CA 263-07 Donelly Steffan, LLC VAR 07-3431

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51829-6476

Comments shall



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/

May 23, 2007

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

Re: Variance 07-3431 Donnelly Steffan, LLC

Dear Ms. Whitt:

Thank you for providing information on the above referenced variance. The applicant is requesting a variance from the 30-foot Special Buffer Management Area (SBMA) setback in order to grade, place fill, and to construct multiple wooden walkways and multiple decks. The property is designated an Intensely Developed Area (IDA) and is currently developed with an existing dwelling, shed, and concrete pad.

Based on the information provided and a recent site visit to the property, this office is opposed to the applicant's request for a variance as proposed. As you are aware, particular properties within the Critical Area are designated as SBMAs where it has been demonstrated that the existing Buffer does not fulfill or provide all of the water quality and habitat functions outlined within the Critical Area Law due to existing grandfathered patterns of development or previous disturbance. This designation affords flexibility to landowners to locate development partially within the 100-foot Buffer. In this case, the applicant is requesting to further exceed the flexibility provided in the law in order to grade, place fill, and locate structures within the 30-foot SBMA setback. It is our view that the proposed grading and fill are entirely unnecessary within this portion of the property, and that the proposed walkways and decks significantly exceed that which would provide reasonable access through the Buffer as well as reasonable and significant use of the entire lot or parcel. Since we believe that the applicant has failed to meet each and every one of the County's variance standards, we recommend that the Board deny the variance request.

In reviewing the variance request, the Board should consider the following information:

1. The Calvert County Zoning Ordinance (Section 8-1.08.D.3.b) permits one four-foot wide access per waterfront lot through the Buffer. We recognize that the existing property consists of two parcels of record, with two existing piers. As the property is being developed as one project with four townhome units, one access point would appear to represent the minimum necessary disturbance through the Buffer. However, should the Board wish to provide greater flexibility to the property owners given the existence of two existing parcels of record, the provision of a maximum of two access points would appear consistent with the intent and spirit of the County Code. We assert that the four proposed walkways significantly exceed the minimum necessary to provide reasonable access to four townhome units.

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- 2. The existing 30-foot SBMA area is grassed and level. There does not appear to be any justification or any need for the applicant to grade and fill within the SBMA setback, thereby raising the elevation within the existing setback. While the townhome units may require elevation in order to eomply with floodplain regulations, there appears ample room to move the units further back towards Solomon's Island Road and to keep all grading outside of the 30-foot setback. The current proposal creates significant potential for adverse impacts to water quality. In addition, there does not appear to be a hardship associated with the lack of grading within the SBMA setback.
- 3. The proposed deeks located parallel to the shoreline are entirely inconsistent with the intent and goals for management of the 30-foot SBMA setback. As previously mentioned the existing SBMA area is level and grassed. The Board's denial of these features would not appear to represent an unwarranted hardship to the applicant as reasonable and significant use of the property would still exist. Further, the award of a variance for these structures would represent a special privilege to the applicant that the Board has previously denied to other applicants and would create the potential for additional adverse impacts to water quality and habitat in the SBMA.
- 4. While outside the scope of the Board's review, we note that development proposal will require site plan review by both the County Planning staff and Critical Area Commission staff. As a component of this process, the applicant will be required to address all standards for redevelopment within the SBMA. These standards include establishing the 30-foot setback in native vegetation, providing a 10% reduction in overall pollutant loadings, and providing offsets for all new impervious surfaces within the cntire SBMA. This information is pertinent to the Board because the area currently existing and shown as grass within the 30-foot SBMA setback will be established as a functioning Buffer area. As such, any proposed improvements and disturbance within the SBMA setback permitted by the Board will decrease the available land area for water quality and habitat restoration opportunities.

In summary, it is our view that the Board should permit only the minimum nccessary walkway(s) through the SBMA setback in order to provide reasonable access to the existing piers. We believe that the applicant has failed to meet the standard of unwarranted hardship in conjunction with the request for four walkways. In regard to the proposed grading, fill, and decks within the SBMA setback, we believe that the applicant has failed to meet each and every one of the County's variance standards. Therefore, we recommend that the Board deny the applicant's request for these improvements.

As always, 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 ease.

Sincerely,

Keni Jall

Kerrie L. Gallo Natural Resource Planner

CALVERT COUNTY BOARD OF APPEALS

Case No. 07-3431

2007

JUL 102

Public Hearing June 7, 2007

243-07

Solomons One LLC and Christine McNelis and Donnelly Steffan LLC have applied for a variance in the Floodplain Management Requirements; a variance in the Solomons 30' Critical Area Buffer requirements; a variance in the building height requirements from 36' to 39', a variance in the 75' lot width requirements; a variance along the north property line of Parcel 29 from 40' to 5'; a variance along the south property line of Parcel 29 from 40' to 5'; a variance along the north property line of Parcel 28 from 40' to 5'; and a variance along the south property line of Parcel 28 from 40' to 0' for construction of Harbour Square – Phase 1. The property is located at 14532 and 14538 S. Solomons Island Road (Tax Map 46A, Parcels 28 & 29) in the Solomons Town Center/C1 Subarea.

AUTHORITY OF THE BOARD OF APPEALS

The jurisdiction of the Board of Appeals is based on Article 66B of the Annotated Code of Maryland, as amended and Article 11 of the Calvert County Zoning Ordinance, which provides that the Board of Appeals shall have the authority to grant variances from the strict application of the floodplain, buffer, lot width, setback, and height requirements of the Ordinance.

TESTIMONY & EVIDENCE PRESENTED

- 1. The case was presented June 7, 2007 before Board of Appeals members Mr. Michael Reber, Chairman, Mr. Walter Boynton, Vice Chairman, and Mr. Dan Baker, member, (the Board). Mr. Dan Kelsh from Collinson, Oliff and Associates and Mr. Charles Donnelly, Attorney were present at the hearing and represented the applicants. Mr. Jack Upton served as the Board's attorney.
- 2. A Staff Report, including photographs taken on sitc, was entered into the record at the hearing and marked Staff Exhibit No. 1.
- 3. The following Applicant Exhibits were dated and entered into the record at the hearing:
 - Exhibit No. 1 Application

¹ The height variance request was withdrawn by the applicant at the hearing.

- Exhibit No. 2 Plat submitted with the Application
- Exhibit No. 3 Drawings of the Proposed Townhouses
- Exhibit No. 4(a) Harbor Square Variance Requests
- Exhibit No. 4(b) E-mail from Dan Kelsh to Pamela Helie dated May 8, 2007
- 4. The following correspondence was entered into the record at the hearing:
 - Letter dated May 23, 2007 from Kerrie Gallo, Chesapeake Bay Critical Area Commission
 - Letter dated May 29, 2007 from John M. Joyce, Maryland Department of the Environment
 - Memo dated May 29, 2007 from Mary Beth Cook, Engineering Bureau, Calvert County Department of Publie Works
 - Memo dated May 30, 2007 from David Humphreys, Planning Commission Administrator
- 5. The following persons testified at the hearing:
 - Kerrie Gallo, Chesapeake Bay Critical Area Commission, 1804 West Street, Suite 100, Annapolis, MD 21401
 - Christine McNelis, P. O. Box 1534, Solomons, MD 20688

FINDINGS OF FACT

Based on the application and testimony and evidence presented at the hearing the

Board finds the following:

- 1. The properties eonsist of 34,825 s.f. (~.8 aere) and are situated on the east side of Solomons Island Road and adjacent to the waterfront on Back Creek. The properties are currently developed with mixed residential and commercial uses. The general neighborhood is a mix of commercial and residential uses.
- 2. The applicants propose to construct four townhouse units in the configuration of 2 separate duplexcs, with each having living space of two stories plus habitable roofs, the lower stories being garages. Total building height proposed is 36 feet. Proposed side setbacks from adjoining properties are 5 feet, with a 0 foot setback along the common boundary of the subject Parcels 28 and 29. Distance between the buildings is ~5 feet. The architectural renderings show a connector between the two buildings. The townhouse units are proposed to be situated at the 30-foot buffer line as measured from Back Creek. The buffer is primarily grass lawn. Tree cover is minimal.

- 3. A flood zone (A7) with base flood elevation of 7 feet is located adjacent to the shoreline and includes the proposed townhouse development site. The terrain in this area is shallow, bowl-shaped and lower in elevation than the terrain on the adjoining properties. The applicants propose to place less than 600 eubie yards of fill on the property to raise the construction site elevation for drainage purposes and to meet floodplain requirements. The proposed elevations would mirror those found on the adjoining properties, with the result being that the subject and adjoining properties would drain toward the waterfront rather than the eurrent situation where the adjoining properties drain toward the subject properties. Placement of fill as requested would not cause floodwaters from the subject properties to drain toward adjacent properties. The Board finds that Maryland Department of the Environment's requirement for no floodwater damage or surface runoff damage to adjoining properties can be met. County, State and Federal regulations allow fill of less than 600 cubic yards in the floodplain without requiring variance approval; the request before the Board results from a decision by Planning and Zoning staff to decline approval of fill for elevating the buildings. The Board finds that the use of fill is appropriate due to the existing topography of the properties.
- 4. The Board finds that, while Solomons enjoys a reduced Critical Area buffer of 30 feet, the purpose and intent as well as the general requirements of the buffer regulations still apply. The Board finds that the buffer on the subject property is highly disturbed and is substantially a non-functional buffer. The Applicants propose to restore buffer function by removing an old septie tank, a concrete pad, and a house, a portion of which is currently located in the 30 foot buffer, and to replant the buffer with native vegetation for purposes of improving water quality and providing for additional habitat. The Board finds that any temporary, negative effects of the proposed grading within the buffer are offset by long-term environmental benefits of buffer revitalization. Conversely, the Board finds that construction of two walkways per parcel for water access rather than the one access that is allowed by the Zoning
- Ordinance is not consistent with the Critical Area law, would connote a special privilege, and would have negative impacts on buffer function.
- 5. The Board finds that most lots in the Solomons C1 area are small and eannot meet the 75 foot lot width requirement, and the subject property is no different in this regard. Most of the parcels pre-date the Zoning Ordinance and some pre-date the Ordinance by at least 100 years.
- 6. The Board finds that, based on the size of most properties in the Solomons C1 area including the subject properties, adjacent parcel setbacks of 40' are generally unachievable. The Board finds that the applicants' proposal for 5' setbacks in the Solomons area is not unusual. The Board further finds that setbacks observed on some properties are closer than 5' due to co-agreements between adjacent landowners.

CONCLUSIONS

Based on the above findings of fact, the Board came to the following conclusions (in accordance with Section 11-1.01.A of the Calvert County Zoning Ordinance):

- 1. The Board of Appeals concludes that it has the authority to grant the variances requested.
- 2. The Board concludes that peculiar and unusual practical difficulties exist on the pareels and those difficulties are related to the land.
- 3. With respect to the lot width, setback and floodplain variances, the Board concludes that:
 - a. The variances will not result in injury to the public interest; and
 - b. granting the variances will not adversely affect the implementation of the Comprehensive Plan; and
 - c. the variances are the minimum adjustment necessary to afford relief from the regulations; and
 - d. the variance requests are not based upon conditions or circumstances which are the result of actions by the applicant.
- 4. With respect to the buffer variance, the Board concludes that the applicant can meet the variance criteria for the proposed grading within the buffer, but cannot meet the variance criteria for construction of the walkways as proposed.

<u>ORDER</u>

It is hereby ordered, by a unanimous decision, that a variance in the Floodplain Management Requirements; a variance in the Solomons 30' Critical Area Buffer requirements for proposed grading; a variance in the 75' lot width requirements; a variance along the north property line of Parcel 29 from 40' to 5'; a variance along the south property line of Parcel 29 from 40' to 5'; a variance along the north property line of Parcel 28 from 40' to 5' and a variance along the south property line of Parcel 28 from 40' to 5' and a variance along the south property line of Parcel 28 from 40' to 0' as requested by Solomons One LLC and Christine McNelis and Donnelly Steffan LLC for construction of Harbour Square Phase 1 be **GRANTED SUBJECT TO THE FOLLOWING CONDITIONS:**

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- 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, ageneics, eommissions, boards or entities, in accordance with County, State and Federal law, must be obtained for the proposed construction.
- 2. The granting of the 30' Critical Area Buffer variance is contingent upon only one four-foot walkway for waterfront access being provided for each of the Pareels.
- 3. The applicant is required to intensively replant the buffer with native vegetation for purposes of treating and attenuating stormwater, improving the quality of the tidal waters, and providing for additional habitat.
- 4. The applicant is required to install on-site stormwater management, which will reduce pollutant loading by at least 10%.
- 5. In accordance with Section 11-1.02.C.3 of the Calvert County Zoning Ordinanee 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.

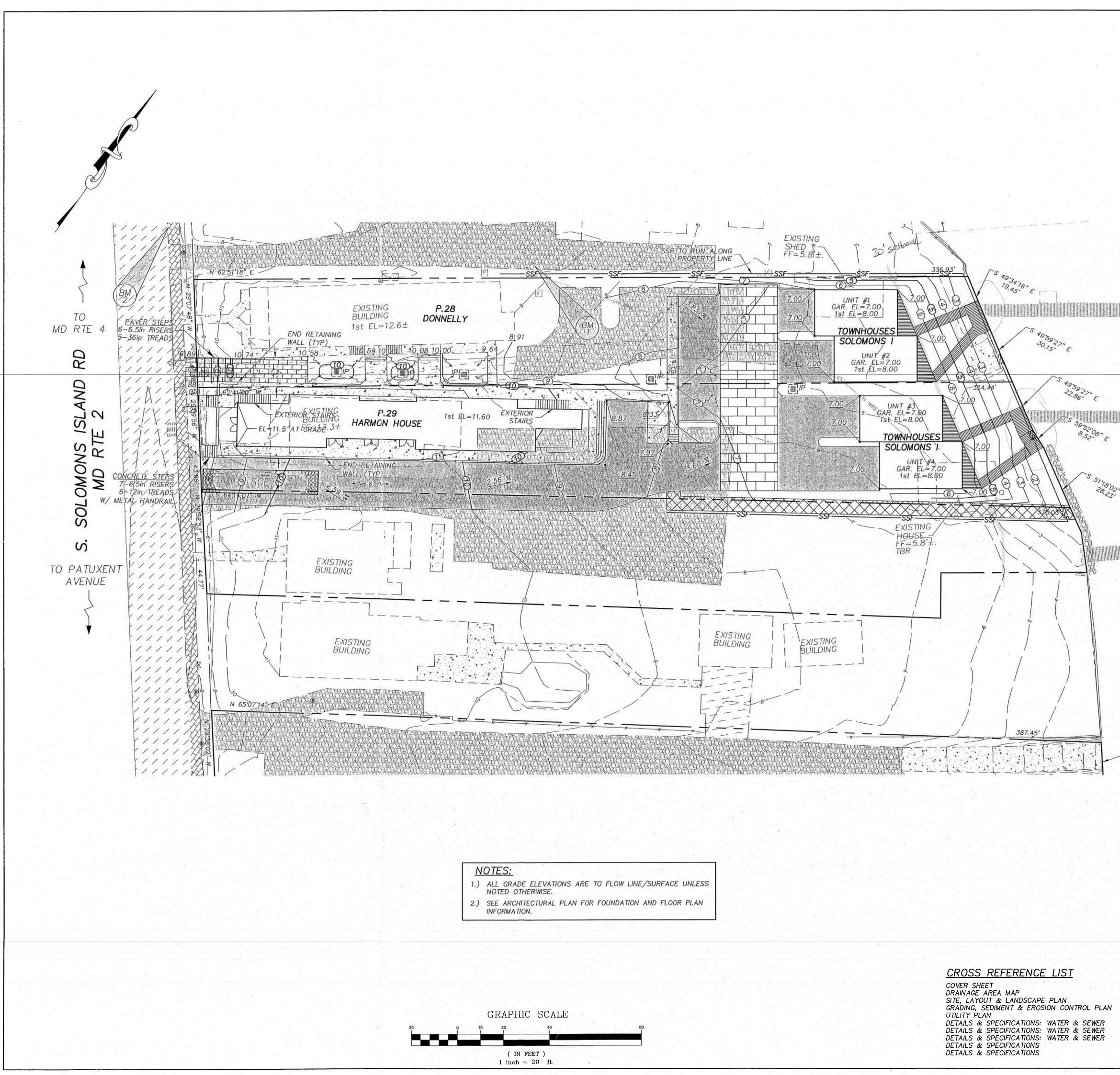
APPEALS

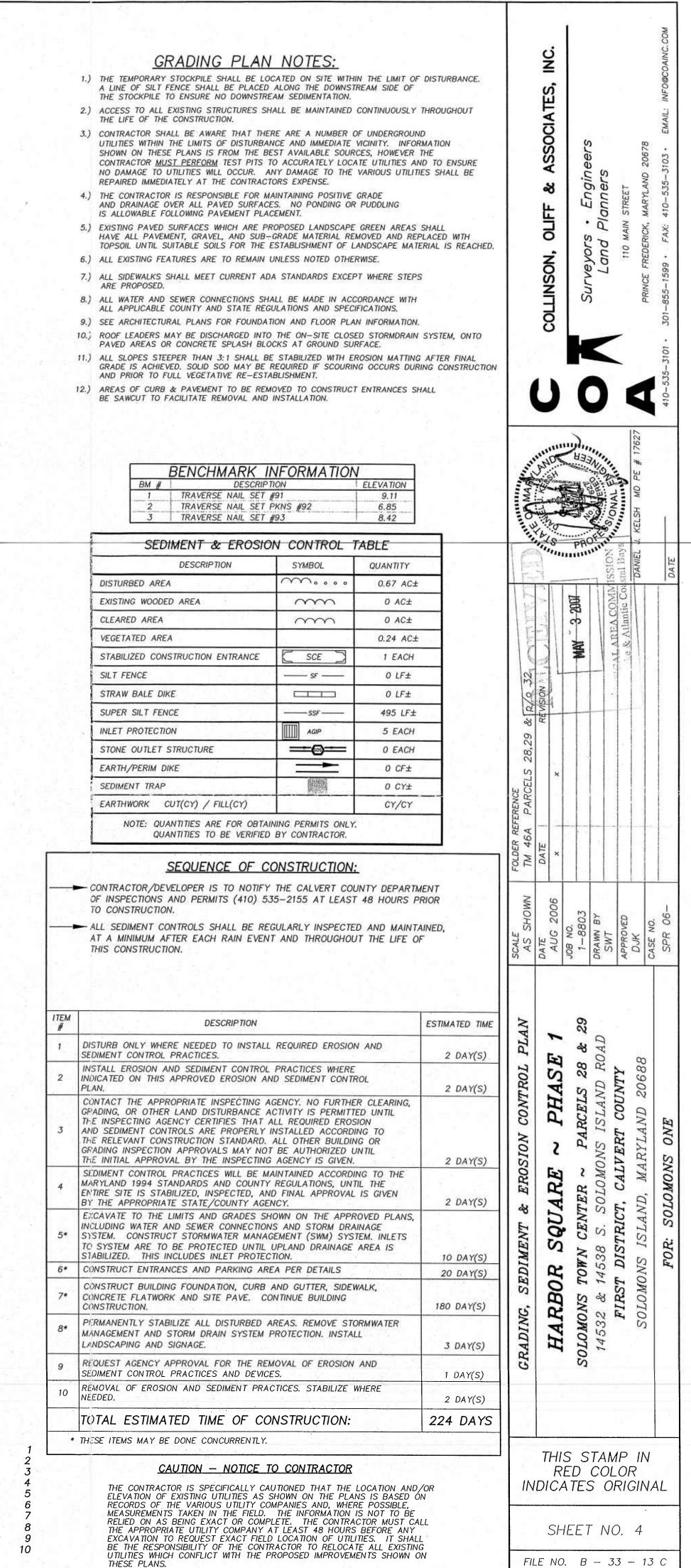
In accordance with Section 6 of the Calvert County Board of Appeals Rules of Procedure, "any party to a case may apply for a reconsideration of the Board's decision no later than 15 days from the date of the Board's Order."

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: July _____ 2007 Pamela P. Helie, Clerk

Michael J. Reber, Chairman





FILE NO. B - 33 - 13 C