

AA 0018-06
VAR

Scholley, Frank
2005-0462-V

MSA-S-1829-5382

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Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



Margaret G. McHale
Chair

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/

March 10, 2010

Ms. Patricia Cotter
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road, MS 6301
Annapolis, MD 21401

Re: 2010-029-V – Scholley, Frank G. and Barbara L.

Dear Ms. Cotter:

Thank you for forwarding information on the above-referenced project. This lot is 28,395 square feet and is located in the Limited Development Area (LDA). This is also a Buffer Modification Area (BMA). The applicant requests a variance to allow a dwelling with less setbacks and Buffer than required and with disturbance to slopes greater than 15%. This property was the subject of a previous variance (2005-0462-V), which was granted on February 13, 2006, although it appears that the dwelling proposed as part of that request was never built. The request is identical to the previous one, however, it does not appear that the work was completed although the previous dwelling has been removed. The applicant proposes to construct a dwelling, porches, and garage for a total lot coverage of 5,263 square feet, which is within the allow coverage for a lot of this size (5,445 square feet).

Provided the lot is properly grandfathered, we do not oppose this variance request. If the Hearing Officer determines this request can be granted, mitigation is required at a ratio of 3:1 for the area of ground disturbance on the Buffer. This mitigation should be in the form of native plantings and located forward of the dwelling, if feasible. As the entire area of plantings cannot be accommodated on site, a fee in lieu may be substituted for the portion that cannot be planted.

It should be noted that the new Buffer regulations are in effect and COMAR 27.01.09.01-2 requires the following: (1) For a variance, mitigation for development in the Buffer must be calculated at 3:1 based on the limits of disturbance, where "disturbance" means any alteration or change to the land and includes any amount of clearing, grading, or development activity; (2) In addition, mitigation must be provided for a development activity that results in the removal of an

Ms. Cotter
Page 2 of 2
3/10/2010

individual tree with a diameter of at least 2 inches at DBH at a rate of 100 square feet for every 1 inch of diameter; (3) the planting standards and credits of COMAR 27.01.09.01-2.3(a) must be adhered to

Please include this letter in your file and submit it as part of the record for variance. Please notify the Commission of the decision made in this case. I can be reached at 410-260-3476 should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Julie Roberts', with a long horizontal flourish extending to the right.

Julie Roberts
Natural Resources Planner

cc: AA 18-06

18-06

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 2010-0029-V

FRANK G. SCHOLLEY AND BARBARA L. SCHOLLEY

SECOND ASSESSMENT DISTRICT

DATE HEARD: MARCH 30, 2010

ORDERED BY:

DOUGLAS CLARK HOLLMANN
ADMINISTRATIVE HEARING OFFICER

PLANNER: PATRICIA A. COTTER

DATE FILED: APRIL 1, 2010

PLEADINGS

Frank G. Scholley and Barbara L. Scholley, the applicants, seek a variance (2010-0029-V) to allow a dwelling¹ with less setbacks and buffer than required and with disturbance to slopes 15% or greater on property located along the east side of McPherson Road, south of Riverview Avenue, Annapolis.²

PUBLIC NOTIFICATION

The hearing notice was posted on the County's web site in accordance with the County Code. The file contains the certification of mailing to community associations and interested persons. Each person designated in the application as owning land that is located within 175 feet of the property was notified by mail, sent to the address furnished with the application. Mr. Scholley testified that the property was posted for more than 14 days prior to the hearing. I find and conclude that there has been compliance with the notice requirements.

¹ The application was advertised as seeking a variance to allow a dwelling, but the evidence shows that the applicants are seeking to rebuild the house and the deck attached on the waterside of the pre-existing dwelling.

² The application was advertised as seeking variances for setbacks and buffer and for disturbance to steep slopes. The dwelling that will be built is in the buffer and expanded buffer, and also on steep slopes. However, the property is located in a buffer management area. The requirements of Anne Arundel County Code, Article 18, § 18-13-104(a) relating to the 100-foot buffer and steep slope restrictions do not apply in a buffer modification area. Furthermore, no setback variance is needed because the proposed dwelling meets all zoning setbacks for the R2 district. Also, no variance is needed to § 18-13-104(b) because there will be no new impervious surface added closer to the shoreline than the structure that was demolished. However, a variance to the steep slope provisions is required.

FINDINGS

A hearing was held on March 30, 2010, in which witnesses were sworn and the following evidence was presented with regard to the proposed variance requested by the applicants.

The Property

The applicants own the subject property, which has a street address of 43 McPherson Road, Annapolis, Maryland 21401. The site is shown on Tax Map 45F, Block 21, as Lot 8 in Parcel 219 in the Riverview Manor subdivision. The property is zoned R2 Residential and is a waterfront lot on Weems Creek. This property is classified in the Chesapeake Bay Critical Area as limited development area (LDA) and mapped in a buffer modification area.

The Proposed Work

The applicants seek a variance to allow them to rebuild the dwelling on the same footprint of the pre-existing dwelling, as shown on the Revised Variance Plan, Riverview Manor, Lot 8, admitted into evidence at the hearing on this application as County Exhibit 2.³

The Anne Arundel County Code

Article 17, § 17-8-201 provides that development in the LDA may not occur within slopes of 15% or greater unless development will facilitate the

³ The first stage of the redevelopment of the property, the demolition of the existing house, has occurred. This decision deals with a variance necessary to rebuild the dwelling.

stabilization of the slope or the disturbance is necessary to allow connection of a public utility.

The Variance Requested

There is no evidence that the work proposed is for the purpose of facilitating the stabilization of slopes or necessary to allow connection of a public utility. Because the work will be performed in the steep slope area, steep slope disturbance will occur and a critical area variance to § 17-8-201 is required.

The Evidence Submitted At The Hearing

Patricia A. Cotter, a planner with the Office of Planning and Zoning (OPZ), testified that the subject property contains 28,395 square feet of land area. The property has been zoned R2-Residential since the adoption of comprehensive zoning for the Annapolis Neck Small Area Plan effective July 21, 2007.

Ms. Cotter testified that the subject property meets both the lot area (20,000 square feet) and lot width (80 feet) requirements for a lot in an R2 district. It is a waterfront lot that was platted prior to the enactment of the current development regulations and critical area criteria. The subject property has an existing driveway, garage/workshop, and a large hole where the previous dwelling had been located. This application relates to the demolition, reconstruction and use of a structure located on or next to steep slopes.

Ms. Cotter testified that the property was the subject of a previous variance application (Case No. 2005-0462-V) approved on February 13, 2006 to allow additions (rear additions and a second floor) to the then-existing dwelling with less

buffer than required and with disturbance to slopes measuring 15% or greater.⁴

Building Permit #B02240016 was issued on August 8, 2007 to allow the applicant in that case to expand the floor area of the existing dwelling by constructing a second floor addition, rear addition and an attached garage. During the renovation it was determined that the footings and foundation of the existing dwelling required extensive underpinning to meet the minimum 30-inch depth requirements and to include subsoil drains inside and out. Additional requirements to remove the top courses of block and to grout/reinforce the block walls further rendered such repairs as more costly than complete demolition and complete replacement with superior new footings and foundation walls. This effectively demolished the pre-existing dwelling. The applicants were issued a Stop Work Order on August 31, 2009.

Ms. Cotter testified that, as pointed out in the previous variance case, the proposed construction follows the building line of the existing house. The actual disturbance to steep slopes is considered to be minor and for the most part constitutes the typical 10-foot limit of disturbance to permit construction of the addition and second story. In the current application the applicants are proposing to replace the existing deck attached to the waterfront portion of the dwelling. It will be replaced in the same location and will be the same size. In this regard, the variance is the minimum necessary to allow relief. There is no dwelling immediately adjacent to the proposed disturbance. Consequently, Ms. Cotter

⁴ The 2005 application was in the name of Frank Scholley only.

testified, the approval of the variance should not affect the use of the adjacent property. Also, approval will not alter the existing character of the neighborhood.

Ms. Cotter stated that the critical area lot coverage for this lot before construction began was 2,671 square feet (approximately 9.41%). The allowable coverage for the property is 5,445 square feet. After completion of the proposed construction, the proposed critical area lot coverage will be 5,263 square feet. This is 182 square feet less than the maximum allowed at this site.

Ms. Cotter further testified that the slope on this property descends rapidly from the front of the house toward the shoreline, starting at approximately 46 feet above sea level at the front of the house and descending to approximately 2 feet above sea level at the shoreline. As shown on the site plans, the existing dwelling proposed for reconstruction is immediately adjacent to the area of slopes of 15% and greater. It is clear that any redevelopment in this area of the lot would necessitate variance approval.

Ms. Cotter testified that a review of the neighborhood indicates that all the surrounding lots are developed with single-family dwellings. Both the subject lot and the surrounding neighborhood are clearly impacted by the presence of slopes measuring 15% or more. In fact, approximately 50% of the lot is encompassed by slopes measuring 15% or greater. As such, there are physical constraints and topographic conditions that would result in an unwarranted hardship to the applicants if the critical area program was strongly implemented.

As previously noted, Ms. Cotter continued, all the surrounding lots are improved with single-family dwellings, most of which include decks and porches. Many of the existing dwellings are also much larger than the dwelling proposed for reconstruction. The denial of this variance would deny the applicants rights commonly enjoyed by all the surrounding properties and in similar areas within the critical area.

Furthermore, the request is not based upon conditions or circumstances that are the result of actions by the applicants nor does it arise from any condition relating to land or building use on any neighboring property.

Ms. Cotter testified that it was the opinion of OPZ that this is the minimum variance necessary to afford relief. To grant the applicants a variance to reconstruct the dwelling in the same location and same size is clearly the minimum variance necessary to afford relief. As previously pointed out, a significant portion of the lot is impacted by slopes 15% and greater. The dwelling cannot be reconstructed on the subject property without disturbance to these slopes. The applicants have proposed the dwelling in the same location in order to minimize the site disturbance. It is the opinion of OPZ that the granting of this variance request would be in harmony with the general spirit and intent of the critical area program.

The Critical Area Commission has reviewed the variance case and stated that "provided the property is properly grandfathered, this office does not oppose the variance request." The Commission recommended mitigation at a ratio of 3:1

for the area of ground disturbance in the buffer. The mitigation should be in the form of native plantings and located forward of the dwelling, if feasible. As the entire area of plantings cannot be accommodated on site, a fee in lieu may be substituted for the portion that cannot be planted.

OPZ's Critical Area Team reviewed the application with respect to each of the specific critical area criteria. They offered no objection to the approval of the request. They noted that mitigation will be determined as part of the review of the grading permit.

The Department of Health did not believe that there was adequate room for the three septic system sites required for the property and recommended denial. The applicants have notified OPZ that they are working with the Department of Health to resolve these concerns. Ms. Cotter recommended that if the variance is granted that the decision be conditioned on securing Department of Health approval prior to the issuance of the building and grading permits.

With regard to the standards by which a variance may be granted as set forth under § 18-16-305, Ms. Cotter testified that OPZ recommended that the application be granted.

Mr. and Mrs. Scholley confirmed Ms. Cotter's testimony about the sequence of events that led them to the point where they needed a second variance because the renovation exposed fundamental problems with the existing home that was being renovated, requiring its demolition and the construction of a new dwelling.

Mr. Scholley testified that the entire process has been a burden, financially and otherwise, on him and his entire family. They have been living in the garage on the property since their home was demolished, but “there’s no place like home.”⁵ The applicants’ twin daughters, 7 years of age,⁶ testified that they wanted their house back so that they could have a pet. Having heard applicants ask for a 4-car garage because they were into collecting cars, or pleading to keep a shed in which to store clothing being sold on E-Bay, a plaintive plea for a pet is the most persuasive argument I’ve heard as the Administrative Hearing Officer.

There was no other testimony taken or exhibits received in the matter. The Hearing Officer did not visit the property.

DECISION

Upon review of the facts and circumstances, I find and conclude that the applicants are entitled to conditional relief from the Code.

State Requirements for Critical Area Variance

§ 8-1808(d)(2) of the Natural Resources Article, Annotated Code of Maryland, provides in subsection (ii), that “[i]n considering an application for a variance [to the critical area requirements], a local jurisdiction shall presume that

⁵ Quoting Dorothy, not Mr. Scholley.

⁶ “Except as otherwise provided by law, every person is competent to be a witness.” Maryland Rules of Civil Procedure, Rule 5-601. The age at which a child can testify in a court proceeding has been the subject of much discussion in court opinions. The age of 7 is usually considered too young. However, the twins seemed to understand what it is to tell the truth, which is the litmus test in accepting the testimony of any witness, including a minor. Whatever the legal arguments might be, there was no reason to doubt the twin’s testimony that they wanted to recover their home so they could have a pet.

the specific development in the critical area that is subject to the application and for which a variance is required does not conform to the general purpose and intent of this subtitle, regulations adopted under this subtitle, and the requirements of the jurisdiction's program." (Emphasis added.) "Given these provisions of the State criteria for the grant of a variance, the burden on the applicant is very high." *Becker v. Anne Arundel County*, 174 Md.App. 114, 124; 920 A.2d 1118, 1124 (2007).

The question of whether the applicants are entitled to the variance requested begins, therefore, with the understanding that, in addition to the other specific factors that must be considered, the applicants must overcome the presumption, "that the specific development in the critical area that is subject to the application ... does not conform to the general purpose and intent of [the critical area law]."⁷ Furthermore, the applicants carry the burden of convincing the Hearing Officer "that the applicant has satisfied each one of the variance provisions."⁸ (Emphasis added.)

County Requirements for Critical Area Variance

§ 18-16-305(b) sets forth six separate requirements (in this case) that must be met for a variance to be issued for property in the critical area. They are (1)

⁷ § 8-1808(d)(2)(ii) of the Natural Resources Article. References to State law do not imply that the provisions of the County Code are being ignored or are not being enforced. If any difference exists between County law and State law, or if some State criteria were omitted from County law, State law would prevail. See, discussion on this subject in *Becker v. Anne Arundel County, supra*, 174 Md.App. at 135; 920 A.2d at 1131.

⁸ § 8-1808(d)(4)(ii).

whether a denial of the requested variance would constitute an unwarranted hardship, (2) whether a denial of the requested variance would deprive the applicants of rights commonly enjoyed by other property owners, (3) whether granting the variance would confer a special privilege on the applicants, (4) whether the application arises from actions of the applicants, or from conditions or use on neighboring properties, (5) whether granting the application would not adversely affect the environment and be in harmony with the critical area program, and (6) whether the applicants have overcome the presumption in Natural Resources Article, § 8-1808(d)(2)(ii), of the State law that the variance request should be denied.

Provided that an applicants meet the above requirements, a variance may not be granted unless six additional factors are found: (1) the variance is the minimum variance necessary to afford relief; (2) the granting of the variance will not alter the essential character of the neighborhood or district in which the lot is located; (3) the variance will not substantially impair the appropriate use or development of adjacent property; (4) the variance will not reduce forest cover in the limited development and resource conservation areas of the critical area; (5) the variance will not be contrary to acceptable clearing and replanting practices required for development in the critical area; or (6) the variance will not be detrimental to the public welfare.

Findings - Critical Area Variance

I find, based upon the evidence that, for the reasons set forth below, the applicants are entitled to conditional relief from the Code.

Subsection (b)(1) - Unwarranted Hardship.

In *Becker v. Anne Arundel County, supra*, 174 Md.App. at 132-3; 920 A.2d at 1129, the Court of Special Appeals discussed the definition of unwarranted hardship found in § 8-1808(d)(1) of the Natural Resources Article in the State law: “The amendment changed the definition of unwarranted hardship to mean that, ‘without a variance, an applicant would be denied reasonable and significant use of the entire parcel or lot for which the variance is requested.’”

I find that the denial of the variance would constitute an unwarranted hardship that would deny the applicants use of the entire parcel. The applicants have the right to rebuild the structure on this grandfathered lot in order to have “reasonable and significant use of the entire ... lot” that is the subject of this application. Therefore, I find that the applicants have met the requirements of subsection (b)(1).

Subsection (b)(2) - Deprive Applicants Of Rights

I find that the applicants would be deprived of rights commonly enjoyed by other properties in similar areas as permitted in accordance with the provisions of the critical area program, i.e., the right to rebuild the dwelling on this grandfathered lot. Therefore, I find that the applicants have met the requirements of subsection (b)(2).

Subsection (b)(3) - Special Privilege

I further find that the granting of the critical area variance requested will not confer on the applicants any special privilege that would be denied by COMAR, 27.01, the County's critical area program, to other lands or structures within the County's critical area. There was testimony that the proposed improvements are comparable to other houses in the neighborhood. *See*, County Exhibit 2. Therefore, I find that the applicants have met the requirements of subsection (b)(3).

Subsection (b)(4) - Actions By Applicants Or Neighboring Property

I find that the critical area variance requested is not based on conditions or circumstances that are the result of actions by the applicants, including the commencement of development before an application for a variance was filed, and does not arise from any condition relating to land or building use on any neighboring property. Therefore, I find that the applicants have met the requirements of subsection (b)(4).

Subsection (b)(5) - Water Quality, Intent Of Critical Area Program

The granting of the critical area variance requested will not adversely affect water quality or adversely impact fish, wildlife or plant habitat within the County's critical area or a bog protection area and will be in harmony with the general spirit and intent of the County's critical area program. The proposed work will be offset by mitigation that the applicants will undertake. Ms. Cotter testified that the proposed work would not adversely affect water quality or adversely

impact fish, wildlife or plant habitat within the County's critical area or a bog protection area and will be in harmony with the general spirit and intent of the County's critical area program. Therefore, I find that the applicants have met the requirements of subsection (b)(5).

Subsection (b)(7) - § 8-1808(d)(2)(ii) Presumption

In *Becker v. Anne Arundel County*, *supra*, 174 Md.App. at 133; 920 A.2d at 1129, the Court of Special Appeals discussed the presumption found in § 8-1808(d)(2)(ii) of the Natural Resources Article: "The amendment also created a presumption that the use for which the variance was being requested was not in conformity with the purpose and intent of the critical area program."

I find that the applicants, by competent and substantial evidence, have overcome the presumption contained in the Natural Resources Article, § 8-1808(d)(2), of the State law (which is incorporated into § 18-16-305 subsection (b)(2)) for the reasons set forth above. Therefore, I find that the applicants have met the requirements of subsection (b)(7).

I further find that the critical area variance represents the minimum relief. There was nothing to suggest that the granting of the critical area variance would alter the essential character of the neighborhood, substantially impair the appropriate use or development of adjacent property, reduce forest cover in the limited development and resource conservation areas of the critical area, or cause a detriment to the public welfare.

ORDER

PURSUANT to the application of Frank G. Scholley and Barbara L. Scholley, petitioning for a variance to allow a dwelling with less setbacks and buffer than required and with disturbance to slopes 15% or greater; and

PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is this **1st day of April, 2010**,

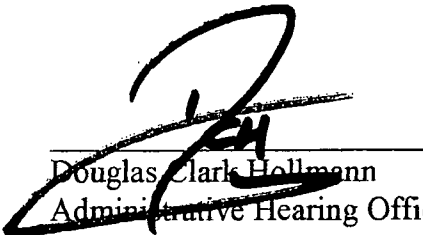
ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicants are **granted** a critical area variance to § 17-8-201 to allow the construction of the proposed dwelling and deck as shown on County Exhibit 2.

Furthermore, County Exhibit 2, referenced in this decision, is incorporated herein as if fully set forth and made a part of this Order. The proposed improvements shown on County Exhibit 2 shall be constructed on the subject property in the locations shown therein.

The foregoing variance is subject to the following conditions:

1. The applicants shall comply with the instructions and necessary approvals from the Permit Application Center, the Department of Health, and the Critical Area Commission. This condition specifically includes, but is not limited to, mitigation as determined by the Permit Application Center and/or the Critical Area Commission.
2. No further expansion of the dwelling is allowed.
3. Impervious coverage shall not exceed 5,263 square feet.

4. The building permit is subject to the approval of the Department of Health.
5. This Order does not constitute a building permit. In order for the applicants to construct the structures permitted in this decision, they must apply for and obtain the necessary building permits, along with any other approvals required to perform the work described herein.


Douglas Clark Hollmann
Administrative Hearing Officer

NOTICE TO APPLICANTS

Within thirty days from the date of this Decision, any person, firm, corporation, or governmental agency having an interest therein and aggrieved thereby may file a Notice of Appeal with the County Board of Appeals. **A permit for the activity that was the subject of this variance application will not be issued until the appeal period has elapsed.**

Further § 18-16-405(a) provides that a variance expires by operation of law unless the applicants obtain a building permit within 18 months. Thereafter, the variance shall not expire so long as construction proceeds in accordance with the permit.

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

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/

February 1, 2006

Ms. Liz West
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road, MS 6301
Annapolis, MD 21401

RE: Variance 2005-0462-V Frank Sholley

Dear Ms. West:

Thank you for providing information on the above referenced variance request. The applicant is requesting a variance to permit the construction of a dwelling addition, porches, attached garage, and a second story to the existing single-family dwelling with less Buffer than required and with impacts to steep slopes greater than 15%. The property is currently designated as a Limited Development Area (LDA) and a Buffer Exemption Area (BEA), is partially forested, has a single-family dwelling with driveway and detached workshop, retaining walls, deck, patio, pathway, foot bridge, bulkhead, pier, well, and septic system, and steep slopes.

Provided that the property is properly grandfathered, this office does not oppose a variance to permit the construction of the dwelling additions; however, impacts must be minimized and the variance the minimum necessary. Based on the site plan, we have the following comments.

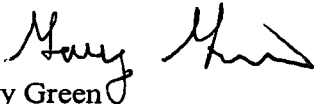
- 1) As stated in the site plans, steep slopes encumber almost the entire property.
- 2) The property is 0.65 acres (28,395 square feet) and the applicant proposes a total of 5,270 square feet of impervious surface coverage which includes 2,671 square feet of existing impervious coverage. The amount of allowable impervious surface coverage is 5,445 square feet. 14,139 square feet of forest exists on the property and 2,964 square feet of forest will be cleared with the proposed improvements. The amount of ground disturbance for the improvements is 7,000 square feet.

Ms. Liz West
Variance 2005-0462-V Frank Sholley
February 1, 2006
Page 2

- 3) Mitigation, at a ratio of 3:1 for disturbance within the Buffer should be required. Plantings, consisting of native trees and shrubs, should be accommodated on the site to the extent possible.
- 4) Stormwater from dwelling and driveway should be directed to stable vegetated outfalls away from steep slopes to provide water quality benefits on the site.

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,



Gary Green
Environmental Analyst
cc: AA0018-06

AA18-06

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 2005-0462-V

IN RE: FRANK SCHOLLEY

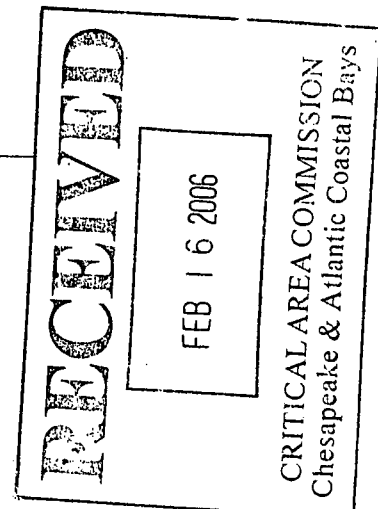
SECOND ASSESSMENT DISTRICT

DATE HEARD: FEBRUARY 9, 2006

ORDERED BY: STEPHEN M. LeGENDRE, ADMINISTRATIVE HEARING OFFICER.

PLANNER: ROBERT KONOWAL

DATE FILED: FEBRUARY 13, 2006



PLEADINGS

Frank Scholley, the applicant, seeks a variance (2005-0462-V) to permit dwelling additions with less buffer than required and with disturbance to steep slopes on property located along the east side of McPherson Drive, south of Riverview Avenue, Annapolis.

PUBLIC NOTIFICATION

The hearing notice was posted on the County's web site in accordance with the County Code. The file contains the certification of mailing to community associations and interested persons. Each person designated in the application as owning land that is located within 175 feet of the property was notified by mail, sent to the address furnished with the application. Mr. Scholley testified that the property was posted for more than 14 days prior to the hearing. I find and conclude that the requirements of public notice have been satisfied.

FINDINGS AND CONCLUSIONS

The applicant owns a single-family residence with a street address of 43 McPherson Drive, in the Riverview Manor subdivision, Annapolis. The property comprises 82,395 square feet and is zoned R-2 residential with a Chesapeake Bay Critical Area designation as Limited Development Area (LDA). This waterfront lot on Weems Creek is located in a Buffer Modification Area. The applicant seeks to expand the existing A-frame dwelling with a rear addition (living space and

garage) and a second floor. The limits of disturbance extend into the Chesapeake Bay Critical Area buffer as expanded for steep slopes. And, a portion of the disturbance falls on steep slopes.

Anne Arundel County Code, Article 18, Section 18-13-104(a) creates a 100-foot buffer from tidal waters. The buffer expands to include all lands within 50 feet of contiguous steep slopes. Article 17, Section 17-8-201 prohibits disturbances of slopes of 15 percent or greater in the LDA. Accordingly, the proposal requires a variance to disturb the expanded buffer and steep slopes.

Robert Konowal, a planner with the Office of Planning and Zoning, testified that the dwelling is located next to the steep slopes. The construction follows the existing building lines. The disturbance is considered comparatively minor. The variances are not likely to alter the character of the neighborhood or the use or development of adjacent property. There were no adverse agency comments.¹ By way of conclusion, Mr. Konowal supported the application.

Mark Evans, the applicant's engineering consultant, testified that the additions are no closer to tidal waters than the existing dwelling. The disturbance to steep slopes is 650 square feet. The neighborhood includes other two-story dwellings. The witness believes that the variance standards are satisfied because the project includes stormwater management, sediment controls and reforestation. Mr. Scholley testified that the septic system has been upgraded to the requirements of the Department of Health. There was no other testimony in the matter.

¹ The Chesapeake Bay Critical Area Commission requested mitigation and control of stormwater.

Upon review of the facts and circumstances, I find and conclude that the applicant is entitled to relief from the code. For this Critical Area property, due to the extent of the expanded buffer and steep slopes, a strict implementation of the program would result in an unwarranted hardship. To literally interpret the program would deny the applicant the right to expand the dwelling, a right commonly enjoyed by other properties in similar areas in the Critical Area. Conversely, the granting of the variances does not confer any special privilege that the program typically denies. There is no indication that the request results from the actions of the applicant or from land use on neighboring property. Finally, with mitigation and other conditions, the variances will not adversely impact Critical Area assets and will harmonize with the general spirit and intent of the program.

I further find that the variances represent the minimum relief. As noted, the additions are no closer to the water than the existing construction and the disturbance to steep slopes is relatively contained. There was nothing to indicate that the granting of the variances would alter the essential character of the neighborhood, substantially impair the appropriate use or development of adjacent property, or cause a detriment to the public welfare. The approval is subject to the conditions in the Order.

ORDER

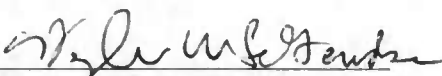
PURSUANT to the application of Frank Scholley, petitioning for a variance to permit dwelling additions with less buffer than required and with disturbance to steep slopes; and

PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is this 13th day of February, 2006,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicant is **granted** variances to disturb the expanded buffer and steep slopes to permit dwelling additions in accordance with the site plan.

The foregoing approval is subject to the following conditions:

1. No further expansion of the dwelling is allowed.
2. Impervious coverage shall not exceed 5,270 square feet.
3. The building permit is subject to the approval of the Department of Health.
4. The applicant shall provide mitigation at a 3:1 ratio for disturbance in the buffer with plantings on site to the extent practicable.
5. Stormwater shall be directed to stable, vegetated outfalls, away from steep slopes to provide water quality benefits.


Stephen M. LeGendre
Administrative Hearing Officer

NOTICE TO APPLICANT

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

Further Section 18-16-405(a) provides that a variance expires by operation of law unless the applicant obtains a building permit within eighteen months. Thereafter, the variance shall not expire so long as construction proceeds in accordance with the permit.

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

Drum, Loyka & Associates, LLC
Civil Engineers - Land Surveyors

December 5, 2005

Anne Arundel County
Office of Planning and Code Enforcement
Zoning Division
2664 Riva Road
Annapolis, MD 21401

RE: River View Manor ~ Lot 8
43 McPherson Road,
Annapolis, MD 21401
Tax Map 45, Block 17, Parcel 219
Tax Account #02-644-00105400

Sir/ Madam:

Enclosed please find a variance request package for the above referenced project. The subject property is located in the community of River View Manor. The subject lot is located in the Chesapeake Bay Critical Area with a Limited Development Area (LDA) land use designation and is buffer exempt.

A variance is requested to Article 17, Title 8, Subtitle 2, 201 of the Anne Arundel County Code. This variance is necessary to allow the disturbance of steep slopes greater than 15% and their buffers during the construction of an addition with Garage, 2nd story improvements to the existing A-frame dwelling and driveway. The lot steeply slopes on both its north and east side all the way up to the existing dwelling. The new addition has been sited on the south and west face of the existing structure to limit disturbance in the steep slopes, however, no improvements can be made without impacting the buffers. The additions will not bring the structure any closer to the tidal waters of Weems Creek. The existing septic system limits improvement to a dwelling less than 3500-sf and wells both onsite and on adjacent properties limit any more improvements to the septic system.

Thank you for your attention to this matter. Please contact us if we may be of further service during your review of this variance request.

Sincerely,

DRUM, LOYKA & ASSOCIATES, LLC



Mark W. Evans
Associate

RECEIVED

JAN 09 2006

CRITICAL AREA COMMISSION

209 West Street, Suite 203
Annapolis, Maryland 21401
(410) 280-3122 Fax (410) 280-1952

**Critical Area Report Narrative Statement for Riverview Manor Lot 8,
(43 McPherson Road, Annapolis, MD 21401)**

The proposed use of the project site is for a new single family dwelling to replace a previously existing dwelling on a lot zone as residential (R-2).

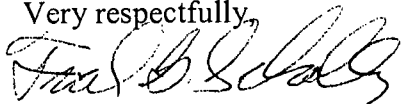
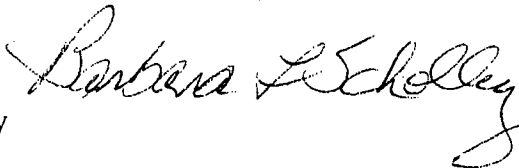
The property is an irregularly shaped lot with an area of 28,395 square feet (0.65 acres). As of February 01, 2010, the property has an existing gravel driveway, garage/workshop and a large excavated hole where the previous dwelling existed. These improvements are located in the western portion of the lot which is relatively flat and has a variety of trees that include a black walnut and several large poplars. A super silt fence, earth dike and stone outlet structure (approved in Grading Permit #2012025) currently manages erosion. The eastern half of the lot descends to Weems Creek and is stabilized by a mix of trees, bushes, and grasses. Approximately 14,872 square feet of the property is vegetated with trees and shrubs. The proposed total disturbed area is 9,753 square feet. The proposed mitigation for the disturbance is by reforestation at a 3:1 ratio for disturbed area inside the expanded buffer for steep slopes and at a 1:1 ratio for deforestation outside of the buffer. Proposed reforestation of 4,935 square feet would occur on site and 13,215 square feet of offsite reforestation to be paid by fee-in-lieu.

Methods to minimize impact on water quality during construction include the super silt fence, earth dike, and stone outlet structure currently installed and discussed above.

The impervious surface before construction began was 2,671 square feet. The proposed impervious surface after construction is 5,263 square feet.

No known plant or wildlife habitats of local significance exist on the lot which includes steep slopes and an expanded buffer.

Very respectfully,

Frank G. and Barbara L. Scholley

Chesapeake Bay Critical Area Report

River View Manor ~ Lot 8

Tax Map 45, Grid 17, Parcel 219

Tax Account No. 02-644-00105400

Property Address: 43 McPherson Drive
Annapolis, MD 21401

Property Owner & Variance Applicant: Frank G. Scholley

Critical Area Designation: LDA **Zoning:** R2 **Lot Area:** 28,395 s.f.

Site Description

This property is a rectangular shaped lot in the subdivision of River View Manor on the west shore of Weems Creek. The lot is currently improved with a single-family dwelling and associated improvements. The lot has both private water and septic. The site gradually slopes from west to east for approximately 100 feet. The land then steeply slopes down to a flat, low-lying grassy area along the shore of Weems Creek. This lot is waterfront, falls within the Critical Area of the Chesapeake Bay with an LDA land use designation and is buffer exempt.

Description and Purpose of Variance Request

The applicant is proposing an addition to the existing single-family dwelling with associated improvements. The proposed improvements include an addition with a garage to the west and south and adding a 2nd story to the existing building. Construction of the proposed addition will require a variance to Article 17 Title 8-201 of the Anne Arundel County Code to allow disturbance on slopes of 15% or greater and there buffers.

Vegetative Coverage

This site is currently forested with roughly 14,139 s.f. of vegetation. Roughly 2,964 s.f. of vegetation will need to be removed as a result of the proposed construction. Reforestation for this lot will be addressed during the grading permit phase of this project.

Impervious Coverage

The site currently has 2,671 s.f. of impervious coverage. The proposed impervious area for this property is 5,270 s.f. The proposed impervious coverage will not exceed the allowable impervious coverage of 5,445 s.f. The area to be disturbed by proposed work will roughly be 7,000 s.f.

Predominant Soils

The predominant soils types in the area are Collington, Wist, Westphalia, 10 to 15 percent slopes (CSE) and Collington, Wist Urban Land Complex, 0 to 5 percent slopes (CPuB). These soils are not hydric soils (soils characteristic of wetlands).

Drainage and Rainwater Control

Runoff from the existing house discharges at grade through existing roof leaders. Runoff from this property has a direct discharge to Weems Creek. Stormwater management and erosion control for this property will be addressed at the time of grading permit.

Conclusions – Variance Standards

The applicant proposes an addition to the existing dwelling with associated improvements. With the other requirements set at time of grading permit including reforestation, sediment controls, and stormwater management, the proposed development will not cause adverse impacts to fish, wildlife, or water quality in the Critical Area.

This report is based on a Variance Plan prepared by Drum, Loyka & Associates, LLC and date November 29, 2005 and a site survey by Drum, Loyka & Associates, LLC. Copies of which are attached to this report.

Reference:

ADC: The Map People, 2002 Anne Arundel County, Maryland, Street Map Book

Anne Arundel County Office of Planning & Zoning, 1988 Critical Area Map

Anne Arundel County Office of Planning & Zoning, 1995 Buffer Exemption Map

Anne Arundel County, Maryland; Chesapeake Bay Critical Area Mapping Program, 1988, Critical Area Map

Federal Emergency Management Agency, 1985. Flood Insurance Rate Map

First American Real Estate Solutions, 2002, Realty Atlas: Anne Arundel County Maryland

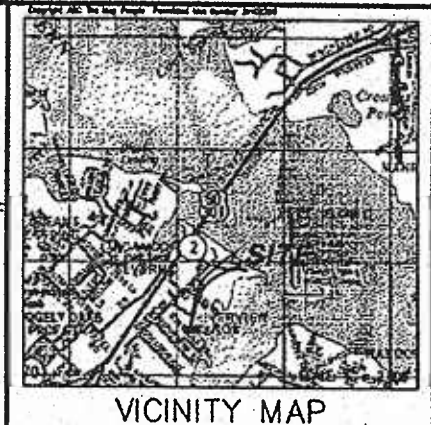
Drum Loyka and Associates. 2005 Site Plan

U.S. Department of Agriculture, Natural Resource Conservation Service –2003 Soil Survey of Anne Arundel County Maryland.

State Highway Administration of Maryland, 1989. Generalized Comprehensive Zoning Map: Third Assessment District



SITE TABULATIONS	
ZONING: R-2	
SETBACKS: FRONT=30', REAR=25', SIDE=7' MIN., COMB. 20'	
CRITICAL AREA DESIGNATION	LDA
SITE AREA	28,395 SF OR 0.65 AC
TOTAL DISTURBED AREA	7,000 SF OR 0.16 AC 9753 SF
IMPERVIOUS COVERAGE ALLOWED	5,445 SF OR 0.13 AC
EXISTING IMPERVIOUS COVERAGE	2,671 SF OR 0.06 AC
PROPOSED IMPERVIOUS COVERAGE	5,270 SF OR 0.12 AC
	5,263 SF.



VARIANCE NOTE: THIS PLAN REQUIRES A VARIANCE TO ARTICLE 17, TITLE 8, SUBTITLE 2, 201 TO ALLOW DISTURBANCE ON SLOPES OF 15 % OR GREATER AND TREE BUFFERS.

SEPTIC NOTE: THIS LOT REQUIRED & RECEIVED A 5-FT HEALTH DEPARTMENT VARIANCE TO ALLOW THE SEPTIC DRYWELL TO BE 5-FT FROM THE LOT LINES. SEPTIC DESIGN APPROVED FOR HOUSE UNDER 3500 SF.

McPHERSON ROAD
30' RIGHT-OF-WAY

RECEIVED
FEB 18 2010
CRITICAL AREA COMMISSION
Chesapeake & Atlantic Coastal Bays

DESIGNED: MINE	DRAWN: MINE	REVISIONS TO APPROVED PLANS			
ORIG. DATE:		No.	DATE	BY	DESCRIPTION
MODIFIED BY/DATE: MINE / 11/28/05		1	02/01/10	FRANK SCHOLLEY	(OWNER)
CADD DWG #: RS04904Y					
CSA PROJECT #: RS-049-04					

DRUM, LOYKA & ASSOCIATES, LLC
CIVIL ENGINEERS - LAND SURVEYORS
209 WEST STREET, SUITE 203
ANNAPOLIS, MARYLAND 21401
410-280-3122

OWNER
Mr. FRANK G. SCHOLLEY
43 McPHERSON DRIVE
ANNAPOLIS, MD 21401
(410) 224-2367

REVISED VARIANCE PLAN
RIVER VIEW MANOR ~ LOT 8
43 McPHERSON ROAD, ANNAPOLIS, MD 21401
TAX ACCOUNT NO. 02-844-00105400
TAX MAP 45 GRID 17 PARCEL 219 DISTRICT 2ND
ANNE ARUNDEL COUNTY, MARYLAND

SCALE: 1"=20'
DATE: 11/28/05 PRD. NO: RS04904 SHEET 1 OF 1

1"=40' 02/01/10

- LEGEND**
- - - EXISTING CONTOUR
 - - - PROPOSED GRADE
 - - - EX. WOODS LINE
 - - - LIMIT OF DISTURBANCE
 - 27⁺ PROPOSED SPOT ELEV.
 - SS - SS SUPER SILT FENCE

