



Kent County Planning Commission  
Department of Planning, Housing, and Zoning  
400 High Street, Suite 130  
Chestertown, MD 21620  
410-778-7423 (voice/relay)

**County Commissioners Hearing Room**  
**MEETING TO BE HELD VIRTUALLY via CONFERENCE CALL**

**AGENDA**  
May 6, 2021  
1:30 p.m.

In response to the State of Emergency due to COVID-19, individuals must refrain from attending meetings. In lieu of public appearance, this meeting is being held virtually, via teleconference. Members of the public may listen to the meeting either online at <https://www.kentcounty.com/commissioners/meeting-live-video>, OR via the audio-only phone number and conference identification number listed below. The way for members of the public to provide verbal comments during the meeting is via the audio-only phone number.

Public participation and audio-only call-in number:

1. Dial **1-872-239-8359**
2. Enter Conference ID: **926 610 798#**

Members of the public are asked to mute their phones/devices, until the Commission Chair opens the floor for comment. Please note that if you are listening to the online livestream while waiting to call in to participate, there is an approximately 45-second delay. In order to avoid audio feedback issues, please mute the livestream before calling in.

**MINUTES**

April 1, 2021

**APPLICATIONS FOR REVIEW**

- 21-11 Strong Associates, II LP – Buffer Variance**  
2959 Eastern Neck Road – Fifth Election District – Zoned Resource Conservation District (RCD)  
.....PC Recommendation to BOA
- 21-12 James Peary – Setback Variances (Front & Rear Yards) and Critical Area Clearing**  
N. Bayview Avenue at Vermont Avenue – Sixth Election District – Zoned Critical Area Residential (CAR)  
.....PC Recommendation to BOA

**GENERAL DISCUSSION**

**STAFF REPORTS**

**ADJOURN**

Meetings are conducted in Open Session unless otherwise indicated. All or part of the Planning Commission meetings can be held in closed session under the authority of the MD Open Meetings Law by vote of the members. Breaks are at the call of the Chairman. Meetings are subject to audio and video recordings.

Projects will not be reviewed prior to their scheduled time. All applications will be given the time necessary to assure full public participation and a fair and complete review of all projects. Agenda items are subject to change due to cancellations.

Other business without assigned times may be discussed during the meeting.

## MINUTES

The Kent County Planning Commission met in regular session on Thursday, April 1, 2021, virtually in the County Commissioners' Hearing Room at 400 High Street, Chestertown, Maryland, with the following members attending via audio/video conference: Kim Kohl, Chairman; F. Joseph Hickman, Vice Chairman; County Commissioner P. Thomas Mason; Paul J. Ruge, Jr.; James Saunders; William Sutton; and Cynthia L. McCann, Esq., Planning Commission Attorney; Staff in attendance were William Mackey, Director; Carla Gerber, Deputy Director; and Sandy Adams, Clerk.

Ms. Kohl called the meeting to order at 1:30 p.m.

## MINUTES

Mr. Ruge made a motion to accept the minutes of the March 4, 2021 meeting as distributed.

Mr. Sutton seconded the motion; the motion passed with all in favor.

## APPLICATIONS FOR REVIEW:

### **19-30 The Animal Care Shelter of Kent County (The Humane Society and Kennedyville Properties, LLC) – Final Site Plan Review**

Mr. Mackey gave a description of the proposal, the required Standards, and staff's recommendation.

Mr. Mackey reported that the Animal Care Shelter of Kent County is requesting final approval to construct a 10,648 square-foot facility for the care and boarding of domestic animals. The minor subdivision which created the five-acre parcel, was recorded on April 4, 2020. The facility will include an animal enrichment training center as well as a veterinary office. The property is located on Worton Road between Worton and Chestertown in the Third Election District and is zoned Industrial (I). The parcel is comprised of an open field with a hedgerow along the edge of Route 297. The surrounding area is characterized by agricultural land and residential uses.

Mr. Mackey said staff recommends granting final site plan approval conditioned upon the stormwater management and sediment control plans being approved; the Forest Conservation Plan and Forest Conservation Deed Restrictions being approved; and all required sureties must be submitted.

Representing the applicant were: Mr. Kevin Shearon of Davis, Moore, Shearon, and Associates, P.O. Box 80, Centerville, Maryland; and Richard Keaveney, Executive Director, Animal Care Shelter, 102 S. Water Street, Chestertown, Maryland; both were sworn in.

Mr. Shearon informed the Commission that the Sediment and Erosion Control Plan and the Stormwater Management Plan have been approved and signed off by Kent Soil and Water Conservation District and the sureties have been submitted; the Forest Conservation Easement Agreement has been reviewed by Planning Commission Attorney Cynthia McCann, and comments were forwarded to the applicant's attorney; Mr. Shearon said they are working on finalizing that agreement. Ms. McCann informed the Commission that the agreement has been finalized and that she will be signing the agreement.

Mr. Hickman made a motion to grant final site plan approval based on the following findings and conditioned upon sureties being submitted for stormwater management, sediment and erosion control, and forest conservation:

- The applicant meets the general standards for permitted uses.
- The proposed facility meets all required setbacks.

- The applicant has adequately addressed the performance and noise standards.
- A Forest Conservation Plan has been submitted and reviewed.
- Sediment and Erosion Control and Stormwater Management plans have been submitted and reviewed.
- The applicant exceeds the minimum parking requirements.
- Signage has been presented and meets the standards.
- The proposal is consistent with many strategies of the Comprehensive Plan and conforms with applicable regulations.
- Highway access has been provided and the off-street parking meets the requirements.
- An area for off-street loading and unloading has been provided and adequate dark sky compatible lighting has been provided.
- The facility will place reasonable demands on public water and sewer. The proposed use should not require excessive use of other public infrastructure such as police and emergency services.
- The applicant has proposed adequate methods of solid waste disposal. Stormwater management will be implemented to protect surface waters and groundwater. Sediment control will minimize soil erosion during and after construction.
- The building has been designed thoughtfully, and the materials have been carefully selected to aid in the reduction of sound to protect abutting properties.
- A Citizen Participation Plan has been provided.

Mr. Saunders seconded the motion; the motion passed with all in favor.

#### **20-36 Pep-Up, Inc. – Major Site Plan Review (Final)**

Ms. Gerber gave a description of the proposal and staff and TAC's comments.

Pep Up, Inc. is requesting final site plan approval for a proposed liquid propane storage and distribution center. The liquid propane (LP) facility will be accessed by a rail spur allowing for bulk delivery by railcars. The propane will be offloaded from railcars into one of four new 90,000 gallon above-ground storage tanks. Fixed bodied trucks will fill from the storage tanks and provide deliveries throughout the region.

The property is located at 12213 Galena Road in the First Election District. It is comprised of 7.123 acres and is zoned Employment Center (EC). The existing railroad crossing, with upgrades as directed by the Maryland Department of Transportation, will be utilized to deliver the liquid propane.

Ms. Gerber said Staff recommends granting final site plan approval conditioned upon submission and approval of sureties for sediment and erosion control and stormwater management.

Representing the applicant were Mr. Kevin Shearon of Davis, Moore, Shearon, and Associates, P.O. Box 80, Centreville, Maryland; and Brian Pepper, 24987 Dupont Boulevard, Georgetown, Delaware; Mr. Pepper was sworn in.

Mr. Shearon confirmed that there are no buildings/no architecture to review. He stated that it is simply a propane storage and distribution facility. They are working on posting sureties, and they are requesting that it be a condition of final site plan approval.

Mr. Hickman made a motion to grant final site plan approval based on the following findings and conditioned upon submission and approval of sureties for sediment and erosion control and stormwater management:

- The proposal meets the minimum setback requirements.
- The applicant has addressed the performance standards and submitted a Certified Engineer's Report.
- Forest Conservation was addressed by previous development on site.
- Sediment and erosion control and stormwater management plans have been approved.

**DRAFT**

- Onsite vehicular circulation appears to promote clearly defined access to the storage tanks while also limiting unauthorized vehicles by gating the entrances to the site.
- The southern portion of the site contains a planted screening buffer that was installed as part of the OneStar Energy solar array project. No additional screening is required.
- A lighting plan has been submitted and lighting appears to be designed to avoid glare onto adjacent properties, roadways, and should not interfere with traffic or create a safety hazard.
- The proposed loading area and access lanes are sufficient for the offloading of LP from railcars into above ground storage tanks and for loading into fix bodied trucks.
- The proposal is consistent with many strategies and goals of the Comprehensive Plan.
- The Kent County Health Department is still evaluating the proposed septic reserve area.
- No additional landscaping is required.
- A Citizen Participation meeting was held on December 1, 2020.
- No signage has been proposed at this time.

Mr. Sutton seconded the motion; the motion passed with all in favor.

#### **20-41 Great Oak Manor – Site Plan Review (Preliminary and Final – Event Tent Area)**

Ms. Gerber gave a description and history of the proposal, relevant issues, standards, parking and loading requirements, site plan review, and staff and TAC’s comments.

The applicants are proposing improvements to create a permanent area for erecting a tent to be used in support of the existing country inn. The other improvements presented at the concept plan hearing will be completed in the future. The tent area will be an 80-foot by 60-foot concrete pad finished with a paver or turf surface on top. It will be connected to the Manor House with a walkway.

Great Oak Manor’s 8.515-acre property is zoned Critical Area Residential (CAR) and is located along Cliff Road adjacent to the Chesapeake Bay, Great Oak Estates, and Great Oak Landing to the south and residential uses to the north. The property is currently approved with a 3-story dwelling known as the “Manor House” and a detached garage. The surrounding area is characterized by residential development, agriculture, and marine uses.

Ms. Gerber said staff recommends granting final approval conditioned upon the acceptance of letters of credit by the County Commissioners of Kent County.

Correspondence was received both in support and in opposition of the project and was provided to the Commission. Ms. Gerber read into the record all correspondence that was received after the meeting packet was distributed.

Representing the applicant were Harry Reed, 16892 Brightling Way, Naples, Florida, and 10092 Third Point Road, Chestertown, Maryland and William Thomas Davis Jr., Professional Engineer, DMS and Associates, 207 E. Water Street, Centreville, Maryland; both were sworn in. Miles Barnard, 10810 Cliff Road, Chestertown, Maryland, was also sworn in.

Mr. Davis stated that they are requesting preliminary and final site plan approval for a tent area. A formal buffer management plan, stormwater management plan, and a sediment and erosion control plan have been submitted. Mr. Davis said while there are a few minor comments to address, agencies have agreed that they have met the Kent County requirements for the plans that were submitted. Mr. Davis said once final approval has been granted, they will submit the required letters of credit for buffer management, stormwater management, and sediment and erosion control.

Mr. Barnard said the applicant is attempting to work through issues and concerns with neighbors on Cliff Road via a “Conditions of Approval” agreement.

Mr. Reed commented that the Manor has been hosting weddings for a number of years. He said they are not asking for a tent site to have weddings. They are asking for a tent site for a more stable surface for the weddings that they do have.

A lengthy discussion ensued pertaining to the correspondence received and with citizens who called into the meeting in opposition due to noise; citizens who called in to testify were sworn in.

Mr. Hickman made a motion to grant preliminary site plan approval based on the following findings:

- The proposal is consistent with strategies and goals of the Comprehensive Plan to retain and promote existing businesses and assist in their growth.
- A country inn has been operating on this site since 1984. The proposed tent area provides an amenity common to other similar inns on large lots. The tent area will provide a permanent, stable base on which tents can be erected, as needed, for weddings or other events. The tent area is located on the south side of the property and is surrounded by existing trees/woodlands.
- A Buffer Enhancement Plan is required for the increase in lot coverage. The total mitigation requirement for this phase is 4,965 square feet. A Buffer Enhancement Plan has been submitted. A mix of trees, shrubs and grasses will be planted in the buffer. Additional landscaping is proposed for the bio-retention area near the tent platform.
- Stormwater and sediment and erosion control plans have been approved. The applicant has submitted a letter from his bank indicating that Letters of Credit will be issued upon project approval.
- The project does not exceed the lot coverage limit of 15%. The total lot coverage after the proposed improvements will be 38,764 square feet, which is 10.5% of the total area.
- Great Oak Manor can accommodate up to 150 people for tented events. The applicant has provided a parking plan showing the availability of 50 spaces on existing lawn areas.
- The property is served by private well and septic. A new well was recently installed. Additional septic reserve area has been shown on the site plan.
- A parking plan has been provided. Sufficient parking is available.
- The applicant provided a sample lease agreement for events which includes a rule that outside music must end by 10:00 pm. Another rule states that vehicles may not block or park on the public roads or shoulders at any time.
- The tent area is an enhancement of the existing use. Great Oak Manor already hosts weddings and other events. The applicant has attempted to integrate tent area into the landscape in a way that is sensitive to the surrounding neighborhood.
- A Citizens Participation meeting was held. There were comments from only one person.

The following conditions will be addressed at final site plan approval:

- An owner, innkeeper, and/or employee must be onsite at all events and make themselves available to staff and/or neighbors.
- Per the contract, a 10:00 p.m. event cut off time will be imposed.
- The applicant must comply with any future County or State noise ordinance.
- The applicant will not seek an exception from any future noise ordinance.
- The tent area will be placed so that musicians and speakers are facing away from Cliff Road residents allowing the existing Manor House to act as a noise barrier.
- Great Oak Manor shall consult with an acoustic consultant.
- Evergreens will be planted on the property line in order to block lights; lighting will be low-impact lighting.

In addition, as part of final site plan review:

- The report prepared by the acoustical consultant on ways to minimize noise leaving the property must be submitted for review by staff and the Planning Commission.
- Staff will research previous applications to determine if limits on the number of events or number of attendees per event was part of previous decisions.

Mr. Ruge seconded the motion; the motion passed with all in favor.

### **21-07 David and Eileen Smack – Special Exception - Adaptive Reuse of Historic Structure**

Mr. Mackey described the proposal.

David and Eileen Smack, sole members of ACED, LLC, are requesting a special exception for an adaptive reuse of a historic structure on their property located at 22622 Handy Point Road. Dr. and Mrs. Smack propose to renovate the existing two-story dwelling into a reservation-only tasting room for their small, “Boutique” winery located on their adjacent 80-acre farm. According to the applicant’s research, the lot upon which the dwelling is located was originally part of the 1658 Great Oak Manor land grant held by one of the most controversial and influential Colonial Governors of the Maryland Colony. This historic farm was subsequently patented and owned for over a century by one of the founding Quaker families of Kent County and the Maryland colony. The structure was originally constructed in the early 1940’s and was remodeled in 2008 to complement the existing period historic features of the circa 1790 Main house on their adjacent farm. The house is not listed on the Maryland Historic Inventory of Properties.

The 1.6-acre property is zoned Resource Conservation District, RCD, and located in the 6th Election District. The property is currently improved with a two-story dwelling. The surrounding area is characterized by agricultural and forested land with sparse residential development. This property is located approximately seven-miles north-west of the Town of Chestertown.

The intent of the special exception provisions is to provide for certain uses with unique characteristics, and the Commission must consider the impact of the uniqueness of these characteristics upon neighboring uses, the surrounding area, and the public need for the particular use at the particular location. Limitations and standards are established by the special exception performance standards.

This application addresses all standards and outlines limitations on its proposed uses onsite. There is a definite uniqueness to the applicant’s site and the historic structure specifically. The use as proposed, in conjunction with the limitations outlined, offers a novel community interface with a valuable historic structure.

Mr. Mackey said the applicant has addressed all specific and general special exception standards and said the Planning Commission is tasked with (a) approving the structure as historically significant, for which the applicant has submitted substantial evidence in the attached report, and (b) making a recommendation to the Board of Appeals on the matter. Mr. Mackey said staff recommends approval conditioned upon site plan approval. Mr. Mackey informed the Commission that the meeting packet includes two letters in support of the project.

David Smack, 22626 Handy Point Road, Chestertown, Maryland, Buck Nickerson, Extreme Measures Surveying, were sworn in.

Dr. Smack said he and his wife have had a hobby winery for about 12 years. He said he is getting ready to retire from his medical career, he loves history, and he feels that this project would be a good fit for him when he retires. Dr. Smack said they currently produce about 100 cases of wine per year; they have a wine tasting room by reservation only; and the product will be mainly for sales to restaurants and licensed resellers. He said by virtue of his MALPF approval, they are not permitted to have weddings or large events, and they do not have anyone nearby, so he does not believe that what he is proposing will have much of an impact on the neighborhood.

Mr. Nickerson commented that the Health Department typically requires a 10,000 square foot septic area and via his setback calculations, he does not believe there will be any issues for the Health Department for providing an adequate area for the septic reserve area.

Mr. Hickman made a motion to send a favorable recommendation to the Board of Appeals based on the following findings:

- The applicant has provided significant research on the history of the property and provides the context for the adaptive reuse; and the Comprehensive Plan addresses that we seek to use adaptive reuses.
- The applicant intends to preserve the history of the property and no alternations to the building.
- The aerial of the property identifies existing forest on the east portion of the property along the water. Landscaping is in keeping with the character of the building.
- The applicant proposes access to the site from the existing driveway on Handy Point Road; The proposed use will have minimal impact on traffic; no vegetation will be removed; and the proposed tasting room will be located in the interior of the existing house.
- The number of dwellings does not exceed the density permitted in the Resource Conservation District.
- The proposed use does not create an unacceptable impact by way of noise, odor, noxious materials, or other nuisances.
- The surrounding area is characterized by sparse residential development and is surrounded by both agricultural and forested land.
- This property is located approximately seven miles north-west of the Town of Chestertown where the closest churches, schools, and places of public gathering are located.
- The site is served by private well and septic. The Kent County Health Department provided the following comment: An adequate sewage reserve area will need to be established for the proposed use.
- The Comprehensive Plan and the Ordinance encourage the preservation of historic structures. The full scope of the proposal of the uses onsite has been described, identified, and limited by the applicant in the narrative.
- The applicant has outlined use of the property which is specific and clearly defined which should not have a negative impact on property values.
- The proposed use is considered agriculture and will be conducted within the interior of the existing structure. No additions or additional lot coverage will be added.
- The proposal is consistent with many Comprehensive Plan strategies concerning preservation of historic structures.
- Areas of vehicular flow are clearly identified.
- The property provides sufficient parking.
- The use places reasonable demands on public services and infrastructure.
- The proposed use will be conducted within an existing historic structure thereby protecting abutting properties from any undue disturbance caused by excessive or unreasonable noise, smoke, vapor fumes, dust, odors, glare, stormwater runoff, etc.
- No tree or vegetation removal is proposed, and adequate screening currently exists.

Mr. Sutton seconded the motion; the motion passed with all in favor.

## **STAFF REPORTS**

Mr. Mackey:

- Mr. Mackey explained how the DPHZ is currently being restructured, and he congratulated Carla Gerber on her promotion to Deputy Director.
- Mr. Mackey informed the Commission that local ads are being placed in an attempt to fill the Planning Specialist position. This position usually serves as the Clerk for the Planning Commission.
- In response to inquiry by the Commissioners, Mr. Mackey conveyed that there is a steady stream of applicants interested in serving on the boards. He said he intends to approach the County Commissioners in the near future with the list for filling the vacancy on the Planning Commission.

**DRAFT**

- Mr. Mackey thanked the Chair for reminding him about the Maryland Planning Commission Association. He suggested that at the next meeting the Planning Commission may wish to discuss who would be a good candidate to represent the Commission and interface with that organization.

Carla Gerber:

- The department is in the midst of its MALPF easement application cycle.
- We have reviewed many building permits; and, we have been answering many calls from people looking for property in the County.
- Ms. Gerber said she is working on many items pertaining to the Task Force.
- The audio recordings for the Planning Commission meetings are now posted online, and the recordings for other DPHZ-staffed boards will also soon be posted online .

Ms. McCann:

- There were no legal issues that required reporting.

## **ADJOURN**

There being no further business for the good of the organization, the meeting adjourned at 3:59 p.m.

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Kim Kohl, Chairman

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Sandy Adams, Clerk



## PRELIMINARY STAFF REPORT

TO: Kent County Planning Commission  
SUBJECT: Strong Associates, II L.P – Critical Area Buffer Variance  
#21-11  
DATE: April 29, 2021

### DESCRIPTION OF PROPOSAL

Mr. Robert Strong, representative and co-owner of Strong Associates, II L.P., is requesting a variance to the Critical Area buffer standards in order to replace and slightly expand an existing cottage. The cottage is entirely within the Critical Area buffer and sits 40.4 feet from the mean high-water line. The proposed expansion is a widening of the foundation to align the exterior walls of the northern most section with the middle section of the cottage. The cottage was placed on the property in 1967 and consists of three smaller structures that were joined together when they were relocated from Eastern Neck Island by the applicant's father.

The 107-acre property is located on Eastern Neck Road, adjacent to Church Creek in the Fifth Election District and is zoned Resource Conservation District (RCD). The parcel is predominantly devoted to agriculture but consists of a primary dwelling and accessory storage structures outside of the buffer with a driveway leading to two cottages within the 100-foot buffer. Both cottages are also in the 1-percent annual chance (100-year) floodplain. The replacement and expansion are proposed for the cottage to the north. The surrounding area is zoned Resource Conservation District and Agricultural Zoning District.

### APPLICABLE LAWS

#### I. Yard Requirements

- A. *Comprehensive Plan*: “Insure that all new development or redevelopment meets a high standard of planning, workmanship, and design.” (Page 31)
- B. *Applicable Law*: Article V, Section 2.5 of the *Kent County Land Use Ordinance* establishes the density, height, width, bulk, and fence requirements for the Resource Conservation District.

Front	50 ft
Side	15 ft
Rear	30 ft
Waterfront	Minimum 100-foot buffer

- C. *Staff and TAC Comments*. The applicant proposes to replace and slightly expand an existing cottage. According to the site plan, at its closest point, the existing structure sits 40.4 feet from the mean high-water line of Church Creek. The proposed widening of the foundation will be approximately 49.8 feet from the mean high-water line. The granting of a buffer variance is required in order to replace the cottage and widen the foundation. The cottage meets the side and rear setback requirements.

#### II. Buffer Requirements

- A. *Comprehensive Plan*: “Maintain, enforce, and if necessary, strengthen existing regulations for floodplains and buffers.” (Page 86)
- B. *Applicable Law*: Article V, Section 2.7.B.3 of the *Kent County Land Use Ordinance* addresses development in the buffer:

- a. Development in the Buffer
  - i. *Development activities*, including *structures*, *roads*, parking areas, and other *impervious surfaces*, mining, and related activities, or septic systems shall not be permitted within the minimum 100-foot *buffer*. This restriction does not apply to water-dependent facilities that meet the criteria set forth below.

Development activity is defined as “the construction or substantial alteration of residential, commercial, industrial, institutional or transportation facilities or structures.”

- C. *Staff and TAC Comments*: Development activity of this nature is not permitted in the buffer; therefore, the applicants have applied for a buffer variance to replace the cottage.

### III. Variance

- A. *Applicable Law*: Article IX Section 2.2 of the Kent County Land Use Ordinance authorizes the Board of Appeals to grant variances from the yard (front, side, or rear), height, bulk, parking, loading, shoreline cliff, 15% slope, pier length, impervious surface, stream protection corridor, and buffer requirements so as to relieve practical difficulties or other injustices arising out of the strict application of the provisions of this Ordinance.

Such granting of a variance shall comply, as nearly as possible, in every respect to the spirit, intent, and purpose of this Ordinance; it being the purpose of this provision to authorize the granting of variation only for reasons of demonstrable practical difficulties as distinguished from variations sought for purposes or reasons of convenience, profit, or caprice.

In the Critical Area, for a variance of 15% slope, impervious surface, or buffer requirements, it being the purpose of this provision to authorize the granting of variation only for reasons of demonstrable and exceptional unwarranted hardship as distinguished from variations sought by applicants for purposes or reasons of convenience, profit, or caprice.

In order to grant a *variance*, the Board of Appeals must find all of the following:

- a. That the *variance* will not cause a substantial detriment to adjacent or neighboring property.
- b. That the *variance* will not change the character of the neighborhood or district.
- c. That the *variance* is consistent with the *Comprehensive Plan* and the general intent of this Ordinance.
- d. That the practical difficulty or other injustice was caused by the following:
  - i. Some unusual characteristic of size or shape of the property.
  - ii. Extraordinary topographical or other condition of the property.
  - iii. The use or *development* of property immediately adjacent to the property, except that this criterion shall not apply in the *Critical Area*.
- e. That the practical difficulty or other injustice was not caused by the applicant’s own actions.
- f. That within the *Critical Area* for *variances* of 15% *slope*, *impervious surface*, or *buffer* requirements:
  - i. The granting of a *variance* will be in harmony with the general spirit and intent of the *Critical Area Law* and the *regulations* adopted by Kent County

- ii. That the granting of a *variance* will not adversely affect water quality or adversely impact fish, wildlife, or *plant habitat*.
- iii. That the application for a *variance* will be made in writing with a copy provided to the *Critical Area* Commission.
- iv. That the strict application of the Ordinance would produce an *unwarranted hardship*.
- v. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity.
- vi. The authorization of such *variance* will not be a substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the *variance*.
- vii. That a literal interpretation of this Ordinance deprives the applicant of rights commonly enjoyed by other properties in similar areas within the *Critical Area* of Kent County.
- viii. That the granting of a *variance* will not confer upon an applicant any special privilege that would be denied by this Ordinance to other lands or *structures*.
- ix. Due to special features of a site, or special conditions or circumstances peculiar to the applicant's land or *structure*, a literal enforcement of this Ordinance would result in *unwarranted hardship* to the applicant.
- x. The Board of Appeals finds that the applicant has satisfied each one of the *variance* provisions.
- xi. Without the *variance*, the applicant would be deprived of a use of land or a *structure* permitted to others in accordance with the provisions of the critical area program.
- g. In considering an application for a *variance*, the Board shall consider the reasonable use of the entire parcel or lot for which the *variance* is requested.
- h. In considering an application for a *variance*, the Board of Appeals shall presume 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 Ordinance and the Critical Area Law.
- i. The Board may consider the cause of the *variance* request and if the *variance* request is the result of actions by the applicant, including the commencement of *development* activity before an application for a *variance* has been filed.

B. *Staff and TAC Comments:* The granting of the variance will not cause a substantial detriment to adjacent or neighboring properties nor will it change the character of the district. The character of the surrounding area consists mostly of land in agricultural production with single-family dwellings. The cottage was placed in its current location prior to the adoption of the Critical Area Program.

The Comprehensive Plan encourages the protection of the buffer, as well as promotion and support of the agricultural industry in order to secure its future in the County. Although removal of the cottage from the buffer may provide minimal improvement to water quality, rebuilding the cottage outside of the buffer may also negatively affect agricultural production on this farm.

Per documentation submitted by the applicant, the cottage was damaged by Tropical Storm Isabel; however, the extent of the damage was not realized until recently when some of the siding was removed. Extensive damage from mold and insects was discovered which has resulted in the need to demolish the cottage rather than renovate it.

It is not uncommon in this neighborhood that dwellings are located within the Critical Area Buffer. In that regard, granting of a variance for this type of construction would not confer upon the applicant any special privileges that would be denied by the Ordinance to other lands or structures. The applicant also enjoys reasonable use of the property in that there is an existing principal dwelling and another recently renovated cottage onsite and there may be alternative locations outside of the buffer to construct the proposed replacement dwelling.

The request for the variance has not been caused by the applicants' own actions. The dwelling was in existence prior to the Critical Area Program, and construction has not begun.

### **STAFF RECOMMENDATION**

The existing cottage is a nonconforming use and structure that the applicant is voluntarily removing. Past interpretation of Article VIII, Nonconformities, has not allowed for the in-kind replacement of nonconforming structures or uses unless a variance is granted. However, the Critical Area Law does not require a buffer variance for in-kind replacement, which is defined as "the removal of a structure and the construction of another structure that is smaller than or identical to the original in use, footprint area, width, and length." The Critical Area Law does require a variance for the expansion of the foundation to align the exterior walls. In its letter, the Critical Area Commission staff note that in order to grant the variance, the Board of Appeals will need to make findings that the variance meets every variance standard listed above.

Strong Associates II, LP  
Buffer Variance



Source: Kent County Department of Planning, Housing, and Zoning.  
Aerial taken Spring 2019. Map prepared April 2021.

1 inch = 500 feet

Strong Associates II, LP  
Buffer Variance



Source: Kent County Department of Planning, Housing, and Zoning.  
Aerial taken Spring 2019. Map prepared April 2021.

1 inch = 100 feet

BOARD OF APPEALS APPLICATION

Kent County Department of Planning, Housing and Zoning

Kent County Government Center
400 High Street • Chestertown, MD 21620
410-778-7475 (phone) • 410-810-2932 (fax)

IN THE MATTER OF THE APPLICATION OF:
(Name, Address and Telephone Number of Applicant)

Strong Associates II
2959 Eastern Neck Rd.

Rock Hall MD. 21661
410 708 7820

Email: rhstrongjr@yahoo.com

For Office Use Only:
Case Number/Date Filed: 21-11
Filed by:
Applicant:
Planning Commission:
Date of Hearing:
Parties Notified:
Notice in Paper:
Property Posted:

TO THE KENT COUNTY BOARD OF APPEALS: In accordance with Article Section
of the Kent County Zoning Ordinance, as amended, request is hereby made for:

Appealing Decision of Kent County Zoning Administrator x Variance
Special Exception Non-conforming Use

DESCRIPTION OF PROPERTY INVOLVED:

Located on: (Name of Road, etc.) Eastern Neck Rd.

In the 5th Election District of Kent County.

Size of lot or parcel of Land: 107 acres
Map: 58 Parcel: 0006 Lot #: Deed Ref: 223/340

List buildings already on property: 2981:main hse,w/corn cr.,2 garages,stor.shed; 2959 adj.
cottage w/ small shed, 2967 subject prop.

If subdivision, indicate lot and block number: n/a

If there is a homeowners association, give name and address of association: n/a

PRESENT ZONING OF PROPERTY: RCD

DESCRIPTION OF RELIEF REQUESTED: (List here in detail what you wish to do with property that requires
the Appeal Hearing.)remove ex. cott. keep foundation,keep to one-story, 16"-18" on
south side of cottage/requested to be widened:see Page 2 highlight

If appealing decision of Zoning Administrator, list date of their decision: n/a

Present owner(s) of property: Strong Associates II Telephone: 410 708 7820

If Applicant is not owner, please indicate your interest in this property: Partner/Manager

Has property involved ever been subject to a previous application? yes 10/04/2019

If so, please give Application Number and Date: 1950 Buffer Vov. ;



PLEASE FILL IN BELOW, OR ATTACH HERETO, A SKETCH OF THIS PROPERTY.  
List all property measurements and dimensions of any buildings already on the property.

Put distances between present buildings or proposed buildings and property lines.

**NAMES OF ADJOINING PROPERTY OWNERS:**

Owner(s) on the North: Charles Wojciehowski and Alton Farm

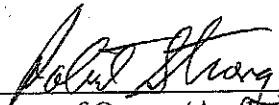
Owner(s) on the South: Robert D. Ford

Owner(s) to the East: N/A

Owner(s) to the West: Strong Associates I Ernest Strong & James Strong

Homeowners Association, name and address, if applicable: N/A

**BY SIGNING THIS APPLICATION I GRANT MEMBERS AND ALTERNATE OF THE BOARD OF ZONING APPEALS THE RIGHT TO ENTER ONTO THE PROPERTY FOR THE PURPOSE OF VIEWING THE SITE OF THE APPLICATION OR APPEAL.**

  
\_\_\_\_\_  
Signature of Owner/Applicant/Agent or Attorney

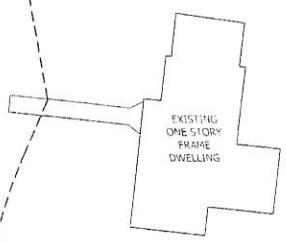
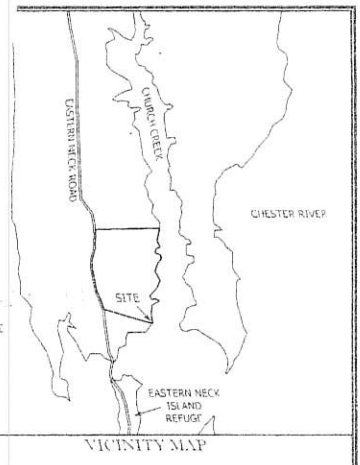
March 24, 2021  
Date

Please file this form at 400 High Street, Chestertown, MD 21620 accompanied by **\$350.00** filing fee made payable to the Board of Appeals. If you have any questions, contact Clerk at 410-778-7467.

**NOTICE: Neither the Board of Appeals or the Planning Office is required to make out this Application. Application should be filled in by applicant or its agent. If the Planning Office assists you, they cannot be held responsible for its contents.**

**Applicants arriving more than 10 minutes after the scheduled hearing will not be heard and will be re-scheduled at the applicant's expense.**





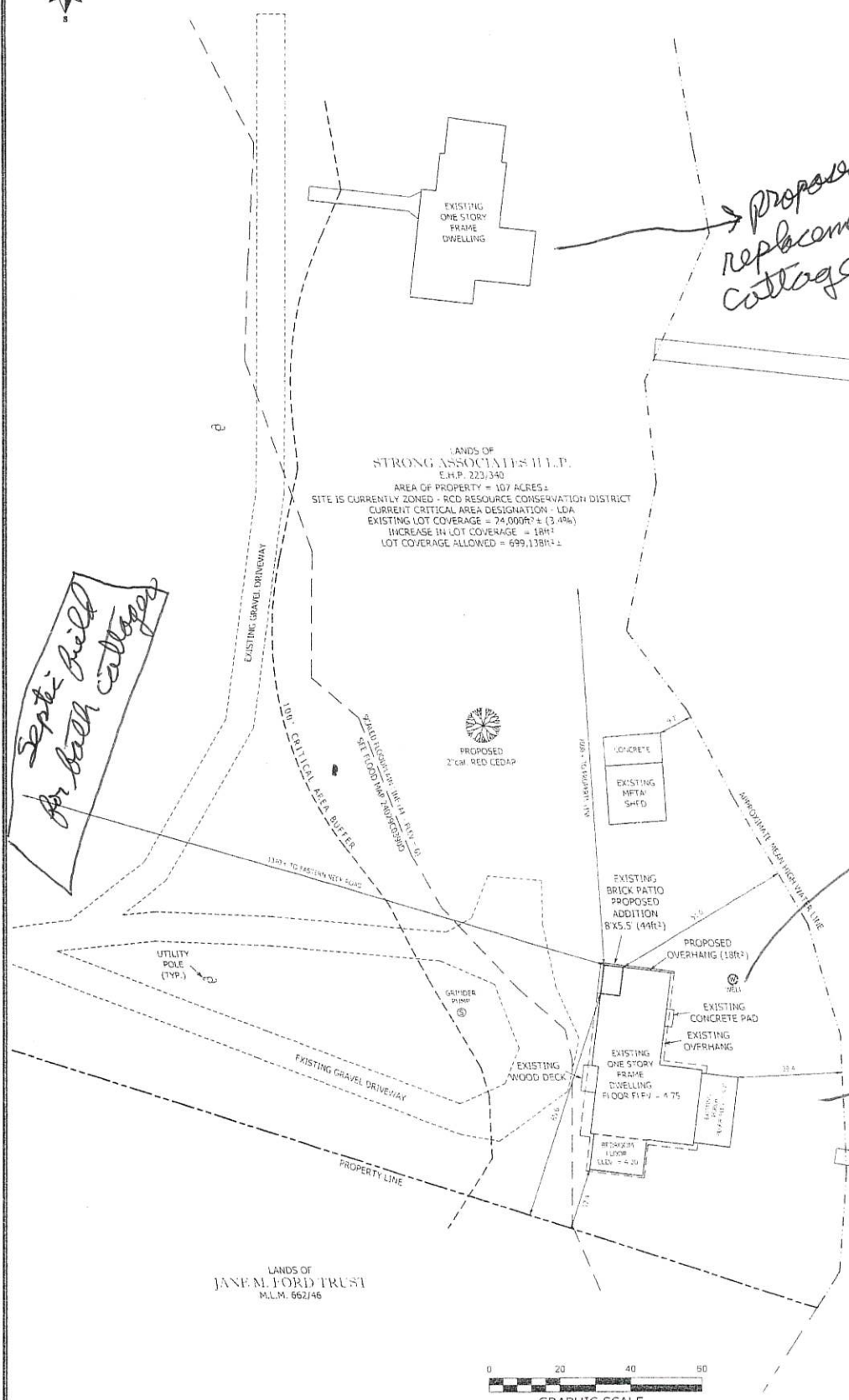
*Proposed replacement Cottage*

LANDS OF STRONG ASSOCIATES II L.P.  
E.H.P. 223,340  
AREA OF PROPERTY = 107 ACRES ±  
SITE IS CURRENTLY ZONED - RCD RESOURCE CONSERVATION DISTRICT  
CURRENT CRITICAL AREA DESIGNATION - LDA  
EXISTING LOT COVERAGE = 74,000SF ± (3.4%)  
INCREASE IN LOT COVERAGE = 18%  
LOT COVERAGE ALLOWED = 699,138SF ±

*Septic field for both cottages*

*well serves both properties*

*Cottage renovated 2019/2020*



DEPARTMENT OF PLANNING, HOUSING & ZONING  
RECEIVED 3/24/21

SITE PLAN  
OF THE LANDS OF  
**STRONG ASSOCIATES II L.P.**  
FIFTH ELECTION DISTRICT, KENT COUNTY, MARYLAND  
PREPARED FOR: ROBERT H. STRONG, JR.  
TAX MAP 58, PARCEL 6

SCALE	1" = 20'
DRAWN BY	RAM
DATE	9-21-19
JOB NO.	519
DESCRIPTION	

**EXTREME MEASURES**  
LAND SURVEYORS  
1 The Meadows, MD 21629 PHONE 410 728 0117  
www.extrememeasuresllc.com

OWNERS: Robert Strong & Julia Strong

To Address the relevant sub sections of Art. IX section 2.2.3 as follows:

- a. That the variance will not cause a substantial detriment to neighboring properties.  
The only neighboring property within one-half mile is the Ford property located within 250' of the subject cottage on the south side. Our cottage has been rented to summer guests and gunners since the late 60's. Your applicant does not foresee a great increase in traffic should the variance be granted and the upgrade requested be approved.
- b. The variance will not change the character of the neighborhood in any substantial respect. Since the late 60's when this three-part cottage was moved from the Eastern Neck Wildlife Refuge, the cottage has been used for sporadic rental, more by gunners (oct-jan) than Summer/Crabbing guests.
- c. The requested variance is consistent with the Comprehensive Plan in that water resources will be enhanced by the installation of a new septic treatment system based on Best Available Technology. The rural, agriculture and open ambience will not be affected or degraded.
- d. The practical difficulty in lifting the three-joined sections of the cottage in their present flood damaged state may well be impossible without destroying the structural strength and integrity of the cottage. The unusual characteristic as set forth in the Ordinance, concerns the original joining of three separate buildings. This salvage effort, performed by our Dad, Robert Strong, Sr., was itself an effort to clear the recently purchased Wildlife Refuge of as many structures as the Federal Government decided to clear. (nearly all) This was an effort to clear land so wildlife could occupy the island as their refuge. Our Dad was one of the forward thinking people in this area who could see the benefit of a wildlife refuge and worked with the U.S. Fish and Wildlife to make it all happen. Regrettably, he may not have foreseen that one day a new law authority and agency might attempt to stop his children from repairing and improving the cottage.  
The two 16" expansion areas on the east and west sides of the northern section of the structure is simply to allow the two northerly most sections of the cottage to align for a safe even foundation. This will also allow a bedroom and bathroom in the north section to be wide enough for handicap access.
- e. The practical difficulties as described above were not caused by the applicant as the cottage was moved and co-joined in (circa) 1967, best of my recollection. Plus the flood damage and resulting deterioration was not caused by your applicant. Some of the flood damage was addressed in '03 after the flood. Unfortunately, much of the damage was in the floor structure which was not known or addressed. The mold and rot now being quite extensive. THE TRUE EXTENT AS DEPICTED IN APPLICANTS PHOTO EXHIBITS WAS FULLY REALIZED IN FEBRUARY 2021 WHEN THE ANCIENT TEXTURE T1-11 SIDING WAS REMOVED AND THE DAMAGE EXPOSED.

DEPARTMENT OF  
PLANNING, HOUSING & ZONING  
RECEIVED 4/21/2021

f. Critical Area for Variance, impervious surface and buffer.

i. The applicant proposes to impinge upon the pervious yard area around the north structure approximately 34 sq feet.(2 areas 16"x10' 6") Your applicant understands that mitigation will be required by the County in the form of plantings of trees or approved shrubbery.

ii. There will be no adverse effect of water quality. The upgrade in the septic system will, if approved by the Health Dept., provide enhanced clean water for decades.

iii. Copy to Critical Areas,

iv. Unwarranted Hardship. The Strict application of the Ordinance would force the applicant to attempt to refurbish (improve more than 50% value) and raise the structure out of flood plain. If the structures fail to withstand the stress of lifting, which my experts predict, your applicant will lose a valuable cottage which guests and invitees have enjoyed for decades. It will be lost and demolished.

If the applicant is forced to relocate the cottage out of the buffer and into the agriculture field, valuable productive land will be lost. Agricultural land in this country is witnessing a crisis in the loss of a valuable commodity—they aint making any more of it! Your applicant verily believes every inch will be needed to feed future generations.

v. No other property in this area shares the specific characteristics of this 3-part structure. The cottage refurbished last year by your applicant and located within 200' of the subject property is on higher ground and did not sustain permanent damage during the hurricane/Isabel flood. Also the Ford cottage, itself within 300' of the subject property is on high ground and did not suffer flood damage.

The full extent of the flood damage was not known nor could it have been discovered by due diligence, until Feb. 2021 when the texture T1-11 siding was removed exposing the rot, mold, mildew and insect damage. Your applicant attributes this dilatory effect to the soaking flood damage of the Hurricane.

vi. The authorization to the requested variance will only have a positive effect on the neighborhood. The present dilapidated eye sore will be lifted above flood plain and replaced with a new, clean and aesthetically pleasing appearance. The one neighbor who can see the cottage should be able to enjoy the improvement and your applicant can not foresee any objection from the neighbors.

vii. Persons living in this neighborhood and within the Critical Area are permitted to enhance, protect and maintain their homes and buildings. As advances are made in modern and more efficient and economical hvac and plumbing and heating systems owners are permitted to upgrade. THE PRESENT STRUCTURE NEEDS TO BE REPLACED IN ITS ENTIRETY. It is a small cottage, less than 1000 sq ft. To attempt to rebuild and strengthen with new plate, studs and rafters will be more than a mere hardship; it could be more than this old boy, even a Strong, can manage.

viii There is no special privilege requested, only to replace with a safe and sound structure. It will only house 2-4 people with two bedrooms and two bathrooms

ix. The special feature of this structure is its 3-part co-joined sections as show no Exhibit I and II. To attempt to raise them as-is will practically require their being separated and raised as three separate buildings and then lowered and rejoined. The footings and foundation which need work will be especially challenging if the three sections are to be set back securely and level with each other. THE UNWARRANTED HARDSHIP IS DUE TO THE LOW LEVEL OF THE STRUCTURES AND THE THREE ORIGINAL SEPARATE BUILDINGS.

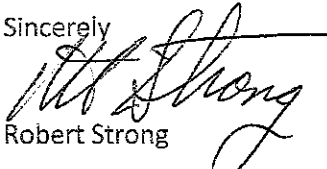
We are requesting to allow a new building with integral strength be placed on the same footprint(with the 16" pieces added). Allow the foundation to be aligned. Thereby ending up with a safe, clean, solid, no mold, living space.

x. Board of Appeals findings.

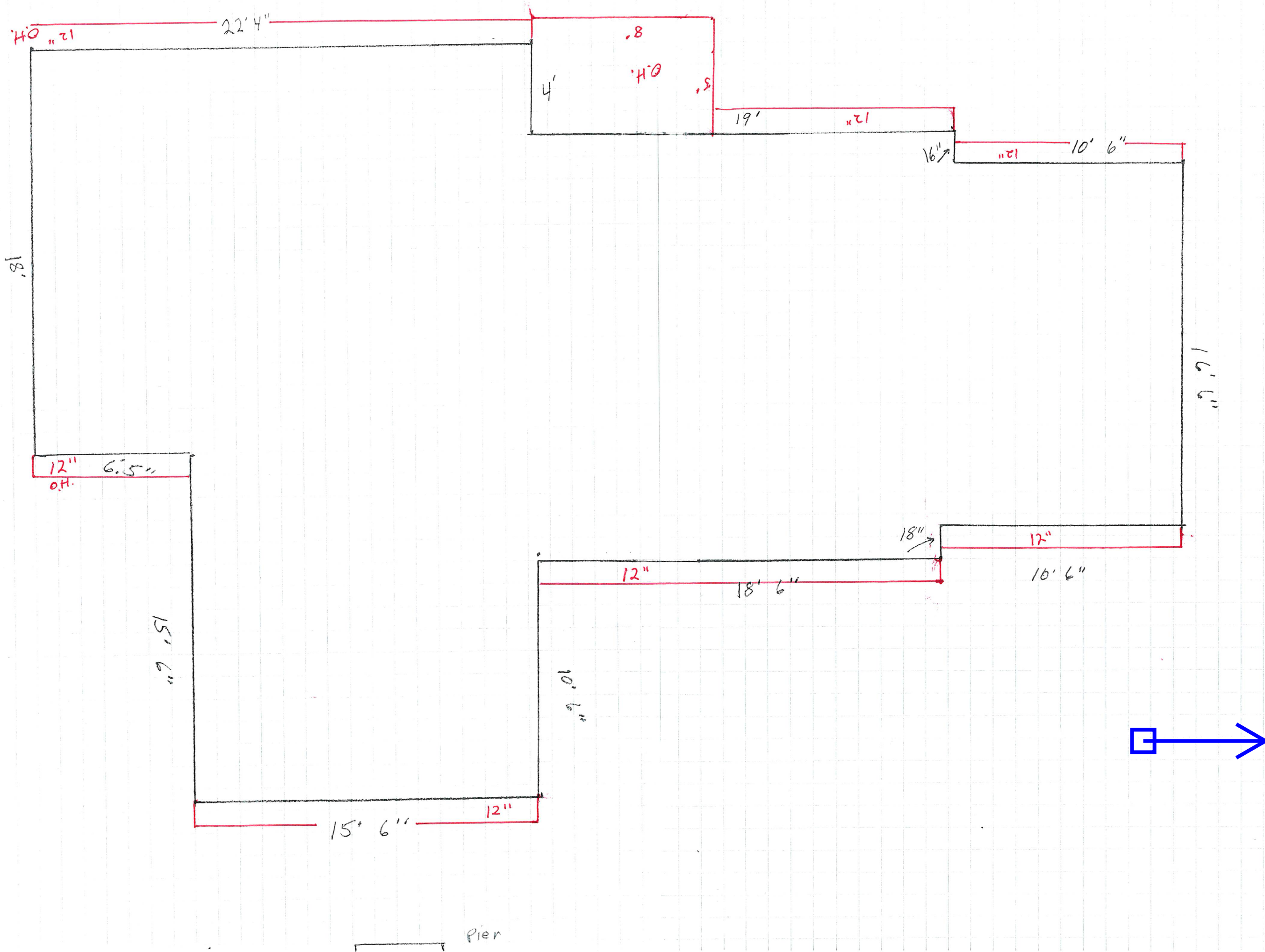
xi. Without the variance the applicants will be deprived of a cottage which has been utilized by our family since 1967. Other properties too numerous to cite in the county have been allowed to upgrade their property in order to continue a service to the community. Guests who stay at this cottage bring needed revenue to the family as well as the community as a whole. Not to mention the tax revenue that supports us all. They use this cottage, enjoy it, pay in many ways, and leave for their homes after having enjoyed the scenic beauty of the EasternNeck Island Wildlife Refuge as well as other points of interest. The impact on the environment is minimal and the benefit is worth the granting of the variance.

g. The reasonable use of the entire land, which is of major concern to your applicant, is that the prime agricultural land remain a productive farm. Statistics will be provided at the hearing to support our position that Ag. Land is disappearing at an alarming rate in this country. With explosive increase in world population we are left with the inescapable conclusion that every inch of productive farm land must be preserved. The most fertile land on Overton farm is immediately adjacent and to the west of our proposed variance. We will not give it up.

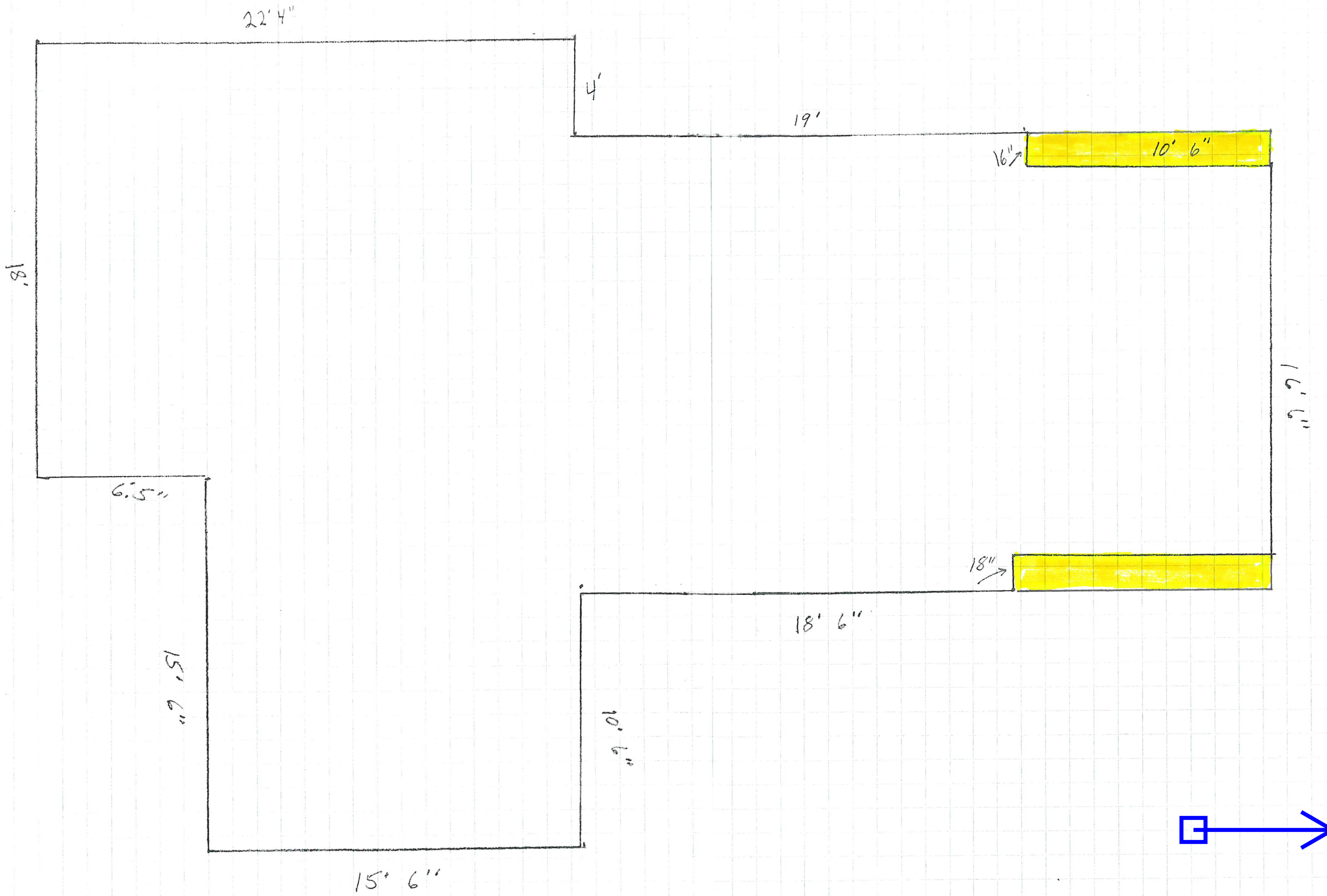
Sincerely

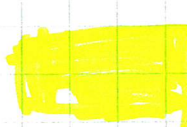


Robert Strong

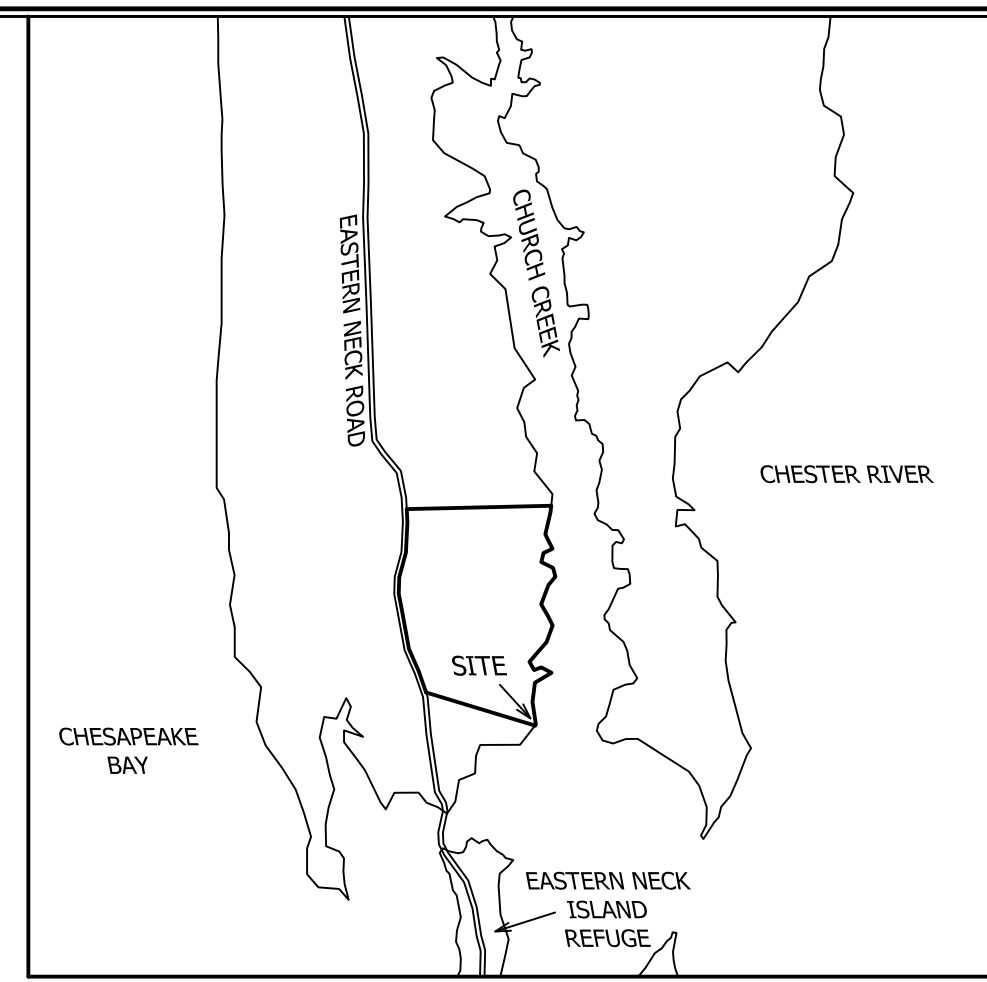
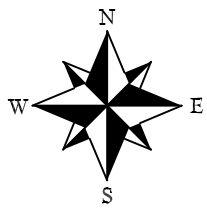


Red: overhang  
BLACK - perim  
eter of  
house

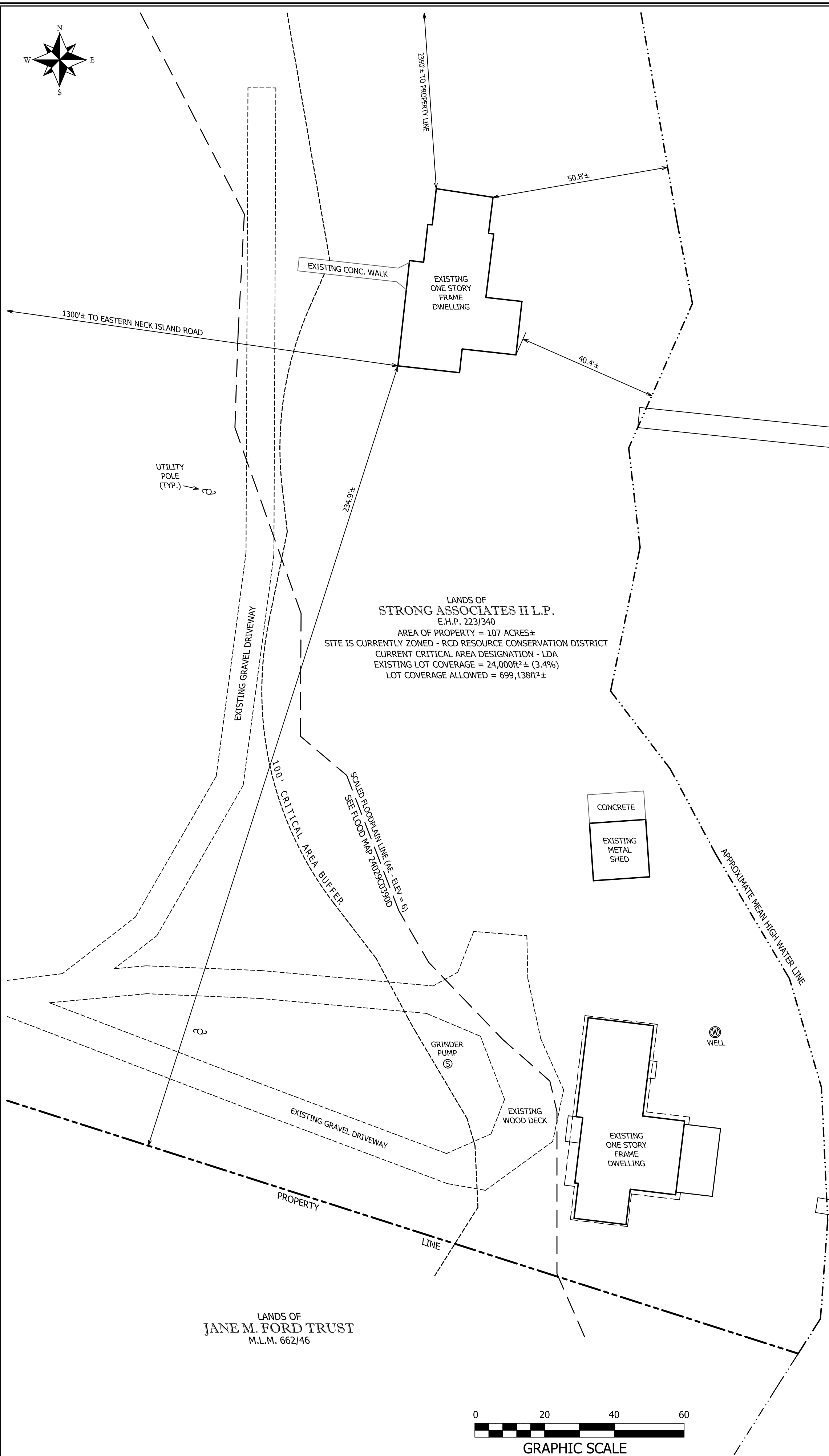


 Requested extension of Foundation

 Pier



VICINITY MAP



LANDS OF  
**STRONG ASSOCIATES II L.P.**  
 E.H.P. 223/340  
 AREA OF PROPERTY = 107 ACRES±  
 SITE IS CURRENTLY ZONED - RCD RESOURCE CONSERVATION DISTRICT  
 CURRENT CRITICAL AREA DESIGNATION - LDA  
 EXISTING LOT COVERAGE = 24,000ft<sup>2</sup>± (3.4%)  
 LOT COVERAGE ALLOWED = 699,138ft<sup>2</sup>±

LANDS OF  
**JANE M. FORD TRUST**  
 M.L.M. 662/46



GRAPHIC SCALE

EXISTING CONDITIONS  
 OF THE LANDS OF  
**STRONG ASSOCIATES II L.P.**  
 FIFTH ELECTION DISTRICT, KENT COUNTY, MARYLAND  
 PREPARED FOR: ROBERT H. STRONG Jr.  
 TAX MAP 58 PARCEL 6

SCALE  
 1"=20'  
 DRAWN BY  
 WJE  
 DATE  
 3/23/21  
 JOB NO.  
 318B  
 REVISIONS

**EXTREME MEASURES**  
 LAND SURVEYORS  
 Chestertown, MD 21620 PHONE 410-778-0147  
 www.extrememeasuresllc.com



Larry Hogan  
*Governor*  
Boyd K. Rutherford  
*Lt. Governor*

Charles C. Deegan  
*Chairman*  
Katherine Charbonneau  
*Executive Director*

**STATE OF MARYLAND  
CRITICAL AREA COMMISSION  
CHESAPEAKE AND ATLANTIC COASTAL BAYS**

1804 West Street, Suite 100, Annapolis, Maryland 21401  
(410) 260-3460 Fax: (410) 974-5338  
[dnr.maryland.gov/criticalarea/](http://dnr.maryland.gov/criticalarea/)

April 26, 2021

Ms. Carla Gerber  
Kent County  
Department of Planning, Housing, and Zoning  
400 High Street  
Chestertown, Maryland 21620

Re: **Local Case No. 21-11  
Strong Variance  
2967 Eastern Neck Road, Rock Hall  
Tax Map 58, Parcel 6**

Dear Ms. Gerber:

Thank you for providing information on the above-referenced variance request. The applicant requests a variance in order to replace an existing cottage within the 100-foot Buffer. The 107-acre waterfront property is designated as a Resource Conservation Area (RCA) and is used for agricultural purposes. The site is improved with a single-family dwelling, driveway and accessory structures located outside of the Buffer, with a driveway and two cottages within the Buffer. The applicant proposes the in-kind replacement of the dwelling, with an additional 51 square feet of lot coverage to align the exterior walls of the cottage. The applicant proposes 1,380 square feet of Buffer disturbance for the cottage replacement. No vegetation removal is proposed.

Based on the information provided, Commission staff have the following comments:

1. Application materials indicate that the applicant wishes to reconstruct the cottage in the original location within the Buffer in order to utilize the existing foundation, and so as not to remove any land from agricultural production.
2. In order to grant this variance request, the Board must find that the proposed variance meets each and every variance standard as outlined in COMAR 27.01.12 and the Kent County Land Use Ordinance, Article IX, Section 2.2. Should the Board find that the variance request meets the required standards, mitigation must be provided at a 3:1 ratio. Required mitigation plantings should be located in the Buffer between the shoreline and the dwelling to provide maximum water quality benefits. Mitigation plantings may be delayed if the Buffer is in agricultural production provided that the property owner has a bona-fide farm plan.



Thank you for the opportunity to review and provide comments. Please include this letter in your file and submit it as part of the record for the variance. Please notify the Commission of the decision made in this case. If you have any questions, please contact me at (410) 260-3479.

Sincerely,

A handwritten signature in cursive script that reads "Alexandra DeWeese".

Alexandra DeWeese  
Natural Resources Planner

File: KC 117-21

## PRELIMINARY STAFF REPORT

**TO:** Kent County Planning Commission  
**SUBJECT:** James Peary  
#21-12, Setback Variance and Forest Clearing Variance  
**DATE:** April 29, 2021

### DESCRIPTION OF PROPOSAL

James Peary is requesting a 2-foot variance from the required 50-foot front setback requirement and 2.5-foot variance from the 30-foot rear setback requirement in order to construct a new single-family dwelling. Mr. Peary also needs a variance to clear more than 30% of the woody vegetation on the entirely wooded 12,000 square foot lot. The parcel is located at the corner of North Bayview Drive and Vermont Avenue in Tolchester Estates in the 6<sup>th</sup> Election District and is zoned Critical Area Residential (CAR). The surrounding area is characterized by residential development.

### RELEVANT ISSUES

#### I. Area, Height, Width and Yard Requirements

A. *Applicable Law:* Article V, Section 5.5 of the Kent County Land Use Ordinance requires the minimum yard:

Front	50 ft
Side	15 ft
Rear	30 ft
Waterfront	Minimum 100 ft buffer

B. *Staff and TAC Comments:* The applicant is requesting a variance of 2 feet from the required 50-foot front setback requirement to construct a two-story screened deck onto a proposed single-family dwelling. The applicant also needs a variance of 2.5 feet from the 30-foot rear setback requirement to accommodate bilco doors that provide access to a partial basement. The 100-foot by 120-foot parcel is a corner lot and N. Bayview Drive is considered the front yard. The proposed driveway will be located on Vermont Avenue.

#### II. Forest Clearing

A. *Applicable Law:* Article V, Section 5.7.B.4 of the Kent County Land Use Ordinance establishes the Forest requirements.

##### 4. *Forest*

- a. A forestry management plan prepared by a registered forester and approved by the Maryland Department of Natural Resources shall be required when developing forested lands.
- b. *Forest* shall be replaced on an acre by acre basis, but no more than 20% of any *forest* or *developed woodlands* shall be removed unless by prior agreement with the *Planning Commission*, the *developer* agrees to afforest on the following basis: a *developer* may clear or develop more *forest* than otherwise may be permitted if the total *forest* removed is not increased by more than 50% of the area permitted to be disturbed provided that the afforested area consists of 1.5 times the total surface acreage of the disturbed *forest* or *developed woodlands* or both. For example, in a 100 acre woodland, up to 30 acres may be cleared if the *developer* agrees to afforest (not necessarily on his own property) 45 acres of currently unforested land.
- c. Replacement trees shall be of a species similar to that which was removed or a species appropriate to the replanting *site*.

- d. *Forest or developed woodlands* that remain after development shall be maintained through recorded restrictive covenants, *easements*, or similar instruments.
- e. Sediment, erosion and grading permits shall be required before forest or developed woodlands are cleared. *Forest* cleared prior to obtaining permits or that exceeds the maximum area allowed shall be replanted at three times the acreage of the cleared *forest*.
- f. If the acreage of the *site* limits the application of *reforestation* requirements *forest* may be created on other lands in the *Critical Area* including County lands, or a fee in an amount determined by the Maryland Department of Natural Resources to be the equivalent to the value of the required *forest* may be paid to the County Commissioners of Kent County. These funds shall be placed in a dedicated fund used to ensure the restoration or establishment of an equivalent *forest* area, in the *Critical Area* or riparian areas.
- g. After *development*, the *site* shall be planted to provide a *forest or developed woodlands* cover of at least 20%.

B. *Staff and TAC Comments*: The parcel is only 12,000 square feet and is entirely wooded. The applicant has tried to minimize the footprint of the dwelling and the area that needs to be cleared; however, he cannot stay under 30%. He is requesting approval to clear 4,687.6 square feet or 39% of the parcel. He will mitigate for as much of the clearing as is possible by planting canopy trees where there are existing holes in the canopy as well as understory trees and shrubs to enhance the existing forest on site.

### III. Variance

A. *Applicable Law*: Article IX Section 2.2 of the Kent County Land Use Ordinance authorizes the Board of Appeals to grant variances from the yard (front, side, or rear), height, bulk, parking, loading, shoreline cliff, 15% slope, pier length, impervious surface, stream protection corridor, and buffer requirements so as to relieve practical difficulties or other injustices arising out of the strict application of the provisions of this Ordinance.

Such granting of a variance shall comply, as nearly as possible, in every respect to the spirit, intent, and purpose of this Ordinance; it being the purpose of this provision to authorize the granting of variation only for reasons of demonstrable practical difficulties as distinguished from variations sought for purposes or reasons of convenience, profit, or caprice.

In the Critical Area, for a variance of 15% slope, impervious surface, or buffer requirements, it being the purpose of this provision to authorize the granting of variation only for reasons of demonstrable and exceptional unwarranted hardship as distinguished from variations sought by applicants for purposes or reasons of convenience, profit, or caprice.

In order to grant a *variance*, the Board of Appeals must find all of the following:

- a. That the *variance* will not cause a substantial detriment to adjacent or neighboring property.
- b. That the *variance* will not change the character of the neighborhood or district.
- c. That the *variance* is consistent with the *Comprehensive Plan* and the general intent of this Ordinance.
- d. That the practical difficulty or other injustice was caused by the following:
  - i. Some unusual characteristic of size or shape of the property.
  - ii. Extraordinary topographical or other condition of the property.
  - iii. The use or *development* of property immediately adjacent to the property, except that this criterion shall not apply in the *Critical Area*.

- e. That the practical difficulty or other injustice was not caused by the applicant's own actions.
  - f. That within the *Critical Area* for *variances* of 15% *slope, impervious surface, or buffer* requirements:
    - i. The granting of a *variance* will be in harmony with the general spirit and intent of the *Critical Area* Law and the *regulations* adopted by Kent County.
    - ii. That the granting of a *variance* will not adversely affect water quality or adversely impact fish, wildlife, or *plant habitat*.
    - iii. That the application for a *variance* will be made in writing with a copy provided to the *Critical Area* Commission.
    - iv. That the strict application of the Ordinance would produce an *unwarranted hardship*.
    - v. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity.
    - vi. The authorization of such *variance* will not be a substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the *variance*.
    - vii. That a literal interpretation of this Ordinance deprives the applicant of rights commonly enjoyed by other properties in similar areas within the *Critical Area* of Kent County.
    - viii. That the granting of a *variance* will not confer upon an applicant any special privilege that would be denied by this Ordinance to other lands or *structures*.
    - ix. Due to special features of a site, or special conditions or circumstances peculiar to the applicant's land or *structure*, a literal enforcement of this Ordinance would result in *unwarranted hardship* to the applicant.
    - x. The Board of Appeals finds that the applicant has satisfied each one of the *variance* provisions.
    - xi. Without the *variance*, the applicant would be deprived of a use of land or a *structure* permitted to others in accordance with the provisions of the critical area program.
  - g. In considering an application for a *variance*, the Board shall consider the reasonable use of the entire parcel or lot for which the *variance* is requested.
  - h. In considering an application for a *variance*, the Board of Appeals shall presume 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 Ordinance and the Critical Area Law.
  - i. The Board may consider the cause of the *variance* request and if the *variance* request is the result of actions by the applicant, including the commencement of *development* activity before an application for a *variance* has been filed.
- B. *Staff and TAC Comments:* Granting a variance will neither cause a substantial detriment to neighboring properties nor will it change the character of the neighborhood and district. There are no rare, threatened, or endangered species in the location of this parcel.

In considering the setback variances, a 16-foot wide by 12-foot deep screened porch is a reasonable use and is in keeping with other houses in the neighborhood. Decks and porches are common amenities in Tolchester Estates. The bilco doors provide the only access to the partial basement.

In considering the clearing variance and the reasonable use of the entire parcel, Mr. Peary has selected a modest house design and his lot coverage will be just under 20% of the parcel. The additional clearing is necessary to install a well and grinder pump, as well as provide access around the proposed dwelling during construction.

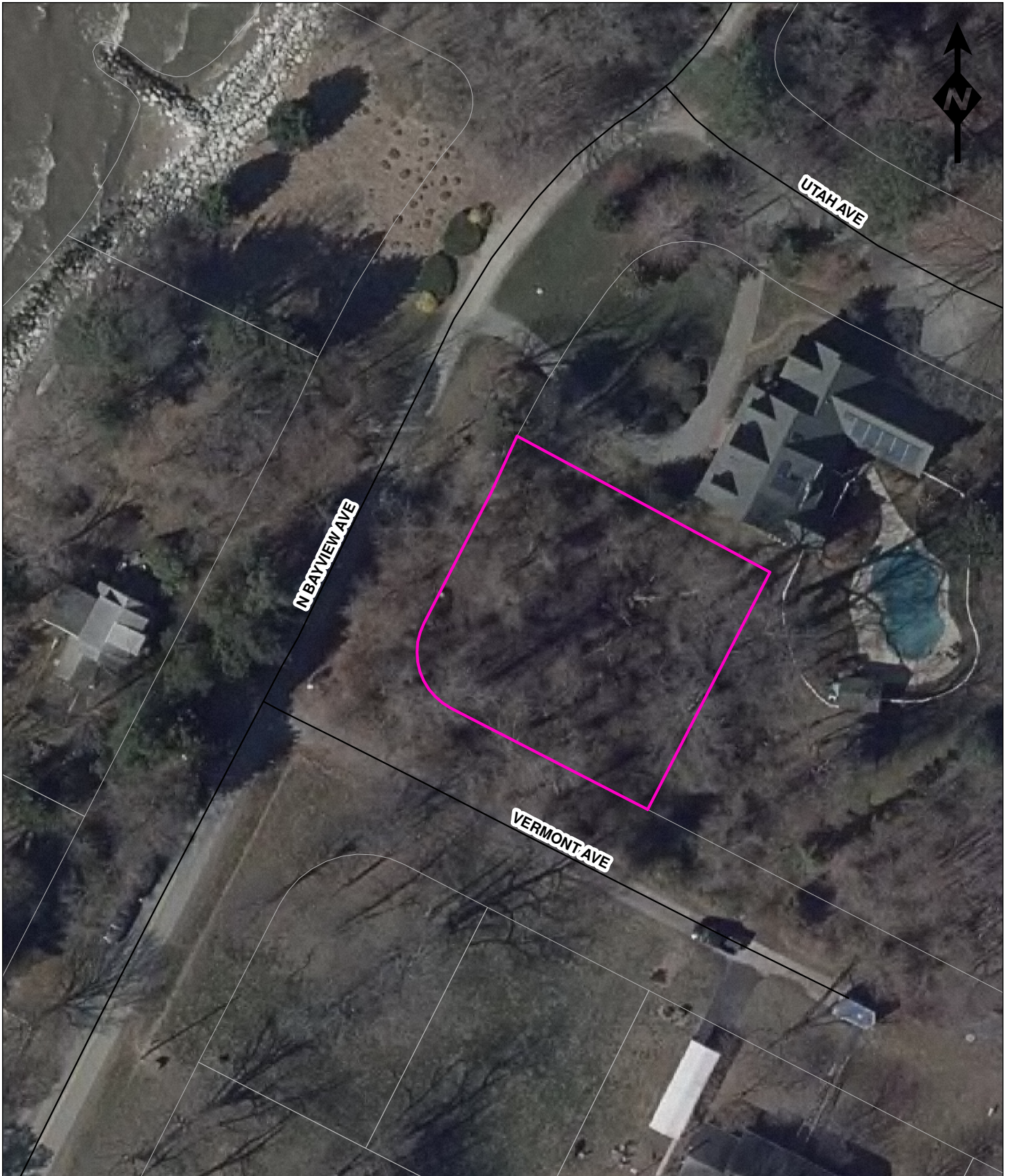
Mitigation will be 1.5 times the amount being cleared, or 7,031.4 square feet. Mr. Peary will plant as much as possible onsite to enhance the existing forest. He will pay a fee-in-lieu to cover any remaining mitigation requirement.

The Comprehensive Plan is neutral on the setbacks but has goals and strategies for no-net loss of forest and protection of plant and wildlife resources. The proposal is consistent with the Critical Area Law. The practical difficulty is due to the small size of the parcel. In Critical Area Residential, the minimum lot size for new lots is one-half acre. If Mr. Peary had a parcel which met the minimum lot size requirement, then he wouldn't need any variances based on the plans presented herein.

The strict application of the forest provisions would produce an unwarranted hardship that is not generally shared by other properties in the same zoning district and vicinity. The literal interpretation of the Ordinance would deprive the applicant of rights generally enjoyed by other properties in similar areas. The granting of the variance will not confer any special privilege.

### **Staff Recommendation**

Staff recommends approval of the setback variances and the forest clearing variance.



BOARD OF APPEALS APPLICATION

Kent County Department of Planning, Housing and Zoning

Kent County Government Center
400 High Street • Chestertown, MD 21620
410-778-7475 (phone) • 410-810-2932 (fax)

IN THE MATTER OF THE APPLICATION OF:
(Name, Address and Telephone Number of Applicant)

James Peary
9262 N. Bayview Dr.
Chestertown, MD 21620
Email: jpeary@mac.com

For Office Use Only:
Case Number/Date Filed: 21-12
Filed by: M.R. Peary
Applicant:
Planning Commission: 5/16/21
Date of Hearing: BOA: 5/17/21
Parties Notified:
Notice in Paper:
Property Posted:

Please provide the email of the one person who will be responsible for responding to comments. Only this person will be contacted by staff and will be the person responsible for forwarding the comments or requests for additional information to any other interested parties. EMAIL: jpeary@mac.com

TO THE KENT COUNTY BOARD OF APPEALS: In accordance with Article a. IX Section 2.2.3
of the Kent County Zoning Ordinance, as amended, request is hereby made for: b. V 5.5

Appealing Decision of Kent County Zoning Administrator X Variance
Special Exception Non-conforming Use

DESCRIPTION OF PROPERTY INVOLVED:

Located on: (Name of Road, etc.) N. Bayview Ave at Vermont Ave.

In the 06 Election District of Kent County.

Size of lot or parcel of Land: 12,000 sq ft, 0.28 Acres
Map: 035C Parcel: 0867 Lot #: Deed Ref: 00990/00198

List buildings already on property: None

If subdivision, indicate lot and block number: na

If there is a homeowners association, give name and address of association: Tolchester Community Association
P.O. Box 35 Rock Hall, MD 21661

PRESENT ZONING OF PROPERTY: Residential (CAR)

DESCRIPTION OF RELIEF REQUESTED: (List here in detail what you wish to do with property that requires the Appeal Hearing.) Please see attachment 1

If appealing decision of Zoning Administrator, list date of their decision:

Present owner(s) of property: James Peary Telephone: 267-206-3002



If Applicant is not owner, please indicate your interest in this property: Owner

Has property involved ever been subject to a previous application? No

If so, please give Application Number and Date: \_\_\_\_\_

**PLEASE FILL IN BELOW, OR ATTACH HERETO, A SKETCH OF THIS PROPERTY.**

List all property measurements and dimensions of any buildings already on the property.

**Put distances between present buildings or proposed buildings and property lines. NAMES OF ADJOINING PROPERTY OWNERS:**

Owner(s) on the North: Bob and Sue Basener 9251 N. Bayview Ave


Owner(s) on the South: Jason Smith 21381/21383 Vermont Ave

Owner(s) to the East: Bob and Sue Basener 9251 N. Bayview Ave

Owner(s) to the West: James Peary (applicant) 9262 N. Bayview Ave.

Homeowners Association, name and address, if applicable: Tolchester Community Association

**BY SIGNING THIS APPLICATION, I GRANT MEMBERS AND ALTERNATE OF THE BOARD OF ZONING APPEALS THE RIGHT TO ENTER ONTO THE PROPERTY FOR THE PURPOSE OF VIEWING THE SITE OF THE APPLICATION OR APPEAL.**

  
Signature of Owner/Applicant/Agent or Attorney

April 2, 2021  
Date

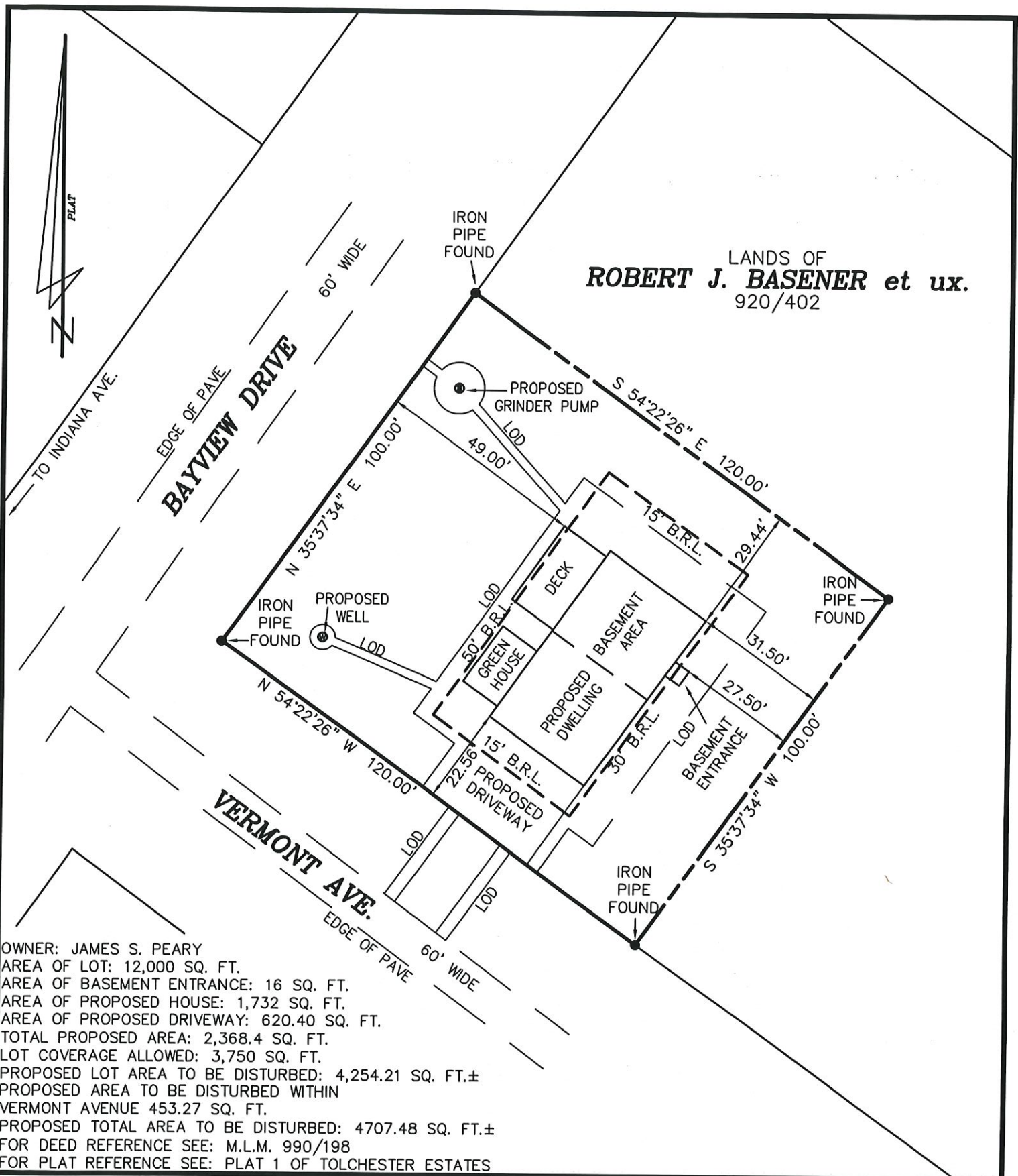
Please file this form at 400 High Street, Chestertown, MD 21620 accompanied by **\$350.00** filing fee made payable to the Board of Appeals. If you have any questions, contact Clerk at 410-778-7467.

**NOTICE: Neither the Board of Appeals or the Planning Office is required to make out this Application. If the Planning Department assists you, it cannot be held responsible for its contents.**

**Applicants arriving more than 10 minutes after the scheduled hearing will not be heard and will be re-scheduled at the applicant's expense.**

DEPARTMENT OF  
PLANNING, HOUSING & ZONING  
RECEIVED 4/2/21





LANDS OF  
**ROBERT J. BASENER et ux.**  
 920/402

OWNER: JAMES S. PEARY  
 AREA OF LOT: 12,000 SQ. FT.  
 AREA OF BASEMENT ENTRANCE: 16 SQ. FT.  
 AREA OF PROPOSED HOUSE: 1,732 SQ. FT.  
 AREA OF PROPOSED DRIVEWAY: 620.40 SQ. FT.  
 TOTAL PROPOSED AREA: 2,368.4 SQ. FT.  
 LOT COVERAGE ALLOWED: 3,750 SQ. FT.  
 PROPOSED LOT AREA TO BE DISTURBED: 4,254.21 SQ. FT.±  
 PROPOSED AREA TO BE DISTURBED WITHIN  
 VERMONT AVENUE 453.27 SQ. FT.  
 PROPOSED TOTAL AREA TO BE DISTURBED: 4707.48 SQ. FT.±  
 FOR DEED REFERENCE SEE: M.L.M. 990/198  
 FOR PLAT REFERENCE SEE: PLAT 1 OF TOLCHESTER ESTATES

PROPOSED DWELLING  
 OF LOTS 1, 3, 5, 7, 9 & 11, BLOCK 3K, PLAT 1 OF,  
**TOLCHESTER ESTATES**  
 SIXTH ELECTION DISTRICT, KENT COUNTY,  
 MARYLAND

**MICHAEL SCOTT INC.**  
 400 S CROSS ST STE 3, CHESTER TOWN, MD 21620 (410)778-2310

DRAWN BY K. DEAN  
 SCALE 1"=30'  
 DATE 04-21-21  
 JOB NO. 7141-A  
 FOLDER K-42C

Board of Appeals Application  
Attachment 1

J. Peary

**Description of Relief Requested:**

I am in the planning process to build a house in Tolchester in the Critical Area. Since the building lot is small (12,000 sq ft; 0.28 acres), I am running up against some building and clearing limits.

**A. Forest Clearing Limit**

I request to clear 4,687.6 sq ft (39%) of the lot in order to build the house. The allowed clearing limit, as part of a *Critical Area Forest Clearing Plan*, for this situation is 30% (3,600 sq ft).

As part of my planning I have endeavored to minimize the disturbance of the lot. I have:

- 1.) Chosen a small footprint house plan (1,320 sq ft floorplan).
- 2.) Used a 2-story design.
- 3.) Included the garage within the house footprint.

I plan to re-plant the property as much as possible. My preference is for a mostly wooded landscape.

I believe my current property in Tolchester (across the street from the proposed house), shows that I make an effort to increase the canopy. I have, in the 22 years I have been there, converted areas that were open space and lawn to wooded area by planning and encouraging both canopy and understory trees and shrubs. For example, in 2018 I participated in the Maryland Department of Natural Resources Back-Yard-Buffer program and so received 25 native tree seedlings which I planted in my current property.

I plan to make a similar effort to encourage canopy coverage in this property.

**B. Front Setback Limit**

I would like to add a screen porch to the proposed house. In my proposed design the footprint of the porch would encroach on the front setback limit (50') by 1'. The roof overhang of the porch would encroach on the front setback limit by an additional 1' for a total of 2' over the limit. The porch, at 16' wide, would then have a total encroachment of 32 sq ft over the Building Restriction Line.

As described in A. the small size of the lot has proved difficult to fit our desired house without exceeding some limits. We have made effort to design the house to meet as many requirements as possible.

I request to build a screen porch exceeding the setback limit as described above.

### **C. Rear Setback Limit**

I would like to have access to the dug basement portion of the house via a stair and steel door (i.e. Bilco door). Such a door is expected to be 48" in "height". Since foundation wall is at 31' 6", this door would exceed the rear setback by 30".

I request to build a Bilco door and stair access to the basement at the rear of the house exceeding the setback limit as described above.