

June 6, 2016

Mr. William Bafitis PE
Bafitis and Associates Inc.
1249 Engleberth Rd.
Baltimore MD 21221

Re: 639 Back River Neck Rd. 21221
Critical Area Administrative Variance
Tracking No. 07-16-2174

Dear Mr. Bafitis:

The Department of Environmental Protection and Sustainability (EPS) has completed a review of the variance request for the proposed development on the above referenced property. The area of the property proposed for development is located within a Limited Development Area in the Chesapeake Bay Critical Area. The request proposes to impact 2,675 square feet of the Critical Area buffer and to reduce the 35-foot primary structure setback to 10-feet on the north side for construction of a dwelling, garage, porch, driveway, and yard area. There are no proposed direct impacts to streams or wetlands, but the 25-foot wetland buffer and Critical Area forest will be impacted.

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. This property existed prior to the Critical Area law and had historic residential use. Remnants of a structure remain on-site in the area of proposed development. Buffers for the protection of wetlands cover the majority of the property. The development proposal minimizes the buffer impacts by siting the dwelling and other structures in the area of the old structure. Literal enforcement of the regulations would not allow for construction of a practical dwelling, garage, porch, driveway, and yard area on this grandfathered property. 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 proposed residential uses and similar site constraints enjoy use of their property like those

proposed in this application. Literal enforcement of the regulations would deprive the owners from practical residential uses. 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 dwelling, garage, porch, driveway, and yard area on the referenced property would not be denied to similar properties with similar constraints in the Critical Area. 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. No development activity has been performed on the property, and this variance request is not the result of existing or proposed uses on any of the 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 the Critical Area regulations. The impacts to the buffer have been minimized to the extent possible for the construction of a practical dwelling, garage, porch, driveway, and yard area on this property. These impacts are on or near the footprint of the existing structure with the majority of construction outside the buffer. Mitigation will be required for the buffer impacts and for the forest impacts. A Critical Area Easement, and Forest Buffer and Forest Conservation Easement will be recorded in Baltimore County Land Records with protective covenants for protection of the remainder of the property. Therefore, the buffer impacts to allow for the proposed residential uses will result in minimal adverse impacts to plants or wildlife. 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 and forest 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 June 6, 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 2,675 square feet of the Critical Area buffer and to reduce the 35-foot

primary structure setback to 10-feet on the north side for construction of a dwelling, porch, driveway, and yard area. Conditions were placed on this variance to reduce water quality impacts. Any revisions to this proposal, or any new development involving buffer impacts will require a new variance application for review”.

2. Mitigation for approved impacts shall be provided as follows:

The 2,675 square feet of Critical Area buffer impacts shall be mitigated at a rate of 3:1 resulting in a buffer mitigation requirement of 8,025 square feet. The 13,659 square feet of forest clearing outside the buffer shall be mitigated at a rate of 1.5:1 (20,489 square feet) as this is greater than 20% of the Critical Area forest area on the property. Because of very limited opportunity to mitigate on-site, mitigation must be provided at an EPS approved off-site location or by the payment of a fee-in-lieu to Baltimore County. Based on the above figures, the fee-in-lieu for buffer impacts would be \$12,037.50 (\$1.50 per square foot) and the fee for forest clearing would be \$10,244.50 (\$0.50 per square foot). Required mitigation fees will be finalized in the review of the required Critical Area/buffer management plan depending on any revisions to the forest clearing proposed or mitigations options chosen. See condition #3 below.

3. A Critical Area/buffer management plan outlining the required and proposed mitigation 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.
4. Upon approval of the Critical Area/buffer management plan by this Department, a security of no less than \$0.25 per square foot of any planting areas 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 Critical Area/buffer management plan. Any plantings must meet a 100% survivability requirement for two years following the approval of the initial planting by this office.
5. Critical Area “Do Not Disturb” signs shall be installed at the locations shown on the approved Critical Area/buffer management plan. This requirement must be completed prior to permit approval. This note must be added to the Critical Area/buffer management plan (see enclosure for sign specifications).
6. A Critical Area Easement and a Forest Buffer and Forest Conservation Easement must be recorded in Baltimore County Land Records along with

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Critical Area Administrative Variance
Tracking No. 07-16-2174
June 6, 2016
Page 4

the appropriate declarations of protective covenants. Please contact EPS to discuss the procedures required to meet this requirement for this property.

7. State/Federal approval for the proposed impacts to the 25-foot wetland buffer must be provided to this office prior to any permit approvals.

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).

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: A- Sign Specifications, B- Critical Area Buffer Assistance Guide,

c: 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) _____