habitat are unaffected. Further, the undeveloped parts of the property will be seeded lawn and an abundance of trees, shrubs and perennials will be planted on the Lots. (See attached Bridges' Automotive Planting Plan, dated July 29, 2005.) The site plan and landscape plan demonstrate that the variance will be in harmony with the Critical Area Law, the Talbot County Critical Area Plan, and the Talbot County Zoning Ordinance.*

- (f) The variance shall not exceed the minimum adjustment necessary to relieve the unwarranted hardship.

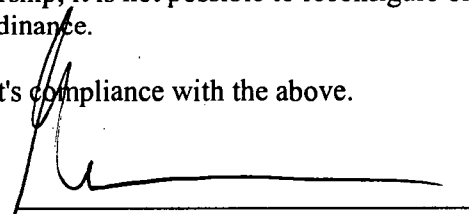
Applicant Response:

*Mr. and Mrs. Bridges purchased the three lots with the hope that the three combined lots could accommodate the mechanic's shop. Mr. and Mrs. Bridges' plans for a mechanic's shop is designed merely to meet the needs of the community in Tilghman Island. Mr. and Mrs. Bridges do not intend or expect to receive business from anywhere except Tilghman Island and the surrounding vicinity. Lastly, due to the substantial cost to purchase the three lots (\$345,000.00), the proposed six bay mechanic's shop is the minimum size necessary to be economically feasible. The variance requested is the minimum adjustments necessary to relieve the unwarranted hardship.*

Note: Within the Critical Area, if a request for a variance arises regarding nonconforming lots of record, the applicant must demonstrate and the Board of Appeals must find that criteria [a] through [f] above have been met and further that, due to the pattern of lot ownership, it is not possible to reconfigure or consolidate lots so as to permit compliance with this Ordinance.

The Board's action will be predicated upon the applicant's compliance with the above.

9/22/05  
Date

  
Signature of Applicant or  
Applicant's Designated Agent

References:

1. Talbot County Comprehensive Plan
2. Talbot County Charter
3. Talbot County Zoning Ordinance

Signed Copies to:

1. Applicant
2. Board Of Appeals Members
3. File

All structures and piers must be staked out prior to the Board's site visit.

682-05  
742-05

MINUTES OF PUBLIC HEARING  
TALBOT COUNTY BOARD OF APPEALS  
Appeal No. 1406

Pursuant to due notice, a public hearing was held by the Talbot County Board of Appeals at the Bradley Meeting Room, Court House, South Wing, 11 North Washington Street, Easton, Maryland, beginning at 7:30 p.m., December 19, 2005, on the application of **BACKCREEK CAPITAL, LLC** ("Applicant"). The Applicant is requesting a variance of the maximum 2,000 square foot gross floor area for a total of 3,600 square feet to construct a 60' x 60' automobile service and repair shop. In addition, the Applicant is requesting a variance of the allowable 15% impervious surface coverage limit for a total of 45.6% impervious surface. The property is located at 6211 Tilghman Island Road, Tilghman, Maryland 21671 in the Village Center/Critical Area (VC/CA) zone. The Applicant is the property owner. The application is made in accordance with Chapter 190 Zoning, Article IV, §190-19; Article XII, §190-93E(6)(c)[1][a][i]; and Article XIV, §190-104 of the Talbot County Code ("Zoning Ordinance").

Present at the hearing were Board of Appeals members Paul Shortall, Jr., Chairman, Phillip Councill, Jr., Vice Chairman, Jack K. Sun, Phillip Jones, and Rush Moody, Jr. The Applicants were represented by Alexis Kramer, Esquire, 16 South Washington Street, Easton, Maryland. Glenn D. Klakring was the attorney for the Board of Appeals.

It was noted for the record that all members of the Board had visited the site.

The following exhibits were offered and entered into evidence as Board's Exhibits as indicated:

**RECEIVED**  
JAN 12 2006  
CRITICAL AREA COMMISSION

1. Application for variance.
2. Copy of a portion of the Talbot County tax map with the property highlighted.
3. Notice of Public Hearing.
4. Certificate of publication of the Notice of Public Hearing from the Star-Democrat.
5. Notice of hearing with a list of nearby property owners attached thereto.
6. Copy of variance requirements from the Ordinance with the Applicant's response to each applicable requirement.
7. Planning Office Staff Memorandum. The staff recommended certain conditions should the application be approved.
8. Sign Maintenance Agreement and Affidavit.
9. Site plan.
10. Planting plan.
11. Floor plan.
12. Letter from the Critical Area Commission dated December 14, 2005. The Commission opposes the application.
13. Letter from the State Highway Administration dated November 3, 2005.
14. Impervious surface calculations.
15. Letter from David Clarke, dated November 7, 2005.
16. Letter from Russell Dize.
17. Letter from Edward Bridges, dated December 12, 2005.



18. Letter from Douglas Fluharty, dated December 14, 2005.
19. Letter from Edward and Fanoula Sullivan, dated November 22, 2005.
20. Letter from Jerry Barrow.
21. Petition in support of variance (four pages).

In his opening statement Mr. Kramer said that the Applicant wishes to expand his two-bay automotive repair business on Tilghman Island. The Applicant's business is growing. There are only two automotive repair shops in Tilghman. The other is a small shop offering different services.

The first witness was the owner, Mark B. Bridges. He owns the business with his wife. They repair cars, trucks, boats, and small motorized items such as lawn mowers. Their business is currently located at 5801 Tilghman Island Road, across from the bank in Tilghman. It is in a 52' x 30' rented building with only three doors. The doors only open to eight feet and the building has a ceiling of only nine feet. The ceiling height restricts the height at which vehicles can be lifted for underside repairs. Because of those limitations much of the repair work has to be accomplished outside in the weather. The property has insufficient parking and he has to rent an overflow parking area.

Mr. Bridges believes that one reason for his success is the convenience of having a local repair shop in Tilghman. He can work on most, if not all, models of cars through the 2005 model year. He has all the required computerized equipment to analyze problems in late model cars. There is only one other mechanic shop on the Island.

The owner of his present building does not want to sell the property. He looked throughout Tilghman for a suitable site to relocate and expand his shop. He finally found and purchased the

subject three contiguous lots. He paid a total of \$345,000.00 for the three lots. He wishes to delete the lot lines making them all one lot.

He is proposing a six-bay building for his shop on the combined three lots. Although he employs only one other mechanic, he needs the additional bays to store disassembled vehicles waiting for parts from Easton. It usually takes most of one day for the delivery of necessary parts from Easton to Tilghman. With the extra bays they can continue to work on other cars without reassembling and moving vehicles awaiting parts. Each bay will have a separate entrance. In addition, the plans are for 15 parking spaces for customer vehicles and for Mr. Bridges and his employee.

The rear and side yard parking lot will be surrounded by a six-foot fence to screen it from the roadway and from neighboring residential properties. Storm water management ponds will be inside the fence for safety and aesthetic purposes. From the street passers by will only see the front of the shop and some parking spaces proposed for the front of the building. The only vehicles outside the fence during nonbusiness hours will be those left for repair or pick up after hours. He has designed a planting plan which will use more than 100 new plants to landscape the property.

He has had much support from the Tilghman community for his planned shop. He offered three additional letters from local residents supporting the application. They were admitted as Applicant's Exhibits A, B, and C. He said that there is no other land available in Tilghman for his proposed shop.

The next witness was Mary Kay Verdery, Talbot County Assistant Planning Officer. She said

that all of Tilghman is within the Critical Areas and of the three zones in Tilghman only the VC zone permits mechanic shops. Individually, the three lots would be permitted a 25% impervious surface coverage as they are each less than one half acre but combined they are only permitted coverage of 15%. She said that the growth allocation option would not be appropriate based on the property's critical area designation. She said that the proposed building will not exceed the allowable impervious surface coverage but when combined with the proposed parking area the whole project will.

Chris Wooters, C & R Professional Surveyors, Cordova, Maryland, testified next. He was hired by the Applicant to design a storm water management plan for the site. His plan is designed to contain runoff from a "two-year" rain event. The runoff would be contained in the ponds on the property. The runoff would then gradually flow from the site at the same rate as currently exists from the unimproved property. The water held in the ponds would ultimately flow into the normal drainage along Tilghman Island Road. It would not drain onto the surrounding properties. He said that the storm water plan for the proposed project would cause less runoff than if all three lots were developed individually.

Edward Sullivan, 21475 Club Road, Tilghman, Maryland, testified in support of the application. He is a regular customer of the Applicant. He said that Applicant provides a necessary service to the residents of Tilghman who would otherwise have to get their cars and other motorized equipment to St. Michaels or Easton for regular service and repair. Having such a reliable business in Tilghman saves both time and resources.

Ed Bridges, McDaniel, Maryland, also spoke in support of the application. He is Mark

Bridges' father. He said that it would be a loss to the Tilghman community if his had to move his business to another location.

Thereafter, at the request of the Applicant, the Board recessed the meeting to permit the Applicant to consider modifications to the application in response to concerns regarding the requested amount of impervious surface.

After a 20-minute recess the meeting reopened and Mr. Kramer requested permission to modify the application by reducing the amount of impervious surface requested in the application. The proposed reduction involved eliminating unnecessary parking spaces and utilizing pervious pavers for certain other areas. The Applicant proposed to remove three planned parking spaces on the southwest corner and replace that area with seeded lawn. The Applicant also said that all six proposed parking spaces on the front of the lot would be made with pervious pavers as would three of the six spaces on the south side of the building. The remaining three would have to remain as impervious as they are needed for vehicles larger than the typical passenger car. In addition, the Applicant outlined certain other areas planned for impervious stone surfacing which would be modified to pervious pavers. The net result was that the Applicant would be requesting a variance for a total impervious surface of 10,404 square feet. As the proposed changes did not significantly change the nature of the request but, on the other hand, substantially reduced the proposed impervious surface area, the Board of Appeals permitted the modification of the application.

Mr. Kramer then summarized the application and urged that the Board of Appeals act favorably on the requested variances, as modified.

The Board then considered the application. Mr. Sun said that in his opinion the Applicant had made a case for the granting of the variances. Mr. Jones noted that he is a strong supporter of the goals of the Chesapeake Bay Critical Area laws and he believes that the proposed variances, as modified, should be granted. He said that balancing the community needs with the goals of the critical areas laws weighs in favor of approving the request. Otherwise the large, but unincorporated Tilghman community might be denied an economically necessary service. Citizens of the community would incur increased costs and expend more resources to obtain the similar services further away. Mr. Moody said that the Applicant had met all of the requirements necessary for the Board to grant the requested variance. He felt that the growth allocation process would not be appropriate in this particular case. Mr. Councill said that the failure to grant the requested variances would result in a waste of resources.

Thereafter, upon motion duly made and seconded, the Board of Appeals made the following findings of fact and law:

1. All legal requirements pertaining to a public meeting were met.
2. Special conditions or circumstances exist that are peculiar to the land or structure such that a literal enforcement of the provisions of the Ordinance would result in unwarranted hardship to the property owner. Although it is an unincorporated village, Tilghman, is a small but vibrant community with many local services, such as a school and fire department, and local businesses, such as community stores. Due to its proximity to the Chesapeake Bay and its tributaries, the community is entirely

within the Critical Area. The village has historically been made up of small lots and land available for business use is severely limited. The services provided by the Applicant to the community go beyond simple convenience to the citizens of that community, yet, absent the requested variances, the business is not economically viable. There does not appear to be any alternative location in the community which would permit such a small repair facility without the necessity of requesting the same variances. Were the requested variances denied, not only would the Applicant suffer an unwarranted hardship but the community would as well.

3. A literal interpretation of the Ordinance will deprive the property owner of rights commonly enjoyed by other property owners in the same zone. Tilghman is a historic community that was developed well before the Critical Area restrictions were enacted by the Maryland General Assembly. Because they predate those restrictions, many of the properties in the village exceed those restrictions. The Board believes that the Applicant has met all of the requirements for the requested variances. Given an identical application with the same circumstances by another property owner, that owner would also enjoy the same rights.
4. The granting of the variances will not confer upon the property owner any special privilege that would be denied by the Ordinance to other owners of lands or structures in the same zone.
5. The request is not based on conditions or circumstances which are the result of

actions by the property owner nor does the request arise from any condition relating to land or building use, either permitted or nonconforming, on any neighboring property.

6. The granting of the variances within the Critical Area will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat and granting of the variance will be in harmony with the general spirit and intent of the Critical Area Law, the Talbot County Critical Area Plan and the regulations adopted in the Ordinance. The Applicant has presented a viable storm water management program for the property that will result in the same runoff from the property as exists now in its unimproved state. This "neutral" impact on water quality and sedimentation is consistent with the general spirit and intent of the Critical Area law. Were the three lots to be developed individually, it is possible that the overall result would be inconsistent with the spirit and intent of the Critical Area law.
7. The variances do not exceed the minimum adjustment necessary to relieve the unwarranted hardship.

HAVING MADE THE FOREGOING FINDINGS OF FACT AND LAW, IT IS, BY THE  
TALBOT COUNTY BOARD OF APPEALS,

RESOLVED, that the Applicant, **BACKCREEK CAPITAL, LLC** (Appeal No. 1406) is  
**GRANTED** the requested variances for the proposed vehicle repair shop consistent with the evidence presented to the Board of Appeals. The Applicant must present a new site plan to the Planning Office


consistent with the changes suggested by the Applicant reducing the overall impervious surface to 10,404 square feet.


The variances granted by this decision will lapse and become null and void eighteen months following the date of this opinion, unless, prior to the expiration date, construction is commenced and diligently pursued toward completion.


The vote of the Board was five to zero in favor of the motion to grant the requested variances.

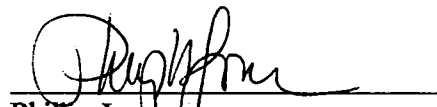
GIVEN OVER OUR HANDS, this 9th day of January, 2006.

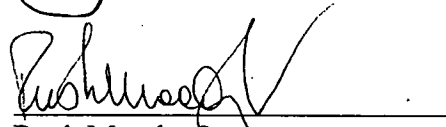
**TALBOT COUNTY BOARD OF APPEALS**

  
Paul Shortall, Jr., Chairman

  
Phillip Councill, Jr., Vice-Chairman

  
Jack K. Sun

  
Phillip Jones

  
Rush Moody, Jr.