



KEVIN KAMENETZ
County Executive

VINCENT J. GARDINA, *Director*
Department of Environmental Protection
and Sustainability

January 12, 2016

Mr. Henry A. Leskinen
Eco-Science Professionals, Inc.
P.O. Box 5006
Glen Arm, Maryland 21057

Re: Jarosinski Property
Lot 355-Swan Point
Baltimore, Maryland 21219
Critical Area Administrative Variance
DEPS Tracking Number: 07-15-2067

Dear Mr. Leskinen:

The Department of Environmental Protection and Sustainability (DEPS) has received your variance request, which proposes to construct a new, single-family dwelling on an existing lot of record. The request to construct the dwelling, yard area and other residential features will require impacts of 4,355 square feet (sf), which includes 1,556 sf of impacts to non-tidal wetlands, and 2,799 sf of impacts to the associated Critical Area buffer. This variance request also seeks to reduce the principal building minimum setback from the Critical Area Easement (CAE) from 35 feet to 20 feet.

The wetland and its buffer encompass the entire site area, except for 100 sf, severely constraining development potential of the property. The combination of the relatively small lot size (8,100 sf) and the area of wetlands and Critical Area buffer, presents these constraints. The depressional, palustrine, emergent wetland is located along the center of the site and functions to convey surface drainage and seasonal groundwater. A portion of the site contains forested wetlands and will remain undisturbed. The area of the site to be developed contains scattered trees and invasive species such as Common Reed (*Phragmites australis*) and Oriental Bittersweet (*Celastrus orbiculatus*).

The subject non-waterfront property, located in the Swan Point/Millers Island section of Baltimore County, is within a Limited Development Area of the Chesapeake Bay Critical Area. It is bounded to the north by other undeveloped, forested residential lots of similar size, to the south by undeveloped, forested residential lots and the Gunpowder Falls State Park and to the east and west by developed residential lots of equivalent size.

The Director of DEPS may grant a variance to the Chesapeake Bay Critical Area regulations in accordance with regulations adopted by the Critical Area Commission

Mr. Henry A. Leskinen
Jarosinski Property-Lot 355 Swan Point
Critical Area Administrative Variance
DEPS Tracking #07-15-2067
January 12, 2016
Page 2

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 unwarranted hardship. The entire property, except for approximately 100 square feet, consists of non-tidal wetlands and associated Critical Area buffer. The alternative, which would avoid impacts to the wetlands and buffer, is the no-build alternative. This would deprive the applicant of any reasonable use of the property. The plan minimizes impact to the resources by 450 square feet by moving the house toward the road, forward of the dwellings on the adjoining lots. In addition, the proposed back yard width has been limited to 20 feet and the house length limited to 28 feet to further minimize impacts. After consideration of the alternatives, the layout shown on the submitted plan results in the least impacts to the wetlands and buffer. Literal enforcement of the regulations would constitute 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. The applicant would be deprived of the ability to construct a dwelling and other residential features on the property, which are enjoyed on similar properties in the area, if there were literal enforcement of the buffer and buffer setback requirements. 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 construction of the dwelling and associated residential uses within the Critical Area buffer on a similar property with similar constraints would not be denied, if all other criteria for a Critical Area Variance were met. 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. Site work or construction has not started on the property, and the applicant is not requesting this variance due to conditions on neighboring properties. 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

Mr. Henry A. Leskinen
Jarosinski Property-Lot 355 Swan Point
Critical Area Administrative Variance
DEPS Tracking #07-15-2067
January 12, 2016
Page 3

the Critical Area regulations. The construction of the dwelling will have minimal impacts on water quality. Water quality impacts will be limited to 1,556 sf of a wetland dominated by phragmites, an invasive plant with minimal wildlife value, and given the small size of these impacts, there will be no discernible effect on water quality. Additionally, mitigation will be provided. Therefore, the construction of the dwelling will have no discernible, adverse effect on water quality and no effect on wildlife habitat and, therefore, the granting of this variance will be in harmony with the spirit and intent of the Critical Area Regulations. Therefore, the fifth criterion can be met with mitigation.

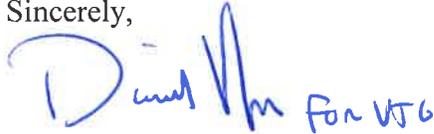
Based upon our review, this Department finds that the first four of the above criteria have been met, and that the fifth criterion can be met by mitigation for impacts, which shall include the payment of a fee-in-lieu of planting, Critical Area Easement and implementation of an approved Critical Area Management Plan. Therefore, the requested variance is hereby approved in accordance with Section 33-2-205 of the Baltimore County Code with the following conditions:

1. Mitigation for the 4,355 square feet of wetland and buffer impacts shall be provided at a rate of 3:1 (13,065 square feet). Since the remaining, undeveloped area of the property consists of forest and there is no area for on-site planting, the applicant proposes to satisfy this requirement by the payment of a fee-in-lieu of planting in the amount of \$1.50 per square foot (\$19,597.50). This shall be accomplished in accordance with an approved Critical Area Buffer Management Plan, consistent with COMAR 27.01.09.01, and include the additional provisions set forth below. The fee-in-lieu must be received by this Department prior to the issuance of any permit.
2. A Critical Area Easement (CAE), comprising approximately 4,371 square feet, shall be recorded, via the Exhibit A process, in the Baltimore County Land Records along with a declaration of protective covenants that restrict use and disturbance of the area. The recordation must be completed prior to approval of any permit.
3. The CAE shall be marked by "Critical Area Easement-Do Not Disturb" signs placed in approved locations, and a permanent, three-rail, split-rail, protective fence along the Easement limits, shown on the approved Critical Area Management Plan for this project, and installed according to the approved Management Plan specifications. This must be completed by others and inspected by DEPS prior to approval of the Use & Occupancy (U&O) Certificate.

Mr. Henry A. Leskinen
Jarosinski Property-Lot 355 Swan Point
Critical Area Administrative Variance
DEPS Tracking #07-15-2067
January 12, 2016
Page 5

If you have questions regarding this project, please contact Thomas Panzarella at (410)-887-3980.

Sincerely,



Vincent J. Gardina
Director

VJG:tcp

c: Ms. Kate Charbonneau, Critical Area Commission

JarosinskiPropLot355SwanPtCAV11.17.15.doc/sheir/TomP

I/We have read the information contained within this correspondence and agree to implement the above requirements to bring my/our property, located at Lot 355, Swan Point, on Millers Island Boulevard, into compliance with the Baltimore County Code, Article 33, Title 2, Chesapeake Bay Critical Areas Protection.

Property Owner(s) Signature(s)

Date

Printed Name(s) of Owner(s)

Date