WC 416-05 VAR Withers, Gary

MSA-5-1829-5359 10F2

Martin O'Malley

Governor

Anthony G. Brown Lt. Governor



Margaret G. McHale

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/

February 19, 2009

Ms. Janet Davis, Critical Area Planner Worcester County Department of Review and Permitting One West Market St., Room 1201 Snow Hill, MD 21863

RE: Withers Variance, TM 26, Parcel 444, Lot 16A

Dear Ms. Davis!

Thank you for providing information on the above referenced variance request. The applicant is requesting a variance to expand an existing dwelling within the Critical Area 100-foot Buffer. The property is designated IDA and is not Buffer Exempt. The property is 26,764 square feet in size.

Based on the information provided, we are unable to support the variance as requested. Specifically, the applicant is proposing to place an additional 1050 square feet of lot coverage within the 100-foot Buffer, on a property for which a previous variance was granted in 2005. During the Board of Zoning Appeals' consideration and subsequent granting of the 2005 variance request, they found that the size, location, and layout of the new dwelling was satisfactory in providing relief from any existing unwarranted hardship. Consequently, it is clear that reasonable and significant use of the entire lot or parcel currently exists and the applicant cannot meet the standard of unwarranted hardship in relation to the current request. Where each and every one of the County's variance standards has not been met, the variance must be denied. The applicant should explore whether any alternative avenues exist to obtain a variance to building restriction or setback lines or to reconfigure the existing dwelling footprint such that a variance to the Buffer is not necessary.

In addition to the comments above, we provide the following for the Board's consideration. Based on our site visit on February 2, 2009 it did not appear that all the trees and shrubs illustrated on the site plan exist on site. Also, I don't believe that Arborvitaes is a Worcester County approved mitigation plant. Finally, there is no evidence of 10% pollutant reduction best management practices or mitigation existing on site as described in this application. Revisiting the previous variance conditions and building permit requirements should be accomplished by the County and specific details regarding the issues described above should be clarified.

Thank you for the opportunity to provide comments. Please include this letter in your file and submit it as part of the record for this variance. Also, please notify the Commission in writing of the decision made in this case. If you have any questions, please contact me at (410) 260-3468.

Ms. Janet Davis February 20, 2009 Page 2

Sincerely,

Roby Hurley Natural Resources Planner

WC416-05



DEPARTMENT OF DEVELOPMENT REVIEW AND PERMITTING

Morcester County

BOARD OF APPEALS
PLANNING COMMISSION
AGRICULTURAL PRESERVATION

GOVERNMENT CENTER
ONE WEST MARKET STREET, ROOM 1201
SNOW HILL, MARYLAND 21863
TEL: 410-632-1200 / FAX: 410-632-3008

ELECTRICAL BOARD SHORELINE COMMISSION LICENSE COMMISSIONERS

MEMORANDUM

TO:

Roby Hurley, Natural Resources Planner

Critical Area Commission for the Chesapeake & Atlantic Coastal Bays

FROM:

Janet Davis, Critical Area Specialist

DATE:

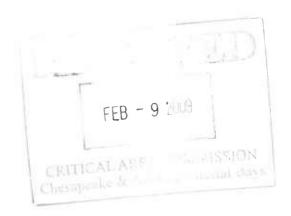
February 5, 2009

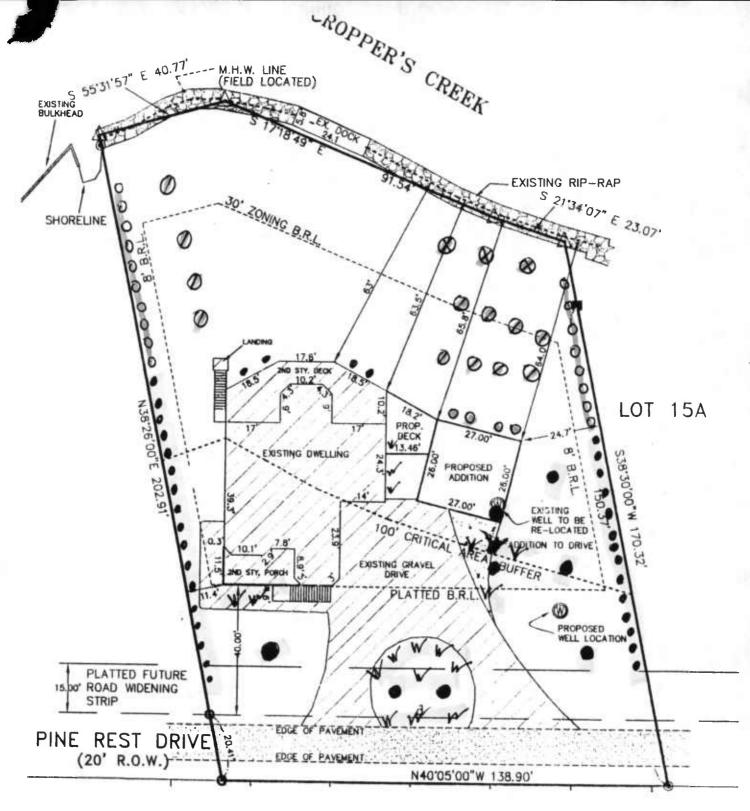
RE:

Map 26 Parcel 444, Lot 16A, 12312 Pine Rest Drive, Gary Withers

Attached is a revised Landscape Plan for above property for a recently submitted critical area variance request. Please replace the initial Plan sent with the notification application.

If you have any questions or need any additional documentation, do not hesitate to contact me at Ext. 1144; or email at *jdavis@co.worcester.md.us*.





Landscape Exhibit – 12312 Pine Rest Drive (Withers)

Existing vegetation meeting mitigation requirement for critical area variance approved August 2005 (Based on 1687 sq. ft. lot coverage w/i buffer @ 3 to 1 ratio – 5,061 points) Planting Agreement and Bond in place.

• Large Trees (Cherry) 8 @ 200 pts. 1600 pts. 7

• Evergreens (Arborvitaes) 34 @ 75 pts. 2550 pts.

✓ Large Grasses
 19 @ 50 pts. 950 pts.

5100 total pts. - verified by Kevin Layfield, C.A. Inspector 12/4/07

Proposed vegetation

New proposed lot coverage w /i buffer - 1114 sq. ft. @ 3 to 1 ratio - 3342 points (includes 64 sq. ft. existing stairs w/i buffer not included in 08/2005 calculations)

S Large Trees (Red Maples*)

 — Large Trees (Red Maples*)
 — Large Trees (Red Maples*)

3 @ 200 pts 600 pts.

Small Trees (Dogwoods*)

12 @ 100 pts. 1200 pts.

O Evergreens (Junipers)

22 @ 75 pts. <u>1650 pts.</u>

3450 total pts.



^{*}species may be modified, but not location or point value.

Lord 868 21999



DEPARTMENT OF
DEVELOPMENT REVIEW AND PERMITTING

Morcester County

GOVERNMENT CENTER

ONE WEST MARKET STREET, ROOM 1201

SNOW HILL, MARYLAND 21863

TEL: 410-632-1200 / FAX: 410-632-3008

ELECTRICAL BOARD SHORELINE COMMISSION LICENSE COMMISSIONERS

NN species in B No 10% be moved

MEMORANDUM

TO:

BOARD OF APPEALS

PLANNING COMMISSION

AGRICULTURAL PRESERVATION

Roby Hurley, Natural Resources Planner

Critical Area Commission for the Chesapeake & Atlantic Coastal Bays

FROM:

Janet Davis, Critical Area Specialist

DATE:

February 3, 2009

RE:

Map 26 Parcel 444, Lot 16A, 12312 Pine Rest Drive, Gary Withers

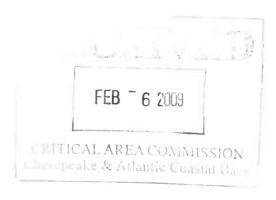
Attached is the official Project Notification Application with attachments for above referenced variance request. As you know, the placement of the original dwelling was the subject of a previous critical area variance approved on August 11, 2005. Another copy of State's comments for the original case and the legal Opinion are attached.

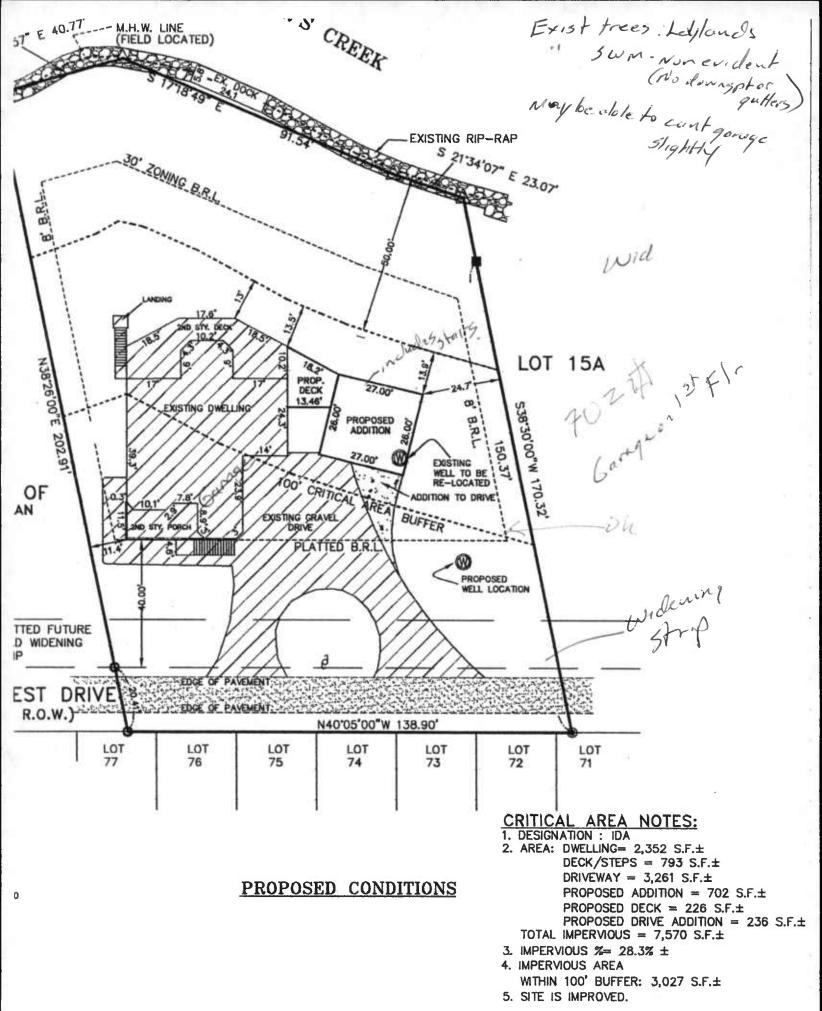
While it is not the owner's preference, an option <u>may</u> exist for the owners to enclose a portion of the first floor area of the existing dwelling, instead of increasing the footprint thereof. However, this may necessitate further review of the dwelling's elevation certificate and building code compliance issues.

A separate landscape exhibit will be prepared illustrating the existing vegetation on site which meets the mitigation requirement from the first variance approval, as well as proposed location and species of plantings should this additional relief be granted.

Based on your observations during the on-site meeting yesterday, and a thorough review of the enclosed documents, we look forward to your comments prior to this request being scheduled before our Board.

If you have any questions or need any additional documentation, do not hesitate to contact me at Ext. 1144; or email at *jdavis@co.worcester.md.us*.





Frank G. Lvnch. Jr.

DISK: BENCD#2

LAW OFFICE

COWDREY, THOMPSON & KARSTEN

A PROFESSIONAL CORPORATION

9923 STEPHEN DECATUR HICHWAY #D-2

PO. BOX 535

OCEAN CITY, MARYLAND 21843

(410) 213-2681 FAX (410) 213-2685 **EASTON OFFICE**

I30 N. WASHINCTON ST. PO. BOX 1747 EASTON, MD 21601 (410) 822-6800 FAX (410) 820-6586

· ADMITTED IN MD & VA

ROY B. COWDREY, JR.

DAVID R. THOMPSON*

ROBERT J. MERRIKEN*

BRYNJA MCDIVITT BOOTH ELIZABETH ANN EVINS

KURT D. KARSTEN*

HUCH CROPPER, IV

CURTIS H. BOOTH

DERRICK H. DYE

* ADMITTED IN MD & DC

January 14, 2009

Mr. Chris McCabe, Natural Resource Administrator Worcester County Department of Development, Review & Permitting Worcester County Government Center One West Market Street Snow Hill, Maryland 21863

RE: Gary L. and Lynn M. Withers
Tax Map 26, Parcel 444, Lot 16A

Dear Mr. McCabe:

Gary L. Withers and Lynn M. Withers, his wife, are the owners of the property known as Worcester County Tax 26, Parcel 444, Lot 16A, consisting of 26,764 square feet, which is approximately .61 acres. The property is improved with a single family dwelling, and accessory uses, a portion of which were authorized by a variance to the Atlantic Coastal Bays Critical Area Law in Board of Zoning Appeals Case Number 96114. I actually represented the prior owners, Jay Allen Warren and Janel T. Warren, his wife, and Mr. and Mrs. Withers as contract purchasers, back on August 11, 2005.

Jason Yonker, M.D. and Sarah Yonker, M.D. are physicians who have recently relocated to Atlantic General Hospital in Berlin. Drs. Yonker are desirous of purchasing the property, but require an addition to accommodate their family.

This application proposes an addition to the existing dwelling which is approximately 702 square feet, connected to the existing dwelling by a proposed deck which is approximately 226 square feet. There will be a small addition to the existing gravel drive.

The land use designation within the Critical Areas is Intensely Developed Area and the property has a one hundred foot buffer.

Mr. Chris McCabe January 14, 2009 Page Two

This property was originally subdivided as part of the Charles Lewis Farm Subdivision. Lot 16A is part of the Croppers Creek Minor Subdivision, which was a recompilation of the Charles Lewis Farm Subdivision, and was recorded on March 4, prior to the effect of the Atlantic Coastal Bays Critical Area Law.

The applicants are requesting a variance to $\S NR3-104(c)(1)-(3)$ of the County Code in association with the construction of the proposed addition, proposed deck, and gravel driveway.

It is asserted that the applicants' proposal will meet all other Critical Area requirements in every other respect.

1. Special conditions or circumstances exist that are peculiar to the applicants' land or structure and a literal enforcement of provisions and requirements of the County's Atlantic Coastal Bays Critical Area Program would result in unwarranted hardship.

The one hundred foot Critical Area Buffer consumes more than fifty percent of the land area of this lot. The one hundred foot Critical Area Buffer consumes almost the entire building envelope, leaving a triangular shaped building envelope. This lot is unique by virtue of the small building envelope.

This lot is also unique by virtue of the fact that Pine Rest Drive, a twenty foot right of way, appears to be located wholly within the boundaries of this lot. There is also a fifteen foot platted future road widening strip. It would be difficult to move the house and the proposed addition closer to the road, by virtue of this widening strip, which is a unique situation.

The applicants have agreed to build the small addition to the driveway out of partially pervious material. The applicants have agreed to construct the deck to Critical Area standards for pervious decks.

The proposed addition will be no further channelward than the existing dwelling.

2. A literal interpretation of the provision of the County's Atlantic Coastal Bays Critical Area Program and related laws will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Atlantic Coastal Bays Critical Area.

Mr. Chris McCabe January 14, 2009 Page Three

Numerous homes in this area were built prior to the effect of the Critical Area Law. Many are very old, and are not subject to the one hundred foot buffer. A literal interpretation of the Code would provide a narrow triangular building envelope, which is virtually unbuildable without a variance, and would deprive the applicants of rights commonly enjoyed by other properties in the neighborhood.

3. The granting of a variance will not confer upon an applicant any special privilege that would be denied by the County's Atlantic Coastal Bays Critical Area Program to other lands or structures within the Atlantic Coastal Bays Critical Area.

This property is zoned R-2, Suburban Residential District. Single family homes are permitted uses. The proposed addition would be in keeping with the size of homes in typical waterfront communities. Indeed, the addition is necessary to accommodate Drs. Yonkers' family needs.

4. The variance request is not based upon conditions or circumstances which are the result of actions by the applicant nor does the request arise from any condition relating to land or building use, either permitted or non-conforming on any neighboring property.

This is not an after the fact the variance. The Critical Area Law was imposed nine years after recordation of the resubdivision, and over sixty years after the subdivision of the Charles Lewis Farm Plat. The Critical Area Law severely constrains the development potential of this property. The proposed use is consistent with zoning, which will not change. The project should meet all other requirements of the Critical Area Law.

5. The granting of a variance shall not adversely affect water quality or adversely impact fish, wildlife or plant habitat within the Atlantic Coastal Bays Critical Area and the granting of the variance will be in harmony with the general spirit and intent of the County's Atlantic Coastal Bays Critical Area Program.

A Planting Agreement should be required for the disturbance within the buffer should the BZA grant the variance. Plantings will be required at not less than three times the square footage of the area of the disturbance allowed by the variance or as recommended by the Department. In this case, the buffer will be beefed up from its current condition.

Mr. Chris McCabe January 14, 2009 Page Four

Start Start

This is community of historical development. Some of the areas are quite dense with residential development. It is surprising that this area was not placed in some type of buffer management area during the original enactment of the Critical Area Law. Many, many structures extend well into the one hundred foot buffer. It is doubtful that there is any wildlife habitat whatsoever that could be affected in any way by this variance request. With regard to plant habitat, this is already part of the yard of the existing single family residence.

6. The Board of Zoning Appeals shall not make a decision relative to a request for such a variance without reviewing the comments of the Department and finding that the applicant has satisfied each of the provisions and standards contained herein.

With regard to the original variance in BZA Case Number 96114 the Staff supported the variance. Indeed, the original Staff report stated: "Staff acknowledges that a variance would be realistically needed for this lot..." Hopefully, the Staff will now recognize the addition is necessary for the reasonable use and enjoyment of this property, taking into account the development of the surrounding community, and the Staff will see fit to again recommend the requested variance.

Respectfully submitted,

Hugh Cropper, IV Attorney for the Applicants

HC/tgb

IN THE MATTER OF GARY WITHERS AND LYNN WITHERS

BEFORE THE BOARD OF ZONING

APPEALS FOR WORCESTER COUNTY,

MARYLAND

Case No. 96114

OPINION

A hearing was held before the Board of Zoning Appeals for Worcester County, Maryland on Thursday, August 11, 2005, upon the application of Gary Withers and Lynn Withers, on the land of Jay Allen Warren and Janel T. Warren, requesting a variance to reduce the Ordinance prescribed buffer within the Atlantic Coastal Bays Critical Area from 100 feet to 52 feet (an encroachment of 48 feet)(structure setback 60.5', an encroachment of 39.5') associated with the proposed construction of a single family dwelling, in a R-2 Suburban Residential District, pursuant to Sections ZS 1-205(b)(2), NR 3-104(c)(1)-(3), NR 3-111 and ZS 1-116(c)(4). The property is located on the north side of Pine Rest Drive, approximately 264 feet north of Waterview Avenue, Tax Map 26, Parcel 444, Lot 16A, in the Cropper's Creek Minor Subdivision, in the Tenth Tax District of Worcester County, Maryland.

Kelly Henry, Zoning Administrator, presented the application to the Board.

Gary Withers, the applicant herein, testified before the Board along with his brother, Dale Withers, who is the adjacent property owner to the east and north and Jay Warren, the current owner of the property. Additionally, Keith Lackie, the Natural Resources Administrator for the Department testified in favor of this application.

The testimony revealed that if the 100 foot setback were enforced, this property would be unbuildable. The testimony also revealed that the applicants had submitted three separate proposals in an effort to build a suitable dwelling in compliance with the Coastal Bays Ordinance. The applicants proposal before the Board was deemed acceptable by the Department as well as by the Maryland Critical Area Commission.

Jay Charland, the Assateague Coastkeeper, testified in opposition to the application. Mr. Charland recognized that the applicant has taken great effort in submitting his current proposal. Mr. Charland, however, testified that in his belief, the applicant could realign portions of the dwelling to

further insulate itself from the protected area.

After duly considering the application, and the testimony and other evidence offered and presented in connection therewith, the Board adopted as its finding of fact and conclusion of law, the Staff Report dated August 2, 2005 submitted by Stacey Weisner, Planner II, and attachments 1 through 4 as if fully set forth herein. Accordingly, upon a Motion made by Mr. Parks, which was seconded by Ms. Gismondi, the Board unanimously passed the following resolution:

	BE IT RESOLVED, that the request	ted variance be GRANTED upon the following condition:
1.		be the only enclosed area on the first floor.
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		The god Bt
0	18/05	1000
Date	792	The Clause
(7).713.61		Jerre Clauss Chairperson
	9/1/05	But V
Date		Beth Gismondi
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Date		Joseph Green
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Date		Richard Outten

Robert L. Ehrlich, Jr.

Michael S. Steels



Martin G. Macklon

Ren Screy
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.dnf.state.md.us/criticalarca/

July 25, 2005

Ms. Stacoy Weisner
Wordester County Development Review & Permitting
One West Market St., Room 1201
Snow Hill, MD 21863

Rtl: Variance Case #96114, Withers, TM 26, Parcel 444, Lot 16A Comments on Revised Plans dated 7/21/2005

Dear Ms. Weisner:

Thank you for providing information on the above referenced variance request. The applicant is requesting a variance to permit a dwelling within the Critical Area 100-foot Buffer. The property is designated IDA and is not Buffer Exempt. The property is 26,764 square feet in size and is currently vacant.

Provided this lot is properly grandfathered, this office does not oppose the siting of a dwelling on it. However, impacts should be minimized and the variance request should be the minimum to provide relief. It appears that the applicant has attempted to utilize the area outside of the Buffer, though there are still significant impacts. If the deck were re-shaped to be located primarily on the northern side of the bumpout section of the house, the minimum distance to the water could be increased. (Please note that the site plan currently does not show any steps from the deck to ground level.) Regardless, the deck should be constructed to be pervious. We recommend that any disturbance within the Buffer be mitigated at a 3:1

Thank you for the opportunity to comment on this variance. Please include this letter in your file and submit it as part of the record for this case. Also, please notify the Commission in writing of the Board's decision.

Sincerely,

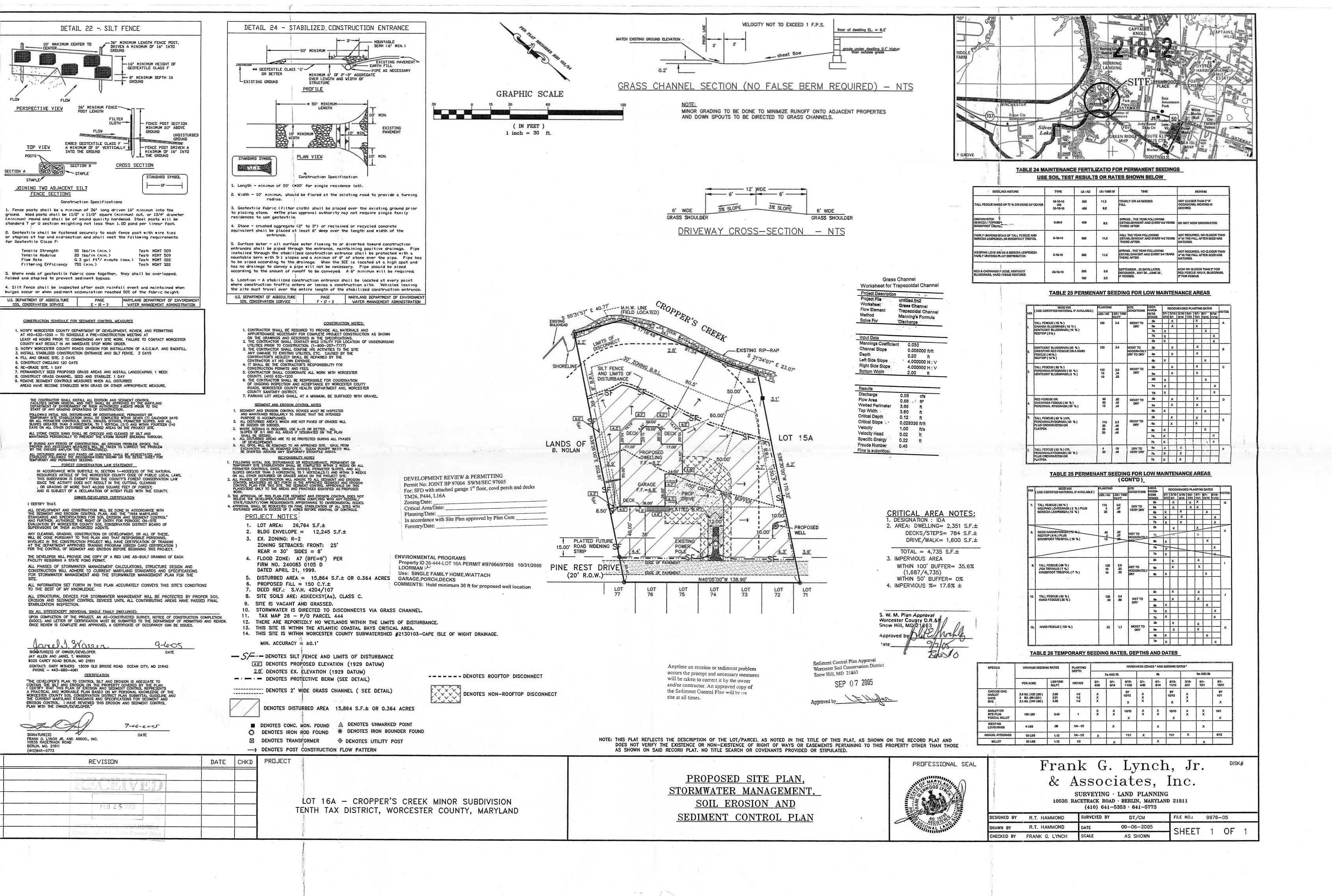
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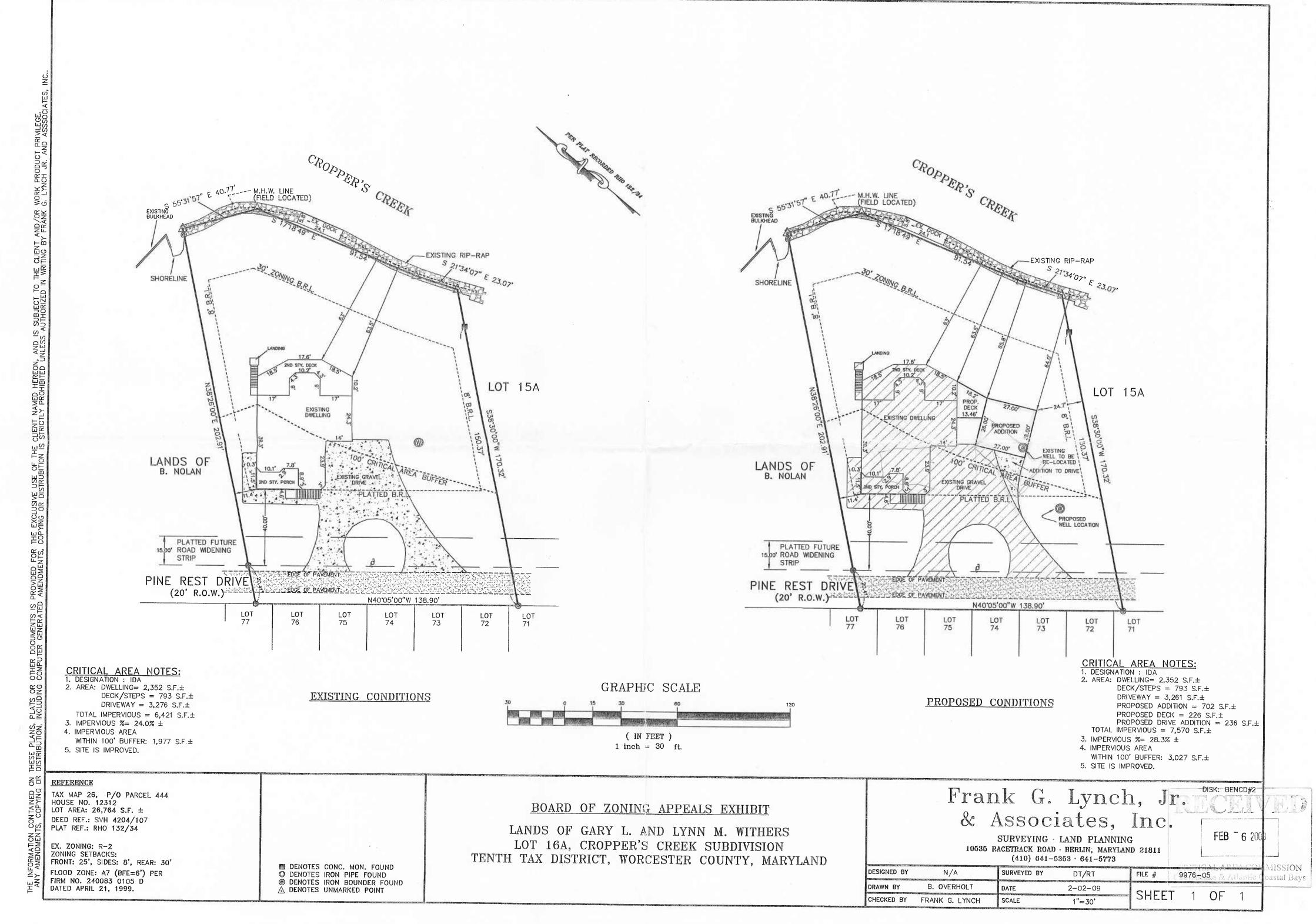
Natural Resources Planner

ee: WC416-05

TTY for the Deaf
Annapolis: (410) 974-2609 D.C. Mem. (201) 504 (440)

Attachment 4





- WC 416-05 Withers, Gary VAR ₩ 96114

MSA_S_1829-5359 2.C2

fc | 1/2 | 05

Robert L. Ehrlich, Jr.

Michael S. Steele
Lt. Governor



Martin G. Madden Chairman

Ren Serey
Executive Director

STATE OF MARYLAND CRITICAL AREA COMMISSION CHESAPEAKE AND ATLANTIC COASTAL BAYS

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

July 25, 2005

Ms. Stacey Weisner Worcester County Development Review & Permitting One West Market St., Room 1201 Snow Hill, MD 21863

RE: Variance Case #96114, Withers, TM 26, Parcel 444, Lot 16A

Comments on Revised Plans dated 7/21/2005

Dear Ms. Weisner:

Thank you for providing information on the above referenced variance request. The applicant is requesting a variance to permit a dwelling within the Critical Area 100-foot Buffer. The property is designated IDA and is not Buffer Exempt. The property is 26,764 square feet in size and is currently vacant.

Provided this lot is properly grandfathered, this office does not oppose the siting of a dwelling on it. However, impacts should be minimized and the variance request should be the minimum to provide relief. It appears that the applicant has attempted to utilize the area outside of the Buffer, though there are still significant impacts. If the deck were re-shaped to be located primarily on the northern side of the bumpout section of the house, the minimum distance to the water could be increased. (Please note that the site plan currently does not show any steps from the deck to ground level.) Regardless, the deck should be constructed to be pervious. We recommend that any disturbance within the Buffer be mitigated at a 3:1 ratio.

Thank you for the opportunity to comment on this variance. Please include this letter in your file and submit it as part of the record for this case. Also, please notify the Commission in writing of the Board's decision.

Sincerely,

LeeAnne Chandler

Natural Resources Planner

une Chandles_

cc: WC416-05

Robert L. Ehrlich, Jr. Governor

Michael S. Steele



Martin G. Madden Chairman

Ren Serey
Executive Director

STATE OF MARYLAND CRITICAL AREA COMMISSION CHESAPEAKE AND ATLANTIC COASTAL BAYS

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

June 16, 2005

Ms. Stacey Weisner Worcester County Development Review & Permitting One West Market St., Room 1201 Snow Hill, MD 21863

RE: Variance Case #96114, Withers, TM 26, Parcel 444, Lot 16A

Dear Ms. Weisner:

Thank you for providing information on the above referenced variance request. The applicant is requesting a variance to permit a dwelling within the Critical Area 100-foot Buffer. The property is designated IDA and is not Buffer Exempt. The property is 26,764 square feet in size and is current vacant.

Provided this lot is properly grandfathered, this office does not oppose the siting of a dwelling on it. However, impacts should be minimized and the variance request should be the minimum to provide relief. Variances should not be granted as a matter of preference or convenience. We recommend that the house be designed and sited to utilize the area of the lot outside of the 100-foot Buffer as much as possible. The house could be shifted slightly and moved towards the road. Also, the garage could be front entry or, at a minimum, the driveway could be redesigned to eliminate the large curve into the Buffer. The deck should be constructed to be pervious. Also, it seems that the limits of disturbance, especially along the water could be brought closer to the proposed structure. Any disturbance within the Buffer must be mitigated at a 3:1 ratio.

Thank you for the opportunity to comment on this variance. Please include this letter in your file and submit it as part of the record for this case. Also, please notify the Commission in writing of the Board's decision.

Sincerely,

Gerfune Chandle
LeeAnne Chandler

Natural Resources Planner

cc: WC416-05



DEPARTMENT OF DEVELOPMENT REVIEW AND PERMITTING

Morcester County

GOVERNMENT CENTER ONE WEST MARKET STREET, ROOM 1201 SNOW HILL, MARYLAND 21863 TEL: 410-632-1200 / FAX: 410-632-3008

ELECTRICAL BOARD SHORELINE COMMISSION LICENSE COMMISSIONERS

RECEIVED

JUL 11 2005

CRITICAL AREA COMMISSION

withdrawn

BOARD OF APPEALS PLANNING COMMISSION AGRICULTURAL PRESERVATION

MEMORANDUM

TO:

Kelly Henry, Zoning Administrator

FROM:

Stacey Weisner, Planner II &

SUBJECT:

Board of Zoning Appeals, July 14, 2005, Case Number 96114

Critical Area Variance request for Withers

DATE:

July 7, 2005

The following comments are provided for the above referenced case:

This is a request before the Board of Zoning Appeals (Board) for a property located within the Atlantic Coastal Bays Critical Area (Critical Area). The property is identified as the lands of Jay and Janel Warren (Tax Map 26, Parcel 444, Lot 16A), consisting of 26,764 square feet (0.61 acre). The land use designation within the Critical Area is Intensely Developed Area (IDA) and the property has a 100 foot Buffer (Buffer). The Applicants are Gary and Lynne Withers.

Lot 16A is part of Croppers Creek Minor Subdivision (which was originally a part of the Charles Lewis Farm subdivision) and was recorded on March 4, 1992, prior to the Critical Area Law being in effect.

The Applicants are requesting a variance to δNR 3-104(c)(1)-(3) of the Worcester County Code of Public Local Laws (County Code) in association with the construction of a single family dwelling that is located partly within the Buffer. The Critical Area "[b]uffer shall be established at a minimum distance of one hundred feet landward from the mean high water line of tidal waters, the edge of the bank of tributary streams and the landward edge of tidal wetlands" as stated in δNR 3-104(c)(1). Under δNR 3-104(c)(4) of the County Code, "[n]ew development activities including structures, . . . and other impervious surfaces may not be allowed in the Buffer".

As stated in δNR 3-111(c) of the County Code, "(a)pplications for a variance shall be made in writing to the Board of Zoning Appeals". The Wither's are requesting the

100 foot Buffer be reduced to 49.7 feet, for an encroachment of 50.3 feet in the Buffer. As the Board is aware (as a result of Bill 04-6), Variances to the Critical Area Law have six standards to meet. The Critical Area Law requires that each of the six standards for Variance be met.

Contained within your packets you will find comments from Staff of the Chesapeake and Atlantic Coastal Bays Critical Area Commission (Attachment 4) and written documentation and attachments provided by the Applicant (Attachment 3) which addresses the criteria stipulated in δ NR 3-111(b) Items 1 thru 6. Several additional attachments included are summarized below.

Attachment	Description	
. 1	Site Plan of Lot $16A$, $6-9-05$ $(1" = 30")$	
	- Buildable area without a variance is highlighted in yellow	
2	Overview sketch of other homes in the area	
3	Written documentation from the Applicant with attachments	
4	Comments dated 6-17-05 from LeeAnne Chandler of the Chesapeake and Atlantic Coastal Bays Critical Area Commission (Commission)	

It should be noted that the Applicant's proposal meets all other Critical Area Law requirements with the exception of the 100 foot Buffer variance request which is the subject of this Public Hearing. The property has no limit on impervious surface, and no trees are proposed to be cleared.

Under δNR 3-111 "[a]n Atlantic Coastal Bays Critical Area Program variance may be granted . . . where, owing to special features of a site or other circumstances, implementation of this Program or a literal enforcement of provisions within the Program would result in unwarranted hardship to an applicant". The six standards for Variance, as listed in δNR 3-111(b) (1) thru (6) of the County Code, will be addressed below. (**Bold text** indicates variance standard from Critical Area Law; standard text indicates staff analysis).

STAFF ANALYSIS

(1) Special conditions or circumstances exist that are peculiar to the applicant's land or structure and a literal enforcement of provisions and requirements of the County's Atlantic Coastal Bays Critical Area Program would result in unwarranted hardship.

The restrictions that were placed on this lot by the 100 foot Buffer (Attachment 1) certainly affects the building envelope, which is now triangular in shape. Requesting relief from the front yard setback would not be expected, because there is a fifteen foot platted future road widening strip parallel to Pine Rest Drive. Pine Rest Drive is constructed entirely within the boundary of Lot 16A. The Wither's have agreed to build the driveway out of a partially pervious material and construct the deck to Critical Area standards as suggested by Staff.

Although staff acknowledges a Variance would be realistically needed for this lot, we do not believe the Applicant has done all they can to minimize the impact to the Buffer. While it appears relief would be needed from the Buffer, the house could have been rotated towards the road, also minimizing the amount of driveway in the Buffer and reorientation or reduction in size of the proposed deck/porch. Staff met with the Applicant on numerous occasions and made suggestions to rotate the house and driveway (at a minimum) towards the street.

2) A literal interpretation of the provisions of the County's Atlantic Coastal Bays Critical Area Program and related laws will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Atlantic Coastal Bays Critical Area.

Attachment 2 is an overview sketch of other homes in the area. All of these homes were constructed prior to the Critical Area, and therefore were not subject to the 100 foot Buffer. That does not give the Applicant the right to build their house at the same setback. The Critical Area gives no provisions for grandfathering, nor should the Applicant assume they will be granted the same setbacks as their neighbors.

(3) The granting of a variance will not confer upon an applicant any special privilege that would be denied by the County's Atlantic Coastal Bays Critical Area Program to other lands or structures within the Atlantic Coastal Bays Critical Area.

The Application before the Board is for construction of a single family dwelling on a lot zoned for such use. The size of the dwelling seems to be reasonable and in keeping with other homes in the neighborhood, however, Staff has concerns with the distance to the Buffer, and lessening the amount of impervious surface in the Buffer, which could be reduced through slight modification to the proposal.

(4) The variance request is not based upon conditions or circumstances which are the result of actions by the applicant nor does the request arise from any condition relating to land or building use, either permitted or non-conforming on any neighboring property.

The Applicant is asking for a variance from the Board for a proposed single family dwelling, not an after-the-fact request. The property will have all of the necessary permits for the proposed structures. Furthermore, the property use or Zoning will not change.

(5) The granting of a variance shall not adversely affect water quality or adversely impact fish, wildlife or plant habitat within the Atlantic Coastal Bays Critical Area and the granting of the variance will be in harmony with the general spirit and intent of the County's Atlantic Coastal Bays Critical Program.

Under δNR 3-111(e)(1) a planting agreement shall be required for the disturbance within the Buffer should the Board grant the variance. Furthermore, as required by δNR 3-111(e)(1) "[a]dverse impacts resulting from the granting of the variance shall be

mitigated by the planting of trees and shrubs on the site at an amount equal to not less than three times the square footage of the area of disturbance allowed by the variance or as recommended by the Department." The mitigation required is triple the square footage of the disturbance within the Buffer and will have a positive impact on water quality, plant, fish or wildlife habitat. The proposed impervious surface within the Buffer is 3,495 sq ft, however Staff does not know the limits of disturbance with the Buffer. This requirement will be satisfied at the Building Permit stage. Very little vegetation currently exists on the site, so Staff would proffer that this would constitute a beneficial improvement to the environment. Research of resource maps indicate an absence of fish, wildlife, and plant habitat which may be adversely affected by the proposed development.

(6) The Board of Zoning Appeals shall not make a decision relative to a request for such a variance without reviewing the comments of the Department and finding that the applicant has satisfied each of the provisions and standards contained herein.

As a result of the Staff analysis provided above, <u>Staff finds the Applicant has not met each standard of variance listed above</u>.

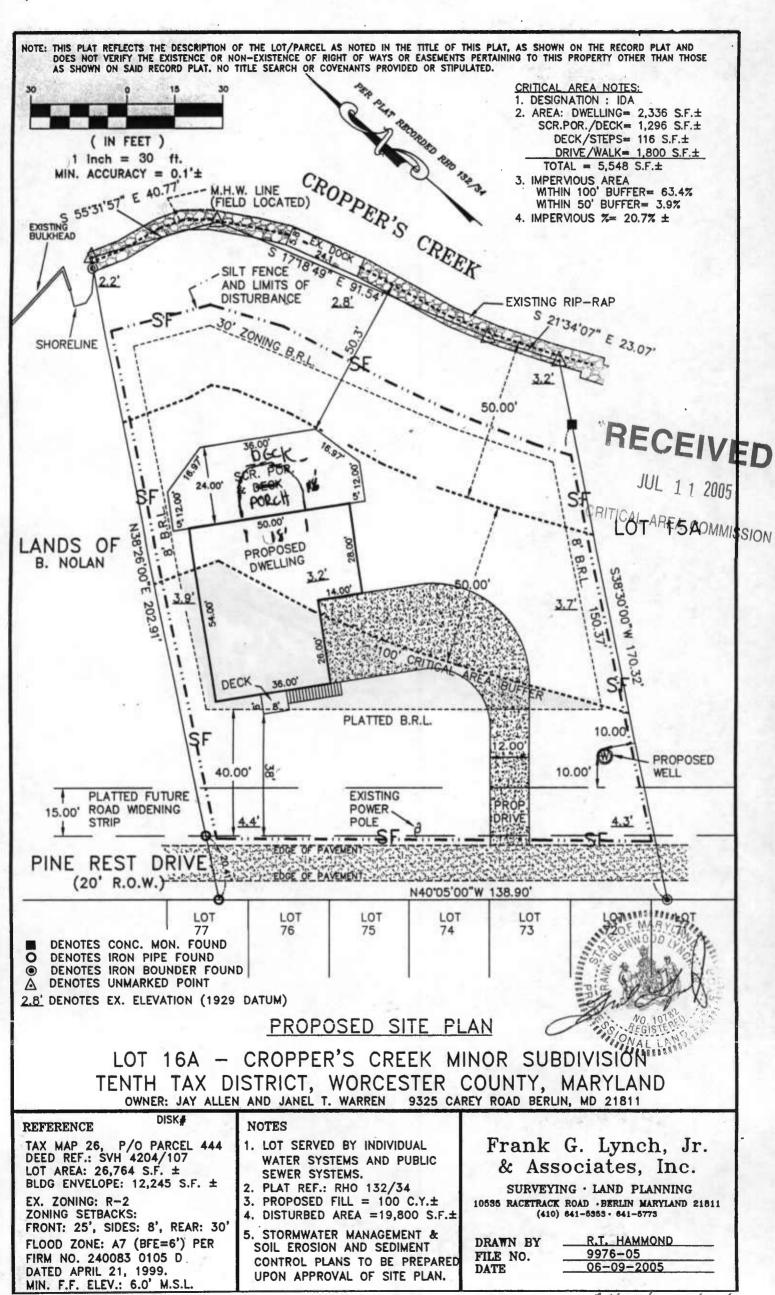
ADDITIONAL STAFF COMMENTS

Please note that the Critical Area Commission Staff initially reviewed this request and made an unfavorable recommendation (Correspondence is Attachment 4) Staff wishes to make the Board fully aware of the comments from LeeAnne Chandlers of the State of Maryland Critical Area Commission for the Chesapeake and Atlantic Coastal Bays (Commission). Ms. Chandler is our liaison with the Commission and does not believe the Applicants have done all they can to minimize the impact to the Buffer. County Staff concurs with the State analysis and comments

STAFF RECOMMENDATION

Staff recommends the Board of Zoning Appeals consider not granting the variance

Should you have any questions or need additional information please contact me at 410-632-1200, x1144, or e-mail at sweisner@co.worcester.md.us. Thank you for your attention in this important matter.



Attachment

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105 11 2005

CRITICAL AREA COMMISSION

Attachment 1

56M Croppers Creek 16 A Pine Rest Drive RECEIVED CRITICAL AREA COMMISSION 15 A JUL 11 2005 63 A 96114, Withers (7-14-05)

A Hachment

1

Attention Ms Weisner Dept of Zoning Appeals Worcester Co., Md From Gary and Lynne Withers 13009 Old Bridge Rd West Ocean City Md,21842

My wife and I are requesting a variance of the Atlantic Coastal Bays Critical Area's (CAL) act with regard to the 100' buffer setback along Croppers' Creek for Lot 16A, Croppers Creek Minor Subdivision on Pine Rest Drive in West Ocean City, Md. 21842.

We are currently in the process of purchasing the property from Jay Allen Warren and Janel T Warren subject to the approval of our request for a variance from the 100' waterfront buffer setback to a 50' waterfront buffer setback.. We feel that without this approval the lot will have no value. The existing building envelope is much too small to allow any building and certainly not a home suitable to the property. We feel this is an undue hardship that could be rectified by the boards granting of a waterfront buffer variance from 100' to 50'.

This is the only lot on the south side of Croppers Creek subject to the recently more restrictive CAL Act. Our proposed building lot as well as the adjoining properties on the creek are in the counties Intensive Developed Zone. The to 16A is the only lot affected by the new law as the other home though relatively new were constructed before enactment of the new law. Most of the other homes on the creek are only 30' away from mean high water (mhl). Display 3 showing the subject property along with adjoining properties from a satilite photo. There is a scale at the bottom of Display 3 showing houses 1 and 2 are only 30' from the mhw on the creek. Also in Display 4 the adjacent building east of the subject lot shows the building footprint to be only 30.7' from the mhw mark. Houses 3 and 4 at the head of the creek and 3 and 4 lots away from the subject property show their close proximity to the waterfront through the photos in display 2

As you can see we are attempting to minimize the impact of our home on the property. This lot 16A and lot 15 B are also subject to more stringent setbacks from the roadway. They have a 40' set back from the front while the others do not. Despite these drawbacks, our surveyor was able to put the house within a building area with a 50' waterfront setback

With regard to Md NR-3-111 of the Atlantic Bays Critical Areas Act we would like to point out the following:

- 1. Special conditions exist peculiar to the lot 16A creating undue hardship. The lot is unbuildable in its current state without the approved variance.
- 2. The literal interpretation of CAL will deprive us of the same rights enjoyed by our adjoining neighbors. We have requested only a 50' setback variance where our neighbors enjoy a 30' setback

Attachment 3

- 3. The granting of a variance will not confer upon an applicant any special privilege that would be denied by the county's Atlantic Coastal Bays Critical Area program to other lands within the Atlantic Coastal Bays Area.
- 4. We have not created the hardship in any way. We merely wish to build our home on what should be a buildable lot
- 5. Granting us the variance will not adversely impact the water quality, fish, wildfire, or plant All construction will be to applicable codes. The riprap is already installed as is a dock. We feel our plans will be in harmony with the ideals and effects of CAL.
- 6. We feel a 50' setback is a reasonable request and have worked to stay within that area.

7. We request the board take into consideration comments made by the Dept of Zoning and grant our request.

8. DRIVEWAY TO BE MADE OF A PARTIALLY PERUIOUS MATERIAL.

DECK TO BE BOILT TO CTITICAL AREA STANDADD.

NO TREES WILL NEW TO BE BURY ON THE PROPERTY.

In conclusion, we would also like to address the board to support our request for variance.

Thank you for your time,

Gary Withers Lynne Withers

A TEMPORARY GIADING OF 5' FOR DECK CONSTRUCTION AREA

RECEIVED

JUL 1 1 2005

CRITICAL AREA COMMISSION

Attachment 3, page 2

Cropper's Creek Ü BY AND WITH SHORELINE Z 38*30.00 Lot 16A Cropper's Creek Subdivision d Ref.: R.H.0.2316/274 chael & Judy Quillen EXISTING ±163.66 . (9) Porcelo 15' Future Rood Widening Strip As Shown On Plot "Cropper's. Creek Minor Subdivision" Pine Rest Drive Paved Road 20' R/W 94.94' N 40'05'00" W 15.00 FINAL AS-CONSTRUCTED SURVEY LOT 15B - CROPPER'S CREEK SUBDIVISION TENTH TAX DISTRICT, WORCESTER COUNTY, MARYLAND DISK #1229 REFERENCE NOTES LOT AREA: 18,586 S.F. Frank G. Lynch, Jr. EX. ZONING: R-2 & Associates, Inc. ZONING SETBACKS: FRONT: 50' FROM CENTER OF ROAD SIDES: 8', REAR: 30' SURVEYING . LAND PLANNING (IN FEET)

FLOOD ZONE: A7 PER FIRM NO. 240083 0105 D DATED 4-21-1999. B.F.E. = 6.0

1 inch = 30

0 DENOTES CONC. MON. FOUND ¢ DENOTES IRON ROD

DENOTES IRON STOB FOUND MIN. ACCURACY = ±0.1'

10535 RACETRACK ROAD . BERLIN MARYLAND 21811 (410) 641-5353 . 641-5773

DRAWN BY FILE NO.

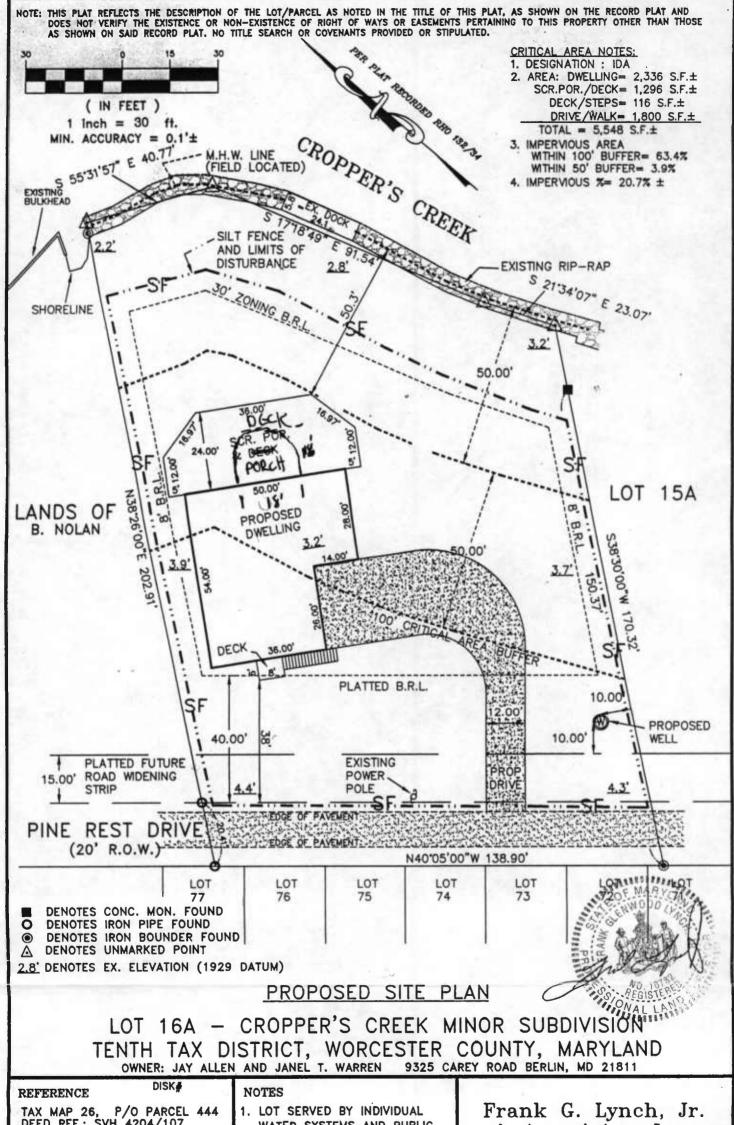
F.G.L. JR. 8942-04 4-06-2004

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CRITICAL AREA COMMISSION

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TAX MAP 26, P/O PARCEL 444 DEED REF.: SVH 4204/107 LOT AREA: 26,764 S.F. ± BLDG ENVELOPE: 12,245 S.F. ±

EX. ZONING: R-2

ZONING SETBACKS: FRONT: 25', SIDES: 8', REAR: 30' FLOOD ZONE: A7 (BFE=6') PER FIRM NO. 240083 0105 D DATED APRIL 21, 1999. MIN. F.F. ELEV.: 6.0' M.S.L.

- WATER SYSTEMS AND PUBLIC SEWER SYSTEMS.
- 2. PLAT REF.: RHO 132/34 3. PROPOSED FILL = 100 C.Y.±
- 4. DISTURBED AREA =19,800 S.F.±
- . STORMWATER MANAGEMENT & SOIL EROSION AND SEDIMENT CONTROL PLANS TO BE PREPARED UPON APPROVAL OF SITE PLAN.

& Associates, Inc.

SURVEYING · LAND PLANNING 10535 RACETRACK ROAD ·BERLIN MARYLAND 21811 (410) 641-5363 · 641-5773

DRAWN BY FILE NO. DATE

R.T. HAMMOND 9976-05 06-09-2005

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CRITICAL AREA COMMISSION

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Robert L. Ehrlich, Jr. Governor

Michael S. Steele Lt. Governor



Martin G. Madden Chairman

Ren Serey Executive Director

STATE OF MARYLAND CRITICAL AREA COMMISSION CHESAPEAKE AND ATLANTIC COASTAL BAYS

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

June 16, 2005

Ms. Stacey Weisner Worcester County Development Review & Permitting One West Market St., Room 1201 Snow Hill, MD 21863

RECEIVED

JUL 1 1 2005

CRITICAL AREA COMMISSION

Variance Case #96114, Withers, TM 26, Parcel 444, Lot 16A RE:

Dear Ms. Weisner:

Thank you for providing information on the above referenced variance request. The applicant is requesting a variance to permit a dwelling within the Critical Area 100-foot Buffer. The property is designated IDA and is not Buffer Exempt. The property is 26,764 square feet in size and is current vacant.

Provided this lot is properly grandfathered, this office does not oppose the siting of a dwelling on it. However, impacts should be minimized and the variance request should be the minimum to provide relief. Variances should not be granted as a matter of preference or convenience. We recommend that the house be designed and sited to utilize the area of the lot outside of the 100-foot Buffer as much as possible. The house could be shifted slightly and moved towards the road. Also, the garage could be front entry or, at a minimum, the driveway could be redesigned to eliminate the large curve into the Buffer. The deck should be constructed to be pervious. Also, it seems that the limits of disturbance, especially along the water could be brought closer to the proposed structure. Any disturbance within the Buffer must be mitigated at a 3:1 ratio.

Thank you for the opportunity to comment on this variance. Please include this letter in your file and submit it as part of the record for this case. Also, please notify the Commission in writing of the Board's decision.

Sincerely.

er Anne Chandler LeeAnne Chandler

Natural Resources Planner

WC416-05 cc:

TTY for the Deaf

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

Attachment 4

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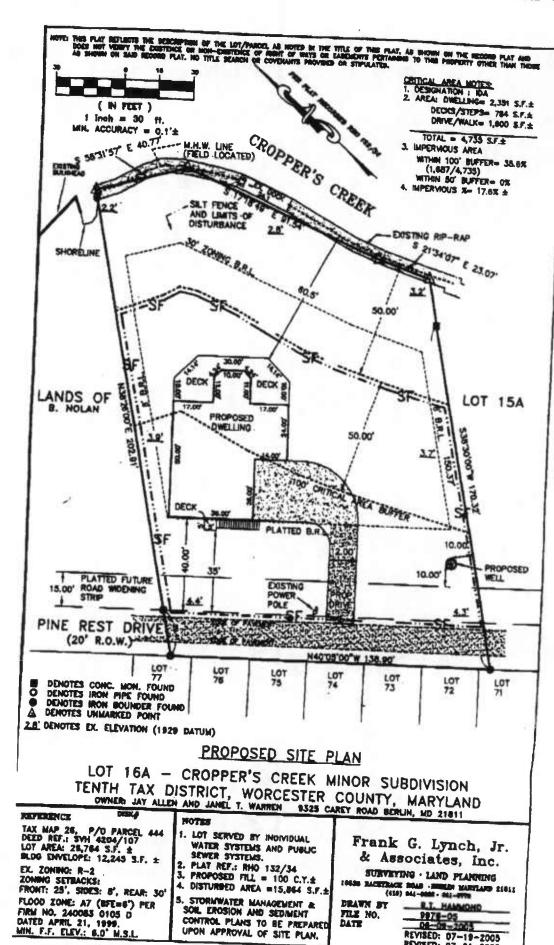
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Thank you for your time,

Gary Withers Lynne Withers 07/21/2005 09:56 4182888227

FRANK G LYNCH

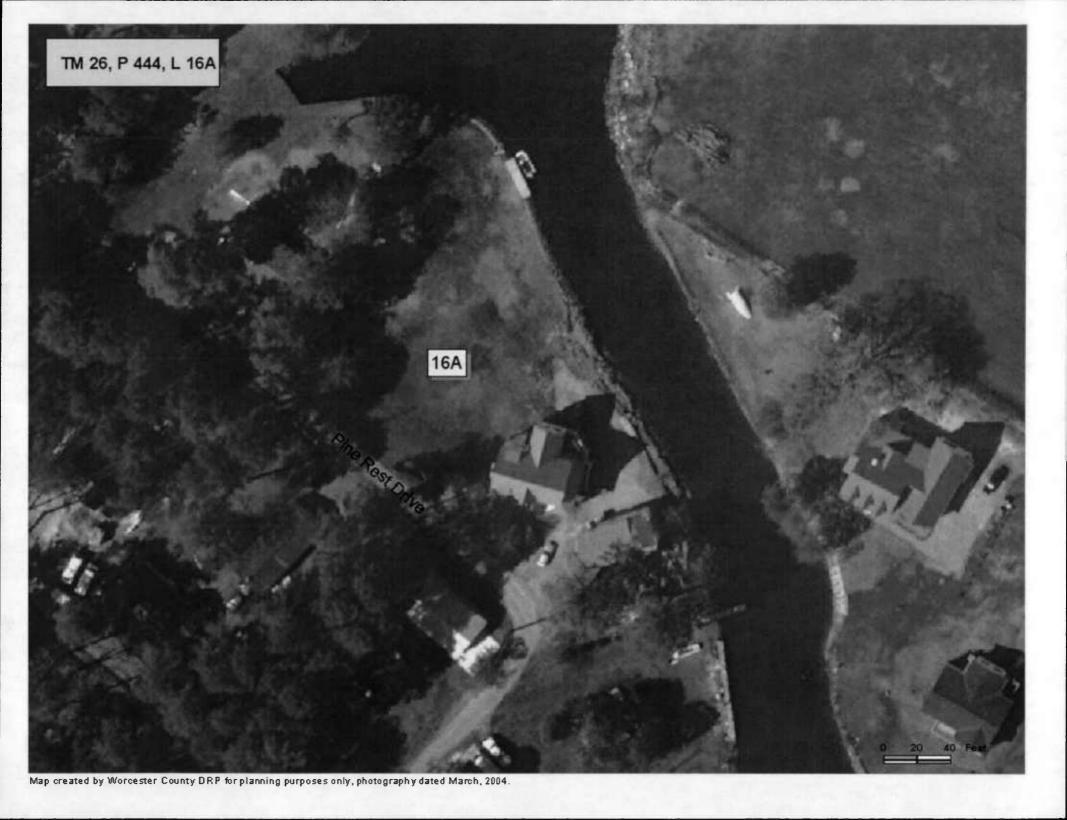
PAGE 82



PILE NO.

REVISED: 07-19-2005 REVISED: 07-21-2005

Revised site plan-Rec'd vi2 fax on 7/21

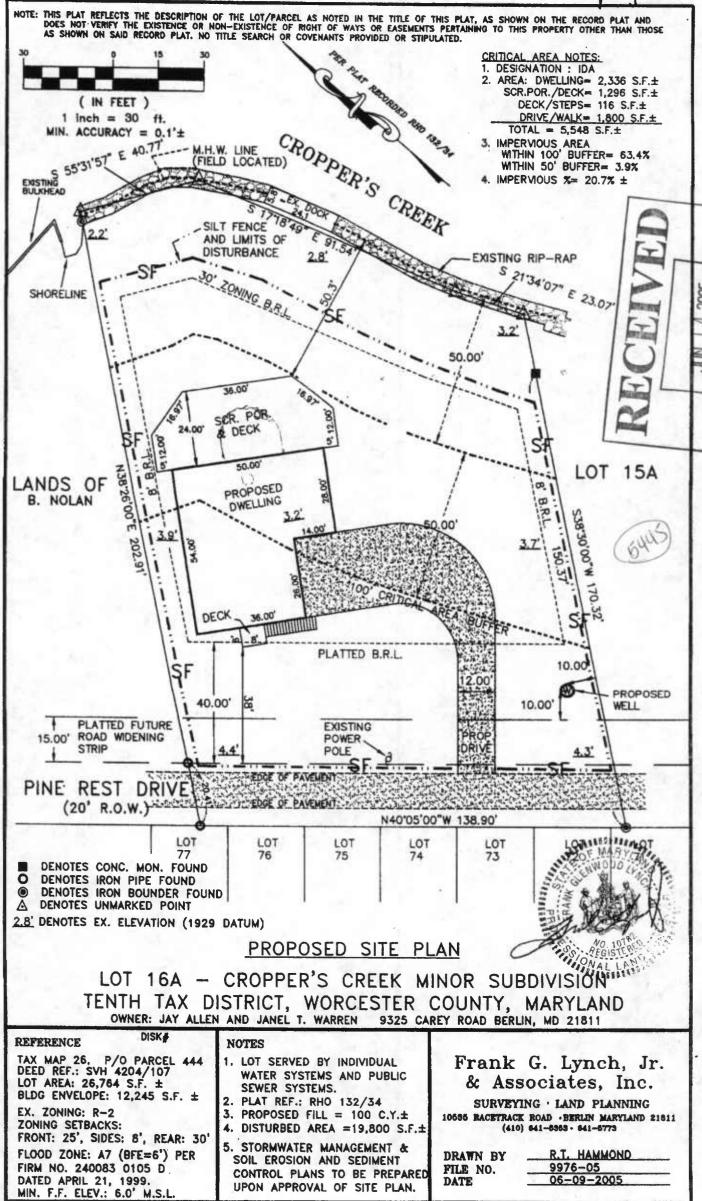


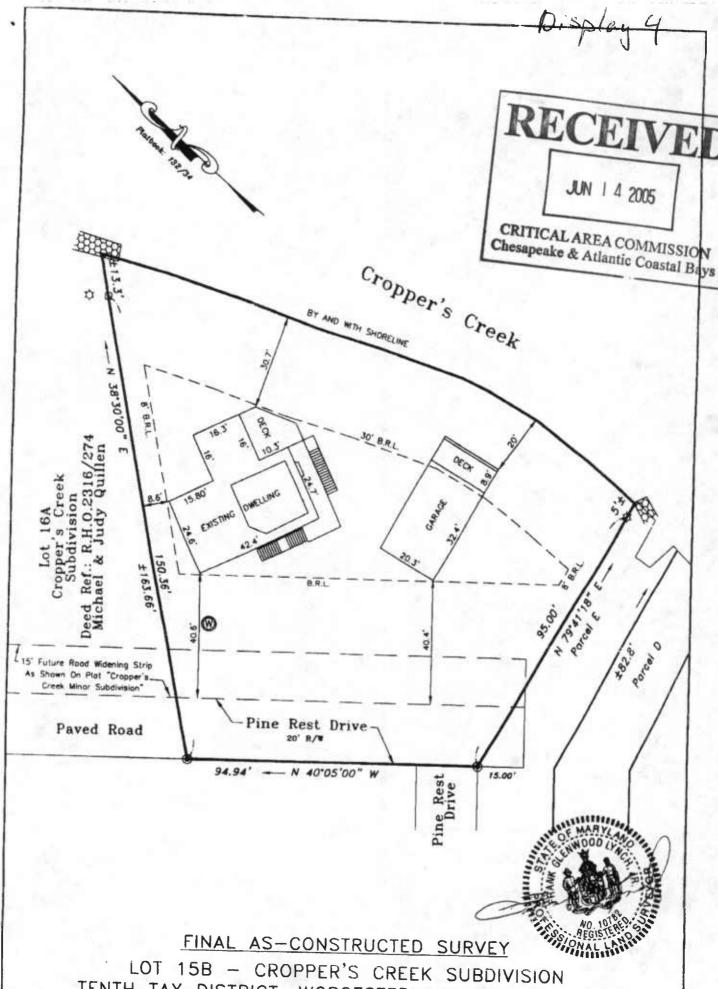
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CRITICAL AREA COMMISSION

VAR.

Display 5





TENTH TAX DISTRICT, WORCESTER COUNTY, MARYLAND

DISK #1229 REFERENCE

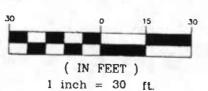
LOT AREA: 18,586 S.F.

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NOTES



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Frank G. Lynch, Jr. & Associates, Inc.

SURVEYING . LAND PLANNING 10535 RACETRACK ROAD . BERLIN MARYLAND 21811 (410) 641-5353 . 641-5773

DRAWN BY FILE NO. DATE

F.G.L. JR. 8942-04 4-06-2004