

AA 441-07  
VAR

Rabena, John  
0223

S1829-6301

Martin O'Malley  
Governor

Anthony G. Brown  
Lt. Governor



Margaret G. McHale  
Chair

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Executive Director

STATE OF MARYLAND  
CRITICAL AREA COMMISSION  
CHESAPEAKE AND ATLANTIC COASTAL BAYS

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October 22, 2008

Mr. William Ethridge  
Anne Arundel County  
Office of Planning and Zoning  
2664 Riva Road, MS 6301  
Annapolis, Maryland 21401

Re: Rabenz, John - 2007-0223-V

Dear Mr. Ethridge:

Thank you for forwarding the above referenced revised variance application. The applicant has requested a variance to disturb the 25-foot buffer to slopes 25% or greater in order to develop the property with a dwelling, garage, septic system, steps and pier with a 100 square foot landing within. Additionally, the entire property is within the 100-foot Buffer which is expanded to include slopes 15% or greater. The property is currently undeveloped, it is designated as a Limited Development Area (LDA), and it is mapped as a Buffer Modification Area (BMA). Our office is providing these comments to supplement those already submitted in an August 6, 2007 letter, and in my September 5, 2007 letter.

Based on the latest site plan provided, the applicant has not moved the proposed house back from the edge of the steep slope along the shoreline as this office noted was both possible and necessary in order to gain support for the requested variance. The only apparent change the applicant has made to the plans since they were last submitted is that the house is shown eight feet further from the side lot line. It is unclear why this office's recommendations for demonstrating that the requested variance is the minimum necessary for reasonable use of the property have been unaddressed by the applicant to date. In addition, the applicant has not asserted any reason for why more of the house can not be moved out of the 25-foot slope buffer to the open area on the property that is behind the 25-foot steep slope buffer. Based on my October 17, 2008 site visit to the property, there are no apparent characteristics of the property that would prevent the applicant from making better use of the existing open areas as recommended.

By failing to maximize the distance between the house and the edge of the cliff, this office has concerns that the shoreline slope will erode at a faster rate, adversely impacting the water quality and habitat functions of the Severn River. Specifically, construction of the proposed dwelling will require grading and disturbance of highly erodible soils at the top of the cliff. These actions

compromise the stability of the compacted soils. During storm events, stormwater will more easily erode the disturbed area, washing sediment downhill toward the slope, over the edge of the slope and into the water. Additionally, locating a large area of lot coverage in close proximity to the edge of the cliff results in an increase in the volume and speed of the stormwater runoff coming from the house, decreases opportunities for infiltration through the soil, and threatens to hasten the rate at which the property will gradually erode into the Bay. Finally, if the dwelling were moved farther from the slope, additional trees and shrubs could be planted to stabilize the slope by holding the soils in place with root systems, and by trapping and slowing stormwater and sediments that would otherwise run off into the Bay.

Because the applicant has not reduced the most significant and unnecessary impact to the Critical Area from the proposed development, the applicant has not demonstrated that the variance is the minimum necessary or that 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, each and every one of the County's variance standards has not been met. Therefore, this office does not support variance as it is currently proposed. We may be able to offer support for an amended variance application if the applicant were to incorporate our previous recommendations for minimization of impacts into a new plan. This office has described these recommendations in our previous letters, and they are reiterated below.

#### Maximize Development Opportunity Outside of the 25-foot Slope Setback

In situations where development of a property is constrained by legally protected sensitive environmental features such as this, the applicant's preference for a house of a certain size and configuration must yield to a development design which recognizes and avoids the environmentally sensitive characteristics of the property where feasible. As mentioned above, the plans show that there is unused space on the property outside of the 25-foot slope buffer in which more development could be located, thereby minimizing the extent of the requested variance. If the applicant were to make use of this portion of the property, more of the house could be pulled away from the edge of the cliff. Additionally, it appears that a house with a different configuration, for instance, a narrow house that is perpendicular to the shoreline, as opposed to the current parallel configuration, could be constructed such that the majority of the proposed disturbance to the 25-foot slope buffer could be eliminated. Further, if the dwelling were moved back closer to the rear/southern property line, the proposed 60 foot long driveway could be reduced in length, which would result in a reduction of the proposed lot coverage on the property. In addition to allowing the applicant to show minimization of the proposed slope buffer disturbance, reduced lot coverage will yield a reduced amount of stormwater runoff, which means a lesser amount of stormwater will run off of the house and driveway, across the yard, and over the edge of the cliff.

#### Minimize Disturbance Within the 100-foot Buffer

We note that while the proposed development is shown just outside of the 100-foot Buffer, the applicant has not shown the limits of disturbance on the development plan. Generally, construction of a dwelling requires at least a 10 foot wide limit of disturbance to provide

sufficient room for construction activities and grading surrounding the dwelling. Just as there appears to be sufficient opportunity to move and reconfigure the proposed dwelling such that the majority of the disturbance to the 25-foot slope buffer can be eliminated, the applicant can move and reconfigure the house so that the limit of disturbance does not intrude into the 100-foot Buffer. Additionally, it is common for property owners to construct waterfront decks. We recommend that if the property owner plans to construct a deck on the waterside of this house, the house be moved far enough back from the 100-foot Buffer and 25-foot slope buffer to accommodate this development at this time. This office will not support a future variance request for additional development on this property, since if a variance is granted for construction of a dwelling, reasonable use of the property is presumed.

#### Minimization of the Construction Footprint

As noted, the applicant has reduced the size of the proposed dwelling by 153 square feet, for a total dwelling footprint of approximately 1,398 square feet. While this is less than what was previously proposed, a smaller footprint would still provide reasonable use of such a constrained property, especially since the dwelling will be developed with two stories. As recommended by this office previously, the dwelling footprint could be significantly reduced if the proposed garage and parking pad were eliminated from the plans. It is this office's position a garage is not necessary to provide reasonable use on properties with this degree of sensitive environmental features. Further, if the garage is removed from the plans, this will provide 400 additional square feet of developable area outside of the 25-foot slope buffer in which more of the dwelling could be located. Additionally, we note that while the larger area of the driveway is no longer identified on the plans as a parking pad, the design of the driveway with a parking pad appears unchanged and in fact has increased from 999 square feet to 1,004 square feet.

While the dwelling footprint has been slightly reduced, the plans indicate that the total slope disturbance has increased by 50 square feet, and the overall site disturbance has increased by 81 square feet. It is unclear where disturbance within the slopes will occur because no disturbance is shown within the slopes 15% or greater on the plans, with the exception of the proposed steps to the pier. It appears that some additional site disturbance will be created by the applicant relocating the nitrogen reducing tank from under the driveway to a previously undisturbed area of the yard. While the proposed new area of disturbance is outside of the 25-foot slope buffer, if this tank can be located under the driveway as originally proposed, this will leave more room on property on which the proposed dwelling could be located outside of the 25-foot slope buffer, and at a minimum, locating the tank back under the driveway would reduce the total area of disturbance within the expanded buffer on the property.

Lastly, we note that the applicant proposes to construct a 10 foot by 10 foot landing at the toe of the shoreline slope leading to the pier. A 100 square foot area of decking is larger than what is necessary to serve as a landing, and seems large enough to serve as a waterside deck. Accordingly, we recommend that this landing, over nontidal wetlands that are now identified on the revised plans, be reduced to the minimum area necessary to function as a landing.

Mr. Ehrhridge  
October 22, 2008  
Page 4 of 4

If the applicant submits a revised plan that incorporates this office's recommendations for minimization of the requested variance, we recommend that the applicant show that the Buffer will be established with native trees and shrubs. In addition to being a mitigation requirement for development within the Buffer and the BMA, providing such plantings will help to control the future erosion of the shoreline slope, as well as providing a stormwater quality improvement and enhanced riparian habitat 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,



Amber Widmayer  
Natural Resource Planner

cc: AA 441-07

Martin O'Malley  
Governor

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Lt. Governor



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September 5, 2007

Mr. William Ethridge  
Anne Arundel County  
Office of Planning and Zoning  
2664 Riva Road, MS 6301  
Annapolis, Maryland 21401

Re: Rabena, John - 2007-0223-V

Dear Mr. Ethridge:

Thank you for forwarding the above referenced variance application. The applicant has requested a variance to construct a dwelling, garage and deck on slopes greater than 15%. The property is currently undeveloped and is designated as a Limited Development Area (LDA). It is our understanding that the applicant has submitted revised plans for this site. While we have not yet received these revised plans, based on our conversation this morning our office is providing these comments to supplement the ones already provided by this office in Megan Sine's August 6, 2007 letter.

This office cannot support granting the requested variance for the construction as it is currently proposed. We would not oppose an amended variance application for construction of a dwelling on this property, provided the design and placement of the dwelling is modified to adequately minimize the proposed extensive impacts to the regulated and sensitive environmental features of the lot. In particular, this office would not oppose an amended variance application that incorporated the type and extent of modifications that are discussed below.

No Disturbance Within the 100-foot Buffer

It is our understanding that the applicant's new plans show the proposed 3,500 square foot house with a deck that is mostly within the 100-foot Buffer and slopes greater than 15%. The applicant should remove this deck and any proposed structures, clearing, or grading from the 100-foot Buffer, as this office will not support a variance for Buffer disturbance in cases such as this where it is possible to locate a dwelling elsewhere on the property. Therefore, the applicant should locate all proposed construction and limits of disturbance outside of the Buffer.

### Minimization of Disturbance to Slopes Greater than 15%

The applicant's plans for the proposed dwelling do not minimize impacts to slopes greater than 15%. Anne Arundel County's Code contains several requirements that are designed to minimize impacts to steep slopes. The applicant has not met those that are possible to do given the site characteristics.

Anne Arundel County Code § 16-2-304(c) provides that development may not occur within 25 feet of the top of slopes with a grade of 25% or more. The applicant has shown this 25-foot setback line on the plan and there is sufficient room behind this line to locate the proposed house on the property. However, the applicant has located approximately half of the house within this setback. Within the Critical Area, Anne Arundel County Code §18-13-104 states, "if there are contiguous slopes of 15% or greater, the buffer shall be expanded by the greater of four feet for every 1% of slope or to the top of the slope and shall include all land within 50 feet of the top of the slopes." The applicant's plan shows slopes of 15-25% that are contiguous to the 100-foot Buffer. It is unclear exactly where the expanded Buffer would be if expanded four feet for every 1% of slope. However, even if the expanded Buffer were to be expanded by the lesser 50 foot setback from the top of the steep slopes, it seems that a significant portion of the proposed dwelling could be located behind this line. Accordingly, the applicant should locate as much of the dwelling as is feasible outside of at least the 50 foot setback from the top of the steep slopes.

### Minimization of the Construction Footprint

In addition to the modifications of the placement of the proposed dwelling, it appears that it is possible for the applicant to reduce the size of the dwelling footprint. The applicant has proposed a house that is at least 3,500 square feet. This seems excessive given the constraints of the lot and the smaller size of the surrounding dwellings. Similarly, it is this office's position that the proposed garage and a parking pad are not necessary given the site constraints, and if they were removed from the plan would provide further area in which the proposed dwelling could be located. Therefore, it is this office's position that the size of the proposed dwelling and driveway can be reduced and that the proposed garage and parking pad are not necessary.

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,



Amber Widmayer  
Natural Resources Planner

cc: AA 441-07

Martin O'Malley  
*Governor*

Anthony G. Brown  
*Lt. Governor*



Margaret G. McHale  
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August 29, 2007

Ms. Laura Atkins  
950 Tioga Lane  
Crownsville, MD 21032

Re: Rabena, John VAR 2007-0233-V

Dear Ms. Atkins:

As you requested during our conversation this afternoon, I am sending you a copy of the comment letter we sent to Anne Arundel County Office of Planning and Zoning in response to Mr. Rabena's application for a variance to allow a dwelling on slopes greater than 15% on his property at 956 Tioga Lane.

Thank you for your interest in Anne Arundel County's Critical Area Program. Please feel free to call me if you have additional questions at (410) 260-3482.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Amber Widmayer'.

Amber Widmayer  
Natural Resources Planner

cc: AA 441-07



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Lt. Governor



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August 6, 2007

Ms. Suzanne Schappert  
Anne Arundel County  
Office of Planning and Zoning  
2664 Riva Road, MS 6301  
Annapolis, Maryland 21401

Re: Rabena, John VAR 2007-0223-V

Dear Ms. Schappert:

This office has received the above-referenced variance request for review and comment. The applicant is seeking a variance to allow a dwelling with less setbacks than required and with disturbance to slopes greater than 15%. The property is in the Limited Development Area (LDA). This office does not generally oppose a dwelling on a grandfathered lot; however, my comments are outlined below:

1. It appears from the site plan that the project will also require a variance for expanded Buffer to steep slopes; therefore, we recommend moving the dwelling further to the south as well as reducing the overall size of the dwelling and garage in order to reduce those impacts.
2. Measures should be taken to minimize disturbance to the Buffer during construction (use of silt fence, etc.).
3. The applicant should indicate any plans for decks on the waterward side of the dwelling.
4. A line marking the Limits of Disturbance should be shown on the final plans.

Thank you for the opportunity to comment. 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.

If you have any questions, please telephone me at (410) 260-3481 or Lisa Hoerger at (410) 260-3478.

Sincerely,

A handwritten signature in cursive script that reads "Megan J. Sines".

Megan J. Sines  
Natural Resources Planner

cc: AA 441-07

441-07

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 2011-0337-V

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JOHN F. RABENA AND ANGELA M. RABENA

SECOND ASSESSMENT DISTRICT

DATE HEARD: FEBRUARY 16, 2012

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ORDERED BY:

DOUGLAS CLARK HOLLMANN  
ADMINISTRATIVE HEARING OFFICER

PLANNER: ROBERT KONOWAL

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DATE FILED: FEBRUARY 27, 2012



## PLEADINGS

John F. Rabena and Angela M. Rabena, the applicants, seek a variance (2011-0337-V) to allow an extension in the time required for the implementation and completion of a previously approved variance on property located along the northeast side of Tioga Lane, north of Waterview Drive, Crownsville.

## 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. Rabena 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.

## FINDINGS AND CONCLUSIONS

A hearing was held on February 16, 2012, in which the witnesses were sworn and the following was presented with regard to the proposed relief requested by the applicants.

This case concerns the same property the subject of a decision by this office in Case No. 2007-0223-V (December 2, 2008). The 2008 Order was appealed to the Board of Appeals in Case No. BA 79-08V (September 9, 2009) which granted variances to disturb steep slopes in the critical area to construct a single-family dwelling. The 2009 Order of the Board of Appeals was not appealed.

At the time of the approval, Anne Arundel County Code, Article 18, § 18-16-405(a) provided that a variance expires by operation of law unless a building permit is obtained within 18 months and construction proceeds in accordance with the permit. Senate Bill 958 created an automatic two and one-half year tolling period for any permits that would otherwise expire between January 1, 2008 and June 30, 2010. The 18-month period, therefore, began July 1, 2011, and would have expired December 31, 2011. However, the applicants timely filed an application to extend the time period for an additional 18 months.

The applicants were represented at the hearing by Joseph F. Devlin, Esquire, and Lauren M. Bonnani, Esquire. Testimony was offered through Mr. Rabena that he and his wife purchased the subject property, Lot 28, and the adjoining lot, Lot 27, in 2003. Lot 27 is improved with a dwelling; Lot 28 is unimproved. The applicants intended to sell Lot 27 to help finance the development of Lot 28. However, they have been unable to do so in the current economic climate. Also, the plans for developing Lot 28 became connected to Lot 27 when the Department of Health decided that the existing well would have to be capped and re-drilled. The financing expected from commercial lenders has not been forthcoming and the applicants have been unable to finance the well-drilling work. In the meantime, development of Lot 28 has been held up although, as confirmed by Timothy Martin, the applicants' engineer, permits have been obtained to grade the property and recently the necessary well permits have been issued.

The applicants are now being told that financing will be provided shortly that will allow them to finish the work needed to develop Lot 28.

Robert Konowal, a planner with the Office of Planning and Zoning (OPZ), testified that OPZ recommended that the requested variance be granted.

Although the failure to move forward is not considered exceptional circumstances, failure to extend the variance would work an unnecessary hardship on the applicants, particularly where the delay has been caused by actions not under the applicants' control. Good cause has been shown for the delay in obtaining a building permit. Furthermore, this is the minimum necessary to afford relief. Therefore, I will grant the extension. The approval incorporates the same conditions appended to the Order in Case No. BA 79-08V.

### ORDER

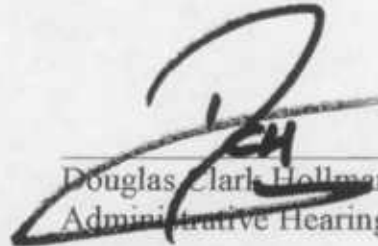
PURSUANT to the application of John F. Rabena and Angela M. Rabena, petitioning for an extension in the time required for the implementation and completion of a previously approved variance; and good grounds therefore having been found;

PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is this **27<sup>th</sup> day of February, 2012**,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicants are **granted** a variance to extend the time to obtain a building permit until August 27, 2013, with completion in accordance with the

permit, subject to the conditions contained in the Order granted in Case No. BA-79-08V which are:

1. Mitigation is required at a ratio of 3:1 for the area of disturbance to the steep slopes, and expanded Buffer, to be performed onsite (insofar as possible) in the area waterward of the dwelling.
2. The Petitioners are required to submit a plantings plan that includes species, size, spacing and schedule for review and approval by the County.
3. Stormwater management is required for all construction; and
4. With the exception of the 6-foot wide water access path, no further encroachment into the Buffer is permitted.



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.

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

**RE: An Appeal From A Decision Of The  
Administrative Hearing Officer**

**JOHN & ANGELA RABENA**

**Petitioners**

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**BEFORE THE  
COUNTY BOARD OF APPEALS  
OF ANNE ARUNDEL COUNTY**

**CASE NO.: BA 79-08V  
(2007-0223-V)**

**Hearing Date: March 26, April 1,  
May 6 & 13, 2009**

**MEMORANDUM OF OPINION**

**Summary of Pleadings**

This is an appeal from a decision of the Administrative Hearing Officer. This appeal is taken from the conditional granting of a variance to permit construction of a dwelling with disturbance to slopes 15% or greater, on property known as 956 Tioga Lane, Crownsville.

**Summary of Evidence**

Mr. Timothy J. Martin, an expert surveyor, stated that his assignment was to draft the subject site plan and (ultimately) develop grading and building permit plans. The Petitioners are seeking a variance to disturb steep slopes and the property cannot be developed without a variance. The 14,774 square foot property is zoned R2-Residential District and is in the Critical Area designated as buffer modified and Limited Development Area ("LDA"). Section 17-8-702(d) of the Anne Arundel County Code lists criteria for development within the buffer modification area. Mr. Martin followed those criteria in developing the site plan. One principal septic system and space for two reserve septic systems are required for the subject property. The proposed disturbance to steep slopes would permit the construction of the septic system and driveway. When development is completed, the property will be enhanced with a stormwater management system. Mr. Martin believes the proposed development will not confer any special privilege upon the Petitioners. The need for the variance is not based upon circumstances or

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TRUE CERTIFIED**

events created by the Petitioners. It will not adversely affect water quality, or impact fish, wildlife or plant habitat and will be in harmony with the general spirit and intent of the Critical Area Program. The development will enhance the area by way of site stabilization and providing stormwater management for the entire property. It will not reduce forest cover and will not allow the Petitioners to act contrary to acceptable planting practices. The Petitioners have minimized the size of the house and the distance of the disturbance from the shoreline. There have been numerous changes to the site plan over the past four years. The current plan is the minimum variance to afford relief for the site. The Petitioners had initially proposed a larger house and it derived to a smaller one, which is consistent with the character of the neighborhood. The proposed house is 285 square feet larger than the one on Lot 27 and 206 square feet smaller than the structure on Lot 26 at 952 Tioga Lane. The total area variance being requested is approximately 808 square feet.

Mr. Charles Jubb, a Protestant, stated that the sand "cave" on the subject site is a red herring. He has seen evidence of sand mines in the area. He also knows them to be filled with cement approximately ten years ago. Mr. Jubb was disappointed that a variance to disturb 15% slopes was granted. On questioning, Mr. Jubb stated that in the past he just filled any holes with dirt. There were some chunks of concrete in the hole with fill dirt on top. It was not something the County oversaw. He wanted to be able to drive down his driveway.

Mr. Shep Tullier, a land planner and land use consultant, stated that he is familiar with the variance application and has visited the property. The property is in the LDA-Limited Development Area designation for the Critical Area in a buffer modified area. It is zoned R2-Residential District. The request is for a variance within the buffer modified area to steep slopes for a dwelling, driveway and associated septic improvements. The property has steep slopes in the front which relate to the Severn River, as well as in the rear, which appear to be man made.



The rear yard contains the vehicular access point to the property. Two areas on the property contain slopes of 25% or more and two are 15% or greater. He does not believe there is a way to build a principal residence on the property without a variance and he believes that said improvement is reasonable. The granting of the variance would not confer a special privilege upon the Petitioners. Alternatively, denying the requested variance would deprive the Petitioners of the reasonable use of their property. The request does not arise from conditions created by the Petitioners on the property. It will not adversely affect water quality or habitat. Benefits after construction include significant planting of shrubs, trees and stormwater management, where there is none today. If the variance is granted, the development would not negatively impact the essential character of the neighborhood. The variance would not impair the appropriate use or development of adjacent properties and would not reduce forest cover in the LDA. He does not believe it would be contrary to the Critical Area Program or detrimental to the public welfare. In Mr. Tullier's opinion, the variance is the minimum necessary to afford relief and allows the Petitioners a reasonable, significant use of the property. In his opinion, any other proposed house/septic location will have more of an impact, require additional variances and more disturbances to steep slopes. Waterfront lots are all buffer modified in this vicinity. On questioning, Mr. Tullier stated that the variance was approved by the Administrative Hearing Officer. There is over 6,000 square feet of proposed disturbance, which will require a grading permit. The proposed house is 2,500 square feet. Unique physical conditions of the property include the steep slopes in the front and rear yards. Surrounding properties share the same characteristics that would warrant a variance. He did not review the sediment and erosion control plan. He described the septic system components and required setbacks from other wells and septic systems in the neighborhood. The disturbance to steep slopes will be offset with a new stormwater management system.

Ms. Amber Widmayer, a Natural Resource Planner with the Critical Area Commission, is responsible for the review of site plans, subdivisions and variances from Anne Arundel County, Wicomico County and the City of Annapolis. She believes that the proposed variance can be minimized and, therefore, does not support the current proposal. The Petitioners have not demonstrated that the requested variance is the minimum necessary to afford relief or that, if approved, it will not adversely affect fish, wildlife or plant habitat. Each and every one of the County's variance standards has not been met. She questions whether the septic system can be reconfigured, but does not possess the requisite information on the septic requirements. The size of the house is not reasonable given the environmental constraints of the lot. Ms. Widmayer further believes that a larger area for stormwater management would better infiltrate run-off and slow down the velocity thereof. A larger buffer would provide more planting space while helping to stabilize the slopes and take up more of the pollutants. There are no plantings proposed in front of the house at the shoreline. It is generally a bad idea to put a house at the top of slopes. With any disturbance in the buffer, mitigation is necessary because of the disturbance to habitat and water quality. There is roughly 100 feet between the house and shoreline, within which three shrubs are proposed. Any additional plantings in this area would buffer stormwater runoff. There are caves where the driveway is proposed, but she has not seen the caves. An underground cave presence on the property would be an environmentally sensitive feature. She does not believe that the location for the proposed house is fixed. She would not propose putting it toward the rear of the property because the septic would then be located closer to the water. She does not know the K value (erodability of soils) of the soils on the waterside. She does not know if the slopes to the back of the lot are less steep than those on the waterside. The Critical Area Commission would support moving the septic system farther away from the water to the rear of the lot and moving the house back to reduce intrusion toward the water's edge.

Mr. Bill Deck, a sanitary engineer with the Health Department, is familiar with septic system rules. The septic system for the subject property, Lot 28, is approved for a home of less than 3,500 square feet. The Health Department limits the square footage of a house and checks at the time of building permit application. Lots 20 and 28 had different reviews. The septic system on Lot 28 is different because of the underground caves. The entrance of the property is on top of remnants of a cave. The Health Department does not tell people what kind of septic system to use, but rather indirectly advises individuals where to install a septic system by citing the setback criteria. There is a current proposed septic system on the plan. All three drywells are in a triangle. For Lot 28, the measurements are 35 feet by 50 feet by 55 feet. For Lot 20, the measurements are 32 feet by 48 feet by 50 feet. These measurements are approximately the same. Lot 28's septic system is not yet approved – pending installation of wells. Two wells need to be drilled, one for the neighboring property and one for the subject property. Mr. Deck read the Health Department file for this case. He believes that the best place for the septic system is indicated on the proposed plan. The house would be smaller than 2,500 square feet. He had knowledge of the cave and the required setback therefrom when evaluating the proposed septic system. The physical conditions of this site limit the location of the septic system. The Health Department did not consider a smaller septic system.

Mr. Ronald Bridges, a Protestant, lives at 950 Tioga Lane and does many contract drawings for his occupation. He has no issue with the Petitioners building a house on the subject property, but does not approve of the septic system. He created an overlay of the previous septic system and the current system plans. He was going to buy the Petitioners' lots and planned to build a house on each lot. He believes that there are two other locations acceptable for house placement. The septic system can be built in the back or behind the lines. A different configuration can be achieved while meeting the Code. He believes that the septic system should

be placed in the front of the house. Many neighbors have it this way on their properties. Those septic systems have not leaked into the river and placement in the front yard is still a common practice. At some point, the Petitioners will need to address stormwater management. He has repaired many ditches caused by stormwater runoff. The proposed house will disturb the wetland area, where he fishes and crabs. He knows that septic systems have been placed on the water side between slopes and houses. There are ten homes in a row with systems 30 feet from slopes. He wants the proposed house moved approximately 10 feet back from the slopes and turned.

Mr. James McCutchoen, a Protestant, lives at 952 Tioga Lane and owns Lot 26 with his wife. His lot is smaller than Lot 28. His septic system is outside of the 100 foot buffer. Mr. Rabena granted him access for that work to be done. He is fine with the Petitioners' proposed house size, but he wants a smaller septic system behind the slopes and the house located farther back from the waterfront. The corner of the proposed house is 9-10 feet from steep slopes and entirely in the Critical Area buffer. The placement of the house will impact views upstream and downstream. The loss of 20% of a view is significant.

Ms. Jeanne Roby, a Protestant, lives at 960 Waterview Drive in a home built on Lots 29 and 30. She sees birds foraging in the wetlands and fears that the proposed house will have a negative impact on the wetlands and wildlife. Water runs down the hill during bad storms and the erosion is terrible. New impervious surfaces will make that worse. The house should not be that close to the slope and, as proposed, the house will ruin the view.

Mr. William Ethridge, a planner with the Office of Planning and Zoning, prepared the staff report recommending the grant of the requested variance. The last report submitted by the Critical Area Commission has been incorporated into his report. The Office of Planning and Zoning disagrees with the Critical Area Commission. The property measures 19,950 square feet.

He conducted a site visit and the property is consistent with other lots in the area. The Office of Planning and Zoning originally recommended denial in September 2007. Since that time, the site plan was revised, the house size was reduced, the proposed deck was removed and the applicants agreed that no deck would be constructed. The location of the septic system was changed since the hearing before the Administrative Hearing Officer. There was no nitrogen treatment system on the original plan. However, the current plan includes nitrogen treatment as a benefit. The caves were located with ground penetrating radar. That was done as a result of neighbor inquiries. The cave became an issue for septic system location and required setbacks. The subject case was delayed ten months and, during that time, the Office of Planning and Zoning negotiated with the Petitioners to improve the site plan.

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**

The subject property is a waterfront lot zoned R2-Residential District and classified as a Limited Development Area ("LDA") within the Chesapeake Bay Critical Area. The Petitioners have requested a variance to disturb steep slopes of 15% or greater in conjunction with the construction of a dwelling on property known as 956 Tioga Lane, Crownsville. Disturbance to slopes relates to the complex, but necessary, septic system that must accompany the proposed dwelling as well as the driveway leading to said dwelling. The proposed dwelling house itself, however, requires no variances to conform to the Critical Area criteria. Section 17-8-201 of the Anne Arundel County Code (the "Code") sets forth that development in the "Limited Development Area... may not occur within slopes of 15% or greater." § 17-8-201. The proposed development examined herein will disturb slopes of 15% or greater and, therefore, requires a variance.

Variations to the Critical Area criteria oblige the Petitioners to satisfy an extensive list of requirements set out in the Code. § 3-1-207. The requirements established for variances within the Critical Area are exceptionally difficult to overcome and an applicant for variances to the Critical Area Program must meet each and every one of the variance requirements of the Code. *See id.* If an applicant fails to meet even one of the criteria, the variance must be denied. In light of the discussion below, we find that the Petitioners have met their onerous burden of proof regarding the variance criteria. Thus, the Board grants the requested variances as conditioned below.

The Petitioners are first required to show that “because of certain unique physical conditions, such as exceptional topographical conditions peculiar to and inherent in the particular lot, or irregularity, narrowness, or shallowness of lot size and shape, strict implementation of the County's critical area program would result in an unwarranted hardship...” § 3-1-207(b)(1). The evidence presented to the Board displayed that, due to site constraints including the unique topography of the subject lot, the existence of caves confirmed by ground penetrating radar and the layout of the septic system, it is necessary for the proposed development to disturb slopes of 15% or greater. With regard to the septic system, the Board recognizes that the prerequisite of having to place a primary, secondary and tertiary septic system on the property substantially reduces useable area on the property within which the Petitioners can construct a modest dwelling and driveway. Moreover, the overwhelming presence of sensitive environmental features, specifically the prevalent location of slopes 15% or greater on the subject lot, waterfront and caves, in combination with the limited width of the property, make impossible the development of said lot to include a dwelling without some disturbance to slopes. As such, the Board finds that strict implementation of the Critical Area Program would place an unwarranted hardship on the Petitioners and, therefore, Section 3-1-207(b)(1) has been satisfied.

The Petitioners next must establish that “[a] literal interpretation of COMAR, 27.01, Criteria for Local Critical Area Program Development or the County’s Critical Area Program and related ordinances will deprive the applicant of rights commonly enjoyed by other properties in similar areas as permitted in accordance with the provisions of the critical area program within the Critical Area of the County.” § 3-1-207(b)(2)(i). As mentioned briefly above, other properties in the Critical Area enjoy improvements similar in size and appearance to the proposed development desired by the Petitioners. Furthermore, the proximity of the slopes and the requirement of a complicated septic system make any development of the subject lot in compliance with the County’s Critical Area Program impossible. Absent the granting of the requested variances, no residential structure could be built on the subject property. A house is the most basic reasonable and significant use of a property and, in the instant case, the proposed dwelling is not of excessive size. Furthermore, the house itself does not require variances to comply with the County guidelines; rather, the County-mandated septic system for service to the subject development necessitates the requested variances. The Board also appreciates the Petitioners’ consistent efforts in revising the layout for proposed development to comply with, to the extent possible, the provisions of the Critical Area Program. Denying the requested variances would ultimately deprive the Petitioners of their fundamental right to enjoy a right universally enjoyed by other Critical Area properties – a residence. As such, the Board finds that the Petitioners would be denied rights commonly enjoyed by others if the Critical Area provisions are applied literally.

Next, the Petitioners must show that “[t]he granting of a variance will not confer on an applicant 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 critical area, or the County’s bog protection program to other lands or structures within a bog protection area.” § 3-1-207(b)(3).

Other Critical Area properties throughout the County enjoy dwellings and other uses of property similar to the Petitioners' proposed use. Furthermore, because of the unusual topography of the subject lot, the Petitioners cannot construct any home absent the requested variances. A failure of this Board to grant the requested variances would result in a denial of all reasonable use of the property as the Petitioners would be deprived of the fundamental right to enjoy use of a dwelling on one's property. With regard to the unusual topography of the property, the evidence supports a finding that the location of the septic system toward the rear of the property prevents substantially against potential interference with primary water service to the property. The complex septic system is a mandatory aspect of the proposed development and, given the required setbacks as set forth in the Code, the Board finds that the proposed location for the septic system and home, taking the required variances into consideration, confers only the most practical benefit to the Petitioners. Thus, we do not believe that granting the Petitioners' requested variance would give them any type of special privilege and, accordingly, Section 3-1-207(b)(3) has been satisfied.

The Petitioners also must establish that "[t]he variance request is not based on conditions or circumstances that are the result of actions by the applicant, 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." § 3-1-207(b)(4). None of the development issues were created by the Petitioners or the conditions of neighboring property. Simply because the Petitioners seek to improve property knowing that variances would be necessary does not create a self-imposed hardship. *See Stansbury v. Jones*, 372 Md. 172, 812 A.2d 312 (2002). Accordingly, we find that the requested variances are the result of natural conditions (slopes, waterfront and caves) rather than any unjustified action on the part of the Petitioners.



The next burden that the Petitioners must overcome is to show that “[t]he granting of a variance 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 or bog protection program.” § 3-1-207(b)(5)(i)-(ii). As mentioned above, the variance requests concern the complex, mandatory septic system (and required replacement systems) to service the proposed dwelling and the driveway to traverse the subject lot. The intricate septic system, as analyzed by the Board, will not have adverse affects on water quality or wildlife. It will include a nitrogen pre-treatment system and its distance from the water’s edge will be maximized. Moreover, mitigation is required at a ratio of 3 to 1 for the area of disturbance to the steep slopes, to be performed onsite (where possible) in the area waterward of the dwelling. In addition, the granting of the requested variance is further conditioned upon an approved stormwater management system to service all development. The Board considered the testimony and related concerns therewith as offered by the Critical Area Commission. However, the Critical Area Commission did not have the advantage of Mr. Deck’s input. Upon further consideration of the testimony of the Health Department witness and his opinion that the proposed location for the septic system is the only appropriate location for same, notably a result of the caves beneath the subject lot, the locality of the replacement systems, and the water serving the development, the Board finds that all development-related concerns voiced by Ms. Widmayer were satisfied. In short, the septic system sets the location for the home, and the proposed location appropriately accommodates for and alleviates any concerns surrounding the variances requested herein. The management of stormwater runoff will also provide an environmental benefit. In light of the above, the proposed variances will not harm the environment and, more significantly, the variances will be consistent with the County’s Critical Area Program.

The subject property is not within the County's bog protection area and, therefore, Code Section 3-1-207(b)(6) does not apply and need not be addressed.

The Petitioners' next burden is to establish "by competent and substantial evidence, [that they] ha[ve] overcome the presumption contained in the Natural Resources Article, § 8-1808(d)(2), of the State Code." § 3-1-207(b)(7). Under the above-cited section of the Natural Resources Article, it is *presumed* "that the specific development activity in the critical area that is subject to the application and for which a variance is required does not conform with the general purpose and intent of this subtitle, regulations adopted under this subtitle, and the requirements of the local jurisdiction's program." Md. Code Ann., Natural Resources Art., §8-1808(d)(2)(i) (emphasis added). Here, because the septic system is a mandatory requirement of the Health Department, the Petitioners cannot make any of the proposed developments on the property without variances. Like the other property owners in the community, the Petitioners want to develop their lot. Allowing the Petitioners to build the proposed dwelling, as measured in the site plan, is necessary to avoid denying the Petitioners a reasonable and significant use of their property. Denial of a reasonable use of land is contrary to the Critical Area Program. However, given the abovementioned necessary septic system's reduction of useable area on the property, alternative plans do not exist that would provide for fewer disturbances to steep slopes in the Critical Area. Furthermore, the Critical Area Program does not preclude variances, but rather specifically provides that variances may be granted upon cause shown. As mentioned earlier, a home is a reasonable and significant use of the subject property, and the proposed development is not excessive in size. The septic system and driveway, a mandatory condition of the Health Department, is the development for which variances are required, not the home itself. Moreover, following the accomplishment of the development considered herein, the property will benefit from additional plantings and stormwater management never before present on said

property. Therefore, we find that the Petitioners' proposed development is within the intent of the program.

Next, the Petitioners have the burden of proving that "the variance is the minimum variance necessary to afford relief." § 3-1-207(c)(1). The evidence indicates that the proposed development plan, after diligent revisions, appropriately balances the septic system requirements, required setbacks, and avoidance of the caves onsite, with minimal disturbance to the Critical Area. There is no evidence that an alternate plan could accomplish the proposed development with a more suitable septic system or fewer disturbances to the Critical Area. The residence itself has been located without the need for any variances. Therefore, the Board finds that the requested variances accurately reflect the minimum variance necessary to afford relief and, accordingly, the Petitioners have met Section 3-1-207(c)(1).

Additionally, the Petitioners must show that granting the variances will not "alter the essential character of the neighborhood or district in which the lot is located." § 3-1-207(c)(2)(i). As noted above, neighboring properties in the community are improved with dwellings similar in size and appearance to the development requested by the Petitioners. However, the conditions of the subject lot, specifically with regard to the location of the requisite septic system on slopes 15% or greater, make the subject property quite unique. The Board believes that the character of the neighborhood, wherein adjacent properties enjoy the use of dwellings similar to the proposal considered in this decision, will not be altered by granting the Petitioners' request to disturb slopes 15% or greater. Although this home will contain a 2-car garage, the inclusion of a garage on this house will not alter the residential character of the neighborhood. The photos of local homes show a mix of housing styles, sizes and garage/driveway configurations. Therefore, we believe that the Petitioners' proposed addition will not alter the "the essential character of the neighborhood." *Id.* Similarly, the granting of the variances "will not substantially impair the

appropriate use or development of adjacent property.” § 3-1-207(c)(2)(ii). The property owners within the surrounding community, as noted above, enjoy dwellings in the Critical Area. They are currently developed and used residentially. While a home will be constructed on this property and views across this site will be impacted, nearby property owners do not have a continuing right to views across property they do not own. As such, the granting of the Petitioners’ requests is consistent with the appropriate use or development of adjacent property.

The Petitioners next must show “the granting of the variance will not reduce forest cover in the limited development and resource conservation areas of the critical area.” § 3-1-207(c)(2)(iii). The property is classified as a Limited Development Area. The Boards finds no evidence to suggest that forest cover will be reduced by the development of the requested house. Mitigation will be required for any disturbance and the site plan confirms that plantings will be made at the top of the slope between the home and the waterfront. With the mitigation at a 3 to 1 ratio, vegetation will increase on site, post development. Likewise, the grant of the variances “will not be contrary to acceptable clearing and replanting practices required for development in the critical area or a bog protection area.” § 3-1-207(c)(2)(iv). No evidence before the Board suggests that the proposed development, specifically the septic system and driveway which require variance, are contrary to the acceptable clearing and replanting practices in the subject area. The disturbed area is nominal for the construction of a home and related facilities and as far from the water’s edge as possible; and, more importantly, the disturbance to slopes 15% or greater would not affect the clearing and replanting practice in the Critical Area since vegetation in the Critical Area will increase post development due to the required level of mitigation. Therefore, the Board finds that Section 3-1-207(c)(2)(iv) has been satisfied.

Lastly, the Board finds that the variances will not “be detrimental to the public welfare.” § 3-1-207(c)(2)(v). The Health Department determined that the proposed request complies with

the regulations for on-site sewage disposal and the well-water supply systems. In support thereof, the Board has conditioned approval of the requested variances upon mitigation at a ratio of 3:1 for the area of disturbance to the steep slopes, and Expanded Buffer, to be performed onsite (to the extent possible) in the area waterward of the dwelling, an enhanced stormwater management system for service to the subject lot, and a sufficient plantings plan as approved by the County. The site plan shows that the area at the top of the slope between the house and the water would be fully planted. The location of the septic system toward the rear of the subject lot prevents substantially against potential impacts to the river by virtue of the extensive setbacks therefrom. The testimony of Ms. Widmayer that the setback of the septic system from the waterfront should be maximized is convincing. The site plan has appropriately located the proposed improvements to protect the public from potential leachate. Furthermore, the Board believes that the disturbance to the Critical Area which accompanies the granting of this request is a minimal one and, more importantly, reflects the diligent efforts of the Petitioners to curtail said impact as much as possible. The variance would simply result in the construction of a reasonably sized residence in a residential community. Therefore, the Board finds that the requested variances would not be detrimental to the public welfare.

To be granted a variance to the Critical Area Program requirements, the Petitioners have the burden to satisfy each and every Code requirement. § 3-1-207. As the foregoing discussion detailed, failure to meet even one of the Code provisions requires this Board to deny the requested variances. Here, the Petitioners have satisfied all of the applicable requirements of Section 3-1-207. Therefore, the Board grants the Petitioners' requested variances as conditioned below.

**ORDER**

For the reasons set forth in the foregoing Memorandum of Opinion, it is this 9<sup>th</sup> day of SEPT., 2009, by the County Board of Appeals of Anne Arundel County, ORDERED, that the variance requested herein be **GRANTED** for disturbance to slopes 15% or greater in the Critical Area in conjunction with the construction of a dwelling and the mandatory septic system required therewith subject to the following conditions:

- (1) Mitigation is required at a ratio of 3:1 for the area of disturbance to the steep slopes, and expanded Buffer, to be performed onsite (insofar as possible) in the area waterward of the dwelling;
- (2) The Petitioners are required to submit a plantings plan that includes species, size, spacing, and schedule for review and approval by the County;
- (3) Stormwater management is required for all construction; and
- (4) With the exception of a 6 foot wide water access path, no further encroachment into the Buffer is permitted.

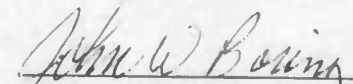
Any appeal from this decision must be in accordance with the provisions of Section 604 of the Charter of Anne Arundel County, Maryland.

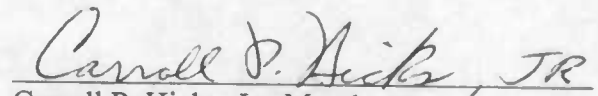
If this case is not appealed, exhibits must be claimed within 90 days of the date of this Order; otherwise, they will be discarded.


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, III, Chairman

  
John W. Boring, Member

  
Carroll P. Hicks, Jr., Member


  
William Moulden, Member

  
James E. Rzepkowski, Member

*(Andrew C. Pruski, Member, participated in the hearings on this appeal, but resigned prior to issuance of this Order.)*

DISSENT

The proposed development is too grand to represent the minimum reasonable and significant use for the subject site. This property is riddled with steep slopes, both at the water's edge and at the rear of the property. There is also the unique cave formation on site—an environmental condition that I have not encountered in my years on this Board. Given these features, a 2,500 square foot home with a two-car garage is excessive. If the garage were eliminated, the footprint thereof (which is farther from the water's edge than the proposed structure) could be utilized to provide living space and the portion of the dwelling located nearest to the waterfront and top of the slope could be eliminated. Although undesirable in the eyes of the Petitioners, a dwelling slightly more modest than what the Petitioners currently propose located farther from the water and partly on the footprint of the proposed garage could be constructed in compliance with all County requirements. Thus, for the reasons stated, I respectfully dissent.

  
Arnold W. McKechnie, Vice Chairman



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SEP 10 2009

CRITICAL AREA COMMISSION  
Chesapeake & Atlantic Coastal Bays

AW

441-07

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 2007-0223-V

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JOHN AND ANGELA RABENA

SECOND ASSESSMENT DISTRICT

DATE HEARD: OCTOBER 29, 2008

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ORDERED BY: STEPHEN M. LeGENDRE, ADMINISTRATIVE HEARING OFFICER

PLANNER: WILLIAM ETHRIDGE

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DEC 4 2008

DATE FILED: DECEMBER 2<sup>nd</sup>, 2008

ICAL AREA COMMISSION  
ice & Atlantic Coastal Bays

## PLEADINGS

John and Angela Rabena, the applicants, seek a variance (2007-0223-V) to allow a dwelling with disturbance to slopes of 15% or greater on property located along the northeast side of Tioga Lane, north of Waterview Drive, Crownsville.

## 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. The applicants submitted the affidavit of Timothy Moore indicating that the property was posted on October 14, 2008. I find and conclude that there has been compliance with the notice requirements.

## FINDINGS AND CONCLUSIONS

This case concerns unimproved property with a street address of 956 Tioga Lane, also identified as Lot 28 in the subdivision of Sunrise Beach, Crownsville. The property comprises 19,950 square feet and is zoned R2 residential with a Chesapeake Bay Critical Area designation as Limited Development Area (LDA). This waterfront lot on the Severn River is mapped as a buffer modification area.

The request is to develop the property with a single-family dwelling with disturbances to steep slopes.

Anne Arundel County Code, Article 17, Section 17-8-201 proscribes the disturbance of steep slopes. Accordingly, the proposal requires a variance to disturb steep slopes.

William Ethridge, a planner with the Office of Planning and Zoning (OPZ), testified that the property is irregular in configuration, below the minimum area for the district and steeply sloped on the street side (rear) and overlooking the water. The applicants are proposing a two-story dwelling with basement and two-car garage addition. The project also includes a well and septic system. The coverage is less than the allowance. The site plan has been revised to reduce the footprint of the dwelling (from 1,374 to 1,221 square feet), the sidewalk area (from 105 to 70 square feet) and the rear porch addition (from 170 to 113 square feet) and to eliminate a waterfront deck addition (120 square feet). The witness summarized the agency comments. The Department of Health did not oppose the request. The Chesapeake Bay Critical Area Commission recommended relocating the dwelling further from the steep slope on the water. By way of ultimate conclusion, Mr. Ethridge offered conditional<sup>1</sup> support for the revised site plan. In particular, the proximity of dwelling to the slope is a function of the septic design and the dwelling is in keeping with the character of the neighborhood.

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<sup>1</sup> The recommended conditions are: mitigation, a planting plan, stormwater management and development in the buffer limited to a water access path.

Timothy Martin, a licensed surveyor employed by the applicant, testified that the location of the septic system in the east side yard is the controlling feature of the site design. He believes that the variance standards are satisfied. In this regard, the footprint of the dwelling is smaller than the majority (23 out of 27) of the surrounding homes on both sides of Waterview Drive. Finally, the septic design approved by the Department of Health limits the dwelling to 2,500 square feet of living area and includes nitrogen removal.

James McCutcheon, who resides two properties to the west<sup>2</sup>, summarized a written statement in opposition to the request. In brief, OPZ has relied on inaccurate information from the applicants and their consultants, the revised plan exceeds the minimum relief, the dwelling is too big and should be reconfigured, the front setback is incorrect with the front façade of the dwelling forward of the average front yards of the adjacent dwellings, the septic system should be relocated to the waterside, there is no room for mitigation and the proposal will change the character of the neighborhood.

Other neighbors opposing the application included Charles Jubb, Jr., who resides on the adjacent property to the east; Jeanne Roby, who resides on the property to the rear; Ronald Bridges and Chris McGrady. Matters of concern include the impact on the view to water, whether the wetlands at the shore experiences tidal influence, the precedent value of the request, and the potential for additional caves at the premises beyond the ones identified on the site plan.

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<sup>2</sup> The intervening property is owned by the applicants and is improved with a dwelling.

I visited the site and the neighborhood. Tioga Lane dead ends at the property. The topography falls off gradually through a clearing and then more steeply across a vegetated bank above the wetlands and the river. This is an older community with modest to moderate sized dwellings. There are also a few newer, larger homes, some on waterfront lots. The dwellings to the west on Tioga Lane are below the elevation of the paving with the grade falling more steeply through the front yards down to the river. The dwelling to the east is further from water than the dwelling to the west. The dwelling to the east is near the top of the slope above the river.

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.

Upon review of the facts and circumstance, I find and conclude that the applicants are entitled to conditional relief from the code. Considering first the subsection (b) criteria, due to the extent of the slopes, a strict application of the Critical Area program would result in an unwarranted hardship to the applicants. Under a literal application of the program, the applicants would be deprived of the right to develop the property with a single family dwelling, a right commonly enjoyed by other properties in similar areas in the Critical Area; conversely, the granting of a conditional steep slope variance to develop a single-family dwelling is not a special privilege that the program typically denies to other lots in the Critical Area. There is nothing to suggest that the need for the relief results from the actions of the applicants or from land use on neighboring properties. Finally, with mitigation and other conditions, the variance will not impair Critical Area assets and harmonizes with the spirit and intent of the program.

Considering the subsection (c) criteria, the determination of the extent of the relief is certainly subjective. But on balance, I find and conclude that the request has been minimized. The dwelling is appropriately sized and does not disturb the buffer, which is intended to perform protective functions. The

suggestion to relocate the septic system to the waterside would result in both buffer and steep slope variances. I further find that the granting of a conditional variance will not alter the essential character of the residential neighborhood, substantially impair the appropriate use or development of adjacent property, or constitute a detriment to the public welfare. The approval is subject to the conditions in the Order.

### ORDER

PURSUANT to the application of John and Angela Rabena, petitioning for a variance to allow a dwelling with disturbance to slopes 15% or greater, and

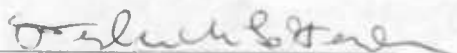
PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is this 2nd day of December, 2008,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicants are **granted** a variance to disturb steep slopes in accordance with the revised site plan. The approval is subject to the following conditions:

1. No further expansion of the dwelling is allowed and accessory structures for storage are not allowed.
2. Development in the buffer is limited to a pervious water access path.



3. The applicants shall provide mitigation, a planting plan and stormwater management as determined by the Permit Application Center.
4. The conditions of the approval run with the land and shall be included in any contract of sale.

  
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. **A permit for the activity that was the subject of this variance application will not be issued until the appeal period has elapsed.**

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

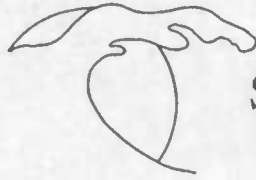
If this case is not appealed, exhibits must be claimed within 60 days of the date of this Order, otherwise they will be discarded.

AA441-07 Rabena, John

- Variance to the expanded 100-foot Buffer within a BMA and to the 25-foot setback to steep slopes 25% or greater in order to develop a property with a single-family dwelling, garage, septic, steps and a pier. Dwelling footprint in 1,398, reduced by 153 based on previous review comments.
- Commission staff did not fully oppose, but could not offer support based on significant concerns regarding lack of minimization. Staff requested that the dwelling be removed from the 25-foot setback to steep slopes due to concerns about the credibility of the slope once developed. Other recommendations included greater minimization of the limits of disturbance, incorporation of the proposed garage into the dwelling design and modification to the design of the driveway.
- Significant neighborhood concern with the proposal regarding the size of the dwelling, the location of the dwelling in proximity to slopes, and the presence of subterranean caves on the property (not a Critical Area issue).
- Variance conditionally granted by the HO who found that the house size is reasonable and does minimize disturbance to the Buffer. Conditions of approval included prohibiting future expansion of the dwelling and accessory structures as well as limiting development within the Buffer to a pervious pathway.
- No CAC appeal since the proposal did not impact the Buffer (BMA), the lot was an undeveloped lot of record, the footprint wasn't huge, and the majority of concerns stemmed from disturbance within the 25-foot slope setback which is a local zoning setback.
- Decision has been appealed to the BOA by the neighbors. Scheduled for 3/26/09.
- Neighbors continue to contact Amber for support.

5/22

27,28,29



## SEE ENVIRONMENTAL SERVICES, INC.

### CHESAPEAKE BAY CRITICAL AREA AND HABITAT ASSESSMENT REPORT

For: 956 Tioga Lane, Sunrise Beach Subdivision, Crownsville, MD  
Tax Map 31, Grid 4, Parcel 389  
John F. and Angela M. Rabena, Applicant

Zoning: R<sub>2</sub>  
CA Designation: LDA (Buffer Modified/Exempt)

May, 2007

#### **Introduction:**

The applicants are proposing to construct a single family home on this vacant, legal waterfront lot in the Sunrise Beach Subdivision in Crownsville. The lot, like the adjoining waterfront lots, has a nearly level plateau on the street side of the house, and then slopes steeply down to the beach along the upper end of the Severn River. The lot is located entirely within the Chesapeake Bay Critical Area, with a Limited Development (LDA) land classification. See enclosed copy of County map #15.

The relatively level plateau is just big enough for house, well, and septic system. The 50-foot expansion of the Buffer back from the top of the steep slopes places at least one-half of the level portion of the lot within the Expanded Buffer, and therefore a variance to allow disturbance to the Expanded Buffer is required. In addition, the site constraints push the proposed septic dry well to an area of 15% slopes on the rear of the lot, requiring a variance to this Code provision.

This Critical Area report is based on the April, 2007, site plan by Bay Engineering, Inc. (a copy of which is included at the end of this report) and an April 30, 2007 site visit by Eric E. See of See Environmental Services, Inc.

#### **Site Conditions/Proposed Development:**

The site is a 19,126 square foot/0.44-acre waterfront lot in the Sunrise Beach Subdivision in Crownsville. The site is gently sloping at the road, and then drops very steeply down to a beach on the upper Severn River. The current owners own the adjoining home to the west, and have maintained the upland plateau in lawn with a few planted azaleas. The steep slopes down to the beach have a few trees and dense brush and vines. The less steep, 15% slopes on which a septic drywell is proposed has been maintained in mowed grass for decades.

Soils mapped in the 2003 County Soil Survey are the Sassafras and Croom Soils, 15-25% slopes (SME), with an erosive factor of less than 0.35. There are no wetlands on the site, the area behind the beach being Phragmites on dry sandy soils.

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Annapolis, Maryland 21401  
Tel: (410) 266-3828 Fax: (410) 266-3866

The only existing impervious coverage is a narrow sidewalk, to be removed. Proposed impervious coverage would be 2,648 square feet, or 13.85%, well under what is allowed (5,445 square feet) for a lot of this size in the LDA. Because of site and slope restrictions, stormwater management will be by vegetative plantings, or drywells, to be determined at time of building and grading permits.

Woodland coverage on the site is composed of one large, twin elm on top of the steep slopes, which will be removed to place the corner of the proposed house, and a few trees and dense brush on the steep slopes on the bank down to the beach, all covering approximately 4,805 square feet. Total removal proposed is approximately 869 square feet, or 18% of the existing, with on-site replacement possible, and determined at time of building and grading permits.

#### Conclusions:

*Because of the relatively small size of the building and septic disposal envelope on the lot, and the presence of the 100-foot Buffer and the expansion of the Buffer because of steep slopes and the required size and setbacks for a septic drywell system and a water well, no development on the lot is possible without some minor development of steep slopes and the Expanded Buffer. The proposed house is modest in size and consistent with others on this street. Development will be mainly on flat lawn, and only a small area on the base of the steep slopes. With sediment control and stormwater management plantings, development can be accomplished without significant adverse impacts to fish and wildlife habitat and water quality.*

#### References:

Anne Arundel County Office of Planning & Zoning, Critical Area Map #15

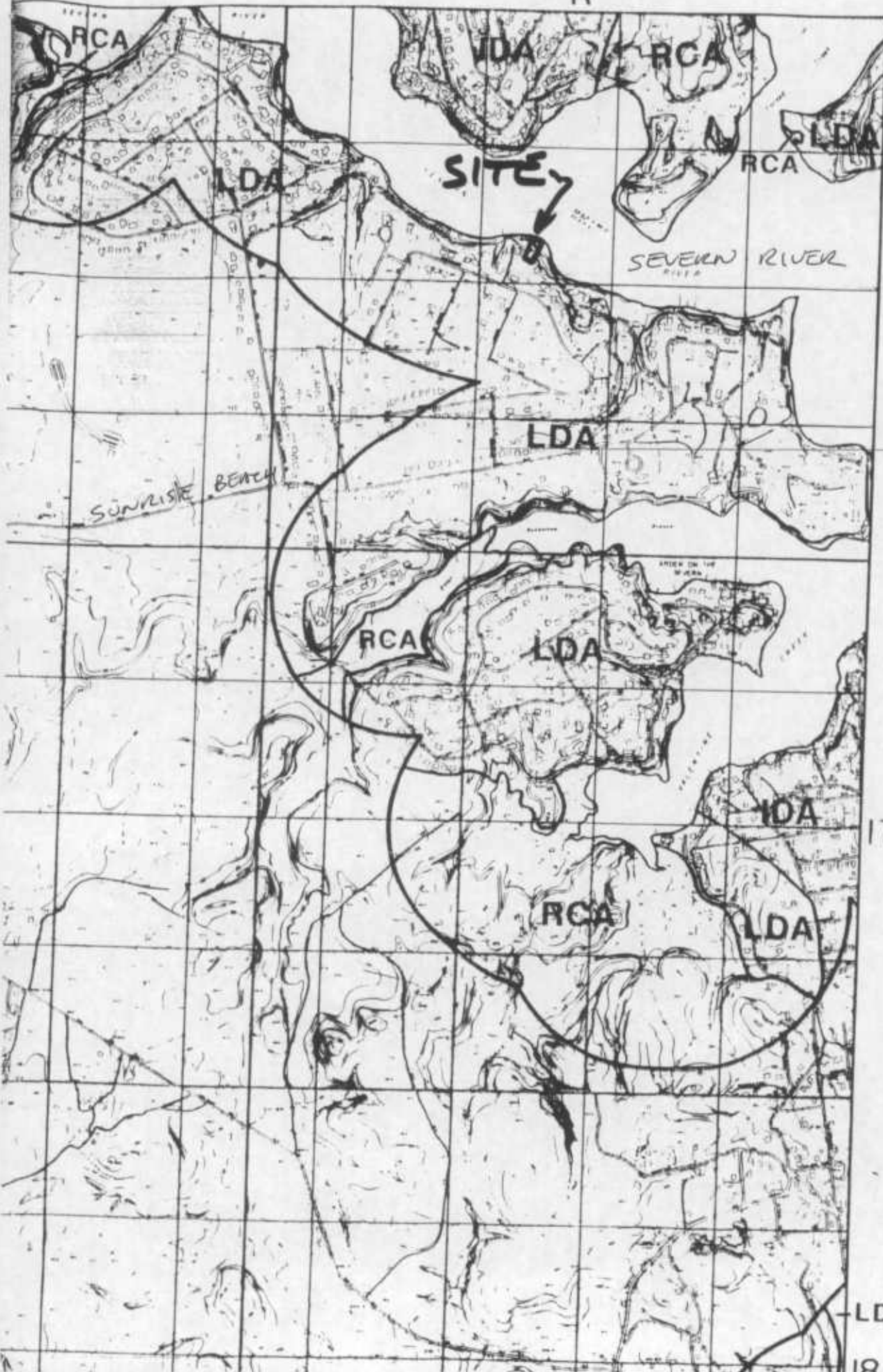
Bay Engineering, Inc., April, 2007 Site Plan

U.S. Natural Resources & Conservation Service. 2003 County Soil Survey (from FTOG website).

SEE ENVIRONMENTAL SERVICES, INC.

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R



16

C.A. MAP

# 15

1" = 1,000'

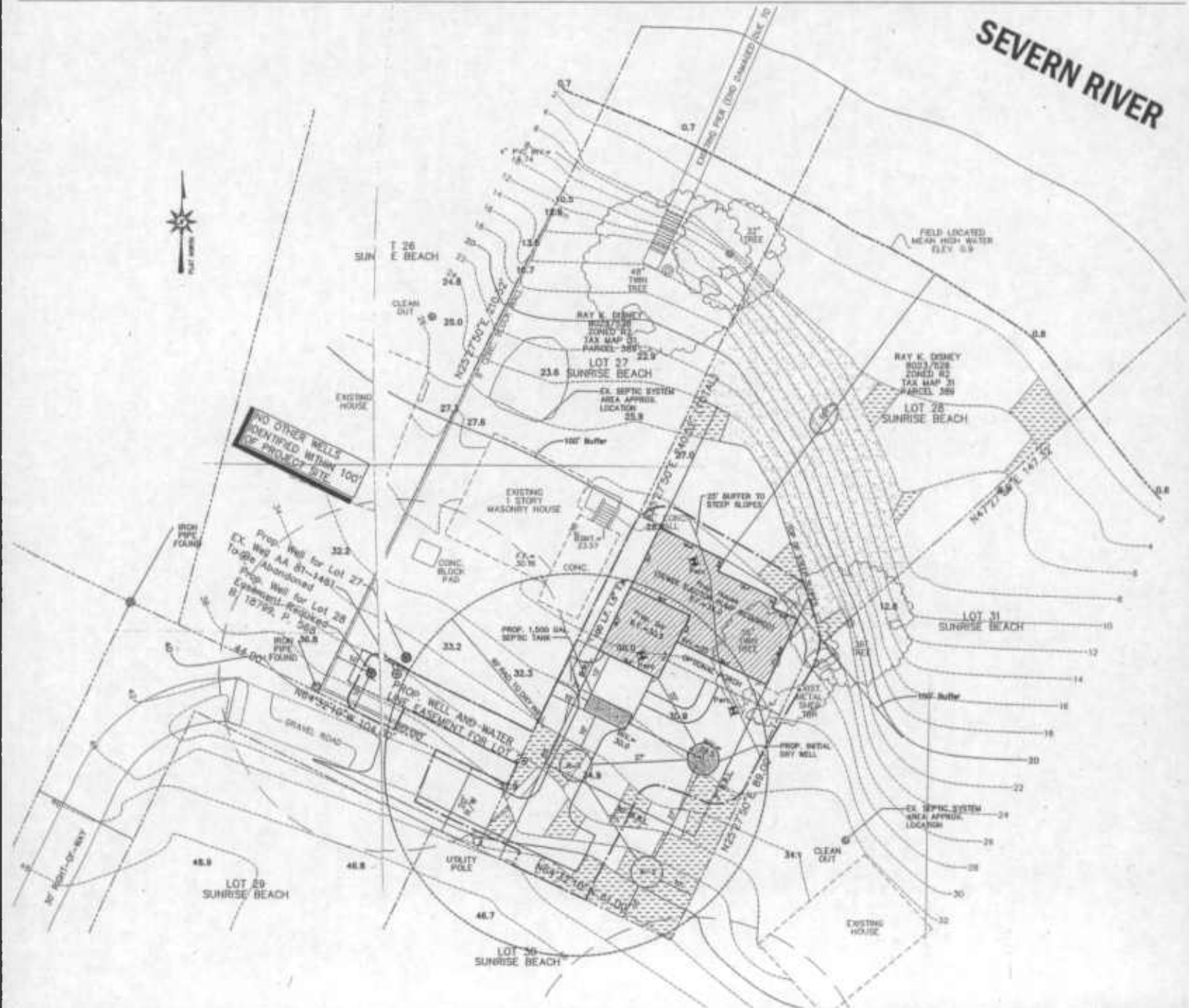
17

LDA

18

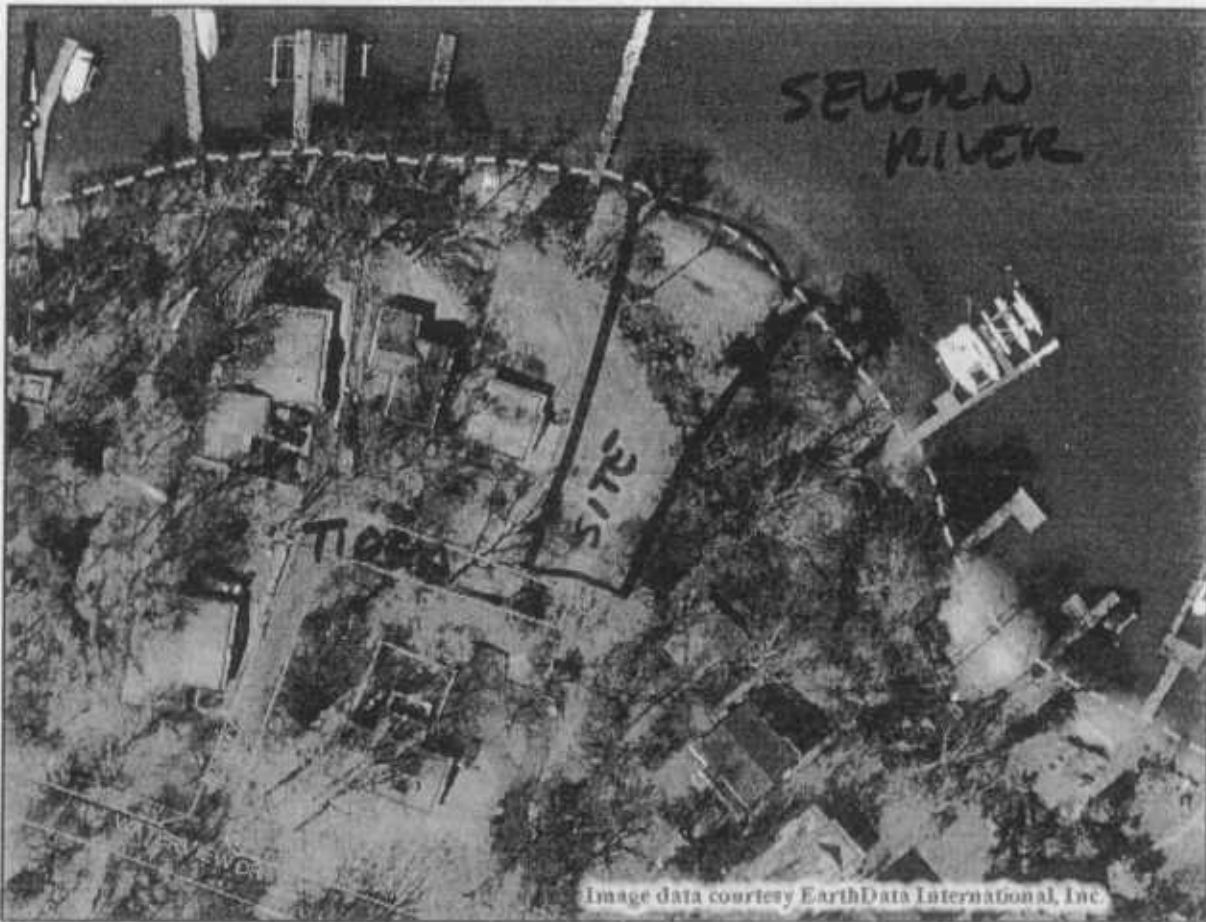
956 TIOGA LANE  
CROWNSVILLE, MD 21032  
TAX MAP 31 ~ GRID 16 ~ PARCEL 389  
ZONED: R-2

SECOND ELECTION DISTRICT ANNE ARUNDEL COUNTY, MARYLAND





Anne Arundel County Department of Public Works



Printed: 5/1/2007 9:33:38 AM

Scale = 1" = 100'

**WATER VIEW**

January 28, 2009  
962 Waterview Drive  
Crownsville, Maryland 21032

Ms. Amber Widmayer  
State of MD Critical Area Commission  
1804 West Street; Suite 100  
Annapolis, Maryland 21401

Re: Rabena, John – 2007-0223-V

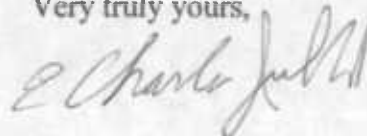
Dear Ms. Widmayer;

I appreciate your help in trying get Mr. Rabena to move his house back from the steep slopes overlooking the Severn River. The Hearing Officer approved the revised variance against the advice of your office, so I am appealing it to the Anne Arundel County Board of Appeals. The appeal is being heard on 3/26/09 at 5:30 p.m.

One of the points I am trying to make is that there is a Tidal Wetlands on the shore line and therefore the 100 foot Buffer should be drawn farther inland. I would appreciate it if you could review my argument and let me know if I am wrong or just wasting my time. Please let me know if you know of someone who I could contact to confirm my opinion.

Thanks again for your help. My telephone number is 410-271-5612. My email address is [pel-1@msn.com](mailto:pel-1@msn.com).

Very truly yours,



E. Charles Jubb, Jr.

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## 100 foot Buffer

The Critical Area laws require little or no disturbance in the 100 foot buffer. The 100 foot buffer is drawn from the Mean High Water line or from the land side of a Tidal Wetland. The drawing submitted by Mr. Rabena claims the wetland on his property is a non-tidal wetland. This is incorrect. The Glossary of the Critical Area web page states that "Tidal Wetlands - those vegetated, or unvegetated, lands bordering, or lying beneath, tidal waters which are subject to regular or periodic action. (the glossary defined non-tidal wetlands as those not subject to tidal action).

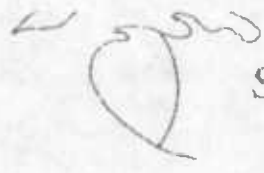
Periodic tidal action does not mean daily. I visited the NOAA website and found that from October 1<sup>st</sup>, 2007 to September 20<sup>th</sup>, 2008 the observed water in the Annapolis area was 1 foot above Mean High Tide 76 times. The observed water level was 1.5 feet above Mean High Tide 10 times. During these 86 times the wetlands would have been flooded by the Severn River. I have lived next to these wetlands for over 40 years and at a normal summer high tide the ground is spongy.

On October 25, 2008 at 3:00 p.m. the NOAA Tides and Current website showed the observed water level was 1.5 feet above MHW. I measured the water in the deepest part of the wetland at 956 Tioga Lane and found it to be about 18 inches. The next day at 8:00 a.m. I saw no water in the wetland. The NOAA site showed the tide at 8:00 a.m. to be .4 feet below the MHW. As the tide went down so did the water level in the wetland. Therefore the wetland is affected by tidal action.

Mr. Rabena's environmental expert, Mr. See, wrote in his May 2007 assessment report "there were no wetlands on the site". Then, after we challenged him at a meeting in front of the Hearing Officer, he revised the report (dated October 2008) and wrote "there is a small pocket of non-tidal wetlands located between the sandy beach and the toe of the steep slopes".

Since the water in the wetlands at 956 Tioga Lane is affected by the tides of the Severn River it is a Tidal Wetland and the 100 foot Buffer required by the Critical Area Commission should be measured from the inland side of the Tidal Wetland and not the Mean High Water line shown on the Bay Engineering map.

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FEB 03 2009  
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SEE ENVIRONMENTAL SERVICES, INC.

CHESAPEAKE BAY CRITICAL AREA AND HABITAT ASSESSMENT REPORT

For: 956 Tioga Lane, Sunrise Beach Subdivision, Crownsville, MD  
Tax Map 31, Grid 4, Parcel 389  
John F. and Angela M. Rabera, Applicant

Zoning: R2  
CA Designation: LDA (Buffer Modified/Exempt)

May, 2007

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CRITICAL AREA COMMISSION

Introduction:

The applicants are proposing to construct a single family home on this vacant, legal waterfront lot in the Sunrise Beach Subdivision in Crownsville. The lot, like the adjoining waterfront lots, has a nearly level plateau on the street side of the house, and then slopes steeply down to the beach along the upper end of the Severn River. The lot is located entirely within the Chesapeake Bay Critical Area, with a Limited Development (LDA) land classification. See enclosed copy of County map #15.

The relatively level plateau is just big enough for house, well, and septic system. The 50-foot expansion of the Buffer back from the top of the steep slopes places at least one-half of the level portion of the lot within the Expanded Buffer, and therefore a variance to allow disturbance to the Expanded Buffer is required. In addition, the site constraints push the proposed septic dry well to an area of 15% slopes on the rear of the lot, requiring a variance to this Code provision.

This Critical Area report is based on the April, 2007, site plan by Bay Engineering, Inc. (a copy of which is included at the end of this report) and an April 30, 2007 site visit by Eric E. See of SEE Environmental Services, Inc.

Site Conditions/Proposed Development:

The site is a 19,126 square foot/0.44-acre waterfront lot in the Sunrise Beach Subdivision in Crownsville. The site is gently sloping at the road, and then drops very steeply down to a beach on the upper Severn River. The current owners own the adjoining home to the west, and have maintained the upland plateau in lawn with a few planted azaleas. The steep slopes down to the beach have a few trees and dense brush and vines. The less steep, 15% slopes on which a septic drywell is proposed has been maintained in mowed grass for decades.

Soils mapped in the 2003 County Soil Survey are the Sassafras and Croom Soils, 15-25% slopes (SME), with an erosive factor of less than 0.35. There are no wetlands on the site, the area behind the beach being Phragmites on dry sandy soils.

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The only existing impervious coverage is a narrow sidewalk to be removed. Proposed impervious coverage would be 2,648 square feet, or 13.85%, well under what is allowed (5,415 square feet) for a lot of this size in the LDA. Because of site and slope restrictions, stormwater management will be by vegetative plantings, or drywells, to be determined at time of building and grading permits.

Woodland coverage on the site is composed of one large, twin elm on top of the steep slopes, which will be removed to place the corner of the proposed house, and a few trees and dense brush on the steep slopes on the bank down to the beach, all covering approximately 4,305 square feet. Total removal proposed is approximately 869 square feet, or 18% of the existing, with on-site replacement possible, and determined at time of building and grading permits.

#### Conclusions:

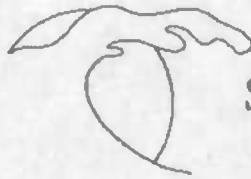
*Because of the relatively small size of the building and septic disposal envelope on the lot, and the presence of the 100-foot Buffer and the expansion of the Buffer because of steep slopes and the required size and setbacks for a septic drywell system and a water well, no development on the lot is possible without some minor development of steep slopes and the Expanded Buffer. The proposed house is modest in size and consistent with others on this street. Development will be mainly on flat lawn, and only a small area on the base of the steep slopes. With sediment control and stormwater management plantings, development can be accomplished without significant adverse impacts to fish and wildlife habitat and water quality.*

#### References:

Anne Arundel County Office of Planning & Zoning, Critical Area Map #15

Bay Engineering, Inc., April, 2007 Site Plan

U.S. Natural Resources & Conservation Service, 2003 County Soil Survey (from FTOG website).



**SEE ENVIRONMENTAL  
SERVICES, INC.**

**CHEESAPEAKE BAY CRITICAL AREA REPORT**

Variance Applicant: John F. and Angela Rabena

For Property at: 956 Tioga Lane, Sunrise Beach Subdivision, Crownsville, MD  
TM 31, G 4, P 389

C.A. Land Use Designation: LDA – Buffer Exempt/Buffer Modified  
Zoning: R-1

Revised: October, 2008

**Introduction/Variance Request:**

The applicants are proposing to construct a single-family home on this vacant, legal, waterfront lot in the Sunrise Beach Subdivision in Crownsville. The lot, like the adjoining waterfront lots, is a gently sloping plateau on the street side of the lot, and then slopes steeply down to the beach along the upper end of the Severn River. The lot is located completely within the Critical Area with a Limited Development (LDA) land use designation. See the enclosed copy of the County Critical Area Map #15.

The plateau on the lot is just big enough for the house and septic system. The placement of existing wells and septic drain fields requires that the septic dry wells be placed on the uphill side of the lot, and on a small area of slopes 15% or greater, and disturbance of such steep slopes requires the requested variance. Although the house is within 50 feet of the top of steep slopes, there is no expansion of the 100-foot Buffer because the lot has been mapped by the County as Buffer Exempt/Buffer Modified, and therefore no variance to allow disturbance within the Expanded Buffer is required.

This Critical Area report has been based on the revised, September 22, 2008, variance site plan prepared by Bay Engineering, Inc. (a reduced-scale copy of which is included at the end of this report). Site visits were conducted on April 30 and September 4, 2007, and January 23, 2008, by Eric E. See of See Environmental Services, Inc. The latter site visit was to conduct a delineation of a small pocket of nontidal wetlands located between the sandy beach and the toe of steep slopes. The wetlands boundary was then surveyed by Bay Engineering, and now depicted on their site plan with the required 25-foot nontidal wetlands buffer.

**Site Conditions/Proposed Development:**

The lot is a 19,126 square foot/0.44-acre waterfront in the Sunrise Beach Subdivision in Crownsville. The lot slopes gently down from the road, and then drops steeply down to a beach on the upper Severn River. The applicants also own the adjoining home to the west, and have maintained the upland plateau (as did the previous owners) in lawn with a few planted azaleas. The steep slopes down to the beach have several larger trees and dense shrub cover. The placement of the house has been dictated by the need to place three septic drywell locations meeting State and County standards.

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2444 Solomons Island Road, Suite 217  
Annapolis, Maryland 21401

The soil type mapped on the property in the 2003 County Soil Survey is the Sassafras and Croom Soils, 15-25% slopes (SME) map unit, with an erosive factor of less than 0.35. A small pocket of nontidal wetlands is located between the toe of the steep slopes and the beach berm. This pocket will flood on storm tides but does not receive daily tidal inundation, apparent both from its surface elevation and the presence of wetlands plants that cannot take frequent flooding by brackish water, such as blackberries, jewelweed, and deertongue grass.

This wetland pocket including the required 25-foot nontidal wetlands buffer will be undisturbed and are enclosed within the 100-foot shoreline Buffer and its presence does not require any additional County or State approvals.

The only existing impervious coverage on the lot is a narrow sidewalk to be removed. Proposed impervious coverage. Proposed impervious coverage would be 2,408 square feet, or 12.06% of the lot. Stormwater management would be some combination of drywells, rain barrels, and rain gardens, to be determined at time of permits.

Proposed tree clearing would be removal on one twin elm, covering approximately 869 square feet, leaving approximately 3,939 square feet of smaller trees on the steep bank above the beach.

#### Conclusions:

Because of the small size of the lot and the constraints of steep slopes, the 100-foot Buffer, and required setbacks to septic systems and wells both on the subject lot and adjoining lots, no development of the site is possible without a variance. The house is modest in size (limited by the Health Department to less than 2,500 square feet), and with sediment control during construction and stormwater management, the development can be accomplished without significant adverse impacts to water quality and fish, wildlife and plant habitat.

#### References:

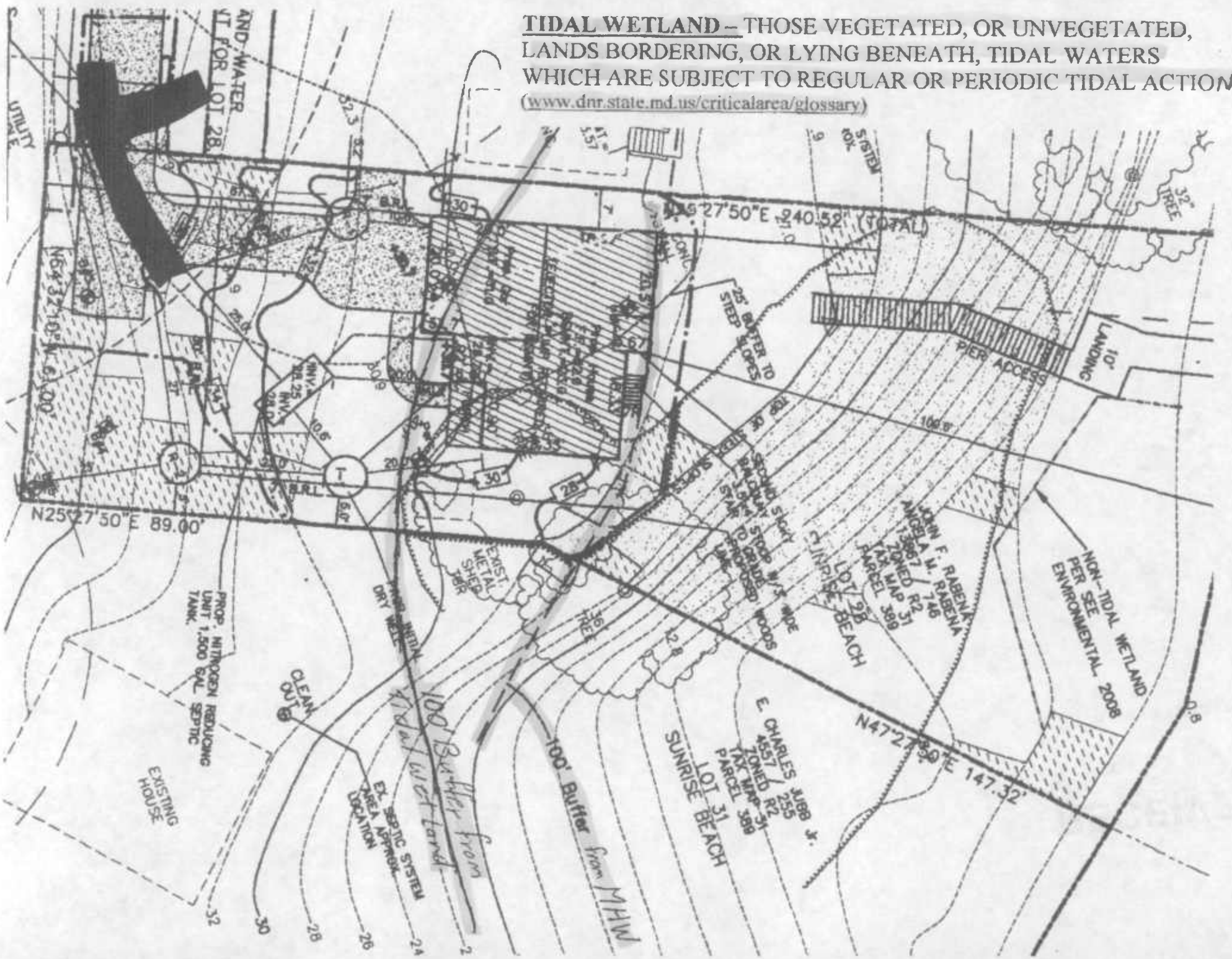
Anne Arundel County. Critical Area Map #15

Bay Engineering, Inc., 2008 Variance site plan

U.S. NRCS. 2003 County Soil Survey.

**TIDAL WETLAND** – THOSE VEGETATED, OR UNVEGETATED, LANDS BORDERING, OR LYING BENEATH, TIDAL WATERS WHICH ARE SUBJECT TO REGULAR OR PERIODIC TIDAL ACTION

([www.dnr.state.md.us/criticalarea/glossary](http://www.dnr.state.md.us/criticalarea/glossary))



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FEB 03 2009

CRITICAL AREA COMMISSION



October 8, 2008  
962 Waterview Drive  
Crownsville, Maryland 21032

Mr. William Ethridge  
Anne Arundel County  
Office of Planning and Zoning  
1664 Riva Road, MS 6301  
Annapolis, Maryland 21401

Re: Rabena, John – 2007-0223-V

Dear Mr. Ethridge;

Mr. Rabena has asked for a variance to the Maryland Critical Area laws. His house was proposed in September 2007 to be next to the steep slopes and wetlands on the river side of the lot. The Maryland Critical Area Commission requested a minimum of 50 feet back from the steep slopes.

In the new proposed plan Mr. Rabena has reduced the size of the house from 3500 to 2500 square feet and removed the deck over the steep slopes. However, the new house is still located right next to the steep slopes and not set back the 50 feet requested by the Maryland Critical Area Commission.

Mr. Rabena can very easily move the house to the rear of the lot. I was trying to think of an argument his attorney can present which would prevent the building on the rear of the lot. One possibility would be the Sand Mines/Caves added to the new September 10, 2008 drawing would prevent the building of the house there.

This would be a fallacious argument since the neighbor on the other side of my house built his house on known caves. He located, photographed and filled the caves before starting construction. The house has had no ill effects in the ten years since it was built.

I have had my own personal experience with the Sand Mine/Caves. In May 2008 my car sunk into a hole caused by the ground dropping into the cave. The sink hole was about 15 feet in diameter by 20 feet deep. I could see the mine going across Mr. Rabena's lot in the direction of a cave-in that occurred 25 years ago in the gravel road in front of Lot 27. It was also in line with the caves shown on the September 2008 drawing.

Based on my experience, a back hoe could uncover and fill the caves in a couple of hours. The caves on Mr. Rabena's lot are only about 15 feet under the surface. They are about 4 feet wide at the bottom and slowly curve to a point in the center of the roof about 5 feet from the floor.

**RECEIVED**

OCT 14 2008

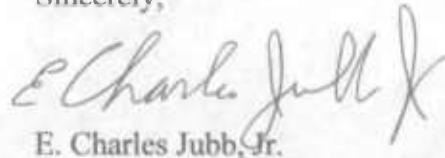
CRITICAL AREA COMMISSION



It may be argued that the dry wells force the house to be located at the front of the lot. I went to the Anne Arundel County Health Department and received the dry well separations required. Based on these separations and the variance request map prepared by Bay Engineering I was able to locate the proposed house behind the steep slope's 25 foot buffer. By slightly changing the shape of the house it can be placed behind the steep slope's 50 foot buffer that has been requested by the Maryland Critical Area Commission.

I don't object to the house being built. I just don't want it built in front of my house blocking my view of the river.

Sincerely,

A handwritten signature in cursive script that reads "E. Charles Jubb, Jr." with a large, stylized flourish at the end.

E. Charles Jubb, Jr.

cc: Amber Widmayer  
State of Maryland Critical Area Commission

**McCUTCHEON TESTIMONY IN OPPOSITION TO  
VARIANCE 2007-0223-V**

**September 6, 2007 (10:30)**

I appreciate you giving me this opportunity to present my wife's and my concerns. At the onset let me tell you that no one in the neighborhood has told me they wish to bar the Applicants from building a reasonable house. Unfortunately, they seek a weekend house that is unreasonable as to size and location. We can only conclude from the variance request that the applicants' engineers were told the new home must be large and have a commanding view of the river from above the water's edge. In consideration of neighboring homes and the evidence that will follow, there can be no other explanation for the engineers' conclusion that some hardship mandates the grant of a variance to allow for the construction of a 3500 square foot home closer to the water than the homes of all neighbors.

Simply, it is unreasonable to expect to build a home closer to the water than all others in the immediate area and a home that is dramatically larger. It is an even more unreasonable expectation when the lot in question was purchased at a price reflecting the seller's belief the lot was not build able. To achieve the 3,500 square feet requested will require three stores where most neighboring homes are one story above ground, and where the largest of homes immediately surrounding the property are all under 2,000 square feet. (Documentation of square footages in surrounding homes has been provided in the record as attachments to my opposition letter supporting these conclusions.)

This request has been developed over the past four years by applicants' with seemingly endless resources and expertise. Yet, the request does not present the Zoning Department with applicants' entire development plans for their two properties at 954 and 956 Tioga Lane. In addition to the previous factual misrepresentations documented in the record, does it make sense that a proposed 3500 square foot home with a commanding view of the Severn River would not have one deck or patio identified in the initial submission—and that a relatively insignificant deck would be added only when requested by a state agency? Does it make sense that no dock or waterfront construction was identified with the initial or subsequent submission, though the proposed home is closer to the beachfront than those of the immediate neighbors? Could the fact no wetland or bog is identified at the waterfront of the 956 property by the topographical survey or in the environmental study be driven by the fact it might be much more difficult to later install steps descending to the waterfront, and a hillside deck, and a pier, over an existing wetland or bog? Bay Engineering, Inc. specifically states "...869 square feet of woodland will be disturbed on the waterfront portion of the lot to allow a work area for construction of the dwelling. In order to construct the[sic], 15% slopes and greater must be disturbed..." This representation suggests disturbances that might lead to some of the steep slope's sand falling down the hill and filling up the wetland—a fortunate occurrence if later requests for steps to the beach and a deep water pier are planned and a wetland or bog condition would make this construction more difficult. And, will the impact of construction on 956 Tioga Lane mandate variances for the 954 properties?

Before introducing facts that mandate denial of the variance, I wish to note for the record shortcomings in the variance request paperwork and failure to comply with notice requirements.

**McCUTCHEON TESTIMONY IN OPPOSITION TO  
VARIANCE 2007-0223-V**

First, attachment (a) shows steep slopes on the waterside and 962 Waterview Drive side of the 956 Tioga Lane lot. The administrative site plan supporting this variance does not comply with the requirements at 18-16-201 (b)(11) because it does not show field run topography at two-foot intervals given the steepness of the slopes on the property. Second, the photographs at attachment (b) show plant life, soils, and habitat that we believe constitutes a wetland or bog, as further supported by Mr. Jubb's eyewitness locations of a spring also at the beach for 956 Tioga Lane. Attachment (c). Attachment (d) corroborates the location of the spring by showing Mr. Bridges' fresh spring outflow also at the beach a little down the shoreline as attested to by his accompanying letter. Third, there has not been proper notice required by 18-16-203 (d)(2). The photographs at attachment (e) show that the signs have not been posted 3 feet above the ground which in this case made it markedly harder for the public to see the notice from the water. Also, there should have been a posting at the corner of Waterview Drive and Tioga Lane given that the land side location is hidden from the public road and view. See attachment (e).

As to the completeness and adequacy of the representations made by applicants' engineers, my wife's letter found at attachment (f) further corroborates assertions in my 27 August 2007 letter that Bay Engineering and SEE Environmental did not factually understand the nature of the neighborhood or conditions of the property for which variances are being sought when they provided their engineering recommendations. After applicants' Counsel reviewed my opposition letter dated 27 August, Bay Engineering sent one of its employees on 31 August to come and take pictures of my house and the surrounding properties as confirmed by the photographer when questioned by my wife and another neighbor--interestingly both firms represented a thorough knowledge of the property in question and the neighborhood as the basis for their recommendations in favor of the variance months before. Later on September 4<sup>th</sup> engineers showed up looking for caves. I request that deference be given to the sworn representations provided by myself and neighbors where these factual representations are based on eyewitness accounts—we are not paid to put forward the applicants' agenda that is contrary to the stated intent found in Maryland Law.

There are many factors each of which independently mandates your denial of the requested variance, I wish to supplement our earlier letter to your office and highlight the facts which mandate your denial of the subject waiver request by describing the characteristics of the neighborhood and then identifying specific Variance regulation provisions that demand denial of the variance request. I and all the immediate neighbors hope you will interject your good judgment, given that credible local engineers and lawyers refuse to assist us in opposing the requested variance because it would be bad for business. In the alternative, we request that, if you do not find that the facts presented demand your denial of the requested actions at the close of this hearing, you perform a site visit of your own so that you may insert your good judgment as to what should be allowed on the 956 Tioga Lane property.

**NEIGHBORHOOD CHARACTERISTICS  
GOOGLE OVERVIEW**

Turning to the first of two points in my presentation, I wish to present the Google Map provided as attachment (g) in your hearing binder...

- a. The people opposing this variance live in these houses...

**McCUTCHEON TESTIMONY IN OPPOSITION TO  
VARIANCE 2007-0223-V**

b. You will note that going along the shoreline the houses essentially maintain the same setback so that you can draw a smooth line through the centers of their roofs...

c. The houses all essentially have a single story above ground and support a well and septic systems on site...

d. The three homes up river at 950, 952, and 954 have their septic systems placed between the home and steep slope/beach—which I presume must be an acceptable practice because when my wife and I recently bought our home in 2006, the previous owners had to permit much work before the sale and placed both a new well and septic field on our property. Further, as attachment (h) shows, the lot at 956 Tioga Lane is approximately 6000 square feet larger than 952 or 954 Tioga Lane which indicates a large house can be built on this site without a variance to place the house closer to the water given that the 956 Tioga Lane well will not be accommodated on site.

e. Next I would like to direct your view to the beach front below the bluff over which the proposed house is to be built. You will note that it is particularly shallow and we believe it constitutes a wetland as there are trees and plants that grow in a continuously saturated state there and behind the immediate sand shoreline the soil is dark and mucky as shown by the pictures included at Attachment (b). Further, attachment (c) indicates there is a spring in the immediate area of the wetland. (The location of this spring also creates concern that this area of the steep slope of more fragile than might be customarily expected.) This spring is similar to that found up the beach at 950 Tioga Lane as shown by attachment (d) which is a picture of the drainage tube through which Mr. Bridges' freshwater spring drains.

f. Finally, I would like to show you two deep ravines that are not natural or customary to the surrounding landscape that, when taken in conjunction with the article provided at attachment (i) on the Anne Arundel website detailing the sand mining operation on our beachfront and attachment (3)'s representation as to the caves running under 956 Tioga Lane, demonstrate there was tunneling for the mining of sand done under the 956 Tioga Lane property. We believe this mining and tunneling is responsible for the extremely steep slopes on the water side of the lot and one the side of the lot adjacent to 962 Waterview Drive. These slopes are far steeper than 25 degrees as shown by attachment (b) and mandate at least enforcement of the standard setback if not a larger buffer zone from the waterfront when considered with the likely mining and a wetland or bog below.

Now that you are familiar with the neighborhood, let me turn to the Variances provision.

**SECTION 18-16-305  
DISCUSSION**

Requirements for Zoning Variances. Section 18-16-305 (a) provides that the Administrative Hearing Officer may vary or modify provisions of this article when... practical difficulties or unnecessary hardships prevent conformance with the strict letter of this article, provided the spirit of the law is observed... and substantial justice done. A variance requires affirmative findings as described in subparagraphs (a)(1) and (A)(2).

(a)(1) Unique physical conditions of lot (narrower or shallower than a normal R-2) **OR**

(a) Exceptional circumstances make the grant necessary to avoid practical difficulty or hardship **AND** [must be granted] to enable development of the lot.

**McCUTCHEON TESTIMONY IN OPPOSITION TO  
VARIANCE 2007-0223-V**

*The criteria at (a)(1) is not met because the applicants' two lots are not unique as compared to the surrounding lots. Specifically, (none of the lots surrounding the two lots owned by the applicants at 954 and 956 meet the customary R-2 zoning requirement), yet all have houses that support wells and septic systems on site while maintaining reasonable setbacks from the water. Moreover, 956 is shown on the Tax Records as being 19,950 sq. ft., while my lot at 952 is 12,903 and Applicants' lot next door at 954 is 12,810 sq. ft. Both these lots have houses with wells and septic on them as do the other surrounding homes of the neighbors opposing the variance. None of those homes has the further relief afforded 956 Tioga Lane of the well being off site.*

*The criteria at (a)(2) is also not met because the applicants face no practical difficulty or hardship given that Mr. Jubb at 962 Waterview Drive moved his well away from applicants lot and 956 Tioga Lane lot size is 19,950 sq. ft. as shown at attachment (h) and no reasonable or significant use of the lot is denied by application of the laws and regulations given that a house larger than that of the immediate neighbors can be built without variances. Further, applicants' careful management of easements relating to both their lots at 954 and 956 suggest they will take other steps to maximize the house size and appurtenances for both their 956 and 954 properties through piecemeal submissions of requests for decks, docks, and whatever else they deem most advantageous though it may be at the expense of presenting the full picture of their current intentions.*

*Failing to meet the conditions in subparagraphs (a)(1) and (a)(2) mandates denial of the variance.*

Turning to subparagraphs (b)(1) and (b)(2), Affirmative Finding Requirements for Variances. For property located in the critical area... a variance to the requirements of the County's critical area program... may be granted if the Administrative Hearing Officer makes the affirmative finding [that]...

(b)(1) Denial of a variance will cause an unwarranted hardship as defined in Natural Resources Article 8-1808<sup>1</sup> **OR**

(b)(2)(i) and (ii) A literal interpretation of COMAR, 27.01... will deprive the applicant of rights commonly enjoyed by other properties in the similar areas...

*It is reasonable to expect to build a house on a lot that has been designated for construction. It is unreasonable to expect to build a home closer to the water than all others in the immediate area and a home that is dramatically larger. To achieve the 3,500 square feet requested will require three stores where most neighboring homes are one story above ground, and where the largest of homes immediately surrounding the property are all under 2,000 square feet. (Documentation of square footages in*

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<sup>1</sup> "Unwarranted Hardship" means 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.

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*surrounding homes has been provided in the record as attachments to my opposition letter supporting these conclusions.)*

*Maryland Statute Section 8-1808(d)(2)(i) provides in part that the hearing officer is to "presume that the specific development in the critical area that is subject to the application for which a variance is required does not conform with the general purpose and intent of this subtitle." The facts presented in the record and pictures of houses on similar, yet smaller lots at attachment (g) and (j), bar the Administrative Hearing Officer from making the required affirmative findings necessary to grant a variance under (b)(1) or (b)(2).*

*With respect to (b)(1) the significant use of the lot forming the basis for the variance request is the desire to build a house. The 956 Tioga lane lot is over 6000 square feet larger than other adjacent lots with homes that have both wells and septic fields on site with the home. Moreover, the largest nearby home is under 2000. The application says the need for a customary 3500 square foot home mandates the variance. Such use is not reasonable for the neighborhood nor does construction of a house inside of the 25 foot setback reflect anything more than the applicants' desire for a home with a commanding view down rive for a weekend home. Granting this variance will also take the views of neighbors who live full time in adjacent homes.*

*(b)(2) given relocation of a neighbor's well; an easement to put a well for 956 Tioga Lane on 954; and, the larger relative size of the 956 lot together mandate the conclusion that a literal interpretation of COMAR 27.01 does not preclude the applicants from not only building a house, but most likely a house large than that of adjacent neighbors. No affirmative finding can be made that denial of the variance deprives the applicant of the home building rights enjoyed by similar area properties—the point of our opposition is to hold the applicants to a home on 956, and on 954 that are deemed reasonable by neighborhood standards and consistent with the intent of Maryland State Law. The requested variance should not be granted where it serves to build a home at the expense of neighbors' views, Chesapeake Bay waters, and the environment.*

*Denial of the variance is also mandated under subparagraph (b)'s provisions. The standard of proof for granting the affirmative finding cannot be met based on evidence entered into the record by the five households surrounding the applicants' 956 and 954 Tioga Lane lots.*

Subparagraph (b)(3) also precludes the granting of a waiver. This paragraph provides that the Granting of a Variance Must Not Confer any Special Privilege.

*Granting the requested variance would confer a special privilege to the applicant at the expense of immediate neighbors for reasons discussed above and in the opposition letters provided by the five neighbors who would be most immediately affected by the variance. The variance will confer on the applicant the special privilege of placing a house closer to the waterfront than that of all other homes that share the same shoreline as shown by attachment (g). This home placement would block views of other waterfront neighbors. The variance would allow for the construction of a home over a bog or*

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*wetland and so close to the water's edge as to create an eyesore, because the placement of the home would be out of keeping with the look of the other waterfront homes in the areas. See the pictures of attachment (j). Further, it seems unreasonable to damage the waterfront by cutting down two wetland trees, destroying waterfront plants, and destroying the habitat at the water's edge that would be located immediately below the steep slope where the home is to be built. See attachments (a), (b), (g), and (j). Granting of this variance only serves the purpose of allowing for an unreasonably large house when compared to the neighborhood--a house that to accommodate the stated 3500 sq. ft. must go three stories tall when the five homes adjacent to the applicant's two lots are one story or one story with a walkout level below. Also of concern is the precedent of granting a waiver for 956. Attachment (j). Also of concern is the precedent that will be set if a variance were granted for 956 Tioga Lane with respect to the applicants' 954 Tioga Lane property, a property whose further development will certainly be impacted if the variance is granted. Finally, granting the variance would create a greater risk of sewage runoff into the gully at 962 Waterview Drive and down into the Severn River for the reasons more fully discussed in my letter dated 27 August 2007.*

*The variance must also be denied under this provision, since multiple special privileges would be conferred upon the applicants at the expense of adjacent landowners.*

Subparagraph (b)(5) also mandates denial of the variance request. This provision requires that Granting of the Variance Not Adversely Affect Water Quality or Adversely Impact Fish, Wildlife, or Plant Habitat within the County's Critical Area... AND will be in Harmony with the General Spirit and Intent of the County's Critical Area Program...

*Granting the variance is prohibited, because cutting down the trees near the beach as well as disruption of the plant, fish, bird, fox, muskrat, and, crab habitat below the steep slope where construction is planned (inside of the setback areas) mandates denial of the variance as more fully described in my letter of 27 August 2007 and demonstrated by pictures of the 956 Tioga Lane water front submitted with my letter and accompanying this testimony. The proposed variance is not in harmony with the intent of Maryland Statute 8-1808.*

*For reasons already stated, this paragraph also mandates denial of the variance.*

Subparagraph (b)(6) again mandates denial of the variance, by requiring that any Variance to Allow Development in the 100-foot Upland Buffer Maximize the Distance Between the Bog and Each Structure and... has Met the Requirements of § 17-9-208.

*The applicants' topographical map does not identify a wetland and/or bog below the steep slope where the proposed home site would be located. As shown in applicants' variance request, by attachments (g) and (h), and other public records, the 956 Tioga Lane lot runs deeper than neighboring lots, thereby providing a greater ability to setback from the steep slope and the waterfront with a wetlands and/or bog. More than the customary setback may be reasonable given the location of a spring under or near the wetland under the steep slope on the waterside of 956 Tioga Lane. Attachment (c). Of course, it is unreasonable to suggest that any house build on the 956 Tioga Lane site will*

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*be complete without a staircase from the back of the house to deepwater dock, something that the identification of a wetland or bog would preclude—yet another instance suggesting that the applicants continue to take a piecemeal approach to development of their two adjoining lots as a way of hiding their long term plans from the Zoning Department.*

*Further, Bay Engineering's representations that a 3500 square foot house is customary for the neighborhood are shown false by state tax records and pictures, thereby undermining their conclusions in support of a variance. SEE Environmental's conclusion that the house must be placed inside of the steep slope setback is based in part on the mistaken beliefs that less than a 3500 square foot house is a hardship; an on site well must be accommodated; and, that there is no other way to accommodate a home, septic system, and well on a lot that is 6000 square feet larger than adjacent neighboring lots. I think it is reasonable to conclude that applicants' engineer only concludes that a variance must be granted to build a home on the lot because the applicants have told him that they must have a house with a commanding view from the bluff over the beach and that the home must be three times the size of mine. The facts show the conclusions of the applicants' engineers to be neither credible nor reasonable in light of the fact other engineers have placed nearby homes with septic and well systems on much smaller lots without needing a variance for homes to be placed a close to the beach as that desired by the applicants.*

*Denial of this variance is also mandated by this provision, because granting the waiver would place the proposed house inside of a reasonable setback from a bog or wetlands, as well as steep slopes immediately over the beach.*

Subparagraph (c) and its provisions also mandate denial of the variance, given that it provides A Variance May Not be Granted Unless:

- (1) the variance is the **MINIMUM** variance **NECESSARY** to afford relief; **AND**
- (2) granting of the variance will **NOT**:
  - (2)(i) alter the **ESSENTIAL CHARACTER** of the neighborhood... in which the lot is located;
  - (2)(ii) substantially **IMPAIR** the appropriate **USE** or **DEVELOPMENT** of adjacent property
  - (2)(iii) **REDUCE FOREST** cover in the limited development and resource conservation areas of the critical area... **OR**
  - (2)(v) be **DETRIMENTAL** to the **PUBLIC WELFARE**

*These provisions mandate denial of the variance, because the variance serves only to maximize the value the applicants' two properties at the expense of allowing for the construction of a house not in harmony with the surrounding shoreline, environment, and neighborhood. Denial is mandated because placing a home of this size and closer to the water than all nearby shoreline homes will alter the essential nature of the neighborhood. See attachments (g) and (j). As more fully discussed in my letter, construction of the home will substantially impair the appropriate use and development of adjacent property by taking away neighbors views because granting the variance allows applicants' home to be both closer to the water than other shoreline neighbors and stand higher than other neighborhood homes. This proposed taking of neighbors'*



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*views undermines property values and has a direct impact on the neighbors' ability to more fully utilize and develop their own properties.*

*Further, use of the variance will include cutting down trees close to the waterfront that give shade in areas where the soils are continuously hydrated and have many types of plants that grow into the water and create habitat where I have seen many crabs and animals. Destruction of this habitat that I believe constitutes a wetland or bog is detrimental to the public welfare, in the same way that inserting an inappropriately size house closer than others on the adjacent shoreline is detrimental to the public welfare.*

*These provisions also mandate denial of the requested variance, because granting the request is not the minimum variance necessary to afford relief (no relief is needed to build a home); granting the variance would alter the essential character of the neighborhood; reduce the use and development of neighboring properties; reduce forestation and harm the habitat on the Severn River; all of which is deemed detrimental to the public welfare by Maryland Natural Resource laws.*

**CONCLUSION**

The record and facts presented at this hearing mandate denial of the requested variance as inconsistent with the intent of Maryland State law and regulation. Through easements, the current waiver request, and requests yet to come for properties owned by the applicants at 954 and 956 Tioga Lane, the Virginia applicants and their local lawyers and engineers are taking a piecemeal approach to development of their two adjacent waterfront properties with no consideration for their neighbors, the environment, or the Severn River waterfront and the wetland or bog habitat on the 956 Tioga Lane beachfront.

My wife and I request that you issue a decision denying the requested variance based on the facts demanding this result. To the extent possible, we also request that you take those steps necessary to ensure applicants' future requests to your department are accurate and completely reflect their long term plans to develop both 954 and 956 Tioga Lane properties.

Respectfully Submitted,

JAMES McCUTCHEON

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Attachments:

- (a1-a5) 956 Tioga Lane Steep Slope Photographs
- (b1-b15) Pictures of Plants, Soil, and Trees in wetland area on 956 Tioga Lane
- (c) Jubb Letter of
- (d1, d2) Photograph of spring outflow at 950 Tioga Lane and Bridges Letter
- (e1-e5) Photograph of Sign at end of 956 Tioga Lane Right of Way, Waterfront, Corner of Tioga and Waterview Dr.; and view down Tioga Lane
- (f) Barbara McCutcheon letter dated \_\_\_\_\_
- (g) Google Map of Neighborhood
- (h) MD Tax records for 956 Tioga Lane
- (i) Severn River Commission: History of the Severn River
- (j1-j7) Ground and Water level views of 950, 952, 954, and 956 Tioga Lane and 962 Waterview Dr.

**HAND DELIVERED**

August 27, 2007

Mr. William Ethridge  
Department of Planning and Zoning  
2664 Riva Road  
Annapolis, MD 21401

**Case Number 2007-0223-V (AD 2, CD 4),  
956 Tioga Lane; Crownsville, Maryland 21032**

Dear Sir/Madam:

Please let me make one thing clear, I have no concerns and take no exceptions to people building homes based on the standard guidelines provided by the county or state. I am AGAINST this home being built with special variations that the Rabenas have asked be awarded to them. Granting the waivers is inconsistent with how all other homes in the neighborhood were built. *I also request that I be sworn in at the hearing so that I may testify and provide facts that are different than those presented in the waiver request.*

I have lived in the neighborhood at my address for over 30 years and there are sand caves on and around the property that have not been identified or addressed by the requested variance, the neighborhood is different than Bay Engineering says, and drainage issues at the property are not discussed. Heavy rains push down Tioga Lane and disperse on the 950, 952, and 954 properties—but wall channels more of the rain to 956 Tioga Lane where it gathers with runoff from the lot above at 960 Waterview Drive. My concern is that the 956 Tioga Lane drain fields are indicated to be where this water disperses. Another concern I have is that if the 956 Tioga Lane property gets a variance, it will have a negative impact on 954 Tioga Lane property's views which will then mean the applicants can also get a variance to move the 954 home closer to the beach and further impact my views.

I would like to add the following facts that are different than those provided by the applicants.

First, caves on the property were covered up long before the property was bought by the Rabenas. I am concerned about a lack of proper compacting of the soil. Seven to eight years ago an oil delivery truck fell into one of these caves at the western boarder of the property where the septic system is to be placed and had to be pumped out and removed with a crane. I actually saw down 20 feet into the hole with a flashlight. Though the hole was filled, this is where the septic system is supposed to go. I believe there are other caves on the property and that construction on the property without understanding these caves could lead to collapse of the bank into the river; septic waste being released into the river; and/or that since water from all the properties on Tioga Lane washes to where the septic field is placed, this could lead to some type of unexpected soil erosion on the property. I am especially concerned the water flow from rain is not being taken into consideration though it disperses over that piece of property

where the septic drain field is to go. I'm afraid of the consequences of this water filling the planned 956 Tioga Lane sewer drain field in conjunction with the fact there may not be proper compaction of the ground.

Second, I am concerned for the Severn River waterfront and marsh or wetlands below where the house is proposed to be built. This is home for a lot of wildlife and plants such as cattails. I like seeing the ducks, geese, blue heron, other birds, and frogs that go in and out of this area. I don't want to see this area harmed or built over.

Third, when the leaves are down, the proposed home will block and/or be in my down river view from my back yard. Also, the size of the house will look overbearing because it is too large and too close to the shoreline when I am looking at the shoreline from my boat. All houses should have similar setbacks from the slope so that views remain as expected.

Fourth, a two or three story house would not match the aesthetic appearance of any other houses near it or on our shoreline. The proposed house would be as much as three times as big as close by houses and the biggest houses in the area are limited to 2 stories

Although monetary value for the Rabenas is probably the main issue here and the value of being able to build the second house has increased these two property values significantly, my concerns are mainly as stated above. I have lived here over thirty years and everyone who has built since I have been here has expected that all houses should follow the contours of the river and be set back from the shoreline the same amount. We all thought the lot in question was not build able. It's good that the Rabenas got a neighbor's well moved so they could now build a house, but the house should follow the existing setback rules and be the size that the rules dictate—and no more than 2000 square feet.

Yours truly,

Ron Bridges  
950 Tioga Lane  
Crownsville, MD 21032

August 27, 2007

HAND DELIVERY

Attn: Mr. William Ethridge  
Department of Planning and Zoning  
2664 Riva Road  
Annapolis, MD 21401  
410-222-7437

Re: CASE NUMBER 2007-0223-V, REQUEST FOR VARIANCE IN  
CRITICAL AREA

Dear Sir/Madam:

This letter presents the undersigned's objection to the request for variance at 956 Tioga Lane, Crownsville, MD 21032, submitted by Mr. and Mrs. John Rabena. Denial of this request to build a home inside of protective setbacks is mandated by the spirit and letter of Anne Arundel County Zoning Code § 18-16-305, because no "practical difficulties" or "unnecessary hardship[s]" are presented. In fact, denial of this request is mandated by subparagraphs (c)(2)(i) and (ii) because, granting the requested waiver would "alter the essential character of the neighborhood" and "impair the appropriate use" of neighbors' adjacent properties. Further, the waiver is unnecessary because applicants' previous efforts have already relieved those constraints that prevented construction of a home on the 956 Tioga Lane property by relocating a neighbors' well.

The 956 Tioga Lane lot was priced and sold with the 954 Tioga Lane property at a time when it was not suitable for home construction. The adjacent lot at 954 Tioga Lane, also owned by the applicants, is a home of around 800 square feet. The characteristics of 950, 952 and 954 Tioga Lane, the next three houses north up the shoreline from 956 Tioga Lane are:

950 Tioga Lane		1800 <sup>1</sup> sq. ft.		septic field between the house and beach		well on site
952 Tioga Lane		1286 sq. ft.		septic field between the house and beach		well on site
954 Tioga Lane		816 sq. ft.		septic field between the house and beach		well on site

The applicants' proposed house for which a waiver is requested has the following characteristics that differ from the other three homes up river:

956 Tioga Lane | **3500 sq. ft.** | **house on bluff over beach with septic behind** | **offsite well**

When the applicants purchased the properties at 954 and 956 Tioga Lane, it was unreasonable to expect to build a second home on the 956 Tioga Lane lot that was three times the square footage of the homes at 952 and 954 Tioga lane when doing so is not in harmony with the neighborhood; encroaches on the shoreline wildlife; and, devalues adjoining properties by impacting neighbors' views. Further, the homes listed above all have a well and septic system within their lots. Any

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<sup>1</sup> County records reflect 2536 sq.ft. which incorrectly includes a detached garage as if it was house floor space. Mr. Bridges is requesting review and correction of this record. The current record is shown as attachment (i).

home built on the 956 lot has relief from the requirement for a well because the applicants' have an easement to place a well at 954 Tioga Lane, thus there is no continuing need to address the alleged "unnecessary hardship."

The following facts are provided to supplement your record with relevant facts omitted from the representations made in support of this requested variance concerning neighboring properties. The application mischaracterizes the nature of the waterfront affected and fails to identify the Department of Zoning as to the existence of subterranean caves on the 956 Tioga Lane property.

Facts contrary to those presented by the applicants' submissions that require denial of the request pursuant to Anne Arundel County Zoning Code § 18-16-305, Variances, include:

a. The Variance Would Alter the Essential Character of the Neighborhood. The proposed house would create a dramatic and imposing negative impact on the scenic beauty of the western shoreline of the Severn River, because granting the waiver would allow a dramatically larger waterfront home to be newly constructed sitting over the bluff bordering the Severn River—much closer than neighboring shoreline properties. The newly constructed house just up the Severn River at 940 Waterview Drive was limited to a maximum of 2500 square feet by this same Department of Planning and Zoning. Contrary to Bay Engineering's statement that "[T]he development shown will provide the least amount of environmental impacts, while allowing the owners to *improve their property in a manner consistent with other properties in the area,*" neighboring waterfront houses are as described above and verified by county records as averaging under 2000 square feet.

b. Applicants' Request Would Impair Use of Neighbors' Properties. Applicants' "Variance Plan" has a "Property Owners Map" in the upper left hand corner that shows the shoreline receding to the west as one looks down river towards the property at 956 Tioga Lane and beyond. Attachment (a) pictures the undersigned's home with the trampoline at the right followed by the applicants' 954 Tioga Lane home, and then the 956 property where construction is proposed. This picture shows that the edge of the water side slope recedes to the west when looking down river as does Attachment (b)'s view down the shoreline to the 956 property (with the applicants' notice sign at the water's edge). Currently, 950, 952, and 954 Tioga lane structures are built with setbacks from the waterfront that mirror the contours of the slope and beach. Attachment (c) shows how houses on both sides of the open lot at 956 Tioga Lane are built to a consistent setback with the contours of the riverfront, failing to apply standard setbacks by granting a variance will more greatly compromise the undersigned and neighbors' views and reduce the value of their properties which has an impact on their ability to further develop their property and is detrimental to the neighbors' welfare (financial and otherwise). Accordingly, any home on the 956 property should be set back a little bit further from the slope for the home at 954 to follow shoreline contours and to be consistent with houses on the western waterfront. Luckily, this can be accommodated because the 956 Tioga Lane lot is deeper, allowing for a house to be built even further back than 954 and remain on the lot. The variance request is impermissible because it would allow the 956 home to deviate from the neighborhood convention where the setback for house locations follows the contours of the slope and beach. Further, granting the waiver to place the three story house proposed--three times larger than the

two adjacent homes up river--on the edge of the slope pictured in attachment (a) is out of harmony with the surrounding neighborhood and environment.

c. Locating the 956 Home Back from the Slope is No Hardship Recognizable to Support a Variance. Attachment (d) shows applicants' 954 home and the undersigned's at 952. Attachment (e) shows 952 and 950 Tioga Lane homes. All these homes have the septic system between them and the slope to the beach with the wells on the sides away from the water. Applicants have not shown they cannot build a similar home with a similar setback from the water side slope, and therefore have not presented those facts necessary for a waiver to be granted. Further, eliminating the setback requirement for the 956 home unnecessarily creates a greater impact on neighbors' views.

d. The SEE Environmental Memorandum Misstates Facts and Recommends the Applicants' Variance Based on Incorrect Facts. The "Conclusion" paragraph in the SEE Environmental Services, Inc. memorandum for the Chesapeake Bay Critical Area and Habitat Assessment Report misstates facts in that it says home construction on the subject site is constrained by an onsite well. Notwithstanding SEE Environmental Inc.'s representations as to their familiarity with the property, the applicants' own drawings requesting a variance show that the 956 Tioga Lane lot will be serviced by a new well at 954 Tioga Lane, thereby allowing the applicants to increase the size of the house that may be built on the 956 Tioga Lane site beyond that which would be customary or expected. Further, given that the conclusions provided in the Chesapeake Bay Critical Area and Habitat Assessment Report are predicated on a misunderstanding of such a fundamental fact as to the existence of a well on the property about which Mr. See makes recommendations, the rest of his conclusions must also be called into question. Also, the memorandum's date appears altered, calling into question when the document was authored and whether its conclusions are based upon the current condition of the 956 Tioga Lane property.

e. Undisclosed Caves on 956 Tioga Lane Mandate Further Study Before Any Variance Can be Granted. The property in question may have undiscovered caves and voids underneath where either the house and/or septic system are planned to be built, and has a cave impacting the area for the septic system based on the account of Mr. Ron Bridges of 950 Tioga Lane who has looked into a cave 20 feet deep on the edge of the 956 Tioga Lane property. As attested to in Mr. Bridges' letter opposing granting of a variance, in 1996 an oil truck was swallowed by a cave the center of which was at approximately the location of applicants' notice sign shown in the picture at Attachment (f) (on an east/west axis) and in the middle of the road as defined by the concrete wall and steep hillside running down from the 960 Waterview Drive property. The truck sunk in to over the tires but, when it was removed by a crane, Mr. Bridges looked down into a cave that was 20 feet deep when he examined it with a flashlight. It is recorded in materials at the Severna Park Library that this immediate area was the site of significant mining of sand for glass production. The opening of previous caves and sinkholes on or near the property for which construction waivers are sought mandates that a reasonable survey of subterranean conditions be made before any construction in this critical area on the Severn River. Locating the septic system as recommended places it directly in an area influenced by the cave.

f. A Large Volume of Rain Water Runoff Collects on the Location for the Proposed Septic Field Such that Placement of the Septic System where Proposed Could be Detrimental to Public Welfare as envisioned by Variance subparagraph (c)(2)(v). Though not shown in the Attachment (f) photograph because it was not raining, in the area of the 956 Tioga Lane lot between the sign and the applicants' shed, standing water is evident when it rains and for a while after making a pond the width of the lot. This rain water comes rushing down the road shown in Attachment (g) and applicants' large Variance Plan and turns with the road to pour onto 956 Tioga Lane along with water from the hillside to the right of the Attachment (f) photograph. We are concerned that this large inflow of water, that the ground is currently unable to quickly absorb and disperse, will cause a catastrophic problem if the septic system is placed there.

g. Given the Mistaken Representations in the SEE Memo, Applicants May have Failed to Identify a Wetland Deserving of Protection by Application of Customary Setbacks. The beachfront below the proposed construction site may constitute wetlands. Cat Tails, various grasses, and moss grow on the shore and the sand below the waterline is appreciably softer than that on adjoining shores and appears to have soils mixed with the sand. There is no mention of the impact on the plants and animals that would be caused by construction inside of standard setbacks, but there are baby blue crabs, ducks, heron, geese, muskrats, frogs, fox, and many animals that live in the grasses and Cat Tails on the 956 waterfront. Harming this area is contrary to public policy and the intention of the Variance provision. The Jubb letter in opposition to the variance addresses this more fully.

h. Granting the Variance will Violate Subparagraphs (c)(2)(ii) and (v), by Undermining the Development of Neighbors' Property and Detrimental the Neighbors' Welfare. Allowing the applicant to waive the standard required setbacks on the Severn River side of the property constitutes an impermissible economic taking from adjacent neighbors that is inequitable when considered with the Applicants' significant windfall upon converting the 956 Tioga Lane site into a lot suitable for home construction. Applicants purchased the lot in question at a price reflecting the fact the lot could *not* be built upon. (\$650,000 was paid for both 954 and 956 Tioga Lane in 2003.) As shown by applicants' Variance Plan's Property Owners Map (in the upper left hand corner), 952, 954, and 956 Tioga Lane are on a point where the shoreline recedes to the west as one looks down river towards the property at 956 Tioga Lane and beyond. Attachment (c) shows how houses on both sides of the open lot at 956 Tioga Lane are built to a consistent setback with the contours of the riverfront, failing to apply standard setbacks by granting a variance will more greatly compromise the undersigned and neighbors' views and reduce the value of their properties which has an impact on their ability to further develop their property and is detrimental to the neighbors' welfare (financial and otherwise). Granting a variance to build the proposed house three times the size of the undersigned's is prohibited by the Variance provision.

The application for a variance shows that the applicants purchased their two properties at 954 and 956 Tioga Lane with the expectation of building a house closer to the river than their neighbors—a house that is also two or three times as large as those houses of their neighbors. This expectation to build such a house on a lot not previously deemed suitable for construction is unreasonable. The applicants' were able to convince Mr. Charles Jubb to move his well on his adjacent property to facilitate home construction on 965 Tioga Lane. With this move and



placement of the well serving 956 Tioga Lane on applicants' 954 property, they can build a house that is larger than would be expected given the nature of the 956 Tioga Lane site. However, the inability to build an unreasonably large sized and situated house on the 956 Tioga Lane site that is inconsistent with those other homes in the neighborhood does not constitute a "practical difficult[y] or unnecessary hardship" within the meaning of the Anne Arundel County Zoning Code that addresses variances. Rather, granting a variance is barred by provisions of Anne Arundel County Zoning Code § 18-16-305, and would not provide "substantial justice" for the community. The undersigned welcomes the building of a home on the 956 Tioga Lane site, but simply request that any such home respect established setbacks and be consistent with neighboring homes.

Finally, as to your consideration relative to the credibility of the evidence provided by the opposing parties, eyewitness accounts by neighbors living in the area must be accepted as more credible than those factual representations made by representatives of the applicants. The Bay Engineering documentation gives a blatantly inaccurate characterization of the neighborhood that is not supported by home sizes in the immediate area and photographs of the same. State tax records are included for the six closest homes to 956 Tioga Lane that are within 175 feet of the property—not one home is over 2000 square feet. See attachments (h) through (m). The conclusions and recommendations in the SEE Environmental Inc. documentation are based on a misunderstanding of essential characteristics of the property about which it is making variance recommendations—there will be no well on the 956 Tioga Lane site. And last, Mr. Charles Jubb has provided a letter in opposition to applicants' request though he was the individual who moved his well so that 956 Tioga Lane lot could become built upon—it is reasonable to infer that the characterization of the proposed house at the time Mr. Jubb's indulgence was sought by applicants is different than that home for which a waiver request is now sought at 956 Tioga Lane. These three material factual representations that are mistaken suggest a pattern of misrepresentations by the applicants and their representatives.

I request to be sworn and allowed to testify at the subject hearing. I also request to be provided all documentation relating to this matter including your recommendations, documentation from other agencies, transcripts, and the final decision. I will pay all reasonable costs for the requested materials.

Respectfully submitted,

JAMES AND BARBARA McCUTCHEON  
952 Tioga Lane  
Crownsville, MD 21032  
(o) 202-767-2244  
(c) 703-400-6606

Attachments:

- (a) Picture from 952 Tioga Lane (southeasterly) towards 956 with 954 included looking down steep slope to beach.
- (b) Picture from 952 Tioga Lane (southeasterly) towards 956 Tioga Lane at beach level
- (c) Arial view of the waterfront showing the alignment of all waterfront homes with similar setbacks from the waterfront.
- (d) View of applicants' 954 Tioga Lane home (to right) and 952 Tioga Lane home (to left)
- (e) View of 952 Tioga Lane home (to right) and 950 Tioga Lane home (to left)
- (f) View of southwestern half of property with Notice sign marking one border and applicants' grey shed marking the southeastern side of the property
- (g) View up Tioga Lane looking southwesterly at the "corner" where Tioga Lane turns 90 degrees towards the entrance to 956 Tioga Lane.
- (h) MD tax record for 948 Tioga Lane
- (i) MD tax record for 950 Tioga Lane
- (j) MD tax record for 952 Tioga Lane
- (k) MD tax record for 954 Tioga Lane
- (l) MD tax record for 960 Waterview Dr.
- (m) MD tax record for 962 Waterview Dr.

**Widmayer, Amber**

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**From:** Jim McCutcheon [james.mccutcheon@nrl.navy.mil]  
**Sent:** Wednesday, May 06, 2009 11:34 AM  
**To:** 'Jim McCutcheon'; Dise, Marianne E.; Widmayer, Amber  
**Subject:** Proposed Questions and a Question I Hope you Can Answer  
**Attachments:** Widmayer\_Directver\_Ajver.doc

Dear Ms. Widmayer,

I am providing my final proposed questions in the attached file. Mr. Jubb has provided me his proposed questions should he question you directly. Mr. Jubb's questions are also included in this same attached file.

I hope you feel free to answer one question before the hearing, and I am copying your attorney Ms. Dise should you need her input. The question is, "Are CAC letters reviewed by the Director, a more senior person, and/or otherwise discussed internally before they are issued?"

Simply, I don't want to ask the above question if it will undermine my argument that your letters represent the CAC position. I won't ask this question if your answer is no. I have attached my final anticipated questions for your review.

Thank you,

Jim McCutcheon  
(o) 202 767-2244  
Cell 703-400-6606

\*\*\*\*Testimony on the record before the Board has been that Ms. Widmayer possesses no proven qualifications to suggest her factual findings or conclusions should be given any credence. Further, 3 of 4 CAC letters have been kept out of evidence as “not relevant.” I will try and lay a foundation for Ms. Widmayer’s qualifications to speak on behalf of the CAC, but would appreciate any assistance you can provide given that I do not have her background and am unable to find it on the web. \*\*\*\*

Please state your name and address for the record.

With whom are you employed?

Ms. Widmayer, what is your current position with the Critical Area Commission?

How long have you worked for the CAC?

During your tenure with the CAC, have you held the same position?

What are your responsibilities with the CAC?

Can you tell us your educational background?

Do you regularly review local zoning ordinances and codes affecting the CA as part of your job?

Do you have resources such as experienced attorneys available to assist you if you are unclear as to the meaning of a particular matter?

Are you an attorney?

How many Variance requests are you responsible for overseeing on behalf of the CAC?

Have you reviewed the CAC files containing all documentation relating to this matter in preparation for your testimony?

Did you make a site visit during your review of the proposed variance, the information from which is reflected in the CAC’s conclusions?

Is it correct that your office has issued 4 letters in opposition to this Variance?

What is the process for the office issuing letters?

Are letters reviewed by the Director, a more senior person, and or otherwise discussed internally before they are issued?

Let me show you what has been marked Protestants’ \_\_\_\_\_; are these the letters your office issued?

Why does your office issue letters like those marked as evidence?

Who at the CAC authorized to issue letters like those I’ve shown you?

What are the qualifications required for those who would sign out such CAC letters?

Move to enter Ms. Widmayer as an expert witness, qualified to give expert opinions as to whether zoning ordinances, laws, and other guidance affecting land covered by the CA program have been met....

Is it unusual for the CAC to issue 4 letters concerning one variance?

Why did your office do so?

Were your office's concerns raised in the letters to the County Office of Planning and Zoning ever addressed by either a response, or in the OPZ's recommendation to the Administrative Hearing Officer?

Specifically turning to what is marked Protestants 3B, where the CAC asserts to the OPZ that Anne Arundel County Code § 16-2-304(c) applies, did the OPZ ever respond to the CAC with an opinion as to whether the provision applied?

Did the OPZ ever indicate whether they thought a variance was required to § 16-2-304(c)?

Would you please read from the CAC letter of October 22, 2008 at page two, the first sentence of the second paragraph?

Does the CAC still believe "the Applicant has not demonstrated that the variance is the minimum necessary or that 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, each and every one of the County's variance standards has not been met"?

Are all the CAC letters before you still reflective of the CAC's opposition to the proposed variance and otherwise relevant to this discussion?

Move to enter into evidence the remaining CAC letters marked as \_\_\_\_\_

Is it still the CAC's position that granting of the Variance is contrary to the policies captured in state CA laws and implementing codes and regulations?

Before we turn to the conditions that must be satisfied for a variance to be granted, can you tell us what the CAC's practical concerns are with the placement of the home as it affects habitat and wildlife?

When determining whether the Variance requested is the minimum necessary for the reasonable use of the property, did you consider the size of neighboring homes on similar waterfront lots?

When you considered them, did you consider the total square footage of the homes as it is reflected in state property records to supplement your visual inspection?

Additionally, did you consider whether the construction footprint was the minimum necessary?

What were your conclusions based upon consideration of these factors?

Where variances are granted that allow for disturbances within the CA 100 foot buffer, isn't effective mitigation of the disturbance a prerequisite to consideration of whether a variance should be granted?

Let me show you Applicants exhibit \_\_\_ showing an area of disturbance at the top of the steep sand slopes, in your opinion will the slope erode during construction?

With further erosion occur as a result of new water runoff patterns?

Can the Applicants reasonably mitigate the damage to the animals in the surrounding area such fox if they lived in a den like that shown in what is marked Protestant's \_\_\_\_\_ at the base of the hill?

What about the other plant and wildlife?

Does the mitigation plan what shows no plants or other efforts under the area of disturbance at the top of the steep slopes provide a basis for you to conclude the "temporary" construction damage shown in the site plan that is located within the 100 Buffer can be adequately mitigated?

Why?

Are you familiar with the variance provisions applicable to this Board found at 3-1-207?

Let me provide you a copy of 3-1-207, as know failure to satisfy even one requirement for a variance mandates denial of the requested variance, will you go through each condition that must be met and read each condition the CAC believes is not satisfied and explain the basis for the CAC's position?

## **§. Standards for granting variance.**

(a) **Generally.** The Board of Appeals may vary or modify the provisions of Article 18 of this Code when it is alleged that practical difficulties or unnecessary hardships prevent carrying out the strict letter of that article, provided the spirit of law shall be observed, public safety secured, and substantial justice done. A variance may be granted only upon an affirmative finding that:

(1) because of certain unique physical conditions, such as irregularity, narrowness or shallowness of lot size and shape, or exceptional topographical conditions peculiar to and inherent in the particular lot, there is no reasonable possibility of developing the lot in strict conformance with Article 18 of this Code; or

(2) because of exceptional circumstances other than financial considerations, the grant of a variance is necessary to avoid practical difficulties or unnecessary hardship, and to enable the applicant to develop the lot.

(b) **Variances in the critical area or a bog protection area.** For a property located in the critical area or a bog protection area, a variance to the requirements of the County critical area program or bog protection program may be granted only upon an affirmative written finding that:

(1) because of certain unique physical conditions, such as exceptional topographical conditions peculiar to and inherent in the particular lot, or irregularity, narrowness, or shallowness of lot size and shape, strict implementation of the County's critical area program would result in an unwarranted hardship, as that term is defined in the Natural Resources Article, § 8-1808, of the State Code, to the applicant;

(2) (i) a literal interpretation of COMAR, 27.01, Criteria for Local Critical Area Program Development, or the County critical area program and related ordinances will deprive the applicant of rights commonly enjoyed by other properties in similar areas, as permitted in accordance with the provisions of the critical area program, within the critical area; or

(ii) the County's bog protection program will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the bog protection area of the County.

(3) the granting of a variance will not confer on an applicant any special privilege that would be denied by:

(i) COMAR, 27.01, or the County critical area program to other lands or structures within the County critical area; or

(ii) the County's bog protection program to other lands or structures within a bog protection area;

(4) that the variance request:

(i) is not 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 was filed; and

(ii) does not arise from any condition relating to land or building use on any neighboring property;

(5) that the granting of the variance:

(i) 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

(ii) will be in harmony with the general spirit and intent of the County critical area program or bog protection program;

(6) the applicant for a variance to allow development in the 100-foot upland buffer has maximized the distance between the bog and each structure, taking into account natural features and the replacement of utilities, and has met the requirements of § 17-9-208 of this Code; and

(7) the applicant, by competent and substantial evidence, has overcome the presumption contained in the Natural Resources Article, § 8-1808(d)(2), of the State Code.

(c) **Required findings.** A variance may not be granted under subsection (a) or (b) unless the Board finds that:

- (1) the variance is the minimum variance necessary to afford relief;
- (2) the granting of the variance will not:
  - (i) alter the essential character of the neighborhood or district in which the lot is located;
  - (ii) substantially impair the appropriate use or development of adjacent property;
  - (iii) reduce forest cover in the limited and resource conservation areas of the critical area;
  - (iv) be contrary to acceptable clearing and replanting practices required for development in the critical area or bog protection area; or
  - (v) be detrimental to the public welfare.

Are there any additional comments you wish to make?

Mr. Jubb's Proposed Questions

**AMBER WIDMAYER**

- 1) Where does she work?
- 2) Education and experience
- 3) Did you visit 956 Tioga Lane before writing your report?
- 4) Does your office support the variance as currently proposed?
- 5) Why did you reach that conclusion?
- 6) Most important part of the report to me was the 2<sup>nd</sup> paragraph – *It is both possible and necessary to move the proposed house back from the edge of the steep slopes along the shoreline.*
- 7) *T.J. Martin testified for Mr. Rabena that:*
  - a) The proposed house will not adversely affect water quality or impact fish, wildlife or plant habitat and will be in harmony with the general spirit and intent of the Critical Area program. *Do you agree?*
  - b) Bay Engineering has minimized the size of the house and the distance to the shoreline. *Do you agree?*
  - c) Bay Engineering has done everything to meet the code requirements in the Buffer Modification Area. *Do you agree?*
  - d) The current plan is the minimum distance to afford relief to the site. *Do you agree?*
- 8) *Shep Tullier testified for Mr. Rabena that:*
  - a) The first time there was a failure of the septic tank located on the



25 ft. buffer to the steep slopes line, the water would go into the river. Considering the size of the lot and the sandy nature of this ground – is there any place a leaking septic tank would be OK and would not reach the river?

If you are seeking variances, would it be better to have variances on the water side of the lot or the part of the lot farthest from the river?

**Widmayer, Amber**

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**From:** Jim McCutcheon [james.mccutcheon@nrl.navy.mil]  
**Sent:** Tuesday, May 05, 2009 7:02 PM  
**To:** Dise, Marianne E.; Widmayer, Amber  
**Subject:** Surprise Filing

Hello,

April 27 the Board received Mr. Jubb's filing asking that I be removed from representing the 5 families opposing the Rabena variance. The grounds for the filing were my reticence to subpoena Ms. Widmayer.

If you want a copy of the filing and associated documents, you can get it from the Board or simply contact me with a fax number. Though I hope it won't be taken seriously, I would appreciate a comment to the effect the CAC has given more support than would be customary because of my efforts/requests to Ms. Widmayer.

Yours truly,

Jim McCutcheon  
202-767-2244  
(c) 703-400-6606

**Widmayer, Amber**

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**From:** Jim McCutcheon [james.mccutcheon@nrl.navy.mil]  
**Sent:** Monday, April 27, 2009 10:28 AM  
**To:** Dise, Marianne E.; Widmayer, Amber  
**Cc:** napolifish@cs.com  
**Subject:** Proposed Questions for Ms. Widmayer  
**Attachments:** Widmayer Directver A.doc

Dear Ms. Dise and Widmayer,

I am providing a courtesy copy of the questions I propose asking Ms. Widmayer on direct in the attached file, the answers to which come from the CAC letters. If Ms. Widmayer requests any additional questions to be asked, please add them to the document file or feel free to call me. I will try and coordinate with Mr. Jubb, the person who sent the subpoena, so as to add any questions he might have. (Currently, I am the individual the Chairman appointed to represent the 5 neighboring households opposing this variance.)

At the open of the next hearing, I will move to get the Board to rule on the CAC position taken by Ms. Widmayer that 16-2-304(c) applies to the property in question, given that both of Applicants' experts have now testified that the provision does not apply. I believe the Board's site visit provides them with the information necessary to make this ruling. If I can get this ruling, I will move for a summary judgment based upon Applicants' failure to give public notice that a variance to 16-2-304(c) was needed to approve the proposed construction. (Given the tenor of the Chairman, I question how well it will go, but it will preserve the issue for appeal.) Please let me know if for any reason the CAC opinion on this point changes. I do not want to undermine Ms. Widmayer's credibility as a witness if 16-2-304(c) does not apply prior to her testimony.

Both of Applicants' experts have testified that Ms. Widmayer is not qualified to provide those factual findings or conclusions in the CAC letters. Further, 3 of 4 CAC letters have been kept out of evidence as "not relevant" to date. (I previously overcame hearsay and foundation challenges.) I will try and lay a foundation for Ms. Widmayer to be entered as an expert witness. I have been unable to find a c.v. or other information upon which to lay the foundation on the web, so I will be running "blind" unless I am provided credentials or there is a case on point that says CAC planners shall be considered experts.

Finally, FYI, Applicants' expert witness concerning the site layout, Mr. Tullier, is still on the stand. Next, a wetland "expert," a Mr. McCarthy (I think?), will testify as to the wetland issues. It seems Mr. McCarthy will testify instead of Mr. See, who wrote and then amended the CA report. I believe Protestants' case in chief will begin after these two witnesses. I will press to have Ms. Widmayer testify first which will hopefully be at the next hearing.

Your support has been and is greatly appreciated!

Jim McCutcheon  
202-767-2244

**Widmayer, Amber**

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**From:** Jim McCutcheon [james.mccutcheon@nrl.navy.mil]  
**Sent:** Wednesday, October 08, 2008 9:58 AM  
**To:** Widmayer, Amber  
**Subject:** RE: Rabena, John 2007-0223

Amber,

Thank you for your attention to this. I am a Navy lawyer and I feel outmatched when facing a "lawyer's lawyer" who specializes in this area of law, who also has a former city employee who will make fact statements supportive of Mr. Rabena's desires. As I said, if you compare the Rabena's 2007 factual representations with the new ones for 2008, I suspect you will find some inconsistencies.

Again, thank you for giving this your time and attention.

Yours truly,

Jim

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**From:** Widmayer, Amber [mailto:AWidmayer@dnr.state.md.us]  
**Sent:** Tuesday, October 07, 2008 4:32 PM  
**To:** Jim McCutcheon  
**Subject:** RE: Rabena, John 2007-0223

Hello Jim,

I talked with William Etheridge today at the County who is the planner reviewing this application. He forwarded a copy of the revised application to my office early this week so I should receive it shortly. Once I have a chance to look at the revised plans, I can get back to you with further information about any revised comments that we may provide. Feel free to contact me if you have any questions in the meantime.

Thank you,

Amber Widmayer  
410 260 3481

-----Original Message-----

**From:** Jim McCutcheon [mailto:james.mccutcheon@nrl.navy.mil]  
**Sent:** Monday, October 06, 2008 2:42 PM  
**To:** Widmayer, Amber  
**Subject:** RE: Rabena, John 2007-0223

Hello Amber,

There is another hearing concerning this matter scheduled for October 29<sup>th</sup>. It appears there are also new additions to the file in the zoning department submitted by Mr. Rabena and his attorney. Has your office reviewed the new filings? I would appreciate your opinion as to the revised plans in light of your past letters and assessment of the situation.

I am concerned because my Rabena's attorney is well respected and the factual representations in support of Mr. Rabena's requests are being made in part by a former employee of the zoning department who has made factual misrepresentation in the past—representations that the zoning department indicated would be accepted over my objections. The department seemed willing to accept in 2007 that no wetland exists on the property and that the customary home size in the area is for homes of 3,500

square feet. It is interesting to note that after submitting an environmental report that makes the representations that no wetlands exist at the shoreline in September of 2007, now a "non-tidal wetland" is shown on new drawings (an off duty county forester opined that a "tidal wetland" is on the shoreline). My bottom line concern is that at least one corner of the house is too close to a very steep embankment that sits over a wetland, and that placement of the house inside 50 feet of the embankment shows clear disregard for the letter you previously sent which is attached. Wetland wildlife at the waters edge includes wetland trees, bushes, and animals as well as two freshwater springs that come up through the sand at the shoreline. Also, since the last hearing, voids or caves left from sand mining are identified on the property and I am not sure they are properly characterized.

My wife and I do not object to a home in the 2,000-2,500 square foot range, though 2,000 or less is customary to the neighbors. However, there is another fact worthy of consideration; the Rabenas make their representations as if the subject piece of property is their only property on the Severn River. To the contrary, they own the adjoining plot of land with house on it. They bought both in 2003 for \$650,000. They were unaware at the time they purchased both lots of the caves on the 956 Tioga Lane lot site, only learning of them as part of my objections to a variance at the last hearing. If discovery of these caves now makes the siting of a home as they desire on the 956 Tioga site objectionable, they still will not suffer an unconscionable loss given that they can build one large home on the plots at both 954 and 956 Tioga Lane. The price of \$650,000 is a reasonable price in our neighborhood for a piece of property on which one house sits.

In sum, I am asking for your opinion as to the proposed plans and any suggestions you may provide me as to how far back a house on the 956 site should be set back. As I have not read the new submissions from *See Engineering* or any other documents added to the file after the last hearing, I would also appreciate your opinion of them. Simply, with official work travel and two twin daughters, I don't have time to go review the file before the hearing.

Yours truly,

Jim McCutcheon

**Widmayer, Amber**

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**From:** Widmayer, Amber  
**Sent:** Monday, September 17, 2007 5:31 PM  
**To:** 'Jim McCutcheon'  
**Subject:** RE: Additioinal Site Information and Fax for 956 Tioga Lane

Hello Jim,

Thank you for reminding me to forward you the letter we sent to Anne Arundel County regarding our comments on the requested Rabena variance. I have attached a PDF version of the letter for your convenience. Let me know if you have additional questions.

Sincerely,  
Amber Widmayer

-----Original Message-----

**From:** Jim McCutcheon [mailto:james.mccutcheon@nrl.navy.mil]  
**Sent:** Monday, September 17, 2007 1:27 PM  
**To:** Widmayer, Amber  
**Cc:** jimmc@ccs.nrl.navy.mil  
**Subject:** RE: Additioinal Site Information and Fax for 956 Tioga Lane

Amber,

Did your office ever send comments as you said would be done? A postponement was granted until March 2008 on this zoning decision at the request of the applicants. I am of the opinion that it will be easier to encourage good behavior and zoning before their next run at the variance in March. It is clear the Rabinas are simply improving their arguments to drive the requested variance through in the absence of any hardship. I plan on sending a letter to the Rabinas' attorney in a day or so, but would appreciate state assistance sooner than later. Please understand that I have digital pictures of wetland plants and animals that I believe document a wetland on the proposed building site that will be filled by the "disruption" of 900 feet of slope as is envisioned by the current construction plans. Presumably, additional decks and pier permits will come later and run over the soon to be filled wetland.

I would appreciate any thoughts or suggestions your office may have. Given the Rabinas' disregard for the first letter issued by your office, I am hopeful that a more proactive approach might be taken now to support the 5 adjacent households who oppose the subject variance.

Very respectfully,

Jim McCutcheon  
(o) 202-767-2244  
(c) 703-400-6606

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**From:** Widmayer, Amber [mailto:AWidmayer@dnr.state.md.us]  
**Sent:** Wednesday, September 05, 2007 11:07 AM  
**To:** Jim McCutcheon  
**Subject:** RE: Additioinal Site Information and Fax for 956 Tioga Lane

Hello Jim,

Thank you for forwarding the information you have gathered on the proposed development of 956 Tioga Lane. Our office will be submitting a revised comment letter this afternoon to William Etheridge. I will forward a copy of that letter to you.

9/17/2007

Thank you,  
Amber Widmayer

-----Original Message-----

**From:** Jim McCutcheon [mailto:james.mccutcheon@nrl.navy.mil]  
**Sent:** Wednesday, September 05, 2007 10:22 AM  
**To:** Sines, Megan  
**Cc:** Widmayer, Amber  
**Subject:** RE: Additional Site Information and Fax for 956 Tioga Lane

Amber,

If you have any questions please feel free to call me in the office. Attached is a cleaner version of my prepared statements that hit the portions of the Variance provision mandating denial of the request. I have added a paragraph on the first page that describes what we believe is the Rabenas' planned future development of 954 and 956 Tioga Lane that may not be apparent because of the systematic piecemeal approach they are taking to establishing easements and zoning requests. Does your office plan on issuing a letter today?

Very respectfully,

Jim

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**From:** Sines, Megan [mailto:MSINES@dnr.state.md.us]  
**Sent:** Wednesday, September 05, 2007 7:59 AM  
**To:** Jim McCutcheon  
**Cc:** Widmayer, Amber  
**Subject:** RE: Additional Site Information and Fax for 956 Tioga Lane

Jim-

As I am only in the office part time, I have passed the case along with the all the information you have forwarded me onto Amber Widmayer in our office. Amber will be following up with the County. Jim, you had asked that I forward a copy of our final letter to the County to you-- so Amber, if you can email the letter to Jim when you have finished that would be great.

Thank-you,  
Megan

-----Original Message-----

**From:** Jim McCutcheon [mailto:james.mccutcheon@nrl.navy.mil]  
**Sent:** Tuesday, September 04, 2007 9:35 AM  
**To:** Sines, Megan  
**Subject:** RE: Additional Site Information and Fax for 956 Tioga Lane

Megan,

I hope you had a good weekend. Given that I believe the lawyers representing the Rabenas will try and disrupt my presentation at the hearing, I will be providing my intended testimony in hard copy before the hearing to make sure it gets into the record. As we are highlighting additional grounds for denial of the variance, I am forwarding my proposed testimony which basically is in two parts: (1) a general description of the neighborhood; and, (2) as section by section presentation of the facts that under various provisions of the Variance regulation mandate denial of the variance request. New factual arguments include identification of a fresh water spring under the area we believe is a wetland; identification of the fact that the lot for which the variance is sought is 6000 sq. ft. larger than nearby lots with homes; identification of failure to comply with notice

requirements; and, a few other new factual representations.

If you should want any of the attachments sent in digital format please ask. I would appreciate if you have any suggestions as to how this might be improved.

Very respectfully,

Jim McCutcheon  
(o) 202-767-2244  
(c) 703-400-6606



## Sines, Megan

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**From:** Jim McCutcheon [james.mccutcheon@nrl.navy.mil]  
**Sent:** Thursday, August 30, 2007 9:47 AM  
**To:** Sines, Megan  
**Subject:** Additionial Site Information and Fax for 956 Tioga Lane

Megan,

The fax didn't go through to 410-974-5388. Did I take down your number wrong?

All the neighbors are running around trying to stop the variance but I believe another neighbor has raised 3 credible points that may be appropriate for your next memo.

If you look at the Google Map of 956 Tioga, the large ravine that we are sure is an old sand mine site has a steep—25 degree or steeper—slope. While we think the overall topographical map is wrong in some measurements, this slope is not properly called out by SEE Environmental, Inc. or on the map. My neighbor was told this slope mandates 3 things because some of the over 15 degree steepness is also on the water side of the lot.

1. A 150 foot setback comes into play because of over 25 degrees of slope—not the 100 foot buffer zone.
2. Since the slopes are more than 15 degrees on parts of the property, you need a different Topographical map submitted for the variance, one with a “Field Run Topography at Two Foot Intervals.”
3. Also, another neighbor is concerned that the plans call for cutting down two trees right need the water and that this should be barred or at least require some type of additional approval.

Also, is there an additional variance required that has not been requested? I am trying to get with another neighbor who claims to have “figured” this out.

I hope the information above is helpful.

Very respectfully,

Jim McCutcheon  
(o) 202-767-2244  
(c) 703-400-6606

**Sines, Megan**

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**From:** Jim McCutcheon [james.mccutcheon@nrl.navy.mil]  
**Sent:** Wednesday, August 29, 2007 2:33 PM  
**To:** Sines, Megan  
**Subject:** Retry

Dear Megan,

Attached please find my memorandum. The digital versions of many attachments will be sent by separate cover. I will fax the other info tomorrow but it is readily available in state tax records if you need to confirm the home sizes. Also, this quote was taken from the county website supporting our belief that tunnels/caves may be under 956 Tioga that are not addressed:

“Sugary white sand suitable for glass making exists along the upper Severn in a rather narrow vein; Hopkins’ 1878 map notes glass sand between Plum and Valentine Creeks. In 1885 the Annapolis Glass Works opened on Horn Point Sand was dug from shoreline pits on both sides of the upper Severn and then transported by boat. Intricate tunnels

were dug into the banks for these operations, especially in the Arden area. The abandoned tunnels were a local attraction until closed by authorities in the 1930’s.

A number of small pit operations existed along the upper river in the early 1900’s, including the Brenan Sand Company at Forked Creek and the Liberty Sand and Gravel Company at Stevens Creek. Operations at Forked Creek closed in 1938. By 1976 only one pit was active, and this is now closed.”

Found at <http://www.aacounty.org/severnriver/history.cfm>.

The variance is sought for a piece of property at 956 Tioga Lane. A Google of the area shows what looks like a dark gully adjacent to the property. We believe this was the site of sand mining and that tunnels were dug under the 956 Tioga property to get sand. We fear these tunnels were not properly filled because an oil delivery truck fell into a cave around 1996 as attested by another neighbor. The owner believes that the gully just up river next to 950 Tioga Lane is also the remains of a sand mine. My big concerns are that the basis for the recommendation in the SEE Environmental letter is based on incorrect facts; the Bay Engineering memo mischaracterizes the neighborhood home sizes; and, both memos fail to identify that we may have a wetland below the bluff on which the home is to be sited. Opposing counsel representing Mr. Rabena was given the attached memo within a few hours of its submission, so the engineers know I am calling them on the misrepresentations. There are 4 other neighbor letters opposing the variance to setback requirements and proposed house size.

Very respectfully,

Jim McCutcheon

7 pages

To: Megan Sines

From: Jim McCutcheon

results



Maryland Department of Assessments and Taxation  
**ANNE ARUNDEL COUNTY**  
 Real Property Data Search (2007c)

Go Back  
 View Map  
 New Search  
 GroundRent

Account Identifier: District - 02 Subdivision - 748 Account Number - 00294025

Owner Information			
Owner Name:	PHAM, THY C MCGRADY, CHRISTOPHER	Use:	RESIDENTIAL
Mailing Address:	948 TIOGA LN CROWNSVILLE MD 21032-1245	Principal Residence:	YES
		Deed Reference:	1) /18414/ 641 2)

Location & Structure Information									
Premises Address						Legal Description			
948 TIOGA LN CROWNSVILLE 21032						LT 24R SC 1 PL 1 948 TIOGA LN SUNRISE BEACH			
Map Grid Parcel Sub District Subdivision Section Block Lot Assessment Area						Plat No: 1 Plat Ref: 203/ 44			
31	16	389		748	1	24R	2		
Town									
Ad Valorem									
Tax Class									

Primary Structure Built		Enclosed Area	Property Land Area	County Use
1970		1,956 SF	24,254.00 SF	
Stories	Basement	Type		Exterior Siding
1	YES	STANDARD UNIT		

Value Information				
	Base Value	Value As Of	Phase-in Assessments	
		01/01/2005	07/01/2006	07/01/2007
Land	158,180	279,430		
Improvements:	221,000	127,490		
<b>Total:</b>	<b>379,180</b>	<b>406,920</b>	<b>364,340</b>	<b>406,920</b>
Preferential Land:	0	0	0	0

Transfer Information			
Seller:	BAUER, FREDERICK J	Date:	10/25/2006
Type:	IMPROVED ARMS-LENGTH	Deed1:	/18414/ 641
Seller:	AYERS ROBERT E	Date:	03/11/1986
Type:	IMPROVED ARMS-LENGTH	Deed1:	/ 9283/ 449
Seller:		Date:	
Type:		Deed1:	
		Price:	\$720,000
		Deed2:	
		Price:	\$137,500
		Deed2:	/ 4036/ 149

Exemption Information			
Partial Exempt Assessments	Class	07/01/2006	07/01/2007
County	000	0	0
State	000	0	0
Municipal	000	0	0
Tax Exempt:	NO	Special Tax Recapture:	
Exempt Class:		* NONE *	

(H)

results

Maryland Department of Assessments and Taxation  
**ANNE ARUNDEL COUNTY**  
 Real Property Data Search (2007)

Go Back  
View Map  
New Search  
GroundRent

Account Identifier: District - 02 Subdivision - 748 Account Number - 01714910

**Owner Information**

Owner Name: BRIDGES, RONALD W  
 BRIDGES, SHARON J  
 Use: RESIDENTIAL  
 Principal Residence: YES  
 Deed Reference: 1) / 2543/ 462  
 2)

Mailing Address: 950 TIOGA LN  
 CROWNSVILLE MD 21032-1245

**Location & Structure Information**

Premises Address: 950 TIOGA LN  
 CROWNSVILLE 21032  
 Legal Description: LT 25 SC 1 PL 1  
 950 TIOGA LN  
 SUNRISE BEACH

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
31	16	389		748	1		25	2	1

**Special Tax Areas**

Town: Ad Valorem  
 Tax Class: Enclosed Area  
 2,536 SF

Property Land Area: 13,407.00 SF  
 County Use: Exterior SIDING

Primary Structure Built: 1954  
 Stories: 1 1/2  
 Basement: NO  
 Type: STANDARD UNIT

**Value Information**

	Base Value	Phase-In Assessments		
		Value As Of 01/01/2005	As Of 07/01/2006	As Of 07/01/2007
Land	302,800	546,600		
Improvements:	124,300	131,260		
Total:	427,100	677,860	594,272	677,860
Preferential Land:	0	0	0	0

**Transfer Information**

Seller: UNKNOWN  
 Date: 12/01/1972  
 Deed1: / 2543/ 462  
 Price: \$0

**Exemption Information**

Partial Exempt Assessments	Class	07/01/2006	07/01/2007
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO  
 Exempt Class:  
 Special Tax Recapture: \* NONE \*

*This number includes a large garage. The file has Mr. Bridges' statement that his house is no larger than 1800 sq. ft. (we think its only 1600)*

(i)

results

<b>Maryland Department of Assessments and Taxation</b> <b>ANNE ARUNDEL COUNTY</b> <b>Real Property Data Search</b> (2007c)	<a href="#">Go Back</a> <a href="#">View Map</a> <a href="#">New Search</a> <a href="#">GroundRent</a>
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**Account Identifier:** District - 02 Subdivision - 748 Account Number - 06514625

Owner Information			
<b>Owner Name:</b>	MCCUTCHEON, JAMES N MCCUTCHEON, BARBARA J	<b>Use:</b>	RESIDENTIAL
<b>Mailing Address:</b>	952 TIOGA LN CROWNSVILLE MD 21032-1245	<b>Principal Residence:</b>	YES
		<b>Deed Reference:</b>	1) /17506/ 407 2)

Location & Structure Information									
<b>Premises Address</b>						<b>Legal Description</b>			
952 TIOGA LN CROWNSVILLE 21032						LT 26 SC 1 PL 1 952 TIOGA LN SUNRISE BEACH			
<b>Map</b>	<b>Grid</b>	<b>Parcel</b>	<b>Sub District</b>	<b>Subdivision</b>	<b>Section</b>	<b>Block</b>	<b>Lot</b>	<b>Assessment Area</b>	<b>Plat No:</b>
31	16	389		748	1		26	2	1
<b>Special Tax Areas</b>			<b>Town</b>						
			Ad Valorem						
			Tax Class						
<b>Primary Structure Built</b>			<b>Enclosed Area</b>			<b>Property Land Area</b>		<b>County Use</b>	
1955			1,284 SF			12,903.00 SF			
<b>Stories</b>			<b>Basement</b>			<b>Type</b>		<b>Exterior</b>	
1			YES			STANDARD UNIT		SIDING	


Value Information				
	Base Value	Phase-in Assessments		
		Value As Of 01/01/2005	Value As Of 07/01/2006	Value As Of 07/01/2007
Land	117,070	562,470		
Improvements:	71,720	76,460		
<b>Total:</b>	<b>188,790</b>	<b>638,930</b>	<b>555,550</b>	<b>638,930</b>
Preferential Land:	0	0	0	0

Transfer Information			
<b>Seller:</b>	HULL, TERRY F	<b>Date:</b>	02/23/2006
<b>Type:</b>	IMPROVED ARMS-LENGTH	<b>Deed1:</b>	/17506/ 407
<b>Seller:</b>		<b>Date:</b>	
<b>Type:</b>		<b>Deed1:</b>	
<b>Seller:</b>		<b>Date:</b>	
<b>Type:</b>		<b>Deed1:</b>	
		<b>Price:</b>	\$725,000
		<b>Deed2:</b>	
		<b>Price:</b>	
		<b>Deed2:</b>	

Exemption Information			
<b>Partial Exempt Assessments</b>	<b>Class</b>	07/01/2006	07/01/2007
County	000	0	0
State	000	0	0
Municipal	000	0	0
<b>Tax Exempt:</b>	NO		
<b>Exempt Class:</b>	Special Tax Recapture: * NONE *		

(J)

results

 <b>Maryland Department of Assessments and Taxation</b> <b>ANNE ARUNDEL COUNTY</b> <b>Real Property Data Search</b> (2007C)	Go Back View Map New Search GroundRent
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**Account Identifier:** District - 02 Subdivision - 748 Account Number - 03336200

Owner Information			
<b>Owner Name:</b>	RABENA, JOHN F RABENA, ANGELA M	<b>Use:</b>	RESIDENTIAL
<b>Halling Address:</b>	21574 SCHOOLHOUSE CURT ASHBURN VA 20148	<b>Principal Residence:</b>	NO
		<b>Deed Reference:</b>	1) /13867/ 748 2)

Premises Address		Legal Description
954 TIOGA LN CROWNSVILLE 21032		LT 27 SC 1 PL 1 954 TIOGA LN SUNRISE BEACH

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
31	16	389		748	1		27	2	1
<b>Special Tax Areas</b>			WATERFRONT Town Ad Valorem Tax Class						

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1955	816 SF	12,810.00 SF	
<b>Stories</b>	<b>Basement</b>	<b>Type</b>	<b>Exterior</b>
1	NO	STANDARD UNIT	BLOCK

Value Information				
	Base Value	Phase-In Assessments		
		Value As Of 01/01/2005	Value As Of 07/01/2006	Value As Of 07/01/2007
Land	307,970	550,070		
Improvements:	56,300	60,050		
<b>Total:</b>	<b>364,270</b>	<b>610,120</b>	<b>528,170</b>	<b>610,120</b>
Preferential Land:	0	0	0	0

Transfer Information			
<b>Seller:</b> DISNEY, RAY K	<b>Date:</b> 10/02/2003	<b>Price:</b> \$650,000	
<b>Type:</b> MULT ACCTS ARMS-LENGTH	<b>Deed1:</b> /13867/ 746	<b>Deed2:</b>	
<b>Seller:</b> DISNEY, WALTER	<b>Date:</b> 08/18/1997	<b>Price:</b> \$0	
<b>Type:</b> NOT ARMS-LENGTH	<b>Deed1:</b> / 8023/ 528	<b>Deed2:</b>	
<b>Seller:</b>	<b>Date:</b>	<b>Price:</b>	
<b>Type:</b>	<b>Deed1:</b>	<b>Deed2:</b>	

Exemption Information			
<b>Partial Exempt Assessments</b>	<b>Class</b>	07/01/2006	07/01/2007
County	000	0	0
State	000	0	0
Municipal	000	0	0
<b>Tax Exempt:</b> NO	<b>Special Tax Recapture:</b>		
<b>Exempt Class:</b>	* NONE *		

(K)

results

<b>Maryland Department of Assessments and Taxation</b> <b>ANNE ARUNDEL COUNTY</b> <b>Real Property Data Search</b> <small>(2007c)</small>	<a href="#">Go Back</a> <a href="#">View Map</a> <a href="#">New Search</a> <a href="#">GroundRent</a>
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**Account Identifier:** District - 02 Subdivision - 748 Account Number - 03333300

Owner Information			
<b>Owner Name:</b>	ROBY, JEANNE M	<b>Use:</b>	RESIDENTIAL
<b>Mailing Address:</b>	960 WATERVIEW DR CROWNSVILLE MD 21032-1214	<b>Principal Residence:</b>	YES
		<b>Deed Reference:</b>	1) / 9375/ 207 2)

Location & Structure Information									
<b>Premises Address</b>						<b>Legal Description</b>			
960 WATERVIEW DR CROWNSVILLE 21032						LTS 29 30 SC 1 PL 1 960 WATERVIEW DR SUNRISE BEACH			
<b>Map</b>	<b>Grid</b>	<b>Parcel</b>	<b>Sub District</b>	<b>Subdivision</b>	<b>Section</b>	<b>Block</b>	<b>Lot</b>	<b>Assessment Area</b>	<b>Plat No:</b>
31	16	389		748	1		29	2	1
<b>Plat Ref:</b>									

Special Tax Areas				
<b>Primary Structure Built</b>		<b>Enclosed Area</b>	<b>Property Land Area</b>	<b>County Use</b>
1967		1,092 SF	23,400.00 SF	
<b>Stories</b>	<b>Basement</b>	<b>Type</b>		<b>Exterior</b>
1	YES	STANDARD UNIT		ASBESTOS SHINGLE

Value Information					
	<b>Base Value</b>	<b>Value</b>	<b>Phase-in Assessments</b>		
		As Of	As Of	As Of	
		01/01/2005	07/01/2006	07/01/2007	
	<b>Land</b>	114,850	220,850		
	<b>Improvements:</b>	77,530	82,660		
	<b>Total:</b>	192,380	303,510	266,466	303,510
	<b>Preferential Land:</b>	0	0	0	0

Transfer Information			
<b>Seller:</b> DISNEY, RAY K	<b>Date:</b> 08/20/1999	<b>Price:</b> \$190,000	
<b>Type:</b> MULT ACCTS ARMS-LENGTH	<b>Deed1:</b> / 9375/ 207	<b>Deed2:</b>	
<b>Seller:</b>	<b>Date:</b> 01/25/1971	<b>Price:</b> \$0	
<b>Type:</b> UNKNOWN	<b>Deed1:</b> / 2384/ 743	<b>Deed2:</b>	
<b>Seller:</b>	<b>Date:</b>	<b>Price:</b>	
<b>Type:</b>	<b>Deed1:</b>	<b>Deed2:</b>	

Exemption Information			
<b>Partial Exempt Assessments</b>	<b>Class</b>	<b>07/01/2006</b>	<b>07/01/2007</b>
<b>County</b>	000	0	0
<b>State</b>	000	0	0
<b>Municipal</b>	000	0	0
<b>Tax Exempt:</b> NO			
<b>Exempt Class:</b>			<b>Special Tax Recapture:</b> * NONE *

(L)



results

<b>Maryland Department of Assessments and Taxation</b> <b>ANNE ARUNDEL COUNTY</b> <b>Real Property Data Search</b> (2007c)	<a href="#">Go Back</a> <a href="#">View Map</a> <a href="#">New Search</a> <a href="#">GroundRent</a>
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**Account Identifier:** District - 02 Subdivision - 748 Account Number - 06907550

Owner Information			
<b>Owner Name:</b>	JUBB JR, E CHARLES	<b>Use:</b>	RESIDENTIAL
<b>Mailing Address:</b>	962 WATERVIEW DR CROWNSVILLE MD 21032-1214	<b>Principal Residence:</b>	YES
		<b>Deed Reference:</b>	1) / 4557/ 255 2)

Location & Structure Information									
<b>Premises Address</b>						<b>Legal Description</b>			
962 WATERVIEW DR CROWNSVILLE 21032						LT 31 SC 1 PL 1 962 WATERVIEW DR SUNRISE BEACH			
<b>Map</b>	<b>Grid</b>	<b>Parcel</b>	<b>Sub District</b>	<b>Subdivision</b>	<b>Section</b>	<b>Block</b>	<b>Lot</b>	<b>Assessment Area</b>	<b>Plat No:</b>
31	16	389		748	1		31	2	1
<b>Special Tax Areas</b>									
Town Ad Valorem Tax Class									
<b>Primary Structure Built:</b>			<b>Enclosed Area</b>			<b>Property Land Area</b>			<b>County Use</b>
1955			1,504 SF			23,500.00 SF			
<b>Stories</b>		<b>Basement</b>		<b>Type</b>				<b>Exterior</b>	
2		NO		STANDARD UNIT				BRICK	

Value Information				
	<b>Base Value</b>	<b>Value As Of</b>	<b>Phase-In Assessments</b>	
			<b>As Of</b>	<b>As Of</b>
			07/01/2006	07/01/2007
	<b>Land</b>	289,230	513,030	
	<b>Improvements:</b>	74,270	79,110	
	<b>Total:</b>	363,500	592,140	515,926    592,140
	<b>Preferential Land:</b>	0	0	0    0

Transfer Information			
<b>Seller:</b> JUBB JR ELMER C		<b>Date:</b> 03/03/1988	<b>Price:</b> \$0
<b>Type:</b> NOT ARMS-LENGTH		<b>Deed1:</b> / 4557/ 255	<b>Deed2:</b>
<b>Seller:</b>		<b>Date:</b>	<b>Price:</b>
<b>Type:</b>		<b>Deed1:</b>	<b>Deed2:</b>
<b>Seller:</b>		<b>Date:</b>	<b>Price:</b>
<b>Type:</b>		<b>Deed1:</b>	<b>Deed2:</b>

Exemption Information			
<b>Partial Exempt Assessments</b>	<b>Class</b>	<b>07/01/2006</b>	<b>07/01/2007</b>
<b>County</b>	000	0	0
<b>State</b>	000	0	0
<b>Municipal</b>	000	0	0
<b>Tax Exempt:</b>	NO	<b>Special Tax Recapture:</b>	
<b>Exempt Class:</b>		* NONE *	

(m)

VARIANCE PLAN FOR

LOT 28 'SUNRISE BEACH'

866 TOGA LANE  
CROWNSVILLE, MD 21032  
TAX MAP 31 - GRID: 16 - PARCEL 389  
ZONED: R-2  
SECOND ELECTION DISTRICT ANNE ARUNDEL COUNTY, MARYLAND



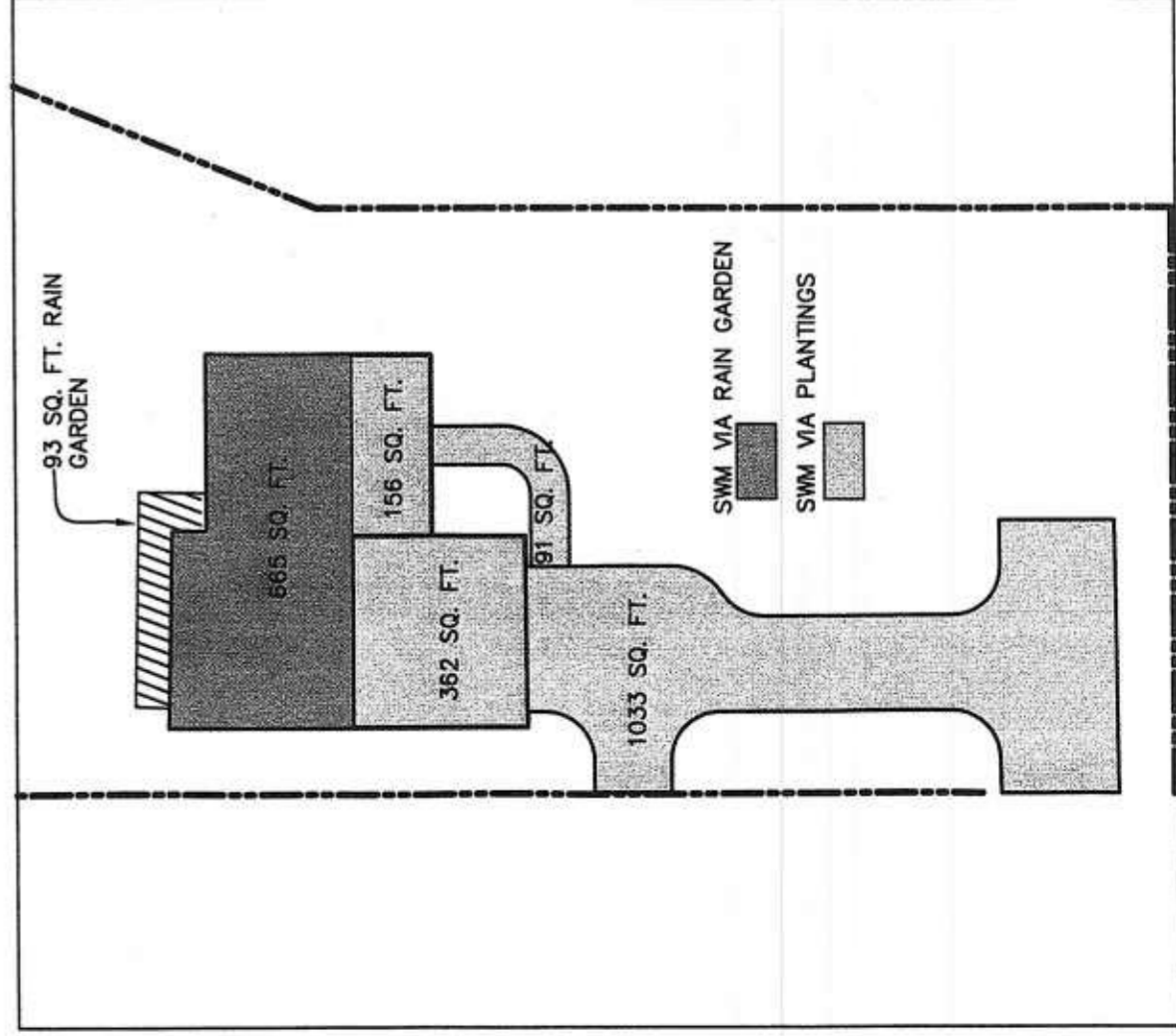
PROPERTY OWNERS MAP

SCALE: 1" = 90'

PROPERTY OWNERS LIST

PROPERTY OWNERS WITHIN 175' OF SITE

PROPERTY ADDRESS	OWNER / MAILING ADDRESS
LOT 24R TM 31, G. 16, P. 389 948 TOGALANE CROWNSVILLE, MD 21032	THY C. PHAM & CHRISTOPHER MCGRADY 948 TOGALANE CROWNSVILLE, MD 21032
LOT 25 TM 31, G. 16, P. 389 950 TOGALANE CROWNSVILLE, MD 21032	RONALD W. & SHARON J. BRIDGES 950 TOGALANE CROWNSVILLE, MD 21032
LOT 26 TM 31, G. 16, P. 389 952 TOGALANE CROWNSVILLE, MD 21032	JAMES N. & BARBARA J. MCCUTCHEON 952 TOGALANE CROWNSVILLE, MD 21032
LOT 27 TM 31, G. 16, P. 389 954 TOGALANE CROWNSVILLE, MD 21032	JOHN F. & ANGELA M. RABENA 954 TOGALANE CROWNSVILLE, MD 21032
LOT 28 TM 31, G. 16, P. 389 956 TOGALANE CROWNSVILLE, MD 21032	JOHN F. & ANGELA M. RABENA 956 TOGALANE CROWNSVILLE, MD 21032
LOT 28 & 30 TM 31, G. 16, P. 389 958 TOGALANE CROWNSVILLE, MD 21032	JEANNE M. ROBY 958 TOGALANE CROWNSVILLE, MD 21032
LOT 31 TM 31, G. 16, P. 389 962 TOGALANE CROWNSVILLE, MD 21032	E. CHARLES JUBB JR. 962 TOGALANE CROWNSVILLE, MD 21032
LOT 32 TM 31, G. 16, P. 389 964 TOGALANE CROWNSVILLE, MD 21032	MARK H. LUPKIE 964 TOGALANE CROWNSVILLE, MD 21032
LOT 33 TM 31, G. 16, P. 389 966 TOGALANE CROWNSVILLE, MD 21032	LOUIS E. & JANET L. HEDRICK 966 TOGALANE CROWNSVILLE, MD 21032
LOT 34 TM 31, G. 16, P. 389 968 TOGALANE CROWNSVILLE, MD 21032	MATTHEW A. EARL & DIANE K. MBBEE 968 TOGALANE CROWNSVILLE, MD 21032



IMPERVIOUS AREA PLAN

SCALE: 1"=20'

STORMWATER MANAGEMENT STATEMENT

STORMWATER MANAGEMENT IS PROVIDED FOR VIA RAIN GARDENS FOR IMPERVIOUS COVERAGE OUTSIDE SEPTIC BUFFERS. THE REMAINING IMPERVIOUS COVERAGE WILL BE ADDRESSED VIA PLANTINGS. SEE AREA PLAN THIS SHEET.

SWM PLANTINGS

VM Planting Calculation:  
1,894 x 100 = 18.9 OR 19 trees or 57 shrubs

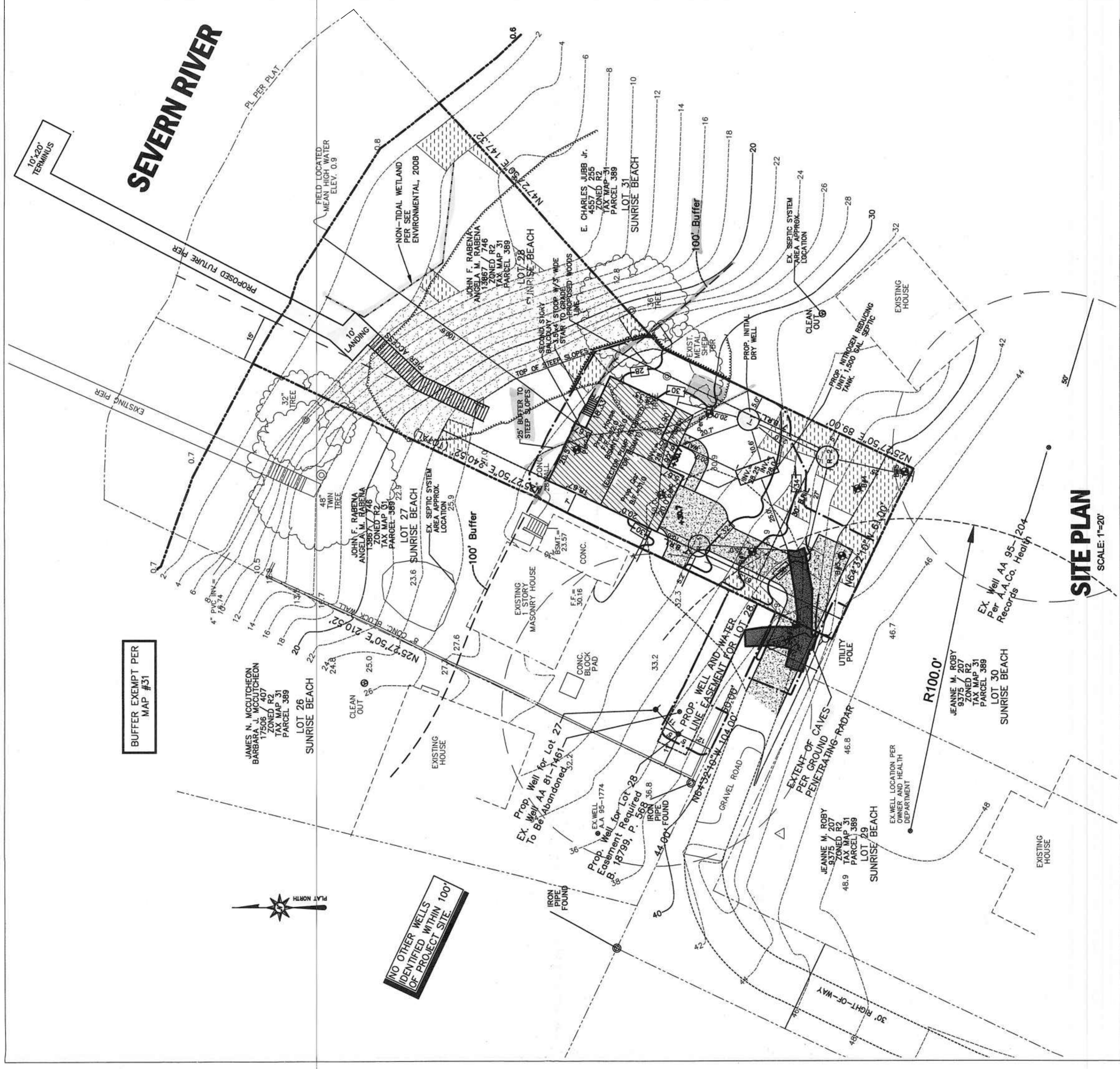
Plant List:

0 TREES

33 SHRUBS

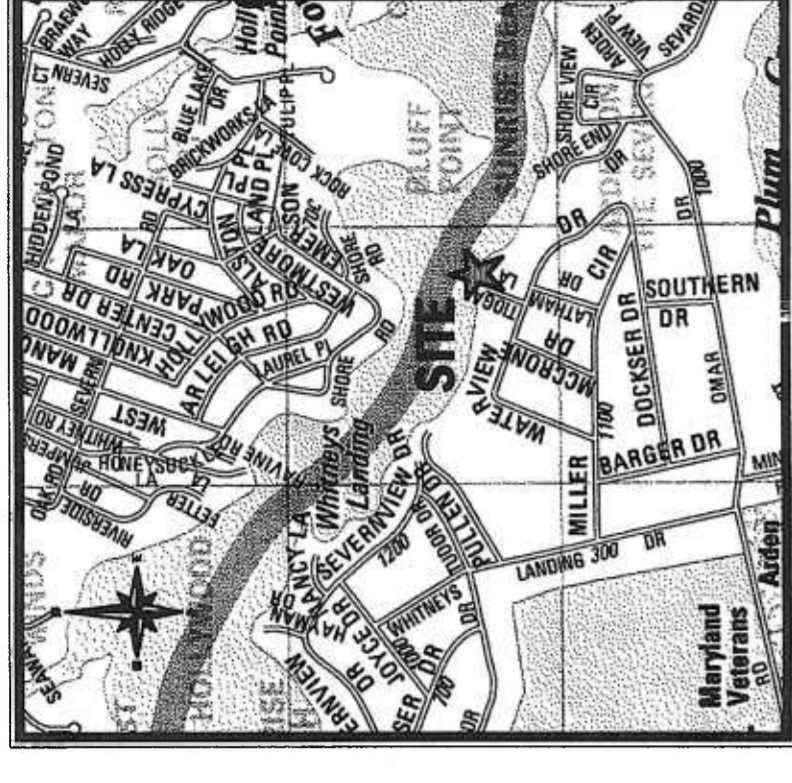
VARIANCE REQUEST

VARIANCE IS REQUESTED FOR RELIEF TO ARTICLE 17, SUBTITLE 2, SECTION 17-6-201 OF THE ANNE ARUNDEL COUNTY CODE WHICH STATES DEVELOPMENT IN THE OTS-10 ZONING DISTRICT SHALL BE LIMITED TO SINGLE-FAMILY RESIDENTIAL DEVELOPMENT NOT OCCUR WITHIN SLOPES OF 1% OR GREATER UNLESS DEVELOPMENT WILL FACILITATE STABILIZATION OF THE SLOPE OR THE DISTURBANCE NECESSARY TO ALLOW CONNECTION TO A PUBLIC UTILITY.



SITE PLAN

SCALE: 1"=20'



VICINITY MAP

SCALE: 1"=2000'  
COPYRIGHT: ADD THE MAP PEOPLE  
PERMITTED USE NO. 20400770

GENERAL NOTES

- Property Owners:  
JOHN F. RABENA & ANGELA M. RABENA  
2187A SCHOOLHOUSE COURT  
ASHBURN, VA 20146
- Site Address: 956 TOGA LANE  
CROWNSVILLE, MD
- The property is located on Tax Map 31, Grid 16, Parcel 389.
- Tax Account Number 02-748-03334800
- Bearings and Distances Shown per Deeds of Record.
- No Title Report provided at this time.
- No boundary survey has been performed on this site.
- Current Perc Test No. T02036282, this site has an approved septic site plan for a house < 3,500 Sq. Ft.
- The septic area shall remain unencumbered by buildings, easements, right-of-ways, or other permanent or physical objects.
- Zoning: R-2  
Setbacks:  
Front: 7'-0"  
Side: 7'-0"  
Rear: 25'
- This site is located in the LDA and is shown as buffer modified.

LEGEND

- Property Line
- Existing Contour
- Approx. Wood Line
- Existing Edge of Pave
- Existing Protection Fence
- Proposed LOD
- Proposed Silt Fence
- Proposed Contour
- 25%+ Slopes
- 15-25% Slopes
- Prop. Woodline

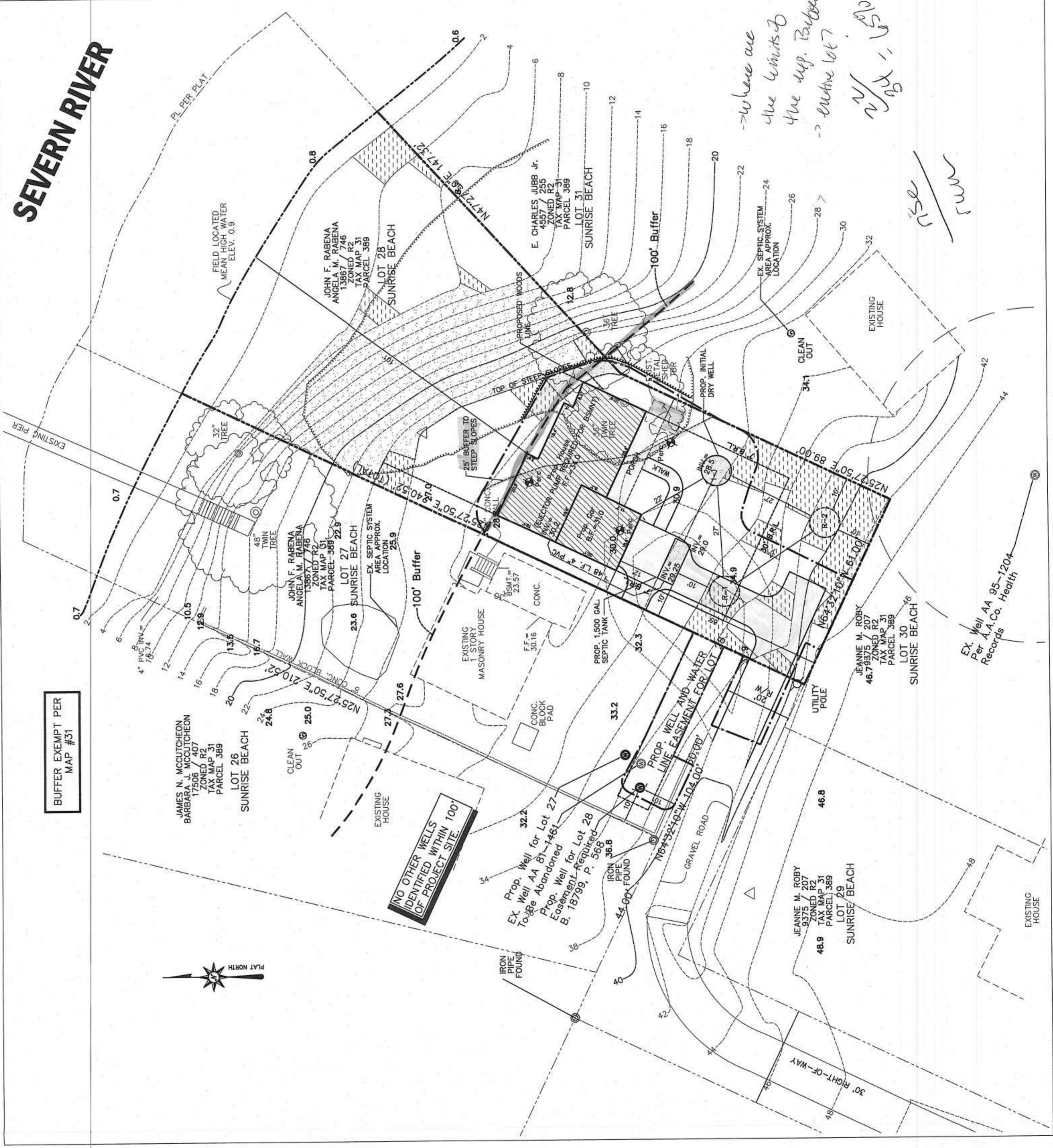
SITE CALCULATIONS

- Total Site area...14,774 sq. ft.
- Site area in Critical area...4,774 sq. ft.
- Existing impervious area...70 sq. ft.
- Existing impervious to be Removed...0 sq. ft.
- Existing impervious to Remain...0 sq. ft.
- Proposed impervious area...1,221 sq. ft. (house) 1,004 sq. ft. (drive) 113 sq. ft. (sidewalk) 70 sq. ft. (porch) 2,408 sq. ft. Total
- Total Impervious Coverage after Construction...2,408 sq. ft. (12.06%)
- Total Impervious Coverage Allowed...4,617 sq. ft. (31.25%)
- Total Woodland Removed...869 sq. ft.
- Total Woodland Remaining...3,936 sq. ft.
- Opposed Woodland Area...5,630 sq. ft.
- Total 25% Slopes...114 sq. ft.
- Total 25% Slope Disturbance...114 sq. ft.

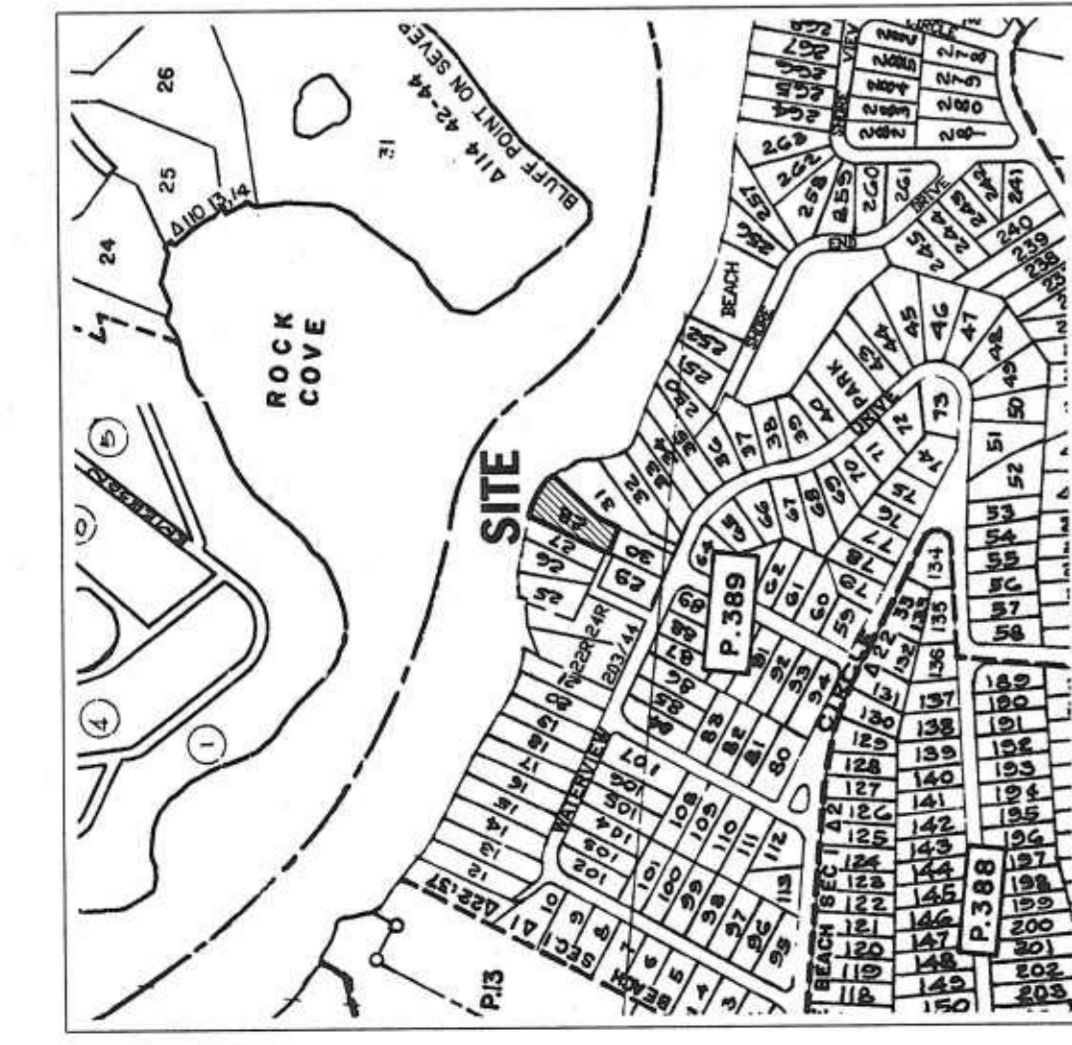
# VARIANCE PLAN FOR LOT 28 'SUNRISE BEACH'

956 TIOGA LANE  
CROWNSVILLE, MD 21032  
TAX MAP 31 ~ GRID 16 ~ PARCEL 389  
ZONED: R-2

SECOND ELECTION DISTRICT ANNE ARUNDEL COUNTY, MARYLAND



**SITE PLAN**  
SCALE: 1"=20'



**PROPERTY OWNERS MAP**  
SCALE: 1"=500'

**PROPERTY OWNERS LIST**  
PROPERTY OWNERS WITHIN 175' OF SITE

PROPERTY ADDRESS	OWNER / MAILING ADDRESS
LOT 24R T.M. 31, G. 16, P. 389 948 TIOGA LANE CROWNSVILLE, MD 21032	THY C. PHAM & CHRISTOPHER MCGRODY CROWNSVILLE, MD 21032
LOT 25 T.M. 31, G. 16, P. 389 950 TIOGA LANE CROWNSVILLE, MD 21032	RONALD W. & SHARON J. BRIDGES CROWNSVILLE, MD 21032
LOT 26 T.M. 31, G. 16, P. 389 952 TIOGA LANE CROWNSVILLE, MD 21032	JAMES N. & BARBARA J. MCCUTCHEON CROWNSVILLE, MD 21032
LOT 27 T.M. 31, G. 16, P. 389 954 TIOGA LANE CROWNSVILLE, MD 21032	JOHN E. & ANGELA M. RABENA CROWNSVILLE, MD 21032
LOT 28 T.M. 31, G. 16, P. 389 956 TIOGA LANE CROWNSVILLE, MD 21032	JOHN E. & ANGELA M. RABENA CROWNSVILLE, MD 21032
LOT 29 & 30 T.M. 31, G. 16, P. 389 960 WATERVIEW DRIVE CROWNSVILLE, MD 21032	JEANNE M. ROBY CROWNSVILLE, MD 21032
LOT 31 T.M. 31, G. 16, P. 389 962 WATERVIEW DRIVE CROWNSVILLE, MD 21032	E. CHARLES JUBB JR. CROWNSVILLE, MD 21032
LOT 32 T.M. 31, G. 16, P. 389 964 WATERVIEW DRIVE CROWNSVILLE, MD 21032	MARK H. LUPPKE CROWNSVILLE, MD 21032
LOT 33 T.M. 31, G. 16, P. 389 966 WATERVIEW DRIVE CROWNSVILLE, MD 21032	LOUISE & JANET L. HEIDRICK CROWNSVILLE, MD 21032
LOT 34 T.M. 31, G. 16, P. 389 968 WATERVIEW DRIVE CROWNSVILLE, MD 21032	MATTHEW A. EARL & DIANE K. MCBEE CROWNSVILLE, MD 21032

**VARIANCE REQUEST**

VARIANCE IS REQUESTED FOR RELIEF TO ARTICLE 17, SUBTITLE 2, SECTION 17-8-201 OF THE ANNE ARUNDEL COUNTY CODE WHICH STATES "DEVELOPMENT IN THE LIMITED DEVELOPMENT AREA (LDA) OR RESOURCE CONSERVATION AREA (RCA) MAY NOT OCCUR WITHIN SLOPES OF 15% OR GREATER UNLESS DEVELOPMENT WILL FACILITATE STABILIZATION OF THE SLOPE OR THE DISTURBANCE NECESSARY TO ALLOW CONNECTION TO A PUBLIC UTILITY."

**GENERAL NOTES**

- Property Owners: JOHN F. RABENA & ANGELA M. RABENA  
2194 BROOKWOOD LANE  
ASHBURN, VA 20146
- Site Address: 956 TIOGA LANE  
CROWNSVILLE, MD
- The property is located on Tax Map 31, Grid 16, Parcel 389.
- Tax Account Number 02-748-03334800
- Bearings and Distances Shown per Deeds of Record.
- No Title Report provided at this time.
- No boundary survey has been performed on this site.
- Current Perc Test No. T02036282, this site has an approved septic site plan for a house < 3,500 Sq. Ft.
- The septic area shall remain unencumbered by buildings, easements, right-of-ways, or other permanent or physical objects.
- Zoning: R-2  
Setbacks: 30'  
Side: 7'  
Rear: 25'
- This site is located in the LDA and is shown as buffer modified.

**LEGEND**

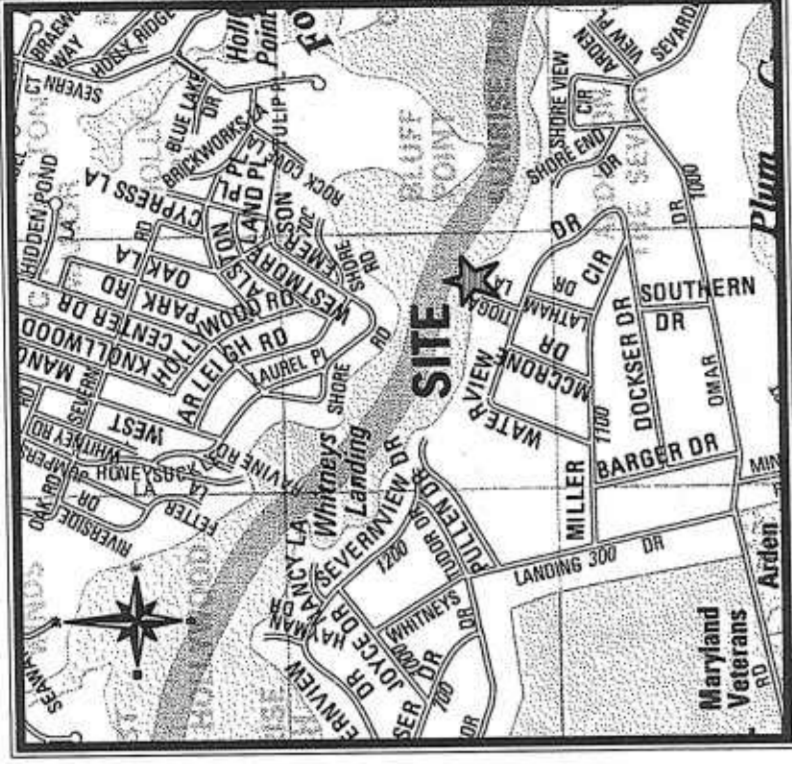
- Property Line
- Existing Contour
- Approx. Wood Line
- Existing Edge of Pavement
- Existing Protection Fence
- Proposed LOD
- Proposed Silt Fence
- Proposed Contour
- 25% Slopes
- 15-25% Slopes
- Ex. Gravel Drive
- Prop. Parking Pad
- Prop. Woodslane

**SITE CALCULATIONS**

- Total Site area: 19,126 sq. ft.
- Site in Critical area: 19,126 sq. ft.
- Existing impervious area: 70 sq. ft.
- Existing impervious to be removed: 70 sq. ft.
- Existing impervious to remain: 0 sq. ft.
- Proposed impervious area: 1,374 sq. ft. (house) 170 sq. ft. (porch) 999 sq. ft. (parking pad) 105 sq. ft. (sidewalk) 2,648 sq. ft. Total
- Total Impervious Coverage after Construction: 2,648 sq. ft. (13.85%)
- Total Impervious Coverage Allowed: 5,977 sq. ft. (31.25%)
- Total Woodland: 4,805 sq. ft.
- Total Woodland Remaining: 3,936 sq. ft.
- Proposed Disturbed Area: 6,336 sq. ft.
- Total Slope Disturbance: 644 sq. ft.
- Total 25% Slope Disturbance: 114 sq. ft.

**VICINITY MAP**

SCALE: 1"=2000'  
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Engineers, Planners and Surveyors  
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Annapolis, Maryland 21401  
410.897.9290  
410.897.9298 fax  
email: info@bayengineering.com  
www.bayengineering.com

**LOT 28 'SUNRISE BEACH'**  
OF THE VARIANCE FOR  
956 TIOGA LANE  
CROWNSVILLE, MARYLAND  
TAX MAP 31, GRID 16, PARCEL 389  
ANNE ARUNDEL COUNTY  
SECOND DISTRICT

Rev. #	By	Date	Description

Date: 7-29-07  
Timothy J. Martin, R.S. #10989

NONE : Xrefs / Images