

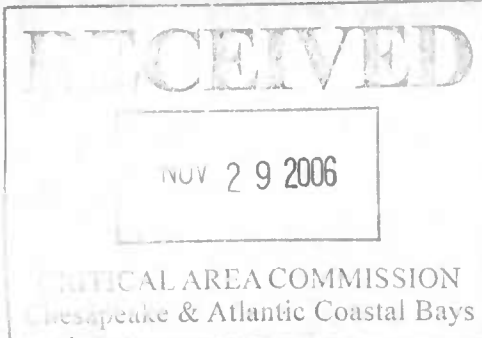
CA 546-06
VAR

Berezoski, Donald
06-3358

MSA. S. 1829-5666

Comments 9/24/50-Ked

Site visit needed



546-06

Case No. 06-3358

Public Hearing
October 5, 2006
November 2, 2006

Donald Berezoski has applied for a variance in the west side setback requirements from 6' to 2', a variance in the impervious surface requirements, and a variance in the waterfront buffer requirements to construct a second floor addition to an existing garage. The property is located at 2914 Bay Boulevard, Huntingtown (Tax Map 19B, Block E, Lot 1, Neeld Estates) and is zoned RD Residential District.

AUTHORITY OF THE BOARD OF APPEALS

Section 11-1.01.B of the Calvert County Zoning Ordinance provides that the Board of Appeals shall have the authority to grant variances from the Critical Area requirements of Section 8-1 of this Ordinance.

TESTIMONY & EVIDENCE PRESENTED

1. The case was presented October 5, 2006 before Board of Appeals members Mr. Michael Reber, Chairman, Mr. Walter Boynton, Vice Chairman, and Mr. Dan Baker (the Board). Mr. Donald Berezoski was present at the hearing.
2. A Staff Report dated October 5, 2006, along with photographs taken on site, was entered into the record as Staff Exhibit No. 1.
3. The following Applicant Exhibits were dated and entered into the record at the October hearing:
 - Exhibit No. 1 – Plat Submitted With Application
 - Exhibit No. 2 – Site Plan of 2914 Bay Boulevard
4. The following person testified at the October hearing:
 - Kerrie Gallo, Chesapeake Bay Critical Area Commission
5. The following correspondence was entered into the record at the October hearing:
 - Letter dated September 25, 2006 from Kerrie Gallo, Chesapeake Bay Critical Area Commission

- Memo dated September 27, 2006 from Stephanie Taylor, Calvert County Engineering
6. The Board deferred action at the October hearing pending a site visit.
 7. The matter was again presented November 2, 2006 before the Board. Mr. Donald Berezoski was present at the hearing.

FINDINGS OF FACT

Based on the application, testimony and evidence presented at the hearings, the Board found the following facts to be true:

1. The property consists of .25 acre and is situated on the west side of Bay Boulevard in Neeld Estates, approximately 60 feet from the mouth of Plum Point Creek and ~275 feet from the Bay.
2. The property is currently developed with a house that has a footprint of ~1970 s.f. Other improvements include a garage measuring ~180 s.f., and concrete driveway, sidewalks and pad.
3. The septic system is at the west side of the house; the well is on the north side.
4. The existing garage is 2 stories and is situated 23 feet from the north property line and 2 feet from the west property line.
5. The applicant proposes to add a 14' x 19' addition to the existing garage, on the 2nd level only. The garage addition would sit 2 feet from the west property line.
6. The proposed garage addition would lie approximately 75 feet from the tidal waters of Plum Point Creek, which is the entrance to Breezy Point Marina.
7. Existing impervious surface on site is 5160 s.f., or 47.4% of the property. Proposed impervious surface, with the 268 s.f. expansion, is 49.8%.
8. The applicant has owned the property since 1992.
9. Calvert County's Critical Area Program was adopted in 1989, in accordance with the 1986 Maryland Critical Area law.
10. The property is considered to be properly grandfathered for Critical Area variance consideration by the State of Maryland.

11. Because of the shape of the property and the position of the existing house and the structural capacity of the house there is no other place for the proposed addition.
12. Based on the topography of the property the proposed addition will not create runoff onto adjacent properties.
13. The addition to the garage will be used for storage and shall have no livable space.
14. The applicant advised at the November hearing that the actual size for the proposed addition is 12' x 19'.
15. Because the property already exceeds allowable impervious surfaces, allowing additional impervious surfaces on this property would be contrary to the spirit and intent of the Critical Area law, and contrary to decisions the Board has made in the past with regard to impervious surface requests.
16. The applicant indicated at the November hearing that an 8' x 8' concrete pad could be removed reducing impervious surfaces by approximately 64 s.f., and the 12' wide driveway could be changed to a pervious paver type material for a distance of 75' from the road front toward the lot interior, which would reduce impervious surfaces on site by an additional 900 s.f. Total impervious surface reduction is approximately 1,000 s.f., which offsets the requested expansion by a factor of three.

CONCLUSIONS

Based on the above findings of fact, the Board came to the following conclusions (in accordance with Section 11-1.01.A of the Calvert County Zoning Ordinance):

1. The Board of Appeals concludes that it has the authority to grant a variance in the west side setback requirements from 6' to 2' for construction of a second floor addition to an existing garage.
2. The Board concludes that peculiar and unusual practical difficulties exist on the parcel, and such difficulties are created by the small size of the property and the location of the existing house, well and septic system, which limit the space available within the Building Restriction Lines for the proposed construction.
3. The Board concludes that:
 - a. The variance will not result in injury to the public interest; and
 - b. granting the variance will not adversely affect the implementation of the Comprehensive Plan; and
 - c. the variance is the minimum adjustment necessary to afford relief from the regulations; and

- d. the variance request is not based upon conditions or circumstances which are the result of actions by the applicant.

Based on the above findings of fact, the Board came to the following conclusions (in accordance with Section 11-1.01.B of the Calvert County Zoning Ordinance):

1. The Board concludes that it has the authority to grant variances from the Critical Area requirements of Section 8-1 of this Ordinance.
2. With regard to the buffer variance, the Board concludes that the applicant has overcome the presumption of nonconformance as required in Section 11-1.01.B.2 & 3 of the Zoning Ordinance.
3. With regard to the buffer variance, the Board concludes that the applicant has met each of the following variance standards:
 - a. The variance will not result in injury to the public interest; and
 - b. granting the variance will not adversely affect the implementation of the Comprehensive Plan; and
 - c. the variance is the minimum adjustment necessary to afford relief from the regulations; and
 - d. special conditions or circumstances exist that are peculiar to the land or structure within Calvert County and that a literal enforcement of provisions within the County's Critical Area Program would result in unwarranted hardship; and
 - e. a literal interpretation of the Critical Area Legislation and the Calvert County Critical Area Program and related ordinances will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area of the County; and
 - f. the granting of a variance will not confer upon an applicant any special privilege that would be denied by the Calvert County Critical Area Program to other lands or structures within the County's Critical Area; and
 - g. the variance request is not based upon conditions or circumstances which are the result of actions by the applicant, nor does the request arise from any condition relating to land or building use, either permitted or non-conforming, on any neighboring property. If the variance request is based on conditions or circumstances that are the result of actions by the applicant, including the commencement of development activity before an application for a variance has been filed, the Board of Appeals may consider that fact; and

- h. the granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the County's Critical Area, and that the granting of the variance will be in harmony with the general spirit and intent of the Critical Area law.
4. With regard to the Critical Area impervious surface variance request, the Board concludes that the variance criteria cannot be met and instead orders removal of excess impervious surface as a condition of approval of the Critical Area buffer variance as noted below.

ORDER

It is hereby ordered, by a unanimous decision, that the variance in the Critical Area impervious surface limitations as requested by Donald Berezoski be **DENIED** based on the above findings of fact and conclusions. It is hereby ordered, by a unanimous decision, that the variance in the west side setback requirements from 6' to 2', and the variance in the waterfront buffer requirements for construction of a second floor addition to an existing garage as requested by Donald Berezoski be **GRANTED** based on the above findings of fact and conclusions subject to the following conditions:

1. All permits and approvals required by the Calvert County Zoning Ordinance and the Department of Planning and Zoning and those required by any other departments, agencies, commissions, boards or entities, in accordance with County, State and Federal law, must be obtained before commencing the development activity approved by this Order.
2. The 8' x 8' concrete pad on the property must be removed prior to construction of the garage addition.
3. The 12' wide impervious driveway must be changed to pervious for a distance of 75' from the roadfront prior to construction of the garage addition.
4. The applicant shall record in the land records for the subject property a restriction

stating the 2nd floor garage addition is for storage only and is not allowed for residential use by the current or future property owners.

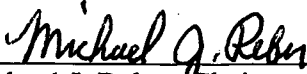
In accordance with Section 11-1.01.F.3 of the Calvert County Zoning Ordinance any violation of conditions imposed by the Board of Appeals shall be considered a violation of this Ordinance and subject to the enforcement provisions of Section 1-7.

In accordance with Section 11-1.01G of the Calvert County Zoning Ordinance if any application for a variance is denied by a final order of the Board, a second application involving substantially the same subject matter shall not be filed within one year from the date of the final order. If any such denial by the Board is appealed to a higher Court and the Board's denial is upheld, a second application involving substantially the same subject matter shall not be filed within one year from the date of the final order of the Court.

In accordance with Section 6 of the Calvert County Board of Appeals Rules of Procedure, "any party to a case may apply for a reconsideration of the Board's decision no later than 15 days from the date of the Board's Order."

In accordance with Section 11-1.07 of the Calvert County Zoning Ordinance, Board of Appeals decisions may be appealed to the Circuit Court of Calvert County by (1) any person aggrieved by any decision of the Board of Appeals or (2) any taxpayer, or (3) any officer, department, board or bureau of Calvert County. Such appeal shall be taken according to the Maryland Rules as set forth in Maryland Rules, Title 7, Chapter 200, as amended from time to time, within 30 days of the Board of Appeals Order.

Entered: November 28 2006
Pamela P. Helie, Clerk



Michael J. Reber, Chairman

** Deferred for site visit*



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/

September 25, 2006

Ms. Roxana Whitt
Calvert County Department of Planning and Zoning
150 Main Street
Prince Frederick, Maryland 20678

Re: Variance 06-3358 Bereszowski

Dear Ms. Whitt:

Thank you for providing information on the above referenced variance. The applicant is requesting a variance from the 100-foot Buffer and impervious surface area limits in order to construct a second story addition to an existing detached garage. The property is designated a Limited Development Area (LDA) and is currently developed with a single-family dwelling, garage and septic area.

Based on the information provided, it appears that the applicant proposes to construct a 268 square foot addition, located over an area of existing lawn. We note that the property is currently 47.4% impervious in nature and that the existing garage appears to be utilized as an accessory apartment, developed with an extensive, multi-level deck. The permitted impervious surface area limit for the property is 25%. We note also that the property has been identified as lying within a sensitive species review area for a Federally-listed rare, threatened, or endangered species. In general, this office would not oppose a variance to construct a reasonably-sized addition where it can be demonstrated that a hardship exists. However, in this case, it is our view that the applicant currently enjoys reasonable and significant use of the property, and that the granting of a variance to further exceed the impervious surface area limit and to further disturb the Buffer would be granting the applicant a special privilege and would be entirely in contrast with the strict standards for variances outlined within the County's zoning ordinance. In addition, it is our view that the proposed variance clearly fails to meet the standard of unwarranted hardship as well as further diminishes the quality and ability of the Buffer to function as intended by the Critical Area Law.

Because we believe that the applicant has failed to meet each and every one of the County's variance standards, including the standard of unwarranted hardship, we oppose this variance. I have outlined each of the County's variance standards as it pertains to this case below:

1. *That special conditions or circumstances exist that are peculiar to the land or structure within the jurisdiction's Critical Area program that would result in an unwarranted hardship to the applicant.* As stated, it is our view that the applicant currently enjoys reasonable and significant use of the property as evident by the existing dwelling and detached garage with decks. In general, detached garages are considered accessory structures. Denial of a variance to significantly expand an accessory structure within the Buffer would not represent an unwarranted hardship within the Critical Area.

TTY for the Deaf

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

2. *That a literal interpretation of this subtitle or the local Critical Area Program and related ordinances will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical area of the local jurisdiction.* This office would not support similar variance requests to expand an accessory structure within the Buffer and to further exceed the impervious surface area limits, particularly where reasonable use of the property already exists. Accessory structures are not an inherent right, nor are they a right commonly enjoyed by others within the Critical Area.
3. *The granting of a variance will not confer upon an applicant any special privilege that would be denied by this subtitle or the local Critical Area program to other lands or structures within the jurisdiction's Critical Area.* If the variance is granted, it would confer upon the applicant a special privilege that would be denied to others in this area, as well as in similar situations in the County's Critical Area.
4. *The variance request is not based upon conditions or circumstances which are the result of the actions by the applicant, nor does the request arise from any condition conforming, on any neighboring property.* It appears that the applicant has met this standard.
5. *The granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the jurisdiction's Critical Area, and that the granting of the variance will be in harmony with the general spirit and intent of the Critical Area law and the regulations.* In contrast, the granting of this variance is not in harmony with the general spirit and intent of the Critical Area law and regulations. The applicant is proposing to convert an additional 268 square feet of pervious cover to impervious surface within the Buffer, an area recognized as particularly sensitive to human disturbances. The amount of development on the site provides the applicant with reasonable and significant use of the property and currently exceeds the limits of impervious cover that other properties within similar areas enjoy. To grant a variance to further remove an area of Buffer from providing the functions outlined within the law and criteria, particularly where there may be concern for a Federally-listed rare, threatened or endangered species, would not be in harmony with the general intent and spirit of the law.

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

Thank you for the opportunity to provide comments. Please include this letter in your file and submit it as part of the record for this variance. Also, please notify the Commission in writing of the decision made in this case.

Sincerely,

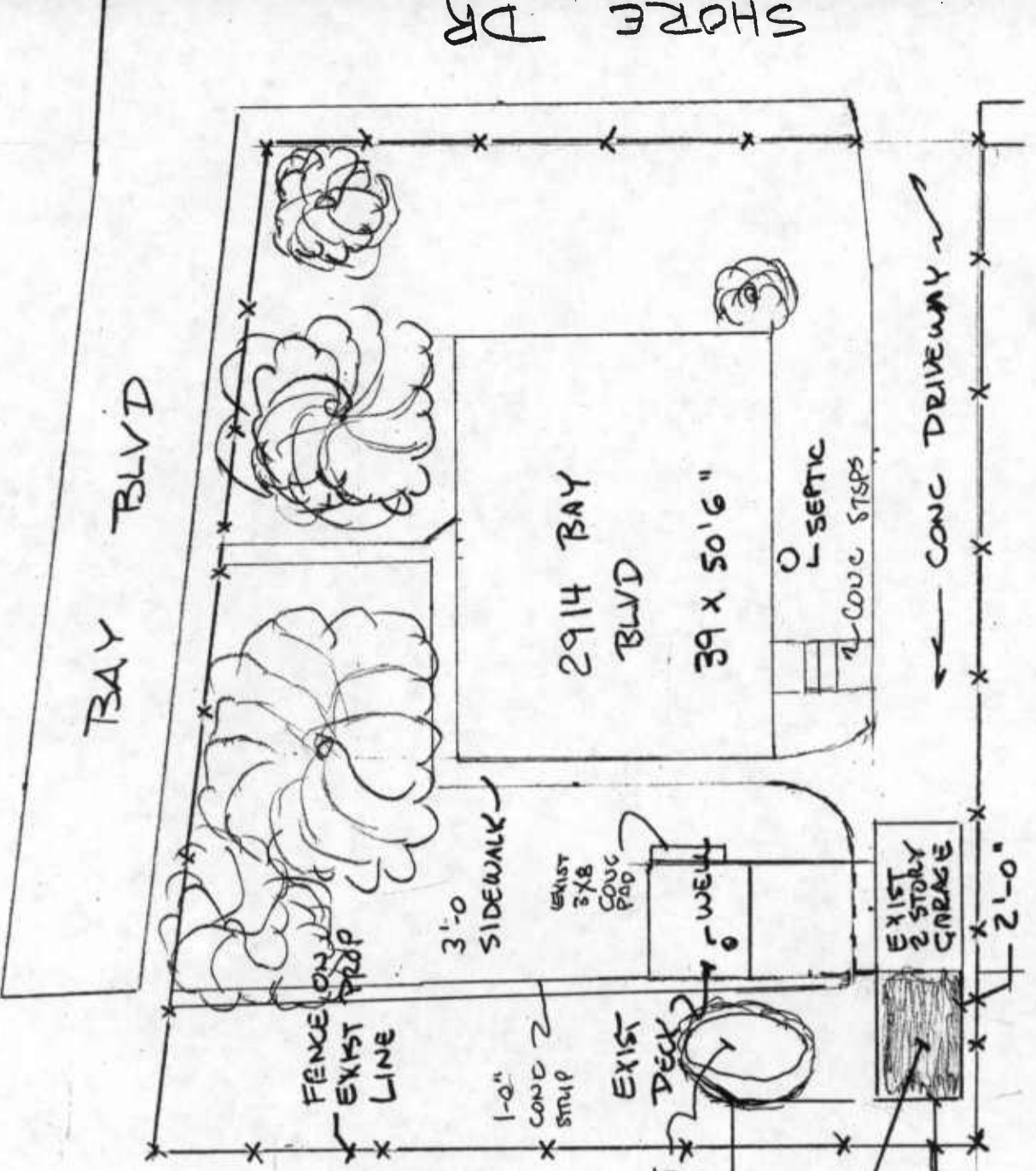


Kerrie L. Gallo
Natural Resource Planner
CA 546-06

SITE PLAN OF
2914 BAY BLVD



SCALE 1/2" = 10'-0"



PLUM POINT CREEK

Flow

CBB

SEA WALL

PART OF BREEZY POINT MARINA

76'-0" ±

14' x 19'
PROPOSED
ADDITION
2nd FL
ONLY

RECEIVED

AUG 25 2006

CRITICAL AREA COMMISSION
Chesapeake & Atlantic Coastal Bays

SHORE DR

BAY BLVD

2914 BAY BLVD

39 x 50'6"

L SEPTIC

CONC STPS

CONC DRIVEWAY

EXIST 2 STORY GARAGE

EXIST 3'x8 CONC PAD

WELL

3'-0 SIDEWALK

FENCE ON EXIST PROP LINE

1'-0" CONC STRIP

EXIST DECK

EXIST POND

4'-0" a

2'-0"

0. 17/10/06
20- cash
W.

APPLICATION FOR
HEALTH DEPARTMENT/
ZONING APPROVAL
AND/OR
BUILDING PERMIT

Calvert County Inspections and Permits Division
150 Main Street, Suite 201, Prince Frederick, MD 20678
(410) 535-2155 or (410) 535-2156



Office Use Only
Building A/P # 64559
Grading A/P # _____
Received by: WU Date: 7/17/06

02 - To be Completed by Applicant:
Tax ID # 030802
Tax Map 19B Grid _____ Parcel _____
Blk E Lot 1 Sect 214

Also To be Completed by Applicant:

Property Owner Information	Name: <u>DONALD BEREZOSKI</u>	Phone: <u>410 535 1274</u>
	Mailing Address: <u>P.O. BOX 1000</u>	
Job Location Information	City, State & Zip: <u>HUNTINGTOWN, MD 20639</u>	E-mail: <u>N/A</u>
	Town or Subdivision: <u>NEELD ESTATE</u>	Deed Reference: _____
	Premise Address: <u>2914 BAY BLVD</u>	Lot Size or Acreage: _____
	City, State & Zip: <u>HUNTINGTOWN, MD 20639</u>	
	Directions to site from Courthouse: <u>RT 2-4 N TO PLUM POINT RD EAST TO RIDGE RD LEFT ON RIDGE TO BAY BLVD L TO END ON LEFT</u>	
Contractor Information	Company Name: <u>OWNER</u>	Phone: <u>410 535 1274</u>
	Mailing Address: _____	City, State & Zip: _____
	Contractor's Name: _____	E-mail: _____
	Calvert County License #: _____	State License #: _____

SPECIAL INSTRUCTIONS:

- A. An approved sewerage and water certificate must be obtained prior to issuance of a building permit.
- B. Inspectors shall be notified, 24 hours prior to an inspection, by calling the Inspections & Permits Division at (410) 535-2155
 - 1. Before footings or slabs are poured;
 - 2. Before foundation walls are backfilled;
(Foundation Location Surveys must be submitted and approved for new dwellings prior to calling for a Framing Inspection)
 - 3. Before framed walls are insulated;
(Note: Certifications required for engineered floor and roof systems.)
 - 4. Before interior walls are covered; and
 - 5. Upon completion of building
- C. Permit is good for only 6 months unless under continuous construction.
- D. See information sheets which pertain to your project for other special instructions.
- E. Return this completed application and other required information to the Inspections & Permits Division.

PROPOSED CONSTRUCTION INFORMATION

Description of Work: FLOODPLAIN
RAISE EXISTING ROOF / SQUARE OFF 2nd FLOOR OF GARAGE EXTEND BUILDING 14' ON 2nd FLOOR ONLY D.B. on Lexle's Storage.

Total Square Footage of Proposed Finished Floor Area: _____ Total Square Footage of Proposed Porches, Garages, Decks, Sheds, etc.: _____

Type of Work: New Addition Existing (remodel, repair) Replacement Demolition Fire Restoration

Type of Structure:

<input type="checkbox"/> Single Family Detached Home	<input type="checkbox"/> Accessory Apartment	<input type="checkbox"/> Modular Home	<input type="checkbox"/> Dbl. Wide Mobile Home
<input type="checkbox"/> Single Wide Mobile Home	<input type="checkbox"/> Single Family Attached Home	<input type="checkbox"/> Apartment/Condo	<input type="checkbox"/> Construction Trailer
<input checked="" type="checkbox"/> Res. Accessory Structure	<input type="checkbox"/> Res. Water Dependent	<input type="checkbox"/> Comm. Water Dependent	<input type="checkbox"/> Comm. Accessory Structure
<input type="checkbox"/> Single Wide Mobile Home replaced w/DBL Wide, Modular, Stick Built	<input type="checkbox"/> Commercial Building		

# Bldgs:	# Units:	Footing <input type="checkbox"/> Concrete <input type="checkbox"/> Pile <input type="checkbox"/> Caisson	Estimated Construction Cost: \$
# Kitchens:	# Stories:	<input type="checkbox"/> Other <u>N/A</u>	<u>1500-</u>
# Full Baths:	Bldg. Height:	Exterior <input type="checkbox"/> Wood <input type="checkbox"/> Metal <input type="checkbox"/> Brick	Heat <input type="checkbox"/> Oil <input type="checkbox"/> Gas <input type="checkbox"/> Electric <u>N/A</u>
# Half Baths:	# Fireplaces:	Walls <input checked="" type="checkbox"/> Vinyl <input type="checkbox"/> Other	<input type="checkbox"/> Other
# Rooms: (exclude kitchen & baths)		Interior <input type="checkbox"/> Plaster <input type="checkbox"/> Panel <input type="checkbox"/> Drywall	Equipment <input type="checkbox"/> Air Cond. <input type="checkbox"/> Boiler <input type="checkbox"/> Furnace
		Walls <input type="checkbox"/> Other <u>N/A</u>	<input type="checkbox"/> Heat Pump <input type="checkbox"/> Other
<input type="checkbox"/> Basement <input type="checkbox"/> Slab <input type="checkbox"/> Crawl		Roof <input type="checkbox"/> Flat <input checked="" type="checkbox"/> Pitch <input type="checkbox"/> Shed	Is the property in the Critical Area? <u>YES</u>
		Structure <input type="checkbox"/> Other	Board of Appeals Case # _____
Sewerage: <input type="checkbox"/> Public <input type="checkbox"/> Septic Tank		Roof <input type="checkbox"/> Built-up <input type="checkbox"/> Roll <input checked="" type="checkbox"/> Shingles	Is the Property in a Town Center? _____
Water: <input type="checkbox"/> Public <input type="checkbox"/> Individual Well <u>N/A</u>		Cover <input type="checkbox"/> Other	

Use & Occupancy Permit Requested:
 Use & Occupancy Permit with structural modification Use & Occupancy Permit with no structural modification
Complete: Existing Use STORAGE Proposed Use: SAME

I hereby certify that I have the authority to make this application, that the information given is correct, and that use and construction shall conform to the County Health Regulations, the Building Code and Zoning Ordinances, and private deed restrictions, if any, which are imposed on the property.

SIGNATURE OF OWNER OR AUTHORIZED AGENT: Donald Berezoski DATE: 6-14-06
PLEASE PRINT NAME: DONALD BEREZOSKI PHONE: 410 535 1274