

MSA S. 1829-5826

Comments

10/13/06 KS

~~9/128/07 QMR~~

4/06/07 QMR

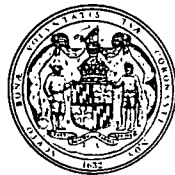
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9/25/07 QMR

9/26/07 QMR

Martin O'Malley  
Governor

Anthony G. Brown  
Lt. Governor



Margaret G. McHale  
Chair

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, 2007

Ms. Awilda Hernandez  
Board of Appeals  
Town of Indian Head  
4195 Indian Head Highway  
Indian Head, Maryland 20640

Re: Mattingly Subdivision Variance

Dear Ms. Hernandez:

I have received your letter regarding the above referenced subdivision request. Condition 2 of the variance to steep slopes, as indicated by the Board of Zoning Appeals of the Town of Indian Head, requires the applicant to obtain approval on the location, type and number of all required mitigation plantings. Mr. Cruz received guidance regarding appropriate plantings during a visit to our office this summer. Please have the applicant submit a final plantings plan for review by the Critical Area Commission staff.

Also, in the future, please provide notice of decision from the Board of Zoning Appeals within the applicable appeals period. Thank you and if you have any questions, please feel free to call me at 410-260-3476.

Sincerely,

A handwritten signature in black ink, appearing to read "Julie Roberts", with a long horizontal flourish extending to the right.

Julie Roberts  
Natural Resource Planner

Cc: IH673-06



STATE OF MARYLAND  
CRITICAL AREA COMMISSION  
CHESAPEAKE AND ATLANTIC COASTAL BAYS

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April 6, 2007

Ms. Awilda Hernandez  
Board of Appeals  
Town of Indian Head  
4195 Indian Head Highway  
Indian Head, Maryland 20640

Re: Mattingly Subdivision Variance – Letter of Clarification

Dear Ms. Hernandez:

I have received a note from the applicant asking for clarification regarding the necessary mitigation for his variance request. After a review of my March 28, 2007, I recognize that there is an inconsistency with the information I provided. *Please have the applicant disregard the statement recommending a 3:1 mitigation for disturbance to steep slopes.* The following point, taken from my original letter stands:

The applicant shows 1:1 mitigation for the 6,240 square feet of removed woodland. As indicated in our previous letter, Critical Area Commission guidance for forest mitigation plantings recommends 1 tree of 2" caliper for every 100 square feet, or 1 shrub for 50 square feet or a credit of 400 square feet for grouped plantings of 1 tree and 3 shrubs. The plat dated December 2006 indicates that the applicant will plant 12 trees to allow for 4,800 square feet or 1 tree to 400 square feet and 36 shrubs to allow for an additional 1,440 square feet. This calculation is incorrect. I have included our *Guidelines for Mitigation Plantings in the Critical Area* as clarification. The applicant can choose how they would like to mitigate. For example, if the applicant chooses to follow the combined tree/shrub plantings, they could plant 16 trees and 48 shrubs to mitigate for clearing at 1:1 ratio.

I believe this letter should clear up the applicant's questions regarding where to plant trees, as it nullifies his need to plant more than he was expecting. I apologize for the confusion. Please let me know if you or the applicant have any further questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Julie", with a long horizontal flourish extending to the right.

Julie Roberts  
Natural Resource Planner

Cc: Wes Tomlinson, Ben Dyer Associates

IH673-06



STATE OF MARYLAND  
CRITICAL AREA COMMISSION  
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March 28, 2007

Ms. Awilda Hernandez  
Board of Appeals  
Town of Indian Head  
4195 Indian Head Highway  
Indian Head, Maryland 20640

Re: Mattingly Subdivision Variance

Dear Ms. Hernandez:

Thank you for providing information on the above referenced variance. The applicant is requesting to build a single dwelling unit on lots with slopes of 15% or greater. The applicant has applied for a variance for grading slopes under recommendation by Critical Area planner Kate Schmidt in a letter dated October 13, 2006. Based in the information I have received I have the following comments:

- The plat indicates a 100-foot Buffer for the stream located on Lot 40. The engineer has indicated that this stream does not run onto Lots 37 or 38. Therefore, no additional Buffer is necessary.
- It appears that the applicant has sited the proposed dwelling to minimize disturbance to steep slopes.
- If the Board of Appeals finds the applicant has met the variance standards, we recommend 3:1 mitigation for the area of disturbance to the steep slopes.
- The applicant shows 1:1 mitigation for the 6,240 square feet of removed woodland. As indicated in our previous letter, Critical Area Commission guidance for forest mitigation plantings recommends 1 tree of 2" caliper for every 100 square feet, or 1 shrub for 50 square feet or a credit of 400 square feet for grouped plantings of 1 tree and 3 shrubs. The plat dated December 2006 indicates that the applicant will plant 12 trees to allow for 4,800 square feet or 1 tree to 400 square feet and 36 shrubs to allow for an additional 1,440 square feet. This calculation is incorrect. I have included our *Guidelines for Mitigation Plantings in the Critical Area* as clarification. The applicant can choose how they would like to mitigate. For example, if the applicant chooses to follow the combined tree/shrub plantings, they could plant 16 trees and 48 shrubs to mitigate for clearing at 1:1 ratio.

Ms. Hernandez  
March 28, 2007  
Page 2 of 2

Thank you for the opportunity to provide comments. Please include this letter in your file and submit is 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 black ink, appearing to read "Julie", followed by a long, sweeping horizontal line that extends to the right.

Julie Roberts  
Natural Resource Planner

Enclosure

<sup>673</sup>  
Cc: IH634-06



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**

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October 13, 2006

Ms. Diane Campbell  
Town of Indian Head  
4195 Indian Head Highway  
Indian Head, Maryland 20640

Re: F.E. Mattingly Subdivision/Site Plan  
TM 11, Parcel 530, Lots 37, 38, 39

Dear Ms. Campbell:

Thank you for providing information regarding the above referenced site plan. The applicant is requesting to construct a single-family dwelling on the combined lots. The total area of all three lots is 43,290 square feet in size and they are designated as Limited Development Area (LDA). The property is currently undeveloped.

Based on the information provided, I have the following comments:

1. It would appear that there will be disturbance to slopes greater than 15%. Under Town of Indian Head Zoning Code Section 955(c)(vi), development on steep slopes in LDA's is prohibited without a variance. This office typically does not oppose such variances provided the lot is properly grandfathered and the applicant can meet all of the variance standards established under Natural Resources Article 8-1808(d).
2. I believe there may be a possibility of a stream located on the property. According to the Town Zoning Code Section 971(b), all tributary streams require a 100-foot Buffer. Tributary streams are defined as either perennial or intermittent. If the stream on this property meets this definition the 100-foot Buffer must be shown and the applicant must again obtain a variance to develop within the Buffer.
3. Under Town Zoning Code Section 955(c)(iii)C the applicant is limited to clearing up to 20% of any forest or developed woodland and mitigation provided at a 1:1 ratio. In order to determine the percent of forest cleared, the applicant should provide the square footage of existing forest.
4. Critical Area Commission guidance for forest mitigation plantings recommends 1 tree of 2" caliper for every 100 square feet or 1 shrub for 50 square feet. Alternatively, credit of 400 square feet can be given for grouped plantings of 1 tree and three shrubs. I suggest the provided mitigation plan be revised to include shrubs in order to receive the credits of 400 square feet.

TTY for the Deaf

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

As a reminder, this office must receive note of variance to provide review and comment two weeks prior to a hearing date. Thank you for the opportunity to provide comments. If you have any questions, please contact me at 410-260-3475.

Sincerely,

A handwritten signature in cursive script that reads "Kate Schmidt". The signature is written in black ink and is positioned below the word "Sincerely,".

Kate Schmidt  
Natural Resource Planner  
IH 673-06

**Roberts, Julie**

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**From:** Roberts, Julie  
**Sent:** Friday, April 06, 2007 2:29 PM  
**To:** 'wcruz1@doc.gov'  
**Cc:** Serey, Ren  
**Subject:** Mitigation location

Mr. Cruz,


I have discussed your mitigation options with Ren Serey, our Executive Director. If you are not able to place the mitigation plantings in the area of disturbance, they could be placed behind your house or on your neighboring lots #35 and #36. These areas are preferred over the Town park. This office supports configurations that improve habitat. I understand that your technical hearing is on Tuesday which leaves time a bit short to look at a plan (I'm out in the field on Monday). I am happy to go over plantings plans with you after the fact if desired.

I hope this helps. Please feel free to bring this email to the hearing or forward it to appropriate parties.

Julie

Julie Roberts  
Natural Resources Planner  
Critical Area Commission  
410-260-3476



IA 673-06 



*Town of Indian Head, Maryland*

September 14, 2007

Ms. Kate Schmidt, Natural Resources Planner  
Critical Area Commission  
1804 West Street, Suite 100  
Annapolis, MD 21401

Re: Town of Indian Head BZA Case #040107

Dear Ms. Schmidt,

Enclosed please find a copy of the variance resolution for Mr. and Mrs. Cruz for Lots 37, 38 & 39 on Mattingly Avenue, Indian Head, MD.

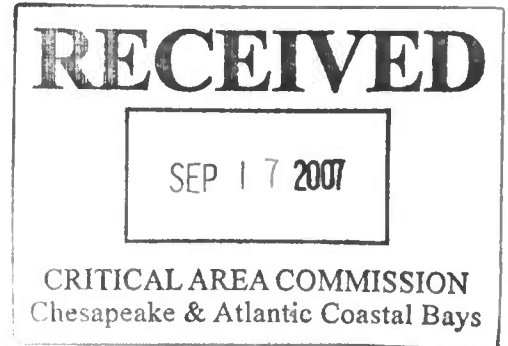
If you have any questions, please do not hesitate to call me at 301-743-5511.

Thank you,

Awilda Hernandez  
Administrative Assistant

/ah

Enclosures



**BOARD OF ZONING APPEALS OF THE TOWN OF INDIAN HEAD,  
MARYLAND**

IN THE MATTER OF THE APPLICATION OF  
WILLIAM CRUZ AND JANE L. CRUZ FOR A  
VARIANCE TO CRITICAL AREA  
REQUIREMENTS TO GRADE ON SLOPES  
IN EXCESS OF 15% ON PROPERTY  
LOCATED AT 90 (LOTS 37, 38 AND 39)  
MATTINGLY AVENUE

Case No. BZA #040107

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A RESOLUTION concerning

Cruz - Variance

FOR the purpose of granting, with conditions, the application of Petitioners William Cruz and Jane L. Cruz for a variance to Critical Area requirements to allow grading on slopes greater than 15% on property located at 90 (Lots 37, 38 and 39) Mattingly Avenue in the Town of Indian Head.

**EXPLANATORY STATEMENT**

The Petitioners filed an application for a variance to Critical Area requirements to allow grading on slopes in excess of 15% on property owned by the Petitioners at 90 (Lots 37, 38 and 39) Mattingly Avenue in the Town of Indian Head. The Board of Zoning Appeals held a public hearing on the application on April 10, 2007, at which time testimony and other evidence was offered by and on behalf of the Petitioners and the Town. No members of the public offered comments in favor of or in opposition to the application, although members of the public were in attendance at the hearing. Written comments dated March 28 and April 6, 2007 were received from the Maryland Critical Area Commission and entered into the record. After consideration of the entire record made at the public hearing, including all testimony, documents and exhibits offered and accepted therein by way of oral, written or referenced material, and in light of matters of public record of which notice may have been taken, and after having duly judged the credibility of witnesses appearing before it, the Board of Zoning Appeals makes the following findings of fact and conclusions of law applicable to and in disposition of the application for variance filed by Petitioners.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Board has jurisdiction under Sections 311(a) and 501 of the Code of the Town of Indian Head to entertain the Petitioners' application for a variance.

2. The Petitioners, William Cruz and Jane L. Cruz, are the owners of the real property located at 90 (Lots 37, 38 and 39) Mattingly Avenue in the F.E. Mattingly subdivision in the Town of Indian Head. The property is unimproved but heavily wooded. The property is located in an R-2 residential zoning classification. The property also is located within the Limited Development Area (LDA) of the Critical Area.

3. The Petitioner sought permission from the Zoning Administrator to construct a single family dwelling on Lot 38, along with ancillary grading and mitigation planting to take place on Lots 37, 38 and 39, which was denied by the Zoning Administrator.

4. The Petitioners filed an application on February 14, 2007 for a variance to Critical Area requirements necessary to allow the construction of a house on Lot 38 and the related grading and plantings on Lots 37, 38 and 39. Specifically, the Petitioner sought a variance to allow the disturbance of steep slopes (Section 955 (c)(vi)).

5. A public hearing was held on the application on April 10, 2007. Notification of the hearing was published in the Maryland Independent on March 23, 2007. Notice of the hearing was sent to the owners of property contiguous to and opposite the property. A sign giving notice of the hearing was posted on the property. All public notice requirements have been satisfied.

6. Petitioners requested the variance because Petitioners desire to construct on Lot 38 a single family Cape Cod style detached dwelling consisting of approximately 1,800 square feet situated on a crawl space with a one car garage. The variance is necessary to permit grading on Lots 37 and 38. The grading also is necessary to allow the Petitioners to provide a modest size level yard and plant the necessary mitigation plantings as required by the Critical Area regulations to support the construction of the house on Lot 38.

7. As part of the application, Petitioner submitted a "SITE PLAN LOTS 37, 38 & 39 F.E. MATTINGLY SUBDIVISION" dated December 2006 prepared by Ben Dyer Associates, Inc. The Site Plan presented a consolidated plan for the use of all three lots in conjunction with the proposed construction of a house on Lot 38. This exhibit depicts, among other things, the size, topography, steep slopes, impervious surface computations, required clearing, mitigation plantings, and other features of the lots, and the proposed development of the lots. Lots 37-39 have a combined area of 43, 290 square feet, a combined width of 222 feet and a depth of 195 feet. The proposed house has a basic

footprint of 28.5' x 43.9'. The attached garage will be 24' x 12.1'. This Site Plan exhibit is incorporated into this Resolution, and the Board accepts as true the information and graphic depictions contained on this exhibit.

8. As depicted on the Site Plan, the topography of the lots severely limits the area where the house can be sited, and precludes the development of a reasonably usable yard to serve the house without some disturbance to steep slopes. According to the analysis by the Critical Area Commission staff, the proposed location of the house will minimize disturbance to the steep slopes. The Critical Area Commission has recommended mitigation at the rate of 1:1 for disturbed areas.

9. The Site Plan reflects proposed impervious surface coverage of 2,033 square feet, or 4.6% of the entire site. No separate impervious surface computations were presented for any single lot.

10. The Site Plan and the comments from the Critical Area Commission do not reveal the existence of any regulated wetlands on Lots 37-39. The Site Plan does reveal that the outer reach of a 100' stream buffer lies on Lot 39, but no development or grading is proposed for that area. Even though a stream does not lie on Lots, 37-39, a deep ravine runs through the middle, width-wise, of the Petitioners' property, and this ravine becomes inundated during periods of heavy rain.

11. Storm water from the development will be managed in three existing culverts along Mattingly Avenue and through the use of dry wells at the rear of the house to catch rain water from the gutters. Additional storm water management will be provided as required by law.

12. In order to be entitled to a variance for property in the Critical Area, Petitioners must satisfy all criteria set forth in Section 501(b) and (d) of the Town of Indian Head zoning code and Real Property Article Section 8-1808(d) of the Annotated Code of Maryland. The burden of presenting evidence sufficient to allow the Board of Appeals to reach the conclusions required by Section 501(b) and (d) and the burden of proof and persuasion with respect to all such matters is the responsibility of the Petitioners. (Zoning Code, Section 504(b)).

13. Section 8-1808(d)(2) establishes a presumption that the development activity in the Critical Area for which a variance is sought does not conform with the general purposes and intent of the State Critical Area law, regulations adopted under that law, and the Town's Critical Area program. The Petitioners have the burden of proof and burden of persuasion to establish by competent and substantial evidence that the presumption of non-conformity has been overcome. (Section 8-1808(d)(3)).

14. For the reasons set forth below, and subject to the conditions hereinafter set forth, the Board finds that the Petitioners have met their burdens and the requested variance should be granted.

15. The Board concludes that strict enforcement of the zoning ordinance would result in practical difficulties or unnecessary hardship for Petitioners and that, by granting the variance, the spirit of the zoning ordinance will be observed, public safety and welfare secured, and substantial justice done. The Board further concludes that the granting of the variance will not adversely affect water quality or adversely affect fish, wildlife or plant habitat within the LDA district, and the granting of the variance will be consistent with the spirit and intent of the Town's Critical Area Program and related Town and State laws. In support of these conclusions, the Board makes the following express findings:

a. Because of the steep slopes on the Petitioners' property, combined with applicable building setbacks, the Petitioners would not reasonably be able to develop a house or make any other reasonable use on any of the three lots without a variance.

b. The conditions faced by Petitioners are unique to the land and their lots and are not caused by their own actions. The topography of the land, and the bisection of their lots by a floodplain, creates a situation not shared generally by other properties.

c. The Petitioners seek to build a single family dwelling on the lots. This is a use generally permitted for residential development in the R-2 zoning district and in the LDA classification of the Critical Area. Without a variance Petitioners would not be able to have this right commonly utilized by owners of other properties. The granting of the variance would not provide to Petitioners a special privilege that would be denied to other owners of like property within the R-2 zoning district and LDA Critical Area district.

d. Petitioners' request for the variance is not based upon any self-created condition, desire for greater profitability, lack of knowledge of restrictions, or upon any condition or circumstance on adjoining property. The variance request is based solely upon the development constraints on the property presented by the property's unique topography. The combination of three platted lots, each having the required R-2 minimum lot area, into one building site belies any suggestion that the variance is being sought to achieve greater profitability of the land.

e. The proposed variance will allow the development of a single house on infill lots. This is consistent with the Town's Comprehensive Plan which promotes increased development and expansion of the Town's tax base. No evidence was presented to suggest that the development proposal is not consistent with the Town's Comprehensive

Plan.

f. The granting of the variance will not result in the initiation or unlawful extension of a nonconforming use. The use of the property as proposed conforms to current zoning regulations.

g. The granting of the variance will be in harmony with the general purpose and intent of the zoning ordinance and the Town's Critical Area Program. The purposes of the Town's Critical Area Program, as set forth in Section 950 of the Zoning Ordinance, are to conserve fish, wildlife and plant habitat; establish land use policies for development in the district that accommodate growth as well as address the environmental impacts that the number, movement, and activities of persons may have in the Critical Area; and minimize adverse impacts on water quality resulting from pollutants discharged from structures or run off from surrounding lands. The development plan furthers these purposes by, among other things, consolidating three lots into one for development purposes and thereby reducing the percentage of impervious surface that will be covered by development; minimizing the amount of clearing to that necessary for development purposes; siting the house nearest to Mattingly Avenue as reasonably practicable to minimize the amount of impervious driveway required and to minimize disturbance to steep slopes; reducing run off from the property by the use of dry wells; using silt fencing during construction; and installing mitigation plantings under the guidance of the Critical Area Commission staff in order to restore forest and other vegetative covering cleared for development. The Critical Area Commission staff reviewed Petitioners' variance application and did not recommend that the application be denied.

h. A single family detached dwelling is a permitted use in the R-2 zoning district and the LDA Critical Area classification. Therefore, the granting of the variance will not result in a use that is not permitted in this district and classification.

i. The granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare since the proposed use of the lots as a single family detached dwelling is consistent with the use of properties in the surrounding neighborhood along Mattingly Avenue.

j. The granting of the variance as requested is the minimum relief required to provide Petitioners with a reasonable use of their land for the house and its appurtenant usable yards as depicted on the Site Plan. The proposed house structure is reasonable in size; the amount of impervious surface has been minimized; and the house has been sited as far from Mattowoman Creek and the tributary stream on adjoining properties as is reasonably feasible. Reforestation will take place on a 1:1 basis to offset disturbed forested or developed woodlands; at least 15% of the total site area will remain forested

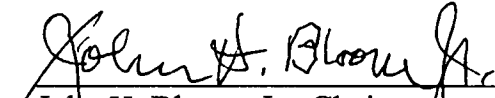
after development; and no specific mitigation measures for Habitat Protection Areas have been recommended by the Critical Area Commission.

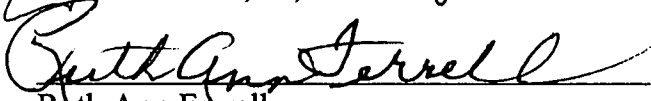
Whereupon,

SECTION I. BE IT RESOLVED BY THE BOARD OF ZONING APPEALS OF THE TOWN OF INDIAN HEAD this 21 day of June, 2007, that, based upon the foregoing Findings of Fact and Conclusions of Law, the application of William Cruz and Jane L. Cruz for a variance to allow the disturbance of steep slopes (Section 955 (c)(vi)) on property located at 90 (Lots 37-39) Mattingly Avenue in the Town of Indian Head be and it hereby is granted, subject to compliance with each and every one of the conditions set forth below:

1. Except as may be set forth in other conditions below, the site shall be developed and used in accordance with the Site Plan.
2. The Petitioners shall obtain approval from the staff of the Critical Area Commission for the location, type and number of all required mitigation plantings, and evidence of such approval shall be presented to the Town's Zoning Administrator before the Town may issue a building or grading permit for development of the site.
3. The Petitioners shall submit to and receive approval from the Town Planning Commission of a plat of subdivision to consolidate Lots 37, 38 and 39 into one parcel of record; and evidence of the approval and recording of such subdivision plat shall be presented to the Zoning Administrator before the Town may issue a building or grading permit for development of the site.
4. As part of the subdivision plat described in Condition 3 above, Petitioners shall place all remaining forested land on Lot 38 into a forest conservation easement. The subdivision plat shall contain one or more notes that describe the uses and limitations upon the use of such land that is placed within the forest conservation area.
5. Petitioners shall ensure that all land disturbed during the development process is reestablished with vegetation immediately following completion of construction.

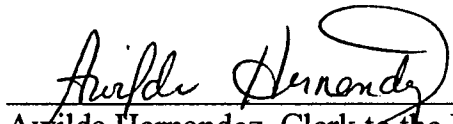
BOARD OF ZONING APPEALS OF THE  
TOWN OF INDIAN HEAD

  
\_\_\_\_\_  
John H. Bloom, Jr., Chairman

  
\_\_\_\_\_  
Ruth Ann Ferrell

\_\_\_\_\_  
(Absent)  
Vernon Smith

ATTEST:

  
\_\_\_\_\_  
Awilda Hernandez, Clerk to the Board





*Town of Indian Head, Maryland*

March 20, 2007

Ms. Kate Schmidt, Natural Resources Planner  
Critical Area Commission  
1804 West Street, Suite 100  
Annapolis, MD 21401

Dear Ms. Schmidt,

Enclosed please find a copy of the variance request from Mr. and Mrs. Cruz for Lots 37, 38 & 39 on Mattingly Avenue, Indian Head, MD. I also have attached the Critical Area Commission Project Notification Application as per our discussion. The hearing has been scheduled for Tuesday, April 10, 2007, at 7:00pm at the Village Green Pavilion on 100 Walter Thomas Road, Indian Head, MD.

If you have any questions, please do not hesitate to call me at 301-743-5511.

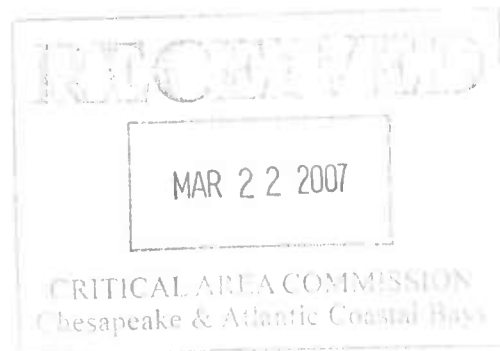
Thank you,

Awilda Hernandez  
Administrative Assistant

/ah

Enclosures

cc: Applicant



## VARIANCE REQUEST

### Request:

The applicant, Mr. & Mrs. Cruz are requesting a variance to the Town of Indian Head Zoning Ordinance, for permission to grade on slopes 15% or greater associated with the construction of a new single family detached residence.

### Background and Justification:

The property is located near the south or creek end of Mattingly Avenue, Tax Map 11, Parcel 661 and 662, and being Lots 37, 38 and 39 "F. E. Mattingly Subdivision", the subdivision was recorded in 1910. The property is located in the R-2 Residential Zone and within the Chesapeake Bay Critical Area, Limited Development Overlay Zone.

The Cruz's wish to construct a new single family detached dwelling on the property. Article IX, Part III, Section 955 (c)(vi) of the Town of Indian Head, Maryland Zoning Ordinance prohibits development on slopes 15% or greater unless the project provides an effective way to maintain or improve the stability of the slope and is consistent with the policies of the Zoning Ordinance. This request for variance is to grade within lots on slopes that exceed 15 % in order to construct a single family detached residential dwelling with additional grading to provide a side yard with fairly level slopes. In order to minimize impacts to areas of slopes exceeding 15%, multiple lots have been utilized to provide for the development site. The home type has been selected to complement the existing terrain, with minimum disturbance and grading. Only the area required for development will be disturbed, the balance of the lot will remain undisturbed. All disturbed areas will be vegetative established immediately upon grading and disturbance. Stormwater management will be provided as required by the Ordinance. Non-structural devices (dry wells) shall be provided on all roof top drains leading directly onto the earth where slopes exceed 12% and by methods as prescribed with the CBCA Program to comply with the 10% reduction pre-development standards. Proposed impervious areas have been limited to just 4.6% of the property, where 15% is allowable by the Ordinance. The clearing required for construction of the dwelling shall be mitigated at a ratio of 1:1 in order to preserve the original forested tract forest coverage.

### Variance Application

- I. The Board of Appeals is authorized to grant variances under Article 9, Part III, Section 955, (c), (vi) of the Zoning Ordinance where implementation of the ordinance would result in practical difficulties, unnecessary or unwarranted hardships to the applicant and that granting as variance, the spirit of the ordinance will be observed, public safety and welfare preserved pursuant to the Ordinance.

## Article 5

- i. That if the applicant complies strictly with the provisions of the ordinance, he can make no reasonable use of his property.

*Special conditions do exist on this property and strict application of the Zoning Ordinance would result in the lot being undevelopable due to slopes and applicable setbacks. There are no reasonable alternatives for the siting of the dwelling without encroachment into the BRL's.*

- ii. That special conditions or circumstances exist that are unique to the subject property or structure and that a literal enforcement of the provisions of this Ordinance would result in unwarranted hardship which is not generally shared by owners of property in the same land use classification.

(A) The hardship of which the applicant complains is one suffered by the applicant rather than by neighbors or the general public.

*The applicants, neighbors or the general public will be affected by the requested variance. Several other houses in the neighborhood have been built on steep slopes, as defined in the Critical Area ordinance. This project is a "fill-in lot" created prior to the current ordinances. Section 23-501 of the Critical Area provisions provides for development of legally subdivided lots prior to the adoption of this ordinance. Other lots in the neighborhood may not lie within the Chesapeake Bay overlay Zone and not be limited to grading on slopes less than 15%.*

(B) The hardship relates to the applicant's land, rather than personal circumstances.

*The existing topography on the applicant's lot is greater than 15% on the entire lot within the building envelope as defined by the building restriction lines. Being limited to slopes less than 15% limits the useable area of his lots.*

(C) The hardship is unique, or nearly so, rather than one shared by many surrounding properties.

*There are approximately 140 lots within the F.E. Mattingly Subdivision Plan of Indian Head, know as Mattingly Avenue. Of the total lots within the subdivision there are approximately 6 undeveloped lots remaining lying within the Chesapeake Bay Critical Area Overlay Zone. A large number of lots have been developed on slopes exceeding 15 %.*

(D) The hardship is not the result in the applicant's own actions.

*There are no self-imposed or self-created conditions. The Zoning and CBCA provisions are being complied with in so far as possible. The lot was created prior to the existence of any current zoning category, or Critical Area regulations.*

- iii. The strict enforcement of the provisions of this Ordinance would deprive the property owner of rights commonly shared by other owners of property in similar areas.

*There is no greater profitability or lack of knowledge of the restrictions as a justification for a variance.*

- iv. That the granting of a variance will not confer upon an applicant any special privilege that would be denied to other owners of like property and/or structures within the Zoning District or Critical Area overlay district.

*This variance will comply with the spirit, intent and purpose of the Comprehensive Plan.*

- v. That the variance request is not based upon conditions or circumstances which are self-created or self-imposed, nor does the request arise from conditions or circumstances either permitted or non-conforming which are related to adjacent parcels.

*None of the conditions are self imposed.*

- vi. The greater profitability or lack of knowledge of the restrictions shall not be considered as sufficient cause for a variance.

*There is no greater profitability; the applicant requests only one building right.*

- vii. That the proposed variance is consistent with the Town of Indian Head Comprehensive Plan.

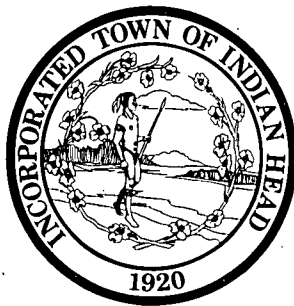
*We feel this variance is in the spirit of the current Comprehensive Plan.*

- viii. That the variance will neither result in the extension of a nonconforming situation in violation of Article VII nor authorize the initiation of a conforming use of land.

*No nonconforming situations will result from the approval of this variance request.*

- ix. That the granting of the variance will be in harmony with the general purpose and intent of this ordinance and the Town's Critical Area Program and shall not result in a use not permitted in the zone in which the property subject to variance is located, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

*The granting of the variance will be in harmony with the general intent of the ordinance of the Town's Critical Area Program. Granting the variance will not create any uses not permitted or harm the public welfare in any way.*



*Town of Indian Head, Maryland*

October 5, 2006

Ms. Kate Schmidt, Natural Resources Planner  
Critical Area Commission  
1804 West Street, Suite 100  
Annapolis, MD 21401

Dear Kate,

Enclosed please find three Critical Area Commission Project Notification Applications for projects pending in the Town of Indian Head.

If you have any questions, please do not hesitate to call me at 301-743-5511.

Thank you,

Awilda Hernandez  
Administrative Assistant

/ah

Enclosures

To: Critical Area Commission  
Attn: Julie Roberts  
Natural Resource Planner  
cc: Town of Indian Head  
Attn: Awilda Hernandez

From: William Cruz  
Indian Head, MD  
Wk. 202 482 4315  
e-mail [wcruz1@doc.gov](mailto:wcruz1@doc.gov)

Subject: Variance request #BZA040107

Julie, we received your comments about the variance request, it appears we need to plant more trees in order to meet the requirement (3:1 ratio not 1:1 ratio). Our engineer was under the assumption that we were not clearing with in the 100 ft buffer zone (= 1:1 ratio), as you stated in your comments, the plat shows we have a 100 ft buffer. We are "not" going to argue that point. We are agreeable to planting more trees, how ever we have questions on where we can plant these trees: If you look at the plat we have plenty of room behind the house to plant trees, the flat part of the lot is where we propose to build the house, however to many trees in one area would block the view of the house, and the view looking out of the house. The area behind the house is wooded but has room for more trees. What is your take on this, how can we plant trees to meet the requirement with out impacting the view. We were going to request (at our hearing) planting some of them off site in the Town park or on our other two lots #35 & #36. Now it appears that at a 3:1 ratio we will have more trees to plant. If we could utilize the space behind the house we could easily meet the requirement. Please advise ASAP, our hearing is next Tuesday 4/10/07.  
Thank you.

## FOR BOARD OF ZONING APPEALS USE ONLY

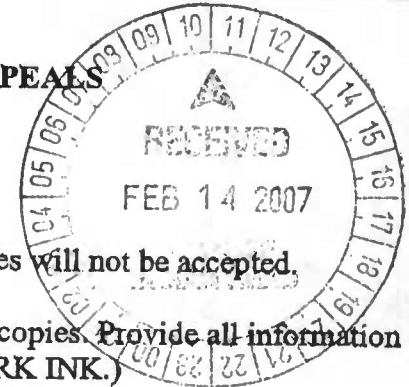
Application received on 2-14-07  
 Fee (\$150) paid on 2-14-07  
 by check # 3773 or cash \_\_\_\_\_  
 Resolution prepared for signature on: \_\_\_\_\_

Case Number BZA040107  
 Hearing Date 4-10-07  
 Board of Appeals action: \_\_\_\_\_

TOWN OF INDIAN HEAD BOARD OF ZONING APPEALS  
 Application for Variance

## INSTRUCTIONS TO APPLICANT

Provide all information and documents requested. Incomplete application packages ~~will not be accepted.~~



1. Complete this application form and submit the original form and nine (9) copies. ~~Provide all information requested on the application form. (TYPE OR PRINT CLEARLY IN DARK INK.)~~
2. Submit a nonrefundable application fee in the amount of \$150.00 with the application package. Make checks payable to the Town of Indian Head. The Chief Executive Officer will make a reasonable estimate of the Town's expenses to process the application, including legal fees, advertising fees and any other related costs. After an amount is determined by the Chief Executive Officer, the petitioner will be advised of that amount and shall be required to pay it as a deposit to cover those expenses. If expenses exceed the deposit, the petitioner shall be liable for that additional amount. The petitioner shall be entitled to a refund of deposit monies not used (with the exception of the nonrefundable \$150.00 application fee.)
3. Provide nine (9) copies of:
  - a. Tax Map displaying subject property (outlined in red) and properties contiguous to and opposite the subject property.
  - b. Detailed site plan of subject property showing current and proposed improvement(s) and clearly showing how the Code requirements are met in relation to the requested special exception. Site plan must include: details to indicate compliance with all other requirements for the current or proposed improvements to the property, including (but not limited to) location of all structures, parking spaces, all recorded easements and/or rights-of-way; and names of property owners and parcel/lot numbers of properties contiguous to and opposite the subject property.
4. Provide list of owners' names, their mailing addresses, and the lot or parcel numbers of properties contiguous to and opposite the subject property, and the current use of each of those properties.

Application for Variance

CASE NUMBER: BZA040107

I (We) William E Jane L. Cruz, are the  Owners(s),

( ) Contract Purchaser(s), ( ) Tenant/Lessee, ( ) Other (specify) \_\_\_\_\_,

of property whose address is 90 Mattingly Ave Lots 37, 38, 39,

containing 0.9938 acres of land ( unimproved or improved by a ( ) single family detached,

( ) single family attached, ( ) multi-family dwelling, ( ) other structure: \_\_\_\_\_,

located in the subdivision (if any) known as F.E. Mattingly Subdivision

The deed describing this property is recorded in the Land Records of Charles County, Maryland

at Liber 5863, folio 339. The property is zoned: R-2 CBCA OVERLAY ZONE (LDA)

5863 335

The variance requested is described as: Permission to grade on slopes of 15% or greater in the CBCA.

Permission to do off site planting of 9 trees and 6 bushes on lots 37 & 38.

which would be a variance to Town Zoning Ordinance Section 955, C, vi, which ~~requires~~ prohibits development on slopes greater than 15%.

Considering the terms and conditions under which variances may be approved, as outlined in Town Zoning Ordinance Section 501(b)(f), explain how the variance requested complies with those terms and conditions: See attached variance request letter.

Has the property in question been subject to previous petition? No If so, give date of petition or hearing and action requested and taken: \_\_\_\_\_

THE PETITIONER MUST DEMONSTRATE TO THE BOARD OF APPEALS THAT THE PROPOSED VARIANCE COMPLIES WITH ALL APPLICABLE REQUIREMENTS OF LAW, INCLUDING ANY SPECIAL PROVISIONS OR CONDITIONS FOR THAT USE AS CONTAINED IN THE TOWN ZONING ORDINANCE.



Application for Variance

CASE NUMBER: BZA040107

BY MY/OUR SIGNATURE(S) BELOW, I/WE CERTIFY UNDER THE PENALTIES OF PERJURY THAT THE STATEMENTS CONTAINED IN THIS APPLICATION FOR A SPECIAL EXCEPTION ARE TRUE AND COMPLETE TO THE BEST OF MY/OUR KNOWLEDGE, INFORMATION AND BELIEF. FURTHER, I/WE UNDERSTAND THAT THIS APPLICATION WILL BE ENTERED AS EVIDENCE IN A HEARING TO BE HELD ON THIS APPLICATION BY THE INDIAN HEAD BOARD OF ZONING APPEALS.

Will. Cruz  
Signature of Applicant

Printed name:

William Cruz

Date: 2/14/07

Mailing Address:

90 Mattingly Ave.  
Indian Head, MD. 20640

Telephone number:

(Daytime) (202) 482 4315

Jane L. Cruz  
Signature of Applicant

Printed name:

Jane L. Cruz

Date: 2/14/07

Mailing Address:

90 Mattingly Ave.  
Indian Head, MD. 20640

Telephone number:

(Daytime) 301 870-0489

SIGNATURE OF PROPERTY OWNER IF APPLICANT NOT OWNER. ALL OWNERS OF THE PROPERTY MUST SIGN THIS APPLICATION (USE OTHER SIDE IF MORE SPACE IS NEEDED):

\_\_\_\_\_  
Signature of Owner

Printed name:

\_\_\_\_\_  
Date:

Mailing Address:

\_\_\_\_\_  
Telephone number:

(Daytime) \_\_\_\_\_

\_\_\_\_\_  
Signature of Owner

Printed name:

\_\_\_\_\_  
Date:

Mailing Address:

\_\_\_\_\_  
Telephone number:

(Daytime) \_\_\_\_\_

U.S. NAVAL SURFACE WARFARE CENTER

N34°15'00"W

222.00'

CHESAPEAKE BAY CRITICAL AREA

25' B.R.L.

LOT 39

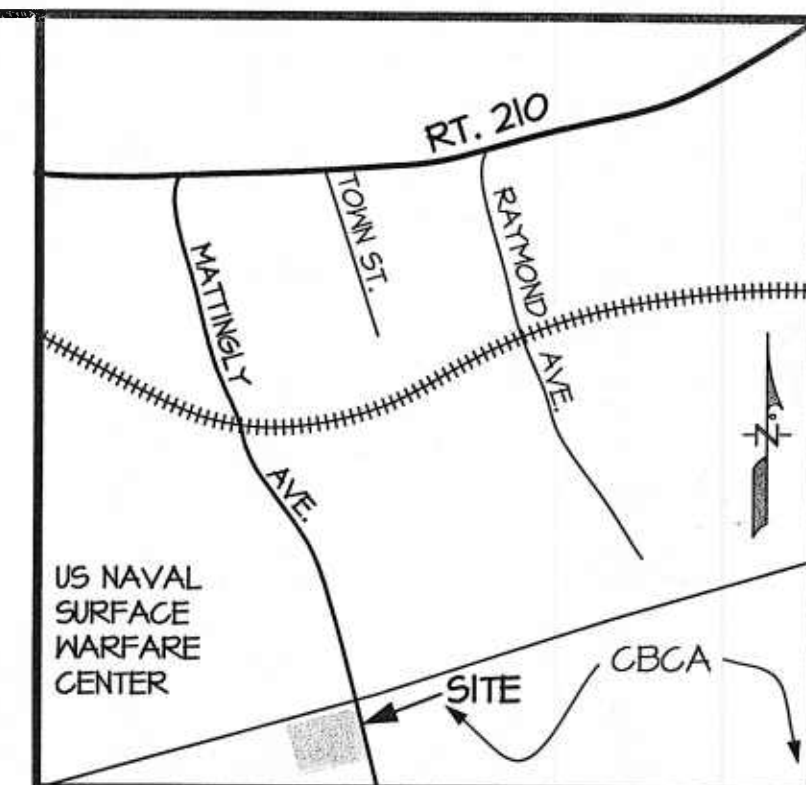
LOT 38

LOT 37

TOTAL AREA  
43,290 S.F.

N/F  
SMIG, LLC  
LIBER 5493 FOLIO 37  
P. 22 PB. 454

N/F  
WILLIAM & JANE L. CRUZ  
LIBER 1869 FOLIO 8  
P. 22 PB. 454



VICINITY MAP  
TAX MAP II, GRID 21, PARCEL 662 & 661  
ADC MAP #6 G-8 PAGE # 7

GENERAL NOTES:

- Site Data:  
Tax Map: II, Grid: 21, Parcel: 662  
Tax Account No. 07-071540  
Reference: Plat Book 22 Page 454  
Zoning: R-2 CBGA OVERLAY ZONE, LDA ZONE
- This plan has been prepared based on available records, but without the benefit of a title report. Prior to construction, please contact your attorney or title company to determine whether there are any easements, or restrictions, other than those shown, which could affect the use of this property.
- The dwelling appears to lie within the 100 year Flood plain as shown on F.I.R.M. Panel 240084-0001B, effective date June 5, 1985 (Zone C).
- Topography used is from best available source.
- Lot is serviced by public Water and Sewer.
- No land disturbance shall occur within the stream buffer.

IMPERVIOUS AREA CALCULATIONS

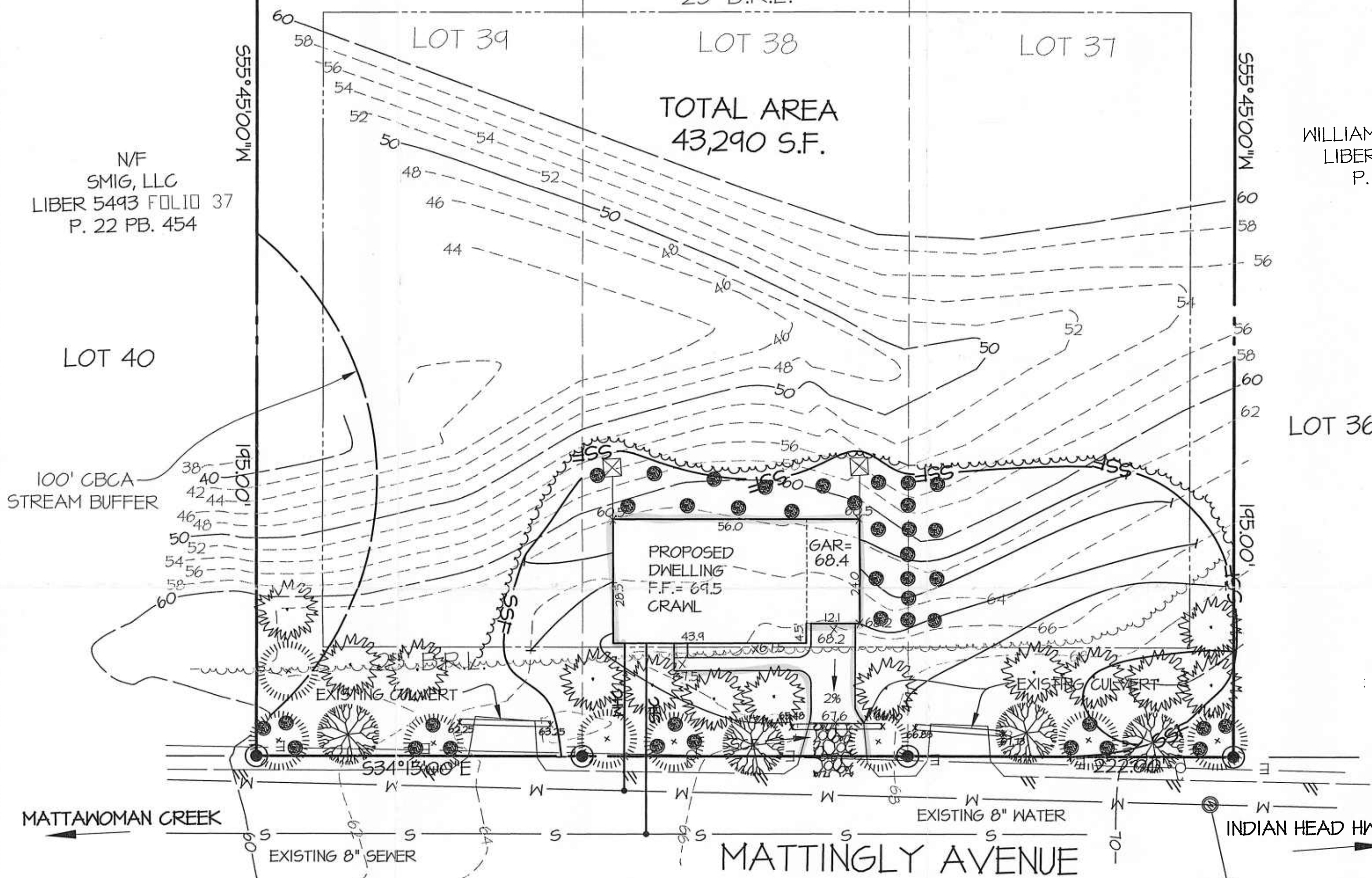
- ALLOWABLE IMPERVIOUS AREA: 6,494 S.F. = 15%
- PROPOSED IMPERVIOUS AREA =  
Dwelling: 1,568 S.F.  
SIDEWALK: 105 S.F.  
DRIVEWAY: 360 S.F.  
Total = 2,033 S.F.
- TOTAL PROPOSED IMPERVIOUS AREA  
Total = 2,033 S.F. = 4.6%

MITIGATION REQUIREMENTS:

CLEARING WITHIN THE CHESAPEAKE BAY CRITICAL AREA @ 1:1 RATIO = 6,200 S.F. = 16% OF FORESTED COVER 14% TOTAL LOT EXISTING FOREST COVERAGE = 37,140 S.F.

STORMWATER MANAGEMENT NOTES:

- STORMWATER MANAGEMENT IS ACHIEVED VIA PLANTING
- 771 SQ. FT. NON STRUCTURAL PRACTICE - DRYWELL
  - CRITICAL AREA 10% REDUCTION IS ACHIEVED VIA PLANTING 1,262 SQ. FT. PLANTING - 13 TREES



MATTAWOMAN CREEK  
EXISTING 8" SEWER  
EXISTING 8" WATER  
MATTINGLY AVENUE  
INDIAN HEAD HWY

TOWN OF INDIAN HEAD

LOT 87

N/F  
PAUL A. MAHER  
LIBER 1831 LIBER 322

LOT 86

N/F  
CHARLES B. & EVELYN D. LATEULERE  
LIBER 375 LIBER 129

SITE PLAN  
LOTS 37, 38 & 39  
F.E. MATTINGLY  
SUBDIVISION  
TOWN OF INDIAN HEAD  
7TH ELECTION DISTRICT  
CHARLES COUNTY, MARYLAND  
GRAPHIC SCALE 1" = 20'

LEGEND:

EXISTING:	PROPOSED:
x(201.00)	Spot Elevation x201.00
---202---	2' Contour Line 202
---200---	10' Contour Line 200
---	Property Line
---	Building Restriction Line
⊕	Percolation Test
---	Septic Easement
---	Silt Fence
---	Limit of Disturbance
---	Well
---	Dwelling
---	Tree Line

CRITICAL AREA MITIGATION FOR CLEARING  
Mitigation = 6,200 S.F.

NO.	PLANT TYPE	TYPE	ALLOWANCE	AREA SQ-FT.
8	WHITE OAK	LARGE TREE	400	3,200
4	RIVER BIRCH	LARGE TREE	400	1,600
40	HIGHTIDE BUSH	SHRUB	36	1,440
TOTAL:				6,240 S.F.

CRITICAL AREA MITIGATION FOR STORMWATER MANAGEMENT  
Stormwater Management = 1,262 S.F.

NO.	PLANT TYPE	TYPE	ALLOWANCE	AREA SQ-FT.
13	RED MAPLE	LARGE TREE	100	1,300
TOTAL:				1,300 S.F.

OWNER:  
William and Jane L. Cruz  
90 Mattingly Ave.  
Indian Head, MD, 20640



RECEIVED SHEET 1 OF 2

DATE	DESCRIPTION	BY
MAR 22 2007		
	REVISIONS	

9375 CHESAPEAKE STREET, SUITE 227  
P.O. BOX 2727, LA PLATA, MARYLAND 20646  
BEN DYER ASSOCIATES, INC.  
Engineers / Surveyors / Planners  
TELEPHONE (301) 753-1696  
COPYRIGHT © 2006 BEN DYER ASSOCIATES, INC.  
DRAWN BY DESIGNED BY CHECKED BY RECORD NO.  
ANV DLY WNT A-99663  
SCALE 1" = 20'  
DATE DECEMBER, 2006 DRWG. NO. 06.001-P