

ST 789-05
VAR

Velo, Stephen

MSA-S-1829-5286

Comments 12/13/05
Part

3/26/08 MK

9/24/08 NK

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/

September 24, 2008

Deborah A. Renshaw
Zoning Inspector
Town of St. Michaels
300 Mill Street
P.O. Box 206
St. Michaels, MD 21663

**Re: Velo Variance (Revised)
518-08**

Dear Ms. Renshaw:

Thank you for providing additional information on the above-referenced variance application. The applicant has submitted plans that are a revision to your office's September 10, 2008 submittal for this request. The revised plans propose a driveway configuration that provides access to Radcliffe Avenue instead of North Harbor Road. It is our understanding that these plans were submitted to this office for review per your office's request. The comments below are based on the review of this revised plan.

The applicant proposes a variance to allow for the construction of a single-family dwelling, garage, walkway and driveway on a grandfathered lot that is located entirely within the 100-foot Buffer. The site is 9,486 square feet in size and is designated as an Intensely Developed Area (IDA). Currently, the site is undeveloped. If the variance is granted, total lot coverage onsite will increase to 1,684 square feet (17.7%). The proposed development will not encroach closer to the shoreline than 25 feet. The applicant proposes to mitigate for disturbance within the 100-Buffer by planting 9 canopy trees, 8 understory trees, and 12 shrubs (3,292 square feet of mitigation). The applicant is meeting 10% requirements by installing a bioretention facility. Development will encroach no closer than 25 feet to the shoreline.

Provided that Board of Appeals finds that the applicant has met each of the variance standards detailed within the Town of St. Michaels Zoning Ordinance, we do not oppose the granting of this variance. However, we do have the following comments:

- It appears that portions of the 25-foot Buffer are not fully vegetated. Commission staff recommends that the applicant fully establish the 25-foot Buffer in native vegetation. This should be required as a condition of approval for this variance.

Thank you for the opportunity to provide comments on this variance application. 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. If you have any additional questions please contact me at (410) 260-3483.

Sincerely,

A handwritten signature in black ink that reads "Nick Kelly". The signature is written in a cursive, slightly slanted style.

Nick Kelly
Natural Resource Planner
cc: ST 789-05

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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March 26, 2008

Deborah A. Renshaw
Zoning Inspector
Town of St. Michaels
300 Mill Street
P.O. Box 206
St. Michaels, MD 21663

Re: Velo Variance
518-08

Dear Ms. Renshaw:

Thank you for providing information on the above-referenced variance application. The applicant proposes to construct a single-family home, garage, and driveway on a grandfathered lot that is located entirely within the 100-foot Buffer. The site is 9,357 square feet in size and is designated as an Intensely Developed Area (IDA). Currently, the site is undeveloped. If the variance is granted, total impervious surface onsite will increase to 2,130 square feet (17.1%). The proposed development will not encroach closer to the shoreline than 25 feet. The applicant proposes to mitigate for disturbance within the 100-Buffer by planting 11 canopy trees, 10 understory trees, and 18 shrubs (4,400 square feet of mitigation). The applicant is meeting 10% requirements by installing a bioretention facility.

Provided that Board of Appeals finds that the applicant has met each of the variance standards detailed within the Town of St. Michaels Zoning Ordinance, we do not oppose the granting of this variance. However, we do have the following comments:

1. It appears that portions of the 25-foot Buffer are not fully vegetated. Commission staff recommends that the applicant fully establish the 25-foot Buffer in native vegetation.
2. The applicant is requesting to install a driveway that provides access to both Radcliffe Avenue and North Harbor Road. While we understand that every lot requires roadway access, providing two access points does not minimize Buffer disturbance. In an effort to minimize the adverse effects on fish, wildlife, and plant habitat within the 100-foot Buffer, Commission staff requests that the applicant remove the portion of the driveway

TTY for the Deaf

Annapolis: (410) 974-2609 D.C. Metro: (301) 586-0450

that provides access to North Harbor Road and plant this area with native vegetation. We note that the applicant applied for a variance in 2005 to construct a home with a driveway that provided access only to Radcliffe Avenue.

Thank you for the opportunity to provide comments on this variance application. 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. If you have any additional questions please contact me at (410) 260-3483.

Sincerely,



Nick Kelly

Natural Resource Planner

cc: ST 789-05

Roby Hurley, Critical Area Circuit Rider, Town of St. Michaels



Robert L. Ehrlich, Jr.
Governor

Michael S. Steele
Li. 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

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December 9, 2005

Ms. Debbie Renshaw
Zoning Inspector
Town of St. Michaels
P.O. Box 206
St. Michaels, MD 21663

Re: Velo Variance

Dear Ms. Renshaw:

Thank you for providing information on the above referenced variance request. The applicant is requesting a variance to the 100-foot Buffer requirements for the purposes of constructing a single family dwelling and accessory garage structure. The property lies within a designated Intensely Developed Area (IDA) and is currently undeveloped.

Based on the information provided, it is my understanding that the applicant's property is a legally recorded, grandfathered parcel of record. In addition, it appears that the majority of the parcel is located within the 100-foot Buffer, and that development of the property would not be possible without some degree of variance. The site plan indicates that the applicant proposes approximately 1,600 square feet of impervious surface area, with a 25-foot setback from tidal waters. Since the property is located within an IDA, the applicant has proposed a bioretention facility which appears to adequately address the 10% pollutant removal requirement for residential development within the IDA. In addition, it is my understanding that the applicant has agreed to provide mitigation plantings at a 2:1 ratio, based on the areal extent of disturbance to the Buffer. We recommend that this mitigation requirement be included as a condition of any variance approval and that a signed planting agreement be executed. Provided that the Board determines that the applicant has sufficiently met each of the variance standards detailed within the Town's zoning ordinance, we do not oppose the granting of the variance.

Thank you for the opportunity to provide comments for this variance request. Should you have any questions, please feel free to contact me at 410-260-3482.

Sincerely,

Kerrie Gallo
Natural Resource Planner
ST 789-05

Cc: Roby Hurley, MDP

St. Michaels Board of Appeals
St. Michaels, Maryland

Number
Date filed

518-08
3-17-08
4-8-08
3-24-08 3-31-08
3-24-08

Variance from the Critical Overlay District Provisions

Date of hearing
Dates of public notice
Applicant(s) notified
Property posted
Decision
Applicant(s) notified

Fee paid _____
Deposit _____
Application Fee _____
Date paid _____

To the St. Michaels Board of Appeals: (A separate application must be made for each action)

Pursuant to Chapter 340 of the Code of the Town of St. Michaels, MD, application is hereby made for a:

Variance from the Critical Area Overlay District Provisions, as described in the supplemental statement attached hereto.

INCLUDE A CITATION to all pertinent Code provisions in the supplemental statement.

Subject Property:

Location: southeast corner of North Harbor Road and Radcliffe Avenue

Name(s) of Owner(s): Stephen Velo

Mailing address(s): P.O. Box 272, Bozman, Maryland 21612

Telephone number(s): 410-745-2838 410-310-4336

Name(s) of Applicant(s)/Appellant(s): Same as Owner

Mailing address(s): _____

Telephone number(s): _____

Is property in question the subject of any other pending application? unknown

If so, give number and date _____

Summary of requested variance: _____

Stephen Velo
Signature(s) of Applicant(s)/Appellant(s)

ATTACH SKETCH drawn to scale of the property with all dimensions of lot building thereon, distances between building and property lines, bounding street or road number, contiguous and opposite properties with names of owners, North point and scale.

IMPORTANT: Applications on which all required information is not furnished will be returned for completion before processing.

* * * * *

See Other Side of This Application for Additional Required Information and

NOTICE TO ALL APPLICANTS FOR LAND-USE APPROVALS AND PERMITS

VARIANCE APPLICATION INFORMATION

According to St. Michaels Code, § 340-79(A)(1)(b), variances can only be granted if all of the following are demonstrated to the Board of Appeals (legal requirements are in bold type with general guidelines in parentheses):

1) That, owing to special conditions, a literal enforcement of the provisions of this chapter would result in unnecessary hardship;

A literal enforcement of this chapter would render the Applicant's lot unbuildable thereby denying him of all reasonable and significant use of the lot. Therefore, the literal enforcement of this chapter would cause the Applicant an unnecessary hardship.

2) That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zone (the variance request must be based on abnormalities of the land or structure, not the special needs of the applicant);

The Applicant's lot is irregular in configuration although conforming in size and dimension and due to its location within the 100' shoreline buffer is rendered entirely unbuildable by application of a required buffer.

3) That literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zone under the terms of this ordinance (the circumstances discussed in #1 above deprive the property owner of some right -of-use granted under the ordinance to properties in the zone);

The Applicant's lot is a long standing single lot of record in "Bentley Hay". Other single lots off record in the R-1 zone commonly enjoy the right of being buildable as single family residential lots.

4) That the special conditions and circumstances do not result from the actions of the applicant (the circumstances discussed in #1 above are not of the applicant's own making);

Applicant neither subdivided the lot nor was responsible for the enactment of the Critical Area regulations which imposes the 100' shoreline buffer.

5) That granting the variance requested will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structures, or buildings in the same zone(the variance will merely restore the deprived right-of-use from #2 above, and will grant no privilege beyond those enjoyed generally by properties in the zone);

The Applicant seeks only the right to utilize his existing lot of record for single family residential purposes which does not constitute any special privilege in the zone.

6) That no non-conforming use of neighboring lands, structures, or buildings in the same zone, and no permitted use of lands, structures, or buildings in the other zones shall be considered grounds for the issuance of a variance (the applicant must demonstrate that tests #1-4 above are met, not merely cite that elsewhere in town there exist non-conformities similar to the

variance requested).

The Applicant does not rely upon any non-conforming use of any neighboring lands, structures or buildings in the R-1 zone. The Applicant can demonstrate that, without the requested variance, he will suffer the unwarranted, undue and/or unnecessary hardship of having his land "taken" from him by the zoning regulations.

VARIANCE APPLICATION INFORMATION

§340-81. Variance from Critical Area Overlay District provisions

A. In addition, due to special features of a site or other circumstances where a literal enforcement of provisions relating to the Critical Area Overlay District ("O") would result in unwarranted hardship to a property owner, the Board of Zoning Appeals may grant a variance from the provisions of the Critical Area Overlay District. Variance requests in the Critical Area Overlay District shall not be granted unless the decision is based on the following additional criteria:

- (1) That special conditions or circumstances exist that are unique to the subject property or structure and that strict enforcement of the provisions within the Critical Area Overlay District ("O") would result in unwarranted hardship which is not generally shared by owners of property in the same management areas (i.e. IDA, LDA, RCA) of the Critical Area.**

"Unwarranted hardship" is defined in § 340-81 of the St. Michaels Code as "without a variance the Applicant would be denied reasonable and significant use of the entire parcel or lot for which the variance is sought." Clearly, without the requested variance the Applicant will be denied all reasonable and significant use of his parcel because the lot is rendered entirely unbuildable by application of a required 100' shoreline buffer.

- (2) That strict enforcement of the provisions within the Critical Area District would deprive the property owner of rights commonly shared by other owners of property in the same management area within the Critical Area District.**

The Applicant's lot is a legally buildable single lot of record in "Bentley Hay". The surrounding properties in the IDA zone commonly enjoy the right of being buildable as single family residential lots. Thus, depriving the Applicant of the right to build upon his lot is a deprivation of a right commonly shared by other owners in the IDA zone.

- (3) That the granting of a variance will not confer upon an applicant any special privilege that would be denied to other owners of like property and/or structures within the Critical Area District.**

The Applicant requests the right to utilize his existing lot of record for single family residential purposes. The granting of a variance will not confer upon Applicant any special privilege that would be denied to other property owners in the IDA zone.

- (4) That the variance request is not based upon conditions or circumstances which are self-created or self-imposed, nor does the request arise from conditions or circumstances either permitted or nonconforming which are related to adjacent parcels.**

The Applicant neither subdivided the lot nor was responsible for the enactment of the Critical Area regulations which imposes the 100' shoreline buffer.

- (5) **That the granting of a variance will not adversely affect water quality or adversely impact fish, wildlife or plant habitat within the Critical District, and that the granting of the variance will be consistent with the spirit and intent of the Town's Critical Area Program and associated ordinances as well as Subtitle 18 of the Natural Resources Article and COMAR 14.15.**

The proposed project will not adversely affect water quality or adversely impact fish, wildlife or plant habitat within the Critical District. There are no wetlands, forests or endangered species located on the Property. Additionally, the Property is within a developed community and bulkheaded therefore no fish or wildlife habitat will be impacted by the proposed variance. The Applicant will cause a minimal amount of impervious area and mitigate development of the property by planting trees and shrubs and through the creation of a bio retention area. The granting of the variance will be consistent with the spirit and intent of the Town's Critical Area Program.

- (6) **That greater profitability or lack of knowledge of the restrictions shall not be considered as sufficient cause for a variance.**

Neither greater profitability nor lack of knowledge of the restrictions is the cause for this variance. Without the requested variance, the lot is rendered entirely unbuildable by application of the 100' shoreline buffer.

IN THE MATTER OF:	*	BEFORE THE ST. MICHAELS
APPLICATION OF STEPHEN VELO	*	BOARD OF ZONING APPEALS
FOR VARIANCES FROM THE FRONT	*	
YARD SETBACK REQUIREMENT AND	*	
THE 100' BUFFER REQUIREMENT OF	*	BZA Case No. 523-08
THE TOWN CODE FOR PROPERTY	*	
LOCATED IN THE SOUTHEAST	*	
CORNER OF NORTH HARBOR ROAD	*	
AND RADCLIFFE AVENUE	*	
* * * * *	*	* * * * *

OPINION AND DECISION

I. Introduction

This case arises out of an application for variance relief filed by Stephen Velo (the "Applicant"), Application No. 523-08 (the "Application") to allow the construction of a single family dwelling on property which he owns located in the southeast corner of North Harbor Road and Radcliffe Avenue in St. Michaels, Maryland (the "Property"). The Property is depicted on Tax Map 201 as Parcel 1246, and is further described in a deed recorded in the land records of Talbot County, Maryland at Liber 1379, Folio 32 (the "Property"). The Property is zoned Residential Zone R-1 and is classified within the Critical Area as part of the Intensely Developed Area ("IDA"). It is unimproved. The Applicant seeks a variance from both the thirty foot (30') front yard setback requirement and the One-hundred- foot (100') Buffer requirement of the St. Michaels Code. See St. Michaels Code §340-49 (Schedule B) and §340-27.5 respectively.

II. Jurisdiction

The Board of Zoning Appeals (the "BZA"), pursuant to the Code of the Town of St. Michaels, Maryland (the "Code"), Articles VIII (Board of Zoning Appeals Procedure) and IX (Board of Zoning Appeals Powers and Duties) is empowered, upon written application, to grant a variance from the terms of Chapter 340: Zoning, "as will not be contrary to the public interest." Code, §340-75A. Furthermore, pursuant to State law, "the Town has also established provisions whereby a Critical Area program variance may be obtained when, owing to special features of a site or other circumstances, implementation of this program or a literal enforcement of its provisions would result in unwarranted hardship to an applicant." See Code, §340-77.A. Based upon the foregoing, the BZA concludes that it has jurisdiction over the requested variances. To grant the requested variances, a public hearing must be held, and the BZA must make findings that the applicable requirements of §340-75 and §340-77 have been met.

III. Exhibits

A. Town's Exhibits:

The BZA accepted the following exhibits into the record, without objection:

1. Application to St. Michaels Board of Appeals dated 9/3/08
2. Supplemental Statement
3. Critical Area Buffer Management Plan prepared by Environmental Concern, Inc. dated August 11, 2008
4. Proposed site plan (P-1 dated Aug. 08, 2008), First and Second Floor Plan (A-1 dated 8/8/08), and Elevations (E-1 dated July 1, 2008) prepared by Mr. Clark
5. Variance/Variance from Critical Area Overlay District Application Information Questionnaire

6. Notice of Public Hearing
7. Confirmation of Publication, September 12 and 19, 2008
8. Certification of Posting of Property
9. Notice of Public Hearing and List of Adjacent Property Owners
10. Written Excerpt from Md. Department of Assessments & Taxation
11. Signed Administrative Fee Agreement
12. (Revised) Critical Area Buffer Mgt. Plan prepared by Environmental Concern, Inc., September 19, 2008
13. (Revised) Environmental Assessment prepared by Ronald Gatton of Environmental Concern, Inc., September 19, 2008
14. Site Plan (P-1 Sept. 19, 2008)
15. September 22, 2008 Letter from Edith Swallow of Radcliffe Ave
16. September 24, 2008 Letter from Nick Kelly of Critical Area Commission

B. Applicant's Exhibit:

The following exhibits were admitted on behalf of the Applicant:

1. Deeds for the Property

C. Protestants' Exhibits:

The following exhibits were admitted on behalf of the Protestants:

1. Large Aerial Photo of the Property and surrounding area,
2. Ms. Kassel's Petition, and
3. Letter dated September 29, 2008 from Helen Radcliff Seymour to Board of Appeals.

IV. Witnesses

On behalf of the Applicants:

The following witnesses were sworn and testified on behalf of the Applicants:

1. Mr. Stephen Velo, Applicant
2. Mr. Ronald Gatton of Environmental Consultant, Inc.
3. Mr. Eugene Slear of Environmental Consultant, Inc.
4. Ms. Deborah Renshaw, Zoning Inspector of the Town of St. Michaels

Willard C. Parker, Esq. and Sarah Schoenfelder, Esq. appeared before the BZA on behalf of the Applicant.

On behalf of the Protestants:

1. Jayne Kassel of 102 Douglass Lane, St. Michaels, Maryland represented by David Thompson, Esq.
2. Jack Bockmiller of 103 Douglas Lane, St. Michaels, Maryland
3. Mike Estrella of 104 E. Chew St., St. Michaels, Maryland
4. Helen Radcliffe Seymour of 1103 Riverview Terrance, St. Michaels, Maryland
5. Stuart Rowe of 703 Long Lane, St. Michaels, Maryland
6. Bridgett Dixon of 8821 Dawson Road, St. Michaels, Maryland
7. Bob Little of 712 Riverview Terrance, St. Michaels, Maryland

Sharon Van Emburgh, Esq. appeared on behalf of Ann and Kimber Rosswork, Helen Seymour of 1103 Riverview Terrace in Rio Vista, Ted Clarke of 926 Riverview Terrance, St. Michaels, Maryland Mary Anne Lane, Phillip Stovall, and William Rose of 303 E. Chew Avenue, St. Michaels, Maryland. David Thompson, Esq. appeared on behalf of Jayne Kassel.

V. Background

The Applicant and his spouse, Eva Velo, previously sought a variance (Case No. 494-05) from the required One- Hundred- Foot Buffer on the Property so as to reduce said buffer to 25 feet. The Town of St. Michaels Board of Zoning Appeals denied the Buffer variance in an Opinion and Decision filed on January 17, 2006. The Velos filed a petition for judicial review of the BZA's decision with the Circuit Court for Talbot County. The Circuit Court found that the BZA misapplied the law as to merger and remanded the case to the BZA for reconsideration of the issues based on a proper application of the law. Ann Rosswork and others who appeared before the BZA and opposed the variance request appealed the decision of the Circuit Court to the Court of Special Appeals of Maryland. The Court of Special Appeals, in an unpublished opinion (No. 1208, Sept. Term 2006) filed on August 22, 2007, affirmed in part and reversed in part the judgment of the Circuit Court and remanded the case

BZA Case No.: 523-08
North Harbor Road/Radcliffe Avenue
Velo

to the Circuit Court with instructions that the case be remanded to the BZA for further proceedings consistent with its opinion.

When the matter came before the BZA on remand, the BZA decided that it would hear the case anew since the remand left the determination of whether additional testimony was necessary to the BZA and none of the members of the BZA had heard the original appeal. The decision to proceed in this fashion was discussed at a properly advertised meeting of the BZA on the 14th day of January, 2008, which the Applicant's attorney, Willard Parker, Esq., and the attorney for Ann Rosswork, et al., Sharon VanEmburch, Esq. attended. Neither the Applicant nor anyone opposing the Application objected to the BZA proceeding in this fashion. Mr. Parker and Ms. VanEmburch specifically agreed to the BZA hearing the matter de novo.

Further, when the matter came back to the BZA, it was discovered that the Town/County boundary line bisects the Property. Accordingly, the Applicant revised his site plan to locate the house totally within the Town of St. Michaels. Upon review of the new site plan, it was determined that the Applicant would also need a front yard variance. Accordingly, the Applicant filed a request for a front yard setback variance (Case No. 523-08) on September 3, 2008. The additional relief requested is a 15' variance from the 30' required front yard setback from Radcliffe Avenue. See St. Michaels Code §340-49 (Schedule B). The remand from the Circuit Court in Case No. 494-05 and the request for a front yard setback variance were combined into one case which was assigned Case No. 523-08.

VI. Notice

As explained above, the application was essentially re-filed on September 3, 2008. (Applicant's Ex. 1.) Notice of the Public Hearing, scheduled for September 29, 2008, was published in the Star Democrat, a mid-shore periodical, on September 12 and 19, 2008. (Applicant's Ex. 7.) In addition, the Applicant certified that a sign was posted in the front yard of the Property along Radcliffe Avenue advising of the hearing September 29, 2008. (Applicant's Ex. 8.) The hearing before the Board of Zoning Appeals commenced, and was concluded on September 29, 2008. Deliberation occurred at a public meeting held on October 13, 2008. Accordingly, the BZA concludes that all of the Notice requirements of the Town Code were met.

Chairman Barry Gillman presided over the hearing and deliberation, and Board Members Alexandra Drobnick, Esq. and Mr. Harold Britt were present for both the hearing and the deliberations and participated with Chairman Gillman in the decision of the Board. Also, in attendance at both meetings were Mr. and Mrs. Velo, Williard Parker, II, Esq. representing the Applicant and his associate, Sarah Schoenfelder, Esq. who attended the hearing only. David Thompson, Esq. and Sharon Van Emburgh, Esq., both of whom represented people in opposition to the Application, were also present at the hearing, while Ms. VanEmburch was also present for the deliberations. There were many others present at the hearing and the deliberations as noted in the Witness List above. All of those present at the hearing in opposition to the Application were not Town residents.

Also present were: Karen Ruff, Board Attorney, and Deborah Renshaw, Zoning Inspector.

VII. Testimony

The Applicant, Stephen Velo, testified that he owns the Property which is located at the southeast corner of North Harbor Road and Radcliffe Avenue in St. Michaels, Maryland, known as Parcel 1246 on Tax Map 201. He stated that he purchased the parcel on September 30, 2005. The Deed for the Property was identified by Mr. Velo and submitted as Applicant's Exhibit 1 with all prior deeds in the chain of title going back to 1961.

Mr. Velo testified that his plan for the use of the Property was to build a modern single family home. He stated that the proposed dwelling would be a modest two-story home with three bedrooms. According to Mr. Velo, the footprint of the proposed dwelling is approximately 1,253 square feet with a driveway to Radcliffe Avenue and a small walkway as well. Mr. Velo testified that the revised site plan is responsive to comments from the Critical Area Commission regarding driveway access off Radcliffe Avenue.

The Applicant testified that the Property is an irregularly shaped lot, and if one applies the 100' Critical Area shoreline buffer requirement and the 30' front yard setback requirement to the Property, it leaves him with no area in which to build a reasonably-sized house. He further stated that there is an inadequate building envelope on the Property under a strict application of the Code, resulting in his inability to construct a house on the Property, which constitutes an unnecessary hardship for him. Mr. Velo further stated that the maximum depth of the Property is 112' and the frontage at N. Harbor Road is approximately 40 feet.

The Applicant presented a revised site plan to build a single family dwelling with a 1,253 square foot footprint, fronting on Radcliffe Avenue located in the northern portion of the Property. The dwelling consists of four sections (12'4" x 18' to 22.4", 13' x 14', 20' x 16', and 30' x 16') of successively larger sizes set alongside each other with the largest

section placed near the municipal-county line. See Exh. 14. The Applicant proposes a second floor above the latter three sections of the house which will contain two additional bedrooms and an office. The office does not have a closet.

Mr. Velo also testified that his Property is peculiar in that none of the other lots situated along Harrison Cove have such an irregular shape, and that his lot is the only one without a home built on it. He further testified that a literal interpretation of the zoning ordinance would deprive him of rights commonly granted to other property owners within the R-1 zone. He stated that other owners all have homes on their waterfront lots, but that without variances he could not have the same enjoyment as other owners for his retirement home.

The Applicant further testified that the special conditions involved in this application are not the result of his own actions because he did not create the lot. He stated that he did not contribute to the zoning ordinance regarding the required setbacks, nor did he take any action regarding the establishment of the Critical Area's shoreline buffer. He testified that the request for a variance to build a small retirement home would not confer a special privilege that is denied other lands in the same zone. Mr. Velo testified that there were no nonconforming uses of neighboring land in the zone and no other permitted uses elsewhere that were being considered as grounds for the request.

Regarding the Critical Area variance, Mr. Velo affirmed that special conditions exist that are peculiar to the land thereby causing an unwarranted hardship because, according to the Applicant, the required 100' buffer alone would leave a maximum of twelve feet of space

at the southwest corner of the Property in which to build. He asserted that a literal interpretation of the Code would deprive him of rights commonly enjoyed by other property owners in similar areas of the Town's Critical Area because the remaining waterfront areas along Harrison Cove all have homes while his waterfront parcel does not.

Mr. Velo testified that, if granted, the buffer variance would not confer upon him a special privilege that is denied other owners of similar properties within the Town's Critical Area. He stated, furthermore, that a modest single-family home would not be a special privilege because they are typically allowed in the R-1 zone and the IDA.

Mr. Velo also testified that the buffer variance request is not based on conditions or circumstances that are the result of his actions because, again, he had nothing to do with the creation of any of the buffer zones or setbacks. Finally, he denied that the request was based upon either a permitted or nonconforming use on any neighboring property.

Mr. Velo testified, without objection, that his environmental consultant found no adverse impacts to water quality or to fish and wildlife habitat. Mr. Velo referenced a Letter from Mr. Nick Kelly previously placed in the record (App. Exh. 16), and testified that the Critical Area Commission ("CAC") had reviewed the Application. Accordingly, the Applicant has revised the site plan as suggested by the CAC to accommodate the new driveway location off Radcliffe Avenue and two additional bio-retention ponds on the site (for a total of three bio-retention ponds). He again testified that the variances were the minimum necessary to build a modest retirement home on the lot.

Upon cross examination by Ms. Van Emburgh, Mr. Velo testified that his plans included a three bedroom house having three bathrooms and an office. He further responded that he currently owns three automobiles. Ms. Van Emburgh introduced a large scale aerial

photo of the Property and its environs into the record as Opponent's Exhibit 1. The Chairman stipulated without objection that no other houses depicted on the exhibit have similar setbacks and buffers as those requested in the subject application. When further questioned by opposing counsel as to why he had not utilized the unincorporated portion of the Property, Mr. Velo stated he was not aware of the procedures and that he did not want to deal with both jurisdictions' regulations.

Environmental Consultant Ronald Gatton testified that he had found the Property to be maintained like a residential yard having three trees and being improved with a shoreline bulkhead since the 1960's. He referenced his report that had been submitted into the record as Applicant's Exhibit 13. He stated that a letter from the Wildlife and Heritage Service had indicated no records of endangered species regarding the Property. App. Exh. 13.

Mr. Gatton testified that the proposed development would not adversely impact the water quality nor increase the volume of untreated storm water entering the tributary by use of bio-retention ponds. He testified that in his expert opinion that granting the buffer variance would be in harmony with the Critical Area law and the Code. Finally, Mr. Gatton testified that the Applicant would establish a natural 25' buffer as a condition of approval pursuant to the revised planting plan. He further confirmed that the Property was not used by wildlife for nesting or food.

Zoning Inspector Renshaw testified that the Property and the adjacent Harrison Cove properties located within the Town are not located within the Buffer Exemption Area. She also testified without objection that the Talbot County staff's comments about the Property were that it was suggested that the entire house footprint be located completely within the corporate limits of the Town or the County, as to do otherwise would require the issuance of

County and Town variances and building permits. Further, the County stated that it was unsure as to how the request would proceed if both jurisdictions are involved. Ms. Renshaw stated that there is no evidence in the Town's files that the Property was intended to be a non-buildable lot. Furthermore, she testified that the Property was classified as IDA and also had a 30% lot coverage limitation for structures only as imposed by the R-1 zone standards.

Environmental Consultant Eugene Slear testified that he had visited the Property and that his firm had developed the Buffer Management Plan on behalf of the Applicant. He testified that the CAC had reviewed the Buffer Management Plan and offered one comment recommending that the entire buffer be vegetated. He testified that the Plan had been made to conform to the comment as shown on Applicant's Exhibit 12. He testified that the Plan shows a planting area to mitigate the impervious surfaces to be developed along with full vegetation of the 25' buffer and three bio-retention facilities. He testified that the facilities will collect water from the roof and gutters as well as storm water from offsite including runoff from Radcliffe Avenue. He stated in his testimony that the bio-retention facility proposed for the waterside of the dwelling is required; however, it is 50% larger than required.

According to Mr. Slear's testimony, if granted, the variances will actually improve the tributary's water quality overall. Furthermore, he testified that the bio-retention ponds will meet or exceed the 10% Rule¹, and that the pollutant loading formula calculation had been reviewed by the CAC. He further testified that the Buffer Management Plan had been calculated based on the limits of disturbance included in the site plan and had applied the 2 to 1 mitigation requirements required by the CAC.

¹ The 10% Rule is an IDA requirement intended to minimize adverse impacts to water quality caused by stormwater associated with new development by requiring new developments to utilize offsets as determined by the Town to reduce pollutant loadings by at least 10% of the predevelopment levels. (See Town Code, §340-27.1)

Mr. Slear testified that it appeared that the Property would have the only vegetative buffer with a bio-retention pond in the area. He further testified that the bio-retention facilities are a serious responsibility, which requires proper maintenance to keep them free of debris. In his expert opinion, Mr. Slear testified that granting the variance will not adversely affect water quality, that the variance request is in the general spirit and intent of the Code, and that it meets all CAC requirements and guidelines. On cross examination, Mr. Slear testified that his comparison with other properties regarding the buffer and bio-retention ponds were primarily located in the County area to the south of the Property. Upon completion of Mr. Slear's testimony, the Applicant concluded his case.

Mr. Thompson called Ms. Jane Kassel of 102 Douglass Lane who read a prepared statement and submitted into the record a petition signed by 95 residents and 134 nonresidents. Applicant's counsel objected to the petition because he could not cross examine the petitioners. The BZA accepted the petition over the objection recognizing the BZA would give the petition the weight it is due. Ms. Kassel testified that the Property currently provided the only remaining unobstructed view of the water in Town and that tour buses often stopped to enjoy the view. She urged the BZA to deny the variances and requested that the Property be maintained as open space. On cross examination, Ms. Kassel testified that she was not concerned with the fact that the unimproved portion of N. Harbor Street was not part of the subject Property because the tourists that she observed sightseeing tended to view the water further south from across the Property itself.

Mr. Jack Bockmiller of 103 Douglass Lane testified that the petition was incomplete due to one of the circulators being ill, but that many more names were collected.

Mr. Mike Estrella of 104 E. Chew St. testified that he is a town resident. He urged the Board to place a park on the Property². He further testified that the new Critical Area law accounts for coverage, including driveways and sidewalks and is limited to 15% of the total lot size.

Ms. Cathy Stovall of 109 N. Harbor Road testified that her porch is approximately 40' from Polly's Cove, and that all homes in the area are at least 100' from the road. In her testimony she recounted that in the mid-1980's she and her spouse were advised that a proposed swimming pool could not be located in the front yard because they would have to honor the critical area setback. She also testified that, as a realtor, Mrs. Velo was fully aware, prior to the time of purchase that they would have to obtain variances in order to develop the Property.

Ms. Helen Radcliffe Seymour of 1103 Riverview Terrance, which is in the County, testified that her family's cemetery is located adjacent to the Property. Ms. Seymour further testified that the Property is not developable, and she objected to the removal of all three trees remaining on site. She also feared that the bio-retention facilities would not be properly maintained, and she felt that the view enjoyed across the Property would also be lost.

Mr. Stuart Rowe of 703 Long Lane testified that he was a county resident. He testified that Mr. Velo purchased both 108 N. Harbor Street along with the Property in October of 2005. Mr. Rowe testified that the previous owners of both properties had used the waterfront parcel as a yard. According to the witness, the Applicant changed his intentions regarding the new house's use as his retirement home. He further testified that the conditions constitute a self imposed hardship because Mr. Velo bought the property knowing that he

² The Board here notes that it does not have the authority to "place a park on the Property."

needed variances to develop the lot, and that the variance should not be granted to allow greater profitability. Furthermore, Mr. Rowe testified that the proposed development would block light and air and would be detrimental to the health, safety and welfare of the residents.

Ms. Bridgett Dixon of 8821 Dawson Road urged the Board to deny the variances.

Mr. Bob Little of 712 Riverview Terrance testified that he could look across the creek from the opposite side and would see the proposed house in his view shed. Having served on the Board of Appeals in Cincinnati, Ohio, Mr. Little testified that one must usually show economic need or a need for additional housing for the public benefit in order to justify relief. He testified that he knew of no demand for housing in St. Michaels.

VIII. Variance Criteria

The Applicant requests a variance from the front yard setback requirements of the St. Michaels Zoning Ordinance. Pursuant to Section 340-75 of the Zoning Code, the BZA is authorized to grant variances to the setback requirements of the Zoning Code. The general standards for granting a variance from the setback requirements of the Zoning Code are set forth in Section 340-75 as follows:

A. The Board of Zoning Appeals shall have the power to authorize upon appeal in specific cases the requested variance from the terms of this chapter as will not be contrary to the public interest. A variance from the terms of this chapter shall not be granted by the Board of Zoning Appeals unless and until:

1. A written application for a variance is submitted demonstrating:

* * * *

(b) In the case of an application for any variance:

[1] That, owing to special conditions, a literal enforcement of the provisions of this chapter would result in unnecessary hardship;

[2] That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zone;

[3] That a literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same zone under the terms of this chapter;

[4] That special conditions and circumstances do not result from the actions of the applicant;

[5] That granting the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, structures, or buildings in the same zone; and

[6] That no nonconforming use of neighboring lands, structures, or buildings in the same zone, and no permitted use of lands, structures, or buildings in other zones shall be considered grounds for the issuance of a variance.

B. Notice of public hearing shall be given as in § 340-74A(3) above;

C. The public hearing shall be held. Any party may appear in person, or by agent or by attorney;

D. The Board of Zoning Appeals shall make findings that the requirements of § 340-75A(1) have been met by the applicant for a variance;

E. The Board of Zoning Appeals shall further make a finding that the reasons set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of land, building, or structure;

F. The Board of Zoning Appeals shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this chapter, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

G. In granting any variance, the Board of Zoning Appeals may prescribe appropriate conditions and safeguards in conformity with this chapter. Violation of such conditions and safeguards, when made part of the terms under which the variance is granted, shall be deemed a violation of this chapter and punishable under § 340-106 of this chapter.

H. Under no circumstances shall the Board of Zoning Appeals grant a variance to allow a use not permissible under the terms of this chapter in the zone involved, or any use expressly or by implication prohibited by the terms of this chapter in said zone.

The Applicant also requests a variance from the 100 foot Critical Area Shoreline Buffer. The BZA is authorized to grant variances to the buffer requirement utilizing the criteria established in Town Code, Section 340-77. The standards for granting a variance as set forth in Section 340-77 are as follows:

C. Standards. Before granting a variance to the Critical Area Program Overlay District, the Board of Appeals shall make written findings demonstrating that each of the following standards has been met:

1. Special conditions or circumstances exist that are peculiar to the land or structure involved and that a literal enforcement of provisions and requirements of the Town's Critical Area Program Overlay District would result in unwarranted hardship. "Unwarranted hardship" shall mean that without a variance the applicant would be denied reasonable and significant use of the entire parcel or lot for which the variance is sought.
2. A literal interpretation of the provisions of Chapter 340 of the Code of the Town of St. Michaels, the 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 Town.
3. The granting of a variance will not confer upon an applicant any special privilege that would be denied by the Town's Critical Area elements to other lands or structures within the Critical Area.
4. The variance request is not based upon conditions or circumstances which are the result of actions by the applicant, including the commencement of development activity before an application for a variance has been filed, nor does the request arise from any condition relating to land or building use, either permitted or nonconforming on any neighboring property.
5. The granting of a variance shall not adversely affect water quality or adversely impact fish, wildlife or plant habitat within the Critical Area and the granting of the variance will be in harmony with the general spirit and intent of the Critical Area Act and Chapter 340 of the Code of the Town of St. Michaels.
6. The variance granted is the minimum variance that will make possible reasonable use of the land, building, or structure.

IX. Discussion of Variance Criteria and Findings

A. Front Yard Setback Variance Request - Section 340-75 Criteria

The Property is zoned Residential Zone R-1. In the R-1 Zone a thirty foot (30') front yard setback is required for all single-family dwellings. Town Code, §340-49 (Schedule B). The Applicant proposes to develop the Property with a single-family dwelling that is located 15 feet from Radcliffe Avenue, which is fifteen feet (15') less than the required front yard setback. Accordingly, the Applicant has requested the subject variance.

Section 340-75.A.(1)(b) sets forth six criteria that must be met for the BZA to grant a variance from the 30' minimum front yard building setback requirement in the R-1 zone. First, the BZA must find that, owing to special conditions, a literal enforcement of the provisions of Chapter 340 would result in unnecessary hardship. Based upon the testimony and evidence presented, and as is more fully set forth below, the BZA finds that the Property has a special condition which is peculiar to the land which is not applicable to other lands in the same zone, namely its shape. When evaluating the hardship requirement, the BZA took administrative notice of the Town's zoning map and looked at the shapes, sizes and development of the lots along Harrison Cove and elsewhere within the R-1 zone in the Town. The BZA discovered that when it applies the thirty foot (30') front yard setback requirement to the Property, given the shape of the Property, the building envelope on the Property is significantly affected. The BZA finds it particularly compelling that the R-1 yard setbacks coupled with the 100' Buffer leaves the Property without a viable building envelope.

The BZA notes that the Property was created by deed in 1961, prior to the adoption of subdivision or zoning regulations by the Town of St. Michaels. This fact was not challenged.

The Opposition testified that the Property was never intended to be developed, however, upon review of the deed (Applicant's Exhibit 1), the BZA finds that the Property was conveyed without any deed restrictions or covenants restricting the use of the Property. Accordingly, the Property is considered a lot of record. Although the Property was created prior to zoning, it meets the minimum lot size requirement and the minimum lot width requirement for a lot in the R-1 Zone.³ However, the large majority (over 75% - 80%) of the Property does not meet the minimum lot depth requirement of the R-1 Zone – just one very small portion of the Property. The depth of the Property ranges from 38' to 111'. Accordingly, the Property is a nonconforming lot. In this case, the Property became a nonconforming lot when the laws of the Town were enacted. Town Code, § 340-9. **“Nonconforming lots of record” states, in pertinent part,**

In any zone in which single-family dwellings are permitted, notwithstanding limitations imposed by other provisions of this chapter, a single-family dwelling and a customary accessory building may be erected on any single lot of record at the effective date of adoption or amendment of this chapter.

The BZA concludes that the Property can be developed as it is a nonconforming lot of record. The primary use of R-1 Zoned property is as a single family dwelling. The literal enforcement of the setback requirement would preclude the Applicant from a reasonable and significant use of his residentially-zoned property, that is the ability to build a modest single-family dwelling. The BZA finds that owing to the unique, irregular shape of the Property a literal enforcement of the provisions of Chapter 340 would result in unnecessary hardship to

³ The minimum lot size in the R-1 Zone is 7,200 s.f., the minimum width requirement is 50 feet and the minimum lot depth requirement is 100 feet. Town Code, §340-49 “Schedule of Zone Regulations.”

the Applicant, that is, the inability to develop the Property with a modest single-family dwelling.

The next criteria under Town Code, §340-75.A(1)(b) that the BZA must consider is whether special conditions and circumstances exist which are peculiar to the land, structure, or building involved, which are not applicable to other lands, structures, or buildings in the same zone. As stated above the BZA took notice of the Town's zoning map. The BZA concluded, based upon the testimony and evidence presented, that the Property has a strange almost horseshoe shape, and is unusually long and narrow. Upon review of the Town Zoning Maps, the BZA concludes that the Property is a one of a kind lot; it is unique. Accordingly, the BZA finds that special conditions exist which are peculiar to the Property which are not applicable to other lands in the same zone.

Next the BZA must consider whether a literal interpretation of the provisions of Chapter 340 would deprive the Applicant of rights commonly enjoyed by other properties in the same zone under the terms of Chapter 340. The Board notes that this requires that the BZA restrict its analysis to properties located within the Town as it requires the BZA to consider whether the Applicant would be deprived of rights enjoyed by other properties in the same zone under the terms of Chapter 340. Adjacent and nearby properties in the County do not carry the same zone as the Property nor are they subject to the terms of Chapter 340. As stated above, a literal interpretation of the setback requirement, when coupled with the 100 Foot Buffer requirement, would deprive the Applicant of the ability to build a single-family dwelling on property which is zoned for a residential use and for which a single family detached dwelling is an appropriate principal use. See Town Code, §340-19 "Residential Zone R-1." Additionally, the house is consistent with the neighborhood. The Board,

therefore, finds that a literal enforcement of the zoning provisions would deprive the Applicant of rights commonly enjoyed by others in the same zone because the Property was legally subdivided by deed in 1961 and other similar legally existing waterfront lots have been developed.

Since the BZA found that a hardship would exist from the application of the setback requirement, the BZA must determine whether the special conditions and circumstances result from the actions of the Applicant. The Applicant did not have any control over the adoption of the zoning regulations or the critical area regulations which apply to this Property. The Property was created prior to the Zoning Code. The Applicant did not purchase the Property until 2005. The BZA notes that the types of hardship that are considered self-created do not arise from the purchase of property with knowledge of zoning restrictions, but from those actions which the owner himself takes after the property is purchased which creates the hardship (i.e. building a structure too close to the property line). See *Richard Roeser Professional Builders v. Anne Arundel Co.*, 386 Md. 294 (2002). The Board, therefore, finds that the conditions and circumstances creating the hardship are not the result of any actions of the Applicant.

Section 340-75 further requires that the BZA consider whether granting the variance request will confer on the Applicant any special privilege that is denied by Chapter 340 to other lands, structures, or buildings in the same zone. Again, this requirement causes the BZA to focus on properties located in the Town for the same reasons articulated previously. The Property is located on a corner lot. Chapter 340 of the Code of the Town of St. Michaels (Chapter "340"), §340-108 defines "Primary frontage as "the road of a corner lot faced by the main entrance of the principal building located on that lot; and "secondary frontage" of such a

corner lot is the other adjacent road. Accordingly, the Town Code requires a 30 foot front yard setback for the primary frontage of the Property and a fifteen foot front yard setback for the secondary frontage of the Property. The Applicant proposes a 30' setback from North Harbor Street, which is a paper street, and a 15 foot front yard setback from Radcliffe Avenue. According to §340-108, the Applicant should provide a 30 foot front yard setback from Radcliffe Avenue because it is the primary frontage of the Property and a minimum 15 foot front yard setback from North Harbor Street, as it is the secondary frontage for the Property. The BZA notes that it could deny the requested front yard setback and require the Applicant to provide the required front yard setbacks for primary and secondary frontage as stated above, however, if the Applicant changed the main entrance of the house to be off of North Harbor Street, this would only result in the development of North Harbor Street which would result in the establishment of an impervious surface all the way to the water and the construction of the house as currently proposed by the Applicant. The BZA finds that the development of the Road with additional impervious surface in the Critical Area is not a desirable outcome. Further the proposed house is smaller than many of its neighbors'. The Applicant is not being allowed to build a house larger than others, or taller than others. For these reasons, the BZA finds that granting the variance would not confer any special privilege on the Applicant.

Finally, with respect to the criteria for approval of a front yard setback variance, the BZA must make a determination that no nonconforming use of neighboring lands, structures, or buildings in the same zone, and no permitted use of lands, structures, or buildings in other zones shall be considered grounds for the issuance of a variance. Based upon the testimony

and evidence presented, the BZA finds that no other non-conforming use of neighboring lands or structures were considered as grounds for granting the variance.

In addition to the above, as is required by §340-75.E. of the Code, the BZA must find that the reasons set forth in the application justify granting the 15' foot front yard setback variance, and that it is the minimum variance necessary for reasonable use of the land. The BZA discussed this issue at great length, considering the Opposition's assertion that the building could be relocated on the County portion of the Property thereby providing a greater setback. The BZA, after many calculations, determined that to move the building onto the County portion of the Property would not derive a significantly larger setback, and it might create other issues. Given the 100 foot Buffer Requirement, the Applicant cannot push the house toward the water. In the context of the entire Application, the variance request is not out of line. The BZA finds that the house which the Applicant seeks to build is entirely reasonable, both in size and location. The BZA finds, therefore, that the variance is the minimum necessary for the reasonable use of the land.

The Board of Zoning Appeals must also make a finding that the granting of the variance will be in harmony with the general purpose and intent of this chapter, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare. As stated above, the BZA found that given the nonconforming nature of the Property and in light of the footprint and size of the proposed house as well as the various constraints involved including the buffer, the setback relief requested is the minimum variance that will make possible a permitted use of the Property with a reasonably sized single family dwelling that is in harmony with the existing character of the neighborhood. The BZA further finds that testimony regarding any alleged reduction in property values and the protection of air, light

and view for certain individual property owners located nearby are not a valid basis under the existing Code for denying the requested relief. The BZA heard testimony from the Opposition regarding the value to the public as the last open view down the Miles River and that tour buses often stop to let tourists view the sites from this vantage point. The BZA cannot deny the requested variance and thereby prevent a property owner from developing his property in order to preserve the Property for public enjoyment if the Applicant meets the criteria for approval of the variance. The BZA is unpersuaded that the construction of a house on the Property will have a negative impact on the public welfare. The BZA finds that the granting of the variance will be in harmony with the general purpose and intent of Chapter 340, and will not be injurious to the neighborhood, or the public welfare.

B. One Hundred Foot Buffer – Section 340-77 Criteria

The Property is located almost completely within the Critical Area. It is classified as IDA (Intensely Developed Area)⁴. Section 340-27.5 of the Town Code, “One-hundred-foot Buffer” states:

The establishment of a minimum one-hundred-foot Buffer from the mean high water line of tidal waters, the edge of bank of tributary streams, and the landward extent of tidal wetlands shall be required measured on a site-by-site basis as part of the environmental review and site analysis process.

⁴ An IDA is an “area where residential, commercial, institutional, and/or industrial developed uses predominate and where relatively little natural habitat occurs. At the time of the initial mapping, these areas shall be concentrated in an area of at least 20 adjacent acres or that entire upland portion of the Critical Area within the boundary of a municipality, whichever is less, and have had at least one of the following features: (1) Housing density equal to or greater than four dwelling units per acre; (2) Industrial, institutional or commercial uses are concentrated in the area; or (3) Public sewer and water collection and distribution systems are currently serving the area and housing density is greater than three dwelling units per acre. Town Code, §340-27.1.

"Buffer" is defined therein as an existing, naturally vegetated area, or an area established in vegetation and managed to protect aquatic, wetlands, shoreline, and terrestrial environments from man-made disturbances. The Applicant proposes to develop the Property with a single-family dwelling providing a 25' Buffer as opposed to the required 100' Buffer. Accordingly, the Applicant has requested this variance.

Section 340-77.C. sets forth six criteria that must be met before the BZA may grant a variance from the Critical Area Overlay District provisions. Notwithstanding the front yard setback requirement, the BZA must evaluate the Application as to its request for a variance from the 100 foot Buffer requirement. Accordingly, the BZA must determine whether special conditions or circumstances exist that are peculiar to the land or structure involved such that a literal enforcement of provisions and requirements of the Town's Critical Area Program Overlay District would result in unwarranted hardship. "Unwarranted hardship" shall mean that without a variance the applicant would be denied reasonable and significant use of the entire parcel or lot for which the variance is sought. As is stated in Article IX.A. above, the BZA finds that there are special conditions of the Property that are peculiar to the land (ie. the shape of the lot) that makes a literal enforcement of the 100' Buffer result in an unwarranted hardship. Given the size of the Property and the fact that the depth of the Property varies from 38' to 111' at its deepest point, applying the 100' Buffer would result in a very small portion of the Property being located outside of the Critical Area Buffer. This would deny the Applicant the ability to build a modest house on the Property such as that proposed, thereby depriving the Applicant of reasonable and significant use of the entire Property. The Property cannot be developed without a variance.

The next criteria that the BZA must consider is whether a literal interpretation of the provisions of Chapter 340 of the Code of the Town of St. Michaels, the 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 Town. Once again the BZA is required to focus on properties within the Town. Section 340-16 "Grandfathered uses in the critical area" provides that the Town shall permit a single lot or parcel of land that was legally of record on the date of the Program approval (May, 1988) to be developed with a single-family dwelling if a dwelling is not already placed there (notwithstanding that such development may be inconsistent with the density provisions of this Chapter), provided that: it is a legal parcel of land, not being part of a recorded or approved subdivision that was recorded as of December 1, 1985, if at the time of development the land is brought into conformance with the Critical Area Program insofar as possible. The BZA finds that the Property was a legal lot or parcel of land prior to May, 1988 and that it is absolutely impossible for the Applicant to comply with the 100 Foot Buffer requirements, but that the Applicant, taking into consideration the purpose of the 100 Foot Buffer⁵ is bringing the Property into conformance with the Critical Area provisions in so far as possible by providing a 25 foot vegetative buffer with three bioretention ponds. Based upon testimony of Mr. Slear, the Applicant is providing mitigation at a greater rate than that required. The BZA finds that

⁵ Town Code, §340-27.5 "One-hundred-foot Buffer" states that "[t]he Town adopts the following policies with regard to the functions of the Buffer:

1. Provide for the removal or reduction of sediments, nutrients and potentially harmful or toxic substances in runoff entering the bay and its tributaries;
2. Minimize the adverse effects of human activities on wetlands, shoreline, stream banks, tidal waters and aquatic resources;
3. Maintain an area of transitional habitat between aquatic and upland communities;
4. Maintain the natural environment of streams; and
5. Protect riparian wildlife habitat.

other waterfront lots in similar areas within the Town's Critical Area commonly enjoy the right to be improved with a single-family home and that a literal interpretation of the Code would deprive the Applicant of rights commonly enjoyed by other properties.

The third criteria for consideration by the BZA is whether granting of a variance will confer upon an applicant any special privilege that would be denied by the Town's Critical Area elements to other lands or structures within the Critical Area. The BZA does not find that a special privilege exists in this case by having a smaller setback from the water than other waterfront properties in the immediate vicinity. Based upon the testimony presented the BZA finds that many waterfront properties in the area of the Property were developed prior to the enactment of the Critical Areas laws and regulations and the setbacks for those properties cannot be said to relate to the enactment of the Critical Areas laws and regulations. The proposed house is very modest, it is in fact small as compared to other waterfront properties in the area. For these reasons the BZA finds that development of the Property with a single family dwelling would not in and of itself bestow a special privilege that would be denied by the Town's Critical Area elements to other lands within the Critical Area.

The fourth criteria that the BZA must consider is whether the variance request is based upon conditions or circumstances which are the result of actions by the applicant, including the commencement of development activity before an application for a variance has been filed, and whether the request arises from any condition relating to land or building use, either permitted or nonconforming on any neighboring property. The BZA find, based upon the testimony presented that Mr. Velo has not commenced development of the Property. Furthermore, as discussed hereinabove the fact that Mr. Velo purchased the land with knowledge that it may require variances to develop, does not in and of itself constitute a self-

created condition. The Property was created prior to the enactment of Critical Areas laws and regulations. Finally, the BZA does not find any indication in the record that the request arises from conditions relating to any land or building use on neighboring property. Accordingly, the BZA finds this criterion has been met.

The penultimate criterion that the BZA must evaluate in connection with this application is whether granting of the variance will adversely affect water quality or adversely impact fish, wildlife or plant habitat within the Critical Area and the granting of the variance will be in harmony with the general spirit and intent of the Critical Area Act and Chapter 340 of the Code of the Town of St. Michaels. The BZA finds the testimony of Mr. Slear particularly compelling in this regard. And, the BZA notes that the Opposition failed to proffer any contradictory expert testimony or evidence. Accordingly, the BZA finds that, based upon the record, the use of three bio-retention facilities, and the treatment of storm water generated off site, will improve water quality within the Critical Area. Furthermore, the Board found that the newly vegetated buffer and plantings will likely improve animal habitat. The Board notes that the Critical Areas Commission has issued comments regarding the Application in which it states no opposition to the Application, however recommends the imposition of a condition. Therefore, the BZA finds that the Buffer Management Plan including the required 3:1 mitigation plantings to be undertaken as a condition of approval of the requested variance is in harmony with the general spirit and intent of the Critical Area Act and the Code.

Lastly, the BZA must consider whether the variance granted is the minimum variance that will make possible reasonable use of the land, building, or structure. As discussed regarding the zoning variance, the BZA finds that the proposed size and design of the

dwelling is reasonable compared to other properties located in the area and is well within all applicable regulations (ie. height limitations). Furthermore, the BZA finds that relocating the dwelling's footprint further south on the parcel would not significantly minimize the variance while accommodating the proposed dwelling's footprint or a similarly sized residence. No matter where the house is moved, a large variance would be required. The BZA also finds that because development of a modest dwelling on the Property would call for both Critical Area and zoning variances, a 25' shoreline buffer, along with the mitigation implemented herein, and a 15' front yard setback are in keeping with the spirit and intent of the Code and State law. Finally, the Board found that based on its findings above, granting the variances will not be detrimental to the health, safety, and welfare of the residents.

X. Decision

The Board of Zoning Appeals deliberated after the hearing and directed that a decision be drafted in accordance with their deliberations approving the Application for the reasons set forth above. With the BZA unanimously voting to approve the Application, it is this 31st day of October, 2008, hereby:

ORDERED, that the variances requested in Application No. 523-08, including the variance relief originally requested in Application No. 494-05, are hereby CONDITIONALLY GRANTED.

FURTHER ORDERED, that the following condition(s) do hereby apply to the granting of the variances requested herein:

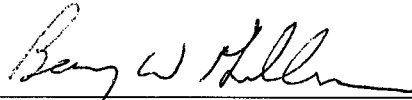
1. The Applicant shall implement the Buffer Management Plan submitted in accordance herewith, including the required 3:1 mitigation plantings to be undertaken;

2. The Applicant shall be required to secure and post bonds in favor of the Town of St. Michaels to guarantee the continued viability of all landscaping proposed on the Property for a period of five (5) years from the date of the issuance of the Occupancy Permit for the house in an amount approved by the Zoning Inspector, which amount shall relate to the cost of replacing the plantings in the event they fail to remain viable during the aforementioned five year period; and
3. The Applicant shall file with the Town Zoning Inspector a certificate issued by a qualified professional stating, under oath, that the bio-retention ponds located on the Property have been inspected and have been found to be working properly in accordance with their design. The certificate shall be provided on or before July 1 following the issuance of the Occupancy Permit for the principal use of the Property and every two years thereafter.

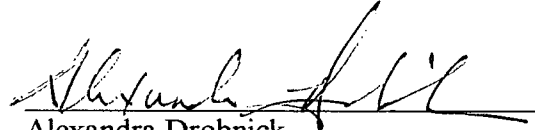
Chairman Barry Gillman and Board members Alexandra Drobnick and Harold Britt, in attendance for the Hearing and Deliberations on the above

captioned Application, unanimously approve, adopt and submit this Written
Opinion and Decision this 27 day of October, 2008.

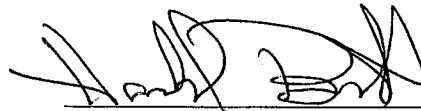
Town of St. Michaels
Board of Zoning Appeals



Barry Gillman, Chairman



Alexandra Drobnick



Harold Britt

IN THE MATTER OF:	*	BEFORE THE ST. MICHAELS
APPLICATION OF STEPHEN VELO	*	BOARD OF ZONING APPEALS
FOR VARIANCES FROM THE FRONT	*	
YARD SETBACK REQUIREMENT AND	*	
THE 100' BUFFER REQUIREMENT OF	*	BZA Case No. 523-08
THE TOWN CODE FOR PROPERTY	*	
LOCATED IN THE SOUTHEAST	*	
CORNER OF NORTH HARBOR ROAD	*	
AND RADCLIFFE AVENUE	*	
* * * * *	*	* * * * *

OPINION AND DECISION

I. Introduction

This case arises out of an application for variance relief filed by Stephen Velo (the "Applicant"), Application No. 523-08 (the "Application") to allow the construction of a single family dwelling on property which he owns located in the southeast corner of North Harbor Road and Radcliffe Avenue in St. Michaels, Maryland (the "Property"). The Property is depicted on Tax Map 201 as Parcel 1246, and is further described in a deed recorded in the land records of Talbot County, Maryland at Liber 1379, Folio 32 (the "Property"). The Property is zoned Residential Zone R-1 and is classified within the Critical Area as part of the Intensely Developed Area ("IDA"). It is unimproved. The Applicant seeks a variance from both the thirty foot (30') front yard setback requirement and the One-hundred- foot (100') Buffer requirement of the St. Michaels Code. See St. Michaels Code §340-49 (Schedule B) and §340-27.5 respectively.

II. Jurisdiction

The Board of Zoning Appeals (the "BZA"), pursuant to the Code of the Town of St. Michaels, Maryland (the "Code"), Articles VIII (Board of Zoning Appeals Procedure) and IX (Board of Zoning Appeals Powers and Duties) is empowered, upon written application, to grant a variance from the terms of Chapter 340: Zoning, "as will not be contrary to the public interest." Code, §340-75A. Furthermore, pursuant to State law, "the Town has also established provisions whereby a Critical Area program variance may be obtained when, owing to special features of a site or other circumstances, implementation of this program or a literal enforcement of its provisions would result in unwarranted hardship to an applicant." See Code, §340-77.A. Based upon the foregoing, the BZA concludes that it has jurisdiction over the requested variances. To grant the requested variances, a public hearing must be held, and the BZA must make findings that the applicable requirements of §340-75 and §340-77 have been met.

III. Exhibits

A. Town's Exhibits:

The BZA accepted the following exhibits into the record, without objection:

1. Application to St. Michaels Board of Appeals dated 9/3/08
2. Supplemental Statement
3. Critical Area Buffer Management Plan prepared by Environmental Concern, Inc. dated August 11, 2008
4. Proposed site plan (P-1 dated Aug. 08, 2008), First and Second Floor Plan (A-1 dated 8/8/08), and Elevations (E-1 dated July 1, 2008) prepared by Mr. Clark
5. Variance/Variance from Critical Area Overlay District Application Information Questionnaire

6. Notice of Public Hearing
7. Confirmation of Publication, September 12 and 19, 2008
8. Certification of Posting of Property
9. Notice of Public Hearing and List of Adjacent Property Owners
10. Written Excerpt from Md. Department of Assessments & Taxation
11. Signed Administrative Fee Agreement
12. (Revised) Critical Area Buffer Mgt. Plan prepared by Environmental Concern, Inc., September 19, 2008
13. (Revised) Environmental Assessment prepared by Ronald Gatton of Environmental Concern, Inc., September 19, 2008
14. Site Plan (P-1 Sept. 19, 2008)
15. September 22, 2008 Letter from Edith Swallow of Radcliffe Ave
16. September 24, 2008 Letter from Nick Kelly of Critical Area Commission

B. Applicant's Exhibit:

The following exhibits were admitted on behalf of the Applicant:

1. Deeds for the Property

C. Protestants' Exhibits:

The following exhibits were admitted on behalf of the Protestants:

1. Large Aerial Photo of the Property and surrounding area,
2. Ms. Kassel's Petition, and
3. Letter dated September 29, 2008 from Helen Radcliff Seymour to Board of Appeals.

IV. Witnesses

On behalf of the Applicants:

The following witnesses were sworn and testified on behalf of the Applicants:

1. Mr. Stephen Velo, Applicant
2. Mr. Ronald Gatton of Environmental Consultant, Inc.
3. Mr. Eugene Slear of Environmental Consultant, Inc.
4. Ms. Deborah Renshaw, Zoning Inspector of the Town of St. Michaels

Willard C. Parker, Esq. and Sarah Schoenfelder, Esq. appeared before the BZA on behalf of the Applicant.

On behalf of the Protestants:

1. Jayne Kassel of 102 Douglass Lane, St. Michaels, Maryland represented by David Thompson, Esq.
2. Jack Bockmiller of 103 Douglas Lane, St. Michaels, Maryland
3. Mike Estrella of 104 E. Chew St., St. Michaels, Maryland
4. Helen Radcliffe Seymour of 1103 Riverview Terrance, St. Michaels, Maryland
5. Stuart Rowe of 703 Long Lane, St. Michaels, Maryland
6. Bridgett Dixon of 8821 Dawson Road, St. Michaels, Maryland
7. Bob Little of 712 Riverview Terrance, St. Michaels, Maryland

Sharon Van Emburgh, Esq. appeared on behalf of Ann and Kimber Rosswork, Helen Seymour of 1103 Riverview Terrace in Rio Vista, Ted Clarke of 926 Riverview Terrace, St. Michaels, Maryland Mary Anne Lane, Phillip Stovall, and William Rose of 303 E. Chew Avenue, St. Michaels, Maryland. David Thompson, Esq. appeared on behalf of Jayne Kassel.

V. Background

The Applicant and his spouse, Eva Velo, previously sought a variance (Case No. 494-05) from the required One- Hundred- Foot Buffer on the Property so as to reduce said buffer to 25 feet. The Town of St. Michaels Board of Zoning Appeals denied the Buffer variance in an Opinion and Decision filed on January 17, 2006. The Velos filed a petition for judicial review of the BZA's decision with the Circuit Court for Talbot County. The Circuit Court found that the BZA misapplied the law as to merger and remanded the case to the BZA for reconsideration of the issues based on a proper application of the law. Ann Rosswork and others who appeared before the BZA and opposed the variance request appealed the decision of the Circuit Court to the Court of Special Appeals of Maryland. The Court of Special Appeals, in an unpublished opinion (No. 1208, Sept. Term 2006) filed on August 22, 2007, affirmed in part and reversed in part the judgment of the Circuit Court and remanded the case

to the Circuit Court with instructions that the case be remanded to the BZA for further proceedings consistent with its opinion.

When the matter came before the BZA on remand, the BZA decided that it would hear the case anew since the remand left the determination of whether additional testimony was necessary to the BZA and none of the members of the BZA had heard the original appeal. The decision to proceed in this fashion was discussed at a properly advertised meeting of the BZA on the 14th day of January, 2008, which the Applicant's attorney, Willard Parker, Esq., and the attorney for Ann Rosswork, et al., Sharon VanEmburch, Esq. attended. Neither the Applicant nor anyone opposing the Application objected to the BZA proceeding in this fashion. Mr. Parker and Ms. VanEmburch specifically agreed to the BZA hearing the matter de novo.

Further, when the matter came back to the BZA, it was discovered that the Town/County boundary line bisects the Property. Accordingly, the Applicant revised his site plan to locate the house totally within the Town of St. Michaels. Upon review of the new site plan, it was determined that the Applicant would also need a front yard variance. Accordingly, the Applicant filed a request for a front yard setback variance (Case No. 523-08) on September 3, 2008. The additional relief requested is a 15' variance from the 30' required front yard setback from Radcliffe Avenue. See St. Michaels Code §340-49 (Schedule B). The remand from the Circuit Court in Case No. 494-05 and the request for a front yard setback variance were combined into one case which was assigned Case No. 523-08.

VI. Notice

As explained above, the application was essentially re-filed on September 3, 2008. (Applicant's Ex. 1.) Notice of the Public Hearing, scheduled for September 29, 2008, was published in the Star Democrat, a mid-shore periodical, on September 12 and 19, 2008. (Applicant's Ex. 7.) In addition, the Applicant certified that a sign was posted in the front yard of the Property along Radcliffe Avenue advising of the hearing September 29, 2008. (Applicant's Ex. 8.) The hearing before the Board of Zoning Appeals commenced, and was concluded on September 29, 2008. Deliberation occurred at a public meeting held on October 13, 2008. Accordingly, the BZA concludes that all of the Notice requirements of the Town Code were met.

Chairman Barry Gillman presided over the hearing and deliberation, and Board Members Alexandra Drobnick, Esq. and Mr. Harold Britt were present for both the hearing and the deliberations and participated with Chairman Gillman in the decision of the Board. Also, in attendance at both meetings were Mr. and Mrs. Velo, Williard Parker, II, Esq. representing the Applicant and his associate, Sarah Schoenfelder, Esq. who attended the hearing only. David Thompson, Esq. and Sharon Van Emburgh, Esq., both of whom represented people in opposition to the Application, were also present at the hearing, while Ms. VanEmburch was also present for the deliberations. There were many others present at the hearing and the deliberations as noted in the Witness List above. All of those present at the hearing in opposition to the Application were not Town residents.

Also present were: Karen Ruff, Board Attorney, and Deborah Renshaw, Zoning Inspector.

VII. Testimony

The Applicant, Stephen Velo, testified that he owns the Property which is located at the southeast corner of North Harbor Road and Radcliffe Avenue in St. Michaels, Maryland, known as Parcel 1246 on Tax Map 201. He stated that he purchased the parcel on September 30, 2005. The Deed for the Property was identified by Mr. Velo and submitted as Applicant's Exhibit 1 with all prior deeds in the chain of title going back to 1961.

Mr. Velo testified that his plan for the use of the Property was to build a modern single family home. He stated that the proposed dwelling would be a modest two-story home with three bedrooms. According to Mr. Velo, the footprint of the proposed dwelling is approximately 1,253 square feet with a driveway to Radcliffe Avenue and a small walkway as well. Mr. Velo testified that the revised site plan is responsive to comments from the Critical Area Commission regarding driveway access off Radcliffe Avenue.

The Applicant testified that the Property is an irregularly shaped lot, and if one applies the 100' Critical Area shoreline buffer requirement and the 30' front yard setback requirement to the Property, it leaves him with no area in which to build a reasonably-sized house. He further stated that there is an inadequate building envelope on the Property under a strict application of the Code, resulting in his inability to construct a house on the Property, which constitutes an unnecessary hardship for him. Mr. Velo further stated that the maximum depth of the Property is 112' and the frontage at N. Harbor Road is approximately 40 feet.

The Applicant presented a revised site plan to build a single family dwelling with a 1,253 square foot footprint, fronting on Radcliffe Avenue located in the northern portion of the Property. The dwelling consists of four sections (12'4" x 18' to 22.4", 13' x 14', 20' x 16', and 30' x 16') of successively larger sizes set alongside each other with the largest

section placed near the municipal-county line. See Exh. 14. The Applicant proposes a second floor above the latter three sections of the house which will contain two additional bedrooms and an office. The office does not have a closet.

Mr. Velo also testified that his Property is peculiar in that none of the other lots situated along Harrison Cove have such an irregular shape, and that his lot is the only one without a home built on it. He further testified that a literal interpretation of the zoning ordinance would deprive him of rights commonly granted to other property owners within the R-1 zone. He stated that other owners all have homes on their waterfront lots, but that without variances he could not have the same enjoyment as other owners for his retirement home.

The Applicant further testified that the special conditions involved in this application are not the result of his own actions because he did not create the lot. He stated that he did not contribute to the zoning ordinance regarding the required setbacks, nor did he take any action regarding the establishment of the Critical Area's shoreline buffer. He testified that the request for a variance to build a small retirement home would not confer a special privilege that is denied other lands in the same zone. Mr. Velo testified that there were no nonconforming uses of neighboring land in the zone and no other permitted uses elsewhere that were being considered as grounds for the request.

Regarding the Critical Area variance, Mr. Velo affirmed that special conditions exist that are peculiar to the land thereby causing an unwarranted hardship because, according to the Applicant, the required 100' buffer alone would leave a maximum of twelve feet of space

at the southwest corner of the Property in which to build. He asserted that a literal interpretation of the Code would deprive him of rights commonly enjoyed by other property owners in similar areas of the Town's Critical Area because the remaining waterfront areas along Harrison Cove all have homes while his waterfront parcel does not.

Mr. Velo testified that, if granted, the buffer variance would not confer upon him a special privilege that is denied other owners of similar properties within the Town's Critical Area. He stated, furthermore, that a modest single-family home would not be a special privilege because they are typically allowed in the R-1 zone and the IDA.

Mr. Velo also testified that the buffer variance request is not based on conditions or circumstances that are the result of his actions because, again, he had nothing to do with the creation of any of the buffer zones or setbacks. Finally, he denied that the request was based upon either a permitted or nonconforming use on any neighboring property.

Mr. Velo testified, without objection, that his environmental consultant found no adverse impacts to water quality or to fish and wildlife habitat. Mr. Velo referenced a Letter from Mr. Nick Kelly previously placed in the record (App. Exh. 16), and testified that the Critical Area Commission ("CAC") had reviewed the Application. Accordingly, the Applicant has revised the site plan as suggested by the CAC to accommodate the new driveway location off Radcliffe Avenue and two additional bio-retention ponds on the site (for a total of three bio-retention ponds). He again testified that the variances were the minimum necessary to build a modest retirement home on the lot.

Upon cross examination by Ms. Van Emburgh, Mr. Velo testified that his plans included a three bedroom house having three bathrooms and an office. He further responded that he currently owns three automobiles. Ms. Van Emburgh introduced a large scale aerial

photo of the Property and its environs into the record as Opponent's Exhibit 1. The Chairman stipulated without objection that no other houses depicted on the exhibit have similar setbacks and buffers as those requested in the subject application. When further questioned by opposing counsel as to why he had not utilized the unincorporated portion of the Property, Mr. Velo stated he was not aware of the procedures and that he did not want to deal with both jurisdictions' regulations.

Environmental Consultant Ronald Gatton testified that he had found the Property to be maintained like a residential yard having three trees and being improved with a shoreline bulkhead since the 1960's. He referenced his report that had been submitted into the record as Applicant's Exhibit 13. He stated that a letter from the Wildlife and Heritage Service had indicated no records of endangered species regarding the Property. App. Exh. 13.

Mr. Gatton testified that the proposed development would not adversely impact the water quality nor increase the volume of untreated storm water entering the tributary by use of bio-retention ponds. He testified that in his expert opinion that granting the buffer variance would be in harmony with the Critical Area law and the Code. Finally, Mr. Gatton testified that the Applicant would establish a natural 25' buffer as a condition of approval pursuant to the revised planting plan. He further confirmed that the Property was not used by wildlife for nesting or food.

Zoning Inspector Renshaw testified that the Property and the adjacent Harrison Cove properties located within the Town are not located within the Buffer Exemption Area. She also testified without objection that the Talbot County staff's comments about the Property were that it was suggested that the entire house footprint be located completely within the corporate limits of the Town or the County, as to do otherwise would require the issuance of

County and Town variances and building permits. Further, the County stated that it was unsure as to how the request would proceed if both jurisdictions are involved. Ms. Renshaw stated that there is no evidence in the Town's files that the Property was intended to be a non-buildable lot. Furthermore, she testified that the Property was classified as IDA and also had a 30% lot coverage limitation for structures only as imposed by the R-1 zone standards.

Environmental Consultant Eugene Slear testified that he had visited the Property and that his firm had developed the Buffer Management Plan on behalf of the Applicant. He testified that the CAC had reviewed the Buffer Management Plan and offered one comment recommending that the entire buffer be vegetated. He testified that the Plan had been made to conform to the comment as shown on Applicant's Exhibit 12. He testified that the Plan shows a planting area to mitigate the impervious surfaces to be developed along with full vegetation of the 25' buffer and three bio-retention facilities. He testified that the facilities will collect water from the roof and gutters as well as storm water from offsite including runoff from Radcliffe Avenue. He stated in his testimony that the bio-retention facility proposed for the waterside of the dwelling is required; however, it is 50% larger than required.

According to Mr. Slear's testimony, if granted, the variances will actually improve the tributary's water quality overall. Furthermore, he testified that the bio-retention ponds will meet or exceed the 10% Rule¹, and that the pollutant loading formula calculation had been reviewed by the CAC. He further testified that the Buffer Management Plan had been calculated based on the limits of disturbance included in the site plan and had applied the 2 to 1 mitigation requirements required by the CAC.

¹ The 10% Rule is an IDA requirement intended to minimize adverse impacts to water quality caused by stormwater associated with new development by requiring new developments to utilize offsets as determined by the Town to reduce pollutant loadings by at least 10% of the predevelopment levels. (See Town Code, §340-27.1)

Mr. Slear testified that it appeared that the Property would have the only vegetative buffer with a bio-retention pond in the area. He further testified that the bio-retention facilities are a serious responsibility, which requires proper maintenance to keep them free of debris. In his expert opinion, Mr. Slear testified that granting the variance will not adversely affect water quality, that the variance request is in the general spirit and intent of the Code, and that it meets all CAC requirements and guidelines. On cross examination, Mr. Slear testified that his comparison with other properties regarding the buffer and bio-retention ponds were primarily located in the County area to the south of the Property. Upon completion of Mr. Slear's testimony, the Applicant concluded his case.

Mr. Thompson called Ms. Jane Kassel of 102 Douglass Lane who read a prepared statement and submitted into the record a petition signed by 95 residents and 134 nonresidents. Applicant's counsel objected to the petition because he could not cross examine the petitioners. The BZA accepted the petition over the objection recognizing the BZA would give the petition the weight it is due. Ms. Kassel testified that the Property currently provided the only remaining unobstructed view of the water in Town and that tour buses often stopped to enjoy the view. She urged the BZA to deny the variances and requested that the Property be maintained as open space. On cross examination, Ms. Kassel testified that she was not concerned with the fact that the unimproved portion of N. Harbor Street was not part of the subject Property because the tourists that she observed sightseeing tended to view the water further south from across the Property itself.

Mr. Jack Bockmiller of 103 Douglass Lane testified that the petition was incomplete due to one of the circulators being ill, but that many more names were collected.

Mr. Mike Estrella of 104 E. Chew St. testified that he is a town resident. He urged the Board to place a park on the Property². He further testified that the new Critical Area law accounts for coverage, including driveways and sidewalks and is limited to 15% of the total lot size.

Ms. Cathy Stovall of 109 N. Harbor Road testified that her porch is approximately 40' from Polly's Cove, and that all homes in the area are at least 100' from the road. In her testimony she recounted that in the mid-1980's she and her spouse were advised that a proposed swimming pool could not be located in the front yard because they would have to honor the critical area setback. She also testified that, as a realtor, Mrs. Velo was fully aware, prior to the time of purchase that they would have to obtain variances in order to develop the Property.

Ms. Helen Radcliffe Seymour of 1103 Riverview Terrance, which is in the County, testified that her family's cemetery is located adjacent to the Property. Ms. Seymour further testified that the Property is not developable, and she objected to the removal of all three trees remaining on site. She also feared that the bio-retention facilities would not be properly maintained, and she felt that the view enjoyed across the Property would also be lost.

Mr. Stuart Rowe of 703 Long Lane testified that he was a county resident. He testified that Mr. Velo purchased both 108 N. Harbor Street along with the Property in October of 2005. Mr. Rowe testified that the previous owners of both properties had used the waterfront parcel as a yard. According to the witness, the Applicant changed his intentions regarding the new house's use as his retirement home. He further testified that the conditions constitute a self imposed hardship because Mr. Velo bought the property knowing that he

² The Board here notes that it does not have the authority to "place a park on the Property."

needed variances to develop the lot, and that the variance should not be granted to allow greater profitability. Furthermore, Mr. Rowe testified that the proposed development would block light and air and would be detrimental to the health, safety and welfare of the residents.

Ms. Bridgett Dixon of 8821 Dawson Road urged the Board to deny the variances.

Mr. Bob Little of 712 Riverview Terrance testified that he could look across the creek from the opposite side and would see the proposed house in his view shed. Having served on the Board of Appeals in Cincinnati, Ohio, Mr. Little testified that one must usually show economic need or a need for additional housing for the public benefit in order to justify relief. He testified that he knew of no demand for housing in St. Michaels.

VIII. Variance Criteria

The Applicant requests a variance from the front yard setback requirements of the St. Michaels Zoning Ordinance. Pursuant to Section 340-75 of the Zoning Code, the BZA is authorized to grant variances to the setback requirements of the Zoning Code. The general standards for granting a variance from the setback requirements of the Zoning Code are set forth in Section 340-75 as follows:

A. The Board of Zoning Appeals shall have the power to authorize upon appeal in specific cases the requested variance from the terms of this chapter as will not be contrary to the public interest. A variance from the terms of this chapter shall not be granted by the Board of Zoning Appeals unless and until:

1. A written application for a variance is submitted demonstrating:

* * * *

(b) In the case of an application for any variance:

[1] That, owing to special conditions, a literal enforcement of the provisions of this chapter would result in unnecessary hardship;

[2] That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zone;

[3] That a literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same zone under the terms of this chapter;

[4] That special conditions and circumstances do not result from the actions of the applicant;

[5] That granting the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, structures, or buildings in the same zone; and

[6] That no nonconforming use of neighboring lands, structures, or buildings in the same zone, and no permitted use of lands, structures, or buildings in other zones shall be considered grounds for the issuance of a variance.

B. Notice of public hearing shall be given as in § 340-74A(3) above;

C. The public hearing shall be held. Any party may appear in person, or by agent or by attorney;

D. The Board of Zoning Appeals shall make findings that the requirements of § 340-75A(1) have been met by the applicant for a variance;

E. The Board of Zoning Appeals shall further make a finding that the reasons set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of land, building, or structure;

F. The Board of Zoning Appeals shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this chapter, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

G. In granting any variance, the Board of Zoning Appeals may prescribe appropriate conditions and safeguards in conformity with this chapter. Violation of such conditions and safeguards, when made part of the terms under which the variance is granted, shall be deemed a violation of this chapter and punishable under § 340-106 of this chapter.

H. Under no circumstances shall the Board of Zoning Appeals grant a variance to allow a use not permissible under the terms of this chapter in the zone involved, or any use expressly or by implication prohibited by the terms of this chapter in said zone.

The Applicant also requests a variance from the 100 foot Critical Area Shoreline Buffer. The BZA is authorized to grant variances to the buffer requirement utilizing the criteria established in Town Code, Section 340-77. The standards for granting a variance as set forth in Section 340-77 are as follows:

C. Standards. Before granting a variance to the Critical Area Program Overlay District, the Board of Appeals shall make written findings demonstrating that each of the following standards has been met:

1. Special conditions or circumstances exist that are peculiar to the land or structure involved and that a literal enforcement of provisions and requirements of the Town's Critical Area Program Overlay District would result in unwarranted hardship. "Unwarranted hardship" shall mean that without a variance the applicant would be denied reasonable and significant use of the entire parcel or lot for which the variance is sought.
2. A literal interpretation of the provisions of Chapter 340 of the Code of the Town of St. Michaels, the 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 Town.
3. The granting of a variance will not confer upon an applicant any special privilege that would be denied by the Town's Critical Area elements to other lands or structures within the Critical Area.
4. The variance request is not based upon conditions or circumstances which are the result of actions by the applicant, including the commencement of development activity before an application for a variance has been filed, nor does the request arise from any condition relating to land or building use, either permitted or nonconforming on any neighboring property.
5. The granting of a variance shall not adversely affect water quality or adversely impact fish, wildlife or plant habitat within the Critical Area and the granting of the variance will be in harmony with the general spirit and intent of the Critical Area Act and Chapter 340 of the Code of the Town of St. Michaels.
6. The variance granted is the minimum variance that will make possible reasonable use of the land, building, or structure.

IX. Discussion of Variance Criteria and Findings

A. Front Yard Setback Variance Request - Section 340-75 Criteria

The Property is zoned Residential Zone R-1. In the R-1 Zone a thirty foot (30') front yard setback is required for all single-family dwellings. Town Code, §340-49 (Schedule B). The Applicant proposes to develop the Property with a single-family dwelling that is located 15 feet from Radcliffe Avenue, which is fifteen feet (15') less than the required front yard setback. Accordingly, the Applicant has requested the subject variance.

Section 340-75.A.(1)(b) sets forth six criteria that must be met for the BZA to grant a variance from the 30' minimum front yard building setback requirement in the R-1 zone. First, the BZA must find that, owing to special conditions, a literal enforcement of the provisions of Chapter 340 would result in unnecessary hardship. Based upon the testimony and evidence presented, and as is more fully set forth below, the BZA finds that the Property has a special condition which is peculiar to the land which is not applicable to other lands in the same zone, namely its shape. When evaluating the hardship requirement, the BZA took administrative notice of the Town's zoning map and looked at the shapes, sizes and development of the lots along Harrison Cove and elsewhere within the R-1 zone in the Town. The BZA discovered that when it applies the thirty foot (30') front yard setback requirement to the Property, given the shape of the Property, the building envelope on the Property is significantly affected. The BZA finds it particularly compelling that the R-1 yard setbacks coupled with the 100' Buffer leaves the Property without a viable building envelope.

The BZA notes that the Property was created by deed in 1961, prior to the adoption of subdivision or zoning regulations by the Town of St. Michaels. This fact was not challenged.

The Opposition testified that the Property was never intended to be developed, however, upon review of the deed (Applicant's Exhibit 1), the BZA finds that the Property was conveyed without any deed restrictions or covenants restricting the use of the Property. Accordingly, the Property is considered a lot of record. Although the Property was created prior to zoning, it meets the minimum lot size requirement and the minimum lot width requirement for a lot in the R-1 Zone.³ However, the large majority (over 75% - 80%) of the Property does not meet the minimum lot depth requirement of the R-1 Zone – just one very small portion of the Property. The depth of the Property ranges from 38' to 111'. Accordingly, the Property is a nonconforming lot. In this case, the Property became a nonconforming lot when the laws of the Town were enacted. Town Code, § 340-9. **“Nonconforming lots of record” states, in pertinent part,**

In any zone in which single-family dwellings are permitted, notwithstanding limitations imposed by other provisions of this chapter, a single-family dwelling and a customary accessory building may be erected on any single lot of record at the effective date of adoption or amendment of this chapter.

The BZA concludes that the Property can be developed as it is a nonconforming lot of record. The primary use of R-1 Zoned property is as a single family dwelling. The literal enforcement of the setback requirement would preclude the Applicant from a reasonable and significant use of his residentially-zoned property, that is the ability to build a modest single-family dwelling. The BZA finds that owing to the unique, irregular shape of the Property a literal enforcement of the provisions of Chapter 340 would result in unnecessary hardship to

³ The minimum lot size in the R-1 Zone is 7,200 s.f., the minimum width requirement is 50 feet and the minimum lot depth requirement is 100 feet. Town Code, §340-49 “Schedule of Zone Regulations.”

the Applicant, that is, the inability to develop the Property with a modest single-family dwelling.

The next criteria under Town Code, §340-75.A(1)(b) that the BZA must consider is whether special conditions and circumstances exist which are peculiar to the land, structure, or building involved, which are not applicable to other lands, structures, or buildings in the same zone. As stated above the BZA took notice of the Town's zoning map. The BZA concluded, based upon the testimony and evidence presented, that the Property has a strange almost horseshoe shape, and is unusually long and narrow. Upon review of the Town Zoning Maps, the BZA concludes that the Property is a one of a kind lot; it is unique. Accordingly, the BZA finds that special conditions exist which are peculiar to the Property which are not applicable to other lands in the same zone.

Next the BZA must consider whether a literal interpretation of the provisions of Chapter 340 would deprive the Applicant of rights commonly enjoyed by other properties in the same zone under the terms of Chapter 340. The Board notes that this requires that the BZA restrict its analysis to properties located within the Town as it requires the BZA to consider whether the Applicant would be deprived of rights enjoyed by other properties in the same zone under the terms of Chapter 340. Adjacent and nearby properties in the County do not carry the same zone as the Property nor are they subject to the terms of Chapter 340. As stated above, a literal interpretation of the setback requirement, when coupled with the 100 Foot Buffer requirement, would deprive the Applicant of the ability to build a single-family dwelling on property which is zoned for a residential use and for which a single family detached dwelling is an appropriate principal use. See Town Code, §340-19 "Residential Zone R-1." Additionally, the house is consistent with the neighborhood. The Board,

therefore, finds that a literal enforcement of the zoning provisions would deprive the Applicant of rights commonly enjoyed by others in the same zone because the Property was legally subdivided by deed in 1961 and other similar legally existing waterfront lots have been developed.

Since the BZA found that a hardship would exist from the application of the setback requirement, the BZA must determine whether the special conditions and circumstances result from the actions of the Applicant. The Applicant did not have any control over the adoption of the zoning regulations or the critical area regulations which apply to this Property. The Property was created prior to the Zoning Code. The Applicant did not purchase the Property until 2005. The BZA notes that the types of hardship that are considered self-created do not arise from the purchase of property with knowledge of zoning restrictions, but from those actions which the owner himself takes after the property is purchased which creates the hardship (i.e. building a structure too close to the property line). See *Richard Roeser Professional Builders v. Anne Arundel Co.*, 386 Md. 294 (2002). The Board, therefore, finds that the conditions and circumstances creating the hardship are not the result of any actions of the Applicant.

Section 340-75 further requires that the BZA consider whether granting the variance request will confer on the Applicant any special privilege that is denied by Chapter 340 to other lands, structures, or buildings in the same zone. Again, this requirement causes the BZA to focus on properties located in the Town for the same reasons articulated previously. The Property is located on a corner lot. Chapter 340 of the Code of the Town of St. Michaels (Chapter "340"), §340-108 defines "Primary frontage as "the road of a corner lot faced by the main entrance of the principal building located on that lot; and "secondary frontage" of such a

corner lot is the other adjacent road. Accordingly, the Town Code requires a 30 foot front yard setback for the primary frontage of the Property and a fifteen foot front yard setback for the secondary frontage of the Property. The Applicant proposes a 30' setback from North Harbor Street, which is a paper street, and a 15 foot front yard setback from Radcliffe Avenue. According to §340-108, the Applicant should provide a 30 foot front yard setback from Radcliffe Avenue because it is the primary frontage of the Property and a minimum 15 foot front yard setback from North Harbor Street, as it is the secondary frontage for the Property. The BZA notes that it could deny the requested front yard setback and require the Applicant to provide the required front yard setbacks for primary and secondary frontage as stated above, however, if the Applicant changed the main entrance of the house to be off of North Harbor Street, this would only result in the development of North Harbor Street which would result in the establishment of an impervious surface all the way to the water and the construction of the house as currently proposed by the Applicant. The BZA finds that the development of the Road with additional impervious surface in the Critical Area is not a desirable outcome. Further the proposed house is smaller than many of its neighbors'. The Applicant is not being allowed to build a house larger than others, or taller than others. For these reasons, the BZA finds that granting the variance would not confer any special privilege on the Applicant.

Finally, with respect to the criteria for approval of a front yard setback variance, the BZA must make a determination that no nonconforming use of neighboring lands, structures, or buildings in the same zone, and no permitted use of lands, structures, or buildings in other zones shall be considered grounds for the issuance of a variance. Based upon the testimony

and evidence presented, the BZA finds that no other non-conforming use of neighboring lands or structures were considered as grounds for granting the variance.

In addition to the above, as is required by §340-75.E. of the Code, the BZA must find that the reasons set forth in the application justify granting the 15' foot front yard setback variance, and that it is the minimum variance necessary for reasonable use of the land. The BZA discussed this issue at great length, considering the Opposition's assertion that the building could be relocated on the County portion of the Property thereby providing a greater setback. The BZA, after many calculations, determined that to move the building onto the County portion of the Property would not derive a significantly larger setback, and it might create other issues. Given the 100 foot Buffer Requirement, the Applicant cannot push the house toward the water. In the context of the entire Application, the variance request is not out of line. The BZA finds that the house which the Applicant seeks to build is entirely reasonable, both in size and location. The BZA finds, therefore, that the variance is the minimum necessary for the reasonable use of the land.

The Board of Zoning Appeals must also make a finding that the granting of the variance will be in harmony with the general purpose and intent of this chapter, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare. As stated above, the BZA found that given the nonconforming nature of the Property and in light of the footprint and size of the proposed house as well as the various constraints involved including the buffer, the setback relief requested is the minimum variance that will make possible a permitted use of the Property with a reasonably sized single family dwelling that is in harmony with the existing character of the neighborhood. The BZA further finds that testimony regarding any alleged reduction in property values and the protection of air, light

and view for certain individual property owners located nearby are not a valid basis under the existing Code for denying the requested relief. The BZA heard testimony from the Opposition regarding the value to the public as the last open view down the Miles River and that tour buses often stop to let tourists view the sites from this vantage point. The BZA cannot deny the requested variance and thereby prevent a property owner from developing his property in order to preserve the Property for public enjoyment if the Applicant meets the criteria for approval of the variance. The BZA is unpersuaded that the construction of a house on the Property will have a negative impact on the public welfare. The BZA finds that the granting of the variance will be in harmony with the general purpose and intent of Chapter 340, and will not be injurious to the neighborhood, or the public welfare.

B. One Hundred Foot Buffer – Section 340-77 Criteria

The Property is located almost completely within the Critical Area. It is classified as IDA (Intensely Developed Area)⁴. Section 340-27.5 of the Town Code, “One-hundred-foot Buffer” states:

The establishment of a minimum one-hundred-foot Buffer from the mean high water line of tidal waters, the edge of bank of tributary streams, and the landward extent of tidal wetlands shall be required measured on a site-by-site basis as part of the environmental review and site analysis process.

⁴ An IDA is an “area where residential, commercial, institutional, and/or industrial developed uses predominate and where relatively little natural habitat occurs. At the time of the initial mapping, these areas shall be concentrated in an area of at least 20 adjacent acres or that entire upland portion of the Critical Area within the boundary of a municipality, whichever is less, and have had at least one of the following features: (1) Housing density equal to or greater than four dwelling units per acre; (2) Industrial, institutional or commercial uses are concentrated in the area; or (3) Public sewer and water collection and distribution systems are currently serving the area and housing density is greater than three dwelling units per acre. Town Code, §340-27.1.

"Buffer" is defined therein as an existing, naturally vegetated area, or an area established in vegetation and managed to protect aquatic, wetlands, shoreline, and terrestrial environments from man-made disturbances. The Applicant proposes to develop the Property with a single-family dwelling providing a 25' Buffer as opposed to the required 100' Buffer. Accordingly, the Applicant has requested this variance.

Section 340-77.C. sets forth six criteria that must be met before the BZA may grant a variance from the Critical Area Overlay District provisions. Notwithstanding the front yard setback requirement, the BZA must evaluate the Application as to its request for a variance from the 100 foot Buffer requirement. Accordingly, the BZA must determine whether special conditions or circumstances exist that are peculiar to the land or structure involved such that a literal enforcement of provisions and requirements of the Town's Critical Area Program Overlay District would result in unwarranted hardship. "Unwarranted hardship" shall mean that without a variance the applicant would be denied reasonable and significant use of the entire parcel or lot for which the variance is sought. As is stated in Article IX.A. above, the BZA finds that there are special conditions of the Property that are peculiar to the land (ie. the shape of the lot) that makes a literal enforcement of the 100' Buffer result in an unwarranted hardship. Given the size of the Property and the fact that the depth of the Property varies from 38' to 111' at its deepest point, applying the 100' Buffer would result in a very small portion of the Property being located outside of the Critical Area Buffer. This would deny the Applicant the ability to build a modest house on the Property such as that proposed, thereby depriving the Applicant of reasonable and significant use of the entire Property. The Property cannot be developed without a variance.

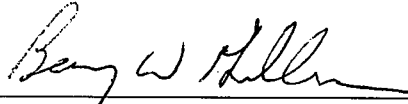
The next criteria that the BZA must consider is whether a literal interpretation of the provisions of Chapter 340 of the Code of the Town of St. Michaels, the Critical Area program and related ordinances will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area of the Town. Once again the BZA is required to focus on properties within the Town. Section 340-16 "Grandfathered uses in the critical area" provides that the Town shall permit a single lot or parcel of land that was legally of record on the date of the Program approval (May, 1988) to be developed with a single-family dwelling if a dwelling is not already placed there (notwithstanding that such development may be inconsistent with the density provisions of this Chapter), provided that: it is a legal parcel of land, not being part of a recorded or approved subdivision that was recorded as of December 1, 1985, if at the time of development the land is brought into conformance with the Critical Area Program insofar as possible. The BZA finds that the Property was a legal lot or parcel of land prior to May, 1988 and that it is absolutely impossible for the Applicant to comply with the 100 Foot Buffer requirements, but that the Applicant, taking into consideration the purpose of the 100 Foot Buffer⁵ is bringing the Property into conformance with the Critical Area provisions in so far as possible by providing a 25 foot vegetative buffer with three bioretention ponds. Based upon testimony of Mr. Slear, the Applicant is providing mitigation at a greater rate than that required. The BZA finds that

⁵ Town Code, §340-27.5 "One-hundred-foot Buffer" states that "[t]he Town adopts the following policies with regard to the functions of the Buffer:

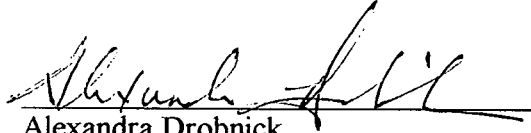
1. Provide for the removal or reduction of sediments, nutrients and potentially harmful or toxic substances in runoff entering the bay and its tributaries;
2. Minimize the adverse effects of human activities on wetlands, shoreline, stream banks, tidal waters and aquatic resources;
3. Maintain an area of transitional habitat between aquatic and upland communities;
4. Maintain the natural environment of streams; and
5. Protect riparian wildlife habitat.

captioned Application, unanimously approve, adopt and submit this Written
Opinion and Decision this ___ day of October, 2008.

Town of St. Michaels
Board of Zoning Appeals



Barry Gillman, Chairman



Alexandra Drobnick



Harold Britt

RECEIVED ²

SEP 15 2008

CRITICAL AREA COMMISSION

SUPPLEMENTAL STATEMENT
TO
VARIANCE APPLICATION
FILED BY
STEPHEN VELO

The Applicant is the owner of an unimproved lot of record located at the southeast corner of North Harbor Road and Radcliffe Avenue in the R-1 zoning district. The Applicant's lot contains 9,486 square feet of land¹, but is irregular in shape and has its primary frontage line on Radcliffe Avenue with a secondary frontage on North Harbor Road.

As a result of the pre-existing lot of record's irregular dimensions, the imposition of required 100' shoreline buffer setback renders the lot completely unbuildable under current zoning regulations. The Applicant requests a variance from the required 100' shoreline buffer so as to reduce said buffer to 25', which reduced buffer distance is in conformity with other nearby structures on Harrison Cove. Only through the grant of the requested variance can Applicant build a single family residence on his lot of record.

The Applicant also requests a variance from the front yard setback requirement so as to reduce the yard setback from Radcliffe Avenue to 15 feet. The secondary frontage for the lot is on North Harbor Road and will have a 30 foot setback.

Applicant originally filed for the requested variance on November 15, 2005. After a lengthy appeals process, the application is now before the Board of Appeals on remand for a de novo hearing with regard to its request for a variance from the 100' shoreline buffer. Applicant's request for a variance for the front yard setback from Radcliffe Avenue is made for the first time herein.

Planning & Zoning\VELO\Documents\Supplemental Statement to Variance Application(08/08)\WCP\bap

¹ The lot is divided by the Town of St. Michaels/Talbot County jurisdictional boundary with 2,684 square feet of the total lot located in Talbot County as shown on the attached plat.

VARIANCE APPLICATION INFORMATION

§340-77. Variance from Critical Area Overlay District provisions

C. Standards. Before granting a variance to the Critical Area Program Overlay District, the Board of Appeals shall make written findings demonstrating that each of the following standards has been met:

- (1) Special conditions or circumstances exist that are peculiar to the land or structure involved and that that a literal enforcement of the provisions and requirements of the Town's Critical Area Overlay District would result in unwarranted hardship. "Unwarranted hardship" shall mean that without a variance the applicant would be denied reasonable and significant use of the entire parcel or lot for which the variance is sought.**

The entire buildable envelope of Applicant's irregularly shaped lot lies within the 100' shoreline buffer. A literal enforcement of the Town's Critical Area Overlay District will result in the Applicant being denied all reasonable and significant use of the entire parcel or lot since Applicant will not be able to build a dwelling on the lot. Clearly, without the requested variances the Applicant will be denied all reasonable and significant use of his parcel because the lot is rendered entirely unbuildable by application of the front yard set-back and the required 100' shoreline buffer.

- (2) A literal interpretation of the provisions of Chapter 340 of the Code of the Town of St. Michaels, the 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 Town.**

The Applicant's lot is a legally buildable single lot of record in the "Bentley Hay" subdivision. The surrounding properties in the IDA zone commonly enjoy the right of being buildable as single family residential lots. Thus, depriving the Applicant of the right to build upon his lot is a deprivation of a right commonly enjoyed by other property owners in the IDA zone.

- (3) That the granting of a variance will not confer upon an applicant any special privilege that would be denied by the Town's Critical Area elements to other lands or structures within the Critical Area.**

The Applicant requests the right to utilize his existing lot of record for single family residential purposes. The granting of the requested variances will not confer upon the Applicant any special privilege that would be denied to other property owners in the IDA zone.

- (4) The variance request is not based upon conditions or circumstances which are the result of actions by the applicant, including the commencement of development activity before an application for a variance has been filed, nor**

does the request arise from condition relating to land or building use, either permitted or nonconforming on any neighboring property.

The Applicant neither subdivided the lot nor was responsible for the enactment of the Town's Code which imposes the front yard set-back or the Critical Area regulations which imposes the 100' shoreline buffer.

- (5) That the granting of a variance shall not adversely affect water quality or adversely impact fish, wildlife or plant habitat within the Critical District, and that the granting of the variance will be in harmony with the general spirit and intent of the Critical Area Act and Chapter 340 of the Code of the Town of St. Michaels.**

The proposed project will not adversely affect water quality or adversely impact fish, wildlife or plant habitat within the Critical District. There are no wetlands, forests or endangered species located on the Property. Additionally, the lot is within a fully developed residential community and is bulkheaded construction. Therefore no fish or wildlife habitat will be impacted by the proposed variance. The Applicant will cause a minimal amount of impervious area and will include design alternatives which will mitigate development of the property by planting trees and shrubs and through the creation of a bio retention area. The granting of the variance will be consistent with the spirit and intent of the Town's Critical Area Program.

- (6) The variance granted is the minimum variance that will make possible reasonable use of the land, building, or structure.**

The variances, if granted, will be the minimum variances that will make possible the reasonable use of the land as the site for a single-family residence. Without the requested variances, the lot is rendered entirely unbuildable by application of the front yard set-back and the 100' shoreline buffer.

VARIANCE APPLICATION INFORMATION

According to St. Michaels Code, § 340-75(A)(1)(b), variances can only be granted if all of the following are demonstrated to the Board of Appeals (legal requirements are in bold type with general guidelines in parentheses):

1) That, owing to special conditions, a literal enforcement of the provisions of this chapter would result in unnecessary hardship;

A literal enforcement of this chapter would render the Applicant's lot unbuildable thereby denying him of all reasonable and significant use of the lot. Therefore, the literal enforcement of this chapter would cause the Applicant an unnecessary hardship.

2) That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zone (the variance request must be based on abnormalities of the land or structure, not the special needs of the applicant);

The Applicant's lot is irregular in configuration although conforming in size and dimension and due to its location within the 100' shoreline buffer is rendered entirely unbuildable by application of a required buffer.

3) That literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zone under the terms of this ordinance (the circumstances discussed in #1 above deprive the property owner of some right -of-use granted under the ordinance to properties in the zone);

The Applicant's lot is a long standing single lot of record in "Bentley Hay". Other single lots of record in the R-1 zone commonly enjoy the right of being buildable as single family residential lots.

4) That the special conditions and circumstances do not result from the actions of the applicant (the circumstances discussed in #1 above are not of the applicant's own making);

Applicant neither subdivided the lot nor was responsible for the enactment of the Critical Area regulations which imposes the 100' shoreline buffer.

5) That granting the variance requested will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structures, or buildings in the same zone (the variance will merely restore the deprived right-of-use from #2 above, and will grant no privilege beyond those enjoyed generally by properties in the zone);

The Applicant seeks only the right to utilize his existing lot of record for single family residential purposes which does not constitute any special privilege in the zone.

6) That no non-conforming use of neighboring lands, structures, or buildings in the same zone, and no permitted use of lands, structures, or buildings in the other zones shall be considered grounds for the issuance of a variance (the applicant must demonstrate that tests #1-4 above are met, not merely cite that elsewhere in town there exist non-conformities similar to the

variance requested).

The Applicant does not rely upon any non-conforming use of any neighboring lands, structures or buildings in the R-1 zone. The Applicant can demonstrate that, without the requested variances, he will suffer the unwarranted, undue and/or unnecessary hardship of having his land "taken" from him by the zoning regulations.

Environmental Assessment
For
The Lands of
Mr. Stephen Velo

August 19, 2008

Ronald D. Gatton
Environmental Consultants Inc.
P.O. Box 438
Trappe, Maryland 21673

Introduction

Mr. Stephen Velo proposes to develop a 9,486 sq. ft. parcel of land (Tax Map 201 parcel 1246) within St. Michaels, Talbot County, Maryland. The land is presently undeveloped and is located entirely within the Chesapeake Bay Critical Area (CBCA), and within the area designated Intensely Developed Area. The property is located at the intersection of North Harbor and Radcliffe Avenue, Saint Michaels, Maryland (See figure 1). The purpose of this report is to assess what impact if any the project will have on the water quality, fish, and wildlife or plant habitat within the Town of St. Michaels Critical Area.

Table 1 Summary of Existing and Proposed Conditions

	Existing Conditions	
Total Area		9,486 sq. ft.
Area within Critical Area		9,486 sq. ft.
Woodlands		.0 acres
Wetlands		.0 acres
Uplands		9,486 sq. ft.
	Proposed Conditions	
Proposed Housing	One house, garage, driveway and walkway	1,646 sq. ft.
Forest to be cleared		-0-
Wetlands impacted		-0-

Proposed project

The proposed project will allow construction of a house, garage, walkway and private driveway. Development will create 1,646 square feet of impervious area. To mitigate development of the property the applicant proposes to plant trees, shrubs and to create a bio retention area.

Existing Conditions

Topography and Hydrology

Generally, the site has gentle slopes, with the highest elevation being approximately 10' above NGVD. The shoreline of the property is bulk headed. Drainage from the site sheet flows into Harrison Cove, and into the Miles River. Please note drainage pattern shown in Plate 1 of the Critical Area Buffer Management plan prepared by Environmental Concern Incorporated (Plan Attached).

Existing Land Use

As stated above the site is presently bulk headed and has a small pier.

Soils

The Talbot County Soil Conservation Service Survey maps indicate that the soil, which occurs on the site, is Mattapex loam. (See attached Plat). The Mattapex soils consist of deep, moderately well drained soils that formed in silty clay marine sediments, and are considered an upland soil.

Wetlands

No wetlands occur on the site.

Forest

No Forest occurs on the site. Three trees occur but not in a concentration high enough to be considered a forest. In addition, the large white popular tree (58 inch diameter) on the lot has significant portions of the trunk which are hollow and rotten.

Fish & Wildlife

Since the property is located within the town, fish & wildlife use is very limited.

Endangered Species, Colonial Bird Nesting Areas and Critical habitat

We believe no endangered species, colonial bird nesting areas and critical habitat are known to occur on the site, however we have requested the Wildlife and Heritage Service to check their records to see if any exist. Note: we have requested reviews for other parcels within the harbor area and the results were that no endangered species, colonial bird nesting areas and critical habitat are known to occur in the area.

Existing Pollution Sources

Existing sources of pollution are limited to air born pollutants deposited on the site and lawn fertilizers, and pesticides.

Environmental Consequences

Land Use

Land use will change from that of a yard to residential use including the associated yards. Considering the area is already within a developed neighborhood and the proposed bio-retention area to be planted, environmental impacts will be insignificant.

100- foot CBCA Buffer

All of the property is located within the 100' buffer; therefore, 1,646 square of buffer will be impacted.

Wetland

No wetlands will be impacted by the development.

Forest

No forest will be impacted by the development.

Fish & Wildlife

Considering that the area occurs within the a developed community, maintained in a yard like condition and bulk headed; no fish & wildlife habitat will be impacted by the proposed development and therefore fish & wildlife will not be significantly impacted by the proposed variance.

Endangered Species, Colonial Bird Nesting Areas and Critical Habitat

No endangered species, colonial bird nesting areas and critical habitat are known to occur on the site. Thus, they will not be adversely impacted by the proposed variance.

Forest Interior Dwelling Birds (FIDS)

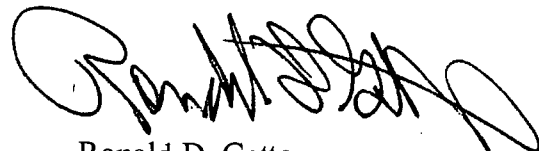
No forest area occurs on the property, thus no FIDS habitat will be disturbed.

Water Quality

The project may slightly increase the amount of storm water runoff into the Harrison Cove. However, since the lawn area will be reduced, the increase will be limited to air born pollutants. Again, considering the benefits of the bio retention area and that the surrounding area is already developed, the cumulative impact upon water quality will be insignificant.

Conclusion

The proposed project will allow development of an existing parcel, and will have no significant detrimental effect on the environment, the water quality, or living resources of the Chesapeake Bay.



Ronald D. Gatton
President, Environmental
Consultants Inc.

76°12'30"

Joins Map 5

1:630,000 FT

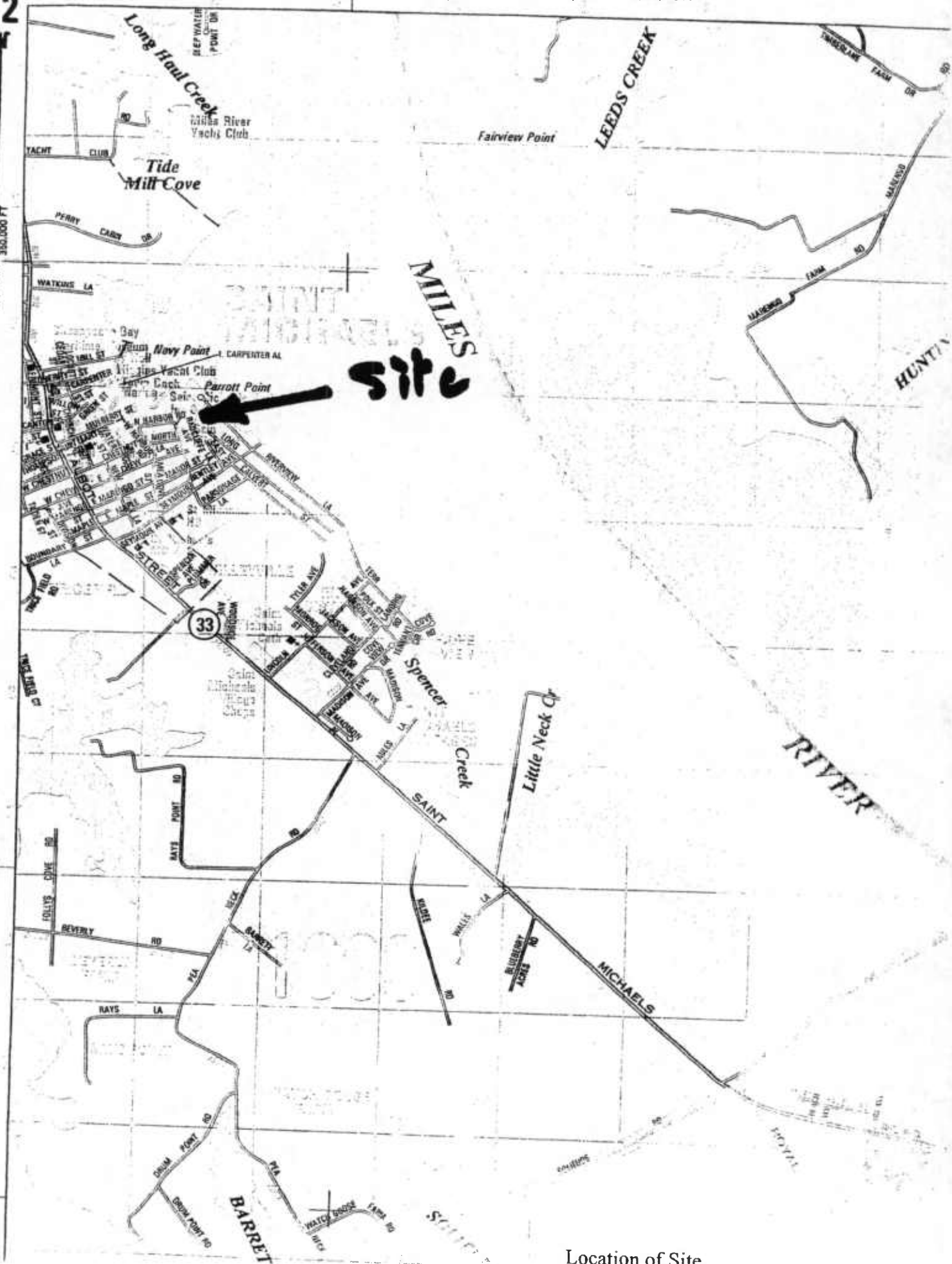
12



38°47'30"

340,000 FT Joins Map 11

38°45'00"



site

Location of Site



*Martin O'Malley, Governor
Anthony G. Brown, Lt. Governor
John R. Griffin, Secretary
Eric Schwaab, Deputy Secretary*

March 13, 2008

Ronald Gatton
Environmental Consultants, Inc
PO Box 438
Trappe, MD 21673

RE: Environmental Review for Stephen Velo, TM 201 P 1246 in St. Michaels, North Harbor and Radcliffe Ave., Talbot County, MD.

Dear Mr. Gatton:

The Wildlife and Heritage Service has determined that there are no State or Federal records for rare, threatened or endangered species within the boundaries of the project site as delineated. As a result, we have no specific comments or requirements pertaining to protection measures at this time. This statement should not be interpreted however as meaning that rare, threatened or endangered species are not in fact present. If appropriate habitat is available, certain species could be present without documentation because adequate surveys have not been conducted.

Thank you for allowing us the opportunity to review this project. If you should have any further questions regarding this information, please contact me at (410) 260-8573.

Sincerely,

Lori A. Byrne,
Environmental Review Coordinator
Wildlife and Heritage Service
MD Dept. of Natural Resources

ER# 2008.0374

NORTH HARBOR ROAD

CONCRETE MONUMENT

N 72°29'00" E 38'±
IRON ROD

30.25'

9.3'

44.0'

N 19°10'00" W 139.25'

LANDS OF
STEPHEN VELO
1379/032

L=10.0'

15'

66.9'

TOWN OF ST. MICHAELS
45.1' 88'±
TALBOT COUNTY

HARRISON'S COVE

IRON ROD

49.11'

S 73°07'49" W 62'± TOTAL

IRON ROD

S 75°12'14" W 49.77'

CEMETERY
(HARRISON FAMILY
BURIAL GROUND)

RADCLIFFE AVENUE

REF. S 19°10'00" E 267.95'

TOWN OF ST. MICHAELS
TALBOT COUNTY

NOW OR FORMERLY
LANDS OF
EDITH W. SWALLOW
1559/575



NORTH LANE

--- DENOTES PROPOSED BUILDING RESTRICTION LINES AND WERE ADDED AT THE REQUEST OF THE CLIENT.

--- DENOTES CORPORATE LIMITS OF THE TOWN OF ST. MICHAELS

THE PURPOSE OF THIS PLAT IS TO SHOW THE RELATIONSHIP OF THE CORPORATE LIMITS OF THE TOWN OF ST. MICHAELS TO THE STEPHEN VELO LANDS.

THIS PLAT WAS PREPARED WITHOUT THE BENEFIT OF REVIEW OF AN ABSTRACT OF TITLE.

REVISED 7/21/08
PLAT AZIMUTH
ADDED DIMENSIONS TO BRL

SPECIAL PURPOSE PLAT

OF THE LANDS OF

STEPHEN VELO

TAX MAP 201, GRID 4, PARCEL 1246

SECOND ELECTION DISTRICT, TALBOT COUNTY, MARYLAND

MICCRONE

- Engineering
- Environmental Sciences
- Construction Services
- Land Planning & Surveying

ANNAPOLIS • CENTREVILLE • DOVER • ELKTON • SALISBURY

207 NORTH LIBERTY STREET
CENTREVILLE, MARYLAND 21617

DATE: JUNE, 2008	SCALE 1" = 30'
JOB NUMBER: D1080166	DRAWN BY MDI
FOLDER REF.: 6887	DESIGNED BY
	APPROVED BY

Environmental Assessment
For
The Lands of
Mr. Stephen Velo

September 19, 2008

Ronald D. Gatton
Environmental Consultants Inc.
P.O. Box 438
Trappe, Maryland 21673

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Forest to be cleared		-0-
Wetlands impacted		-0-

Proposed project

The proposed project will allow construction of a house, walkway and private driveway. Development will create 1,684 square feet of impervious area. To mitigate development of the property the applicant proposes to plant trees, shrubs and to create a bio retention area.

Existing Conditions

Topography and Hydrology

Generally, the site has gentle slopes, with the highest elevation being approximately 10' above NGVD. The shoreline of the property is bulk headed. Drainage from the site sheet flows into Harrison Cove, and into the Miles River. Please note drainage pattern shown in Plate 1 of the Critical Area Buffer Management plan prepared by Environmental Concern Incorporated (Plan Attached).

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As stated above the site is presently bulk headed and has a small pier.

Soils

The Talbot County Soil Conservation Service Survey maps indicate that the soil, which occurs on the site, is Mattapex loam. The Mattapex soils consist of deep, moderately well drained soils that formed in silty clay marine sediments, and are considered an upland soil.

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No Forest occurs on the site. Three trees occur but not in a concentration high enough to be considered a forest. In addition, the large white popular tree (58 inch diameter) on the lot has significant portions of the trunk which are hollow and rotten.

Fish & Wildlife

Since the property is located within the town, fish & wildlife use is very limited.

Endangered Species, Colonial Bird Nesting Areas and Critical habitat

We believe no endangered species, colonial bird nesting areas and critical habitat are known to occur on the site, however we have requested the Wildlife and Heritage Service to check their records to see if any exist. Note: we have requested reviews for other parcels within the harbor area and the results were that no endangered species, colonial bird nesting areas and critical habitat are known to occur in the area.

Existing Pollution Sources

Existing sources of pollution are limited to air born pollutants deposited on the site and lawn fertilizers, and pesticides.

Environmental Consequences

Land Use

Land use will change from that of a yard to residential use including the associated yards. Considering the area is already within a developed neighborhood and the proposed bio-retention area to be planted, environmental impacts will be insignificant.

100- foot CBCA Buffer

All of the property is located within the 100' buffer; therefore, 1,684 square of buffer will be impacted.

Wetland

No wetlands will be impacted by the development.

Forest

No forest will be impacted by the development.

Fish & Wildlife

Considering that the area occurs within the a developed community, maintained in a yard like condition and bulk headed; no fish & wildlife habitat will be impacted by the proposed development and therefore fish & wildlife will not be significantly impacted by the proposed variance.

Endangered Species, Colonial Bird Nesting Areas and Critical Habitat

No endangered species, colonial bird nesting areas and critical habitat are known to occur on the site. Thus, they will not be adversely impacted by the proposed variance.

Forest Interior Dwelling Birds (FIDS)

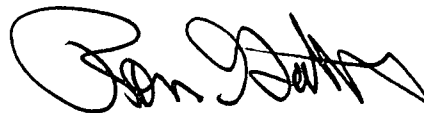
No forest area occurs on the property, thus no FIDS habitat will be disturbed.

Water Quality

The project may slightly increase the amount of storm water runoff into the Harrison Cove. However, since the lawn area will be reduced, the increase will be limited to air born pollutants. Again, considering the benefits of the bio retention area and that the surrounding area is already developed, the cumulative impact upon water quality will be insignificant.

Conclusion

The proposed project will allow development of an existing parcel, and will have no significant detrimental effect on the environment, the water quality, or living resources of the Chesapeake Bay.



Ronald D. Gatton
President, Environmental
Consultants Inc.

76°12'30"

Joins Map 5

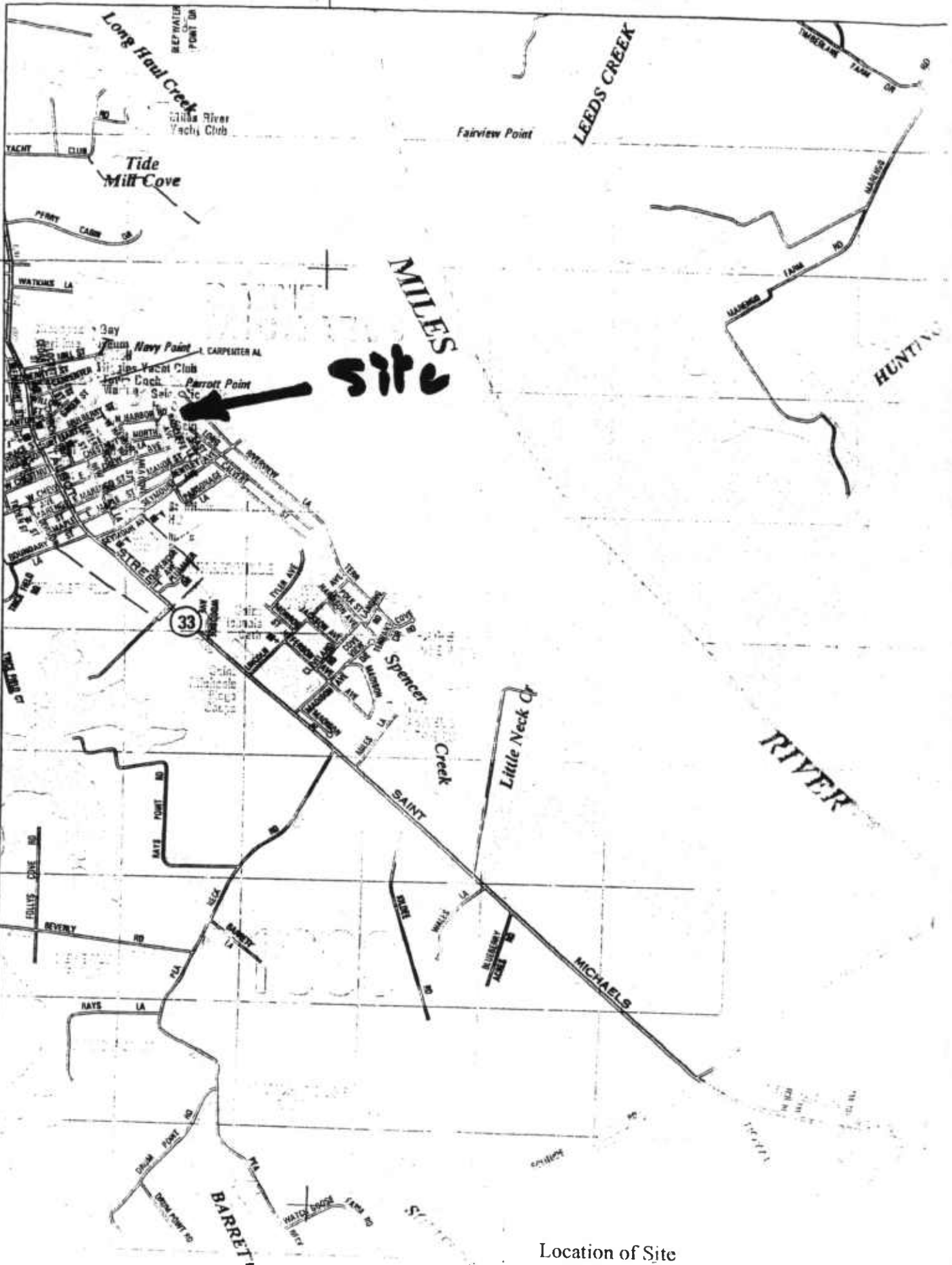
1:030,000 FT

12

38°47'30"

340,000 FT Joins Map 11

38°45'00"



Location of Site

CRITICAL AREA BUFFER MANAGEMENT PLAN

The following form should be completed by the property owner, or responsible party, for any disturbance of natural vegetation or construction within the Critical Area Buffer. Once completed, and approved, this form will constitute your Buffer Management Plan and will provide our office with an official record of your proposed Buffer impacts and the way in which you plan to meet any required offsets (mitigation).

Property Background Information

Property Owner (or Contact): Stephen Velo
Property Owner's address: P.O. Box 272, Bozman, MD 21612
Property Owner's (or Contact's Phone): Contact: Environmental Concern Inc. - Gene Slear: (410) 745-9620
Project Address (if different): S.E corner of N Harbor Road and Radcliffe Ave., St Michaels, MD 21663

Tax Map # 201 Block # _____ Parcel # 1246 Section # _____ Lot# _____

Proposed Buffer Disturbance

New development/redevelopment (e.g., new building, addition to home, replacement of structures)
 Shore erosion control
 Shore access
 Other (Please explain)

Is the property in a designated Buffer Exemption Area (BEA)? Yes _____ No

Are there any special plat notes or restrictions concerning your Buffer (E.G., wetlands, habitat protection areas, conservation easements)? Yes _____ No

If yes, please explain: _____

Please provide a brief explanation of your proposed project in the space below. Include area and/or number of trees cleared as well as the type of equipment that will be used.

Proposed Project

- 1) Construction of single family dwelling will create approximately 1,684 sq. ft. of impervious surface area. A 150 sq ft bioretention facility will be installed in order to mitigate for impervious surface.
- 2) 9 canopy trees, 8 understory trees and 12 shrubs will be planted. See step 2 - Mitigation ratios. All plantings will be native to Maryland.

Justification

Construction of single family dwelling on a deeded building lot.

What are the long-term management plans for this area?

The Owner will maintain the bioretention facility and the Buffer plantings.

Calculation of Mitigation

The following three-step process is used to compute the amount of mitigation needed for impacts to the Buffer. For the purposes of this Buffer Management Plan, mitigation is defined as plantings or similar offsets which will help to negate the effects of the Buffer disturbance. To determine the amount of mitigation for your Buffer disturbance you need to determine the following:

1. Amount of Buffer disturbed for clearing, grading and placement of new structures, etc.;
2. Mitigation ratio for the type of Buffer impact;
3. Mitigation amount calculated by multiplying the area disturbed by the mitigation ratio.

Step 1 - Amount of Buffer Disturbance

There are two ways to calculate the amount of disturbance in the Buffer. Buffer disturbance is based on either the area disturbed or the number of individual trees that will be cut. It is recommended that when an area to be disturbed more closely resembles a natural forest (i.e., canopy cover with multi-layer understory) or when structures or other impervious surfaces are placed within the Buffer or BEA, even if no trees are cleared, you should quantify the disturbance amount in the *area cleared*. On the other hand, if your site more closely resembles a park setting (i.e., scattered trees with little or no understory), it is recommended that you count the *number of trees removed*.

AREA OF BUFFER CLEARED OR DISTURBED: 1,684 SQUARE FEET

-or-

NUMBER OF TREES CLEARED: 1

Step 2 - Mitigation Ratios

Different types of Buffer management activities require different mitigation ratios. Higher ratios are used for activities that have a greater impact upon the Buffer. The purpose of the mitigation is to improve the Buffer functions where possible. The table below provides the mitigation ratio for different types of Buffer management activities.

Type of Buffer Disturbance	Mitigation Ratio
New development/redevelopment (non-BEA) or violations	3:1
New development/redevelopment (BEA)	2:1
Shore erosion control	1:1
Shore access	2:1
Non-native replacement	1:1
Other: new construction on existing lot with bioretention facility.	*2:1

*Please consult with your local government Critical Area Planner if the purpose of your Buffer disturbance is in the "Other" category.

*Mitigation Ratio = 2:1 (per R. Hurley 12/6/05)

Step 3 - Mitigation Amount

Mitigation Amount = (sq ft. or number of trees) x (mitigation ratio)
= (1,684 sq. ft.) x (2) = 3,368 sq. ft. = 9 canopy trees, 8 understory trees, 12 shrubs (See Plates 2 & 4)

Buffer Planting Plan

Planting Location

All mitigation should be located within the Critical Area in the following order of preference:

1. On-site within the Buffer
2. On-site adjacent to existing Buffer
3. On-site within Critical Area
4. Off-site (follow order of preference 1-3 above)
5. Fee-in-lieu of payment

PLANT SPACING AND MITIGATION CREDITS FOR VARIOUS SIZE TREES AND SHRUBS*

Credit Square Feet	Plant Size	Plant Spacing
100 sq. ft.	1 tree (2-inch caliper)	10-foot center
400 sq. ft.	1 tree (minimum:2-inch caliper and either balled and burlapped or container grown) and understory vegetation (minimum: 2 small trees or 3 shrubs)	tree: 20-ft. center understory: 10-ft. center
50 sq. ft.	1 tree (seedlings)	7-ft. center
50 sq. ft.	1 shrub	3 to 7-ft. center

*Although the Critical Area Commission recognizes natural regeneration as a method for mitigation, not all jurisdictions authorize natural regeneration. If your jurisdiction allows natural regeneration as a method for mitigation of Buffer impacts, consult with the appropriate contact to determine the area to be managed for natural growth.

Schematic Drawing

Please attach a schematic drawing to scale identifying areas of impact to the Buffer, indicate on plan the existing trees and shrubs, if possible, and the proposed location for replanting within the Buffer. Show the location of the Critical Area Buffer. Indicate on the drawing the specific types of vegetation which will be removed and the specific types and amount of vegetation which will be used for mitigation.

I certify these statements to be true and accurate and that any trees to be removed are on my property. I hereby grant County/Local Jurisdiction officials permission to enter my property for inspections of this Buffer Management Plan.

Applicant Signature: Stephen Velo Date: 9-23-08
 Stephen Velo

Approval information: FOR OFFICIAL USE ONLY
 This Buffer Management Plan is approved as of _____

1) Residential Water Quality Management Plan

This is a waterfront property. The entire site falls within the Chesapeake Bay Critical Area.

Description of Work::	Erect a single family home
Total Site Area:	0.2 acres (9,486 sq ft)
Total Disturbed Area:	0.05 acres (1,684 sq ft)
Total Forested Area Before Construction:	3 trees
Total Forested Area After Construction:	10 canopy trees, 8 understory trees, 12 shrubs
Existing impervious Area:	0.0 sq ft
Proposed Impervious Surface:	0.04 acres (1,684 sq ft)

Non-Structural BMPs:

Bioretention (see sizing information below)
Tree and Shrub Planting (see buffer below)
Porous Pavement

2) Buffer Mitigation Calculations

Disturbance:

1,684 sq. ft.

Mitigation Ratio:

2:1

Required Mitigation:

3,368 sq. ft.

Per buffer guidelines, 1 tree and 2 understory trees or 3 shrubs are required per 400 sq. ft. of mitigation.

Therefore applicant proposes:

9 canopy trees
8 understory trees
12 shrubs

3) Bioretention Sizing*

Water Quality Volume:

$$WQv = (P \cdot Rv \cdot A) / 12$$

$$WQv = (1 \cdot .212 \cdot .05) / 12$$

P = rainfall depth

Rv = 0.05 + (0.009 * I)

A = area in acres

I = % impervious cover

$$WQv = 0.004 \text{ acres ft (165.3 cu ft)}$$

Temporary Storage:

$$V_{temp} = 0.75 \cdot WQv$$

$$V_{temp} = 124 \text{ cu ft}$$

Bioretention Surface Area:

$$A = (WQv \cdot df) / (K \cdot (hf + df) \cdot tf)$$

A = surface area of bioretention

df = filter bed depth (1 ft)

K = coefficient of permeability for bioretention system (0.5 ft/day)

hf = average height of water above filter media (0.5 ft)

tf = design filter drain time (2 days)

Required: A = 132.2 sq ft

Proposed: A = 150 sq ft

Bioretention Treatment Volume: includes additional storage

V_{treat} = ponding + storage in gravel, soil, mulch

$$V_{treat} = 75 + 60 + 75 + 11.25$$

ponding = 150 sq ft * 0.5 ft depth = 75 cu ft

gravel = 150 sq ft * 1.0 ft depth * porosity 0.4 = 60 cu ft

soil = 150 sq ft * 2 ft depth * porosity 0.25 = 75 cu ft

mulch = 150 sq ft * .3 ft depth * porosity 0.25 = 11.25 cu ft

$$V_{treat} = 221.25 \text{ cu ft}$$

*Source: Maryland Department of the Environment 2000 Maryland Stormwater Design Manual.

PLATE 4

Stormwater Bioretention Facility & Buffer Management Plan Calculations



Environmental Concern Inc.
P.O. Box P
St. Michaels, MD 21663

Velo Property
St. Michaels, MD

Scale: n/a
Date: 08/11/2008
rev. 09/19/2008

North Harbor Road



existing wood bulkhead

30 ft

runoff

Harrison Cove

25 ft

existing pier


existing trees

Radcliffe Avenue

TALBOT COUNTY

15 ft

PLATE 1
Stormwater Bioretention Facility
& Buffer Management Plan
Existing Conditions

 Environmental Concern Inc.
P.O. Box P
St. Michaels, MD 21663

Velo Property
St. Michaels, MD

Scale: 1" = 20'
Date: 08/11/2008
rev. 09/19/2008



Harrison Cove

bioretention facility
150 sq. ft.
(see planting plan)

North Harbor Road

Radcliffe Avenue

existing pier

existing wood
bulkhead

Town of St Michaels
TALBOT COUNTY

Impervious surface
(1,684 sq. ft.)

Legend

- Property Line
- Building Restriction Line (BRL)
- ➔ Runoff
- Bulkhead
- ▭ Building
- ▨ Impervious Surface

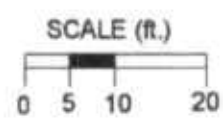


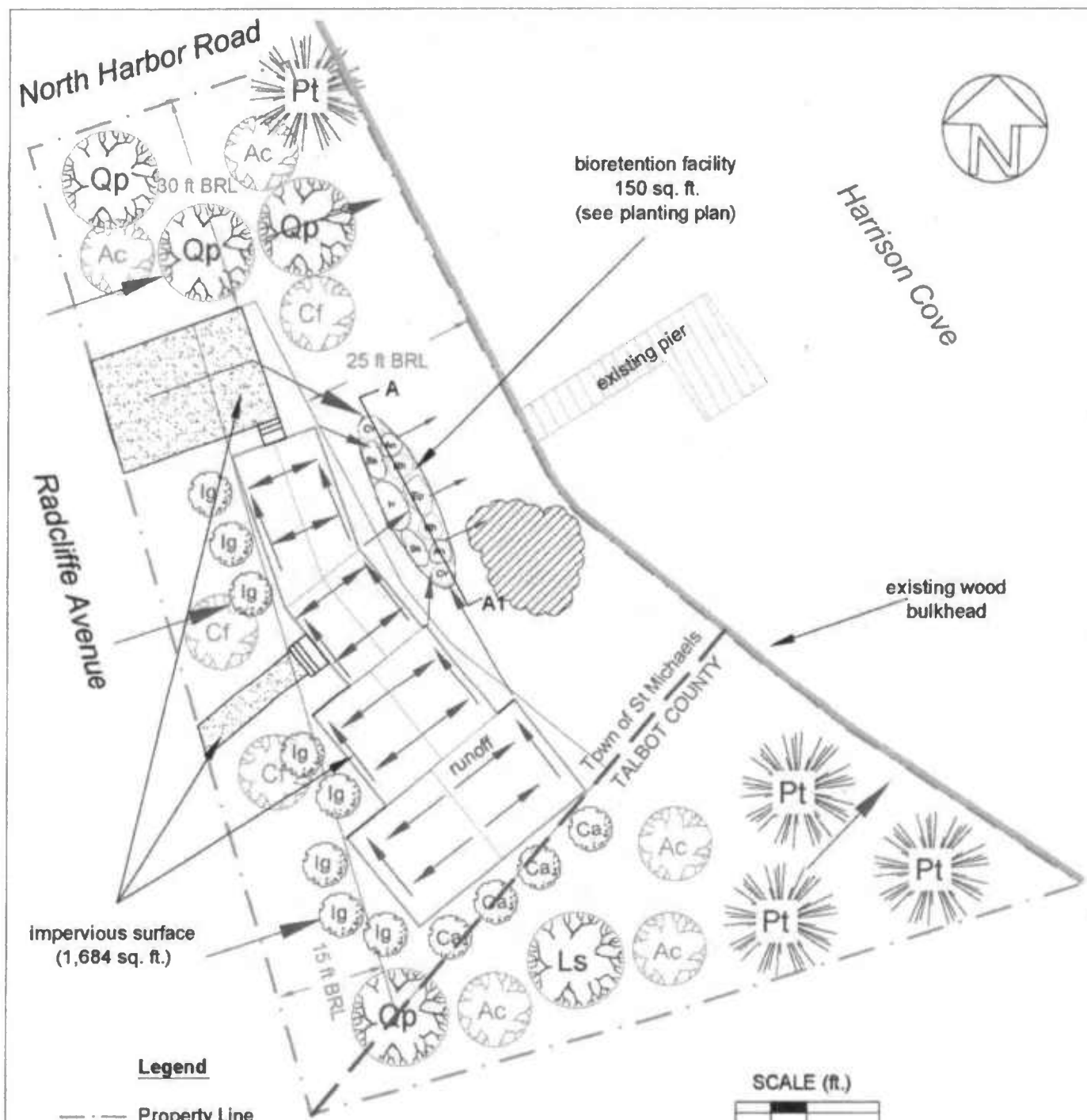
PLATE 2
**Stormwater Bioretention Facility
 & Buffer Management Plan**



Environmental Concern Inc.
 P.O. Box P
 St. Michaels, MD 21663

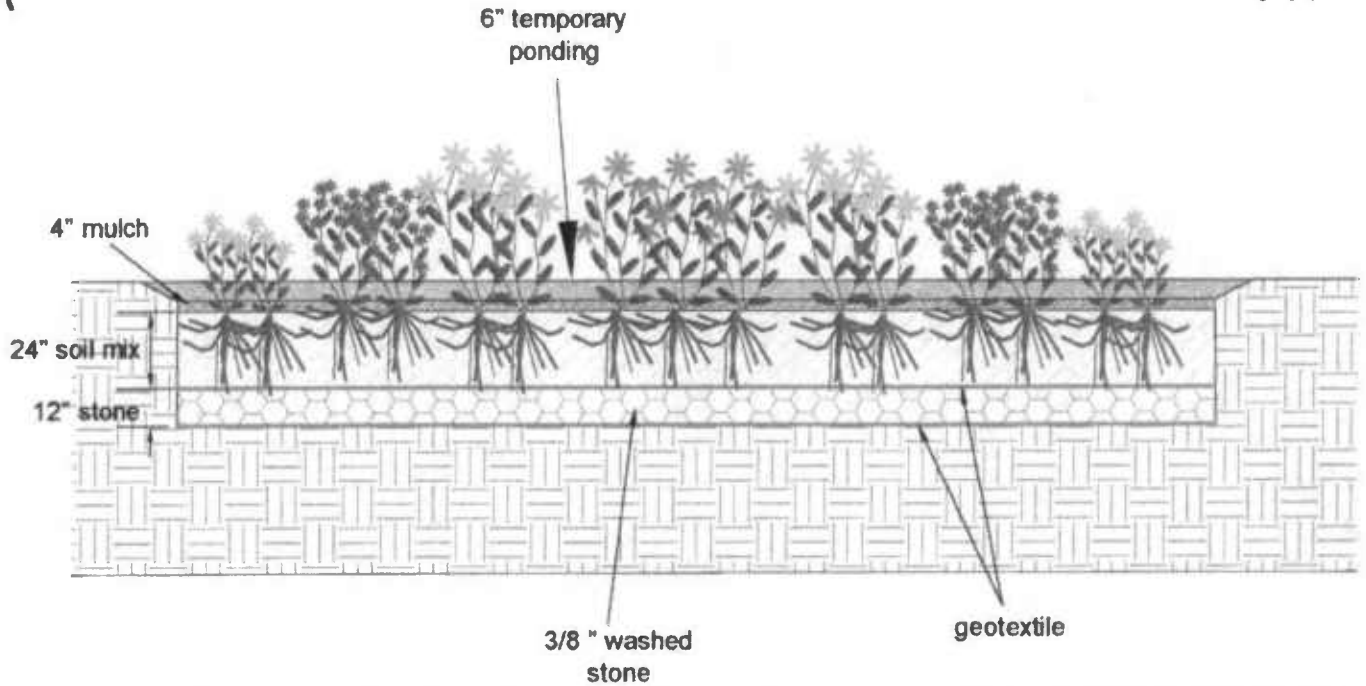
Velo Property
 St. Michaels, MD

Scale: 1" = 20'
 Date: 08/11/2008
 rev. 09/19/2008



A

A1



Planting Plan

ID	Botanical Name	Common Name	Quantity	Size
Canopy Trees				
Ls	<i>Liquidambar styraciflua</i>	Sweet Gum	1	2" caliper
Pt	<i>Pinus taeda</i>	Loblolly Pine	4	2" caliper
Qp	<i>Quercus phellos</i>	Willow Oak	4	2" caliper
		Sub Total	9	
Understory Trees				
Ac	<i>Amelanchier canadensis</i>	Shadbush	4	1" caliper
Cf	<i>Cornus florida</i>	Flowering Dogwood	4	1" caliper
		Sub Total	8	
Shrubs				
Ca	<i>Clethra alnifolia</i>	Sweet Pepperbush	4	3 gallon
Ig	<i>Ilex glabra</i>	Inkberry	8	3 gallon
		Sub Total	12	
Herbaceous Perennials				
An	<i>Aster novi-belgii</i>	New York Aster	6	1 quart
Ai	<i>Coreopsis verticillata</i>	Moonbeam Coreopsis	6	1 quart
Ep	<i>Echinacea purpurea</i>	Purple Coneflower	5	1 quart
Iv	<i>Iris versicolor</i>	Blue Flag Iris	5	1 quart
Rh	<i>Rudbeckia hirta</i>	Black-eyed Susan	6	1 quart
Ss	<i>Schizachyrium scoparium</i>	Little Bluestem	6	1 quart
		Sub Total	34	

All proposed plantings are native to Maryland.

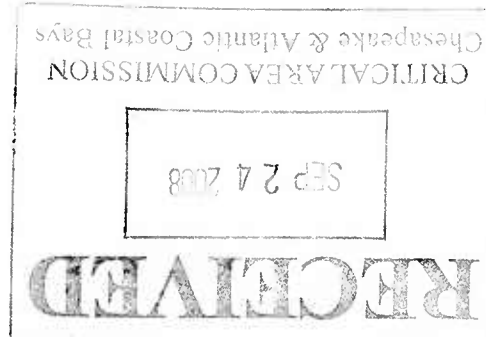
PLATE 3
Stormwater Bioretention Facility
Cross Sections (typical)



Environmental Concern Inc.
P.O. Box P
St. Michaels, MD 21663

Velo Property
 St. Michaels, MD

Scale: n/a
 Date: 08/11/2008
 rev. 09/19/2008



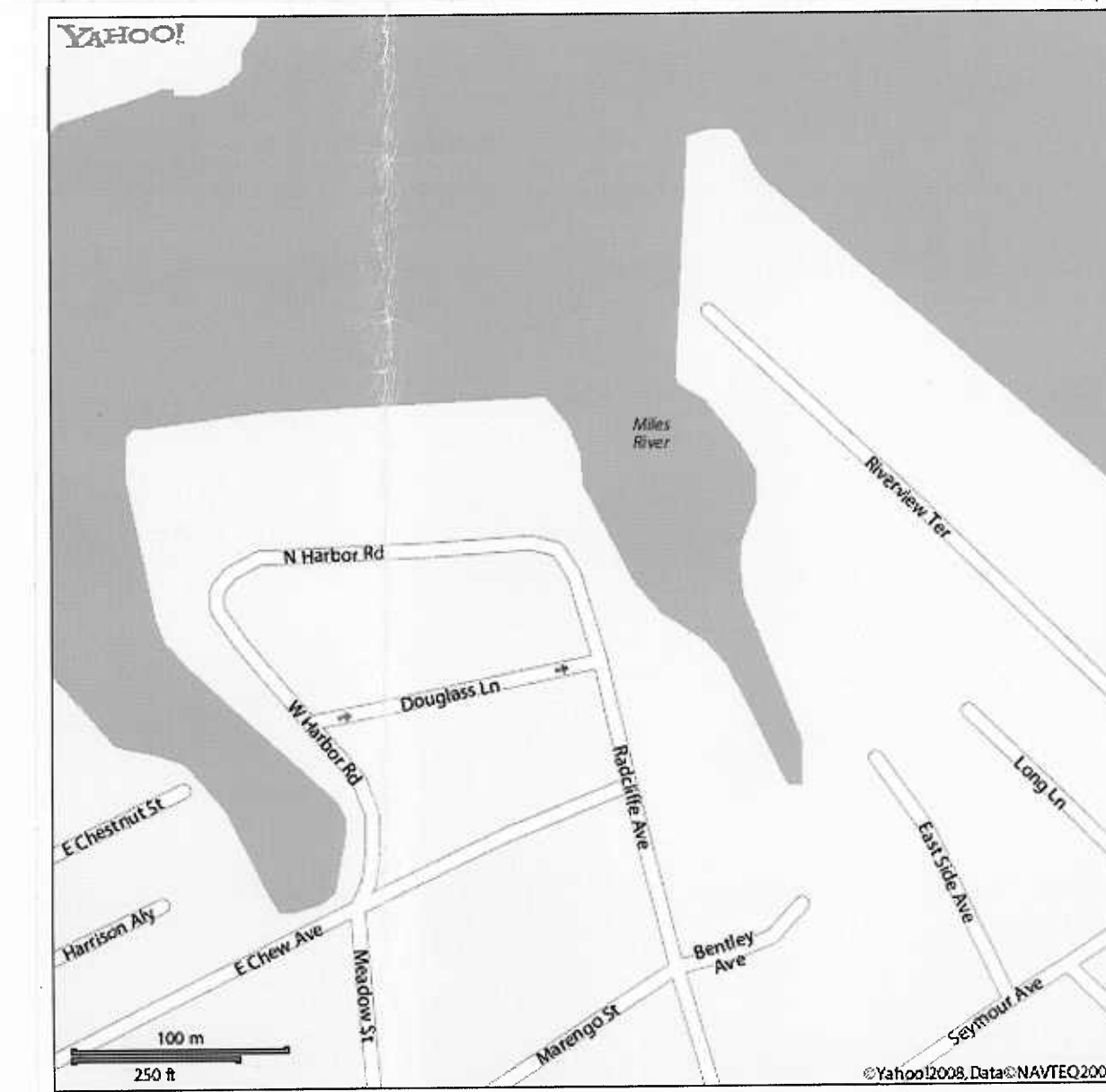
SITE PLAN

SCALE: 1" = 10'-0"

Stephen & Eva Velo
 St. Michaels, MD 21663
 Talbot County

Map 201 Parcel 1246 District 2 Grid 4

VICINITY MAP



LEGEND

- NORTH LOCATOR ARROW
- PROPERTY LINE
- COUNTY / STATE HIGHWAY
- SETBACK BRL LINES
- DIMENSIONS
- LINE SURVEY INFORMATION
- PROPOSED STRUCTURE
- DRIVEWAY & WALKWAY
- PROPERTY CORNER MARKER

NOTES:

ALL DIMENSIONS ARE AS SHOWN UNLESS OTHERWISE NOTED. THE DIMENSIONS SHOWN ON THIS PLAN ARE THE RESULT OF A SURVEY CONDUCTED BY THE DESIGNER. THE DESIGNER HAS NOT CONDUCTED A VISUAL INSPECTION OF THE SITE AND HAS NOT BEEN ADVISED OF ANY ADJACENT EXISTING STRUCTURES OR UTILITIES. THE DESIGNER IS NOT RESPONSIBLE FOR ANY ERRORS OR OMISSIONS IN THIS PLAN. THE CLIENT IS RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES. THE DESIGNER'S LIABILITY IS LIMITED TO THE DESIGN SERVICES PROVIDED HEREIN. THE DESIGNER DOES NOT WARRANT THE ACCURACY OF THE INFORMATION PROVIDED HEREIN. THE DESIGNER'S LIABILITY IS LIMITED TO THE DESIGN SERVICES PROVIDED HEREIN. THE DESIGNER DOES NOT WARRANT THE ACCURACY OF THE INFORMATION PROVIDED HEREIN.

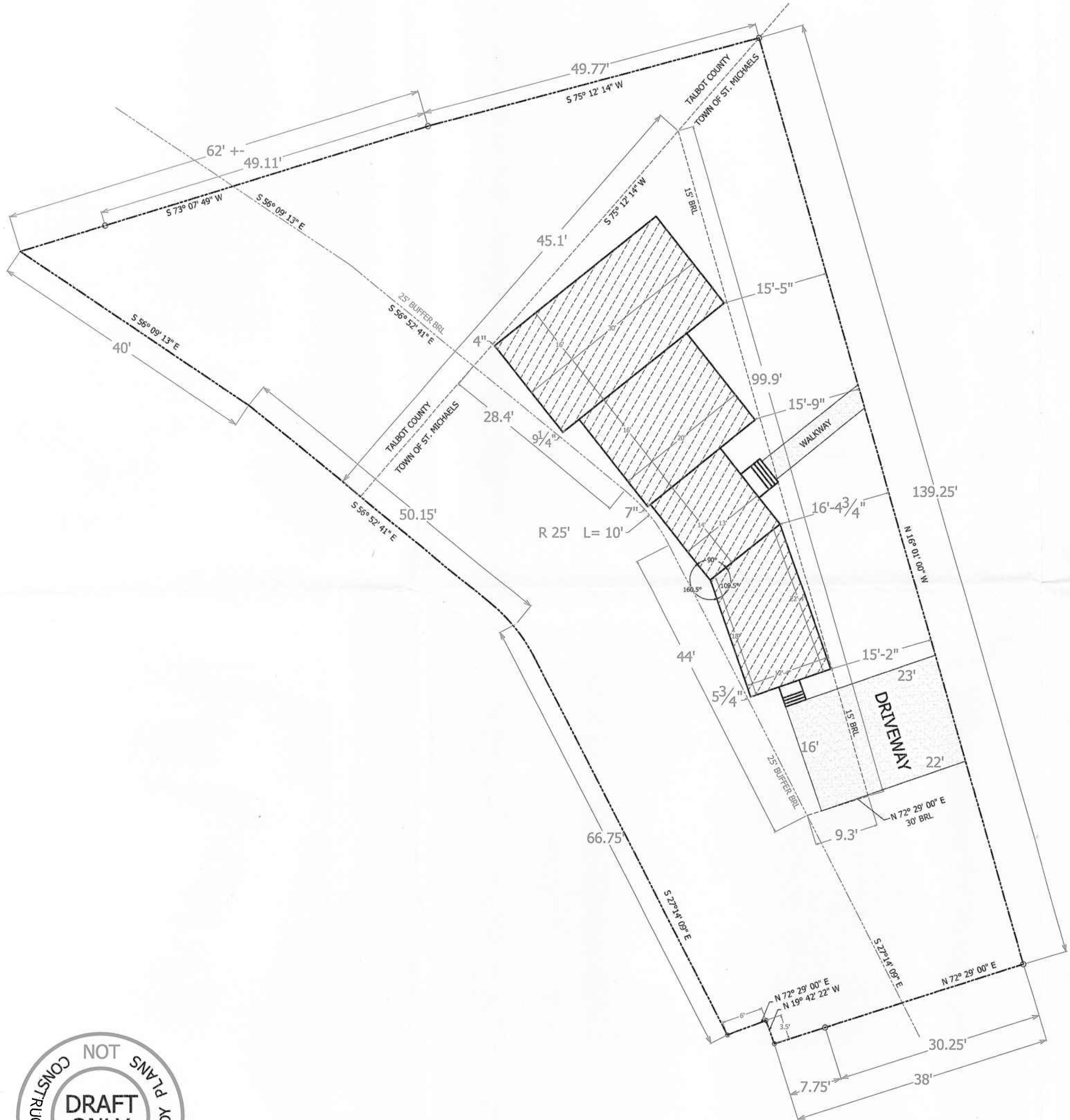
Michael Franklin Clark
 Professional Member of the
 American Institute
 of Building Design

A I B I D
 www.aibid.org

PLAN AHEAD
 DRAFTING
 AND DESIGN LLC

RESIDENTIAL DESIGN SPECIALIST
 8 CHOPTANK AVENUE
 EASTON, MD 21601-4032
 PHONE: 410-822-3447 FAX 410-822-3927
 E-MAIL: planaheaddrafting@msr.com
 ON THE WEB @ : www.planaheaddrafting.com

SHEET NUMBER P-1	
FIRST & SECOND FLOOR PLAN	VELO PROJECT
OWNER & PROPERTY ADDRESS Stephen & Eva Velo St. Michaels, MD 21663 Map 201 Parcel 1246 District 2 Grid 4 Talbot County	ST. MICHAELS PRELIMINARY PLANS COMPLETION DATE: AUGUST 8, 2008 SCALE: 1" = 10'-0"
CHANGE LEGEND <input type="checkbox"/> 7/19/2008 <input type="checkbox"/> 8/8/2008	



NOT RESPONSIBLE FOR:
 FRONT FOOTPRINTABILITY
 RIDGING ACCURACY
 BUILDING CODE ACCURACY
 OR STRUCTURAL INTEGRITY
 AT THIS POINT IN THE PLANNING PROCESS