

CA 548-06  
VAR

Lucio-Ibell Enterprises  
06-3360

MSA. S. 1829-5668

Comments 9/24/08  
KWA

## BoA Hearing

- Δs to be made to site plan at time of building permit
- driveway to be moved towards south (about 25')
- limits of clearing to be decreased to below 6,000 ft<sup>2</sup>
- denitrification system required
- requires SSF

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/)

September 26, 2006

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

Re: Variance 06-3360 Lucic

Dear Ms. Whitt:

Thank you for providing information on the above referenced revised variance. The applicant is requesting a variance to the 100-foot expanded Buffer and steep slope requirements for the purpose of constructing a primary dwelling and septic system. The property lies within a designated Limited Development Area (LDA) and is currently undeveloped.

Based on the site plan, it appears that the existing topography of the site would render the property non-buildable without some degree of variance to steep slopes. In addition, it appears that the location of the dwelling is constrained by the setbacks from the proposed well and septic area. As a result, this office does not oppose the granting of a variance.

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,

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

Kerrie L. Gallo  
Natural Resource Planner

RECEIVED

OCT 31 2006

Case No. 06-3360

Public Hearing  
October 5, 2006

CRITICAL AREA COMMISSION  
Chesapeake & Atlantic Coastal Bays

Edward Lucic, Sr. from Ibell Enterprises, Inc. has applied for a variance in the extended waterfront buffer requirements; a variance to clear greater than 6,000 square feet of the property; and a variance in the steep slope requirements for construction of a single-family dwelling. The property is located at 604 Field Road, Lusby (Tax Map 35A, Lot 13-RR, Block 25, Plat Seven, White Sands) 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 October 5, 2006 before Board of Appeals members Mr. Michael Reber, Chairman, Mr. Walter Boynton, Vice Chairman, and Mr. Dan Baker (the Board). Mr. Roland Joun from Wilkerson & Associates, Inc. and Mr. Edward Lucic were present at the hearing.
2. A Staff Report dated October 5, 2006, along with photographs taken on site, was entered into the record as Staff Exhibit No. 1.
3. The following Applicant Exhibit was dated and entered into the record at the hearing:
  - Exhibit No. 1 – Plat Submitted With Application
4. The following correspondence was entered into the record at the hearing:
  - Letter dated September 26, 2006 from Kerrie Gallo, Chesapeake Bay Critical Area Commission
  - Memo dated September 27, 2006 from Stephanie Taylor, Calvert County Engineering

### FINDINGS OF FACT

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

1. The property consists of .51 acre and is situated on the southwest side of Field Road in the White Sands subdivision.
2. Two lots (13 & 14) have been combined to obtain the building lot now recorded. A third lot (15) is being added to this project in order to develop the amount of frontage required by the Health Department.
3. A stream that is a tributary to the Chesapeake Bay is located at the base of the steep slopes at the rear of the property. The Critical Area buffer is expanded due to the location of the steep slopes adjacent to the 100-foot buffer mark. The expanded buffer incorporates the entire property.
4. The property exhibits slopes greater than 15% across approximately 75% of the lot area.
5. The lot is wooded throughout. The adjoining lot to the northwest is developed. Lots to the south and east are not developed.
6. The proposed development consists of a 25' x 40' house with rear deck, for a total footprint of 1000 s.f.
7. Proposed impervious surfaces, including the driveway, are 2322 s.f., or 10.45% of the property. Allowed impervious surface on this site is 15% (3332 s.f.) without mitigation, and up to 5445 s.f. with mitigation.
8. The applicant originally proposed clearing at 7566 s.f., or 33% of the site. The applicant's representative advised at the hearing that the location for the driveway could be moved to the south of the lot by 25', resulting in clearing of less than 6000 s.f. A clearing variance is no longer required.
9. Super silt fence is proposed to control erosion and sediment transport during construction.
10. Two drywells were originally proposed to capture stormwater after construction. The Applicant's Representative advised at the hearing that a rain garden can be provided as recommended by the Engineering Bureau.
11. No clearing is required for the well.

12. The Maryland Critical Area law and Calvert County's Critical Area Program regulate development on slopes greater than 15%. Development activities may not occur on these slopes without variance approval. Based on the topography of the lot, it would be unbuildable without some type of variance to steep slopes.
13. A denitrification septic system will be installed.
14. The lot was recorded in ~1950's. The applicant purchased the property in 2005. Calvert County's Critical Area Program was adopted in 1989, in accordance with the 1986 Maryland Critical Area law.
15. The property is properly grandfathered for Critical Area variance consideration.
16. The location for the proposed dwelling is constrained by required setbacks from the proposed well and septic area.

### 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 for the extended waterfront buffer and steep slope variances.
  - a. The extended waterfront buffer and steep slope variances will not result in injury to the public interest; and
  - b. granting the extended waterfront buffer and steep slope variances will not adversely affect the implementation of the Comprehensive Plan; and
  - c. the variances in the extended waterfront buffer and steep slope requirements are 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 without a variance in the extended waterfront buffer requirements and steep slope requirements; and

- e. a literal interpretation of the Critical Area Legislation and the Calvert County Critical Area Program and related ordinances regarding extended waterfront buffer requirements and steep slope requirements 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 an extended waterfront buffer variance and a steep slope variance will not confer upon the 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 extended waterfront buffer variance and the steep slope variance requests are not based upon conditions or circumstances which are the result of actions by the applicant, nor do the requests arise from any condition relating to land or building use, either permitted or non-conforming, on any neighboring property. If the variance requests are 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 an extended waterfront buffer variance and the granting of a steep slope 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 these variances 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 to clear greater than 6,000 square feet of the property for construction of a single-family dwelling as requested by Edward Lucic, Sr. from Ibell Enterprises, Inc. be **DENIED** based on the above findings of fact and conclusions

It is hereby ordered, by a unanimous decision, that the variance in the extended waterfront buffer requirements and the variance in the steep slope requirements for construction of a single-family dwelling as requested by Edward Lucic, Sr. from Ibell

Enterprises, Inc. 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. The extended waterfront variance and the steep slope variances are granted contingent upon the Applicant successfully combining Lot 15 with Lot 13R, and recording the combined lots as one in the Land Records for Calvert County.
3. The super silt fence shown on the plat must be backed with chain link fence.
4. A stormwater management plan that will not result in clearing of greater than 6,000 square feet shall be designed and then submitted to and approved by the Department of Public Works.
5. A revised plat must be submitted to Staff for review and approval showing the redesigned configuration for the driveway, proposed stormwater management, and a denitrification unit on the septic system.
6. The project must be developed in phases with each phase being stabilized prior to proceeding to the next phase.
7. A phasing plan must be submitted with the building permit.
8. Prior to work being done on site, the location of the house and the limitation of clearing shall be staked and marked.



9. 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.
10. There shall be no stockpiling of excavated materials on site.
11. 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.
12. A 6" washed gravel bed shall be placed under any decks or deck areas to provide stabilization.
13. All downspouts shall discharge into drywells or other appropriate and approved stormwater management devices as recommended by the Department of Public Works.
14. 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.
15. 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.

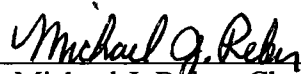
In accordance with Section 11-1.01.F.3 of the Calvert County Zoning Ordinance any violation of conditions imposed by the Board of Appeals shall be considered a violation of this Ordinance and subject to the enforcement provisions of Section 1-7.

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

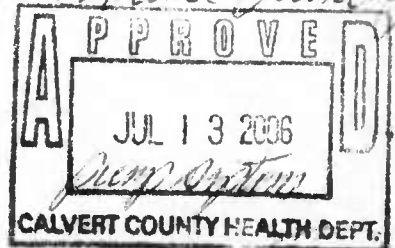
  
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Michael J. Reber, Chairman

**GENERAL NOTES**

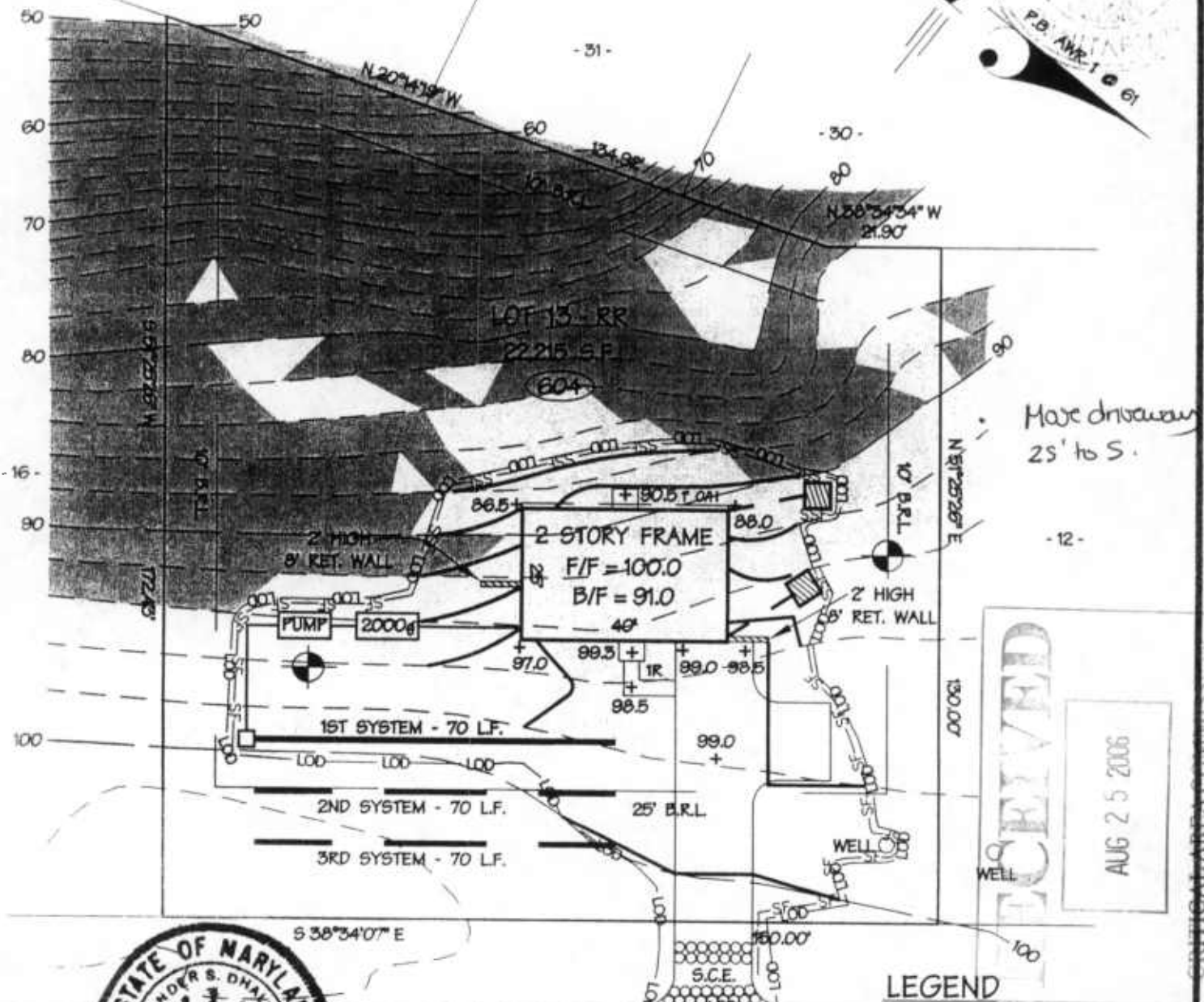
Job No. CA - 426 - A - 343

1. A title search was not furnished to or performed by this company.
2. Decks and other structures not shown do not have Zoning approval for construction.
3. The issuance of County permits is a local process and does not imply the applicant has met State and Federal requirements for wetlands filling and/or wetland buffer disturbance.
4. All fill under buildings to be Class 1; all fill under driveways and walks to be Class 2; all remaining fill to be Class 3.
5. Septic design will allow for basement level plumbing as shown.
6. Assumed vertical datum.
7. Positive drainage away from the foundation to be provided.
8. All Sediment Control and Stabilization measures shall be performed in accordance with the Standards and Specifications of the 1994 MDE Manual.
9. Call "MISS UTILITY" for location of utilities, 1-800-257-7777, 48 hours in advance of any work in this vicinity.
10. Impervious area: 2,322 s.f.
11. Total disturbed area: 7,566 s.f. Disturbance within 15% or greater slopes: 5,539 s.f.
12. Variance required for disturbance within slopes greater than 15% in the Critical Area.
13. Plat to combine Lots 13 - 15 will be necessary for permit.

Tax I.D. # = 01 - 057391  
 AP # = 3189B  
 B.O.A. Case # =



- 32 -



Have driveway 25' to S.

- 12 -



FIELD ROAD  
(30' R/W)

- LEGEND**
- HOUSE NUMBER
  - B.R.L. — BUILDING RESTRICTION LINE
  - 25% OR GREATER SLOPES
  - 15 - 25% SLOPES
  - ▨ DRYWELL - 5' X 5' X 4.5'

*Chandler S. Dhawala 5/18/06 6/19/06*

REVISED: 3/30/06, 4/13/06, 4/21/06, 4/26/06, 5/19/06, 6/19/06

**RDA**  
**RDA ENGINEERING CO. INC.**  
 ENGINEERS • LAND PLANNERS • LAND SURVEYORS  
 65 DUKE STREET, SUITE 204  
 PRINCE FREDERICK, MARYLAND 20678  
 PHONE (301) 855-9500 (410) 535-8600  
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**CRITICAL AREA PLOT PLAN**  
 LOT 13 - RR BLOCK 25 PLAT SEVEN  
**WHITE SANDS**  
 FIRST DISTRICT - CALVERT COUNTY - MARYLAND  
 FOR: IBELL ENTERPRISES, INC. JANUARY, 2006  
 Recorded In: AWR 1 @ 61 Scale: 1" = 30'

CRITICAL AREA COMMISSION  
Chesapeake & Atlantic Coastal Bays

