



St. Mary's County Department of Land Use and Growth Management

23150 Leonard Hall Drive, Leonardtown, MD 20650

Phone (301) 475-4200, ext. *1500 Fax (301) 475-4672

DEVELOPMENT REVIEW APPLICATION



Instructions to Applicant:

Please complete the information below prior to your submission. This application will be required in order to accept and process your submission. All plans must be folded or of a size which will fit into a standard legal folder. **ALL INFORMATION MUST BE COMPLETE OR SUBMISSION WILL BE RETURNED TO APPLICANT.**

CONTROL NUMBER: _____ (To be completed by LUGM personnel)

PROJECT NAME: 36850 Bushwood Wharf Rd., Bushwood, MD 20618

DATE: November 4, 2020

DIGITAL SUBMISSIONS ARE REQUESTED FOR ALL TEC AND RECORDING DOCUMENTS

REQUEST: Check appropriate block(s)

DEPT. OF LAND USE AND GROWTH MANAGEMENT

REVIEW ONLY:

- Confirmatory Plat
- Boundary Line Adjustment Plat
- Forest Stand Delineation of proposed _____
- Forest Conservation Plan for _____
- Forest Conservation Plan Amendment
- Plat Exempt Division by Deed
- Resubmission
- Other (Specify) _____

TEC/PLANNING COMMISSION REVIEW:

- Preliminary review of _____ lot minor/major subdivision
- Final review of _____ lot minor/major subdivision
- Concept Site Plan review for _____ sq. ft. for _____ (use type)
- Site Plan review for _____ sq. ft. for _____ (use type)
- Zoning Map Amendment from _____ Zone to _____
- Amendment to CWSP from category _____ to _____

OWNER/CONTRACT PURCHASER: Ann Pogue

MAILING ADDRESS: 36850 Bushwood Wharf Rd., Bushwood, MD 20618

PHONE #: 240-538-2136 E-MAIL ADDRESS: _____

AUTHORIZED AGENT: Christopher T. Longmore

ADDRESS: 22738 Maple Rd., Suite 210, Lexington Park, MD 20653

PHONE #: 301-862-3764 E-MAIL ADDRESS: chris@paxlawyers.com

PROPERTY LOCATION: Address if known. If not known, then *directions* as follows:

Describe location as N-S-E-W side of (Street Name), approx. (feet) N-S-E-W of Intersection with State/County) Road
36850 Bushwood Wharf Rd., Bushwood, MD 20618

PARCEL IDENTIFICATION:

TAX MAP:	38	GRID:	07	PARCEL:	11
LAND USE:		ZONING:	RPD	ZONING OVERLAYS:	
ACREAGE:	41,252 Sq. Ft.	ELECTION DISTRICT:	7th	TAX ID ACCT #:	07-023022
CWSP WATER/SEWER SERVICE CATEGORY: _____ USE TYPE #: _____					

(OVER)

Development Review Application

Page 2 of 2

I hereby request that EDUs for this application be allocated at: (choose one below)

<input type="checkbox"/> Concept Site Plan Approval	<input type="checkbox"/> Final site Plan Approval
<input type="checkbox"/> Preliminary Subdivision Approval	<input type="checkbox"/> Final Record Plat Approval

I hereby swear or affirm that I am the property owner and that this application is correct:

PROPERTY OWNER/AUTHORIZED AGENT'S SIGNATURE: PRINT NAME Christopher T. Longmore

I hereby swear or affirm that I have received authority from the property owner to make this application and that this application is correct (See attached "Limited Power of Attorney").

REVIEW FEES:

# of Lots/Sq. Ft. of Site Plan/Acres Disturbed	Type of Project:	Initial Submission Fees	Resubmission Fees
	Minor Subdivision 1-7 Lots	\$750 + \$100 per lot + Application Fee	
	Major Subdivision 8+ Lots	\$1900 + \$100 per lot + Application Fee	
	Concept Site Plan	\$920 + Application Fee	
	Major Site Plan	\$1500 per acre of disturbed area + Application Fee	
	Minor Site Plan (Includes DPWT Fee)	\$250 – Less than 500 sq. ft. + Application Fee \$375 – Over 500 sq. ft. + Application Fee	
	Application Fee	\$20.00	
	Soil Conservation Storm Water Management Concept Plan	\$250- Less than 5 acres \$500- 5 acres or greater	
	BLAP, Confirmatory Plats, Plat Exempt, FCP, FSD, Transfer Development Rights	\$80.00	\$80.00
	Health Department Plat Fee	\$120.00 per lot or site plan	\$120.00
	MetCom Fees TEC Review/Concept Site Plan	\$60.00 No public water and sewer \$120.00 Public water and/or sewer	\$60.00
	Recording Package	\$60 LUGM Review Fee \$5 Per Plat Recording Fee (Clerk of the Court)	
	Additional Recording Documents	\$30 DPWT Review 1-10 lots \$60 more than 10 lots \$60 Recording Fee (each) (Clerk of the Court)	

Resubmissions – \$25 each after first resubmission

Other fees may apply; see the Schedule of Fees for St. Mary's County, Effective July 1, 2018

Total	\$260.00
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SUBMISSION REQUIREMENTS:

See applicable checklist

NUMBER OF PRINTS REQUIRED FOR REVIEW:TEC Committee – **15** PrintsPlanning Commission – **15** PrintsNon-TEC Site Plans – **1** PrintResubmissions – **1** PrintForest Stand Delineation – **1** PrintRecording Package – **4** Mylar **4** PaperForest Conservation – **1** PrintIn addition to the prints listed above, a **digital copy** of the plans is encouraged.

FOR RECORDING DOCUMENTS PLEASE MAKE CHECKS PAYABLE TO THE CLERK OF THE COURT Also Please make the \$60.00 check and the \$5.00 two separate checks. The Courthouse will not accept one full check. Thank you. FOR ALL OTHER SUBMISSIONS, PLEASE MAKE CHECKS PAYABLE TO THE COMMISSIONERS OF ST. MARY'S COUNTY.

DUGAN, MCKISSICK & LONGMORE

LLC

22738 MAPLE ROAD, SUITE 210

LEXINGTON PARK, MARYLAND 20653

PHONE: 301 862-3764

FAX: 301 862-3789

PAXLAWYERS.COM

BRYAN T. DUGAN *

BILL D. MCKISSICK, JR. *

CHRISTOPHER T. LONGMORE *†

SHANNON A. DENT *

REBEKKA J. HUTCHINS*

SAMUEL H. Wiest *†‡

ANJELICA N. HARDEN-IVANOSKI *‡

DAVID C. WEIGEL *

* ADMITTED IN MARYLAND

† ADMITTED IN DISTRICT OF COLUMBIA

‡ ADMITTED IN VIRGINIA

November 4, 2020

VIA HAND-DELIVERY

Brandy Glenn
Dept. of Land Use and Growth Management
Planner III Development Facilitator
23150 Leonard Hall Drive
Leonardtown, MD 20650

Re: Request for Exception from Intrafamily Conveyance Requirements –
36850 Bushwood Wharf Road, Bushwood, MD 20618

Dear Ms. Glenn:

This office represents Ann Holt Pogue with the regards to that certain parcel of real property known as Adjusted Parcel 11, per a Critical Area Boundary Line Adjustment Plat dated July 30, 2007 prepared by Little Silences Rest, Inc., Professional Land Surveyors (the “Property”), and recorded among the Land Records of St. Mary’s County, Maryland on May 23, 2008 in Plat Book JWW 65, Folio 36 (the “2008 Plat”). The Property is located at 36850 Bushwood Wharf Road, Bushwood, MD 20618 and is arguably subject (or partially subject) to a Declaration of Covenants recorded among the Land Records of St. Mary’s County at Liber EWA 711, Folio 303 (the “Declaration”), which restricts conveyances of the Property to members of the owner’s immediate family. Ms. Pogue respectfully requests an exception to the intrafamily conveyance requirements pursuant to Section 41.6.4 of the St. Mary’s County Comprehensive Zoning Ordinance (“SMCCZO”).

Section 41.6.4(a)(3) of the SMCCZO allows for exceptions to the intrafamily conveyance restrictions if:

- (a) The lot was created as part of a bona fide intrafamily transfer and not with the intent of subdividing the original parcel of land for purposes of ultimate commercial sale; and
- (b) A description of the change in circumstances that has occurred since the bona fide intrafamily original transfer was made is not inconsistent with the Critical Area program and warrants an exception.

The Declaration, a true and correct copy of which is attached hereto as **Exhibit A**, was made by Robert Steele Pogue, Dianne L. Pogue, Terry Northrop Pogue, and Cynthia Marie Wood, and was recorded among the Land Records of St. Mary's County on September 24, 1992. The Property was originally not subject to this Declaration. However, as a result of the aforementioned 2008 Plat, a portion of the property that was originally subject to the restriction was conveyed to Ms. Pogue. A true and correct copy of the 2008 Plat is attached hereto as **Exhibit B**. This makes this situation unique because the dwelling unit on the Property was not originally intended or required to be limited by an intrafamily covenant and instead only became so restricted by a technicality according the County and State.

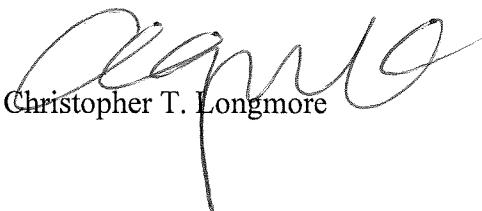
In addition, since the recordation of the Declaration there has been a genuine change in circumstances warranting an exception to the intrafamily conveyance restriction. More specifically, on or about January 9, 2017, one of the property owners of a property that was clearly subject to the Declaration received a letter from Phillip Shire, the then Director of the Department of Land Use and Growth Management ("LUGM"), notifying him that the properties located at 36846 and 36844 Bushwood Wharf Road would no longer be held to the intrafamily conveyance requirements of the Declaration. One of said properties was then conveyed to a non-family member in January and March of 2017. A True and correct copy of Director Shire's letter, which was attached to the deed conveying that other property, is attached hereto as **Exhibit C**.

Additionally, the Property is already improved by a single-family residence which was constructed in 1935. The granting of exception to the intrafamily conveyance requirement will not result in any increased density or use and is consistent with the Critical Area program. Additionally, as stated above, the vast majority of the Property was never intended to be restricted by the Declaration and therefore a release from this Declaration is more than appropriate.

As demonstrated above, an exception to the intrafamily conveyance restriction is warranted and Ms. Pogue respectfully requests that the Planning Commission find that the restriction should be removed and that the appropriate title documents be recorded to effectuate the granting of the exception.

Ms. Pogue requests that her application be placed on the next TEC Agenda and reserves the right to present additional evidence and make additional arguments before the TEC and Planning Commission.

Sincerely,



Christopher T. Longmore

cc: Ann Pogue (*via email*)

LIE 0711 00303

DECLARATION OF RESTRICTIVE COVENANTS

THIS COVENANT, made this 18th day of September, 1992 by ROBERT STEELE POGUE and DIANNE L. POGUE, parties of the first part, and TERRY NORTHRUP POGUE and CYNTHIA MARIE WOOD, parties of the second part.

1:41PM09/24/920 C.t.R. \$20.00

WHEREAS, a certain parcel of land called and known as "Part of Chickahominy", containing 7.56 acres of land, more or less and located in the Seventh election District of St. Mary's County, Maryland was conveyed to the parties of the first part from Lucy Long Pogue, surviving tenant by the entireties, by deed dated December 30, 1988 and recorded among the aforesaid land records at Liber M.R.B. No. 452, Folio 20.

1:41PM09/24/920 SURCHG \$2.00

WHEREAS, the parties of the first second part subsequently conveyed a portion of said property to Terry Northrop Pogue by deed dated September 23, 1991 and recorded among the aforesaid land records at Liber E.W.A. No. 628, Folio 266, and which was subsequently conveyed to the parties of the second part by deed dated October 29, 1991 and recorded among the aforesaid land records at Liber E.W.A. No. 628, Folio 375.

WHEREAS, each of the properties described above is situated in the one thousand foot (1,000') critical area, and therefore subject to the St. Mary's County Critical Area Ordinance (Ordinance No. 90-02), which is incorporated in Section 38.02 of the St. Mary's County Zoning Ordinance.

WHEREAS, the conveyances described above constitute "intrafamily transfers" as defined in Part One, pages 5 and 6 of the Ordinance, and are subject to certain restrictions set forth therein.

WHEREAS, it is the intent of the parties to place the following restrictive covenants on the above-described properties in order to assure compliance with the provisions of the Critical Area Ordinance governing intrafamily transfers.

NOW THEREFORE, the parties of the first part and the parties of the second part hereby declare that the following restrictive covenants shall be binding on their respective properties described above:

1. The parties hereby covenant and agree that said properties shall not be conveyed subsequently to any other person or persons other than a member of the owner's immediate family, except with the written assurance filed by the owner with the St. Mary's County Office of Planning and Zoning that:

a. The lot was created as part of a bona fide intrafamily transfer and not with the intent of subdividing the

EXHIBIT A

LCM0711 0304

original parcel of land for purposes of ultimate commercial sale, and

b. A change in circumstances has occurred since the original transfer was made that is not inconsistent with the critical area program and that warrants an exception, or other circumstances that are consistent with the critical area program to maintain land areas necessary to support the protective uses of agriculture, forestry, open space, and natural habitats in Resource Conservation Areas warrant an exception.

2. The parties covenant, agree and acknowledge that these restrictive covenants may be enforced administratively or judicially by the Board of County Commissioners of St. Mary's County, Maryland, acting through its Office of Planning and Zoning.

3. These restrictive covenants shall run with and bind the respective properties of the parties, and shall be binding upon the parties and their respective personal representatives, heirs and assigns.

WITNESS the hands and seals of the parties hereto as of the date first written above.

WITNESS:

Jean L. Wetter

Robert Steele Pogue (SEAL)
ROBERT STEELE POGUE

Jean L. Wetter

Dianne L. Pogue (SEAL)
DIANNE L. POGUE

Jean L. Wetter

Terry Northrop Pogue (SEAL)
TERRY NORTHRUP POGUE

Jean L. Wetter

Cynthia Marie Wood (SEAL)
CYNTHIA MARIE WOOD

STATE OF MARYLAND, St. Mary's County, to wit:

I HEREBY CERTIFY that on this 18 day of September, 1992 before the undersigned, a Notary Public of the state and county aforesaid, personally appeared ROBERT STEELE POGUE, DIANNE L. POGUE, TERRY NORTHRUP POGUE and CYNTHIA MARIE WOOD, and they

GENERAL NOTES

- Subject property is located on Tax Map 38 at Block 1 as Parcels 11, 71 & 254.
- The total area of this site is 10.04 Acres +/-.
- Subject property is zoned RPD (Rural Preservation District) as shown on Official Zoning Maps for St. Mary's County, MD, and also within the RCA (Resource Conservation Area) Overlay Zone.
- Building Restriction Lines (BRL's) shall be as shown hereon. The BRL's are mapped in accordance with the St. Mary's County Comprehensive Zoning Ordinance (CZO) 02-01 Chapter 32.3.2 and Schedule 32.1 for Zone RPD as follows: 25' Front, 15' Side, and 20' Rear applied from the more restrictive of the lot lines or from sensitive areas mapped per CZO 02-01 Chapter 71.
- These lots are to be served by individual septic systems and deep drilled wells. Deep Drilled Wells shall be drilled to an approved confined aquifer.
- This Health Department Approval certifies the above lots are in consonance with pertinent Health Department Laws and Regulations as of the approval date; however, this approval is subject to changes in such laws and regulations. Changes in topography or site designations may void this approval. The designated perc area is the only area approved by the St. Mary's County Health Department for sewage disposal purposes. The approved lots include a minimum area of 10,000 sq. ft. for sewage disposal purposes, as required by current Maryland State Health Law. Improvement of any nature including but not limited to the installation of other utility lines in this area may render the lot undevelopable. To determine the exact area of the lot approved for sewage disposal purposes, or to establish a different area for such purposes, you should contact the St. Mary's County Health Department, Office of Environmental Health.
- This subdivision is in compliance with the St. Mary's County Comprehensive Water and Sewerage Plan.
- There shall be a 10' Utility Easement along all lot lines. The easements are to include use by the St. Mary's County Metropolitan Commission, its successors and assigns, for construction, maintenance, repair, inspection and operation of public water and sewer facilities, should such facilities ever be installed.
- Unless otherwise shown, there are no restrictions or record affecting this subdivision, subject to a Title Search.
- Areas established for Resource Protection on this site, in accordance with required protection levels, must remain in undisturbed open space & undeveloped.
- There are no Outlots, Outparcels or Parcels included herewith.
- Parcels 11, 71, and 254 (Tract 1) have direct access to a State Road (Bushwood Wharf). Parcel 254 (Tract 2) is to be accessed by the 30' Access Easement as shown hereon. CAUTION: This access easement does not necessarily provide access from these lots to a County or State road at this time. Road and utility construction and maintenance are the responsibility of the buyer of these lots, unless otherwise provided herein.
- Existing structures within subject property do not meet side and/or front yard restrictions established by the St. Mary's County Comprehensive Zoning Ordinance (CZO) 02-01 and is therefore an existing non-conforming use.
- Current Water and Sewerage Plan Category Designation are as follows: Water = W-N.P.S. and Sewer = S-N.P.S.
- No plans currently exist for future subdivision.
- Parcel 251 (Tract 2) shall be served by the 30' Access Easement as shown hereon.
- Premise Addresses for the Lots hereon are shown as this: (XXXXX).
- This plat was prepared without the benefit of a Title Report, which could reveal additional conveyances, easements, covenants, rights-of-way and/or more stringent building restriction lines not shown hereon.
- The Horizontal and Vertical Datums shown hereon are assumed. North Rotation is referenced to the Deed Record in Liber EMA 1124 at Folio 375.
- The Subject Property Shown Hereon appears to be located in Flood Hazard Zones "X" and "AE" (E1, 5/6) as delineated on Flood Insurance Rate Maps for St. Mary's County, Maryland, as distributed by the Federal Emergency Management Agency, Community Panel Number 24031C014E, Effective Date October 14th, 2004. All structures placed in the floodplain on the parcels shall be subject to the requirements of CZO 76.6. No enclosed structure can be added to the floodplain on site unless it is elevated and receives a Waterway Construction permit issued by MDE. No structure can be approved in the floodplain buffer without a variance.
- Non-Tidal Wetlands information on site of subject subdivision was derived from the "National Wetlands Inventory" Maps distributed by the U.S. Department of the Interior, FWS (quad), MD, and Maryland DNR maps.
- Soils information shown hereon was taken from the "Soil Survey of St. Mary's County, Maryland" as prepared by the U.S. Department of Agriculture, Soil Conservation Service, sheet #14 thereof.
- Except for the Field Run Topography around subject Sewage Reserve Areas, topographic information shown hereon was taken from a map obtained from the St. Mary's County Department of Public Works, as compiled by Photoscience, Inc., using photogrammetric methods.
- There appear to be no Critical Habitats, Cultural Features or Historic Sites located within subject property per MERLIN online maps.
- The lots shown hereon contain an area of at least 20,000 square feet not including rights-of-way (existing or proposed), 50 year flood plains, and grades of 25% or greater.
- Unless otherwise shown hereon, there are no wells or septic systems within 100' of the lot lines.
- Existing development on Parcels 11, 71, and 251 (Tract 1 and 2) is exempt from Stormwater Management pursuant to the St. Mary's CZO 02-01. Any further development shall be subject to the provisions of the Stormwater Management, Grading, Erosion & Sediment Control Ordinance.
- Subject subdivision is exempt from the Forest Conservation requirements of the St. Mary's County Comprehensive Zoning Ordinance per Section 75.2.2h. The requirements of Chapter 72 (Forest and Woodland Resources in the Critical Area) supersede the requirements of Section 75.2.2h.
- Parcels 11, 71, and 251 (Tract 1 and 2) are not grandfathered and are ineligible for variances to exceed impervious surface limits or for new encroachments into the Critical Area Buffer. For lots exceeding impervious surface coverage or with impervious surfaces in the Buffer, changes to impervious surface coverage shall be subject to CZO 415.3.1(B) limitations on impervious surface trading. If replacement structures are proposed, the replacement structures shall be relocated outside the Critical Area Buffer.
- Recording of this Boundary Line Adjustment Plat will expand existing deeded parcels of record as shown in the Boundary Line Adjustment Table, and will not result in additional building sites or increase in density or intensity beyond the current lands use shown hereon.

OWNER'S CERTIFICATE

We, Ann Holt Pogue Jenkins, Robert Steele Pogue, Diane Lee Pogue, and Terry Northrop Pogue, the owners of the property shown herein and described in the Surveyor's Certificate affixed hereto, hereby adopt this boundary line adjustment plat upon its approval by all required agencies. There are no pending suits or actions at law, leases, liens, mortgages or deeds of trust affecting this subdivision except as noted or shown, hereon. All parties in interest thereto have affixed their signatures indicating their assent to this plan.

We further establish the minimum building restriction lines as required by the St. Mary's County Zoning Ordinance and dedicate the streets, walkways, easements, rights-of-way and other improvements, where applicable, to public use.

The requirements of Section 3-108 of the Annotated Code of Maryland (Real Property Article) as far as it concerns the making of this plan and setting of the markers required therein have been complied with to the best of our knowledge, information and belief.

There shall be a 10' utility easement along all lot lines. These easements are to include use by the St. Mary's County Metropolitan Commission, its successors and assigns for construction, maintenance, repair, inspection and operation of public water and sewer facilities, should such facilities ever be installed.

The requirements of Section 3-108 of the Annotated Code of Maryland (Real Property Article) as far as it concerns the making of the plan and setting of the markers required therein have been complied with to the best of my knowledge, information and belief.

There shall be a 10' utility easement along all lot lines.

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ST. MARY'S COUNTY GOVERNMENT
DEPARTMENT OF LAND USE
AND GROWTH MANAGEMENT

Phillip Shire, Director

William Hunt, Deputy Director



COMMISSIONERS OF ST. MARY'S COUNTY

James R. Guy, President

Michael L. Hewitt, Commissioner

Tom Jarboe, Commissioner

Todd B. Morgan, Commissioner

John E. O'Connor, Commissioner

January 9, 2017

Joann M. Wood
The Law Office of Joann M. Wood, L.L.C.
23087 Three Notch Road
P.O. Box 70
California, MD 20619

Reference: 36846 Bushwood Wharf Rd., Tax Account 07-040970, Tract 2, 6.47 acres and 36844 Bushwood Wharf Rd., Tax Account 07-036566, Tract 1, 1.44 acres.

Dear Ms. Wood,

The above referenced property will not be held to the intra-family requirements of the Declaration of Restrictive Covenants, Liber 711 Folio 303 by Land Use and Growth Management.

Sincerely,

A handwritten signature in black ink, appearing to read "Phillip J. Shire".
Phillip J. Shire
Director

EXHIBIT

tabbies®

C