

AA 733-07 Dailey, Donald
VAR 0413

51829-6386

JMC 1/2/08
2/2/10

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/

February 2, 2010

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

Re: 2010-0006-V – Dailey, Donald

Dear Ms. Cotter:

Thank you for forwarding information on the above-referenced variance request. We received a similar variance request in 2007 (2007-0413-V). The applicant seeks a variance to allow a dwelling with less setbacks and Buffer than required. This lot is 0.292 acres, or 12,723 square feet (although the site plan and applications' listed square footage vary), and is located in the Limited Developed Area (LDA). The application indicates that this lot is in a Buffer Modification Area (BMA). The applicant now proposes to build a single family dwelling and driveway for a lot coverage in the amount of 2,311 square feet, which is within the limits for a lot of this size, but approximately 100 square feet more and is in a different configuration than previously proposed. The dwelling unit is proposed to be built entirely within the 100-foot Buffer, but no further waterward (approximately 45' from Mean High Water) than the previous proposal in 2007. It is our understanding that the previous variance was withdrawn prior to a hearing.

Provided the lot is properly grandfathered, we do not oppose this variance request for the construction of a dwelling and driveway on this lot. If the County determines this request, or some variation of this request can be granted, we recommend 2:1 mitigation for the area of impact to the 100-foot Buffer. These plantings should be done in the form of native species and should be placed waterward of the proposed dwelling to the extent possible, and should be in addition to the retention of the forested area waterward of the proposed dwelling. If mitigation cannot be done on site, a fee in lieu may be substituted. Also, the 1st replacement for the septic tank should remain forested until the need for its use; at that point, the primary mound should be reforested, if possible.

Also, it appears that there may be disturbance to the nontidal wetlands located on site, therefore a permit from the Maryland Department of the Environment (MDE) may be

Ms. Pam Cotter
2/2/2010
Page 2 of 2

necessary.

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. I can be reached at 410-260-3476 should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Julie', with a long horizontal flourish extending to the right.

Julie Roberts
Natural Resources Planner
AA 740-07

Cc: Judy Cole, MDE

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



Margaret G. McHale
Chair

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January 2, 2007

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

Re: 2007-0413-V – Dailey, Donald and Lillian

Dear Ms. Schappert:

Thank you for forwarding information on the above-referenced variance request. The applicant seeks a variance to allow a dwelling with less setbacks and Buffer than required. This lot is 0.292 acres, or 12,723 square feet, and is located in the Limited Developed Area (LDA). The applicant proposes to build a single family dwelling and driveway for a total impervious surface area in the amount of 2,205 square feet, which is within the limits for a lot of this size. The dwelling unit is proposed to be built entirely within the 100-foot Buffer.

Provided the lot is properly grandfathered, we do not oppose this variance request for the construction of a modest sized dwelling and driveway on this lot. If the County determines this request, or some variation of this request can be granted, we recommend 3:1 mitigation for the area of impact to the 100-foot Buffer. These plantings should be done in the form of native species and should be placed waterward of the proposed dwelling to the extent possible, and should be in addition to the retention of the forested area waterward of the proposed dwelling. If mitigation cannot be done on site, a fee in lieu may be substituted. Also, the 1st replacement for the septic tank should remain forested until the need for its use; at that point, the primary mound should be reforested.

Also, it appears from the site plan that the well for this property may be located in the 25-foot buffer to nontidal wetlands. A permit from the Maryland Department of the Environment (MDE) may be necessary.


Ms. Suzanne Schappert

1/2/2008

Page 2 of 2

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. I can be reached at 410-260-3476 should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Julie Roberts', with a long horizontal flourish extending to the right.

Julie Roberts

Natural Resources Planner

AA 740-07

Cc: Judy Cole, MDE

733-07

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 2010-0006-V

**DONALD DAILEY, OWNER &
ROBERT DONOHUE, CONTRACT PURCHASER**

THIRD ASSESSMENT DISTRICT

DATE HEARD: FEBRUARY 25, 2010

ORDERED BY:

**DOUGLAS CLARK HOLLMANN
ADMINISTRATIVE HEARING OFFICER**

PLANNER: WILLIAM ETHRIDGE

DATE FILED: MARCH 16, 2010

PLEADINGS

Donald Dailey, owner, and Robert Donohue, contract purchaser, collectively referred to herein as the applicants, seek a variance (2010-0006-V) to allow a dwelling with less setbacks and buffer than required on property located along the west side of Riverside Drive, southwest of Sunset Drive, Pasadena.

PUBLIC NOTIFICATION

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

A hearing was held on February 25, 2010, in which witnesses were sworn and the following evidence was presented with regard to the proposed variances requested by the applicants.

The Property

The subject property has a street address of 8164 Riverside Drive, Pasadena, MD 21122. It is identified as Lots 662 & 663, Parcel 81 in Block 23,

Tax Map 18, in the subdivision of Pinehurst in Pasadena. The property is zoned R1 Residential. This is a waterfront lot located in the Chesapeake Bay Critical Area and is designated as limited development area (LDA). The property is mapped in a buffer modification area.

The Proposed Work

The applicants propose to construct a new single-family dwelling (30' x 24') and deck (14' x 10') on waterfront property that contains nontidal wetlands as shown on County Exhibit 2 - Revised Variance Plan, and Applicants' Exhibit 1 admitted into evidence at the hearing.

The Anne Arundel County Code

Article 18, § 18-2-402(b) states that OPZ designates a front yard setback on a waterfront lot that approximates the average front yard setback of the principal structures on abutting lots. The abutting dwellings on Lot 39 to the north and Lot 41 to the south are located 34 feet and 52 feet from the shoreline.

Article 17, § 17-6-401 provides that development may not occur within a nontidal wetland, or within a 25-foot buffer to nontidal wetland, except for certain commercial harvesting of trees.

The Variances Requested

The dwelling will be located 45 feet from the shoreline, or 11 feet into the front setback, as determined by § 18-2-402(b), and be built in the 25-foot buffer to nontidal wetlands. See County Exhibit 2 - Revised Variance Plan, and Applicants' Exhibit 1 which depicts in color the various work to be performed on the

property.¹ Both documents were admitted into evidence at the hearing. Therefore, variances to the front lot line setback are required to construct the proposed dwelling where it is depicted on County Exhibit 2, as well as a variance to its construction in the 25-foot buffer.

The Evidence Submitted At The Hearing

William Ethridge, a planner with the Office of Planning and Zoning (OPZ), testified that the subject property contains 12,723 square feet. The property has been zoned R1-Residential since the adoption of the Lake Shore Small Area Plan Maps effective October 24, 2005. The property is currently undeveloped, and lies between Riverside Drive and Bodkin Creek. It is lower in elevation than the adjoining properties on either side. It is not served by public water or sewer.

Mr. Ethridge testified that OPZ recommended approval of the requested relief because the property is below minimum size and width and is impacted by nontidal wetlands, provided that the Department of Health approved, the turnaround was not built in the nontidal wetlands, and mitigation and a landscaping plan were provided. The Critical Area Commission did not oppose the relief requested but asked for mitigation.

Matthew Forgen, the applicants' engineering consultant, testified that the property was platted in 1948 prior to the imposition of zoning in Anne Arundel County. An earlier application for relief from the Code (Case No. 2007-0413-V)

¹ Applicants' Exhibit 1 includes information not shown on County Exhibit 2. For example, a proposed turnaround is depicted on Applicants' Exhibit 1 that will be located at the end of the proposed driveway along the north lot line. Also, the extent of the limits of disturbance to install the well in the nontidal wetlands is shown on Applicants' Exhibit 1.

was withdrawn by the same applicants in order to meet concerns of the OPZ and the Department of Health. The location of the proposed dwelling has been moved to the north because of the need to provide three septic fields and a well, which will be located on the waterside of the dwelling. The location of these improvements is driven by the location of successful percolation tests, also shown on the exhibits submitted. Mr. Forgen showed where the well would be located in the nontidal wetlands on the waterside of the proposed dwelling. He testified that the house would be built on a slab and would be modest in size. The septic system would be a mound system because the property lies at such a low elevation.

County Exhibit 11, the critical area report prepared by M.A.F. & Associates, LLC, described the property as having “nontidal wetland vegetation onsite and at the water’s edge.” The report concludes that “the development of the lot will not have an adverse impact on the plant or wildlife habitat” of the property, and that it is “not possible to construct a single-family dwelling on this lot and not disturb the nontidal wetlands.”

Mr. Ethridge and Mr. Forgen stated that the impervious surface created by the proposed development would not exceed the permissible limits for this site.

Donald Dailey testified that he and his wife purchased the subject property in 2001 for \$60,000 and that they have entered into a contract to sell the property to Robert Donohue if certain conditions are met. Mr. Dailey speculated that the subject property might be the last, if not the last, undeveloped lot in the neighborhood. He testified that water flow ran down from the wooded area across

Riverside Drive and entered the subject property through a culvert and then flowed across the lot on the south side into the nontidal wetlands along the shoreline.

Steven Bird, and his wife, Helen Willey, testified that they live at 8180 Riverside Drive, two houses south of the subject property. They purchased their home in 1997 and thought the subject property would remain undeveloped because of its sensitive nontidal wetlands. They said the subject lot harbors wildlife and that the nontidal wetlands were valuable in processing runoff from lands further uphill. Mr. Bird introduced photographs (Protestant's Exhibits 1-3) which he took of the property in the past few years. They show the waterside of the property and tall grasses that grow in the nontidal wetlands (Exhibit 1) and how flooded the property gets when the tide is unusually high (Exhibits 2-3), which is apparently not unusual. He questioned whether anything could be built in such a low-lying area.

This testimony was echoed by JoAnn Uhl, who lives on the other side of the property at 8160 Riverside Drive. Ms. Uhl testified that she has lived in her home for five years and thought the property could not be developed. She also noted that wildlife and vegetation used the nontidal wetlands of the subject property and questioned whether the property could be developed without adversely affecting both the nontidal wetlands and the adjoining properties.

Mr. Forgen testified that the proposed dwelling would be built on a slab, and fill will be brought in to raise the level of the slab to 5 feet to reduce the

difference in elevation between the subject property and the properties on either side and meet flood elevation requirements.

There was no other testimony taken or exhibits received in the matter. The Hearing Officer did not visit the property.

DECISION

Upon review of the facts and circumstances, I find and conclude that the applicants are not entitled to relief from the Code. In short, this is a sensitive property. The nontidal wetlands serve an important purpose to the uplands and Bodkin Creek. The property is small and lower in elevation than neighboring properties. As the applicants admit by filing this application, the property cannot meet the Department of Health requirements (location of the septic system, use of mounds, distances from lot lines, distances from other properties and their systems, and the well to be installed on this property) without creating disturbance in the nontidal wetlands and the 25-foot buffer to nontidal wetlands that exist on this property. In order to build the house proposed for this property, the applicants will have to basically ignore the nontidal wetlands and the 25-foot buffer. A corner of the proposed house will invade the nontidal wetlands. The well, and the disturbance associated with the drilling of a well, will be placed in the nontidal wetlands. Much of the construction and development will take place in the 25-foot buffer.

The applicants purchased the property in 2001 knowing that it was burdened with nontidal wetlands. Despite this, the applicants want to develop the property. The problem is that the Department of Health regulations have pushed the proposed dwelling into the nontidal wetlands and their buffer. Without those regulations, the house could be placed at the road and the nontidal wetlands would be protected.

Here, however, the property is not large enough to support a house *and* the needed septic and well systems *and* protect the environment at the same time, at least not the house proposed here. If the Department of Health has determined that three septic fields are required, and that they must be located between the road and the proposed dwelling as shown on County Exhibit 2, then there isn't enough room on the property for a dwelling. As further explained below, I must deny the requested variances.

State Requirements for Critical Area Variances

§ 8-1808(d)(2) of the Natural Resources Article, Annotated Code of Maryland, provides in subsection (ii), that “[i]n considering an application for a variance [to the critical area requirements], a local jurisdiction shall presume that the specific development in the critical area that is subject to the application and for which a variance is required does not conform to the general purpose and intent of this subtitle, regulations adopted under this subtitle, and the requirements of the jurisdiction’s program.” (Emphasis added.) “Given these provisions of the State criteria for the grant of a variance, the burden on the applicant is very high.”

Becker v. Anne Arundel County, 174 Md.App. 114, 124; 920 A.2d 1118, 1124 (2007).

In *Becker v. Anne Arundel County*, *supra*, 174 Md.App. at 131; 920 A.2d at 1128, the Court of Special Appeals discussed the history of the critical area law in reviewing a decision from this County. The court's discussion of the recent amendments to the critical area law in 2002 and 2004, and the elements that must be satisfied in order for an applicant to be granted a variance to the critical area, is worth quoting at length:

In 2002, the General Assembly amended the [critical area] law. ... The amendments to subsection (d) provided that, (1) in order to grant a variance, the Board had to find that the applicant had satisfied each one of the variance provisions, and (2) in order to grant a variance, the Board had to find that, without a variance, the applicant would be deprived of a use permitted to others in accordance with the provisions in the critical area program. ... The preambles to the bills expressly stated that it was the intent of the General Assembly to overrule recent decisions of the Court of Appeals, in which the Court had ruled that, (1) when determining if the denial of a variance would deny an applicant rights commonly enjoyed by others in the critical area, a board may compare it to uses or development that predated the critical area program; (2) an applicant for a variance may generally satisfy variance standards rather than satisfy all standards; and, (3) a board could grant a variance if the critical area program would deny development on a specific portion of the applicant's property rather than considering the parcel as a whole.

...

In 2003, the Court of Appeals decided *Lewis v. Dep't of Natural Res.*, 377 Md. 382, 833 A.2d 563 (2003). *Lewis* was decided under the law as it existed prior to the 2002 amendments (citation omitted), and held, *inter alia*, that (1) with respect to variances in buffer areas, the correct standard was not whether the property owner retained reasonable and significant use of the property outside of the buffer, but whether he or she was being denied reasonable use within the buffer, and (2) that the unwarranted hardship factor was the determinative consideration and the other factors merely provided the board with guidance. *Id.* at 419-23, 833 A.2d 563.

Notwithstanding the fact that the Court of Appeals expressly stated that *Lewis* was decided under the law as it existed prior to the 2002 amendments, in 2004 Laws of Maryland, chapter 526, the General Assembly again amended State law by enacting the substance of Senate Bill 694 and House Bill 1009. The General Assembly expressly stated that its intent in amending the law was to overrule *Lewis* and reestablish the understanding of unwarranted hardship that existed before being “weakened by the Court of Appeals.” In the preambles, the General Assembly recited the history of the 2002 amendments and the *Lewis* decision. The amendment changed the definition of unwarranted hardship [found in § 8-1808(d)(2)(i)] to mean 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.” (Emphasis added.)

The question of whether the applicants are entitled to the variances requested begins, therefore, with the understanding that, in addition to the other

specific factors that must be considered, the applicants must overcome the presumption, “that the specific development in the critical area that is subject to the application ... does not conform to the general purpose and intent of [the critical area law].”² Furthermore, the applicants carry the burden of convincing the Hearing Officer “that the applicant has satisfied each one of the variance provisions.”³ (Emphasis added.) “*Anne Arundel County's local critical area variance program contains ... separate criteria. ... Each of these individual criteria must be met.*” *Becker v. Anne Arundel County, supra*, 174 Md.App. at 124; 920 A.2d at 1124. (Emphasis in original.) In other words, if the applicants fail to meet just *one* of these criteria, the variance is *required* to be denied.

The variances sought are variances from the critical area law and from the zoning law. “[A number of requests in the *Becker* decision] were for variances from the stringent critical area law. The request for a variance from the setback, however, is a request under the more lenient general zoning requirements. As indicated above, the criteria for a general zoning variance and the criteria for a critical area variance are not the same.” *Becker v. Anne Arundel County, supra*, 174 Md.App. at 141; 920 A.2d at 1134.

² § 8-1808(d)(2)(ii) of the Natural Resources Article. References to State law do not imply that the provisions of the County Code are being ignored or are not being enforced. If any difference exists between County Code and State law, or if some State criteria were omitted from County Code, State law would prevail. *See*, discussion on this subject in *Becker v. Anne Arundel County, supra*, 174 Md.App. at 135; 920 A.2d at 1131.

³ § 8-1808(d)(4)(ii).

Therefore, the critical area variances must be considered separately from the general zoning or setback variances.⁴ I will first analyze the facts in light of the critical area variances requested, and then analyze the facts in light of the zoning variance requested.

County Requirements for Critical Area Variances

§ 18-16-305 sets forth the requirements for granting a variance for property in the Critical Area. Subsection (b) reads, in part, as follows: a variance may be granted if the Administrative Hearing Officer finds 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(d)(1) of the State law, to the applicant. Subsection (b)(1).
- (2) 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 provision of the critical area program within the critical area of the County. Subsection (b)(2).
- (3) The 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. Subsection (b)(3).

⁴ "We agree that the Board should have distinguished between the critical area variance and the setback variance." *Becker v. Anne Arundel County*, *supra*, page 174 Md.App. at 141; 920 A.2d at 1134.

- (4) The 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 rise from any condition relating to land or building use on any neighboring property. Subsection (b)(4).
- (5) The granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the County's critical area and will be in harmony with the general spirit and intent of the County's critical area program. Subsection (b)(5).
- (6) The applicant, by competent and substantial evidence, has overcome the presumption contained in the Natural Resources Article, § 8-1808(d)(2)(ii), of the State law. Subsection (b)(7).⁵

Furthermore, a variance may not be granted unless it is found that: (1) the variance is the minimum variance necessary to afford relief; (2) the granting of the variance will not alter the essential character of the neighborhood or district in which the lot is located; (3) the variance will not substantially impair the appropriate use or development of adjacent property; (4) the variance will not reduce forest cover in the limited development and resource conservation areas of the critical area; (5) the variance will not be contrary to acceptable clearing and replanting practices required for development in the critical area; or (6) the variance will not be detrimental to the public welfare.

Findings - Critical Area Variances

I find, based upon the evidence that, for the reasons set forth below, the applicants are not entitled to relief from the Code.

⁵ Subsection (b)(6) refers to bogs, which are not present on the Property.

Subsection (b)(1) - Unwarranted Hardship.

In *Becker v. Anne Arundel County*, *supra*, 174 Md.App. at 132-3; 920 A.2d at 1129, the Court of Special Appeals discussed the definition of unwarranted hardship found in § 8-1808(d)(1) of the Natural Resources Article in the State law: “The amendment changed the definition of unwarranted hardship to mean 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.’”

I find that the denial of the variances would not constitute an unwarranted hardship that would deny the applicants use of the entire parcel. The applicants have not exhausted the possibilities of how they can develop this property and still protect sensitive areas along the shoreline. For example, a septic pump out system would eliminate the need for the three septic replacement systems and the house could be pulled out of the 25-foot buffer. Therefore, I find that the applicants have not met the requirements of subsection (b)(1).

While the applicants must meet each element contained in § 18-16-305,⁶ and the denial of a variance under the first element contained in subparagraph (b) may make the analysis of the remaining elements unnecessary, I will make findings under those elements as well.

⁶ § 8-1808(d)(4)(ii); *Becker v. Anne Arundel County*, *supra*, 174 Md.App. at 131; 920 A.2d at 1128. There is no doubt that each element must be satisfied because the connector “and” separates Subparagraphs (a)(6) and (a)(7) of § 18-16-305.

Subsection (b)(2) - Denial Of Rights Enjoyed By Others

I cannot conclude that the denial of the requested critical area variances would deprive the applicants 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. Any other property that is similarly burdened would be protected rather than developed. Accordingly, I find that they have failed to carry the burden on this element.

Subsection (b)(3) - Special Privilege

I conclude that it is unlikely that a similar request for another property in the critical area would be granted. Therefore, granting the requested variances would confer a special privilege on the applicants.

**Subsection (b)(4) - Actions By The Applicants Or Conditions
On Neighboring Properties**

The critical area variances requested are not based on the commencement of development before an application for a variance was filed, nor do they result from any condition relating to land or building use on any neighboring property.

Subsection (b)(5) - Environmental Impacts

It is clear that the requested variances, if granted, would not be in harmony with the general spirit and intent of the County's critical area program. I find that this element of § 18-16-305 has not been satisfied.

Subsection (b)(7) - Presumption

I find that the applicants have not overcome the presumption contained in the Natural Resources Article, § 8-1808(d)(2), of the State law (which is incorporated into § 18-16-305 subsection (b)(2) “that the specific development in the critical area that is subject to the application ... does not conform to the general purpose and intent of [the critical area law].”⁷

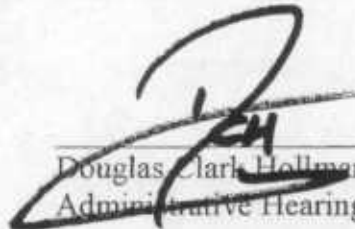
Accordingly, for the above reasons, the requested critical area variances are denied. The request for the front setback variance is moot and will be denied on the grounds set forth above.

ORDER

PURSUANT to the application of Donald Dailey, owner, and Robert Donohue, contract purchaser, petitioning for a variance to allow a dwelling 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 **16th day of March, 2010**,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicants request is hereby **denied**.


Douglas Clark Hollmann
Administrative Hearing Officer

⁷ § 8-1808(d)(2)(ii) of the Natural Resources Article.

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.

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

PINEHURST LOTS 662-663

8164 RIVERSIDE DRIVE

CRITICAL AREA REPORT

RECEIVED

JAN 14 2010

CRITICAL AREA COMMISSION
Chesapeake & Atlantic Coastal Bays

PREPARED FOR:
Donald Dailey
8126 Riverside Drive
Pasadena, MD. 21122

PREPARED BY:
M.A.F. & ASSOCIATES, LLC
526 HOODS MILL ROAD
WOODBINE, MD 21797

410-552-5541

JANUARY 2010

PINEHURST LOTS 662-663

8164 RIVERSIDE DRIVE CRITICAL AREA REPORT

INTRODUCTION

The lot located at 8164 Riverside Drive Pasadena, MD. 21122 in the community of Pinehurst on the Bay and is currently an unimproved single-family lot. The site lies in the LDA designation of the critical area. The contract purchaser of the property wishes to construct a new single-family dwelling and associated improvements. The associated improvements will include driveway, water well, septic system and wood deck.

VICINITY MAP

Included in this report and shown on the attached plan is a vicinity map designating the location of the subject site. Also included in the report is a portion of the Critical Area Map with the site located.

NARRATIVE

EXISTING CONDITIONS

The lot is partially wooded (5,950 square feet) at this time and has a single-family dwelling and driveway. The lot is relatively flat with non-tidal wetlands at the shoreline.

The woodland onsite is similar throughout. No rare, threatened or endangered species were noted.

The site has non-tidal wetland vegetation onsite and at the water's edge. The shoreline is stabilized with a wood bulkhead. The only wildlife seen was mallard ducks. It is expected that there is very little wildlife use of the property.



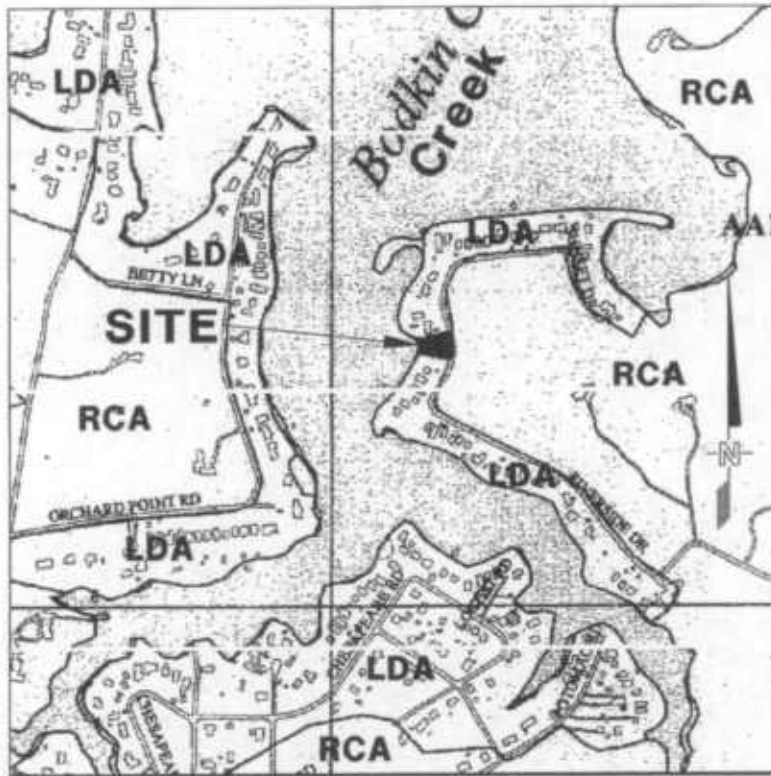
VICINITY MAP

SCALE: 1" = 2,000'

ADC MAP: 10, GRID: G10

Copyright ADC The Map People

Permitted Use Number 20811204



CRITICAL AREA MAP

SCALE: 1" = 1,000'

STORMWATER MANAGEMENT

The stormwater management proposed for the property is plantings that were reviewed under grading permit G02013782. There is no stormwater management onsite at this time.

IMPACT MINIMIZATION

Due to the location of the non-tidal wetlands and the requirement of the mound systems being on the roadside of the lot, we feel that this development demonstrates a minimal impact on the environment.

HABITAT PROTECTION AREAS

The Habitat Protection Areas onsite include the shallow water habitat, the 100' buffer to the shoreline, non-tidal wetlands and the 25-foot buffer to the wetlands. With the location of the proposed septic system and wetland location, this construction is not possible without a variance.

EXISTING CONDITIONS AND SITE CALCULATIONS

The proposed conditions of the site include the construction of a new house and its associated structures such as a driveway. The site calculations are as follows:

Total site area	13,658 sf
Existing woodland	5,950 sf
Proposed clearing	3,142 sf
Proposed planting	to be determined
Existing impervious coverage prior to the newly constructed dwelling	0 sf
Allowed impervious coverage	4,268 sf (31.25%)
Additional impervious coverage after construction	2,311 sf

Reforestation for clearing, stormwater management and impervious coverage in the buffer will be addressed with the grading and building permits.

CONCLUSIONS

The lot in question is a legal lot located in an established community. It was not possible to construct a single-family dwelling on this lot and not disturb the non-tidal wetlands.

As proposed, the development of the lot will not have an adverse impact on the plant or wildlife habitat of the Critical Area.

This house is similar to those newly constructed homes in the neighborhood and will not adversely impact adjacent properties.

PLANS

A plan showing the site and its improvements is attached to this report.

ADDITIONAL INFORMATION

A Notification of Project Application for the Critical Area Commission is included in this package.

The fieldwork was conducted on January 2, 2010



Chesapeake Land Consulting, Inc.

313 Najoles Road, Suite J

Millersville, MD 21108

Phone/Fax: 410-729-5533

November 16, 2007

Planning and Zoning
2664 Riva Road
Annapolis, Md. 21401

RE: Pinehurst on the Bay, Lot 662 & 663

Tax Account 3-653-16621100
8164 Riverside Drive.
Pasadena, MD. 21122
Variance Request

To Whom It May Concern:

Attached you will find the variance package for the above referenced property. We offer the following in regard to the variance requirements.

1. This variance is a request to construct a house and all associated utilities within the 100' Buffer to Tidal Wetlands and to allow a structure with less side setbacks then required in a R-1 zone.
2. The site is zoned R-1 and consists of 0.292 Acres
3. The site is entirely in the Critical Area, L.D.A.
4. The site will be served by a well and septic.
5. Stormwater management will be handled by plantings for water quality.
6. This lot is a Legal Lot based on the Record Plat.
7. This project proposes to construct a 42'x 30' house.

Attached are the appropriate plans and document for your review.

If you should have any further questions, please contact me at (410) 729-5533

Sincerely,
Chesapeake Land Consulting, Inc.

A handwritten signature in cursive script that reads "Stan Serwatka". The signature is written in dark ink and is positioned below the typed name.

Stan Serwatka - President

RECEIVED

DEC 6 2007

CRITICAL AREA COMMISSION

"VARIANCE PLAN"

***Critical Area Report
For***

***Pinehurst on the Bay, Lots 662& 663
Tax Map 18, Block 23, Parcel 81
8164 Riverside Drive
Pasadena, MD 21122***

November, 2007

Prepared By:

CHESAPEAKE LAND CONSULTING, Inc.

313 NAJOLES Road # J

Millersville, MD 21108

Phone (410) 729-5533

Fax (410) 410-729-5533

**“VARIANCE PLAN”
CHESAPEAKE BAY CRITICAL AREA REPORT
Pinehurst on the Bay, Lots 662 & 663
TAX MAP 18, BLOCK 23, PARCEL 81
8164 Riverside Drive
Pasadena, MD 21122**

INTRODUCTION

This is a 12,720 sq. ft. Or .292-acre property that is located on the West side of Riverside Drive in Anne Arundel County, Maryland. The property is completely inside the Chesapeake Bay Critical Area Boundary and is designated as Limited Development Area (LDA) the property is zoned R-1. This variance is a request to construct a single family dwelling and all associated utilities within the 100' Buffer to Tidal Wetlands and to allow a structure with less side setbacks then required in a R-1 Zone.

EXISTING LAND USE

The site is currently vacant. The proposed use is the construction of a new single family dwelling served by a proposed well and septic system.

SURROUNDING LAND USE

The surrounding properties consist of Single Family Dwellings.

SOILS

The U.S. Department of Agriculture Soil Survey of Anne Arundel County shows the subject property to contain the soil type:

PFB - Patapsco Fort Mott
PGD – Patapsco Fort Mott

FLOODPLAIN

The property is shown on the Federal Emergency Management Agency (FEMA) panel 240008 0015 C Zone A-9, Elev. 8. This site does lie within the 100-year Hurricane Flood Zone Elev. 8.0.

TIDAL WETLANDS

Tidal Wetlands do exist within this site.

BODIES OF WATER

The property drains to Locust Cove

STEEP SLOPES

Steep slopes of 15%+ do not exist on this site.

FOREST COVER

The site is partially wooded and contains trees with Brush, Shrubs and Grass Areas..

RARE AND ENDANGERED SPECIES

An environmental review statement has been requested for this site.

STORMWATER MANAGEMENT

The existing runoff is conveyed via sheet flow over a vegetated surface to a stable outfall with the outfall that discharges to Locust Cove. The proposed runoff will be collected by gutters and downspouts and conveyed to Water Quality plantings. Plantings will also be provided onsite at a 3:1 Ratio for the new Impervious Area.

FOREST MITIGATION

Reforestation will be provided onsite at the time of the Grading Permit.

DATES OF FIELD WORK

November, 2007

SITE ANALYSIS

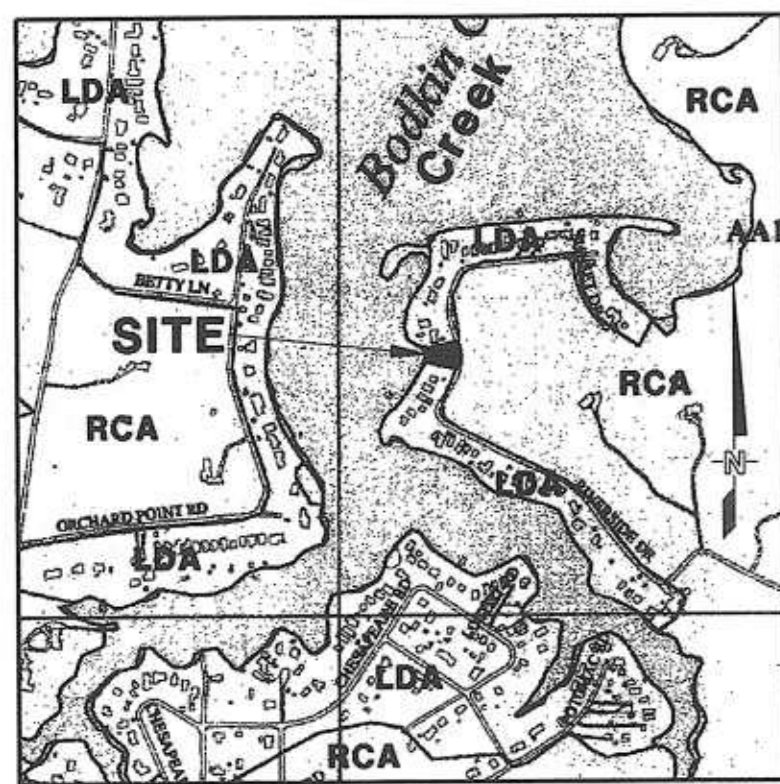
TOTAL SITE AREA = .292 ACRES OR 12,720 SQ.FT.

TOTAL EXISTING WOODLANDS ON-SITE = 8,062 SQ. FT.

TOTAL WOODLANDS TO BE CLEARED For This Variance Requested = 5,741 SQ.FT.

PROPOSED IMPERVIOUS AREA (HOUSE AND DRIVE) = 2,205 SQ. FT

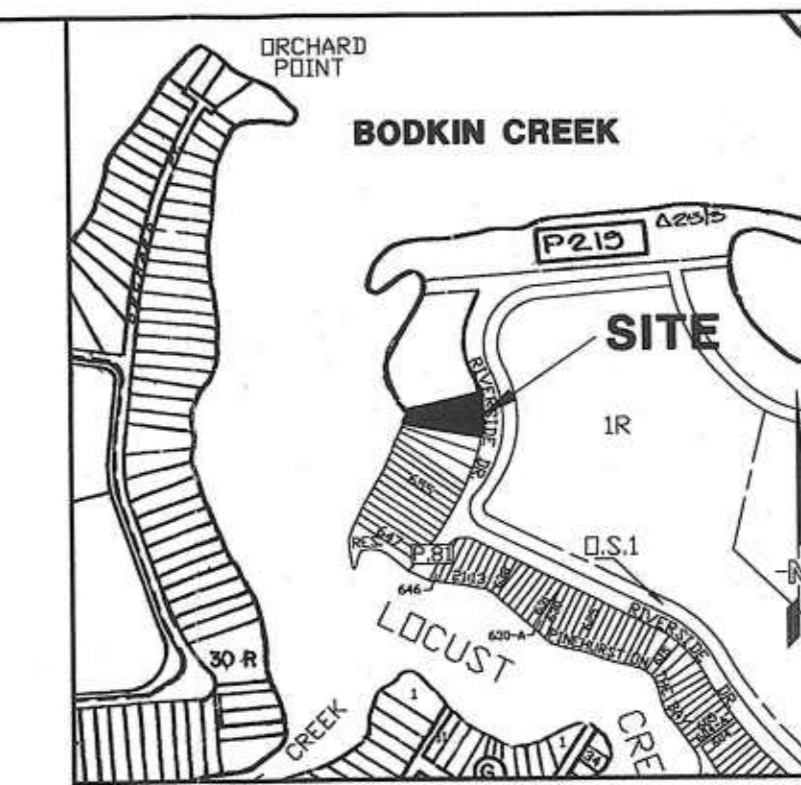




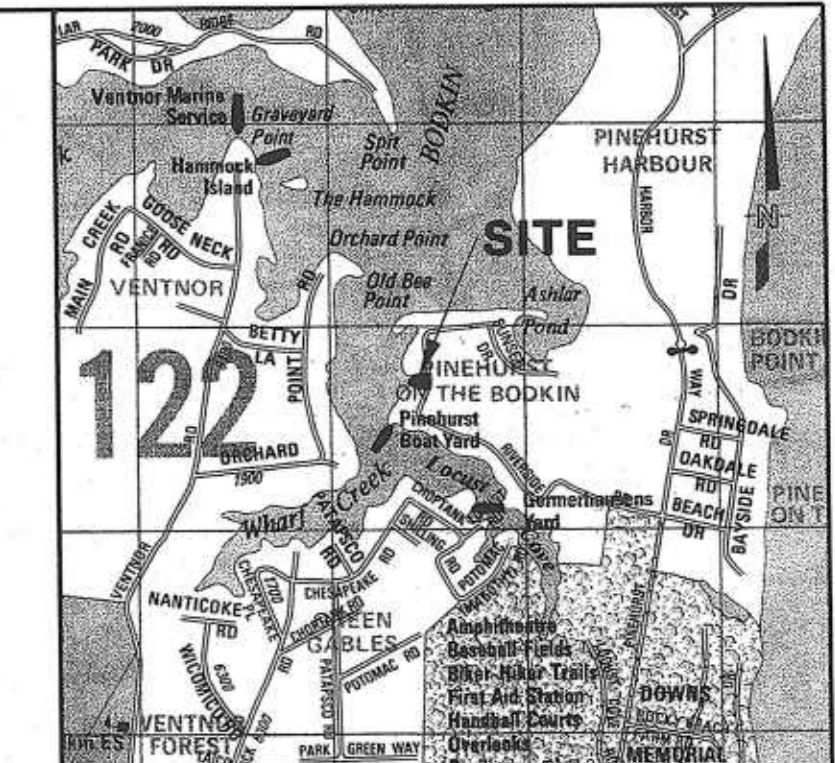
CRITICAL AREA MAP
SCALE: 1" = 1,000'

CRITICAL AREA CALCULATIONS (ILDA)

- Total site area: 14,836 s.f. or 0.340 AC.
- Total impervious area allowed: 31.25% = 4,320 s.f.
- Existing impervious: 0 S.F.
- Proposed impervious: House: 780 S.F. or 5.26% site coverage.
Drive: 1,531 S.F. or 10.32% site coverage.
Total: 2,311 S.F. = 15.58% site coverage.
- Total impervious area on site: 2,311 square feet or 15.58% of site.
- Total woods on site: 3,470 square feet or 23.39% of site.
- Total woods allowed to be cleared: 6,534 square feet for lot under 1/2 acre.
- Total woods to be cleared on site: 2,917 square feet.
- Impervious area in 100 foot buffer: 1676 S.F.
- Impervious area out of 100 foot buffer: 635 S.F.
- Mitigation for impervious in 100 foot buffer: 2 x 1,676 S.F. = 3,352 S.F.
- Fee in lieu of 100 foot buffer: 3,352 S.F. = \$4,022.40
- Disturbance in 100 foot buffer: 6,918 S.F.
- Disturbance in Non-Tidal Wetlands: 1,015 S.F. (3,233 PER MDE)



TAX MAP
SCALE: 1" = 600'



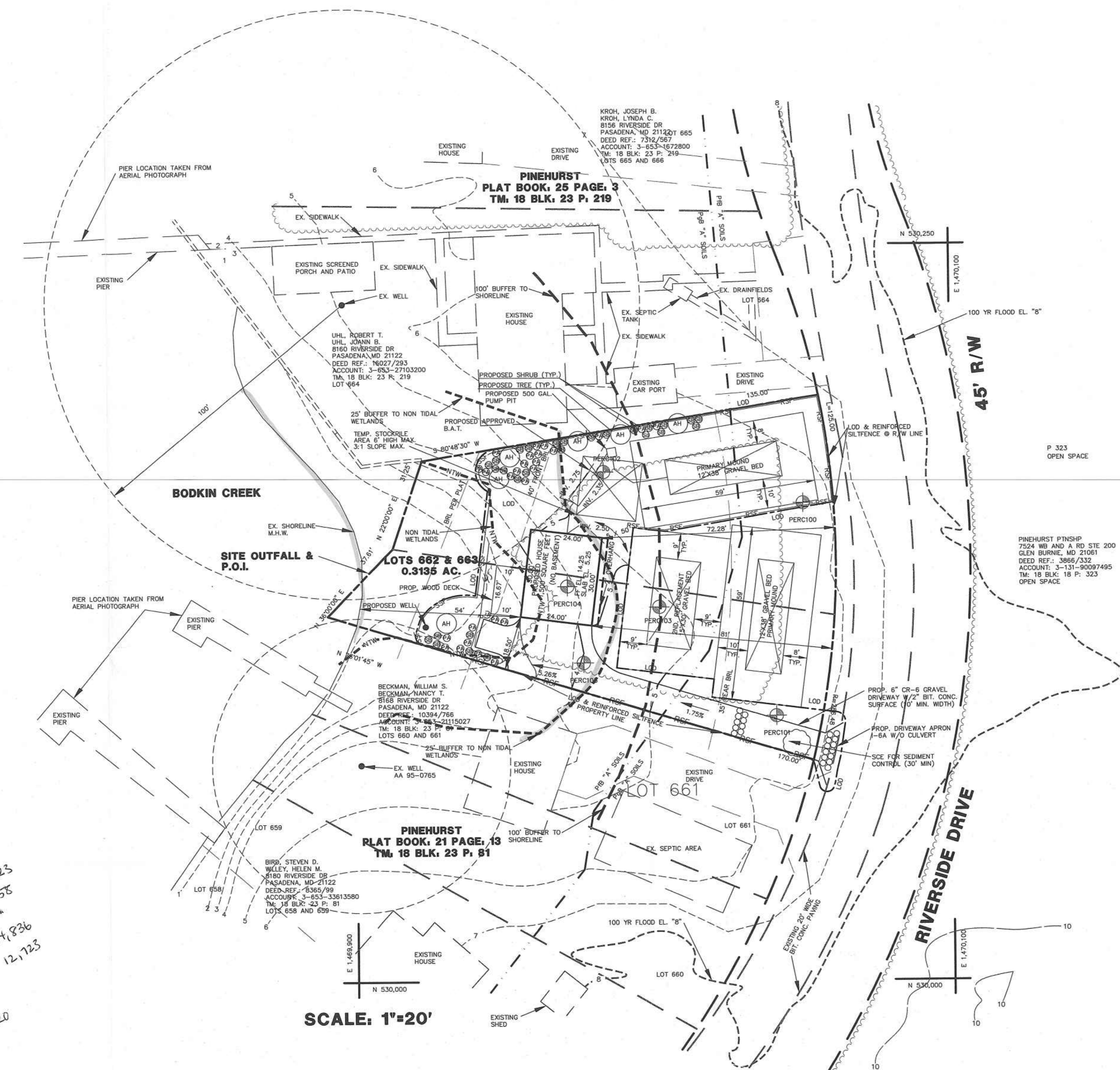
VICINITY MAP
SCALE: 1" = 2,000'
ADC MAP: 10, GRID: G10
Copyright ADC The Map People
Permitted Use Number 20811204

GENERAL NOTES:

- THIS SITE CONSISTS OF 0.34 ACRES = 14,836 SQUARE FEET.
- EXISTING ZONING R-1.
- SETBACKS: FRONT: 40', SIDE: 15' REAR: 35'
- EXISTING USE: VACANT
- PROPOSED USE: SINGLE FAMILY DWELLING
- PROPERTY ADDRESS: 8164 RIVERSIDE DR PASADENA, MD 21122
- OWNER: DONALD H. DALEY
LILLIAN I. DALEY
8126 RIVERSIDE DR PASADENA, MD 21122
- DEVELOPER: ROBERT DONOHUE
8132 RIVERSIDE DR PASADENA, MD 21122
- NO PROPERTY LINE SURVEY HAS BEEN MADE AT THIS TIME.
- THE EXISTING UTILITIES HAVE NOT BEEN FIELD VERIFIED AT THE TIME. IT IS THE RESPONSIBILITY OF THE CONTRACTOR TO OBTAIN THE LOCATION OF THE EXISTING UTILITIES PRIOR TO COMMENCEMENT OF ANY GRADING ACTIVITY.
- TWO OFF-STREET PARKING SPACES REQUIRED AND PROVIDED
- PROPOSED DWELLING COVERAGE: 720 SQUARE FEET = 4.85% OF SITE
- PROPOSED DWELLING HEIGHT: LESS THAN 35'

OWNERS WITHIN 175'

- | | |
|--|--|
| PINEHURST PTNSHP
7524 WB AND A RD STE 200
GLEN BURNIE, MD 21061
DEED REF.: 3866/332
ACCOUNT: 3-131-90097495
TM: 18 BLK: 18 P: 323
OPEN SPACE | BECKMAN, WILLIAM S.
BECKMAN, NANCY T.
8185 RIVERSIDE DR.
PASADENA, MD 21122
DEED REF.: 10384/766
ACCOUNT: 3-653-2115027
TM: 18 BLK: 23 P: 81
LOTS 660 AND 661 |
| MOST JR, CHARLES L.
MOST, TINA M.
13737 MANOR RD
BALDWIN, MD 21013
DEED REF.: 13311/77
ACCOUNT: 3-131-90097491
TM: 18 BLK: 18 P: 323
LOT 664 | UHL, ROBERT T.
UHL, JOANN B.
8160 RIVERSIDE DR
PASADENA, MD 21122
DEED REF.: 16027/293
ACCOUNT: 3-653-27103200
TM: 18 BLK: 23 P: 219
LOT 664 |
| FOCHOS-MULLINX, DEBORAH
15929 A E MULLENX RD
WOODBINE, MD 21797
DEED REF.: 6912/624
ACCOUNT: 3-653-2225105
TM: 18 BLK: 23 P: 81
LOTS 658 AND 659 | KROH, JOSEPH B.
KROH, LYNDA C.
8156 RIVERSIDE DR
PASADENA, MD 21122
DEED REF.: 7312/567
ACCOUNT: 3-653-1672800
TM: 18 BLK: 23 P: 219
LOTS 665 AND 666 |
| HATFIELD, KENNETH P.
HATFIELD, MAUREN L.
8184 RIVERSIDE DR
PASADENA, MD 21122
DEED REF.: 8603/244
ACCOUNT: 3-653-22881500
TM: 18 BLK: 23 P: 81
LOTS 658 AND 659 | |
| BIRD, STEVEN D.
WILLEY, HELEN M.
8180 RIVERSIDE DR
PASADENA, MD 21122
DEED REF.: 8365/99
ACCOUNT: 3-653-33613580
TM: 18 BLK: 23 P: 81
LOTS 658 AND 659 | |



SCALE: 1"=20'

LEGEND

---	Existing Grade
-20-	Proposed Grade
LOD	Limit of Disturbance
RSF	Reinforced Silt Fence
SSF	Super Silt Fence
SCA	Stabilized Construction Entrance
TS	Temporary Stockpile Area
---	Salls Line
NTW	Non-Tidal Wetlands
---	Existing Treeline

VARIANCE NOTE

- WE REQUEST A VARIANCE TO ARTICLE 17 SECTION 17-8-301 THAT REQUIRES NO STRUCTURE MAY BE PLACED IN THE 100 FOOT BUFFER. THIS REQUEST IS FOR CONSTRUCTION OF A SINGLE FAMILY DWELLING AND ASSOCIATED IMPROVEMENTS IN THE BUFFER.
- WE ARE REQUESTING A VARIANCE TO ARTICLE 17 SECTION 17-8-503 TO ALLOW DISTURBANCE OF NON-TIDAL WETLANDS AND THE 25' BUFFER FOR THE CONSTRUCTION OF A SINGLE FAMILY DWELLING AND ASSOCIATED IMPROVEMENTS. DISTURBANCE OF NON-TIDAL WETLANDS IS PROPOSED TO BE 3,233 S.F. DISTURBANCE OF NON-TIDAL WETLANDS BUFFER IS PROPOSED TO BE 2,282 S.F.

SHEET 1 of 1

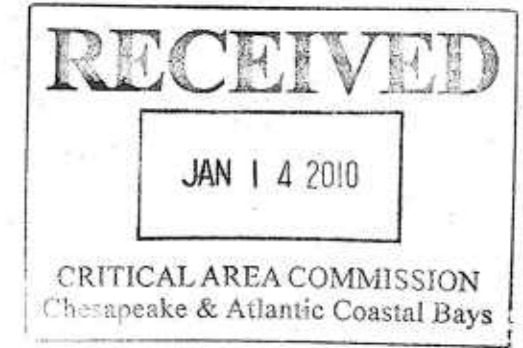
VARIANCE PLAN

PINEHURST
LOTS 662 AND 663
SINGLE FAMILY DWELLING

3rd DISTRICT ANNE ARUNDEL COUNTY, MARYLAND
SCALE: AS SHOWN JANUARY, 2010
TAX MAP 18 BLOCK 23 PARCEL 81
G.P. NO.: G02013782
ZONING: R-1 ZIPCODE: 21122

M.A.F. & ASSOCIATES, LLC
526 HOODS MILL ROAD
WOODBINE MD. 21797
PHONE: 410-552-5541
FAX: 410-552-5546

Handwritten notes:
Lot Size
2008 App - 12,723
CA App - 136,578
MA F -
Current Site Plan - 14,836
Ad " - 12,723
Allowed = 3976 - 4320
LC
Proposed 2,311
Previous 2,205



PERC # 102036945