

CA 838-05
VAR

Zaremba, Loren
06-3258

MSA-5-1829-4892

Comments 2/24/09
Hed

11/2 lbs
Hull Keyped

* Board deferred action
for site visit
* Rehear in Feb.



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/

December 21, 2005

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

Re: Variance 06-3258 Zaremba

Dear Ms. Whitt:

Thank you for providing information on the above referenced revised variance. The applicant is requesting a variance to the steep slope requirements for the purpose of constructing multiple deck structures. The property lies within a designated Limited Development Area (LDA) and is currently developed.

Based on the site plan, it appears that the applicant is requesting approval of a building permit for a total of four deck structures, as well as for a 110 square foot addition to the existing dwelling. While the majority of the proposed structures can be constructed without requiring a Critical Area variance, a portion of the 400 square foot porch and one of the proposed decks (100 square feet) encroach into an area of steep slopes, requiring a Critical Area variance. In evaluating the site plan, we note that the property is currently developed with a single-family dwelling, a large deck, and an extensive brick paver patio. As such, it appears that the applicant currently enjoys significant and reasonable use of the outdoor space on the property, and is therefore not able to meet the variance standard of unwarranted hardship. In addition, it appears that the applicant could construct some configuration of deck which does not propose disturbance to steep slopes, and which remains in harmony with the spirit and intent and of the Critical Area Law. Consequently, we oppose the applicant's request to disturb steep slopes.

Thank you for the opportunity to provide comments for this variance request. If you have any questions or concerns, please feel free to contact me at 410-260-3482. As always, please provide the Commission with a copy of the written decision made in this case.

Sincerely,

Kerrie L. Gallo
Natural Resource Planner

• While they may
• Already enjoys significant + reasonable use of outdoor area
lot via paver patio + existing decks -> so standard of unwarranted hardship cannot truly be met and that the granting of additional disturbance where possible to avoid is not harmony w/ spirit + intent of law
• However, should the board consider allowing additional decks, some amount and/or configuration of decks could be constructed off of steep slopes, eliminating the need for a variance, without
• Brick patio

RECEIVED

MAR 6 2006

CRITICAL AREA COMMISSION
Chesapeake & Atlantic Coastal Bays

Case No. 06-3258

Public Hearing
January 5, 2006
February 2, 2006

*Commission
opposed*

Loren & Terrye Zaremba have applied for a variance in the front setback requirements from 25' to 6' for construction of a deck, porch and addition on slopes of 15% or greater; and a variance in the side setback requirements from 6' to 2' for construction of a porch. The property is located at 5324 Chesapeake Avenue (Lots 6 & 7, Block 2, Calvert Beach) and is zoned R-1/LDA.

AUTHORITY OF THE BOARD OF APPEALS

Section 11-1.01.A of the Calvert County Zoning Ordinance provides that the Board of Appeals shall have the authority to grant variances from the strict application of the area, yard, and height requirements of the Ordinance.

Section 11-1.01.B of the Calvert County Zoning Ordinance provides that the Board of Appeals shall have the authority to grant variances from the Critical Area requirements.

TESTIMONY & EVIDENCE PRESENTED

1. The case was presented January 5, 2006 before Board of Appeals members Mr. Mike Reber, Chairman, Mr. Walter Boynton, Vice Chairman, and Mr. Dan Baker (the Board). Mrs. Terrye Zaremba was present at the January hearing and was represented by Mr. Jeff Tewell from Collinson, Oliff & Associates (COA). A Staff Report, along with photographs taken on site, was entered into the record at the hearing. The case was deferred pending a site visit. The Board requested and received permission to visit the property prior to the case coming back before the Board.

The following Exhibits were marked, dated and entered into the record at the January hearing:

- Applicant Exhibit No. 1 - Plat w/Health Department Approval
- Applicant Exhibit No. 2 - Plat w/Proposed Structures Colored
- McNeil Exhibit No. 1 - Photos

The following persons testified at the January hearing:

Mrs. Rebecca McNeill - Adjoining Property Owner

Ms. Kerri Gallo - Representing Critical Area Commission

The following letters were entered into the record at the January hearing:

Letter from Rebecca & Lawrence McNeil, Jr., dated 12/27/05

Letter from Rebecca & Lawrence McNeil, Jr., dated 01/02/06

2. The matter was again presented February 2, 2006 before the Board. Mr. Loren Zaremba was present at the hearing and was represented by Mr. Jeff Tewell from COA.

The following Exhibit was marked, dated and entered into the record at the February hearing:

Applicant Exhibit No. 1 - Wentworth Plantings Sketch dated 1/23/06

The following letters were entered into the record at the February hearing:

Letter from Rebecca & Lawrence McNeil, Jr., dated 01/30/06

Letter from Loren & Terry Zaremba, dated 01/23/06

FINDINGS OF FACT

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

1. The property is located at 5324 Chesapeake Avenue, Calvert Beach, St. Leonard, and is otherwise known as Lots 6, 7 & PT Bayside Park, Block 2, Tax Map 32A in the Land Records for Calvert County.
2. The property consists of 13,516 s.f. and is situated between Chesapeake Avenue and the Chesapeake Bay.
3. The subject property is zoned R-1 with a Limited Development Area (LDA) Critical Area overlay.
4. Section 8-1.03 of the Zoning Ordinance states, with respect to LDA zoning overlay:

"Limited Development Areas are those areas within the Critical Area District which are currently developed in low or moderate intensity uses. They also contain areas of natural plant and animal

habitats, and the quality of runoff from these areas has not been substantially altered or impaired."

5. The property is currently developed with a 48' x 27' house situated on a cliff above the Bay. Additional construction on the property includes a deck, walkways and a patio at the cliff edge. Permits could not be located for the patio and deck constructed on the cliff side of the property.
6. The applicants propose to construct 2 porches, a house addition, 2 decks, and one deck extension.
7. The ridge on which the house sits is fairly level, but the terrain falls steeply on the north side, where the buffer is extended.
8. There is a house located on the down-slope side of this hillside, below the proposed construction.
9. The additions will be made with minimal disturbance to the site. Proposed clearing is ~800 s.f.
10. The existing structure could be enlarged on the Bay side of the property up to the Building Restriction Line without need for a variance.
11. The applicants have chosen to add the porches, deck, and proposed addition to the house on the portion of the lot that is away from the Bay and the cliff front. The locations chosen minimize potential impact on the Bay and to neighboring properties. The Board determined the chosen locations are the most suitable for these additional structures.
12. The addition of decks and porches to waterfront property is common in Calvert County, and where appropriate such structures have been approved by the Board. What the applicants are requesting is not out of the ordinary or special.
13. The Board determined during the site visit that erosion and runoff from this property is minimal.
14. The applicants will implement a series of plantings to reduce the possibility of runoff and erosion in the future.
15. The porches will be covered but are not indoor living areas.
16. The porches will be supported on posts rather than with masonry foundation.

CONCLUSIONS

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

1. Strict application of the front setback requirements from 25' to 6' for construction of a 10' x 10' deck, a 10' x 40' porch and a 4' x 27.4' addition on slopes of 15% or better and strict application of the side setback requirements from 6' to 2' for construction of a 6' x 35'7" porch would impose peculiar and unusual practical difficulties upon the applicants.
2. Granting the variances would not cause injury to the public interest or substantially impair the intent of the Comprehensive Plan.
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.
4. A literal interpretation of the Critical Area Legislation and the Calvert County Critical Area Program and related ordinances would deprive the Applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area of the County.
5. 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.
6. 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.
7. 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 variance will be in harmony with the general spirit and intent of the Critical Area law.

8. The application for the variances 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 variance in the front setback requirements from 25' to 6' for construction of a 10' x 10' deck, a 10' x 40' porch and a 4' x 27.4' addition on slopes of 15% or better and strict application of the side setback requirements from 6' to 2' for construction of a 6' x 35' 7" porch as requested by Loren & Terrye Zaremba be **GRANTED** based on the above findings of fact and conclusions subject to the following conditions:

1. The property shall be developed in phases with each phase being stabilized prior to proceeding to the next phase.
2. A phasing plan shall be submitted with the building permit.
3. Prior to work being done on site, the location of the house and the limitation of clearing shall be staked and marked.
4. The Applicants' 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.
5. There shall be no stockpiling of excavated materials on site.
6. A foundation location plat prepared by a registered surveyor must be submitted to and approved by the Department of Planning and Zoning prior to framing.


7. A 6" washed gravel bed shall be placed under any decks or deck areas to provide stabilization.
8. All downspouts shall discharge into drywells or other appropriate and approved stormwater management devices as recommended by the Department of Public Works.
9. A final as-built certification prepared by a registered surveyor must be submitted for approval by the Department of Planning and Zoning showing that the grading was performed and structures were built according to the approved plan, prior to final approval of the project.
10. Approval by the Zoning Enforcement Officer for the Board of Appeals is required prior to issuance of a Use and Occupancy Permit, or other final approval for the project, as determined by the Division of Inspection and Permits.
11. Footings and other digging required for the porches and decks shall be dug by hand as opposed to using wheeled machinery.
12. This approval is contingent upon authorization for, or removal of, the brick patio positioned on the Bay side of the house without permit.

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: March 3 2006
Pamela P. Helie, Clerk



Michael J. Reber, Chairman

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

DATE: January 5, 2006

CASE NO. 06-3258

APPLICANT: Loren and Terrye Zaremba

VARIANCE TYPE: Front Setback, Side Setback and Steep Slopes

PROPERTY LOCATION: 5324 Chesapeake Ave., Calvert Beach

PROPERTY SIZE: 13,516 s.f.

WATERFRONT: Chesapeake Bay

DISTURBED AREA: ~800 s.f.

DEVELOPMENT SITE SLOPE: A portion is level; a portion is ~23%

GENERAL SITE CONDITIONS:

The property is developed with a 48' x 27' house situated on a cliff above the Bay. Additional construction on the property includes a deck, walkways and a patio at the cliff edge. The ridge on which the house sits is fairly level, but the terrain falls steeply on the north side, where the buffer is extended. There is a house located on the down-slope side of this hillside, below the proposed construction.

COMMENTS:

The applicants propose 2 porches, a house addition, 2 decks, and one deck extension. It is not immediately clear whether any of the existing decking or walkways are to be removed and then replaced by the proposed construction. Considering the applicants already have significant use of the usable area of the property, it may be difficult to overcome the burden of demonstrating unwarranted hardship and analogous use on similarly situated properties.

Some of the plat notations are not particularly clear with respect to what is existing and what is proposed, and the sketch of development on the southeast corner is particularly confusing. Clarification of these details at the hearing is requested.

Addition Back Deck

APPROVED
 NOV 9 2005
 CALVERT COUNTY HEALTH DEPT

LEGEND

-  15% - 24% SLOPES
-  25% OR GREATER SLOPES
-  100' BUFFER
-  APPROXIMATE LOCATION DRIVEWAY EASEMENT PER A.B.E 599 @ 24
-  EXISTING TREELINE
-  ASSIGNED HOUSE NUMBER
-  EXISTING SHORELINE

*942
525*

INFORMATION STATEMENT

- PROPOSED 6' X 35'7" PORCH *314*
- PROPOSED 10' X 40' PORCH *400*
- PROPOSED 4' X 27'4" ADDITION *110*
- PROPOSED 8' X 22'2" DECK *177*
- PROPOSED 3'2" X 16' DECK EXTENSION *51*
- PROPOSED 10' X 10' DECK *100*

LOT AREA: 13,516 SQ. FT. ±
 EX. IMPERVIOUS AREA: 2,682 SQ. FT. ± (19.8%)
 FORESTED AREA: 7,824 SQ. FT. ± (57.9%)
 FORESTED AREA TBR: 0 SQ. FT. ±
 PROP. IMPERVIOUS AREA: 3,233 SQ. FT. ± (23.9%)

OWNER: LOREN & TERRY ZAREMBA
 OEE: K.P.S. 1583 @ 637
 TAX I.O.#: 01-030272

SOILS MAP #32
 SOIL TYPE: EeE ERODEO LANO, STEEP

THIS LOT IS IN THE CRITICAL AREA.

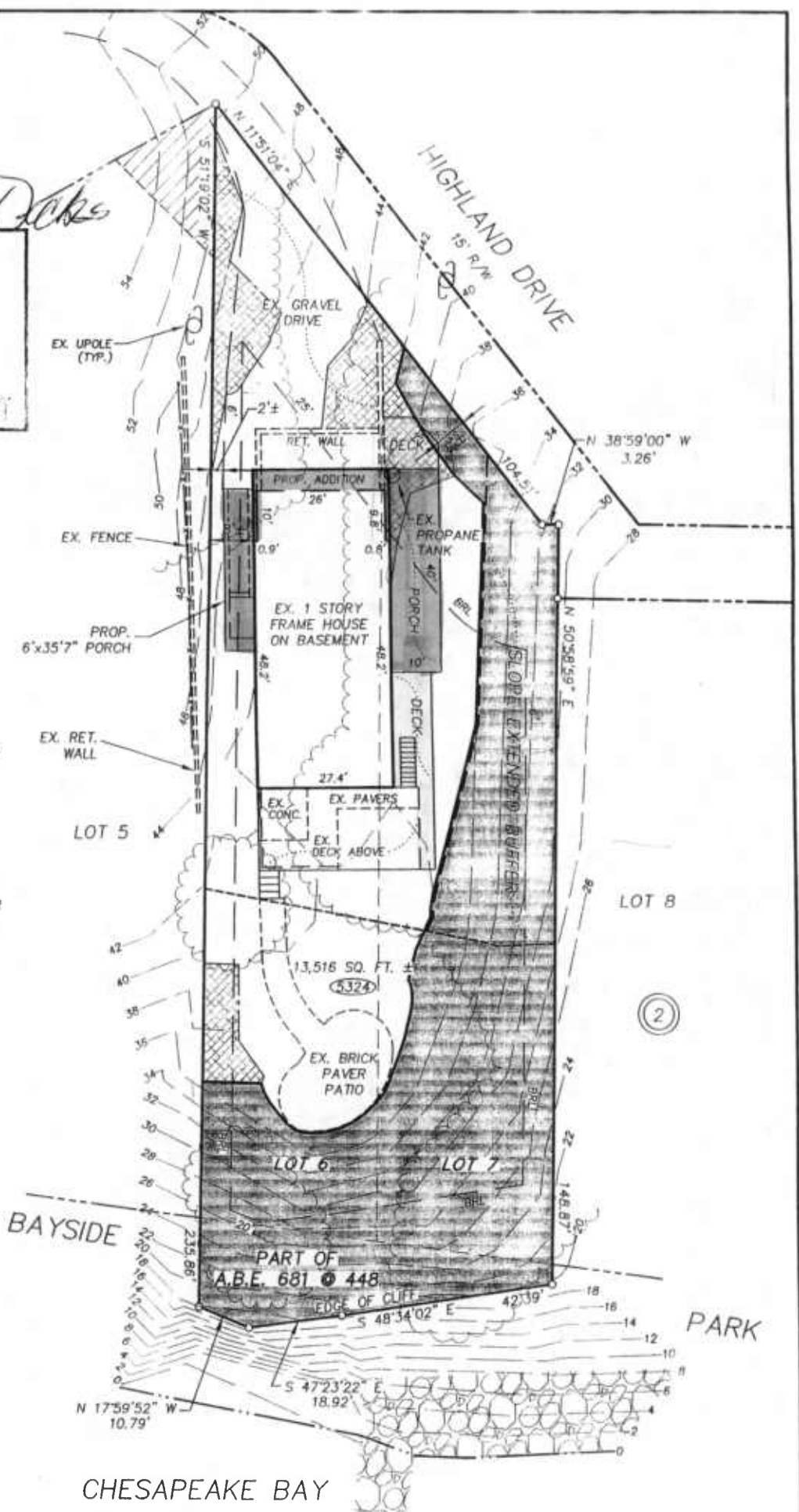
THIS LOT WAS RECORDED PRIOR TO JULY 1984, WHEN STORMWATER MANAGEMENT WAS NOT REQUIRED.

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.

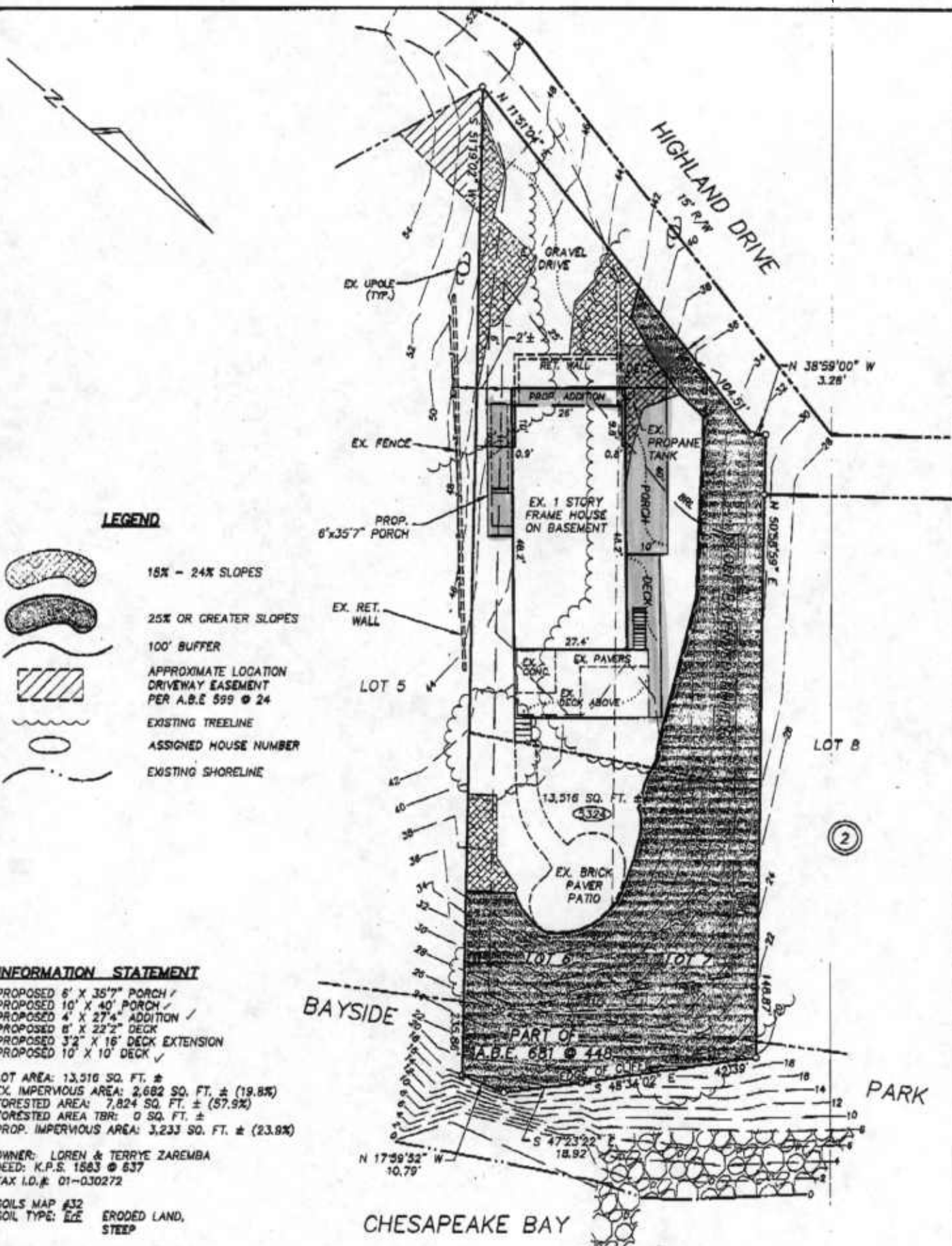
THIS PLAT WAS PREPARED WITHOUT BENEFIT OF A TITLE REPORT WHICH MAY REVEAL ADDITIONAL CONVEYANCES, EASEMENTS, RIGHTS-OF-WAY OR BUILDING RESTRICTION LINES NOT SHOWN.



BUILDING PERMIT PLAT
LOT 6 & 7 - BLOCK 2
CALVERT BEACH
FIRST DISTRICT, CALVERT COUNTY, MD.
FOR: LOREN ZAREMBA

COLLINSON, CLIFF & 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	NJM
SCALE	1" = 30'
DATE	11-3-05
JOB NO.	1-8468
FOLDER	CALVERT BEACH BLOCK 2



LEGEND

- 18% - 24% SLOPES
- 25% OR GREATER SLOPES
- 100' BUFFER
- APPROXIMATE LOCATION DRIVEWAY EASEMENT PER A.B.E 599 @ 24
- EXISTING TREELINE
- ASSIGNED HOUSE NUMBER
- EXISTING SHORELINE

INFORMATION STATEMENT

- PROPOSED 6' X 35'7" PORCH ✓
- PROPOSED 10' X 40' PORCH ✓
- PROPOSED 4' X 27'4" ADDITION ✓
- PROPOSED 8' X 22'2" DECK ✓
- PROPOSED 3'2" X 16' DECK EXTENSION ✓
- PROPOSED 10' X 10' DECK ✓

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 FORESTED AREA: 7,824 SQ. FT. ± (57.9%)
 FORESTED AREA TBR: 0 SQ. FT. ±
 PROP. IMPERVIOUS AREA: 3,233 SQ. FT. ± (23.9%)

OWNER: LOREN & TERRY ZAREMBA
 DEED: K.P.S. 1583 @ 537
 TAX I.D.#: 01-030272

SOILS MAP #32
 SOIL TYPE: EcE ERODED LAND, STEEP

THIS LOT IS IN THE CRITICAL AREA.

THIS LOT WAS RECORDED PRIOR TO JULY 1984, WHEN STORMWATER MANAGEMENT WAS NOT REQUIRED.

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ZAREMBA CAL

BUILDING PERMIT PLAT
LOT 6 & 7 - BLOCK 2
CALVERT BEACH
FIRST DISTRICT, CALVERT COUNTY, MD.
FOR: LOREN ZAREMBA

COLLINSON, CLIFF & ASSOCIATES, INC.
 Surveyors - Engineers
 Land Planners
 288 MERRIMAC COURT
 PRINCE FREDERICK, MARYLAND 20676
 301-855-1589 • 410-535-3101 • FAX 410-535-3103

DRAWN BY	NJM
SCALE	1" = 30'
DATE	11-3-05
JOB NO.	1-8468
FOLDER	CALVERT BEACH BLOCK 2

UBDIVISION PLAT RECORDED IN PLAT BOOK A.A.H. 1 @ 7

06-3258 © LATEST DATE HEREON

004/004

12/19/2005 MON 9:44 FAX 410 414 3092 PLANNING ZONING