

October 4, 2016

John and Isabell Fischer
200 West Rd.
Baltimore MD 21221

Re: 200 West Rd. 21221
Critical Area Administrative Variance
Tracking No. 07-16-2310

Dear John and Isabell Fischer:

The Department of Environmental Protection and Sustainability (EPS) has completed a review of the variance request for the proposed Critical Area buffer impacts on the above referenced property. The property is located within a Limited Development Area in the Chesapeake Bay Critical Area. The request proposes to impact 5,247 square feet of the Critical Area buffer for construction of 2 sets of 2-4-foot high stone retaining walls to stabilize a failing hillside with replacement pier access provided by a step and walkway access down the eastern side of the slope. There are no proposed direct impacts to waterways or wetlands, and existing trees and forest are to be retained.

The Director of EPS may grant a variance to the Chesapeake Bay Critical Area regulations in accordance with regulations adopted by the Critical Area Commission concerning variances as set forth in COMAR 27.01.11. There are five (5) criteria listed in COMAR 27.01.11 that shall be used to evaluate the variance request. All five of the criteria must be met in order to approve the variance.

The first criterion requires that special conditions exist that are peculiar to the land or structure, and that literal enforcement of the regulations would result in an unwarranted hardship. Severe soil erosion issues have existed for years on this property at the shoreline and on slopes above mean high water. Following discussions with Baltimore County and the Maryland Department of the Environment several years ago, the owner had a stone revetment constructed in an attempt to stabilize the shoreline while retaining the mature trees, understory trees, and shrubs along the embankment. The previous stabilization attempts and attempts to save multi-layered vegetation on the embankment have not abated the erosion of the sandy loam soils on the slope above the revetment. Due to the nature of the soils and the approximately 60% embankment, a mass grading and all vegetative stabilization project would require much greater disturbance, including significant amounts of earth replacement and removal of all of the mature trees on the shoreline. The proposal minimizes the buffer impacts by siting the retaining walls as close together as possible to achieve the hillside stabilization goal and protect the mature trees. An access to the existing pier needs to be incorporated into the project to replace the access removed for the retaining wall construction. Literal enforcement of the regulations would not allow for construction of

the retaining walls to stabilize the erosion on this grandfathered property with minimized disturbance and retention of mature trees. Based on this, special conditions do exist that are peculiar to this site, and literal enforcement of the regulations would result in an unwarranted hardship. Therefore, the first criterion has been met.

The second criterion requires that a literal enforcement of the regulations would deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area. Property owners in the Critical Area with similar residential uses, site constraints, and unique site conditions that include severe erosion, enjoy use of their property with retaining walls to prevent severe erosion or steep slope issues similar to what is proposed by the applicant. In addition, waterfront properties with piers are allowed access provided the type of access meets requirements. Literal enforcement of the regulations would deprive the applicant of rights enjoyed by others with these unusual conditions. Therefore, the second criterion has been met.

The third criterion requires that granting of a variance will not confer upon an applicant any special privilege that would be denied to other lands or structures within the Critical Area. The proposed impacts to the Critical Area buffer for construction of the retaining walls and a pier access on the referenced property would not be denied to similar properties with severe erosion issues in the Critical Area where other measures have failed to correct the problem. Therefore, the third criterion has been met.

The fourth criterion requires that a variance is not based upon conditions or circumstances which are the result of actions by the applicant, nor does the request arise from any condition relating to land or building use, either permitted or non-conforming, on any neighboring property. The applicant has attempted to save trees and shrubs on the slope, and constructed a revetment in an attempt to fix the erosion problem, but due to the nature of the soils and the steep embankment, the erosion persists. The erosion issue and the need for retaining walls and stabilization, and a replacement pier access, is not related to any neighboring property, and is not due to work performed on the property. Therefore, the fourth criterion has been met.

The fifth criterion requires that granting of the variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area, and that the granting of the variance will be in harmony with the general spirit and intent of the Critical Area regulations. When considering previous work conducted attempting to solve the erosion issues, existing conditions, and the location of existing structures and mature trees, the impacts to the buffer for construction of the 2 retaining walls, a pier access, and associated grading have been minimized to the extent possible to meet the goals of the project. The planting of native trees and shrubs within the buffer will be required as mitigation. Therefore, the proposed buffer impacts will result in minimal adverse impacts to plants, fish, or wildlife. Eliminating the erosion will improve water quality. Therefore, granting of this variance will be in harmony with the spirit and intent of the Critical Area regulations, and the fifth criterion can be met with mitigation.

Based upon our review, this Department finds that the first four of the above criteria have been met, and that the fifth criterion can be met by meeting mitigation requirements for the buffer impacts. Therefore, the requested variance is hereby approved in accordance with Section 33-2-205 of the Baltimore County Code with the following conditions:

1. The following note must appear on all plans associated with this project:

“On October 4, 2016, a variance was granted by the Baltimore County Department of Environmental Protection and Sustainability from Baltimore County Code Article 33, Title 2 Chesapeake Bay Critical Areas Protection to impact the Critical Area buffer for construction of 2 retaining walls to stabilize a failing hillside on this property with a replacement pier access. Conditions were placed on this variance to reduce water quality impacts. Any revisions to this proposal may require a new variance application for review”.
2. The 5,247 square feet of Critical Area buffer impacts shall be mitigated at a rate of 3:1 resulting in a buffer mitigation requirement of 15,741 square feet. Mitigation shall be provided by planting native trees and native shrubs within the Critical Area buffer on the property including areas adjacent to the retaining walls.
3. The 85-foot pier access walkway shall be no more than 4-feet in width.
4. A major buffer management plan (BMP) outlining the required and proposed mitigation, and the pier access walkway must be submitted to EPS for review. The enclosed Critical Area Buffer assistance guide provides information on plan requirements. This plan must be approved and all securities and fees paid prior to any permit approvals.
5. Upon approval of the BMP by this Department, a security of no less than \$0.25 per square foot of planting area shall be submitted to Baltimore County with an Environmental Agreement. Securities must be submitted prior to any permit approval. Mitigation shall be completed prior to dates established on the BMP. Any security releases must meet the requirements of the Environmental Agreement and as indicated on the BMP. This includes a 100% survivability requirement.

It is the intent of this Department to approve this variance subject to the above conditions. Changes in site layout may require submittal of revised plans and an amended variance request. Please be advised that Baltimore County may not issue a permit for the activity that was the subject of the variance application until 30 days after variance approval, pursuant to Natural Resources Article § 8-1808(d)(6)(ii).

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The property owner(s) must sign the statement at the end of this letter, and then return the signed letter to this Department. Failure to return a signed copy of this letter may result in delays in processing of permits or other development plans for the subject property, and/or may render this variance null and void.

If you have questions regarding this project, please contact Paul Dennis at 410-887-3980.

Sincerely,

Vincent J. Gardina
Director

VJG: pad

Enclosures: Critical Area Buffer Assistance Guide

c: Douglas L. Burgess, Esquire
Scott Mielke, Waterfront Engineering, Design and Construction, Inc.
Ms. M. Claudia Jones, Critical Area Commission

I/We have read and agree to implement the above requirements to bring my/our property into compliance with Baltimore County Code Article 33. Environmental Protection And Sustainability, Title 2 Chesapeake Bay Critical Areas Protection.

Property Owner Signature(s)

Date

Property Owner Printed Name(s)