

CA 260-07 Jacobson, Randy
VAR 07-3426

51829-6475

Comments 1/2/11 RBH

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/

January 18, 2011

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

Re: Variance 11-3666 Jacobson

Dear Ms. Whitt:

Thank you for providing information on the above referenced variance. The applicant is requesting a variance to the expanded Buffer, steep slope, and Category 3 cliff setback requirements in order to permit the construction of a single-family dwelling, garage, septic system, driveway and deck. The property is designated a Limited Development Area (LDA) and is currently undeveloped. The Commission provided review and comment on a previous proposal on this lot in May of 2007.

Based on the information provided as well as conversations with the applicant's consultant, a number of improvements over the previous plan have been accomplished. The large Bay side porch has been eliminated and replaced with a small deck. The house foot print has been down-sized and an effort to build vertically has been made by constructing a 2-story house. The applicant has worked with the County Health Dept. to rearrange and relocate the Sewage Reserve Areas (SRAs) closer to South Shore Drive which enabled relocation of the house further from the Buffer and cliff and outside steep slopes. Further movement of the SRA was limited by steep slopes along South Shore Drive which resulted in the Health Dept. requiring a 25 ft. setback.

As you are aware, in order to grant a variance, the applicants need to demonstrate and the Board of Appeals needs to find that every one of the County's variance standards has been met, including the standards of unwarranted hardship and that the variance request is the minimum necessary to provide relief.

Should the variance be granted, a Buffer Management Plan must be submitted to the County for review and approval. We understand this review will occur prior to issuance of a building permit.

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. If you have any questions, please contact me at (410) 260-3468.

Sincerely,

A handwritten signature in cursive script, appearing to read "Roby Hurley".

Roby Hurley
Natural Resources Planner
RH/jjd
CA 260-07

260-87

RECEIVED

MAR 7 2011

CRITICAL AREA COMMISSION
Chesapeake & Atlantic Coastal Bays

CALVERT COUNTY BOARD OF APPEALS ORDER

Case No. 11-3666
Public Hearing: February 3, 2011

Randy Jacobson has applied for a variance in the extended waterfront buffer requirement; a variance in the steep slope requirement; and a variance in the cliff setback requirement to construct a single-family dwelling, garage, porch, deck, sidewalk, driveway, and septic system. The property is located at 3830 South Shore Drive (Tax Map 31A, Block 1, Lot 3, Western Shores) and is zoned RD/LDA Residential District/Limited Development Area.

The case was presented February 3, 2011 before Board of Appeals members Mrs. Susan Hance-Wells, Chair; Mr. Daniel Baker, Jr., Vice Chair; and Mr. John Ward, Member (the Board). Mr. Richard Sothoron, Esquire, served as the Board's counsel. Mr. Randy Jacobson was present, testified at the hearing, and was represented by Mr. Nicholas Montgomery from Collinson, Oliff & Associates, Inc.

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. Article 11 Section 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 the Ordinance.

TESTIMONY & EVIDENCE PRESENTED

1. The following Applicant Exhibits were entered into the record at the February 2011 hearing:
 - Exhibit No. 1 – Application
 - Exhibit No. 2 – Building Permit Plat, Lot 3, Block 1, Western Shores, dated 10-21-10
 - Exhibit No. 3 – Major Buffer Management Plan, Lot 3, Block 1, Western Shores, dated Dec 2010
 - Exhibit No. 4 – Case No. 11-3666, Lot 3 Block One, Western Shores
 - Exhibit No. 4 - Affidavit of Sign Posting

2. A Staff Report prepared by Roxana Whitt , the Board of Appeals Administrator, was entered into the record at the February 2011 hearing and included the following correspondence:
 - Letter dated January 18, 2011 from Roby Hurley, Chesapeake Bay Critical Area Commission, Re Variance 11-3666 Jacobson
 - Board of Appcals Review Comments from John Knopp, Project Engineer, Calvert County Department of Public Works, Engineering Bureau, Review Date 21 December 2011, BOA Case No 11-3666
 - Memo dated January 13, 2011 from John Swartz, Planner II, Department of Planning and Zoning, Re 11-3666
 - Memo dated January 18, 2011 from Geoff Westbrook, Calvert Soil Conservation District, Re 11-3666

FINDINGS OF FACT & CONCLUSIONS

Based on the application and testimony and evidence presented at the hearing the Board makes the following Findings of Fact and Conclusions pursuant to Article 11-1.01.B of the Calvert County Zoning Ordinance:

1. The Board finds that the application was filed pursuant to Article 11-1.01.B of the Zoning Ordinance, which provides that the Board may grant variances from the strict application of the Critical Area requirements of the Ordinance.
2. The Board finds the case was properly advertised, the property was posted, and affected property owners were notified in accordance with the Board's Rules of Procedure.
3. The Board finds the applicant is requesting a variance in the waterfront buffer, steep slope and cliff setback requirements to construct a single family dwelling, garage, porch, deck, sidewalk, driveway, and septic system.
4. The Board finds that the parcel would be unbuildable without the requested variances; that the Zoning Ordinance provides for variances when all variance criteria are met; that this parcel was recorded prior to implementation of the Critical Area Law and is thus considered as grandfathered; and that an advanced design septic system will be required that will greatly reduce nitrogen and phosphorus content in the effluent.
5. The Board finds that protection of environmentally sensitive areas is in the public interest; that the Zoning Ordinance is written to protect the public interest; that development of sensitive areas is permitted provided it is done in accordance with the Zoning Ordinance; and that the advanced septic system and the lot coverage of less than 25% protect environmental resources. Based on these findings the Board concludes the requested variances will not result in injury to the public interest.

6. The Board finds that the Comprehensive Plan includes an objective of protecting environmentally sensitive areas; that the Zoning Ordinance is adopted to implement the goals of the Comprehensive Plan, and to regulate land uses as part of the County's effort to promote the health, safety and general welfare of County residents; that the Zoning Ordinance allows and permits residential development on properties that are zoned for residential development; and that consistent with the Comprehensive Plan the Zoning Ordinance only permits development on steep slopes, shore line buffers, or near cliffs with variances that the Board find meet all variance criteria. Based on these findings the Board concludes the requested variances will not adversely affect the Comprehensive Plan.
7. The Board finds that the proposed structure is typical of many homes being built in Calvert County and that the required location for the septic system prevents locating the house farther from the cliff. Based on these findings the Board concludes that the requested variances are the minimum adjustment necessary to afford relief from the regulations.
8. The Board finds that special circumstances are created by the topography of the property, its location near a cliff edge, the existence of a 100' waterfront and expanded buffer, and the required location for the septic system. The Board also finds that the property is small, limiting the area available for development. Based on these findings the Board concludes that the applicant has demonstrated that a literal enforcement of the Critical Area program would result in unwarranted hardship to the applicant.
9. The Board finds that it does not routinely deny requests for Critical Area variances on grandfathered, residential lots where no alternative exists and the variance criteria are met. The Board of Appeals finds it has approved similar requests for grandfathered residential development within the Critical Area when the criteria for variance approval have been met. Based on these findings the Board concludes the request is a right that has been permitted to others in accordance with the provisions of the Critical Area program.
10. The Board finds that it does not routinely deny requests for Critical Area variances for the construction of residences on grandfathered, residential building lots when no alternative exists and all variance criteria are met. The Board of Appeals finds it has granted variances in similar circumstances when all variance criteria are met. Based on these findings the Board concludes that granting of the variances as requested when all variance criteria can be met does not confer a special privilege on the applicant.
11. The Board finds that the variance requests are based on the fact that the property is affected by a cliff, steep slopes and the 100-foot buffer as measured from the Chesapeake Bay. Based on this finding the Board concludes that the requested

variance does not result from actions by the applicant or from conditions found on neighboring properties.

- 12. The Board finds that the Comprehensive Plan contains an objective of protecting environmentally sensitive areas; that the Zoning Ordinance, which is adopted to satisfy the Comprehensive Plan, requires significant actions to prevent adverse impact on fish, wildlife and plant habitat within the County's Critical Area; that a Stormwater Management Plan and an advanced septic system will be required; that the required amount of forest coverage is retained and lot coverage requirements are met. Based on these findings the Board concludes that granting the requested variances will not adversely affect water quality or adversely impact fish, wildlife or plant habitat.
- 13. Based on the findings of fact set forth above the Board concludes that the applicant has met the variance criteria and has overcome the presumption of non-conformance with the general spirit and intent of the Critical Area law.

ORDER

It is hereby ordered, by a unanimous decision, that the variance in the extended waterfront buffer requirement; the variance in the steep slope requirement; and the variance in the cliff setback requirement to construct a single-family dwelling, garage, porch, deck, sidewalk, driveway, and septic system as requested by Randy Jacobson be **GRANTED**.

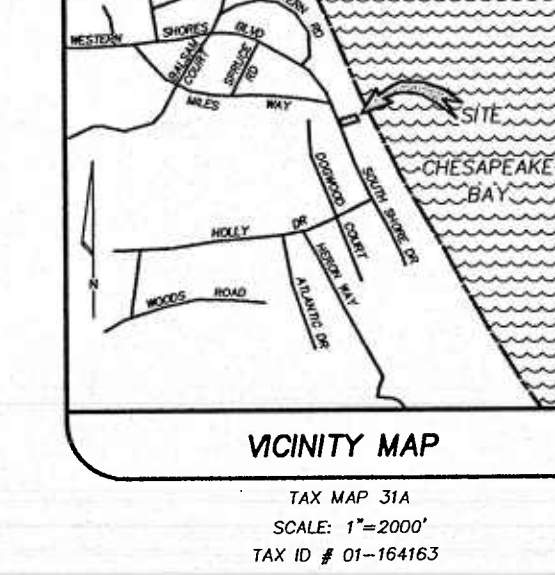
APPEALS

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 4 2011
Pamela P. Helic, Clerk

Susan Hance-Wells
Susan Hance-Wells, Chair



COLLINSON, OLIFF & ASSOCIATES, INC.
 Surveyors • Engineers
 Land Planners
 P.O. BOX 2209 • 110 MAIN STREET
 PRINCE FREDERICK, MARYLAND 20678
 410-535-3101 • 301-855-1899
 FAX: 410-535-3103 • EMAIL: INFO@COAINC.COM



NOTES

- ALL TREE/SHRUB SPECIES ARE TO BE SELECTED FROM THE CALVERT COUNTY NATIVE PLANT LIST.
- THE PROPOSED PLANTINGS ARE LOCATED WITHIN THE EXPANDED BUFFER. THESE AREAS ARE TO REMAIN NO-CUT/NO-CLEAR IN PERPETUITY.

CRITICAL AREA AFFORESTATION MAINTENANCE AGREEMENT

All trees and shrubs planted by the contractor shall be maintained as follows:

- The project area should be kept healthy, neat and orderly. The area should be kept free of trash and debris. All reasonable precautions shall be taken to avoid damage to existing plants, structures and private property.
- Remove tags, labels, strings, and wire from the plant material unless otherwise directed.
- Final clean up shall be the responsibility of the contractor and shall consist of removing all trash and materials incidental to the project. Trash and material shall be disposed of in an appropriate manner off-site.
- Regularly water plants every few days initially and then once a week depending on soil conditions and rainfall. Weekly to monthly watering should continue as necessary. Trees need 1 inch of water per week during the growing season when there is no rainfall. It is the contractor's responsibility to supply water if there is none available on site. Any associated costs shall be the responsibility of the contractor.
- Periodic inspection shall be made by the contractor for any evidence of disease or damage. Pests should be managed using integrated pest management (IPM) principles.
- The Planning & Zoning Department (P&Z) shall be permitted to enter the property to make other periodic inspections as deemed necessary.
- The contractor shall maintain a 1 year maintenance agreement from the time of initial inspection on all plants. A minimum of 100% of the total number of plants is required to survive at the end of the maintenance period.
- Any plant material that is 25% dead or more shall be considered dead and must be replaced at no charge. A tree will be considered dead when the main leader has died back, or 25% of the crown is dead.
- The periodic care and replacement shall begin after the initial planting band and inspection and approval of the installation of all the plants and continue for 2 years. Planning and Zoning inspections shall be made within 30 days of written notification from the contractor.
- Plant replacement shall be performed in accordance with the contract specification.
- The planting band shall be released if, after the maintenance period, the survival rate is satisfactory.

As part of the maintenance agreement, invasive species will be controlled as follows:

- Monitor twice annually for invasive species of plants.
- No clearing of vegetation shall be permitted without Planning & Zoning authorization.
- Treat, in place, all vine growth. Even if the vines are indigenous, they can put stress on existing trees and shrubs.
- Treat, in place, all invasive plant species using an accepted systemic herbicide. Invasive species to be treated shall be agreed upon and marked in the field. Herbicide shall only be applied by an applicator licensed through the Maryland Department of Agriculture.
- Leave dying trees. This will invite microorganisms that will help encourage and maintain healthy plant growth.
- Leave woody material and other organics such as leaves in place for the nutrient regeneration and moisture.
- No vehicles or heavy equipment shall be permitted in planted areas.
- No storage of anything except plant material shall be permitted in afforestation areas.

MAJOR BUFFER MANAGEMENT PLAN

LOT 3 - BLOCK 1
 WESTERN SHORES
 FIRST DISTRICT, CALVERT COUNTY, MARYLAND

This plan is intended to address the requirements for a Major Buffer Management Plan, as specified in C.O.M.A.R. 27.01.09.01 and Calvert County Zoning Ordinance Section 8. Specifically, it will describe the measures that will be taken to minimize impacts to plant and wildlife habitat within the buffer.

Major Buffer Management Plan

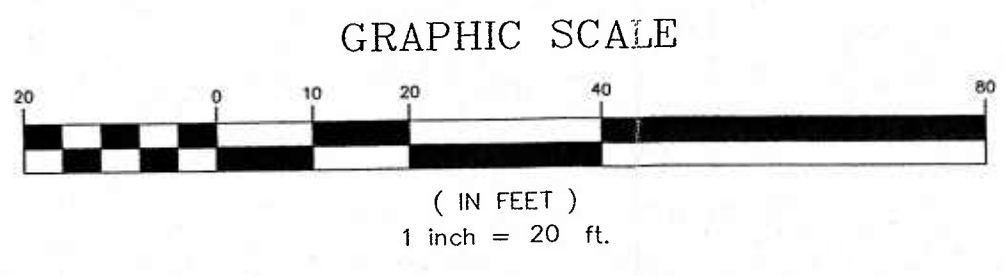
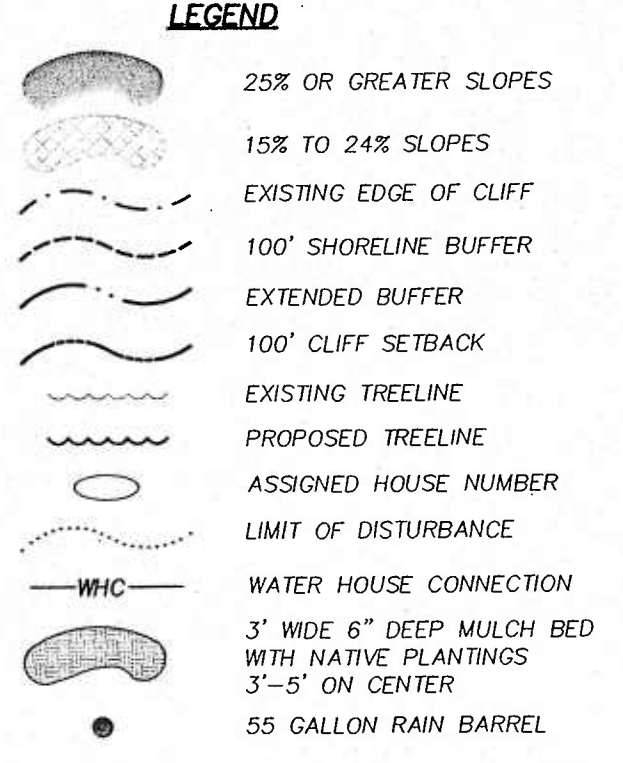
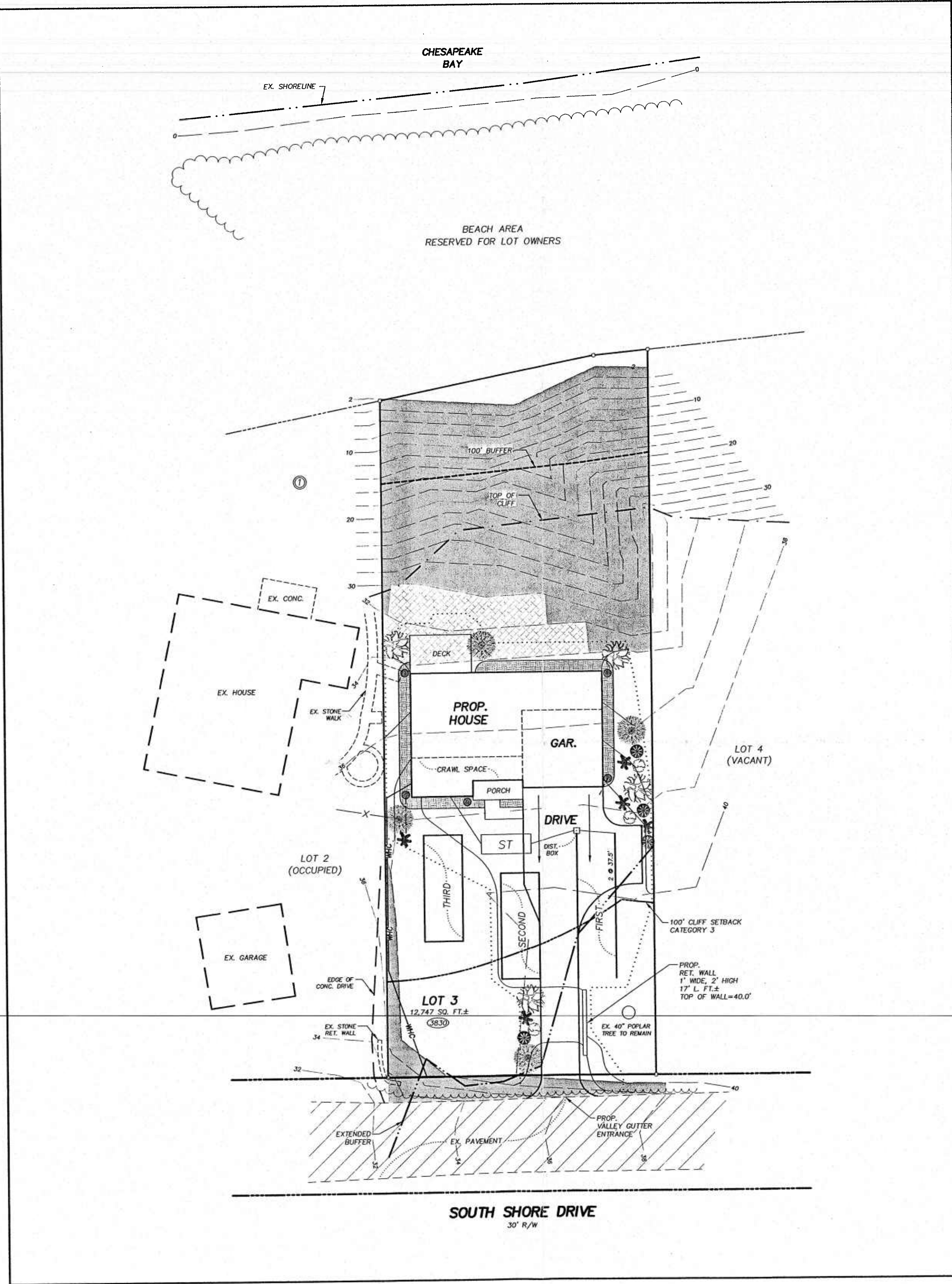
- Minimization of the removal of vegetation: Disturbance to the buffer is for construction of a new single family dwelling and associated features. No other disturbance to the buffer is proposed.
- Plant and wildlife habitat protection: To protect plant and wildlife habitat, the proposed impervious surfaces (lot coverage) will not be above the maximum allowed per the Calvert County Zoning Ordinance. Septic system will utilize a pre-treatment unit to produce safer effluent being released into the environment, with reduced nitrogen and phosphorous levels.
- Reduction of the runoff of pollutants: To reduce the runoff of pollutants and control the adverse impacts associated with increased storm water runoff, stormwater management for all proposed lot coverage will be designed in accordance with regulations in effect at the time of building permit application.
- Required afforestation including a planting plan: A Planting Plan showing areas to be reforested on site, including number and type of shrubs, is shown hereon.
- Protection of the area during development activities: Sediment and erosion control measures will consist of silt fence, and an earth dike with associated stone outlet structure backed by super silt fence, which is in accordance with the Erosion and Sediment Control Ordinance of Calvert County and the latest version of Maryland Standards and Specifications for Soil Erosion and Sediment Control. These requirements and procedures have been established to provide a protective transition from initial site disturbance until implementation of permanent stabilization and storm water management facilities.

LANDSCAPE SCHEDULE						
SYMBOL	KEY	QUANTITY	BOTANICAL NAME	COMMON NAME	SIZE, ROOT PREPARATION	SPACING
UNDERSTORY TREES						
FD	ea	4	Cornus Florida	FLOWERING DOGWOOD	1 INCH CALIPER, 6' HIGH, B&B	AS SHOWN
P	ea	4	Diospyros Virginiana	PERSIMMON	1 INCH CALIPER, 6' HIGH, B&B	AS SHOWN
SHRUBS/SCREENING						
IB	ea	4	Ilex glabra	INKBERRY	1 GALLON AND 4' HIGH	AS SHOWN
W	ea	3	Ilex verticillata	WINTERBERRY	1 GALLON AND 4' HIGH	AS SHOWN
RR	ea	5	Rhododendron maximum	ROSEBAY RHODODENDRON	1 GALLON AND 4' HIGH	AS SHOWN

LANDSCAPE NOTES

- LANDSCAPING MATERIAL TYPES MAY BE SUBSTITUTED FROM THE CALVERT COUNTY NATIVE PLANTING LIST WITH THE APPROVAL OF THE COUNTY PLANNING AND ZONING DEPARTMENT.
- LOT 3, BLOCK ONE, WESTERN SHORES HAS 4,894 SQ. FT. OF DISTURBANCE WITHIN THE EXPANDED BUFFER. AT 3:1 MITIGATION, MITIGATION REQUIRED IS 14,882 SF.
 2 - PLANTING CLUSTER #2 = 700 SF CREDIT
 4 - UNDERSTORY TREES = 300 SF CREDIT
 6 - LARGE SHRUBS = 300 SF CREDIT
 TOTAL CREDIT = 1,300 SF
 MITIGATION REQUIRED AFTER CREDIT (14,882-1,300) = 13,582 SF
 FEES-IN-LIEU OF PLANTING TO BE APPLIED (13,582 x 0.80) = \$10,705.60

Handwritten notes:
 75' = 300
 75' = 300
 1500 Forest Cling
 400 = 200
 400 = 150
 150 = 250
 1200
 776 BC
 4894 FC 1/2 B
 x 3
 615 FC 9/5 B
 x 1
 15,297



THIS STAMP IN RED COLOR INDICATES ORIGINAL
 SHEET NO. 1 OF 1
 FILE NO. B - 45 - 4