

CA 442-06
VAR

Harding, Arthur
06-3338

MSA-S-1829-5652

pulled from August
agenda per Roxana
7/27/06 - no comments
sent
7/27/06
Comments 12/19/06 - Kelly

** Deferred for site visit*



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/

December 19, 2006

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

- 1) Paver Patio not permanent
- 2) not apples/oranges comparison for retirement patio - one is permitted for SEC and one is structure in Buffer
- 3) MHS packet

Re: Variance 06-3338 Harding

Dear Ms. Whitt:

Thank you for providing information on the above referenced variance. The applicant is requesting a variance to the 100-foot Buffer in order to permit the construction of a dwelling addition, garage addition and a driveway. In addition, a variance to the 25% impervious surface area limit is requested. The property lies within a designated Limited Development Area (LDA) and is currently developed.


In evaluating the applicant's variance request, this office has several serious concerns. First, it appears that the applicants are requesting a variance to construct approximately 1,120 square feet of new impervious structures within the Buffer. We note that the sum of these proposed improvements is larger than the footprints of most primary dwellings which the Board reviews and grants variance for. In addition, despite the lot's small size and location entirely within the Buffer, extensive improvements currently exist on the property which result in virtually no undeveloped Buffer area available to serve as a transitional area for wildlife and water quality benefits or as a functional riparian Buffer. In consideration of the existing site improvements and site conditions, it appears that the applicant currently enjoys reasonable and significant use of the entire lot or parcel and that little effort has been made to minimize the footprint and overall impact of new impervious surfaces in the Buffer. As such, it is our view that the applicant has failed to meet each and every one of the County's variance standards and should therefore be denied a variance.

Second, it is my understanding that extensive improvements within close proximity to Mean High Water (MHW) have been constructed without the required County permits. While the complete extent of the illegal improvements is unclear, it is my understanding that the existing paver patio and several decks are without legal permits. The applicants should be required to obtain permits for and/or remove all illegal structures within the Buffer prior to the Board's consideration of new variances to disturb the Buffer. To grant a variance where outstanding violations exist on a property would be in conflict with the goals and intent of the Critical Area Law. Therefore, we oppose the Board's consideration of new variances at this time.

Roxana Whitt
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Thank you for the opportunity to provide comments for this variance request. If you have any questions or concerns, please feel free to contact me at 410-260-3482. As always, please provide the Commission with a copy of the written decision made in this case.

Sincerely,



Kerrie L. Gallo
Natural Resource Planner
CA

CALVERT COUNTY BOARD OF APPEALS

Case No. 06-3338

Public Hearing
January 4, 2007
February 21, 2007

Arthur & Vickie Harding have applied for a variance in the 100' waterfront buffer requirements and a variance in the front setback requirements from 25' to 21' for construction of an addition to an existing single-family dwelling. The property is located at 12860 Bay Drive, Lusby (Tax Map 45A, Block A, Section 2A, Lots 6 & 7 Drum Point) and is zoned RD Residential District.

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 11-1.01.A of the Calvert County Zoning Ordinance, which provides that the Board of Appeals shall have the authority to grant variances from the strict application of the lot area, lot width, setback, and height requirements of this Ordinance; and Article 11-1.01.B of the Calvert County Zoning Ordinance, which provides that the Board of Appeals shall have the authority to grant variances from the Critical Area requirements of the Ordinance.

TESTIMONY & EVIDENCE PRESENTED

1. The case was presented January 4, 2007 before Board of Appeals members Mr. Michael Reber, Chairman, Mr. Walter Boynton, Vice Chairman, and Mrs. Karen Edgecombe, Alternate for Mr. Dan Baker.
2. Mr. Arthur Harding was present at the hearing and was represented by Mr. Jeff Tewell from Collinson, Oliff and Associates, Inc.
3. A Staff Report with photographs taken on site was entered into the record at the January hearing and marked Staff Exhibit No. 1.
4. The following Applicant Exhibits were dated and entered into the record at the January hearing:

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 CRITICAL AREA COMMISSION
 MAR 29 2007

- Exhibit No. 1 – Application
 - Exhibit No. 2 – Plat with Health Department Approval
 - Exhibit No.3 – Response to Draft Report to the Board of Appeals, dated December 19, 2006
5. The following correspondence was entered into the record at the January hearing:
- Letter dated December 19, 2006 from Kerrie Gallo, Chesapeake Bay Critical Area Commission
 - Memo dated December 14, 2006 from Ron Babcock, Soil Conservation District
 - Memo dated December 21, 2006 from Serena Chapla, Engineering Bureau
6. The following person testified at the January hearing:
- Ms. Kerrie Gallo, Chesapeake Bay Critical Area Commission, 1804 West Street, Suite 100, Annapolis, MD 21401
7. The Board deferred action at the January hearing to allow the owner/applicant time to provide information identifying each improvement on the subject property by name and specifying the Building Permit applicable to each improvement.
8. The applicant provided the requested information between the January and February 2007 hearings.
9. The case was again presented February 21, 2007 before Board members Mr. Michael Reber, Mr. Walter Boynton, and Mr. Dan Baker.
10. Mr. Arthur Harding was present at the February hearing and was represented by Mr. Jeff Tewell from Collinson, Oliff and Associates, Inc.
11. The following Applicant Exhibit was dated and entered into the record at the February hearing.
- Exhibit No. 4 – Letter from Arthur H. Harding to Ms. Roxana Whitt, dated January 17, 2007 (w/attachments)
12. The following persons testified at the February hearing:
- Mr. Michael Stanton, 12881 Bay Drive, Lusby, MD 20657
 - Ms. Deana Cochran, 12844 Bay Drive, Lusby, MD 20657

FINDINGS OF FACT

Based on the application, testimony and evidence presented at the hearings, the Board made the following Findings of Fact:

1. The subject property is located at 12860 Bay Drive in Drum Point subdivision, and is otherwise known as Lots 6 and 7, Block A, Section 2A of Tax Map 45A in the Land Records for Calvert County.
2. The property consists of two adjoining lots totaling 20,682 s.f. and is situated on the east side of Bay Drive, adjacent to the Chesapeake Bay. Only 14,649 s.f. of the property is situated above mean high water on fast land, or upland.
3. The entire extent of the subject property lies within the 100-foot buffer.
4. The natural habitat of the property has been altered by the development that has occurred onsite to date. There is no functional buffer in that it has been converted to decking, patio and grass, with pressure-treated lumber walls along the shoreline.
5. The terrain is primarily level except for the bank at the waterfront, which is supported by retaining walls and bulkheads.
6. The existing house, including the rear deck, has overall dimensions of 44' x 58'. Other detached decks and patios are not included in these dimensions.
7. The proposed construction includes a 22.84' x 21' garage on the north side of the house; a 23' x 7' addition on the rear of the garage; a 17.38' x 22' addition to the north of the proposed garage and addition; and an 8' x 8.35' addition on the south side of the house.
8. The garage and the addition north of the garage require front setback variances, with a maximum encroachment of 4 feet.
9. All of the additions and the garage require buffer variances. The proposed structures lie within 42 feet of mean high water. The existing house lies within 31 feet of the water, with decks situated as close as 15 feet from the waterline.
10. The proposed additional construction size, 40' x 28', is similar to that of entire houses on other lots within the community. Houses on waterfront lots are generally larger.
11. The entire footprint of the finished structure, which includes the existing house and deck as well as the proposed construction, is approximately 98' x 44', or ~3600 s.f.
12. The County's GIS program suggests that houses in the immediate vicinity range from 1600 s.f. to 3500 s.f.

13. Specific characteristics of each property are important in determining the level of development that can be supported. The applicants' property consists of two lots; however, a considerable portion of the lot area is not buildable because it lies below mean high tide.
14. Impervious surfaces currently cover 24.7% of the property's upland. The proposed addition brings the total on site to 4022 s.f., or 27.5% of the upland. This total includes removal of the paved driveway, and replacement with an ostensibly pervious surface.
15. The applicants purchased the property in 1998, after the enactment of Maryland's Critical Area law. According to the State Department of Assessments and Taxation, the house on the lot was built in 1979, prior to the adoption of Critical Area law.
16. The property was recorded as a lot prior to Critical Area law in 1986, and the State of Maryland has deemed it properly grandfathered for Critical Area variance consideration.
17. The addition will be constructed on adjoining Lots 6 & 7 owned by the applicant. This addition is less intrusive than if an entire residence were constructed on Lot 7.
18. Proper permits were not obtained for the patio constructed behind the bulkhead.

CONCLUSIONS

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

1. The Board of Appeals concludes that it has the authority to grant a variance in the front setback requirements from 25' to 21' for construction of an addition to an existing single-family dwelling as set forth in the Ordinance.
2. The Board concludes that peculiar and unusual practical difficulties exist on the parcel as a considerable portion of the lot is not buildable because it lies below mean high tide, limiting the space available within the Building Restriction Lines for the proposed addition.
3. The Board concludes that:
 - 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. the variance request is not based upon conditions or circumstances which are the

result of actions by the applicant.

4. 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.
5. 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.
6. 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.
 - 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 a variance in the 100' waterfront buffer requirements and a variance in the front setback requirements from 25' to 21' for construction of an addition to an existing single-family dwelling as requested by Arthur and Vickie Harding be **GRANTED 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. The paver patio constructed without permit and located near the waterfront on the north side of Lot 6 and extending to Lot 7 must be removed and the area must be planted to act as a functional buffer in accordance with Critical Area criteria, prior to issuance of the building permit for construction of the addition. The buffer is to remain planted in perpetuity.
3. A denitrifying septic system shall be installed.
4. Rain gardens, adequate in size to handle stormwater runoff from the proposed new addition, must be installed.
5. The property shall be developed in phases with each phase being stabilized prior to proceeding to the next phase.
6. A phasing plan shall be submitted with the building permit.
7. Prior to work being done on site, the location of the house and the limitation of clearing shall be staked and marked.
8. 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.
9. There shall be no stockpiling of excavated materials on site.
10. 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.
11. 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 Board of Appeals record for this case.

12. 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 Inspections and Permits.
13. In accordance with Article 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 the Ordinance and subject to the enforcement provisions of Article 1-7.

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: March 26 2007
Pamela P. Helie, Clerk



Michael J. Reber, Chairman

Case No. 96-2228

Public Hearing
June 6, 1996

Mr. and Mrs. Tom Ricker have applied to the Board of Appeals for a variance in the waterfront buffer requirements for construction of an addition within the buffer. The subject property is known as Lot 6, Block A, Section 2-A, Drum Point, is located on the southeast side of Bay Drive, and is zoned R-1 Residential. Note: This case was originally scheduled for the April, 1996 public hearing but was postponed by the applicants.

The matter was presented June 6, 1996 before Mr. William Dowell, Chairman of the Board of Appeals, Mr. John Prouty, Vice-Chairman, and Mr. Michael Reber. The applicants were present at the hearing and were represented by Mr. Jeff Tewell, of Collinson, Oliff and Associates, Inc. The plat which was submitted with the application was marked Applicant's Exhibit No. 1 and entered into the record. A staff report, along with photographs taken on-site, were also entered into the record.

FINDINGS OF FACT

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

1. The property is small, containing 10,179 square feet. It is located entirely within the Critical Area on the Chesapeake Bay.
2. The property is currently developed with a 40' x 28' house, with two decks behind, one measuring 29' x 14.5' and the other measuring essentially 12' x 10'. The decks were recently (May 1996) covered in an indoor/outdoor carpeting. There was some question as to whether the carpet should be considered an impervious surface. However, the total amount of impervious surfaces on-site is below the limitations required by the Critical Area regulations.
3. The applicants are proposing construction of a one-story addition on the rear corner of the house extending 7' from the southern end of the house and 11' from the rear, or eastern side of the house for a total of 296 square feet. The addition will be used as an expansion of the existing bedroom.

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4. The house was constructed several years ago, prior to the adoption of the Critical Area regulations, and contains only one bedroom. The house is constructed on pilings and the addition will also be constructed on pilings so that no excavation for the foundation will be necessary.
5. Due to the interior layout of the house, enclosure of the existing decks to provide additional bedroom area would not be feasible. The applicants indicated that they have no intentions of enclosing the decks in the future.
6. The septic system is located in the front yard. The well is located beneath the rear deck.
7. A few small trees are located on the roadfront side of the property, but no trees are located within the waterfront buffer area. No trees will be removed to accommodate construction of the addition.
8. A retaining wall/bulkhead lines the waterfront, and the area between the wall and the house is covered in grass lawn.

CONCLUSIONS

Based on the above findings of fact, the Board came to the following conclusions (in accordance with Section 7-3.01.A of the Calvert County Zoning Ordinance):

1. Strict application of the waterfront buffer requirements would impose peculiar and unusual practical difficulties and undue hardship upon the owners of the property due to the size of the lot and the location and size of the existing house, which was constructed prior to the adoption of the Critical Area regulations.
2. Granting the variance would not cause injury to the public interest or substantially impair the intent of the Comprehensive Plan as the addition will be constructed on pilings so that very little disturbance within the buffer will be necessary.
3. Findings were made which demonstrate that special conditions or circumstances exist that are peculiar to the land and that a literal enforcement of provisions within the County's Critical Area Program would result in unwarranted hardship.

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4. 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.
5. The granting of a variance will not confer upon the applicant special privileges that would be denied by the Calvert County Critical Area Program to other lands or structures within the County's Critical Area.
6. 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.
7. 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 the granting of the variance will be in harmony with the general spirit and intent of the Critical Area law; and
8. The application for a variance was made in writing to the Board of Appeals with a copy provided to the Critical Areas Commission.

ORDER

It is hereby ordered, by a unanimous decision, that the variance in the waterfront buffer requirements, as requested by Mr. and Mrs. Tom Ricker, be granted based on the above findings of fact and conclusions, with the following conditions:

1. That any erosion control measures required by Soil Conservation District be installed and maintained during construction.
2. That all drainage from all downspouts on the addition be directed onto rip rap pads.

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3. That prior to issuance of a building and/or grading permit, the applicant shall be required to pay fees-in-lieu or replant vegetation at the following rates for clearing of forested area outside the buffer:

<u>Amount of Clearing</u>	<u>Fees-in-Lieu</u>	<u>Replanting</u>
less than 6,000 s.f. or less than 20% of the lot	= \$.02 per s.f.	1:1 basis (seedlings)
between 20% & 30% of the lot and greater than 6,000 s.f.	= \$.60 per s.f.	1.5:1 basis (6' trees)
greater than 30% of the lot and greater than 6,000 s.f.	= \$1.20 per s.f.	3:1 basis (6' trees)

For any disturbance within the buffer, the fees-in-lieu shall be \$.80 per s.f. and replanting shall be on a 2:1 basis (6' trees).

In accordance with Section 7-3.02 of the Calvert County Zoning Ordinance, "any person or persons, jointly or severally, aggrieved by any decision of the Board of Appeals...may appeal the same to the Circuit Court of Calvert County. Such appeal shall be taken according to the Maryland Rules as set forth in Maryland Rules, Title 7, Chapter 200 within 30 days. If any application for a variance is denied by a final order of the Board, or if appealed, by a final order of the Court, a second application involving substantially the same subject matter shall not be filed within one year from the date of the final order."

Entered: July 9, 1996
Miriam J. America, Clerk


William Dowell, Chairman

Case No. 97-2351

Public Hearing
June 5, 1997

Mr. and Mrs. Thomas Ricker have applied to the Board of Appeals for the following: (1) a variance (after-the-fact) in the 100' waterfront buffer requirement for enclosure of an existing deck; (2) a variance (after-the-fact) in the 100' waterfront buffer requirement for approval of an addition constructed differently than that which was previously approved by the Board of Appeals; and (3) a variance in the impervious surfaces requirements to increase the impervious surfaces on-site above the 25% limitation. The subject property is known as Lot 6, Block A, Section 2-A, Drum Point, is located on the southeast side of Bay Drive, and is zoned R-1 Residential.

The matter was presented June 5, 1997 before Mr. William Dowell, Chairman of the Board of Appeals, Mr. Michael Reber, Vice-Chairman, and Mr. John C. Smith. The applicant was present and was represented by Mr. Robert Gray, Attorney. Mr. Jeff Tewell, of Collinson, Oliff and Associates, Inc., also spoke on the applicant's behalf. One of the adjoining property owners, Mr. John Yarborough, was present at the hearing and indicated his support of the applicants' request.

The plat which was submitted with the application was marked Applicant's Exhibit No. 1, dated, and entered into the record. The applicant also submitted 12 photographs of the property, which were marked Applicant's Exhibits No. 2A through 2L. Applicant's Exhibit No. 3 consisted of the plat reviewed by the Board of Appeals during the original case. Staff submitted its report, along with photographs taken on site and the building permit which had been issued for the addition, into the record. Staff also read portions of the original Board of Appeals Order into the record.

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FINDINGS OF FACT

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

1. The subject property consists of 10,179 square feet and is located entirely within the Critical Area along the Chesapeake Bay. The property is relatively level.
2. The property is developed with a 40' by 28' house to which a 27' by 18.7' addition was constructed in April, 1997. The house also has attached a 10' by 28' screened porch, a 29' by 14.5' deck, and a 12' by 12' deck.
3. The owners received Board of Appeals approval in June, 1996, to construct a 24' by 18' (432 square feet) addition to the rear of the house on pilings and situated 33' from mean high tide. The variance for that addition was based on a conclusion made by the Board of Appeals that strict application of the waterfront buffer requirements would impose peculiar and unusual practical difficulties and undue hardship upon the owners of the property due to the size of the lot and the location and size of the existing house, which was constructed prior to the adoption of the Critical Area regulations.
4. The addition as constructed does not match what was presented at the June, 1996 hearing in size, type of construction, orientation, or distance to the water. The addition was constructed on a concrete foundation, extends toward the water rather than across the rear of the house, and is situated approximately 25' from mean high tide.
5. The addition as constructed extends 16.5' from the rear of the house for a width of 18.7'. There is also an "L" section constructed on the side of the house extending 8.3' from the side for a length of 10.5'. The total square footage of the addition as constructed is 395.7 square feet.
6. At the 1996 hearing, the applicant was asked whether the existing 29' by 14.5' deck could be enclosed to provide additional bedroom area. The applicants indicated that the location of the deck with respect to the layout of the house would not render it feasible for use as a bedroom, and that they had no intention of enclosing the existing deck. A Finding of Fact to this affect was included in the Board's Order.

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7. A stop work order was issued when it was reported to the Department of Planning and Zoning that the deck was indeed being enclosed. Further inspection revealed that the construction on site did not conform to the Board's original Order or to the building permit which had been issued.
8. The applicant indicated that the addition was constructed differently than that which was approved by the Board and on the building permit due to the location of the kitchen window, which would have been obstructed had the addition been constructed as proposed.
9. The applicant indicated that his builder had obtained the building permit for the addition on his behalf, and that he was not aware of the violations until the stop work order had been posted.
10. Although the building permit noted that the addition was to be constructed on pilings and included the plat approved by the Board, the fact that the addition was not constructed on pilings and was constructed differently than that which was approved was not discovered until the stop work order for the enclosure of the deck was issued.
11. The applicant was residing in Florida during the construction of the addition. Mr. Ricker testified that his builder informed him that no permit was necessary for the enclosure of the deck.
12. The impervious surfaces on-site would be increased to approximately 27% if the addition and the enclosure of the deck were to be approved.
13. Pursuant to the stated purposes of the Critical Area Program (Section 4-6.01 of the Zoning Ordinance), the Board of Appeals has been cautious and selective in granting variances in the buffer for structures which are not necessarily associated with water-dependent facilities. Even where special conditions or circumstances have been shown, the Board of Appeals has limited its approvals to primary residential structures, modest additions thereto, and necessary components thereof. In accordance with this conservative approach in cases which do not involve structures or facilities which are necessarily associated with water-dependent facilities, the Board of Appeals has consistently disapproved the placement of expansive additions, decks and patios, swimming pools, and other recreational facilities within the buffer. The enclosure of the deck on the subject property is not necessarily associated with water-dependent facilities and is also not a necessary component of a primary residential structure.

CONCLUSIONS

Based on the above findings of fact, the Board came to the following conclusions (in accordance with Section 7-3.01.A of the Calvert County Zoning Ordinance):

- 1. Strict application of the waterfront buffer requirements for the addition would impose peculiar and unusual practical difficulties and undue hardship upon the owners of the property due to the size of the lot and the location of the existing house, which was constructed prior to the adoption of the Critical Area regulations, and which contains only one bedroom.

The applicants failed to prove that there are any peculiar or unusual practical difficulties or undue hardships caused by exceptional narrowness, shallowness, or shape of the property or exceptional topographical conditions or other extraordinary situations or conditions affecting the property which would justify the granting of a variance for the enclosure of the deck within the waterfront buffer.

The applicants had indicated at the original hearing that the purpose of the addition was to expand the existing bedroom, and that enclosure of the deck would not satisfy this need due to the interior layout of the house. Therefore, the enclosure of the deck is not a necessary component of a primary residential structure.

- 2. Granting the variance for the addition would not cause injury to the public interest or substantially impair the intent of the Comprehensive Plan as the addition as constructed actually contains less square footage than that which was originally approved by the Board.

Granting the variance for the enclosure of the deck would cause injury to the public interest and substantially impair the intent of the Comprehensive Plan as no legal justification, in accordance with Section 7-3.01 of the Zoning Ordinance, was given for the variance request.

- 3. Findings were made which demonstrate that special conditions or circumstances exist that are peculiar to the land and that a literal enforcement of provisions within the County's Critical Area Program would result in unwarranted hardship if the variance for the addition were to be denied. No such findings were made with respect to the variance requested for the enclosure of the deck.

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4. A literal interpretation of the Critical Area Legislation and the Calvert County Critical Area Program and related ordinances for approval of the addition will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area of the County as the addition provides additional living space and bedroom area.

However, a literal interpretation of the Critical Area Legislation and the Calvert County Critical Area Program and related ordinances for enclosure of the deck will not deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area of the County as the deck enclosure is not a necessary component of a primary residential structure.

5. The granting of a variance for the addition will not confer upon the applicant special privileges that would be denied by the Calvert County Critical Area Program to other lands or structures within the County's Critical Area.

The granting of a variance for enclosure of the deck will confer upon the applicant special privileges that would be denied by the Calvert County Critical Area Program to other lands or structures within the County's Critical Area as it is not a necessary component of a primary residential structure.

6. The variance requests are based upon conditions and circumstances which are the result of actions by the applicant. However, with respect to the construction of the addition, a smaller square footage resulted in the changes made to the addition after the Board's approval. To the contrary, the enclosure of the deck was discussed at the original hearing and the applicant indicated at that time that he had no intentions of enclosing the deck in the future. The applicant was fully aware that the Board had not approved the enclosure of the deck under its original Order.

The request did not arise from any condition relating to land or building use, either permitted or non-conforming, on any neighboring property.

7. The granting of a variance for the addition will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the County's Critical Area as the addition contains less square footage than that which was originally approved by the Board. The granting of the variance for the addition will be in harmony with the general spirit and intent of the Critical Area law as legal justification for the variance was submitted by the applicant.

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The granting of a variance for the enclosure of the deck will adversely affect water quality and adversely impact fish, wildlife, and plant habitat within the County's Critical Area by increasing the amount of impervious surfaces within the buffer for a structure which is not a necessary component of a primary residential structure. The granting of the variance for the enclosure of the deck will not be in harmony with the general spirit and intent of the Critical Area law as no legal justification for the variance was submitted by the applicant.

8. The application for a variance was made in writing to the Board of Appeals with a copy provided to the Critical Areas Commission.

ORDER

It is hereby ordered, by a unanimous decision, that the variance in the waterfront buffer requirements for the enclosure of the deck on the subject property, as requested by Mr. and Mrs. Thomas Ricker, be denied based on the above findings of fact and conclusions.

It is further ordered, by a unanimous decision, that the variance in the waterfront buffer and impervious surfaces' requirements for approval of the recently constructed addition, as requested by Mr. and Mrs. Ricker, be granted based on the above findings of fact and conclusions.

'Note: This variance may no longer be necessary as the addition as constructed is smaller than that which was originally approved, and the enclosure of the deck was not approved by the Board.

Case No. 97-2351

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In accordance with Section 7-3.02 of the Calvert County Zoning Ordinance, "any person or persons, jointly or severally, aggrieved by any decision of the Board of Appeals...may appeal the same to the Circuit Court of Calvert County. Such appeal shall be taken according to the Maryland Rules as set forth in Maryland Rules, Title 7, Chapter 200 within 30 days. If any application for a variance is denied by a final order of the Board, or if appealed, by a final order of the Court, a second application involving substantially the same subject matter shall not be filed within one year from the date of the final order."

Entered: July 16, 1997
Miriam J. America, Clerk


William Dowell, Chairman

CHESAPEAKE BAY

S 36°43'00" W 77.50'



MEAN LOW TIDE

MEAN HIGH TIDE

N/F
 TM 45A, SECTION 3A,
 LOT 1
 A.B.E. 333/675
 JOHN B. JR. & WENDY
 GEAGAN
 TRACT AREA: 0.25 Ac.±
 USE: RESIDENTIAL

S 53°17'00" E
 134.42'

EXISTING BULKHEAD
 see detail sheet 2 of 2

N 53°17'00" W
 133.44'

EXISTING BULKHEAD
 see detail sheet 2 of 2



LOT #7

N/F
 TM 45A, SECTION 2A
 K.P.S. 1259/366
 ARTHUR H. & VICKIE
 HARDING
 TRACT AREA: 0.23 Ac.±
 USE: RESIDENTIAL

N/F
 TM 45A, SECTION 2A,
 LOT 6
 B.J.S. 1036/191
 ARTHUR H. & VICKIE
 HARDING
 TRACT AREA: 0.23 Ac.±
 USE: RESIDENTIAL

N 36°43'00" E 77.50'

BAY DRIVE

40' R/W PER PLAT 1:44



GENERAL NOTES:

1. THE INFORMATION SHOWN HEREIN HAS BEEN DUPLICATED FROM AN EXISTING AS-BUILT. NO FIELD SURVEY HAS BEEN PREPARED BY THIS FIRM.
2. THE PURPOSE OF THIS PLAN IS TO OBTAIN AN MDE PERMIT AND APPROVAL AFTER THE FACT FOR VARIATIONS DONE IN THE CONSTRUCTION AND REPAIR OF A BULKHEAD, DONE UNDER HURRICANE ISABEL REPAIR/REPLACEMENT PERMITS AS FOLLOWS: PUBLIC NOTICE #03-20 DATED SEPTEMBER 22, 2003, MDE GENERAL TIDAL WETLANDS PERMIT DATED SEPTEMBER 20, 2003, CALVERT COUNTY EMERGENCY REPAIRS PERMIT DATED SEPTEMBER 25, 2003 (REVISED OCTOBER 17, 2003) AND STATE OF MARYLAND BOARD OF PUBLIC WORKS NOTICE DATED SEPTEMBER 23, 2003.
3. BULKHEAD AVERAGE ABOVE GROUND, CHANNELWARD, HEIGHT IS FIVE FEET, IN ACCORDANCE WITH WARD PLAN.
4. HURRICANE ISABEL DEBRIS HAVE BEEN CLEARED FROM SITE AND BEACH AREA.
5. FINE GRADING AND STABILIZATION TO BE REDONE AFTER ISSUANCE OF PERMIT AND COMPLETION AND INSPECTION OF BULKHEAD.

**AS-BUILT PLOT PLAN FOR
 MDE BULKHEAD PERMIT
 LOT No. 7, BLOCK AA, SECTION 2
 DRUM POINT
 First Election District
 Calvert County, Maryland**

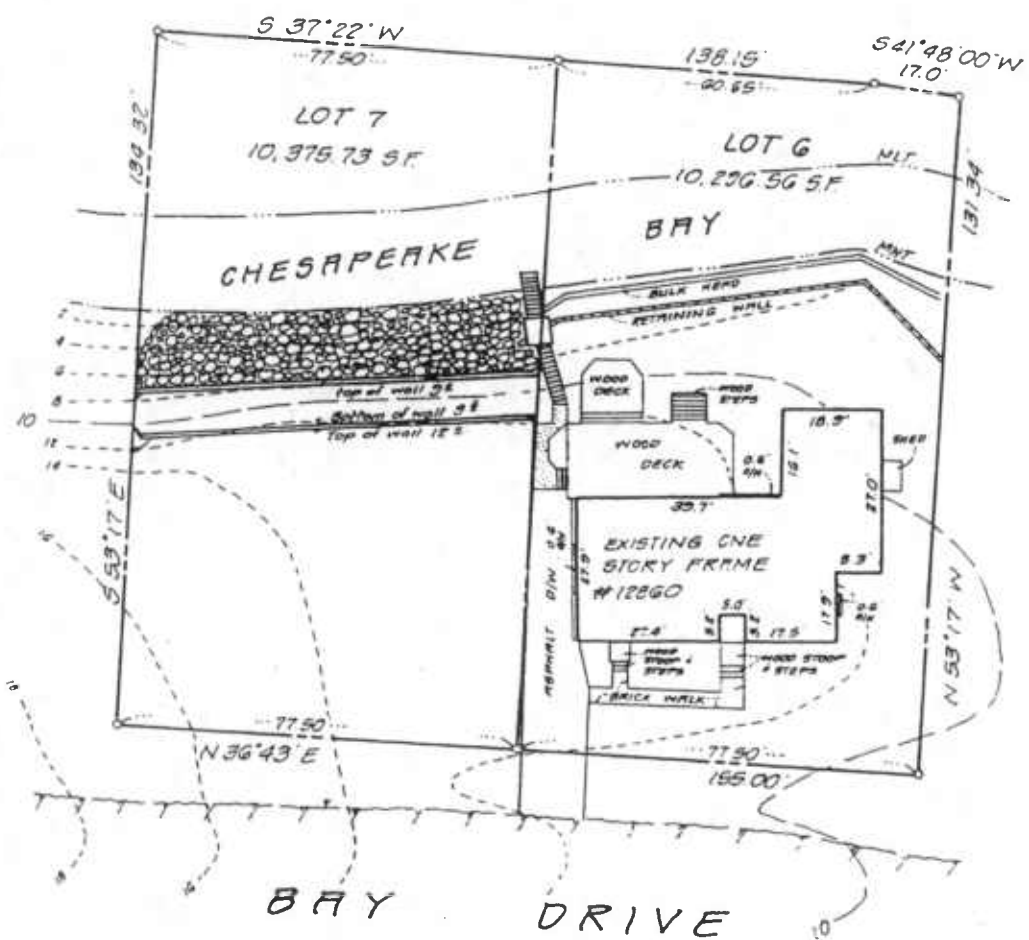
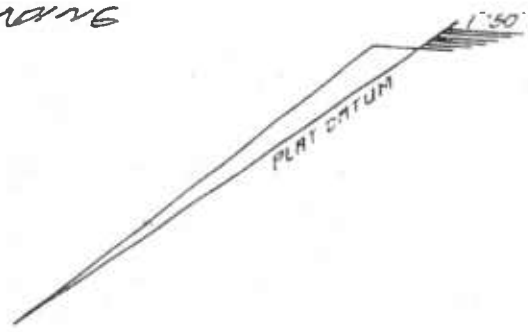
DATE	BY	REVISIONS

DAYTECH
ENGINEERING, LLC

ENGINEERS • PLANNERS • SURVEYORS
 44438 Paces Court - Suite 163
 Odessa, MD 20750
 Phone (301) 863-6323 FAX (301) 863-7400

Scale: 1" = 20' Drwn. ARS File #: LOT7.DWG Survey #: 04-035 Date: 09/17/04

ARTHUR H. HANDING
 01-GL-151
 200066050
 06/19/2000
 p. 1 of 3



1. TOTAL LOT AREA: 20,672.29 ±
2. LOT AREA OUTSIDE THE BAY: 13,788 ±
3. TOTAL ALLOWABLE IMPERVIOUS AREA: 3,447 ± or 25%
4. TOTAL IMPERVIOUS AREA EXISTING: 2,880.5 ± or 20.96%
5. ALLOWABLE IMPERVIOUS SURFACE REMAINING: 557.5 ±
6. THE ABOVE CALCULATIONS ARE BASED ON BOTH LOTS 6 AND 7 COMBINED.



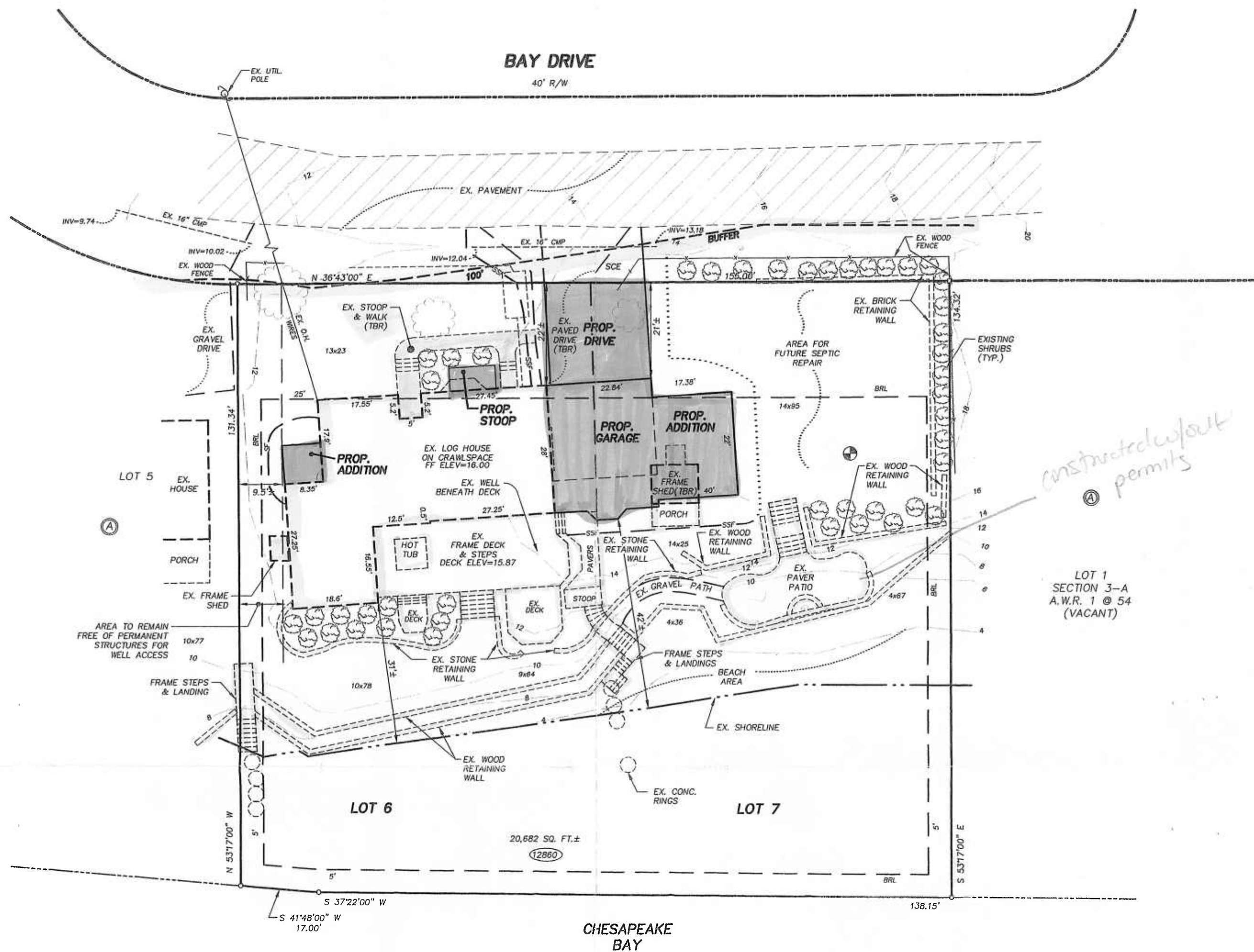
SHEET 1 OF 2



ROBERTSON DHALWALA ASSOCIATES, LLC
 55 DUKE STREET - SUITE 204 - PRINCE FREDERICK, MD 20678
 PRINCE FREDERICK
 UPPER MARLBORO

ENGINEERS
 LAND PLANNERS
 LAND SURVEYORS

REVIETMENT PLAN	
LOTS 6 & 7, BLOCK AA, SECTION 2	
"DRUM POINT"	
1 ST DISTRICT - CALVERT COUNTY, MARYLAND	
FOR FURTHER RECORDING	DATE: JULY 28, 2000



INFORMATION STATEMENT

TWO STORY ADDITION - 880
 ON CRAWL SPACE
 23' X 21' GARAGE - 480
 8' X 8' ADDITION - 64
 17'6" X 22' ADDITION - 387
 7' X 23' ADDITION - 161

GARAGE ELEVATION: 15.5'
 FIRST FLOOR ELEVATION: 16.0'

LOT AREA: 20,682 SQ. FT. ±
 LOT AREA ABOVE MHW: 14,649 SQ. FT. ±
 DISTURBED AREA: 2,380 SQ. FT. ±
 EX. IMPERVIOUS AREA: 3,615 SQ. FT. ± (24.7%)
 TOTAL PROP. IMP. AREA: 4,022 SQ. FT. ± (27.5%)
 FORESTED AREA: 92 SQ. FT. ± (0.6%)
 FORESTED AREA TBR: 20 SQ. FT. ± (21.7%)

OWNER: ARTHUR H. HARDING
 VICKIE HARDING
 DEED: B.J.S. 1036 @ 191
 K.P.S. 1259 @ 366
 TAX I.D.#: 01-067567
 01-063634

SOILS MAP #45
 SOIL TYPE: WoB WOODSTOWN FINE SANDY LOAM,
 2 TO 5 PERCENT SLOPES
 ShD3 SASSAFRAS FINE SANDY LOAM,
 10 TO 15 PERCENT SLOPES,
 SEVERELY ERODED
 Co COASTAL BEACHES

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 CON-
 STRUCTION.

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.

AREAS BETWEEN HOUSE & BULKHEAD WILL BE
 ENHANCED BY ADDITIONAL NATIVE PLANTINGS.

PROPOSED DRIVE SHALL BE CONSTRUCTED OF A
 PERVIOUS MATERIAL.

EXISTING SEPTIC TANK TO BE OUTFITTED WITH
 PRE-TREATMENT UNIT OR NEW TANK WITH
 PRE-TREATMENT UNIT SHALL BE INSTALLED.

*Did the County
 ever locate permits
 for any of the
 "steps" in Buffer?*

*Constructed w/out
 permits*

Fed listed species area

BUILDING PERMIT PLAT
LOTS 6 & 7 ~ BLOCK A ~ SECTION 2-A
DRUM POINT

FIRST DISTRICT, CALVERT COUNTY, MARYLAND

FOR: BOB DAVIS & ASSOC., INC.

SUBDIVISION PLAT RECORDED IN PLAT BOOK A.W.R. 1 @ 44

LEGEND

- EXISTING SHORELINE
- 100' BUFFER
- EXISTING TREELINE
- ASSIGNED HOUSE NUMBER
- STABILIZED CONSTRUCTION ENTRANCE
- PERCOLATION TEST

COLLINSON, OLIFF & ASSOCIATES, INC.
 Surveyors • Engineers
 Land Planners
 110 MAIN STREET
 PRINCE FREDERICK, MARYLAND 20678
 410-535-3101 • 301-855-1599 • FAX 410-535-3103

DATE	7-7-06	SCALE	1" = 20'
JOB NO.	1-9050	DRAWN BY	RCJ,NJM
FOLDER REF.	DRUM PT SEC 2-A	APPROVED	JLT
DATE	11-16-06	REVISION	HSE, ETC. REVISION

