

AA 255-06

VAR

Shulmister, Morris

0092 Beverly Beach

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MSA-S-1829-5423

Robert L. Ehrlich, Jr.
Governor

Michael S. Steele
Lt. Governor



Martin G. Madden
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**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 27, 2006

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

RE: Variance 2006-0092
Morris Shulmister

Dear Ms. Plociennik:

Thank you for providing information on the above referenced variance request. The applicant is requesting a variance to allow a dwelling with less setbacks and Buffer than required. The property is designated as Intensely Developed Area (IDA) and Resource Conservation Area (RCA). The property is currently undeveloped.

Provided this lot is properly grandfathered, we do not oppose this variance. Based on the information provided, I have the following comments regarding the current development proposal and variance request:

1. Is the extended access drive shown on the site plan required by the county and is it privately or publicly owned? If the extended access drive will be owned and maintained by the applicant, then the applicant will need to include this area of disturbance in the mitigation calculations. If the extended access drive will be owned by someone other than the applicant, then that entity will need to submit this portion as a separate action for approval.
2. Because the improvements are located on the portion of the property designated an IDA, water quality improvements must be provided to offset the proposed development. Stormwater should be directed away from the nontidal wetlands to a stable vegetated outfall to provide water quality benefits on the site. Water quality improvements may be satisfied in the form of mitigation plantings at a ratio of 3:1, a minimum of three (3) trees or nine (9) shrubs for every 100 square feet of the proposed development activity. The proposed development activity is considered as the entire area of disturbance, 5,750 square feet, not just the

impervious surface area. The applicant will need to increase the number of proposed mitigation plantings or provide appropriate offsets to meet this requirement.

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 that reads "Kate Schmidt". The signature is written in black ink and includes a long horizontal flourish at the end.

Kate Schmidt
Natural Resource Planner
AA255-06

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 2006-0092-V

IN RE: MORRIS SHULMISTER

FIRST ASSESSMENT DISTRICT

DATE HEARD: MAY 9, 2006
LAST EVIDENCE: MAY 30, 2006

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

PLANNER: **LORI RHODES**

RECEIVED

JUN 12 2006

CRITICAL AREA COMMISSION
Chesapeake & Atlantic Coastal Bays

DATE FILED: JUNE 6, 2006

PLEADINGS

Morris Shulmister, the applicant, seeks a variance (2006-0092-V) to allow a dwelling with less buffer than required on property located along the south side of Linden Avenue, east of Cedar Avenue, Edgewater.

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. Robert Baxter, the applicant's engineering consultant, 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 unimproved property known as Lots 22 and 23 in Block R of the Beverly Beach subdivision, Edgewater. The property comprises 7,250 square feet and is zoned R-5 residential with a Chesapeake Bay Critical Area designations as Intensely Developed Area (IDA) and Resource Conservation Area (RCA). The request is to construct a two-story dwelling (48 by 30 feet) with one-car integral garage and front porch (6 by 14 feet) to be located 40 feet from

tidal wetlands surrounding Bream Pond. The limits of disturbance also encompass nontidal wetlands.

Anne Arundel County Code, Article 18, Section 18-13-104(a) creates a 100-foot buffer from tidal wetlands. Section 17-8-502 proscribes the disturbance of Habitat Protection Areas. Accordingly, the applicant requests a buffer variance of 60 feet and a variance to disturb nontidal wetlands.

Lori Rhodes, a planner with the Office of Planning and Zoning, testified that the property is below the minimum width for the R-5 district. The lots were platted in 1931. Eighty percent of the site lines in the buffer from tidal wetlands. The witness summarized the agency comments. Among other concerns, the stockpile encroaches on the County's Beverly/Triton Beach Park and poses a risk of sedimentation to Bream Pond; there is excess paving in the Linden Avenue right-of-way; the right-of-way disturbance must be included in the mitigation; and the Department of Health requires plan approval. By way of conclusion, Ms. Rhodes supported the application, subject to satisfying the agency review comments.

Towards the end of satisfying the review comments, the record was left open for the submission of a revised plan received in the office on May 30, 2006. Mr. Baxter's letter of explanation dated May 30, 2006, is appended (Attachment A).

Upon review of the facts and circumstances, I find and conclude that the applicant is entitled to conditional relief from the code. For this Critical Area

property, due to the extent of the tidal wetlands buffer and the proximity to nontidal wetlands, a strict implementation of the program would result in an unwarranted hardship. To literally interpret the program would deny the applicant the right to develop the property with a single-family dwelling, a right commonly enjoyed by other properties in similar areas of the Critical Area. Conversely, the granting of the variance 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 conditions, the variances will not adversely impact Critical Area assets and harmonize with the general spirit and intent of the program.

I further find that with the revised site plan has minimized the relief. More particularly, the stockpile and the disturbance to Beverly/Triton Beach Park have been eliminated; the project includes stormwater management plantings for all impervious surfaces; and the substituting of a 10-foot wide drive with "T" turnaround has reduced the impervious coverage. Finally, the granting of the variances will not 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

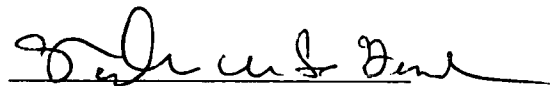
PURSUANT to the application of Morris Shulmister, petitioning for a variance to allow a dwelling with less buffer than required; and

PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is this 6th day of June, 2006,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicant is **granted** a buffer variance of 60 feet and a variance to disturb nontidal wetlands to allow a dwelling in accordance with the revised site plan.

The foregoing approval is subject to the following conditions:

1. The building permit is subject to the approval of the Department of Health.
2. No further expansion of the dwelling is allowed and no accessory structures are allowed.
3. The applicant shall provide water quality improvements in the form of mitigation plantings at a ratio of 3:1 based on the area of disturbance.
4. Stormwater shall be directed away from nontidal wetlands to a stable, vegetated outfall.


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.

