



Kent County Board of Zoning Appeals  
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**

*COVID-19 Special Announcement Regarding Meeting Attendance*

The County Commissioners have reopened County facilities, and the Board of Appeals will discuss future meeting protocols at its next meeting. For the time being, 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: **839 267 197#**

Members of the public are asked to mute their phones/devices, until the Board 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.

**AGENDA**

Monday, May 17, 2021  
7:00 p.m.

**MINUTES**

April 19, 2021

**APPLICATIONS FOR REVIEW:**

**21-11 Strong Associates, II LP – Buffer Variance**

2959 Eastern Neck Road – Fifth Election District – Zoned Resource Conservation District “RCD”

**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)

**APPLICANT OR REPRESENTATIVE MUST BE PRESENT**

**APPLICANTS ARRIVING MORE THAN 10 MINUTES AFTER THE SCHEDULED HEARING WILL NOT BE HEARD AND WILL BE RESCHEDULED AT THE APPLICANT’S EXPENSE.**

Meetings are conducted in Open Session unless otherwise indicated. All or part of the Board of Appeals 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

Meeting: Kent County Board of Zoning Appeals  
 Date: April 19, 2021  
 Time: 7:00 P.M.  
 Location: Virtual Meeting/County Commissioners Hearing Room, 400 High Street, Chestertown, Maryland

Agenda Item/Case	Sitting for the Board	Action Taken	Vote
<p><b>MINUTES: March 15, 2021</b></p> <p>It was brought to the Board’s attention that Roseland Inc. (Special Exception #21-01 – Expansion of existing sand and gravel pit) - was sold to ASH Materials, LLC (a Delaware LLC) on April 8, 2021; the Board approved a special exception for the property on March 15, 2021.</p> <p>Kevin Shearon, DMS and Associates, and Andy Schlosser, former owner of Roseland, Inc., inquired as to whether or not the special exception remains valid.</p> <p>Christopher Drummond, Attorney for the Board, informed the Board that special exceptions run with the land, but Attorney Drummond said that Planning staff needs to ensure that the low intensity use that was approved in this case is not now being intensified. Planning staff will reach out to the new owners, ASH materials, LLC, to determine the intensity of use.</p>	<p>Dr. Albert Townshend, Chairman</p> <p>Joan Horsey, Member</p> <p>John Massey, Member</p> <p>David Hill, Alternate Member</p> <p>Mr. Christopher Drummond, Attorney for the Board</p> <p>Sandy Adams, Clerk</p>	<p>Ms. Horsey made a motion to approve the minutes, and Mr. Massey seconded the motion; the motion passed with all in favor.</p>	<p>Unanimous Approval</p>

Agenda Item/Case	Sitting for the Board	Action Taken	Vote
<p><b>#21-07 David and Eileen Smack – Special Exception – Adaptive Reuse of Historic Structure.</b></p> <p>The applicants are seeking a Board of Appeals Special Exception for an adaptive reuse of a historic structure for use as a tasting room operated in conjunction with their farm-based winery.</p> <p>The property is located at 22622 Handy Point Road in the First Election District and is Zoned Resource Conservation District (RCD).</p> <p>Two pieces of correspondence were received in support of the project and were read into the record.</p> <p>Mr. Massey announced that he has used Dr. Smack’s medical services in the past, but he feels that he can render a fair and impartial decision on the case.</p> <p><u>Planning Staff:</u> William Mackey, Director</p> <p><u>Applicant(s)/Representative(s):</u> Dr. David Smack, applicant/owner; and Buck Nickerson, Extreme Measures, LLC</p> <p>Both gentlemen were sworn in.</p> <p>Dr. Smack presented his case.</p>	<p>Dr. Albert Townshend, Chairman</p> <p>Joan Horsey, Member</p> <p>John Massey, Member</p> <p>David Hill, Alternate Member</p> <p>Mr. Christopher Drummond, Attorney for the Board</p> <p>Sandy Adams, Clerk</p>	<p>Mr. Massey made a motion to grant the special exception for the Adaptive Reuse of Historic Structure with the following condition(s):</p> <ul style="list-style-type: none"> <li>• Conditioned upon site plan approval.</li> </ul> <p>Ms. Horsey seconded the motion; the motion passed with all in favor.</p>	<p>Unanimous Approval</p>
<p><b>Adjourn</b></p>		<p>Ms. Horsey made a motion to adjourn the meeting, and Mr. Massey seconded the motion; the motion passed with all in favor. The meeting adjourned at 7:35 p.m.</p>	<p>Unanimous Approval</p>

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Dr. Albert Townshend, Chairman

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Sandy Adams, Clerk



May 11, 2021

Dr. Al Townshend  
Kent County Board of Appeals  
400 High Street  
Chestertown, MD 21620

RE: Strong Associates, II L.P. - Critical Area Buffer Variance

Dear Dr. Townshend:

At its May 6, 2021, meeting, the Kent County Planning Commission reviewed an application submitted by Robert Strong, member of Strong Associates, II L.P., requesting a variance of the Critical Area buffer standards in order to replace and slightly expand an existing cottage located entirely within the 100-foot buffer. The proposed expansion is a widening of the foundation to align the exterior walls of the northern most section of the cottage with the middle section. At its closest point, the cottage sits about 40 feet from the mean high-water line. 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 surrounding area consists of large parcels devoted to agriculture and the natural landscape.

Following discussion, the Planning Commission voted to make a favorable recommendation for a buffer variance to replace the cottage on the same footprint. The decision was based on the following findings of fact:

- The cottage pre-dates the Critical Area Law.
- The Comprehensive Plan and Critical Area Law restricts development activities in the buffer, but in-kind replacement is allowed by the Critical Area Law.

The Planning Commission also voted to make a favorable recommendation for a buffer variance to expand the footprint to allow alignment of the exterior walls. The decision was based on the following findings of fact:

- Granting a variance will neither cause a substantial detriment to neighboring properties nor will it change the character of the neighborhood and district.
- The granting of the variance is in harmony with the general spirit and intent of the Critical Area Law, as substantiated by the letter received from Critical Area Commission.
- The practical difficulty was the placement of the cottage on the site prior to the Critical Area Law and damage sustained from Tropical Storm Isabel in 2003.
- The granting of the variance will not adversely affect water quality, impact fish, wildlife, or plant habitat.
- Due to the location of the dwelling entirely within the Critical Area buffer, the literal enforcement and strict application of the Ordinance would result in an unwarranted hardship.

- The reasonable use of the entire parcel has been considered.
- A literal interpretation of the Ordinance could deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area of Kent County.
- The variance does not confer any special privileges to the applicant.
- The dwelling was in existence prior to the Critical Area Program.

In accordance with the Critical Area requirements, staff further recommends that a buffer mitigation plan at a rate of 3:1 be implemented onsite to comply with the critical area variance planting requirements.

Sincerely,  
Kent County Planning Commission

A handwritten signature in black ink, appearing to read "Kim Kohl". The signature is written in a cursive, flowing style.

Kim Kohl  
Chairman

cc: Robert Strong, Strong Associates, II L.P.

## 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

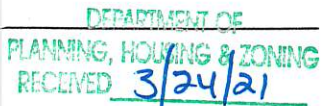
If appealing decision of Zoning Administrator, list date of their decision: n/a

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: 19-50 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

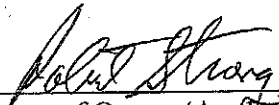
Owner(s) on the South: Robert D. Ford

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.**

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.

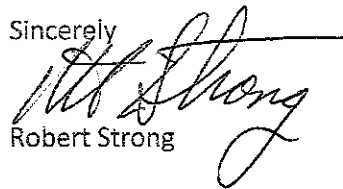
We are requesting to allow a new building with integral strength be placed on the same footprint(with the 16" pieces added). Allow the foundation to be aligned. Thereby ending up with a safe, clean, solid, no mold, living space.

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.

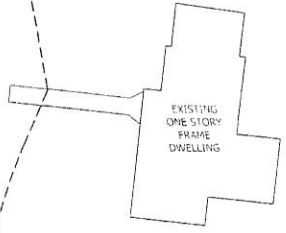
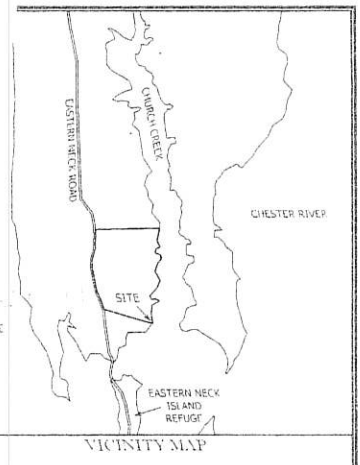
g. The reasonable use of the entire land, which is of major concern to your applicant, is that the prime agricultural land remain a productive farm. Statistics will be provided at the hearing to support our position that Ag. Land is disappearing at an alarming rate in this country. With explosive increase 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

A handwritten signature in black ink, appearing to read "Robert Strong", written in a cursive style.

Robert Strong





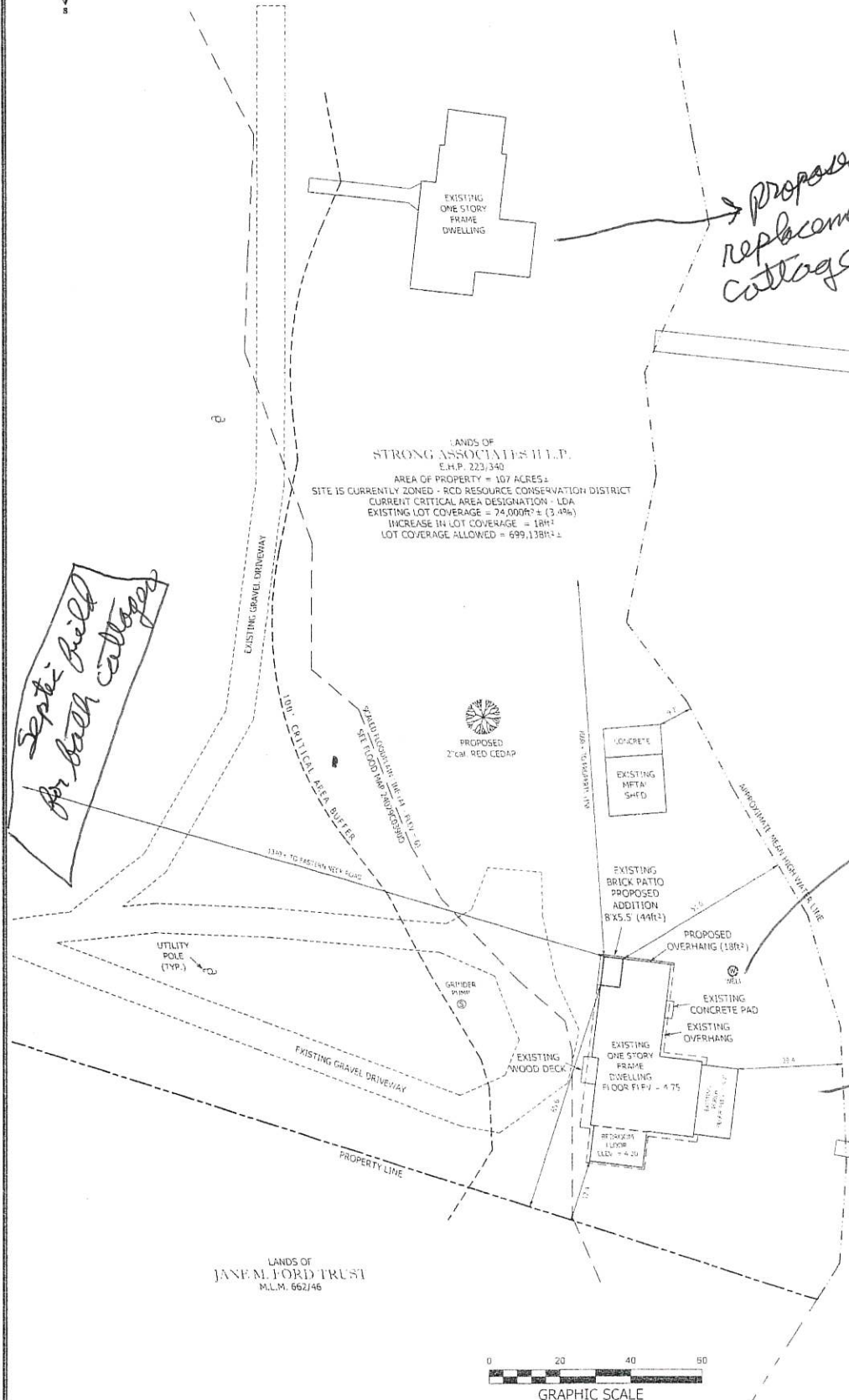
*Proposed replacement Cottage*

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 = 18M<sup>2</sup>  
LOT COVERAGE ALLOWED = 699,138M<sup>2</sup> ±

*Septic field for both cottages*

*well serves both properties*

*Cottage renovated 2019/2020*



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

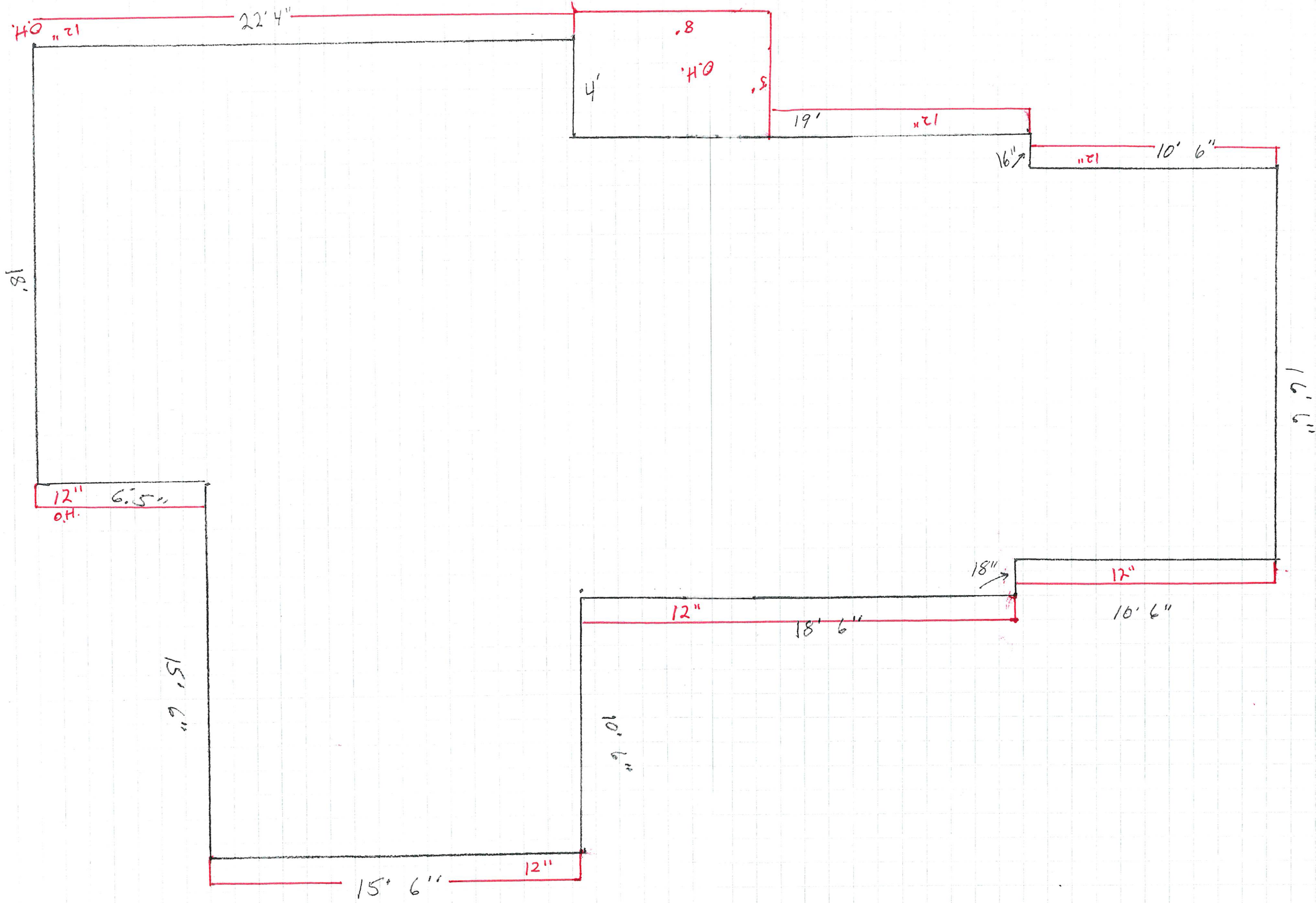


DEPARTMENT OF PLANNING, HOUSING & ZONING  
RECEIVED 3/24/21

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

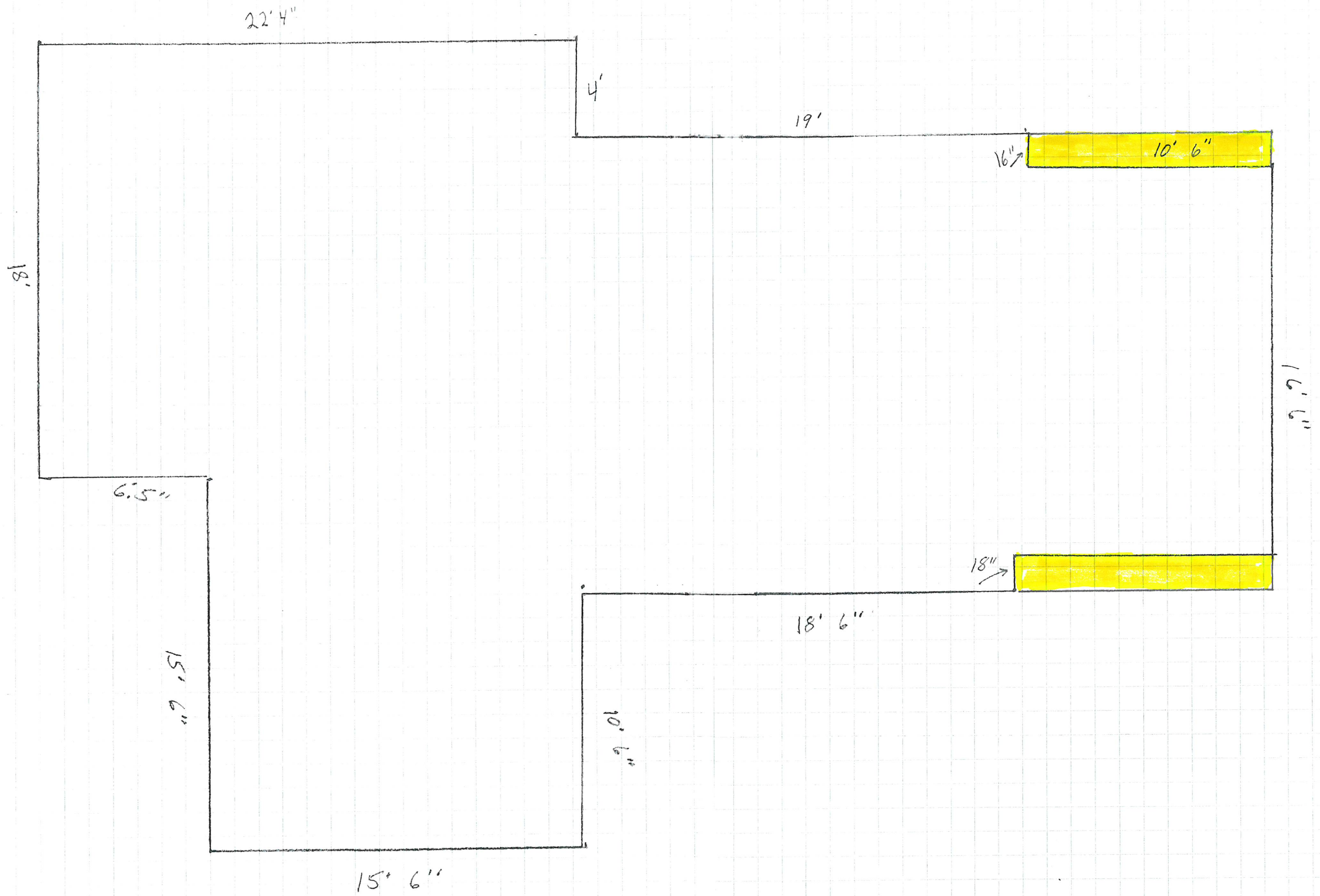
SCALE	1" = 20'
DRAWN BY	RAM
CHECKED BY	RAM
DATE	9-21-19
JOB NO.	519
DESCRIPTION	

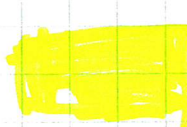
**EXTREME MEASURES**  
LAND SURVEYORS  
1 The Meadows, MD 21629 PHONE 410 728 0117  
www.extrememeasuresllc.com



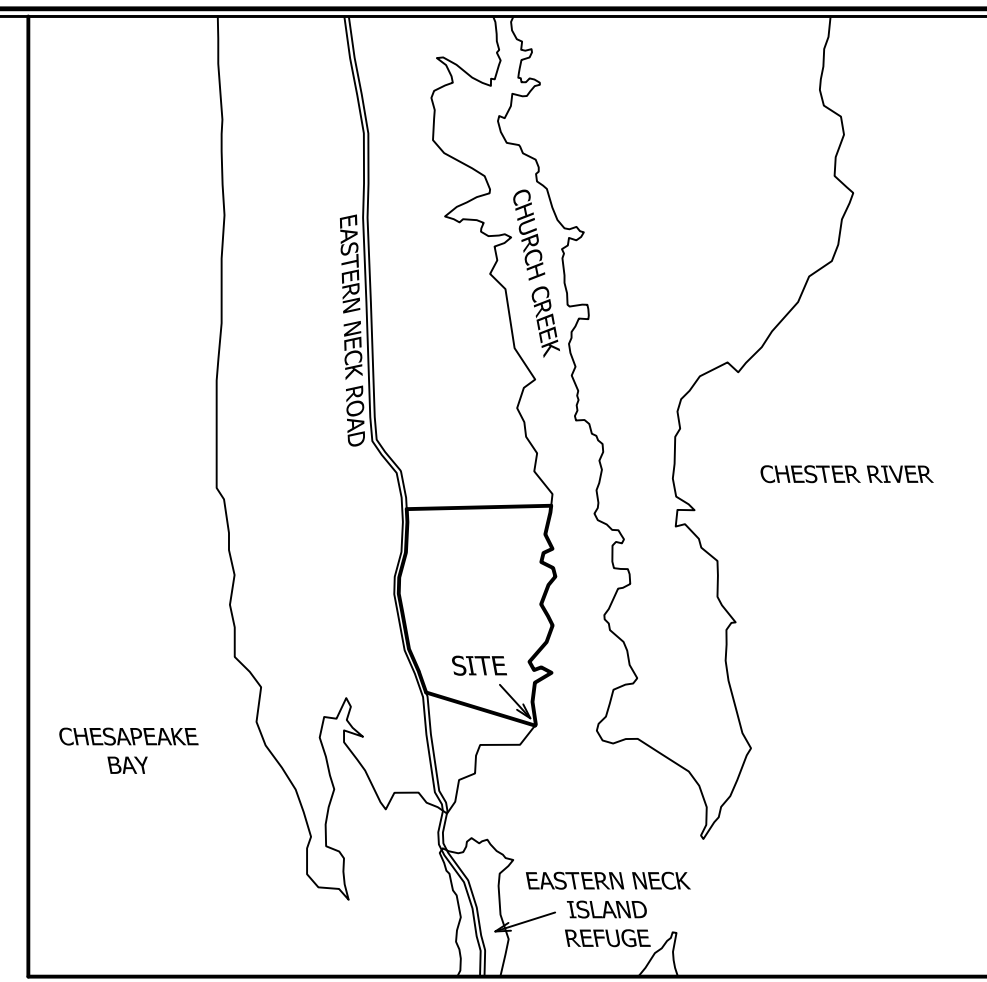
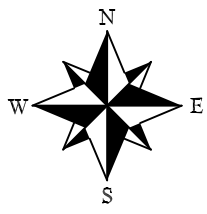
Red: overhang  
BLACK - perim  
eter of  
house



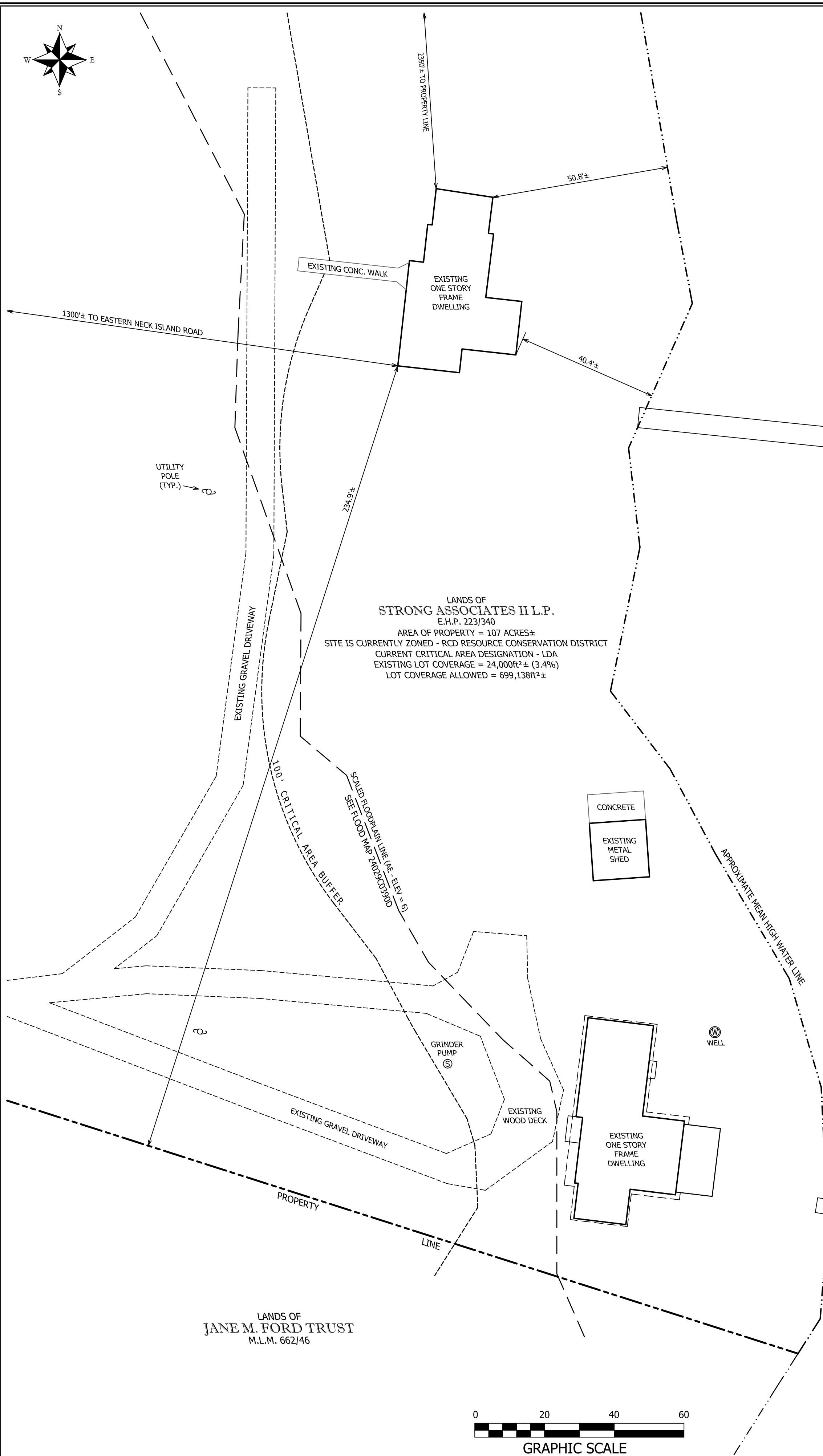


 Requested extension of Foundation

 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

10/20



10/20





3/21



3/21



3/21



3/21



3/21









3/21





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





May 11, 2021

Dr. Al Townshend  
Kent County Board of Appeals  
400 High Street  
Chestertown, MD 21620

RE: James Peary – Setback Variances and Critical Area Forest Clearing Variance

Dear Dr. Townshend:

At its May 6, 2021, meeting, the Kent County Planning Commission reviewed an application submitted by James Peary requesting variances of the front and rear yard setback requirements and the Critical Area forest clearing standards in order to construct a new single-family dwelling. The 12,000 square foot property is located at the corner of North Bayview Drive and Vermont Avenue in Tolchester Estates in the Sixth Election District and is zoned Critical Area Residential (CAR). The surrounding area is characterized by residential development.

Following discussion, the Planning Commission voted to make a favorable recommendation for a 2-foot variance from the 50-foot front setback requirement and 2.5-foot variance from the 30-foot rear setback requirement. The decision was based on the following findings of fact:

- Granting a variance will neither cause a substantial detriment to neighboring properties nor will it change the character of the neighborhood and district.
- The granting of the variance is consistent with the Comprehensive Plan goals to locate development in areas with existing infrastructure.
- The practical difficulty is due to the small size of the parcel.
- The applicant has thoughtfully designed the dwelling to minimize the need for the variances.
- The need for the variance was not caused by the applicant's own actions.
- The granting of the variance allows a reasonable use of the property.
- The request is consistent with the Critical Area Law.

The Planning Commission also voted to make a favorable recommendation for a forest clearing variance to allow up to 39% of the parcel to be cleared. The decision was based on the following findings of fact:

- Granting a variance will neither cause a substantial detriment to neighboring properties nor will it change the character of the neighborhood and district.
- The request is consistent with the Comprehensive Plan.
- The practical difficulty is due to the small size of the entirely wooded parcel.
- The applicant has thoughtfully designed the dwelling to minimize the need for the variance.
- The need for the variance was not caused by the applicant's own actions.
- The granting of the variance allows a reasonable use of the property.

In accordance with the Critical Area requirements, staff further recommends that a clearing mitigation plan at a rate of 2:1 be implemented onsite to the extent possible and any remainder to be paid as a fee-in-lieu to the Critical Area Forest Clearing Fund.

Sincerely,  
Kent County Planning Commission

A handwritten signature in black ink, appearing to read "Kim Kohl". The signature is written in a cursive, flowing style.

Kim Kohl  
Chairman

cc: James Peary

## 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 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.

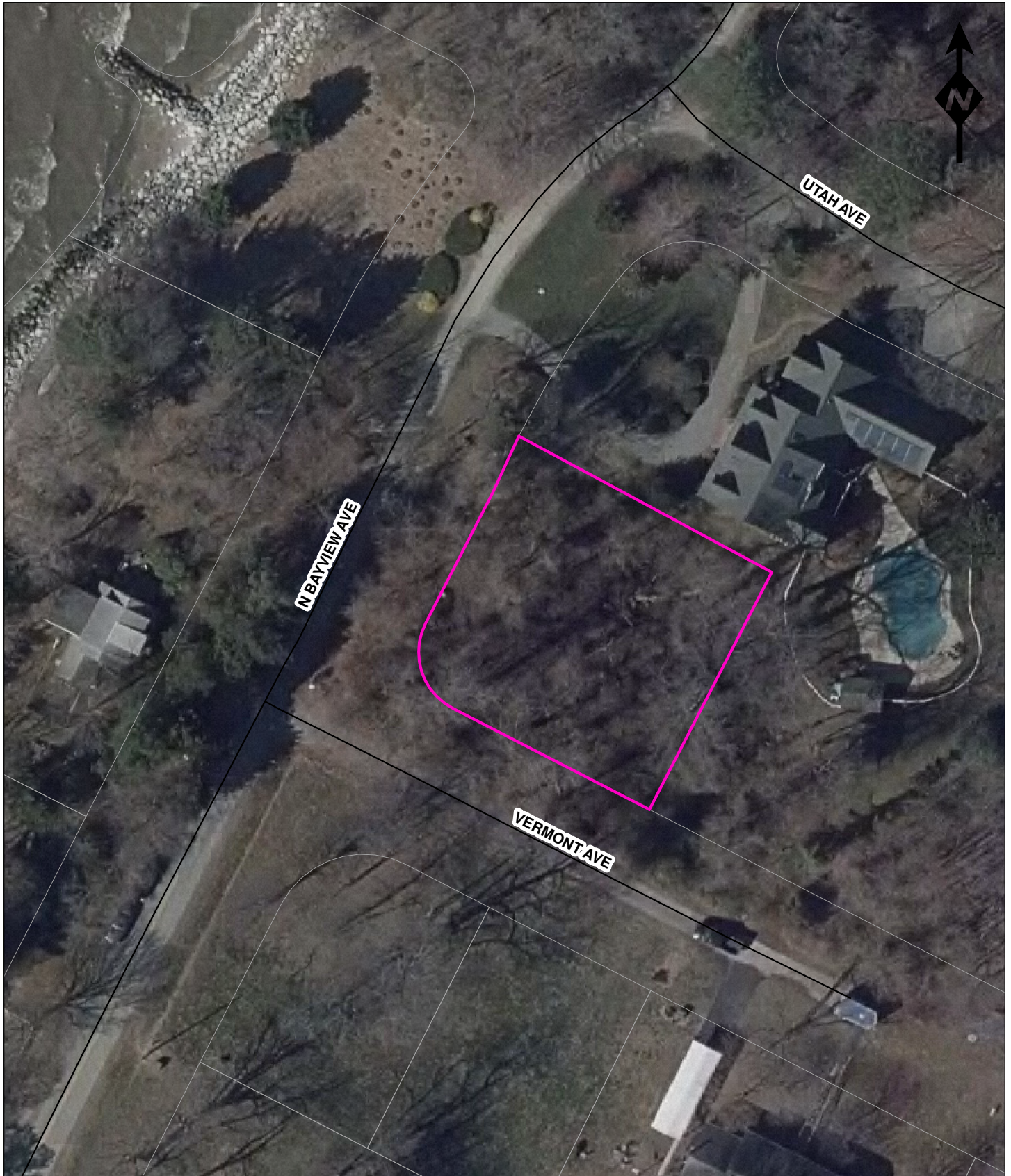
Mitigation will be 1.5 times the amount being cleared, or 7,031.4 square feet. Mr. Peary will plant as much as possible onsite to enhance the existing forest. He will pay a fee-in-lieu to cover any remaining mitigation requirement.

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

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.

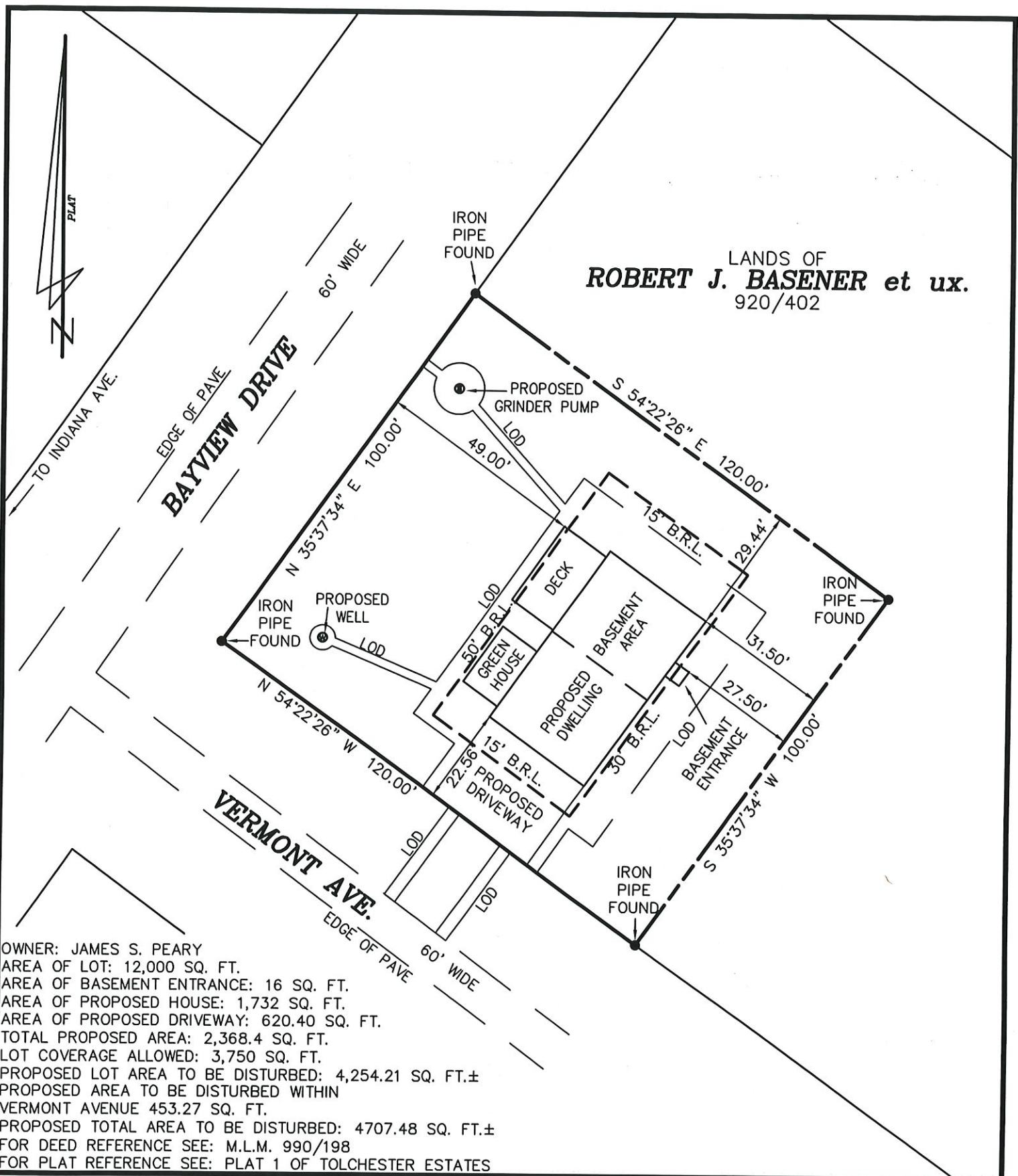
As described in A. the small size of the lot has proved difficult to fit our desired house without exceeding some limits. We have made effort to design the house to meet as many requirements as possible.

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.



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

CRITICAL AREA FOREST CLEARING PLAN

Please attach site plan.

Property Owner James Peary

Address of property N. Bayview Ave at Vermont Ave, Chestertown (Tolchester)

Election District 6 Map 35C Grid \_\_\_\_\_ Parcel 867 Lot \_\_\_\_\_

Size of property 12,000 square feet

Total area of tree/vegetation removal: 4,687.6 (39%) (see variance application) + 6 large trees sq. ft.

Some forest in the Critical Area may be cleared if there is a plan for replacement. Up to 20% of the forest may be removed if an equal area is afforested. 20%-30% may be removed if 1.5 times the area is afforested. Removal of more than 30% is not permitted.

Please list types of plants to be removed and types to be planted (include size of replacement trees and whether balled and burlap or container grown). See the Forest Mitigation Requirements on the back of this sheet to calculate replacement requirements.

Understory to be removed (See the Forest Mitigation Requirements on the back of this sheet to calculate replacement requirements).

Clearing for house includes Spicebush, Privet, Sassafras.

Canopy trees to be removed (See the Forest Mitigation Requirements on the back of this sheet to calculate replacement requirements).

House footprint clearing includes 15” dia Swamp (Silver) Maple (1) and 10” dia Mulberry (1)  
Selected trees outside the house clearing that risk damaging the house: Swamp (Silver) Maple (3), Mulberry (1), Black Cherry (2)

Proposed Maintenance Plan.

Area to be planted within two growing seasons on or before Fall 2021 per approved plan and maintained thereafter.


Replanting to replace canopy for house clearing plus selected trees that risk damaging the house

Plant selection based on availability to include varieties from: [www.nativeplantcenter.net](http://www.nativeplantcenter.net)

Trees (7): White Cedar, Red Cedar, Tulip Poplar, Pitch Pine, Persimmon

Small Trees (7): Redbud, Dogwood, Magnolia Virginiana, Rhododendron maximum

Shrub (15): Ilex, Hydrangea, Viburnum, Spirea, Blueberry,

Signature  Printed name James Peary

Mailing address 118 S 21<sup>st</sup> St. Apt 909 Philadelphia, PA 19103

Email address: jpeary@mac.com Daytime phone 267-205-3002

## CRITICAL AREA FOREST CLEARING PLAN: FOREST MITIGATION REQUIREMENTS

In accordance with the applicable activity located in the Critical Area, the following mitigation ratios apply (measurements based upon canopy calculation or square footage of disturbance):

Activity	Mitigation Ratio	
	Permanent Disturbance	Temporary Disturbance
Septic on a lot created before local program approval if located in existing grass or if clearing is not required	Not applicable	0
Septic system in a forest or developed woodland on a lot created before local program approval of clearing is required	1 :1	Not applicable
Shore erosion control	1:1	1:1
Riparian water access	2:1	1:1
Development or redevelopment of a water-dependent facility	2:1	1:1
Variance	3:1	1:1
Violation	4:1	Not applicable

The following planting credits for the type and size of the vegetation may be calculated as follows:

Please refer to this site for a list of native plantings:

<http://www.nativeplantcenter.net/>

Vegetation Type	Minimum Size Eligible for Credit	Maximum Credit Allowed (Square Feet)	Maximum Percent of Credit
Canopy tree	2-inch caliper	200	Not applicable
Canopy tree	3/4-inch caliper	100	Not applicable
Understory tree	3/4-inch caliper	75	Not applicable
Large shrub	3 feet high	50	30
Small shrub	18 inches high	25	20
Herbaceous perennial*	1 quart or based on the area covered by plugs or seed mix	2	10
Planting Cluster 1*	1 canopy tree; and 3 large shrubs or 6 small shrubs of sizes listed above	300	Not applicable
Planting Cluster 2*	2 understory trees; and 3 large shrubs or 6 small shrubs of sizes listed above	350	Not applicable

\* These options are available only for mitigation of less than 1/2 acre.

100% dead does not require replanting. Area must be stabilized with native vegetation or ground cover.

**PROPOSED PLANTING/MAINTENANCE PLAN**

Area to be planted within two growing seasons on or before Spring 2022 per approved plan and maintained thereafter.

Large/small shrubs to be planted (you may also list any herbaceous perennials here):

Shrubs from proposed list attached in size and quantity indicated.

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Canopy trees to be planted:

Canopy trees and understory trees from proposed list attached in 3/4" diameter size and quantity indicated.

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