

CA 477-05 Patuxent Habitat for
VAR 05-3211 Humanity

MSA-S-1829-4872

Comments 8/2/05 KUA

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/

August 2, 2005

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

Re: Variance 05-3211 Wagner/Habitat for Humanity

Dear Ms. Whitt:

Thank you for providing information on the above referenced variance. The applicant is requesting a variance to the steep slope requirements in order to construct a primary dwelling. The property is designated a Limited Development Area (LDA) and is currently undeveloped.

We note that this property was the subject of a previous variance request in January of 1998. During the 1998 Board of Appeals hearing, the Board denied the variance request, largely due to concerns about the impact to neighboring properties from stormwater runoff. Based on a review of the current development proposal, we note that changes have been incorporated which provide enhanced stormwater management, as well as a footprint that has been reduced by 720 square feet. We note that the subject lot is significantly constrained by the small size and presence of steep slopes. Based on this information, this office does not generally oppose the applicant's request for some amount of disturbance to steep slopes. However, we have outstanding concerns regarding the environmental impacts of the applicant's development proposal as shown on the site plan. We provide the following comments:

1. It appears that the footprint could be reduced even further by utilizing vertical construction. It is unclear whether the applicant has explored this option. While the proposed footprint is generally modest in size, the extremely small lot size and presence of steep slopes warrants that efforts at minimization be explored to the fullest extent possible.
2. The site plan shows an earth berm with a stone outlet structure. We recommend that the Board require the earth berm to remain in place in perpetuity. It is the opinion of this office that removal of the earth berm after construction will negate the water quality benefits provided by the stone outlet structure, rendering it ineffective. While a drywell has also been included, it does not appear that the location of the drywell could adequately service the amount of stormwater runoff draining

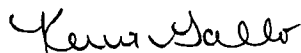
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to steep slopes from the entire property. A permanent earth berm and stone outlet structure would significantly decrease the potential for negative stormwater impacts to neighboring properties, as well as preserve the integrity of the slope.

3. Please advise the applicant that the amount of clearing proposed requires mitigation be provided at a 1:1 replacement ratio. We recommend that the applicant locate the mitigation plantings between the proposed dwelling and the slope side of the property so as to provide additional stormwater filtration opportunities. These plantings should consist of species native to Maryland.

Thank you for the opportunity to provide comments. Please include this letter as a part of the record for this variance. Also, please notify the Commission in writing of the decision made in this case.

Sincerely,



Kerrie L. Gallo
Natural Resource Planner
CA477-05

Case No. 97-2414

Public Hearing
December 4, 1997
January 8, 1998

Walter Brothers, Inc. has applied to the Board of Appeals for a variance in the steep slope requirements for construction of a portion of a house and a portion of a septic system on slopes of 15% or greater. The subject property is known as Lot 70, Section 5-R, Chesapeake Ranch Estates, is located on the south side of Aztec Trail, and is zoned R-1 Residential.

The matter was first presented December 4, 1997 before Mr. Michael J. Reber, Chairman of the Board of Appeals, Mr. John C. Smith, Vice-Chairman, and Mr. H. Wilson Dowell. The Board deferred action at the December hearing pending review by the Health Department and submittal of a revised plat based on that review. The Health Department reviewed the plat and a letter from that agency was read into the record at the January 8, 1998 hearing. The Board made its decision at the January hearing. The applicant was represented at both hearings by Mr. Jeff Tewell, of Collinson, Oliff and Associates, Inc. An adjoining property owner, Mr. Jack Landis, spoke at both hearings.

The plat which was submitted with the application was marked Applicant's Exhibit No. 1, dated, and entered into the record at the December hearing. A second plat, showing the location of the house on adjoining Lot 67, was submitted as Exhibit No. 2 at the December hearing. A staff report, along with photographs taken on site, were also entered into the record at the December hearing.

To: Kerrie

From: Roxana

FINDINGS OF FACT

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

1. The subject property is small, containing 10,509 square feet. It is located entirely within the Critical Area, but does not adjoin a waterway or wetlands area.
2. The lot is entirely wooded and slopes toward the rear, with drainage being toward adjoining Lot 66. Lots 66 and 67 are developed with single family dwellings.
3. The staff report, which was submitted into the record at the December hearing, raised concerns regarding stormwater runoff and the potential impacts to the houses down-slope from the existing drainage pattern. Staff recommended that the house size be considered in the Board's decision, and that stormwater control be required. In addition, staff recommended that the applicant investigate whether the house could be located at the top of the slope, with the septic system located behind.
4. The adjoining property owner, Mr. Jack Landis, who testified at both hearings is the owner of Lot 66, which adjoins the southeastern corner of the subject lot and the southern boundary of Lot 71, which is the subject of a similar variance considered by the Board simultaneously with this application. Mr. Landis raised concerns similar to those of staff regarding the adverse effects which would result from the stormwater runoff created when the lots are developed.
5. In response to the above concerns by staff and the adjoining property owner, the Board deferred action at the December hearing pending the following:
 - A. Consultation with the Health Department to determine whether the proposed septic system may be reconfigured to allow relocation of the house closer to the road and off the steeper slopes.
 - B. The submittal of a revised plat, approved by the Health Department, demonstrating any changes allowed.

6. The applicants consulted with the Health Department, as requested, and submitted a letter which was read into the record at the January hearing, which states:

"Upon reviewing the site plans for CRE Lots 70 and 71, Section 5R, we are unable to honor your request to change the location of the septic systems. Both properties are influenced by a water table. The water table is sufficiently high enough to limit the movement of the currently approved septic locations. Any movement to lower elevations would lengthen the septic system and/or conflict with C.O.M.A.R. 26.04.02.04 C(1), requiring a four foot separation buffer from the water table. Therefore, we are unable to alter the approved site plans for Lots 70 and 71, Section 5R. The septic system must be installed as designed and approved by this office."

7. The adjoining property owner indicated that he had installed a septic system in the rear of his property, adjacent to the rear of the subject lot and Lot 71, and questioned whether percolation tests had been performed in the rear of Lots 70 and 71 to determine whether the septic systems could be installed in that area. The applicant's engineering representative indicated that the Health Department's letter was based on the plan as submitted, and that no additional percolation tests had been performed.
8. The applicant's engineering representative indicated that the applicant is willing to construct a two-story house with a smaller footprint on Lot 71 to reduce the amount of impervious surfaces on-site. In addition, they are willing to phase construction and use stabilization matting during construction on the steeper slopes on both lots, also leaving the earth dike and stone outlet structure in place for erosion and sediment control until the site is stabilized. However, the applicant's engineering representative indicated that the calculations for the stormwater management system had not been performed and would not be performed until the building permit was under review by the County Engineering Office.
9. Despite the fact that it was noted that stormwater runoff from this site would likely negatively affect the adjoining property, no measures for control stormwater runoff were proposed.

CONCLUSIONS

Based on the above findings of fact, the Board came to the following conclusions (in accordance with Section 7-3.01.A of the Calvert County Zoning Ordinance):

1. Strict application of the steep slope requirements would impose peculiar and unusual practical difficulties and undue hardship upon the owners of the property. However, the remaining criteria for granting variances were not met, as indicated below.
2. Granting the variance would cause injury to the public interest and substantially impair the intent of the Comprehensive Plan by setting a precedent for granting variances for which no legal justification was given and by causing adverse effects on adjoining properties resulting from the stormwater runoff which would be created when the lot is developed.
3. Findings were made which demonstrate that special conditions or circumstances exist that are peculiar to the land. However, the remaining criteria for granting variances were not met and a variance can not be granted based on hardship alone.
4. A literal interpretation of the Critical Area Legislation and the Calvert County Critical Area Program and related ordinances will not deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area of the County.
5. The granting of a variance will 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 as the stormwater runoff created when the lot is developed would cause adverse effects on adjoining properties.
6. The variance request is 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.
7. The granting of a variance will adversely affect water quality and adversely impact fish, wildlife, and plant habitat within the County's Critical Area, and the granting of the variance will not be in harmony with the general spirit and intent of the Critical Area law; and
8. The application for a variance was made in writing to the Board of Appeals with a copy provided to the Commission.

ORDER

It is hereby ordered, by a unanimous decision, that the variance in the steep slope requirements, as requested by Walter Brothers, Inc., be denied without prejudice based on the above findings of fact and conclusions.

In accordance with Section 7-3.02 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 Chapter 1100, Subtitle B (now renumbered as 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: February 11, 1998
Miriam A. Gholi, Clerk

Michael J. Reber
Michael J. Reber, Chairman

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

DATE: August 4, 2005

CASE NO. 05-3211

APPLICANT: Patuxent Habitat for Humanity

VARIANCE TYPE: Steep Slope

PROPERTY LOCATION: 1105 Aztec Trail, CRE

PROPERTY SIZE: 10,509 s.f.

WATERFRONT: N/A

DISTURBED AREA: 4800 s.f.

DEVELOPMENT SITE SLOPE:

Septic system: 2%; House: 20%; Slope on SE Corner: 28%

GENERAL SITE CONDITIONS:

The property is small and wooded throughout. The front portion of the lot is level, after which the terrain drops quite steeply. There is a house on Lot 67 below the subject lot.

COMMENTS:

This case was previously heard in 1997. At that time, the Board of Appeals denied the steep slope variance due to concerns for stormwater runoff affecting adjoining properties. No stormwater management was proposed at that time.

The current plan shows a slightly smaller house on a crawl space rather than a basement.

The house is moved ~10 feet further up hill, and stormwater devices have been added.

While the current plan is an improvement, there are still concerns relative to stormwater runoff and development on steep slopes. The surge stone pad is situated on the edge of very steep slopes (28%).

The Department of Planning and Zoning recommends that the house footprint be reduced in size to 24' x 34', which would still meet the minimum 800 s.f. house size required by CRE.

The smaller house size would allow the structure and the stormwater device to be moved further from the steepest slopes. With this size footprint and a 2-story house, the owners would be afforded 1632 s.f. of living space, and the environment and the adjoining properties would be afforded more protection from stormwater runoff.

**BOARD OF APPEALS
CRITICAL AREA FORM**

**THE FOLLOWING ADDITIONAL INFORMATION IS REQUIRED FOR ALL
CRITICAL AREA VARIANCE CASES:**

PROPERTY LOCATION AND INFORMATION:

Tax Map # 45B Parcel N/A Lot 70 Block _____ Section SR

Property Address 1105 AZTEC TRAIL LUSBY MD 20657

Zoning R-1 Critical Area Designation LDA

Total Acreage of Property 10,509 \pm Tax ID 01-12032B

PROJECT INFORMATION:

Type of construction proposed SINGLE FAMILY DWELLING

Total square footage of the proposed construction 1,120 \pm

Total square footage of existing impervious surface 0

Total square footage of proposed impervious surface 1,120 \pm -106570

Total square footage of existing tree cover 10,509 \pm

Total square footage of disturbed area and/or tree cover to be removed 4,800 \pm

Is the proposed construction site within the waterfront buffer? NO

Is the proposed construction site on slopes greater than 15%? YES

ALL PLANS MUST CONTAIN THE FOLLOWING INFORMATION:

Location and dimensions of the proposed construction.

Location and dimensions of all existing improvements on the property.

Location and dimensions of driveways, parking areas and accessory structures.

Distances from proposed construction to all property lines and waterways/wetlands.

Location of the approved well and the septic system drainfields.

Location of the tree canopy line and limit of clearing.

Waterfront and/or wetland buffers.

****For all new and replacement dwellings and for substantial additions, fully engineered plans are required, showing 2-foot contours, grading, and proposed sediment and erosion control measures.**

**NOTE: APPLICATIONS AND PLANS THAT ARE INCOMPLETE MAY BE
RETURNED TO THE APPLICANT FOR COMPLETION BEFORE SCHEDULING
FOR PUBLIC HEARING.**



1 in. = 221.3 feet

BOA 05-3211 / Aztec Tr. / CRE

The data represented here is maintained to the best ability of Calvert County Government. Users assume any and all risks associated with decisions based on this data. Aerial imagery complies with Department of Homeland Security requirements. Acquisition date: April 6, 2003

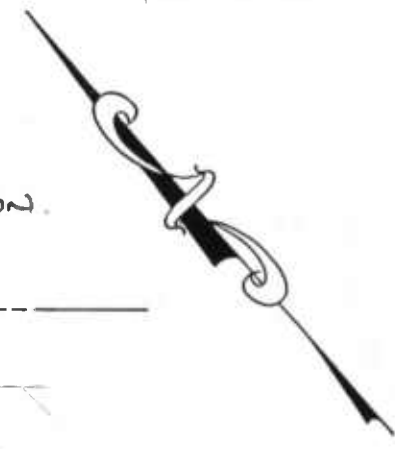


ALL SLOPES 15% OR GREATER SHALL BE STABILIZED WITH EROSION CONTROL MATTING.

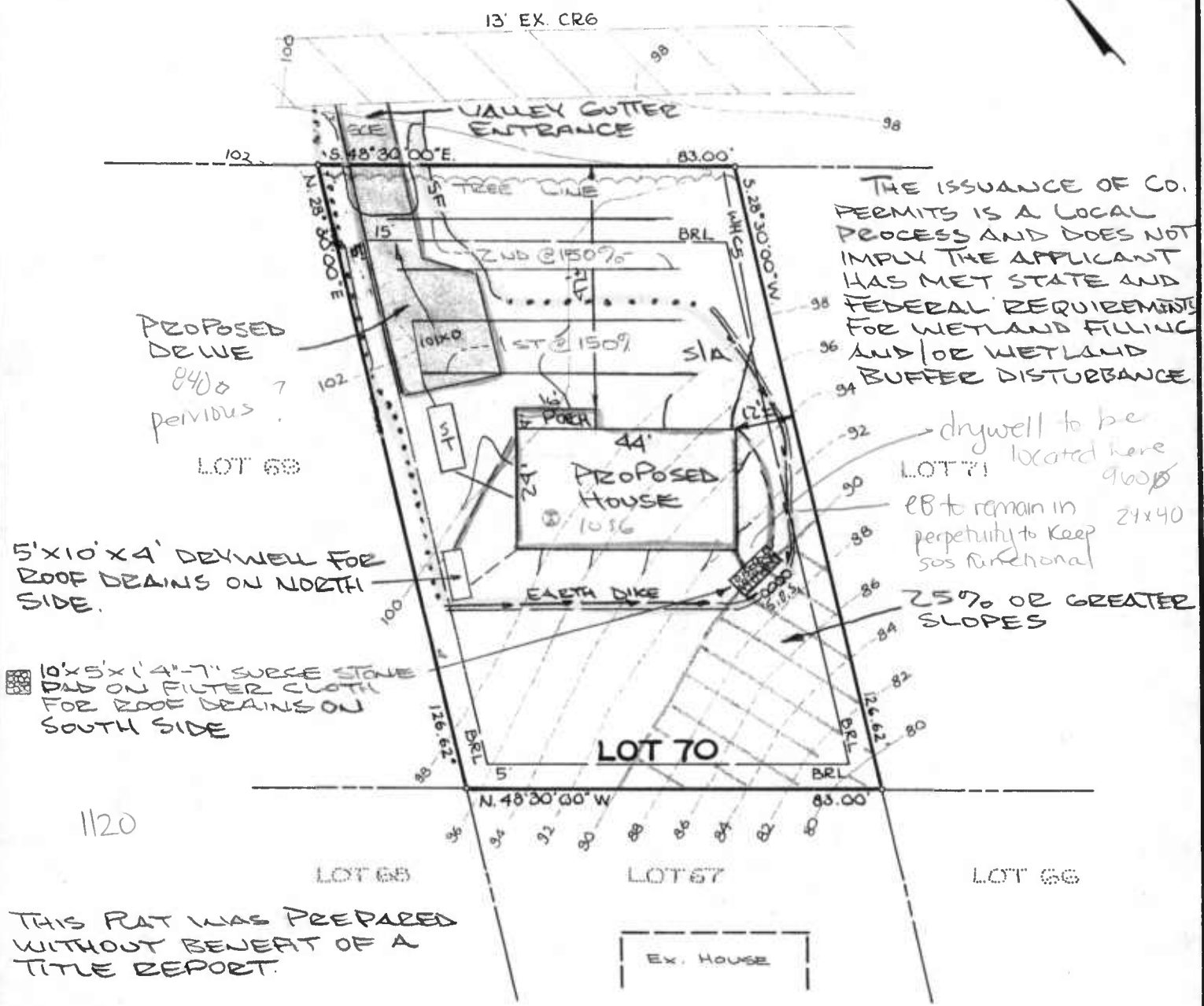
THE DRIVEWAY SHALL BE CONSTRUCTED OF A PERVIOUS MATERIAL & SHALL BE SLOPED TO DRAIN TOWARDS AZTEC TRAIL.

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

Pull Merlin



AZTEC TRAIL 40' R/W



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

drywell to be located here LOT 71 9600' 24x40 EB to remain in perpetuity to keep SOS functional

5' x 10' x 4' DRYWELL FOR ROOF DRAINS ON NORTH SIDE.

10' x 5' x 1' 4"-7" SURGE STONE PAD ON FILTER CLOTH FOR ROOF DRAINS ON SOUTH SIDE

THIS PLAN WAS PREPARED WITHOUT BENEFIT OF A TITLE REPORT.

INFORMATION STATEMENT
24' x 44' RAMBLER ON CRAWL SPACE - build up?
4' x 16' PORCH
FIRST FLOOR ELEV: 102.0'

DISTURBED AREA: 4,800 ±
IMPERVIOUS AREA: 1,120 ± - 10.6%
ACREAGE: 10,509 ±

OWNER: PATUXENT HABITAT FOR HUMANITY
DEED REF: KPS 2300@163

THIS LOT IS LOCATED IN THE CRITICAL AREA.
THIS LOT IS ENTIRELY WOODED.

SOIL SHEET # 33 S1E
SASSAFRAS & WESTPHALIA
STEEP, NON-HYDRIC

CONTACT MISS UTILITY @ 1-800-251-7777 AT LEAST 48 HOURS PRIOR TO COMMENCEMENT OF ANY WORK.

S/A = STOCKPILE AREA
SEE BOARD OF APPEALS CASE # 97-2414



Handwritten signature of Jeffrey LeGard Tewell.

702

⊙ = PERC TEST

BUILDING PERMIT PLAT		<p>COLLINSON, OLIFF & ASSOCIATES, INC. Surveyors • Engineers Land Planners PRINCE FREDERICK, MARYLAND 301-855-1599 410-535-3101</p>	DRAWN BY <u>JT</u>
LOT 70	SECTION 5-R		SCALE <u>1"=30'</u>
CHESAPEAKE RANCH ESTATES			DATE <u>7-1-05</u>
FIRST DISTRICT, CALVERT COUNTY, MD			JOB NO. <u>N/A</u>
FOR: HABITAT FOR HUMANITY			FOLDER <u>C.R.E. 5-R</u>