

AA 91-06
VAR

Hollaway, William
0020

MSA-S-1829-5398

Aug 2/16/04

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 16, 2006

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

RE: Variance 2006-0020-V William and Stephanie Hollaway

Dear Ms. West:

Thank you for providing information on the above referenced variance. The applicant is requesting a variance to permit the construction of a first floor and adjacent second story decks on the side of the existing dwelling with less setbacks and Buffer than required. The property is designated as Limited Development Area (LDA), is Buffer Exemption Area (BEA), and is developed with a single-family dwelling and driveway.

Provided that the property is properly grandfathered, we do not oppose the variance.

If granted, we recommend that the footers for the decks be hand dug to reduce impacts to the property and that mitigation at a ratio of 3:1 for disturbance within the Buffer should be required.

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.

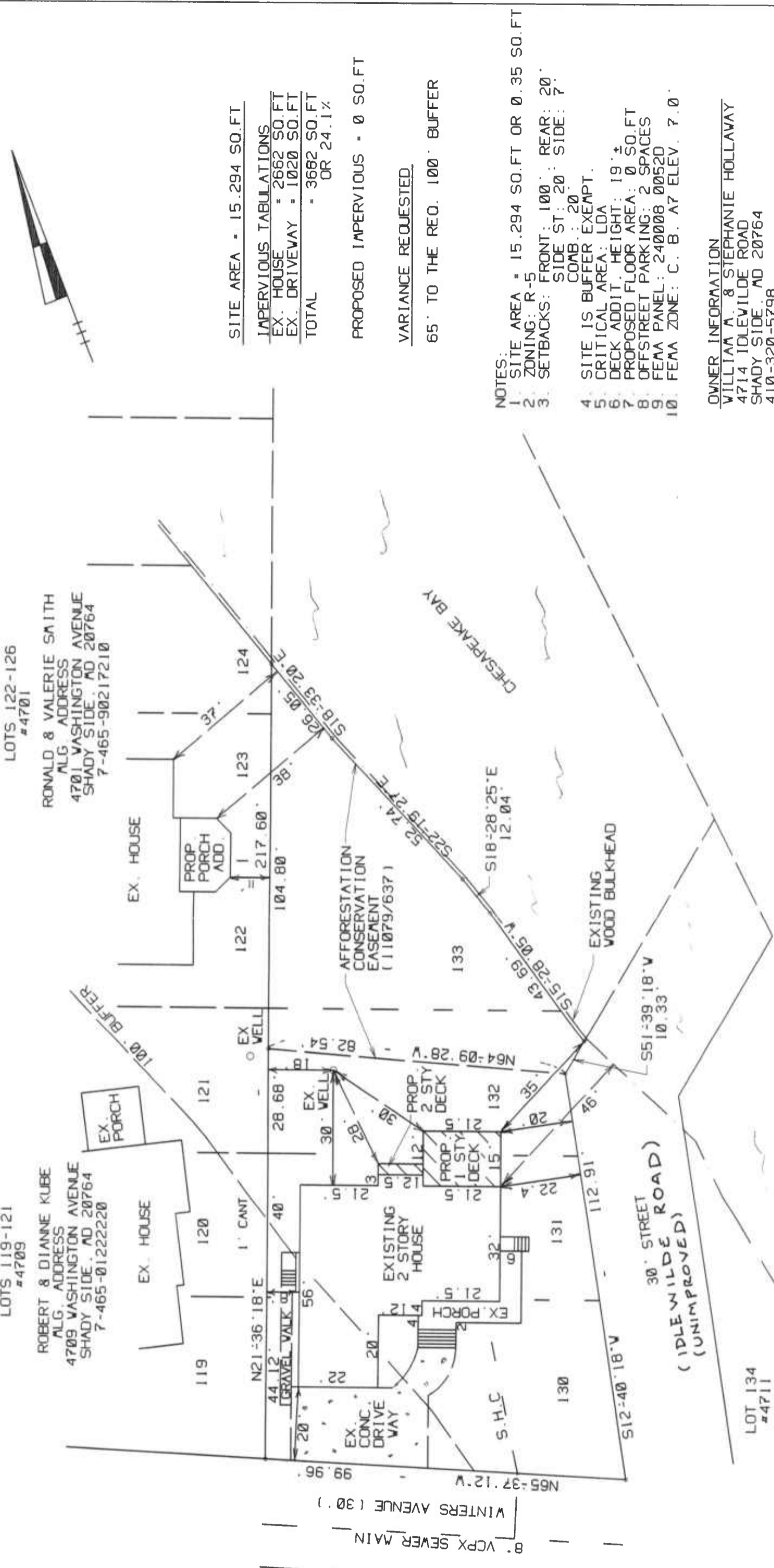
Sincerely,

A handwritten signature in cursive script, appearing to read "Gary Green".

Gary Green
Environmental Analyst
cc: AA91-06

SITE PLAN

SCALE: 1" = 30'



SITE AREA - 15,294 SQ.FT
 IMPERVIOUS TABULATIONS
 EX. HOUSE - 2662 SQ.FT
 EX. DRIVEWAY - 1020 SQ.FT
 TOTAL - 3682 SQ.FT
 OR 24.1%

PROPOSED IMPERVIOUS - 0 SQ.FT

VARIANCE REQUESTED

65' TO THE REQ. 100' BUFFER

- NOTES:
1. SITE AREA = 15,294 SQ.FT OR 0.35 SQ.FT
 2. ZONING: R-5
 3. SETBACKS: FRONT: 100' REAR: 20'
SIDE ST: 20' SIDE: 7'
COMB.: 20'
 4. SITE IS BUFFER EXEMPT.
 5. CRITICAL AREA: LDA
 6. DECK ADDIT. HEIGHT: 19'±
 7. PROPOSED FLOOR AREA: 0 SQ.FT
 8. OFFSTREET PARKING: 2 SPACES
 9. FEMA PANEL: 240008 00520
 10. FEMA ZONE: C. B. A7 ELEV. 7.0'

OWNER INFORMATION
 WILLIAM A. & STEPHANIE HOLLAWAY
 4714 IDLEWILDE ROAD
 SHADY SIDE, MD 20764
 410-320-5798

IDLEWILDE ON THE BAY

LOTS 130 - 133
 4714 IDLEWILDE ROAD
 SHADY SIDE, MD 20764
 TAX ID: 7-465-01222222

RECEIVED

FEB 9 2006

CRITICAL AREA COMMISSION

LOTS 119-121
 #4709
 ROBERT & DIANNE KUBE
 ALG. ADDRESS
 4709 WASHINGTON AVENUE
 SHADY SIDE, MD 20764
 7-465-01222220

LOTS 122-126
 #4701
 RONALD & VALERIE SMITH
 ALG. ADDRESS
 4701 WASHINGTON AVENUE
 SHADY SIDE, MD 20764
 7-465-90217210

LOT 134
 #4711
 IDLEWILDE CIVIC LEAGUE
 ALG. ADDRESS
 P.O. BOX 155
 SHADY SIDE, MD 20764
 7-465-02383000

8" VCPX SEWER MAIN
 WINTERS AVENUE (30')

30' STREET
 (IDLEWILDE ROAD)
 (UNIMPROVED)

RE: An Appeal From An Administrative
Decision Of The Department of
Inspections & Permits

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BEFORE THE
COUNTY BOARD OF APPEALS
OF ANNE ARUNDEL COUNTY
CASE NO.: BA 46-06A
Hearing Date: January 9 &
April 25, 2007



LIAM M. HOLLAWAY
Petitioner

MEMORANDUM OF OPINION

Summary of Pleadings

This is an administrative decision of the Department of Inspections & Permits. This appeal is taken from the granting of building permit #B02227716, to permit construction of a 237' x 6' vinyl fence, on property known as 4714 Idlewilde Road, Shady Side.

Summary of Evidence

Mr. William Hollaway testified regarding the location and physical features of his property and other properties in the neighborhood. Mr. Kube is the only neighbor who has noted a disagreement over the fence. The fence was installed for privacy. He requested a permit to construct a fence along the east side of the property, but has not implemented that portion of the permit. His property contains a forest conservation easement. His home is constructed above the flood level and is setback seven feet from the west side property line.

Ms. Barbara Parkinson testified that she owns a parcel of waterfront land that adjoins community association property. The more established residents were concerned that the developer of other homes (including the Hollaway's) would construct a gated and fenced community and change the character of the neighborhood. She does not want the Petitioner's fence to remain and impede views.

Mr. Edwin Reid, a 40 year resident, testified that he did not fence his property because it would impede the views of the water from other's properties. Fences should not disrupt the views of the Bay.

Mr. Ralph Ray moved to the area 19 years ago. He wanted a view of the Bay. His view has been reduced significantly over the years. The subject fence blocks his view and decreases his property's value.

Ms. Audrey Flanagan is opposed to the fence. She wants the Petitioner to comply with the law.

Ms. Carrie Hayes is opposed to the fence. She wants the Board to consider the impact of it upon light, air and view.

Mr. Robert Kube, the Protestant, described his home's location next to the Petitioner's property. The offending fence is white and taller than six feet. He objects to the location of the fence, which blocks his view of the water and is within five feet of his well. Mr. Hollaway has no children or pets that require enclosure and privacy is not a legitimate concern. All other sides of the property are open. He would like the Petitioner to remove five or six of the fence panels to maintain a 30 foot setback from the well as required for other accessory structures.

Ms. Dianne Kube testified that the developer intended that all parcels have water views. Mr. Hollaway told her that he had no intention of installing fencing. She placed her home on the market and the sale fell through because of the fence. She believes that her property's value has decreased by \$150,000 due to the fence.

Mr. Robert Angle testified that his home faces the Hollaway property. There are no community covenants.

Mr. W. Jay Leshinskie, County permit coordinator, reviewed the permit after it was issued. He described the permitting process. Fences are often used to delineate property lines.

He found nothing wrong with this permit. If the fence in this case violates the permit, then an enforcement action could begin.

All testimony was stenographically recorded and the recording is available to be used for the preparation of a written transcript of the proceedings.

Findings and Conclusions

This property is a waterfront lot within the R5-Residential district and within the Limited Development Area ("LDA") Chesapeake Bay Critical Area. The property is improved with a single-family residence, a deck, bulkhead, porches and walkways. This appeal is taken from the granting of a building permit to permit the construction of a six foot tall, vinyl fence along the west side property line of a residential parcel. A portion of the fence is in the front (or waterside) yard. The Petitioner originally requested 237 linear feet of fencing, but have constructed and/or desire to construct only 112.8 feet thereof. We consider this case a request only for the 112.8 feet of fencing.

The Protestants raised concerns regarding the fence, most importantly the negative impact of the fence upon their views and property value. They do not like the placement of the fence within five feet of the well. Of greatest concern is that portion of the fence beyond the waterfront of the Petitioner's house façade. If five panels of the fence were removed, the Protestants would be satisfied. Other neighbors dislike the fence and its opaque quality. It is considered an eyesore and out of character with the neighborhood.

Unfortunately, none of the Protestants' (or neighbors') concerns are sufficient to render the Petitioner's request for a building permit for a fence unlawful. The Petitioner has the right to construct the fence, as requested, pursuant to the Code requirements. We explain.

A fence is a permitted accessory structure use. The Anne Arundel County Code, Section 18-2-403 sets forth the parameters by which a fence (and other accessory structures) can be constructed in the front yard of a waterfront lot, as follows:

The Office of Planning and Zoning designates the location of an accessory structure or use in the front yard on a waterfront lot based on:

- (1) the height, location, necessity, and purpose of the proposed structure;
- (2) existing and allowed land uses on the lot and adjacent waterfront properties;
- (3) topographic and other physical features of the lot and adjacent waterfront properties including shoreline irregularities and restrictions based on the required placement of utilities; and
- (4) the impact of the structure or use on the use and enjoyment of adjacent waterfront properties and their light, air, and view.

Normally, a setback from the property line is required for an accessory structure. Since the subject accessory structure is a fence, it can be constructed on the property line, rather than be set back therefrom, as follows:

§ 18-2-301. Setbacks . . .

(e) **Certain uses or structures.** The following uses or structures need not comply with setback requirements contained in this article and are not included in determining requirements relating to maximum coverage by structures: access ramps to accommodate a person under disability, driveways, paved or gravel at-grade surfaces, fences, noise barriers or noise walls, signs, walkways eight inches or less above grade, and walls. (emphasis added.)

Therefore, a fence can be constructed on this property and on the property line, subject to the requirements of Section 18-2-403.

Although the Protestants' property is adjacent to the Petitioner's, they do not own a waterfront lot. Therefore, the Protestants' property cannot be considered under Section 18-2-403 (2), (3) or (4). Our duty is to evaluate the proposed fence pursuant to the remaining relevant criteria.

This Board, as the *de novo* authority, must designate "the location of an accessory structure or use in the front yard on a waterfront lot based on: (1) the height, location, necessity, and purpose of the proposed structure". Section 18-2-403(1). We find that the six foot tall fence would provide reasonable privacy to the Petitioner. The location of the fence along the property line is appropriate to protect the Petitioner's property and privacy interests and is the typical location for a fence. Additionally, given the existing land uses on this property (house, walkway, utilities and rear door), the location of the fence along the west side property line is appropriate. Section 18-2-403(2). The topographic and other physical features of the lot, (flat and waterfront) render appropriate the construction of a fence, as proposed. Section 18-2-403(3). Lastly, the fence would have no impact on other waterfront lots since it does not encroach along the side of other waterfront lots. Section 18-2-403(4).

A permit application, the payment of fees and compliance with the building code requirements are necessary to receive a building permit. This building permit application met all the Code criteria. Without some evidence that the plans for the structure and the site plan did not meet the Code criteria, we cannot lawfully deny the permit.

Upon the examination of the testimony presented and the exhibits submitted, the Board concludes that the Building Permit #B02205583 can be issued lawfully. For these reasons, the permit requested by the applicant is granted.

ORDER

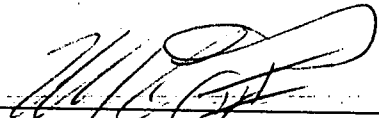
For the reasons set forth in the foregoing Memorandum of Opinion, it is this 3rd day of AUGUST, 2007, by the County Board of Appeals of Anne Arundel County, ORDERED, that the Petitioner's request for Building Permit #B02227716 as modified to permit construction of six foot tall vinyl fencing 112.8 feet in length along the west side property line is hereby **GRANTED.**

Any appeal from this decision must be in accordance with the provisions of Section 604 of the Charter of Anne Arundel County, Maryland.

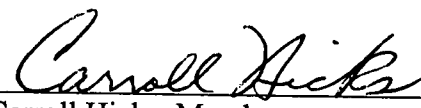
If this case is not appealed, exhibits must be claimed within 90 days of the date of this Order; otherwise, they will be discarded.

Any notice to this Board required under the Maryland Rules shall be addressed as follows: Anne Arundel County Board of Appeals, Arundel Center, P.O. Box 2700, Annapolis, Maryland 21404, ATTN: Mary M. Leavell, Clerk.

COUNTY BOARD OF APPEALS
OF ANNE ARUNDEL COUNTY



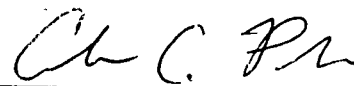
William C. Knight, Chairman



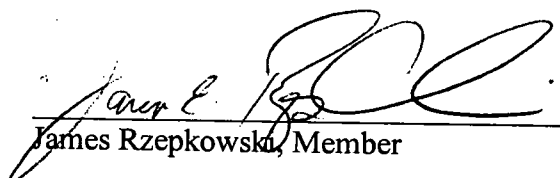
Carroll Hicks, Member



William Moulden, Member



Andrew Pruski, Member



James Rzepkowski, Member

(Arnold W. McKechnie, Vice Chairman, and John W. Boring, Member, did not participate in this appeal.)

91-06

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 2006-0020-V

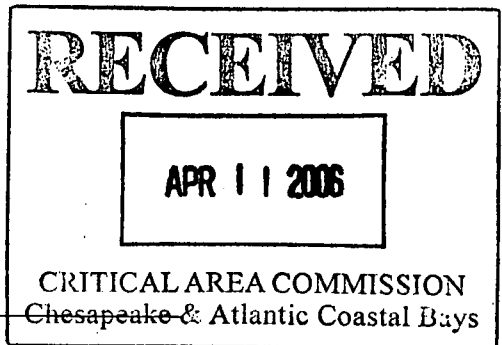
IN RE: WILLIAM AND STEPHANIE HOLLAWAY

SEVENTH ASSESSMENT DISTRICT

DATE HEARD: MARCH 9, 2006

ORDERED BY: STEPHEN M. LeGENDRE, ADMINISTRATIVE HEARING OFFICER

PLANNER: LIZ WEST



DATE FILED: APRIL 7, 2006

PLEADINGS

William and Stephanie Holloway, the applicants, seek a variance (2006-0020-V) to allow a deck addition with less buffer than required on property located along the west side of Idlewilde Road, north of Winters Avenue, Shady Side.

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.¹ Mr. Holloway testified that the property was posted for more than 14 days prior to the hearing. I find and conclude that there has been substantial compliance with the requirements of public notice.

FINDINGS AND CONCLUSIONS

The applicants own a single-family residence with a street address of 4714 Idlewilde Road, in the subdivision of Idlewilde on the Bay, Shady Side. The property comprises 15,294 square feet and is zoned R-5 residential with a

¹ The applicants failed to designate the Idlewilde Civic Association as an adjacent property owner. Although the Association did not receive individual notice, Michael Rauh, the Association's President, participated in the hearing.

Chesapeake Bay Critical Area designation as Limited Development Area (LDA). This waterfront lot on the Chesapeake Bay is mapped as a buffer modification area. The request is to construct a one-story deck (15 by 21.5 feet)² to be located 35 feet from mean high water. The leading edge of the dwelling is 46 feet from water.

Anne Arundel County Code, Article 18, Section 18-13-104(a) creates a 100-foot buffer from tidal waters. However, Section 18-13-104(b) establishes a buffer modification area on lots created before December 1, 1985 on which the existing pattern of development prevents the 100-foot buffer from performing its protective functions. Under Article 17, Section 17-8-702(b), the expansion of a dwelling shall be no closer to the shoreline. Accordingly, the proposal requires a buffer variance of 11 feet.³

Ms. West testified that the property, which is almost entirely located in the 100-foot buffer, was developed in 2005 without variances. The dwelling is located at the minimum rear building restriction line. An afforestation conservation easement and the well are limitations on further development. The decks are pervious construction. There were no adverse agency comments.⁴ By way of conclusion, Ms. West supported the application.

² Liz West, a zoning analysis with the office of Planning and Zoning, indicated in her written report and testimony that the deck measures 12 by 15 feet. Regrettably, the error went unnoticed at the hearing.

³ The applicants are also proposing a second-story deck (3 by 12.5 feet) that does not require a variance.

⁴ The Chesapeake Bay Critical Area Commission requested hand dug deck footers and mitigation for disturbance in the buffer.

Mr. Hollaway testified that the first-floor deck is the minimum size for outdoor recreational use. The dwelling on the adjacent waterfront property (Smith) is approved for decking and a porch that did not require a variance but are the same distance to water as the deck requested by the applicants. The witness anticipated little adverse impact on the view to water from neighboring properties.

Mr. Rauh submitted letters in opposition to the request from area residents Robert Angle and Robert and Dianne Kube.⁵ Mr. Rauh testified that the applicants substituted doors for windows shown on the approved building plans on the waterside of the dwelling. The Association installed riprap and a pier on its adjacent property (east side) following Hurricane Isabel. The Association is concerned about the potential for property damage in the event of a seawall failure along the applicants' frontage. The Association is also opposed to the establishment of a precedent that could be followed in the development of the one remaining undeveloped property in the community.

Brian Colella, also an area resident, testified that an engineer reviewed the condition of the seawall and determined it to be stable for at least 25 years. According to Mr. Colella, a bulge in the wall along the applicants' frontage was caused by erosion years ago. There was no other testimony in the matter.⁶

⁵ Mr. Angle resides directly across Winters Avenue and the Kubes reside due west from the applicants' property.

⁶ Mr. Hollaway was given the opportunity to respond to the letter from Mr. and Mrs. Kube. This office provided a copy of his response dated March 15, 2006 (Attachment A) to the Kubes at their request. Although technically not part of the record, Mr. Kube submitted an additional letter dated March 20, 2006 (Attachment B) and Mr. Rauh submitted an additional letter dated March 21, 2006 (Attachment C).

I visited the site and the neighborhood. The applicants' property is located at the intersection of Winters Avenue and Idlewilde Road (unimproved) next to the community pier. The property is level. The dwelling has a substantial footprint, with a two-car garage addition at the rear. There is a covered entrance porch wrapping approximately half the rear and east side facades and a full second floor with dormers. There is a small bump out in the center of the waterside façade. There are glass doors in the bump out on the second floor. There are glass doors in the bump out, and glass doors, then windows in the adjacent (to the east) inset on the first floor. The first floor doors are several feet above grade. There is a slight bulge at the approximate mid-point of the seawall along the frontage. The ground behind the seawall and the riprap into the water appear stable. The Kube and Smith properties are developed with fairly substantial two-story homes on level lots. The riprap in front of the Smith property and the Association property is more extensive than the riprap in front of the applicants' property.

The standards for granting variances are contained in Section 18-16-305. Under subsection (b), for a property in the Critical Area, a variance to the Critical Area program requirements may be granted only after determining that (1) due to unique physical conditions, peculiar to the lot, a strict implementation of the program would result in an unwarranted hardship to the applicants; (2) a literal interpretation of the program will deprive the applicants of rights commonly enjoyed by other properties in similar areas within the Critical Area; (3) the

granting of the variance will not confer on the applicants any special privilege that would be denied by the program to other lands within the Critical Area; (4) the variance request is not based on circumstances resultant of actions by the applicants and does not arise from conditions relating to land use on neighboring property; and (5) the granting of the variance will not adversely affect water quality or adversely impact fish, wildlife or plant habitat within the Critical Area and will be in harmony with the general spirit and intent of the program. Under subsection (c), any variance must be the minimum necessary to afford relief; and its grant may not alter the essential character of the neighborhood, substantially impair the appropriate use or development of adjacent property, or be detrimental to the public welfare.

Although the matter is not free from doubt, I find and conclude that the applicants are entitled to modified, conditional relief from the code. My hesitation in this matter relates to the manner in which the property has been developed. The applicants obtained a building permit for a home that did not require a variance to the Critical Area program based on the property's buffer modification status. For reasons that do not appear in the record, they were allowed to substitute windows for doors on the approved plans on the waterside. Certainly, the better approach is to submit the project as a whole, including deck additions. In that way, the design can be evaluated for compliance with the Critical Area program before any development, rather than after the property is already substantially developed.

Accepting the sequence of events leading to the present application, the applicants' burden is to satisfy all of the Critical Area variance criteria.

Considering first the subsection (b) criteria, the proximity to water constitutes a unique physical condition, such that a strict application of the program would be an unwarranted hardship. To literally interpret the program would deny the applicants the right to a waterfront deck, a right commonly enjoyed by other properties in similar areas in the Critical Area. Conversely, the granting of the variance is not a special privilege that the program typically denies to other lands in the Critical Area. The request is not the result of the actions of the applicants and does not arise from conditions relating to land use on neighboring property. After due consideration of the entire record, I am satisfied that a modified, conditional variance will not adversely impact Critical Area resources. Although there is always the potential for a seawall failure, the likely cause is from the Chesapeake Bay rather than a deck addition to the applicants' dwelling.

Considering next the subsection (c) criteria, I find and conclude that there is the opportunity to minimize the relief. Mr. Holloway's suggestion to the contrary notwithstanding, a deck measuring 12 by 15 feet is adequate for outdoor recreational use. The reduction increases the distance to water to 41 feet and reduces the buffer variance to 5 feet. So modified, the granting of the variance will not alter the essential character of the residential neighborhood, substantially impair the use or development of adjacent property, or constitute a detriment to the public welfare. The modified approval is subject to the conditions in the Order.


ORDER

PURSUANT to the application of William and Stephanie Hollaway,
petitioning for a variance to permit a deck addition with less buffer than required;
and

PURSUANT to the notice, posting of the property, and public hearing and
in accordance with the provisions of law, it is this 7 day of April, 2006,

ORDERED, by the Administrative Hearing Officer of Anne Arundel
County, that the applicants are **granted a modified** buffer variance of five feet to
permit a deck addition measuring 12 by 15 feet. The approval is subject to the
following conditions:

1. Other than the second floor deck addition (3 by 12.5 feet), no
further expansion of the dwelling is allowed.
2. Both deck additions shall be pervious construction.
3. The footers for the first floor deck shall be hand-dug.
4. The applicants shall provide mitigation as determined by the Permit
Application Center.


Stephen M. LeGenre
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.

Click here for a plain text ADA compliant screen.

	Maryland Department of Assessments and Taxation ANNE ARUNDEL COUNTY Real Property Data Search	Go Back View Map New Search Ground Rent
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Account Identifier: District - 07 Subdivision - 465 Account Number - 01222222

Owner Information

Owner Name:	HOLLAWAY, WILLIAM M HOLLAWAY, STEPHANIE	Use:	RESIDENTIAL
		Principal Residence:	YES
Mailing Address:	4714 IDLEWILDE RD SHADY SIDE MD 20764-9766	Deed Reference:	1) /13596/ 248 2)

Location & Structure Information

Premises Address 4714 IDLEWILDE RD SHADY SIDE 20764	Legal Description LTS 130 131 132 133 4714 IDLEWILDE RD IDLEWILDE																				
WATERFRONT																					
<table style="width: 100%; border-collapse: collapse;"> <tr> <th>Map</th> <th>Grid</th> <th>Parcel</th> <th>Sub District</th> <th>Subdivision</th> <th>Section</th> <th>Block</th> <th>Lot</th> <th>Assessment Area</th> <th>Plat No:</th> </tr> <tr> <td>69</td> <td>6</td> <td>63</td> <td></td> <td>465</td> <td></td> <td></td> <td>130</td> <td>3</td> <td>7/ 44</td> </tr> </table>	Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:	69	6	63		465			130	3	7/ 44	
Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:												
69	6	63		465			130	3	7/ 44												
Special Tax Areas	Town Ad Valorem Tax Class IDLEWILDE																				
Primary Structure Built 2005	Enclosed Area 4,370 SF	Property Land Area 15,299.00 SF	County Use																		
Stories 2	Basement NO	Type STANDARD UNIT	Exterior FRAME																		

Value Information

	Base Value	Value As Of	Phase-in Assessments	
			As Of	As Of
Land:	611,920	01/01/2006	07/01/2005	07/01/2006
Improvements:	421,050	1,373,920		
Total:	1,032,970	1,874,010	1,032,970	1,313,316
Preferential Land:	0	0	0	0

Transfer Information

Seller: PATRIOT HOMES INC	Date: 08/20/2003	Price: \$368,900
Type: UNIMPROVED ARMS-LENGTH	Deed1: /13596/ 248	Deed2:
Seller: MIDDLEBURG ASSOCIATES LLC	Date: 08/20/2003	Price: \$275,000
Type: MULT ACCTS ARMS-LENGTH	Deed1: /13596/ 245	Deed2:
Seller: HOWARD R CHAMPION FLIP CHARITABLE	Date: 09/17/2001	Price: \$1,250,000
Type: MULT ACCTS ARMS-LENGTH	Deed1: /10739/ 388	Deed2:

Exemption Information

Partial Exempt Assessments	Class	07/01/2005	07/01/2006
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:

* NONE *