

March 4, 2016

Mr. Jeff Markley
7216 Oliver Beach Rd.
Baltimore MD 21220

Re: Markley Property, Parcel 69, Oliver Beach Road 21220
Critical Area Administrative Variance
Tracking No. 06-16-2140

Dear Mr. Markley:

The Department of Environmental Protection and Sustainability (EPS) has completed a review of the variance request for proposed development on the above referenced property. The 28,500 square foot property is located within a Limited Development Area in the Chesapeake Bay Critical Area. The request proposes to impact 4,980 square feet of the Critical Area buffer to construct a 1,200 square-foot shed with continued use of yard area. The required buffer covers almost the entire property. Non-tidal wetlands exist on about half of the property and forest covers about two-thirds of the site.

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. Non-tidal wetlands cover almost half of the property and the required Critical Area buffer covers almost the entire property. The applicant seeks to construct a 1,200 square foot shed with the continued use of yard area in the upland corner of the site. With this location, buffer impacts have been minimized to the extent possible while the applicant has some practical use of this environmentally constrained property. Literal enforcement of the regulations would not allow for any construction or the continued uses 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. Other residential property owners in the Critical Area with similar site constraints enjoy uses of their property like the uses proposed in this

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application. Literal enforcement of the regulations would deprive the owners from constructing the shed, and from continued use of the yard area. 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 impacts to the Critical Area buffer for construction of the shed and the continued use of some 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. The property owners have not started any construction on the property related to this variance request. Also, 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 size shed and for continued use of some yard area. All impacts have been located in the upland corner of the site with no wetland impacts. The remainder and majority of the Critical Area buffer, including the non-tidal wetlands, will be recorded in Baltimore County Land Records with protective covenants and will be planted with native trees to reduce water quality impacts. Any mitigation that cannot be completed on-site will require a fee-in-lieu to allow Baltimore County to conduct Critical Area mitigation. Therefore, the buffer impacts to allow for the shed construction and for the continued use of some yard area 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 by meeting mitigation requirements.

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 and recording a Critical Area easement to protect the wetlands and forest. 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 March 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 allow for impact to the Critical Area buffer for construction of a shed, and continued use of some yard area on this property. Conditions including meeting all mitigation requirements and recordation of a Critical Area easement to protect the resources were placed on this variance to reduce water quality impacts. Any revisions to this proposal, or any new development involving impacts to the required buffer (not just the recorded Critical Area easement) will require a new variance application for review."

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

The 825 square feet of new permanent buffer impacts shall be mitigated at a rate of 3:1 resulting in a 2,475 square foot buffer mitigation requirement. The 375 square feet of shed area outside the buffer must meet buffer establishment requirements at 1:1. The 2,850 square feet of total required mitigation shall be met by planting native deciduous trees and native shrubs within the Critical Area buffer on-site prior to September 23, 2016 (See condition #3 below).

3. A minor buffer management plan outlining the required 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 prior to any permit approvals.
4. Upon approval of the minor buffer management plan by this Department, a security of no less than \$0.25 per square foot of planting area (\$712.50) shall be submitted to Baltimore County with an Environmental Agreement. The security must be submitted prior to any permit approval. The planting shall be completed prior to September 23, 2016. The plantings must meet a 100% survivability requirement for two years following the approval of the initial planting by this office. Native plant information is available on the internet at <http://www.nps.gov/plants/pubs/chesapeake/>.
5. Critical Area "Do Not Disturb" signs shall be installed at the locations shown on the approved buffer management plan. This requirement must be completed prior to permit approval. This note must be added to the buffer management plan (see enclosure for sign specifications).
6. The area of the required Critical Area buffer that has not been approved for continued use or construction of the shed shall be recorded as a Critical Area

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Easement in Baltimore County Land Records along with the appropriate declaration of protective covenants. Please contact EPS to discuss procedures required to meet this requirement. This requirement must be completed prior to permit approval.

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: Critical Area Buffer Assistance Guide, Lot Coverage Assistance Guide
Sign Specifications

c: Devin Leary, Human & Rohde
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)

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