

Charles Brenton
Brenton Landscape Architecture
265 West 31st Street
Baltimore, MD 21211

Re: 2022 Holly Neck Road
Critical Area Administrative Variance
Tracking Number 07-24-4123

Dear Charles Brenton:

The Department of Environmental Protection and Sustainability (DEPS) has completed a review of the variance request for the proposed development on the above referenced property. The property is located within a Limited Development Area in the Chesapeake Bay Critical Area. The variance request proposes to impact 4,471 square feet of the required Critical Area buffer, clear 4,958 square feet (43 percent) of forest on site, and reduce the 35-foot principal structure setback to 20-feet for construction of a dwelling. The required buffer covers about 90% of the completely forested property.

The Director of DEPS may grant a variance to the Chesapeake Bay Critical Area regulations in accordance with regulations adopted by the Critical Area Commission concerning variances as set forth in COMAR 27.01.12.04. There are seven (7) criteria listed in COMAR 27.01.12.04 that shall be used to evaluate the variance request. All seven of the criteria must be met in order to approve the variance.

The first criterion requires that special conditions exist that are peculiar to the land or structure, and that literal enforcement of the regulations would result in unwarranted hardship. Because the majority of the property is covered by the required Critical Area buffer, including nontidal wetlands, the construction of a dwelling with a practical front and rear yard cannot be accomplished without buffer impacts. In addition, a practical yard cannot be achieved without clearing over 30 percent of the forest. Literal enforcement of the regulations would not allow construction of a dwelling with related residential uses on this property. This represents an unwarranted hardship for the property owner. Therefore, the first criterion is met.

The second criterion requires that a literal enforcement of the regulations would deprive the applicant of a use of land or a structure permitted to others in accordance with the provisions of the local Critical Area program. Other residential property owners in the Critical Area with similar buffer and forest site constraints enjoy uses of their property like the uses proposed in this application. Therefore, the second criterion has been met.

The third criterion requires that granting of a variance will not confer upon an applicant any special privilege that would be denied to other lands or structures within the Critical Area. Other property owners with similar Critical Area buffer and forest constraints would be granted

variance approval to build a home and maintain a yard within a portion of the required Critical Area buffer. Therefore, this criterion has been met.

The fourth criterion requires that a variance is not based upon conditions or circumstances which are the result of actions by the applicant. This variance request is a result of the extent of the Critical Area buffer on the property, and the forest requirements. The need for this variance is not the result of any actions taken by the property owner. Therefore, the fourth criterion has been met.

The fifth criterion requires that the variance request does not arise from any conforming or nonconforming condition on any neighboring property. The request for the variance involves significant buffer and forest constraints and is not related to any conditions on adjacent properties. Therefore, the fifth criterion is met.

The sixth criterion requires that granting of the variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area. Buffer, wetland, and forest impacts have been minimized when considering the proposed dwelling has been located 25-feet from the road, and the rear yard and Critical Area easement setback has been proposed at 20-feet. With this layout, 57 percent of the property will be required to be retained in easement and protected by a declaration of protective covenants, conditions, and restrictions recorded in Baltimore County Land Records. In addition, a fee-in-lieu will be required to provide mitigation for buffer and forest impacts as there are no mitigation areas on the site. As a result, granting of this variance will not adversely affect water quality, or adversely impact fish, wildlife, or plant habitat.

The seventh criterion requires that the granting of the variance would be in harmony with the general spirit and intent of the Critical Area law. Development of this property must comply with all Critical Area requirements for the proposed residential construction, including payment of a fee-in-lieu for Critical Area buffer and forest mitigation, and the recordation of a Critical Area Easement. By meeting these requirements, the granting of the variance request will be in harmony with the general spirit and intent of the Critical Area regulations and the seventh criterion can be met.

Based upon our review, this Department finds that the above criteria have been met, or will be met through implementation of the conditions outlined below. Therefore, the requested variance is hereby approved in accordance with Section 33-2-205 of the Baltimore County Code with the following conditions:

1. This note must be added to all future plans:

“A variance (Tracking Number 07-24-4123) was granted by Baltimore County Department of Environmental Protection and Sustainability (DEPS) from Chesapeake Bay Critical Area requirements to impact the Critical Area buffer, clear greater than 30 percent forest, and reduce the principal structure setback to the Critical Area Easement for construction of a

dwelling with associated residential uses. Mitigation for the buffer and forest impacts will be addressed by payment of a fee-in-lieu to Baltimore County DEPS.”

2. Mitigation for the Critical Area buffer impacts (4,471 square feet) must be provided at 4:1 (17,884 square feet). No Critical Area Bank is available and with no proposed off-site mitigation site, and no area on-site to mitigate, a fee-in-lieu of \$26,826.00 shall be paid to DEPS prior to permit approval.
3. Mitigation for the forest clearing must be provided at 3:1 (1,461 square feet). No Critical Area Bank is available. Therefore, a fee-in-lieu of \$803.55 shall be paid to DEPS prior to permit approval.
4. A Critical Area management plan detailing the proposed mitigation for the buffer impacts must be submitted to EIR for review and approval prior to building permit approval. The Critical Area management plan must be implemented prior to approval of the use and occupancy permit.
5. A Critical Area Easement must be recorded in the Land Records of Baltimore County to protect the buffer area not to be disturbed. The Critical Area Easement must be recorded in the Land Records prior to approval of the use and occupancy permit for the house.
6. Critical Area Easement signs must be installed along the easement boundary to delineate the limit. The sign locations must be shown on the Critical Area management plan and installed prior to building permit approval.
7. Any required state and federal authorizations must be submitted to this office prior to permit approval.

It is the intent of this Department to approve this variance subject to the above conditions. Changes in site layout may require submittal of revised plans and an amended variance request. Please be advised that Baltimore County may not issue a permit for the activity that was the subject of the variance application until the applicable 30-day appeal period has elapsed pursuant to COMAR 27.01.12.07 C.

The property owner(s) must sign the statement at the end of this letter, and then return the signed letter to this Department. Failure to return a signed copy of this letter may result in delays in processing of permits or other development plans for the subject property, and/or may render this variance null and void.

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If you have questions regarding this project, please contact Jann Anderson at 410-887-3980.

This variance is approved by the Director of the Department of Environmental Protection and Sustainability on _____. Any changes to site layout may require submittal of revised plans and a new variance request.

Sincerely yours,

Horacio Tablada
Director

HT: jda

cc: Jonathan Coplin, Critical Area Commission
Stacey Riley, Gemcraft Homes
2163 Greythorne Road, LLC

I/We have read and agree to implement the above requirements to bring our property into compliance with Chesapeake Bay Critical Area laws and regulations.

_____ Signature	_____ Date	_____ Signature	_____ Date
_____ Printed Name	_____ Date	_____ Printed Name	_____ Date