

CA 364-06  
VAR

Hazell, David  
06-3327

MSA-S-1829-5643

Comments  
6/12/2010

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/](http://www.dnr.state.md.us/criticalarea/)

June 19, 2006

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

Re: Variance 06-3327 Hazell

Dear Ms. Whitt:

Thank you for providing information on the above referenced variance. The applicant is requesting a variance from the 100-foot Buffer requirements in order to construct an accessory shed. The property is designated a Resource Conservation Area (RCA). It is my understanding that a primary dwelling is currently under construction.

The applicant has stated that the proposed shed is 160 square feet and will be constructed on cinder blocks or wood pilings. Based on the site plan provided, as well as aerial photographs from June of 2005, it appears that ample opportunity exists outside of the Buffer to accommodate a 160 square foot shed. In evaluating the applicant's variance request, the Board must determine that each and every one of the County's variance standards has been met. Because we believe that the applicant has failed to meet each of these standards, particularly the standard of unwarranted hardship, this office opposes the variance request.

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

Sincerely,

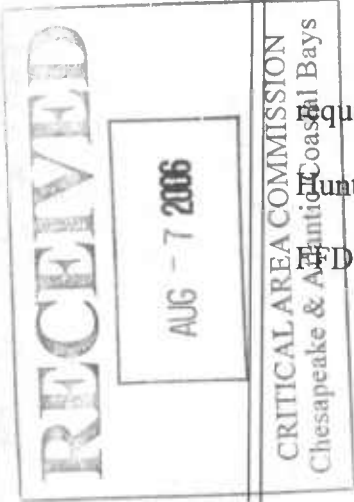
A handwritten signature in cursive script that reads "Kerrie Gallo".

Kerrie L. Gallo  
Natural Resource Planner  
CA364-06

364-04

Case No. 06- 3327

Public Hearing  
July 6, 2006



David and Sharon Hazell have applied for a variance in the 100' waterfront buffer requirements for placement of a shed. The property is located at 3380 Soper Road, Huntingtown, (Tax Map 20, Parcel 207, Lot 6, Mary D. Reida, et. al. Property) and is zoned RFD Farm and Forest District.

**AUTHORITY OF THE BOARD OF APPEALS**

Section 11-1.01.B of the Calvert County Zoning Ordinance provides that the Board of Appeals shall have the authority to grant variances from the Critical Area requirements of Section 8-1 of this Ordinance.

**TESTIMONY & EVIDENCE PRESENTED**

1. The case was presented July 6, 2006 before Board of Appeals members Mr. Michael Reber, Chairman, Mr. Walter Boynton, Vice Chairman, and Mr. Dan Baker (the Board). Mrs. Sharon Hazell was present at the hearing.
2. The following Applicants' Exhibits were dated and entered into the record at the hearing:
  - Applicants' Exhibit No. 1 – Plat Submitted With Application
  - Applicants' Exhibit No. 2(a) & 2(b) - Photographs
3. The following Staff Exhibits were dated and entered into the record at the hearing:
  - Staff Exhibit No. 1 – Staff Report dated July 6, 2006
  - Staff Exhibit No. 2 – Photographs Taken on Site
4. The following correspondence was entered into the record at the hearing:
  - Letter dated June 19, 2006 from the Critical Area Commission

### FINDINGS OF FACT

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

1. The applicants in the subject case have applied for a Critical Area 100-foot buffer variance for placement of a 10' x 16' shed within the buffer.
2. The subject property is located at 3380 Soper Road and is otherwise known as Lot 6, Parcel 207 of Tax Map 20 in the Land Records for Calvert County.
3. The property consists of 2.21 acres and is situated at the end of Soper Road, with tidal marsh and tidal waters of Hunting Creek on three sides.
4. The subject property is zoned Farm and Forest District (FFD) with a Resource Conservation Area (RCA) Critical Area overlay.
5. Section 2-8.01 of the Zoning Ordinance defines the purpose and intent of the FFD:

*The Farm and Forest District consists of farmland and woodland tracts, along with some scattered residential communities. This District also consists of large undeveloped lands containing a significant portion of sensitive soils and/or steep slopes.*

6. Section 8-1.05 of the Zoning Ordinance defines the nature, purpose and goals of the RCA zoning overlay and includes the following language:

*The RCA is chiefly designated for agriculture, forestry, fisheries activities, other resource utilization activities and for habitat protection. Development is limited in the RCA.*

*The following goals will guide development in the RCA:*

*Conserve, protect, and enhance the overall ecological values of the Critical Area, its biological productivity and its diversity;*

*Provide adequate breeding, feeding, and wintering habitats for those wildlife populations that require the Chesapeake Bay, its tributaries, or coastal habitats in order to sustain populations of those species;*

*Conserve the land and water resource base that is necessary to maintain and support land uses such as agriculture, forestry, fisheries activities, and aquaculture; and*

*Conserve the existing developed woodlands and forests for the water quality benefits that they provide.*

7. Section 8-1.01 of the Zoning Ordinance defines the purpose of the Critical Area Buffer:

*The purpose of the Buffer is to:*

*Provide for the removal or reduction of sediments, nutrients, and potentially harmful or toxic substances in runoff entering the Bay and its tributaries;*

*Minimize the adverse effects of human activities on wetlands, shorelines, stream banks, tidal waters, and aquatic resources;*

*Maintain an area of transitional habitat between aquatic and upland communities;*

*Maintain the natural environment of streams; and*

*Protect riparian wildlife habitat.*

8. Section 8-1.01.C.4.a states:

*New development activities, including structures, roads, parking areas and other impervious surfaces, mining and related facilities, or septic systems, may not be permitted in the buffer, except for those necessarily associated with water-dependent facilities.*

9. The Zoning Ordinance defines Water-Dependent Facilities as *“Those structures or works associated with industrial, maritime, recreational, educational, or fisheries activities that require location at or near the shoreline within the Critical Area Buffer specified in Section 8-1.08.D. These facilities include, but are not limited to, ports, the intake and outfall structures of power plants, water-use industries, marinas and other boat docking structures, public beaches and other public, water-oriented recreation areas, and fisheries activities. Excluded from this definition are individual private piers installed or maintained by riparian landowners, and which are not part of a subdivision which provides a community pier.”*

10. The applicant testified the proposed shed does not have a permanent foundation and would be used for water-dependent activities.

11. The shed cannot be upgraded to any type of living space.

12. The buffer consumes a large portion of the lot as does the 10,000 s.f. septic recovery area. The well is positioned in a northwest corner. The house occupies much of the buildable area leaving only small pockets outside of the buffer available for placement of the shed.

### CONCLUSIONS

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

1. The Board concludes that it has the authority to grant the subject variance from the Critical Area requirements of Section 8-1 of this Ordinance.
2. The Board concludes that the applicant has overcome the presumption of nonconformance as required in Section 11-1.01.B.2 &3 of the Zoning Ordinance.
3. The Board concludes that the applicant has met each of the following variance standards:
  - a. The variance will not result in injury to the public interest; and
  - b. granting the variance will not adversely affect the implementation of the Comprehensive Plan; and
  - c. the variance is the minimum adjustment necessary to afford relief from the regulations; and
  - d. special conditions or circumstances exist that are peculiar to the land or structure within Calvert County and that a literal enforcement of provisions within the County's Critical Area Program would result in unwarranted hardship; and
  - e. a literal interpretation of the Critical Area Legislation and the Calvert County 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 County; and
  - f. the granting of a variance will not confer upon an applicant any special privilege that would be denied by the Calvert County Critical Area Program to other lands or structures within the County's Critical Area; and
  - g. 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. If the variance request is based on conditions or circumstances that are the result of actions by the applicant, including the commencement of development activity before an application for a variance has been filed, the Board of Appeals may consider that fact; and
  - h. the granting of a variance will not adversely affect water quality or

adversely impact fish, wildlife, or plant habitat within the County's Critical Area, and that the granting of the variance will be in harmony with the general spirit and intent of the Critical Area law.

**ORDER**

It is hereby ordered, by a unanimous decision that the variance in the waterfront buffer requirements for placement of a shed as requested by David and Sharon Hazell be **GRANTED** based on the above findings of fact and conclusions, subject to the following condition:

1. All permits and approvals required by the Calvert County Zoning Ordinance and the Department of Planning and Zoning and those required by any other departments, agencies, commissions, boards or entities, in accordance with County, State and Federal law, must be obtained before commencing the development activity approved by this Order.


In accordance with Section 11-1.01.F.3 of the Calvert County Zoning Ordinance any violation of conditions imposed by the Board of Appeals shall be considered a violation of this Ordinance and subject to the enforcement provisions of Section 1-7.

In accordance with Section 11-1.01G of the Calvert County Zoning Ordinance if any application for a variance is denied by a final order of the Board, a second application involving substantially the same subject matter shall not be filed within one year from the date of the final order. If any such denial by the Board is appealed to a higher Court and the Board's denial is upheld, a second application involving substantially the same subject matter shall not be filed within one year from the date of the final order of the Court.

In accordance with Section 6 of the Calvert County Board of Appeals Rules of Procedure, "any party to a case may apply for a reconsideration of the Board's decision no later than 15 days from the date of the Board's Order."

In accordance with Section 11-1.07 of the Calvert County Zoning Ordinance, Board of Appeals decisions may be appealed to the Circuit Court of Calvert County by (1) any person aggrieved by any decision of the Board of Appeals or (2) any taxpayer, or (3) any officer, department, board or bureau of Calvert County. Such appeal shall be taken according to the Maryland Rules as set forth in Maryland Rules, Title 7, Chapter 200, as amended from time to time, within 30 days of the Board of Appeals Order.

Entered: August 4 2006  
Pamela P. Helie, Clerk

  
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Michael J. Reber, Chairman



File

364-06

# CALVERT COUNTY BOARD OF APPEALS

Case No. 06-3327 (REMAND)

Public Hearing  
June 7, 2007

This matter came before the Calvert County Board of Appeals on a remand from the Circuit Court of Calvert County. The Court vacated the Board's original decision (BOA 06-3327) and remanded the matter back to the Board for further hearing.

## BACKGROUND

David & Sharon Hazell applied for a variance in the Critical Area 100' waterfront buffer requirements for placement of a shed. The property is located at 3380 Soper Road, Huntingtown (Tax Map 20, Parcel 207, Lot 6, Mary D. Reida, et. al Property) and is zoned Farm and Forest District (FFD). The Board originally heard the case on July 6, 2006 and granted the requested variance in a written order dated August 4, 2006. Martin G. Madden, Chairman, Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, represented by an Assistant Attorney General of Maryland, sought judicial review of the decision by the Calvert County Board of Appeals. The Circuit Court heard the matter on March 5, 2007 and determined that the Board's record in this matter was incomplete. The Court remanded the matter back to the Board for further findings in accordance with the Calvert County Zoning Ordinance and Maryland critical Area law. The Board of Appeals reconsidered the case on June 7, 2007.

## AUTHORITY OF THE BOARD OF APPEALS

The jurisdiction of the Board of Appeals is based on Article 66B of the Annotated Code of Maryland, as amended, and Article 11 of the Calvert County Zoning Ordinance. Article 11 Section 1.01.B of the Calvert County Zoning Ordinance provides that the Board of Appeals shall have the authority to grant variances from the Critical Area requirements of Section 8-1 of the Ordinance.

RECEIVED  
JUL 10 2007  
CRITICAL AREA COMMISSION  
Chesapeake & Atlantic Coastal Bays

**TESTIMONY & EVIDENCE PRESENTED**

1. Martin G. Madden filed an appeal of the Board of Appeals decision in Case No. 06-3327 to the Calvert County Circuit Court. This appeal came before the Circuit Court for hearing on March 5, 2007. Based on the record, Petitioner's memorandum and arguments of the Petitioner and Respondent, the Circuit Court ordered that the decision of the Calvert County Board of Appeals in Case No. 06-3327 be vacated and the case be remanded back to the Board of Appeals for further action.
2. The remanded case was presented June 7, 2007 before Board of Appeals members Mr. Michael Reber, Chairman, Mr. Walter Boynton, Vice Chairman, and Mr. Dan Baker (the Board). Mr. David and Mrs. Sharon Hazell were present at the hearing and represented themselves.
3. A Staff Report including photographs taken on site was entered into the record as Staff Exhibit No. 1.
4. The following Applicant Exhibits were dated and entered into the record at the hearing:
  - Exhibit No. 1 – Remand from Circuit Court (C-06-1075)
  - Exhibit No. 2 – Photos
5. The following person testified at the hearing:
  - Saundro Canedo, Assistant Attorney General, Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, 1804 West Street, Suite 100, Annapolis MD 21401
6. The following correspondence was entered into the record at the hearing:
  - Letter dated June 19, 2006 from Kerrie Gallo, Critical Area Commission for the Chesapeake and Atlantic Coastal Bays

**FINDINGS OF FACT**

Based on the application, testimony and evidence presented at the hearing, the Board finds the following:

1. The applicants in the subject case have applied for a Critical Area 100-foot buffer variance for placement of a pre-fabricated shed on cinder blocks within the 100' buffer.

2. The property consists of 2.21 acres and is situated at the end of Soper Road, with tidal marsh and tidal waters of Hunting Creek on 3 sides.
3. The terrain is level, with only a slight bank at the waterfront. A small area of tree cover exists at the shoreline; however, the majority of the lot consists of a grass lawn and the residential development.
4. The property is developed with a house measuring 80' x 60', with a 27' x 32.5' garage and 2 variable-width decks and patio, all approved for construction in 2005. The house is situated at the 100-foot buffer line. The applicants enjoy reasonable and significant use of the property in that it supports this development.
5. A pier extends into Hunting Creek from the east side of the property. The shed is located within the 100-foot buffer at the landward end of the pier. The shed is not a water dependent facility in that it could be located anywhere on the property and does not, by its intrinsic nature, require location within the buffer.
6. The subject property was recorded as a building lot in 1996. The property is not grandfathered for Critical Area purposes because it was recorded 8 years after the adoption of Calvert County's Critical Area Program. The plat of subdivision shows the 100-foot buffer and includes a note stating that "No disturbance or construction within the 100' buffer is allowed." The Board finds that the shed constitutes disturbance within the buffer.
7. The Board finds that there are no features of this property that suggest placement of the shed within the 100' Critical Area Buffer is warranted. Denial of the requested variance does not preclude placement of a shed outside the buffer area on the property and does not deny the applicants reasonable and significant use of the property.

### CONCLUSIONS

Based on the above findings of fact, the Board makes the following conclusions:

1. The Board concludes that it has the authority to grant the subject variance from the Critical Area requirements of Section 8-1 of this Ordinance.
2. The Board concludes that the applicant has not overcome the presumption of nonconformance as required in Section 11-1.01.B.2 &3 of the Zoning Ordinance.
3. The Board concludes that:
  - a. the variance is not the minimum adjustment necessary to afford relief from the regulations; and
  - b. there are no special conditions or circumstances peculiar to the land or structure such that denial of the shed's placement within the buffer

- would rise to the level of unwarranted hardship; and
- c. a literal interpretation of the Critical Area Legislation will not deprive the applicants of rights commonly enjoyed by other properties similarly created within the Critical Area of Calvert County after adoption of the Critical Area law; and
  - d. the granting of a variance will confer upon the applicants a special privilege that would be denied by the Calvert County Critical Area Program to other lots created after adoption of the Critical Area law within the County's Critical Area; and
  - e. the placement of a shed within the buffer will adversely affect water quality and adversely impact fish, wildlife, and plant habitat within the County's Critical Area.

**ORDER**


It is hereby ordered, by a unanimous decision that a variance in the 100' waterfront buffer requirements for placement of a shed as requested by David & Sharon Hazell be **DENIED.**

**APPEALS**

In accordance with Section 6 of the Calvert County Board of Appeals Rules of Procedure, "any party to a case may apply for a reconsideration of the Board's decision no later than 15 days from the date of the Board's Order."

In accordance with Section 11-1.07 of the Calvert County Zoning Ordinance, Board of Appeals decisions may be appealed to the Circuit Court of Calvert County by (1) any person aggrieved by any decision of the Board of Appeals or (2) any taxpayer, or (3) any officer, department, board or bureau of Calvert County. Such appeal shall be taken according to the Maryland Rules as set forth in Maryland Rules, Title 7, Chapter 200, as amended from time to time, within 30 days of the Board of Appeals Order.

Entered: July 6 2007  
Pamela P. Helie, Clerk

  
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Michael J. Reber, Chairman

ENGINEERING BUREAU.  
APPROVED

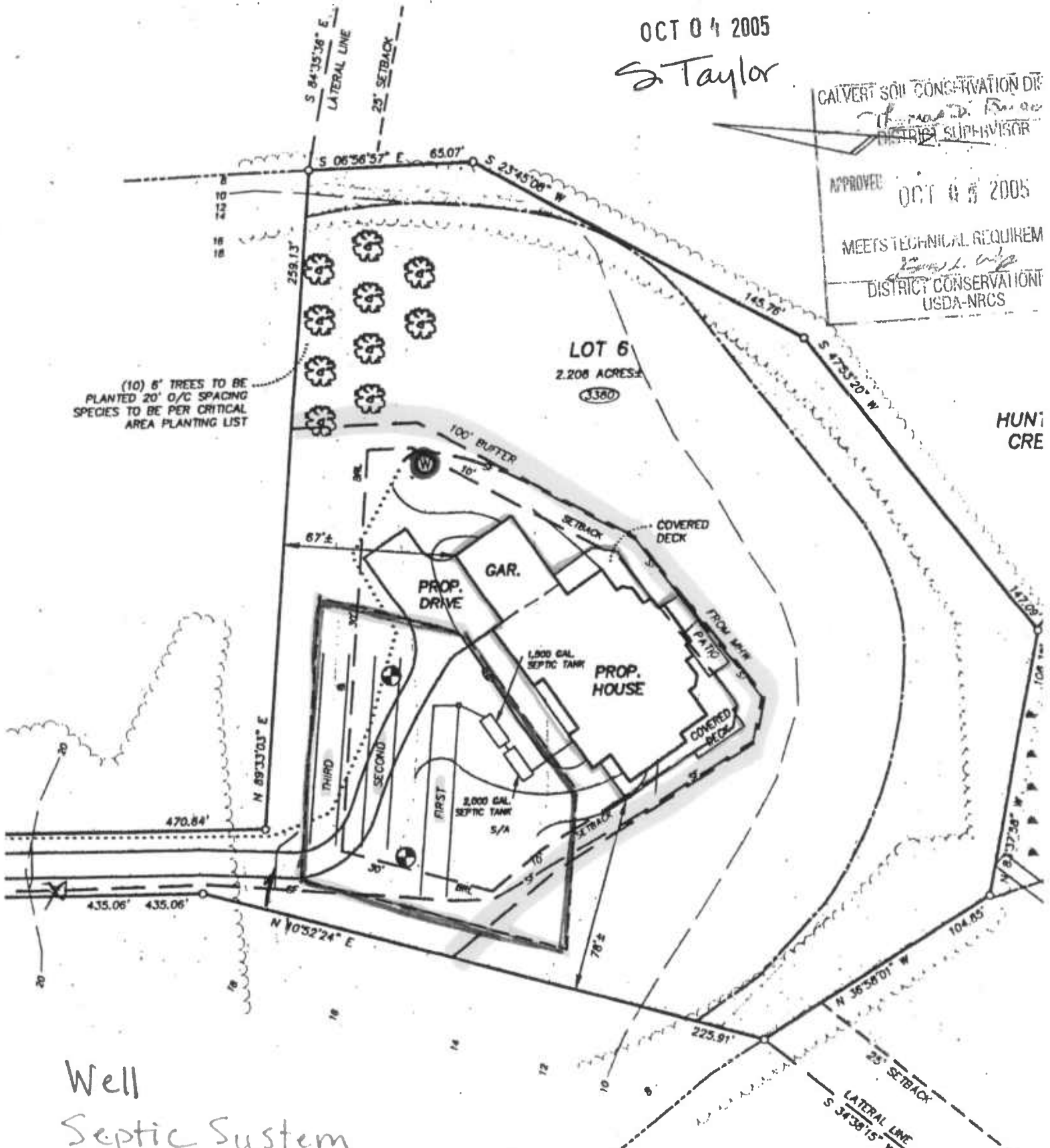
OCT 04 2005  
*S Taylor*

CALVERT SOIL CONSERVATION DISTRICT SUPERVISOR

APPROVED OCT 05 2005

MEETS TECHNICAL REQUIREMENT  
DISTRICT CONSERVATION  
USDA-NRCS

HUNTING CREEK



Well  
Septic System  
House  
Buffer

HUNTING CREEK COUNTY ZONING APPROVED

SEP 14 2005

*[Signature]*