

CA 726-06 Kurtz, William  
VAR 06-3378

MSA. S. 1829-5675

PKA  
Carmichael

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/)

November 27, 2006

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

Re: Variance 06-3378 Kurtz

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 as well as the impervious surface area limitation in order to permit the construction of a deck. The property is designated a Limited Development Area (LDA) and is currently developed.

Based on the information provided, it appears that the applicant is requesting two variances for the purpose of constructing a 313 square foot deck. In general, this office is not opposed to the granting of a Buffer variance in order to construct the deck. However, given that the proposed deck will be located in close proximity to the water, is located entirely within the Buffer, and that an existing concrete patio appears to exist, this office is opposed to the granting of a variance to the impervious surface area limits. It appears that the applicant could construct a pervious deck, affording reasonable use of the outdoor space without further compromising the ability of the Buffer to serve for water quality benefits. Should the Board be inclined to grant the requested variance, we recommend that pervious construction be required and the variance to exceed a 25% impervious surface area limit be denied.

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, appearing to read "Kerrie Gallo".

Kerrie L. Gallo  
Natural Resource Planner  
CA 726-06

Case No. 06-3378

Public Hearing  
December 7, 2006

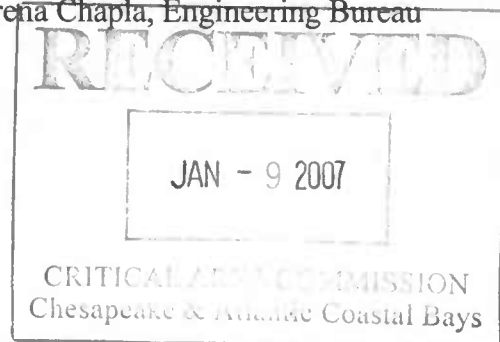
Kathleen & William Kurtz have applied for a variance in the waterfront buffer requirements for construction of a deck. The property is located at 13166 River View Drive, Lusby (Tax Map 45A, Section 10, Block R, Lot 3, Drum Point) and is zoned RD Residential District.

### 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 December 7, 2006 before Board of Appeals members Mr. Michael Reber, Chairman, Ms. Karen Edgecombe, Alternate for Mr. Walter Boynton, Vice Chairman, and Mr. Dan Baker (the Board). Mr. William Kurtz and Mr. James McIntyre were present at the hearing.
2. A Staff Report, along with photographs taken on site, was entered into the record as Staff Exhibit No. 1.
3. The following Applicant Exhibits were dated and entered into the record at the hearing:
  - Exhibit No. 1 – Application
  - Exhibit No. 2 – Plat Submitted With Application
4. The following correspondence was entered into the record at the hearing:
  - Letter dated November 27, 2006 from Kerrie Gallo, Chesapeake Bay Critical Area Commission
  - Memo dated November 8, 2006 from Ron Babcock, Soil Conservation Services
  - Memo dated November 22, 2006 from Serena Chapla, Engineering Bureau



### 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 10,062 square feet and is situated between River View Drive and Lake Vista, a small primarily freshwater pond in Drum Point.
2. The property is developed with a 3-level house that lies ~61 feet from the shoreline on Lake Vista.
3. Lake Vista is a tributary stream of the Chesapeake Bay and a 100-foot buffer is therefore required.
4. The terrain on which the house sits is primarily level. The slope falls off more steeply on the east side of the house, toward the waterfront. The applicants propose to construct a wooden deck that would extend 9.5 feet further into the buffer to create a level area behind the house.
5. There are 2 upper-level decks on the house, with a concrete patio beneath.
6. There is no tree cover that would be removed for construction of the deck. There are a few non-native juniper shrubs that would be removed.
7. The buffer between the house and shoreline is primarily wooded, with a small lawn area. The property has many trees; the application plan shows 29 major trees in the east yard between the house and water.
8. Existing impervious surface on the property is at 25.56%. There shall be no additional impervious surface on site as the new deck will be constructed of pervious materials.
9. The deck will be located more than 50 feet from the shoreline of the lake.
10. Additional plantings will be placed around the deck.
11. The house on the property was constructed in 1973. The applicants purchased the property in 2002. Calvert County's Critical Area Program was adopted in 1989, in accordance with the 1986 Maryland Critical Area law.
12. The State of Maryland has determined that this property is properly grandfathered for Critical Area variance consideration.

### 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):

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.
  - 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 for construction of a deck as requested by Kathleen & William Kurtz 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. There shall be no additional impervious surface on site.
3. The deck must be constructed of pervious materials.
4. Native plantings shall be placed around the deck in accordance with a plan approved by Planning and Zoning with the building permit submittal.
5. Approval of the Drum Point Property Owners Association is required prior to issuance of any permits.
6. A 6" washed gravel bed shall be placed under the deck to provide stabilization.

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.

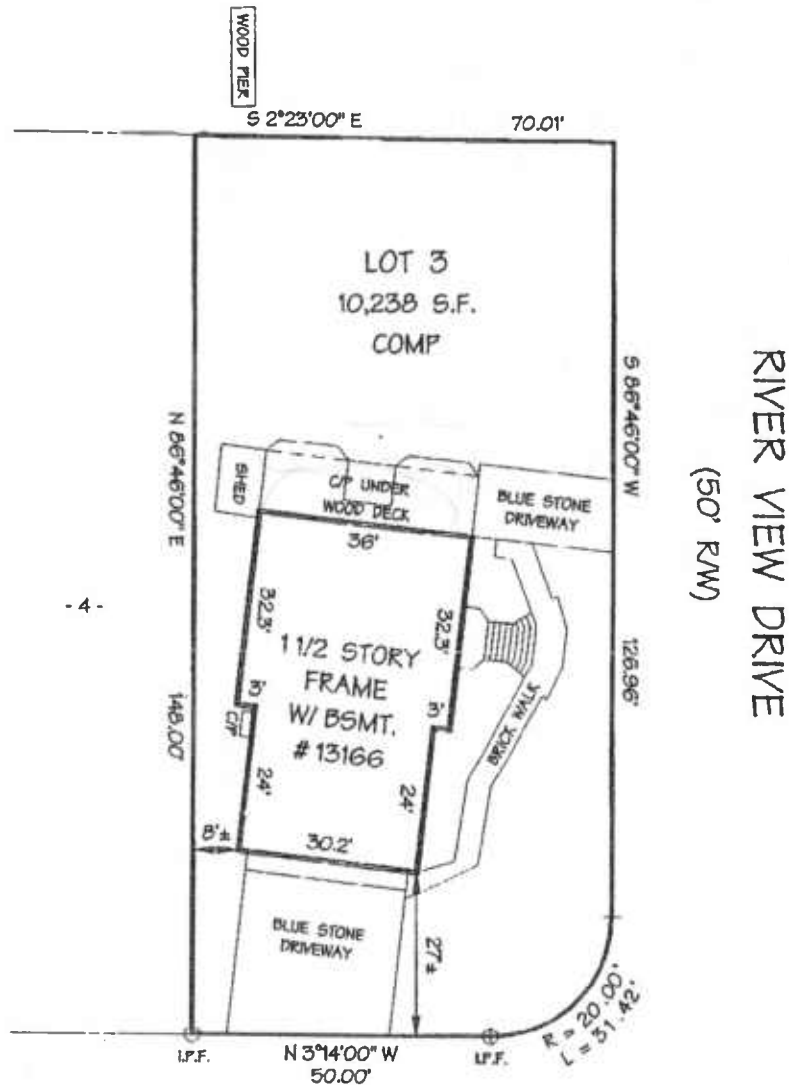
In accordance with Section 6 of the Calvert County Board of Appeals Rules of Procedure, "any party to a case may apply for a reconsideration of the Board's decision no later than 15 days from the date of the Board's Order."

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.

*JAN*  
Entered: ~~December 8~~ <sup>2007</sup> 2006 *ph*  
Pamela P. Helie, Clerk

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

# LAKE VISTA



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RECEIVED

NOV 7 2006

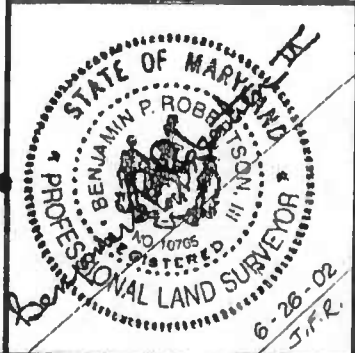
CRITICAL AREA COMMISSION  
Chesapeake & Atlantic Coastal Bays

RIVER VIEW DRIVE  
(50' RW)

Level of accuracy of this Location Drawing: 2' ±

The property shown hereon is not within Zone A-Special Flood Hazard Area per F.E.M.A. Flood Insurance Rate Map Panel No. 25.

This is to certify that to the best of my knowledge and belief the improvements indicated hereon are located as shown. This is not a boundary survey.



Note: No title research furnished to or done by this company.

RECORDED IN: AWR 1 @ 22

LOCATION DRAWING	
LOT 3 BLOCK R SECTION 10	
DRUM POINT	
FIRST DISTRICT, CALVERT COUNTY, MARYLAND	
Job No. CA - 265 - A - 212	Scale: 1" = 30'

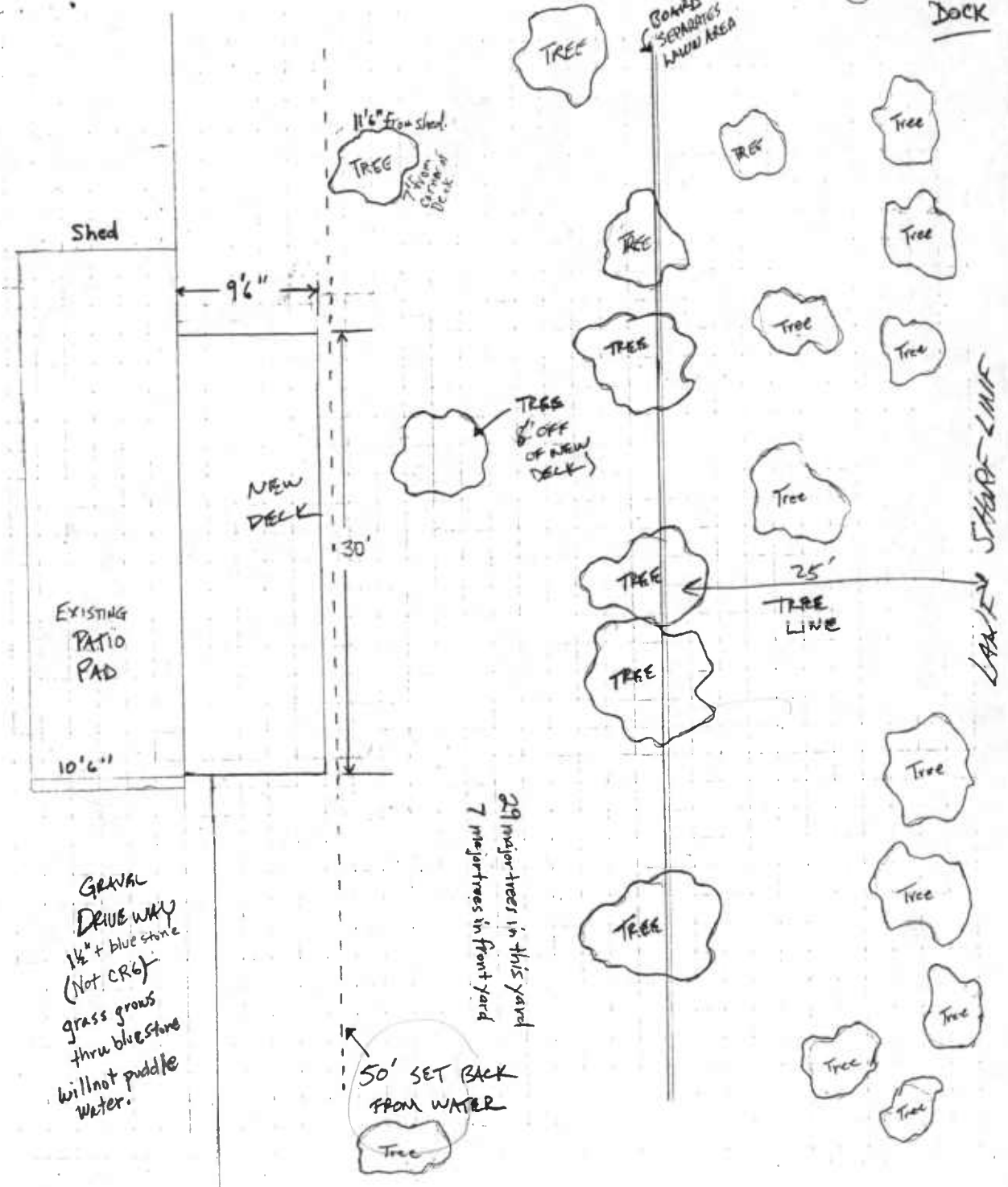
**RDA**

REAL ESTATE DEVELOPMENT TECHNOLOGY ASSOCIATES, INC.  
ENGINEERS • LAND PLANNERS • LAND SURVEYORS

P.O. BOX 1628, 65 DUKE STREET, SUITE 204  
PRINCE FREDERICK, MARYLAND 20678  
PHONE (301) 855-9500 (410) 535-8600



1 Block = 2 FEET



LOT 3 BLOCK R SECTION 10  
 William & Kathleen Kurtz  
 13166 River View Dr.  
 Lusby, Md. 20657  
 410-326-0352