

AA 340-99 Auld, David
VAR 99-0260

MSA_ 51829-138

Letter
RC
7-1-99

340-99

RECEIVED

AUG 9 1999

CHESAPEAKE BAY
CRITICAL AREA COMMISSION

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 1999-0260-V

IN RE: DAVID & SHERRILL AULD AND MICHAEL & ANNE PACE

FIRST ASSESSMENT DISTRICT

DATE HEARD: JULY 27, 1999

ORDERED BY: STEPHEN M. LeGENDRE, ADMINISTRATIVE HEARING OFFICER

ZONING ANALYST: CHARLENE L. MORGAN

DATE FILED: AUGUST 3, 1999

PLEADINGS

David & Sherrill Auld and Michael & Anne Pace, the applicants, seek a variance (1999-0260-V) to permit an off-site joint use pier from a water access easement on property located along the south side of Old Point Road, east of Auld Road, Edgewater.

PUBLIC NOTIFICATION

The case was advertised in accordance with the provisions of the County Code. Mr. Auld testified that the property was posted for 14 days prior to the hearing.

FINDINGS AND CONCLUSIONS

This confusing case concerns a water access easement on property located at 3321 Old Point Road, Edgewater; also known as the Pennyoyer lot. The easement occupies 13,000 square feet and is zoned R-1 residential with a Chesapeake Bay Critical Area Program designation as Resource Conservation Area (RCA). The dominate estate is property with a street address of 3324 Old Point Road. The dominate estate is also known as Lot 1 on a plat entitled "Minor Subdivision-Plat 2 of 2 Family Conveyance - Carl Fiorenza property," recorded among the land records of Anne Arundel County at Plat Book 145, Page 24. The applicants own lots due north of the dominate estate. The Auld property (3300 Old Point Road) is known as Larkington Lot 1. The Pace property (3320 Old Point Road) is known

as Larkington Lot 1A. The applicants have obtained title to the dominate estate. They seek to administratively subdivide the dominate estate into two equal parcels to be merged into Larkington Lots 1 and 1A. Their ultimate goal is to build a joint use pier into Larkington Cove from the water access easement.

Anne Arundel County Code, Article 28, Section 1-111(d)(1) provides that a private pier must be used by the owner of the property from which it extends. Section 2-302(a)(15) permits residential piers only as an accessory use to a dwelling unit located on the property. Accordingly, the proposal requires three separate variances:

1. A variance to permit two lots to use a single pier.
2. A variance to permit a pier on a separate lot from the owners' lots.
3. A variance to permit an accessory structure without a primary structure.

Charlene L. Morgan, a zoning analyst with the Department of Planning and Code Enforcement, testified that there is sufficient area within the easement to support the pier and that the joint use of a pier is beneficial. She supported the application, provided the applicants submit an administrative subdivision plat bearing all of the appropriate signatures and the applicants obtain the requisite State and Federal approvals and permits.

Mr. Pace testified that the overall result of the transaction will be that the dominate estate will never be developed with a dwelling, a distinct benefit for Critical Area resources. The pier will provide deep water access (5 plus feet) for the applicants. Their existing piers are located in shallow water (18 inches to 2.5

feet), with boat passage impeded by bay grasses.

The standards for granting variances are contained in Section 11.102.1. Under subsection (a), a zoning variance may be granted only after determining either (1) unique physical conditions, peculiar to the lot, such that there is no reasonable possibility of developing the lot in strict conformance with the code; or (2) exceptional circumstances such that the grant of a variance is necessary to avoid an unnecessary hardship, and to enable the applicants to develop the lot. 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 relief from the code. This case satisfies the test of unique physical conditions, consisting of an off-site platted water access easement, such that there is no reasonable possibility of developing the property in strict conformance with the code. The variances are the minimum necessary to afford relief. The joint use of the pier, as compared to use by one lot as originally contemplated, is not a significant intensification, especially in light of the elimination of a building lot in the RCA. There is nothing to suggest that the granting of the variance will alter the essential character of the neighborhood, substantially impair the appropriate use or development of adjacent property, or be detrimental to the public welfare. There are other piers in the immediate

neighborhood, including a pier on the Pennyoyer lot. The proposed pier satisfies setbacks. It will permit the applicants better water access, with less impact to sensitive resources than their current piers. The approval shall be subject to the conditions in the Order.

ORDER

PURSUANT to the application of David & Sherrill Auld and Michael & Anne Pace, petitioning for a variance to permit an off-site joint use pier from a water access easement; and

PURSUANT to the advertising, posting of the property, and public hearing and in accordance with the provisions of law, it is this 3rd day of August, 1999,

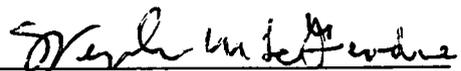
ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicants are hereby granted the following variances:

1. A variance to permit two lots to use a single pier.
2. A variance to permit a pier on a separate lot from the owners' lots.
3. A variance to permit an accessory structure without a primary structure.

The foregoing variances are subject to the following conditions:

- A. An administrative subdivision plat must be approved to revise Larkington Lots 1 and 1A and to identify those lots as the users of the easement. Said plat must include the Pennyoyer lot to revise the grant of the easement.
- B. All appropriate State and Federal approval and permits must be obtained as a

part of the County building permit.


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 1, 1999

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

RE: Variance 1999-0260-V, David Auld & Michael Pace

Dear Mr. Dooley:

Thank you for providing information on the above referenced variance application. The applicants are requesting a variance to permit an offsite joint use pier from a water access easement.

Because it appears that no Habitat Protection Areas would be affected by this proposal and because water access is permitted, this office defers to the Maryland Department of the Environment (MDE) as the permitting agency on this issue. A tidal wetlands permit for this pier should be requested as appropriate from MDE.

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,

A handwritten signature in cursive script that reads "LeeAnne Chandler".

LeeAnne Chandler
Natural Resources Planner

cc: AA340-99

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

TTY FOR DEAF ANNAPOLIS-974-2609 D.C. METRO-586-0450



OUTDOOR CONSTRUCTION

P.O. BOX 999
EDGEWATER, MD. 21037-0999

(410) 798-8255
FAX (410) 798-8206

PROPOSED NEW PIER
AT: OLD CEDAR POINT ROAD, EDGEWATER, MD LOT #1 PIER ACCESS
WATERWAY; LARKINGTON COVE (BREWERS
CREEK) OFF SOUTH RIVER
APPL. BY: DAVID AULD
3300 AULD DR.
EDGEWATER, MD. 21037

AUGUST 3, 1998

100' PIER
(FIRST 70'-6" WZDE, LAST 30'-4" WZDE)
4 MOORING PILES

FLOOD
EBB

LARKINGTON
COVE

AA Co SET BACK

AA Co SET BACK

4' AIR MLW



SCALE
1" = 20'

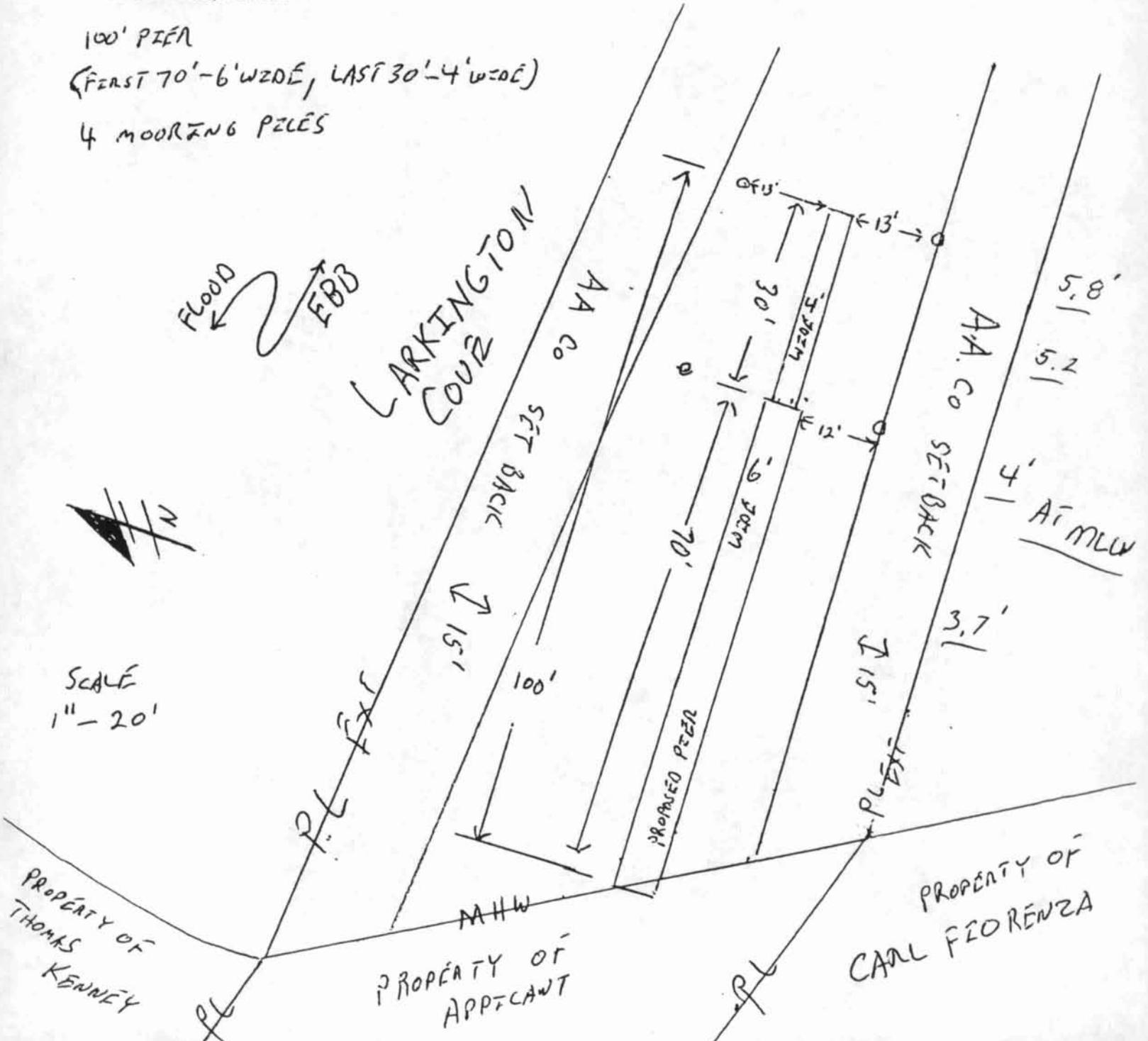
PL 7' x 7'

PL 7' x 7'

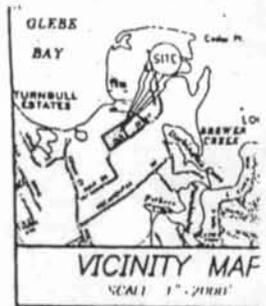
PROPERTY OF
THOMAS
KENNEY

PROPERTY OF
APPLICANT

PROPERTY OF
CARL FIORENZA

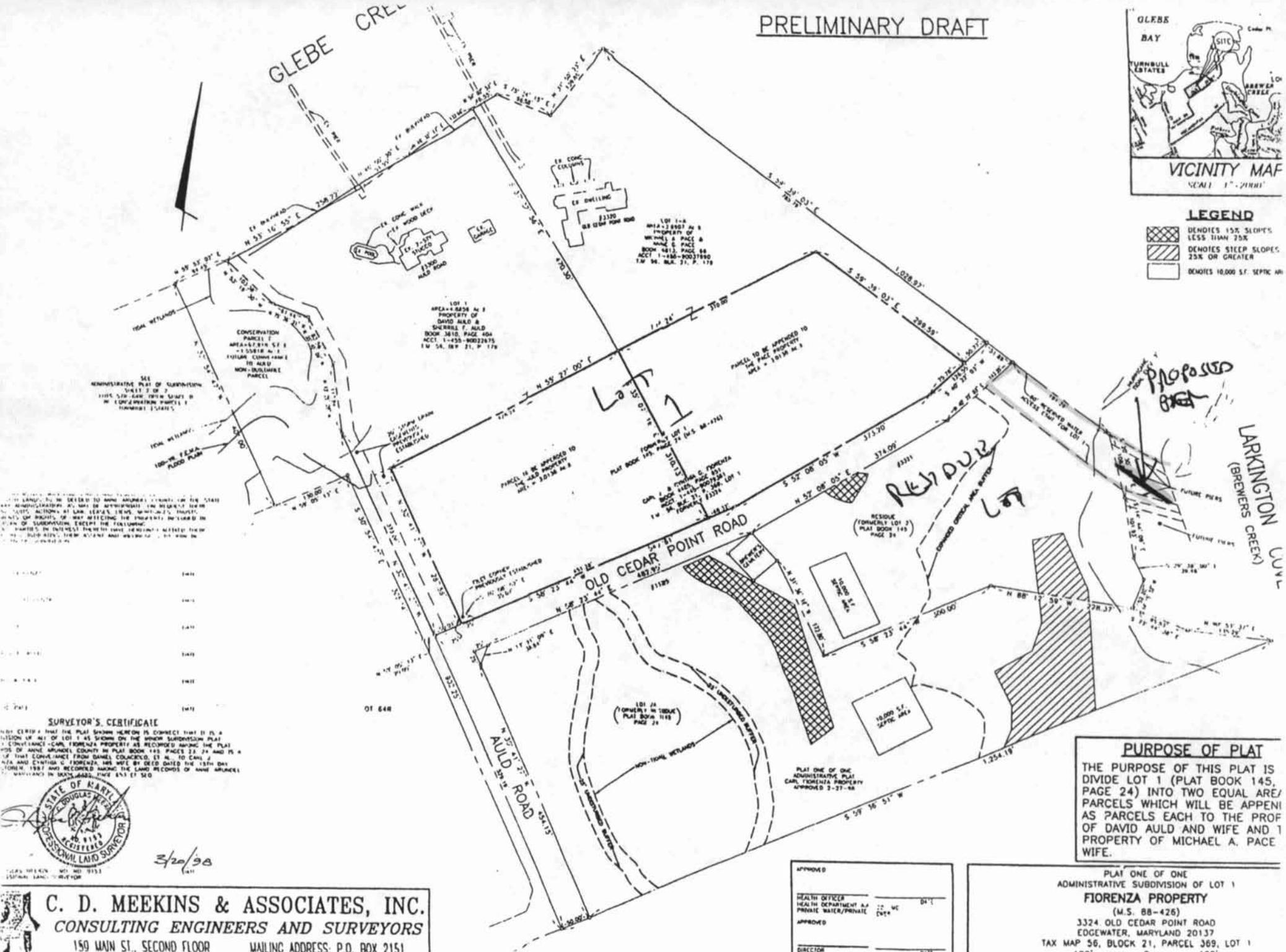


PRELIMINARY DRAFT



LEGEND

- DENOTES 15% SLOPES LESS THAN 75%
- DENOTES STEEP SLOPES 25% OR GREATER
- DENOTES 10,000 S.F. SEPTIC AREA



SEE ADMINISTRATIVE PLAT OF SUBDIVISION SHEET 2 OF 2 THIS SURVEY FORM SHOWN IN CONSERVATION PARCEL 1 TURNBULL ESTATES

SURVEYOR'S CERTIFICATE
 I HEREBY CERTIFY THAT THE PLAT SHOWN HEREON IS CORRECT THAT IT IS A DIVISION OF ALL OF LOT 1 AS SHOWN ON THE SURVEY SUBMISSION PLAT 1 CONFORMANCE-CARL FORNENZA PROPERTY AS RECORDED AMONG THE PLAT BOOKS OF ANNE ARUNDEL COUNTY IN PLAT BOOK 145 PAGES 22, 24 AND 25 AND THAT CONFORMANCE FROM DANIEL COLACORNO ES Q. TO CARL FORNENZA AND CANTINA G. FORNENZA HIS WIFE BY DEED DATED THE 15TH DAY OF NOVEMBER 1987 AND RECORDED AMONG THE LAND RECORDS OF ANNE ARUNDEL COUNTY, MARYLAND, PAGE 483 OF 510.



3/20/98

C. D. MEEKINS & ASSOCIATES, INC.
 CONSULTING ENGINEERS AND SURVEYORS
 150 MAIN ST., SECOND FLOOR ANNAPOLIS, MD.
 MAILING ADDRESS: P.O. BOX 2151 ANNAPOLIS, MD. 21404-2151

RECORDED IN BOOK PAGE

APPROVED _____ DATE _____
 HEALTH OFFICER HEALTH DEPARTMENT & PRIVATE WATER/PRIVATE WATER
 APPROVED _____ DATE _____
 DIRECTOR DEPT. OF PLANNING & COMM. DEVELOPMENT

PURPOSE OF PLAT
 THE PURPOSE OF THIS PLAT IS DIVIDE LOT 1 (PLAT BOOK 145, PAGE 24) INTO TWO EQUAL AREAS/ PARCELS WHICH WILL BE APPENI AS PARCELS EACH TO THE PROF OF DAVID AULD AND WIFE AND 1 PROPERTY OF MICHAEL A. PACE WIFE.

PLAT ONE OF ONE ADMINISTRATIVE SUBDIVISION OF LOT 1 FIORENZA PROPERTY (M.S. 88-426)
 3324 OLD CEDAR POINT ROAD EDGEWATER, MARYLAND 20137
 TAX MAP 56, BLOCK 21, PARCEL 369, LOT 1
 SCALE: 1"=100'
 GRAPHIC SCALE
 DATE: MARCH, 1998
 1ST ACCESSANT DIST., ANN. ARUNDEL COUNTY, MARYLAND