

Summary

MC 10/19/07
MC 5/13/08
IK 5/19/08
MC 6/10/08

51829-6880

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/

June 12, 2008

Ms. Chris Corkell
Talbot County Office of Planning and Zoning
28712 Glebe Road, Suite 2
Easton, Maryland 21601

**Re: 1496
Herget Variance – Infiltration Trench**

Dear Ms. Corkell:

At the May 19, 2008 hearing for the above referenced variance case, the Talbot County Board of Appeals requested that Commission staff review and consider the benefit of a proposed infiltration trench within the 100-foot Buffer at the above referenced property. The Board requested staff input as to whether the infiltration trench would provide treatment of stormwater runoff and improve the overall quality of runoff from the property. This Best Management Practice (BMP) is requested as mitigation for the stone and paver areas that were installed within the Buffer without the required permits.

At this time, we have reviewed the applicant's proposal for an infiltration trench within the 100-foot Buffer. In the context of the variance case, we continue to note that both the State and County Law require the Board of Appeals to find that the applicant has overcome the burden to meet *each and every* one of the variance standards in order to grant a variance. These strict standards do not include consideration of offset measures, such as an infiltration trench, for after-the-fact variance requests. However, the variance standards do expressly authorize the Board of Appeals to consider whether the need for a variance was caused by the actions of the applicant. In this circumstance, the applicant constructed the stone and paver areas without the proper permits. In addition, as noted in our May 13, 2008 letter and our May 19, 2008 addendum letter, we believe that the applicant has failed to meet *all five* variance standards. Therefore, we are unable to offer support for the applicant's variance request, and we strongly recommend that the infiltration trench not be considered by the Board as an appropriate offset to legalize unpermitted construction in the Buffer.

In addition, please note that Commission staff generally does not support the construction of stormwater practices such as infiltration trenches in the 100-foot Buffer. Specifically, a BMP is

considered to be a development activity and thus is not permitted in the Buffer (COMAR 27.01.09C(2)). Furthermore, in reviewing the proposal with the Commission's science advisor, it appears that an infiltration trench of the nature proposed is typically placed adjacent to impervious surfaces in order to maximize the water quality benefits for a site. Thus, the optimal location of an infiltration trench on this site would be adjacent to the existing impervious areas, with stormwater runoff directed away from the Buffer. Finally, staff has significant concerns that the location of the infiltration trench as proposed, within five feet of the shoreline, could significantly weaken and damage the existing bulkhead. Based on all of these factors, the infiltration trench within the 100-foot Buffer as proposed should be removed from the plans.

Thank you for the opportunity to provide supplemental comments on this Board of Appeals variance request. If you have any questions, please feel free to contact me at (410) 260-3483.

Sincerely,



Nick Kelly
Natural Resource Planner

cc: TC 620-07
LeeAnne Chandler, CAC

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



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May 19, 2008

Ms. Chris Corkell
Talbot County Office of Planning and Zoning
28712 Glebe Road, Suite 2
Courthouse
Easton, Maryland 21601

**Re: 1496
Herget Variance - ADDENDUM**

Dear Ms. Corkell:

In an addendum to our May 13, 2008 letter, Commission staff has performed additional review of the above referenced variance request and determined that the stone and paver area was constructed during the expansion phase of the existing house. Consequently, this project requires an after-the-fact variance and does not meet the following criteria:

- 4. The variance request is not based upon conditions or circumstances, which are the result of the actions, by the applicant, nor does the request arise from any condition conforming, on any neighboring property.*

By constructing the stone and paver area without the required permits, the variance request is based on conditions or circumstances that are the result of the actions performed by the applicant. As a result, we believe that the applicant has failed to meet all five variance standards, and, consequently, we are unable to support the applicant's variance request.

Thank you for the opportunity to provide comments on this Board of Appeals variance request. If you have any questions, please feel free to contact me at (410) 260-3483.

Sincerely,

A handwritten signature in cursive script that reads "Nick Kelly".

Nick Kelly
Natural Resource Planner
cc: TC 620-07

Martin O'Malley
Governor

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Lt. Governor



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May 13, 2008

Ms. Chris Corkell
Talbot County Office of Planning and Zoning
28712 Glebe Road, Suite 2
Courthouse
Easton, Maryland 21601

**Re: 1496
Herget Variance**

Dear Ms. Corkell:

Thank you for providing information on the above referenced variance request. The applicant requests a variance to the 100-foot Buffer to retain an existing stepping stone and paver area that runs parallel to Mean High Water (MHW), and to maintain an existing impervious wooden walkway to the shoreline. The property is 4.49 acres in size and is designated as a Limited Development Area (LDA). Currently, the parcel is developed with a single family dwelling unit, gravel driveway, stepping stone walkways, stone paver walkways, patio, pool, pool deck, brick pads, walls, garage, concrete apron, breezeway, spa, storage shed, wood walkway, wood steps, and HVAC unit pads. Total impervious surface for Tax Map 41, Parcel 150 is 22,046 square feet (11.3%).

Based on the information provided, Commission staff cannot support maintaining the existing wood walkway that leads to the pier, as it appears from the provided photographs that the wooden walkway is impervious in nature (there does not appear to be gaps 1/8-inch to 3/8-inch in size between the boards to allow for water infiltration), and that the walkway was constructed to be parallel in places, rather than perpendicular. Talbot County permits only pervious walkways that provide perpendicular shoreline access within the 100-foot Buffer. We acknowledge that the applicant has the right to shoreline access, and that the applicant requires reasonable means to access the existing pier. However, it appears that the applicant could replace the walkway with pervious materials located in a perpendicular manner and still have reasonable access to the shoreline. Consequently, Commission staff recommends that the applicant replace the impervious wooden walkway with mulch and mitigate for any disturbances to the 100-foot Buffer at a 2:1 ratio. It appears that an opportunity exists within the Buffer to accommodate the mitigation plantings. Commission staff also recommends that the new walkway be constructed

perpendicular in nature, as the site plan reveals that the current wooden walkway is parallel to MHW 18.0 feet from the shoreline.

This office *opposes* the variance to maintain the existing slate stepping stone and paver area that runs parallel to MHW, as Talbot County Code §190-93E.3(c) states that new development activities may not be permitted in the 100-foot Buffer, except for those associated with water-dependent facilities or individual private piers." Furthermore, the Talbot County Setback Policy does not permit man-made disturbances, such as patios or walkways, that are constructed of brick, gravel, slate, or other like materials within the 100-foot Buffer.

The applicant also states that the stone and paver area is no closer to MHW than the existing non-conforming residence. However, it appears from the site plan that the stepping stone and paver area is closer to MHW than the existing home. Talbot County setback policy states that "non-covered concrete patios, walkways, or similar structures built as an accessory to a primary or principal structure (i.e. residential patio, pool decking, walkways, etc.) *shall not be considered* for the purposes of determining the closest point of the primary or principal structure and/or use from MHW of a property line." Consequently, the stone and paver area is closer to MHW than the existing home and is thus not permitted.

Based on these factors, and based on the reasonable and significant use of the property that the applicant currently enjoys onsite, Commission staff opposes this variance request.

Impacts to the 100-Foot Buffer

In 2002 and 2004, the General Assembly strengthened the Critical Area Law and reiterated its commitment to the Chesapeake Bay Critical Area's water quality and wildlife habitat values, particularly emphasizing the importance of the 100-foot Critical Area Buffer. Specifically, the General Assembly reaffirmed the stringent standards of the law, which an applicant must meet in order for a local jurisdiction to grant a variance to the Critical Area law. The State law provides that variances to a local jurisdiction's Critical Area program may be granted **only** if a Board of Appeals finds that an applicant has satisfied its burden to prove that the applicant meets each one of the county's variance standards, including the standard of "unwarranted hardship." The General Assembly defined that term as follows: "without the variance, the applicant would be denied reasonable and significant use of the entire parcel or lot." Furthermore, the State law establishes a presumption that a proposed activity for which a Critical Area variance is requested does not conform to the purpose and intent of the Critical Area law. The County must make an affirmative finding that the applicant has overcome this presumption, based on the evidence presented.

In this case the applicant is proposing to construct a new slate stepping stone and paver area within the Buffer. The Critical Area Buffer establishes an area of undisturbed natural forest vegetation, or an area for enhancement with vegetation native to the Critical Area, managed to protect shorelines, streams, wetlands, and riparian biological communities from adverse effects of land use. Accordingly, the County has enacted a specific set of provisions to recognize the importance of the 100-foot Buffer and maintain its integrity by prohibiting the construction of new structures unless they are water dependent (Talbot County Code §190-93). Constructing a

new slate stepping stone and paver area within the 100-foot Buffer would be in direct conflict with the County's Buffer goals.

Based on the information received, the applicant has not met each one of Talbot County's variance standards and should therefore be denied a variance. I have discussed each one of the variance standards below as it pertains to this site:

- 1. That special conditions or circumstances exist that are peculiar to the land or structure within the jurisdiction's Critical Area program that would result in an unwarranted hardship to the applicant.*

Currently, the lot is developed with a single family dwelling unit, gravel driveway, stepping stone walkways, stone paver walkways, patio, pool, pool deck, brick pads, walls, garage, concrete apron, breezeway, spa, storage shed, wood walkway, wood steps, and HVAC unit pads. The applicant proposes to place 883 feet of slate stepping stone and paver area within the 100-foot Buffer. As stated above, the General Assembly defined "unwarranted hardship" to mean that the applicant must prove that, without the requested variance, he would be denied reasonable and significant use of **the entire parcel or lot**. Based on this information, we do not believe that the County has evidence on which to base a finding that, without the stepping stone and paver area, the entire parcel would lack reasonable and significant use.

- 2. That a literal interpretation of this subtitle or the local 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 local jurisdiction.*

The applicant has a reasonable use of this property for residential purposes, and therefore, would not be denied a right commonly enjoyed by neighboring properties. No property owner has the right to build a new slate stepping stone and paver area within the Buffer. Therefore, the rejection of a variance for the slate stepping stone and paver area would not deny the applicants a right commonly enjoyed.

- 3. The granting of a variance will not confer upon an applicant any special privilege that would be denied by this subtitle or the local Critical Area program to other lands or structures within the jurisdiction's Critical Area.*

If the variance is granted, it would confer upon the applicant a special privilege, in this case the construction of a slate stepping stone and paver area over pervious land within the 100-foot Buffer, which would be denied to others in this area, as well as in similar areas found in the County's Critical Area. To grant a variance to the Buffer would confer a special privilege on the applicant (Talbot County Code §190-97). The applicant has the burden of proof and the burden of persuasion to overcome the presumption that his proposed variance does not conform to the Critical Area Law. We do not believe the applicant has overcome this burden.

4. *The variance request is not based upon conditions or circumstances, which are the result of the actions, by the applicant, nor does the request arise from any condition conforming, on any neighboring property.*

From the information provided, it does not appear that the variance request is based on conditions or circumstances that are the result of the applicant or from a neighboring property. Therefore, it appears that the applicant has met this standard.

5. *The granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the jurisdiction'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 and the regulations.*

Granting of this variance is not in harmony with the general spirit and intent of the Critical Area law and regulations. An increase in impervious surface in the Buffer and consequential disturbance to the land results in increased stormwater and sediment runoff and the loss of essential infiltration opportunities. Further, the conversion of the Buffer to impervious areas reduces the opportunity for use of the Buffer as a transitional area and for the intended habitat benefits. Given that the applicant can adequately redevelop this property and enjoy outdoor activities without the addition of a slate stepping stone and paver area in the 100-foot Buffer, approval of this variance would not be in harmony with the general intent and spirit of the Critical Area Law.

In summary, the Board of Appeals must find that the applicant has overcome the burden to meet each and every one of the County's variance standards in order to grant a variance. Because we believe that the applicant has failed to meet four of the five variance standards, we are unable to offer support for the applicant's request.

Thank you for the opportunity to provide comments on this Board of Appeals variance request. If you have any questions, please feel free to contact me at (410) 260-3483.

Sincerely,



Nick Kelly
Natural Resource Planner
cc: TC 620-07



Martin O'Malley
Governor

Anthony G. Brown
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October 19, 2007

Ms. Mary Kay Verdery
Talbot County Office of Planning and Zoning
11 N. Washington Street
Courthouse
Easton, Maryland 21601

Re: 1066
Herget Site Plan

Dear Ms. Verdery:

Thank you for providing information on the above referenced site plan. The applicant proposes a lot line revision between two parcels (Tax Parcel 34 and Revised Tax Parcel 150). Currently, the area of Tax Parcel 34 is 2.125 acres, and Revised Tax Parcel 150 is 4.492 acres. Both Parcels are located in a Limited Development Area (LDA). If the lot line revision is granted, total acreage for Tax Parcel 34 will be 2.87 acres, and Revised Tax Parcel 150 will be 3.817 acres. Tax Parcel 34 is currently developed with a one story frame dwelling, concrete tennis court, building, sidewalk, and windmill; Tax Parcel 150 is developed with two-and-a-half story frame dwelling, one-and-a-half story frame garage, gravel driveway, slate walkway, paver walkway/patio, wood walkway, retaining walls, concrete apron, breezeway, two porches, pool, pool house, hot tub, and pier. Total impervious surface on Tax Parcel 34 is 9,628 square feet (7.8% of the total site area) and on Tax Parcel 150 is 21,128 square feet (12.7%). Total forest coverage on Tax Parcel 34 is 13,335 square feet site (10.9%) and for Tax Parcel 150 is 29,488 square feet (17.7%).

Based on the information provided, we have the following comments on this project:

1. As stated in COMAR 27.01.02.04, all parcels must provide forest coverage of at least 15%. Please have the applicant provide additional forest coverage on Tax Parcel 34 to meet this requirement.
2. The Talbot County Soil Survey shows the presence of a small area of tidal marsh near the northwest corner of the parcel. Please have the applicant perform a wetland delineation to determine the amount of tidal wetlands located onsite and to ensure the Buffer is properly delineated. The amount of tidal wetlands located

onsite will help determine the total buildable area and the amount of impervious surface allowed for Tax Parcel 34.

3. In order for the 100-foot Buffer to meet its goal for the protection of aquatic, wetlands, shoreline, and terrestrial environments from man-made disturbances (COMAR 27.01.09.01), staff recommends that the applicant remove the existing stone fire pit and fully vegetated the Buffer area of Tax Parcel 34 with native trees and shrubs.

Thank you for the opportunity to provide comments on this site plan. If you have any questions, please contact me at 410-260-3483.

Sincerely,



Nick Kelly
Natural Resource Planner
cc: TC 620-07

RECEIVED

JUL 16 2008

CRITICAL AREA COMMISSION TALBOT COUNTY BOARD OF APPEALS
Chesapeake & Atlantic Coastal Bays

DECISION

Appeal No. 1496

Pursuant to due notice, a public hearing was held by the Talbot County Board of Appeals at the Bradley Meeting Room, Court House, South Wing, 11 North Washington Street, Easton, Maryland, beginning at 7:30 p.m., May 19, 2008, on the application of **R. PHILLIP HERGET, III and ANNE S. HERGET** ("Applicants"). The Applicants are requesting a variance of the 50-foot side yard setback and the 50-foot front yard setback to permit the retention of a fence surrounding an existing tennis court located 45.9 feet from the side yard property line and 21.6 feet from the front property line. In addition, the Applicants are requesting variances of the 100-foot shoreline development buffer to permit stepping stone and paver areas located 60.7 feet from the shoreline at the northwest corner of the residence and 35.8 feet on the northeast corner of the residence. They are also requesting a variance of the buffer from 0 feet to 35.8 feet from the shoreline for a wooden walkway. The property is located at 6587 Locust Grove Road and 6599 Peachblossom Point Road, Easton, Maryland 21601 and is in the Rural Residential (RR) zone. It is owned by the Applicants. The request is made in accordance with Chapter 190 Zoning, Article X, §190-59D(1)(a), (c) and (4); Article XII, §190-93E(3)(c); and Article XIV, §190-104 of the Talbot County Code ("Code").

Present at the hearing were Board of Appeals members Paul Shortall, Jr., Chairman, Phillip Jones, Vice Chairman, Betty Crothers, John Sewell, and Margaret Young. The Applicants were represented by Bruce C. Armistead, Esquire and Carmen Farmer, Esquire. The Maryland Critical Area Commission was represented by Sandra K. Canedo, Assistant Attorney General. Glenn D. Klakring was the attorney for the Board of Appeals.

It was noted for the record that all members of the Board had visited the site.

The following exhibits were offered and admitted into evidence as Board's Exhibits as indicated:

1. Application for variance with Attachment A.
2. Copy of portion of the Talbot County tax map with the property highlighted.

3. Appeals Notice of Public Hearing.
4. Certificate of publication of the Notice of Public Hearing from the Star-Democrat.
5. Notice of hearing with a list of nearby property owners attached.
6. Copy of non-critical area variance requirements from the Code with the Applicants' response to each applicable requirement.
7. Copy of critical area variance requirements from the Code with the Applicants' response to each applicable requirement.
8. Staff memorandum.
9. Sign maintenance agreement.
10. Site plan by Lane Engineering.
11. Letter from Critical Area Commission dated May 13, 2008.
12. Independent Procedure Disclosure & Acknowledgement Form.
13. Photograph of wooden walkway.
14. Photograph of concrete stepping stones.
15. Aerial photograph of property.

Mr. Armistead stated that his clients own two parcels which they purchased in 2000 from separate owners. The main residence is on the waterfront parcel and is partly in the 100-foot shoreline buffer. The second parcel contains a cottage and several other structures, including the tennis court. The tennis court was constructed in 2001. A building permit for the tennis court was not required at the time.

Mr. Armistead submitted a photograph showing the waterfront side of the Applicants' home. It was admitted as Applicants' Exhibit No. 1.

Mr. Herget testified that the contractor who constructed the tennis court for him had built other tennis courts in Talbot County and told him that a building permit was not required. The same contractor built the fence around the court at the same time. He did not realize that the fence was considered a

structure and required a variance if inside any setbacks. He said that his neighbor closest to the tennis courts does not oppose the fence.

Mr. Armistead stated that of the walkways shown on the site plan (Board's Exhibit No. 10) the parts shown in white are an area replacing a previous impervious walkway and the parts that are colored are new. The new walkways are not continuous but are instead a series of pavers with spaces between each of the pavers in grass.

Mr. Herget said that they did not realize the pavers might cause a problem. They relied on their architect and landscape architect. They did not use mortar for any of the pavers in the walkways or around the pool.

Mrs. Herget said that they deliberately chose a landscape architect who has a reputation as a minimalist. They wanted to have a minimal impact on the area between the house and waterfront. She said that they are willing to modify the wood walkway and stairs to the pier so that they are pervious.

Francis Nicholas Kelly, III, Ph.D., Maryland Critical Area Commission, testified next. He said that a perpendicular and pervious walkway to the pier would be acceptable as landowners are permitted access to water dependent activities through the shoreline buffer. However, the Commission is opposed to the variances for the new impervious surfaces within the buffer. The wood walkway to the pier is not perpendicular and appears to cover more surface than necessary. Also, it does not appear to be pervious. The new paver covered areas are not necessary and as they are in the buffer should not be permitted. They do not meet any of the variance criteria. A copy of Dr. Kelly's Curriculum Vitae was admitted as Critical Area Commission Exhibit No. 1. A letter dated May 19, 2008 from the Critical Area Commission was admitted as Critical Area Commission Exhibit No. 2.

Mr. Herget said that there is a significant slope from the house to the shoreline. The walkway to the pier was put in with a dogleg to negotiate the topography of the yard between the house and shoreline and avoid having the walkway to the pier directly through the pool area. A former pier was closer to the

center of the house. The present pool replaced a pool in the same area. The new pool may be somewhat smaller than the previous pool it replaced. It is not closer to the shoreline. The pool is not enclosed by a fence.

The next witness was Bill Stagg, Lane Engineering. He said that there are no wildlife habitats on the property. He said that without removing the pavers the Applicants could achieve close to the same pollutant reduction by installing a landscaping strip between the sea wall and slope up to the house and an infiltration trench.

Thereafter the Board considered the various requests. The Board first considered the request for a variance for the fence surrounding the tennis court. After discussion and upon motion to approve the request, duly made and seconded, the Board made the following findings of fact and law regarding the tennis court fence:

1. Certain unique characteristics exist, such as unusual size or shape of the property or extraordinary topographical conditions, such that a literal enforcement of the provisions of the Code would result in practical difficulty or unreasonable hardship in enabling the Applicants to develop the property.
2. The granting of the variance is not based upon circumstances which are self-created or self-imposed.
3. The granting of the variance will not be contrary to the public interest and will not be a detriment to adjacent or neighboring properties.
4. The variance does not exceed the minimum adjustment necessary to relieve the practical difficulty or unreasonable hardship.

The motion to approve the variance for the tennis court fence was approved by a vote of four to one (Mr. Jones voted against the motion) and was subject to the following conditions:

1. The approval of the proposed lot line revision transferring land from parcel 150 to parcel 34.
2. The Applicants shall maintain a landscaped vegetative screening between the fence and the nearby roadway.

The Board then considered the variance request for the wood walkway between the house and the shoreline. After discussion and upon motion to approve the request, duly made and seconded, the Board made the following findings of fact and law regarding the wood walkway:

1. Special conditions or circumstances exist that are peculiar to the land or structure such that a literal enforcement of the provisions of the ordinance result in unwarranted hardship to the property owner.
2. A literal interpretation of the ordinance will deprive the property owner of rights commonly enjoyed by other property owners in the same zone.
3. The granting of the variance will not confer upon the property owner any special privilege that would be denied by the ordinance to other owners of lands or structures within the same zone.
4. The variance request is not based on conditions or circumstances which are the result of actions by the property owner nor does the request arise from any condition relating to land or building use, either permitted or nonconforming, on any neighboring property.
5. Greater profitability or lack of knowledge of the restrictions was not considered as sufficient cause for the variance.
6. The variance does not exceed the minimum adjustment necessary to relieve the unwarranted hardship.
7. The granting of the variance will not adversely affect water quality or adversely impact fish, wildlife or plant habitat, and the granting of the variance will be in harmony with the

general spirit and intent of the Critical Area Law, the Talbot County Critical Area Program and the Critical Area provisions of the ordinance.

The motion to approve the wood walkway was approved by a vote of 5 to 0 and was subject to the following conditions:

1. The entire walkway meets or is modified to meet criteria for a pervious wood walkway.
2. The Applicants shall install and maintain plantings on the sides of the walkway, as approved by the Talbot County Office and Planning and Zoning.

The Board then decided to defer consideration of the final variance request for the new walkways and surfaces to June 16, 2008 at 7:00 p.m.

The Board then met again on June 16, 2008 and first heard from Mr. Stagg. He suggested that the Applicants install a stone infiltration trench behind the sea wall which would remove more of the runoff pollutants than simply replacing the pavers with turf.

LeeAnne Chandler, Science Advisor, Critical Area Commission testified that the proposed infiltration trench only addresses one of the five purposes of the shoreline buffer and the best management practices would be removal of the pavers.

Dr. Kelly also testified against approval of the variance for the new walkways.

The Board then met in a brief executive session with the Board's attorney regarding legal issues raised by the application.

The Board then met in open session. The Board then considered the variance request for the new walkways. After discussion and upon motion to approve the request, duly made and seconded, the Board made the following findings of fact and law regarding the newly covered surfaces:

1. Special conditions or circumstances exist that are peculiar to the land or structure such that a literal enforcement of the provisions of the ordinance result in unwarranted hardship to the property owner.

2. A literal interpretation of the ordinance will deprive the property owner of rights commonly enjoyed by other property owners in the same zone.
3. The granting of the variance will not confer upon the property owner any special privilege that would be denied by the ordinance to other owners of lands or structures within the same zone.
4. The variance request is not based on conditions or circumstances which are the result of actions by the property owner nor does the request arise from any condition relating to land or building use, either permitted or nonconforming, on any neighboring property.
5. Greater profitability or lack of knowledge of the restrictions was not considered as sufficient cause for the variance.
6. The variance does not exceed the minimum adjustment necessary to relieve the unwarranted hardship.
7. The granting of the variance will not adversely affect water quality or adversely impact fish, wildlife or plant habitat, and the granting of the variance will be in harmony with the general spirit and intent of the Critical Area Law, the Talbot County Critical Area Program and the Critical Area provisions of the ordinance.

The motion to approve the variance request for the newly covered surface without subjecting it to an infiltration trench was approved by a vote of 5 to 0 and was subject to the following conditions:

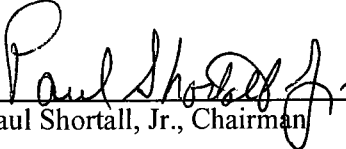
1. The approval of the proposed lot line revision transferring land from parcel 150 to parcel 34.
2. The Applicants shall submit and comply with a planting plan subject to the approval of the Talbot County Office of Planning and Zoning providing for mitigation within the buffer for all new impervious surfaces at a ratio of two to one.

HAVING MADE THE FOREGOING FINDINGS OF FACT AND LAW, IT IS, BY THE
TALBOT COUNTY BOARD OF APPEALS,

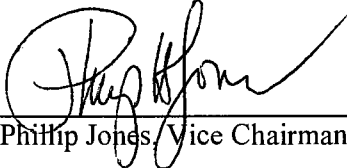
RESOLVED, that the Applicants, **R. PHILLIP HERGET, III and ANNE S. HERGET**
(Appeal No. 1496) are **GRANTED** the requested variances consistent with the evidence presented to the
Board of Appeals and subject to the previously listed conditions.

GIVEN OVER OUR HANDS, this 15th day of July, 2008.


TALBOT COUNTY BOARD OF APPEALS



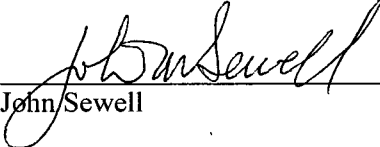
Paul Shortall, Jr., Chairman



Phillip Jones, Vice Chairman



Betty Crothers



John Sewell



Margaret Young

Board of Appeals/1496.HergetVarianceCANCA

In the Matter of Philip and Anne Herget
Variance 1496

MEMORANDUM OF CRITICAL AREA COMMISSION

Background:

On May 19, 2008, this Board met to consider the variance application of Mr. and Mrs. Herget to retain, in the Critical Area Buffer, various stone/paver walkways and patios as well as access to the water and a variance for a fence surrounding a tennis court. The access variance and the fence variance were granted on the 19th of May and the hearing was continued to June 16 with regard to the stone/paver walkways and patios. The Board asked that the Critical Area Commission consider mitigation that was proposed by the applicant. The Board also asked the undersigned counsel to think about the Commission's position on the unwarranted hardship standard given the fact that these various walkways and patios were constructed in 2003. After due consideration, the Commission submits the following statement for record in this case.

Mitigation Planting Plan:

With regard to the mitigation plan, Dr. Nick Kelly has written a comment letter and Lee Anne Chandler, the Commission's Science Advisor reviewed the plans with Dr. Kelly. The Commission's position continues to be that review of a mitigation plan prior to the granting of a variance is not the appropriate process. This is because the variance standards in this case have not been met, and, in our view, the walkways/pavers should be removed and the areas restored. Under these circumstances, consideration of a mitigation plan is, at best, premature.

Applicable Law:

The law that this Board must apply regarding the "unwarranted hardship" standard is without a variance, the applicant would be denied reasonable and significant use of the entire parcel or lot for which the variance is requested. Annotated Code of Md., Nat. Res. Art. 8-1808(d). Although the construction was apparently done in 2002 or 2003, the after-the-fact variance application was made in 2008. As the Court of Special Appeals observed in a critical area variance case, "the legislative history makes it clear that the General Assembly's desire was for the changes in the State law to take effect as soon as possible. ...All of the changes in the State law in this case [2002 and 2004 amendments] affected the requirements for obtaining a variance, thereby affecting the zoning status of property located within the critical area. ...Each change applied to pending proceedings as of its effective date." *Becker v. Anne Arundel County*, 174 Md.App. 114, 135 (2007).

The variance application for these patios and walkways is subject to the law as it stands today. The Court of Special Appeals has upheld this application, by applying the doctrine that, "a court is to apply the law in effect at the time it renders its decision unless

doing so would result in manifest injustice or there is statutory direction or legislative history to the contrary.” *Layton v. Howard County Board of Appeals*, 171 Md.App. 137, 167 (2006) quoting *T & R Joint Venture v. Office of Planning & Zoning of Anne Arundel County*, 47 Md.App. 395, 407 (1980) citing *Bradley v. School Board of Richmond*, 416 U.S. 696, 711, 94 S.Ct. 2006, 2016, 40 L.Ed.2d 476 (1974).

It is important to note that the unwarranted hardship standard is not the only standard that must be met. There are other variance standards that must be met: rights commonly enjoyed; special privilege; request based upon conditions or circumstances which are the result of the actions of applicant; and that the granting of the variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat and that the variance is in harmony with the spirit and intent of the Critical Area law.

The Critical Area law and criteria were enacted in 1984. As of 2002, the criteria for Habitat Protection Areas in the Critical Area was a well established part of the Critical Area Program, at both the State and local levels. “New development activities, including structures, roads, parking areas and other impervious surfaces, mining and related facilities, or septic systems, may not be permitted in the Buffer...” COMAR 27.01.09.01C and Talbot County Code §190-93. The criteria for development in the buffer in 2002 is the same as in 2008, therefore, the applicant’s variance request is not subject to a different standard.

Conclusion:

This variance application is subject to the unwarranted hardship standard, that without this variance, the applicant would be denied reasonable and significant use of the entire parcel or lot. There has been no evidence presented by the applicant which overcomes this strict standard.

Setback Policy for the Critical Area Shoreline Development Buffer

- Any non-covered concrete patios, decking, or other areas constructed of like materials, as well as, uses which are built or constructed and require a fixed location on the ground shall be classified as structures and shall comply with all setback requirements and *may be expanded* in accordance with the Talbot County Code.
- Non-covered concrete patios, walkways, or similar structures built as an accessory to a primary or principal structure (i.e. residential patio, pool decking, walkways, etc.) *shall not be considered* for the purposes of determining the closest point of the primary or principal structure and/or use from Mean High Water of a property line.
- The closest point of the primary or principal structure *may include* the leading edge of a wooden deck or other appurtenant structure if it is clearly and structurally connected to the primary or principal structure.

STRUCTURAL CONNECTION: The joining of individual members of a structure by fasteners, rivets, bolts, plates, and/or welding to form a complete assembly.

- Man-made disturbances such as patios or walkways constructed of brick, gravel, slate, or other like materials *are not permitted* within the 100' Shoreline Development Buffer and shall not be permitted to expand.



STAFF MEMORANDUM

Prepared by: Shawn Leidy
Date: April 29, 2008

Appeals Case #: 1496

BOA Meeting Date: May 19, 2008

General Information:

Owner: Philip & Anne Herget

Applicant: Same As Above

Requested Action: Variance of 50' front and side yard setback and 100' Shoreline Development Buffer.

Purpose: Applicants, Philip & Anne Herget are requesting a variance from the 50' side yard setback and the 50' front yard setback to permit the retention of a fence surrounding an existing tennis court located 45.9' from the side property line and 21.6' from the front property line. (P. 34) In addition, the applicants are requesting variances of the 100' Shoreline Development Buffer to permit stepping stone and paver areas located 60.7' from Mean High Water at the north-west corner of the residence and 35.8' on the north-east corner of the residence. (P. 150) The applicants are also requesting a variance of the Shoreline Development Buffer from 0' to 35.8' from MHW for a wooden walkway. (P. 150)

Existing Zoning: RR - Rural Residential

Tax Map No: Map 41, Grid 18, Parcel 150
Map 41, Grid 18, Parcel 34

Location: 6597 Locust Grove Road
Easton, MD 21601

6599 Peachblossom Point Road
Easton, MD 21601

Property Size: 4.51 Acres
2.13 Acres

Comprehensive Plan: Impervious coverage, such as wooden walkways and stepping stones, located inside the 100' Shoreline Development Buffer are inconsistent with the Comprehensive Plan.

Staff Recommendation:

- 1) Impervious coverage has exceeded on parcel 34. The applicants have applied for a lot line revision which will give parcel 34 land from parcel 150. If the lot line revision is not approved, the applicants must apply for a variance from the Board of Appeals for impervious coverage.
- 2) If the variance is granted, a planting plan shall be submitted for this project. Applicant must mitigate for the impervious in the buffer at a ratio of two to one.



TALBOT COUNTY BOARD OF APPEALS

28712 GLEBE ROAD, SUITE 2
EASTON, MARYLAND 21601

PHONE: 410-770-8040

FAX: 410-770-8043
TTY: 410-822-8735

NOTICE OF PUBLIC HEARING

APPEAL NO. 1496

In accordance with Chapter 190 Zoning, Article XIV, §190-112 of the Talbot County Code, notice is hereby given that a public hearing will be held in the **Bradley Meeting Room, Court House, South Wing, 11 North Washington Street, Easton, Maryland** on **May 19, 2008** at **7:30 p.m.** by the Talbot County Board of Appeals to hear the following petition:

Applicants, Philip & Anne Herget are requesting a variance from the 50' side yard setback and the 50' front yard setback to permit the retention of a fence surrounding an existing tennis court located 45.9' from the side property line and 21.6' from the front property line. In addition, the applicants are requesting variances of the 100' Shoreline Development Buffer to permit stepping stone and paver areas located 60.7' from Mean High Water at the north-west corner of the residence and 35.8' on the north-east corner of the residence. Applicants are also requesting a variance of the Shoreline Development Buffer from 0' to 35.8' from MHW for a wooden walkway. Request is made in accordance with Chapter 190 Zoning, Article X, § 190-59 D (1) (a) (c) and (4), Article XII, § 190-93 E (3) (c) and Article XIV, § 190-104 of the Talbot County Code. Property is located at 6597 Locust Grove Road and 6599 Peachblossom Point Road, Easton, Maryland 21601 in the Rural Residential (RR) Zone. Property owners are Philip & Anne Herget and the property is located on Tax Map 41, Grid 18, Parcels 150 & 34. All persons are notified of said hearing and invited to attend. **The Board reserves the right to close a portion of this hearing as authorized by Section 10-508 (a) of the Maryland Annotated Code.**

A copy of said petition is available for inspection during the regular office hours of the Talbot County Board of Appeals, 28712 Glebe Road, Suite 2, Easton, Maryland 21601.

Christine Corkell
Board of Appeals

P.S. PLEASE BOLD WHERE INDICATED

Please run two consecutive weeks: May 2, 2008 & May 9, 2008

MAIL CONFIRMATION WHEN COMPLETE



TALBOT COUNTY BOARD OF APPEALS

"NON-CRITICAL AREA VARIANCE REQUIREMENTS"

Appeal No. 1496

Hearing Date: 5/19/08

Chapter 190 Zoning – Talbot County Code

Power of the Board of Appeals – see Chapter 190, Article XIV
Article XIV, § 190-104 - Variances

Variances: To authorize upon appeal in specific cases such variance from the terms of this Ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this ordinance shall not be granted unless and until the applicant has demonstrated that:

The applicant for a variance shall have the burden of proof which shall include the burden of going forward with the evidence and the burden of persuasion to all questions of fact, which are to be determined by the Board of Appeals.

- (a) Certain unique characteristics exist, such as unusual size or shape of the property or extraordinary topographical conditions, such that a literal enforcement of the provisions of this Ordinance would result practical difficulty or unreasonable hardship in enabling the applicant to develop the property;

Applicant Response:

The Applicants' lot is irregularly shaped with an existing dwelling, shed, gravel driveway and sewage disposal area, therefore limiting the available viable locations for a tennis court. Additionally, at the time of installation in 2001, the construction of the tennis court surface was not subject to the front and side yard setbacks because it was not deemed to be a structure. However, because the fence is considered a structure it is subject to the front and side setbacks and requires a variance to function as a fence around the tennis court.

- (b) The granting of the variance is not based upon circumstances which are self-created or self-imposed;

Applicant Response:

Again, at the time of construction in 2001, the tennis court surface did not require a building permit and was not subject to the front and side yard setbacks because it was not deemed to be a structure. However, because the fence is considered a structure it is subject to the front and side setbacks and requires a variance to function as a fence around the tennis court.

- (c) Greater profitability or lack of knowledge of the restrictions shall not be considered as sufficient cause for a variance;

Applicant Response:

The granting of the requested variance will not confer upon the Applicants any greater profitability.

(d) The granting of the variance will not be contrary to the public interest and will not be a detriment to adjacent or neighboring properties; and

Applicant Response:

The granting of the variance will not be contrary to the public interest and will not be a detriment to adjacent or neighboring properties.

(e) The variance shall not exceed the minimum adjustment necessary to relieve the practical difficulty or unreasonable hardship;

Applicant Response:

The variance shall not exceed the minimum adjustment necessary to relieve the practical difficulty or unreasonable hardship. No portion of the tennis court fence is situated closer to the front and side property lines than the closest points on the existing tennis court.

The Board's action will be predicated upon the applicant's compliance with the above.

3/6/08
Date


Signature of Applicant or Designated Agent

References:

1. Talbot County Comprehensive Plan
2. Talbot County Code
3. File

All structures and piers must be staked out prior to the Board's site visit.

EXHIBIT A

PURPOSE OF APPLICATION

Pursuant to Section 190-104 of the Talbot County Code, R. Phillip Herget, III and Anne S. Herget ("Applicants") request the following variances:

1. **VARIANCE NO. 1 – SLATE WALKWAY AND PAVER AREAS.** A variance from the 100' Critical Area Buffer to permit the extension of a previously existing slate walkway running parallel to mean high water and paver areas, located no closer to mean high water than 60.7', together with a walkway extending from the walkways parallel to the residence and connecting to a wooden boardwalk at a point approximately 35.8' from mean high water. [Note: The paver areas are located no closer to mean high water than the existing non-conforming residence and would be eligible for approval as an administrative variance. For purposes of administrative efficiency, Applicant has elected to include those portions of the walkway in this variance application rather than pursue a separate application for an administrative variance.] The walkway is comprised of slate stepping stones spaced 5-6 inches apart with grass strips between each stone, allowing surface water to infiltrate the underlying soils. Applicants contend that the spacing of the stepping stones interspersed with the green strips, and installed without a concrete base, should not result in the classification of the walkway as impervious surface or as a structure. Portions of the walkway existed within the 100' Buffer when the Applicants acquired the property in 2000. In connection with the expansion of the main residence, Applicants extended the existing walkway to provide a safe and continuous means of access along the entire rear side of the residence. Applicants contend that consistency between surfaces is necessary for safety reasons. If the extension of the pre-existing walkway will be classified as a structure containing impervious surface, then this request requires a variance from the provisions of **Section 190-93E(3)**.

2. **VARIANCE NO. 2 – WOOD WALKWAY.** A variance from the 100' Critical Area Buffer to permit the retention of an existing wood walkway extending from mean high water (i.e. zero [0] feet from mean high water) to the walkways designated in the foregoing Paragraph 1. The wood walkway facilitates access down a steep slope to the dock. Applicants contend that access to the dock would be difficult and potentially dangerous without the wood walkway due to the slope of the rear yard. The existing wood walkway replaces a similar wood walkway that existed prior to the acquisition of the Property by the Applicants. In addition, Applicants propose to modify the walkway to conform to the Critical Areas Commission guidelines for non-impervious surfaces. This request requires a variance from the provisions of **Section 190-93E(3)**.

3. **VARIANCE NO. 3 - TENNIS COURT FENCE**. A variance from the 50' side yard setback from the westerly property line and a variance from the 50' front yard setback from the southerly property line to permit the retention of an existing fence surrounding a permitted tennis court. The construction of the tennis court surface in 2001 did not require a building permit and was not subject to the front and side yard setbacks because it was not deemed to be a structure. However, because the fence is considered a structure, it is subject to the front and side setbacks and necessitates a variance to function as a fence around the tennis court. Although the tennis court fence encroaches into the 50' front yard setback by 28.4' at the maximum and into the side yard setback by approximately 4.1', no portion of the tennis court fence is situated closer to the front and side property lines than the closest points on the existing tennis court. In addition, the entirety of the fence is located outside of the 100' Critical Area Buffer. This request requires a variance from the provisions of **Section 190-59D(1)**.

The slate and wood walkways and tennis court fence are more particularly shown and depicted on a Site Plan prepared by Lane Engineering, LLC titled "VARIANCE SITE PLAN EXHIBIT ON THE LANDS OF ANNE S. HERGET AND PHILLIP R. HERGET, III." dated April 17, 2008, Scale 1"=40'.

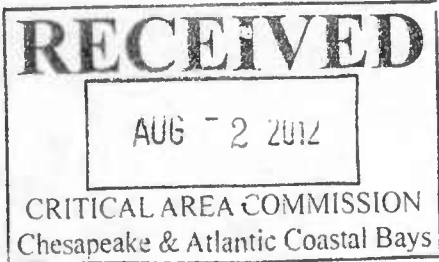
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ARMISTEAD, GRISWOLD, LEE & RUST, P.A.

ATTORNEYS AT LAW
114 BAY STREET, BUILDING C
EASTON, MARYLAND 21601

TELEPHONE: (410) 819-8989
FACSIMILE: (410) 819-8966

EMAIL ADDRESS
ARMISTEAD@AGRLAW.COM



August 1, 2012

Talbot County Office of Planning & Zoning
Attention: Elisa Deflaux, Environmental Planner
215 Bay Street, Suite 2
Easton, Maryland 21601

**Re: Margaret McHale, et al. v. R. Philip Herget, III, et al.
Talbot County Circuit Court Case No.: 20-C-08-006437**

Dear Elisa:

You may recall that I represent Mr. and Mrs. Philip Herget in connection with their properties located at 6597 Locust Grove Road and 6599 Peachblossom Point Road in Easton, Maryland. You may also recall that the Herget properties were the subject of a variance proceeding before the Talbot County Board of Appeals that resulted in a Decision dated July 15, 2008. That Decision was appealed by the Critical Area Commission to the Talbot County Circuit Court, and that matter was subsequently settled through the entry of the enclosed Consent Order dated April 20, 2009.

Pursuant to the terms of the Consent Order, the Hergets agreed to install certain plantings on their property and to maintain such plantings at a survival rate of at least 80% for a period of at least three (3) years. As an additional condition of the Consent Order, the Hergets posted a cash bond with the County in the amount of Nine Thousand Dollars (\$9,000) to guarantee the planting obligation.

The plantings were completed by the Hergets on or before July 15, 2009, and the three year period for the survival of the mitigation plantings has now expired. The Hergets believe that they have now fully satisfied the terms of the Consent Order and by this letter, we are requesting a final inspection by the County of the work as required by Paragraph 6 of the Consent Order. Although the Hergets (or their representative) have the right pursuant to Paragraph 4 of the Consent Order to be present at the time of any inspection, I doubt that they plan to do so. Nevertheless, in case they wish to be present or to have a representative present at the time of the final inspection, please let me or the Hergets know when that inspection will occur.

Talbot County Office of Planning & Zoning
Attention: Elisa Deflaux, Environmental Planner
August 1, 2012
Page 2

As Mike Pullen will know, the terms of the Consent Order require the County to issue a Written Notice of Final Acceptance following the completion of the final inspection. The Consent Order further specifies that the Written Notice of Final Acceptance shall be filed in Case No.: 20-C-08-006437, along with a Notice of Satisfaction of Consent Order. By a copy of this letter, I am alerting Mike Pullen that these actions by the County will be required upon completion of the final inspection.

Finally, upon completion of the final inspection and the filing of the Written Notice of Final Acceptance and a Notice of Satisfaction of Consent Order as specified above, the County should then release the Nine Thousand Dollars (\$9,000) bond. Since this bond was posted in cash, I assume that a check will be issued by the County Finance Office. That check can be mailed directly to the Hergets at the following address:

Mr. and Mrs. R. Philip Herget, III
2203 Belle Haven Road
Alexandria, VA 22307-1119

Thank you for your prompt attention to this matter. If there are any questions, please call. Otherwise, we will look forward to notification of the inspection date and the subsequent filing of the required documentation and release of the cash bond.

Sincerely yours,



Bruce C. Armistead

Enclosure

cc: Mr. and Mrs. R. Philip Herget, III
Michael L. Pullen, Esq.
Saundra K. Canedo, Esq. ✓

IN THE CIRCUIT COURT FOR TALBOT COUNTY, MARYLAND

PETITION OF: *
MARGARET McHALE *
Chair, Critical Area Commission for *
the Chesapeake and Atlantic Coastal Bays *

FOR JUDICIAL REVIEW OF THE *
DECISION OF: *
THE TALBOT COUNTY BOARD *
OF APPEALS *

Case No.: 20-C-08-006437

IN THE CASE OF: *
Appeal No. 1496 *
R. PHILLIP HERGET, III AND *
ANNE S. HERGET *

* * * * *

CIRCUIT COURT
OF TALBOT COUNTY
EASTON, MARYLAND
2020 APR 21 PM 12 21

CONSENT ORDER

Petitioner, Margaret McHale, Chair, Critical Area Commission for the Chesapeake and Atlantic Coastal Bays ("CAC"), by her attorneys Douglas F. Gansler, Attorney General of Maryland, and Sandra K. Canedo and Marianne E. Dise, Assistant Attorneys General, and Respondents, the Talbot County Board of Appeals ("County"), by Michael L. Pullen, Talbot County Attorney; and R. Phillip Herget, III and Anne S. Herget ("Hergets"), by Bruce C. Armistead and Armistead, Griswold, Lee & Rust, P.A., their attorneys, represent to the Court that they have resolved this matter by agreement and jointly request the Court to enter this Consent Order to implement the same.

The Hergets are the owners of that certain lot or parcel located at 6597 Locust Grove Road, Easton, Maryland 21601, being more particularly described in that certain deed dated September 8, 2000 and recorded among the Land Records of Talbot County in Liber 974, folio 814, and that certain lot or parcel located at 6599 Peachblossom Point

Road, Easton, Maryland 21601, being more particularly described in that certain deed dated September 8, 2000 and recorded among the Land Records of Talbot County, Maryland in Liber 974, folio 818 ("Property"). In 2001, the Hergets completed certain renovations and modifications to the residential structures located on the Property after obtaining one or more building permits issued by Talbot County, Maryland. In 2007, as a result of an application by the Hergets to the County for a property line revision, the County conducted certain inspections of the Property and it was determined that portions of the exterior improvements constructed by the Hergets at the time of the renovations and modifications encroach into the 100' Critical Area Buffer on the Property.

The Hergets filed an application for certain variances with the Talbot County Board of Appeals to permit the encroaching exterior improvements to remain in place. The Talbot County Board of Appeals approved the variances requested by the Hergets by a decision dated July 15, 2008 and the CAC subsequently appealed the Board's decision to this Court ("Appeal").

In lieu of further litigation over the issues involved in this case, the Hergets have proposed to mitigate the environmental impact of the encroaching exterior improvements through the implementation of a planting plan prepared by Lane Engineering, LLC and approved by the CAC and the County and more particularly described herein. The County has agreed to monitor the installation of the planting plan and to conduct periodic inspections to insure the survival of at least eighty percent (80%) of the plantings for a period of at least three (3) years.

In order to allow the Hergets time to implement the approved planting plan during the spring planting season, the parties have agreed to enter this Consent Order dismissing the Appeal on the terms and conditions set forth herein.

As settlement of the Appeal, the parties have agreed as follows:

1. **Planting Plan.** The Hergets shall commence and complete the implementation of the Planting Plan attached hereto as Exhibit A using the plants listed on the Plant List attached hereto as Exhibit B on or before July 15, 2009.
2. **Bond.** Within fifteen (15) days of the date of this Consent Order, the Hergets shall post a bond, letter of credit, or other acceptable surety (hereinafter the "Bond") with the County in the amount of Nine Thousand Dollars (\$9,000). The Bond shall be in a form acceptable to the County and shall be unconditional except for the conditions set forth herein. The Bond shall be irrevocable and shall remain in effect until terminated in accordance with this Consent Order. If, at the conclusion of the three (3) years following the issuance of Preliminary Acceptance as defined in Paragraph 3 ("Three Year Period"), the Hergets have satisfied all of the terms of this Consent Order, the County shall issue Final Acceptance in accordance with Paragraph 6 below and the Bond shall be promptly released, canceled, non-renewed, or terminated. If, at the conclusion of the Three Year Period, the Hergets have not satisfied all of the terms of this Consent Order, at the election of the County, the Bond shall either: (1) be extended until the Hergets have satisfied all of the terms of this Order at which time the County shall issue Final Acceptance in accordance with Paragraph 6

below, or (2) the County may exercise its rights under Default as set forth in Paragraph 5 below. The conditions for release of the Bond shall be:

- a. Full and timely performance of the Planting Plan in accordance with its terms;
- b. Full and timely performance of the terms of this Consent Order; and
- c. Survival of, and a duty to maintain and where applicable replant, all nursery stock and other plants required under the Planting Plan for a period of three (3) years from the County's Preliminary Acceptance as specified in Paragraph 3 below.

3. Preliminary Acceptance. When the Hergets have provided all labor and materials required by the Planting Plan in accordance with its terms, and have fulfilled all other obligations contained in this Consent Order, the Hergets shall give the County written notice of compliance ("Notice of Compliance"). Within fifteen (15) days of receipt of such Notice of Compliance, the County shall inspect the work to determine if it has been completed in accordance with the requirements of the Planting Plan and this Consent Order. The Hergets shall perform all work and provide all nursery stock and other plantings required by the Planting Plan to the reasonable satisfaction of the County and shall perform all obligations required to be performed by this Consent Order as a condition precedent to the County's issuance of written notice of preliminary acceptance of the work, ("Preliminary Acceptance").

4. Inspections. The County may from time to time inspect the work performed under the Planting Plan at such intervals as it determines appropriate, and following each inspection shall prepare and provide the Hergets a written report of its findings. The County, its agents, officials, employees, and contractors shall have the right of entry onto the Property, upon not less than twenty four (24) hours advance notice, to inspect implementation of the Planting Plan, progress of the work, survival of the plants, and compliance with all other terms of the Planting Plan. During the Three Year Period, the County at any time, may require the Hergets to replant all or any portion of the nursery stock or other plantings that fail to survive as required by the Planting Plan. The Hergets or their authorized representative shall be entitled to be present during the period of any inspection.

5. Default. Failure by the Hergets to comply with the terms of the Planting Plan or this Consent Order shall be deemed an event of default. In the event of a default by the Hergets, the County shall provide the Hergets with written notice specifying the default and the action required to cure it. The Hergets shall have thirty (30) days within which to cure, unless the default cannot reasonably be cured within thirty (30) days, in which case the County may extend the period to provide a reasonable time within which the Hergets may cure. In the event any default is not cured within thirty (30) days, unless extended (and in that event within the time as extended), the County may immediately proceed to cure the default and to perform or cause to be performed all or any part of the work and provide all or any part of the nursery stock or other plantings necessary to perform

the Planting Plan in accordance with its terms. In the event of a default hereunder by the Hergets, the County, its agents, officials, employees, and contractors shall be entitled at reasonable times with not less than twenty four (24) hours advance notice to enter upon, over, and through the Property, bring equipment and materials onto the Property, plant all or any portion of the nursery stock or other plantings, and perform all other acts necessary or proper for all purposes connected with work required by the Planting Plan (the "Remedial Measures"). The County shall use reasonable care to not damage the Property and shall use its best efforts to leave the Property in the same condition as before the institution of the Remedial Measures. In the event that the County shall be required to institute the Remedial Measures, the Hergets shall be responsible for payment of all costs incurred by or on behalf of the County in connection with the completion of the Remedial Measures.


6. Final Acceptance. At the end of the Three Year Period, the County shall perform a final inspection of the work and, if the Hergets have satisfied all of the terms of this Consent Order, the County shall issue a written notice of final acceptance ("Written Notice of Final Acceptance"), and deliver the same to the Hergets or the Hergets' successors-in-title to the Property. The County shall not unreasonably withhold issuance of the Written Notice of Final Acceptance. The same shall be filed in this proceeding and, when filed, shall terminate any ongoing, additional, or future liability for performance of the Planting Plan. The Hergets' obligation under this Consent Order and under the Planting Plan shall not be released until a Written Notice of Final Acceptance has been filed in this proceeding. Upon the

issuance of a Written Notice of Final Acceptance, the County shall also file a Notice of Satisfaction of Consent Order in this action.

7. Successors. This Consent Order shall be binding upon the Property and upon the Hergets, including the Hergets' heirs, personal representatives, grantees, successors, and assigns.
8. Finality. Except as expressly set forth herein, this Consent Order resolves all pending claims between the parties in this action and is a final order under the Maryland Rules. The Court will retain continuing jurisdiction to resolve any dispute(s) that may arise concerning performance and to enforce the terms of this Consent Order as necessary.
9. Enforcement by the County. The terms of this Consent Order shall be enforceable by the County pursuant to the provisions of the Talbot County Zoning Ordinance and Chapter 58 of the Talbot County Code. In the event that any such enforcement action shall become necessary, the Hergets shall be responsible for all attorney's fees and costs incurred by the County in connection with any such enforcement action.
10. Applicable Law. It is the intention of the parties hereof that all questions with respect to the construction of this Consent Order and the rights and liabilities of the parties hereunder shall be determined in accordance with the laws of the State of Maryland.
11. Attorneys Fees and Costs. Each party shall bear responsibility for all attorney's fees and costs incurred on their behalf pursuant to matters arising under this litigation.

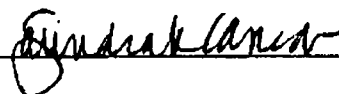
11. Consent. The parties, through undersigned counsel, jointly request the Court to enter this Order by consent.

IT IS ACCORDINGLY, this 20th day of April, 2009, by the
CIRCUIT COURT FOR TALBOT COUNTY, MARYLAND, SO ORDERED.



JUDGE

DOUGLAS F. GANSLER,
Attorney General of Maryland

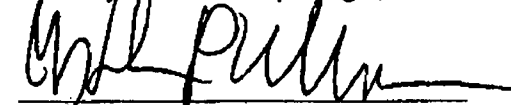
By: 



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Attorneys for R. Phillip Herget, III and Anne S. Herget



MICHAEL L. PULLEN
Talbot County Attorney
11 North Washington Street
Easton, MD 21601
(410) 770-8092
Attorney for Talbot County

Exhibit B
Landscape Plant List

Buffer Mitigation Plantings (12 total trees and 33 total shrubs)

Quan.	Plant Species	Common Name	Size/Spec
3	<i>Acer rubrum</i> 'October Glory'	Red Maple	2" caliper
7	<i>Betula nigra</i> 'Heritage'	Heritage River Birch	6' hgt, multi-trunk
1	<i>Cercis Canadensis</i>	Eastern Redbud	5' hgt, multi-trunk
1	<i>Quercus phellos</i>	Willow Oak	2" caliper
14	<i>Comptonia peregrine</i>	Sweet Fern	3 gallon, 5' on-center
4	<i>Ilex glabra</i> 'Nigra'	Inkberry	3 gallon, 5' on-center
15	<i>Rosa rugosa</i>	Rugosa Rose	3 gallon, 5' on-center

Rain Garden Area Plantings

2735 sq ft of roof; rain garden to manage first 1: run-off = 219 cubic feet volume @ 6" depth rain garden requires 438 sq ft of surface or approximately 15' x 30'. Site selected has a gentle fall from east to west, so excavations in east end to 6" depth can be used for subtle berm/dam at west end to capture run-off. Overflow shall be either small rock wier or riser pipe with piped outfall beyond berm. Existing soil in this area appears natural top soil with reasonable percolation (no specific infiltration tests conducted). Recommending working the bottom of the rain garden to depth of 6".

Plant List

Quan.	Plant Species	Common Name	Size/Spec
Shady side along and under tree canopy:			
4	<i>Clethra alnifolia</i>	Sweet Pepperbush	3 gallon, 3' on-center
4	<i>Ilex verticillata</i>	Winterberry	3 gallon, 3' on-center
4	<i>Itea virginicus</i>	Sweetspire	3 gallon, 3' on-center
4	<i>Athyrium filix-femina</i>	Lady Fern	1 gallon, 2' on-center
4	<i>Osmunda cinnomomea</i>	Cinnamon Fern	1 gallon, 2' on-center
4	<i>Onoclea sensibilis</i>	Sensitive Fern	1 gallon, 2' on-center
4	<i>Thelypteris noveboracensis</i>	New York Fern	1 gallon, 2' on-center

Wet Pool Plants- wettest, lowest pocket of rain garden- 8-12" deep area

6	<i>Caltha palustris</i>	Marsh Marigold	1 gal., 18" on-center
6	<i>Iris versicolor</i>	Iris	1 gal., 18" on-center
6	<i>Lobelia cardinalis</i>	Cardinal flower	1 gal., 18" on-center

General Basin Plants

20	<i>Carex stricta</i>	Tussock Sedge	Quart, 18" on-center
10	<i>Carex vulpinoides</i>	Fox Sedge	Quart, 18" on-center
10	<i>Panicum virgatum</i>	Switch Grass	Quart, 18" on-center

8	<i>Eupatorium maculatum</i>	Joe Pye Weed	Quart, 18" on-center
8	<i>Liatris spicatum</i>	Blazing Star	Quart, 18" on-center
8	<i>Phlox paniculata</i>	Phlox	Quart, 18" on-center
8	<i>Phlox maculata</i>	Phlox	Quart, 18" on-center
8	<i>Solidago rugosa</i>	Wrinkle-leaf Goldenrod	Quart, 18" on-center
8	<i>Symphotrichum novae-angliae</i>	New York	Quart, 18" on-center
3	<i>Hypericum densiflora</i>	St. Johnswort	3 gallon, 4' on-center
3	<i>Spirea tomentosa</i>	Steeplebush	3 gallon, 4' on-center

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Centreville, Maryland 21617
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Memorandum

RECEIVED

JAN 28 2009

CRITICAL AREA COMMISSION

To: Dr. Nick Kelly
From: Bill Stagg *BN*
Date: January 27, 2009

Re: Herget Residence; Talbot County

Dr, Kelly, on behalf of the Herget's, I enclose a revised mitigation and swm concept plan for Critical Area staff review and comment. It reflects the discussions we had last Friday related to plant location, type and swm objectives. The following narrative outlines some of the specifics. Please review this concept and let me or the attorneys know that the concept is acceptable or acceptable with specific changes. From there, I will finalize the plan to whatever format is necessary for the settlement agreement.

A. 3:1 Mitigation Plantings- 9 trees and 25 shrubs located both sides of house between water and paving areas subject of Variance. Trees shall be minimum 2" caliper or equivalent if multi-stem and the following species: Quercus phellos (willow oak), Betula nigra 'Heritage' (river birch), Acer rubrum (red maple) and Cercis canadensis (red bud). Shrubs shall be minimum 3 gallon size and include Comptonia peregrine (sweet fern), Ilex glabra 'Shamrock' (inkberry) and Rosa rugosa (rugosa rose). Additional daylilies or other perennials will fill in bed lines as shown, but these plants are not part of required mitigation.

B. Rain Garden Area

2735 sq ft of roof; rain garden to manage first 1: run-off = 219 cubic feet volume @ 6" depth rain garden requires 438 sq ft of surface or approximately 15' x 30'. Site selected has a gentle fall from east to west, so excavations in east end to 6" depth can be used for subtle berm/dam at west end to capture run-off. Overflow shall be either small rock wier or riser pipe with piped outfall beyond berm. Existing soil in this area appears natural top soil with reasonable percolation (no specific infiltration tests conducted). Recommending working the bottom of the rain garden to depth of 6".

*retspecies as indicated
January 27, 2009*

confer right of inspection



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general@leinc.com

Plant List

Shady side along and under tree canopy:

- 96 sq ft of Shrubs- *Clethra alnifolia*, *Itea virginicus* & *Ilex verticillata*- propose 4 of each covering 8 sq ft each or 96 sq ft of rain garden area
- 72 sq ft of Ferns- *Athyrium filix-femina*, *Osmunda cinnomomea*, *Onoclea sensibilis* and *Thelypteris noveboracensis*- propose 4 of each covering 4.5 sq ft each or 72 sq ft of rain garden area.

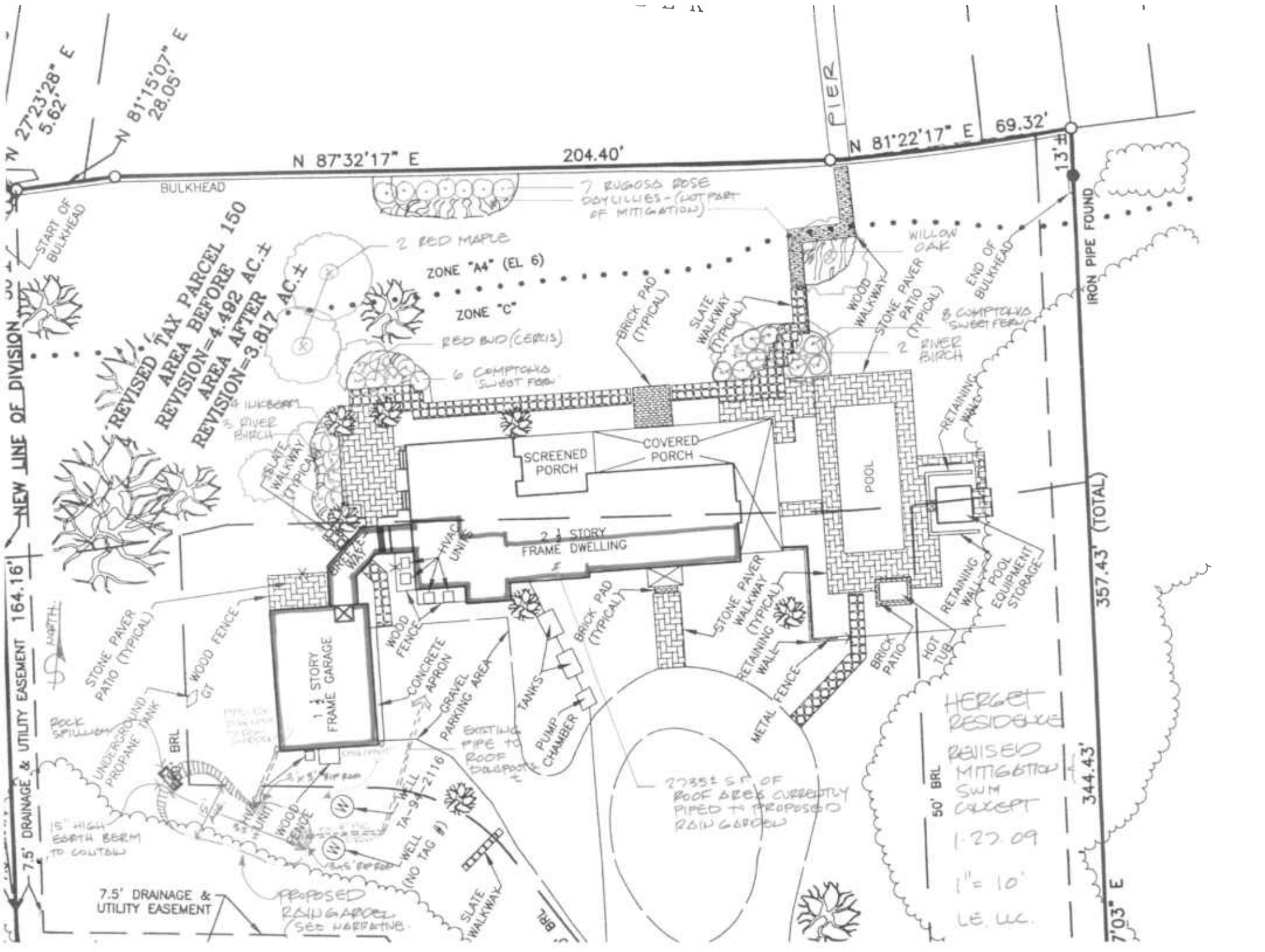
Wet Pool Plants- wettest, lowest pocket of rain garden- 8-12" deep area

- 40 sq ft of wet pool plants- *Lobelia cardinalis*, *Iris versicolor*, *Caltha palustris*- propose 18" on center covering 40 sq ft of rain garden area or 6 plants of each

General Basin Plants

- 242 sq ft of basin plants- generally across the entire rain garden area- planted 18" on center requires approx. 106 plants total of the following species—

Grasses	20- <i>Carex stricta</i> 10- <i>Carex vulpinoides</i> 10- <i>Panicum virgatum</i>
Herbaceous	8- <i>Eupatorium maculatum</i> 8- <i>Liatris spciatum</i> 8- <i>Phlox paniculata</i> 8- <i>Phlox maculata</i> 8- <i>Solidago rugosa</i> 8- <i>Symphotrichum novae-angliae</i>
Shrubs	3- <i>Spirea tomentosa</i> - shrub spacing about 4- on center 3- <i>Hypericum densiflora</i> - shrub spacing about 4- on center



NEW LINE OF DIVISION

7.5' DRAINAGE & UTILITY EASEMENT 164.16'

7.5' DRAINAGE & UTILITY EASEMENT

REVISED TAX PARCEL 150
 REVISION=4.492 AC.±
 REVISION=3.817 AC.±

ZONE "M" (EL 6)
 ZONE "C"

2.5 STORY
 FRAME DWELLING

1.5 STORY
 FRAME GARAGE

POOL

HOT TUB

TANKS
 PUMP CHAMBER

2735± S.F. OF
 ROOF AREA CURRENTLY
 PIPED TO PROPOSED
 RAIN GARDEN

HERGET
 RESIDENCE
 REVISED
 MITIGATION
 SWM
 CONCEPT
 1-27-09
 L.E. LLC.

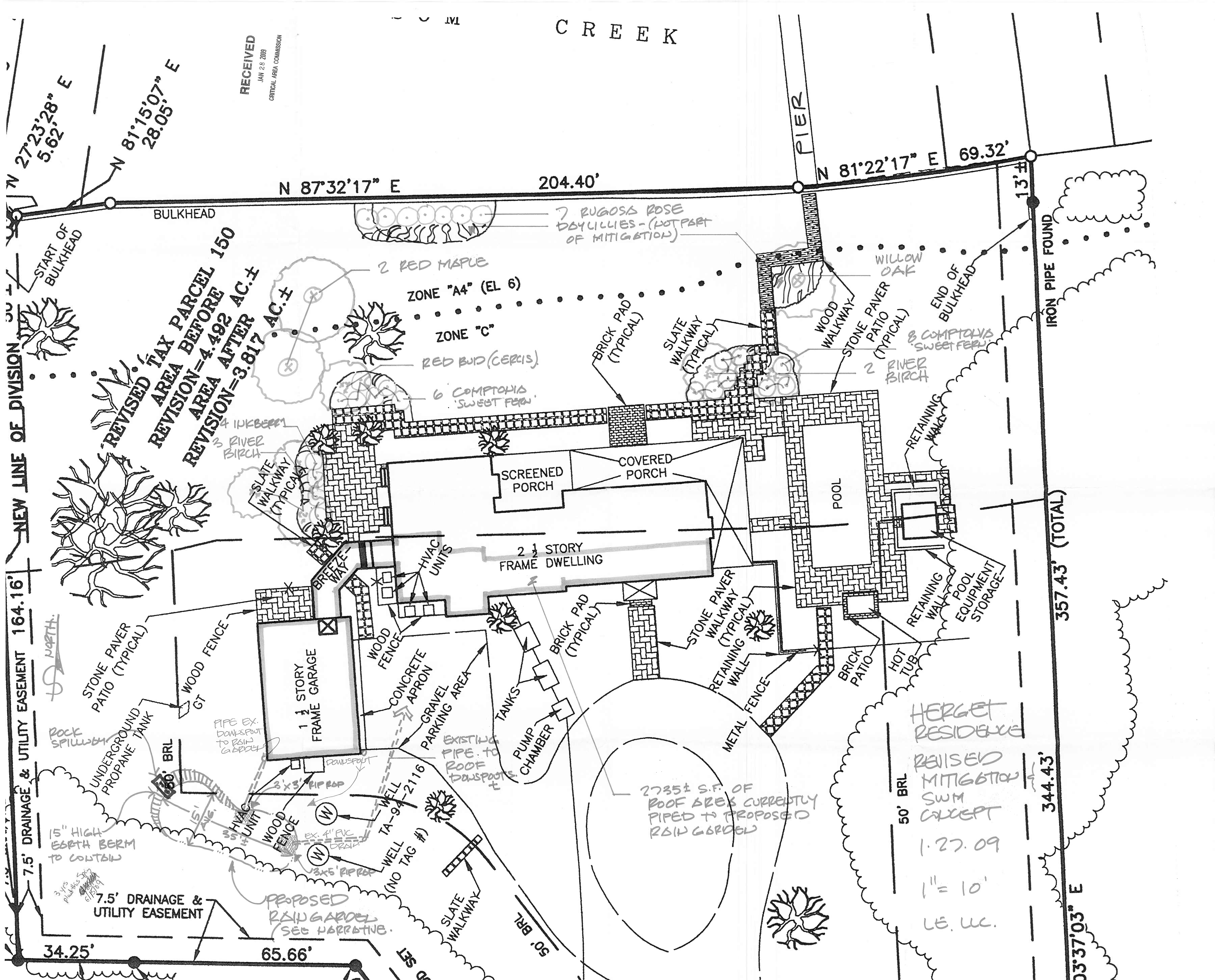
357.43' (TOTAL)

344.43'

7.03" E

CREEK

RECEIVED
JAN 28 2009
CRITICAL AREA COMMISSION



NEW LINE OF DIVISION 164.16'

7.5' DRAINAGE & UTILITY EASEMENT 164.16'

34.25'

REVISED TAX PARCEL 150
AREA BEFORE REVISION=4.492 AC.±
AREA AFTER REVISION=3.817 AC.±

N 87°32'17" E 204.40'

N 81°22'17" E 69.32'

357.43' (TOTAL)

344.43'

357'03" E

HERGET RESIDENCE
REVISED MITIGATION SWM CONCEPT
1.27.09
1" = 10'
L.S. U.C.

7 RUGOSA ROSE DAYLILLIES - (NOT PART OF MITIGATION)

2 RED MAPLE
ZONE "A4" (EL 6)

ZONE "C"

RED BUD (CERIS)

6 COMPTONIA SWEET FERN

4 INKBERY
3 RIVER BIRCH

SCREENED PORCH
COVERED PORCH

2 1/2 STORY FRAME DWELLING

1 1/2 STORY FRAME GARAGE

POOL

POOL EQUIPMENT STORAGE

TANKS
PUMP CHAMBER

2735± S.F. OF ROOF AREAS CURRENTLY PIPED TO PROPOSED RAIN GARDEN

PROPOSED RAIN GARDEN (SEE NARRATIVE)

ROCK SPILLWAY

STONE PAVER PATIO (TYPICAL)

WOOD FENCE

WOOD FENCE

CONCRETE APRON

GRAVEL PARKING AREA

EXISTING PIPE TO ROOF DOWNSPOUTS

STONE PAVER WALKWAY (TYPICAL)

RETAINING WALL

METAL FENCE

BRICK PATIO

HOT TUB

50' BRL

15" HIGH EARTH BERM TO CONTAIN

7.5' DRAINAGE & UTILITY EASEMENT

65.66'

50' BRL

357'03" E

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December 22, 2008

Faxed to (410) 974-5338

Nick Kelly, PhD.
Natural Resource Planner
Chesapeake Bay Critical Area Commission
1804 West Street, Suite 100
Annapolis, Maryland 21401

Re: Margaret McHale et al. v. R. Phillip Herget et al
Circuit Court for Talbot County, No. 20-C-08-006437

Saundra Canedo Letter dated December 18, 2008

Dear Dr. Kelly:

Bruce Armistead's office copied me with Saundra Canedo's letter of December 18, 2008 and has since received approval for you and I to coordinate directly any revisions or clarifications to the Herget Buffer Planting Concept your office currently finds unacceptable. To begin, let me summarize the basis for the planting concept. Several weeks ago you provided some limited direction for the quantity and type of mitigation plantings required. You outlined a 3:1 mitigation requirement to off-set the impacts of paved areas in the Buffer and additionally, you suggested the Herget's provide a "planting solution" to mitigate stormwater impacts of the same paved areas. We discussed rain gardens and other grading oriented stormwater management improvements and you concluded that these techniques involved Buffer disturbances that would require another Variance. Based on this direction, I prepared the planting concept that has been found deficient in three (3) areas.

Specific to Saundra's letter and the 3 outlined concerns, I offer the following:

Item 2- You advised that I review the Guide to Forest Mitigation publication and the planting credit schedules outlined in Table 3 therein. The Herget's agree to use the 400 sq ft "cluster" option from Table 3 that requires, 1- 2" caliper tree and 3 shrubs per 400 sq ft credit unit. The 3:1 mitigation planting requirements using this option are $3300 \text{ sq ft} \div 400 = 8.25$ planting credit units, or 9- 2" caliper trees and 25 shrubs. My current plan proposes substantially more tree plantings, but the Herget's accept the planting schedule you direct. With this change, I believe this concern is addressed.



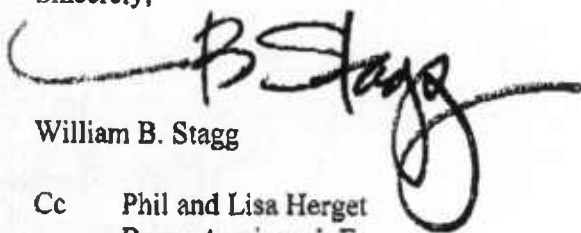
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Item 1- Utilizing the plant quantities directed above, the plan I prepared proposes 12 trees on the subject lot. The Herget's propose to install 9 of these trees and add 25 shrubs in the same general areas thus providing all plantings on the subject lot. With this change, I believe this concern is addressed.

Item 3- The Herget's and I are perplexed by Sandra's sentence reading, "Because the off-set plantings are only planted near 'pervious' structures that would not be contributing to stormwater run-off, the proposal does not contribute to a meaningful enhancement of water quality on the site." Are the paving stones that were the subject of the Variance being appealed now considered 'pervious' and if so why are the Herget's required to provide any stormwater mitigative plantings? Did staff overlook the proposed planting strip adjacent to and downstream of the subject paving stones? Won't this planting bed intercept run-off for plant uptake and planting bed infiltration and improve water quality? Sandra's letter suggests we consider other stormwater management techniques. Each of the outlined techniques involves grading or adding impervious surface in the Buffer and based on our early discussions requires a Variance to implement.

I will follow-up with a phone call Tuesday morning to discuss these items. Thank you for your prompt attention in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Stagg". The signature is fluid and cursive, with a long horizontal stroke extending to the left and a large loop at the end.

William B. Stagg

Cc Phil and Lisa Herget
Bruce Armistead, Esq.
Carmen Farmer, Esq.

December 22, 2008

Faxed to (410) 974-5338

Nick Kelly, PhD.
Natural Resource Planner
Chesapeake Bay Critical Area Commission
1804 West Street, Suite 100
Annapolis, Maryland 21401

Re: Margaret McHale et al. v. R. Phillip Herget et al
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Specific to Sandra's letter and the 3 outlined concerns, I offer the following:

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Sincerely,

William B. Stagg

Cc Phil and Lisa Herget
Bruce Armistead, Esq.
Carmen Farmer, Esq.

620-07

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November 25, 2008

Nick Kelly, PhD.
Natural Resource Planner
Chesapeake Bay Critical Area Commission
1804 West Street, Suite 100
Annapolis, MD 21401

Re: Herget Residence; Talbot County, Map 41, Grid 18, Parcels 34 & 150
Buffer Lot Coverage Off-Set Planting Concept

Dear Dr. Kelly:

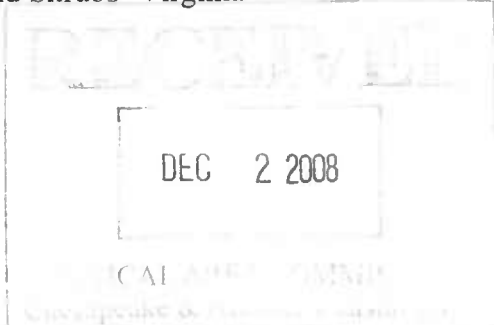
On behalf of Phil and Lisa Herget, I enclose a Buffer Planting Concept designed to off-set the impacts of impervious surfaces (lot coverage) constructed in the 100' Buffer and approved by the Talbot County Board of Appeals. We discussed this planting concept several weeks ago and at that time you outlined we should "consider" a 3:1 planting ratio to offset the lot coverage and "consider" additional plantings to off-set storm water run-off impacts and improve water quality.

We propose the following:

- | | |
|--|----------------------------------|
| 1. Off-Set Plantings (3:1 ratio) for Buffer Lot Coverage | |
| Areas that were Subject of Variance Approval- | 373 sq ft of stepping stone walk |
| | 656 sq ft of new paved area |
| | 81 sq ft of wood boardwalk |
| Total Coverage- | 1110 sq ft |

At 3:1 ratio = 3330 sq ft of planting. At 400 stems per acre with approximately 25% shrub and 25% understory trees, this planting comprises 30 stems total, or 7 shrubs, 7 understory trees and 16 canopy or larger evergreen type trees to be planted in the Buffer. This planting (red on attached plan) is proposed for areas adjoining other Buffer plantings (green on attached plan) required previously and separately by the County for shoreline stabilization replacement plantings. Species proposed for this planting are Canopy Trees- Red Oak, Willow Oak and Loblolly Pine; Understory Trees- Fringe Tree and Amelanchier; and Shrubs- Virginia Sweetspire.


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2. Storm Water Management Off-Set Plantings- you indicated a preference for a "plant based" solution in lieu of a rain garden or bio-retention solution that requires grading and consequently a Variance for disturbance in the Buffer. To that end, we propose 670 sq ft of woody shrub/perennial border plantings along the length of the paving stone walkway (except for grassed pedestrian opening at brick landing) and additional massed woody shrub/perennial mixed beds around wood walkway section all designed to capture storm run-off from the paving stones and wood walkway, and through absorption and infiltration reduce and treat potential storm run-off generated by the lot coverage in the Buffer.

The proposed species for these planting areas will include a dense mix of Inkberry, Virginia Sweetspire, New York Aster, Baptisia, Goatsbeard (Aruncus), Liatris, Echinacea, Heuchera, Penstemon, Rudbeckia and Switch Grass.

Please review this concept. Should everything be acceptable, we will prepare a final plan and specs for staff approval and implementation. I have been informed by counsel for the Hergets that the Circuit Court appeal filing dates have been extended to allow us to present this concept plan as a possible means of settlement of the pending appeal. I also understand that the CAC Memorandum must be filed on or about January 2, 2009. In an effort to save the expenditure of unnecessary time by your attorneys and unnecessary expense to the Hergets, I would appreciate your response as soon as possible so that we can reach a settlement based upon this proposal or make any necessary revisions that may facilitate a settlement.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "W. B. Stagg". The signature is fluid and cursive, with a large, stylized "S" at the end.

William B. Stagg

Enclosure

Cc Phil and Lisa Herget with enclosure
Bruce Armistead with enclosure

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cc: MD, Commission Counsel
Mike Pullen

November 25, 2008

Nick Kelly, PhD.
Natural Resource Planner
Chesapeake Bay Critical Area Commission
1804 West Street, Suite 100
Annapolis, MD 21401

Re: Herget Residence; Talbot County, Map 41, Grid 18, Parcels 34 & 150
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We propose the following:

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81 sq ft of wood boardwalk

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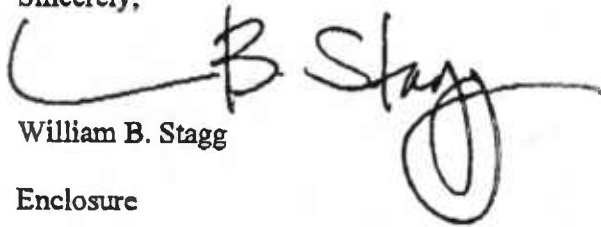
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Sincerely,

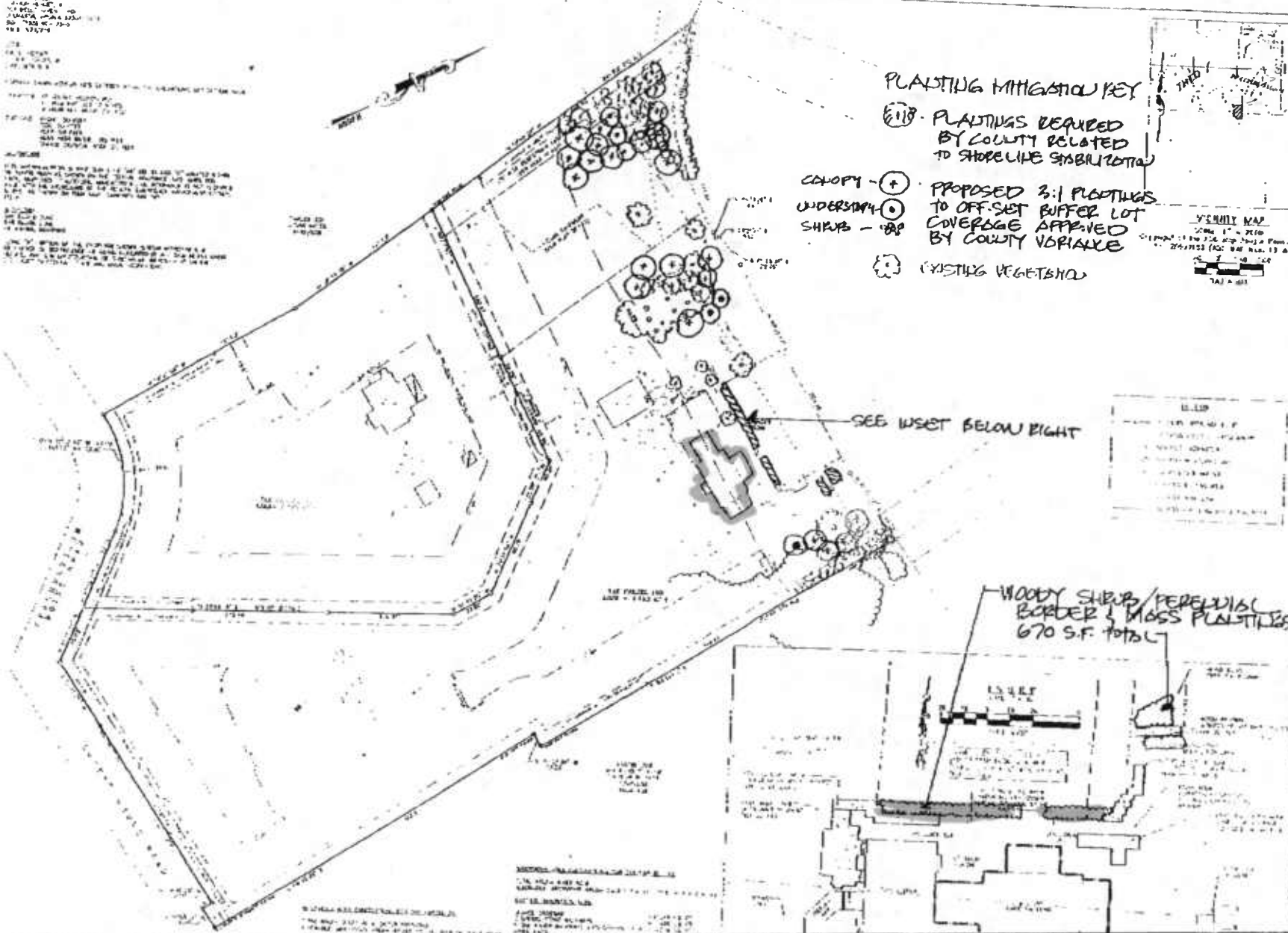
A handwritten signature in black ink, appearing to read "W B Stagg". The signature is fluid and cursive, with a large loop at the end of the last name.

William B. Stagg

Enclosure

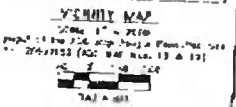
Cc Phil and Lisa Herget with enclosure
Bruce Armistead with enclosure

1. ALL PLANTINGS SHALL BE INSTALLED IN ACCORDANCE WITH THE FOLLOWING SCHEDULE:
 2. PLANTINGS SHALL BE INSTALLED IN ACCORDANCE WITH THE FOLLOWING SCHEDULE:
 3. PLANTINGS SHALL BE INSTALLED IN ACCORDANCE WITH THE FOLLOWING SCHEDULE:
 4. PLANTINGS SHALL BE INSTALLED IN ACCORDANCE WITH THE FOLLOWING SCHEDULE:
 5. PLANTINGS SHALL BE INSTALLED IN ACCORDANCE WITH THE FOLLOWING SCHEDULE:
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 8. PLANTINGS SHALL BE INSTALLED IN ACCORDANCE WITH THE FOLLOWING SCHEDULE:
 9. PLANTINGS SHALL BE INSTALLED IN ACCORDANCE WITH THE FOLLOWING SCHEDULE:
 10. PLANTINGS SHALL BE INSTALLED IN ACCORDANCE WITH THE FOLLOWING SCHEDULE:



PLANTING MITIGATION KEY

- ⊕ PLANTINGS REQUIRED BY COUNTY RELATED TO SHORELINE STABILIZATION
- ⊕ CANOPY - ⊕ PROPOSED 3:1 PLANTINGS TO OFF-SET BUFFER LOT COVERAGE APPROVED BY COUNTY VARIANCE
- ⊙ UNDERSTORY - ⊙
- ⊗ SHRUBS - ⊗
- ☼ EXISTING VEGETATION

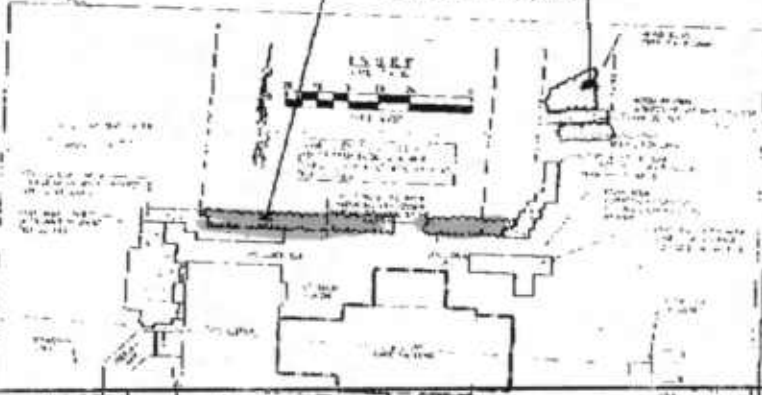


LEGEND

1. EXISTING BUILDING
2. PROPOSED BUILDING
3. EXISTING DRIVEWAY
4. PROPOSED DRIVEWAY
5. EXISTING PARKING
6. PROPOSED PARKING
7. EXISTING FENCE
8. PROPOSED FENCE
9. EXISTING UTILITY
10. PROPOSED UTILITY

BUFFER LOT
 COVERAGE
 OFF-SET PL.
 CONCEPT
 11-25-08

WOODY SHRUB/PERENNIAL
 BORDER & MASS PLANTINGS
 670 S.F. TOTAL



PLANTING SCHEDULE

PLANTING	QUANTITY	DATE
1. CANOPY	10	12/15/08
2. UNDERSTORY	20	12/15/08
3. SHRUBS	30	12/15/08
4. EXISTING VEGETATION	40	12/15/08
5. TOTAL	100	12/15/08

VARIANCE SITE PLAN
 BY THE CITY OF
 VINE & HONEY
 PHILIP J. MURPHY

ARMISTEAD, GRISWOLD, LEE & RUST, P.A.
ATTORNEYS AT LAW
114 BAY STREET, BUILDING C
EASTON, MARYLAND 21601
PHONE: (410) 819-8989 FAX: (410) 819-8986

FAX

Total No. Pages (Including Cover Page): 4

Time: 3:45 PM

Hard Copy to Follow: Yes X No

TO: Sandra K. Canedo
Critical Area Commission for the Chesapeake Bay & Atlantic Coastal Bay
FAX NO: 410-974-5338
FROM: Carmen L. Farmer
DATE: December 2, 2008
RE: R. Phillip Herget Zoning Variance

[PLEASE SEE ATTACHED]

CONFIDENTIALITY NOTICE

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- 1) Retrofit dwelling for SWM
- 2) ↳ Cisterns for irrigation

Lane Engineering, LLC

Established 1986

Civil Engineers • Land Planning • Land Surveyors

15 Washington Street
Cambridge, Maryland 21613
Tel 410-221-0818
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117 Bay Street
P.O. Box 1767
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Tel 410-822-8003
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Centreville, Maryland 21617
Tel 410-758-2095
Fax 410-758-4422

June 3, 2008

Mr. Nick Kelly, PhD.
Critical Area Commission
1804 West Street, Suite 100
Annapolis, MD 21401

Re: Talbot County; Herget Residence Variance Request- Supplemental Information Related to Proposed Water Quality Improvement Strategies.

Dear Mr. Kelly:

On behalf of Phil and Lisa Herget, and in accordance with the discussion at the May 19, 2008 Variance Hearing, and based on the direction provided there from the Talbot County Board of Appeals, I enclose 3 copies of a proposed storm water management (swm) design practice intended to manage the first 1" of storm run-off and improve the quality of this runoff resulting in run-off leaving the site that is of better quality than run-off leaving the site if the improvements subject to the referenced Variance are removed and replaced with turf or landscaping. The enclosed documents verify that the Herget's can leave the existing paving improvements within the 100' Buffer, install the swm best management practices as proposed and improve the quality of storm run-off leaving the site. In other words, they can leave the environment better than it was prior to the installation of the paving improvements.

Thank you for your review of the enclosed documents. Don't hesitate to contact either me or Rick VanEmburch, PE who assisted in the preparation of the swm analysis.

Sincerely,



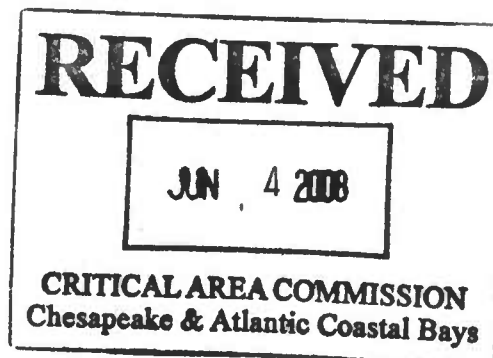
William B. Stagg

Enclosures

Cc Talbot County Board of Appeals with enclosure
Phil and Lisa Herget with enclosure
Bruce Armistead with enclosure



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May 16, 2008

**Revised June 2, 2008 per discussions 5-19-08 Talbot Board of Appeals Hearing
Water Quality Management Analysis- Herget Residence**

The purpose of this summary is to demonstrate that the Herget's can provide meaningful improvement to the quality of storm runoff from their property and maintain the paver stepping stones as installed.

Terms used in Summary-

- **Study Watershed-** the area of Variance application between main house and top of slope toward creek- shown as area inside red line on Exhibit 1 attached hereto. **Note: the study Watershed has increased due to relocation of proposed infiltration trench closer to shoreline.**
- **Pre-Development-** this refers to the improvement condition of the study watershed as though the pavers or impervious surfaces requested under the Variance were not existing. It does include the brick landing and pavers not subject of Variance request.
- **Post- Development-** this refers to the improvement condition of the study watershed as though the Variance is approved and the pavers or impervious surfaces remain as shown and an infiltration trench is implemented as shown herein.

We have analyzed the quality of storm water run-off from two perspectives:

First, we compare pre and post development conditions utilizing the Chesapeake Bay Critical Area 10% Pollution Reduction Model for evaluating the change in phosphorous (model pollutant) and demonstrate a 33 - 44% reduction, or improvement from pre to post development conditions. **Note: a strict application of the 10% Pollution Reduction Model formulas is not specifically designed for a development proposal of this low intensity. The formulas are designed for modeling phosphorous loading increases from heavily developed projects where additional lot coverage is proposed, or from undeveloped sites where significant lot coverage is proposed; they don't accurately analyze site conditions where minor lot coverage is only slightly increased, as in the case for the Herget Residence.**

To that end, we include two sets of 10% computations for consideration. Option A calculations follow the strict application of the model, whereas Option B more accurately reflects a comparable comparison between pre and post development run-off loading under a low lot coverage scenario.



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Regardless of the net pollution reduction demonstrated under Option A or B above, the Best Management Practice (BMP) proposed herein achieves a 65% removal rate of the phosphorous pollutant from the first 1" of run-off for any design storm. We submit that the most accurate projection (Option B) of net pollution reduction or improvement in the water quality leaving the site comparing the post-development condition to the pre-development condition is 44%.

Second, we have computed the storage volume and sizing required for the proposed infiltration trench to intercept the first 1" of run-off volume from any given storm and infiltrate it for ground absorption and quality improvement. The first 1" of run-off sweeps any pollutants from the surface or slightly below and is the standard for managing runoff water quality; beyond 1", the run-off is deemed to be clean and free of pollutants.

Sheet 1 depicts the Study Watershed (defined as the area draining from the pavers and impervious surfaces that are the subject of the Variance application); Sheet 2 shows a cross-section diagram indicating the drainage area and beyond with the proposed infiltration trench, and Sheet 3 show an infiltration trench detail BMP taken from the Maryland 2000 Storm Water Management Design Manual. Sheets 4, 5, 6 and 7 outline a summary and supporting computations utilizing the Chesapeake Bay Critical Area 10% Pollution Reduction formula (Option A as described above) to compute the reduction in phosphorous loading from pre compared post improvement conditions. The infiltration trench improves the quality of run-off leaving the site by 33% as demonstrated in the computations. Sheets 8, 9, 10 and 11 outline a summary and supporting computations utilizing the Chesapeake Bay Critical Area 10% Pollution Reduction formula (Option B as described above) to compute the reduction in phosphorous loading from pre compared post improvement conditions. The infiltration trench improves the quality of run-off leaving the site by 44% as demonstrated in the computations.

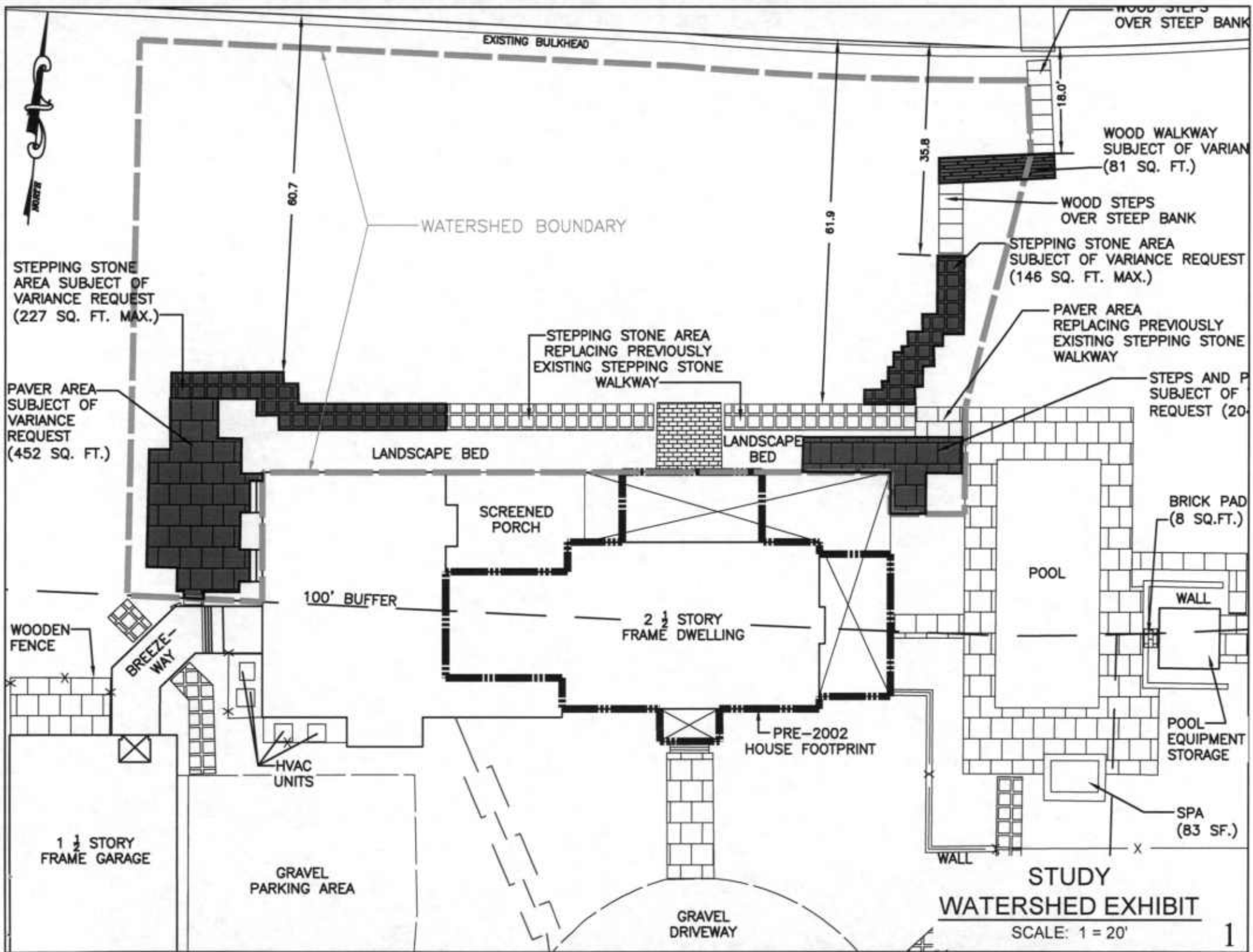
Sheet 12 utilizes the MD 2000 Storm Water Management Design Manual (required ordinance) to determine the infiltration trench required to intercept and infiltrate the first 1" if rainfall from any given storm event. The Sassafras soils on-site permit (worst case) 0.52"/hour of infiltration. Based on this factor and others, the infiltration trench volume should be 179 cubic feet. We propose a trench 1.5' x 2.0' x 140' length = 450 cubic feet x 0.40 stone void capacity = 180 cubic feet of storage capacity provided.

The addition of a *Spartina patens* (Salt marsh hay) planting strip down stream of the infiltration trench has not been factored into the phosphorous removal formula referenced above. It will provide supplemental infill opportunities for excessive run-off, but is primarily intended to stabilize the collection berm and contain the slope run-off entering the infiltration trench, and to return a portion of the buffer to a native grass plant community.

In summary, the addition of the infiltration trench proposed herein manages and captures the "polluted" storm run-off from this site, returns it to the ground and improves its quality by 44% above pre-variance approval conditions, or better than the quality of water leaving the site today.

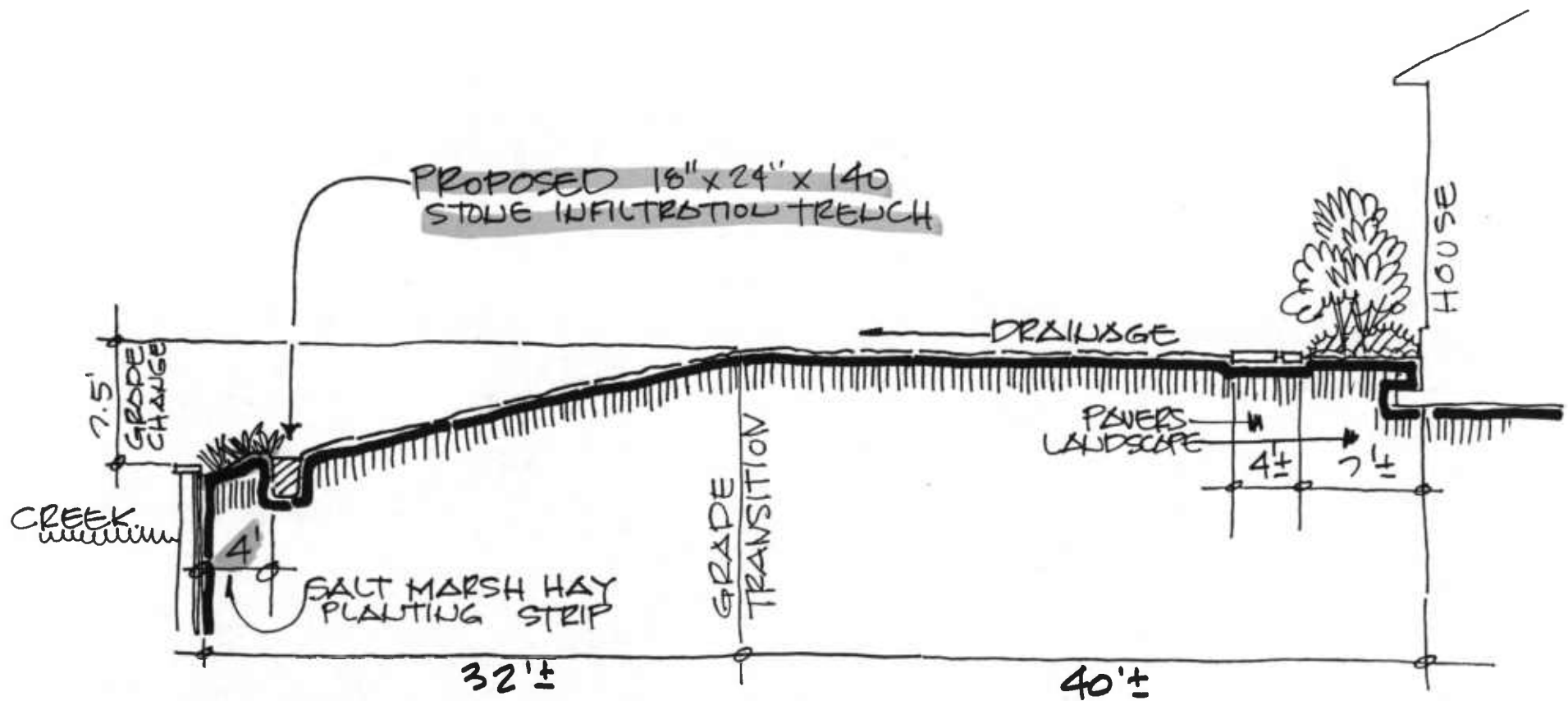
Prepared by: William B. Stagg, RLA and Rick Van Emburgh, PE

WBS

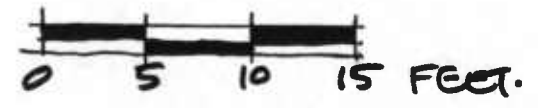


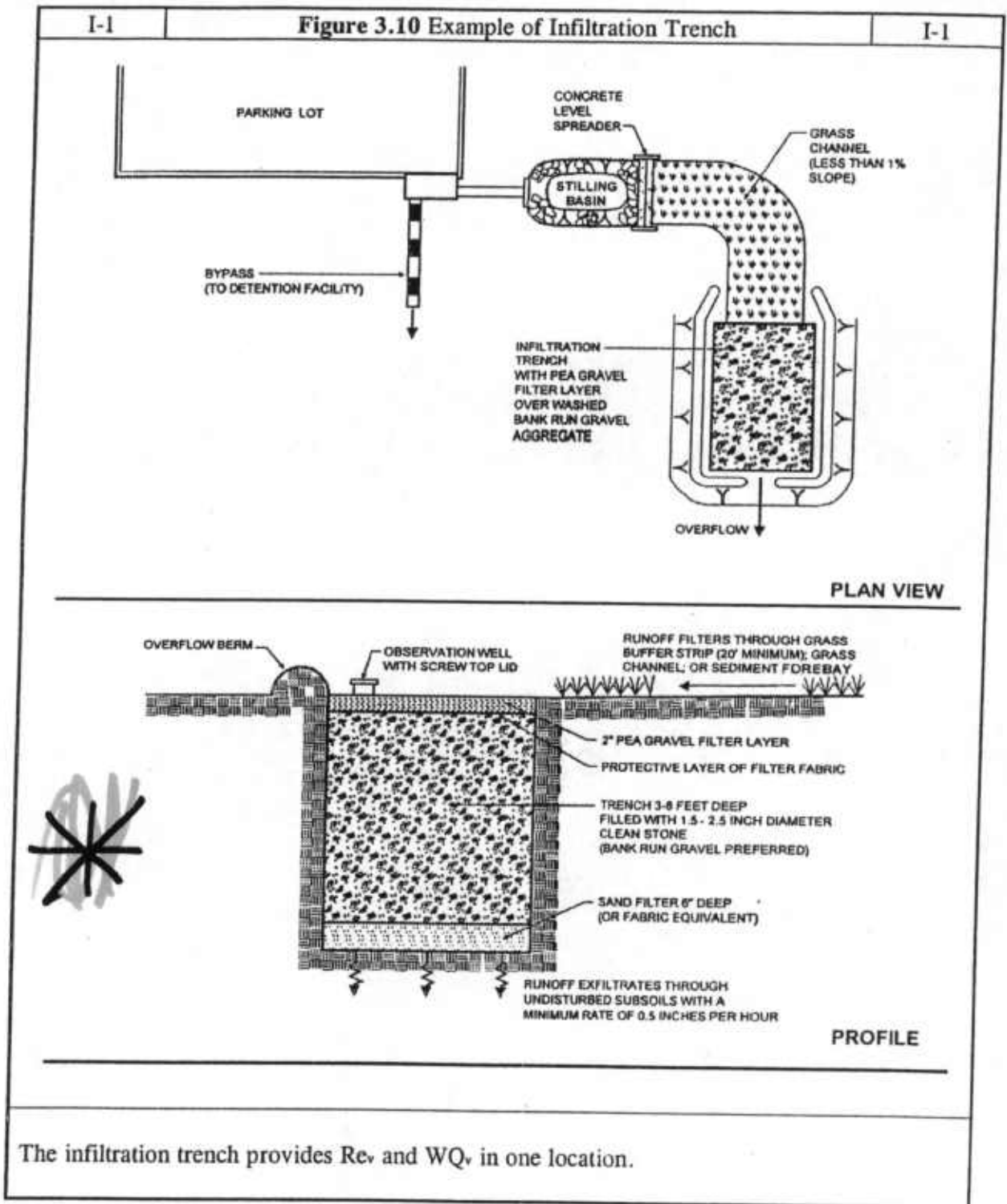
STUDY
WATERSHED EXHIBIT

SCALE: 1 = 20'



HERGET RESIDENCE · WATER QUALITY IMPROVEMENT
DIAGRAM
LE. LIC 6.2.08





MD 2000 DESIGN MANUAL.

Worksheet A: Standard Application Process

Project
Location

Herget
Talbot County

By RLV
Date 5/15/2008
Variance Request

Job # 070055
File # 7126

Calculating Pollutant Removal Requirements

Summary

Existing Condition (Lpre)	0.13 lbs of Phosphorus/year
Proposed Condition (Lpost)	* 0.12 lbs of Phosphorus/year
Infiltration Trench Removal	0.08 lbs of Phosphorus/year removed
Final Net Condition	0.04 lbs of Phosphorus/year

DUE TO 10%
FORMULA
CONSTRAINTS

Reduction Required = 10%
Reduction Provided = 33%

←
 $0.04 \div 0.13 = 33\%$
reduction.

*. OPTION 'B' calculations correct this deficiency.

Worksheet A: Standard Application Process

Project Herget
 Location Talbot County

By RLV Job # 070055
 Date 5/15/2008 File # 7126
Variance Request

Calculating Pollutant Removal Requirements

Step 1: Project Description

A. Calculate Percent Imperviousness

- 1) Site Acreage = 0.26 acres
 2) Site Imperviousness, existing and proposed, (See Table 1.0 for details)

→ why not whole site

	(a) Existing (acres)	(b) Post-Development (acres)
rooftop		
roads		
sidewalks		
parking lots		
pools/ponds		
decks		
other	0.03	0.04
Impervious Surface Area	0.03	0.04

Imperviousness (I)

Existing Impervious Surface Area/Site Area = (Step 2a)/(Step 1) = 0.10
 Post-Development Impervious Surface Area/Site Area = (Step 2b)/(Step 1) = 0.16

B. Define Development Category (circle)

- 1) **Redevelopment:** Existing imperviousness greater than 15% I (Go to Step 2A)
 -> 2) **New Development:** Existing imperviousness less than 15% I (Go to Step 2B)
 3) **Single Lot Residential:** Single lot being developed or improved; single family residential; and more than 250 square feet being disturbed. (Go to Page 27 - Single Lot Residential sheet for remaining steps).

* **NOTE:** All acreage used in this worksheet refer to areas within the IDA of the critical area only.

5

Worksheet A: Standard Application Process

Project Herget
Location Talbot County

By RLV Job # 070055
Date 5/15/2008 File # 7126
Variance Request

Calculating Pollutant Removal Requirements

Step 2: Calculate the Pre-Development Load (L pre)

A. Redevelopment

$$\begin{aligned}L_{pre} &= (Rv)(C)(A)8.16 \\Rv &= 0.05+0.009(I_{pre}) \\I_{pre} &= \\Rv &= \\C &= 0.3 \\A &= \\L_{pre} &= \underline{\hspace{2cm}} \text{ lbs P/year}\end{aligned}$$

where:

- Rv = runoff coefficient, which expresses the fraction of rainfall which is converted into runoff.
 I_{pre} = site imperviousness (i.e., $I=75$ if site is 75% impervious)
 C = flow-weighted mean concentration of the pollutant in urban runoff (mg/l) = 0.30 mg/l
 A = area of the development site (acres in the Critical Area).
 8.16 = includes regional constants and unit conversion factors.

OR

B. New Development

$$\begin{aligned}L_{pre} &= 0.5 \text{ lbs/year} * A \\A &= 0.256198347 \\L_{pre} &= \underline{\hspace{2cm}} 0.13 \text{ lbs P/year}\end{aligned}$$

Step 3: Calculate the Post-Development Load (L post)

A. New Development and Redevelopment

$$\begin{aligned}L_{post} &= (Rv)(C)(A)8.16 \\Rv &= 0.05+0.009(I_{post}) \\I_{post} &= 15.77 \\Rv &= 0.19 \\C &= 0.3 \\A &= 0.26 \\L_{post} &= \underline{\hspace{2cm}} 0.12 \text{ lbs P/year}\end{aligned}$$

where:

- Rv = runoff coefficient, which expresses the fraction of rainfall which is converted into runoff.
 I_{post} = site imperviousness (i.e., $I=75$ if site is 75% impervious)
 C = flow-weighted mean concentration of the pollutant in urban runoff (mg/l) = 0.30 mg/l
 A = area of the development site (acres in the Critical Area).
 8.16 = includes regional constants and unit conversion factors.

6

Worksheet A: Standard Application Process

Project	<u>Herget</u>	By	<u>RLV</u>	Job #	<u>070055</u>
Location	<u>Talbot County</u>	Date	<u>5/15/2008</u>	File #	<u>7126</u>
			<u>Variance Request</u>		

Calculating Pollutant Removal Requirements

Step 4: Calculate the Pollutant Removal Requirement (RR)

RR =	L post - (0.9)(L pre)	
L post =	0.12	lbs P/year
L pre =	0.13	lbs P/year
RR =	<u>0.01</u>	lbs P

Step 5: Identify Feasible Urban BMP

Select BMP Options using the screening tools and pollutant removal rates listed in the Applicant's Guide Tables 5.0, 5.1, 5.2, and 5.4 Calculate the load removed for each option.

BMP Type	I/IA	Removal Efficiency	Fraction of Drainage Area Served	L post	Load Removed
<u>Infiltration Trench</u>	<u> </u>	<u>0.65</u>	<u>1.00</u>	<u>0.12</u>	<u>0.08</u>
<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
			Total Load Removed =		<u>0.08</u>
			RR =		<u>0.01</u>

If the Load Removed is equal to or greater than the pollutant removal requirement (RR) calculated in Step 4, then the on-site BMP option complies with the 10% Rule. (See Table 5.3, page 16) for submittal requirements for each BMP option.

* Use decimal for efficiency rating. (Example: Use 0.50 for a 50% removal efficiency rating.)

7

OPTION 'B'

Worksheet A: Standard Application Process

Project
Location

Herget
Talbot County

By RLV
Date 5/15/2008
Variance Request

Job # 070055
File # 7126

Calculating Pollutant Removal Requirements

Summary

Existing Condition	(Lpre)	0.09 lbs of Phosphorus/year
Proposed Condition	(Lpost)	* 0.12 lbs of Phosphorus/year
Infiltration Trench Removal		0.08 lbs of Phosphorus/year removed
Final Net Condition		0.04 lbs of Phosphorus/year

Reduction Required = 10%
Reduction Provided = 44%

* Corrected by using 'Re-development calc's for both pre and post.'

8

Worksheet A: Standard Application Process

Project Herget
 Location Talbot County

By RLV Job # 070055
 Date 5/15/2008 File # 7126
Variance Request

Calculating Pollutant Removal Requirements

Step 1: Project Description

A. Calculate Percent Imperviousness

- 1) Site Acreage = 0.26 acres
 2) Site Imperviousness, existing and proposed, (See Table 1.0 for details)

	(a) Existing (acres)	(b) Post-Development (acres)
rooftop		
roads		
sidewalks		
parking lots		
pools/ponds		
decks		
other	0.03	0.04

Impervious Surface Area 0.03 0.04

Imperviousness (I)
 Existing Impervious Surface Area/Site Area = (Step 2a)/(Step 1) = 0.10
 Post-Development Impervious Surface Area/Site Area = (Step 2b)/(Step 1) = 0.16

B. Define Development Category (circle)

- 1) **Redevelopment:** Existing imperviousness greater than 15% I (Go to Step 2A)
 -> 2) **New Development:** Existing imperviousness less than 15% I (Go to Step 2B)
 3) **Single Lot Residential:** Single lot being developed or improved; single family residential; and more than 250 square feet being disturbed. (Go to Page 27 - Single Lot Residential sheet for remaining steps).

* **NOTE:** All acreage used in this worksheet refer to areas within the IDA of the critical area only.

9

Worksheet A: Standard Application Process

Project Herget
Location Talbot County

By RLV Job # 070055
Date 5/15/2008 File # 7126
Variance Request

Calculating Pollutant Removal Requirements

Step 2: Calculate the Pre-Development Load (L pre)

A. Redevelopment

$$\begin{aligned} L_{pre} &= (Rv)(C)(A)8.16 \\ Rv &= 0.05+0.009(I_{pre}) \\ I_{pre} &= 10.01 \\ Rv &= 0.14 \\ C &= 0.30 \\ A &= 0.26 \\ L_{pre} &= \underline{\hspace{2cm}} 0.09 \text{ lbs P/year} \end{aligned}$$

where:

- Rv = runoff coefficient, which expresses the fraction of rainfall which is converted into runoff.
 I_{pre} = site imperviousness (i.e., $I=75$ if site is 75% impervious)
 C = flow-weighted mean concentration of the pollutant in urban runoff (mg/l) = 0.30 mg/l
 A = area of the development site (acres in the Critical Area).
8.16 = includes regional constants and unit conversion factors.

OR

B. New Development

$$\begin{aligned} L_{pre} &= 0.5 \text{ lbs/year} * A \\ A &= \underline{\hspace{2cm}} \\ L_{pre} &= \underline{\hspace{2cm}} \text{ lbs P/year} \end{aligned}$$

Step 3: Calculate the Post-Development Load (L post)

A. New Development and Redevelopment

$$\begin{aligned} L_{post} &= (Rv)(C)(A)8.16 \\ Rv &= 0.05+0.009(I_{post}) \\ I_{post} &= 15.77 \\ Rv &= 0.19 \\ C &= 0.3 \\ A &= 0.26 \\ L_{post} &= \underline{\hspace{2cm}} 0.12 \text{ lbs P/year} \end{aligned}$$

where:

- Rv = runoff coefficient, which expresses the fraction of rainfall which is converted into runoff.
 I_{post} = site imperviousness (i.e., $I=75$ if site is 75% impervious)
 C = flow-weighted mean concentration of the pollutant in urban runoff (mg/l) = 0.30 mg/l
 A = area of the development site (acres in the Critical Area).
8.16 = includes regional constants and unit conversion factors.

10

Worksheet A: Standard Application Process

Project Herget By RLV Job # 070055
 Location Talbot County Date 5/15/2008 File # 7126
 Variance Request

Calculating Pollutant Removal Requirements

Step 4: Calculate the Pollutant Removal Requirement (RR)

RR = L post - (0.9)(L pre)
 L post = 0.12 lbs P/year
 L pre = 0.09 lbs P/year
 RR = 0.04 lbs P

Step 5: Identify Feasible Urban BMP

Select BMP Options using the screening tools and pollutant removal rates listed in the Applicant's Guide Tables 5.0, 5.1, 5.2, and 5.4 Calculate the load removed for each option.

BMP Type	I/IA	Removal Efficiency	Fraction of Drainage Area Served	L post	Load Removed
<u>Infiltration Trench</u>	<u> </u>	<u> </u> 0.65	<u> </u> 1.00	<u> </u> 0.12	<u> </u> 0.08
<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
				Total Load Removed =	<u> </u> 0.08
				RR =	<u> </u> 0.04

If the Load Removed is equal to or greater than the pollutant removal requirement (RR) calculated in Step 4, then the on-site BMP option complies with the 10% Rule. (See Table 5.3, page 16) for submittal requirements for each BMP option.

* Use decimal for efficiency rating. (Example : Use 0.50 for a 50% removal efficiency rating.)

11

Water Quality Calculations

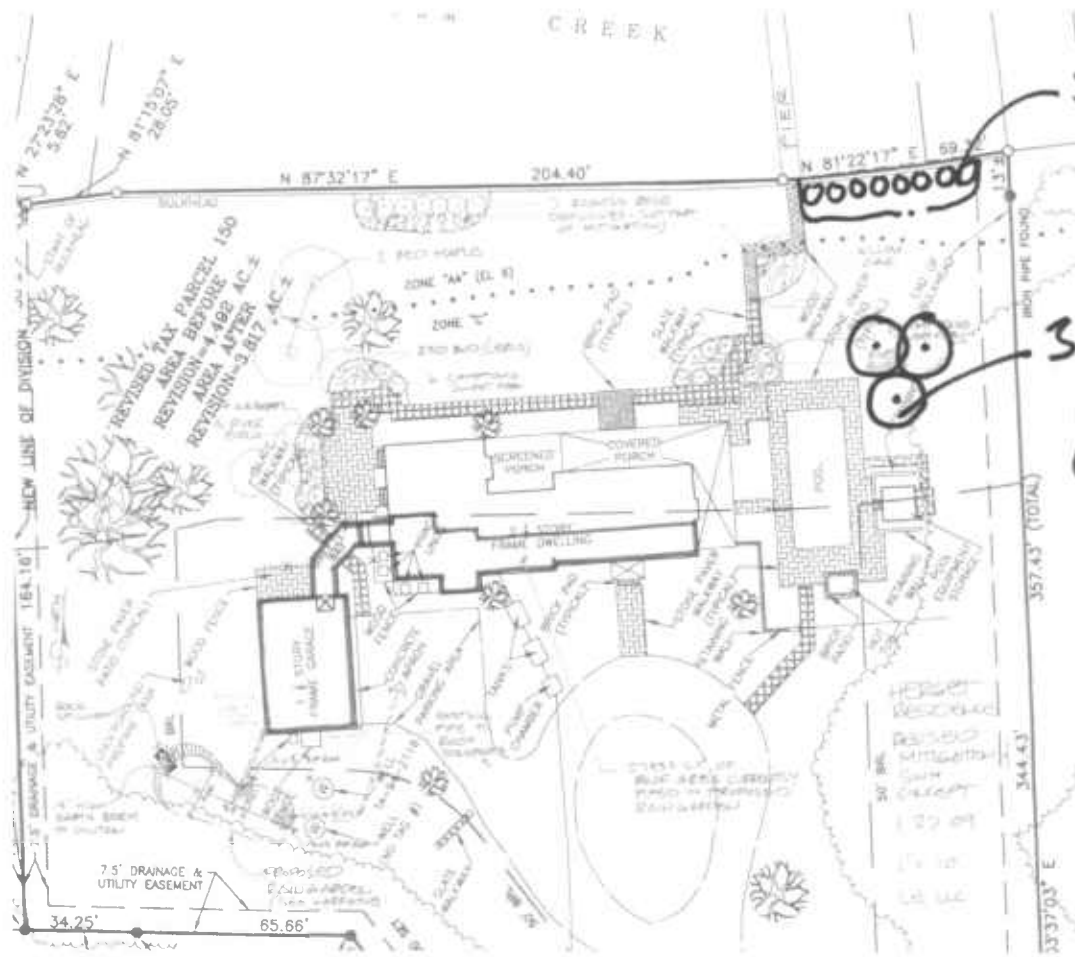
Project	<u>Herget</u>	By	<u>RLV</u>	Job #	<u>070055</u>
Location	<u>Talbot County</u>	Date	<u>5/15/2008</u>	File #	<u>7126</u>
Description	<u>Variance Request</u>				

WQv (2000 Design Manual)

$A_i = 0.04$ acres (Impervious Area)
 $A = 0.26$ acres (Total Area)
 $I = 100 \times A(\text{impervious})/A(\text{total})$
 $I = 15.77\%$
 $R_v = 0.05 + 0.009(I)$
 $R_v = 0.19$
 $P = 1.0$ inch (Eastern Shore)
 $WQv = \frac{(P)(R_v)(A)}{12}$ (2000 MD SWM Design Manual 2.1)
 $WQv = 0.00$ ac-ft
 179 cf

STORAGE VOLUME
REQUIRED

Trench = 1.5' wide x 2.0' deep
 x 150' long =
 450 ~~450~~ cf $\times 40\%$
 stone void space =
 .180 cf. storage
 required.



Shubs
bea.



3 hrs.
1.30.09
L6LLC

PROPERTY STATISTICS

TAX PARCEL 34

OWNER: ANNE S. HERGET
R. PHILIP HERGET, III
2203 BELLE HAVEN ROAD
ALEXANDRIA, VIRGINIA 22307-1119
PHONE NUMBER: (703) 403-3360
DEED REFERENCE: 974/818

TAX PARCEL 150

OWNER: ANNE S. HERGET
R. PHILIP HERGET, III
2203 BELLE HAVEN ROAD
ALEXANDRIA, VIRGINIA 22307-1119
PHONE NUMBER: (703) 403-3360
DEED REFERENCE: 974/814

ZONING CLASSIFICATION: RR (RURAL RESIDENTIAL)
MINIMUM LOT SIZE: 2 ACRES
MINIMUM LOT WIDTH: 200 FEET
BUILDING RESTRICTIONS: FRONT: 50 FEET
SIDE: 50 FEET
REAR: 50 FEET
MEAN HIGH WATER: 100 FEET
SEWAGE DISPOSAL AREA: 20 FEET

PROPERTY OWNER DECLARATION:

THIS DEVELOPMENT MAY CONTAIN JURISDICTIONAL NONTIDAL WETLANDS, WHICH HAVE BEEN OFFICIALLY DELINEATED BY THE U.S. ARMY CORPS OF ENGINEERS...

THIS DEVELOPMENT MAY CONTAIN THREATENED OR ENDANGERED SPECIES PROTECTED UNDER THE ENDANGERED SPECIES ACT AS AMENDED...

WE, ANNE S. HERGET AND R. PHILIP HERGET, III, OWNERS OF TAX PARCEL 34 AND TAX PARCEL 150, AS SHOWN AND DESCRIBED HEREON, HEREBY ADOPT THIS REVISION PLAT.

THE OWNER HAS SWORN TO AND SUBSCRIBED BEFORE ME THIS DAY OF May 2009.

NOTARY: Heather A. Cap...

THE OWNER HAS SWORN TO AND SUBSCRIBED BEFORE ME THIS DAY OF May 2009.

NOTARY: Heather A. Cap...

SURVEYOR'S CERTIFICATE:

THE PRESENT OWNERS OF THE LAND OF WHICH THIS REVISION PLAT IS COMPRISED ARE ANNE S. HERGET AND R. PHILIP HERGET, III (TAX PARCEL 34 AND TAX PARCEL 150)...

I, THOMAS D. LANE, HEREBY CERTIFY THAT THE REVISION PLAT SHOWN HEREON IS CORRECT...

THIS REVISION PLAT HAS BEEN PREPARED BY THE LICENSEE EITHER PERSONALLY OR UNDER THE DIRECT SUPERVISION AND CONTROL WITH THE REQUIREMENTS AS SET FORTH IN REGULATION 09.13.06.12 OF THE MARYLAND MINIMUM STANDARDS FOR SURVEYORS.

THOMAS D. LANE
PROPERTY LINE SURVEYOR NO. 340
117 BAY STREET, O. BOX 1786
EASTON, MARYLAND 21601
(410)822-8003

TALBOT COUNTY OFFICE OF PLANNING AND ZONING:

THIS PLAT REPRESENTS A REVISION OF LOT LINES BETWEEN TAX PARCEL 34 AND TAX PARCEL 150 AS PREVIOUSLY RECORDED...

ADDITIONALLY, THIS PLAT REPRESENTS ABANDONMENT OF THE VISUAL EASEMENT AND 25' PEDESTRIAN EASEMENT AS PREVIOUSLY ESTABLISHED ON PLAT 50/37.

Stacy Johnson AICP
PLANNING OFFICER
June 26, 2009

TALBOT COUNTY HEALTH DEPARTMENT:

THIS REVISION PLAT HAS BEEN APPROVED BY THE TALBOT COUNTY HEALTH DEPARTMENT, THE SEWAGE DISPOSAL AREA SHOWN ON REVISION TAX PARCEL 34 IS APPROVED FOR INDIVIDUAL ON-SITE SEWAGE DISPOSAL...

Kathleen Jester RSM
HEALTH OFFICER
6/9/09

TALBOT COUNTY DEPARTMENT OF PUBLIC WORKS:

A UTILITY AND DRAINAGE RIGHT-OF-WAY AND EASEMENT SHALL BE PROVIDED IN AND OVER STRIPS OF LAND FIFTEEN (15) FEET IN WIDTH ALONG BOUNDARY LINES CONTIGUOUS TO ANY ROAD...

THESE PARCELS SHALL BE DEVELOPED IN ACCORDANCE WITH THE "2000 MARYLAND STORMWATER DESIGN MANUAL", AND THE TALBOT COUNTY STORMWATER MANAGEMENT CODE.

LOT COVERAGE CALCULATIONS: *

* ALL LOT COVERAGE SURFACES SHOWN BELOW ARE CONSIDERED 100% IMPERVIOUS SURFACE; NO REDUCTION FOR PARTIAL PERVIOUSNESS IS APPLICABLE.

REVISED TAX PARCEL 34
TOTAL AREA = 2,800 AC.± (AFTER REVISION)
ALLOWABLE LOT COVERAGE AREA = 18,295 SQ.FT. (15% OF 2,800 AC.±)

EXISTING LOT COVERAGE AREA:
ONE STORY FRAME DWELLING (WITH PORCH, STOOP, DECK & STEPS) = 2,008 SQ.FT.
GRAVEL DRIVEWAY = 5,463 SQ.FT.
CONCRETE TENNIS COURT = 6,874 SQ.FT.
SHED = 295 SQ.FT.
SIDEWALK = 151 SQ.FT.
CONCRETE PATIO = 74 SQ.FT.
CONCRETE APRON = 65 SQ.FT.
HVAC PAD = 6 SQ.FT.

TOTAL EXISTING LOT COVERAGE AREA = 14,936 SQ.FT.
REMAINING ALLOWABLE LOT COVERAGE AREA = 3,359 SQ.FT.

REVISED TAX PARCEL 150
TOTAL AREA = 3,817 AC.± (AFTER REVISION)
ALLOWABLE LOT COVERAGE AREA = 24,940 SQ.FT. (15% OF 3,817 AC.±)

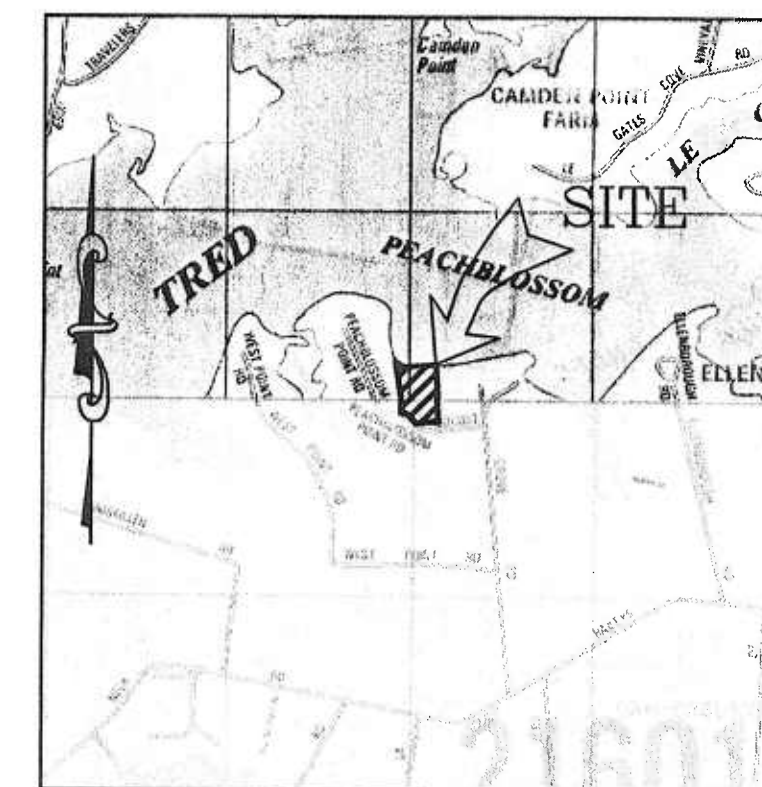
EXISTING LOT COVERAGE AREA:
GRAVEL DRIVEWAY = 11,202 SQ.FT.
STEP STONE WALKWAYS = 999 SQ.FT.
STONE PAVER WALKWAYS/PATIOS/POOL DECK = 2,309 SQ.FT.
BRICK PADS/PATIOS = 152 SQ.FT.
RETAINING WALLS = 83 SQ.FT.
CONCRETE APRON = 60 SQ.FT.
1 1/2 STORY FRAME GARAGE = 1,120 SQ.FT.
BREEZEWAY = 198 SQ.FT.
2 1/2 STORY FRAME DWELLING = 4,567 SQ.FT.
POOL = 747 SQ.FT.
HOT TUB = 83 SQ.FT.
POOL EQUIPMENT STORAGE = 105 SQ.FT.
WOOD WALKWAYS & WOOD STEPS = 192 SQ.FT.
HVAC UNIT PADS = 24 SQ.FT.
TOTAL EXISTING LOT COVERAGE AREA = 21,841 SQ.FT.
REMAINING ALLOWABLE LOT COVERAGE AREA = 3,099 SQ.FT.

DEVELOPMENT RIGHTS CALCULATIONS:

TAX PARCEL 34
TOTAL AREA = 2,125 AC.± (BEFORE REVISION)
DEVELOPMENT RIGHTS PERMITTED = 1
DEVELOPMENT RIGHTS UTILIZED = 1
DEVELOPMENT RIGHTS REMAINING = 0

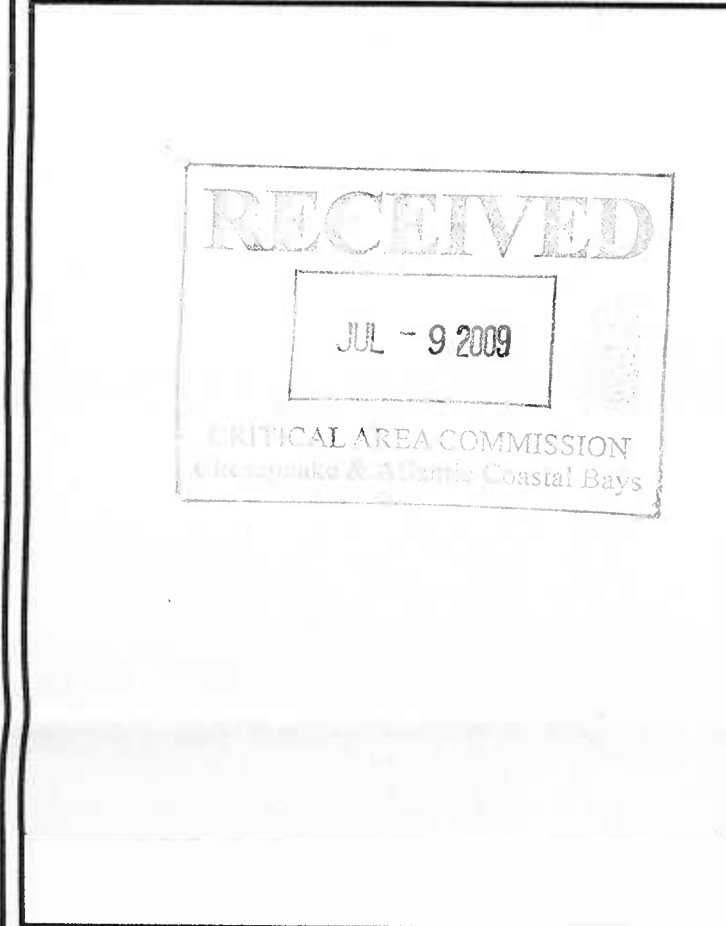
TAX PARCEL 150
TOTAL AREA = 4,492 AC.± (BEFORE REVISION)
DEVELOPMENT RIGHTS PERMITTED = 1
DEVELOPMENT RIGHTS UTILIZED = 1
DEVELOPMENT RIGHTS REMAINING = 0

NOTE: DEVELOPMENT RIGHTS SHOWN HEREON ARE BASED UPON CURRENT REGULATIONS AND MAY BE SUBJECT TO CHANGE BASED ON ZONING ORDINANCE REGULATIONS IN EFFECT AT THE TIME OF DEVELOPMENT ACTIVITY.



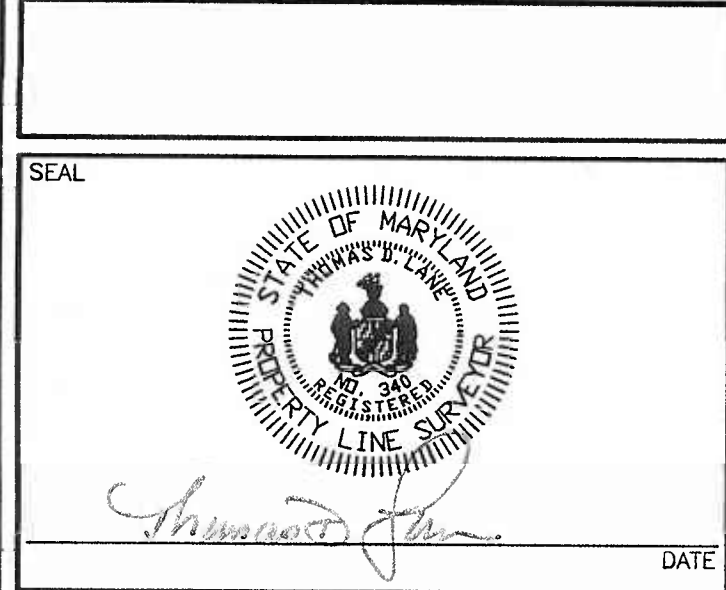
VICINITY MAP
SCALE: 1" = 2000'
Copyright of the ADC Map People Permitted Use No. 20992180 (ADC MAP Nos. 13 & 19)
1000' 0" 1000' 2000'
SCALE IN FEET

Table with 4 columns: No., DATE, DESCRIPTION, BY. It lists three revisions to the plat.

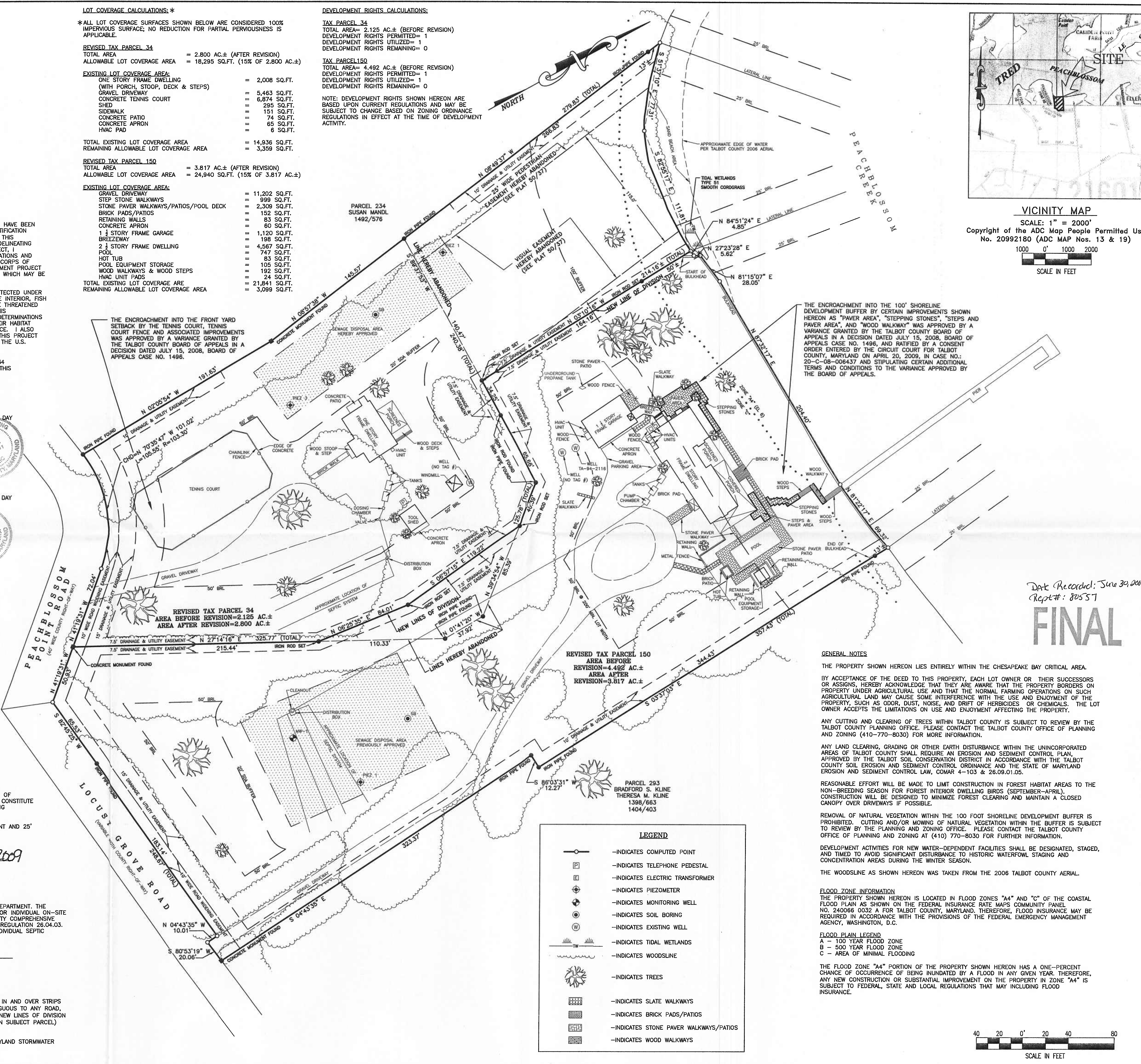


Lane Engineering, LLC
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117 Bay St. Easton, MD 21601 (410) 822-8003

NOT VALID FOR CONSTRUCTION UNLESS SIGNED AND DATED HERE:



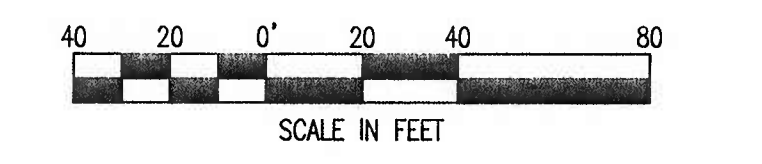
REVISION PLAT
THE LANDS OF ANNE S. HERGET AND PHILIP R. HERGET, III
IN THE FIRST ELECTION DISTRICT TALBOT COUNTY, MARYLAND
TAX MAP 41 GRID 18 PARCELS 34 & 150
ISSUED FOR: CRM REVIEW DATE: 10/17/08 BY: WBS
FINAL STAFF APPROVAL DATE: 4/16/09 WBS
RECORDATION DATE: 4/29/09 WBS



LEGEND
- INDICATES COMPUTED POINT
- INDICATES TELEPHONE PEDESTAL
- INDICATES ELECTRIC TRANSFORMER
- INDICATES PIEZOMETER
- INDICATES MONITORING WELL
- INDICATES SOIL BORING
- INDICATES EXISTING WELL
- INDICATES TIDAL WETLANDS
- INDICATES WOODSLINE
- INDICATES TREES
- INDICATES SLATE WALKWAYS
- INDICATES BRICK PADS/PATIOS
- INDICATES STONE PAVER WALKWAYS/PATIOS
- INDICATES WOOD WALKWAYS

GENERAL NOTES
THE PROPERTY SHOWN HEREON LIES ENTIRELY WITHIN THE CHESAPEAKE BAY CRITICAL AREA.
BY ACCEPTANCE OF THE DEED TO THIS PROPERTY, EACH LOT OWNER OR THEIR SUCCESSORS OR ASSIGNS, HEREBY ACKNOWLEDGE THAT THEY ARE AWARE THAT THE PROPERTY BORDERS ON PROPERTY UNDER AGRICULTURAL USE...

FLOOD ZONE INFORMATION
THE PROPERTY SHOWN HEREON IS LOCATED IN FLOOD ZONES "A4" AND "C" OF THE COASTAL FLOOD PLAN AS SHOWN ON THE FEDERAL INSURANCE RATE MAPS COMMUNITY PANEL NO. 240066 0032 A FOR TALBOT COUNTY, MARYLAND...



Vertical text on the left margin: Project Manager: TDL, User: rector, Drawing Path: \\Eaton\hobbs\2007\070055\CadData\Draw\PLT\070055.dwg, XREF File(s): \\GSE-BASE-24\36-070055.dwg, VSP-BASE-070055.dwg, VWP-BASE-070055.dwg, VUP-BASE-070055.dwg