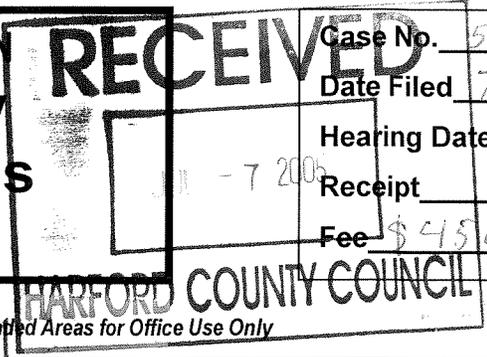


STANDARD APPLICATION
Harford County
Board of Appeals
 Bel Air, Maryland 21014



Case No. 5502
 Date Filed 7/1/06
 Hearing Date _____
 Receipt _____
 Fee \$450.00

Type of Application

Administrative Decision/Interpretation
 Special Exception
 Use Variance
 Change/Extension of Non-Conforming Use
 Minor Area Variance
 Area Variance
 Variance from Requirements of the Code
 Zoning Map/Drafting Correction

Nature of Request and Section(s) of Code _____

CASE 5502 MAP 65 TYPE Variance
 ELECTION DISTRICT 01 LOCATION Route 40 @ Route 24 (Parcel 220 & Portions of SHA Plat 56467)
 BY Parcel 220, LLC
 Appealed because a modification of variance granted by Board of Appeals Case #5204 to permit disturbance of critical area buffer in a B3 District pursuant to Section 267-9D and 267-41.1H of the Harford County Code requires approval by the Board.

NOTE: A pre-conference is required for property within the NRD/Critical Area or requests for an Integrated Community Shopping Center, a Planned Residential Development, mobile home park and Special Exceptions.

Applicant/Owner (please print or type)

Name Parcel 220, LLC Phone Number Call Attorney

Address 5308 Park Heights Avenue Baltimore MD 21215
Street Number Street City State Zip Code

Co-Applicant _____ Phone Number _____

Address _____
Street Number Street City State Zip Code

Contract Purchaser Parcel 220, LLC Phone Number Call Attorney

Address 5308 Park Heights Avenue Baltimore MD 21215
Street Number Street City State Zip Code

Attorney/Representative Kevin J. Mahoney, Esquire Phone Number 410-893-7500

Address 11 South Main Street Bel Air MD 21014
Street Number Street City State Zip Code

Land Description

Address and Location of Property Route 40 at intersection with Route 24 in Edgewood as described in a deed dated April 18, 2005 from State Highway Administration to Parcel 220, LLC and recorded at Liber 6059 Folio 190. Tax account number 01-366416.

Subdivision _____ Lot Number _____

Acreage/Lot Size 0.2654 Acres Election District 01 Zoning B-3

To be combined

Tax Map No. 65 Grid No. 2F Parcel with Parcel 220 Water/Sewer: Private _____ Public X

List ALL structures on property and current use: None

Estimated time required to present case: One hour.

If this Appeal is in reference to a Building Permit, state number N/A

Would approval of this petition violate the covenants and restrictions for your property? No

Is this property located within the County's Chesapeake Bay Critical Area? Yes X No _____

If so, what is the Critical Area Land Use designations: Intensely Developed Area (IDA)

Is this request the result of a zoning enforcement investigation? Yes _____ No X

Is this request within one (1) miles of any incorporated town limits? Yes _____ No X

Request

Modification of variance granted on Board of Appeals Case 5204 to permit disturbance of critical area buffer pursuant to Section 267-9 (D) and 267-41.1 (H).

Justification

See attached

If additional space is needed, attach sheet to application. In answering the above questions, please refer to the Requirements that pertain to the type of approval request. (Special Exception, Variance, Critical Area or Natural Resource District (NRD) Variance, etc.)

8 : 6/21/05
12 : 4648
204005

**ATTACHMENT TO APPLICATION OF
PARCEL 220, LLC**

JUSTIFICATION:

By reason of the uniqueness, special features and topographical conditions of the subject property, and other circumstances, the literal enforcement of the Code would result in practical difficulty or unreasonable hardship. The property's unique and special features include, but are not limited to the following:

- Applicant recently acquired a small (.2654 ac) piece of surplus land from the State Highway Administration.
- Applicant intends to record a deed consolidating the newly acquired parcel with the existing Parcel 220.
- Applicant would abandon plans to develop certain buffer areas which were subject to the prior Board of Appeals approval in exchange for approval of the current request.
- The proposed plan will result in less environmental impacts and will shift the proposed development closer to Route 40.
- The portion of the property subject to the variance lies between the County utility line and Maryland Route 40
- All of the subject property is encumbered by critical area designations associated buffers, essentially precluding any viable commercial or other use of the property by the Applicant

Further, granting the requested variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of the Code or the public interest. The subject property is in an intensely developed area and is so designated. Adjacent properties include Route 40 and properties with existing commercial uses. Stormwater management will be provided. A utility easement has also been granted to Harford County by the Owner.

BOARD OF APPEALS CASE NO. 5204

*

BEFORE THE

APPLICANTS: William Tyson & Pais Enterprises

*

ZONING HEARING EXAMINER

REQUEST: Variance to disturb a portion of the subject property designated as Critical Area in the CI, Commercial Industrial District; U. S. Route 40 at MD Route 24, Edgewood

*

OF HARFORD COUNTY

*

Hearing Advertised

*

Aegis: 6/5/02 & 6/12/02

HEARING DATE: July 29, 2002

*

Record: 6/7/02 & 6/14/02

* * * * *

ZONING HEARING EXAMINER'S DECISION

The Applicants, William A. Tyson and Pais Enterprises, are requesting a variance, pursuant to Sections 267-9D, 267-41.1H and 267-41.1G of the Harford County Code, to permit disturbance of a portion of the subject parcel which has been designated as a Critical Area in a CI/Commercial Industrial District.

The subject parcel is located on the north side of U.S. Route 40 (Pulaski Highway) approximately 300 feet east of Edgewood Road (MD Route 755) and is more particularly identified on Tax Map 65, Grid 2F, Parcel 220. The subject parcel consists of 5.06± acres, is presently zoned CI/Commercial Industrial and is entirely within the First Election District.

Mr. Alex Pais appeared and testified that he is a used automobile dealer and contract purchaser of the subject parcel. He stated that Route 40 frontage is very desirable for his type of operation allowing maximum visibility of the cars his business has to offer. The parcel is presently undeveloped and is surrounded by other commercial uses including McDonalds, Burger King, shopping centers, warehousing operations, restaurants, auto dealerships, residential uses and large merchandising operations. The Applicant wants to construct a sales office and display area for the vehicles on the front of the property along Route 40. He plans to operate the business from 9:00 a.m. to 7:00 p.m. 6 days per week. There will be 10-12 employees at this location. Based on surrounding uses the Applicant did not think his use would have any adverse impacts on adjoining properties or the intent of the Code.

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Mr. Robert Jones appeared and qualified as an expert environmental engineer. Mr. Jones described the parcel as being zoned CI and designated as High Intensity on the Master Plan. The front of the property is designated IDA and the rear is RCA. There is a sewer easement that bisects the property and there is a non-tidal wetland present that results from Route 40 runoff. Resulting buffers further limit the available building area without variances. In fact, according to the witness, the entire property is impacted by the expanded buffer. There is no identified habitat area and the quality of the wetland is described as poor. The witness described the bio-retention facility proposed that will meet the 10% rule that requires runoff after construction to have a 10% improvement in quality compared to runoff prior to construction. The witness described the numerous unique features of this parcel including areas of wetland, the sewer easement and the fact that this is zoned CI. Mr. Jones said that he has looked at other possible uses for this parcel including a restaurant and a gas station but it has been particularly challenging to configure those uses due to the numerous environmental constraints found on the property. In the opinion of the witness this is the minimum relief necessary to allow reasonable use of the parcel. The rear of the property will not be disturbed and no adverse impacts will result from the use, Mr. Jones went on to describe a 3:1 mitigation which will include planting of trees and payment of fees to the State of Maryland for loss of wetlands.

Mr. Anthony McClune appeared as representative of the Department of Planning and Zoning. The Department agreed that the subject property was unique and contained environmental features that severely limited the potential uses for this parcel. McClune indicated that the proposed use was compatible with other uses found on the Route 40 corridor. The parcel, according to McClune is entirely impacted by the expanded buffer area and no construction or use of any kind could be conducted without a variance. The Department recommends approval of the subject request.

There were no persons who appeared in opposition to the request.

The State of Maryland Critical Area Commission, in a letter dated May 13, 2002, provided favorable comment on the proposed project and recommended a number of conditions of approval.

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CONCLUSION:

The Applicants are requesting a variance, pursuant to Sections 267-9D, 267-41.1H and 267-41.1G of the Harford County Code, to permit disturbance of a portion of the subject parcel which has been designated as a Critical Area in a CI/Commercial Industrial District.

Harford County Code Section 267-9D provides:

“Filings. Applications for variances, interpretations, special exceptions, special developments and reclassification shall be filed with the Zoning Administrator by the property owner, authorized agent or contract purchaser. Appeals from the decision of the Zoning Administrator shall be filed with the Zoning Administrator by the property owner, authorized agent or any person aggrieved.”

Section 267-41.1H requires that the Hearing Examiner make particular findings regarding each requirement of this Code section demonstrating that the request complies with each particular condition. Following is the hearing Examiner’s findings in that regard.

Section 267-41.1H of the Code provides:

“Variances. Variances from the provisions of this section may only be granted if, due to special features of a site or other circumstances, implementation of this section or a literal enforcement of its provisions would result in unwarranted hardship to an applicant. All applications for variances shall be reviewed by the Zoning Administrator for conformance with applicable provision of this section, and a written report shall be provided to the Board of requested approval complies with each of the following conditions:

- (1) That special conditions or circumstances exist that are peculiar to the land or structure within the County’s Critical area, and a literal enforcement of the Critical Area Program would result in an unwarranted hardship.

This property is unique. It is zoned CI and is entirely encumbered by expanded critical area buffer. There is a sewer easement that bisects the parcel and the property is split between IDA and RCA areas. Because of the features found on the property, no use has been able to be developed. Denying the Applicant a reasonable use of the property is an unwarranted hardship.

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- (2) That a literal interpretation of the provisions of this section will deprive the applicant of rights commonly enjoyed by other properties in similar geographic and land use management area within the critical area.

If it were not for the expanded buffer, the Applicant would not need any variances for this proposed use. This is a reasonable commercial use of the parcel and the Applicant has demonstrated that the use can be constructed in a manner that protects wildlife and water quality. There are numerous examples of even more intense uses being made of property in this area and denial of the request would, in the opinion of the hearing Examiner, deprive this Applicant of rights commonly enjoyed by others in the Critical Area.

- (3) That the granting of a variance will not confer upon the applicant any special privilege that would be denied by this section to other lands or structures within the critical area.

The statute allows variances provided that protections are put in place to protect sensitive features and water quality. The Applicant has demonstrated that water quality will be improved, reforestation at a 3:1 ratio has been proposed as mitigation and the State provides for payment into a fund when wetlands are lost as a result of development. This is the standard provided by law and the Applicant proposes to meet each and every standard and is not seeking any special privilege or grant that would be denied to other lands or structures within the Critical Area.

- (4) That the variance request is not based upon conditions or circumstances which are the result of actions by the applicant, nor does the request arise from any conditions relating to land or building use, either permitted or nonconforming, or any neighboring property.

The subject parcel is an undeveloped site and the environmental conditions existing on the parcel are not caused by or created by the Applicant.

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- (5) That the granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the critical area, and the granting of the variance will be in harmony with the purpose and intent of this section.

The Applicant has provided complete field studies to describe existing water quality and wildlife habitat. Proposed is improved water quality and mitigation in terms of replanting of forest cover at another site at a 3:1 ratio. No development is proposed in the RCA designated portion of the property.

- (6) That all identified habitat protection areas on or adjacent to the site have been protected by the proposed development and implementation of either on-site or off-site programs.

The Applicant has provided an acceptable plan of mitigation at an off-site location.

- (7) That the growth allocation for the county will not be exceeded by the granting of the variance.

The growth allocation is not affected.

- (8) That the variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.

Mitigation coupled with water treatment will prevent adverse impacts to adjacent parcels and the intent and purpose of the Code, particularly those sections associated with the Critical Area.

- (9) All applications for variance requests shall be filed in writing in accordance with Section 267-9D, of the Zoning Code. Notice of all variance requests and copies of applications filed in accordance with this section shall be sent to Chesapeake Bay Critical Area Commission within 10 working days of filing with the Department of Planning and Zoning. A copy of the recommendation of the hearing examiner or of the Board in acting on the variance shall be promptly sent to the Commission.

This provision has been met.

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The Department of Planning and Zoning thoroughly reviewed the provisions of Section 267-41.1G(2)(a) of the Harford County Code. The Hearing Examiner finds their conclusions compelling and adopts those findings of fact as follows:

G. Habitat Protection Areas

(2) The following areas of significant natural value are classified "habitat protection areas" and are so designated on each Zoning Map Overlay or herein defined:

(a) **Critical Area Buffer.** An area a minimum 100 feet in width as measured from the mean high water line of tidal waters, tidal wetlands and tributary streams shall be established and maintained in a natural condition. The Critical Area Buffer is expanded beyond 100 feet to include the following contiguous sensitive areas:

[1] **Hydric soils, highly erodible soils, wetlands or other aquatic habitats, and steep slopes.**

The subject property is located entirely within an expanded Buffer area because of wetlands that transect the property. The development, as proposed, will impact the Buffer.

[2] **Steep slopes are defined as slopes, which equal or exceed 15% slope. Steep slopes shall be measured by transects spaced a minimum of 35 feet apart along the base of the slope. Transects measuring steep slopes shall be run perpendicular to the slope beginning at the base of the slope and shall measure slopes with a minimum of 35' run increments up the slope to the top of the slope or the boundary of the Critical Area, whichever is less. In the case of steep slopes within or contiguous to the Critical Area Buffer, the Buffer is additionally expanded beyond the expansions for the above-listed sensitive areas 4 feet for every 1% of slope as averaged over the contiguous steeply sloped area or to the top of the contiguous steeply sloped area, whichever is greater.**

Not applicable. While the subject property contains steep sloped areas, these are not adjacent to the 100-foot Buffer, and therefore do not contribute to the expansion of the Buffer. A variance is not required for this section of the Code.

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Section 267-41.1G(2)(b) reads:

- (b) Nontidal wetlands. Those areas which meet the definition of non-tidal wetlands as set forth in § 267-4 (Harford County Code 1986, as amended), both mapped and located by field survey. A minimum area of 40,000 square feet is hereby established for designation as a non-tidal wetlands, is otherwise identified as a habitat protection area in this section or is shown to be hydrologically connected through surface or subsurface flow to streams and tidal waters.

The subject property contains wetlands that are hydrologically connected through surface or subsurface flow.

Section 267-41.1G.(2)(c) reads:

- (c) Habitats of state-designated threatened or endangered species or species in need of conservation, natural heritage areas and habitats of local significance.

The Applicant has noted that one state highly rare and one state rare species has been documented as occurring within the vicinity of the project site. These species are found within tidally influenced waters or shallow water and marsh areas. No development will occur within the open water area found on the property. There is an existing sewer line and 50 foot easement that separates the proposed development and the open water area. Therefore, a variance is not needed to this section of the code.

Section 267-41.1(G)(2)(d) reads:

- (d) Colonial waterbird nesting sites.

Not applicable to this variance request.

Section 267-41.1G(2)(e) reads:

- (e) Riparian forests and other forested areas utilized as breeding habitat by forest-interior-dwelling species.

Not applicable to this variance request.

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Section 267-41.1G(2)(f) reads:

- (f) Anadromous fish propagation waters.

Not applicable. The nearest body of water is Otter Point Creek, which is designated as Anadromous Fish Propagation Water. This project is located more than 700 feet from the closest tidal wetlands/water, and no water dependent activities are planned as part of this development. Therefore, a variance is not required for this section of the Code.

Section 267-41.1G(2)(g) reads:

- (g) Historic waterfowl staging and concentration areas in tidal waters, tributary streams, or tidal and non-tidal wetlands

Not applicable to this variance request.

Section 267-41.1G(3) reads:

- (3) General provisions.
- (a) Development activities or other land disturbances, including commercial tree harvesting and agricultural activities, are prohibited within the boundaries of an identified habitat protection area unless the Zoning Administrator certifies that the location of the activities and/or the limitations and restrictions placed on them will avoid adverse impacts on the water quality protection and plant and wildlife habitat values of the area or to the species dependent upon such areas.

The Applicant has provided field verified information as to the extent of the impacts to habitat protection areas associated with the proposed variance request. All disturbances will be to the expanded Buffer. In order to meet the requirement of this section, all proposed impervious surfaces need to be minimized to the extent possible. New impervious surfaces must also be kept at a minimum of 25 feet from the edge of the stream channel, and any areas that are not to be disturbed and/or will not have structures or parking should be maintained in woody vegetation.

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Mitigation for the proposed impacts will also be required to meet the requirements of this section. All tree removal must be mitigated at a 3:1 ratio. Preferably, this should be provided within the same watershed and within the Buffer. The 10% pollutant reduction requirements must also be met for this site. Mitigation should also be provided to treat the stormwater runoff coming off of Route 40. Where possible, rain gardens should be utilized as a management facility. The mitigation proposal should include the types and locations of stormwater management facilities as well as a maintenance proposal for all facilities. This proposal should specify who will be responsible for the facilities, and it should include a maintenance schedule.

- (b) The location of roads, bridges or utilities shall be prohibited within the boundaries of a habitat protection area unless there is no feasible alternative, as determined by the Zoning Administrator in consultation with the Director of the Department of Public Works, in which case they shall be located, designed, constructed and maintained to provide maximum erosion protection, to minimize adverse effects on wildlife, aquatic life and their habitats and to maintain hydrologic processes and water quality. [Amended by Bill 01-35]

Not applicable. The Applicant is not proposing the construction of any roads, bridges, or utilities within the boundaries of a habitat protection area. Therefore, a variance is not required for this section of the Code.

- (c) All development activities that must cross or otherwise affect streams shall be designed to:

- [1] Retain tree canopy so as to maintain stream water temperatures within normal variation;

An intermittent stream crosses the subject property and the project, as proposed, will not impact the tree canopy around the stream.

- [2] Provide a natural substrate for streambeds; and

The project as proposed does not involve any disturbance to the streambed.

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[3] Minimize adverse water quality and quantity impacts of stormwater.

The Applicant indicates that stormwater quality and quantity control measures can be designed to treat runoff associated with the proposed development. Additional consideration to treating runoff from U.S. Route 40 should be incorporated into the final stormwater management plans since the natural filtering capacity of the site will be altered by development. Rain gardens should be utilized where possible to allow for infiltration.

Section 267-41.1.G.(4) – Critical Area Buffer

[1] The Buffer shall be maintained in natural vegetation and may include planted native vegetation where necessary to protect, stabilize or enhance the shoreline. In the case of development where the Buffer is not entirely established in woody vegetation, the Buffer shall be planted and maintained according to the standards set forth in the Forest Management Guide for Buffer plantings.

The Applicant is requesting a used car dealership to be constructed within the expanded Buffer. This will require the clearing of .79 acres of existing forest. Mitigation at a 3:1 ratio is required for disturbances to the Buffer. The Applicant has not submitted a mitigation plan.

[2] New development activities, including redevelopment activities and including structures, under-ground petroleum product storage tanks, roads, parking areas and other impervious surfaces, mining and related facilities or septic systems (and other disposal systems), may not be permitted in the Buffer, except for those necessarily associated with water-dependent facilities as approved in accordance with Subsection F(6) of this section. Replacement of existing under-ground petroleum product storage tanks shall be with above-ground tanks.

As proposed, the plan for the subject property will require the locating of structures and parking areas within the Buffer. These facilities are not related to a water-dependent facility and therefore, a variance is required from this section of the Code. The extent of the variance requested for the disturbance to the Buffer is the minimum relief necessary to realize a reasonable and significant use. However, any areas that are not to be disturbed and/or will not have structures or parking should be maintained in woody vegetation. A minimum 25 foot buffer should be left from the edge of the streams.

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- [3] Where agricultural use of lands within the area of the Critical Area Buffer ceases and the lands are proposed to be converted to other uses, the critical area buffer shall be established. Establishment of the buffer shall include the establishment of appropriate forest vegetation as specified in the Forest Management Guide. Appropriate surety and covenant shall also be required as specified in Subsection F(3)(b)[5][d] of this section.**

Not applicable. The subject property has been disturbed for the installation of the County sanitary sewer, and the remainder of the property is wooded and is not used for agricultural purposes. Therefore a variance is not required for this section of the Code.

- [4] For any commercial timber harvesting of trees by selection or for any cutting or clearing of land within the Critical Area Buffer, a Buffer Management Plan shall be prepared by a registered forester and approved by the Department of Natural Resources based upon recommendations of the Harford County Forestry Board and the Harford County Department of Planning and Zoning. Cutting or clearing operations specified in such plans shall be conducted in accordance with the following requirements:**

Not applicable. Commercial timber harvesting has not been proposed for this site. Therefore, a variance is not required for this section of the Code.

- [5] Except as specified below, any clearing of vegetation or removal of trees within the Buffer is prohibited unless a Buffer Management Plan is submitted and approved by the Department of Planning and Zoning prior to any clearing or removal.**

As submitted, the plan for the subject property will require the submission of a Buffer Management Plan.

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- [6]** The cutting of trees or removal of natural vegetation may be permitted in the Critical Area Buffer where necessary to provide access to private piers or to install or construct a shore erosion protection device or measure or a water-dependent facility, provided that the device, measure or facility has received all necessary state and federal permits and provided that a Buffer Management Plan has been approved by the Department of Planning and Zoning.

Not applicable. No private piers, shore erosion protection devices or water-dependent facilities are proposed for the subject property. Therefore, a variance is not required from this section of the Code.

- [7]** Individual trees may be cut for personal use, provided that this cutting does not impair the water quality or existing habitat value or other functions of the Buffer, and provided that the trees are replaced on an equal basis for each tree cut, as approved by the Department of Planning and Zoning. Planting specifications for replaced trees are given in Appendix F of the Harford County Chesapeake Bay Critical Area Management *Program, as amended*.

Not applicable to this variance request.

- [8]** Individual trees may be removed which are in danger of falling and causing damage to dwellings or other structures or which are in danger of falling and therefore causing the blockage of streams or resulting in accelerated shore erosion. Individual trees removed must be replaced on an equal basis for each tree cut, as approved by the Department of Planning and Zoning.

Not applicable to this variance request.

- [9]** Under the guidance of the Department of Natural Resources, horticultural practices may be used in the Buffer to maintain the health of individual trees. However, the clearing of understory may only be undertaken with a Buffer Management Plan approved by the Department of Planning and Zoning.

Not applicable to this variance request.

- [10]** Other cutting techniques may be undertaken within the Buffer under the advice and guidance of the Departments of Agriculture and Natural Resources, if necessary to preserve the forest from extensive pest or disease infestation or threat from fire.

Not applicable to this variance request.

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[11] Buffer Exempt Areas. The following provisions apply to shoreline areas that have been identified as Buffer Exempt Areas in the Harford County Critical Area Program as shown on the Buffer Exempt Area maps attached hereto and incorporated hereby by reference. Buffer Exempt Areas are those lots of record as of December 1, 1985 where the pattern of residential, industrial, commercial or recreational development prevents the Buffer from fulfilling its intended purposes as stated in COMAR 27.01.09.01.B. For purposes of this Buffer Exempt Area section, development refers to sites with less than 15% existing impervious surface and redevelopment pertains to sites with greater than 15% existing impervious surface.

Not applicable. The subject property is not designated as a Buffer Exempt Area; therefore the conditions of these subsections do not apply.

Section 267-41.1G(4)(b) reads:

(b) Nontidal wetlands.

[1] A 75-foot buffer shall be established adjacent to non-tidal wetlands.

Not applicable. Because the non-tidal wetlands located on the subject property have resulted in the expansion of the Buffer over the entire property, the wetland buffer is included in the 100-foot Buffer. Therefore, a variance is not required for this section of the Code.

[2] Development activities shall not be permitted in non-tidal wetlands or the 75-foot non-tidal wetland buffer, except for permitted development associated with water-dependent facilities as listed in Subsection F(6) of this section.

Not applicable. The activities proposed are not related to a water-dependent facility. Therefore, a variance is not required for this section of the Code.

[3] Existing farm ponds and other existing man-made bodies of water for the purpose of impounding water for agriculture, water supply, recreation or waterfowl habitat are specifically excluded from coverage by the provisions of this district.

No applicable to this request.

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- [4]** Development activities in the drainage areas to non-tidal wetlands shall not adversely affect the quality or quantity of surface or subsurface flow to the non-tidal wetland so as to adversely affect its water quality and protection of fish, plant or wildlife habitat value.

As proposed, the plan for the subject property will require filling of the non-tidal wetlands and the location of development activities within the drainage areas to non-tidal wetlands. The minimal amount of disturbance necessary has been proposed, and approval of this disturbance is pending with the Army Corp of Engineers. Mitigation will be required and the Applicant has provided a reasonable plan of mitigation.

- [5]** The location of stormwater management measures is allowed in non-tidal wetlands and the 75-foot non-tidal wetland buffer only if the Zoning Administrator determines that there is no other technically feasible location and that the water quality benefits of the measures outweigh the adverse impacts on water quality and plant and wildlife habitat values of the non-tidal wetlands affected. In determining the adverse impacts of the location of such facilities, consideration can be given to the compensatory value of mitigation measures proposed to replace the lost water quality and habitat value of the affected non-tidal wetlands.

Not applicable. The non-tidal wetlands located on the subject property have resulted in the expansion of the Buffer over the entire property, the Critical Area 100-foot Buffer applies. Therefore, a variance is not required for this section of the Code.

Section 267-41.1G(4)(c) reads:

- (c)** Habitats of state-designated threatened or endangered species or species in need of conservation, designated natural heritage areas and habitats of local significance.

- [1]** Development activity and other land disturbances shall be prohibited in state-designated natural heritage areas, state-designated habitats of threatened and endangered species and species in need of conservation or identified habitats of local significance. Subject to the review of a site-specific study prepared in consultation with the Department of Natural Resources, the Zoning Administrator may approve development activities or disturbances if it can be shown that the proposed activities will not have or cause adverse impacts on the identified habitats.

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Not applicable. The Maryland Department of Natural Resources, Forest, Park, and Wildlife Services states that they have records of one state highly rare and one state rare species occurring within the vicinity of the project site. These species are found within tidally influenced waters or shallow water and marsh areas. No development is proposed to occur within the open water area found on the property. There is also an existing sewer line and 50 foot easement that separates the proposed development from the open water. Therefore, a variance is not required for this section of the Code.

- [2] Forest management plans and soil and water conservation plans developed for forestry or agricultural operations within such protection areas shall include measures to protect the integrity of these habitats.**

Not applicable. Forestry or agricultural operations are not proposed for the subject property. Therefore, a variance is not required for this section of the Code.

Section 267-41.1G(d) reads:

- (c) Colonial waterbird nesting sites.**

- [1] A minimum one-fourth-mile protection area buffer shall be established around any identified colonial waterbird nesting sites unless, subject to the review of a site-specific study prepared in conjunction with the Department of Natural Resources, it can be shown that development activity or disturbances will not have or cause adverse impacts on the identified habitats. Any development activities or other disturbances which are allowed should not occur during the nest-building and incubation periods, approximately February through April.**

Not applicable to this variance request.

- [2] Noise from construction or development activities should be minimized during the breeding season of February through April in areas adjacent to the one-fourth mile protection area buffer in order to avoid adverse impacts on nesting colonial waterbirds. The applicant is required to contact the Department of Natural Resources for information on the specific breeding seasons.**

Not applicable to this variance request.

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Section 267-41.1G.(4)(e) reads:

- (e) Riparian forests and other forested areas utilized as breeding habitat by forest interior dwelling species. The following management practices shall be followed in the case of development, forest operations or other activities in areas identified as breeding habitat for forest-interior-dwelling species in accordance with the procedures specified in the technical report, A Guide to the Conservation of Forest Interior Dwelling Birds in the Critical Area. (Appendix N of the Harford County Chesapeake Bay Critical Area Management Program):

Not applicable to this variance request.

Section 267-41.1G(4)(f) reads:

- (f) Anadromous fish propagation waters. The following management measures shall apply to any streams identified as anadromous fish propagation waters:

Not applicable. The nearest body of water is Otter Point Creek, which is designated as Anadromous Fish Propagation Water. This project is located more than 700 feet from the closest tidal wetlands/water, and no water dependent activities are planned as part of this development. Therefore, a variance is not required for this section of the Code.

The Hearing Examiner recommends approval of the Applicant's requests, subject to the following conditions:

1. The Applicant shall prepare a detailed site plan to be reviewed and approved through the Development Advisory Committee (DAC).
2. The Applicant shall submit a final mitigation plan to the Department of Planning and Zoning for review and approval. The mitigation plan shall include the types and locations of stormwater management facilities as well as a maintenance proposal for all facilities. It should also include a maintenance schedule.
3. All disturbances on the site should be mitigated for at a rate of 3:1. This mitigation should be in the form of forest plantings on another site, preferably in the same watershed and within the buffer.
4. Any areas that are not to be disturbed and/or will not have structures or parking should be maintained in woody vegetation.

Case No. 5204 – William Tyson & Pais Enterprises

5. The 10% pollutant reduction needs to be met for the site since it is an IDA. Hopefully, this can be met on site with a measure such as the proposed rain gardens that will all for infiltration.
6. Impervious surfaces need to be minimized to the extent possible. Impervious surfaces should be as far from the stream/wetlands as possible and at a minimum of twenty-five feet from the edge of the stream channel. This may not be possible at the top of the streams where the used car display is adjacent to Route 40, but this minimum should be maintained on the rest of the site.
7. Mitigation should be proposed to treat some of the storm water runoff coming off of Route 40 in addition to the 10% pollutant reduction requirement. The proposal should include the types and locations of both, as well as a maintenance proposal for all facilities. The maintenance proposal should include who will be responsible for the facilities and a schedule.

Date AUGUST 13, 2002

William F. Casey
Zoning Hearing Examiner

DAVID R. CRAIG
HARFORD COUNTY EXECUTIVE

LORRAINE COSTELLO
DIRECTOR OF ADMINISTRATION



ANTHONY S. McCLUNE
ACTING DIRECTOR OF PLANNING & ZONING

HARFORD COUNTY GOVERNMENT

Department of Planning and Zoning

September 20, 2005

STAFF REPORT

BOARD OF APPEALS CASE No. 5502

APPLICANT/OWNER: Parcel 220, LLC
5308 Park Heights Avenue, Baltimore, Maryland 21215

CONTRACT PURCHASER: Parcel 220, LLC
5308 Park Heights Avenue, Baltimore, Maryland 21215

REPRESENTATIVE: Kevin J. Mahoney, Esquire
11 South Main Street, Bel Air, Maryland 21014

LOCATION: 2210 Pulaski Highway – Edgewood
Tax Map: 65 / Grid: 2F / Parcel: SHA right of way to be combined
with Parcel 220
Election District: First (1)

ACREAGE: Site 2.95 acres
SHA R.O.W. 0.2654 of an acre – total area 3.2154

ZONING: B3/General Business District

DATE FILED: July 1, 2005

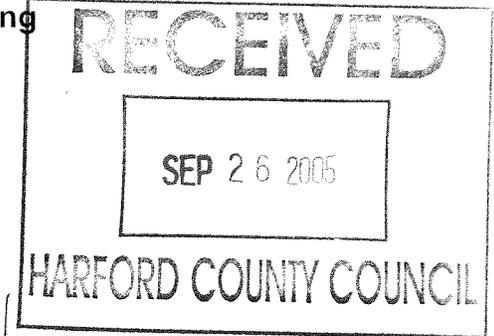
HEARING DATE: October 3, 2005

APPLICANT'S REQUEST and JUSTIFICATION:

Request:

“Modification of variance granted on Board of Appeals Case 5204 to permit disturbance of critical area buffer pursuant to Section 267-9(D) and 267-41.1(H).”

Preserving Harford's past; promoting Harford's future



Justification:

See ATTACHMENT 1.

CODE REQUIREMENTS:

The Applicants are requesting a modification of a variance granted by the Board of Appeals in Case No. 5204 to permit disturbance of critical area buffer in a B3/General Business District pursuant to Section 267-9D and 267-41.1H of the Harford County Code.

Section 267-9D of the Harford County Code reads:

D. Filings. Applications for variances, interpretations, special exceptions, special developments and reclassification shall be filed with the Zoning Administrator by the property owner, authorized agent or contract purchaser. Appeals from the decisions of the Zoning Administrator shall be filed with the Zoning Administrator by the property owner, authorized agent or any person aggrieved.

Section 267-41.1H of the Harford County Code reads:

H. Variances. Variances from the provision of this section may only be granted if, due to special features of a site or other circumstances, implementation of this section or a literal enforcement of its provisions would result in unwarranted hardship to an applicant. All applications for variances shall be reviewed by the Zoning Administrator for conformance with applicable provision of this section, and a written report shall be provided to the Board of Appeals. In granting a variance, the Board shall issue written findings demonstrating that the requested approval complies with each of the following conditions:

- (1) That special conditions or circumstances exist that are peculiar to the land or structure within the County's Critical area, and a literal enforcement of the Critical Area Program would result in an unwarranted hardship [Added by Bill 01-35]*
- (2) That a literal interpretation of the provisions of this section will deprive the applicant of right commonly enjoyed by other properties in similar geographic and land use management area within the critical area.*
- (3) That the granting of a variance will not confer upon the applicant any special privilege that would be denied by this section to other lands or structures within the critical area.*

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- (4) *That the variance request is not based upon conditions or circumstances which are the result of actions by the applicant, nor does the request arise from any conditions relating to land or building use, either permitted or non-conforming, or any neighboring property.*
- (5) *That the granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the critical area, and the granting of the variance will be in harmony with the purpose and intent of this section.*
- (6) *That all identified habitat protection areas on or adjacent to the site have been protected by the proposed development and implementation of either on-site or off-site programs.*
- (7) *That the growth allocation for the county will not be exceeded by the granting of the variance.*
- (8) *That the variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or public interest.*
- (9) *All applications for variance requests shall be filed in writing in accordance with Section 267-9D, of the Zoning Code. Notice of all variance requests and copies of applications filed in accordance with this section shall be sent to Chesapeake Bay Critical Area Commission within 10 working days of filing with the Department of Planning and Zoning. A copy of the recommendation of the hearing examiner or of the Board in acting on variance shall be promptly sent to the Commission.*

LAND USE and ZONING ANALYSIS:

Land Use – Master Plan:

The Applicant's property is located along the north side of Pulaski Highway (U.S. Route 40), approximately 300-feet east of Edgewood Road (MD Route 755). A location map and a copy of the Applicant's site plan are enclosed with the report (Attachments 2 and 3).

The subject property is located within the Development Envelope. The predominant land use designations in this area of the County include Low, Medium and High Intensities, and Industrial/Employment. Other land use designations include Neighborhood and Community Centers. The Natural Features Map reflects the Chesapeake Bay Critical Area, habitats of local significance, stream systems, and Sensitive Species Project Review Areas. The subject property is designated as Low Intensity which is defined by the 2004 Master Plan as:

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Low Intensity – Areas within the Development Envelope where residential development is the primary land use. Density ranges from 1.0 to 3.5 dwelling units per acre. Neighborhood commercial uses such as convenience stores, doctors' offices, and banks are example of some of the nonresidential uses associated with this designation.

Enclosed with the report are copies of portions of the 2004 Land Use Map and the Natural Features Map (Attachments 4 and 5).

Land Use – Existing:

The existing land uses in the area conform to the intent of the Master Plan. The subject property is located along the north side of Pulaski (US Route 40) in the Commercial Revitalization District (CRD). The predominant land use along US Route 40 is commercial. Residential uses are located further south of US Route 40. Commercial uses include shopping centers, individual retail, restaurants, professional offices, service uses, auto dealerships, warehousing, and large general merchandise stores. Residential uses include conventional single-family dwellings, garden apartments, and townhouses. There are areas of tidal and non-tidal wetlands. Enclosed with the report is a copy of the aerial photograph (Attachment 6).

The subject property is rectangular in shape and approximately 3.2154 acres which includes the recently acquired land from the State Highways Administration. The property was the subject of a Board of Appeals approval in 2002, Case 5204 to permit Critical Area buffer disturbance of a portion of the subject parcel. The site is presently under construction as shown by the enclosed site photographs (Attachments 7). The improvements which are located to the front of the property include a sales and service building approximately 83-feet by 43-feet containing offices, a one or two car show room, and 3 service bays. The entrance is located to the west side of the property with parking across the front. To the right or east side of the property is the stormwater management facility. Traversing the property to the rear of the improvements is a sewer line and a 35-foot wide sewer easement. The topography of the site ranges from level to rolling. Enclosed with the report is a copy of the topography map along with an enlargement of the aerial photograph (Attachments 8 and 9).

Zoning:

The zoning classifications in the area are mainly consistent with the 2004 Master Plan as well as the existing land uses. Commercial and industrial zoning includes B1/Neighborhood, B2 Community Business, B3/General Business, CI/Commercial Industrial, and GI/General Industrial Districts. Residential zoning includes R2, R3 and R4/Urban Residential Districts. The subject property is zoned CI/Commercial Industrial District as shown on the enclosed copy of the zoning map (Attachment 10).

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SUMMARY:

The Applicants are requesting a modification of a variance granted by the Board of Appeals in Case No. 5204 to permit disturbance of critical area buffer in a B3/General Business District pursuant to Section 267-9D and 267-41.1H of the Harford County Code.

The modification to the plan is due to an acquisition of surplus land approximately 0.2654 of an acre from the State Highways Administration. The additional land squares up the property and adds approximately 220 feet of frontage to the parcel. This allows the Applicant the ability to convert a portion of the blacktopped parking lot back to open land in front of the Storm Water Management Facility. At the same time the parking lot can then be extended across the front of the property. The amount of area impacted is the same. Most of the extended parking area is outside of the buffer area and does not need Board of Appeals approval. The newly acquired land will be combined by deed to the overall site. The proposed plan will shift the development of the site closer to Route 40 and away from the wetlands to the rear.

Section 267-9D of the Harford County Code:

E. Filings. Applications for variances, interpretations, special exceptions, special developments and reclassification shall be filed with the Zoning Administrator by the property owner, authorized agent or contract purchaser. Appeals from the decisions of the Zoning Administrator shall be filed with the Zoning Administrator by the property owner, authorized agent or any person aggrieved.

The Applicants received approval to develop the site in August of 2002 pursuant to Case No. 5204. A copy of the Hearing Examiner decision is enclosed with the report (Attachment 11). The present request is a modification to the original site plan approved by the Board due to a recent acquisition of surplus land from the State Highway Administration.

Section 267-41.1H of the Harford County Code:

H. Variances. Variances from the provision of this section may only be granted if, due to special features of a site or other circumstances, implementation of this section or a literal enforcement of its provisions would result in unwarranted hardship to an applicant. All applications for variances shall be reviewed by the Zoning Administrator for conformance with applicable provision of this section, and a written report shall be provided to the Board of Appeals. In granting a variance, the Board shall issue written findings demonstrating that the requested approval complies with each of the following conditions:

- (1) That special conditions or circumstances exist that are peculiar to the land or structure within the County's Critical area, and a literal enforcement of the Critical Area Program would result in an unwarranted hardship [Added by Bill 01-35]*

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This variance request is the result of a unique configuration of non-tidal wetlands that has resulted in the expansion of the 100-foot Buffer over the entire property. If the Critical Area Program did not require the expansion of the Buffer because of adjacent sensitive areas, the subject property would not be encumbered by any Buffer requirements. In addition, the property is further encumbered by a County sanitary sewer easement, and a portion of the property is designated RCA. This request also stems from a recent addition of land on the subject property and is specifically seeking a revision of a previously granted variance. Had this additional property been included in the earlier variance request, the resulting layout of the parking area would have had less impact than that which was approved.

- (2) *That a literal interpretation of the provisions of this section will deprive the applicant of right commonly enjoyed by other properties in similar geographic and land use management area within the critical area.*

Denying the applicant the right to develop a use consistent with the underlying zoning would deprive the applicant of rights commonly enjoyed by other similarly zoned properties.

- (3) *That the granting of a variance will not confer upon the applicant any special privilege that would be denied by this section to other lands or structures within the critical area.*

Because a portion of the property is designated IDA, it does not confer on it any special rights or guarantees, and such properties are still subject to all habitat protection requirements as specified in the program. Any variance that is granted should be the minimum relief necessary to realize a reasonable and significant use. The variance should also ensure that the goals of the Critical Area Program are met. These goals are to minimize adverse impacts on water quality, conserve fish, wildlife and plant habitat, maintain and, if possible, increase the amount of forested area in the County's coastal areas, minimize the adverse secondary impacts of development occurring in the coastal areas of the County, and monitor and ensure that development in the County's Critical Area is done in a manner that protects the natural resources of the Chesapeake Bay. The Department is recommending conditions of approval which will allow the request to meet the stated goals of the Critical Area Program.

- (4) *That the variance request is not based upon conditions or circumstances which are the result of actions by the applicant, nor does the request arise from any conditions relating to land or building use, either permitted or non-conforming, or any neighboring property.*

While the property does contain an intermittent stream, which requires the expansion of the Buffer, the wetlands adjacent to U.S. Route 40 may have resulted from runoff from the road. This wetland area resulted in the further expansion of the 100-Foot Buffer causing the entire property to be subject to the expanded Buffer requirements. The applicant was not responsible for any of the conditions as they exist on site.

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- (5) *That the granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the critical area, and the granting of the variance will be in harmony with the purpose and intent of this section.*

The applicant is seeking a revision of a previously granted variance. Specifically, they are requesting a variance to construct additional parking within the 100 Foot Buffer. In return, they are eliminating a similar area of parking that was granted a previous variance. The net result is an increase of 12 square feet of impervious surface within the Buffer. However, these surfaces are located further away from the Waters of the U.S. than what was previously approved. The area previously proposed for parking will be maintained in lawn type condition to be used for providing sheet flow to the stormwater management facility. In recognition of the previous approvals and consideration of the impacts to water quality associated with the previous approvals, the Department believes that through the application of the 10% Pollutant Reduction requirement in the Critical Area Program that there will not be a negative impact on water quality or habitat through the granting of this variance. Appropriate Conditions of approval are proposed so as to ensure that the granting of this variance is in harmony with the intent of the Critical Area Law.

- (6) *That all identified habitat protection areas on or adjacent to the site have been protected by the proposed development and implementation of either on-site or off-site programs.*

The variance request as submitted would have an impact on identified habitat protection areas onsite. These impacts must be mitigated. Specific mitigation plans must meet those requirements specified in the conditions of approval and include a 3:1 mitigation ratio for all forest impacts within the Buffer as well as a 10% Pollutant Reduction plan.

- (7) *That the growth allocation for the county will not be exceeded by the granting of the variance.*

This variance will not have any impact on the County's Growth Allocation.

- (8) *That the variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or public interest.*

With the appropriate mitigation the requested variance will not be substantially detrimental.

- (9) *All applications for variance requests shall be filed in writing in accordance with Section 267-9D, of the Zoning Code. Notice of all variance requests and copies of applications filed in accordance with this section shall be sent to Chesapeake Bay Critical Area Commission within 10 working days of filing with the Department of Planning and Zoning. A copy of the recommendation of the*

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hearing examiner or of the Board in acting on variance shall be promptly sent to the Commission.

This provision has been and will be complied with. The Department has reviewed comments from the Chesapeake Bay Critical Area Commission (Attachment 12). The Commission did not state an objection to the request.

RECOMMENDATION and or SUGGESTED CONDITIONS:

The Department of Planning and Zoning recommends that the Applicant's request be approved subject to the following conditions:

1. The Applicants shall submit a detailed site plan to be reviewed and approved by the Department of Planning and Zoning.
2. The Applicants shall obtain all necessary permits and approvals for the improvements to the site.
3. A 10% Worksheet and associated drainage area maps must be submitted and approved prior to the issuance of any grading or use and occupancy permits. Runoff entering the site from Route 40 must be addressed as well.
4. A mitigation plan must be submitted and approved that details the reforestation necessary to comply with regulations concerning clearing in the Buffer.
5. Any areas that are not to be directly utilized for vehicular sales must be established in vegetation that conforms to the requirements of Critical Area plantings.



Dennis J. Sigler, Coordinator
Zoning & Board of Appeals Review



Anthony S. McClune, Acting Director
Department of Planning and Zoning

DJS/ASM/jf