

MSA-S-1829-4849

Comments states
Key
Comments 9/6/00 KED
Revised 10/11/00 JED

Robert L. Ehrlich, Jr.
Governor

Michael S. Steele
Lt. Governor



Martin G. Madden
Chairman

Ren Serey
Executive Director

**STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS**

1804 West Street, Suite 100, Annapolis, Maryland 21401
(410) 260-3460 Fax: (410) 974-5338
www.dnr.state.md.us/criticalarea/

October 11, 2006

Mr. David Brownlee
Calvert County Department of Planning and Zoning
150 Main Street
Prince Frederick, Maryland 20678

Re: Habitat Protection Plan-Felenchak

Dear Mr. Brownlee:

This letter is in response to your recent request for clarification regarding the most recent Habitat Protection Plan (HPP) submitted to this office, dated September 18, 2006. As you are aware, Commission staff provided comments to County staff, stating that the proposed plantings remain insufficient to provide adequate protections for Tiger Beetle habitat. During our September 20th phone conversation regarding the HPP, you requested that Commission staff provide a specific acreage of plantings which would render the HPP approvable, thereby allowing the County to issue a building permit for the applicant's garage.

In reviewing the comments received from Katharine McCarthy of the Department of Natural Resources' Wildlife and Heritage Division, we note that adequate protection of the Tiger Beetle habitat onsite appears directly related to the amount of plantings and multi-tiered vegetative cover provided. This is true because trees, shrubs, and vegetative groundcover provide enhanced infiltration and absorption opportunities along the top of the cliff, particularly during storm events where runoff from both overland flow and the existing impervious surfaces can be intercepted and absorbed by the plants. When properly slowed and intercepted, the potential for slope failure and destruction of Tiger Beetle habitat significantly decreases. Therefore, it has been repeatedly requested that the applicant maximize all potential areas for plantings and demonstrate that the property has been planted to the extent possible.

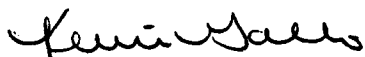
Currently, the HPP proposes two understory trees and twenty-five Inkberry and Bayberry shrubs, roughly equivalent to 1,450 square feet of plantings. The DNR has requested that the goal of achieving reforestation of the original forest retention area be stated by the applicant on the HPP. This amount would have been 13,427 square feet (20,829 square feet - 7,402 square feet = 13,427 square feet). As a result of actions undertaken in violation on the lot, the applicant actually cleared 12,212 square feet of vegetative cover, 4,810 square feet in excess of that which was initially approved by the Board of Appeals. Using these calculations, it would appear that 8,617 square feet of forested cover currently exists on the property. Based on observations made in the field at the time of the original variance application, it appeared that the remaining forested area (8,617 square feet) was located primarily along the steep cliff, between the cliff face and mean high water. The area landward of the cliff face consisted of several canopy trees along the applicant's property line and no understory coverage.

Dave Brownlee
Felenchak HPP
October 11, 2006

To comply with the DNR goal of reforesting the lot to the original forest retention area, the applicant would need to provide 4,810 square feet of plantings. In conjunction with the Board of Appeals' resolution of the violation and issuance of a revised variance, the applicant initially submitted a HPP which demonstrated 6,450 square feet of plantings (copy included for clarity). Consequently, it appears as though there is no spatial restriction on the ability to plant the equivalent of 4,810 square feet on the lot. The 1,450 square feet of plantings proposed within the September 16, 2006 HPP is less than adequate to provide reasonable assurances that impacts to Tiger Beetle habitat have been minimized to the extent possible. Rather, a site-appropriate HPP should at a minimum, include plantings equivalent to 4,810 square feet.

I hope that this information provides you with clarity in regard to the most recent HPP. In addition to these comments, please refer the applicant to the July 18, 2006 comments from Katharine McCarthy of DNR. Should you have any questions about the content of this letter, please do not hesitate to contact me at 410-260-3482. Thank you for your cooperation and consideration of this matter.

Sincerely,



Kerrie L. Gallo
Natural Resource Planner

Attachments

CC: John Swartz, Calvert County
Katharine McCarthy, DNR
John Felenchak

John G. Felenchak

8701 Ferrysburg Way
Montgomery Village, Md. 20886

301-332-7267-Cell

301-924-1426-fax

jfelen@msn.com

September 17, 2006

TO: Mr. David Brownlee

This letter will outline the Habitat Protection Plan for the Building permit #46346, located at 4012 South Shore Dr. Port Republic, Md. 20676, located in Calvert County. This plan is designed address the BOA order 04-3033 and 05-3174. Any previous HPP submissions are void. As this is the latest of several HPP's, it is constructed as a compromise to hopefully appease all parties involved.

The BOA also ordered that our HPP (page 5 of 05-3174), address the FIVE issues that are stated in the memo dated May 17, 2005.

The property currently consists of a beach area that is approximately 100' wide and greater than 100' to the bottom of the vegetated cliff, which is approximately 50' in height. The lot is a total of 20,829 sq feet. The lot is properly grand fathered.

In this area, we will not establish any shore erosion control devices, and will maintain the vegetated cliff. We will make every effort to limit foot and vehicle (ATV Type) traffic on the beach/grass area at the base of the cliff to the mean high tide.

We will install two drywells (10 x 5 x 4) and a 6" bed of gravel and the base and underneath the decks to capture/control rain water runoff, as per BOA. Gutters will be installed to direct the water into the drywells from both the house and garage.

In the area between the house and the cliff, we will also plant a variety of trees and shrubs that are native to Calvert County Maryland. The total plantings will be 2900 square feet, according to the credits for each planting as outlined in the 2005 planting list issued by Calvert County Planning and Zoning. The understory trees and shrubs are intended to stabilize the area at the top of the cliff as well as the surrounding area that was disturbed due to the construction of the residence. Large trees such as black walnut or maples do not have ample room to grow due to other mature trees

along the cliff edge.

The driveway, will consist of a pervious material, gravel (CR-6), to assist with erosion control due to rainwater runoff from South Shore Drive.

The septic area as approved by the Calvert County Health Department, is located between the house and South Shore Drive and covers an area of approximately 50 X 50. It will be seeded with grass to stabilize the soil.

We maintain the right to obtain the proper permit from the appropriate agency to build/construct a pathway from the house to the beach area sometime in the future.

It should be noted that once the HPP is approved, The garage and house are finished, that we intend to apply with the reforestation program to plant shrubs around the foundation, along the sides of the property and along the roadway. It should also be noted that numerous (in excess of 10) mature trees, already provide significant canopy on the lot, which limit's the placement of understory trees.

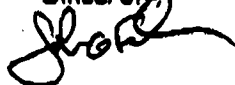
These plantings will be placed in the area along the cliff between the House/Garage.

- 1- Dogwood tree
- 1- Redbud Tree
- 15-Inkberry shrubs
- 10-Northern Bayberry shrubs

We maintain the right to plant the trees and shrubs in any sequence, cluster, or in a line along the top of the cliff as we determine is the best use for our property.

I can be reached at the number above. anytime for any questions you may have. Please contact me if this plan is approved. Thank you for your time.

Sincerely,



John G. Felenchak

Robert L. Ehrlich, Jr.
Governor



Michael S. Steele
Lt. Governor

Martin G. Madden
Chairman

Ren Serey
Executive Director

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September 5, 2006

Mr. Greg Bowen
Calvert County Department of Planning and Zoning
150 Main Street
Prince Frederick, Maryland 20678

Re: Variance Cases 04-3033 and 05-3174 (Felenchak)

Dear Mr. Bowen:

The purpose of this letter is to request written clarification regarding the County's process, implementation, and fulfillment of the requirements for a Habitat Protection Plan (HPP) and the payment of fines in relation to the above referenced variance and violation cases, as well as the subsequent Board of Appeals (BOA) Order dated July 11, 2005.

By way of this letter, we wish to notify you of the Commission's position that the most recent HPP submitted to this office for review, dated August 29, 2006, remains insufficient to ensure adequate protection of the Federal and State-listed Tiger beetle habitat documented for this property. In addition, we are concerned that the amount of fines paid by the applicant in fulfillment of the BOAs' violation mitigation requirements may have been improperly assessed and may be severely inadequate. In order to be clear about the origin and nature of my inquiry, I have provided a summary of events as I understand them. The information below is based upon written correspondence from the Commission's records as well as upon observations made during a site visit to the property and the oral and written testimony provided by Commission staff during the various variance hearings.

Fulfillment of the Conditions of BOA Case # 05-3174-Decision and Order

- On May 24, 2004, John Felenchak, on behalf of then property owners William and Christine Diehlmann, was granted a variance (BOA Case #04-3033) to clear and disturb 7,402 square feet (sf) of natural vegetation and canopy cover (35.5%) on his 20,829 sf lot.
- April 1, 2005-Due to an improperly placed well, Mr. Felenchak was forced to return to the BOA to ask for a revision to the previously approved variance in order to relocate the garage.
- At the April hearing, the BOA deferred action in order to conduct a site visit. Upon completion of the site visit, the Board found to be true, as indicated within the July 11, 2005 decision and order, that the area of tree cover already cleared by Mr. Felenchak exceeded the 7,402 sf previously approved, and that nearly the entire Limits of Disturbance (LOD) had been cleared of natural vegetation (12,212 sf).
- On Page 3 of the same BOA decision, the Board found that 4,810 sf defined the area by which the actual and revised LOD (12,212 sf) exceeded the previously approved LOD (7,402 sf). In addition, the Board determined that 960 sf defined the area by which the actual (and later approved) canopy clearing on the lot (8,362 sf) exceeded the previously approved canopy clearing (7,402 sf).

TTY for the Deaf
Annapolis: (410) 974-2609 D.C. Metro: (301) 586-0450

Greg Bowen
Felenchak HPP/Violation
September 5, 2006

- Based on these findings of fact, Page 7 of the decision orders two conditions of approval. First, the applicant shall be required to pay fines in the amount of three times the area that was disturbed without prior authorization and in violation of the Board's previous order. This area was defined by the Board on Page 3 as 4,810 sf. Therefore, fines should be levied at 3 x 4,810 sf, or 14,430 sf. Please clarify the total amount of fines paid by the applicant to satisfy this portion of the Board's order.
- As a second component of the first condition, the Board ordered the applicant to post a bond for replanting the area of canopy cover that was removed without authorization and in violation of the Board's previous order. Page 3 of the decision defines this area as 960 sf. Therefore, 2,880 sf of planting should be required in order to satisfy the second component of the Board's order.
- In order to utilize the provisions for payment of fees-in-lieu, the County's Zoning Ordinance states that a person must demonstrate that requirements for reforestation or afforestation on site cannot be reasonably accomplished. Based on the site plan and particularly in light of the documented Habitat Protection Area on site, it appears that 2,880 sf of planting could have been reasonably accomplished on site. Please provide clarification on how the County determined that on site planting was neither feasible nor practicable given the site conditions.
- Finally, the Board required that a HPP be submitted and approved. The County's Zoning Ordinance requires that a HPP address the recommendations of the Department of Natural Resource's (DNR) Wildlife and Heritage Division. Those recommendations are defined within a July 18, 2006 memo from Katharine McCarthy (attached). Our outstanding concerns are addressed below.

Habitat Protection Plan (HPP)

The most recent HPP was submitted to this office by the applicant, Mr. Felenchak, by fax on August 29, 2006 (copy attached). Based on the information shown on the plan, it is our view that the plan insufficiently addresses the recommendations of DNR and fails to provide adequate assurances that adverse impacts to the State and Federally listed Tiger Beetle habitat have been minimized to the extent possible. Specifically, sufficient control of stormwater runoff remains uncertain and the amount of plantings proposed remains severely inadequate. We provide the following comments:

1. The DNR memo stresses the importance of providing adequate stormwater management measures. Currently, all rooftop runoff from the primary dwelling is directed into a single drywell. Commission staff questions whether a rain garden or another additional stormwater management feature could be constructed between the dwelling and the garage to provide enhanced infiltration and absorption benefits. At a very minimum, enhanced stormwater measures should be incorporated in the form of foundation plantings at the base of the deck and significantly enhanced areas of plantings between the cliff and the primary dwelling to intercept runoff.
2. As evident by the lengthy discussions before the BOA and within the numerous written letters provided to the Board, County, and applicant, adequate protection of the Tiger Beetle habitat onsite is directly related to the amount of plantings and multi-tiered vegetative cover provided. Given the extensive limits of the clearing on the property, it is imperative that an approved HPP maximize all potential areas for plantings and demonstrate that the property has been planted to the extent practicable. Currently, the HPP proposes six inkberry shrubs and 2 understory trees, roughly equivalent to 500 sf of plantings. Given that 12,212 sf

Greg Bowen
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September 5, 2006

was cleared, 4,810sf of it in violation, the proposed plantings seem severely inadequate. At the very minimum, the applicant should be required to enhance the plantings between the house and cliff, locate plantings between the house and garage, and maximize the space located between the dwelling, garage and street. It appears that at least 4,810 square feet of plantings could be accommodated, if not more. Had the applicant been required to provide mitigation plantings as indicated within the BOAs' order as opposed to paying a fee-in-lieu, these plantings could have contributed to the vegetative cover onsite. Nonetheless, payment of the fee-in-lieu should not be considered as justification for providing less than adequate plantings, particularly where ample opportunity exists to provide better habitat.

As previously indicated, it is the intent of this letter to request a written response to the concerns identified within and to provide the County with the Commission's position on the content of the HPP provided to date. On August 16, 2006, Commission staff requested clarification from the County via email as to the current status of the Felenchak violation, status of the assessment and collection of fees, and an assessment by the County as to whether the BOAs' decision and order has been fulfilled to date. Later that same day, County staff provided a response which I have attached for your reference. While we appreciate the timeliness and cooperative nature of the response, Commission staff respectfully disagrees with the interpretation provided and requests additional consideration as to whether the letter and intent of the Board's decision has been correctly interpreted and applied.

Thank you in advance for your cooperation and consideration of this matter. Should you have any questions, please free to contact me at 410-260-2482.

Sincerely,



Kerrie L. Gallo
Natural Resource Planner

Attachments

CC: Dave Brownlee, Calvert County
John Swartz, Calvert County
Roxana Whitt, Calvert County
Rick Stotler, Calvert County
Katharine McCarthy, DNR
Michael Reber, BOA
Walter Boynton, BOA
Dan Baker, BOA
Carlton Greene, BOA
John Felenchak



Robert L. Ehrlich, Jr., Governor

Michael S. Steele, Lt. Governor

C. Ronald Franks, Secretary

July 18, 2006

MEMORANDUM

To: Kerrie Gallo
Critical Area Commission

From: Katharine McCarthy
Natural Heritage Program

Re: Habitat Protection Plan, Felenchak parcel, Western Shores Listed Species Site

In response to Mr. David Brownlee's request, I have the following comments regarding the habitat protection plan submitted by Mr. Felenchak for this site which provides habitat for the Northeastern beach tiger beetle (*Cicindela dorsalis*, federally threatened, state endangered) and potential future habitat for the Puritan tiger beetle (*Cicindela puritana*, federally threatened, state endangered) which occurs at the southern end of this Listed Species Site.

- 1) Shoreline and cliff stabilization: There should be a statement that current and future owners will forego their right to stabilize the cliff and shoreline. That is not clearly stated in the plan. I suggest that the statement that the owner will maintain the vegetated cliff be removed because this will not contribute to protecting habitat for either rare species.
- 2) Stormwater management: The construction of drywells will promote infiltration of the roof runoff. The owner may want to consider using more drywells to further disperse the infiltration of stormwater in order to further reduce the potential for a slope failure resulting from increased, lateral groundwater flow (as occurred at two locations at Chesapeake Ranch Estates). If the deck is pervious (which is not clear), then gravel under the deck will also absorb stormwater and act to minimize potential erosion.
- 3) Revegetation: In addition to the provision in the plan to plant trees and shrubs native to Charles ^{Calvert} County between the house and the cliff, plantings of native species should be added around the house and between the house and road where space permits. At a minimum, the goal of achieving reforestation of the original forest retention area which, it is my understanding, comprised at least 2/3 of the lot, should be stated. Species should be selected based upon an inventory of similar natural habitat in the immediate vicinity.
- 4) Minimizing impervious surface area: The provision that addresses the use of pervious material (gravel) for the driveway begins to address this recommendation. Decks, walkways and paths should also be pervious. Perhaps we should suggest that the owner add a statement to the effect that current and future owners will not construct additional impervious surfaces on the parcel.
- 5) Invasive species control: The Phragmites (Common reed, probably what the owner refers to as beach/grass area) growing along the beach reduces the value of the beach as larval and adult habitat for the Northeastern beach tiger beetle and as adult foraging and mating habitat for the Puritan tiger beetle. A commitment to control the growth of this invasive grass would contribute to better protection of the habitat for this rare species. I recommended that this be included in the plan in my memo to you

of May 17, 2005 (with more specific language). There is no such provision in the proposed plan. Although I encourage including this provision, I understand that there may not be authority to require it.

If you would like to discuss these comments, please feel free to call.

247-05

MAY-25-2006 08:06 PM FELENCHAK/WILCOX

Post-It [®] Fax Note	7671	Date	5/30/06	# of pages	3
To	Kerrie Gallo	From	K. McCarthy		
Co./Dept.		Co.			
Phone #		Phone #	410/260-8569		

John G. Felenchak/Olivia J. Wilcox

8701 Ferrysburg Way
 Montgomery Village, MD, 20886
 301-332-7267
 jfelen@msn.com

May 20, 2006

Dear K. McCarthy,

I am writing to you to resolve an issue that I have with Calvert County Planning and Zoning in regards to a habitat protection plan that is currently required for my property located at 4012 South Shore Drive, Port Republic, Maryland, 20676.

I appeared before the Calvert County BOA on May 6, 2004, case # 04-3033. The issue of a habitat protection plan noted in the record of the hearing and that it would be addressed by during the permit process. It was determined that NO HABITAT PROTECTION plan was needed for our building site because the two "tiger beetle" that it would affect, the puritain and the northeastern tiger beetle made its habitat on the sandy beaches or the BARE cliffs of the Chesapeake Bay area.

Our building site is on the top of a steep hill (60 feet high), which is very heavily vegetated and a sandy beach, which runs up to the Chesapeake bay of the cliff is at the bottom and remains unspoiled.

In May of 2005, we had to return to the BOA to move the garage because the well driller, John Branham, drilled the well in the wrong place. When we went back to the BOA, in the final order, they required a habitat protection plan.

I have also researched other building permits that have been issued in the past 4 years at Western Shores where our property is located and none of the building permits or BOA orders required a habitat protection plan of the applicants for the permits.

We have every intention of preserving the area around

Post-It [®] Fax Note	7671	Date	5/25	# of pages	3
To	K. McCarthy	From	J. Felenchak		
Co./Dept.	DNR - SER	CC			
Phone #	410-260-8569	Phone #	301 332		
Fax #		Fax #			

our property, and have no desire to increase the impact on the bay or the eco-system that surrounds our home. However, we feel that we are required to submit a habitat protection plan to protect that is not needed because the species habitat is not in the area that we are impacting.

We ask that you dismiss the requirement that a habitat protection plan be required for our property for the reason that the two endangered tiger beetle species is not affected.

Mr. Brownlee, of Calvert County Planning and Zoning is aware of our situation and would also like a response in regards to this matter.

Thank you in advance for your time and should you have any questions or concerns, please call or email us.

Sincerely,



John G. Felenchak

CA 0247-05

RECEIVED

Case No. 05-3174

JUL 12 2005

Public Hearing
May 5, 2005
June 2, 2005

CRITICAL AREA COMMISSION

John Felenchak has applied for a revision to a previously approved variance (Previous BOA Case No. 04-3033). The property is located at 4012 South Shore Drive, Port Republic (Lot 19-R, Section One, Western Shores) and is zoned R-1 Residential.

The matter was presented May 5, 2005 before Mr. Michael J. Reber, Chairman of the Board of Appeals, Mr. Walter Boynton, Vice Chairman and Mr. Daniel Baker. Mr. John Felenchak was present at the hearing and was represented by Mr. Jeff Tewell from Collinson, Oliff and Associates. The plat submitted with the application was marked Applicant's Exhibit No. 1, dated and entered into the record at the hearing. A Staff Report along with photographs taken on site was also entered into the record. Ms. Kerrie Gallo from the Chesapeake Bay Critical Area Commission was present at the hearing. The Board deferred action at the May hearing pending: (1) a site visit; (2) a plan to bring the site into compliance; (3) a Habitat Protection Plan; and (4) to allow the applicant time to address the issues specified in the Staff Report submitted at the hearing.

The matter was again presented June 2, 2005 before Mr. Michael J. Reber, Chairman of the Board of Appeals, Mr. Walter Boynton, Vice Chairman and Mr. Daniel Baker. Mr. John Felenchak was present at the hearing and was represented by Mr. Jeff Tewell from Collinson, Oliff and Associates. The following Exhibits were dated and entered into the record at the hearing: (1) a letter from the Maryland Department of Natural Resources dated May 17, 2005, regarding a Habitat Protection Plan for the subject property was marked Applicant's Exhibit No. 1; and (2) a Planting and Habitat Protection Plan plat for Lot 19-R, Section One, Western Shores, was marked Applicant's Exhibit No. 2. A Staff Report was

entered into the record. Ms. Kerrie Gallo from the Chesapeake Bay Critical Area Commission was present at the hearing.

FINDINGS OF FACT

Through testimony and evidence presented at the hearing, the Board found the following facts to be true:

1. The subject property contains 12,212 s.f. The property is zoned R-1 Residential.
2. The property is currently being developed with a circular house situated ~20 feet from the cliff edge.
3. The development site is primarily level from the roadfront to the cliff edge.
4. The applicant is requesting a revision to the Order issued under BOA Case No. 04-3033 where a variance was granted in the cliff-setback requirements and a variance was granted in the limit of clearing requirements for construction of a single-family dwelling, garage, driveway, well and septic system within the cliff set-back.
5. Staff Comments submitted at the May hearing indicated: (1) in BOA Case No. 04-3033 the Critical Area Commission noted that the property was located within a Habitat Protection Area for two Tiger Beetles that are on the State endangered species list and the Federal threatened species list. Where habitats of protected species are at issue, the property owner must develop a Habitat Protection Plan, as per State law; (2) the Board's Order No.04-3033 noted that this requirement would be addressed at the time of building permit review; however, the Habitat Protection Plan was not submitted and P&Z approved the permit without the Plan; (3) the Limits of Disturbance as per the approved plan under Order No. 04-3033 were marked in the field, the applicant in this case met on site with the Grading Inspector and the Environmental Planner from Planning and Zoning, and the limits of clearing were clearly noted at that time; (4) the Applicant did not abide by the Limit of Disturbance requirements set forth in Order No. 04-3033. Almost the entire vegetative understory on site was stripped from the lot, more clearing of tree cover occurred than was approved by the Board of Appeals, and a zoning violation was noted; (5) a remedy for the clearing violation had not been determined when it was noted that another

violation occurred. The Applicant's well digger did not position the well in accordance with the plan approved under BOA Case No. 04-3033. This error required that the garage be re-sited on the lot; (6) the Applicant proceeded to dig footings for the garage at a new location and concurrently submitted a revised plan for review; (7) the revised plan indicated the limit of disturbance exceeded that originally approved under Board of Appeals Case No. 04-3033 by 4,810 s.f. and the tree canopy removed exceeded that originally approved by 960 s.f.; (8) the Applicant is now requesting a revision to the clearing variance approved under No. 04-3033 for the re-sited garage. The garage cannot be located elsewhere on the site based on the location of the house, well and septic system; (10) Planning and Zoning recommends that the Board condition any clearing approval with replacement to be on the four-to-one basis with one part being bonded as set forth in the Calvert County Zoning Ordinance Section 8-1.03.G.1.c.iv which states: *The total allowable amount of clearing of forest or developed woodland is 6,000 square feet or 30%, whichever is greater. Clearing in excess of this amount without a variance is a violation and required replacement is on a four-to-one basis. Authorized clearing in excess of this amount requires variance approval and replacement on a three-to-one basis;* (11) Planning and Zoning recommends that payment of fines on a three-to-one basis for off-site replacement through the Department of Planning and Zoning's Critical Area reforestation program be required; and (12) the errors associated with this case be remedied immediately if the stability of the cliff is to be maintained.

6. The Applicant and Applicant's Representatives testified at the May hearing that: (1) variances were granted in May 2004 for a single-family dwelling within the cliff setback and for clearing for a house with a garage; (2) the lot was cleared and the well was put in the wrong place; (3) the procedure was followed for a Building Permit and a pre-construction meeting was held; (4) the revised location for the garage, due to the well being drilled in the wrong place, was considered an administrative change; (5) a Stop Work Order was issued; (6) the County lifted the Stop Work Order and construction began; (7) when applying for a building permit for the revised garage location the Applicant was advised he would need to receive approval from the Board of Appeals for this new location due to the additional amount of clearing and because a Habitat Protection Plan was not previously provided as required by BOA Order No. 04-3033; and (8) The Applicant advised he discussed a Habitat Protection Plan with Planning and Zoning and was verbally told it was not needed. If a Habitat Protection Plan is needed it will be provided.
7. Ms. Kerrie Gallo from the Chesapeake Bay Critical Area Commission (CBCAC) was present at the May hearing and indicated CBCAC is concerned that: (1) there is no Habitat Protection Plan in place and the area may have been compromised with the clearing that has taken place; (2) the silt fence is located 5' from the cliff edge; (3) more clearing has been done

that what the plan says; (4) it does not appear the property is being developed in phases as required in the Condition No. 3 of the Board's Order No. 04-3033; (4) the one drywell proposed may not be sufficient; and (5) plantings need to be provided along the foot of the proposed deck to facilitate infiltration opportunities and prevent stormwater runoff.

8. The Applicant's Representative addressed CBCAC concerns and advised: (1) the Board's Order No. 04-3033 does not require a Habitat Protection Plan. The findings of fact for that order ask the Applicant to address the issue; (2) drywells will be provided to address roof runoff. They have been positioned and sized already; (3) the silt fence location has been reviewed and approved by Planning and Zoning.
9. The Applicant testified the County has been involved in everything that has been an issue on this property. When the Stop Work Order was issued he was told to leave the area alone. His intention was not to disobey the Board.
10. The Board deferred action at the May hearing pending the following: (1) a site visit; (2) a plan to bring the site into compliance; (3) receipt of a Habitat Protection Plan; and (4) to allow the Applicant time to address the issues specified by Staff (see Item 5 above).
11. The Board visited the site between the May and June hearings. Based on the site visit the Board determined there is no other location to drill another well on site without going closer to the cliff, which would impose environmental risks. If the well were relocated closer to the street the garage would be closer to the cliff face. The new garage location is further away from the cliff than previously approved under Board Order No. 04-3033.
12. The Applicant submitted for the June hearing a letter dated May 17, 2005 from the Maryland Department of Natural Resources regarding a Habitat Protection Plan and also submitted a Planting and Habitat Protection Plan Plat.
13. The Applicant and the Applicant's representative indicated at the June hearing that: (1) the new plat submitted addresses the Tiger Beetle habitat and replantings; (2) the Habitat Protection Plan addresses ground cover and preserving integrity of the cliff; (3) no revetment or retaining wall would be located at the base or top of cliff; (4) most plantings would be in the northeast corner of the property where drainage occurs; (5) the hardship in this case was created when the well was located in the wrong place, creating the requirement for additional clearing; and (6) the hardship was through no fault of the Applicant.

14. Staff comments submitted at the June hearing indicated the Department of Planning and Zoning recommends that the revised plan be approved with the following condition: that prior to the Stop Work order being lifted, the applicant be required to pay fines in the amount of three times the area that was disturbed without prior authorization and in violation of the Board's Previous Order No. 04-3033; and the Applicant post a bond for replanting the area of canopy that was removed without authorization and in violation of the Board's previous Order.
15. Ms. Kerrie Gallo from the Chesapeake Bay Critical Area Commission was present at the June hearing and indicated: (1) the DNR letter dated May 17, 2005 asks for replantings. There should also be understory replanting; (2) stormwater management needs to be addressed; and (3) a written Habitat Protection Plan, in the form of a report, is needed.
16. The Applicant's Representative addressed Ms. Gallo's concerns and advised an approved Habitat Protection Plan would be required prior to issuance of a revised Building Permit.
17. Staff addressed the five points in the May 17, 2005 DNR letter submitted at the June hearing and indicated: (1) there is no need for shoreline stabilization at this site; (2) plantings and shrubbery should address stormwater issues; (3) the driveway on site will be pervious and it should be made clear that the deck area will be open and remain unenclosed; (4) stormwater from the house and garage will be managed with drywells, which will be located as far away from the cliff as possible; and (5) the beach area is not owned by Mr. Felenchak. He cannot control invasive grasses on the beach.
18. Staff also indicated that a Habitat Protection Plan needs to be developed which addresses the issues in the May 17, 2005 DNR letter. This Habitat Protection Plan should be submitted to the Planning and Zoning Critical Area Planner and to the Planning and Zoning Reforestation Planner for review and approval.
19. Neighboring property owners have been notified of the proposed request and have not opposed the construction either orally or in writing.

CONCLUSIONS

Based on the above findings of fact, the Board came to the following conclusions (in accordance with Section 11-1.01.B of the Calvert County Zoning Ordinance):

1. Strict application of the previously approved variance would impose peculiar and unusual practical difficulties and undue hardship upon the

owner as the revision is required due to the mistake made by the well digger in locating the well in the wrong place.

2. Granting the revision to the previously approved variance would not cause injury to the public interest or substantially impair the intent of the Comprehensive Plan, as neighboring property owners have been notified of the proposed construction and have not objected orally or in writing.
3. Findings were made which demonstrate that special conditions or circumstances exist that are peculiar to the land and that a literal enforcement of provisions within the County's Critical Area Program would result in unwarranted hardship. The revised configuration of the garage and well is due to the well's incorrect placement on the property. Relocating the well would impose environmental risks and is unwarranted. The new garage location is further away from the cliff than previously approved by the Board.
4. A literal interpretation of the Critical Area Legislation and the Calvert County Critical Area Program and related ordinances will deprive the Applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area of the County. The Applicant only seeks the right to construct a garage in a revised location.
5. The granting of the revision to the previously approved variance will not confer upon the Applicant special privileges that would be denied by the Calvert County Critical Area Program to other lands or structures within the County's Critical Area. The Applicant only seeks the right to construct a garage in a revised location.
6. The revision to the previously approved variance request is not based upon conditions or circumstances which are the result of actions by the Applicants, nor does the request arise from any condition relating to land or building use, either permitted or non-conforming, on any neighboring property but due to the mistake made when the well was placed in the wrong location.
7. The granting of the revision to the previously approved variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the County's Critical Area, and the granting of the variance will be in harmony with the general spirit and intent of the Critical Area law with concerns addressed as conditions to this Order.
8. The application for a revision to a previously approved variance was made in writing to the Board of Appeals with a copy provided to the Critical Area Commission.

ORDER


It is hereby ordered, by a unanimous decision, that the request for a revision to a previously approved variance as requested by John Felenchak be **GRANTED** based on the above findings of fact and conclusions subject to the following conditions:

- ✓ 1. Prior to the Stop Work Order being lifted the Applicant shall be required to pay fines in the amount of three times the area that was disturbed without prior authorization and in violation of the Board's previous Order; and post a bond for replanting the area of canopy cover that was removed without authorization and in violation of the Board's previous Order.
- ✓ 2. A Habitat Protection Plan, in the form of a written document, shall be submitted to the Calvert County Planning and Zoning Critical Area Planner and the Calvert County Planning and Zoning Reforestation Planner for review, possible modification, and approval.

In accordance with Section 6 of the Calvert County Board of Appeals Rules of Procedure, "any party to a case may apply for a reconsideration of the Board's decision no later than 15 days from the date of the Board's Order."

In accordance with Section 11-1.02 of the Calvert County Zoning Ordinance, "any person or persons, jointly or severally, aggrieved by any decision of the Board of Appeals...may appeal the same to the Circuit Court of Calvert County. Such appeal shall be taken according to the Maryland Rules as set forth in Maryland Rules, Title 7, Chapter 200 within 30 days. If any application for a variance is denied by a final order of the Board, or if appealed, by a final order of the Court, a second application involving substantially the same subject matter shall not be filed within one year from the date of the final order."

Entered: July 11 2005
Pamela P. Helie, Clerk



Michael J. Reber, Chairman

Robert L. Ehrlich, Jr.
Governor

Michael S. Steele
Lt. Governor



Martin G. Madden
Chairman

Ren Serey
Executive Director

STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS

1804 West Street, Suite 100, Annapolis, Maryland 21401
(410) 260-3460 Fax: (410) 974-5338
www.dnr.state.md.us/criticalarea/

May 3, 2005

Ms. Roxana Whitt
Calvert County Department of Planning and Zoning
150 Main Street
Prince Frederick, Maryland 20678

Re: Variance 05-3174 Felenchak

Dear Ms. Whitt:

Thank you for providing information on the above referenced variance. The applicant is requesting a revision to a previously approved variance request to construct a dwelling with greater than 30% clearing. It is my understanding that the current variance proposal results from the need to relocate the garage.

During the review of the original variance request, May of 2004, this office raised concerns that the subject property lies within a designated Habitat Protection Area (HPA) for the presence of two State and Federally listed species, the Northeastern Beach Tiger Beetle, and the Puritan Tiger Beetle. Based on this information, the Calvert County Critical Area Program (Chapter 5.E), requires that a Habitat Protection Plan be developed which addresses the recommendations for the protection of the species made by the Department of Natural Resources (DNR). This plan must be submitted and approved by DNR prior to the issuance of a building permit for the project.

In conjunction with this requirement, Katherine McCarthy of DNR conducted a site visit with Julie LaBranche, the Commission's planner for Calvert County at the time. During this site visit, Ms. McCarthy identified potential habitat for the Northeastern Beach Tiger Beetle species, as well as documented foraging habitat for the Puritan Tiger Beetle species. In addition, a detailed letter was provided outlining specific recommendations to be addressed by the applicant. Aside from the requirements outlined within State and County Critical Area regulations, the May 6, 2004 decision issued by the County Board of Appeals, Conclusion #6, indicates that the Commission's concerns regarding Tiger Beetle habitat would be addressed. At this time, it appears that the applicant never submitted the required HPP, and therefore never adequately addressed the recommendations made by DNR for the protection of the species. For the Board's reference, I am attaching a copy of the Critical Area comments provided in May of 2004 and a copy of the DNR letter.

In evaluating the current variance request, this office has significant concerns that the Tiger Beetle habitat areas on the property have been compromised at this date by the existing clearing violations and loss of forest cover. Specifically, please refer to recommendation #2 within the

Roxana Whitt
Variance 05-3174 Felenchak
May 3, 2005

May 6, 2004 DNR letter which states the importance of maintaining the forest cover, shrub and understory cover during and after construction. These recommendations were made in order to prevent stormwater runoff and cliff erosion problems as have occurred recently on similar properties within the County with similar cliff and tiger Beetle concerns. As noted above, Chapter 5.E of the Calvert County Critical Area Program requires that the applicant must develop an HPP for this property prior to any further construction activity. In addition, we do not believe that the May 6, 2004 DNR letter is sufficient in relation to the present conditions on the site. To facilitate this coordination process, I have requested that DNR provide the County with a revised set of recommendations based on the current site conditions and habitat concerns. Once the County has received this revised letter from DNR, we recommend that the applicant work with County staff to develop and submit the required HPP to DNR and/or Commission staff. The HPP should address each of the concerns and recommendations made by DNR for the protection of the Tiger Beetle species. At this time, we recommend that the Board require the applicant to obtain approval of a HPP by DNR prior to initiating any further construction activity on the site.

In reference to the revised site plan submitted, we provide the following additional comments:

1. The original site plan and variance request shows the edge of the silt fencing set back 15 feet from the cliff edge. The revised site plan indicates that the closest edge of the silt fencing is 5 feet from the cliff edge. Based on observations during a recent site visit, the silt fencing appears to follow the edge of the cliff face and is not accurately shown on the site plan.
2. The original variance request was approved with a 35.5% clearing limit. While we acknowledge that there has been a clearing violation on the property, the revised site plan indicates that 40.14% clearing is currently proposed. Based on observations made during my site visit, it appears that the actual clearing on-site may have exceeded 40.14%. Given the significance of the clearing violation in relation to its potential impact on the HPA, we recommend that the applicant work with the County to develop a bonded planting plan, including mitigation at a 4:1 ratio. This mitigation should be first fulfilled onsite, with immediate stabilization of the area between the dwelling and the cliff face.
3. We note that Condition # 3 of the Board's previously approved variance required that the property shall be developed in phases with each phase being stabilized prior to proceeding to the next phase. It does not appear that this condition has been met, as the entire site is currently exposed soil with no stabilization efforts provided.
4. The revised site plan indicates one drywell on the western side of the dwelling. It is unclear whether this drywell will be sufficient to handle all of the rooftop runoff from the dwelling. Based on situation on similar sites in the County, this office has concerns whether one drywell will be sufficient to keep stormwater runoff on the entire site from furthering a potential future cliff erosion problem on the property. We recommend that the applicant consider installing multiple drywell systems or additional stormwater

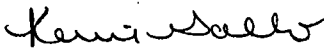
Roxana Whitt
Variance 05-3174 Felenchak
May 3, 2005

management measures which will provide infiltration opportunities at more than one location.

5. We recommend that the applicant be required to provide foundation plantings around the base of the proposed decks in order to facilitate infiltration opportunities and prevent stormwater runoff.

Thank you for the opportunity to provide comments for this revised variance request. At this time, this office is unable to offer support for any further variances. We recommend that the Board require the applicant to first bring the property into compliance with all outstanding conditions and regulations, including those for development within a HPA. Should you have any questions, please free to contact me at 410-260-2482. Please include this letter as a part of the record for this case and please notify the Commission writing regarding the decision.

Sincerely,



Kerrie L. Gallo
Natural Resource Planner

CC: Aimee Daily, Calvert County
Robin Munnikhuysen, Calvert County
Dave Brownlee, Calvert County
Katherine McCarthy, DNR

Robert L. Ehrlich, Jr.
Governor

Michael S. Steele
Lt. Governor



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STATE OF MARYLAND
CRITICAL AREA COMMISSION
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www.dnr.state.md.us/criticalarea/

May 3, 2004

Roxana L. Whitt
Calvert County Dept. of Planning and Zoning
150 Main Street
Prince Frederick, MD 20678

Re: Variance 04-3033 William and Christine Diehlmann

Dear Ms. Whitt:

Thank you for providing information on the above referenced variance. The applicant is requesting a variance to the cliff setback requirements and a variance to clear greater than 30 percent of the property to construct a single-family dwelling, garage, driveway, well, and septic system. The property is designated a Limited Development Area (LDA) and is currently undeveloped.

I conducted a site visit to the Diehlmann property with Katharine McCarthy (Department of Natural Resources, Wildlife and Heritage Division) on April 23, 2004. Lot 19 is fully forested and the cliffs below are densely vegetated (refer to attached photographs). The neighboring properties have mostly mowed grass with landscaping up to the cliff edge, and many of the homes in the neighborhood appear to be located close to the edge of the cliffs. I observed some minor erosion at the top of the cliffs on both of the neighboring properties, which appeared to be caused by stormwater runoff.

Providing this lot is properly grandfathered, we do not oppose a variance to develop this property with a single-family dwelling; however there are several issues that should be addressed. We have the following comments regarding the current development proposal and variance request.

- 1) Based on information from the Department of Natural Resources, Wildlife and Heritage Division (refer to attachment for Western Shores, Critical Area Site CT L-2), this property is located within an identified Habitat Protection Area for two state and federally listed species, the Northeastern Beach Tiger-Beetle and the Puritan Tiger-Beetle. The Habitat Protection Area provisions of the Calvert County Critical Area Program (Part I, Chapter X and Part II, Conservation Manual, Chapter V) require that the applicant develop a habitat protection plan that addresses the recommendations of the Department of Natural Resources for protection of

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these species. The Department of Natural Resources is expected to provide comments prior to the variance hearing on May 6, 2004.

- 2) This property is also designated a Category 3 cliff protection area by the Calvert County Zoning Ordinance (Article 8, Section 2.02). As shown on the site plan provided, a 60-foot cliff setback for development is required because the base of the cliff is greater than 100 feet from mean high water.
- 3) Following is an evaluation of the site plan provided for this variance request.
 - The applicant proposes 3,132 square feet or 15 percent impervious surface coverage and 7,402 square feet or 35.5 percent forest clearing on the site.
 - As measured from the site plan, the dwelling is approximately 1,256 square feet and the garage is approximately 625 square feet. Most of the dwelling and the entire garage are located within the 60-foot cliff setback. Has the applicant considered locating the garage beneath the dwelling?
 - As measured from the site plan, the proposed deck is within 17 feet from the cliff edge, the dwelling is within 22 feet from the cliff edge, and the limit of clearing is within 10 to 15 feet of the cliff edge.

If a variance to the height requirements is not an issue, the development setback might be increased on this site by locating the garage beneath the dwelling, and locating the deck along the side of the dwelling (no further waterward than the primary structure).

We recommend that the applicant have an opportunity to address the recommendations of the Department of Natural Resources for protection of sensitive species on the site. We strongly recommend that the applicant have an opportunity to work with County staff and the Department of Natural Resources to develop the required habitat protection plan for the site, and to consider revisions to the current variance request to address minimization of impacts.

If granted, we recommend the following be made conditions of this variance.

- 1) Mitigation, at a ratio of 2:1 for clearing in excess of 30 percent, should be required (Calvert County Zoning Ordinance Article 8, Section 8-1.03.G.). Mitigation plantings, consisting of native trees and shrubs, should be used to reforest the property to the extent possible (create canopy, understory and groundcover) particularly between the dwelling and the cliff edge.
- 2) In order to decrease the amount of runoff from the site, the driveway should be constructed of material that will maintain maximum perviousness over time, such as washed pea gravel.
- 3) Stormwater from all impervious surfaces should be directed as far away from the cliff edge as feasible and infiltration devices should not be located within the 60-foot cliff setback.

Roxaña L. Whitt

Variance 04-3033 William and Christine Diehlmann

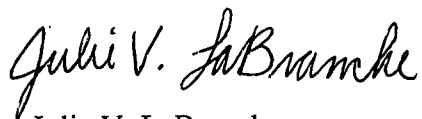
May 3, 2004

Page 3

- 4) Following completion of the proposed development, the applicant should develop a Buffer Management Plan for the property, which should be approved by the County and a copy provided to the Commission. The Buffer Management Plan should include guidelines for maintaining forest cover and natural ground cover vegetation within the 60-foot cliff setback.

Thank you for the opportunity to provide comments. 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,



Julie V. LaBranche
Natural Resource Planner

CA 246-04

Case No. 04-3033

Public Hearing
May 6, 2004

John Felenchak, contract purchaser, has applied on behalf of the property owners William & Christine Diehlmann for a variance in the cliff set-back requirements and a variance to clear greater than 30% of the property for construction of a single-family dwelling, garage, driveway, well and septic system within the cliff set-back. The property is located at 4012 South Shore Drive, Port Republic (Lot 19 & P/O Lot 20, Section One, Western Shores) and is zoned R-1 Residential.

The matter was presented May 6, 2004 before Mr. Michael J. Reber, Chairman of the Board of Appeals, Mr. Walter Boynton, Vice Chairman and Mr. Daniel Baker. Mr. John Felenchak was present at the hearing and was represented by Mr. Jeff Tewell from Collinson, Oliff and Associates. The plat submitted with the application was marked Applicant's Exhibit No. 1, dated and entered into the record at the hearing. Mr. George Anderson was present at the hearing and spoke expressing concern the proposed construction would cause cliff erosion. A letter from Ms. Delores Jones, adjoining property owner, was read into the record at the hearing. A Staff Report, along with photographs taken on-site, was also entered into the record.

FINDINGS OF FACT

Through testimony and evidence presented at the hearing, the Board found the following facts to be true:

1. The subject property contains approximately 20,289 s.f. The property is zoned R-1 Residential.
2. The property is currently undeveloped and wooded throughout, with a gradual slope toward the cliff.
3. The Applicant is requesting a variance in the cliff set-back requirements and a variance to clear greater than 30% of the property for construction of

Case No. 04-3033

Page 2

a 40' diameter 2-story single-family dwelling on a basement, with a deck, a 24' x 24' garage, driveway, well and septic system within the cliff set-back

4. The disturbed area for the proposed construction is 7,402 square feet. The development site has a minimal slope to the cliff edge.
5. The cliff is 50 feet high, with a mostly vegetated face. There is a distance of at least 100' from the bottom of the cliff to the mean high water.
6. Approximately 60% of the property is located within the 60-foot cliff setback.
4. The Applicant's Representative testified: (1) the location of the septic between the house and street as dictated by the Health Department and the location of the well on the adjoining property creates the requirement for a variance to develop this property; (2) the house had to be built where the well and septic are not being located; (3) the cliff is stable and completely vegetated; (4) the shoreline is greater than 100' from the bottom of the cliff; (5) the proposed house is modular, mostly circular, and contains, 11-12,00 s.f; (6) the lot is not steep; (7) drywells are proposed; however, it may be possible to use infiltration trenches instead of drywells to control runoff; (8) the driveway will be pervious; (9) the house is similar in size to those located on adjoining properties; (10) the clearing is required to accommodate the Health Department dictated locations for the septic and well; (11) the "Tiger Beetles" habitat on this property will be addressed with a representative from Planning and Zoning; and (12) infiltration trenches would be installed to run perpendicular to the Bay and moved to the front of the property to control water runoff.
7. Staff comments indicated: (1) concern with the construction of a house with its foundation 27' from the edge of a 50' high cliff with a 15' deck, a drilled well 13' and a limit of clearing 6' from the cliff edge, combined with clearing more than 30% of the site; (2) the cliff does not currently show erosion stress; (3) the Health Department has appropriated the only reasonable development area on site for use as a sewage disposal area and it appears there are no alternatives to this design; (4) the septic system location is fixed based on the well and septic locations on both this and the neighboring properties; (5) it appears the well location is essentially fixed based on the required separation of well and septic facilities; and (6) no objection to the proposal is noted if the variance criteria can be met.
8. Comments dated April 30, 2004 from the Engineering Bureau indicated: (1) all downspouts must be directed into drywells as shown on the plan; (2) a washed gravel bed, minimum 6" deep shall be placed under all decks to provide stabilization; and (3) Stormwater management must be addressed

Case No. 04-3033

Page 3

as required by the 2001 Calvert County Stormwater Management Ordinance.

9. Comments dated April 30, 2004 from the Calvert Soil Conservation District indicated the site plan meets all the requirements of their office and the erosion and sediment control plan is adequate.
10. Comments dated May 3, 2004 from the Critical Area Commission indicated they do not oppose a variance to develop this property provided the lot is properly grandfathered for variance consideration.
11. The property is properly grandfathered for variance consideration.
12. Mr. George Anderson was present at the hearing and spoke expressing concern that the proposed construction would increase water runoff and cause cliff erosion.
13. A letter dated May 6, 2004 from Ms. Delores Jones, adjoining property owner, expressing concern with water runoff was read into the record at the hearing.

CONCLUSIONS

Based on the above findings of fact and based upon testimony and evidence presented the Board came to the following conclusions (in accordance with Section 11-1.01.B of the Calvert County Zoning Ordinance):

1. That the Applicant has demonstrated that special conditions or circumstances exist that are peculiar to the land or structure and that an unwarranted hardship would result without a variance in the cliff set-back requirements and a variance to clear greater than 30% of the property for construction of a single-family dwelling, garage, driveway, well and septic system within the cliff set-back as the Health Department has dictated the location for the septic systems and the location of the well on the adjacent property limits the space available on this site for development of the proposed structure.
2. That the Applicant would be deprived of rights commonly enjoyed by other properties in similar areas within the Critical Area of the County without the variances requested, as there are other houses of similar size located within the cliff setback in this area. The property is properly grandfathered for variance consideration.

Case No. 04-3033

Page 4

3. The granting of the variances will not confer upon the Applicant special privileges that would be denied by the Calvert County Critical Area Program to other lands or structures within the County's Critical Area. The Applicant only seeks the right to construct a single-family dwelling, garage, well, driveway, well and septic system which other similar properties in the area enjoy.
5. The variance requests are not based upon conditions or circumstances which are the result of actions by the Applicant, nor does the request arise from any condition relating to land or building use, either permitted or non-conforming, on any neighboring property but due to the size of the property and the location of the property in the Critical Area adjacent to the cliff.
6. The granting of the variances will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the County's Critical Area, and the granting of the variances will be in harmony with the general spirit and intent of the Critical Area law as the Critical Area Commission has reviewed the request and has no objections since the property is properly grandfathered for variance consideration. Concerns expressed by the Commission regarding "Tiger Beetle" habitat will be addressed. Roof runoff will be managed by infiltration trenches, which will be installed to run perpendicular to the Bay and moved to the front of the property.
7. The application for the variances was made in writing to the Board of Appeals with a copy provided to the Critical Areas Commission.

ORDER

It is hereby ordered, by a unanimous decision, that a variance in the cliff set-back requirements and a variance to clear greater than 30% of the property for construction of a single-family dwelling, garage, driveway, well and septic system within the cliff set-back as requested by John Felenchak, contract purchaser, on behalf of the property owners William & Christine Diehlmann, be GRANTED based on the above findings of fact and conclusions, subject to the following conditions:

1. A 6" washed gravel bed shall be placed under any decks or deck areas to provide stabilization.
2. All downspouts shall discharge onto water retention devices.


Case No. 04-3033

Page 5

3. The property shall be developed in phases with each phase being stabilized prior to proceeding to the next phase.
4. A phasing plan shall be submitted with the building permit.
5. Prior to the work being done on site, the location of the house and the limitation of clearing shall be staked and marked.
6. The Applicant's construction representative shall meet with representatives from the Department of Planning and Zoning and the Department of Public Works to determine the construction grading and limit of clearing prior to construction start.
7. Stormwater management must be addressed as required by the 2001 Calvert County Stormwater Management Ordinance.
8. The silt fence shown on the plan (Applicant's Exhibit No. 1) shall be backed with straw bales.

In accordance with Section 11-1.02 of the Calvert County Zoning Ordinance, "any person or persons, jointly or severally, aggrieved by any decision of the Board of Appeals...may appeal the same to the Circuit Court of Calvert County. Such appeal shall be taken according to the Maryland Rules as set forth in Maryland Rules, Title 7, Chapter 200 within 30 days. If any application for a variance is denied by a final order of the Board, or if appealed, by a final order of the Court, a second application involving substantially the same subject matter shall not be filed within one year from the date of the final order."

Entered: May 24, 2004
Pamela P. Hclie, Clerk



Michael J. Rebel, Chairman



**CALVERT COUNTY
BOARD OF APPEALS**

150 Main Street
Prince Frederick, Maryland 20678
Phone: 410-535-2348 • 301-855-1243

May 11, 2005

CA-247-05

Mr. John Felenchak
8701 Ferrysburg Way
Montgomery Village, MD 20886

Subject: Board of Appeals Case No. 05-3174

Dear Mr. Felenchak:

This is to confirm the action taken by the Board of Appeals at its regular hearing on Thursday, May 5, 2005, regarding your request for a revision to a previously approved variance under Board of Appeals Case 04-3033. The Board deferred action on your application pending the following: (1) a site visit; (2) a plan to bring the site into compliance; (3) a habitat protection plan; and (4) to allow you time to address the issues specified in the Staff Report to the Board dated May 5, 2005 (including items of concern from the Critical Area Commission in their letter dated May 3, 2005 to Ms. Roxana Whitt).

Your case will be continued at the next Board of Appeals Hearing scheduled for **Thursday, June 2, 2005**, in the Commissioners' Hearing Room, 2nd Floor, Courthouse, Prince Frederick, Maryland. Your case has been scheduled for the **morning session, which begins at 9:00 A.M.**

In accordance with Rule 4-101.G of the Board's Rules of Procedure, any request by the Board for additional information shall stay the 45-day time normally required for the Board to make its decision.

If you have any questions, I can be reached at (410)535-1600, extension 2559.

Sincerely,

Handwritten signature of Pamela P. Helie in cursive.

Pamela P. Helie,
Clerk to the Board of Appeals

Cc: Michael Reber, Chairman BOA
Jeff Tewell, COA
Kerrie Gallo, CBCAC
Roxana Whitt, Staff to BOA-

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MAY 13 2005
CRITICAL AREA COMMISSION

Board of Commissioners
Gerald W. Clark
David F. Hale
Linda L. Kelley
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Susan Shaw

Mailing Address: 175 Main Street, Prince Frederick, Maryland 20678

Maryland Relay for Impaired Hearing or Speech 1-800-735-2258

**BOARD OF APPEALS
STAFF REPORT FOR THE DEPARTMENT OF PLANNING AND ZONING**

DATE: May 5, 2005

CASE NO. 05-3174

APPLICANT: John Felenchak

VARIANCE TYPE: Revision to previous approval

PROPERTY LOCATION: 4012 South Shore Drive, Western Shores

PROPERTY SIZE: 20,829 s.f.

WATERFRONT: Chesapeake Bay

DISTURBED AREA: 12,212 s.f.

GENERAL SITE CONDITIONS:

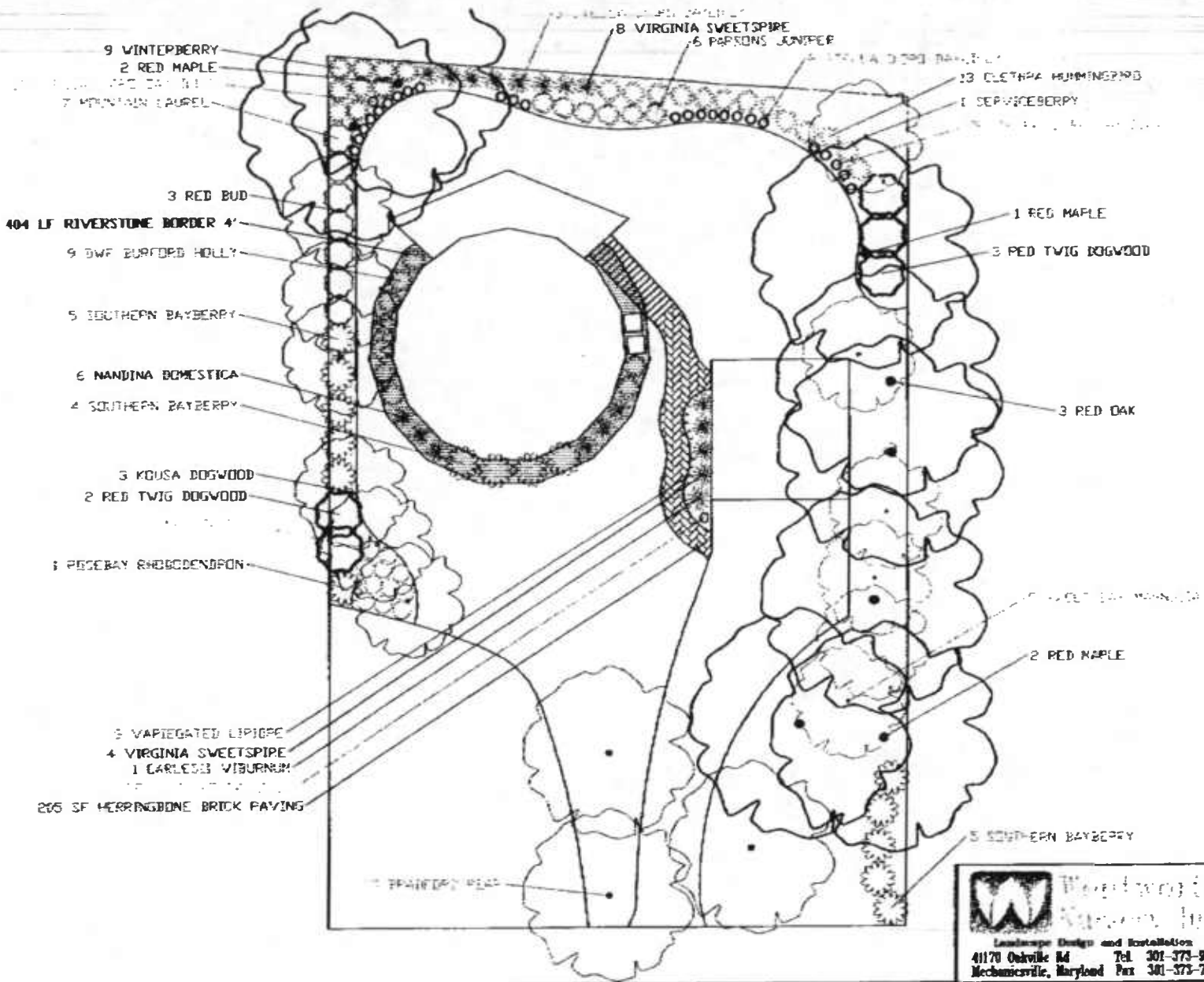
The property is currently being developed with a circular house situated ~20 feet from the cliff edge. The ground has been stripped of understory. Some trees remain, but fewer than were supposed to remain based on the Board's approval.

COMMENTS:

1) The Department of Planning and Zoning recommends that the revised plan be approved with the following condition: That prior to the Stop Work order being lifted, the applicant be required to pay fines in the amount of 3 times the area that was disturbed without prior authorization and in violation of the Board's previous Order; and post a bond for replanting the area of canopy cover that was removed without authorization and in violation of the Board's previous Order.

2) HPA - document will be submitted + attached
⇒ submitted for approval by reforester + CA planner



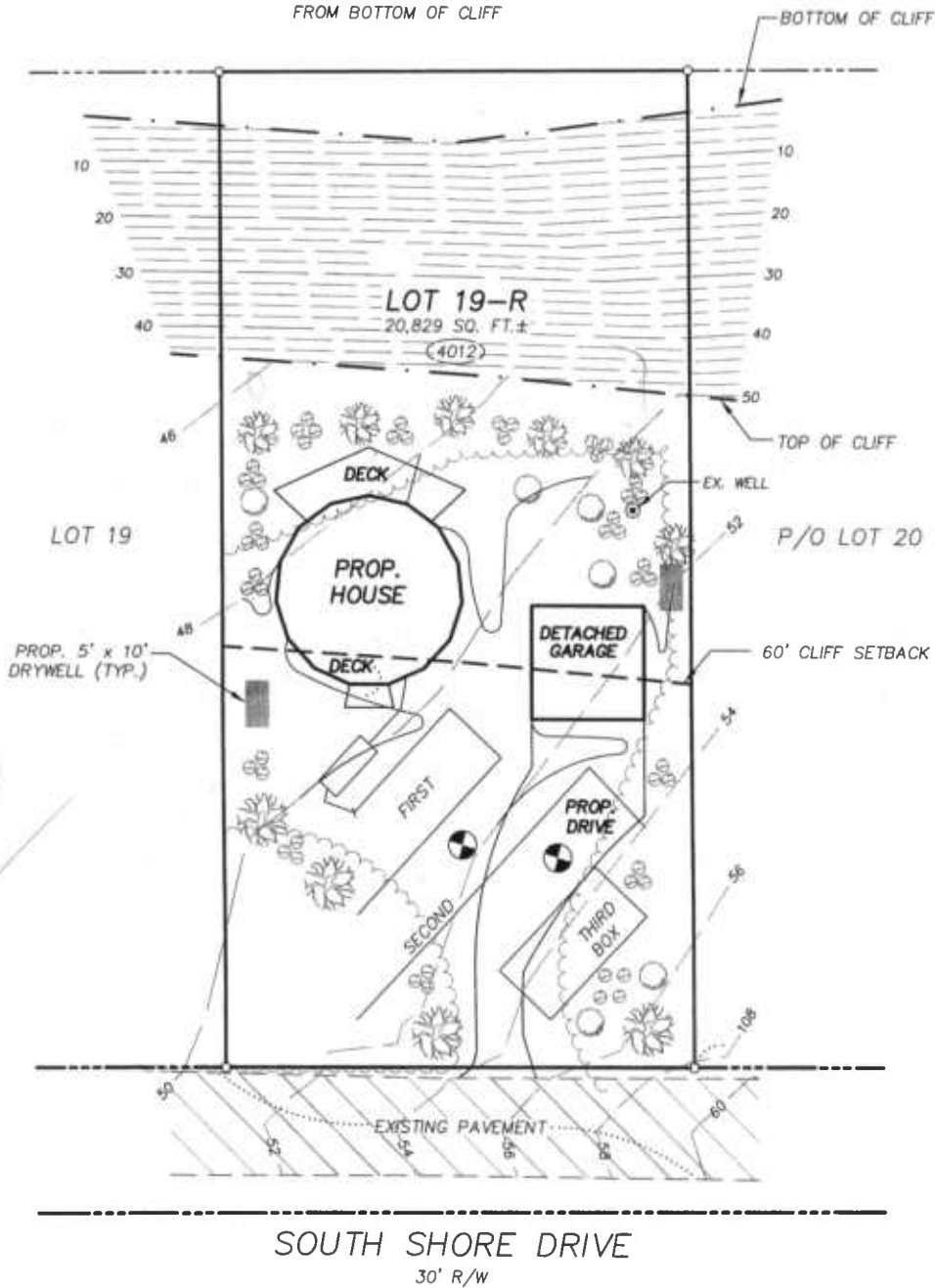


W *Woodbury Hill*
 Landscape Design and Installation
 41170 Oakville Rd Tel 301-373-8245
 Mechanicsville, Maryland Fax 301-373-7291

Project:	JOHN FELENCHAK RESIDENCE
Location:	
Date:	4/20/07
Designer:	JASON FLETCHER
Code:	FELE-J
Scale:	1" = 16'

BEACH AREA
RESERVED LOT
OWNERS USE

SHORELINE OF
CHESAPEAKE BAY
IS GREATER THAN 100'
FROM BOTTOM OF CLIFF



INFORMATION STATEMENT

THIS LOT IS IN THE CRITICAL AREA.

CONTACT "MISS UTILITY" AT 1-800-257-7777 AT LEAST 48 HOURS PRIOR TO COMMENCEMENT OF ANY WORK.

DECKS AND OTHER STRUCTURES NOT SHOWN DO NOT HAVE ZONING APPROVAL FOR CONSTRUCTION.

THE ISSUANCE OF COUNTY PERMITS IS A LOCAL PROCESS AND DOES NOT IMPLY THE APPLICANT HAS MET STATE & FEDERAL REQUIREMENTS FOR WETLAND FILLING AND/OR WETLAND BUFFER DISTURBANCE.

THIS PLAT WAS PREPARED WITHOUT BENEFIT OF A TITLE REPORT WHICH MAY REVEAL ADDITIONAL CONVEYANCES, EASEMENTS, RIGHTS-OF-WAY OR BUILDING RESTRICTION LINES NOT SHOWN.

A 6" GRAVEL BED SHALL BE PLACED BENEATH ALL DECKS.

THE DRIVEWAY SHALL BE CONSTRUCTED OF A PERVIOUS MATERIAL.

ANY FUTURE SHORELINE AND CLIFF STABILIZATION, INCLUDING THE USE OF RETAINING WALLS, SHALL BE PROHIBITED.

ALL PROPOSED PLANTINGS SHALL BE NATIVE SPECIES THAT REQUIRE LITTLE WATERING, RECOMMENDED FOR CRITICAL AREAS AND APPROVED BY PLANNING AND ZONING.

PLANTINGS BETWEEN HOUSE AND THE EDGE OF CLIFF SHALL BE INSTALLED PRIOR TO GARAGE CONSTRUCTION.

ALL PROPOSED DECKS SHALL REMAIN OPEN AND UNENCLOSED IN PERPETUITY.

LEGEND

- EXISTING CLIFF
- 60' CLIFF SETBACK
- ASSIGNED HOUSE NUMBER
- (10) 6' TREES TO BE PLANTED
20' O/C SPACING (4,000 SF±)
- (6) SMALLER TREES TO BE PLANTED
14' O/C SPACING (1,200 SF±)
- (50) SHRUBS (1,250 SF±)

6,450 SF± TOTAL PLANTINGS

SHEET 2 OF 2

PLANTING & HABITAT PROTECTION PLAN
LOT 19-R ~ SECTION ONE
WESTERN SHORES
FIRST DISTRICT, CALVERT COUNTY, MD.
FOR: JOHN FELENCHAK

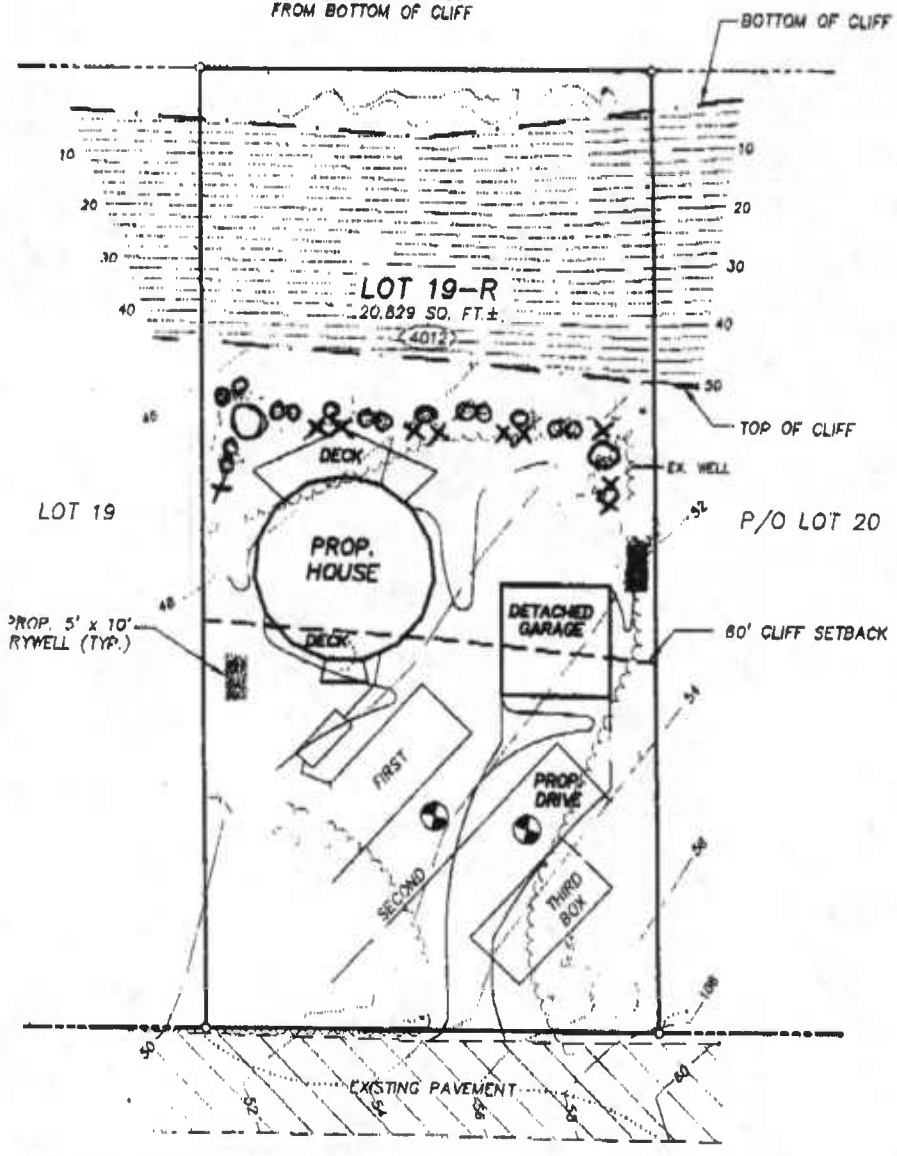
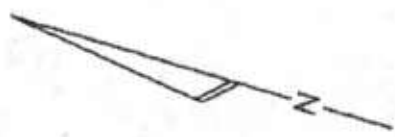
COLLISON, OLIFF & ASSOCIATES, INC.
Surveyors • Engineers
Land Planners

288 MERRIMAC COURT
PRINCE FREDERICK, MARYLAND 20678
301-855-1599 • 410-535-3101 • FAX 410-535-3103

DRAWN BY	RCJ
SCALE	1" = 40'
DATE	6-1-05
JOB NO.	1-7775
FOLDER	WESTERN SHORES

BEACH AREA
RESERVED LOT
OWNERS USE

SHORELINE OF
CHESAPEAKE BAY
IS GREATER THAN 100'
FROM BOTTOM OF CLIFF

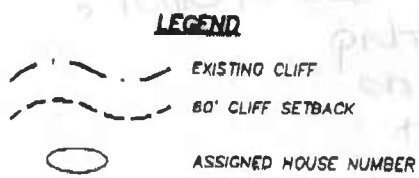


SOUTH SHORE DRIVE
30' R/W

LI
CA.
30-257-7777 AT LEAST
MENT OF ANY WORK.
NOT SHOWN DO NOT
INSTRUCTION.
ITS IS A LOCAL PROCESS
CANT HAS MET STATE &
ILAND FILLING AND/OR

IT BENEFIT OF A TITLE REPORT
CONVEYANCES, EASEMENTS,
RESTRICTION LINES NOT SHOWN.
ACED BENEATH ALL DECKS.
ICTED OF A PERVIOUS MATERIAL
F STABILIZATION, INCLUDING THE
RE PROHIBITED.
L BE NATIVE SPECIES THAT
MENDED FOR CRITICAL
NING AND ZONING.
THE EDGE OF CLIFF SHALL
CONSTRUCTION.

1450



- 1 - Wht Flowering Dogwood
- 1 - Eastern Red Bud
- 15 - Inkberry
- 10 - Bayberry (N.)

(#) SMALLER TREES TO BE PLANTED
14' O/C SPACING (1' SF±)
(#) SHRUBS (1' SF±)
2900 SF± TOTAL PLANTINGS

check
at Koth
10' what
she want

specific about fog
amount +
specific about the
how it relate
to the existing about
prohibition
on cliff
tree sh

MAIN OPEN AND UNENCLOSED
UPDATED 9-17-06

SHEET 2 OF 2

TAT PROTECTION PLAN
SECTION ONE
IN SHORES
ALVERT COUNTY, MD.
IN FELENCHAK

COLLISON, CLIFF & ASSOCIATES, INC.
Surveyors • Engineers
Lond Planners
288 MERRIMAC COURT
PRINCE FREDERICK, MARYLAND 20670
301-855-1599 • 410-835-3101 • FAX 410-535-3103

DRAWN BY _____
SCALE 1" = _____
DATE 6-1-_____
JOB NO. 1-77_____
FOLDER WESTERN SHORES



Robert L. Ehrlich, Jr.
Governor

Michael S. Steele
Lt. Governor

Maryland Department of Natural Resources
Tawes State Office Building
580 Taylor Avenue
Annapolis, Maryland 21401

C. Ronald Franks
Secretary

W. P. Jensen
Deputy Secretary

May 17, 2005

MEMORANDUM

To: Kerrie Gallo
Critical Area Commission

CC: Roxanna Whitt
Calvert County Department of Planning and Zoning

From: Katharine McCarthy
Natural Heritage Program

Re: Variance 04-3033 William and Christine Diehlmann, Habitat Protection Plan for Western Shores
Critical Area Listed Species Site 2

As stated in our previous correspondence of May 6, 2004, this lot occurs within the Western Shores Listed Species Site 2, which provides habitat for two state endangered, federally threatened species, Northeast beach tiger beetle (*Cicindela dorsalis dorsalis*) and Puritan tiger beetle (*C. puritana*). Please refer to that memo regarding the habitat preferences and conservation concerns for these species. It is my understanding that although the proposed plan was to leave 2/3 of the lot forested, virtually the entire lot has been cleared. Therefore, I have slightly modified my initial recommendations for the habitat protection plan for this property in order to address the extensive clearing.

The following measures should be included within the habitat protection plan for this project in order to minimize the detrimental environmental impacts, to maintain the existing habitat for Northeast beach tiger beetle and, more specifically, to allow for natural shoreline erosion and accretion processes to proceed within this Listed Species Site to maintain habitat for both listed tiger beetle species.

- 1) Any future shoreline stabilization and cliff stabilization, including the use of retaining walls along any portion of the cliff from top to bottom, should be prohibited on this lot.
- 2) The area originally proposed for forest retention, approximately 2/3 of the lot, should be planted in overstory and understory trees and shrubs that are native to Calvert County and are typically found in this habitat type. An inventory of similar natural habitat in the immediate vicinity is the best method for

developing a species list for replanting. Maintenance of forest cover reduces stormwater runoff and erosion from the top of the cliff. This overstory and the cover of understory trees and shrub canopy cover should be maintained during and after construction beyond the limits of disturbance in order to maintain transpiration and soil retention. Immediately around the home, the owners should maximize the cover of species that require little watering (locally native species are often best because they have adapted to the local climate) in order to reduce the input of water to this area.

- 3) The extent of impervious surfaces should be minimized. Runoff from these surfaces speeds erosion. When managed via infiltration, the additional water may promote slumping along the cliff face where groundwater emerges, as is evident in the Chesapeake Ranch Estates community. As surface runoff, the stormwater would create surface erosion problems on the lot. Reducing the extent of impervious surface is the only way to minimize the impacts of runoff. Methods to pursue in order to reduce impervious surface area include:
 - a. constructing all decks as pervious structures without roofing,
 - b. placing the garage under the home if allowable under any height restrictions that may exist,
 - c. using pervious materials for driveway construction.
- 4) Manage stormwater as far from the cliff edge as possible, direct flow away from the cliff, and disperse the locations of infiltration in order to avoid concentrating the water in one area.
- 5) Control invasive plants when they become established on the beach and threaten to eliminate foraging or larval habitat for the Northeast beach tiger beetle. Phragmites is present on the beach in the vicinity. Pursue control with herbicide in early fall 2005 (last week of September or first week of October), after the adult beetles have died. Repeated application of herbicide will likely be necessary in subsequent years in order to control Phragmites.



Robert L. Ehrlich, Jr.
Governor

C. Ronald Franks
Secretary

Maryland Department of Natural Resources

Tawes State Office Building
580 Taylor Avenue
Annapolis, Maryland 21401

Michael S. Steele
Lt. Governor

W. P. Jensen
Deputy Secretary

May 6, 2004

MEMORANDUM

To: Julie LaBranche
Critical Area Commission

CC: Roxanna Whitt
Calvert County Department of Planning and Zoning

From: Katharine McCarthy
Natural Heritage Program

Re: Variance 04-3033 William and Christine Diehlmann, Habitat Protection Plan for Western Shores
Critical Area Listed Species Site 2

This lot occurs within the Western Shores Listed Species Site 2, which provides habitat for two state endangered, federally threatened species, Northeast beach tiger beetle (*Cicindela dorsalis dorsalis*) and Puritan tiger beetle (*C. puritana*). The beach portion of the lot currently supports the Northeast beach tiger beetle. While the vegetated cliffs on the lot do not provide habitat for Puritan tiger beetle currently, the eroding cliffs in the southern portion of the Listed Species Site do provide habitat for the Puritan tiger beetle. Storm events, future shoreline stabilization projects outside the Listed Species Site, and development on the cliff top may cause erosion that creates habitat for the Puritan tiger beetle in this area in the future. It is my understanding that this lot is grandfathered, and that the County's cliff ordinances do not apply to this project. However, development of a habitat protection plan for the rare species is required under the County's Critical Area ordinances prior to final approval of the project.

As proposed, the house on this lot would be 22 ft from the top of the cliff and the deck is 17ft from the cliff. Approximately one-third of this forested lot is proposed to be cleared. The slope below the lot is currently vegetated and the base of the cliff supports trees and shrubs above mean high tide. Although the cliff is vegetated, it is quite steep and has not reached an angle of repose. Several homes in this neighborhood appear to be within 50 ft of the cliff top. Small areas of bare soil evident on adjacent lots indicates there is minor erosion on the cliff face from stormwater runoff on these lots. Neighbors have constructed a retaining wall of railroad ties at the top of the cliff to stabilize their yard.

We recommend that the following measures be included within the habitat protection plan for this project in order to minimize the detrimental environmental impacts, to maintain the existing habitat for Northeast beach tiger beetle and, more specifically, to allow for natural shoreline erosion and accretion processes to proceed within this Listed Species Site to maintain habitat for both listed tiger beetle species.

- 1) Any future shoreline stabilization and cliff stabilization should be prohibited on this lot.
- 2) Forest clearing on the lot should be minimized to the greatest extent possible while allowing for home construction and access to the home. Maintenance of forest cover reduces stormwater runoff and erosion from the top of the cliff. Clearing will put the remainder of trees at risk during storm events, as we have seen on many lots bordering cliffs. The more trees left grouped together in a contiguous stand after construction, the less vulnerable these remaining trees will be. An exception should be made for the cutting of large canopy trees at the cliff edge in order to avoid the loss of large sections of cliff top when they eventually fall. In addition to maintaining the overstory, the cover of understory trees and shrub canopy cover should be maintained during and after construction beyond the limits of disturbance in order to maintain transpiration and soil retention. Immediately around the home, the owners should maximize the cover of species that require little watering (locally native species are often best because they have adapted to the local climate) in order to reduce the input of water to this area.
- 3) The extent of impervious surfaces should be minimized. Runoff from these surfaces speeds erosion. When managed via infiltration, the additional water may promote slumping along the cliff face where groundwater emerges, as is evident in the Chesapeake Ranch Estates community. As surface runoff, the stormwater would create surface erosion problems on the lot. Reducing the extent of impervious surface is the only way to minimize the impacts of runoff. Methods to pursue in order to reduce impervious surface area include:
 - a. constructing all decks as pervious structures without roofing,
 - b. placing the garage under the home if allowable under any height restrictions that may exist,
 - c. using pervious materials for driveway construction.
- 4) Manage stormwater as far from the cliff edge as possible and direct flow away from the cliff.
- 5) Control of invasive plants should be undertaken when they become established on the beach and threaten to eliminate foraging or larval habitat for the Northeast beach tiger beetle. Phragmites is present on the beach in the vicinity and should be controlled with herbicide in early fall (last week of September or first week of October), after the adult beetles have died. Repeated application of herbicide will likely be necessary in subsequent years in order to control Phragmites.