



SOUTHERN CROSSROADS

FOREST BUFFER VARIANCE APPLICATION

prepared for:

Bohler Engineering, Inc.
901 Dulaney Valley Road, Suite 801
Towson, Maryland 21204



prepared by:

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July 12, 2021

**FOREST BUFFER
VARIANCE APPLICATION**

**Regulations for the Protection of Water Quality,
Streams, Wetlands, and Floodplains**

Part A. Applicant Information

Applicant(s):

Mr. Mark Levy
H & H Rock Companies
6800 Deerpath Court, Suite 100
Elkridge , Maryland 21075



Property Owner(s):

Engineer/Other Representative:

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Principal Contact:

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Part B. Property Information

Property Address/Location: 4100 Maple Avenue, Halethorpe MD 21227

Tax Account Number(s) 2500015832, 1600007730, 2500015833

Subdivision/Property Name: pka - Good Shepherd Center

| | | | |
|----------------|-----|-------------------|-------------|
| Tax Map | 108 | Parcel No. | 861 |
| | 109 | | 393 and 578 |

Acreage/Lot Size 18.45 acres

Zoning DR 5.5, BR, ML

Water: public **Sewer:** public

Part C. Variance Type

Indicate the specific section(s) of the Code from which you are requesting a variance :

Indicate the reason why are applying for a variance. Please check only one item.

- practical difficulty or hardship
- public improvement project
- repair/maintenance of public improvement
- had stream/forest buffer applied in conformation
Water Quality Management Policy or Executive Order

D. Indication of Practical Difficulty or Unreasonable Hardship.

Indicate practical difficulty or unreasonable hardship if this is the reason you applied for a variance.

The subject property is substantially constrained by Baltimore County Forest Buffers. The extent of the buffer on the site is greatly influenced by the past land use on the property. The property was historically mined for iron ore and this activity left many steep slopes across the property. Within the previous excavations wetland development is prevalent and these wetlands cast large buffers across the site.

In addition the fact that buffers occupy a substantial portion of the site, the buffers are oddly configured with many long fingers and broad headwaters that dissect the site and leave few contiguous developable areas. The configuration of the buffers creates practical difficulty as it related to a standard site play layout.

The variance application identifies ¹⁰nine locations where the proposed development is in conflict with some element of the forest buffer regulations. Most of these impacts are associated only with the setback requirements and two areas will be disturbed temporarily for restoration of the buffer. Each impact area and discussion of the unwarranted hardship or practical difficulty associated with strict compliance with the regulations is provided below and each area is highlighted on the accompanying plan.

Buffer Impact 1 - In this location, Lot 49, the applicant is seeking a variance to allow the house be located within the 35 foot setback from the Forest Buffer. Denial of this request creates an unreasonable hardship in that it would result in the loss of an otherwise viable lot. The purposed of the 35 foot setback between the house and the buffer is to allow the property owner reasonable yard space and to reduce encroachment/disturbance within the buffer.

For this lot the distance between the house and the buffer will be approximately 33 feet and the encroachment into the setback is along the side of the house not in the rear yard of the home. As such, the property owner does have a fully functional rear yard. Furthermore, the buffer is located approximately 20 feet beyond the lot line of the subject lot and a SWM feature will be located between the property line and the buffer. Given that the subject lot will have a fully functional rear yard, the owner will have no legal ownership of the buffer, and the usable lawn will be separated from the buffer by a SWM facility, the strict application of the regulation creates an unwarranted hardship.

Buffer Impact 2 - In this location, Lot 27, the applicant is seeking a variance to allow the house to be located within the 35 foot setback from the Forest Buffer. Denial of this request creates an unreasonable hardship in that it would result in the loss of an otherwise viable lot. The purpose of the 35 foot setback between the house and the buffer is to allow the property owner reasonable yard space and to reduce encroachment/disturbance within the buffer.

For this lot the distance between the house and the buffer will be approximately 15 feet at the front corner of the home and 26 feet at the rear corner of the home. The encroachment into the setback is along the side of the house not in the rear yard of the home. As such, the property owner does have a fully functional rear yard. Furthermore, the buffer is located beyond the lot line of the subject lot. A fence will be installed along the property boundary of the lot and the buffer area adjacent to the lot will be enhanced with reforestation plantings to further distinguish the buffer and enhance its function. Given that the subject lot will have a fully

functional rear yard , has no legal access into the buffer, and the buffer access will be limited by fencing and plantings, the strict application of the regulation creates an unwarranted hardship.

Buffer Impact 3 - In this location, Lot 26, the applicant is seeking a variance to allow the house to be located within the 35 foot setback from the Forest Buffer. Denial of this request creates an unreasonable hardship in that it would result in the loss of an otherwise viable lot. The purpose of the 35 foot setback between the house and the buffer is to allow the property owner reasonable yard space and to reduce encroachment/disturbance within the buffer.

For this lot the distance between the house and the buffer will be approximately 26 feet at the front corner of the home and 20 feet at the rear corner of the home. The encroachment into the setback is along the side of the house not in the rear yard of the home. As such, the property owner does have a fully functional rear yard. Furthermore, the buffer is located beyond the lot line of the subject lot. A fence will be installed along the property boundary of the lot and the buffer area adjacent to the lot will be enhanced with reforestation plantings to further distinguish the buffer and enhance its function. Given that the subject lot will have a fully functional rear yard , has no legal access into the buffer, and the buffer access will be limited by fencing and plantings, the strict application of the regulation creates an unwarranted hardship.

Buffer Impact 4 - In this location, Lots 21-23, the applicant is seeking a variance to allow three houses to be constructed within the 35 foot setback from the Forest Buffer. Denial of this request creates an unreasonable hardship in that it would result in the loss of an otherwise viable lots. The purpose of the 35 foot setback between the house and the buffer is to allow the property owner reasonable yard space and to reduce encroachment/disturbance within the buffer.

For these lots the hardship is related to the fact that the buffer being protected will be impacted by the necessary impacts associated with the construction of the access road which is addressed in the accompanying Alternatives Analysis application. The setback will have no viable function in this location because the buffer will be developed for the road, as such the strict application of the regulation in this instance creates an unwarranted hardship.

Buffer Impact 5 - In this location, Lot 175, the applicant is seeking a variance to allow the house to be located within the 35 foot setback from the Forest Buffer. Denial of this request creates an unreasonable hardship in that it would result in the loss of an otherwise viable lot. The purpose of the 35 foot setback between the house and the buffer is to allow the property owner reasonable yard space and to reduce encroachment/disturbance within the buffer.

For this lot the distance between the house and the buffer will be approximately 35 feet at the front corner of the home but only 28 feet at the rear corner of the home. The encroachment into the setback is along the side of the house not in the rear yard of the home. As such, the property owner does have a fully functional rear yard. Furthermore a retaining wall will be

constructed between the lot line of the subject property and the buffer easement. Given that the subject lot will have a fully functional rear yard, has no legal access into the buffer, and the setback function will be replaced with a retaining wall that will restrict access to the buffer, the strict application of the regulation creates an unwarranted hardship.

Buffer Impact 6 - In this location, Lots 194-196, the applicant is seeking a variance to allow for a 1,740 sq.ft. encroachment into the forest buffer for the construction of a house/lawn and for a reduction in the setback requirements for three adjacent homes. The buffer encroachment in this area overlaps existing parking area that currently exists on the site. The applicant is proposing to remove all of the associated parking and restore the majority of the buffer in this area to a fully functional buffer. The proposed request to encroach into the buffer for the construction of a retaining wall and lot development will allow for use of the currently paved portion of the property. The setback reduction will be located along the front of the lots and will not cause the reduction in any usable lawn space. The buffer will be located off the lots and the setback reduction will be minimal, allowing for 32 feet between the front of the home and the buffer.

Given that the buffer is currently paved and the applicant will remove and restore the majority of the buffer in this location, denial of the request and strict application of the buffer regulations that would result in the loss of a lot creates an unreasonable hardship for the applicant.

Buffer Impact 7 - In this location, Lot 50, the applicant is seeking a variance to allow the house to be located within the 35 foot setback from the Forest Buffer. Denial of this request creates an unreasonable hardship in that it would result in the loss of an otherwise viable lot. The purpose of the 35 foot setback between the house and the buffer is to allow the property owner reasonable yard space and to reduce encroachment/disturbance within the buffer.

For this lot the distance between the house and the buffer will be approximately 19 feet in the rear corner of the home. The encroachment into the setback is restricted to the southern corner of the lot. A retaining wall will be constructed across the rear corner of the lot, outside the buffer. This retaining wall will create a delineation of the usable lot area and will restrict access into the buffer. Furthermore, the associated buffer will be enhanced/restored by removing existing disturbance and being reforested. Given that the subject lot will have a viable rear yard and the setback function will be replaced with a retaining wall that will restrict access to the buffer, the strict application of the regulation creates an unwarranted hardship.

Impact 8 - In this location the applicant is seeking a variance to allow for the grading and fill of 11,933 sq.ft. of forest buffer associated with an isolated wetland pocket. This buffer area occurs adjacent to the access road and in a critical location relative to the proposed commercial layout of the property. The buffer easement occupies only about 10 percent of the land area to the south of the access road but retention of the easement would effectively impact nearly 20 percent of this land area. Given the limited availability of developable BR zoned land

along the Route 1 corridor, this additional reduction would greatly reduce the possibility of creating a viable retail/business zone for the property in keeping with the zoning allowed and the Master Plan goals for lands along Route 1.

The retention of the isolated resource within the matrix of development proposed in adjacent uplands and the existing adjacent offsite development would provide little function or value. The wetland is a remnant feature of the past ore mining on the site and has no connectivity. The appears to be fed by surface water accumulation on poorly drained soils and the source of hydrology will be reduced by the proposed stormwater management techniques proposed for the adjacent wetlands.

Given that the resource has limited function and value, is of a man-made origin and would have substantially reduced function if retained within the proposed development matrix, strict application of the buffer requires for this resource would create an unwarranted hardship for the applicant as it relates to the ability to create a viable retail/business community on the site.

Impact 9 - In this location the applicant is seeking a variance to allow for the grading and fill of 9,100 sq.ft. of forest buffer associated with an isolated wetland pocket. The location of this resource creates a practical difficulty for the applicant as it is located within a central area of the BR zoned land. Given the limited access to Route 1 that is available, the steep slopes and other buffer resources on the site, the retention of this resource area would basically eliminate the development potential for land areas north of the access road. Retention of this resource would eliminate nearly an acre of otherwise usable land and would reduce the site layout efficiency of the property.

The resource area is situated midway between a large contiguous wetland/buffer area to the west and Route 1. Because limited access to Route 1 is available, there is no way to provide access to the northern end of the BR zone without passes through the area of this resource. The need for that access, combined within it central location increases the difficulty of site development if retention of the resource is mandated.

Further, given that the resource is a remnant, man-made feature on the landscape and its retention would provide limited wetland or habitat function within an otherwise development matrix, the strict application of the regulations requiring that this resource be retained would create an unwarranted hardship to the applicant given the extensive impact this would cause in the development layout and potential business/retail offerings.

Wetland impact = ? SR

Impact 10 - In this location the applicant is seeking a variance to allow for the grading and fill of 11,135 sq.ft. of forest buffer to allow for grading and parking for anticipated commercial development. The location of the buffer relative to the road frontage creates a practical difficulty for development. The buffer complex extends parallel to the road alignment and creates a substantial narrowing of the potential development footprint. This narrow site area greatly impacts the development potential and reduces the opportunity to provide a mixed use business/retail development along the road frontage.

Given that the extent of the buffer is based on historic mining activities that created the wetland and slopes conditions, without regard to the location relative to the road or the subsequent zoning, the strict application of the buffer regulations also creates an unreasonable hardship for the applicant. The wetland location is driven solely by the historic land disturbance and the lack of restoration that followed. Had the disturbed areas been returned to a natural grade there would likely be no wetland or buffers resources occurring in this area encumbering the site development footprint.

The unwarranted hardship is based on the fact that the BR zoned land along Route 1 is of critical importance to the development program and the continuity of uses for the property. Also, reasonable development along the Route 1 corridor is recognized as a goal by the County Master Plan. The minor buffer encroachment proposed in this area will allow for efficient site layout and use where the buffer/road configuration creates the greatest conflict. This request also considers that a substantial portion, nearly one third, of the BR zoned land is being retained within Forest Conservation and Forest Buffer easements to meet the environmental protection goals of the County.

Part E. Project Description.

Briefly describe the proposed project or activity.

In this phase of the project the applicant is presently proposing a redevelopment project that will convert a portion of the existing institutionally developed property into a residential community. Future development of the non-residentially zoned portions of the site will be addressed as part of any future development proposal.

Part F. Existing Resources.

Briefly describe the existing resources (e.g., streams, wetlands, floodplains, steep slopes/erodible soils, vegetation) present within the Forest Buffer, and the condition/quality of these resources.

The subject property has an extensive use history that includes iron ore mining and institutional use. Currently the site contains a large building complex that was previously utilized as an institutional housing and educational facility. This facility includes a multi-building complex with large parking fields, recreational facilities and utilities, including a water tower. The developed facilities are located along the gentle to moderately sloping land along the top of a ridgeline.

The balance of the site is gently to steeply sloping and is dominated by forest. Much of this portion of the site was previously disturbed for iron ore mining. Very steep slopes surround excavated quarries. These slopes appear to be mostly man-made but some, along the far northern end of the site are natural slopes. Smaller excavation/exploration pits are present along the eastern edge of the site as well. Some sloped areas appear to be the result of past stockpile creation.

The forest on the property is made up of a mixed oak/tulip poplar association that includes a diverse community. The stand is generally middle aged but larger specimen trees are present across much of the site. Tulip poplar, white oak, chestnut oak, black oak and red maple are common across the site. The shrub and herbaceous layers of the stand are heavily impacted by invasive species colonization.

Wetland and stream resources are present on the property. Many of these resources appear to be the result of, or at least manipulated by, the previous quarrying operation. Wetland development in the basins of the quarry pits appear to collect discharges from the adjacent steep slopes. Overflows from the basins drain off into stream channels. Isolated basins are present along the eastern edge of the site. These appear to be exploratory pits that do not have regulatory connections to streams or other wetland resources. The soils on the site have a very high clay content which supports the retention of precipitation. Erosion along the natural streams is evidenced by the deeply incised channels and unstable banks.

The wetlands and streams on the site are within the Use I watershed of the Patapsco River (02-13-09). The western half of the site drains toward Herbert Run. The streams in the north and south east of the site drain into culvert/stormdrain systems. The daylight location of these systems is not known but is within the Patapsco River watershed.

Part G. Proposed Forest Buffer Impacts.

Briefly describe the proposed Forest Buffer Impacts (e.g., type/acreage of wetlands to be filled, forest to be cleared, width of buffer to be impacted, etc.). Include a description of the Forest Buffer that would remain, if these impacts are allowed to occur.

The specific buffer impacts are provided in Part D of the application. An overview of the impact request is as follows

Impact 1 - Setback reduction, no impacts to wetlands or buffer

Impact 2 - Setback reduction, no impacts to wetlands or buffer

Impact 3 - Setback reduction, no impacts to wetlands or buffer

Impact 4 - Setback reduction, no impacts to wetlands or buffer

Impact 5 - Setback reduction, no impacts to wetlands or buffer

Impact 6 - Buffer encroachment for construction of a retaining wall and lot 196. Total buffer impact 1,740 sq.ft. Setback reduction for lots 194 and 195.

Buffer to be retained will be 25 feet in width and will be forested

Impact 7 - Setback reduction, no impacts to wetlands or buffer

Impact 8 - Isolated wetland/buffers fill

Impact 9 - Isolated wetland/buffer fill

Impact 10 - Impacts to wetlands/buffer to accommodate grading and parking

Part H. Minimization of Impacts.

Briefly describe how the proposed project or activity will minimize impacts to water quality, streams, wetlands, and floodplains, both during construction and over the long term. Include a description of any proposed mitigative measures.

The applicant has minimized resource impacts through the application of a creative and thoughtful site design that has configured the development plan to avoid lot related impacts to any undisturbed buffers areas. The only proposed buffer encroachment for lot development will occur in an area previously paved for parking. The project engineer has also configured the lot layout such that setback reductions will be required primarily for side yards and most for the forest buffer easement will occur on open space and not in private ownership.

The Forest Buffer Easement will be placed in a protective easement to provide long term protection of the stream system.

In addition, the applicant is proposing to remove existing impervious surface and past development structures that are present within the buffer and to restore these areas to forest. The applicant will provide onsite buffer enhancement to mitigate for the proposed impacts to the buffer associated with the development of Lot 196 and will provide mitigation for buffer impacts required for implementation of necessary infrastructure that is approved through the Alternative Analysis process. A formal Forest Buffer Protection Plan will be provided upon approval of the variance and AA applications. Areas of proposed restoration and potential buffer enhancement within Phase 1 of the project are shown on the accompanying plan.

Buffer impacts associated with later phases of the project will address their mitigation obligations upon final determination of the precise buffer impacts. The project engineer will continue to work to refine site plans to minimize resource impacts to the extent practicable. The applicant proposes to provide Forest Buffer Protection Plans for future phases of the development at the time those site plans are submitted for approval.

During construction the applicant will utilize the required sediment and erosion control techniques to minimize indirect impacts. Any temporarily disturbed areas will be seeded and stabilized.

Part I. Supplemental Information.

Indicate any supplemental information included with the application.

- functional assessment of _____
- alternatives analysis for proposed impacts to _____
- a conceptual mitigation plan for proposed impacts to buffer _____
- wetland data sheets
- copies of pertinent State and Federal permits
- other (explain)

Part J. Additional Information.

Use this space to explain answers to any of the questions on this form in greater detail, or to provide any other information about the site or project pertinent to this variance request. Attach additional sheets if necessary.

The proposed site plan will result in 1,740 sq.ft. of direct buffer impact for lot related development. This impact area is currently paved so mitigation will be required at a 1:1 ratio. The required mitigation credit can be accomplished within FB Restoration Area 2. This area

will provide 4,160 sq.ft. of mitigation credit that will be used to offset mitigation requirements for the Forest Buffer Variance and impacts permitted for road and utility installation.

In addition FB Restoration Area 1 will include the removal of existing impervious surface and other structures that exist within the buffer and reforestation. This restoration will be used to address the mitigation obligation generated by road and utility impacts.

FB Restoration Areas 3 and 4 will include reforestation of the buffer/buffer setback that occurs outside of the private lot to improve the function and delineate the non-disturbance areas.

I/We do solemnly declare and affirm under the penalties of perjury that the contents of this application are true and correct to the best of my/our knowledge, and that the application contains names and addresses of all persons having legal or equitable interest in the property.

Signature(s):



7/6/21

Applicant /Owner

Date

Applicant /Owner

Date