

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

APPLICANT: Dee Matthew Cole, Frances A.W. Cole **ASSESSMENT DISTRICT:** 3

CASE NUMBER: 2024-0155-V

COUNCILMANIC DISTRICT: 5

HEARING DATE: October 31, 2024

PREPARED BY: Sara Anzelmo
Planner



REQUEST

The applicants are requesting a variance to allow a two-lot residential subdivision with greater density than allowed in an RA - Rural Agricultural District on property located at 1700 Pleasant Plains Road in Annapolis.

LOCATION AND DESCRIPTION OF SITE

The subject property consists of 9.768 acres¹ of land and straddles Davidsonville Farm Road, a private right-of-way. It is identified as Parcel 36 in Grid 3 on Tax Map 46.

The property is zoned RA - Rural Agricultural District. The site fronts Mill Creek, lies entirely within the Chesapeake Bay Critical Area overlay, and is designated as RCA – Resource Conservation Area. A small portion of the subject’s shoreline is mapped as a BMA - Buffer Modification Area, but the remainder of the shoreline is subject to the standard buffer regulations.

PROPOSAL

The applicant proposes to subdivide the existing 9.768 acre parcel¹ into two lots: proposed Lot 1 consisting of 3.9095 acres and proposed Lot 2 consisting of 5.8585 acres.

REQUESTED VARIANCES

§ 18-4-301 of the Anne Arundel County Zoning Code provides that the maximum density in an RA - Rural Agricultural District is one dwelling unit per 20 acres. The applicant seeks to subdivide 9.768 acres into two lots with a density of 4.095 units per 20 acres, necessitating a variance of 3.095 dwelling units per 20 acres.

FINDINGS

A review of the County 2024 aerial photograph shows that the subject property is located within a larger area of lots, including those to the immediate north, east, and south, that are also zoned RA. The lots are of various shapes and sizes, some smaller and some larger than the subject site.

¹ The total area according to plats/deeds is 11.187 acres. However, due to shoreline erosion and a private right-of-way that runs through the property, the actual current lot area is 9.768 acres.

The property was the subject of a recently approved nonconforming use application (Case No. 2023-0231-N) which registered a second principal structure (detached dwelling) and a two-story garage used for accessory boat storage on the subject lot.

The **Department of Health** does not have an approved plan for this project, but has no objection to the variance request as long as a plan is submitted and approved by the Department. The issue of crossing the common right of way with the septic line must be addressed and rectified.

The **Development Division (Critical Area Team)** reviewed the proposal and has no objection to the proposed variance.

The **Critical Area Commission** commented that the process of subdividing two grandfathered dwellings on one parcel within the Resource Conservation Area of the Critical Area triggers the delineation of a 200-foot Critical Area Buffer. It appears that dwellings will be located within the 200-foot Buffer and expanded Buffer. Therefore, any proposed improvements to the existing improvements will require a Critical Area variance. Additionally, the subdivision will trigger a Buffer establishment requirement for both lots based on the total amount of lot coverage located outside of the critical Area Buffer.

The **Cultural Resources Section** commented that the current proposal shows existing conditions mostly will remain as-is; however, upon further review, it appears that new septic areas are proposed that may present new disturbance in an area of high archaeological potential. While the Cultural Resources Section has no objection to the variance application, they require more information on existing conditions and the current placement of the existing septic. A site visit may be required for the grading permit application review in order to assess whether any potential archaeological resources require documentation prior to new disturbance activities for the proposed septic installation. Once the plans are ready for submission for a grading permit application, the applicant may contact Anastasia Poulos, pzpoul44@aacounty.org, to provide further information and, if required, to arrange a site visit.

For the granting of a zoning variance, a determination must be made as to whether, because of certain unique physical conditions peculiar to or inherent in the lot or because of exceptional circumstances other than financial considerations, strict implementation of the Code would result in practical difficulties or an unnecessary hardship. The need sufficient to justify a variance must be substantial and urgent and not merely for the convenience of the applicants.

The applicants' letter explains that the subject property has been in the family for many years and has been passed down to and shared by various heirs. Their specific stated goal is to subdivide the property in order to allow for a "continued, simplified conveyance to the future heirs", and they are using the nonconforming second dwelling as justification for a subdivision that exceeds the maximum density allowed in the RA District. However, the existence of a registered nonconforming second dwelling does not in and of itself justify a density variance. The nonconforming use registration is a formal zoning process that is specifically intended to allow a use that is no longer permitted in the zoning district to remain, but it does not grant additional rights beyond those provided under Title 15 of the Zoning Code.

The applicants contend that the variance is necessary to allow the two existing dwellings to remain on independent lots and that the physical conditions of the site make it impossible to

develop the site in strict conformance with the Code. They attest that the existence of the two homes can only be resolved by obtaining a density variance. However, this is simply not true. A variance is not necessary at all because the two dwellings are already allowed to remain on the lot via the nonconforming use registration. In fact, the Code generously allows for replacement, relocation, and transfer of nonconforming uses, and it even allows for potential expansion by special exception. The two dwellings can remain on the property, just as they have for many years, without any variance relief. The applicants' desire for simplification of future family transfers is not enough to warrant variance relief. In fact, the Code specifically excludes financial considerations as a factor to be relied upon when determining whether an unnecessary hardship or exceptional circumstance exists.

The proposed density variance would not necessarily alter the essential character of the neighborhood, substantially impair the appropriate use or development of adjacent property, or be detrimental to the public welfare. However, while the applicants' letter indicates that the dwellings will remain unchanged, the subdivision would allow for the potential intensification of the existing nonconforming use, under current or future ownership. There would no longer be a floor area limitation for the second dwelling, the expansion or redevelopment of which would likely result in greater critical area lot coverage in the RCA. More importantly, because the registered second dwelling is already allowed to remain, to be replaced, to be relocated, and to be transferred to future owners, the variance is not warranted. Therefore, the request for relief cannot be supported and cannot be considered the minimum necessary to afford relief in this case.

RECOMMENDATION

Based upon the standards set forth in § 18-16-305 of the Code under which a variance may be granted, this Office recommends *denial* of the proposed variance.

DISCLAIMER: This recommendation does not constitute a building permit. In order for the applicant to construct the structure(s) as proposed, the applicant 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.



August 5, 2024

Ms. Sterling Seay
Office of Planning and Zoning
Zoning Division
2644 Riva Road, 3rd Fl.
Annapolis, MD 21401

Re: 1660 & 1700 Pleasant Plains Road
Future Subdivision of P36

Dear Ms. Seay:

In accordance with Article 18-4-301, Bulk Regulations for the RA District, the maximum density is One Unit per 20 Acres. We are requesting a Variance to this provision to allow Two (2) Existing Houses to remain at a density of 1 unit per 5.5 acres as follows:

A. Existing Conditions:

1. The Site is a Waterfront Parcel comprising approximately 11.187 acres.
2. The Site is zoned RA.
3. The Site contains two (2) Existing Homes which are currently occupied by aging family members.
4. The Site was the subject of a Non-Conforming Use Decision, Case 2024-0231-N, recognizing two (2) Existing Dwellings on the Parcels (see attached).

B. Proposed Conditions:

1. The Site is 11.187 acres with two (2) Existing Dwellings.
2. The Site has received Acceptable Percolation Tests to allow establishment of the required 10,000 SF Septic Reserve Areas.
3. The Proposed Layout provides for Lot Areas of 3.9095 acres (Lot #1) and 5.8585 acres (Lot #2) as shown on the attached Site Plan.
4. The Minimum Lot Size for an RA Lot is 40,000 SF, the proposed Lots exceed this requirement (see Site Plan).

The request is for a Density Variance to allow the two Existing Houses to remain on independent Lots. Therefore, a Variance to Allow the Subdivision of the 11.187 acres to create the Two (2) Lots which exceed minimum lot size can be evaluated as follows:

Following the shoreline to the north, you will note that the zoning changes to RLD within the property of the same ownership. Following the shoreline to the south, you will note the Lot Sizes are 1722 Pleasant Plains Road (3.2 acres), 1720 Pleasant Plains Road (3.76 acres), and 1718 Pleasant Plains Road (2.69 acres). These Lot sizes are consistent with the proposed Lot sizes for the subject Parcel just to their north. (See Site Plan.)

This Variance Request is also consistent with the Variance Requirements as outlined in 18-16-305, Variances as follows:

(a) Requirements for Zoning Variances:

1. The Lot would be considered to contain Unique Physical Conditions because the Lot is approximately 11.187 acres and contains two (2) Existing, Registered Dwellings. There is no possibility to meet the 20 Ac. Density Requirement, and the physical conditions of the lot size make it impossible to develop the Site in strict conformance with the Code.
2. The Exceptional Circumstance which requires a Variance to avoid Unnecessary Hardship or Practical Difficulties is as follows:
 - a. Due to the family history and the existence of the dwellings since 1923 and 1930 respectively, and the provision of the original RA Zoning Law of 1952 Allowing Two (2) Principal Dwellings on a Lot (see Zoning History: page 2 of the Non-Conforming Decision). The existence of the two homes can only be resolved by obtaining a Density Variance and the subsequent subdivision to memorialize the Decision.
 - b. The history of the property maintained within the family is as follows:

The property was originally owned by William T. and Kate Davidson. William and Kate had four children, Kate Davidson Cole, Clark Davidson, Nan Davidson Stock, and William Davidson, Jr. Upon the deaths of William and Kate, a one quarter interest of the property was conveyed to each of the children. William and Kate had resided at 1700, and 1660 was used as a rental property for the Navy during WWII and ultimately became the home of the heirs of William Davidson, Jr.

The current status of ownership is, 50% by the Coles (Kate and her descendants, originally 25% plus the addition of the Nan Stork 25% buy out.), 25% by the William Davidson, Jr. heirs and 25% by the Clark Davidson heirs.

In order to allow a Continued, Simplified Conveyance to the future heirs, the Subdivision is necessary to avoid Practical Difficulties, as the Davidson heirs would retain one (1) Lot and the Cole heirs would retain the other. Both families hope to convey In Fee Simple Property to future generations.

(b) Critical Area Variance: NA

(c) Requirements for All Variances:

1. The Variance is the minimum necessary to afford relief because there are Two Existing Dwellings on one (1) Parcel and by creating lots around these dwellings, it provides for orderly transfer to future heirs.
2. The granting of the Variance will not:
 - (i). Alter the essential character of the neighborhood per the Proposal is it is consistent with adjoining lots to the north.
 - (ii). Will not impair development of the adjacent properties as they have been developed at less than or equal densities and currently contain Existing Houses.
 - (iii). Due to the presence of Steep Slopes and Buffers, the redevelopment potential will be limited, particularly on Site 1660 Pleasant Plains Road. If development is proposed, it will most likely occur on the same footprint.
 - (iv). Impact the Critical Area as the Request is a Zoning Variance only.
 - (v). Be detrimental to Public Welfare as subdivision of the property is required to meet all development standards to allow two (2) Houses on the Existing Parcel.

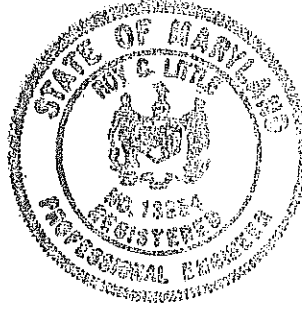
We believe the Proposed Variance Request is consistent with the Non-Conforming Use Decision and will allow the two (2) Houses to remain on separate Parcels.

If you should have any questions or comments or need additional information, please contact our office.

Sincerely,
Terrain



Roy C. Little
Director of Engineering
RCL/II.3123



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

PROJECT NOTIFICATION APPLICATION

GENERAL PROJECT INFORMATION

Jurisdiction: Anne Arundel County

Date: AUGUST 6, 2024

Tax Map #	Parcel #	Block #	Lot #	Section
46	36	3	N/A	N/A

FOR RESUBMITTAL ONLY

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

*Complete Only Page 1
 General Project Information

Tax ID: 03-000-07460600

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

Project location/Address 1700 PLEASANT PLAINS ROAD

City ANNAPOLIS Zip 21409

Local case number

Applicant: Last name COLE First name FRANCES

Company TERRAIN (ROY C. LITTLE, P.E.)

Application Type (check all that apply):

- | | |
|--|--|
| Building Permit <input type="checkbox"/> | Variance <input checked="" type="checkbox"/> |
| Buffer Management Plan <input type="checkbox"/> | Rezoning <input type="checkbox"/> |
| Conditional Use <input type="checkbox"/> | Site Plan <input type="checkbox"/> |
| Consistency Report <input type="checkbox"/> | Special Exception <input type="checkbox"/> |
| Disturbance > 5,000 sq ft <input type="checkbox"/> | Subdivision <input type="checkbox"/> |
| Grading Permit <input type="checkbox"/> | Other <input type="checkbox"/> |

Local Jurisdiction Contact Information:

Last name AACo Zoning Administration Section First name

Phone # 410-222-7437 Response from Commission Required By TBD

Fax # Hearing date TBD

SPECIFIC PROJECT INFORMATION

Describe Proposed use of project site:

REQUESTING A VARIANCE TO THIS PROVISION TO ALLOW TWO (2) EXISTING HOUSES TO REMAIN AT DENSITY OF ONE (1) UNIT PER 5.5 ACRES

Yes Intra-Family Transfer <input type="checkbox"/> Grandfathered Lot <input type="checkbox"/>	Yes Growth Allocation <input type="checkbox"/> Buffer Exemption Area <input type="checkbox"/>
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Project Type (check all that apply)

Commercial <input type="checkbox"/> Consistency Report <input type="checkbox"/> Industrial <input type="checkbox"/> Institutional <input type="checkbox"/> Mixed Use <input type="checkbox"/> Other <input type="checkbox"/>	Recreational <input type="checkbox"/> Redevelopment <input type="checkbox"/> Residential <input checked="" type="checkbox"/> Shore Erosion Control <input type="checkbox"/> Water-Dependent Facility <input type="checkbox"/>
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SITE INVENTORY (Enter acres or square feet)

	Acres	Sq Ft		Acres	Sq Ft
IDA Area	0	0	Total Disturbed Area	0	0
LDA Area	0	0			
RCA Area	11.187	487,306	# of Lots Created		
Total Area	11.187	487,306			

	Acres	Sq Ft		Acres	Sq Ft
Existing Forest/Woodland/Trees	6.59	287,123	Existing Lot Coverage	0.35	15,190
Created Forest/Woodland/Trees	0	0	New Lot Coverage	0	0
Removed Forest/Woodland/Trees	0	0	Removed Lot Coverage	0	0
			Total Lot Coverage		

VARIANCE INFORMATION (Check all that apply)

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

<p><u>Variance Type</u></p> Buffer <input type="checkbox"/> Forest Clearing <input type="checkbox"/> HPA Impact <input type="checkbox"/> Lot Coverage <input type="checkbox"/> Expanded Buffer <input type="checkbox"/> Nontidal Wetlands <input type="checkbox"/> Setback <input type="checkbox"/> Steep Slopes <input type="checkbox"/> Other <input checked="" type="checkbox"/> <u>DENSITY VARIANCE</u>	<p><u>Structure</u></p> Acc. Structure Addition <input type="checkbox"/> Barn <input type="checkbox"/> Deck <input type="checkbox"/> Dwelling <input checked="" type="checkbox"/> 2 EXISTING HOUSES Dwelling Addition <input type="checkbox"/> Garage <input type="checkbox"/> Gazebo <input type="checkbox"/> Patio <input type="checkbox"/> Pool <input type="checkbox"/> Shed <input type="checkbox"/> Other <input type="checkbox"/>
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Critical Area Report
For:
1660 and 1700 Pleasant Plains Road
Annapolis, MD 21409
Tax Map 46, Block 3, Parcel 36

August, 2024

Prepared By:
Terrain, Inc.
53 Old Solomons Island Road, Ste. I
Annapolis, MD 21401
(410) 266-1160
terrain@comcast.net

CHESAPEAKE BAY CRITICAL AREA REPORT
1660 and 1700 Pleasant Plains Road
TAX MAP 46, BLOCK 3, PARCEL 36

INTRODUCTION

This is a 11.187 acres, waterfront property, and is located at 1660 and 1700 Pleasant Plains Road, Annapolis, Maryland 21409. The property fronts on Mill Creek. The property is completely inside the Chesapeake Bay Critical Area Boundary and is designated as Resource Conservation Area (RCA). The property is zoned RA.

EXISTING LAND USE

The site is a waterfront parcel comprising approximately 11.187 acres. The site contains two (2) Existing Houses which are currently occupied by aging family members. The site was the subject of a Non-Conforming Use Decision, Case 2024-0231-N. Recognizing two (2) Existing Houses on the Parcels.

PROPOSED LAND USE

The site is 11.187 acres with two (2) Existing Houses. The site has received Acceptable Percolation Tests to allow establishment of the required 10,000 sf septic Reserve areas. The proposed layout provides for Lot Areas of 3.9095 acres (Lot #1) and 5.8585 acres (Lot #2) as shown on the attached Site plan. The minimum Lot size for an RA Lot is 40,000 sf, the proposed Lots exceed this requirement (see Site Plan).

SURROUNDING LAND USE

This is a waterfront property with the surrounding parcels being waterfront or non-waterfront.

FLOODPLAIN

The property is shown on the Federal Emergency Management Agency (FEMA) panel 24003C0189f, Zone AE/X, Elevation 6.0/-.

BUFFER MODIFICATION

The property is PARTLY mapped buffer modified. (see plan)

TIDAL WETLANDS

This site is waterfront with an existing pier and there are no tidal – wetlands.

BODIES OF WATER

The property is a waterfront lot which fronts the Mill Creek.

STEEP SLOPES

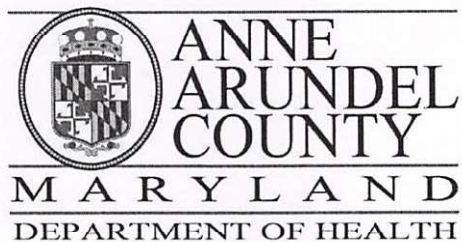
There are no steep slopes on-site that will be disturbed.

RARE AND ENDANGERED SPECIES

There are no federally or state listed species of rare, threatened or endangered species of plants or animals on this site.

DATES OF FIELD WORK

August, 2024



J. Howard Beard Health Services Building
3 Harry S. Truman Parkway
Annapolis, Maryland 21401
Phone: 410-222-7095 Fax: 410-222-7294
Maryland Relay (TTY): 711
www.aahealth.org

Tonii Gedin, RN, DNP
Health Officer

MEMORANDUM

TO: Sadé Medina, Zoning Applications
Planning and Zoning Department, MS-6301

FROM: Brian Chew, Program Manager
Bureau of Environmental Health

A handwritten signature in blue ink, appearing to be "BC", written over the name "Brian Chew" in the FROM field.

DATE: August 15, 2024

RE: Cole Dee Matthew ETAL
1700 Pleasant Plains Road
Annapolis, MD 21409

NUMBER: 2024-0155-V

SUBJECT: Variance/Special Exception/Rezoning

The Health Department has reviewed the above referenced variance to allow a subdivision with greater density than allowed.

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. The issue of crossing the common right of way with the septic line must be addressed and rectified.

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

cc: Sterling Seay

2024-0155-V

Menu

Cancel

Help

Task

OPZ Critical Area Team

Assigned to Department

OPZ Critical Area

Action by Department

OPZ Critical Area

Start Time

Due Date

08/30/2024

Assigned to

Kelly Krinetz

Action By

Kelly Krinetz

End Time

Assigned Date

08/09/2024

Status

Complete w/ Comments

Status Date

08/09/2024

Hours Spent

0.0

Comments

No objection.

In Possession Time (hrs)

Comment Display in ACA

All ACA Users

Record Creator

Licensed Professional

Contact

Owner

Workflow Calendar

Billable

No

Overtime

No

Time Tracking Start Date

Est. Completion Date

Display E-mail Address in ACA

No

Display Comment in ACA

Estimated Hours

0.0

Action

Updated

Task Specific Information

Expiration Date

Reviewer Phone Number

Review Notes

Reviewer Email

Reviewer Name



Jennifer Esposito -DNR- <jennifer.esposito@maryland.gov>

CAC Comments_Cole 2024-0155-V; Pellicano 2024-0156-V; Harmon Fetcho 2024-0162-V; Stancil 2024-0163-V

1 message

Jennifer Esposito <jennifer.esposito@maryland.gov>
To: Sadé Medina <pzmedi22@aacounty.org>
Cc: Charlotte Shearin -DNR- <charlotte.shearin@maryland.gov>

Wed, Sep 4, 2024 at 4:11 PM

Good afternoon,

The Critical Area Commission has reviewed the following variances and we provide the following comments:

- 2024-0155-V; Cole (AA 198-24): The process of subdividing two grandfathered dwellings on one parcel within the Resource Conservation Area of the Critical Area triggers the delineation of a 200-foot Critical Area Buffer. It appears that dwellings will be located within the 200-foot Buffer and expanded Buffer. Therefore, any proposed improvements to the existing improvements will require a Critical Area variance. Additionally, the subdivision will trigger a Buffer establishment requirement for both lots based on the total amount of lot coverage located outside of the critical Area Buffer.
- 2024-0156-V; Pellicano (AA 2024-24): We note that the Zoning Pre-File comments state that the applicant must show that the use has not ceased for the last three years. However, in order to meet the Critical Area grandfathering provisions that would allow for the legal nonconforming accessory dwelling unit to be reconstructed within the Critical Area Buffer and on lands designated as a Resource Conservation Area, the County must verify and determine that the use has been in continuous use since the Critical Area local program inception and has not been abandoned for more than one year in that time. If the County verifies the use has been in continuous use and has not been abandoned for more than one year, and the Administrative Hearing Officer finds that each and every one of the Critical Area variance standards have been met, then appropriate mitigation is required.
- 2024-0162-V; Harman Fetcho (AA 211-24): Appropriate mitigation is required.
- 2024-0163-V; Stancil (AA 212-24): Appropriate mitigation is required.

Thank you for the opportunity to provide comments. If you have any questions or concerns, please let me know.

The above comments have been uploaded to the County's online portal.



 facebook_logo.jpg

 twitter_logo.jpg

dnr.maryland.gov/criticalarea

Jennifer Esposito

Critical Area Commission for the
Chesapeake & Atlantic Coastal Bays
1804 West Street, Suite 100
Annapolis, MD 21401

Office: [410-260-3468](tel:410-260-3468)

(In office: Mon., Wed., Friday)

Cell: [443-569-1361](tel:443-569-1361)

(Teleworking: Tues., Thurs.)

jennifer.esposito@maryland.gov

2024-0155-V

Menu Cancel Help

Task
OPZ Cultural Resources
Assigned to Department
OPZ Cultural Resources
Action by Department
OPZ Cultural Resources
Start Time

Due Date
08/30/2024
Assigned to
Stacy Poulos
Action By
Stacy Poulos
End Time

Assigned Date
08/09/2024
Status
Complete w/ Comments
Status Date
08/21/2024
Hours Spent
0.0

Billable
No

Overtime
No

Comments
The current proposal shows existing conditions mostly will remain as-is; however, upon further review, it appears that new septic areas are proposed that may present new disturbance in an area of high archaeological potential. While the Cultural Resources Section has no objection to the variance application, we require more information on existing conditions and the current placement of the existing septic. A site visit may be required for the grading permit application review in order to assess whether any potential archaeological resources require documentation prior to new disturbance activities for the proposed septic installation. Once the plans are ready for submission for a grading permit application, the applicant may contact Anastasia Poulos, pzpoul44@aacounty.org, to provide further information and, if required, to arrange a site visit.

Time Tracking Start Date
Display E-mail Address in ACA No

Est. Completion Date
 Display Comment in ACA

In Possession Time (hrs)
Comment Display in ACA

- All ACA Users
- Record Creator
- Licensed Professional
- Contact
- Owner

Estimated Hours
0.0

Action
Updated

Workflow Calendar

Task Specific Information

Expiration Date
Reviewer Phone Number

Review Notes
Reviewer Email

Reviewer Name



OCEANVIEW CHRD

DANFORTH RD

Tax Account Number: 3000007460600