

M.A.F. & Associates, LLC  
Matthew A. Forgen  
55 Jones Station Road, W.  
Severna Park, MD 21146  
(443)864-8589

# M.A.F. & Associates, LLC

April 17, 2024

Planner  
Department of Planning & Zoning  
2664 Riva Road  
Annapolis MD 21401

RE: 858 Imperial Road  
Arnold, MD. 21012

Dear Planner:

Please accept this submittal of a variance on the above referenced project. We are proposing to construct a single-family dwelling addition on the 1.0545 -acre, R5 legal lot. This property consists of an improved legal lot that is entirely within the IDA portion of the critical area. Please see below for the variance being requested.

The comments from the pre-file were:

The Critical Area Team reviewed the current proposal and noted that in 2009 the property owner was allowed, through appeal, to rebuild and expand the existing dwelling in the current location. In order for that request to have been approved, the Board would have had to find that the current footprint was the minimum necessary to afford the applicant relief. In addition, the decision to rebuild within the 100' buffer would also make the need for any future variance requests the result of an action by the owner. This request cannot be supported.

The Zoning Administration Section concurs with the comments provided by the Critical Area Team. The existing dwelling was constructed under a variance approved by the Board of Appeals. The dwelling was intentionally constructed within the buffer when there were other locations outside of the buffer that would have eliminated the critical area variance and would have allowed for future expansions. The applicant will need to demonstrate why the existing improvements constructed via the previously approved variance do not already provide the minimum relief necessary to afford reasonable use of the property. In order for a Critical Area variance to be approved, the applicant must demonstrate and the Hearing Officer must find that the proposal complies with each and every variance standard provided under Section 18-16-305 (b) & (c) of the Anne Arundel County Zoning Ordinance.

Our response:

I would agree that that previous variance established minimum relief as well. The issue I have and why I feel we should have county support is that the previously approved variance approved the construction of a much larger footprint than what was constructed.

I have attached the BOA approval (BA-55-09V (2009-0169-V)). The last page of this approval is the exhibit of the approved footprint. As you can see the footprint is much larger than what was built, including the small addition being proposed.

Since this proposal is much smaller than the footprint that established minimum relief in the BOA approval (BA-55-09V (2009-0169-V)), I feel that this application falls within the boundaries of minimum relief as set by the BOA approval.

The following are the variance requested for this site.

***We request a variance to Article 18-8-301 to allow disturbance (1,650 square feet) and construction of an addition (390 square feet) within the 100' buffer to the tidal waters within Chesapeake Bay Critical Area. We request this variance to allow for the construction of a single-family dwelling addition.***

We feel this variance request meets the requirements of Article 18-16-305 (b) and (c) and therefore the variance should be granted. Below is the justification for granting the above noted variances.

18-16-305(b)(1): This is a legal lot that was recorded prior to the critical area laws. The existing dwelling sits entirely within the 100' buffer. The house sits within the non-buffer modified portion of the property. There is no way of expanding the dwelling without being within the 100' buffer.

18-16-305(b)(2)(i): A literal interpretation of COMAR, Title 27, Criteria for Local Critical Area Program Development or the County's critical area program and related ordinances will deprive the applicant of rights commonly enjoyed by other properties in similar areas as permitted in accordance with the provisions of the critical area program within the critical area of the County. There is no way of expanding the dwelling without being within the 100' buffer. If the variance were denied, the owner would not be able to expand to the existing house in any way.

18-16-305(b)(2)(ii): This property does not lie within the bog or any upland bog buffers.

18-16-305(b)(3): The granting of a variance will not confer on an applicant any special privilege that would be denied by COMAR, Title 27, the County's critical area program to other lands or structures within the County critical area, or the County's bog protection program to other lands or structures within a bog protection area. The entire house sits within the 100' buffer. The previous BOA decision set minimum relief and this proposal is smaller than that approval.

18-16-305 (b)(4): The variance request is not based on conditions or circumstances that are the result of actions by the applicant, including the commencement of development before an application for a variance was filed, and does not arise from any condition relating to land or building use on any neighboring property. The existing house has been in the 100' buffer prior to critical area law.

18-16-305(b)(5): The granting of a variance 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 and will be in harmony with the general spirit and intent of the County's critical area program or bog protection program. The proposed addition is relatively small and will need to address storm water management through the permitting process.

18-16-305(b)(6): This proposed development does not fall within the 100-foot upland buffer to the bog and therefore does not need to meet the requirements of § 17-9-208 of the County Code.

18-16-305(b)(7): We feel that the applicant, by competent and substantial evidence, has overcome the presumption contained in the Natural Resources Article, § 8-1808, of the State Code. There is no way to improve/expand the existing dwelling without impacting the 100' buffer.

18-16-305(b)(8): There is no other option for the applicant to add to the existing dwelling to not be within the 100' buffer. This proposal is minimal. There are no other planning alternatives that are available to not require a variance to the 100' buffer.

18-16-305(c)(1): This proposal is the minimum variance to allow for the construction of the dwelling addition. This is a legal lot that was recorded prior to the critical area laws. The existing dwelling sits within the 100' buffer. The house sits within the non-buffer modified portion of the property. There is no way of expanding the dwelling without being within the 100' buffer. We pushed the house addition back from the water as much as possible to minimize the buffer disturbance.

18-16-305(c)(2)(i): The approval of the variance will not alter the essential character of the neighborhood. The proposed dwelling addition will be similar in size to the other waterfront homes in the community and smaller than what was deemed minimum relief in the BOA approval (BA-55-09V (2009-0169-V)).

18-16-305(c)(1)(ii): The adjacent lots are currently improved with single-family dwellings. This proposed development would not impair the appropriate use or development of these properties.

18-16-305(c)(1)(iii): The property is located in the IDA classification of the critical area. We will meet the IDA critical area requirement.

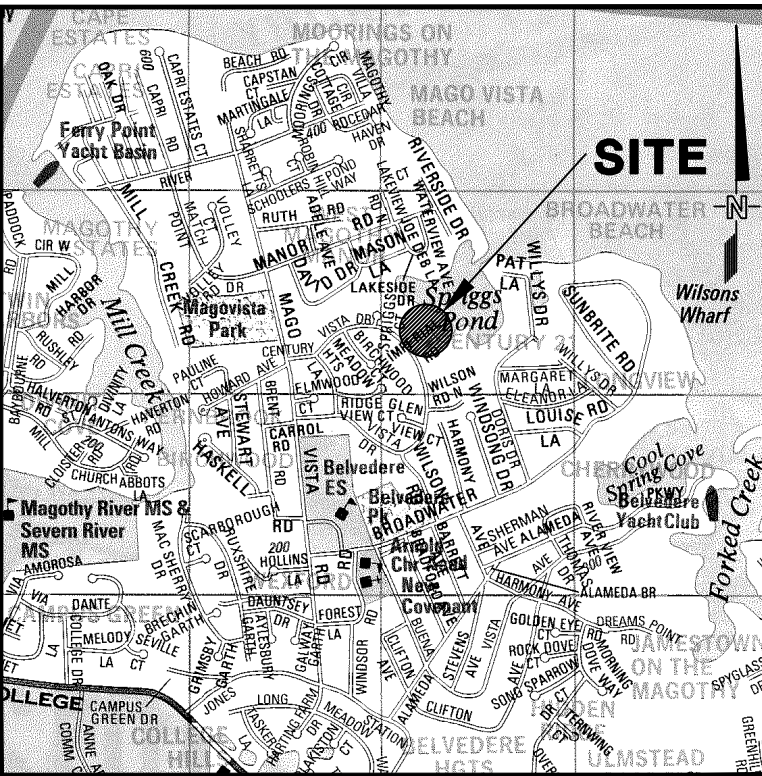
18-16-305(c)(1)(iv): This proposed development is in compliance with all critical area requirements for the IDA portion of the critical area.

18-16-305(c)(1)(v): This development is not detrimental to the health and welfare of the community in that we are proposing to build a new dwelling addition will be required to provide stormwater management for the proposed increase in total lot coverage.

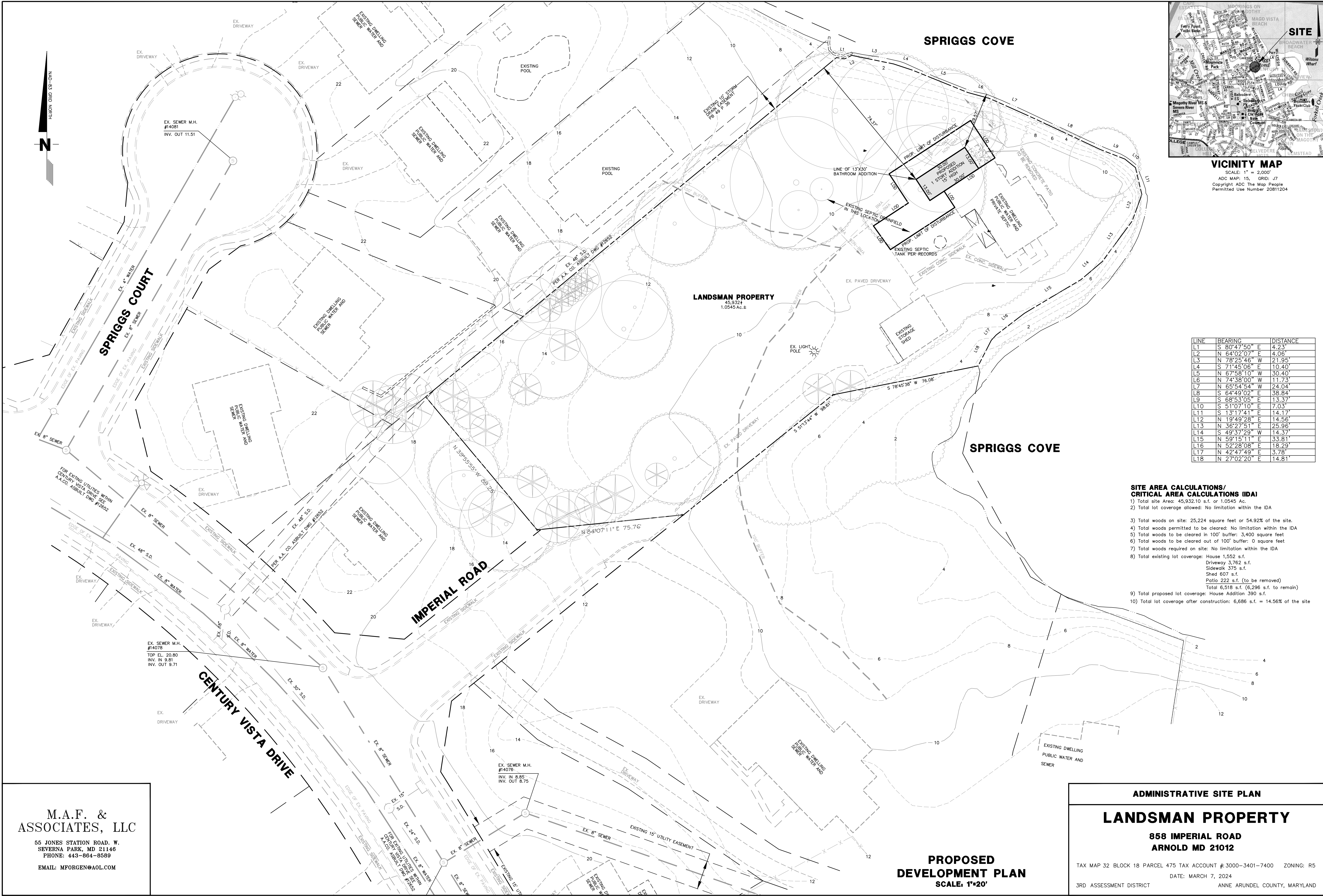
If you should have any questions regarding this submittal, please feel free to contact me at the number above.

Sincerely,

  
Matthew A. Forgen



**VICINITY MAP**  
 SCALE: 1" = 2,000'  
 ADC MAP: 15, GRID: J7  
 Copyright ADC The Map People  
 Permitted Use Number 2081204



LINE	BEARING	DISTANCE
L1	S 60°47'50" E	4.23'
L2	N 64°02'07" E	4.06'
L3	N 78°25'46" W	21.95'
L4	S 71°45'06" E	10.40'
L5	N 67°58'10" W	30.40'
L6	N 74°38'00" W	11.73'
L7	N 65°54'54" W	24.04'
L8	S 64°49'02" E	38.84'
L9	S 68°53'05" E	13.37'
L10	S 51°07'10" E	7.03'
L11	S 13°17'41" E	14.17'
L12	N 19°49'28" E	14.56'
L13	N 36°27'51" E	25.96'
L14	S 49°37'29" W	14.37'
L15	S 59°15'11" E	33.81'
L16	N 52°28'08" E	18.29'
L17	N 42°47'49" E	3.78'
L18	N 27°02'20" E	14.81'

- SITE AREA CALCULATIONS/  
 CRITICAL AREA CALCULATIONS (IDA)**
- Total site Area: 45,932.10 s.f. or 1.0545 Ac.
  - Total lot coverage allowed: No limitation within the IDA
  - Total woods on site: 25,224 square feet or 54.92% of the site.
  - Total woods permitted to be cleared: No limitation within the IDA
  - Total woods to be cleared in 100' buffer: 3,400 square feet
  - Total woods to be cleared out of 100' buffer: 0 square feet
  - Total woods required on site: No limitation within the IDA
  - Total existing lot coverage: House 1,552 s.f., Driveway 3,762 s.f., Sidewalk 375 s.f., Shed 607 s.f., Patio 222 s.f. (to be removed)
  - Total proposed lot coverage: House Addition 390 s.f.
  - Total lot coverage after construction: 6,686 s.f. = 14.56% of the site

**M.A.F. &  
 ASSOCIATES, LLC**  
 55 JONES STATION ROAD, W.  
 SEVERNA PARK, MD 21146  
 PHONE: 443-864-8589  
 EMAIL: MFORGEN@AOL.COM

**PROPOSED  
 DEVELOPMENT PLAN**  
 SCALE: 1"=20'

**ADMINISTRATIVE SITE PLAN**  
**LANDSMAN PROPERTY**  
**858 IMPERIAL ROAD**  
**ARNOLD MD 21012**  
 TAX MAP 32 BLOCK 18 PARCEL 475 TAX ACCOUNT #3000-3401-7400 ZONING: R5  
 DATE: MARCH 7, 2024  
 3RD ASSESSMENT DISTRICT ANNE ARUNDEL COUNTY, MARYLAND

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

PROJECT NOTIFICATION APPLICATION

**GENERAL PROJECT INFORMATION**

Jurisdiction: ANNE ARUNDEL COUNTY

Date: 4-17-2024

Tax Map #	Parcel #	Block #	Lot #	Section
<u>32</u>	<u>475</u>	<u>1B</u>		

**FOR RESUBMITTAL ONLY**

Corrections

Redesign

No Change

Non-Critical Area

*\*Complete Only Page 1  
 General Project Information*

Tax ID: 3000-3401-7400

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

Project location/Address 858 IMPERIAL ROAD

City ARABLE MD Zip 21012

Local case number \_\_\_\_\_

Applicant: Last name LANDSITMAN, JR. First name JOSEPH

Company \_\_\_\_\_

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

- Building Permit
- Buffer Management Plan
- Conditional Use
- Consistency Report
- Disturbance > 5,000 sq ft
- Grading Permit

- Variance
- Rezoning
- Site Plan
- Special Exception
- Subdivision
- 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:

PROPOSED RESIDENTIAL DWELLING ADDITION

Intra-Family Transfer   
 Grandfathered Lot

Growth Allocation   
 Buffer Exemption Area

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

Commercial   
 Consistency Report   
 Industrial   
 Institutional   
 Mixed Use   
 Other

Recreational   
 Redevelopment   
 Residential   
 Shore Erosion Control   
 Water-Dependent Facility

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

	Acres	Sq Ft
IDA Area	1.0545	45,932
LDA Area		
RCA Area		
Total Area	1.0545	45,932

Total Disturbed Area  Acres  Sq Ft 1650

# of Lots Created

	Acres	Sq Ft		Acres	Sq Ft
Existing Forest/Woodland/Trees		25,224	Existing Lot Coverage		6518
Created Forest/Woodland/Trees			New Lot Coverage		390
Removed Forest/Woodland/Trees		3,400	Removed Lot Coverage		222
			Total Lot Coverage		6,186

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

	Acres	Sq Ft		Acres	Sq Ft
Buffer Disturbance		1650	Buffer Forest Clearing		3400
Non-Buffer Disturbance		0	Mitigation		0

Variance Type

Buffer   
 Forest Clearing   
 HPA Impact   
 Lot Coverage   
 Expanded Buffer   
 Nontidal Wetlands   
 Setback   
 Steep Slopes   
 Other

Structure

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



**Landsman Property**  
**858 Imperial Road, Arnold MD 21012**

**CRITICAL AREA REPORT**

**PREPARED BY:**  
**M.A.F. & ASSOCIATES, LLC**  
**55 Jones Station Road, W.**  
**Severna Park, MD 21146**

**443-864-8589**

**April 17, 2024**

---

## **INTRODUCTION**

The property is located at 858 Imperial Road, Arnold MD 21012. This is a legal lot as defined by Article 17-1-101 (63). The property owner is proposing a small addition to the existing single-family dwelling that falls within the 100' buffer to tidal waters. The lot is in R5 zoning district. This lot lies entirely within the IDA portion of the Chesapeake Bay Critical Area.

## **VICINITY MAP**

Included in this report and shown on the attached plan is a vicinity map designating the location of the subject site. Also included in the report is a portion of the Critical Area Map with the site located.

## **NARRATIVE**

### **EXISTING CONDITIONS**

The lot is currently an improved single-family dwelling located entirely within the 100' buffer to tidal waters. The lot is in R5 zoning district. The property slopes from the road to the water's edge. The slopes are approximately 2% in the location of the proposed addition.

There was little wildlife seen around the property at the time of inspection. Some squirrels and birds were witnessed at the time of the inspection. It is expected that there is very little to no wildlife use of the property since it is currently developed.

### **PROPOSED DEVELOPMENT**

The property owner is proposing a small addition to the existing single-family dwelling that falls within the 100' buffer to tidal waters. The addition is only 390 square feet in size.

### **STORMWATER MANAGEMENT**

During construction, sediment and erosion control measures will be employed. Storm water management will be addressed with the required building permit application.

### **IMPACT MINIMIZATION**

Due to the unique lot characteristics and the location of the existing dwelling, we feel that this development plan demonstrates a minimal impact on the environment.

---



## **HABITAT PROTECTION AREAS**

The habitat protection area on this property is the 100' buffer to tidal waters.

## **AFTER CONSTRUCTION CONDITIONS AND SITE CALCULATIONS**

The proposed conditions of the site include the construction of a new house and driveway. The site calculations are as follows:

Total site area	45,932 sf
Existing woodland	25,224 sf
Proposed clearing	3,400 sf
Proposed planting	to be determined.
Existing impervious coverage prior to the proposed lot coverage	6,518 sf
Allowed lot coverage	No limitation within the IDA portion of the Critical Area
Proposed lot coverage	390 sf
Proposed lot coverage reduction	222 sf
Existing and proposed lot coverage	6,686 sf

## **CONCLUSIONS**

The lot in question is a legal lot located in an established community. It's not possible to construct the proposed dwelling addition without the need for the requested variance based on the location of the existing dwelling.

As proposed, the development of the lot does not have an adverse impact on the plant or wildlife habitat of the Critical Area. The proposed dwelling addition and site improvements will not adversely impact adjacent properties.

## **PLANS**

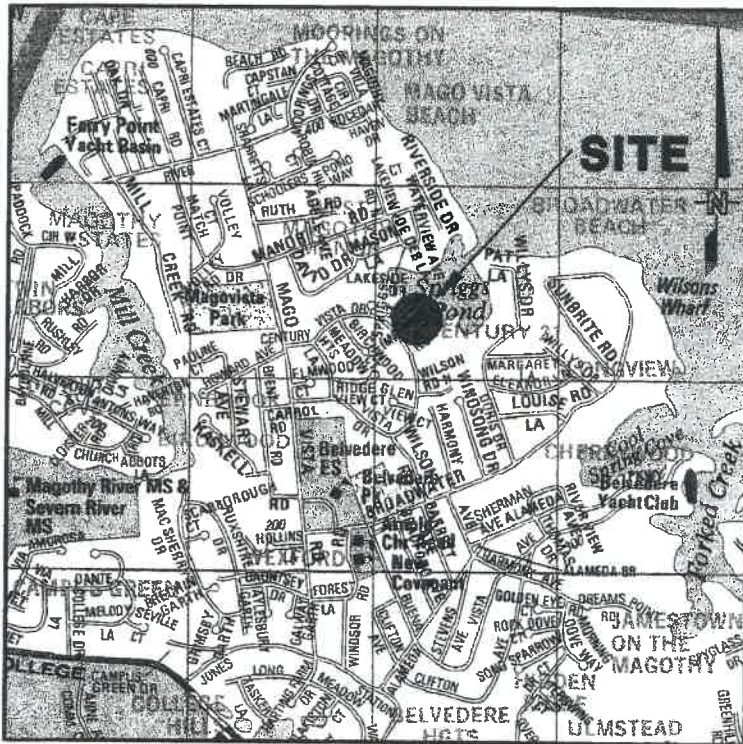
A plan showing the site and its improvements is attached to this report.

## **ADDITIONAL INFORMATION**

A Notification of Project Application for the Critical Area Commission is included in this package.

The fieldwork was conducted on March 27, 2024

---



**VICINITY MAP**

SCALE: 1" = 2,000'

ADC MAP: 15, GRID: J7

Copyright ADC The Map People

Permitted Use Number 20811204

# CRITICAL AREA MAP FOR 858 IMPERIAL ROAD



## Legend

### Parcels



### Critical Areas

- IDA - Intensely Developed Area (Orange fill)
- IDA - Intensely Developed Area (Orange fill)
- LDA - Limited Development Area (Yellow fill)
- RCA - Resource Conservation Area (Green fill)

### Labels

- State Road Label
- Interstate US Road Label
- Local Road Label
- Fire Police Label
- Streams Label

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.

Esri, NASA, NGA, USGS, FEMA



THIS MAP IS NOT TO BE USED FOR NAVIGATION

## Notes



## OFFICE OF PLANNING AND ZONING

### CONFIRMATION OF PRE-FILE (2024-0023-P)

DATE OF MEETING: 3/13/2024

P&Z STAFF: Sara Anzelmo, Kelly Krinetz

APPLICANT/REPRESENTATIVE: Gary Ross/Matt Forgen EMAIL: mforgen@aol.com

SITE LOCATION: 858 Imperial Road, Arnold LOT SIZE: 1.05 acres ZONING: R5

CA DESIGNATION: IDA BMA: Partial or BUFFER: Partial APPLICATION TYPE: Critical Area Variance

The applicant is proposing to construct a 13' by 30' one-story addition onto the northwest side of the existing dwelling. The entire addition would be located within the 100-foot buffer to Spriggs Cove, necessitating a variance for the associated disturbance within the buffer.

#### From the applicant:

"This proposal is the minimum variance to allow for the construction of the dwelling addition. This is a legal lot that was recorded prior to the critical area laws. The existing dwelling sits within the 100-foot buffer. The house sits within the non-modified portion of the property. There is no way of expanding the dwelling without being within the 100-foot buffer. We pushed the house addition back from the water as much as possible to minimize the buffer disturbance."

#### COMMENTS

The **Critical Area Team** reviewed the current proposal and noted that in 2009 the property owner was allowed, through appeal, to rebuild and expand the existing dwelling in the current location. In order for that request to have been approved, the Board would have had to find that the current footprint was the minimum necessary to afford the applicant relief. In addition, the decision to rebuild within the 100' buffer would also make the need for any future variance requests the result of an action by the owner. This request cannot be supported.

The **Zoning Administration Section** concurs with the comments provided by the Critical Area Team. The existing dwelling was constructed under a variance approved by the Board of Appeals. The dwelling was intentionally constructed within the buffer when there were other locations outside of the buffer that would have eliminated the critical area variance and would have allowed for future expansions. The applicant will need to demonstrate why the existing improvements constructed via the previously approved variance do not already provide the minimum relief necessary to afford reasonable use of the property. In order for a Critical Area variance to be approved, the applicant must demonstrate and the Hearing Officer must find that the proposal complies with each and every variance standard provided under Section 18-16-305 (b) & (c) of the Anne Arundel County Zoning Ordinance.

#### 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.

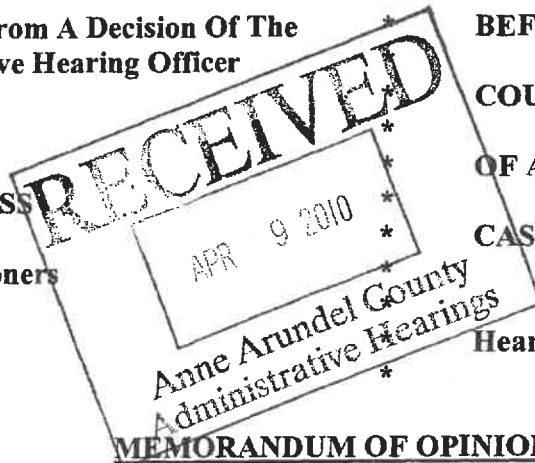
Section 18-16-301 (c) Burden of Proof. The applicant has the burden of proof, including the burden of going forward with the production of evidence and the burden of persuasion, on all questions of fact. The burden of persuasion is by a preponderance of the evidence. A variance to the requirements of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

**RE: An Appeal From A Decision Of The  
Administrative Hearing Officer**

**BEFORE THE  
COUNTY BOARD OF APPEALS  
OF ANNE ARUNDEL COUNTY**

**GARY & JEAN ROSS**

**Petitioners**



**CASE NO.: BA 55-09V  
(2009-0169-V)**

**Hearing Date: February 18, 2010**

**MEMORANDUM OF OPINION**

**Summary of Pleadings**

This is an appeal from a decision of the Administrative Hearing Officer. This appeal is taken from the denial of a variance to permit construction of a dwelling and front deck with fewer setbacks and buffer than required, on property known as 838 Imperial Road, Arnold.

**Summary of Evidence**

Mr. Timothy Martin, a professional registered surveyor, prepared the plats utilized in this matter. Mr. Martin testified that the property is in the Critical Area, and currently there is a fuel tank buried on the property, as well as a septic system 20 feet from the waterline, and an asbestos shingled roof on the building. If the variance were granted in this matter, the fuel tank, the septic system and the roof would all be eliminated from the property. Petitioner's Exhibit 1A shows that two lots comprise the property. The northern lot is located in the Buffer Modification Area ("BMA"); however, the existing home is located on the southern portion of the property and is not within the BMA. Mr. Martin testified that the BMA's purpose is to cover existing homes located in the Critical Area. Approximately one-third of the proposed new home would be located in the BMA. The Petitioners' Exhibit 1B demonstrates how a home larger than the proposed home could be built without the need for a variance and be located outside of the Buffer Modification Area. Exhibit 1C demonstrates the property subdivided into three lots



without the need for a variance. Exhibit 1D compares how granting the requested variance would be more beneficial to the environment than allowing the Petitioners to either build a larger home further back on the property or subdivide it into three building sites. The total requested square footage, the increased percentage over the existing impervious square feet, the disturbed area, the woods clearing and clearing percentage would all be substantially higher if the variance is not granted and the Petitioners move forward with other options pertaining to the subject property. The Petitioners' Exhibit 1E shows locations of similar properties on Spriggs Cove where homes were newly constructed or are in the process of construction; demonstrating that the variance would not impair adjacent properties.

Mr. Eric E. See, an environmental consultant, prepared the Critical Area Report and Habitat Assessment. Mr. See testified that the environment would be less impacted if the variance were granted than if the other development options occurred. The existing home is on the bank of Spriggs Cove, whereas the proposed home would be moved back from the bank. He feels that there is plenty of flat ground area to add storm water management to the property, that the septic system would be removed, as well as the underground oil tank. Mr. See testified that the proposed home would enhance the water quality, and only 3 trees would be removed to effectuate construction. Furthermore, there is plenty of room on the property for reforestation. Mr. See believes there would be a 10 percent reduction of pollutants if the variance is granted and it is environmentally preferable.

Mr. Gary Ross, the Petitioner, testified that the property has been in his family for three generations, the majority of the land was completely acquired in the 1950s. There is a small cottage on the property that comprises less than 1,000 square feet. It was originally a shack built in the 1800s. Later, plumbing and a furnace were installed to modify the home. Mr. Ross believes that the home no longer fits in with the surrounding housing environment in his

neighborhood. By building the proposed home, the two lots on the property would be merged and would destroy the ability to subdivide the property. Allowing the construction of the new home would improve real estate value for adjacent properties. Recently four homes were constructed on or near Spriggs Cove; not allowing the variance would deny Mr. Ross the ability to do what others have done in his neighborhood. Approximately 45 other homes sit within the BMA on the Cove. Photos were submitted showing the surrounding homes that were recently built and portraying the current home on the subject property.

Ms. Lori Rhodes, a planner with the Office of Planning and Zoning, recommended approval of the variance. This site is zoned R5 – Residential District since the adoption of the Broadneck Small Area Plan effective May 26, 2002. This is a waterfront lot that fronts on Spriggs Cove within the Critical Area. Approximately one-half of the northernmost portion of the lot is mapped as BMA. The subject property is the only grandfathered, developed property along Spriggs Cove that is not completely within the BMA. The current dwelling was constructed in 1800 and was expanded around 1950. The proposed dwelling will be constructed over a portion of the land disturbed by the existing dwelling and concrete patio. The new dwelling will also be located further away from the waterline compared to the existing dwelling, and minimal environmental impact will occur; only 3 trees will be eliminated and they will be replaced elsewhere on the property with native plants. The new dwelling will eliminate the current septic system and will hook up to the County's sewage system, eliminating a drain field; an underground heating oil tank; and the asbestos shingles on the current dwelling. The lot is designated on the Critical Area Map as IDA – Intensely Developed Area; the lot will be subject to water quality requirements and will result in a 10 percent reduction of pollutants if the variance were granted. A literal interpretation of the County's Critical Area Program would deny the applicant rights commonly enjoyed by others in similar areas of the County, and that



compared to the other options for development on this lot, it is the most environmentally preferred choice. The County requested that the variance be granted with conditions including that the applicant shall provide mitigation inside the Buffer to the extent possible and shall comply with any instructions and necessary approvals from the Permit Application Center, and the existing stand of trees in and out of the 100 foot buffer may not be disturbed unless deemed necessary for the proposed development and shall not exceed three trees proposed on the site plan for removal.

All testimony was stenographically recorded and the recording is available to be used for the preparation of a written transcript of the proceedings.

#### **Findings and Conclusion**

The subject waterfront property is zoned R5-Residential since the adoption of the Broadneck Small Area Plan, effective May 26, 2002, and classified as IDA-Intensely Developed Area within the Critical Area, as well as a portion of the lot mapped as BMA-Buffer Modification Area. The Petitioners have requested variances to construct a dwelling and front deck with less setbacks and buffer than required within the Critical Area Buffer. The requested variances would allow the Petitioners to reconstruct a house and associated facilities on the property.

In order for this Board to grant the requested variances, the Petitioners must satisfy a rigorous set of requirements set forth in Section 3-1-207 of the Anne Arundel County Code (Code). Each and every requirement must be satisfied; thus, failure to meet even one Code requirement requires this Board to deny the requested variances. The first requires the applicant to show that "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 of the County's Critical Area Program

would result in an unwarranted hardship.” *Id.* § 3-1-207(b)(1). The property is oddly shaped and is surrounded by water on two sides constituting a unique physical condition inherent to the property. Furthermore, only a portion of the property is within the BMA, which does not include the existing cottage. Ms. Rhodes, the Petitioner and Mr. Martin were confused by this aspect since the BMA is supposed to extend protection to homes that existed prior to the implementation of the Critical Area Program; clearly, this cottage meets that standard. Therefore, we find that the property has unique physical conditions that would cause the Petitioners to suffer an unwarranted hardship if the Code is strictly applied.

The Petitioners next must show that “[a] literal interpretation of COMAR, 27.01, Criteria for Local Critical Area Program Development or the County’s critical area program and related ordinances will deprive the applicant of rights commonly enjoyed by other properties in similar areas as permitted in accordance with the provisions of the critical area program within the critical area of the County.” *Id.* § 3-1-207(b)(2)(i). The community on Spriggs Cove is entirely developed; there are homes of various sizes throughout the community, three of which are recently constructed and one is under construction. Indeed, this property is currently developed, but the home is inefficient to meet the needs of the owners, and poses several environmental concerns, including the underground oil tank, its proximity to the waterline, the asbestos shingles, and the septic system. Like other property owners in the community, the Petitioners would like a habitable and environmentally sound house on their property. As Mr. Ross stated, the home does not fit within the character of the surrounding neighborhood, and he would like to do what those around him have done to their properties. We also note all of the surrounding, developed properties are within the BMA, except for the undeveloped lot to the south of the Petitioners’ property. Thus, we find that strict application of the Critical Area law would deprive the Petitioners of the same rights enjoyed by others in the community.

Next, the Petitioners must prove that “the granting of a variance will not confer on an applicant any special privilege that would be denied by COMAR, 27.01, the County’s critical area program to other lands or structures within the County critical area . . . .” *Id.* § 3-1-207(b)(3). As we previously addressed, the surrounding community is completely developed. The variances would permit the lot owner to reconstruct a home on the site, which development would decrease the environmental impact of pollutants by 10 percent; the asbestos shingles, the underground oil tank and the septic system would be eliminated. Furthermore, the proposed home would be constructed farther from the waterline than where the current home sits. If the BMA was correctly applied to the current home as it should have been, the Petitioners would not have a need to request any of these variances. The requested variances would not confer any special privilege on the Petitioners beyond that enjoyed throughout this neighborhood and what is currently enjoyed on this property.

The Petitioners must establish that “[t]he variance request is not based on conditions or circumstances that are the result of actions by the applicant, including the commencement of development before an application for a variance was filed, and does not arise from any condition relating to land or building use on any neighboring property.” *Id.* § 3-1-207(b)(4). The variance requests are based on the physical conditions on the property that render development of the lot in accordance with the Code nearly impossible. No redevelopment has taken place on the property and there are no conditions on neighboring properties that affect the Petitioners’ property. Accordingly, we find that the need for the requested variances was not created by the Petitioners, but by a mishap in the application of the BMA.

The Petitioners must also show that “[t]he granting of a variance 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 and will be in harmony with the general spirit and intent of the County’s

critical area program or bog protection program.” *Id.* § 3-1-207(b)(5). Ms. Rhodes and Mr. See testified that there would be no adverse impact from the proposed redevelopment on the Critical Area ecosystems. The site plan was revised to reduce the disturbance within and impact to the Critical Area. As previously stated, the construction would result in a 10 percent reduction of pollutants on the property. The septic system, the asbestos shingles, and the underground oil tank will all be eliminated. Modern storm water management systems shall be implemented to control runoff, a public sewer hookup will be implemented, and only three trees will be removed, with on site options for reforestation. We find that the Petitioners’ proposal is “in harmony with the general spirit and intent” of the County’s Critical Area program. *Id.*

The subject property is not within the 100-foot upland buffer of a bog. Therefore, Section 3-1-207(b)(6) does not apply and merits no further discussion.

Next, the Petitioners must establish that “by competent and substantial evidence [it] has overcome the presumption contained in the Natural Resources Article, Section 8-1808(d)(2), of the State Code.” *Id.* § 3-1-207(b)(7). Under Section 8-1808(d)(2) of the Natural Resources Article it is presumed “that the specific development activity in the critical area that is subject to the application and for which a variance is required does not conform with the general purpose and intent of this subtitle, regulations adopted under this subtitle, and the requirements of the local jurisdiction’s program.” Md. Code Ann., Natural Resources §8-1808(d)(2)(i). As we previously addressed, there would be less adverse impact on the Critical Area ecosystems from the grant of the requested variances than from the existing developed condition. A house is a permitted use on this property and this application seeks only to reconstruct what currently exists on site—but with lesser impact. We find that the Petitioners have overcome the presumption of the Natural Resources Article.

The Petitioners also must show that "the variance is the minimum variance necessary to afford relief." Code, § 3-1-207(c)(1). The proposed house is comparable to other homes in the community. The area on the lot outside of the buffer is the location available for the Petitioners to construct this home. The Petitioners have suggested that a home several times larger could be built without a variance further back on the lot, however, the environmental impacts would be far greater than what is currently being proposed. Furthermore, the Petitioners also have the option of selling the property for subdivision, which could result in an even greater environmental impact. The Petitioners are opting and requesting to build a home that is not fiscally reasonable for them when they have the options of earning money from building and selling a larger home or subdividing the property. Accordingly, we find that the requested variances are the minimum necessary, and the most environmentally sound.

The Petitioners next must show that "the granting of the variance will not alter the essential character of the neighborhood or district in which the lot is located [or] substantially impair the appropriate use or development of adjacent property." *Id.* § 3-1-207(c)(2)(i) and (ii). The houses in the surrounding community are similar in size to the house that the Petitioners propose to construct. Therefore, we find that granting the requested variances will not have any effect on the character of the neighborhood or impair the use of adjacent property; we believe it will improve the character of the neighborhood, as it will fit in more, and may improve the property value of the surrounding properties.

Next, the Petitioners must show that "the granting of the variance will not reduce forest cover in the limited development and resource conservation areas of the critical area and will not be contrary to acceptable clearing and replanting practices required for development in the critical area." *Id.* § 3-1-207(c)(2)(iii). The site plan shows a significant amount of area for

**COPY**  
TRUE CERTIFIED

reforestation and revegetation on the site. Only three trees will be removed for the construction of this home. Thus, we find that grant of the requested variances would not reduce forest cover.

Lastly, the Petitioners must also show that "the granting of the variance will not be detrimental to the public welfare." *Id.* § 3-1-207(c)(2)(v). The Petitioners simply want to rebuild a house on the property. They have taken numerous steps to ensure that the development would have the least impact on the Critical Area while also improving the environment. We do not believe that allowing the Petitioners to reconstruct the house on this site will be detrimental to the public.

### ORDER


For the reasons set forth in the foregoing Memorandum of Opinion, it is this 6<sup>th</sup> day of APRIL, 2010, by the County Board of Appeals of Anne Arundel County, ORDERED, that a variance of 68 feet from the required 100 foot minimum Critical Area Buffer to permit the construction of a dwelling and front deck is hereby **GRANTED**, on condition that the existing stand of trees in and outside the 100 foot Buffer may not be disturbed unless deemed necessary for the proposed development and no more than three (3) trees shall be removed, as shown on the site plan.

Any appeal from this decision must be in accordance with the provisions of Section 604 of the Charter of Anne Arundel County, Maryland.

If this case is not appealed, exhibits must be claimed within 90 days of the date of this Order; otherwise, they will be discarded.


Any notice to this Board required under the Maryland Rules shall be addressed as follows: Anne Arundel County Board of Appeals, Arundel Center, P.O. Box 2700, Annapolis, Maryland 21404, ATTN: Mary M. Leavell, Clerk.

COUNTY BOARD OF APPEALS  
OF ANNE ARUNDEL COUNTY



---

William C. Knight, III, Chairman



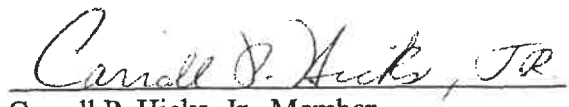
---

Arnold W. McKechnie, Vice Chairman



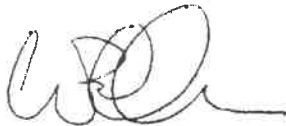
---

John W. Boring, Member




---

Carroll P. Hicks, Jr., Member



---

William Moulden, Member



---

James E. Rzepkowski, Member



---

Doreen Strothman, Member





- EXISTING BUILDING AREA
- NEW BUILDING AREA
- OVERLAP OF EXISTING & NEW BUILDING AREA

RECEIVED

Anne Arundel County  
Administrative Services

Heading = 8/25/09 2009.01.09.V

SITE PLAN

PROJECT FOR:  
**GARY & JEAN ROSS**  
858 IMPERIAL ROAD  
ARNOLD, MARYLAND 21012

DATE: AUGUST 3, 2009  
SCALE: 1" = 30'-0"  
FILE NAME: R0559P  
DRAWN BY: GUGLIUZZA

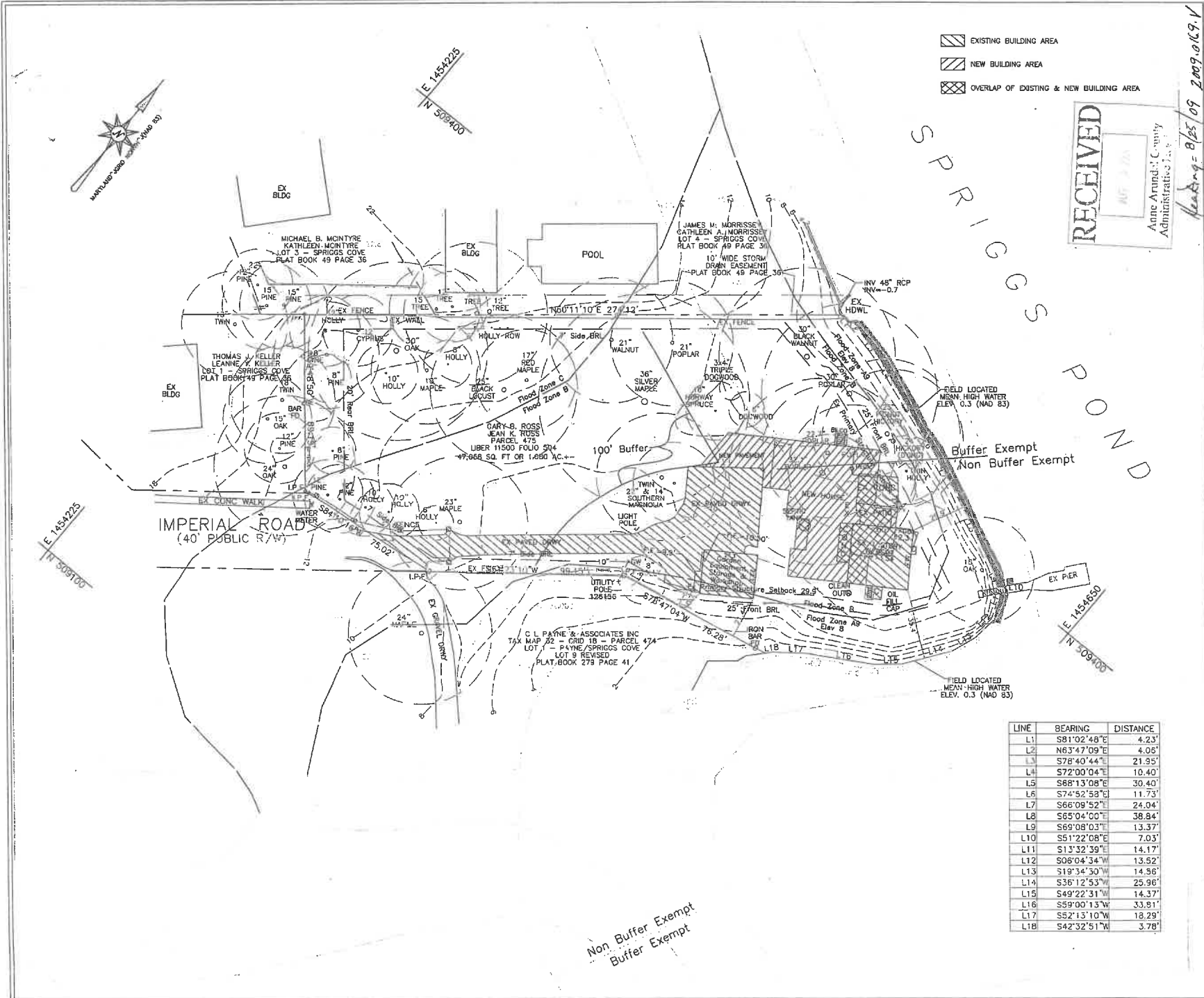
**CREATIVE OUTLOOKS, LLC**  
PHILIP F. GUGLIUZZA

CUSTOM HOME PLANNING & DESIGN  
HOME ADDITION, RENOVATION &  
COMPLETE CONSTRUCTION PLANS

PHONE: 410-234-0264 FAX No. 410-234-607

Authorization/Limitations for Use of Plans  
This set of drawings, the design itself, and any accompanying specifications are solely owned by Creative Outlooks, LLC. A copy of these drawings and specifications will be provided to the Client for the use of construction. It is understood and agreed that these drawings are not to be copied, modified and/or redrawn without the written permission of Creative Outlooks, LLC.  
Copyright Creative Outlooks, LLC.  
All rights reserved 2009

SHEET No.  
**1 of 1**



LINE	BEARING	DISTANCE
L1	S81°02'48\"E	4.23'
L2	N63°47'09\"E	4.06'
L3	S78°40'44\"E	21.95'
L4	S72°00'04\"E	10.40'
L5	S68°13'08\"E	30.40'
L6	S74°52'53\"E	11.73'
L7	S66°09'52\"E	24.04'
L8	S65°04'00\"E	38.84'
L9	S69°08'03\"E	13.37'
L10	S51°22'08\"E	7.03'
L11	S13°32'39\"E	14.17'
L12	S08°04'34\"W	13.52'
L13	S19°34'30\"W	14.96'
L14	S38°12'53\"W	25.96'
L15	S49°22'31\"W	14.37'
L16	S59°00'13\"W	33.91'
L17	S52°13'10\"W	18.29'
L18	S42°32'51\"W	3.78'

Non Buffer Exempt  
Buffer Exempt