

CA 440-06 Smith, James  
VAR 06-3336

MSA-S-1829-5650

Comments 7/18/00-44  
Revised 9/24/06 KED

### 10/5/06 Hearing

- Case closed
- BOA requires the applicant to explore w/ Health Dept. possibility of moving the rain garden back. Also, would like the applicant to explore a second rain garden along the south side of dwelling
- Required salt-tolerant native species in rain garden
- Site plan w/ correct imp. surface areas to be submitted to County staff

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/

September 25, 2006

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

Re: Variance 06-3336 Smith-Revised

Dear Ms. Whitt:

Thank you for providing information on the above referenced revised variance. The applicant is requesting a variance from the 100-foot Buffer and the steep slope requirements in order to permit the construction of a replacement dwelling. The property is designated a Limited Development Area (LDA) and is currently developed with a primary dwelling and septic area.

Based on the information provided, it appears that the applicant has attempted to address previous concerns by moving the dwelling farther from Mean High Water (MHW), increasing the setback to 55-feet and by planting those existing gravel driveway areas which are not incorporated into the area of new driveway. While we acknowledge the applicant's attempts at minimization, it appears that moving the dwelling towards the north has resulted in the need to locate a portion of the proposed deck over steep slopes. It is my understanding that this move is proposed as a requirement of the Calvert County Health Department in order to provide a replacement septic area. While this requirement may affect the location of the dwelling, it is our position that construction of a replacement dwelling should be conducted so as to conform insofar as possible with the existing County and State regulations. By virtue of this approach, an applicant should be required to design a dwelling that fits the constraints of the site. In regard to the steep slope variance, we recognize that the physical impact to the slope may be limited in scope, but it appears that the applicant could utilize an alternative dwelling design which eliminates the need for a steep slope variance altogether. Where a reasonable opportunity to grant a variance of a lesser degree exists or where further minimization is feasible, the Board should require the applicant to revise the site plan.

In evaluating the features of the site plan, this office also questions the location of the proposed rain garden. Generally, the Commission encourages the use of rain gardens as best management practices. In this case, the rain garden is proposed 5 feet off of the existing wooden bulkhead. Installation of the rain garden requires excavation of the existing soil materials and utilizing a design intended to retain water for periods of time. Given these factors, we question whether the rain garden could pose a threat to the integrity of the bulkhead and whether a heavy storm might result in direct overflow into Mill Creek. We recommend that the applicant consult with the County's engineering division prior to or in conjunction with the Board's approval.

- 1) Acknowledge minimization efforts
- 2) Move ~~deck~~ dwelling to N, results in disturb. to steep slopes for a deck
- 3) When replacing dwelling, it should be done in a manner that conforms insofar as possible w/ current reqs.
- 4) While dist. to slopes might be minimal, an alt. dwelling design could be utilized so as to avoid a steep slope variance altogether
- 5) Our pos. that applicants should be required to design in harmony w/ site constraints
  - a) Where opp. exists to avoid steep slope, this should be required.

- 6) Rain Gardens concerns
- 6" excavations only?
- 7) What is the new total imp.?
- No Δ?

TTY for the Deaf

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



Roxana Whitt  
Variance 06-3336 Smith  
September 25, 2006  
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Due to the outstanding concerns identified within this letter, we are unable to offer support for the variance as requested. We recommend that the Board evaluate whether it is possible to utilize an alternative dwelling design which eliminates the need to disturb steep slopes and that the Board consider whether the rain garden would be more appropriately located elsewhere on the property.

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,



Kerrie L. Gallo  
Natural Resource Planner  
CA 440-06

\* Deferred to work out  
Heath Dept. (Issue)



Robert L. Ehrlich, Jr.  
Governor

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July 27, 2006

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

Re: Variance 06-3336 Smith

Dear Ms. Whitt:

Thank you for providing information on the above referenced revised variance. The applicant is requesting a variance from the 100-foot Buffer in order to permit the construction of a replacement dwelling. The property is designated a Limited Development Area (LDA) and is currently developed with a primary dwelling and septic area.

Based on the information provided, it appears that the existing dwelling is non-conforming and located approximately 41-feet from the bulkhead. While we recognize that the applicant proposes to construct a replacement dwelling no closer towards Mean High Water (MHW) than the existing dwelling and that the overall impact to the site may be decreasing, it appears that ample opportunity exists to construct a replacement dwelling further from MHW. Specifically, it appears as though the applicant could move the dwelling east, towards Deer Drive, as much as 25 feet. This move would provide an increased Buffer area, increased opportunities for stormwater runoff infiltration, enhanced plant and wildlife habitat areas, and allow greater potential for an overall improvement to the natural resources of the site. In addition, an alternative design could be considered which minimizes the footprint of the garage and driveway, allowing for greater flexibility in locating the dwelling farther from MHW.

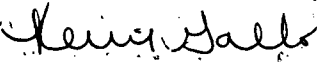
In evaluating the variance, the Board must determine that the applicant has met each and every one of the County's variance standards, including the standard of unwarranted hardship, and that the variance is minimum necessary in order to provide relief. As it appears that opportunities exist to locate the dwelling further from MHW, thereby requesting a variance of a lesser degree, and allowing for greater minimization of impact to the Buffer, this office questions whether the variance standards have been met. Because it is our view that further opportunities for minimization exist, in addition to opportunities to decrease the nonconformity within the Buffer, we recommend that the Board require the applicant to submit a revised site plan.

- Recognize  
(of imp. surface area)
- ~~even though~~ overall impact may be decreasing, <sup>app. can</sup> opportunity to construct further from MHW, as much as 25 ft.
  - This would provide larger Buffer area, increased opps for sw infiltration, ↑ plant/wild habitat
  - Alternatively, alternative, more compact design could be used, which also results in an enhanced site
  - Currently, we question whether v-standards have been met. It's our view that this is the opp. to make the site better, and opp. exist to grant a variance of a lesser degree w/ less Buffer impact

Roxana Whitt  
Variance 06-3336 Smith  
July 27, 2006  
Page 2

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,



Kerrie L. Gallo  
Natural Resource Planner  
CA 440-06

RECEIVED

CA440-qb

OCT 3 1 2006

Case No. 06-3336

CRITICAL AREA COMMISSION  
Chesapeake & Atlantic Coastal Bays

Public Hearing  
August 3, 2006  
October 5, 2006

James Smith has applied for a variance in the 100' waterfront buffer requirements and a variance in the steep slope requirements for construction of a replacement dwelling and deck. The property is located at 365 Deer Drive, Lusby (Tax Map 45A, Lot 11, Block A, Section 23, Drum Point) and is zoned RD Residential 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 August 3, 2006 before Board of Appeals members Mr. Michael Reber, Chairman, Mr. Walter Boynton, Vice Chairman, and Mr. Dan Baker (the Board). Mr. Nicholas Montgomery from Collinson, Oliff and Associates was present at the hearing and represented the property owner Mr. James Smith.
2. The following applicant Exhibit was dated and entered into the record at the August hearing:
  - Exhibit No. 1 – Plat Submitted With Application
3. The following person testified at the August hearing:
  - Kerrie Gallo, Chesapeake Bay Critical Area Commission
4. The following correspondence was entered into the record at the August hearing:
  - Letter dated July 27, 2006 from Kerrie Gallo, Chesapeake Bay Critical Area Commission
5. The Board deferred action at the August hearing at the request of the Applicant's Representative to allow time for a plat with Health Department approval to be obtained.

6. The case was again presented October 5, 2006 before the Board. Mr. James Smith was present at the hearing and was represented by Mr. Nicholas Montgomery from Collinson, Oliff and Associates.
7. A Staff Report and photographs taken on site were entered into the record at the October hearing and marked Staff Exhibit No. 1.
8. The following Applicant Exhibit was entered into the record at the October hearing:
  - Exhibit No. 2 – Revised Plat with Health Department Approval
9. The following correspondence was entered into the record at the October hearing.
  - Memo dated August 30, 2006 from Ron Babcock, Soil Conservation District
  - Letter dated September 25, 2006 from Kerrie Gallo, Chesapeake Bay Critical Area Commission
  - Memo dated September 27, 2006 from Stephanie Taylor, Calvert County Engineering Bureau.
10. The following person testified at the October hearing:
  - Kerrie Gallo, Chesapeake Bay Critical Area Commission

#### **FINDINGS OF FACT**

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

1. The property consists of .36 acre and is situated between Deer Drive and Bow Cove on Mill Creek.
2. The 100-foot waterfront buffer from Mill Creek encompasses more than ½ the depth of the property.
3. The property's terrain has a gentle slope toward the waterfront. The land within ~40 feet of the waterfront lies within the 100-year floodplain.
4. There are residences on the adjoining lots to the north and south. The lots directly across Deer Drive are not developed.



5. The applicant purchased the property in 2004, after the adoption of Critical Area law in 1986.
6. The house on the subject lot was built in 1976. The applicant proposes to replace this structure.
7. The State of Maryland deems this property to be properly grandfathered for Critical Area variance consideration.
8. Proposed impervious surface increases from the existing 1809 s.f. to 2257 s.f., or 15.4% of the total lot area. Proposed impervious surface in the buffer decreases from 1806 s.f. to 1095 s.f.
9. The applicant proposes construction of a rain garden just shoreward of the bulkhead for infiltration of stormwater runoff from the rooftop on the waterfront side of the house. The rain garden in this location would be planted with salt tolerant native species. Concerns were raised regarding the location of the rain garden at the bulkhead. In response to this concern and a request by the Board to maximize stormwater management, the applicant indicated that it may be possible to construct two rain gardens on different portions of the property. A revised plan will be submitted to the Board's Planning Staff and the Department of Public Works for review and approval, showing either the rain garden moved and enlarged or a second rain garden added.
10. A drywell sized for a 2" rainfall is proposed between the house and the roadfront to collect rooftop runoff from the garage.
11. An earth dike is proposed to control sediment and erosion on the south side of the lot; silt fence is used on the north side.
12. The proposed design includes the addition of a denitrification system to the existing septic system. The septic tank, denitrification unit and septic cleanout are all located within the buffer, approximately 30 feet from the waterfront. The primary infiltration trench is located on the southeast side of the lot. The proposed replacement is within the buffer, at the end of the driveway turnaround.
13. A swale for stormwater control must be located at the north side of the house, as required by Public Works. The swale will impact a steep slope area of the property. A corner of the proposed deck also intrudes into this area. No additional steep slope grading is required for the deck.
14. The three driveways that currently enter the property from Deer Drive are to be consolidated into one driveway. The existing impervious driveways are to be removed and are proposed to be replanted with native vegetation.

15. The proposed house sits 55 feet from the waterfront. The current house sits 41 feet from the waterfront.
16. Disturbed area is 11,904 s.f., or 81.3% of the lot. Proposed tree clearing is 2591 s.f., or 27.5% of the forested area on the property.
17. Houses within the community and within the waterfront portion of the Critical Area in general are of similar size to that proposed in this case.
18. Ms. Kerrie Gallo from the Chesapeake Bay Critical Area Commission was present at the hearing and testified: (1) the CBCAC is concerned with the rain garden location as it could possibly cause failure of the bulkhead; (2) the CBCAC is concerned with disturbance to the steep slopes for the deck; (3) impervious surfaces on site should be limited to what is shown on the plat; and (4) areas where the impervious driveway is removed should be replanted.

### 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 variances 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 100' waterfront buffer requirements and the variance in the steep slope requirements for construction of a replacement dwelling and deck as requested by James Smith be **GRANTED** based on the above findings of fact and conclusions subject to the following conditions:

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.
2. A denitrification septic system must be installed.
3. The property shall be developed in phases with each phase being stabilized prior to proceeding to the next phase.

4. A phasing plan shall be submitted with the building permit.
5. Prior to work being done on site, the location of the house and the limitation of clearing shall be staked and marked.
6. The Applicant's construction representative shall meet with representatives from the Department of Planning and Zoning and the Department of Public Works to determine the construction grading and limit of clearing prior to construction start.
7. There shall be no stockpiling of excavated materials on site.
8. A foundation location plat prepared by a registered surveyor must be submitted to and approved by the Department of Planning and Zoning prior to framing.
9. A 6" washed gravel bed shall be placed under any decks or deck areas to provide stabilization.
10. All downspouts shall discharge into drywells or other appropriate and approved stormwater management devices as recommended by the Department of Public Works.
11. The rain garden as proposed is located within a 100-year flood plain. The Applicant shall explore with the Health Department the possibility of moving the proposed rain garden located adjacent to Mill Creek back from the Creek and the bulkhead. The proposed rain garden shall be enlarged and/or moved if approved by the Health Department. There shall be no tree removal for an enlarged/moved rain garden. If Health Department approval for the enlarged/moved rain garden is not obtained, the rain garden shall remain in its current location and must be planted with salt tolerant native plant species.
12. Driveway areas must be removed and be replaced with pervious materials.

13. Decking must be pervious.
14. A modified site plan must be submitted to Staff for review and approval.
15. A final as-built certification prepared by a registered surveyor must be submitted for approval by the Department of Planning and Zoning showing that the grading was performed and structures were built according to the approved plan, prior to final approval of the project. A copy of the approved as-built certification shall be filed in the records for this case.
16. Approval by the Zoning Enforcement Officer for the Board of Appeals is required prior to issuance of a Use and Occupancy Permit, or other final approval for the project, as determined by the Division of Inspection and Permits.


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.

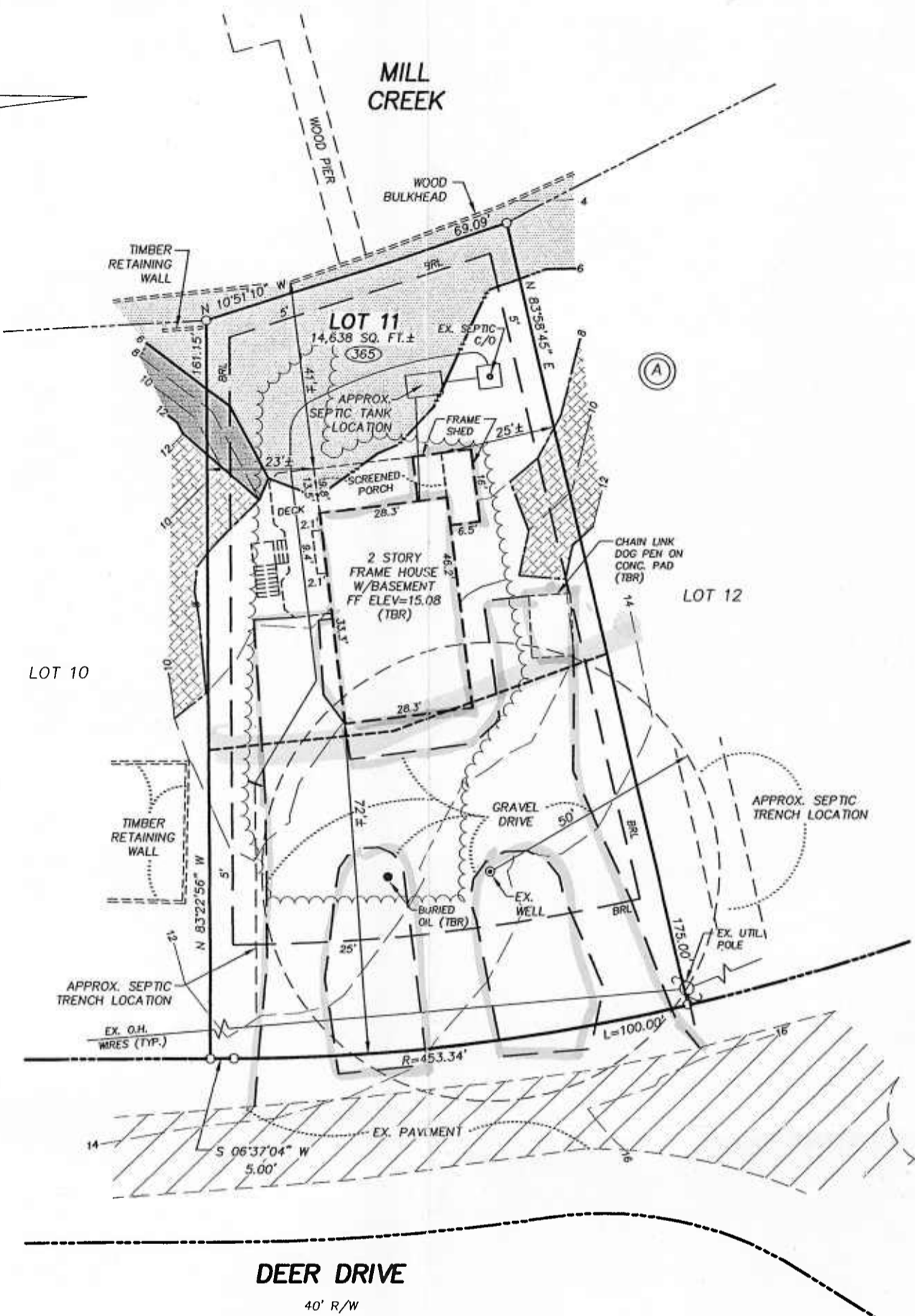
In accordance with Section 11-1.01G of the Calvert County Zoning Ordinance if any application for a variance is denied by a final order of the Board, a second application involving substantially the same subject matter shall not be filed within one year from the date of the final order. If any such denial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

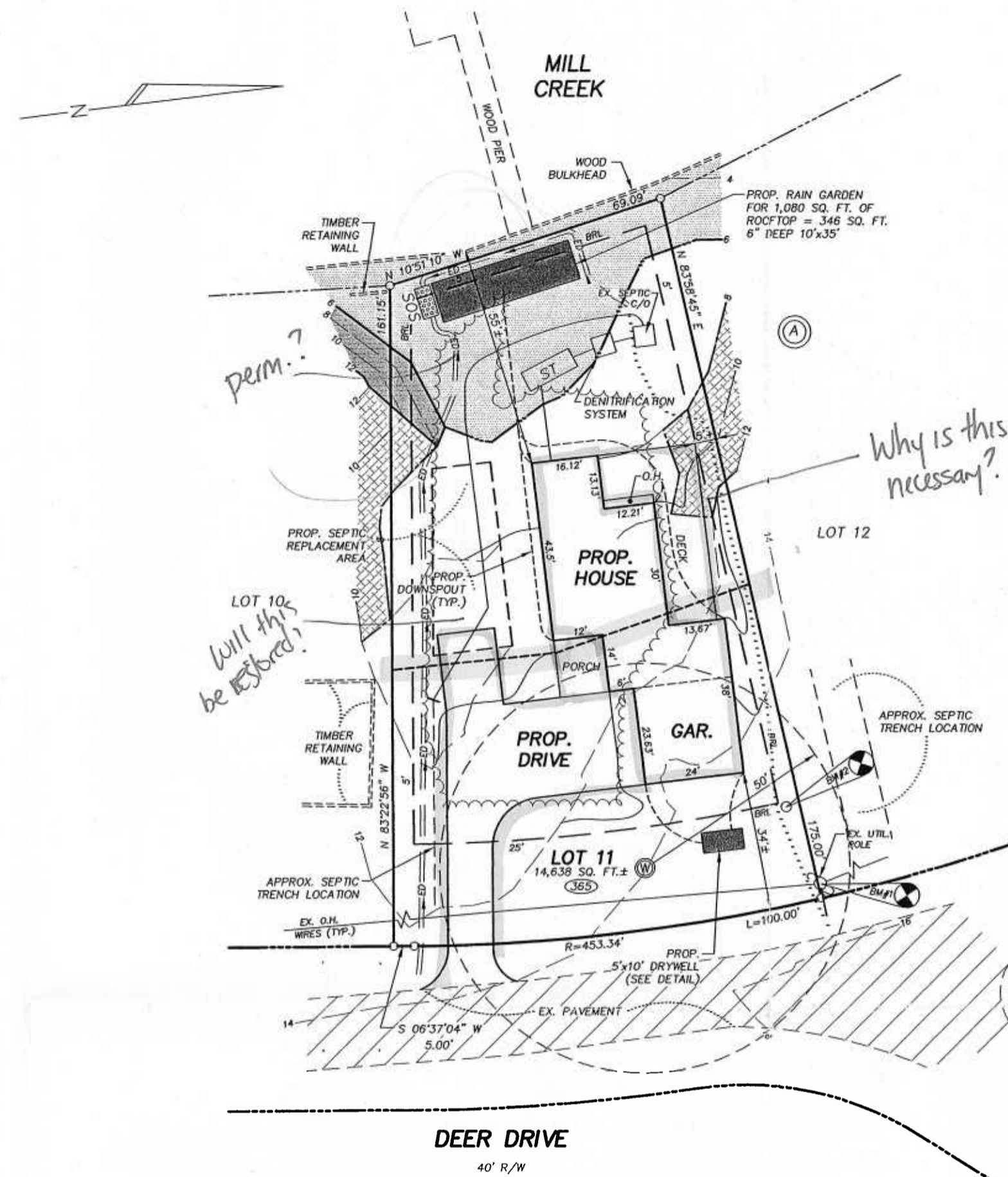
Entered: October 27 2006  
Pamela P. Helie, Clerk

  
\_\_\_\_\_  
Michael J. Reber, Chairman



DEER DRIVE  
40' R/W

EXISTING CONDITIONS



DEER DRIVE  
40' R/W

PROPOSED CONDITIONS

**INFORMATION STATEMENT**

42' X 57.5' TWO STORY HOUSE - 2415 d  
ON BASEMENT  
23.63' X 24' GARAGE - 567  
12' X 14' PORCH - 160  
12' X 55' DECK - 660  
GARAGE ELEVATION: 12.5'  
FIRST FLOOR ELEVATION: 17.0'  
BASEMENT ELEVATION: 8.0'

LOT AREA: 14,638 SQ. FT. ±  
DISTURBED AREA: 11,904 SQ. FT. ± (81.3%)  
EX. IMPERVIOUS AREA: 1,809 SQ. FT. ± (12.4%)  
PROP. IMPERVIOUS AREA: 2,257 SQ. FT. ± (15.4%)  
FORESTED AREA: 9,409 SQ. FT. ± (64.3%)  
FORESTED AREA TBR: 2,591 SQ. FT. ± (27.5%)

EX. IMP. AREA IN BUFFER: 1,806 SQ. FT. ± (12.3%)  
PROP. IMP. AREA IN BUFFER: 1,095 SQ. FT. ± (7.5%)

OWNER: JAMES SMITH  
DEED: K.P.S. 2313 @ 343  
TAX I.D.#: 01-064525

SOILS MAP #44  
SOIL TYPE: MuB2 MATAPEAKE SILT LOAM,  
2 TO 5 PERCENT SLOPES,  
MODERATELY ERODED  
ShC3 SASSAFRAS FINE SANDY LOAM,  
5 TO 10 PERCENT SLOPES,  
SEVERELY ERODED

THIS LOT IS IN THE CRITICAL AREA.

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

CONTACT "MISS UTILITY" AT 1-800-257-7777 AT LEAST  
48 HOURS PRIOR TO COMMENCEMENT OF ANY WORK.

DECKS AND OTHER STRUCTURES NOT SHOWN DO NOT  
HAVE ZONING APPROVAL FOR CONSTRUCTION.

THE ISSUANCE OF COUNTY PERMITS IS A LOCAL PROCESS  
AND DOES NOT IMPLY THE APPLICANT HAS MET STATE &  
FEDERAL REQUIREMENTS FOR WETLAND FILLING AND/OR  
WETLAND BUFFER DISTURBANCE.

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

A 6" GRAVEL BED SHALL BE PLACED BENEATH THE DECK.  
THERE SHALL BE NO STOCKPILING OF EXCAVATED MATERIAL  
ON SITE.

ALL SLOPES 15% OR GREATER TO BE STABILIZED WITH  
EROSION CONTROL MATTING & NATIVE SPECIES PLANTINGS.

THE EXISTING WELL TO BE ABANDONED PER COMAR  
REGULATIONS.

ALL DOWNSPOUTS SHALL DISCHARGE TO DRYWELLS OR RAIN  
GARDEN AS SHOWN.

EX. GRAVEL DRIVEWAY AREAS TO BE RE-PLANTED WITH  
NATIVE VEGETATION.

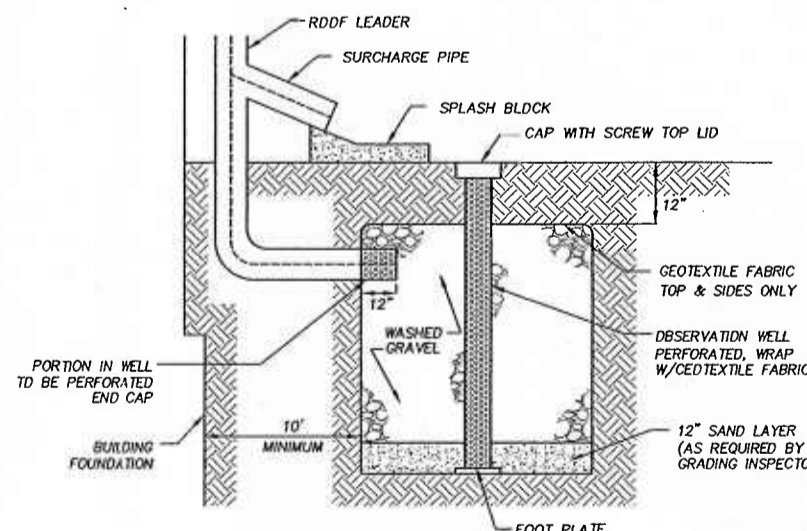
**GRAPHIC SCALE**



( IN FEET )  
1 inch = 30 ft.

**LEGEND**

- LIMIT OF 100 YEAR FLOODPLAIN
- 25% OR GREATER SLOPES
- 15% TO 24% SLOPES
- LIMIT 100' BUFFER
- EXISTING TREELINE
- ASSIGNED HOUSE NUMBER
- PROPOSED WELL
- BENCHMARK



**DRYWELL DETAIL**

NTS

STANDARD DIMENSIONS FOR 1,000 SQ. FT.  
ROOFTOP AREA (MAXIMUM ALLOWED)  
5' W X 10' L X 4' D OR 200 C.F. (WITH  
A VOID RATIO OF 0.40) PROVIDES 80  
C.F. OF STORAGE VOLUME PER DRYWELL.

**BENCHMARK INFORMATION**

BM #	DESCRIPTION	ELEVATION
1	NAIL SET IN UTILITY POLE	20.00
2	NAIL SET IN 30" WHITE OAK TREE	20.00

BUILDING PERMIT PLAT

DRUM POINT

LOT 11 ~ BLOCK A ~ SECTION 23

FIRST DISTRICT, CALVERT COUNTY, MARYLAND

SUBDIVISION PLAT RECORDED IN PLAT BOOK J.L.B. 1 @ 26

FOR: JAMES SMITH

SCALE AS SHOWN

DATE 7-5-06

JOB NO. 1-9052

DRAWN BY N.J.M.

APPROVED J.L.T.

CASE NO.

FOLDER REFERENCE

DRUM POINT, SECTION 23

DATE 8-16-06

REVISION

HOUSE LOCATION, GRADING & SEPTIC DESIGN



AUG 25 2006

STATE OF MARYLAND

COMMISSION

Coastal Bays

COLLISON, OLIFF & ASSOCIATES, INC.

Surveyors • Engineers  
Land Planners

110 MAIN STREET

PRINCE FREDERICK, MARYLAND 20678

410-535-3103 • FAX: 410-535-3103 • EMAIL: INFO@COAINC.COM

