

October 12, 2023

Anne Arundel County, Office of Planning and Zoning  
2664 Riva Road, 3rd Floor  
Annapolis, MD 21401

**RE: Gibson Island ~ Lots 251-252  
814 Broadwater Way  
Gibson Island, MD 21056  
Variance Extension Request**

Sir/Madam:


On behalf of our clients, Mr. & Mrs. James New, enclosed is an application package for a variance extension for the above referenced property. Specifically, a variance is requested to **Article 18, Section 16-405(a)** for a time extension to the variance expiration.

On April 14, 2022, the property owners received variance approval for the construction of a new single-family dwelling, the Order of which is included as Attachment 1. The Hearing Officer approved a critical area variance to allow the disturbance of the buffer and/or expanded buffer and a zoning variance to allow less setbacks from the front lot line.

Due to unforeseen delays, requirements for geo-technical borings and archaeological studies, and other permit requirements the applicants have not been able to receive approvals and proceed with construction. The extension is being requested in order to give the property owners the time needed to continue with the project requirements and obtain permits needed for construction.

Thank you for your attention to this matter. Please contact us if we may be of further service during your review of this variance request.

Sincerely,  
Drum, Loyka & Associates, LLC



Katie Yetman

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

**CASE NUMBER: 2021-0213-V**

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**JAMES M. NEW AND MELANIE K. NEW**

**THIRD ASSESSMENT DISTRICT**

**DATE HEARD: MARCH 22, 2022**

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**ORDERED BY:**

**DOUGLAS CLARK HOLLMANN  
ADMINISTRATIVE HEARING OFFICER**

**PLANNER: JOAN JENKINS**

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**DATE FILED: APRIL 14, 2022**

## **PLEADINGS**

James M. New and Melanie K. New, the applicants, seek a variance (2021-0213-V) to allow a dwelling with less setbacks and buffer than required on property with a street address of 814 Broadwater Way, Gibson Island, MD 21056.

## **PUBLIC NOTIFICATION**

The hearing notice was posted on the County's website in accordance with the County Code. The file contains the certification of mailing to community associations and interested persons. Each person designated in the application as owning land that is located within 300 feet of the subject property was notified by mail, sent to the address furnished with the application. Michael Drum testified that the property was posted for more than 14 days prior to the hearing. Therefore, I find and conclude that there has been compliance with the notice requirements.

## **FINDINGS**

A hearing was held on March 22, 2022, in which the witnesses were sworn and the following was presented regarding the proposed variance requested by the applicants.

### **The Property**

The applicants own the subject property which has 425 feet of frontage on the west side of Broadwater Way, 325 feet southwest of Bywater Road, Gibson Island. It is known as Lots 251, 252 and a strip 15 feet wide of Parcel 156 in Block 18 on Tax Map 33 in the Gibson Island subdivision. The property comprises 2.87 acres and is split-zoned R1-Residential District and OS-Open Space District. This

lot is designated in the Chesapeake Bay Critical Area as limited development area (LDA) with a portion located in the resource conservation area (RCA). The site is encumbered by tidal and nontidal wetlands, the 100-foot buffer to tidal wetlands, the 25-foot buffer to nontidal wetlands, and the expanded buffer.

The property is currently developed with a one and one-half story single-family dwelling and a driveway. The property is served by public water and private septic facilities.

### **The Proposed Work**

The proposal calls to remove the existing dwelling and construct a new two-story dwelling and associated features. Part of the initial septic system and the replacement systems are within the 100-foot buffer to tidal wetlands and the expanded buffer as shown on the site plan admitted into evidence at the hearing as County Exhibit 2. The proposed dwelling will be located 37 feet from the front lot line.

### **The Anne Arundel County Code**

§ 18-13-104 requires that there shall be a minimum 100-foot buffer landward from the mean high-water line of tidal waters, tributary streams and tidal wetlands. The buffer is expanded where there are contiguous steep slopes of 15% or more and the buffer is expanded to include the contiguous slopes and land within 50 feet of the top of slopes. § 17-8-301(b) prohibits disturbance in the 100-foot buffer and the expanded buffer.

§ 18-4-601 requires that a principal structure be set back 40 feet from the front lot line in the R1 district.

### **The Variances Requested**

The proposed work will require the following variances:

1. A critical area variance to the prohibition in § 17-8-301 against disturbing the buffer or expanded buffer to construct the proposed dwelling and associated work as shown on County Exhibit 2, with the actual disturbance to be determined at the time of permitting; and
2. A zoning variance of three (3) feet to the 40-foot front lot line setback requirement of § 18-4-601 to allow the proposed dwelling to be constructed as close as 37 feet from the front lot line as shown on County Exhibit 2.

### **The Evidence Submitted At The Hearing**

#### **Findings and Recommendations of the Office of Planning and Zoning (OPZ)**

Joan A. Jenkins, a zoning analyst with the OPZ, presented the following findings:

- This property is irregularly shaped comprising two lots. OPZ finds that the subject property far exceeds the minimum lot area requirement for a lot in the R1 district and far exceeds the minimum width requirement. Tidal and nontidal wetlands, the 100-foot buffer to tidal wetlands, the 25-foot buffer to non-tidal wetlands, the expanded buffer, and steep slopes cover much of the lot.
- The existing critical area lot coverage is 4,645 square feet and is all located within the LDA portion of the site. The post-construction critical area lot

coverage will also all be in the LDA and will total 6,310 square feet, which is well below the maximum 10,696 square feet allowed.

- A review of the 2020 County aerial photograph shows this property is one of the last building lots on the southernmost point of Gibson Island. It is one of the largest properties in the area. A significant portion of the property is encumbered by the environmental features mentioned above. The original dwelling on the property was constructed, according to State Department of Assessments and Taxation records, in 1927 prior to the enactment of critical area laws; therefore, variances were not required for construction.
- The letter of explanation states that the applicants would like to raze and rebuild the dwelling and associated improvement in an area of the property that minimizes buffer disturbance. The letter states that stormwater management and a nitrogen reducing septic system will be used.
- The Health Department commented that they do not have an approved plan for this project but has no objection as long as a plan is submitted and approved by the Health Department.
- The Department of Inspections and Permits (Engineering) commented the following:
  1. The property will be served by an individual private septic system and public water. The septic well will need to be reviewed and approved by the Health Department.

2. The subject application does not have the information of a complete stormwater preliminary plan. The required information for a complete review was not provided.
3. No review can be made until County application requirements have been met.
4. A concept plan should be submitted with a narrative to support the design. The narrative should describe how important natural areas will be preserved and protected, and show how ESD [environmental site design] may be achieved for meeting onsite stormwater treatment.
5. The area shown for stormwater practices must be determined and be based upon practice feasibility.
6. Feasibility considering the terrain, environmental factors, physical characteristics of the prevalent soil strata and its ability to suitably treat the proposed stormwater runoff and surface groundwater conditions. The practice location should not require any additional regulatory permitting. The proposed development must be compatible with the surrounding community and consider downstream properties in design.
7. Provide suitable justification to support the chosen method of stormwater management. The justification must establish that water quality requirements have been met.
8. Justify in the narrative the choice for each ESD practice used and those not used by stating why it is or is not suitable for the site.

9. Stable conveyance of stormwater and maintenance of natural flow patterns must be demonstrated.

10. Due to insufficient application no recommendation can be made. At this time, this office cannot verify if the proposal adversely affects water quality or not.

11. The applicants should evaluate and implement site planning alternatives in accordance with § 18-16-201.

- The Critical Area Commission commented that it would appear the applicants have reduced impacts by moving the driveway beyond the expanded buffer. Appropriate mitigation should be provided.
- The Development Division (Critical Area Team) commented that while it is true that a significant portion of this site is encumbered by tidal and nontidal wetlands as well as the associated buffer and expanded buffer, there is still 20,419 square feet (almost ½ acre) of area available for development outside of those protected features. In addition, the applicants have identified the square footage of buffer disturbance as 5,920 square feet, this figure does not include the potential future disturbance for the backup septic systems. The site is also identified as being located within a Sensitive Species Project Review Area yet no data is included identifying the species or the necessary protections for that



species.<sup>1</sup> While some reconfiguration has occurred since our original comments and subsequent meeting, the primary septic system is still within the 100-foot buffer. There is no need for disturbance within the buffer for initial system. As previously mentioned, there is almost a ½ acre of available space outside of the required buffers to accommodate the development. The applicants have compared the proposed development with the developed properties in the surrounding area but not properties in areas with similar environmentally sensitive areas. Given the environmental features on this site, protection of the buffer from proposed and potential future disturbance is imperative. This is a site that requires that the proposed development be designed to preserve and protect the environmental features, not a site where the features are meant to accommodate the design. There is ample room on this site to design the development (house, septic, sidewalk, etc.) within the constraints and eliminate or significantly reduce any impacts to the protective features on site.

- The applicants have not submitted sufficient information to address the effect on water quality or the impact on fish, wildlife or plant habitat. The applicants have located the dwelling outside of the buffer but have not fully evaluated opportunities to reduce impacts to the required buffer on site. The sprawling design of the dwelling forces the proposed driveway for the rear entry garage

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<sup>1</sup> The applicants have provided a letter from the Department of Natural Resources stating that there are no official records for State or Federal listed, candidate, proposed, or rare plant or animal species within the project area.

into the expanded buffer as well as the required 25-foot buffer to steep slopes. These slopes lead to an area of nontidal wetlands and the modification required for such an improvement will likely not be supported. The design of the home also forces the septic and septic reserve areas into the buffer and will result in buffer disturbance for the home as well as the potential for future buffer disturbance if the backup areas are needed. This home and the associated development is not appropriate for the constraints on this site and does not meet the test for the minimum necessary given the environmental protection required. The applicants have modified the original design and reduced, but not eliminated the amount of buffer disturbance. There is ample room for a home and associated improvements outside of the buffer. Based on the environmental sensitivity of the lot, buffer should be protected.

- For the granting of a critical area variance, a determination must be made as to whether because of certain unique physical conditions such as exceptional topographical conditions peculiar to and inherent in the property, strict implementation of the County's critical area program would result in an unwarranted hardship. In this case, the lot is encumbered by tidal and nontidal wetlands, the 100-foot tidal wetlands and 25-foot non-tidal wetlands buffers, the expanded buffer, and steep slopes; therefore, development is difficult without the need for some variance relief.
- A literal interpretation of the County's critical area program will not deprive the applicants of rights that are commonly enjoyed by other properties in

similar areas within the critical area of the County. There is sufficient area on the lot to place a dwelling and initial septic system outside of the buffer, thereby lessening the variance request to only what is necessary for the replacement septic systems.

- The granting of the variance as proposed will confer on the applicants special privileges that would be denied by COMAR, Title 27. In particular, the large dwelling footprint requiring the septic system in the 100-foot tidal wetlands buffer is unwarranted. OPZ cannot support disturbance for development within the buffer for any of the development or initial septic system. The applicants should consider redesigning the development to accommodate the dwelling and associated features including the initial septic system thereby only requiring a variance for the backup septic systems.
- The variances requested are not based on conditions or circumstances that are the result of actions by the applicants and does not arise from any condition relating to land or building use on any neighboring property. The granting of the variances may adversely affect water quality or impact fish, wildlife or plant habitat. The applicants have not overcome the presumption that the specific development does not conform to the general purpose and intent of the critical area law and site planning alternatives could be further reevaluated.
- With regard to the requirements for all variances, approval of the variances would not alter the essential character of the neighborhood. Approval of the variances will not substantially impair the appropriate use or development of

adjacent property, as the improvements will be located well away from the dwellings on the abutting lots. The variances will not be contrary to acceptable clearing and replanting practices, and will not be detrimental to the public welfare.

- The standard for granting a variance is whether strict compliance of the zoning ordinance regulations would result in “practical difficulty or unnecessary hardship”. Variances should only be granted if in strict harmony with the spirit and intent of the zoning regulations and only in such a manner as to grant relief without substantial injury to the public health, safety and general welfare. The need sufficient to justify a variance must be substantial and urgent and not merely for the convenience of the applicants. While it is apparent that this lot has unique physical conditions and some relief may be necessary particularly for the replacement septic systems, there is ample room on the lot to design a dwelling within the confines of the zoning requirements. The proposed porch on the south side of the dwelling could easily be reduced to eliminate the need for the zoning front setback variance and therefore cannot be supported.
- It appears that the initial septic could be located entirely outside the buffer minimizing the critical area variance. The porch setback request is not considered to be the minimum necessary to afford relief as the porch could be reduced in size. Therefore, the variance requests are unwarranted.

- With regard to the standards by which a variance may be granted as set forth in § 18-16-305, under the County Code, OPZ recommends that the variances be denied.

### **Other Testimony and Exhibits**

The applicants were assisted at the hearing by Michael Drum and Katie Yetman of Drum, Loyka & Associates, Inc., the applicants' engineers, and Neal Thomson of Thomson & Cooke Architects, LLP. Evidence was presented that the applicants' property is impacted by environmental features that severely limit where they can rebuild their home. The existing one, parts of which may have been built as long ago as 1929, is failing. The applicants purchased the subject property in 2012.

The existing house intrudes into the buffer to the tidal pond behind their home. The existing septic system is entirely in the buffer. The most recent design will locate the dwelling outside the buffer. Only a portion of the septic system will extend into the buffer. Permanent disturbance in the buffer will be reduced to zero.

Katie and Jonathan Simmons testified that they live across the street from the applicants and are in full support of the current proposal. An earlier proposal oriented the new dwelling closer to the street than they thought appropriate but they have no problems with the current design. A letter of protest was received from Elizabeth Davis who wrote that she lives at 814 Broadway nearby. However, the letter is dated January 17, 2022, and Ms. Davis' objections may have been met since the applicants have made significant changes to their proposal, as shown by

the sequence of exhibits marked Applicants' Exhibit 3-8 and the site plan dated February 24, 2022. Ms. Davis did not provide further comment or appear at the hearing.

There was no other testimony taken or exhibits received in the matter. The Hearing Officer did not visit the property.

## DECISION

### State Requirements for Critical Area Variances

§ 8-1808(d)(2) of the Natural Resources Article, Annotated Code of Maryland, provides in subsection (ii), that “[i]n considering an application for a variance [to the critical area requirements], a local jurisdiction shall presume that the specific development in the critical area that is subject to the application and for which a variance is required does not conform to the general purpose and intent of this subtitle, regulations adopted under this subtitle, and the requirements of the jurisdiction’s program.” (Emphasis added.) “Given these provisions of the State criteria for the grant of a variance, the burden on the applicant is very high.” *Becker v. Anne Arundel County*, 174 Md. App. 114, 124; 920 A.2d 1118, 1124 (2007).

In *Becker v. Anne Arundel County*, *supra*, 174 Md. App. at 131; 920 A.2d at 1128, the Court of Special Appeals discussed the history of the critical area law in reviewing a decision from this County. The court’s discussion of the recent amendments to the critical area law in 2002 and 2004, and the elements that must

be satisfied in order for an applicant to be granted a variance to the critical area, is worth quoting at length:

In 2002, the General Assembly amended the [critical area] law. ... The amendments to subsection (d) provided that, (1) in order to grant a variance, the Board had to find that the applicant had satisfied each one of the variance provisions, and (2) in order to grant a variance, the Board had to find that, without a variance, the applicant would be deprived of a use permitted to others in accordance with the provisions in the critical area program. ... The preambles to the bills expressly stated that it was the intent of the General Assembly to overrule recent decisions of the Court of Appeals, in which the Court had ruled that, (1) when determining if the denial of a variance would deny an applicant rights commonly enjoyed by others in the critical area, a board may compare it to uses or development that predated the critical area program; (2) an applicant for a variance may generally satisfy variance standards rather than satisfy all standards; and, (3) a board could grant a variance if the critical area program would deny development on a specific portion of the applicant's property rather than considering the parcel as a whole.

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In 2003, the Court of Appeals decided *Lewis v. Dept. of Natural Res.*, 377 Md. 382, 833 A.2d 563 (2003). *Lewis* was decided under the law as it existed prior to the 2002 amendments (citation omitted), and held, *inter alia*, that (1) with respect to variances in buffer areas, the correct standard was not whether the property owner retained reasonable and significant use of the property outside of the buffer, but whether he or she was being denied reasonable use within the

buffer, and (2) that the unwarranted hardship factor was the determinative consideration and the other factors merely provided the board with guidance. *Id.* at 419-23, 833 A.2d 563.

Notwithstanding the fact that the Court of Appeals expressly stated that *Lewis* was decided under the law as it existed prior to the 2002 amendments, in 2004 Laws of Maryland, chapter 526, the General Assembly again amended State law by enacting the substance of Senate Bill 694 and House Bill 1009. The General Assembly expressly stated that its intent in amending the law was to overrule *Lewis* and reestablish the understanding of unwarranted hardship that existed before being “weakened by the Court of Appeals.” In the preambles, the General Assembly recited the history of the 2002 amendments and the *Lewis* decision. The amendment changed the definition of unwarranted hardship [found in § 8-1808(d)(2)(i)] to mean that, “without a variance, an applicant would be denied reasonable and significant use of the entire parcel or lot for which the variance is requested.” (Emphasis added.)

The question of whether the applicants are entitled to the variances requested begins, therefore, with the understanding that, in addition to the other specific factors that must be considered, the applicants must overcome the presumption, “that the specific development in the critical area that is subject to the application ... does not conform to the general purpose and intent of [the critical area law].”<sup>2</sup> Furthermore, the applicants carry the burden of convincing the

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<sup>2</sup> § 8-1808(d) (2) (ii) of the Natural Resources Article. References to State law do not imply that the provisions of the County Code are being ignored or are not being enforced. If any difference exists between County law and State law, or if some State criteria were omitted from County law, State law would prevail. *See*, discussion on this subject in *Becker v. Anne Arundel County*, *supra*, 174 Md. App. at 135; 920 A.2d at 1131.



Hearing Officer “that the applicant has satisfied each one of the variance provisions.”<sup>3</sup> (Emphasis added.) “*Anne Arundel County’s local critical area variance program contains ... separate criteria. ...Each of these individual criteria must be met.*” *Becker v. Anne Arundel County, supra*, 174 Md. App. at 124; 920 A.2d at 1124. (Emphasis in original.) In other words, if the applicants fail to meet just *one* of these criteria, the variance is *required* to be denied.

In *Assateague Coastal Trust, Inc. v. Roy T. Schwalbach, et al.*, 448 Md. 112, 2016, the Court of Appeals considered an appeal claiming that a variance granted by the Worcester County Board of Appeals to allow a property owner to extend a pier across state-owned marshland from his property should not have been granted. The pier would be 80 feet longer than allowed by the Worcester County ordinance. The variance was granted. The Court of Appeals visited the history of the critical area law and efforts by the Legislature to amend and clarify the law. The Court grappled with the phrase “unwarranted hardship,” and asked if “an applicant [must] demonstrate a denial of *all* reasonable and significant use of the entire property [which was the then-existing standard], or must the applicant show a denial of *a* reasonable and significant use of the entire property?” (At page 14.) The Court concluded, on page 28, that:

In summary, in order to establish an unwarranted hardship, the applicant has the burden of demonstrating that, without a variance, the applicant would be denied a use of the property that is both significant and

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<sup>3</sup> § 8-1808(d) (4) (ii).

reasonable. In addition, the applicant has the burden of showing that such a use cannot be accomplished elsewhere on the property without a variance. (Emphasis added.)

The variances sought in this application are variances from the critical area law (buffers) and from the zoning law (setback requirements). “[A number of requests in the *Becker* decision] were for variances from the stringent critical area law. The request for a variance from the setback, however, is a request under the more lenient general zoning requirements. As indicated above, the criteria for a general zoning variance and the criteria for a critical area variance are not the same.” *Becker v. Anne Arundel County, supra*, 174 Md. App. at 141; 920 A.2d at 1134.

Therefore, the critical area variances must be considered separately from the general zoning or setback variances.<sup>4</sup> I will first analyze the facts in light of the requested critical area variances, and then analyze the facts in light of the zoning variance requested.

#### **County Requirements for Critical Area Variances**

§ 18-16-305(b) sets forth six separate requirements (in this case) that must be met for a variance to be issued for property in the critical area. They are (1) whether a denial of the requested variance would constitute an unwarranted hardship, (2) whether a denial of the requested variance would deprive the

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<sup>4</sup> “We agree that the Board should have distinguished between the critical area variance and the setback variance.” *Becker v. Anne Arundel County, supra*, page 174 Md. App. at 141; 920 A.2d at 1134.

applicants of rights commonly enjoyed by other property owners, (3) whether granting the variance would confer a special privilege on the applicants, (4) whether the application arises from actions of the applicants, or from conditions or use on neighboring properties, (5) whether granting the application would not adversely affect the environment and be in harmony with the critical area program, and (6) whether the applicants have overcome the presumption in Natural Resources Article, § 8-1808(d)(2)(ii), of the State law that the variance request should be denied.

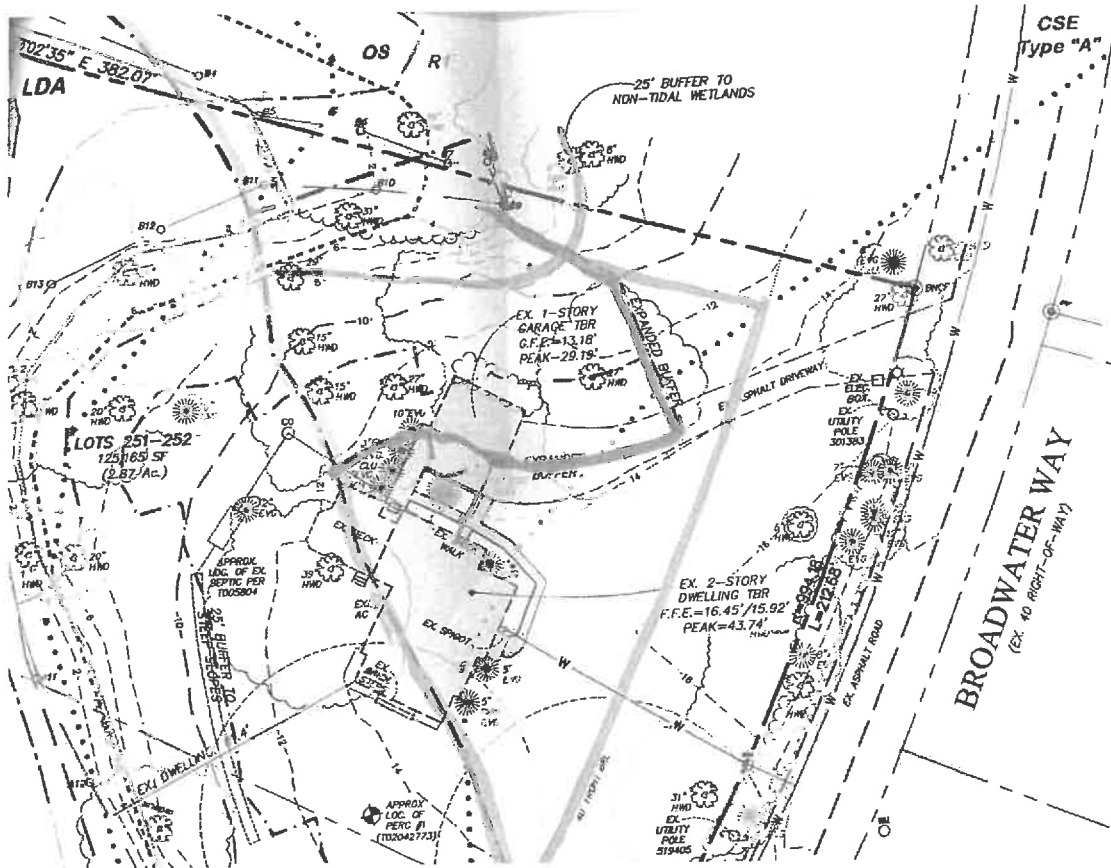
Provided that the applicants meet the above requirements, a variance may not be granted unless six additional factors are found: (1) the variance is the minimum variance necessary to afford relief; (2) the granting of the variance will not alter the essential character of the neighborhood or district in which the lot is located; (3) the variance will not substantially impair the appropriate use or development of adjacent property; (4) the variance will not reduce forest cover in the limited development and resource conservation areas of the critical area; (5) the variance will not be contrary to acceptable clearing and replanting practices required for development in the critical area; or (6) the variance will not be detrimental to the public welfare.

### **Findings – Critical Area Variances**

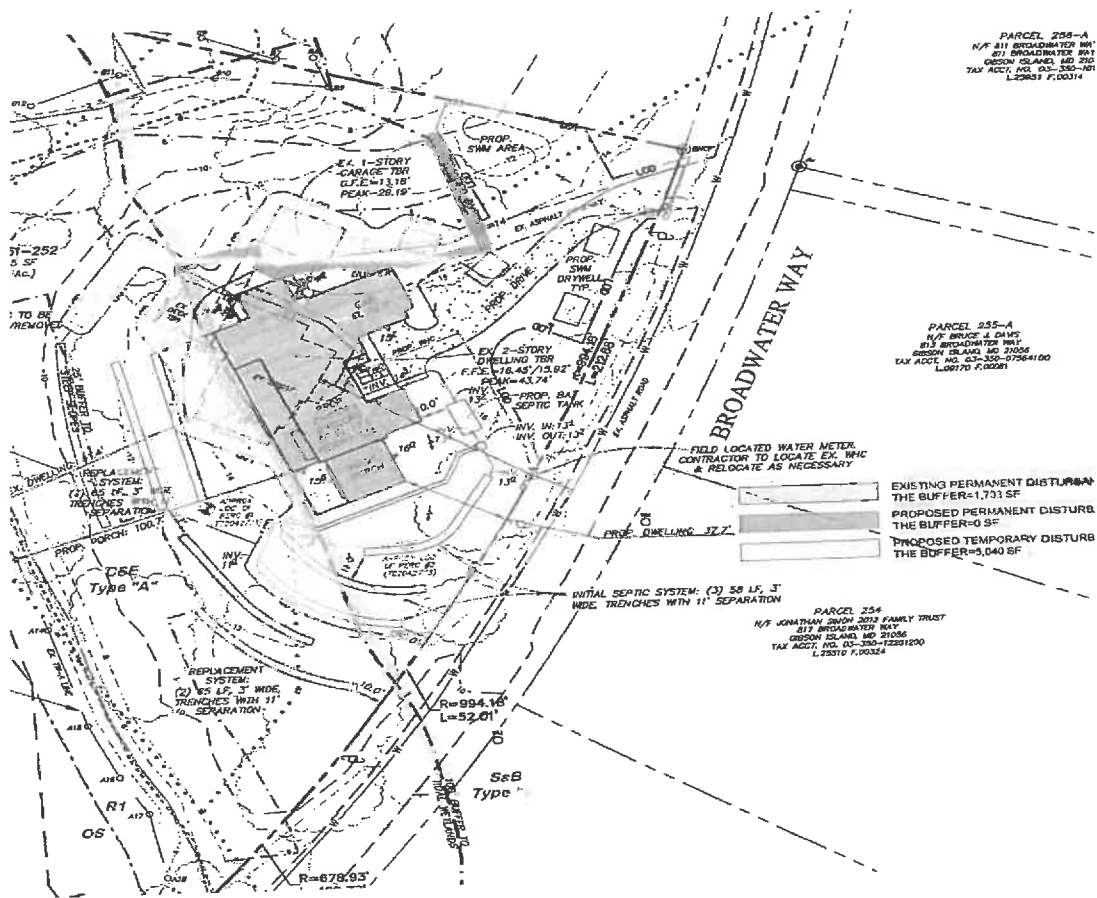
#### **Background**

The buffers and buildable area on the applicants' property are shown in the following aerial photograph (the yellow line is the 100-foot buffer to tidal

wetlands; the orange line is the 25-foot to non-tidal wetlands; and the pink line shows the zoning setbacks from the front and side of the property. The gray areas are the existing dwelling and lot coverage). The buildable area is contained within the orange, yellow, and pink lines.



The following aerial shows the footprint of the proposed dwelling outside the 100-foot buffer, the existing lot coverage in the buffer that will be removed, and temporary disturbance (in yellow), most of which will be related to the removal of existing structures and septic system in the buffers:



A portion of the septic system will be in the 100-foot buffer, but installation of septic trenches is considered temporary because they will be buried and the surface revegetated.

The areas to be disturbed can be considered together in deciding whether the application meets the six requirements in the Code for granting a critical area variance set forth above in § 18-16-305(b).

**Subsection (b)(1) - Unwarranted Hardship.**

As explained in the *Assateague Coastal Trust* case discussed above, an unwarranted hardship is something that would deny a property owner a use of his

or her property “that is both significant and reasonable” and “which cannot be accomplished elsewhere on the property without a variance.” The proposed new dwelling will constitute “significant and reasonable” use of their property. I find that the applicants cannot reasonably place their new home “elsewhere on the property without a variance.” Therefore, I find that the applicants **have met** the requirements of subsection (b)(2).

**Subsection (b)(2) - Deprive Applicants of Rights**

I find that the applicants would be deprived of rights commonly enjoyed by other properties in similar areas as permitted in accordance with the provisions of the critical area program, i.e., the right, on these facts, to construct a new home to replace the one that is failing. Therefore, I find that the applicants **have met** the requirements of subsection (b)(2).

**Subsection (b)(3) - Special Privilege**

I further find that the granting of the requested critical area variances would not confer on the applicants a special privilege that would be denied by COMAR, 27.01, the County’s critical area program, to other lands or structures within the County’s critical area. Therefore, I find that the applicants **have met** the requirements of subsection (b)(3).

**Subsection (b)(4) - Actions By Applicants Or Neighboring Property**

I find that the requested critical area variances are not based on conditions or circumstances that are the result of actions by the applicants, including the commencement of development before an application for a variance was filed, and

do not arise from any condition relating to land or building use on any neighboring property. Therefore, I find that the applicants **have met** the requirements of subsection (b)(4).

**Subsection (b)(5) - Water Quality, Intent of Critical Area Program**

The granting of the requested critical area variances will not adversely affect water quality or adversely impact fish, wildlife or plant habitat within the County's critical area or a bog protection area. It will also be in harmony with the general spirit and intent of the County's critical area program. Therefore, I find that the applicants **have met** the requirements of subsection (b)(5).<sup>5</sup>

**Subsection (b)(7) - § 8-1808(d)(2)(ii) Presumption**

In *Becker v. Anne Arundel County*, *supra*, 174 Md. App. at 133; 920 A.2d at 1129, the Court of Special Appeals discussed the presumption found in § 8-1808(d)(2)(ii) of the Natural Resources Article: "The amendment also created a presumption that the use for which the variance was being requested was not in conformity with the purpose and intent of the critical area program."

I find that the applicants have overcome the presumption contained in the Natural Resources Article, § 8-1808(d)(2), of the State law (which is incorporated into § 18-16-305 subsection (b)(7)) for the reasons set forth above. Therefore, I find that the applicants **have met** the requirement of subsection (b)(7).<sup>6</sup>

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<sup>5</sup> Subsection (b)(6) relates to bogs which are not a factor in this decision.

<sup>6</sup> Subsection (b)(8) relates to § 18-16-201 which sets out requirements for a pre-filing plan and administrative site plan, and other things not relevant here.

Accordingly, the request for a variances to disturb the buffer and expanded buffer will be granted. The applicants have worked hard to come up with a home that is compatible with the neighborhood and reduces disturbance to the extent possible, given the competing facts and interests in this case.

### **The Zoning Variance**

#### **Requirements for Zoning Variances**

§ 18-16-305 sets forth the requirements for granting a zoning variance.

Subsection (a) reads, in part, as follows: a variance may be granted if the Administrative Hearing Officer finds that practical difficulties or unnecessary hardships prevent conformance with the strict letter of this article, provided the spirit of law is observed, public safety secured, and substantial justice done. A variance may be granted only if the Administrative Hearing Officer makes the following affirmative findings:

- (1) Because of certain unique physical conditions, such as irregularity, narrowness or shallowness of lot size and shape or exceptional topographical conditions peculiar to and inherent in the particular lot, there is no reasonable possibility of developing the lot in strict conformance with this article; or
- (2) Because of exceptional circumstances other than financial considerations, the grant of a variance is necessary to avoid practical difficulties or unnecessary hardship and to enable the applicant to develop the lot.



The variance process for subsection (1) above is a two-step process. The first step requires a finding that special conditions or circumstances exist that are peculiar to the land or structure at issue which requires a finding that the property whereupon the structures are to be placed or use conducted is unique and unusual in a manner different from the nature of the surrounding properties. The second part of the test is whether the uniqueness and peculiarity of the property causes the zoning provisions to have a disproportionate impact upon the subject property causing the owner a practical difficulty or unnecessary hardship. “Uniqueness” requires that the subject property have an inherent characteristic not shared by other properties in the area. *Trinity Assembly of God of Baltimore City, Inc. v. People’s Counsel for Baltimore County*, 178 Md. App. 232, 941 A.2d 560 (2008); *Umerley v. People’s Counsel for Baltimore County*, 108 Md. App. 497, 672 A.2d 173 (1996); *North v. St. Mary’s County*, 99 Md. App. 502, 638 A.2d 1175 (1994), cert. denied, 336 Md. 224, 647 A.2d 444 (1994).

The variance process for subsection (2) - practical difficulties or unnecessary hardship - is simpler. A determination must be made that, because of exceptional circumstances other than financial considerations, the grant of a variance is necessary to avoid practical difficulties or unnecessary hardship, and to enable the applicant to develop the lot.

§ 18-16-305 provides that a zoning variance must meet the same conditions set forth above as to critical area variances.

### **Findings - Zoning Variance**

I find, based upon the evidence that, because of the unique physical conditions peculiar to and inherent in the subject property, i.e., the restricted area in which the applicants have to rebuild their home without a zoning variance, there is no reasonable possibility of developing the lot in strict conformance with the Code without the requested zoning variance.

I further find that the granting of the critical area and zoning variances are the minimum needed for relief, the critical area and zoning variances will not alter the essential character of the neighborhood or district in which the lot is located, will not substantially impair the appropriate use or development of adjacent property, will not reduce forest cover in the limited development and resource conservation areas of the critical area, will not be contrary to acceptable clearing and replanting practices required for development in the critical area, or be detrimental to the public welfare.

### **ORDER**

PURSUANT to the application of James M. New and Melanie K. New, petitioning for a variance to allow a dwelling with less setbacks and buffer than required on property with a street address of 814 Broadwater Way, Gibson Island;

PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is this **14<sup>th</sup> day of April, 2022**,

**ORDERED**, by the Administrative Hearing Officer of Anne Arundel County, that the applicants are **granted**:

1. A critical area variances to the prohibition in § 17-8-301 against disturbing the buffer or expanded buffer to allow the applicants to construct the proposed dwelling and associated work as shown on County Exhibit 2, with the actual disturbance to be determined at the time of permitting; and
2. A zoning variance of three (3) feet to the 40-foot front lot line setback requirement of § 18-4-601 to allow the proposed dwelling to be constructed as close as 37 feet from the front lot line as shown on County Exhibit 2.

The foregoing variances are subject to the applicants complying with any instructions and necessary approvals from the Office of Planning and Zoning and/or the Department of Inspections and Permits, the Department of Inspections and Permits, the Department of Health, and/or the Critical Area Commission.

This Order does not constitute a building permit. In order for the applicants to construct the structures permitted in this decision, they must apply for and obtain the necessary building permits, along with any other approvals required to perform the work described herein.

Furthermore, County Exhibit 2, referenced in this decision, is incorporated herein as if fully set forth and made a part of this Order. The proposed improvements shown on County Exhibit 2 shall be constructed on the subject property in the locations shown therein. The decision and order shall not prohibit the applicants from making minor changes to the facilities as presently shown on County Exhibit 2 to adjust for changes made necessary by comments or requirements that arise during plan review or construction, provided those minor

changes do not exceed the variances granted herein. The reasonableness of any such change shall be determined by the Office of Planning and Zoning and/or the Department of Inspections and Permits.



Douglas Clark Hollmann  
Administrative Hearing Officer

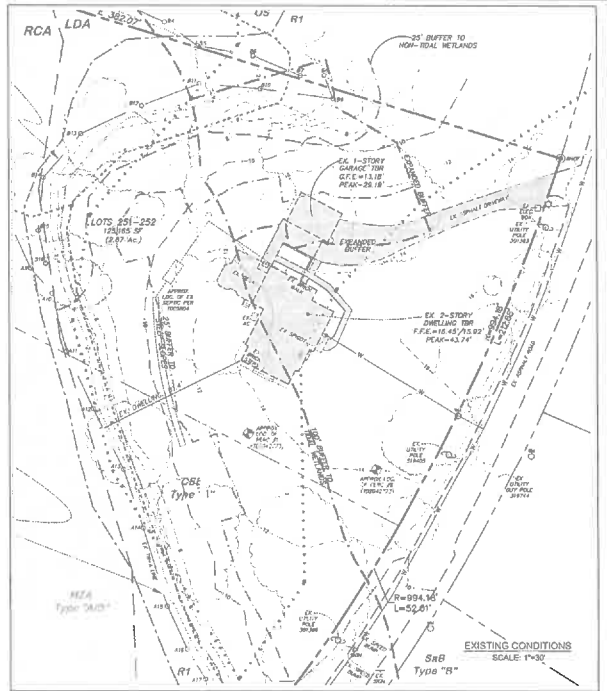
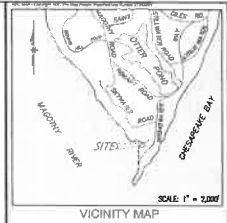
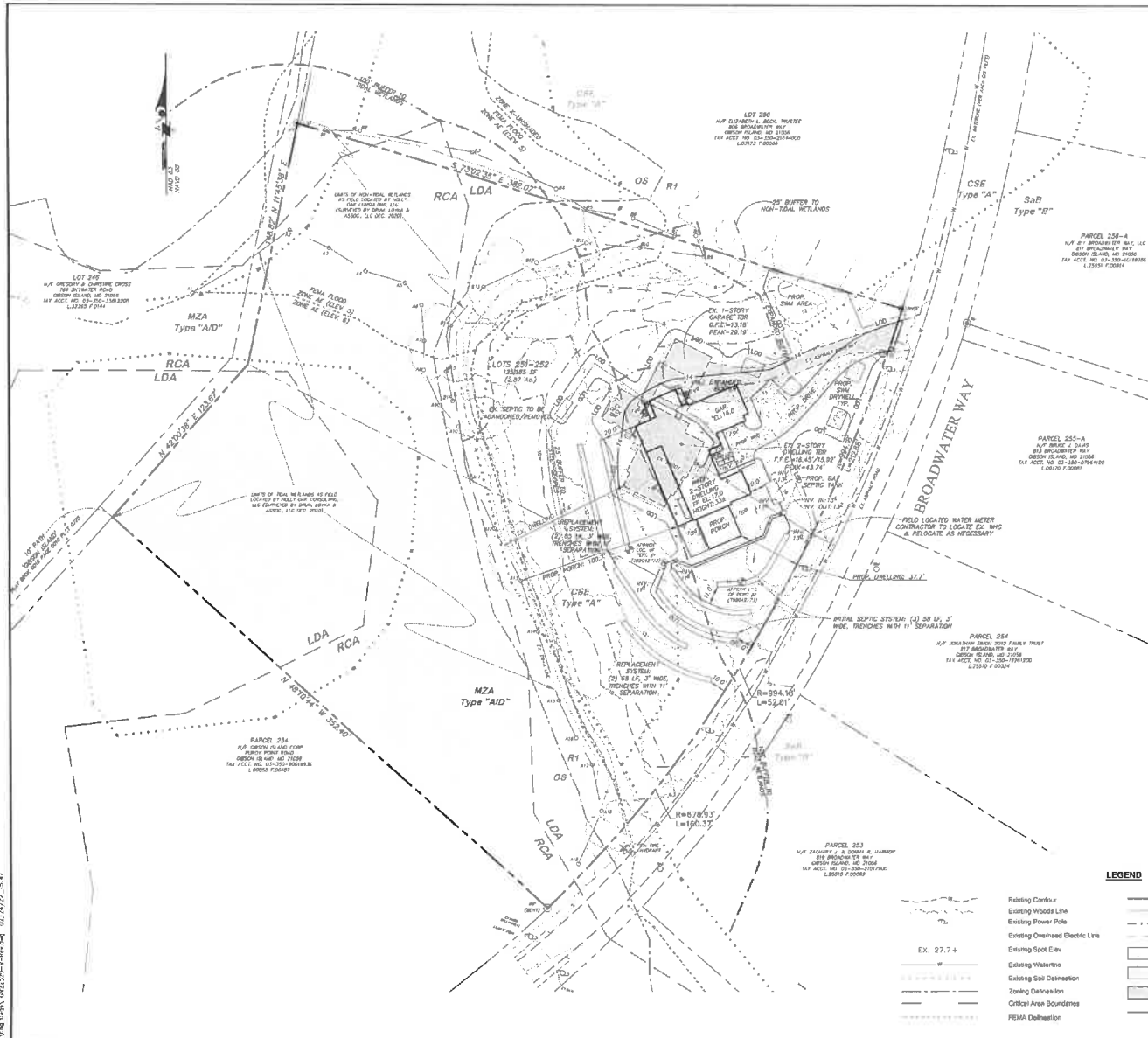
### NOTICE TO APPLICANTS

**This Order does not constitute a building permit. In order for the applicants to perform the work permitted in this decision, the applicants must apply for and obtain the necessary building permits, along with any other approvals required to perform the work described herein.**

Any person, firm, corporation, or governmental agency having an interest in this Decision and aggrieved thereby may file a Notice of Appeal with the County Board of Appeals within thirty (30) days from the date of this Decision. **If the variance or variances granted in this case relate to work in the critical area, a permit for the activity that was the subject of this variance application will not be issued until the appeal period has elapsed.**

Further, § 18-16-405(a) provides that a variance or special exception that is not extended or tolled **expires by operation of law** unless the applicants **within 18 months** of the granting of the variance or special exception (1) obtain a building permit or (2) files an application for subdivision. Thereafter, the variance or special exception shall not expire so long as (1) construction proceeds in accordance with the permit or (2) a record plat is recorded among the land records pursuant to the application for subdivision, the applicants obtain a building permit within one year after recordation of the plat, and construction proceeds in accordance with the permit.

If this case is not appealed, exhibits must be claimed within 60 days of the date of this Order, or they may be discarded.



SITE TABULATIONS	
Total Site Area:	125,165 S.F. (2.87 Ac.)
Total Site Area ("Dry Ground" Only):*	71,307 S.F. (1.64 Ac.)
Site Zoning:	R-1 & OS
Critical Area Designation:	LDA & RCA
LDA Site Area ("Dry Ground" Only):*	63,519 S.F. (1.46 Ac.)
RCA Site Area ("Dry Ground" Only):*	7,650 S.F. (0.18 Ac.)
Lot Coverage:	
-Existing Lot Coverage:	4,844 S.F. (0.11 Ac.)
-Allowable Lot Coverage:**	10,866 S.F. (0.25 Ac.)
-Proposed Lot Coverage:	6,310 S.F. (0.14 Ac.)
R-1 Zoning Setbacks for Principal Structure:	
-Front:	4'
-Rear:	3'
-Side:	10' (4')
Buffer and Expanded Buffer:	
-Total Buffer Site Area:**	50,858 S.F. (1.17 Ac.)
-Total Buffer Disturbance:	5,040 S.F. (0.12 Ac.)

\*\*Total Planned Site Area Less Tidal Wetlands  
 \*\*Based on "Dry Ground" Area

LEGEND	
Existing Curbs	100' Buffer to Tidal Wetlands
Existing Wooded Line	25' Buffer to Non-Tidal Wetlands
Existing Power Pole	Expanded Buffer
Existing Overhead Electric Line	22' Buffer to Steep Slopes
Existing Spot Elev	Steep Slopes 15% or Greater
Existing Waterline	4'
Existing Spot Elevation	3'
Zoning Disturbance	10' (4')
Critical Area Boundaries	Existing Wetland Area
FEMA Delineation	Existing Improvements
	Liability of Disturbance

RECORDED MAP	ISSUANCE BY
DATE: 22 DEC 2020	
MODIFIED BY/DATE	
CADD ENG # QN22220	
DLA PROJECT # QN22220	

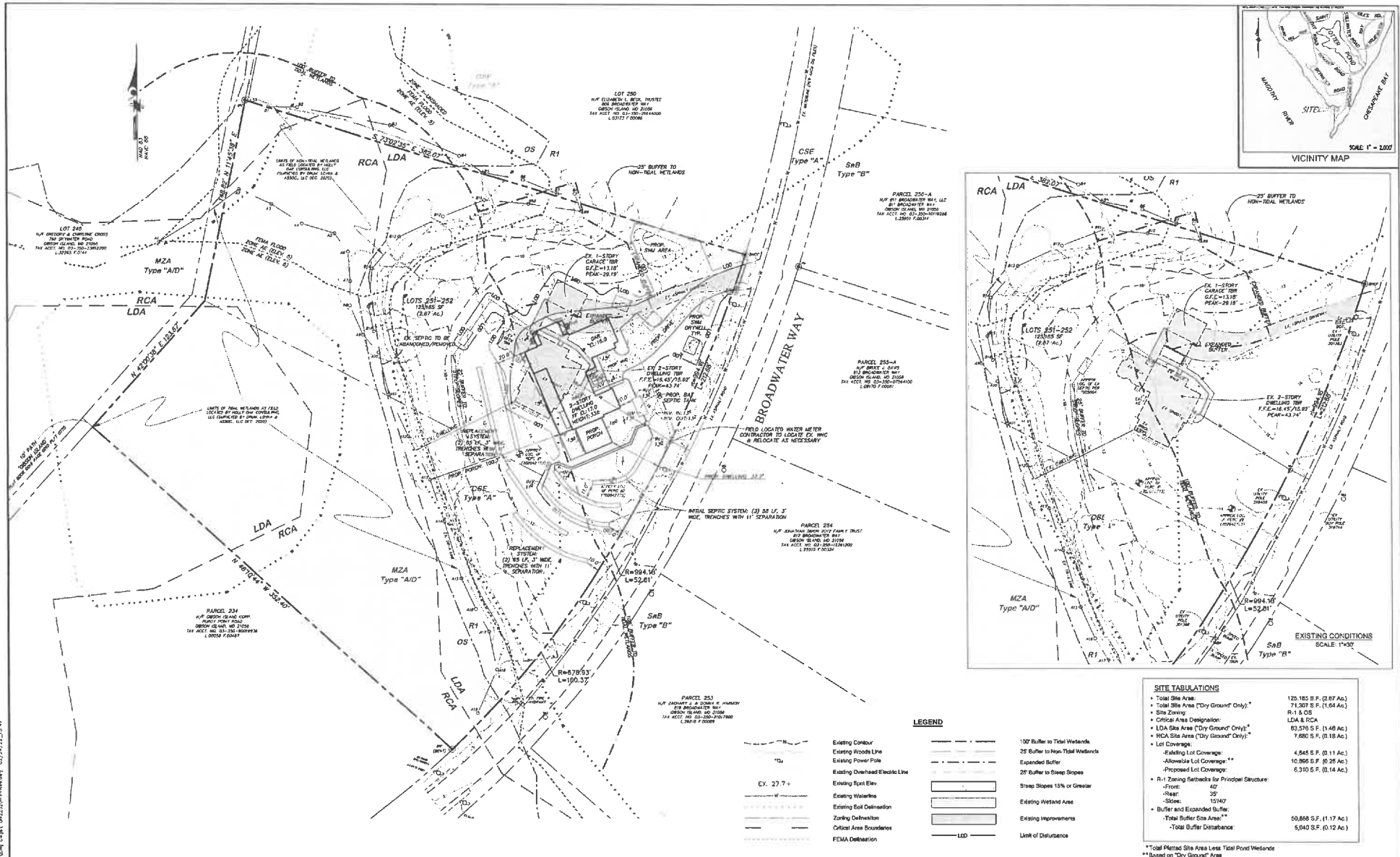
REVISIONS TO APPROVED PLANS			
No	DATE	BY	DESCRIPTION

**Drum, Loyka & Associates, LLC**  
 CIVIL ENGINEERS - LAND SURVEYORS  
 1410 Forest Drive, Suite 35  
 Annapolis, Maryland 21403  
 Phone: 410-280-3192, Fax: 410-280-1992  
 www.drummyka.com

CLIENT:  
 MR. & MRS. JAMES NEW  
 3607 LOWELL ST. NW  
 WASHINGTON D.C. 20016

VARIANCE PLAN  
**GIBSON ISLAND ~ LOTS 251-252**  
 814 BROADWATER WAY, GIBSON ISLAND, MARYLAND 21056  
 TAX ACCT. NO. 03-350-23306800  
 TAX MAP 0033 GRID 0018 PARCEL 0156 DISTRICT 3RD  
 ANNE ARUNDEL COUNTY, MARYLAND

P:\2022\03\08-22-2022\03\08-22-2022\03\08-22-2022.dwg 2022/02/24 15:47



**SITE TABULATIONS**

Total Site Area:	125,185 S.F. (2.87 Ac.)
Total Site Area ("Dry Ground" Only):*	71,307 S.F. (1.64 Ac.)
Site Zoning:	R-1 & OS
Critical Area Designation:	LDA & RCA
LDA Site Area ("Dry Ground" Only):**	63,576 S.F. (1.48 Ac.)
RCA Site Area ("Dry Ground" Only):**	7,850 S.F. (0.18 Ac.)
Lot Coverage:	
-Existing Lot Coverage:	4,845 S.F. (0.11 Ac.)
-Allowable Lot Coverage:**	10,858 S.F. (0.26 Ac.)
-Proposed Lot Coverage:	6,310 S.F. (0.14 Ac.)
R-1 Zoning Setbacks for Principal Structure:	
-Front:	40'
-Rear:	25'
-Side:	15/40'
-Buffer and Expanded Buffer:	
-Total Buffer Site Area:**	50,688 S.F. (1.17 Ac.)
-Total Buffer Disturbance:	5,043 S.F. (0.12 Ac.)

\*Total Planned Site Area Less Tidal Pond Wetlands  
 \*\*Based on "Dry Ground" Area

RECORDED: 04/20/2022  
 DRAWN: RLT  
 DATE: 22 DEC 2020  
 MOVED BY: DATE:  
 CAD: DNG P: 04/22/2020  
 BIA PROJECT #: 04/22/2020

**REVISIONS TO APPROVED PLANS**

No.	DATE	BY	DESCRIPTION

**Drum, Loyka & Associates, LLC**  
 CIVIL ENGINEERS - LAND SURVEYORS  
 1410 Forest Drive, Suite 35  
 Annapolis, Maryland 21403  
 Phone: 410-260-3122 • Fax: 410-260-1962  
 www.drumloyka.com

CLIENT:  
 MR. & MRS. JAMES NEW  
 3607 LOWELL ST. NW  
 WASHINGTON D.C. 20016

**VARIANCE PLAN**  
**GIBSON ISLAND ~ LOTS 251-252**  
 814 BROADWATER WAY, GIBSON ISLAND, MARYLAND 21096  
 TAX ACCT. NO. 03-350-23306900  
 TAX MAP 0033 GRID 0618 PARCEL 0156 DISTRICT 3RD  
 ANNE ARUNDEL COUNTY, MARYLAND

SCALE: 1"=30'  
 DATE: FEB. 24, 2022  
 PROJ. NO. G222520  
 SHEET 1 OF 1

P:\04\2520\GIBSON ISLAND\GIBSON ISLAND\04\_22\_2022\DWG\04\_22\_2022\_0156.dwg

# Chesapeake Bay Critical Area Report

Gibson Island ~ Lots 251-252

Tax Map 33, Grid 18, Parcel 156

Tax Account No. 03-350-22306800

**Property Address:** 814 Broadwater Way  
Gibson Island, Maryland 21056

Nov. 2, 2021

**Property Owners & Variance Applicant:** Mr. & Mrs. James New

**Critical Area Designation:** LDA/RCA

**Zoning:** R-1/OS

**Lot Area:** 2.87 Ac.

## Site Description

The subject property is a 2.87-acre legal building lot located off of Broadwater Way in the community of Gibson Island. It is zoned R-1 and OS and is completely within the Chesapeake Bay Critical Area, with LDA and RCA land use designations. Tidal wetlands border and encroach onto the site along the western half. Roughly 43% of the site is encumbered with tidal wetlands, leaving 1.64-acres as developable property. Currently, the property is improved with a single-family dwelling, detached garage, and associated improvements. Steep slopes border the north and to the west. Private septic and Gibson Island public water service the property.

## Description and Purpose of Variance Request

The applicants propose to raze and remove the existing single-family dwelling and improvements to construct a new single-family dwelling, with associated improvements. Due to the unique physical conditions inherent to the property, the following variances to the Anne Arundel County Code are being requested: **Article 18, Section 4-501** of 12-ft to the required 40-ft front setback and to **Article 18, Section 13-104(a) & (b)** for 5,920-sf of buffer and expanded buffer disturbance.

## Vegetative Coverage and Clearing

The property's primary vegetative covering is wetland grasses, developed woodland, and lawn area. The existing wooded area is roughly 27,000-sf. The proposed vegetative clearing is approximately 6,600-sf., the majority of which is necessary for the demolition of the existing improvements and upgrading of the septic system. Reforestation and afforestation requirements for this property will be addressed during the permit phase of this project.

## Impervious Lot Coverage

The site currently has 4,645-sf of lot coverage. The proposed impervious lot coverage for this property is 7,000-sf, which is within the max allowable impervious coverage of 10,696-sf. The proposed coverage by structures of 4,053-sf is also less than the allowable 25% of the gross lot size, or 17,827-sf.

### **Steep Slopes (slopes > 15%), Wetlands & Buffer**

The subject property contains approximately 9,149-sf of steep slopes, coming up from the existing tidal wetlands, none of which will be disturbed for the proposed construction. The wetlands encompass about 53,858-sf of the property and the total wetland and expanded buffer area of the site is 105,647-sf. The buffer encompasses 50,888-sf of "dry-ground" area. Approximately 5,920-sf of the buffer and expanded buffer will be disturbed as part of the proposed construction.

### **Predominant Soils**

The predominant soil types are Collington, Wist, and Westphalia soils (CSE), Mispillion and Transquaking soils (MZA), and Sassafras fine sandy loam (SaB). These soils have type "A" and "B" hydrologic classifications.

### **Drainage and Rainwater Control**

There appear to be no visible stormwater management controls on site. Stormwater management and sediment and erosion control will be provided for the proposed improvements and the specific design computations will be addressed during the permit phase of the project in accordance with Anne Arundel County design criteria.

### **Conclusions – Variance Standards**

The need for the requested variances arises from the unique physical conditions of the site; specifically, encumbrance of tidal wetlands and their setback, as well as the location of the existing improvements. The layout of the proposed improvements was revised from the initial design to accommodate pre-file comments and is located further from tidal wetlands than the existing improvements. Denial of the requested variance would constitute an unwarranted hardship and deny the applicant's rights commonly enjoyed by other property owners. The variance request is not based on actions by the applicant, and will not confer upon the applicant any special privilege that would typically be denied by COMAR or the local Critical Area Program. With the implementation of stormwater management and the nitrogen reducing septic system, the development will not have an adverse effect on water quality or negatively impact fish, wildlife, or plant habitat, and is in conformance with the general purpose and intent of the Critical Area Program. The variance is the minimum necessary to afford relief from the Critical Area legislation. The granting of the variance will not alter the character of the neighborhood, impair the use and development of adjacent properties, reduce forest cover in the LDA, nor be detrimental to the public welfare. Stormwater Management and reforestation requirements will be addressed during the permit phase of the project. Reforestation will be provided on-site to the extent practicable.



**Reference:**

ADC: The Map People, 2002 Anne Arundel County, Maryland, Street Map Book

Anne Arundel County Office of Planning & Zoning, 2007 Critical Area Map

Anne Arundel County Office of Planning & Zoning, 2007 Buffer Exemption Map

Anne Arundel County, Maryland; Chesapeake Bay Critical Area Mapping Program, 2007, Critical Area Map

Federal Emergency Management Agency, 2015. Flood Insurance Rate Map

First American Real Estate Solutions, 2002, Realty Atlas: Anne Arundel County Maryland

Drum, Loyka and Associates LLC, 2021 Variance Plan

U.S. Department of Agriculture, Natural Resource Conservation Service –2003 Soil Survey of Anne Arundel County Maryland.

State Highway Administration of Maryland, 1989. Generalized Comprehensive Zoning Map: Third Assessment District

CRITICAL AREA COMMISSION  
 FOR THE CHESAPEAKE AND ATLANTIC COASTAL BAYS  
 1804 WEST STREET, SUITE 100  
 ANNAPOLIS, MD 21401

PROJECT NOTIFICATION APPLICATION

**GENERAL PROJECT INFORMATION**

Jurisdiction: \_\_\_\_\_

Date \_\_\_\_\_

Tax Map #	Parcel #	Block #	Lot #	Section
0033	0156	0018	251-252	N/A

**FOR RESUBMITTAL ONLY**

- Corrections
- Redesign
- No Change
- Non-Critical Area

\* Complete only Page 1  
 General Project Information

Tax ID

Project Name (site name, subdivision name, or other)

Project location/Address

City  Zip

Local case number

Applicant: Last name  First name

Company

**Application Type (check all that apply):**

- |                           |                   |       |
|---------------------------|-------------------|-------|
| Building Permit           | Variance          | X     |
| Buffer Management Plan    | Rezoning          |       |
| Conditional Use           | Site Plan         |       |
| Consistency Report        | Special Exception |       |
| Disturbance > 5,000 sq ft | Subdivision       |       |
| Grading Permit            | Other             | _____ |

**Local Jurisdiction Contact Information:**

Last name: \_\_\_\_\_ First name \_\_\_\_\_

Phone # \_\_\_\_\_ Response from Commission Required By \_\_\_\_\_

Fax # \_\_\_\_\_ Hearing date \_\_\_\_\_

**SPECIFIC PROJECT INFORMATION**

Describe Proposed use of project site:

Raze & remove existing single-family dwelling to construct new single-family dwelling with associated improvements.

Intra-Family Transfer  Yes  
 Grandfathered Lot  X  
 Growth Allocation  Yes  
 Buffer Exemption Area

**Project Type (check all that apply)**

Commercial   
 Consistency Report   
 Industrial   
 Institutional   
 Mixed Use   
 Other \_\_\_\_\_  
 Recreational   
 Redevelopment   
 Residential  X  
 Shore Erosion Control   
 Water-Dependent Facility

**SITE INVENTORY (Enter acres or square feet)**

	Acres	Sq Ft	Total Disturbed Area	Acres	Sq Ft
IDA Area				0.50	
LDA Area	1.46		# of Lots Created	0	
RCA Area	0.18				
Total Disturbed Area	0.50				

	Acres	Sq Ft		Acres	Sq Ft
Existing Forest/Woodland/Trees	0.62		Existing Impervious Surface	0.11	
Created Forest/Woodland/Trees	0.00		New Impervious Surface	0.16	
Removed Forest/Woodland/Trees	0.15		Removed Impervious Surface	0.11	
			Total Impervious Surface	0.16	

**VARIANCE INFORMATION (Check all that apply)**

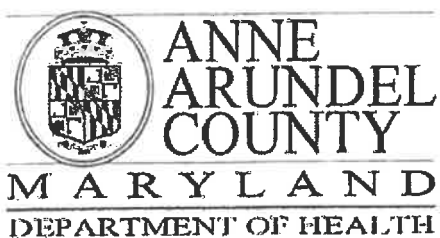
	Acres	Sq Ft		Acres	Sq Ft
Buffer Disturbance	0.14		Buffer Forest Clearing	0.00	
Non-Buffer Disturbance	0.36		Mitigation	0.00	

Variance Type

Buffer  
 Forest Clearing  
 HPA Impact  
 Impervious Surface  
 Expanded Buffer  
 Nontidal Wetlands  
 Steep Slopes  X  
 Setback  
 Other \_\_\_\_\_

Structure

Acc. Structure Addition  
 Barn  
 Deck  
 Dwelling  X  
 Dwelling Addition  
 Garage  
 Gazebo  
 Patio  
 Pool  
 Shed  
 Other \_\_\_\_\_




J. Howard Beard Health Services Building  
3 Harry S. Truman Parkway  
Annapolis, Maryland 21401  
Phone: 410-222-7193 Fax: 410-222-7479  
Maryland Relay (TTY): 711  
www.aahhealth.org

Nilesh Kalyanaraman, M.D., F.A.C.P.  
Health Officer

### MEMORANDUM

TO: Sumner Handy, Zoning Applications  
Planning and Zoning Department, MS-6301

FROM: Brian Chew, Program Manager  
Sanitary Engineering Program 

DATE: December 2, 2021

RE: James M. New  
814 Broadwater Way  
Gibson Island, MD 21056

CASE  
NUMBER: 2021-0213-V

SUBJECT: Variance/Special Exception/Rezoning

The Health Department has reviewed the above referenced variance request to allow a dwelling with less setbacks and buffer than required. The Health Department offers the following comments:

The Health Department does not have an approved plan for this project. The Health Department has no objection to the above referenced variance request as long as a plan is submitted and approved by the Health Department.

If you have further questions or comments, please contact Brian Chew at 410-222-7413.

cc: Sterling Seay



Joan Jenkins <pzjenk00@aacounty.org>

## 2021-0213-V; Revised Site Plan - March 22, 2022 Hearing (AA450-21)

1 message

Katherine Charbonneau -DNR- <katherine.charbonneau@maryland.gov>

Fri, Feb 25, 2022 at 10:52 AM

To: Joan Jenkins <pzjenk00@aacounty.org>, Kelly Krinetz <pzkrin00@aacounty.org>, zhcolb22@aacounty.org, CACAdmin  
DNR -DNR- <cacadmin.dnr@maryland.gov>

All,

We have reviewed the revised site plan for the above-referenced variance application. It would appear the applicant has reduced impacts by moving the driveway beyond the expanded Buffer. Appropriate mitigation should be provided.

Please let me know if you have any questions.

Thank you,  
Kate

--



[dnr.maryland.gov/criticalarea](http://dnr.maryland.gov/criticalarea)

Kate Charbonneau  
Executive Director  
Critical Area Commission for the  
Chesapeake & Atlantic Coastal Bays  
1804 West Street, Suite 100  
Annapolis, MD 21401  
410-260-3475 (office)  
410-271-1692 (cell)  
katherine.charbonneau@maryland.gov

[Click here](#) to complete a three question customer experience survey.

**Critical Area Variance Guidance**  
**Critical Area Review Team/Development Division**

**Applicant:** New  
**Case #:** 2021-0213-V Revised  
**Date:** 3/15/2022 (Original 1/7/22)

**For a property located in the critical area, a variance to the requirements of the County's Critical Area Program may be granted if the Administrative Hearing Officer makes the findings based on the following criteria.**

- Because of certain unique physical conditions, such as exceptional topographical conditions peculiar to and inherent in the particular lot or irregularity, narrowness or shallowness of lot size and shape, strict implementation would result in an unwarranted hardship.

While it is true that a significant portion of this site is encumbered by tidal and nontidal wetlands as well as the associated buffer and expanded buffer, there is still 20,419 square feet (almost ½ acre) of area available for development outside of those protected features. In addition, the applicant has identified the square footage of buffer disturbance as 5920 square feet, this figure does not include the potential future disturbance for the backup septic systems.

The site is also identified as being located within a Sensitive Species Project Review Area yet no data is included identifying the species or the necessary protections for that species.

**While some reconfiguration has occurred since our original comments and subsequent meeting, the primary septic system is still within the 100' buffer. There is no need for disturbance within the buffer for initial system. As previously mentioned, there is almost a ½ acre of available space outside of the required buffers to accommodate the development.**

- A literal interpretation of the Critical Area Laws would deprive the applicant of rights commonly enjoyed by other properties in similar areas as permitted in accordance with the provision of the critical area program.

The applicant has compared the proposed development with the developed properties in the surrounding area but not properties in areas with similar environmentally sensitive areas. Given the environmental features on this site, protection of the buffer from proposed and potential future disturbance is imperative.

**Original comment still applicable.**

- The granting of a variance will not confer on an applicant any special privilege that would be denied by the County's Critical Area program to other lands or structures within the Critical Area.

This is a site that requires that the proposed development be designed to preserve and protect the environmental features not a site where the features are meant to accommodate the design. There is ample room on this site to design the development (house, septic, sidewalk, etc.) within the constraints and eliminate or significantly reduce any impacts to the protective features on site.

**Original comment still applicable.**

- The request is not the result of actions by the applicant including the commencement of development before an application for a variance was filed and does not rise from any condition relating to land or building use on any neighboring property.

The request is not the result of actions by the applicant.

**Original comment still applicable.**

- The granting of a variance will not adversely affect water quality or adversely impact fish, wildlife or plant habitat within the Critical Area and will be in harmony with the general spirit and intent of the County's Critical Area program.

The applicant has not submitted sufficient information to address this requirement.

**Original comment still applicable.**

New  
2021-0213-V Revised  
3/15/22

- The applicant has evaluated and implemented site planning alternatives in accordance with 18-16-201.

The applicant has located the dwelling outside of the buffer but has not fully evaluated opportunities to reduce impacts to the required buffer on site. The sprawling design of the dwelling forces the proposed driveway for the rear entry garage into the expanded buffer as well as the required 25' buffer to steep slopes. These slopes lead to an area of nontidal wetlands and the modification required for such an improvement will likely not be supported. The design of the home also forces the septic and septic reserve areas into the buffer and will result in buffer disturbance for the home as well as the potential for future buffer disturbance if the backup areas are needed.

This home and the associated development is not appropriate for the constraints on this site and does not meet the test for the minimum necessary given the environmental protection required.

**The applicant has modified the original design and reduced, but not eliminated the amount of buffer disturbance. There is ample room for a home and associated improvements outside of the buffer. Based on the environmental sensitivity of the lot, buffer should be protected.**

**Critical Area Variance Guidance**  
**Critical Area Review Team/Development Division**

**Applicant:** New  
**Case #:** 2021-0213-V  
**Date:** 1/7/22

**For a property located in the critical area, a variance to the requirements of the County's Critical Area Program may be granted if the Administrative Hearing Officer makes the findings based on the following criteria.**

- Because of certain unique physical conditions, such as exceptional topographical conditions peculiar to and inherent in the particular lot or irregularity, narrowness or shallowness of lot size and shape, strict implementation would result in an unwarranted hardship.

While it is true that a significant portion of this site is encumbered by tidal and nontidal wetlands as well as the associated buffer and expanded buffer, there is still 20,419 square feet (almost ½ acre) of area available for development outside of those protected features. In addition, the applicant has identified the square footage of buffer disturbance as 5920 square feet, this figure does not include the potential future disturbance for the backup septic systems.

The site is also identified as being located within a Sensitive Species Project Review Area yet no data is included identifying the species or the necessary protections for that species.

- A literal interpretation of the Critical Area Laws would deprive the applicant of rights commonly enjoyed by other properties in similar areas as permitted in accordance with the provision of the critical area program.

The applicant has compared the proposed development with the developed properties in the surrounding area but not properties in areas with similar environmentally sensitive areas. Given the environmental features on this site, protection of the buffer from proposed and potential future disturbance is imperative.

- The granting of a variance will not confer on an applicant any special privilege that would be denied by the County's Critical Area program to other lands or structures within the Critical Area.

This is a site that requires that the proposed development be designed to preserve and protect the environmental features not a site where the features are meant to accommodate the design. There is ample room on this site to design the development (house, septic, sidewalk, etc.) within the constraints and eliminate or significantly reduce any impacts to the protective features on site.

- The request is not the result of actions by the applicant including the commencement of development before an application for a variance was filed and does not rise from any condition relating to land or building use on any neighboring property.

The request is not the result of actions by the applicant.

- The granting of a variance will not adversely affect water quality or adversely impact fish, wildlife or plant habitat within the Critical Area and will be in harmony with the general spirit and intent of the County's Critical Area program.

The applicant has not submitted sufficient information to address this requirement.

- The applicant, by competent and substantial evidence, has overcome the presumption contained in Natural Resources Article, 8-1808, of the state Code.
- The applicant has evaluated and implemented site planning alternatives in accordance with 18-16-201.

The applicant has located the dwelling outside of the buffer but has not fully evaluated opportunities to reduce impacts to the required buffer on site. The sprawling design of the dwelling forces the proposed driveway for the rear entry garage into the expanded buffer as well as the required 25' buffer to steep slopes. These slopes lead to an area of nontidal wetlands and the modification required for such an improvement will likely not be supported. The design of the home also forces the septic and septic reserve areas into the buffer and will result in buffer disturbance for the home as well as the potential for future buffer disturbance if the backup areas are needed.

This home and the associated development is not appropriate for the constraints on this site and does not meet the test for the minimum necessary given the environmental protection required.





## Memorandum

**To:** Joan Jenkins, Zoning Analyst, Zoning Division, Office of Planning and Zoning

**From:** John Bory, Engineer, Engineering Division, Department of Inspections and Permits

**Date:** March 10, 2022

**Subject:** James and Melanie New  
2021-0213-V  
Revised Plan

---

**Request – Allow relief from zoning setback and permit disturbance of the Critical Area Buffer and associated expanded buffer.**

**Review** - This office has received the subject application, reviewed for engineering (utilities, stormwater) issues and has the following comments:

1. The property will be served by individual private septic system and public water. The septic well will need to be reviewed and approved by the Health Department
2. The subject application does not have the information of a complete storm water preliminary plan. The required information for a complete review was not provided.
3. No review can be made until county application requirements have been met.
4. A concept plan should be submitted with a narrative to support the design. The narrative should describe how important natural areas will be preserved and protected, and show how ESD may be achieved for meeting on-site stormwater treatment.
5. The area shown for stormwater practices must be determined and be based upon practice feasibility.
6. Feasibility considering the terrain, environmental factors, physical characteristics of the prevalent soil strata and its ability to suitably treat the proposed storm water runoff and surface groundwater conditions. The practice location should not require any additional regulatory permitting. The proposed development must be compatible with the surrounding community and consider downstream properties in design.
7. Provide suitable justification to support the chosen method of stormwater management. The justification must establish that water quality requirements have been met.

8. Justify in the narrative the choice for each ESD practice used and those not used by stating why it is or is not suitable for the site.
9. Stable conveyance of stormwater and maintenance of natural flow patterns must be demonstrated.
10. Due to insufficient application no recommendation can be made. At this time, this office cannot verify if the proposed adversely affect water quality or not.
11. The applicant should evaluate and implement site planning alternatives in accordance with 18-16-201.





**2** Left Elevation (Porch Side)  
1/4" = 1'-0"



**1** Front Elevation (Road Side)  
1/4" = 1'-0"

THOMSON & COOKE ARCHITECTS

5155 MACARTHUR BLVD NW  
WASHINGTON DC 20015  
202.866.6583  
WWW.THOMSONCOOKE.COM

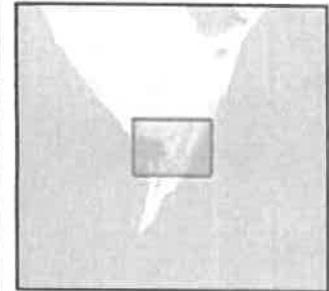
New Residence  
814 Brocchaville Way Gibson Island MD 21056

NOT FOR CONSTRUCTION  
© 2008 THOMSON & COOKE ARCHITECTS

Front & Left  
Elevations

03-20-2001	1.1	
07-24-2001	1.1	
01-04-2002	1.1	ISSUE
02-23-2002	1.1	VARIANCE REVISIONS

**A200**



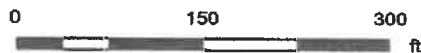
### Legend

Planning: Parcels

Parcels



This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.



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USED FOR NAVIGATION

### Notes



## OFFICE OF PLANNING AND ZONING

### CONFIRMATION OF PRE-FILE MEETING

DATE OF MEETING April 26, 2021

P&Z STAFF R. Konowal K. Krinetz

APPLICANT/REPRESENTATIVE M. Drum EMAIL \_\_\_\_\_  
SITE LOCATION 814 Broadwater Way LOT SIZE 1.64 ac ZONING R1 + OS  
CA DESIGNATION LDA ROA BMA \_\_\_\_\_ or BUFFER X APPLICATION TYPE CA Variance

Variations to allow a dwelling with less buffer and expanded buffer than required and to allow an accessory structure in the front yard of a non waterfront lot and with less setbacks than required.

New replacement dwelling partially located in 100-foot buffer to tidal wetlands and expanded buffer. Lot has been deemed non-waterfront. See Letter of Explanation.

#### COMMENTS

Critical Area Team: No expansion of the dwelling in the buffer or expanded buffer will be supported.

Engineering Comments: No SWM is shown. No practice may be in the environmental features or their buffers.

#### INFORMATION FOR THE APPLICANT

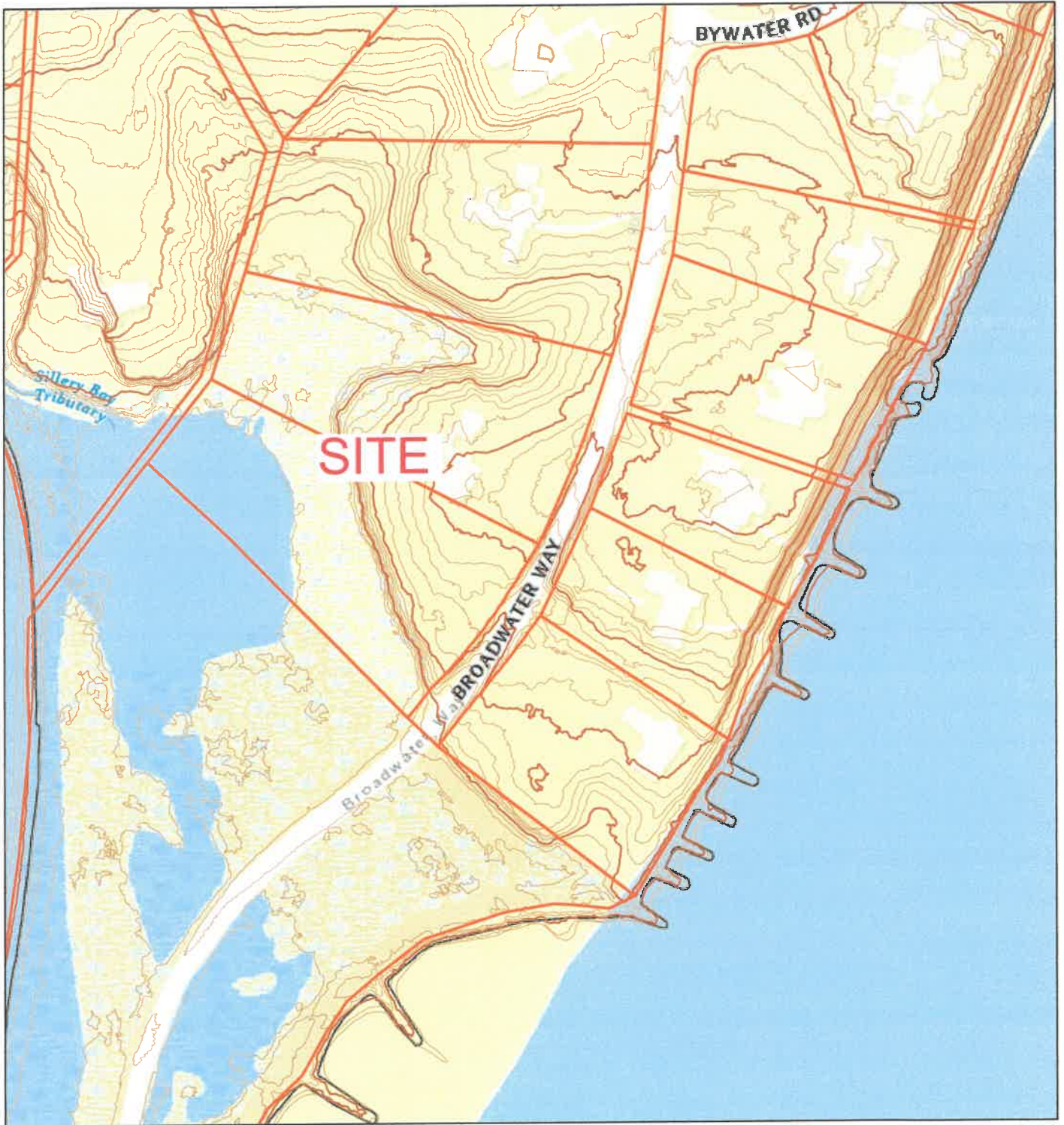
Section 18-16-201 (b) Pre-filing meeting required. Before filing an application for a variance, special exception, or to change a zoning district, to change or remove a critical area classification, or for a variance in the critical area or bog protection area, an applicant shall meet with the Office of Planning and Zoning to review a pre-file concept plan or an administrative site plan. For single lot properties, the owner shall prepare a simple site plan as a basis for determining what can be done under the provisions of this Code to avoid the need for a variance.

\*\*\* A preliminary plan checklist is required for development impacting environmentally sensitive areas and for all new single-family dwellings. A stormwater management plan that satisfies the requirements of the County Procedures Manual is required for development impacting environmentally sensitive areas OR disturbing 5,000 square feet or more. State mandates require a developer of land provide SWM to control new development runoff from the start of the development process.

Section 18-16-301 (c) Burden of Proof. The applicant has the burden of proof, including the burden of going forward with the production of evidence and the burden of persuasion, on all questions of fact. The burden of persuasion is by a preponderance of the evidence.

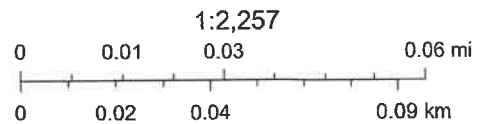
A variance to the requirements of the County's Critical Area Program may only be granted if the Administrative Hearing Officer makes affirmative findings that the applicant has addressed all the requirements outlined in Article 18-16-305. Comments made on this form are intended to provide guidance and are not intended to represent support or approval of the variance request.

# Anne Arundel County Engineering Record Drawing and Monuments



11/2/2021, 9:47:01 AM

- Local Road Label 1 ft Contours
- Streams Label
- County Boundary
- Parcels
- Index
- Intermediate



County of Anne Arundel, VITA, Esri, HERE, Garmin, INCREMENT P, NGA, USGS

Anne Arundel County

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