

WI 213-05 Antes, Frank
VAR

MSA-5-1829-5366

Comments 4/11/05

Robert L. Ehrlich, Jr.
Governor

Michael S. Steele
Lt. Governor



Martin G. Madden
Chairman

Ren Serey
Executive Director

STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS
1804 West Street, Suite 100, Annapolis, Maryland 21401
(410) 260-3460 Fax: (410) 974-5338
www.dnr.state.md.us/criticalarea/

April 14, 2005

Mr. Matt Hedger
City of Salisbury-Wicomico County
Department of Planning, Zoning and
Community Development
PO Box 870
Salisbury, MD 21803-0870

Re: Antes Variance

Dear Mr. Hedger:

Thank you for providing information on the above referenced variance request. The applicant is requesting a variance from the 100-foot Buffer in order to renovate the existing primary dwelling. The property is located within a designated Limited Development Area (LDA) and is currently developed.

Based on the information provided, it appears that the primary dwelling is a legal, non-conforming structure in relation to its location within the 100-foot Buffer. The applicant is proposing to remove the existing dwelling and reconstruct a replacement dwelling, utilizing the existing foundation. The proposed footprint of the replacement dwelling is approximately 1,312 square feet, and will encroach no further towards Mean High Water (MHW) than the existing non-conforming dwelling.

Based on this information, we do not oppose the applicant's request for a variance. However, please note that all disturbance to the Buffer is subject to mitigation. We recommend that mitigation plantings be required at a 2:1 ratio. These plantings should include a combination of native tree and shrub species, and should be clustered at an alternative location within the Buffer, so as to provide optimal habitat value. In addition, we have discussed that the proposed garage structure shown on the site plan is not a component of the current proposal, but that the area proposed for this construction has been identified as an area of non-tidal wetlands. I am enclosing a copy of a map created from MERLIN, which indicates the approximate location of these wetlands. Please advise the applicant that non-tidal wetlands are considered a Habitat Protection Area (HPA) as outlined in the Wicomico County Zoning Ordinance, Section 125-11.B.4.d, and are regulated by the Maryland Department of the Environment (MDE). Any development which proposes impacts to non-tidal wetlands will require a Critical Area variance and appropriate permits from MDE.

TTY For the Deaf

Annapolis: (410) 974-2609 D.C. Metro: (301) 586-0450

Matt Hedger
Antes Variance
April 14, 2005

Thank you for the opportunity to provide comments for this variance request. Please include this letter as a part of the record for the case and please notify the Commission in writing of the Board's decision. If you have questions, please call me at 410-260-3482.

Sincerely,

A handwritten signature in cursive script that reads "Kerrie Gallo".

Kerrie L. Gallo
Natural Resource Planner
WI213-05

WI 213-05



CITY OF SALISBURY - WICOMICO COUNTY
DEPARTMENT OF PLANNING, ZONING
AND COMMUNITY DEVELOPMENT



Tel: 410-548-4800

Fax: 410-548-4955

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MAY 20 2005

Wicomico County Board of Appeals
Salisbury Board of Zoning Appeals
Agricultural Land Preservation Advisory Board

May 5, 2005

CRITICAL AREA COMMISSION
Chesapeake & Atlantic Coastal Bays

DECISION LETTER

Frank P. & Amy Lou Antes
112 Antes Lane
Coatesville, PA 19320

RE: #WA-0522 - "Chesapeake Bay Critical Area Program & Ordinance" – 55-ft. Variance from the 100-ft. Tidal Buffer for replacing an existing dwelling Limited Development Area of the Chesapeake Bay Critical Area District. West of Salisbury at 4498 Sunset Drive in Tyaskin M-53, P-376

Dear Mr. & Mrs. Antes:

This is to officially notify you that the Wicomico County Board of Appeals considered your request in the above-entitled matter at a Public Hearing on **THURSDAY, APRIL 28, 2005**. After reviewing all data and information presented to them, it was their decision to APPROVE the **55-ft. Variance from the 100-ft. Tidal Buffer for replacing an existing dwelling**, attached are the Resolution of Decision and Conditions of Approval.

Any party dissatisfied with the Board's decision may appeal to the Wicomico County Circuit Court **within 30 days from the Signed Resolution of Decision**. The court is empowered to overturn or confirm the Board's decision.

If you have any questions, please do not hesitate in contacting Matt Hedger of this office.

Sincerely,

John F. Lenox, AICP
Director

Cc: County Public Works/Assessment/Health Department
Marianne D. Mason, Esquire, Assistant Attorney General, Department of Natural Resources, 580 Taylor Avenue, Annapolis, Maryland 21401
✓LeeAnne Chandler, Critical Area Commission, 1804 West Street, Suite 100, Annapolis, Maryland 21401

**WICOMICO COUNTY BOARD OF APPEALS
RESOLUTION of DECISION
(Original Jurisdiction)**

Thursday, April 28, 2005

**Frank P. & Amy Lou Antes
#WA-0522**

**"Chesapeake Bay Critical Area Program & Ordinance" – 55-ft. Variance from
the 100-ft. Tidal Buffer for replacing an existing dwelling
Limited Development Area of the Chesapeake Bay Critical Area District.
West of Salisbury at 4498 Sunset Drive in Tyaskin
M-53, P-376**

6:37 to 6:49 p.m.

#810-1150

The Wicomico County Board of Appeals has completed its review of the Staff Report, written evidence, testimony and oral argument presented at the public hearing and for the reasons hereafter set forth, finds that the Applicant's request should be **GRANTED**.

FINDINGS OF FACT

The Board makes the following Findings of Fact and Decision in this matter in accordance with the provisions of Chapter 225, Zoning, of the Wicomico County Code.

The Board reviewed the criteria necessary to approve a Chesapeake Bay Critical Area Variance and has determined that the applicant has met the burden of proof. The Board does adopt the factual findings contained in the Critical Areas Staff Evaluation Paragraph 1 thru 7 of the Staff Report as its Findings of Fact.

The Board determined that currently the dwelling is located entirely within the 100-ft. Tidal Buffer, but that the replacement would not encroach any farther. The Applicant has agreed to complete a Buffer Management Plan which shall specify 38-trees and/or shrubs be planted within the 100-ft. Tidal Buffer. This approval would be subject to the Suggested Conditions #1 to #3.

Upon a **Motion** by Gary Boggs, **seconded** by Nancy Middleton with the Chair voting AYE, the Board unanimously approved the request and hereby **RESOLVES**, for the reasons set forth above, that the Applicant's request is hereby **GRANTED**.

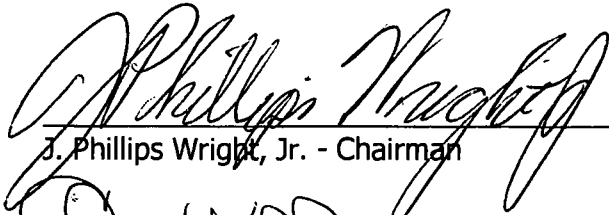
STATEMENT OF VOTING

Votes of the Board proceeded as follows:

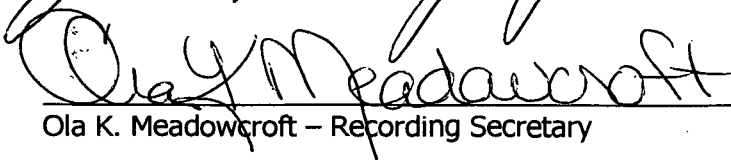
	<u>AYE</u>	<u>NAY</u>
J. Phillips Wright, Jr.	x	
Nancy Middleton	x	
Vaughn Wimbrow	x	
Gary Boggs	x	

The same being a majority of those present in this case and eligible to vote on this matter as required by Chapter 7, Section 3-A.

Approved this 18th day of May, 2005.



J. Phillips Wright, Jr. - Chairman



Ola K. Meadowcroft - Recording Secretary

CONDITIONS OF APPROVAL

- 1. The granting of this Variance does not constitute the right to disturb any land within the Critical Area District. A Certificate of Compliance must be obtained from the Planning Office prior to the disturbance of any land on the site.**
- 2. The applicant must agree to complete a Buffer Management Plan, which shall specify 38 trees and/or shrubs be planted within the 100' Tidal Buffer. The Wicomico County Critical Area Staff must approve the Buffer Management Plan.**
- 3. The applicant must adhere to any conditions set forth by other agency/body.**

NOTE: It is mutually understood that the Applicant shall obtain a County Building Permit, if applicable, and comply with all applicable Codes and regulations whether or not shown on the approved development plan or noted in the Staff report. Additional materials may be required by the appropriate agency.



CITY OF SALISBURY - WICOMICO COUNTY
DEPARTMENT OF PLANNING, ZONING
AND COMMUNITY DEVELOPMENT



Tel: 410-548-4860

Fax: 410-548-4955

Planning & Zoning Commission
Historic District Commission
Metropolitan Planning Organization

Wicomico County Board of Appeals
Salisbury Board of Zoning Appeals
Agricultural Land Preservation Advisory Board

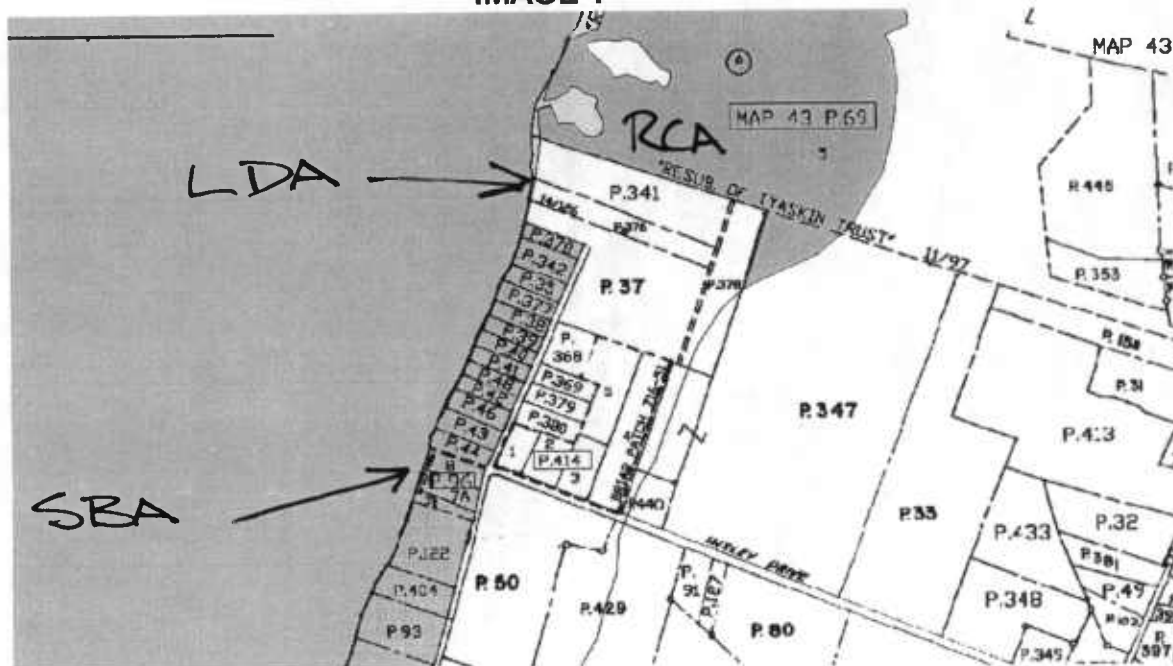
MEETING OF APRIL 28, 2005

APPLICANT: Frank P. & Amylou Antes
PROPERTY OWNER: Frank P. & Amylou Antes
LOCATION: Tax Map # 53, Grid # 5, Parcel # 376
(ATTACHMENT 1 & 2)
SIZE OF PROPERTY: 2.10 acres
CASE #: WA-0522
ZONING: Village Conservation (VC) and Limited Development Area (LDA)
BOARD MEMBERS: Chairman J. Phillips Wright, Jr., William Handy, Bill Turner, Nancy Middleton and Gary Boggs.
REQUEST: Buffer Variance- a 55' Variance from the 100' Tidal Buffer requirements for replacing an existing dwelling with a larger one. **(ATTACHMENT 1)**

A. SUMMARY OF REQUEST: The applicants have requested a Buffer Variance from Section 125-35 & 36, of the Wicomico County Code. Critical area provisions require a 100' Buffer from the edge of Tidal Marsh or from the Mean High Water Line. The property is located entirely within a Limited Development Area (LDA) of the Chesapeake Bay Critical Area District. **(ATTACHMENT 2 & IMAGE 1)**

Frank P. and Amylou Antes have applied to replace an existing dwelling with one that will have a 616 square foot larger footprint. The additional square footage will be placed within the north and south side yards and within the east or rear yard. The existing single-family dwelling is located entirely within the 100' Tidal Buffer, approximately 48' from the Mean High Water Line. The larger dwelling, if approved, will not encroach any farther into the 100' Tidal Buffer.

IMAGE 1



B. ACCESS TO THE AREA: The site has access provided by Sunset Drive.

C. CRITICAL AREA ISSUES: Maps in the Planning Office indicate that this project may be located adjacent to or in a Habitat Protection area. If this request is approved, it will be pending all Wildlife and Heritage Service conditions (ATTACHMENT 4). Applicant has stated that 6 trees will be removed within the 100' Tidal Buffer for the purpose of construction. 18 trees and/or shrubs will be replaced within the Buffer to mitigate for the trees removed.

THE 100' TIDAL BUFFER: The 100' Tidal Buffer located on the property is measured from the bulkhead face or Mean High Water Line on the Nanticoke River. The Buffer consists mostly of grassed areas and includes some scattered trees. The proposed dwelling will require the removal of 6 trees and the disturbance of 616 square feet within the Buffer. However, the applicant must still complete a Buffer Management Plan, which will be prepared in accordance with provisions as stated in Section 125, Critical Area Resource Protection, of the County Code. The Buffer Management Plan is used to offset the area of disturbance and the trees removed for the purpose of construction. Tree mitigation shall be based upon a 3:1 ratio for trees cut within the 100' Tidal Buffer for the purpose of construction and a 2:1 ratio for the additional disturbance created in the Buffer to accommodate the larger dwelling. The applicants will plant 38 native trees and/or shrubs within the Buffer to satisfy the mitigation requirements.



CRITICAL AREA STAFF EVALUATION: The following is a list of how this request meets the seven variance standards of chapter 125-36 of the Wicomico County Code.

1. The existing structure is unique because it was built in 1946, prior to the adoption of the Chesapeake Bay Critical Area Program and the property is located two lots north of a mapped Special Buffer Area (See Image 1). Most of the structures in this management area were built prior to the adoption of the Chesapeake Bay Critical Area Program and were placed within the 100' Tidal Buffer. Most of the properties within the area have increased in size or have been replaced. Variances were not required because the structures are located within a mapped Special Buffer Area.
2. The strict enforcement of the provisions within the Critical Area District would deprive the property owner of rights commonly shared by other owners of the property in the same management area. As stated before, most of the structures in this management area are located within the 100' Tidal Buffer and have either added living area to their homes or have replaced their homes.
3. The variance will not give Mr. and Mrs. Antes any special privilege that would be denied to owners of the neighboring properties. The proposed house is similar to most of the existing Buffer development in the area.

4. The Antes' request is not based upon conditions or circumstances which were self-created or self-imposed. The request is to replace the existing dwelling with a larger one in the same location. The proposed construction will encroach no further towards the Mean High Water Line (MHWL) than the existing non-conforming dwelling.
5. The granting of this variance will not adversely affect water quality or adversely impact fish, wildlife or plant habitat within the Critical Area. If the variance is approved, the applicants will be required to mitigate for the 616 square feet of disturbance and for the trees removed for the purpose of construction within the Buffer. By planting the required 38 trees and/or shrubs, the Buffer will be enhanced. At present, the entire area between the Mean High Water Line and the proposed house location is mostly grass.
6. The proposed house is for Mr. and Mrs. Antes' personal use and will not be used for business. Ignorance of the law is not a factor in this request. The applicants contacted our office with this request and are aware of the Chesapeake Bay Critical Area Program.
7. The request is consistent with both the Zoning Code and the Wicomico County Comprehensive Plan. The proposed house is a permitted use in the Village Conservation zoning district. The proposed house is also consistent with the "Wicomico County Comprehensive Plan".

D. CHESAPEAKE BAY CRITICAL AREA VARIANCE CRITERIA: The Board shall examine all facts of this case and render a decision. Variance requests in the Critical Area District shall not be granted unless a decision is based upon the following criteria as found in Sections 125-35 and Section 125-36.

- A. That Special conditions or circumstances exist that are unique to the subject property or structure and that a strict enforcement of this Chapter would result in an unwarranted hardship which is not generally shared by owner's of property in the same land use management category (i.e. IDA, LDA, or RCA) of the Critical Area District.
- B. That strict enforcement of the provisions within the Critical Area District would deprive the property owner of rights commonly shared by other owners of property in the same management category within the Critical Area District.
- C. That the granting of a Variance will not confer upon an applicant any special privileges that would be denied to other owners of like properties and/or structures within the Critical Area District.
- D. That the Variance request is not based upon conditions or circumstances which are self-created or self-imposed, nor does the request arise from

conditions or circumstances either permitted or non-conforming which are related to adjacent parcels.

- E. That the granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area District, and that the granting of the variance will be consistent with the spirit and intent of the Critical Area Program and associated chapters.
- F. That greater profitability or lack of knowledge of the restrictions shall not be considered as sufficient cause for a variance.
- G. That the proposed variance is consistent with the Wicomico County Comprehensive Plan and Zoning Chapter.

E. CRITICAL AREA STAFF RECOMMENDATION: The Critical Area Staff recommends the granting of the 55' Buffer Variance from the provisions described in Section 125-35 and Section 125-36 of the Wicomico County Code. The request is to replace an existing dwelling with one that will have a 616 square foot larger footprint. The existing single-family dwelling is located entirely within the 100' Tidal Buffer, approximately 48' from the Mean High Water Line. The proposed dwelling, if approved, will encroach no further towards the Mean High Water Line than the existing non-conforming dwelling. The applicants shall agree to complete a Buffer Management Plan in accordance with the provisions stated in Section 125 of the County Code. Tree mitigation shall be based on a 3:1 ratio for trees cut within the 100' Tidal Buffer and a 2:1 ratio for the disturbance in the Buffer. The applicants will plant 38 native trees and/or shrubs within the Buffer to satisfy the mitigation requirements. The required mitigation will greatly enhance the overall condition of water quality and promote a larger range of plant habitat within the Critical Area.

F. CHESAPEAKE BAY CRITICAL AREA COMMISSION COMMENTS: The Chesapeake Bay Critical Area Commission staff stated in their comment letter (**Attachment 5**) that they do not oppose the requested variance. They recommend mitigation in the form of Buffer plantings for the disturbance to the 100' Tidal Buffer at a 2:1 ratio. The plantings should include a combination of native tree and shrub species, and should be clustered at an alternative location within the Buffer, so as to provide optimal habitat value.

H. SUGGESTED CONDITIONS OF APPROVAL:

If the Board should decide that a Buffer Variance is warranted in this case, the following conditions shall apply:

1. The granting of this Variance does not constitute the right to disturb any land within the Critical Area District. A Certificate of Compliance must be obtained from the Planning Office prior to the disturbance of any land on the site.

2. The applicant must agree to complete a Buffer Management Plan, which shall specify 38 trees and/or shrubs be planted within the 100' Tidal Buffer. The Wicomico County Critical Area Staff must approve the Buffer Management Plan.
3. The applicant must adhere to any conditions set forth by other agency/body.

NOTE: It is mutually understood that the Applicant shall obtain a County Building Permit, if applicable, and comply with all applicable Codes and regulations whether or not shown on the approved development plan or noted in the Staff report. Additional materials may be required by the appropriate agency.

Coordinator: Matthew R. Hedger

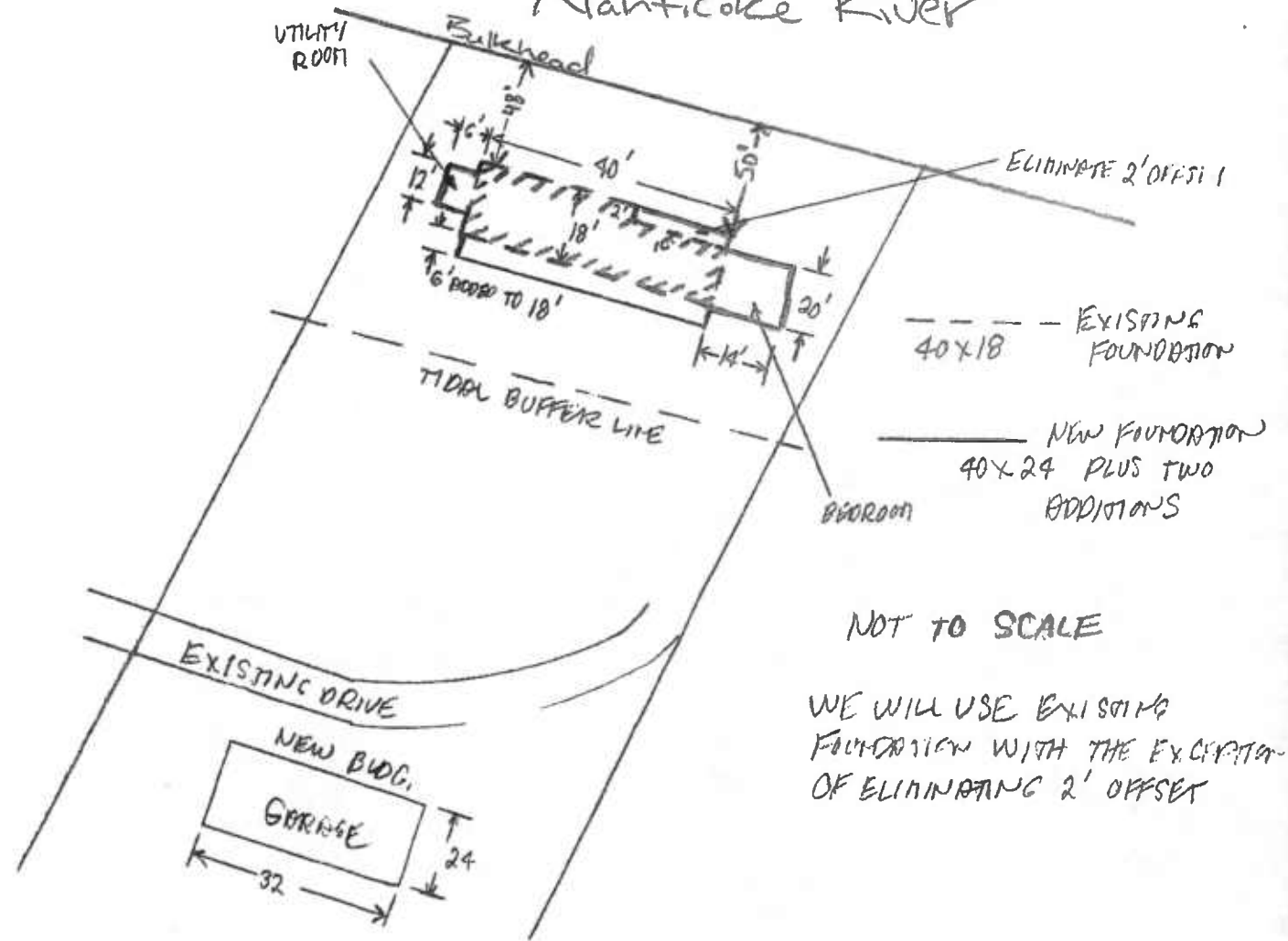
Approved: Frank McKenzie

Date: April 20, 2005

ANTES
4498 SUNSET DRIVE
TRIASITIN, MD

MAP #53
GRID 5
PARCEL 376

VARIANCE REQUEST DRAWING Nanticoke River



Kerrie WI 213-05



**CITY OF SALISBURY - WICOMICO COUNTY
DEPARTMENT OF PLANNING, ZONING
AND COMMUNITY DEVELOPMENT**



Tel: 410-548-4860

Fax: 410-548-4955

Planning & Zoning Commission
Historic District Commission
Metropolitan Planning Organization
March 28, 2005

Wicomico County Board of Appeals
Salisbury Board of Zoning Appeals
Agricultural Land Preservation Advisory Board

Chesapeake Bay Critical Area Commission
ATTN: Kerrie Gallo
1804 West Street, Suite 100
Annapolis, Maryland 21401

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APR 1 2005

RE: **100' Tidal Buffer Variance**
Tax Map #53, Grid 5, Parcel #376

CRITICAL AREA COMMISSION

Dear Kerrie;

I have enclosed a site plan for the above-mentioned property located within a Limited Development Area of the Chesapeake Bay Critical Area. Frank P. and Amylou Antes, the owners of the property, have applied for a Buffer Variance. The request is to create more living space within their existing house. The existing house was constructed in 1946 prior to the adoption of the Chesapeake Bay Critical Area Program. The house was constructed within the 100' Tidal Buffer and approximately 48' from the Mean High Water Line. The proposed addition will not encroach any further into 100' Tidal Buffer than where the house is currently located. The Public Hearing is scheduled for April 28, 2005.

The following is a list of how this request meets the seven variance standards of chapter 125-36 of the Wicomico County Code.

1. The existing structure is *unique* because it was built in 1946, prior to the adoption of the Chesapeake Bay Critical Area Program and the property is located two lots north of a mapped Special Buffer Area (See map on next page). Most of the structures in this management area were built prior to the adoption of the Chesapeake Bay Critical Area Program and were placed within the 100' Tidal Buffer. Most of these properties within the area have added square footage to their houses but were not required to receive a variance because they are located within a mapped Special Buffer Area.
2. The strict enforcement of the provisions within the Critical Area District would deprive the property owner of rights commonly shared by other owners of the property in the same management area. As stated before, most of the structures in this management area are located within the 100' Tidal Buffer and have added living area to their homes since they've been built.
3. The variance will not give Mr. and Mrs. Antes any special privilege that would be denied to owners of the neighboring properties. The proposed addition is similar to most of the existing Buffer development in the area.

4. The Antes' request is not based upon conditions or circumstances which were self-created or self-imposed. The request is for an increase in living area and will not encroach into the Buffer any more than were the house is currently located.
5. The granting of this variance will not adversely affect water quality or adversely impact fish, wildlife or plant habitat within the Critical Area. If the variance is approved, the applicants will be required to mitigate for the disturbance created within the Buffer by planting 20 (2:1 replacement ratio) trees and/or shrubs. This will enhance the Buffer because the entire area between the Mean High Water Line and the proposed addition location is entirely grass.
6. The additional living area is for Mr. and Mrs. Antes' personal use and will not be used for business. Ignorance of the law is not a factor in this request. The applicants contacted our office with this request and are aware of the Chesapeake Bay Critical Area Program.
7. The request is consistent with both the Zoning Code and the Wicomico County Comprehensive Plan. The proposed addition is a permitted use in the Agricultural-Residential zoning district. The proposed increase in living area is also consistent with the "Wicomico County Comprehensive Plan".



Please review and send me any comments that you may have on this project. If you have any questions or concerns, please do not hesitate in giving me a call at (410) 548-4860.

Sincerely,

Matt Hedger

Matt Hedger
Salisbury/Wicomico County
Chesapeake Bay Critical Area Coordinator

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APR 01 2005

CRITICAL AREA COMMISSION

ANTES
4498 SUNSET DRIVE
TYASITIN, MD .

MAP #53
GRID 5
PARCEL 376

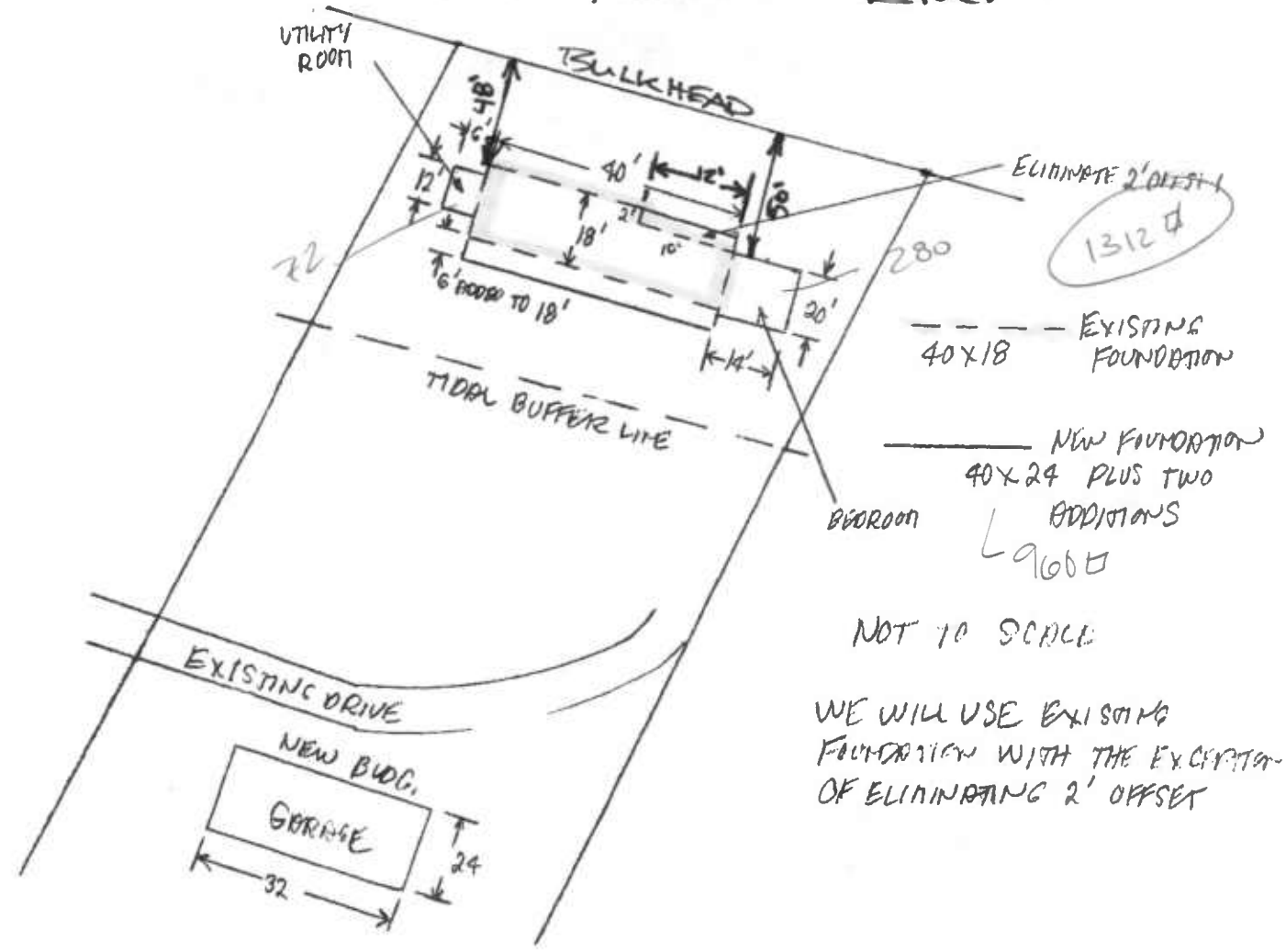
VARIANCE REQUEST DRAWING

Nanticoke River

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APR 01 2005

CRITICAL AREA COMMISSION



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