

AA 555-07 Burgess, Michael
VAR 0306

51829-6336

AJW comments

10/5/07

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



Margaret G. McHale
Chair

Ren Serey
Executive Director

**STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS**

1804 West Street, Suite 100, Annapolis, Maryland 21401
(410) 260-3460 Fax: (410) 974-5338
www.dnr.state.md.us/criticalarea/

October 9, 2007

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

Re: Burgess, Michael- 2007-0306-V

Dear Mr. William Ethridge:

Thank you for forwarding information on the above reference variance request. The applicant has requested an after-the-fact variance to legalize an accessory structure in the Critical Area Buffer. The property is designated as a Limited Development Area (LDA) and is currently developed with a single-family dwelling, driveway, deck and pier.

The Existing Retaining Wall is in Violation of State and Federal Permits

The accessory structure is a 47-foot long concrete block retaining wall and steps that was constructed without authorization. This structure was not included within the scope of the permits issued by Maryland Department of the Environment (MDE) and by the United States Army Corps of Engineers (USACE) for a shoreline erosion control project on the applicant's property. The permit numbers are MDE permit #05-GL-1028, and USACE permit #200561760. The constructed retaining wall is in violation of the terms of both the MDE and the USACE permits.

The MDE permit required that the applicant establish a marsh between the shoreline and where the retaining wall is located for the purpose of both stabilizing the bank and providing enhanced water quality and habitat. Had the applicant complied with the permit, the retaining wall would not have been necessary.

This permit provided that in addition to emplacing 47 feet of stone revetment and construction of a pier, the applicant would "fill, grade and plant marsh vegetation on 40 linear feet of eroding shoreline." When I visited the property on October 10, 2007, I observed no marsh vegetation along the 40 linear feet of shoreline. Instead, the 40 feet of shoreline is currently a sandy beach. The MDE permit specifically conditioned

permission for the shoreline erosion control project on the completion of marsh establishment plantings of spartina alterniflora and spartina patens within one year of the sand filling, and on the marsh establishment project being maintained as a wetland, with non-nuisance species' aerial coverage of at least 85% for three consecutive years. The conditions further specified that "if 85% of [vegetative] coverage is not attained, the reasons for failure shall be determined, corrective measures shall be taken, and the area shall be replanted."

The constructed retaining wall is also in violation of the terms of the USACE permit #200561760. The USACE conditioned the granting of their permit on the work being completed in compliance with the submitted plans, including the applicant's proposed marsh creation. The USACE permit states, "if any of the information contained in your application and/or plans is later found to be in error, the MDSPGP-2 authorization for your project may be modified, suspended, or revoked."

The applicant is currently in violation of both the MDE and the USACE permits by failing to complete the proposed marsh creation, and by constructing the unauthorized retaining wall. Accordingly, it is the position of this Office that the variance process is inappropriate. The applicant is trying to obtain legal permission from one unit of government (Anne Arundel County) for structures which violate both MDE and Army Corps permits. If the County nonetheless chooses to process this application, this office recommends that the applicant's variance to permit the retaining wall be denied, and that the applicant be required to comply with the terms of the MDE and USACE permits. Compliance with the MDE and USACE permits requires removal of the existing retaining wall, and stabilization and planting of the bank along the 40-feet of shoreline in accordance with the terms of the originally proposed and permitted shoreline erosion control project.

Recommended Mitigation

This office recommends that the applicant provide the standard mitigation plantings at a 1:1 ratio for the total area of disturbance to the Buffer that is above MHW from this shoreline erosion control project. The applicant should be required to provide these mitigation plantings onsite in the Buffer. It appeared during this office's site visit to the property that there is ample space for such plantings in the Buffer on the property.

Further, the County previously issued a variance for this property to allow forest clearing in excess of the maximum 6,534 square feet for a property less than one half acre, for construction of the dwelling. In case number 2004-0118-V, Administrative Hearing Officer Stephen M. LeGenre conditioned this variance on the applicant providing mitigation for the excess 5,843 square feet of clearing "on a 3:1 basis with plantings of native species onsite to the extent practicable." The applicant's mitigation planting plan that was submitted to Anne Arundel County shows that the applicant was to provide 4,000 square feet of plantings onsite, consisting of 10 trees and 30 shrubs, with at least four trees planted in the Buffer. As of this office's October 10, 2007 site visit, it did not

appear that these plantings had been done. From my observation, it seems clear that this applicant is in violation of the condition on his 2004 variance. The County should not need any additional reason to suspend processing on this new variance request until full compliance is achieved on the terms of the 2004 variance. We request that the applicant either provide confirmation that these mitigation plantings were done on the property, or that the applicant complete those mitigation plantings onsite at this time.

Variance Standards

Disturbance from Structures in the 100-foot Buffer

In 2002 and 2004, the General Assembly strengthened the Critical Area Law, and reiterated its commitment to the Chesapeake Bay Critical Area's water quality and wildlife habitat values, especially emphasizing the importance of the 100-foot Critical Area Buffer. In particular, the General Assembly reaffirmed the stringent standards, which an applicant must meet in order for a local jurisdiction to grant a variance to the Critical Area law. The State law provides that variances to a local jurisdiction's Critical Area program may be granted **only** if a zoning board finds that an applicant has satisfied its burden to prove that the applicant meets each one of the county's variance standards, including the standard of "unwarranted hardship." The General Assembly defined that term as follows: "without the variance, the applicant would be denied reasonable and significant use of the entire parcel or lot." Furthermore, the State law establishes presumption that a proposed activity for which a Critical Area variance is requested does not conform to the purpose and intent of the Critical Area law. The Hearing Officer must make an affirmative finding that the applicant has overcome this presumption, based on the evidence presented.

In this instance, the applicant is requesting an after-the-fact variance to legalize his unauthorized disturbance to the 100-foot Buffer in the form of a block retaining wall and steps. This structure does not comply with the shoreline erosion control project that both Maryland Department of the Environment (MDE) and the United States Corps of Engineers (USACE) determined was an effective means for controlling erosion on this property. Therefore, the retaining wall and steps are not an authorized shoreline erosion control measure, but rather are illegal construction of accessory structures in the Buffer.

The County's Critical Area Law and Criteria are intended to assure that the integrity of the Buffer is not compromised by the individual and cumulative impacts of development within the County. The applicant's unauthorized Buffer disturbance lies in direct contrast to the goals of the General Assembly and the goals of the Buffer. In opposing this variance, I have addressed each of the standards as it pertains to this case:

- 1. That special conditions or circumstances exist that are peculiar to the land or structure within the jurisdiction's Critical Area program that would result in an unwarranted hardship to the applicant.*

As stated in Anne Arundel County Code 17-8-301, no new structures may be located in the 100-foot Buffer except for water-dependent uses and shore erosion protection

measures and Section 17-8-302 states that the 100-foot Buffer and expanded Buffer shall be maintained in natural vegetation. As proposed and permitted, the applicant's prior shoreline erosion control project would have controlled erosion of the shoreline. The retaining wall was not within the scope of that project, and the property owner did not complete the project as was required by the MDE and USACE permits. Therefore, the applicant has not shown that denial of a variance to permit the retaining wall will create any hardship since he was able to and required by State and federal permits to control erosion on his property without construction of the retaining wall and steps. As stated above, the General Assembly defined "unwarranted hardship" to mean that the applicant must prove that, without the requested variance, he would be denied reasonable and significant use of **the entire parcel or lot**. Because the applicant has not shown that he will suffer a hardship, let alone an unwarranted hardship if this variance is denied, the property owner has not met his burden of proof to overcome the presumption against him on this variance standard.

2. *That a literal interpretation of this subtitle or the local Critical Area Program and related ordinances will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area of the local jurisdiction.*
This office would not support similar variance requests to permit structures within the 100-foot Buffer, where evidence has not been provided to show that it is necessary to control erosion on the property. There is sufficient opportunity on this property to control erosion through the required terms of the MDE and USACE permits. Therefore, denial of this variance would not deny the applicants a right commonly enjoyed.
3. *The granting of a variance will not confer upon an applicant any special privilege that would be denied by this subtitle or the local Critical Area program to other lands or structures within the jurisdiction's Critical Area.*
If the variance is granted, it would confer upon the applicant a special privilege that would be denied to others in this area, as well as in similar situations in the County's Critical Area. To grant a variance to allow disturbance to the 100-foot Buffer for a structure that was built illegally, and is not necessary for shoreline erosion control would confer a special privilege on the applicant. The applicant has the burden of proof and the burden of persuasion to overcome the presumption that his proposed variance does not conform to the Critical Area Law. We do not believe the applicant has overcome this burden.
4. *The variance request is not based upon conditions or circumstances which are the result of the actions by the applicant, nor does the request arise from any condition conforming, on any neighboring property.*
The need for the variance was entirely created by the property owner. If the property owner has completed the prior shoreline erosion control project as was originally proposed and required by the State and federal permits, there would have been no bank left to stabilize with a retaining wall. Instead the area would have been established as a marsh by the filled and graded sand and native wetland plantings.

Mr. Ethridge
October 9, 2007
Page 5 of 5

5. *The granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the jurisdiction's Critical Area, and that the granting of the variance will be in harmony with the general spirit and intent of the Critical Area law and the regulations.*

In contrast, the granting of this variance is not in harmony with the general spirit and intent of the Critical Area law and regulations. Allowing the retaining wall to remain will allow an unnecessary and unnatural structure to remain in the Buffer, where a natural method marsh creation would have provided the same shoreline stabilizing function. The County law recognizes that a naturally vegetated fully functioning 100-foot Buffer is vital to the water quality of the Chesapeake Bay and its Criteria are intended to assure that the integrity of the Buffer is not compromised by the individual and cumulative impacts of development within the County. This proposal not only further reduces the functions provided by the Buffer on this site, but would contribute to the individual impacts of development on the Bay.

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 555-07
Robert Cuthbertson

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 2007-0306-V

L. MICHAEL AND DIANE BURGESS

FIRST ASSESSMENT DISTRICT

DATE HEARD: OCTOBER 16, 2007

ORDERED BY: STEPHEN M. LeGENDRE, ADMINISTRATIVE HEARING OFFICER

PLANNER: WILLIAM ETHRIDGE

DATE FILED NOVEMBER 19th, 2007

PLEADINGS

L. Michael Burgess and Diane Burgess, the applicants, seek a variance (2007-0306-V) to perfect a retaining wall and steps with less setbacks and buffer than required on property located along the east side of Leritz Lane, south of Melanie Lane, Edgewater.

PUBLIC NOTIFICATION

The hearing notice was posted on the County's web site in accordance with the County Code. The file contains the certification of mailing to community associations and interested persons. Each person designated in the application as owning land that is located within 175 feet of the property was notified by mail, sent to the address furnished with the application. Mr. Burgess 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

This case concerns the same property the subject of a decision by this office in Case No. 2004-0118-V (June 2, 2004). The prior Order conditionally approved variances for additional clearing and less setbacks to permit the construction of a dwelling. The present request is to perfect a concrete retaining wall and stone steps. The construction is 35 feet in length and three feet in height and is located

25 feet from mean high water (Glebe Bay) and five feet from the front lot line.

The property is mapped as a buffer modification area.

Anne Arundel County Code, Article 18, Section 18-13-104(a) creates a 100-foot buffer from tidal waters. Article 17, Section 17-8-702(b) proscribes new development closer to the shoreline than the principal structure in a buffer modification area. However, in this case, the modified buffer does not apply, because the dwelling is more than 100 feet from water. Finally, Section 18-4-501 requires accessory structures in the underlying R1 Residential district to maintain 50 feet from the front lot line. Accordingly, the proposal requires a buffer variance of 75 feet and a variance of 45 feet to the front setback.

William Ethridge, a planner with the Office of Planning and Zoning, testified that the property is below the minimum area and width for the district and irregular in configuration. In December 2004, the applicants requested a building permit for shoreline work consisting of stone revetment, groins, sand and plants. The permit issued in June 2005 after the applicants obtained authorization from the Maryland Department of the Environment (MDE) and the US Army Corps of Engineers to alter tidal wetlands. During the course of construction, the contractor suggested a retaining wall for shoreline stabilization. On inquiry to the County, the applicants were advised that retaining walls not more than two feet in height are exempt from permits. The retaining wall was commenced but a stop work order issued because disturbance is not allowed in the buffer absent an approved variance. The witness summarized the agency comments. The comments are

extensive and conflicting. In the final analysis, the County's Critical Area Team and the Soil Conservation District are not opposed to the variance. However, the Chesapeake Bay Critical Area Commission recommended denial because the retaining wall is not within the scope of the wetlands authorizations, the property is deficient in mitigation plantings and the variance standards are not satisfied. By way of ultimate conclusion, Mr. Ethridge opposed the application.

Bob Lee, the applicants' engineering consultant, submitted a detailed letter of explanation. He insisted that the applicants are in compliance with their wetlands authorizations and that MDE and the Corps of Engineers are satisfied.¹ Roland Joun, also an engineering consultant to the applicants, confirmed an erosive condition at the shoreline.

Mr. Burgess confirmed the substance of the request. The applicants are planning to install grasses in the sandy beach in front of the retaining wall when the wall is completed. Ms. Burgess testified that the applicants have installed the mitigation plantings required under the 2004 variance, although a few shrubs need to be replaced. The applicants supplied several site photographs.

Area residents Diana Campe and Margaret Rytleski expressed concern for the erosion that has already occurred as well as the after-the-fact nature of the variance application.

¹ The witness supplied a letter in support of the application from John C. Wilmot. Mr. Wilmot, an architect, wrote in pertinent part, that the wall "appears to stabilize the ground from sliding into the water."

I visited the site and the neighborhood. This is a large dwelling on a lot with an angled shoreline. The waterside of the dwelling is planted in a thick lawn with a few mature trees. The mitigation plantings are predominantly in the side yards, more than 100 feet from the shore. The shoreline is protected with rip-rap at both sides with the retaining wall, steps and beach oriented closer to the southeast corner. There is no evidence of erosion. The property to the south has timber terracing behind a bulkhead. At the time of my visit, the tide had receded from the bulkhead, leaving a narrow strip of beach. The opposite shoreline is protected by extensive rip-rap.

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.

As a preliminary matter, it should be noted that retaining walls in the buffer have been the subject of changing requirements. See, in this regard, Case Nos. 2004-0066-V and 2004-0067-V, In Re: John Becker and Ami Haan (May 5, 2004) and Case No. 2004-029-V, In Re: Brian and Marsha Forgacs (April 26, 2004) (building permit and variance required for a retaining wall in the buffer, without regard to the height of the wall). But see BA 23-07V, In Re: Virginia Gutierrez (October 31, 2007) (variance required for a retaining wall in the buffer; building permit required only when the wall exceeds 24 inches in height).

Applying the facts to the controlling law, I find and conclude that the applicants are entitled to conditional relief from the code. Considering first the subsection (b) criteria for the Critical Area variance, due to the erosive condition encountered at the water, a strict application of the program would result in an unwarranted hardship. Under a literal application of the program, the applicants would be denied the right to shoreline erosion protection, a right commonly enjoyed by other properties in similar areas in the Critical Area; conversely, the granting of the variance is not a special privilege that the program typically denies. I further find that the variance does not arise from the actions of the applicant or

from land use on neighboring properties. Finally, the granting of the variance does not adversely impact Critical Area assets and harmonizes with the spirit and intent of the program.

Considering the zoning variance, this property satisfies the test of unique physical conditions, consisting of the erosive condition at the angled shoreline, such that there is no reasonable possibility of development in strict conformance with the code.

Considering the subsection (c) criteria, while reasonable minds may differ, I am satisfied that a conditional variance represents the minimum relief. This is a fairly modest wall and the property is well within the allowance for impervious coverage. There is no indication that the granting of the variance will alter the essential character of the neighborhood, substantially impair the use or development of adjacent property, or constitute a detriment to the public welfare. The approval is subject to the conditions in the Order.

In closing, I would be remiss if I failed to note that this case is distinguishable from the denial under Case No. BA 23-07-V. In the first place, the structures in Case No. BA 23-07-V consisted of not only a retaining wall, but also a garden wall and step. In the second place, the property exceeded the impervious coverage allowance. But most importantly, the retaining wall was not needed for slope stabilization.

ORDER

PURSUANT to the application of L. Michael Burgess and Diane Burgess, petitioning for a variance to perfect a retaining wall and steps with less setbacks and buffer than required, and

PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is this 19th day of November, 2007,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicants are **granted** a buffer variance of 25 feet and a variance of 45 feet to the front setback to permit a retaining wall and steps in accordance with the site plan. The approval is subject to the following conditions:

1. The applicants shall satisfy the mitigation requirements imposed by the Permit Application Center.
2. The applicant shall comply with the planting requirements of the wetlands authorization.



Stephen M. LeGendre
Administrative Hearing Officer

NOTICE TO APPLICANT

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

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

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




Live Search Maps

 **1004 Siske Rd, Curtis Bay, MD 21226**

My Notes

 **FREE!** Use Live Search 411 to find movies, businesses & more: **800-CALL-411.**



 Bird's eye view maps can't be printed, so another map view has been substituted.



Handwritten scribbles consisting of several overlapping loops and lines, possibly representing a signature or a mark.



2007-0306-V

**SEE ENVIRONMENTAL
SERVICES, INC.**

CHEESAPEAKE BAY CRITICAL AREA REPORT

Variance Applicant: L. Michael and Diane Burgess
For property at: 3315 Leritz Lane
Edgewater, MD 21037
TM 56, G 20, Parcel 134, Block 1, Lot 46

C.A. Land Use Designation: LDA
Zoning: R-1

August, 2007

Introduction/Variance Request:

The applicant owns a 0.48-acre waterfront lot on a small tidal cove off the South River in the Turnbull Estates subdivision in Edgewater, Anne Arundel County. The lot is improved with the newly-built owner's home, a pier and shore erosion works. The entire lot is located within the Critical Area, with a Limited Development (LDA) land use designation. See copy of enclosed Critical Area Map #27.

The applicant proposes to perfect 47 linear feet of concrete block retaining wall and block steps, built behind a sand beach and two stone groins for which approval was obtained from the Maryland Department of Environment. It was a determination by the County Department of Inspection and Permits that this work, necessarily in the 100-foot Buffer, requires a zoning variance.

A site visit was conducted on August 28, 2007, by Eric E. See of See Environmental Services, Inc. Mr. See had also visited the site in December, 2003, for a Critical Area study for the original variance request. The Critical area report from this is appended. The report is based on the August, 2007 revision of applicant Wilkerson & Associates, Inc. site plan, a reduced scale copy of which is enclosed at the end of this report.

General Site Conditions:

The applicants' property abuts a small tidal creek off Glebe Bay. All of the other waterfront lots have fortified shorelines with timber bulkheads or riprap revetment. The constructed wall is located just behind the pre-existing mean high water line, and about 20 feet behind the new mean high water line on the new sand beach created and permitted in front of the pre-existing 3-foot high somewhat eroded bank.

The Woodbridge Center
2444 Solomons Island Road, Suite 217
Annapolis, Maryland 21401
Tel: (410) 266-3828 Fax: (410) 266-3866

RECEIVED

SEP 18 2007

CRITICAL AREA COMMISSION

As noted in the 2003 photograph of the shoreline and the photograph taken in early 2007 with just the stone groins in place, there was an un-stabilized steep bank covered with vines (honeysuckle, etc.). The retaining wall was meant to help maintain the bank behind the sand beach which MDE had authorized.

If stone is considered "impervious", the total area of new impervious would be approximately 60 square feet. However, the blocks used are hollow and the wall so narrow (barely one foot wide) that this "impervious" coverage would have no impact of runoff or infiltration rates.

Findings:

The proposed/completed works would not adversely impact water quality or fish and wildlife habitat, because the wall helps stabilize a somewhat eroded bank and because concrete is environmentally benign, leaching only calcium. (On the other hand, a timber bulkhead leaches toxic metal salts that are impregnated into the wood to prevent rot.) Moreover, if no sand beach had been installed, moving the mean high water line outboard about 20 feet, the block could have been used as a "bulkhead" along the shoreline. The County Code defines bulkheads and stone revetments as "water dependent activities, and no variance is required for them.

References

Anne Arundel County. Critical Area Map 27.

Wilkerson & Associates, Revised Grading Plan



SEE ENVIRONMENTAL
SERVICES, INC.

CHESAPEAKE BAY CRITICAL AREA REPORT

Variance Application for:

Mike Burgess
c/o Wilkerson & Associates, Inc.
P. O. Box 17
Dunkirk, MD 20754

For a lot at:

3315 Leritz Lane, Edgewater, MD 21037
Tax Map 56, Grid 20, Parcel 134, Block 1, Lot 46

Critical Area Designation: LDA
Zoning: R1

March, 2004

I. Purpose of Variance Request:

The applicant is requesting several zoning variances to allow the development of a single-family residence on this 0.48-acre waterfront lot, located on Leritz Lane in the Turnbull Estates subdivision in Edgewater. The lot abuts a small cove off Glebe Bay on the South River, and is located entirely within the Chesapeake Bay Critical Area, with an LDA land use designation.

Based on the current site plan, the following variances to the County zoning ordinance (Article 28) are required:

§1A (105)(h)(vi), to clear greater than 6,534 square feet of forest or woodland on a lot smaller than one-half acre.

§2-305 (2) to reduce the side yard setbacks to less than 40-foot combined required in an R1 district (a variance of 5 feet).

The 100-foot Critical Area Buffer will be retained undisturbed.

This report is based on the site plan by Wilkerson & Associates, Inc., dated February, 2004, a photocopy of which is enclosed at the end of this report.

The Woodbridge Center
2444 Solomons Island Road, Suite 217
Annapolis, Maryland 21401
Tel: (410) 266-3828 Fax: (410) 974-6008

II. Critical Area Narrative - Site Description

The subject property is a wooded and waterfront in-fill lot, located in the Turnbull Estates subdivision. It is vegetated with a relatively young forest of Virginia pine and mixed hardwoods, with a relatively dense shrub layer composed mainly of multiflora rose, and with a patch of dense shrubs and vines along the shoreline, where vines have helped pull down the trees. The site is mapped with the Donlonton-urban land complex (DuB) mapping unity in the 1973 County Soil Survey.

Both adjoining lots are currently developed with single-family homes. These other lots have shore erosion control in the form of riprap and bulkhead, whereas the subject property has a short section of relatively stable but unprotected bank at the shoreline. Neighbors have kept the shoreline open. No plant species were observed that are considered rare, threatened or endangered by the U.S. Fish & Wildlife Service or the Maryland Department of Natural Resources (DNR).

III. Critical Area Checklist:

A. Existing and Proposed Vegetation Coverage:

Existing Conditions: The subject lot is contains +/- 14,755 square feet of forest, with a young- to medium-aged woodlands, and cleared brush along the shoreline.

Proposed Conditions: The proposed clearing is proposed to be 12,207 square feet of tree cover on the lot, or approximately 58% of the current tree cover on the lot. No clearing in the 100-foot Buffer is required, except for a potential path to a pier. Reforestation would be addressed by payment of a fee-in-lieu at time of the Grading Permit.

B. Stormwater and Water Quality:

Existing Conditions: There is no impervious coverage on the lot.

Proposed Conditions: Stormwater management will be addressed and reviewed by the County during review of the Grading Permit. The nature of the soils apparently will not allow conventional stormwater management, and additional plantings will be proposed at time of grading permit.

C. Aquatic Resources:

Existing Conditions: Aquatic resources in Glebe Bay are apparently relatively healthy, with beds of submerged aquatic vegetation mapped in the 2001 and 2002 annual SAV surveys by the Virginia Institute of Marine Sciences.

Proposed Conditions: With sediment control during construction and required stormwater management, no adverse impacts to aquatic resources are anticipated.

D. Forest Clearing and Impervious Coverage:

Existing Conditions: The Critical Area portion of the lot is contains +/- 14,755 square feet of woodland, with a dense understory. There is no existing impervious coverage on the lot.

Proposed Conditions: As noted above, the site has approximately 12,207 square feet of forest will be required to be removed for the proposed house. Proposed impervious coverage for the house and driveway would be 5,551 square feet, or 26% of Critical Area portion of the lot, well under the 31.25% allowed in LDA for a lot with an area between 8,000 and 21,780 square feet.

E. Habitat Protection Areas:

Existing Conditions: The subject property contains a "habitat protection area" in the form of the 100-foot Buffer.

Proposed Conditions: No disturbance for the house is proposed, and a potential path to a pier would be permitted as a "water-dependent activity".

IV. Conclusions - Variance Standards

It should be noted that the *intent* of Section 1A-105(h)(vi) was to make the reforestation requirements for development on smaller lots less onerous because typically forest clearing would exceed 30% of a small lot's area, which was previously then required to provide 3-to-1 reforestation. In fact, if this lot were just 880 square feet larger, it would be larger than one-half acre and, by the County Office of Law's interpretation of this Code reference, and a variance to §1A-105 would not be required. The proposed house is consistent with the other homes in the neighborhood.

With other requirements at time of Grading Permit including sediment control, stormwater management, and reforestation, the proposed development is not anticipated to cause adverse impacts to fish and wildlife habitat or water quality.

V. Site Investigation

A site investigation was conducted on December 13, 2003, to conduct the Critical Area study, by Eric E. See of See Environmental Services, Inc.

References

Anne Arundel County Office of Planning & Zoning, 1988. Critical Area Map #27.

Kirby, R. M. and E. D. Matthews, 1973. Soil Survey for Anne Arundel County, Maryland. USDA.

Maryland Department of Natural Resources, Wildlife and Heritage Division, October, 1997. "Rare, Threatened, and Endangered Animals of Maryland."

Reed, Porter B., Jr., 1988. National List of Plant Species that Occur in Wetlands: Northeast Region I). U.S. Fish & Wildlife Service. Biological Report 88 (26.1).

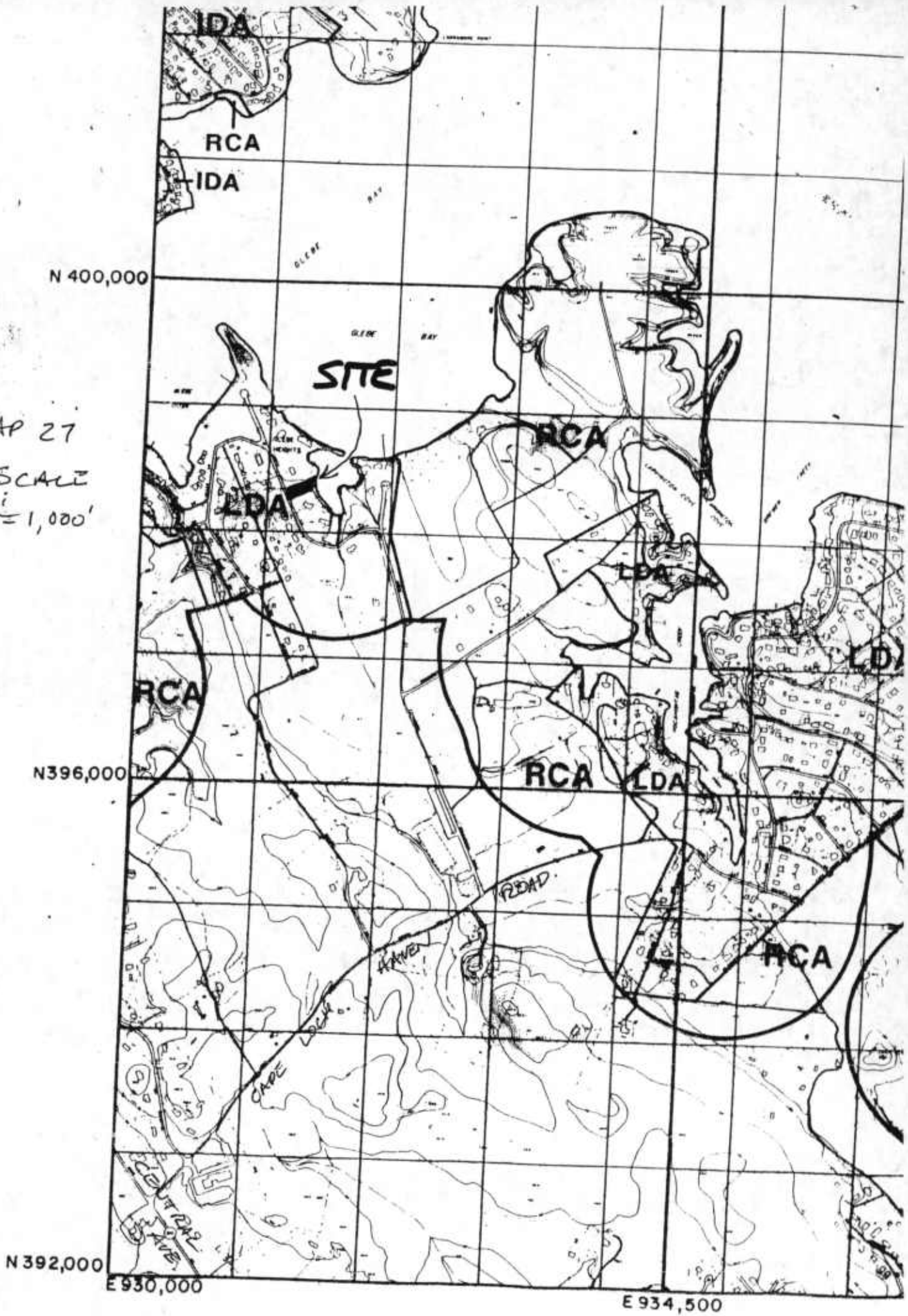
Wilkerson & Associates, Inc. 2002-2003 site plans and field surveys.

Virginia Institute for Marine Sciences, Annual SAV surveys, at www://vims.edu/sav.

MAP 27

SCALE

1" = 1,000'



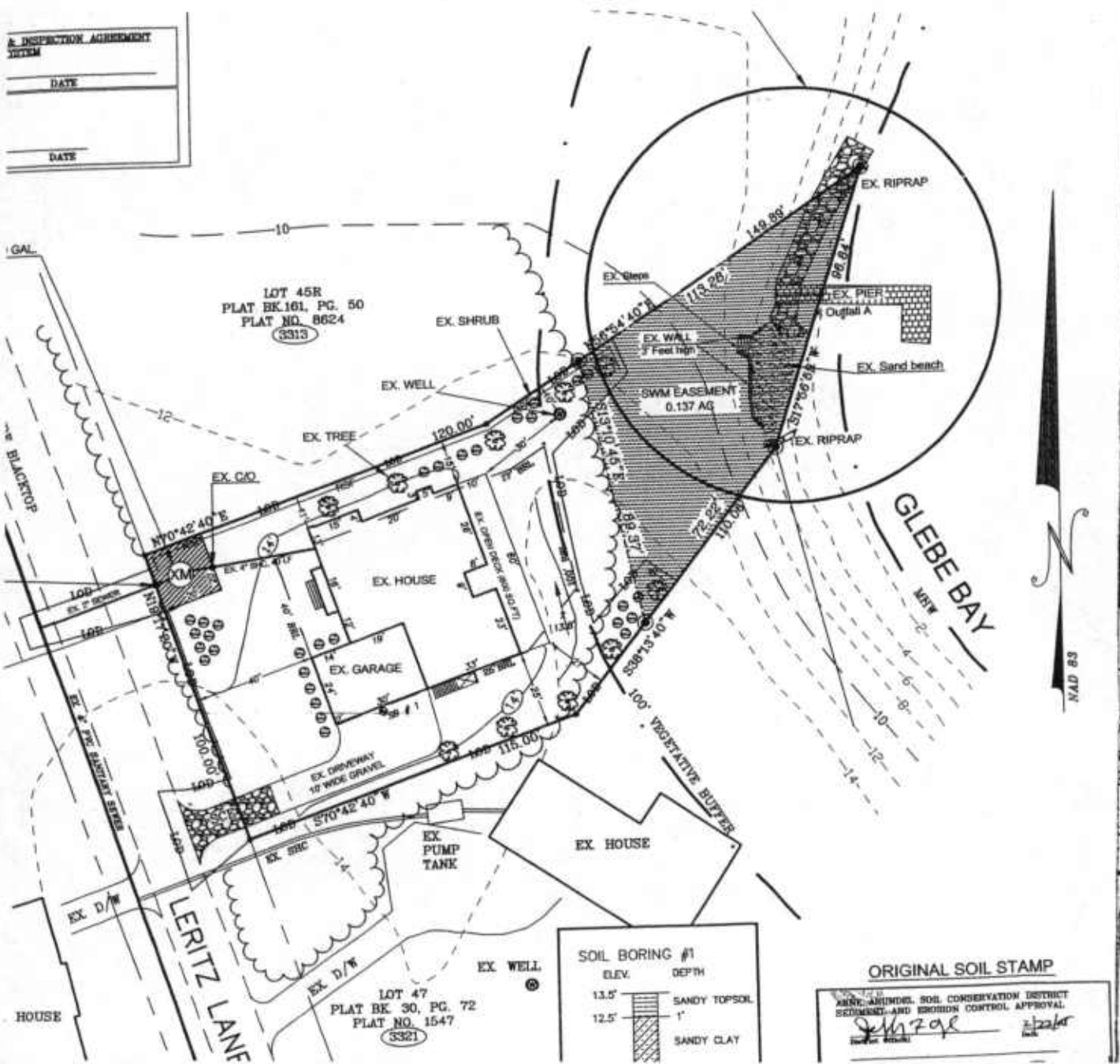
BURGESS PROPERTY VARIANCE

1"=50'

AUGUST, 2007

AREA OF REQUEST
FOR WALL AND STEPS

INSPECTION AGREEMENT
DATE _____
DATE _____



ORIGINAL SOIL STAMP
 STATE OF MICHIGAN, SOIL CONSERVATION DISTRICT
 SEDIMENT AND EROSION CONTROL APPROVAL
 [Signature]
 DATE



PICS/PS BURGESS.

- SHOW SHOULDER
PRE-WALL.

SPRING, 2007

DEC. 13, 2003 - PHOTO
OF EXISTING BANK
CONDITIONS



