

APP. EXHIBIT# 1
CASE: 2024-0090-V
DATE: 7/30/24

This Affidavit is given regarding the Real Estate described below
In connection with a pending Administrative Hearing on Zoning or Permits:

Property Owner: KENNETH VIDMAR
Property Address: Hawkins Street Lots 217 to 221 Plat of North Selby
Edgewater MD 21037
Case Number: 2024-0090-V (AD 1, CD 7)

AFFIDAVIT

I am over the age of eighteen (18) and I am competent to be a witness. The following statements are made based upon my knowledge, information and belief:

1. I posted the Anne Arundel County NOTICE of Hearing sign on the front of the Property facing the street on July 15 2024.
2. I took a photo of the Sign which is attached hereto.
3. I have checked periodically and the sign remained in place until the Hearing.

I hereby swear and affirm under the penalties of perjury that the foregoing statements are true and correct to the best of my knowledge, information and belief.

Date: July 15, 2024

Wade Schorr
Name: Wade Schorr
Title: Production Manager
Telephone: 410-956-2277
Address: 1912 C Lincoln Dr.
Annapolis MD 21401

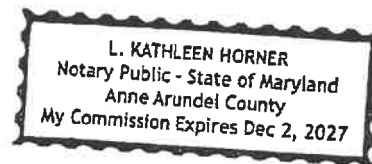
STATE OF MARYLAND, Anne Arundel COUNTY, to wit:

On this date the foregoing Affidavit of Wade Schou (known to me or satisfactorily proven to be) was sworn to and signed before the undersigned Notary Public.

Date: July 15, 2024

L. Kathleen Horner
Notary Public

My Commission expires: 12/2/2027



From: [Front Desk](#)
To: [Daniel J. Mellin](#); [Doug Bourquin \(ddbourquin@gmail.com\)](#); [kenvidmar@hotmail.com](#); [kenneth.vidmar@ddgi04.navy.mil](#); [Wade Schorr](#); [Scott Schorr](#)
Subject: Vidmar July 22, 2024 Pictures
Date: Monday, July 22, 2024 8:36:44 AM
Attachments: [image001.png](#)

frontdesk@lauerhomes.com appears similar to someone who previously sent you email, but may not be that person. [Learn why this could be a risk](#)

Good morning,

I just wanted to send over the photos of the posted signs from Wade, taken today.

Alexis Jerome

Administrative Assistant

Lauer Construction, Inc.

1912C Lincoln Dr.

Annapolis, MD 21401

frontdesk@lauerhomes.com



Office: 410.956.2277

Cell: 410.320.4077

Fax: 410.269.8044

From: [Front Desk](#)
To: [Daniel J. Mellin](#); [Doug Bourquin \(ddbourquin@gmail.com\)](#); [kenvidmar@hotmail.com](#); [vidmar@ddg104.navy.mil](#); [Wade Schorr](#); [Scott Schorr](#)
Subject: Vidmar July 29,2024 Pictures
Date: Monday, July 29, 2024 9:04:21 AM
Attachments: [image001.png](#)

frontdesk@lauerhomes.com appears similar to someone who previously sent you email, but may not be that person. [Learn why this could be a risk](#)

Good morning,

I just wanted to send over the photos of the posted signs from Wade, taken today.

Alexis Jerome
Administrative Assistant

Lauer Construction, Inc.
1912C Lincoln Dr.
Annapolis, MD 21401
frontdesk@lauerhomes.com



Office: 410.956.2277
Cell: 410.320.4077
Fax: 410.269.8044

NOTICE

AN APPLICATION HAS BEEN FILED FOR VARIANCE TO ALLOW
AN EXTENSION IN TIME FOR THE IMPLEMENTATION
AND COMPLETION OF A PREVIOUSLY APPROVED VARIANCE

LOCATION: 910 HAWKINS STREET, EDGEWATER

CASE NO: 2024-0060-V

KENNETH VIDMAR

PENDING A PUBLIC ZOOM MEETING. FOR INFO CONTACT
THE ZONING DIVISION AT 410-222-7437 OR VIEW WEBSITE
WWW.AACOUNTY.ORG/ADMIN-HEARINGS







APP. EXHIBIT# 2
CASE: 2024-0090-V
DATE: 7/30/24

FINDINGS AND RECOMMENDATION
OFFICE OF PLANNING AND ZONING
ANNE ARUNDEL COUNTY, MARYLAND

APPLICANT: Kenneth Vidmar

ASSESSMENT DISTRICT: 1

CASE NUMBER: 2022-0030-V

COUNCIL DISTRICT: 7

HEARING DATE: April 26, 2022

PREPARED BY: Sumner Handy
Planner



REQUEST

The applicant is seeking a variance to allow a dwelling with less setbacks and buffer than required on property located at the intersection of currently unimproved sections of Hawkins Street and Shady Drive in the subdivision of North Selby in Edgewater.

LOCATION AND DESCRIPTION OF SITE

The subject site is 29,303 square feet in area, and has about 108 feet of road frontage on the west side of Hawkins Street, 0 feet north of Shady Drive. It is identified as Lots 217 through 222 of Parcel 27 in Grid 4 on Tax Map 60 in the North Selby subdivision. The subject property is zoned R2 - Residential District and has been since the adoption of comprehensive zoning for the Seventh Council District, effective October 7, 2011.

The site is located in the Chesapeake Bay Critical Area and is designated RCA - Resource Conservation Area. The site is substantially encumbered by the buffer to Brickhouse Creek and is currently unimproved.

APPLICANT'S PROPOSAL

The applicant proposes to construct a new single-family detached dwelling and associated facilities at the subject property. The proposed dwelling measures 21 feet by 40 feet and would be three stories (first floor garage with two stories above) and 35 feet, 6 inches high.

REQUESTED VARIANCES

Section 18-13-104(a) of the Anne Arundel County Zoning Code 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. Brickhouse Creek, and its buffer, runs through the subject property. Section 17-8-301 of the Code states that development on properties containing buffers shall meet the requirements of Title 27 of the State Code of Maryland (COMAR). Section 27.01.01(B)(8)(ii) of COMAR states a buffer exists "to protect a stream, tidal wetland, tidal waters, or terrestrial environment from human disturbance." Section 27.01.09E.(1)(a)(ii) of

COMAR authorizes disturbance to this buffer for a new development activity or redevelopment activity by variance. In the case of the subject property, the 100-foot perennial stream buffer covers much of the subject property. The proposed development necessitates a variance to allow the disturbance of approximately 2,249 square feet in the buffer. If approved, the actual degree of buffer disturbance will be determined at permitting.

Section 18-4-601 of the Anne Arundel County Zoning Code requires a principal structure to be set back a minimum of 30 feet from a front lot line and 20 feet from a corner side lot line. The dwelling is proposed to be located as close as 11 feet from the front lot line and 18 feet from the corner side lot line, necessitating variances of 19 and two feet, respectively.

Section 18-4-601 also requires that a principal structure be limited to 35 feet in height. The dwelling is proposed at 36.5 feet in height, necessitating a variance of 1 foot (rounded).

FINDINGS

At 29,303 square feet in area, the subject property meets the minimum lot area for those in the R2 district, and it exceeds the minimum 80-foot width at the front building restriction line. The property is a collection of lots - numbers 217 through 222 - that together comprise an undeveloped, wooded site at the corner of unimproved sections of Hawkins Street and Shady Drive. The applicants note that the buffer to Brickhouse Creek covers much of the subject property, and that development of this property is not possible absent some disturbance to this perennial stream buffer and the nontidal wetland buffer.

The applicant notes that the setback and height variances are requested to accommodate making the house more compact, which is itself necessary in order to minimize disturbance to the sensitive environmental features at the site. The applicant notes that the proposed lot coverage is limited to 2,390 square feet, below the allowable 5,445 square feet for lots of this size with an RCA designation in the Critical Area.

The **Critical Area Team** notes the following:

1. The subject property is in a mapped Forest Interior Dwelling Species (FIDS) Habitat. The proposed development is not in compliance with recommended FIDS development guidelines as it will create a new edge and allow increased area for predators. The site is also impacted by hydric soils, floodplain, non-tidal wetlands, a stream and the associated buffer. The entire site qualifies as a Habitat Protection Area.
2. Although the Critical Area Team does not often comment on Sea Level Rise, it should be noted that the flood elevation in this area is 5 and the site elevation under the home is 4.2. This development will require a driveway extension within an existing road bed. Accessibility during storm events will be limited.
3. The granting of a variance will impact multiple environmental features that exist on the site. In addition, the applicant would need to fully address all applicable development requirements including SWM which may be difficult at this site.
4. The applicant is proposing a 3-story home with an 840 square foot footprint resulting in 2,520 square feet of habitable space. Given the constraints on this site, the footprint

should be reduced.

The **Critical Area Commission** noted the following:

1. The proposed project will create 2,249 s.f. of disturbance within the Critical Area Buffer. The application states "Critical Area resource impacts are mitigated via avoidance during design and no additional mitigation is required." Please note, if the variance is granted, any disturbance within the 100' Stream Buffer must be mitigated at a 3:1 ratio for a total mitigation requirement of 6,747 s.f.
2. The proposed project will create disturbance within the 25-foot Non-tidal wetland Buffer. The Critical Area Commission requests that Maryland Department of Environment tracking numbers and permit approvals be forwarded to that office.
3. Based on a review of aerials for the property, FIDS habitat may be present on the site. Therefore, the applicant must receive a letter from the Department of Natural Resources Wildlife and Heritage Division (WHS) evaluating the property for any rare, threatened, or endangered species located onsite. If present, the applicant must adequately address any comments provided by WHS for protective measures. Specifically, should FIDS habitat be found onsite, all proposed development must adhere to the FIDS Guidance document, "A Guide to the Conservation of Forest Interior Dwelling Birds in the Chesapeake Bay Critical Area."

The **Engineering Division** reviewed the proposal and was unable to make a favorable recommendation from an Engineering and/or Utility review. That group noted the following:

1. The subject application does not have the information of a complete stormwater preliminary plan. The required information for a complete review was not provided.
2. The property will be served by public sewer and private water well.
3. The significant limiting feature of the site development is the presence of perennial stream, non-tidal wetlands, floodplain and their associated buffers in lots.
4. Urban planter box rain gardens and non-rooftop disconnection has been utilized for stormwater management for water quality. However a Stormwater management (SWM) report has not been provided. County reviewer cannot verify that the proposed design does not adversely affect the water quality.
5. Stormwater practices may not be located in environmental features or on their buffer.
6. Disturbance is not permitted within streams, wetlands or the associated buffers.
7. MDE authorization approval letter 21-NT-0384, plan, and wetland report is required to confirm the limit and authorization of proposed wetland or wetland buffer delineation and disturbance.
8. A tidal 100 Year Floodplain per FEM FIRM Panel: 24003C0242F exists at site. The proposed development shall meet construction guidance requirements on tidal floodplain.
9. Soil boring location is required to determine the siting and suitability of proposed practice. It appears that the proposed practice may not have adequate vertical differences (2 feet) from facility bottom to seasonal high groundwater table.
10. The applicant shall evaluate and implement site planning alternatives in accordance with 18-16-201.
11. A sight triangle easement is required at the intersection of roads. The proposed utility easement (Mayo Tank) shall not be located with this easement.

12. A recorded plat should include in the application to verify the ownership of unimproved road.
13. The proposed house shall be located at the minimum depth of 18 feet from the right-of-way to have parking in the driveway.
14. Provide a narrative to support the design. The narrative should describe how environmental site features and areas will be preserved and protected. The narrative should also include the justification of the selection of ESD practices to address stormwater management requirements.

The **Health Department** does not have an approved plan for the project, but has no objection to this request so long as a plan is submitted to and approved by the Health Department.

For the granting of a Critical Area variance, a determination must be made as to whether, because of unique physical conditions, strict implementation of the County's critical area program would result in an unwarranted hardship. This Office acknowledges that the extent of the buffer on the property makes challenging the development of the lot, and development may be impossible absent some relief from this provision of the Critical Area law. However, the size of the proposed dwelling could be reduced, which would lessen the degree of disturbance in the buffer. The applicant should further evaluate site planning alternatives.

The granting of this Critical Area variance may be understood to confer on the applicant a special privilege, given the extent of the buffer disturbance proposed vis-a-vis the buffer disturbance necessary to develop the lot. As a dwelling may be constructed in a manner that further minimizes buffer disturbance, denial of *this* variance request will not deprive the applicant of a right commonly enjoyed by other properties in similar areas. The variance request is not based on conditions or circumstances that are the result of actions by the applicant and does not arise from any condition relating to land or building use on any neighboring property. Granting of the variance requested may adversely affect water quality or adversely impact fish, wildlife, or plant habitat, and, given the ability to further reduce disturbance to the buffer, would not be in harmony with the general spirit and intent of the County's Critical Area Program.

Accordingly, this Office finds that the applicant has not overcome the presumption that the specific development does not conform to the general purpose and intent of the Critical Area law.

For the granting of a zoning variance, a determination must be made that, because of unique physical conditions, there is no reasonable possibility of developing the lot in strict conformance with the Code, or that, because of exceptional circumstances other than financial considerations, the grant of a variance is necessary to avoid practical difficulties or unnecessary hardship in the development of the lot. This Office acknowledges the applicant's intent to situate the proposed dwelling as far from the stream and nontidal wetlands and their associated buffers as possible, and that it is this effort that incentivizes the applicant to design a compact dwelling that is closer to lot lines and taller than would be allowed. However, that the dwelling's footprint could be reduced suggests that setback and height relief requests could be reduced in concert.

With regards to the requirements for all variances, the proposal may not alter the essential character of the neighborhood. With proper mitigation, the proposal may not reduce forest cover in the Resource Conservation Area or be contrary to acceptable clearing and replanting practices.

While the site plan does show stormwater management in some form, the Engineering comments identified concerns to be addressed, and that group is unable to recommend approval of the proposal at this time. Given their comments and concerns, the applicants have not provided sufficient evidence that the proposed development will not cause adverse impacts on neighboring properties, such as stormwater runoff, or that the proposal will not be detrimental to the public welfare (e.g., due to water quality impacts).

As discussed above, there is a reasonable possibility of developing the lot with a dwelling with less relief from the Code than is requested here. This Office accordingly finds that the proposal is not the minimum necessary to afford relief, and must therefore recommend denial of the requested variances.

RECOMMENDATION

Based upon the standards set forth under Section 18-16-305 under which a variance may be granted, this Office recommends *denial* of:

1. a Critical Area variance to Section 17-8-301 of approximately 2,249 square feet of disturbance to the buffer;
2. Zoning variances to Section 18-4-601 of 19 and two feet, respectively, to the front and corner side setback requirements; and
3. a Zoning variance to Section 18-4-601 of 1 foot (rounded) to the principal structure height requirement.

DISCLAIMER: This recommendation does not constitute a building permit. In order for the applicant(s) to construct the structure(s) as proposed, the applicant(s) shall apply for and obtain the necessary building permits and obtain any other approvals required to perform the work described herein. This includes but is not limited to verifying the legal status of the lot, resolving adequacy of public facilities, and demonstrating compliance with environmental site design criteria.

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

Applicant: Vidmar
Case #: 2022-0030-V
Date: 3/14/22

This site surveys at 29,303 sq. ft. although SDAT has it at 33,150 sq. ft. and was recently purchased for \$48,000. The site is designated as RCA and is entirely wooded and classified as FIDS habitat. The proposed development is not in compliance with recommended FIDS development guidelines as it will create a new edge and allow increased area for predators. The site is also impacted by hydric soils, floodplain, non-tidal wetlands, a stream and the associated buffer. The entire site qualifies as a Habitat Protection Area.

Although we do not often comment on Sea Level Rise, it should be noted that the flood elevation in this area is 5 and the site elevation under the home is 4.2. This development will require a driveway extension within an existing road bed. Accessibility during storm events will be limited.

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.

The site is encumbered by environmental features that require protection and impact the suitability of the site for compliance with regulations required for residential use.

- 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.

A literal interpretation of the Critical Area Laws would not deprive the applicant of rights commonly enjoyed by other properties in similar areas.

- 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.

The granting of a variance will impact multiple environmental features that exist on the site. In addition, the applicant would need to fully address all applicable development requirements including SWM which may be difficult on a site such as this.

- 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 proposed development will impact FIDS habitat.

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

The applicant is proposing a 3 story home with an 840 square foot footprint resulting in 2520 square foot of habitable space. Given the constraints on this site, it is arguable that it cannot accommodate a 2520 square foot home and the footprint, at a minimum, should be reduced.

In the event that the Hearing Officer determines that the applicant has met the test for variance approval, mitigation and SWM must be addressed with the permit application.

A modification will be required for the disturbance of the required wetland buffer. Approval of a variance does not guarantee the approval of the modification. The modification decision will be subject to the requirements of 17-2-108.



Sumner Handy <pzhand00@aacounty.org>

Anne Arundel Administrative Variances 2/28/22-3/4/22

1 message

Michael Grassmann -DNR- <michael.grassmann@maryland.gov>

Thu, Mar 3, 2022 at 9:32 AM

To: Kelly Krinetz <pzkryn00@aacounty.org>, Sterling Seay <pzseay16@aacounty.org>

Cc: Sara Anzelmo <pzanze99@aacounty.org>, "Donald Dyott Jr." <pzdyot22@aacounty.org>, Rob Konowal <pzkono00@aacounty.org>, Joan Jenkins <pzjenk00@aacounty.org>, Sumner Handy <pzhand00@aacounty.org>, Katherine Charbonneau -DNR- <katherine.charbonneau@maryland.gov>, Bonnie Tucker <pztuck00@aacounty.org>, CACAdmin DNR -DNR- <cacadmin.dnr@maryland.gov>

Hello all,

Our office has reviewed the following variances which are being heard by the Administrative Hearing Officer, and has the following comments:

2022-0029-V (Shekar): Our office will send an official comment letter in the near future.

2022-0030-V (Vidmar): 1. The proposed project will create 2,249 s.f. of disturbance within the Critical Area Buffer. The application states "Critical Area resource impacts are mitigated via avoidance during design and no additional mitigation is required". Please note, if the variance is granted, any disturbance within the 100' Stream Buffer must be mitigated at a 3:1 ratio for a total mitigation requirement of 6,747 s.f.

2. The proposed project will create disturbance within the 25-foot Non-tidal wetland Buffer. Please forward full Maryland Department of Environment tracking numbers and permit approvals to our office.
3. Based on a review of aerials for the property, FIDS habitat may be present on the site. Therefore, the applicant must receive a letter from the Department of Natural Resources Wildlife and Heritage Division (WHS) evaluating the property for any rare, threatened, or endangered species located onsite. If present, the applicant must adequately address any comments provided by WHS for protective measures. Specifically, should FIDS habitat be found onsite, all proposed development must adhere to the FIDS Guidance document, "A Guide to the Conservation of Forest Interior Dwelling Birds in the Chesapeake Bay Critical Area."

2022-0033-V (Palowicz): Provided the appropriate mitigation is followed, we have no additional comments.

Thank you for the opportunity to provide comments. Please feel free to contact me if you have any questions or require additional information.

Regards,


dnr.maryland.gov/criticalarea

Michael Grassmann
Natural Resource Planner
Critical Area Commission for the
Chesapeake & Atlantic Coastal Bays
1804 West Street, Suite 100
Annapolis, MD 21401
410-260-3462 (office)
michael.grassmann@maryland.gov



Mark Wedemeyer, Director

Memorandum

To: Sumner Handy, AICP, Zoning Division, Office of Planning and Zoning

From: Ram L. Shrestha, P.E., CFM, Engineering Division, Department of Inspections & Permits

Date: March 30, 2022

Subject: Kenneth Vidmar
North Selby, Lots 2217-222
Hawkins St., Edgewater
Tax # 1579-0287-5400
Variance #2022-0030-V

Request – Variance to allow a dwelling with less setbacks and buffers than required.

Project Scope/Description - The site is located at the corner of Bay Front Rd. and Cook Drive, in the community of Arcadia. The lot area consists of 29,303-square foot, comprising of platted six (6) lots, zoned R-2, and located on Chesapeake Bay Critical Area designated land use as Resource Conservation Area (RCA). The applicant proposes to construct a new three stories single family building and associated improvements.

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 public sewer and private water well.
2. The significant limiting feature of the site development is due to the presence of perennial stream, non-tidal wetlands, floodplain and their associated buffers in lots.
3. Urban planter box rain gardens and non-rooftop disconnection has been utilized for stormwater management for water quality. However a Stormwater management (SWM) report has not been provided. County reviewer cannot verify that the proposed design does not adversely affect the water quality.
4. Stormwater practices may not be located in environmental features or on their buffer.
5. Disturbance is not permitted within streams, wetlands or the associated buffers.
6. MDE authorization approval letter 21-NT-0384, plan and wetland report is required to confirm the limit an dauthorization of proposed wetland or wetland buffer delineation and disturbance.
7. A tidal 100 Year Floodplain per FEM FIRM Panel: 24003C0242F exists at site. The proposed

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Last revised 5/11/11

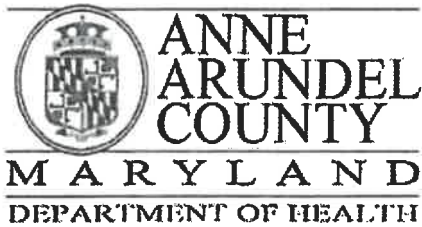
- development shall meet construction guidance requirements on tidal floodplain.
8. Soil boring location is required to determine the siting and suitability of proposed practice. It appears that the proposed practice may not have adequate vertical differences (2 feet) from facility bottom to seasonal high ground water table.
 9. 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.
 10. The applicant shall evaluate and implement site planning alternatives in accordance with 18-16-201.
 11. A sight triangle easement is required at the intersection of roads. The proposed utility easement (Mayo Tank) shall not be located with this easement.
 12. A recorded plat should include in the application to verify the ownership of unimproved road.
 13. The proposed house shall be located at the minimum depth of 18 feet from the right-of-way to have a parking in the driveway.
 14. Provide a narrative to support the design. The narrative should describe how environmental site features and areas will be preserved and protected. The narrative should also include the justification of the selection of ESD practices to address storm water management requirement.

Determination/Recommendation – Based on the above review comments, this office is unable to recommend the variance request approval from an Engineering and/or Utility review.

Recycled paper

www.aacounty.org

Revised 5-11-11



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.aahealth.org

Nilesh Kalyanaraman, MD, FACP.
Health Officer

MEMORANDUM

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

FROM: Brian Chew, Program Manager
Bureau of Environmental Health *BC 3/8/22*

DATE: March 8, 2022

RE: Kenneth Vidmar
Hawkins Street
Edgewater, MD 21037

CASE
NUMBER: 2022-0030-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: Sterline Scay



Office of the Fire Marshal
Subdivision & Development Review

TO: Planning & Zoning

CC: Sterling Seay
Sumner Handy, Michelle Panetta

FROM: Lt. Robert D. Flynn, Fire Marshal Division

DATE: February 28, 2022

SUBJECT: Variances/Special Exceptions

The following Variances have been reviewed by the Office of the Fire Marshal:

Variance #1: 2022-0022-V

Variance #2: 2022-0023-S

Variance #3: 2022-0024-V

Variance #4: 2022-0027-V

Variance #5: 2022-0029-V

Variance #6: 2022-0030-V

Variance #7: 2022-0031-V

Variance #8: 2022-0032-V

Variance #9: 2022-0033-V

Approval is granted.

EnviroProjects, LLC

February 10, 2022

Doug Bourquin, PE
Douglas Bourquin LLC
1298 Bay Dale Drive Suite 203
Arnold, MD. 21012

Re: Vidmar Home Residence, Critical Area Report
Hawkins Street, Edgewater, MD
Project No.: 20210251

Critical Area & Habitat Protection Area Report Narrative

The Ken Vidmar property is a property of undeveloped woodlands, at the end of Hawkins Street in Edgewater, MD 21037, on lands recorded in Anne Arundel County records on tax map 67, parcel 27, Lots 217 through 222. The Vidmar property land area is 29,303 sf / 0.67 acres based on a 2017 survey by Ed Brown, (SDAT states the Lot area is 0.76-acre, 33,150 sf). The site is 100% privately-held, in the Chesapeake Bay Critical Area, Resource Conservation Area (RCA), Refer to attached Critical Area Map, per Anne Arundel County (2020). The study property is zoned Low density Residential (R-2). The general vicinity land use is suburban low-density residential and Open Space. The property contains nontidal wetlands and a stream and is located partially within the FEMA 100-Year Floodplain. The on-site stream is a tributary of Brickhouse Creek, a perennial stream waterway, which flows into the South River and the Chesapeake Bay.

Existing Conditions. The Vidmar study area property is entirely undeveloped and wooded property. A Waters of the US delineation was conducted for the subject study property on March 08, 2021. On-site tree species include Sweetgum (*Liquidambar styraciflua*, FAC), Red Maple (*Acer rubrum*, FAC), and White Pine (*Pinus strobus*). Other species noted on-site include Soft rush (*Juncus effusus*, OBL) and Poison ivy (*Toxicodendron radicans*, FAC). Brickhouse Creek, a perennial stream, flowing through the study area, is approximately 15-feet wide with 2-inch high banks. On-site wetland/stream system may have some tidal influence as shown by the presence of mapped PFO1R wetland on-site. The stream depth is approximately 6 inches, a 20:1 width to depth ratio, low sinuosity, and bed consisting of sand substrate. The riparian coverage is dense consisting of a mix of trees, shrubs and grass/forbs. There is a thick leaf cover along the stream bottom with some common reed growing in-stream. On-site wetlands are nontidal. Tidal wetlands are mapped off-site near the property. The Nontidal wetland delineation was confirmed accurate by the Maryland Department of the Environment permit field inspection on July 20, 2021.

No Steep slopes (+25%) occur on site. The property has no existing impervious surface (0%) on-site.

According to the Maryland Department of Natural Resources MERLIN GIS mapping, Forest Interior Dwelling (FID) Bird habitat occurs on-site; and no sensitive species protection areas occur on-site. No colonial water bird nesting site, historic waterfowl staging areas, natural heritage areas, or protected plant or wildlife habitats of local significance occur on-site.

According to the Maryland Historic Trust-State Historic Preservation Office (MHT-SHPO), Maryland's Cultural Resources Information System (MEDUSA) no National Register of Historic Places, Maryland Inventory of Historic Properties, or locally significant archeology, historic, or culturally significant sites occur at the study property.

EnviroProjects, LLC

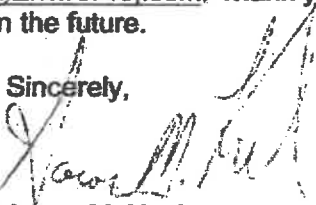
Proposed Activity. The property owner proposes to construct a private personal residence on-site on site which would result in zero (0) sf of disturbance to nontidal wetlands and streams; and temporary disturbance of 1,068 sf of 25-foot wetland buffer; permanent disturbance of 488 sf of 25-foot wetland buffer, and 3,082 sf of construction activity within the FEMA 100-Year Floodplain (1,360 sf permanent & 1,722 sf temporary). All proposed construction in wetland buffers and floodplains is approved by the Maryland Department of the Environment permit authorization 202161045 / 21-NT-0384 on July 28, 2021.

The property is currently undeveloped, privately owned, zoned R2 Low-Density residential, 29,303 sf / 0.67 acres Lot. At this property, the Critical Area Buffer is expanded to include the 100-foot County Stream Buffer. The total proposed limit of construction for the private residence and driveway is 5,121 sf (0.12-ac.). The total proposed added impervious surface is 3,757 sf (0.09-ac.) (12.8% lot coverage). 2,249 sf of the proposed residence occurs within the Expanded Critical Area Buffer. Of the total Limit of Construction (5,121sf), 2,249 sf occurs within the Critical Area Buffer and 2,872 sf is Non-Buffer disturbance.

Mitigation. The project's most significant potential Critical Area resource impacts are mitigated via avoidance during design. The project was significantly redesigned and reduced to avoid impacting on-site streams and nontidal wetlands. The current proposal is authorized by State/Federal Section 401/404 Clean Water Act and Floodplain permits; no additional mitigation is required. The proposed design includes the addition of two urban planter box/rain gardens (UPBRG) at 45 sf each, to manage the impervious stormwater run-off of the proposed structure.

If there are any questions or concerns, please contact me at (410) 599-5335 or aheel@EnviroProj.com. Thank you for choosing EnviroProjects, LLC. We hope to work with you again in the future.

Sincerely,



Aaron M. Keel
Principal
EnviroProjects, LLC

Attachments: A, Maps; B, Project Notification Form; and Site Plan,

C:\ENVIROPROJECTS\2021\20210251-Vidmar-Statyke\Reports-Deliverables\CBCA\Critical Area Report\02B_VIDMAR_2022-02-10.Doc

Vidmar Residence

Chesapeake Bay Critical Area Report

Attachment A: Maps

Project Location Map
Topographic Plan
Critical Area Map

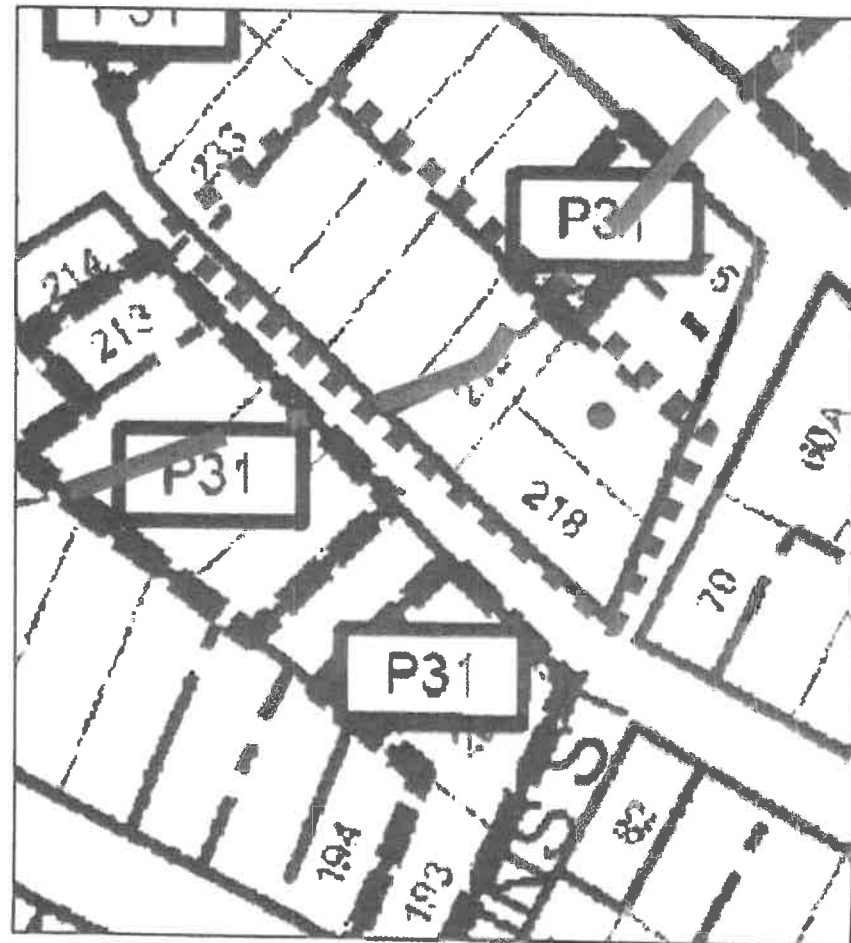
Vidmar, Shady Drive, Lots 217-222: Project Location & Property Map

Undeveloped lot, Hawkins Street @ Shady Drive, Edgewater, MD, 21037, Anne Arundel County Tax Map 60, Parcel 27, Lots 217-222, 0.76-ac.



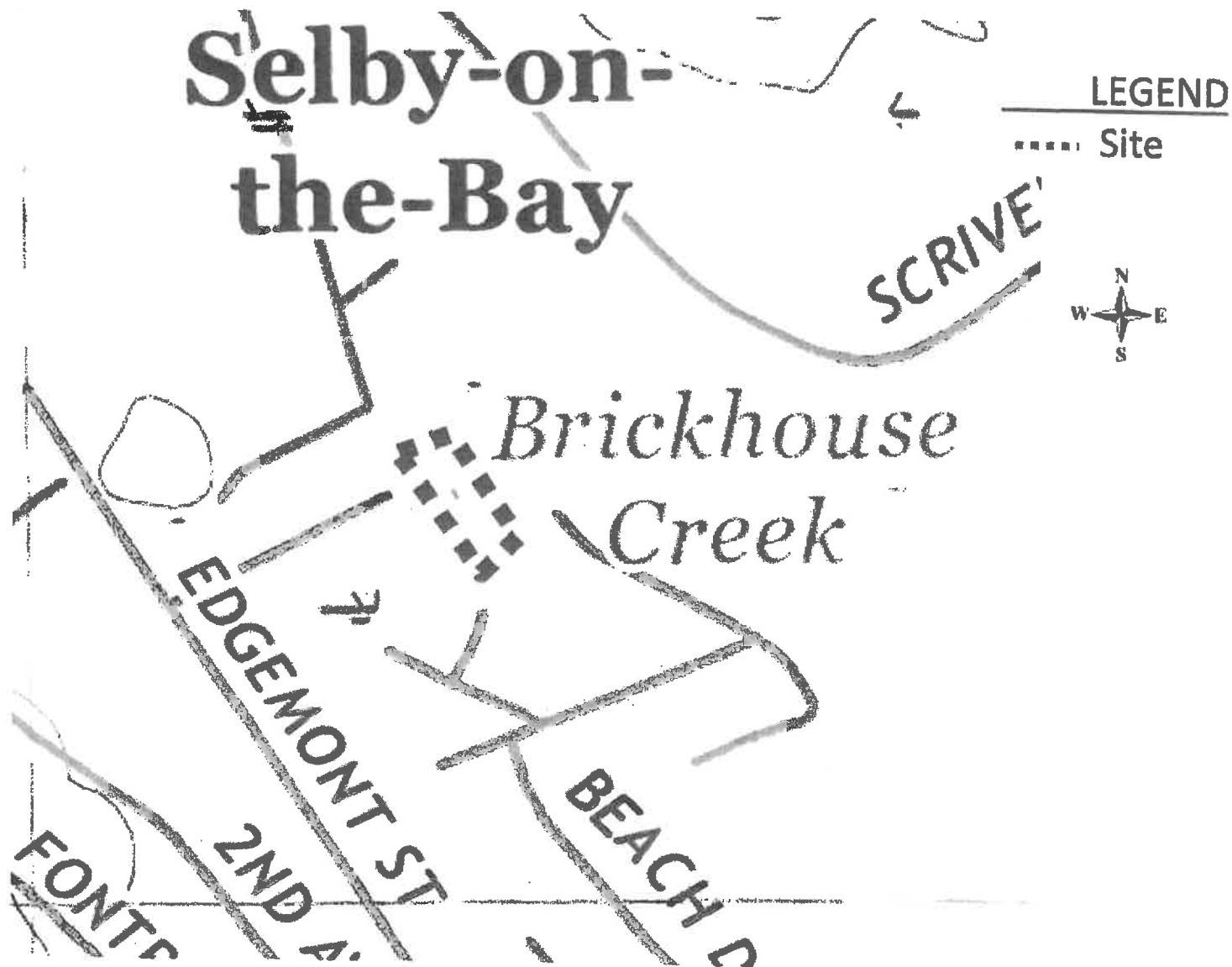
LEGEND

- Study Area Boundary
- - - Mapped Stream Line



Vidmar, Shady Drive, Lots 217-222: USGS Topographic Map

Undeveloped lot, Hawkins Street @ Shady Drive, Edgewater, MD, 21037, Anne Arundel County Tax Map 60, Parcel 27, Lots 217-222, 0.76-ac.



EnviroProjects

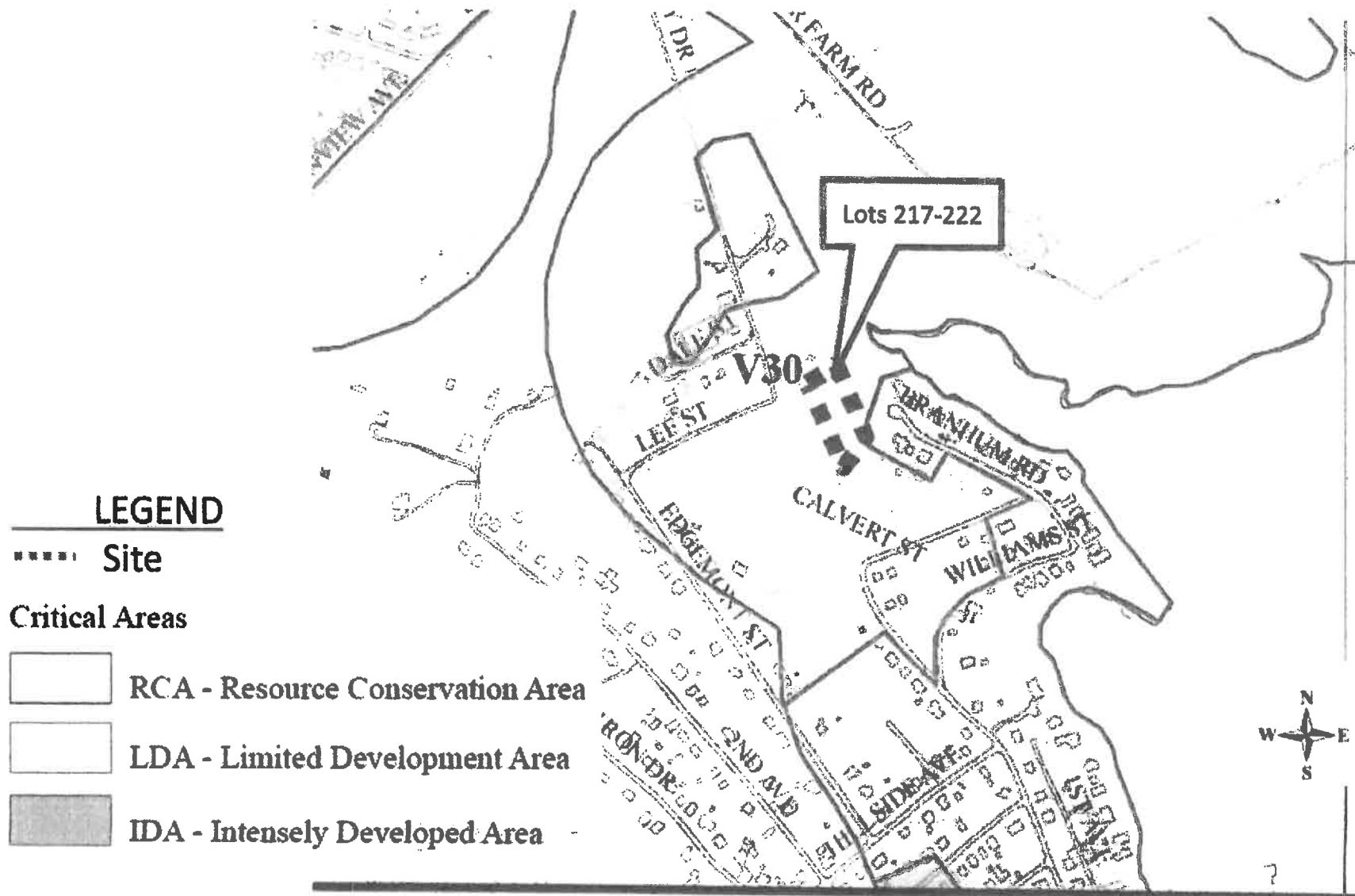
Source: USGS, South River, MD, 2019,
7.5-Minute Quadrangle Topographic map

Date: 03/04/2021

Not to Scale

Vidmar, Shady Drive, Lots 217-222: Critical Area Map

Undeveloped lot, Hawkins Street/Shady Drive, Edgewater, MD, 21037, Anne Arundel County Tax Map 60, Parcel 27, Lots 217-222, 0.76-ac.



EnviroProjects

Source: AA County CBCA Map 24,
2008, Not to Scale

Date: 03/05/2021

Vidmar Residence

Chesapeake Bay Critical Area Report

Attachment B

Project Notification Form

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

PROJECT NOTIFICATION APPLICATION

VIDMAR RESIDENCE

GENERAL PROJECT INFORMATION

Jurisdiction: Anne Arundel County

Date: 10/22/2021

Tax Map #	Parcel #	Block #	Lot #	Section
60	27		217-222	

Tax ID: 157902875400

FOR RESUBMITTAL ONLY

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

*Complete Only Page 1
General Project Information

Project Name (site name, subdivision name, or other) Vidmar Home Residence

Project location/Address Hawkins Street

City Edgewater **Zip** 21037

Local case number

Applicant: **Last name** Vidmar **First name** Ken

Company Not Applicable – Private Residence

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: Private Personal Residence (R2-Residential Zoning)

Intra-Family Transfer ☐ Yes
 Grandfathered Lot ☒

Growth Allocation ☐ Yes
 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		
LDA Area		
RCA Area	0.67	29,303*
Total Area	0.67	29,303

Total Disturbed Area	Acres	Sq.Ft
	0.12	5,121

of Lots Created No change (1)

* Lot Area 29,303 sqft/0.67-acre per D. Bourquin, 2017 Ed Brown survey.

	Acres	Sq Ft		Acres	Sq Ft
Existing Forest/Woodland/Trees	0.67	29,303	Existing Impervious Surface	0.00	0.00
Created Forest/Woodland/Trees	0.0	0	New Impervious Surface	0.09	3,757
Removed Forest/Woodland/Trees	0.12	5,121	Removed Impervious Surface	0.00	0.00
			Total Impervious Surface	0.09	3,757

VARIANCE INFORMATION (Check all that apply)

	Acres	Sq Ft		Acres	Sq Ft
Buffer Disturbance	0.05	2249	Buffer Forest Clearing	0.05	2,249
Non-Buffer Disturbance	0.07	2872	Mitigation	0.0	0

Variance Type

Buffer ☒
 Forest Clearing ☐
 HPA Impact ☐
 Impervious Surface ☐
 Expanded Buffer ☐
 Nontidal Wetlands ☐
 Setback ☐
 Steep Slopes ☐
 Other ☐

Structure

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



© 2021 Esri

HAWKINS ST

DAVE ST

12/23/2021

1 of 64 Select Date

APP. EXHIBIT# 3
CASE: 2024-0090-V
DATE: 7/30/24

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER: 2022-0030-V

KENNETH VIDMAR

FIRST ASSESSMENT DISTRICT

DATE HEARD: APRIL 26, 2022

ORDERED BY:

DOUGLAS CLARK HOLLMANN
ADMINISTRATIVE HEARING OFFICER

PLANNER: SUMNER HANDY

DATE FILED: MAY 12, 2022

PLEADINGS

Kenneth Vidmar, the applicant, seeks a variance (2022-0030-V) to allow a dwelling with less setbacks and buffer than required on property with frontage on the west side of Hawkins Street, north of Shady Drive, Edgewater.

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. The applicant 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 April 26, 2022, in which the witnesses were sworn and the following was presented regarding the proposed variance requested by the applicant.

The Property

The applicant owns the subject property which has frontage on the west side of Hawkins Street, north of Shady Drive, Edgewater. It is known as Lots 217 through 222 of Parcel 27 in Grid 4 on Tax Map 60 in the North Selby subdivision. The property comprises 29,303 square feet and is zoned R2–Residential District. This nonwaterfront lot is designated in the Chesapeake Bay Critical Area as

resource conservation area (RCA). The site is undeveloped and substantially encumbered by the buffer to Brickhouse Creek.

The Proposed Work

The proposal calls to construct a new single-family dwelling and associated facilities on the subject property. The proposed dwelling measures 21' by 40' and would be three stories (first floor garage with two stories above) as shown on the site plan admitted into evidence at the hearing as County Exhibit 2. The dwelling is proposed to be located as close as 11 feet from the front lot line and 18 feet from the corner side lot line and 36.5 feet in height.

The Anne Arundel County Code

§ 18-13-104(a) 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. Brickhouse Creek, and its buffer, runs through the subject property. Section 17-8-301 of the Code states that development on properties containing buffers shall meet the requirements of Title 27 of the State Code of Maryland (COMAR). Section 27.01.01(B)(8)(ii) of COMAR states a buffer exists “to protect a stream, tidal wetland, tidal waters, or terrestrial environment from human disturbance.” Section 27.01.09E.(1)(a)(ii) of COMAR authorizes disturbance to this buffer for a new development activity or redevelopment activity by variance. In the case of the subject property, the 100-foot perennial stream buffer covers much of the subject property. The proposed development necessitates a variance to

allow the disturbance of approximately 2,249 square feet in the buffer. If approved, the actual degree of buffer disturbance will be determined at permitting.

§ 18-4-601 requires a principal structure to be set back a minimum of 30 feet from a front lot line and 20 feet from a corner side lot line and no higher than 35 feet.

The Variances Requested

The proposed work will require the following variances:

1. A critical area variance from the prohibition in § 17-8-301 against disturbing the buffer to a tributary stream to construct the proposed dwelling and associated facilities as shown on County Exhibit 2, with the actual disturbance to be determined at the time of permitting; and
2. A zoning variance of nineteen (19) feet to the 30-foot front lot line setback requirement of § 18-4-601 to allow the proposed dwelling to be constructed as close as 11 feet from the front lot line as shown on County Exhibit 2; and
3. A zoning variance of two (2) feet to the 20-foot corner side lot line setback requirement of § 18-4-601 to allow the proposed dwelling to be constructed as close as 18 feet from the corner side lot line as shown on County Exhibit 2; and
4. A zoning variance of two (2) feet to the 35-foot height limitation of § 18-4-601 to allow the proposed dwelling to be constructed as high as 36.5 feet as shown on County Exhibit 2.

The Evidence Submitted At The Hearing

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

Sumner Handy, a zoning analyst with the OPZ, presented the following findings:

- At 29,303 square feet in area, the subject property meets the minimum lot area for those in the R2 district, and it exceeds the minimum 80-foot width at the front building restriction line. The property is a collection of lots - numbers 217 through 222 - that together comprise an undeveloped, wooded site at the corner of unimproved sections of Hawkins Street and Shady Drive. The applicant notes that the buffer to Brickhouse Creek covers much of the subject property, and that development of this property is not possible absent some disturbance to this perennial stream buffer and the nontidal wetland buffer.
- The applicant notes that the setback and height variances are requested to accommodate making the house more compact, which is itself necessary in order to minimize disturbance to the sensitive environmental features at the site. The applicant notes that the proposed lot coverage is limited to 2,390 square feet, below the allowable 5,445 square feet for lots of this size with an RCA designation in the critical area.
- The Critical Area Team notes the following:
 1. The subject property is in a mapped Forest Interior Dwelling Species (FIDS) Habitat. The proposed development is not in compliance with recommended FIDS development guidelines as it will create a new edge

and allow increased area for predators. The site is also impacted by hydric soils, floodplain, non-tidal wetlands, a stream and the associated buffer.

The entire site qualifies as a Habitat Protection Area.

2. Although the Critical Area Team does not often comment on Sea Level Rise, it should be noted that the flood elevation in this area is 5 and the site elevation under the home is 4.2. This development will require a driveway extension within an existing road bed. Accessibility during storm events will be limited.
 3. The granting of a variance will impact multiple environmental features that exist on the site. In addition, the applicant would need to fully address all applicable development requirements including **SWM** which may be difficult at this site.
 4. The applicant is proposing a 3-story home with an 840 square foot footprint resulting in 2,520 square feet of habitable space. Given the constraints on this site, the footprint should be reduced.
- The Critical Area Commission noted the following:
 1. The proposed project will create 2,249 square feet of disturbance within the critical area buffer. The application states “Critical Area resource impacts are mitigated via avoidance during design and no additional mitigation is required.” Please note, if the variance is granted, any disturbance within the 100-foot stream buffer must be mitigated at a 3:1 ratio for a total mitigation requirement of 6,747 square feet.

2. The proposed project will create disturbance within the 25-foot nontidal wetland buffer. The Critical Area Commission requests that Maryland Department of Environment tracking numbers and permit approvals be forwarded to that office.
3. Based on a review of aerials for the property, FIDS habitat may be present on the site. Therefore, the applicant must receive a letter from the Department of Natural Resources Wildlife and Heritage Division (WHS) evaluating the property for any rare, threatened, or endangered species located onsite. If present, the applicant must adequately address any comments provided by WHS for protective measures. Specifically, should FIDS habitat be found onsite, all proposed development must adhere to the FIDS Guidance document, "A Guide to the Conservation of Forest Interior Dwelling Birds in the Chesapeake Bay Critical Area."
- The Engineering Division reviewed the proposal and was unable to make a favorable recommendation from an Engineering and/or Utility review. That group noted the following:
 1. The subject application does not have the information of a complete stormwater preliminary plan. The required information for a complete review was not provided.
 2. The property will be served by public sewer and private water well.

3. The significant limiting feature of the site development is the presence of perennial stream, nontidal wetlands, floodplain and their associated buffers in lots.
4. Urban planter box rain gardens and non-rooftop disconnection has been utilized for stormwater management for water quality. However a stormwater management (SWM) report has not been provided. County reviewer cannot verify that the proposed design does not adversely affect the water quality.
5. Stormwater practices may not be located in environmental features or on their buffer.
6. Disturbance is not permitted within streams, wetlands or the associated buffers.
7. MDE authorization approval letter 21-NT-0384, plan, and wetland report is required to confirm the limit and authorization of proposed wetland or wetland buffer delineation and disturbance.
8. A tidal 100-Year Floodplain per FEM FIRM Panel: 24003C0242F exists at site. The proposed development shall meet construction guidance requirements on tidal floodplain.
9. Soil boring location is required to determine the siting and suitability of proposed practice. It appears that the proposed practice may not have adequate vertical differences (2 feet) from facility bottom to seasonal high groundwater table.

10. The applicant shall evaluate and implement site planning alternatives in accordance with 18-16-201.
 11. A sight triangle easement is required at the intersection of roads. The proposed utility easement (Mayo Tank) shall not be located with this easement.
 12. A recorded plat should include in the application to verify the ownership of unimproved road.
 13. The proposed house shall be located at the minimum depth of 18 feet from the right-of-way to have parking in the driveway.
 14. Provide a narrative to support the design. The narrative should describe how environmental site features and areas will be preserved and protected. The narrative should also include the justification of the selection of ESD practices to address stormwater management requirements.
- The Health Department does not have an approved plan for the project, but has no objection to this request so long as a plan is submitted to and approved by the Health Department.
 - For the granting of a critical area variance, a determination must be made as to whether, because of unique physical conditions, strict implementation of the County's critical area program would result in an unwarranted hardship. OPZ acknowledges that the extent of the buffer on the property makes challenging the development of the lot, and development may be impossible absent some relief from this provision of the critical area law. However, the size of the

proposed dwelling could be reduced, which would lessen the degree of disturbance in the buffer. The applicant should further evaluate site planning alternatives.

- The granting of this critical area variance may be understood to confer on the applicant a special privilege, given the extent of the buffer disturbance proposed vis-a-vis the buffer disturbance necessary to develop the lot. As a dwelling may be constructed in a manner that further minimizes buffer disturbance, denial of *this* variance request will not deprive the applicant of a right commonly enjoyed by other properties in similar areas. The variance request is not based on conditions or circumstances that are the result of actions by the applicant and does not arise from any condition relating to land or building use on any neighboring property. Granting of the variance requested may adversely affect water quality or adversely impact fish, wildlife, or plant habitat, and, given the ability to further reduce disturbance to the buffer, would not be in harmony with the general spirit and intent of the County's critical area program.
- Accordingly, OPZ finds that the applicant has not overcome the presumption that the specific development does not conform to the general purpose and intent of the critical area law.
- For the granting of a zoning variance, a determination must be made that, because of unique physical conditions, there is no reasonable possibility of developing the lot in strict conformance with the Code, or that, because of

exceptional circumstances other than financial considerations, the grant of a variance is necessary to avoid practical difficulties or unnecessary hardship in the development of the lot. OPZ acknowledges the applicant's intent to situate the proposed dwelling as far from the stream and nontidal wetlands and their associated buffers as possible, and that it is this effort that incentivizes the applicant to design a compact dwelling that is closer to lot lines and taller than would be allowed. However, that the dwelling's footprint could be reduced suggests that setback and height relief requests could be reduced in concert.

- With regards to the requirements for all variances, the proposal may not alter the essential character of the neighborhood. With proper mitigation, the proposal may not reduce forest cover in the RCA or be contrary to acceptable clearing and replanting practices.
- While the site plan does show stormwater management in some form, the Engineering comments identified concerns to be addressed, and that group is unable to recommend approval of the proposal at this time. Given their comments and concerns, the applicant has not provided sufficient evidence that the proposed development will not cause adverse impacts on neighboring properties, such as stormwater runoff, or that the proposal will not be detrimental to the public welfare (e.g., due to water quality impacts).
- As discussed above, there is a reasonable possibility of developing the lot with a dwelling with less relief from the Code than is requested here. OPZ

accordingly finds that the proposal is not the minimum necessary to afford relief, and must therefore recommend denial of the requested variances.

- Based upon the standards set forth under § 18-16-305 under which a variance may be granted, OPZ recommends denial of the requested variances.

Other Testimony and Exhibits

The applicant was represented at the hearing by Daniel J. Mellin, Esquire, of the law firm of Hillman, Brown & Darrow, P.A. Evidence was presented through Douglas Bourquin of Buckhardt Engineering, LLC, and Douglas Bourquin, LLC, land development consultants, Gary Evans, a licensed civil engineer, and Aaron Keel of EnviroProjects, LLC, an expert in environmental matters and permits, that the subject property, consisting of Lots 217-222 in the North Selby subdivision (the applicant's property), is undeveloped land. Brickhouse Creek runs through the applicant's property, emptying a short distance away into Selby Bay.

The applicant plans a shallow 21-foot deep dwelling to keep development as far to the south end of the property as possible because of the environmental features that burden the site. Only 2.6% of the applicant's property is not subject to the various buffers that cross the property.

Mr. Keel testified that the Maryland Department of Engineering (MDE) has granted a license to disturb the applicant's property to build the proposed dwelling. The property is within a FIDS (Forest Interior Dwelling Species Habitat) map but Mr. Keel said he had not seen any such species on his visits to the site.

Neighbors (Anthony Harris, Anne Brown, June Sanford, Fritz Musser, Andrew Clemenko, and John and Gwen Mullins) testified that they live in the neighborhood and were opposed to allowing another home to be built on the applicant's property because of flooding that exists today and other reasons, such as preserving the habitat for the natural fauna and flora on the site. They submitted photographs of flooded conditions on the applicant's property and on nearby properties which they said were taken after light, normal rain. Surface water runs across the applicant's property from Selby Drive and Hawkins Drive to Brickhouse Creek. The neighbors thought that development of the applicant's property would interfere with that drainage and increase the flooding problems they are experiencing.

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.

...

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 applicant is entitled to the variance requested begins, therefore, with the understanding that, in addition to the other specific factors that must be considered, the applicant 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].”¹ Furthermore, the applicant carries the burden of convincing the Hearing Officer “that the applicant has satisfied each one of the variance provisions.”² (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 applicant fails 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

¹ § 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.

² § 8-1808(d) (4) (ii).

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, 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 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.)

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 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.

The variances sought are variances from the critical area law (buffer) 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 variance must be considered separately from the general zoning or setback variances.³ I will first analyze the facts in light of the critical area variance requested, and then analyze the facts in light of the zoning variances requested.

Findings - Critical Area Variances

Background

The applicant's property consists of six lots in the North Selby subdivision, as shown on the following aerial photograph. The applicant proposes to construct the new dwelling on the Hawkins Road side of Lots 217 and 218.



The following aerial photograph shows the extent of the wetlands buffer:

³ “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.



The following aerial shows the 100-foot buffer to Brickhouse Creek:



Combining the above buffers and adding the nearby 100-foot buffer to tidal waters produces the following aerial photograph where the stream buffer is shown

-- State Boundary Mask Tax Map Image Forest Interior Dwelling Species
High : 1 Natural Heritage Areas
Sensitive Species Project Review Areas
Low : 0

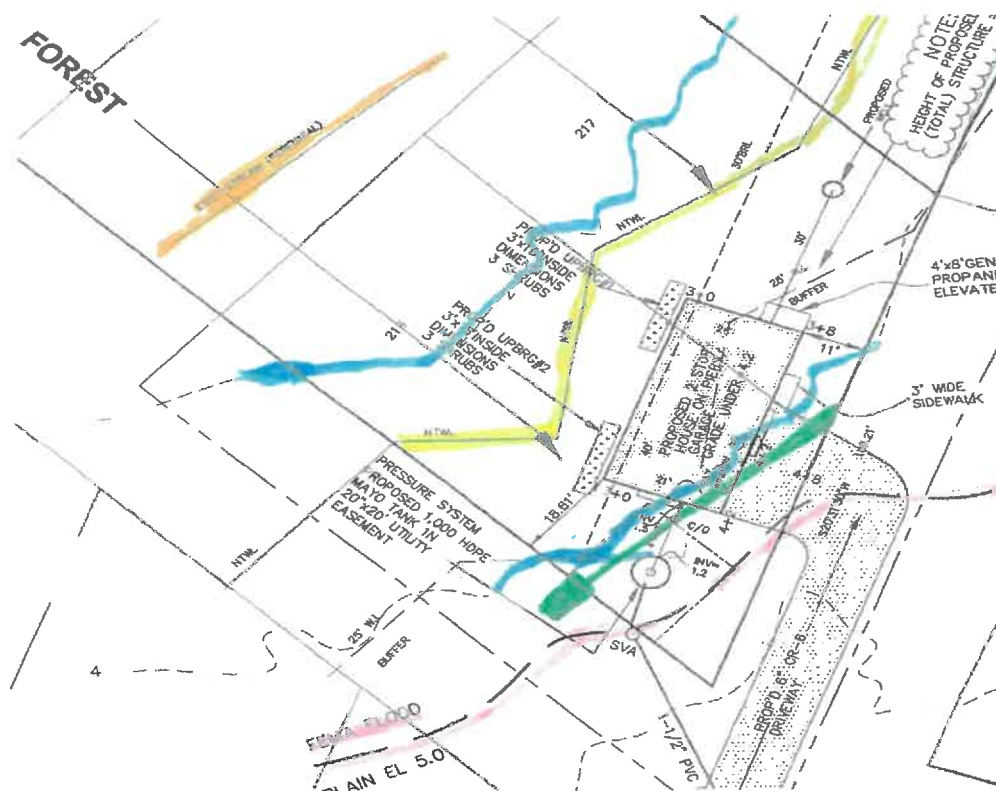
Courtesy of Anne Arundel, VITA, Esn. HERE, Garmin, INCRÉMENT P, USGS,
Maryland Department of Natural Resources
OHCD, MDP, MHT, MDOT, MDOT SHA, USDOT, FHWA, DoT | MD MAP, MDP.

There was testimony that the applicant's property was at the 'edge' of the FIDS Habitat, but the above exhibit shows that it is 'inside' the FIDS Habitat.⁴

The following drawing shows a portion of the site plan (County Exhibit 2) with the following features marked as noted:

- The existing stream in orange;
- The two-foot topo line in blue;
- The wetlands delineation in yellow;
- The four-foot topo line in blue;
- The 100-foot buffer to Brickhouse Creek in green; and
- The FEMA flood line in pink.

⁴ Anyone interested in FIDS can surf over to the Department of Natural Resources (DNR) website and learn more: https://dnr.maryland.gov/criticalarea/Documents/forms_navbar/tweeryjune_2000.pdf.



The Critical Area Variances

The factors that the applicant must satisfy to be granted a critical area variance to disturb the buffer on this property are set forth in detail above. There are many reasons the requested variance could be denied (minimum relief, for example), but I find that the applicant has failed to satisfy the unwarranted hardship test along with other elements set forth in § 18-16-305(b). The reasons are the following.

The subject property has remained undeveloped since 1932, a span of almost 100 years. Much of the surrounding area, however, has been developed. This passage of time, with no one proposing to develop these lots, is evidence that

the real world has recognized that the applicant's property is different from the other lots surrounding it.

The applicant acquired Lots 217 through 222 in July, 2021 for \$48,000.00. Whether this is a fair price is irrelevant; the applicant may have acquired them at this price as a result of shrewd bargaining. However, \$48,000 for six ostensibly buildable lots within walking distance of Selby Bay is a sign of how little value these lots have in the open real estate market.

The applicant will point out that these are grandfathered lots because they were platted before zoning came into effect in 1952 and the critical area law went into effect in 1988. The question of how property in the critical area has been platted and subdivided prior to 1985 is answered in § 27.01.02.07 of the Code of Maryland Regulations (COMAR):

.07 Grandfathering.

B. ... A local jurisdiction shall permit a single lot or parcel of land that was legally of record on the date of program approval to be developed with a single family dwelling, if a dwelling is not already placed there, notwithstanding that such development may be inconsistent with the density provisions of the approved local program.⁵

⁵ A quick reading of this provision may lead someone to conclude that the final clause beginning "notwithstanding" limits this grandfather clause to those situations where the single-family dwelling proposed by an owner was "inconsistent with the density provisions of the approved local program," particularly in a situation like here where R5 zoning allows five houses per acre. But the provision is not so limited, and clearly permits a one-family dwelling if the lot is grandfathered.

Under the *Assateague Island* test discussed above, it is true that the applicant cannot build a dwelling anywhere on his property without variances, but this does not mean that any dwelling of any size or height may be constructed on the property. The question becomes whether the proposed dwelling is of a size and impact that it can be built in an area that is subject to a wetlands buffer, a perennial stream buffer, on land that is no higher than four feet above tidal waters at its highest, and which is within a Forest Dwelling Species Habitat. That this is too much is reinforced by the need for zoning variances as well as critical area variances (front setbacks, corner side setbacks, and height limitations). The proposed dwelling at three stories in height with a footprint of 21' by 40' is not the minimum needed for someone to develop this grandfathered lot with a single-family dwelling. What might be built on this property is speculation that this Office is not allowed to pursue.⁶ The application will be denied.

The Zoning Variances

Having dismissed the application for a variance to the critical area law, it is unnecessary to consider the request for zoning variances, which are hereby dismissed.

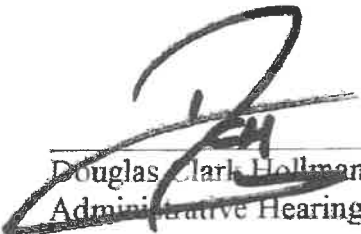
⁶ This Office has jurisdiction to decide only what is presented, not introduce new elements not put forward by the applicant and propose a different application, such as where to place a structure or how large it should be. *Steel, et al. v. Cape Corp.* 111 Md. 1, 677 A.2d 634 (1996), at 646 (a case out of this Office involving Cape St. Claire).

ORDER

PURSUANT to the application of Kenneth Vidmar, the applicant, to allow a dwelling with less setbacks and buffer than required on property with frontage on the west side of Hawkins Street, north of Shady Drive, Edgewater;

PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is this **12th day of May 2022**,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the application is **denied**.



Douglas Clark Hollmann
Administrative Hearing Officer

NOTICE TO APPLICANT

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

APP. EXHIBIT# 4
CASE: 2024-0090-V
DATE: 7/30/24

RE: An Appeal from a Decision of the
Administrative Hearing Officer

BEF

COUNTY BOARD OF APPEALS

OF ANNE ARUNDEL COUNTY

CASE NO.: BA 21-22V
(2022-0030-V)

Hearing Date: August 30, 2022

KENNETH VIDMAR

Petitioner

MEMORANDUM OF OPINION

Summary of Pleadings

This is an appeal of a decision from the Administrative Hearing Officer denying variances to allow a dwelling with less setbacks and buffer than required¹, on property known as Lots 217-222, with frontage on the west side of Hawkins Street, north of Shady Drive, Edgewater.

Summary of Evidence

Mr. Doug Bourquin, the Petitioner's expert in site design and planning, testified that the property comprises approximately 29,000 square feet across 6 lots in north Selby. The proposed house would be on lots 217 and 218. The required 100-foot stream buffer impacts the entire building site. The proposal places the house 11 feet from Hawkins Street and 19 feet from Shady Drive, to minimize the impact to the non-tidal wetlands buffer. This lot is within the R2 – Residential District and a 30-foot minimum front yard setback is required. The Petitioner will connect his driveway to Hawkins Street. There are no steep slopes, and the southwest corner of the property is outside of the 100-foot stream buffer. The property will be served by a private well

¹ The Petitioner withdrew his request for a one foot height variance prior to the commencement of testimony in this appeal.

and a Mayo tank sewer disposal system. The County requires that the Mayo tank be placed in a 20-foot by 20-foot utility easement along the road frontage. Mr. Bourquin explained that stormwater will be managed with urban planter boxes approximately 75 feet from the stream. The urban planter boxes will be within the stream buffer, but outside of the wetlands. The footprint of the proposed house will measure 21 feet by 40 feet. It is an undersized single-family home, but will allow the Petitioner a house to live in. There was no way to avoid impacting the buffer, but the non-tidal wetlands are not impacted by the proposed development. The limit of disturbance is roughly 30 feet by 12 feet, and it gets wider closer to the house. There will be temporary disturbances to drill the well and install the silt fence. The permanent disturbance will comprise 1,100 square feet, including 840 square feet for the house. The granting of this variance would be smart growth because it would consolidate 6 existing lots into one lot with a modest house. The lots were created in 1932 prior to zoning and the Critical Area. The variances will not reduce forest cover because the Petitioner will be required to mitigate at a ratio of 3 to 1. Everything outside of the limits of disturbance will be placed in a conservation easement.

Mr. Aaron Keel, the Petitioner's expert in environmental consulting, testified that the site is some of the flattest terrain in the Chesapeake region. Based on the topography of the site, the overall development design, and the distance of the rain garden outlet to the stream, there will be no adverse impact on water quality. The perennial stream is not perennial due to rainfall. It is perennial due to its connection to the groundwater. He does not believe the house will impact the stream or groundwater. Forest Interior Dwelling Species ("FIDS") are a sensitive group of birds associated with forest tracts of at least 100 acres. FIDS are becoming increasingly rare. The Department of Natural Resources developed guidelines for how to develop in FIDS habitats. The proposed house would be on the edge of the FIDS habitat. The habitat will not change just because

a home is built on the edge. He believes the proposal has done the best to provide a livable structure in the smallest footprint. There are no known rare species on this property.

Mr. Kenneth Vidmar, the Petitioner, has been looking for a buildable lot that suited his purposes for about 2.5 years. He knew when he purchased the property that there were issues and included a feasibility study in the contract. Many of the builders he contacted were not interested in developing this property. This property appealed to him because he wanted to live close to nature. The house was designed long and narrow to minimize the impacts to the environment. The garage was designed to accommodate a pickup truck which he intends to purchase in the future.

Mr. Sumner Handy, a planner for the Office of Planning and Zoning ("OPZ"), testified that OPZ recommends denial of the variances. The site is encumbered by several environmentally sensitive features, Brickhouse Creek, a FIDS habitat, and it carries a designation of Resource Conservation Area, which is the most restricted of the three Critical Area designations. The footprint of the house is proposed to be 840 square feet, but Mr. Handy believes that the footprint can be reduced. The floor area would be approximately 1,680 square feet. If the footprint is reduced then the variances would be reduced, therefore the current proposal cannot be the minimum necessary. The Petitioner agreed that the 40-foot width for a single-family house is a standard dimension, if that dimension could be reduced, it follows that others could be reduced. Some variances will be necessary to develop this site, but the right to disturb the amount requested would grant the Petitioner a special privilege. The purpose of the Critical Area Program is to manage development and minimize the impact to water quality and natural resources, therefore this much disturbance cannot be the minimum necessary. Given the environmental features present, one cannot expect to construct a conventional dwelling and tradeoffs must be made. The Critical Area

Team and Critical Area Commission have concerns about the degree of buffer disturbance, flood elevation, and the presence of FIDS habitat.

Ms. Gwen Mullins, a next-door neighbor, testified that the area is very muddy. She is concerned about what will happen during and after the construction.

Ms. June Sanford, an area resident, explained that she lives on Branhum Road. She would like the Board to consider the extensive wildlife in that area.

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 site is 29,303 square feet of land with about 108 feet of road frontage on the west side of Hawkins Street. It is identified as Lots 217-222 in the North Selby subdivision. It is zoned R2 – Residential District and is in the Chesapeake Bay Critical Area and designated as RCA – Resource Conservation Area. The site is encumbered by the required buffer to Brickhouse Creek. The lot is currently undeveloped, and the Petitioner is proposing the construction of a new three-story dwelling with attached garage. The dwelling would measure 21 feet wide by 40 feet deep and include associated features and a driveway. The site will be served by a well and a Mayo system sewer.

Anne Arundel County Code (“Code”) Section 18-13-104(a) requires “a minimum 100- foot buffer landward from the mean high-water line of tidal waters, tributary streams, and tidal wetlands.” Section 17-8-301 requires that development on properties containing buffers shall meet the requirements of Title 27 of the State Code of Maryland (“COMAR”). COMAR 27.01.01(B)(8)(ii) states that a buffer exists “to protect a stream, tidal wetland, tidal waters or

terrestrial environment from human disturbance.” COMAR 27.01.09(E)(1)(a)(ii) authorizes disturbance to the buffer for a new development activity or redevelopment activity by variance.

The 100-foot perennial stream buffer, nontidal wetlands and buffers thereto covers much of the subject property. The Petitioner proposes approximately 2,249 square feet of disturbance within these features with approximately 1,100 square feet being permanent disturbance. To construct the dwelling as planned, the Petitioner requires variances to the Critical Area Program and variances to the bulk regulations in the R2 District to construct within the required setbacks to the front lot line and side lot line. For ease of analysis, we shall divide our findings into two sections, one pertaining to the variances to the Critical Area Program and another regarding the variances to the setback requirements of the Bulk Regulations.

A. Critical Area Variance

Applicants seeking a variance to the Critical Area Program must satisfy an extensive list of requirements set out in the Code § 3-1-207 (b) and (c). An applicant must meet each of the variance criteria of the Code to obtain variance approval. Failure to meet just one of the criteria requires that the application be denied.

The Petitioner is first required 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, as that term is defined in the Natural Resources Article, § 8-1808, of the State Code, to the applicant.” § 3-1-207(b)(1). Natural Resources Article, Section 8-1808 states “‘unwarranted hardship’ means 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.” The subject site consists of 6 lots and comprises approximately 29,303

square feet. The property has a flat topography with an elevation of 2 to 5± feet above sea level, contains a perennial stream and wetlands, and is encumbered by the required buffers thereto. The lots were platted in 1932. This is a legal, buildable site, however; given the proximity to Brickhouse Creek and the impact of the required setbacks, the property cannot be developed without some variance relief. We find that the Petitioner has met his burden that strict implementation will result in unwarranted hardship.

The Petitioner must also establish that a literal interpretation of COMAR, 27.01, Criteria for Local Critical Area Program Development, the County's Critical Area Program and its related ordinances will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area of the County. § 3-1-207(b)(2). Property owners in the Critical Area are permitted reasonable use of their property. A home is a reasonable use on a legal lot in the Critical Area. The evidence shows that much of the surrounding neighborhood has been developed. Mr. Bourquin testified that a typical house in this community measures 30 feet by 40 feet. This home would measure 21 feet by 40 feet, having a footprint of 840 square feet with 1,680 square feet of livable space. The total lot coverage proposed is 2,390 square feet with allowable lot coverage of 4,395 square feet. This is a reasonable amount of lot coverage, and the proposed dwelling is in harmony with others in the neighborhood. The Petitioner cannot develop this lot without variances given the impact of the Critical Area Program upon the site. Therefore, we find that a literal interpretation of the Critical Area Program would deprive the Petitioner of rights commonly enjoyed and find he has met his burden.

The Petitioner must show that "the granting of a variance will not confer on an applicant any special privilege that would be denied by: (i) COMAR, Title 27, or the County critical area program to other lands or structures within the County critical area...." § 3-1-207(b)(3). It is not

a special privilege to construct a home on a legal lot within the Critical Area. The proposed dwelling is modest in size and will be constructed on piers to avoid the FEMA flood levels. The Petitioner has requested a three-story dwelling with an attached garage under the dwelling which is under the amount of lot coverage allowed by the Code. The Petitioner has designed the development in such a way to ensure that disturbance is as far from Brickhouse Creek and wetlands as reasonably practicable. We find that the Petitioner has met his burden to show the variances will not confer a special privilege that would otherwise be denied by the Critical Area Program.

The Petitioner needs to establish "that the variance request: (i) is not based on conditions or circumstances that are the result of actions by the applicant, including the commencement of development activity before an application for a variance was filed; and (ii) does not arise from any condition relating to land or building use on any neighboring property." § 3-1-207(b)(4). The property is heavily encumbered with sensitive environmental areas and the required buffers thereto which limit the area of development to a small triangle of land near Hawkins Street. The Mayo Tank is required to be in this area. The Petitioner has not commenced construction on the lots. There are no conditions relating to land or building use on neighboring properties which compelled the instant request.

The Petitioner must "show that the granting of the variance: (i) will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the County's critical area...; and (ii) will be in harmony with the general spirit and intent of the County critical area program..." § 3-1-207(b)(5). The Petitioner's property is within the Critical Area, encumbered by non-tidal wetlands, a stream, the 100-foot buffer, and contains FIDS habitat. The proposed structure is modestly sized. The Petitioner will use two urban planter box rain gardens located at least 75 feet away from the stream to manage runoff. The Petitioner will provide mitigation for any disturbance

at a 3 to 1 ratio. Lastly, the undeveloped portions of the lots would be placed in a conservation easement to ensure that the other sensitive features remain protected. The stormwater management, mitigation and conservation easement will ensure that the environment will receive a net benefit post-development.

The Petitioner's most difficult burden to meet is the requirement that he establishes "by competent and substantial evidence, [that he has] overcome the presumption contained in the Natural Resources Article, § 8-1808 of the State Code." § 3-1-207(b)(7). Under 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 Art., § 8-1808(d)(2). The Maryland General Assembly has expressly recognized that the Critical Area is a "natural resource of great significance"; and that human activity in the buffer "can have a particularly immediate and adverse impact on water quality and natural habitats", and "the capacity of these shoreline and adjacent lands to withstand continuing demands without further degradation to water quality and natural habitats is limited." *Id.* § 8-1801(a). Particularly, the Legislature stated "...the new development of nonwater-dependent structures or an increase in lot coverage is presumed to be contrary to the purpose of this subtitle, because these activities may cause adverse impacts, of both an immediate and a long-term nature, to the Chesapeake and the Atlantic Coastal Bays and thus it is necessary wherever possible to maintain a buffer of at least 100 feet landward from the mean high water line of tidal waters, tributary streams, and tidal wetlands." *Id.* Not only do these statutory provisions require the Board to presume that the requested development activity does not conform to the general purpose and intent of the Critical Area Program, but they also place the

substantial burden of proof and persuasion to overcome this presumption firmly on the shoulders of an applicant for a variance. Here, the Petitioner is proposing to construct a small single-family dwelling with approximately 1,100 square feet of permanent disturbance within the Critical Area buffers. This development will create 2,390 square feet of lot coverage. The Petitioner's proposal includes conservation easements, stormwater management through urban planter boxes, and mitigation at a 3 to 1 ratio. The proposal will not increase runoff from the site. We find that the Petitioner's proposal is not contrary to the general purpose and intent of the statute, which is meant to manage and not prevent reasonable development in the Critical Area.

Next, the Petitioner has the burden of proving that "the variance is the minimum variance necessary to afford relief." § 3-1-207(e)(1). The Petitioner proposes a modest house with associated structures and limited disturbance. The house will be on piers to raise it out of the flood area and have a footprint of just 840 square feet. This lot is heavily impacted by the presence of a stream and non-tidal wetlands. Yet, the proposal only disturbs buffers and has avoided the non-tidal wetlands and has placed as much development outside of the nontidal wetlands buffer as possible. Therefore, we find that the Petitioner has proved this is the minimum necessary.

An applicant for a variance must show that granting the variance will not "alter the essential character of the neighborhood or district in which the lot is located." § 3-1-207(e)(2)(i). In this case, we have a residential neighborhood dominated by single-family homes built on elevations very close to sea level. The existing homes have a larger footprint, but the size, shape, and configuration of the proposed house would be in harmony with those nearby. The development in this lot ensures that the other lots on this site will not be developed which maintains the FIDS habitat and protects the stream, non-tidal wetlands, and other sensitive sites.

The Petitioner is also required to show that "the granting of the variance will not substantially impair the appropriate use or development of adjacent property." § 3-1-207(e)(2)(ii). The property comprises 29,000± square feet and the development will be near the edge of the property and as far as possible from the environmental features on site. The proposed home will be buffered from adjoining land uses by the area to be placed in forest conservation and the unimproved private rights of way in this community. As such, the variances will not impair the use or development of adjacent properties.

The Petitioner next must establish that the granting of the variance will neither "reduce forest cover in the limited development and resource conservations areas of the critical area" nor "be contrary to acceptable clearing and replanting practices required for development in the critical area or a bog protection area." § 3-1-207(e)(2)(iii)-(iv). The proposed development will temporarily reduce forest cover in the Critical Area. Trees and vegetation will be removed because of this development; however, the Petitioner's proposal includes required mitigation and reforestation. The appropriate reforestation will result in greater forest cover and therefore, the Petitioner has met his burden.

Lastly, the Petitioner must establish that "the granting of the variance will not be detrimental to the public welfare." §3-1-207(e)(2)(v). The Petitioner's proposal will cause disturbance within required buffers. However, the Petitioner has maximized the distance from sensitive environmental features, located the house as far as possible out of the FIDS environment, mitigated for forest cover disturbance, provided stormwater management, and minimized the house footprint. For these reasons, the Petitioner's proposal will not be detrimental to the public welfare.

We find, therefore, that the Petitioner has met the criteria set forth in section 3-1-207 to

obtain the requested variances to disturb within the required 25-foot buffer to non-tidal wetlands, and to disturb within the required 100-foot buffer to tributary streams.

B. Bulk Regulations Variance

The Anne Arundel County Code Section 18-4-601 requires a principal structure be set back a minimum of 30 feet from a front lot line and 20 feet from a corner side lot line. The Petitioner is proposing a dwelling located as close as 11 feet from the front lot line and 18 feet from the corner side lot line, thereby necessitating variances of 19 feet and 2 feet, respectively.

The Board of Appeals may grant a variance when strict compliance of the Zoning Ordinance, in this case Code Section 18-4-601, would result in practical difficulties or unnecessary hardship. Code, § 3-1-207(a). Provided the spirit of the law is observed, public safety is secured, and substantial justice is done, a variance may be granted upon an affirmative finding that (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" the regulation; 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." *Id.* The subject property is mostly encumbered with sensitive environmental features including the 100-foot buffer, a stream, and FIDS habitat. Only a small triangle of the property is not encumbered by the buffer. The Mayo Tank must be placed in that portion of the property. The property is comprised of legal lots platted in 1932, prior to zoning and Critical Area regulations. A dwelling is lawful in the R2 District. Strict compliance with the setback regulations would force development farther into a more sensitive area. The sensitive

environmental features of this lot result in no reasonable possibility of developing the lot in strict conformance with the setback restrictions.

Even when a Petitioner meets the requirements of County Code, Section 3-1-207(a), as here, a variance may not be granted unless the Board finds that a Petitioner for a variance also meets the requirements of Section 3-1-207(e). The burden of proof and persuasion rests firmly with the Petitioner to meet all the criteria.

First, the Petitioner has the burden of proving that "the variance is the minimum variance necessary to afford relief." § 3-1-207(e)(1). As previously discussed, this property is heavily encumbered by sensitive environmental features including a stream, non-tidal wetlands, and the required buffers thereto. There is no room for a home once the setbacks are imposed upon the lot. The footprint of the dwelling, integral garage, and associated structures (driveway, stormwater management, well and septic/sewer tank) are modestly sized. The lot development is well under the maximum allowed. We find that any further reduction in the house would not avoid a variance, but would deprive the Petitioner of use of the property. The reduced front and side lot line setbacks assist the environmental features on the lot, but the reduction will not harm nearby properties. The undeveloped private road right of way provides nearby properties with a buffer that more than makes up for the reduced setbacks proposed here. Therefore, the Petitioner has met his burden to show that the requested variances are the minimum necessary.

Furthermore, the Petitioner must show that granting the variance will not "alter the essential character of the neighborhood or district in which the lot is located." § 3-1-207(e)(2)(i). In this case, the community is a residential neighborhood of single-family homes. The size, shape and configuration of the house is in harmony with those nearby. The setbacks will appear to meet

the Code criteria due to the undeveloped private rights of way adjoining the site. The variance will not change the essential character of the neighborhood.

The Petitioner must also show that "the granting of the variance will not substantially impair the appropriate use or development of adjacent property." § 3-1-207(e)(2)(ii). The Petitioner is seeking setback variances, however; this corner lot is bounded by two unimproved, private rights of way. Thus, the adjacent lots will be buffered well from the proposed development. Additionally, much of the site will be preserved with a forest conservation easement and the parcel will appear lightly developed. These variances to setbacks will not impair the use or development of adjacent properties.

The Petitioner next must establish that the granting of the variance will neither "reduce forest cover in the limited development and resource conservations areas of the critical area" nor "be contrary to acceptable clearing and replanting practices required for development in the critical area or a bog protection area." § 3-1-207(e)(2)(iii)-(iv). The proposed development will temporarily reduce forest cover in the Critical Area. Trees and vegetation will be removed during the construction of the home and related improvements; however, the Petitioner's proposal includes required mitigation and reforestation. The appropriate reforestation will result in greater forest cover (3:1 mitigation) and therefore, the Petitioner has met his burden on these criteria.

Lastly, the Petitioner must establish that "the granting of the variance will not be detrimental to the public welfare." §3-1-207(e)(2)(v). The Petitioner is seeking setback variances to reduce impact to the sensitive environmental features on site. The dwelling will be located with a reduced corner and front-line setback, but the existing unimproved private rights of way (Shady Drive - 40 feet wide and Hawkins Street - 40 feet wide) will provide more than minimum corner and front-line setbacks. The variances will protect the environmental features, which is in the

public's interest, with no harm to adjacent parcels. The Petitioner's request will not be detrimental to the public welfare.

ORDER

For the reasons set forth in the foregoing Memorandum of Opinion, it is this 18th day of NOV., 2022, by the County Board of Appeals of Anne Arundel County, ORDERED, that the Petitioner's requests for (1) a variance to disturb the buffer to the mean high water line of tributary streams and the buffer to non-tidal wetlands ; (2) a variance of 19 feet to the minimum 30-foot setback from the front lot line; and (3) a variance of 2 feet to the minimum 20-foot setback from the corner side lot line, are hereby **GRANTED**.

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

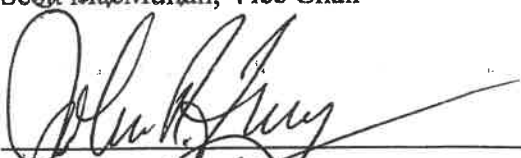
If this case is not appealed, exhibits must be claimed within 90 days of the date of this Order; otherwise, they will be discarded.


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: Deana L. Bussey, Clerk.

NOTICE: This Memorandum of Opinion does not constitute a building or grading permit and may be valid for a limited time period. In order for the applicant to construct or retain any structures allowed by this opinion, or to perform or retain any grading allowed by this opinion, the applicant must apply for and obtain the necessary building or grading permit and any other approval that may be required to perform the work described herein within the time allotted by law or regulation.

COUNTY BOARD OF APPEALS
OF ANNE ARUNDEL COUNTY



Scott MacMullan, Vice Chair

John R. Fury, Member


Darrin Michael Jacobs, Member

Maria K. Patterson, Member

*(Patsy Baker Blackshear, Member, did not
participate in this appeal.)*

CONCURRING

We concur with our fellow Board members to approve the requested variances. We believe the Petitioner has met all of the variance criteria for each request and should be permitted to develop this lot. We have concerns with the current stormwater management proposed for this site, however. We are unsure how two rain gardens with three bushes in each will be sufficient to properly manage the runoff from this site. The testimony presented by the audience members that the subject area is often muddy and swamp like raises concerns that the stormwater management will be ineffective. However, the evidence as provided demonstrates that the Petitioner has met his burden for a variance. Our only hope is that the County pays special attention, and the Petitioner more thoroughly investigates extensive management of the runoff from the site in the permitting stage. Therefore, we believe the variances should be approved.



Anthony V. Lamartina, Chair



Richard Forgo, Member

APP. EXHIBIT# 5

CASE: 2024-0090-V

DATE: 7/30/24

BUCKHARDT ENGINEERING, LLC
P.O. BOX 6307
ANNAPOLIS, MARYLAND, 21401

DRAINAGE STUDY
OF TOTAL DRAINAGE AREA TO SITE OUTFALL
G 02019093
HAWKINS STREET, VIDMAR PROPERTY
LOTS 217-222, NORTH SELBY

JUNE, 2023



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2. TR-55 CALCULATIONS FOR TOTAL D.A.	2
3. D.A. MAP	3

PURPOSE:

The purpose for this Drainage Study is to compare the storm flows from the Site (specific) to the overall contributing Drainage Area flowing to the Site Outfall into Brickhouse Creek on the north side of the site. This analysis was requested by the review staff during a virtual meeting.

NARRATIVE:

The subject property is known as Lots 217-222 North Selby and is situated at the intersection of two Platted roads – Hawkins Street and Shady Drive. The site is wooded and is very gently sloped toward the perennial stream named Brickhouse Creek which flows through the site and into Selby Bay approximately 300 feet north of the Site Outfall.

A photographic walking tour of the outfall was conducted in June, 2023, and accompanies this study in the Grading Resubmission package. The stream is stable and is 6' – 8' wide and 4" - 6" deep in the places where it is well defined. In other places, such as along the north side of the subject site, the existing dense vegetation (mostly phragmites) returns the stream to a "sheet flow" like condition. No active erosion was observed.

The subject property consists of 0.67 acres and most of the property will be placed in F.C.E. as part of the proposed development. The post-developed Site generates a TR-55 RCN of 73 and the post-developed Q 10 at the site outfall = 2.49 cfs based on prior TR-55 calculations.

As stated Brickhouse Creek flows through the site and has a contributing D.A. of 68.56 acres to the Site Outfall. The Zoning / Soils based Q 10 for the over-all D.A. = 248.29 cfs.

It is noted that the site lies at the "bottom" portion of the over-all D.A. to the Site Outfall.

CONCLUSION:

Therefore, given that the subject property lies at the final 1% of the contributing D.A. ($0.67 \text{ acres} / 68.56 \text{ acres} = 0.98\%$) and since the Site Q 10 is only 1% of the over-all D.A. Q 10 ($2.49 \text{ cfs} / 248.29 \text{ cfs} = 1.00\%$) it is apparent that the subject property has no apparent impact on the stream (Brickhouse Creek) or the outfall conditions between the Site Outfall and (the receiving) Selby Bay 300± feet from the Site Outfall.

Please refer to the TR-55 comps and the D.A. Map contained in this study. Please also refer to the Photographic Tour of the outfall that accompanies this study.

Thank you.

/

ddb

Ken Vidmar G02019093
Overall DA through Site to Site Outfall
Anne Arundel County, Maryland

Sub-Area Land Use and Curve Number Details

Sub-Area Identifier	Land Use	Hydrologic Soil Group	Sub-Area Area (ac)	Curve Number
Total	Residential districts (1/4 acre)	D	4.23	87
	Residential districts (1/2 acre)	B	2.09	70
	Residential districts (1/2 acre)	C	15.59	80
	Residential districts (1/2 acre)	D	29.53	85
	Residential districts (1 acre)	B	2.7	68
	Residential districts (1 acre)	C	6.13	79
	Residential districts (1 acre)	D	1.11	84
	Woods (good)	C	5.73	70
	Woods (good)	D	1.45	77
	Total Area / Weighted Curve Number		68.56	81
			=====	==

2.0

ddb

Ken Vidmar G02019093
Overall DA through Site to Site Outfall
Anne Arundel County, Maryland

Sub-Area Time of Concentration Details

Sub-Area Identifier/	Flow Length (ft)	Slope (ft/ft)	Mannings's n	End Area (sq ft)	Wetted Perimeter (ft)	Velocity (ft/sec)	Travel Time (hr)

Total							
SHEET	100	0.0500	0.240				0.162
SHALLOW	1690	0.0467	0.050				0.135
SHALLOW	45	0.0100	0.025				0.006
Time of Concentration							.303
							=====

ddb

Ken Vidmar G02019093
Overall DA through Site to Site Outfall
Anne Arundel County, Maryland

Hydrograph Peak/Peak Time Table

Sub-Area or Reach Identifier	Peak Flow 2-Yr (cfs) (hr)	Peak Time 10-Yr (cfs) (hr)	Peak Time 100-Yr (cfs) (hr)
------------------------------------	------------------------------------	-------------------------------------	--------------------------------------

SUBAREAS

Total	121.88 12.08	248.29 12.06	401.68 12.07
-------	-----------------	-----------------	-----------------

REACHES

OUTLET	121.88	248.29	401.68
--------	--------	--------	--------

2.2

APP. EXHIBIT# 6
CASE: 2024-0090-V
DATE: 7/30/24

BUCKHARDT ENGINEERING
P.O. BOX 6307
ANNAPOLIS, MARYLAND, 21401

PHOTO WALKING TOUR

LOTS 217-222

"NORTH SELBY"

PLAT NO. 7

HAWKINS STREET

EDGEWATER, MARYLAND

G 02019093

JUNE 3, 2023



PHOTO WALKING TOUR INTRODUCTION:

THE FOLLOWING IS A SERIES OF PHOTOGRAPHS TAKEN IN JUNE, 2023, OF THE SUBJECT PROPERTY (AND FURTHER DOWNSTREAM) IN EDGEWATER, MD.

THE PROPERTY IS WOODED AND SLOPES GENTLY TOWARD A PERENNIAL STREAM THAT RUNS THROUGH THE SITE ON IT'S WAY TO THE TIDAL HEADWATERS OF SELBY BAY.

THE ENTIRE SHEETFLOW CONDITION AND STREAMFLOW CONDITION THROUGH THE SUBJECT PROPERTY IS STABLE. NO ACTIVE EROSION WAS OBSERVED.

IN THE AREAS WHERE THE STREAMFLOW IS NOT IMPEDED BY EXISTING DENSE VEGETATION SUCH AS EXISTING FRAGMITES, THE STREAM IS GENERALLY A 6' – 8' WIDE STABLE EARTH CHANNEL THAT IS FLOWING 4" – 6" DEEP. IN THE AREAS WHERE THE CHANNEL IS IMPEDED BY EXISTING DENSE VEGETATION, THE FLOW RETURNS TO A SHEETFLOW-LIKE CONDITION.

PLEASE REFER TO THE PHOTOS AND DESCRIPTIONS WHICH FOLLOW. THERE IS A PHOTO LOCATION MAP @ THE END OF THE PHOTO TOUR.



P.O.I. PHOTOGRAPHIC TOUR

SCALE: 1" = 500'



G02019093

PHOTO LOCATIONS

SCALE: 1"=100'
DATE: JUNE, 2023
DRAWN BY: L.K.C.
CHECKED BY: DDB
JOB NO: 22-04
SHEET NO: 1 OF 1

BUCKHARDT ENGINEERING, LLC
LAND DEVELOPMENT CONSULTING
P.O. BOX 6307
ANNAPOLIS, MARYLAND 21401
PHONE 410-279-6853 (DOUG)
Email: ddbourquin@gmail.com

TAX MAP 60, GRID 04, PARCEL 27
LOTS 217-222
PLAT NO. 7, NORTH SELBY
HAWKINS STREET, EDGEWATER
TAX ID # 1579-0287-5400
FIRST DISTRICT ANNE ARUNDEL COUNTY, MARYLAND

APP. EXHIBIT# 7CASE: 2024-0090-VDATE: 7/30/24

INSPECTION AND MAINTENANCE AGR

AGREEMENT NUMBER 23-0142PERMIT NUMBER G02019093

THIS INSPECTION AND MAINTENANCE AGREEMENT made this 11th day of, September 2023, by and between Kenneth Vidmar, (hereinafter called Owner) and ANNE ARUNDEL COUNTY, a body corporate and politic of the State of Maryland (hereinafter called County).

WHEREAS, Owner has requested that the county issue a grading permit for property which Owner either owns or uses private storm water management; and

LR - Agreement	
Recording Fee	20.00
Name: Vidmar	
Ref:	
LR - Agreement	
Surcharge	40.00
SubTotal:	60.00
Total:	60.00
09/21/2023 10:37	
CC02-RA	
#17575062 CC0501 -	
Anne Arundel	
County / CC05.01.10 -	
Register 10	

WHEREAS, the private stormwater management is located in the subdivision known as Selby, Selby on the Bay, Plat #7", the plat for which is recorded among the Land Records of Anne Arundel County in Plat Book 8 page 27, and,

WHEREAS, the property is known as Lots 217 to 222, and is more particularly described in a deed from Kerry R. Muse, to Kenneth Vidmar, and recorded among the land records of Anne Arundel County in Liber 37658, Folio 106; and,

WHEREAS, it is a requirement of Article 16, Section 4-401(a), Anne Arundel County Code, that the Owner of the subject property shall execute an Inspection and Maintenance Agreement with the County pertaining to private stormwater management; and

WHEREAS, in furtherance of Owners desire to comply with the aforementioned provision of the Anne Arundel County Code, Owner is now entering into this Inspection and Maintenance Agreement.

NOW, THEREFORE, WITNESSETH: That for and in consideration of the mutual covenants and promises herein contained and in order to fulfill the requirements of the Anne Arundel County Code, the parties do hereby agree as follows:

1. The Owner shall install or be responsible for the installation of the private Stormwater management as more particularly described in the Stormwater Management Plan which is part of the Owners Grading and Sediment Control Plan kept on permanent file in the Anne Arundel County Department of Inspections and Permits (Department) in accordance with all conditions and provisions of the Anne Arundel County Stormwater management laws in full force and effect at the same time of execution of this Agreement or as may be required by a building permit or a grading permit which may be issued. This plan shall be maintained by the Department at a location designated by the Director and shall be available for public inspection during regular business hours.
2. The Owner Shall maintain inspection records for the private stormwater management and supply them the Department every three (3) years or upon request.
3. Owner is hereby prohibited from altering the private stormwater without prior approval from the Department.
4. Owner shall provide access to the private stormwater management at all reasonable times for inspection by the county or its agents or contractors.
5. Owner shall by covenant or other valid legal mechanism approved by the County Office of Law, provide uniform regular or special assessment of all property owners affected by the private stormwater management to insure that the private stormwater management is properly maintained in accordance with its design standards and the provisions of the Anne Arundel County Stormwater management laws in effect at a time of this Agreement or as from time-to-time amended.
6. If the Owner or Owners successors or any other party subject to this Agreement, after reasonable notice by the Department, fails to correct a violation of the Anne Arundel County Storm Water Management Laws at or near the private stormwater management, the Department may perform or cause to be preformed, necessary work to correct the violation and return the private stormwater management to a proper working condition.
7. It is specifically understood and agreed that all costs performing work set forth in paragraph 6 shall be levied and collected from the Owner of all properties subject to this Agreement in accordance with the provisions of Article 16, Section 4-401(b)(7) of the Anne Arundel County Code, or as from time-to-time amended.

8. This agreement shall survive the execution of any deed, contract of agreement by Owner of any other party with an interest in the subject property and the conveyance of any interest therefrom shall not merge therein.
9. This agreement shall bind upon and run with the land subject to this agreement as a covenant.
10. This agreement shall insure to the benefit of the parties hereto, their heirs, personal representatives, legal representatives, successors and assigns, as appropriate.
11. This agreement shall be construed in accordance with the laws of the State of Maryland and any action brought hereunder shall be brought in the courts of this State, with venue solely in Anne Arundel County.
12. This Agreement contains the full and final agreement between the parties and no their matter of variation therefrom unless in writing and duly executed by the parties hereto, shall be considered as part of this Agreement.
13. Owner by signature below hereby warrants that all property Owners subject to this Agreement have signed below and have joined this Agreement.
14. This agreement shall not be affective nor shall any grading permit be issued until this Agreement is recorded among the Land Records of Anne Arundel County.

Upon recordation, return to:

Department of Inspections & Permits, 2664 Riva Road, Second Floor, Annapolis MD 21401

IN WITNESS WHEREOF, the parties hereunto set their Hands and Seals on the date and year first above-written.

ATTEST:

Witness

ATTEST:

Witness

Kenneth Vidmar (SEAL)

Name: Kenneth Vidmar, Title: Owner

(SEAL)

Name: _____ Title: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

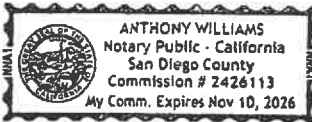
State of California)

County of San Diego)On 8-16-23 before me, Anthony Williams Notary Public
Date Here Insert Name and Title of the Officerpersonally appeared Kenneth Paul Vidmar
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Inspection & Maintenance Agreement +Document Date: 8-16-23 Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

☐ Corporate Officer — Title(s): _____☐ Partner — ☐ Limited ☐ General☐ Individual ☐ Attorney in Fact☐ Trustee ☐ Guardian or Conservator☐ Other: _____

Signer Is Representing: _____

Signer's Name: _____

☐ Corporate Officer — Title(s): _____☐ Partner — ☐ Limited ☐ General☐ Individual ☐ Attorney in Fact☐ Trustee ☐ Guardian or Conservator☐ Other: _____

Signer Is Representing: _____

ANNE ARUNDEL COUNTY, MARYLAND

BY: mag (SEAL)

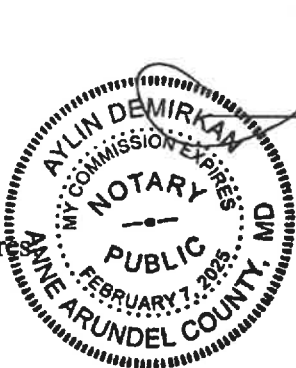
Mark R. Wedemeyer, Director
Department of Inspections & Permits

STATE OF MARYLAND, COUNTY OF ANNE ARUNDEL, to wit:

I HEREBY CERTIFY, that on this 11th day of September, 2023, before me, the subscriber, a Notary Public in and for this State and County, personally appeared, Mark R. Wedemeyer, Director of Inspections and Permits of Anne Arundel County, Maryland and that he has been authorized to execute this Agreement for the purposes herein contained.

IN WITNESS WHEREOF, I hereunto set my Hand and Notary Seal.

My Commission Expires



Notary Public

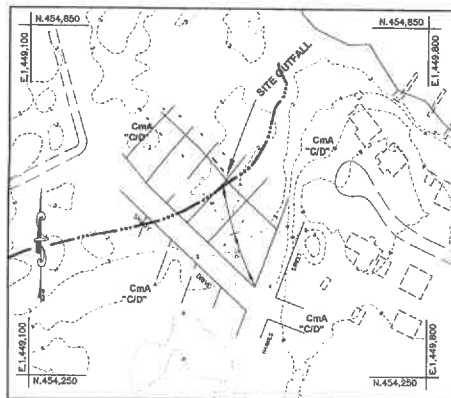
APPROVED FOR FORM AND LEGAL SUFFICIENCY
GREGORY J. SWAIN, COUNTY ATTORNEY

By:

9/14/2023

Date

Aisha N. Hilliard
Assistant County Attorney

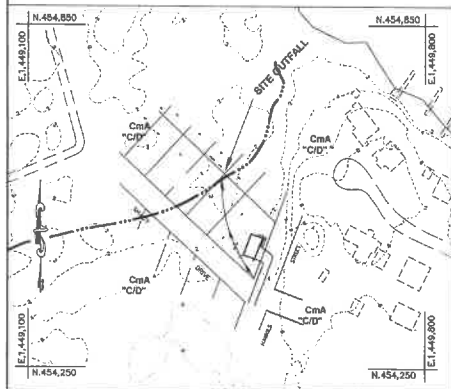


PRE DEVELOPED DRAINAGE AREA MAP

SCALE: 1" = 100'

TR-55 DATA

1. D.A. = SITE = 0.67 ACRES
2. R.O.N. = 70
3. $T_c = 100'$ SHEET FLOW WOODS @ 4% $n = 0.8$
 $= 80'$ SHALLOW CONCENTRATE UNPAVED @ 3% $n = 0.05$
 $T_c = 0.473$ HR
4. $Q_{10} = 1.32$ CFS



POST DEVELOPED DRAINAGE AREA MAP

SCALE: 1" = 100'

TR-55 DATA

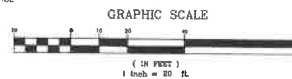
1. D.A. = SITE = 0.67 ACRES
2. R.O.N. = 73
3. $T_c = 45'$ SHEET FLOW GRASS @ 4% $n = 0.24$
 $= 135'$ SHALLOW CONCENTRATE UNPAVED @ 3% $n = 0.05$
 $T_c = 0.107$ HR
4. $Q_{10} = 2.49$ CFS

LEGEND

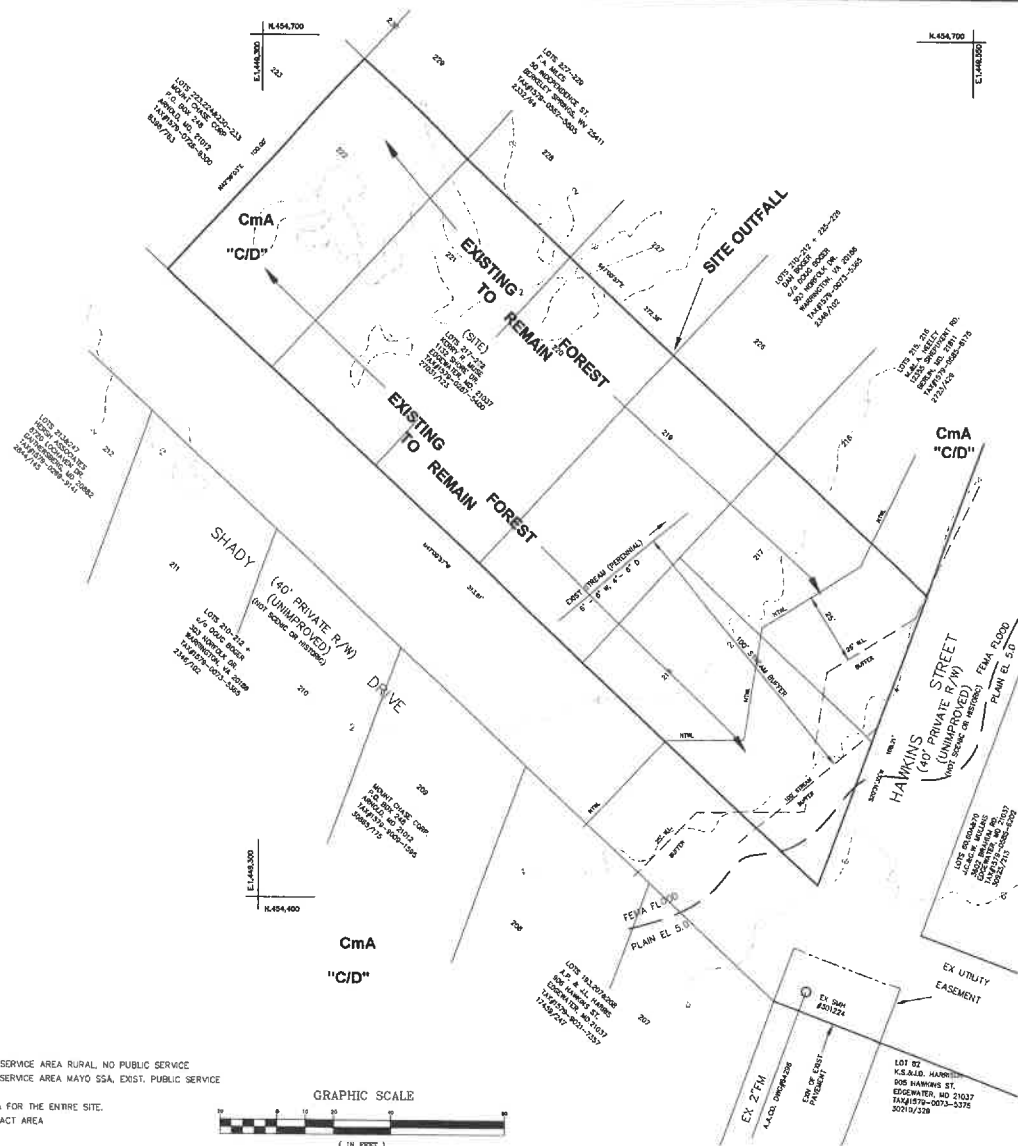
- EXISTING DRIVE ————
- PROPOSED GRADE ————
- EXISTING ELEVATION 110.8
- PROPOSED ELEVATION 110.0
- REINFORCED SLOPE FENCE ————
- LIMIT OF DISTURBANCE ————
- STABILIZED CONSTRUCTION OUTFALL ————
- STOCK PILE ————
- PERMANENT DRAINAGE ————

GENERAL NOTES:

1. WATER MASTER PLAN W-9, WATER SERVICE AREA RURAL, NO PUBLIC SERVICE
2. SEWER MASTER PLAN S-9, SEWER SERVICE AREA MAYO SSA, EXIST. PUBLIC SERVICE
3. ALL ZONING IS R-2
4. CRITICAL AREA DESIGNATION IS NOT FOR THE ENTIRE SITE.
5. SITE IS NOT IN A BOG OR BOG IMPACT AREA



SOIL TYPE			
SYMBOL	NAME	HSG	AREA
CmA	COLEMAN TOWN	C/D	0.67 ACRES



CERTIFICATION NOTE:
 ALL FEATURES SHOWN HAVE BEEN FIELD VERIFIED
 LICENSE EXPIRES JUNE 23, 2024

G 02018093

#	REVISIONS	APPROVED BY	DATE

PROFESSIONAL CERTIFICATION: I, JOHN E. SCOTT, II, CERTIFY THAT THESE DOCUMENTS WERE PREPARED BY OR APPROVED BY ME OR THAT I AM A FULLY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MARYLAND LICENSE #0004, EXPIRATION DATE JUNE 23, 2024.

DOUGLAS BOURQUIN, LLC
 LAND DEVELOPMENT CONSULTING
 4000 COUNTY ROAD 2114
 SEVERNA PARK, MARYLAND 21144
 PHONE: 410-278-0000 EMAIL: dlb@dbourquinllc.com

BUCKHARDT ENGINEERING, LLC
 LAND DEVELOPMENT CONSULTING
 P.O. BOX 6307
 ANNAPOLIS, MD, 21401

SCALE: 1" = 20'

DATE: DECEMBER, 2023

DRAWN BY: JAY

CHECKED BY: O.D.R.

JOB NO.: 21-04

SHEET NO.: 2 OF 4

EXISTING CONDITIONS & RESOURCE MAPPING PLAN

TAX MAP 60, GRID 04, PARCEL 27

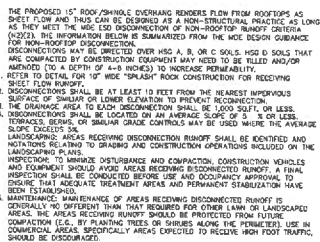
LOTS 217-222

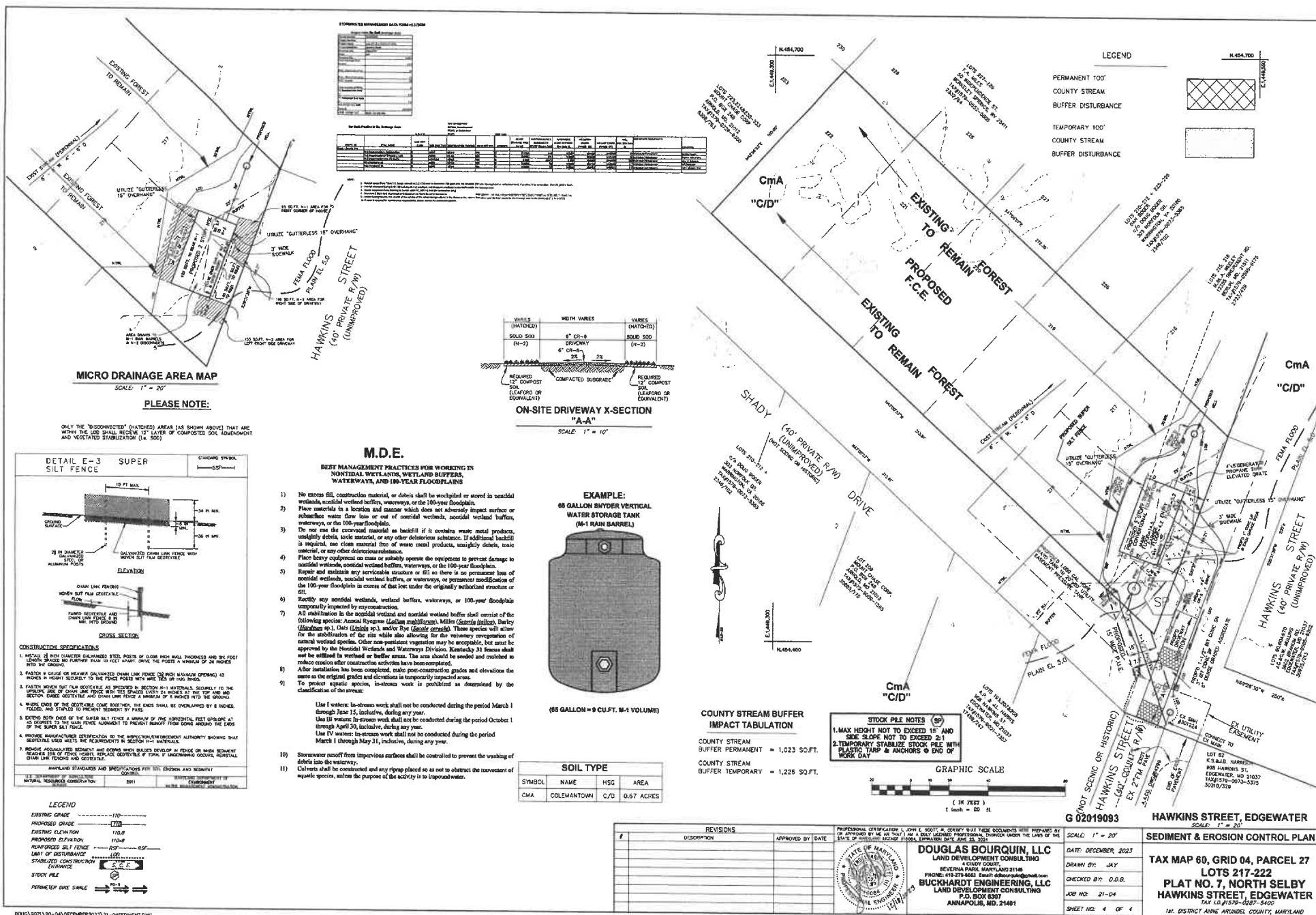
PLAT NO. 7, NORTH SELBY

HAWKINS STREET, EDGEWATER

TAX ID #1579-0207-5400

1st DISTRICT ANNE ARUNDEL COUNTY, MARYLAND







Doug

APP. EXHIBIT# 9
CASE: 2024-0090-V
DATE: 7/30/24

G02019093 - Hawkins Street - North Selby (Ken Vidmar pro...

1 message

Doug Bourquin <ddbourquin@gmail.com>

Thu, Apr 18, 2024 at 8:14 AM

To: Raghavenderrao Badami <ipbada78@aacounty.org>

Cc: Doug Bourquin <ddbourquin@gmail.com>, Ken Vidmar <kenvidmar@hotmail.com>, "Vidmar, Kenneth P IS1 USN, DDG104" <kenneth.vidmar@ddg104.navy.mil>, Scott Schorr <scott@lauerhomes.com>

Bcc: Chris Stepp <cstepp@baylandinc.com>

Good morning Raghu--

Thank you for your ideas and discussions with Mr. Vidmar and me as we continue to work through the review process toward an acceptable solution.

I was looking at the Plans and the ESD Computations again yesterday and I wanted to get your thoughts regarding using ESD M-1 and N-2 practices to address the required 153 cu.ft. required ESDv.

Here is what we would propose:

1. The house footprint is 40' x 21' = 840 sq.ft.
2. With the proposed 15" eaves, the Roof Area is 40'- x 23.5' = 940 sq.ft.
3. The 2.7" one-year rainfall/runoff volume from the roof = $(0.95 \times 2.7 \times 940)/12 = 201$ cu.ft. = 1,503 gallons.
4. If we use standard roof gutters and a downspout @ each of the four house corners and then place a 300 gallon M-1 (rainwater harvesting) Rain barrel Cistern at each house corner, the ESD treatment volume achieved would be 1,200/7.48 = 160 cu.ft. (300 gallon rain barrel cisterns are available from several sources for a cost of around \$500 each.)
5. Each rain barrel will have a 100'- length of "soaker hose" attached (during non-freezing weather) to the spigot on each barrel to drain to and irrigate the vegetated areas within the LOD and Buffer.
6. In addition, the driveway and sidewalk will be graded so that the run-off from driveway and sidewalk will drain into the adjoining vegetated/lawn areas to provide N-2 treatment of the non-rooftop run-off. The N-2 treatment volume achieved would be: $(271 \times 0.95)/12 = 21$ cu.ft. The lawn areas within the LOD will all receive the required 12" composted soil amendment prior to stabilization.
7. In this manner the total M-1 and N-2 treatment volumes achieved = $160 + 21 = 181$ cu.ft. which will completely address the required ESDv.

We also note that the site will contain a recorded FCE forested buffer containing 26,283 sq.ft. which will protect the remaining forested area and all of the environmentally sensitive resources on the subject property. All in accordance with the MDE LOA 21-NT-0384 dated 07/28/2021.

Please let us know if this proposal will be acceptable to address ESD SWM.

Thank you for your help.

-Doug

Douglas D. Bourquin

Douglas Bourquin LLC

Business Office Address & Mailing Address:

4 Cindy Court

Severna Park, MD. 21146

Ph: 410-279-6053

APP. EXHIBIT# 10

CASE: 2024-0090-V

DATE: 7/30/24

From: [Daniel J. Mellin](#)
To: [Daniel J. Mellin](#)
Subject: Ken Vidmar's Board of Appeals Decision
Date: Monday, July 29, 2024 4:47:41 PM

From: Doug Bourquin <ddbourquin@gmail.com>
Sent: Monday, July 1, 2024 5:06 PM
To: Daniel J. Mellin <djm@hbdlaw.com>
Cc: Doug Bourquin <ddbourquin@gmail.com>; Ken Vidmar <kenvidmar@hotmail.com>; Vidmar, Kenneth P IS1 USN, DDG104 <kenneth.vidmar@ddg104.navy.mil>; Scott Schorr <scott@lauerhomes.com>
Subject: Re: [Non-DoD Source] Re: [External] Ken Vidmar's Board of Appeals Decision

Dan--

Follow on from our Variance Hearing Prep discussion earlier:

Formal Grading Permit Resubmissions since the 11-18-22 Board of Appeals Decision:

- * 11-30-22 Grading Resubmission to Address reviewer comments. Includes sending a copy of the 11-18-22 BoA Decision.
- * 2-2-23 Grading Resubmission to Address reviewer comments.
- * 5-26-23 Virtual Meeting w/ Hala Flores & John Bory. Chris Stepp from Bayland was also in attendance as requested by Ken V.
- * 6-30-23 Grading Resubmission to Address reviewer comments. Includes Detailed Drainage Study showing storm Flows to and through Ken's property from our small on-site and large off-site contributing drainage areas. Also included was a Photographic tour of the outfall path through the Vidmar property and then downstream to the discharge into the tidal waters of the Selby Bay.
- * 10-2-23 Grading Resubmission to Address reviewer comments.
- * Preparation of Mayo Tank Easement docs and Cost Estimate at Hala's request.
- * 12-18-23 Grading Resubmission to address reviewer comments.
- * Hala Flores left the County 12-31-23.
- * 2-18-24 Received Engineering comments from Raghu Badami (took over after Hala Flores left).
- * 3-19-24 Met w/ Raghu to discuss his review comments.
- * 4-18-24 I followed up with a detailed summary and suggestions for a way forward in an email to Raghu. Since I never received a response back from him we went full speed ahead on preparing the request for the time extension.
- * 5-10-24 The formal Variance request for the 18 month time extension was filed which included a copy of Ken's timeline.
- * 5-13-24 We received Notice that the County had accepted the application.
- * 5-28-24 We received the Hearing Notice from Holly Colby AHO office.
- * 6-10-24 I picked up the Notice signs and delivered them to Lauer along w/ the Posting instructions.

Please let me know if you have any questions. Thanks.

-Doug

-----Original Message-----

From: Vidmar, Kenneth P IS1 USN, DDG104 <kenneth.vidmar@ddg104.navy.mil>

Sent: Monday, July 1, 2024 5:18 AM

To: Doug Bourquin <ddbourquin@gmail.com>; Daniel J. Mellin <djm@hbdlaw.com>

Cc: Ken Vidmar <kenvidmar@hotmail.com>; Scott Schorr <scott@lauerhomes.com>

Subject: RE: [Non-DoD Source] Re: [External] Ken Vidmar's Board of Appeals Decision

Dan,

If you and Doug talk this week and you want my input, I might possibly be able to participate, depending on the time, as I'm in port this week (but back out next week).

I'm attaching the AA County representation letter. I'm not sure if you need it, as an attorney.

Yes, the house has two floors of living space, 840 sq. ft. each, for an original total of 1,680 sq. ft. of living space. The ground floor is garage and utility space with flood vents plus a small entryway. Michael Day in the last comments we received from OPZ requested that the ground floor entryway be raised 2 ft, because the initial elevation was too low for living space. (You probably see where this is going. ...actually in two directions.) So by making that request, OPZ was acknowledging that the garage floor is too low to be converted into living space. On the other hand, with architect Jeff having raised the entry floor as requested, it's 100 sq. ft. now need to be counted as living space, which brings the total to 1,780 sq. ft.

Another reason the garage/utility space can't be converted into living space is the federally mandated flood vents. Not only would HVAC not be able to control the temperature efficiently, but it wouldn't pass the test ...I forget what the official name is, but it's unofficially referred to as the "blower test" for air sealing.

A non-conversion agreement, we've been told, will be required at the building permit stage.
Ken Vidmar

On Sun, Jun 16, 2024 at 12:32 PM Doug Bourquin <ddbourquin@gmail.com> <<mailto:ddbourquin@gmail.com>> wrote:

Dan--

Also, here is the Inspection and Maintenance Agreement that was processed and recorded last September. At the request of Hala Flores and John Bory, we prepared and submitted a detailed Drainage Study (attached) in June 2023 to determine the quantity of storm water flowing through Ken's property from adjacent and nearby properties. We also at their request prepared and submitted a Photographic Walking Tour (attached) through Ken's property to the tidal outfall just beyond Ken's property. We also submitted the FCE Docs to Michael Day (in August 2023) for processing. We have also prepared the Lot Merger Agreement and sent it to Ken for signing (I don't believe that we have sent it to Michael for processing yet). We did a lot of work and resubmittals between the BofA grant in Nov 2022 and when we relieved that we needed the time extension.

Clearly the policy "revolving door" at I&P as well as the staffing "revolving door" at I&P have in part created the need for this time extension request. I met wit Raghu March 19th and followed up with him April 18th and I never received another response after my 4/18 message.

That was when we decided to get going on the time extension request. Recently Mr. Hollmann approved a time extension for me on one that he had initially approved in September 2022. OPZ had recommended that he deny the extension request.

I'll be out of town the week 7/6 - 7/14. I will probably be having a heart cath procedure sometime during the week of 7-15. We should try to have a phone call regarding Ken's case before the end of June. Scott and Wade at Lauer said that they will post the Notice signs on the property. Thanks.

-Doug

G02019093 Outfall-Stream Photo Tour Booklet 6-30-23.pdf

https://drive.google.com/file/d/1nuuoBaloWbw4I-LD-Cv_B6EA2x1wlnhN/view?usp=drive_web

From: Doug Bourquin <ddbourquin@gmail.com> <<mailto:ddbourquin@gmail.com>> >

Sent: Sunday, December 3, 2023 3:33 PM

To: Daniel J. Mellin <djm@hbdlaw.com> <<mailto:djm@hbdlaw.com>> >

Cc: Doug Bourquin <ddbourquin@gmail.com> <<mailto:ddbourquin@gmail.com>> >; Ken Vidmar <kenvidmar@hotmail.com> <<mailto:kenvidmar@hotmail.com>> >; Vidmar, Kenneth P IS1 USN, DDG104 <kenneth.vidmar@ddg104.navy.mil> <<mailto:kenneth.vidmar@ddg104.navy.mil>> >

Subject: [External] Ken Vidmar's Board of Appeals Decision

Hi Dan--

Quick question....

We now have Hala as the main reviewer for Ken's project since John Bory retired from the County. I'm working on resolving her latest comments. The Board's decision is dated Nov. 18, 2022. Does the Board's decision expire and if so when does it expire? Can it be renewed prior to expiring?

Thanks for your thoughts regarding this.

-Doug

Douglas D. Bourquin

Douglas Bourquin LLC

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APP. EXHIBIT# 11
CASE: 2024-0090-V
DATE: 7/30/24

Kenneth Vidmar
USS Sterett
Unit 100216 Box 1
FPO AP 96678
612-990-4626

May 7, 2024

Anne Arundel County
Office of Planning and Zoning
Zoning Division
Attn: Sterling Seay, Zoning Administrator
2664 Riva Road
Annapolis, MD. 21401

Mr. Seay:

I am requesting an 18-month extension of my variance granted in BA 21-22V.

All of the reasons for which I originally sought the variance are still equally valid. I and my engineer Doug Bourquin have been pursuing a grading permit since 12 days after the variance was granted and are significantly closer to a grading permit than when we started the application process. Nearly a year and a half later, comments are still being put forward by Anne Arundel County and being addressed by my team, and the county has yet to approve or deny the application. I believe I am entitled to an outcome in the permitting process. The extension is needed for the permitting process to run its course.

--Timeline: --

August 30, 2022: Variance appeal hearing is held.

November 18, 2022: Variance granted; see BA 21-22V.

November 30, 2022: Grading permit application resubmitted. (We had submitted prior to the variance, with no response)

December 14-29, 2022: Comments received from John Bory (I&P), Michael Day (OPZ), and OPZ Cultural Resources Section via Land Use Navigator. Comments included:

- Lot merger will be required.
- Urban planter boxes are not allowed.
- Sight distance calculations and turn template for a backing vehicle are needed for a driveway within 50 ft of an intersection. Clearly labeled setbacks from proposed

Stormwater Management (SWM) measures to property lines, structures, septic, wells, etc. are needed.

- OPZ / Cultural Resources comments are required.
- The County expressed confusion over whether the variance authorized disturbance to non-tidal wetland or to the buffer. (Note: It was to the buffer.) The area is mapped as Forest Interior Dwelling (bird species) habitat.
- The remaining woodland (after clearing) shall be put into a conservation easement.
- The garage will require a non-conversion agreement due to being below the flood elevation of 5 ft.

All of these comments were addressed and no longer marked "Revision Needed" on the Land Use Navigator

January 18, 2023: Doug Bourquin meets with John Bory (I&P) to discuss the grading permit application.

January 23, 2023: OPZ Cultural Resources (CR) archaeologist Stacey Poulos visited the property, determined that there should be no adverse effects to cultural resources, and granted CR approval.

February 9, 2023: Lot merger agreement was executed and delivered to Anne Arundel County OPZ.

February 24 and 28, 2023: New comments were received from John Bory (I&P) and Michael Day (OPZ) via Land Use Navigator. Comments included:

- Due to new construction criteria, the Rainhandler system (being considered at County I&P's suggestion), is not appropriate.
- SWM needs to be redesigned considering that "Qp" is a requirement.
- The remaining woodland shall be placed into an easement. (mentioned by both John Bory and Michael Day) Revised mitigation square footage areas should be 6,747 sq ft of Critical Area buffer disturbance plus 2,872 sq ft outside of the buffer, for a total disturbance area requiring mitigation of 9,619 sq ft. Provide a mitigation plan.

All of these comments were addressed and no longer marked "Revision Needed" on the Land Use Navigator.

February 28, 2023: (second-hand information) John Bory (I&P) spoke with Doug Bourquin by telephone and expressed concerns about a "precedent" being established and that, for that reason, they (I&P) might need to consider the site not buildable.

March 1, 2023: (second-hand information) John Bory (I&P) suggested to Doug Bourquin by phone that we (Doug and I) could set up a meeting with Hala Flores (I&P Engineer Manager).

April 27, 2023: In a phone conversation with Doug Bourquin, Doug and I agree that it would be a good idea to set up a meeting with Hala Flores (I&P) and any members of her staff she would like to have in attendance to discuss remaining issues and ways forward for the grading permit.

May 2, 2023: Doug Bourquin contacts John Bory (I&P) via email to attempt to set up a future meeting with Hala Flores (I&P).

May 10, 2023: I retained Christopher Stepp of Bay Land, Inc. to provide input to Doug Bourquin on the SWM plan being presented to Anne Arundel County I&P.

May 10, 2023: John Bory (I&P) schedules a virtual meeting (via Google) with me, Doug Bourquin, Hala Flores (I&P), himself, and Christopher Stepp (Bay Land, Inc.) to discuss remaining issues and ways forward for the grading permit.

May 26, 2023: The planned meeting takes place with me, Doug Bourquin, Hala Flores (I&P Engineer Manager), John Bory (I&P), and Christopher Stepp, discussing remaining issues and ways forward for the grading permit. County I&P reverses its opposition to the Rainhandler system, with Hala Flores (I&P) specifying that vegetation (such as sod) would need to be planted in the area receiving runoff water from the (Rainhandler) system. Online research after the meeting indicated that the company that produced the Rainhandler system may have gone out of business and stopped producing the system. Those indications later proved true.

June 16, 2023: Received confirmation from Lauer Construction that the manufacturer of the Rainhandler system went out of business.

June 30, 2023: Doug Bourquin uploaded revised grading permit documents addressing remaining concerns discussed in the May 26 meeting to Anne Arundel County's (I&P) Land Use Navigator, including:

- Grading Plan Set
- Grading Resubmission Checklist
- Grading Resubmission Transmittal Cover Letter
- Grading Resubmission Point-by-Point Responses
- Overall Contributing Drainage Area Study Report (regarding a perennial stream to which my property contributes approx. 1% of total drainage)
- A booklet containing photos and cross sections of the above-mentioned stream, as requested by Hala Flores (I&P) in the May 26 meeting.

September 15, 2023: Executed and recorded a planting mitigation plan and agreement with Anne Arundel County.

October 6, 2023: Received new comments from Hala Flores (I&P) via Land Use Navigator. Comments included:

- County I&P raised the issue of obtaining the Rainhandler System mentioned above, which we were already aware of.
- Driveway cross sections and elevations are needed to clarify driveway drainage treatment and disconnection.
- Compost soil amendment is needed.
- Public Works Agreement is needed for the Mayo Tank and shall be executed prior to building permit approval.

All of these comments were addressed and no longer marked "Revision Needed" on the Land Use Navigator.

October 24, 2023: Hala Flores (I&P) emailed Doug Bouquin to ask whether the Right-of-Way containing a portion of the driveway in the plans is public or private. This question was answered. It is entirely a private Right-of-Way.

Week of December 10, 2023: Hala Flores (I&P), who was the primary reviewer for my grading permit application after John Bory's retirement (November), announced she would be leaving her job at the end of December. We did not hear from her after that.

December 18, 2023: Doug Bourquin uploaded revised grading permit documents addressing remaining concerns discussed in the May 26 meeting to Anne Arundel County's (I&P) Land Use Navigator, including:

- Grading Permit Fee and Security Estimate Computation Sheet
- Grading Plan Set (revised)
- Grading Resubmission Checklist
- Grading Resubmission Transmittal Cover Letter
- Grading Resubmission Point-by-Point Responses
- Revised SWM Report

January 30, 2024: Anne Arundel County's (I&P) Land Use Navigator still showed the grading permit application as "Under Review," with no new comments.

February 18, 2024: Received new comments from Raghu Badami (I&P Assistant Director and acting Engineer Manager) and Michael Day (OPZ) via Land Use Navigator. Comments included:

- Additional information on the design of the proposed 65-gallon cistern is needed.
- The area dedicated for cistern runoff should be shown (highlighted).
- It is not clear how the "site ESD to MEP is met with the provided SWM."
- The site design should be reviewed to ensure that existing nuisance flooding conditions are not exacerbated by SWM.
- It is not clear "how SWM Pe is met for this site."
- The finished floor levels need to be a minimum of one foot above the flood base elevation. (Note: This only pertains to the entryway. The plans have been adjusted to Michael Day's satisfaction.) Flood notes should also be included in the plans.
- A non-conversion agreement for the garage will be required at the building permit stage.

Doug Bourquin responded to the first five of these items via email on April 18, 2024, and as mentioned, of the remaining two, one is resolved, and the other does not require action until the building permit stage. We have not received a response from Raghu, as of the writing of this letter.

--End Timeline--

I wish to exercise my property rights under COMAR § 27.01.02.07B and other laws to build a single-family home for my own personal use. I believe I have been doing everything reasonably and humanly possible to comply with the requirements to obtain a grading permit. It still isn't clear how much more time the process will take. It appears to be down to only the SWM calculations not being clear to Mr. Badami (I&P). However, it would not be shocking to see new comments/concerns appear from the county. I am patient, and I ask for the time to ensure that they all are resolved.

Sincerely,

A handwritten signature in cursive script that reads "Ken Vidmar". The signature is written in dark ink and is positioned above the printed name.

Kenneth Vidmar