

CS 698-07 Serenity Farm
VAR 1201

S1829-6587

JAC 11/28/07

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/

November 28, 2007

Aimee Dailey
Charles County Department of Planning and Growth Management
PO Box 2150
La Plata, MD 20646

Re: BOA Docket #1201 – Serenity Farm

Dear Ms. Dailey:

Thank you for forwarding the above-referenced request for variance. The applicant proposes construct an addition on their single family dwelling which is entirely within the 100-foot Buffer. The parcel is 29.68 acres and is located in the Resource Conservation Area (RCA). The proposed addition is 775 square feet and is no further waterward than the existing dwelling. As part of this proposal, the applicant plans to remove a large portion of driveway and a shed currently located in the Buffer, for a net total decrease of impervious surface in the 100-Buffer in the amount of 1,698 square feet. No forest removal is being proposed

Provided the lot is properly grandfathered, this office does not oppose this variance request. It appears that the applicant has minimized the impacts to the Buffer by placing the addition as a far back from the slopes as possible. Also, there is a net benefit to the Buffer as the total amount of impervious surface is reduced by 13%. Although there is a net decrease of impervious surface in the Buffer, new development in the Buffer requires mitigation at a ratio of 3:1. Mitigation may be done in the form of plantings and should be located in the 100-foot Buffer. The applicant should provide a plantings plan to the County.

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. If you have any questions, please contact me at 410-260-3476.

Sincerely,

A handwritten signature in black ink, appearing to read "Julie", followed by a long horizontal line extending to the right.

Julie Roberts
Natural Resources Planner

Cc: CS 698-07

BOARD OF APPEALS FOR CHARLES COUNTY, MARYLAND

IN THE MATTER OF THE PETITION OF :
THOMAS & MARSHA LONG, FOR A :
VARIANCE TO THE CHESAPEAKE BAY : Docket #1201
CRITICAL AREA BUFFER REGULATIONS :
FOR THE EXPANSION OF A SINGLE FAMILY :
DWELLING :

.....

DECISION AND ORDER

This matter came before the Board of Appeals for hearing on April 8, 2008 at 7:00 pm., in the Commissioners' Meeting Room of the County Government Building, La Plata, Charles County, Maryland, as a request for a Variance to the Chesapeake Bay Critical Area Buffer regulations for expansion of a single family dwelling in accordance with Article IX, Section 297-130 and 297-131 and Article XXV, Section 297-416 of the *Charles County Zoning Ordinance*. The property is located at 6805 Dicandia Dorsey Place, Benedict, Maryland in the Agricultural Conservation (AC) Zone, with a Resource Conservation Zone (RCZ) overlay of the Chesapeake Bay Critical Area. A quorum of Board Members was present for, and participated in, the hearing. The Notice of the hearing was properly advertised, adjacent property owners notified, and the property was posted in accordance with the applicable regulations.

Incorporated into the record were the following:

1. The appropriate provisions of the Charles County Code;
2. The Charles County Zoning Regulations;
3. The Comprehensive Plan for Charles County;
4. The Zoning Map of Charles County;

5. The Technical Staff Report; and
6. The Petition and Plat submitted by the Applicant.

Testimony for the Applicant was given by Mr. Gore Bolton, President, Bolton & Associates. There was no testimony given by the audience. Based upon the testimony presented at the hearing, the plat and materials submitted by the Applicant along with the Petition and the standards set forth by the *Zoning Ordinance*, and considering the proposed use on the health, safety, welfare, and interest of the general public, the Board of Appeals makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The property is located within an established agricultural and rural residential area at the northern end of Dicandia Dorsey Place, off of Route 231. It is bordered by tidal marsh to the north in the Patuxent River Natural Resources Management Area and agricultural fields to the south.
2. The existing single family dwelling, constructed in 1966, is located entirely within the Critical Area Buffer. Any addition to or renovation of the existing dwelling will necessitate disturbance to the Buffer, which requires a variance. Therefore, the Board found that unique development challenges exist with respect to this property.
3. The Board found that strict enforcement of the provisions of the Zoning Ordinance will affect the ability to add-on to a single family dwelling, a development activity typically permitted for a residential lot, per the Charles County Zoning Ordinance.

4. The Board found that approval of the variance will allow for a single family dwelling addition to be located within the Critical Area Buffer. Other owners of property subject to the Critical Area Buffer provisions would not be afforded this opportunity without obtaining a similar variance.
5. The existing single family dwelling was constructed in 1966, prior to the adoption of the Charles County Critical Area Program in 1989. The improvements have not yet been constructed. Therefore, the Board found that the request is not based upon conditions or circumstances which are self created or self-imposed.
6. The 2006 Charles County Comprehensive Plan identifies the area of Dicandia Dorsey Place as an Agricultural Conservation District. The Agricultural Conservation District is intended to preserve the agricultural industry and the land base necessary to support it. It also satisfies limited demand for rural housing with the prime objective to prevent scattered uncontrolled development over open countryside. Based upon the property's classification, the Board found that the requested variance is consistent with the Charles County Comprehensive Plan.
7. Under the County's Critical Area Program disturbance to the Critical Area Buffer for the purpose of constructing an addition is not permitted. However, since the single family dwelling was constructed prior to Critical Area law, Section 297-130, Charles County Zoning Ordinance allows for a variance to be considered for development activities which represent the minimum amount of disturbance necessary. Therefore, the Board found that consideration of this variance is consistent with the spirit and intent of the County's Critical Area Program.

8. The Charles County Development Services Division and the Charles Soil Conservation District have no objection to the granting of the requested variance.
9. The Charles County Health Department has approved the location of the proposed addition.
10. The proposed construction will be no closer to the edge of tidal waters or wetlands than the existing structure. Therefore, the Board found that the proposed addition has been located as far back from mean high water as is feasible without relocating the existing dwelling.
11. The project site is not located within a Habitat Protection Area, per information obtained from the Maryland Department of Natural Resources.
12. More than 77% of the property is currently forested or vegetated. No clearing is proposed with this project.

ORDER

Based upon the above Findings of Fact and Conclusions of Law, it is, this 13th day of May, 2008, by the Board of Appeals for Charles County, Maryland ORDERED, that the Variance for Docket #1201 is hereby GRANTED, and it is further,

ORDERED, under the following conditions:

1. The site plan submitted for building permit approval shall comprise the minimum amount of disturbance necessary to construct the addition.
2. At the time of building permit, should it be determined that the clearing of vegetation is needed, a planting plan will be submitted by the Applicant to provide

mitigation in the form of native plantings on no less than an equal area basis. Any clearing within the Critical Area Buffer will require mitigation at a ratio of 3:1. Mitigation plantings will be required to be installed prior to obtaining Use and Occupancy of the addition.

**BOARD OF APPEALS FOR
CHARLES COUNTY, MARYLAND**

not available

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Luke Hannah

Luke Hannah, Vice Chairman

John Pearl Yates

John Pearl Yates

Edwin W. Baker

Edwin W. Baker

Carrol Everett

Carrol Everett, Clerk

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I. VARIANCE REQUEST

The applicants, Thomas & Marsha Long, request a Variance in order to expand a single family dwelling located within the Critical Area Buffer. This site has an existing residential building in the Buffer, constructed prior to June 7, 1989, a legal nonconforming use. According to the Zoning Ordinance, §297-130.A(5), for the expansion to occur, the Board of Appeals must approve the location and extent of expansion through the Variance process, with review by the Critical Area Commission considered. The Longs propose to offset the expansion by removing existing impervious structures from the Buffer, to result in a significant net decrease in the Buffer. The requested Variance will allow for new impervious surface in the Buffer, in the amount of 786.83 square feet. However, as shown by the attached site plan, 2,445.81 square feet of impervious surface will be removed from the Buffer. The net result of the proposed development is 1,658.98 square feet less impervious surface in the Buffer.

II. SITE LOCATION

The property is located at the end of Dicandia Dorsey Pl approximately one half mile north of Prince Frederick Road (MD Route 231) as shown on Tax Map 49, Parcel 95. The site contains +/-29.6 acres located in the Agricultural Conservation (AC) base zone, and the Critical Area Overlay Resource Conservation Zone (RCZ). The existing dwelling and the limits of disturbance total approximately 1.6 acres

III. EXISTING SITE CONDITIONS

The proposed expansion is located on land surrounded primarily by farm fields to the south and west with tree cover and tidal marsh to the north and east. There are only two existing buildings on the site, located in the east end of Parcel 95. The waterway associated with the site is an unnamed tributary flowing into the Patuxent River. The proposed expansion will not impact either waterway.

IV. SITE ANALYSIS

A. SOILS

Soils on the property consist of the following (soils within the limits of disturbance are marked with an *), as obtained from the *Soil Survey of Charles County, Maryland*, prepared by Soil Conservation Service, U.S. Department of Agriculture, July, 1974, and include:

<u>Symbol</u>	<u>Group</u>	<u>Description</u>
EvB	A	Evesboro Loamy Sand, 0-8% slopes. The assigned Kw erodibility factor is 0.17. This soil is excessively drained. The slowest permeability within 60 inches is rapid. Available water capacity is high and shrink swell potential is low. This soil is not flooded and

is not ponded. The water table is deeper than 6 feet. There are no saline horizons. It is in nonirrigated land capability class 7s. This component is not a hydric soil.

KpC3 C Keyport Silty Clay Loam, 5-12% slopes. The assigned Kw erodibility factor is 0.43. This soil is moderately well drained. The slowest permeability within 60 inches is slow. Available water capacity is very high and shrink swell potential is moderate. This soil is not flooded and is not ponded. The top of the seasonal high water table is at 33 inches. There are no saline horizons. It is in nonirrigated land capability class 3e. This component is not a hydric soil.

ShA * B Sassafras Sandy Loam, 0-8% slopes. All areas are prime farmland. The assigned Kw erodibility factor is 0.28. This soil is well drained. The slowest permeability within 60 inches is moderately slow. Available water capacity is very high and shrink swell potential is low. This soil is not flooded and is not ponded. The water table is deeper than 6 feet. There are no saline horizons. It is in nonirrigated land capability class 1. This component is not a hydric soil.

TM * Tidal Marsh component makes up 100 percent of the map unit. The assigned Kw erodibility factor is 0.37. This soil is very poorly drained. The slowest permeability within 60 inches is moderate. Available water capacity is very high and shrink swell potential is low. This soil is frequently flooded and is not ponded. The top of the seasonal high water table is at 0 inches. The soil has a slightly saline horizon. It is in nonirrigated land capability class 7w. This component is a hydric soil.

B. HYDROLOGY

An unnamed tributary meanders along the northern property boundary and eventually joins the Patuxent River. The Mean High Water mark was field delineated in order to establish the one hundred (100) foot Buffer required for properties in the Critical Area.

C. VEGETATION

The subject site contains mature forest and open farm fields. Forest cover exists to the north, and in the northeastern portion of the property where the dwelling proposed for expansion is located. These areas are dominated by hardwoods, and pines to a lesser extent. The average tree size is 12-18" diameter.

D. ENVIRONMENTAL

A request for records review was sent to the Department of Natural Resources, Heritage Division. A response is pending. The site visit in July, 2007 showed no visible indications of rare, threatened or endangered species on the development site. All area subject to construction activity is in a previously developed condition. There are no known historic features.

E. TOPOGRAPHY

The existing topography of the site consists of relative flat fields, with the highpoints at an elevation of 12 feet, and 0 feet at the lowest point. The tributary located to the north of the property has slopes ranging from approximately 0% to 5%.

V. RELATIONSHIP TO THE PROVISIONS OF THE ZONING ORDINANCE

The Zoning Ordinance, §297-130.A(5), provides that expansion of legally nonconforming buildings or uses may be permitted after a determination is made that such expansion complies with the provisions of the Zoning Ordinance, or complies insofar as possible with the Ordinance and is approved through the Variance process by the Board of Appeals, and is reviewed by the Critical Area Commission. A Variance is requested, specific to the prohibition against new land uses and development activities in the Critical Area Buffer as specified in the Zoning Ordinance, §297-131. The following are offered for consideration:

Article IX, *Critical Area Zone (Overlay Zone), Section 130, Lots of Record in Critical Area Zone; grandfather provisions:*

- A. (5) The existing building was built circa 1966. The property is a legal nonconforming use, because it existed before June 7, 1989, when the Critical Area Buffer was established. The proposed expansion of habitable space within a legal nonconforming residential structure is permissible in the AC Zone and in the RCZ, subject to Variance and Building Permit approvals. The subject of the Variance request is the proposed expansion of the legal nonconforming use in the Critical Area Buffer, where new land uses and development activities are prohibited as per §297-131.

Article IX, *Critical Area Zone (Overlay Zone), Section 131, Critical Area Buffer Regulations:*

A. Buffer standards

- (1) The Variance request is the proposed expansion of a legal nonconforming use in the Critical Area Buffer, where new uses and development activities are prohibited per §297-131.

Article XXV, *Charles County Board of Appeals, Section 416, Variances*

B.

1. The Board is authorized to grant variances from the strict application of zoning regulations when, by reason of exceptional narrowness, shallowness or shape of specific parcels of property, or by reason of exceptional topographical conditions or other extraordinary situations or conditions of specific parcels of property, the strict application of the regulations would result in peculiar and unusual practical difficulties to, or exceptional or undue hardship upon, the owner of said property. The strict application of the Buffer regulations in this case would not allow any expansion of the existing home, thus resulting in unusual practical difficulties.
2. The Applicant wishes to extend the habitable space within the legal nonconforming use, a residential dwelling located within the Critical Area Buffer. The specific development objective is to expand existing bedrooms, for the purpose of elder parent residence. Prevention from housing the elder parents would result in undue hardship upon the owners of the property.

3. Location of the bedroom space outside of the Buffer would impose unusual practical difficulties to the Applicant, because it is not feasible to construct an addition fully exterior to the Buffer.

C.

- (1) Special circumstances exist that are unique to the subject property, and a strict enforcement of the Buffer-related provisions would result in unwarranted hardship not generally shared by owners of property in the same land use classification. The subject property was created by plat December 22, 1995 and is referenced as Parcel A. The lot platted was consistent at that time with the County's regulations and with the intended use, and the existing home was built in 1966, prior to the existence of the Critical Area Buffer.
- (2) Strict enforcement of the provisions of the Zoning Ordinance would deprive the applicant of rights commonly shared by other owners of property in the surrounding area. The house is generally smaller or no larger than most homes located in the vicinity of the subject property and in other areas of Charles County. The addition is proposed to be constructed to meet the needs of the homeowner, common to those of other property owners in the surrounding area.
- (3) Supported by the above findings, the granting of the requested Variance will not confer upon the Applicant a special privilege that may be denied to other owners of like property within the same zone/land use classification. The Applicant proposes to construct the addition in compliance with the Critical Area regulations, to the extent feasible. Unavoidable adverse effects would be limited by reducing the overall existing impervious area, and by supplementing the existing forest cover with native plant materials, for the purpose of offsetting any adverse effects of the proposed development. A Buffer Management Site Plan is submitted in conjunction with this report, as required by the Zoning Ordinance, and is attached in Appendix B.
- (4) This Variance request is not based upon conditions or circumstances which are self-created or self-imposed, because the subject property and home existed before such development was regulated by the Critical Area law.
- (5) The Applicant is not requesting that greater profitability, or lack of knowledge of the restrictions, be considered as sufficient justification for the requested variance.
- (6) The Zoning Ordinance, according Chapter 1 of the Comprehensive Plan, "... will continue to be the chief means through which this Plan is to be implemented." The proposed variance is consistent with the Comprehensive Plan, based on the consistency with §297-416 of the Zoning Ordinance.

D. The proposed use would not result in detriment to the use, peaceful enjoyment, economic value or development of the surrounding properties and affected neighborhood.

G. The proposed development activity and expanded use will not be detrimental to or endanger the public health, safety and general welfare, and the homeowner will comply with all applicable

County, State, and Federal regulations.

K.

- (1) The granting of the requested variance would be consistent with the spirit and intent of the County's Critical Area Program. The planting of native woody plant materials will enhance habitat, water quality protection, and soil stability functions. Disturbance will be limited to the degree feasible. The request to remove existing impervious area to compensate for unavoidable impacts is a proactive approach on the part of the Applicant, to enhance the beneficial functions of the Buffer.
- (2) The granting of the requested variance would not be due to conditions or circumstances resulting from any actions by the Applicant, and the variance request does not arise from any conforming situation on any neighboring property.
- (3)
 - a. A completed application form for a Variance has been submitted with this report. A copy has been provided to the state's Critical Area Commission.
 - b. The best possible use of land, buildings and structures have been provided on the plan to afford the least amount of impact to the Tidal waterways.
 1. The proposed home addition is located as far back from mean high water as feasible.
 2. The Variance as proposed will result in a net 4% decrease of impervious surface in the Buffer. The removal of the shed, currently located closer to the waterline than the existing building, will be relocated outside of the Buffer, and driveway pavement will be removed from the Buffer. Mitigation for the construction of the expansion will be primarily the net decrease of impervious surface in the Buffer.
 - a. Forested and developed woodlands will not be disturbed in the process of expansion.
 - b. The existing forest vegetation will be maintained. The property contains approximately 78% forest cover which significantly exceeds the required minimum of 15%.
 - c. The proposed mitigation measures related to the Habitat Protection Area consist of removal of existing impervious area from within the Buffer as a direct offset to the proposed expansion in the Buffer. Any mitigation to occur within the Critical Area, both interior and exterior to the Buffer, will contribute beneficially to the Buffer-related functions. Storm water runoff will be decreased in favor of increased infiltration on the subject site, thereby decreasing potential erosion affecting the Buffer, and resulting in higher water quality affecting the adjacent tidal wetland.

- c. The proposed variance will be in harmony with the general purpose and intent of the Zoning Ordinance, shall not result in a use not permissible in the affected base zone, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
- d. All property owners immediately contiguous to this property will be notified by certified mail and a copy of the receipts will be provided to the Zoning Officer.

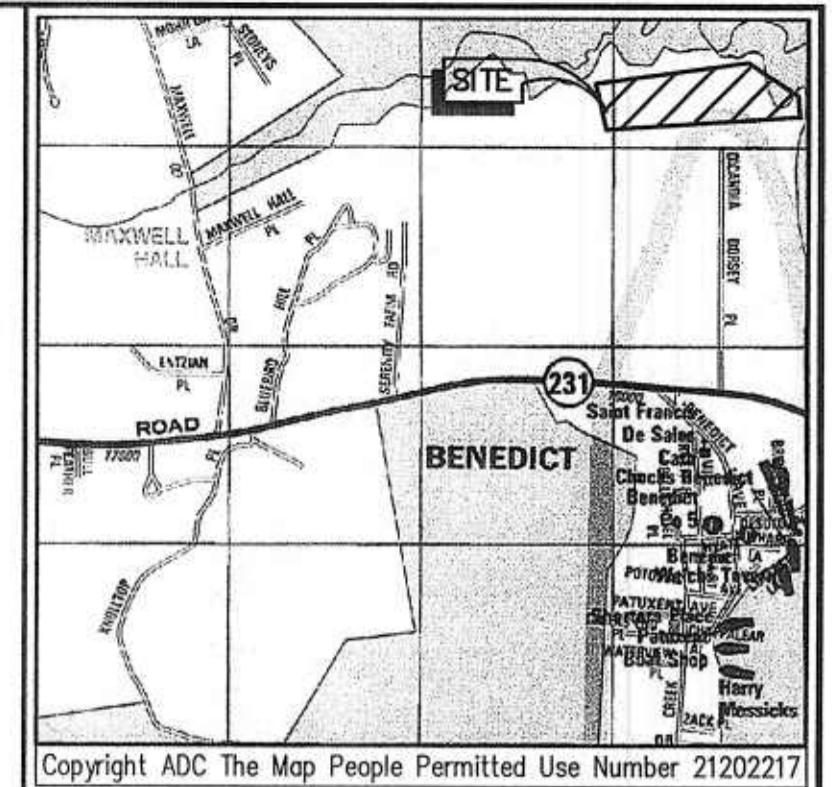
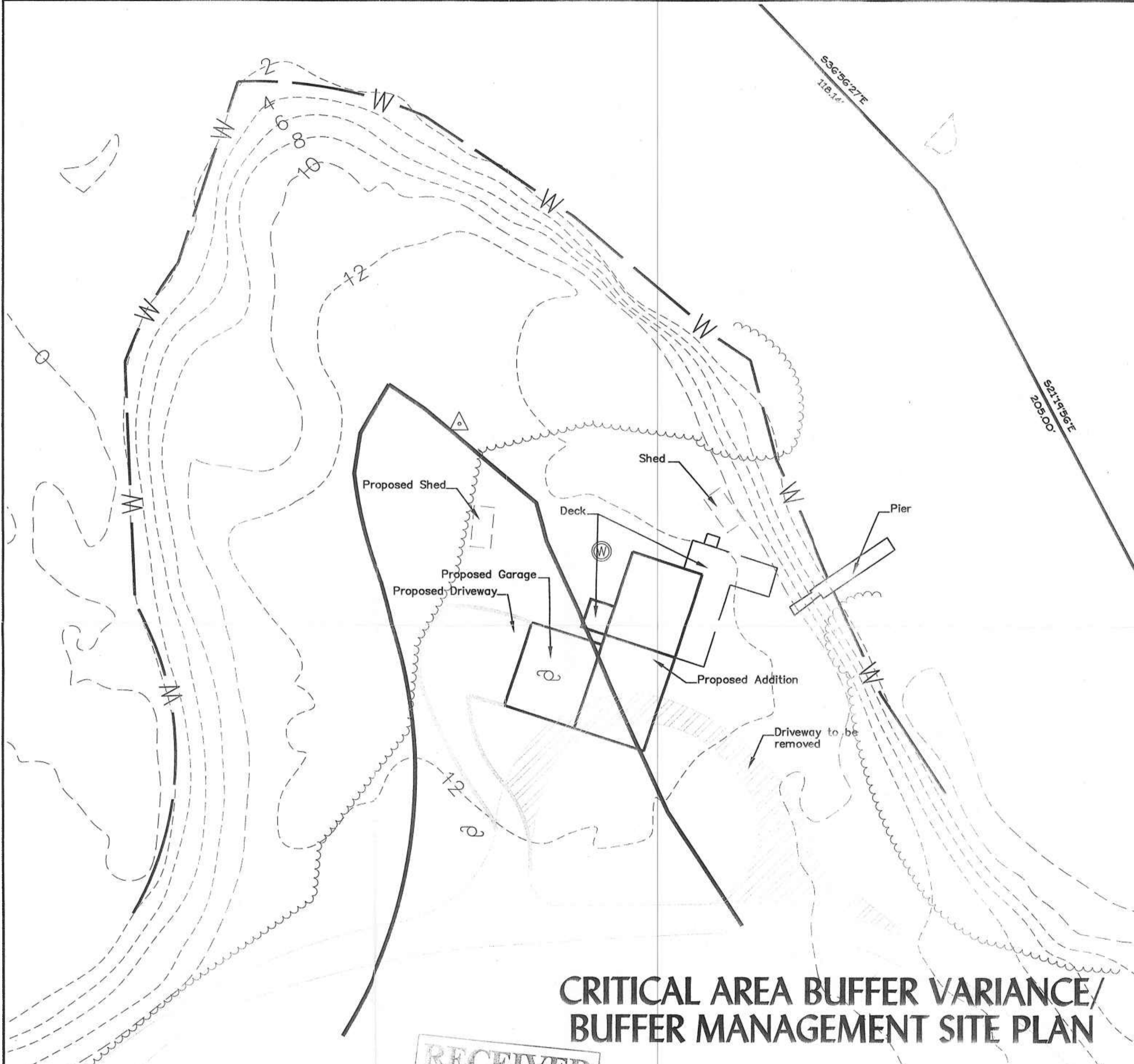
VI. RELATIONSHIP TO THE PROVISIONS OF THE 1997 COMPREHENSIVE PLAN

The Comprehensive Plan recognized the importance of Natural resources to the citizens of Charles County with in the Chesapeake Bay Critical Area Program Section of the Plan. Specific Plan Objectives (Chapter 9) that can, or will, be met by this Variance Request, include the following:

- High degree of restriction placed on the use of waterfront land (1 house per 20 acres).
- Improve and protect water quality.
- Conserve remaining wooded areas in the County, require new plantings to decrease erosion, enhance stream bank stabilization.

VII. CONCLUSION

The requested home addition by Variance is a permissible use compatible with the County's plan of development for the area and with the existing and future uses of adjacent properties. These findings of compatibility along with evidence to support the requested Variance have been stated within this report. For these reasons, the applicant respectfully requests your favorable consideration of this Variance request.



VICINITY MAP
TAX MAP: 49 BLOCK: 01 SCALE: 1"=2,000'
PARCEL: 95

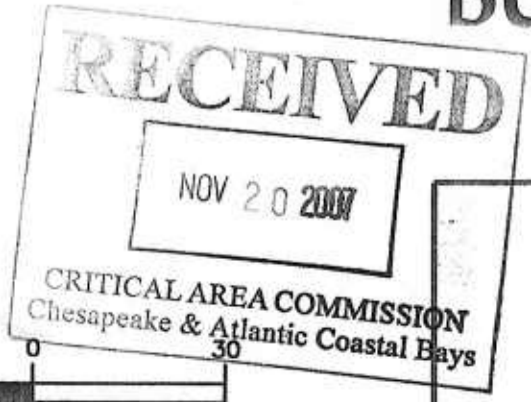
LEGEND

- PROPERTY LINE ———
- ADJOINING PROPERTY LINES - - - - -
- MEAN HIGH WATER ——— W ———
- 100 FT CRITICAL AREA BUFFER ———
- EXISTING EDGE OF PAVEMENT ———
- EXISTING TOPOGRAPHY - - - - -
- EXISTING TREE LINE ~~~~~

SITE TABULATION

EXISTING IMPERVIOUS	BUFFER	OUTSIDE BUFFER	TOTAL
DECK 50%	462.15 sq ft.		
PIER 50%	131.41 sq ft.		
HOUSE	1,093.25 sq ft.		
DRIVEWAY	10,661.93 sq ft.	3,954.55 sq ft.	
SHED	141.92 sq ft.		
TOTAL EXISTING	12,490.66 sq ft.	3,954.55 sq ft.	16,445.21 sq ft.
PROPOSED IMPERVIOUS	BUFFER	OUTSIDE BUFFER	
DRIVEWAY		2,074.51 sq ft.	
GARAGE	11.88 sq ft.	1,083.56 sq ft.	
HOUSE ADDITION	774.95 sq ft.	452.71 sq ft.	
SHED		141.92 sq ft.	
SUBTOTAL PROPOSED	786.83 sq ft.	3,752.70 sq ft.	
IMPERVIOUS REMOVAL	BUFFER	OUTSIDE BUFFER	
DRIVEWAY	2,303.89 sq ft.	871.72 sq ft.	
SHED	141.92 sq ft.		
SUBTOTAL REMOVAL	2,445.81 sq ft.	871.72 sq ft.	
TOTAL CHANGE	-1,658.98 sq ft.	2,880.98 sq ft.	1,222.00 sq ft.
EXISTING + PROPOSED	10,831.68 sq ft.	6,835.53 sq ft.	17,667.21 sq ft.
EXISTING ACREAGE	29.68 AC	1,292,860.80 sq ft.	
PROPOSED PERCENT IMPERVIOUS 1.36%	PERCENT EXISTING TREE COVER 77.83%		
EXISTING TREE COVER (No Clearing Proposed)	23.10 AC	1,006,331.43 sq ft.	

**CRITICAL AREA BUFFER VARIANCE/
BUFFER MANAGEMENT SITE PLAN**



SCALE
INCH = 30 FEET

BOLTON & ASSOCIATES, LLC
CIVIL ENGINEERS
LAND PLANNERS
LAND SURVEYORS

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If the engineer's seal is not red colored, the plan is a copy that should be assumed to contain unauthorized alterations. The certification contained on this document shall not apply to any copies.

Michelle B. Bolton 10/10/07
Michelle B. Bolton, P.E.
State of Maryland No. 30705
Director of Engineering

OWNER:
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MARSHA L. LONG
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BENEDICT, MD 20612
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DESIGN: LSW SHEET 1 OF 1
DATE: 24-Oct-07 C4901-0701
CHECKED: DWD SCALE: 1" = 30' C4901(B)