

AA 338-99
VAR

Obrecht, George
97-0424

MSA - 51829 - 136

Letter KC
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10-98
338-99

RECEIVED

AUG 18 1999

CHESAPEAKE BAY
CRITICAL AREA COMMISSION

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 1997-0424-V

IN RE: **GEORGE OBRECHT, ET AL**

THIRD ASSESSMENT DISTRICT

DATE HEARD: JULY 29, 1999

ORDERED BY: **STEPHEN M. LeGENDRE**, ADMINISTRATIVE HEARING OFFICER

ZONING ANALYST: **SUZANNE SCHAPPERT**

DATE FILED: AUGUST 16, 1999

PLEADINGS

George Obrecht, et al, the applicants, seek a variance (1997-0424-V) to permit a dwelling with less setbacks and buffer than required and on steep slopes on property located along the west side of Holly Farms Road, south of Benfield Road, Severna Park.

PUBLIC NOTIFICATION

The case was advertised in accordance with the provisions of the County Code. The applicants submitted the affidavit of Mark Weber, indicating that the property was posted on July 13, 1999.

FINDINGS AND CONCLUSIONS

This case concerns unimproved property with a street address of 436 Holly Farms Road, Severna Park. The property comprises 2.03 acres and is zoned R-1 residential with a Chesapeake Bay Critical Area designation as Resource Conservation Area (RCA). The applicants seek to develop the site with a single-family dwelling which will require disturbance in the expanded buffer and to steep slopes.

The Anne Arundel County Code, Article 28, Section 1A-104(a)(1) establishes a minimum 100-foot buffer landward from the mean high-water line of tidal waters. The buffer expands to include all land within 50 feet of the top of contiguous steep slopes. Section 1A-105(c) prohibits disturbance of slopes greater

than 15 percent in the RCA. Accordingly, the proposal necessitates a variance to disturb the expanded buffer and steep slopes.

Suzanne Schappert, a zoning analyst with the Department of Planning and Code Enforcement, testified that the property is a grandfathered lot wholly within the expanded buffer. 19.7 percent of the woodlands will be cleared for the utility right-of-way (3,600 square feet) and the house and driveway (17,400 square feet). Six percent of the lot will be covered with impervious surfaces. The applicants initially sited the dwelling closer to the shoreline. Despite the revision, the reviewing agencies (Chesapeake Bay Critical Area Commission and the Environmental Division of PACE) continue to question the extent of the variance. For example, the Environmental Division suggested relocating the driveway and garage to the northeast corner of the site, near the utility connection. Ms. Schappert recommended that any approval should be conditioned on stormwater management and a sediment control plan, as well as mitigation at a 3:1 ratio for new disturbance.

George Obrecht described a series of photographs depicting the site and neighboring properties served by Holly Farms Road, a 20-foot wide private road right-of-way which is paved to a width of 10 feet. The witness submitted a buildable lot letter from PACE as well as a letter of authorization from the Nontidal Wetlands Waterways Division.¹ The witness testified that the proposal

¹The letter of authorization permits construction of sewer and water connections with temporary impact to the regulated nontidal wetland buffer draining to the Severn River.

calls for a two-story dwelling with attached two-car garage and a parking pad for two visitors, whose vehicles would otherwise block Holly Farms Road. He gave consideration to other configurations, but found them less desirable. The alternate recommended by the Development Division would result in increased visibility from Holly Farms Road and would require the homeowner to back up a steep grade and still require the same degree of clearing and only one percent less impervious coverage. The witness concluded that the present proposal is more in keeping with the character of the neighborhood and will have the least impact on the use or development of adjoining properties. He described various efforts to circulate the site plan² in the community for review and comment.

Eric See, the applicants' environmental consultant, submitted a report concluding that "[t]he plan was drawn to minimize impact to the slope while providing a house and garage location that has a not-too-steep driveway and is believed to be compatible with the current real estate market." The witness noted that the utility connection will be installed with a small trenching machine and should have little impact on the area of trees in the northeast corner of the site. He anticipated no impact on water quality, provided the applicants provide sediment control, stormwater management and reforestation. On cross-examination, the witness acknowledged the sensitive nature of the site, but insisted that the usual practice is to strip and stockpile soil for later replacement only in cases of area

²There were several iterations of the site plan. Earlier versions did not include a pier into the Severn River.

grading and not for utility installation.

Scarlett Breeding, an architect/planner in the applicants' employ, considered six separate alternates in attempting to minimize the impacts while maintaining the essential character of the neighborhood. Like the witnesses before her, she considered the proposal with a short drive entering at the lowest part of the site to be vastly superior from both appearance and safety perspectives as compared to the alternate recommended by the Environmental Division.

William O'Berry, a representative of Ben Oaks, Inc., expressed a variety of environmental concerns, including: (1) the implementation and enforcement of effective erosion control measures; and (2) the impact on wildlife. Dr. Eileen Newman expressed similar concerns. Eileen O'Brien, an environmental consultant under contract to the Severn River Land Trust, underscored the need to preserve and protect the forested buffer and steep slopes.

The standards for granting variances are contained in Section 11-102.1. Under subsection (b), for a property in the Critical Area, a variance to the Critical Area program requirements may be granted if (1) due to features of the site, a strict implementation of the program would result in an unwarranted hardship to the applicants; (2) a literal interpretation of the program will deprive the applicants of rights commonly enjoyed by other properties in similar areas within the Critical Area; (3) the granting of the variance will not confer on the applicants any special privilege that would be denied by the program to other lands within the Critical Area; (4) the variance request is not based on circumstances resultant of actions by

the applicants and does not arise from conditions relating to land use on neighboring property; and (5) the granting of the variance will not adversely affect water quality or adversely impact fish, wildlife or plant habitat within the Critical Area and will be in harmony with the general spirit and intent of the program. . Under subsection (c), any variance must be the minimum necessary to afford relief; and its grant may not alter the essential character of the neighborhood, substantially impair the appropriate use or development of adjacent property, or be detrimental to the public welfare.

Upon review of the facts and circumstances, I find and conclude that the applicants are entitled to conditional relief from the code. For this Critical Area property, due to the impact of the expanded buffer (which covers the entire site) and the presence of steep slopes, a strict implementation of the program would result in an unwarranted hardship to the applicants. To literally interpret the program would deprive the applicants of the right commonly enjoyed by other properties in similar areas within the Critical Area to be developed with a single-family dwelling. Conversely, the granting of the variance will not confer on the applicants any special privilege that the program denies to other lands within the Critical Area. There was nothing to suggest that the request is based on circumstances resultant of actions by the applicants; nor does it arise from conditions relating to land use on neighboring property. Finally, with mitigation, the granting of the variance will not adversely affect water quality or adversely impact fish, wildlife or plant habitat within the Critical Area and will be in

harmony with the general spirit and intent of the program.

There remains the issue of whether the variance is the minimum necessary to afford relief. I find that the applicants have minimized the request. The applicants have relocated the dwelling further from the water. Clearing and impervious coverage do not exceed the permitted percentages (20 percent and 15 percent, respectively). A significant part of the applicants' proof was directed to counter the Development Division's recommendation to relocate the driveway and garage to the northeastern corner of the site. The recommendation was based on the belief that the utility installation will likely destroy the stand of trees in the northeast quadrant. Admittedly, the alternate produces a small decrease in impervious coverage. However, there is a genuine difference of opinion whether the utility installation will necessarily destroy the stand of trees in the northeast quadrant. These factors must be balanced against the impact on the character of the neighborhood and the use or development of adjacent property. The community along Holly Farms Road has been described as rural in character; and as an old community in which the houses are hidden from view. The alternate proposal would be more visible from the road. The alternate also yields a steep driveway and an unsafe exiting movement. On balance, the applicants have met their burden of proof and the granting of the variance will not be detrimental to the public welfare.

Every witness recognized the sensitivity of the site. Therefore, it is appropriate to condition the approval to protect the site, both during construction

and in perpetuity. Conditions shall include the prohibition of increased disturbance to the expanded buffer or steep slopes; requirements for stormwater management and sediment control with daily inspection and repair; and a requirement for a conservation easement.³ Mr. O'Berry sought an oversight role in the monitoring of the project. Due to ongoing revisions, the exchange of information may have been less than perfect. However, Mr. Obrecht made an effort to share the site plan. This office will encourage continued cooperation as the permit plans (grading and sediment control) are developed by retaining jurisdiction over the case. In view of the sensitivity of the site, mitigation will be imposed at a 3:1 ratio.⁴

ORDER

PURSUANT to the application of George Obrecht, et al, petitioning for a variance to permit a dwelling with less setbacks and buffer than required and on steep slopes; and

PURSUANT to the advertising, posting of the property, and public hearing and in accordance with the provisions of law, it is this 16th day of August, 1999,

³The need for striping and stockpiling of top soil in the sewer easement is best determined by PACE at the time of permits.

⁴At the hearing, Mr. Obrecht agreed to delete the pier from the site plan. This office expresses no view on whether the pier as shown on the site plan or any other pier is permitted by right.

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicants are hereby **granted** a variance to permit disturbance within the expanded buffer and on steep slopes in accordance with the site plan. The foregoing variance is subject to the following conditions:

1. The site plan shall be modified to delete the pier.
2. There shall be no modifications to the site plan which increase the disturbance to the expanded buffer or steep slopes.
3. The applicants shall provide mitigation of native species at a 3:1 ratio for all new disturbance, including grading, footprint and clearing.
4. The applicants shall meet all stormwater management requirements and provide a sediment control plan, including preconstruction stake out of the limits of disturbance.
5. Top soil in the sewer easement shall be striped and stockpiled for later replacement if required by PACE.
6. The applicants shall be responsible for daily inspection and repairs to sediment control devices during construction and shall maintain a log of inspections and repairs to be made available to PACE on request.
7. All woodland remaining in accordance with the approved site plan shall be placed in a forest conservation easement benefitting and enforceable by Anne Arundel County. In the event the County will not accept such responsibility, then any nonprofit entity established for environmental preservation may be utilized.

8. This office shall retain jurisdiction pending completion of construction.


Stephen M. LeGendre
Administrative Hearing Officer .

NOTICE TO APPLICANT

Within thirty (30) days from the date of this Decision, any person, firm, corporation, or governmental agency having an interest therein and aggrieved thereby may file a Notice of Appeal with the County Board of Appeals.

Further, Section 11-102.2 of the Anne Arundel County Code states:

A variance granted under the provisions of this Article shall become void unless a building permit conforming to the plans for which the variance was granted is obtained within one year of the grant and construction is completed within two years of the grant.

If this case is not appealed, exhibits must be claimed within 60 days of the date of this order, otherwise they will be discarded.



Judge John C. North, II
Chairman

Ren Serey
Executive Director

STATE OF MARYLAND
CHESAPEAKE BAY CRITICAL AREA COMMISSION

45 Calvert Street, 2nd Floor, Annapolis, Maryland 21401
(410) 260-7516 Fax: (410) 974-5338

July 2, 1999

Mr. Kevin Dooley
Anne Arundel County Department of Planning and Code Enforcement
2664 Riva Road, MS 6301
Annapolis, MD 21401

RE: Variance 1997-0424-V, George Obrecht

Dear Mr. Dooley:

Thank you for providing information on the above referenced variance application. The applicant is requesting a variance to permit construction of a single family dwelling with less setbacks and Buffer than required and on steep slopes. The property is designated RCA and is currently undeveloped.

Provided this parcel is properly grandfathered, this office does not oppose the siting of a single family dwelling on it. The lot is located entirely within the expanded Buffer and any development would require a variance. Impacts to the expanded Buffer should be minimized as much as possible. The proposed house is 97 feet long and has a footprint of 2,400 square feet. It appears the dwelling can be reduced and/or reconfigured to reduce impacts to the steep slopes and expanded Buffer.

While it appears that the utilities have been sited to avoid the non-tidal wetland and wetland buffer, it is not clear why the utilities are extended across additional steep slopes up to Holly Farm Road. Also, please note, the Critical Area report states that one-to-one mitigation would be required. Because this parcel is within the expanded Buffer, mitigation of native species should be provided at a 3:1 ratio for all new disturbance. New disturbance includes grading, footprint, and clearing.

Thank you for the opportunity to comment. Please include this letter in your file and submit it as part of the record for this variance. Also, please notify the Commission in writing of the decision made in this case.

Sincerely,

LeeAnne Chandler
Natural Resources Planner

cc: AA338-99

Branch Office: 31 Creamery Lane, Easton, MD 21601
(410) 822-9047 Fax: (410) 820-5093

STATE OF MARYLAND
DEPARTMENT OF THE ENVIRONMENT
WATER MANAGEMENT ADMINISTRATION

LETTER OF AUTHORIZATION

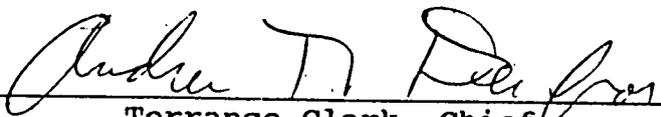
AUTHORIZATION NUMBER: 99-NT-0053/199961928
EFFECTIVE DATE: March 19, 1999
EXPIRATION DATE: March 19, 2002
AUTHORIZED PERSON: The Estate of Alice Obrecht
c/o Charles and George Obrecht
877 Old B&A Blvd., Suite 101
Severna Park, Maryland 21146



IN ACCORDANCE WITH ENVIRONMENT ARTICLE §5-503(a) AND §5-906(a), ANNOTATED CODE OF MARYLAND (1996 REPLACEMENT VOLUME), COMAR 26.17.04.03A AND 26.23.02.01A, AND THE ATTACHED CONDITIONS OF AUTHORIZATION, Charles & George Obrecht, ("AUTHORIZED PERSON"), IS HEREBY AUTHORIZED BY THE WATER MANAGEMENT ADMINISTRATION ("ADMINISTRATION") TO CONDUCT A REGULATED ACTIVITY IN A NONTIDAL WETLAND, BUFFER, OR EXPANDED BUFFER, AND/OR TO CHANGE THE COURSE, CURRENT OR CROSS-SECTION OF WATERS OF THE STATE, IN ACCORDANCE WITH PLANS APPROVED BY THE ADMINISTRATION, NONTIDAL WETLANDS AND WATERWAYS DIVISION ON March 17, 1999, ("APPROVED PLAN") AND PREPARED BY Chisolm-Weber Associates AND INCORPORATED HEREIN, AS DESCRIBED BELOW:

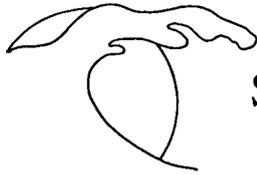
Construction of a single family home and attendant infrastructure. The construction of 8-inch sewer and water connections will temporarily impact 2,750 square feet of regulated nontidal wetland buffer draining to the Severn River. The project site is known as 457 Holly Farms Road in Severna Park, Anne Arundel County.

MD Grid Coordinates: N 455 - E 912


Terrance Clark, Chief
Nontidal Wetlands & Waterways Division

Attachments: Best Management Practices for Utilities

cc: SES (Eric See)
WMA Compliance Program w/ file
Mitigation (Dave Walbeck)
Judy Cole



SEE ENVIRONMENTAL
SERVICES, INC.

Charles F. Obrecht, Jr. and George F. Obrecht, III
877 Old Baltimore-Annapolis, Boulevard, Suite 101
Severna Park, MD 21146

April 24, 1998

RE: 436 Holly Farm Road - Wetlands Investigation

Dear Mr. Obrecht and Mr. Obrecht:

A nontidal wetlands investigation was conducted on April 1, 1998, on the above-referenced site and the adjoining property, owned by Maurice D. and Eleanor S. Meyers. The purpose of the investigation was to identify the nontidal wetlands for purposes of revising a utility easement through the Meyers Property and the Obrecht Property. The wetlands investigation was the first stage in a Critical Area study for a zoning variance for the Obrecht Property.

The subject property is a three-acre lot located on Holly Farm Road off Benfield Boulevard adjacent to the Ben Oaks subdivision in Severna Park. It is waterfront and borders on a small tidal cove off the Severn River. The site is bordered by Holly Farm Road to the east and the tidal cove to the west. Existing public water and sewer is present at the cul-de-sac of Severnside Avenue, separated from the Obrecht parcel by the intervening Meyers Property.

The delineation of vegetated wetlands was conducted using the criteria specified in the currently-mandatory 1987 Corps of Engineers Wetlands Delineation Manual. This manual specifies that, under normal circumstances, all three wetlands parameters--wetlands hydrology, (undrained) hydric soils, and hydrophytic vegetation--must be present for an area to be identified as a jurisdictional wetland.

The site, including the Obrecht Estate Parcel and the adjoining Meyers Property, was found to have a hillside seep nontidal wetland. Only a small portion of this seep is on the northeastern corner of the Obrecht parcel (extending up to approximately the 18-foot contour), while the majority of it is on the Meyers Property, which also has a small very wet shrub swamp located between the toe of slope and the tidal shoreline.

On the Meyers Property, there is a small path that leads from the end of Severnside Avenue in the Ben Oaks subdivision and runs uphill to a grassy terrace that was apparently built about 25 years ago. This path comes as close as 15 feet from the fagged boundary of the nontidal wetlands.

Estate of Alice P. Obrecht Property Wetlands Report
Charles F. Obrecht, Jr. & George F. Obrecht, III
April 24, 1998

The boundary of the nontidal wetlands was identified and flagged with a combination of pink and blue-and-white-striped flagging, and numbered "SES NTWL #1" etc., and was then surveyed by J. A. Rice & Associates. This surveyed boundary and the required 25-foot nontidal wetlands buffer have been placed on the Chisholm-Weber & Associates site plan. The two enclosed Routine Determination Forms document conditions on the uplands and wetlands sides of the center of the flagged wetlands boundary

The installation of the sewer in a newly-platted utility easement through the Meyers Property to serve the Obrecht Property would cause the least tree clearing and slope grading; however, it would require a minor disturbance in the 25-foot buffer required around the nontidal wetlands boundary, and therefore require State approval under the Nontidal Wetlands Protection Act.

Because the path is between six and 20 feet higher in elevation than the closest point of the nontidal wetlands, installation of the pipe by trenching and backfilling should not adversely affect the hydrologic regime of the wetlands. Groundwater percolates into the sandy soils uphill, and then moves laterally to "daylight" into the upper end of the wetlands. This groundwater will continue to find its way into the wetlands after installation and backfilling of the sewer pipe.

If you have any questions or comments, please feel free to contact me at any time.

Sincerely,

Eric E. See

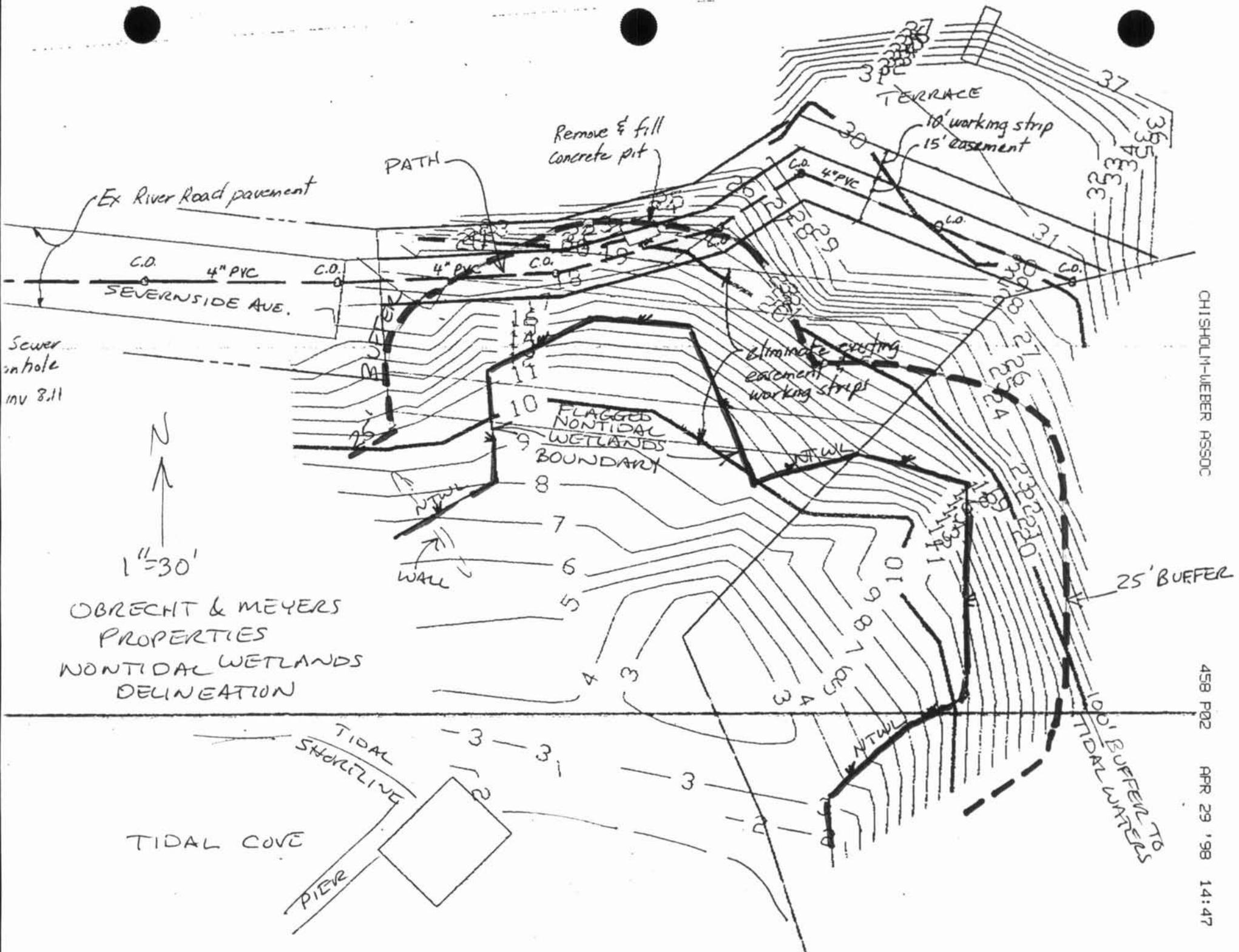
Eric E. See, President
See Environmental Services, Inc.

SWS Prof. Wetlands Scientist #000404



cc: Preliminary plotting of wetlands boundary
~~Two Routine Determination Forms~~

cc (w/enc): Mark Weber, P.E.; Chisholm-Weber & Associates



Remove & fill
concrete pit

TERRACE
10' working strip
15' easement

Ex River Road pavement

PATH

C.O. 4" PVC C.O.
SEVERNSIDE AVE.

Sewer
on hole
inv 8.11

Eliminate existing
easement
working strips

FLAGGED
NONTIDAL
WETLANDS
BOUNDARY

N

1"=30'

OBRECHT & MEYERS
PROPERTIES
NONTIDAL WETLANDS
DELINEATION

WALL

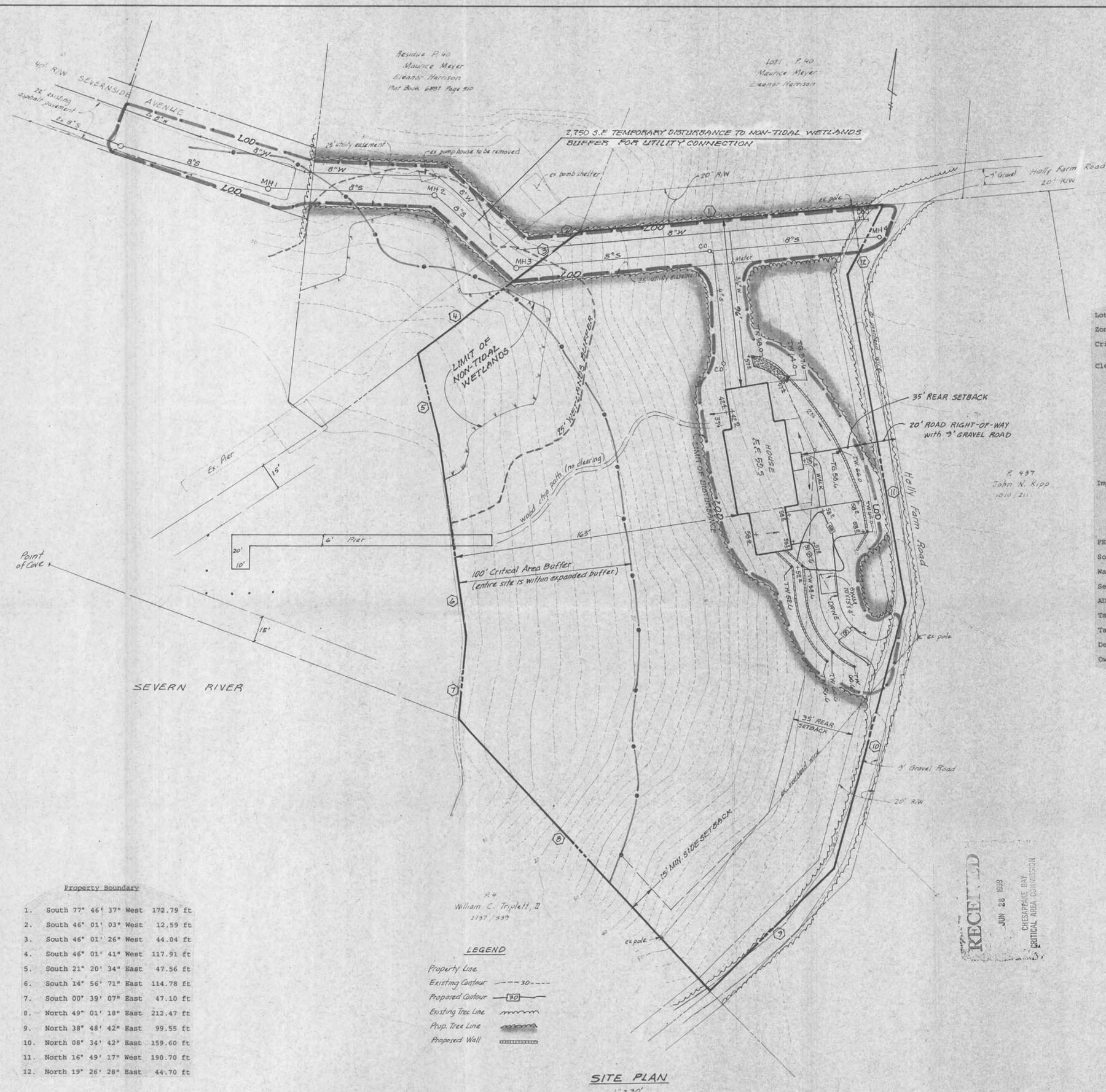
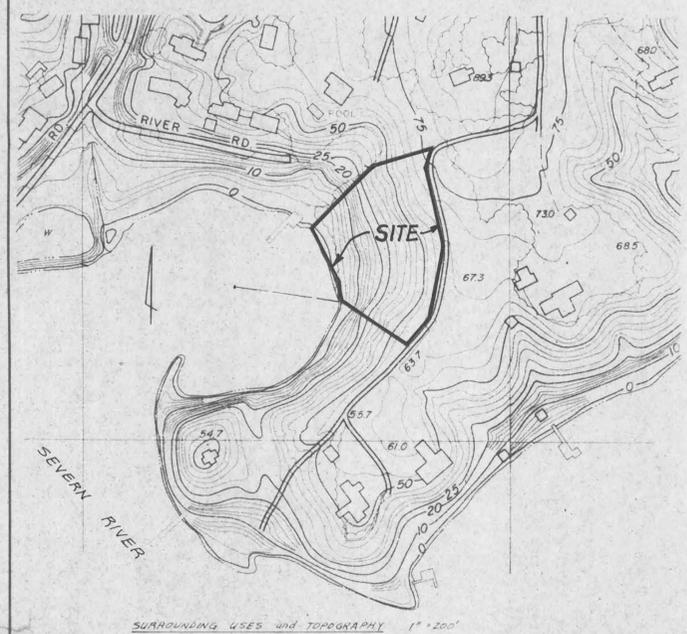
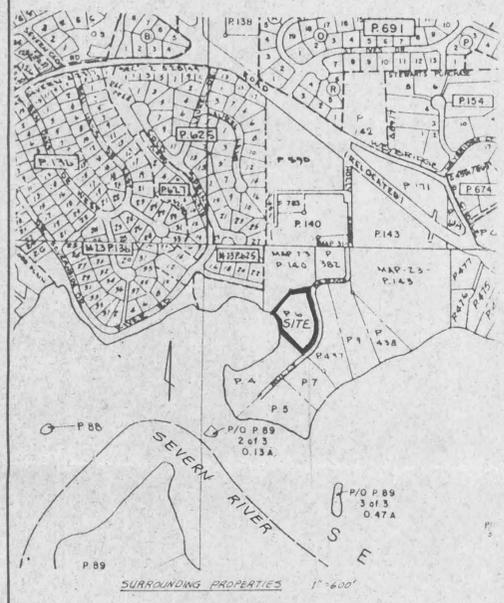
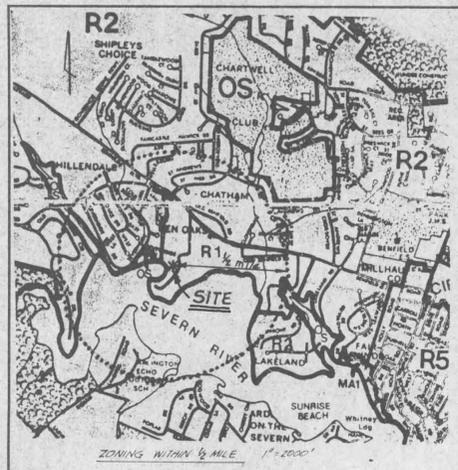
25' BUFFER

TIDAL
SHOULDERLINE

TIDAL COVE

PIER

100' BUFFER TO
TIDAL WATERS



SITE DATA for Lot 6

Lot Size	2.031 ac or 88,472 sf
Zoning	R-1
Critical Area	RCA Not buffer exempt
Cleared Area	Lot 6
Site Development (House, drive, walk, retaining walls, utility connections)	13,800 sf or 15.6%
R/W for Public Utilities	3,600 sf
TOTAL	17,400 sf or 19.7%
Parcel 40 (Adjacent lot)	
R/W for Public Utilities	2,800 sf
Impervious Area	
House	2,400 sf
Garage	600
Retaining Walls	300
Drive & Walk	2,000
Total Impervious	5,300 sf or 6.0%
FEMA Flood Elevation	7.0
Soil Type	Evesboro
Water Service	Public
Sewer Service	Public
ADC Map	14 C 4
Tax Map, Block, Parcel	31, 2, 6
Tax Account Number	3 000 22227502
Deed Reference	1862/299
Owner	Estate of Alice F. Obrecht c/o Charles F. Obrecht, Jr. 877 B & A Blvd Severna Park, MD 21146 410 544 9521

Property Boundary

- South 77° 46' 37" West 172.79 ft
- South 46° 01' 03" West 12.59 ft
- South 46° 01' 26" West 44.04 ft
- South 46° 01' 41" West 117.91 ft
- South 21° 20' 34" East 47.56 ft
- South 14° 56' 71" East 114.78 ft
- South 00° 39' 07" East 47.10 ft
- North 49° 01' 18" East 212.47 ft
- North 38° 48' 42" East 99.55 ft
- North 08° 34' 42" East 159.60 ft
- North 16° 49' 17" West 190.70 ft
- North 19° 26' 28" East 44.70 ft

LEGEND

- Property Line
- Existing Contour
- Proposed Contour
- Existing Tree Line
- Prop. Tree Line
- Proposed Wall

SITE PLAN
1" = 30'

RECEIVED
JUN 28 1999
CHESAPEAKE BAY
CRITICAL AREA ADMINISTRATOR

NO.	BY	DATE	REVISIONS



CHISHOLM-WEBER ASSOCIATES
LAND DEVELOPMENT CONSULTANTS
ENGINEERING • PLANNING • SURVEYING
2661 RIVA ROAD, RIVA 400, SUITE 320
ANNAPOLIS, MARYLAND 21401
PHONE (410) 224-3990 FAX (410) 224-4203

VARIANCE SITE PLAN
OBRECHT RESIDENCE
436 HOLLY FARMS ROAD
TAX MAP # 31 BLOCK # 2 PARCEL # 6
THIRD ASSESSMENT DISTRICT SEVERNA PARK, MARYLAND 21146
SCALE: AS SHOWN MARCH, 1999

OWNER:	Estate of Alice F. Obrecht c/o Charles F. Obrecht 877 B & A Blvd Severna Park, MD 21146 410 544 9521		
DESIGN:	MW	SHEET	7 OF 7
DRAFT:	MW/CRC	DATE:	6/14/99
APPROVED:	SCALE: 1" = 30'	DWG:	98976-180