

SO 629-05
VAR

Holland, David
05-815

MSA-S-1829-5282

Comments 1/19/05
-KJ

APR 31/19/05

12/8/10 File
originally cleaned DS

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



Margaret G. McHale
Chair

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/

March 19, 2009

Mr. Thomas Lawton
Department of Technical and Community Services
11916 Somerset Avenue
Princess Anne, MD 21853

Re: David Holland Additions – Local Case No. ZA 09-13950

Dear Mr. Lawton:

Thank you for forwarding information on the above referenced variance. The applicant is requesting a variance from the lot coverage limit (previously referred to as impervious surface limit) on this lot. The site is 0.51 acres, or 22,215 square feet and is located in the Limited Development Area. In addition, this lot is considered Buffer-Exempt (BEA). This lot is currently improved with a dwelling, sidewalks, covered porch, gravel driveway, lean to, and two sheds, for a total lot coverage of 7,605 square feet, or 34.2%, which is in excess of the 15% lot coverage limit. The applicant proposes to add an addition to the existing dwelling, which would further increase the lot coverage to 35.8%. The applicants are not proposing the removal of any accessory structures, or portions of the 3,000+ square foot driveway. The applicants also applied for a similar variance in 2005, which the Board of Appeals denied.

As Ms. Gallo's letter of October 19, 2005 underlines, the County's zoning ordinance requires that redevelopment, or the intrusion within the BEA, be the minimum necessary. Prior to the granting of a variance to increase the non-conformity of the parcel, the applicant should have adequately demonstrated that every attempt has been made to minimize the overall lot coverage on site, and that the variance request is the minimum necessary. The applicant has not met the County standard, as there are opportunities to bring this lot further into conformance by reducing the size or length of the driveway and removing the accessory structures. Without minimization of lot coverage, we oppose this variance request on this site.

Pursuant to the Somerset Zoning Ordinance § 6.13.j.3(5), "Except as provided in Section 6.13.h.8, the total [lot coverage] of the Critical Area portion of the site shall be limited to a maximum of 15 percent of the building lot, unless a variance is received." The State law provides that variances to a local jurisdiction's Critical Area program may be granted **only** if a Board of Appeals finds that an applicant has satisfied its burden to prove that the applicant meets each one of the county's variance standards, including the standard of "unwarranted hardship." The General Assembly defined that term as follows: "without the variance, the applicant would be denied reasonable and significant use of the entire parcel or lot." Furthermore, the State law establishes a presumption that a proposed activity for which a Critical Area variance is requested does not conform to the purpose and intent of the Critical Area law. In order

to grant a variance, the Board must make an affirmative finding that the applicant has overcome this presumption, based on the evidence presented.

In this case, the applicant is proposing to increase lot coverage on this site from 34.2% to 35.8% which is already over the lot coverage allowance. This calculation is based on the 0.51 acres of upland owned by the applicant. Natural Resources Article 16-101 defines state tidal wetlands as land below mean high tide and regularly affected by the tide. Aerial photography clearly demarcates this "marsh area" as state tidal wetlands. These areas cannot be included to meet performance standards for development in the Critical Area.

The applicant has the burden of proof and the burden of persuasion to overcome the presumption that the proposed variance does not conform to the Critical Area law. The applicant has not overcome this burden. The applicant has not met each one and every one of County's variance standards and should therefore be denied this variance. I have discussed each one of the variance standards below as it pertains to this site:

1. *That special conditions or circumstances exist that are peculiar to the land or structure within the jurisdiction's Critical Area program that would result in an unwarranted hardship to the applicant.*

Currently, the lot is developed with a single-family dwelling unit, sidewalks, covered porch, gravel driveway, lean to and two sheds. The State law standards, applicable to this variance request, define "unwarranted hardship" to mean that the applicant must prove that, without the requested variance, the applicant would be denied reasonable and significant use of the **entire parcel or lot**. Given that the applicant enjoys reasonable use of the property as evidenced by the dwelling, driveway, and sheds, the County does not have evidence on which to base a finding that, without the addition of a playroom, the applicant would be denied reasonable and significant use of the **entire parcel or lot**.

2. *That a literal interpretation of this subtitle or the local 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 local jurisdiction.*

The applicant has a reasonable use of this property for residential purposes, including a dwelling, covered porch, gravel drive, lean to, and two sheds therefore, would not be denied a right commonly enjoyed by neighboring properties. No property owner has the right to increase the amount of lot coverage beyond the limits of the law on their property. Therefore, denial of the variance application for the addition would not deny the applicants a right commonly enjoyed.

3. *The granting of a variance will not confer upon an applicant any special privilege that would be denied by this subtitle or the local Critical Area program to other lands or structures within the jurisdiction's Critical Area.*

If the variance is granted, it would confer upon the applicant a special privilege. In this case granting a variance to allow an increase in non-conformance to current standards and the law which would be

Mr. Lawton

3/19/2009

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denied to others in this area as well as in similar areas found within the County's Critical Area, is a special privilege.

4. *The variance request is not based upon conditions or circumstances, which are the result of the actions, by the applicant, nor does the request arise from any condition conforming, on any neighboring property.*

It is unclear if the variance request is based on conditions or circumstances that are the result of the applicant. However, the applicant could change the current conditions or circumstances so that the property could be brought further into conformance.

5. *The granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the jurisdiction's Critical Area, and that the granting of the variance will be in harmony with the general spirit and intent of the Critical Area law and the regulations.*

Granting of this variance is not in harmony with the general spirit and intent of Critical Area law and regulations. A variance to allow increased lot coverage in the BEA within 100 feet of tidal waters results in an increase in stormwater and sediment runoff, the loss of essential infiltration opportunities, and increased human impacts to the BEA. Since the applicant can adequately redevelop this property and bring this lot further into conformance by the removal of the accessory structures and/or the driveway, approval of this variance is not in harmony with the general intent and spirit of the Critical Area law.

In summary, in order to grant a variance, the Board must find that the applicant has overcome the burden to meet each and every one of the County's variance standards. Because the applicant has failed to meet each and every variance standard, we oppose the applicant's variance request.

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 Roberts
Natural Resource Planner

Cc: SO 629-05

Robert L. Ehrlich, Jr.
Governor

Michael S. Steele
Lt. Governor



Martin G. Madden
Chairman

Ren Serey
Executive Director

**STATE OF MARYLAND
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October 19, 2005

Mr. Tom Lawton
Department of Technical and Community Services
11916 Somerset Ave, Room 102
Princess Anne, MD 21853

Re: Variance 05-815 Holland

Dear Mr. Lawton:

Thank you for providing information on the above referenced variance. The applicant is requesting a variance from the 100-foot Buffer and impervious surface area requirements in order to construct multiple additions to the existing primary dwelling. The property is located within a designated Limited Development (LDA), Buffer Exemption Area (BEA) and is currently developed.

Based on the information provided, it appears that the parcel is currently developed with a primary dwelling and multiple shed structures. The existing impervious surface area on the property is 7,597 square feet, or 34.2%. The permitted impervious surface area for the parcel is 15%. We acknowledge that the applicant has proposed to remove one existing shed, equivalent to 244.6 square feet. While we generally do not oppose the applicant's request to construct a reasonable addition to the primary dwelling, the County's zoning ordinance requires that redevelopment, or the intrusion within the BEA, be the least necessary. In this instance, the applicant is proposing the addition of 1,067 square feet of new impervious surface area. It appears that a majority of the proposed impervious areas is for the construction of accessory structures. Prior to the award of a variance to increase the non-conformity on the parcel, the applicant should have adequately demonstrated that the every attempt has been made to minimize the overall impervious surface area on the property, and that the variance request is the minimum necessary. Since it appears that opportunities exist to remove existing accessory structures and gravel areas, as well as minimize the footprint of the new accessory structures proposed, it does not appear that the applicant has adequately met this County standard.

In addition, the applicant must demonstrate that the denial of the variance would result in an unwarranted hardship. It appears that the applicant currently enjoys reasonable and significant use of the entire parcel, and that multiple opportunities exist to construct a residential addition in a manner which requires a lesser variance, and would result in less non-conformity than that

Tom Lawton
Variance 05-815 Holland
October 19, 2005
Page 2

which is proposed. As a result of these concerns, we do not support the applicant's request for a variance as proposed.

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,

A handwritten signature in cursive script that reads "Kerrie Gallo".

Kerrie L. Gallo
Natural Resource Planner
SO629-05



p29-05

**SOMERSET COUNTY
DEPARTMENT OF TECHNICAL AND COMMUNITY SERVICES**

Jack A. Willing, Jr., Director

**Somerset County
Board of Zoning Appeals**

MAR 26 2009

**APPLICATION NO. CA VAR-09-940
RE: David Holland**

Upon the application for Variance to the property described therein located at 25740 Drum Point Road, Westover, Maryland, on the north side of Fairmount Road in Fairmount Election District, identified on Tax Map #38, Block #19, Parcel #104 and after consideration of said application and the testimony and other evidence presented to the Board at the hearing held on Friday, March 20, 2009, the Board of Zoning Appeals hereby finds:

- (1) That the requirements of Section 9.3.b. of the Zoning Ordinance have been met by the Applicant, that the special circumstances and conditions exist which are peculiar to the property involved and which are not applicable to other properties in the same zone.
- (2) That the Applicant is the fee simple owner of the property and has applied for a Critical Area Impervious Surface Variance for an addition to a single family dwelling.
- (3) That the literal interpretation of the provisions of the Ordinance would deprive the Applicant of the rights commonly enjoyed by other properties in the same zone under terms of this Ordinance.
- (4) That the special conditions and circumstances referred to above do not result from actions of the Applicant.
- (5) That no adjoining property owners, either in person or by letter, appeared before the Board to express opposition to the Application for Variance.
- (6) That the granting of the Variance will not confer on the Applicant special privileges that are denied by the Zoning Ordinance to other properties in the same zone.
- (7) That the Variance granted herein is the minimum variance that will make possible the reasonable use of the property and is in harmony with the general purpose and intent of the Zoning Ordinance and will not be injurious to the neighborhood or detrimental to the public welfare.

(8) The Board found the following facts in this particular matter:

(A) Section 6.13h(8) states impervious surface shall be limited to fifteen percent (15%) of the gross site area in a Limited Development Area (LDA).

(B) Applicant currently utilizes thirty-four point two percent (34.2%) impervious surface and would like to construct additional living area thereby creating an additional one point six percent (1.6%) impervious surface.

(C) A letter from the Critical Area Commission (CAC), dated March 19, 2009, opposing the granting of the requested variance was introduced as CAC Exhibit 1. The Director of the Department of Technical and Community Services (DTCS) presented exhibits and clarification of the points contained in CAC Exhibit 1.

(D) The Director presented DTCS Exhibit 1 which was the site plan submitted by the Applicant showing the location and size of the addition in relation to the existing dwelling.

(E) The Director presented DTCS Exhibit 2 which was an aerial photo of the property and adjoining lots.

(F) The Director presented DTCS Exhibit 3 which was a print out of the assessment information for the subject property.

(G) The Director addressed the five points contained in CAC Exhibit 1 as follows:

1. DTCS Exhibit 3 indicates that the size of the subject property is 1.27 acres, but the Critical Area Commission only used .51 acres in its computation to determine the percentage of impervious surface. Since the remaining lot area was not count because it was considered marsh that created a special condition or circumstance peculiar to the land that results in an unwarranted hardship.
2. DTCS Exhibit 2 indicates that adjoining property owners have comparable impervious surface as that proposed by Applicant. As a result, a literal interpretation of the law would deprive the Applicants of the rights commonly enjoyed by other similarly situated properties.
3. DTCS Exhibit 2 indicates that adjoining property owners have comparable impervious surface as that proposed by Applicant. As a result, the granting of the Variance would not confer on the Applicants any special privilege that would be denied to other properties.

4. DTCS Exhibit 3 indicates that the dwelling was built in 1972 which was before the Critical Area Law was enacted. As a result, the requested Variance is not based on conditions or circumstances resulting from actions by the Applicants.
5. The Applicants have reduced the impervious surface percentage from the amount they originally requested and they have applied for and been granted permission to install a nitrogen removal septic system. As a result, the granting of the Variance would not adversely affect the water quality, fish, wildlife or plants since and is in harmony with the Critical Area Law due to action by Applicants to mitigate their impact.

(H) The Applicants presented two exhibits. The first being Applicant Exhibit 1 which was a letter from the Critical Area Commission dated October 19, 2005, and the second being Applicant Exhibit 2 which was a letter from the Maryland Department of Environment dated February 23, 2009. Testimony was received that Applicant Exhibit 1 showed that the current requested area of impervious surface had been reduced from that which was previously requested. Testimony further indicated that Applicant Exhibit 2 showed that preliminary approval had been granted by MDE for placement of a nitrogen removal septic system on the property. Both exhibits corroborated Applicant's testimony that they had taken steps to mitigate any adverse impact the proposed Variance may have.

The Board found from the testimony and evidence presented that an extreme hardship exists in that the Applicant would be denied reasonable and significant use of the property without the Variance being granted.

Upon the foregoing, the Critical Area Variance is granted with the following conditions and safeguards:

That the Applicant must comply with all local, state and federal regulations.

This decision is only zoning approval, it is the Applicant's responsibility to submit all necessary information or documents (i.e. elevation certificate, utility information, etc.) to the Department of technical and community Services to obtain a Zoning Certificate.

For these reasons and subject to the above conditions the Application for Critical Area Variance is **GRANTED**.

By order of the Board of Zoning Appeals this 20th day of March, 2009.

Robert Hess

Robert Hess, Chairman
Board of Zoning Appeals

629-05

SOMERSET COUNTY
DEPARTMENT OF TECHNICAL AND COMMUNITY SERVICES



Planning & Technical Services Division

**SOMERSET COUNTY BOARD OF ZONING APPEALS
PRINCESS ANNE, MARYLAND**

**APPLICATION NO. CBCA VAR 05-815
RE: David Holland**

Upon the Application for Critical Area Variance to the property described therein located in the Fairmount Election District on Tax Map #38, Block #19, Parcel #104, and after consideration of the said Application and the testimony and other evidence presented to the Board at the hearing held on Friday, November 18, 2005, the Board of Zoning Appeals hereby finds:

(1) That the requirements of Section 9.3 b. (9) of the Zoning Ordinance have been met by the Applicant, that special circumstances and conditions exist which are peculiar to the property involved and which are not applicable to other properties in the same zone.

(2) That the Applicant is the fee simple owner of the property and has applied for a Critical Area Variance, which would allow the maximum impervious surface allowed for the construction of an addition to a single family dwelling on the above-described property.

(3) That a literal interpretation of the provisions of the Ordinance would not deprive the Applicant of his rights commonly enjoyed by other properties in the same zone under terms of this Ordinance.

(4) That the granting of this Variance will confer upon the Applicant special privileges that are denied by the Zoning Ordinance to other properties in the same zone.

(5) That the special conditions and circumstances referred to above do result from actions of the Applicant.

(6) That there appeared no adjoining property owners either in person or by letter before the Board to express opposition to the Application for Variance.

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CRITICAL AREA COMMISSION

(7) The Board found the following facts in this particular matter:

(a) On October 21, 2005, this Application came before the Board of Zoning Appeals with Mr. Kirk Simpkins, Esquire present for the Applicant. The Applicant was not in attendance. The matter was held in abeyance for 30 days to allow the Applicant additional time to gather information and evidence to support his request for Critical Area Variance and to provide them with the opportunity to address the issues raised in the Critical Area Commission letter, dated October 19, 2005.

(b) On November 18, 2005, the matter was recalled for hearing and Mr. Kirk Simpkins, Esquire appeared before the Board on behalf of the Applicant, Mr. David Holland, who also testified.

(c) The Applicant proposed the construction of additions to the existing single family dwelling.

(d) To reduce the amount of impervious surface on the property, the Applicant proposed the removal of one (1) shed from the property, which was equivalent to 244.6 square feet.

(e) Section 6.13.J.3. (5) of the Zoning Ordinance states, except as provided in Section 6.13.H.8, the total impervious surface coverage of the Critical Area portion of the site shall be limited to a maximum of fifteen percent (15%) of the building lot, unless a Variance is received from the Board of Zoning Appeals.

(f) The amount of upland on the parcel is only 0.51 acres out of 1.27 acres. The existing impervious surface on the property, which would include the aforesaid shed, is 7,597 square feet, or 34.2%. Removal of the shed, coupled with the construction of the proposed additions, would increase the amount of impervious surface to 39%. The Applicant, therefore, was seeking an impervious surface Variance of 24%, which exceeded Zoning Ordinance limits.

(g) The Applicant submitted a plat as Exhibit #1 for the Board's consideration. The plat located existing bulkheading and calculated existing upland area and tidal marsh area.

(h) The Zoning Inspector presented a letter from the Critical Area Commission (Exhibit #2), dated October 19, 2005. It stated that the property is located within a designated Limited Development (LDA), Buffer Exemption Area (BEA) and is currently developed with a primary dwelling and multiple shed structures. The majority of the proposed addition of 1,067 square feet of new impervious surface area appeared to be for the construction of accessory structures. The Commission indicated that the Applicant should demonstrate that every attempt had been made to minimize the overall impervious surface area and that the variance was indeed the minimum necessary. The Commission did not feel that the Applicant had adequately met County standards since it appeared that there were other opportunities to remove existing accessory structures and

gravel areas to minimize the footprint for the proposed new accessory structures. The Applicant had not sufficiently shown unwarranted hardship. From the information available to the Commission, it appeared that the Applicant enjoyed reasonable and significant use of the entire parcel, and that multiple opportunities exist to construct a residential addition in a manner which would require a lesser Variance; therefore, the Commission did not support the Variance as proposed.


(i) Minimal oral testimony was taken from the Applicant, which failed to address the issue of unwarranted hardship or provide additional information as to why the Variance should be granted. The Applicant argued that the entire lot surface area should be included in determining the amount of pervious versus impervious area and not just the upland.

(j) Although the Applicant and his Attorney had a copy of the Critical Area letter of October 19, 2005, and the Critical Area Variance application was held in abeyance for an additional 30 day period, neither Mr. Simpkins nor the Applicant presented any evidence or testimony that would sufficiently demonstrate that every attempt had been made to minimize the overall impervious surface area and that the proposed Variance was indeed the minimum necessary. They failed to show unwarranted hardship and meet the burden of proof to support the Variance request.

Upon the foregoing findings, the Critical Area Variance is hereby denied.

For these reasons, and subject to the above conditions, if any, the Application for Critical Area Variance is hereby denied.

By order of the Board of Zoning Appeals this 2nd day of December, 2005.



Robert Hess, Chairman
Board of Zoning Appeals

YOU HAVE THE RIGHT TO APPEAL THIS DECISION TO THE CIRCUIT COURT OF MARYLAND WITHIN THIRTY (30) DAYS FROM THE DATE OF THIS DECISION.

IMPERVIOUS AREA CALCULATIONS

EXISTING	PROPOSED
FR. SHED 244.6± SQ. FT.	FR. SHED 244.6± SQ. FT.
FR. SHED 437.4± SQ. FT.	FR. SHED 437.4± SQ. FT.
LEAN-TO 348.2± SQ. FT.	LEAN-TO 348.2± SQ. FT.
GRAVEL 3324.6± SQ. FT.	GRAVEL ± SQ. FT.
HOUSE 2670.5± SQ. FT.	HOUSE W/ IMPROVEMENTS ± SQ. FT.
PORCH 126.4± SQ. FT.	PORCH 126.4± SQ. FT.
CONCRETE 454.2± SQ. FT.	CONCRETE ± SQ. FT.
TOTAL 7605± SQ. FT.	TOTAL ± SQ. FT.

PLATTED AREA =
1.27± ACRES

APPROXIMATE AREA OF
TIDAL MARSH=
0.49± ACRES
21344.4± SQ. FT.

AREA OF UPLANDS =
0.51± ACRES
22215.6± SQ. FT.

■ CPF

GENERAL NOTES

1. SOMERSET COUNTY, TAX MAP NO. 38 P. 104
2. ZONED: MRC
3. DEED REF: 466/511
4. PLAT REF: 266/104

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DRUM PT.

RUMBLEY

P.146
20F3

P.146
30F3



P.1
20F2

P.65
P.131
P.45
P.46

P/O LOT 8
P.129

P.105
20F2

P.112
DRUM
POINT
RD.

P.105 10F2

(P.145)



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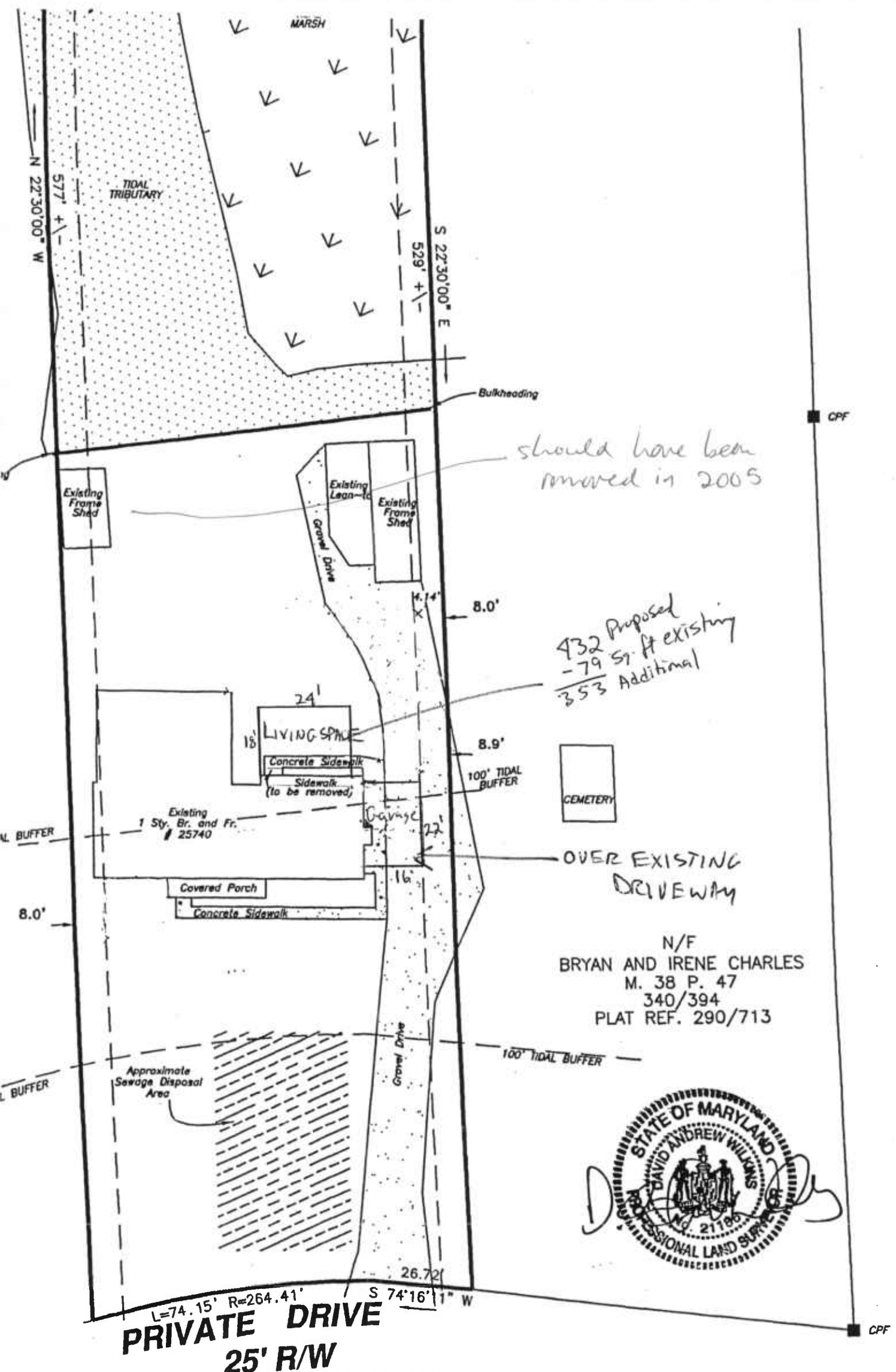
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