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Anthony G. Brown  
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STATE OF MARYLAND  
CRITICAL AREA COMMISSION  
CHESAPEAKE AND ATLANTIC COASTAL BAYS

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(410) 260-3460 Fax: (410) 974-5338  
[www.dnr.state.md.us/criticalarea/](http://www.dnr.state.md.us/criticalarea/)

June 10, 2008

Ms. Yvonne Chaillet  
St. Mary's County Government  
Department of Land Use and Growth Management  
P O Box 653  
Leonardtown, Maryland 20650

Re: Variance Request #07-3249; Merritt  
50465 Fresh Pond Neck Road

Dear Ms. Chaillet:

Thank you for providing information on the above referenced variance. The subject site is a 71,002 square foot parcel located within the Limited Development Area (LDA) designation of the Chesapeake Bay Critical Area. The site is a grandfathered lot currently developed with a single family dwelling with large parking area, gazebo, pier, shed, decks and patio, most of which area located in the 100-foot Buffer. The applicant has proposed to construct two sun rooms over two existing decks within the Buffer. The site is currently non conforming with Critical Area regulations because development on the lot exceeds the 15% impervious surface limit for the LDA. It appears that during the review of the proposal for sun room construction, it was discovered that the applicant has constructed additional structures within the 100 foot Critical Area Buffer, including two brick patios, without permits or approved variances for structures in the Buffer and exceeding impervious limits. Thus, the applicant must be required to request an after-the-fact variance for construction of the brick parking pad and patio, as well as any additional development that was placed within the Critical Area Buffer or that increased the impervious surface area on the site without an approved Critical Area variance. Although information was not provided on the date of their construction, this appears to include the deck and gazebo adjacent to the shoreline of St Jerome's Creek. The proposed sun rooms would result in the site becoming further out of conformance with the impervious surface limits of the LDA.

The Critical Area Commission office is opposed to granting both the after the fact request to maintain unapproved structures in the Buffer and added impervious surface area, and the request to build sun rooms, which may further increase the impervious surface on the site, as proposed because the applicant has not met all the variance standards, including the standard of unwarranted hardship.



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, especially emphasizing the importance of the 100-foot Critical Area Buffer. In particular, the General Assembly reaffirmed the stringent standards, 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 zoning board finds that an applicant has satisfied its burden to prove that the applicant meets each one of the county's variance standards. 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 Board of Appeals must make an affirmative finding that the applicant has overcome this presumption, based on the evidence presented.

The applicants' request is in conflict with the St. Mary's County Comprehensive Zoning Ordinance (CZO) Section 41.5.3.i which states the impervious surface limit for lots greater than ½ acre is 15%. This lot is greater than ½ acre in size. The allowed impervious surface area on the site is exceeded by the proposed sun rooms and the request to maintain the bricked areas, gazebo and decks. Additionally, the request to allow new (or to maintain after the fact) impervious surface within the 100-foot Buffer is in conflict with Section 71.8.3.b of the CZO which prohibits new impervious surfaces in the Buffer. Only structures that are water dependent facilities may be located in the Buffer. Shoreline property owners are allowed shoreline access; however the County applies strict standards to such pathways including use of materials such as mulch and the provision of a Buffer Management Plan. Finally, it is the position of this office that the applicant cannot meet each one of St. Mary's County's variance standards, and in particular, the applicant does not meet the standards included and discussed below.

#### Relevant Variance Standards

*24.4.1.a – That special conditions or circumstances exist that are peculiar to the land or structure involved and that strict enforcement of the Critical Area provisions of this Ordinance would result in an unwarranted hardship*

There are no conditions that are peculiar to this property that would require the applicant seek a variance for impervious surface or additional structures in the Buffer since the applicant has already achieved reasonable use of the property for residential purposes with existing decks, accessory structures and lawn areas surrounding the house. The applicant suffers no hardship from not being able to have expanded amenities on their property beyond the impervious surface limit because the applicant is not prevented from using the property for residential purposes. As stated above, the General Assembly defined "unwarranted hardship" to mean that the applicant must prove that, without the requested variance, reasonable and significant use of **the entire parcel or lot** would be denied. Based on this information, we do not believe that the County has evidence on which to base a favorable finding on this factor for the excess impervious surface or to maintain the illegal bricked areas and other structures in the Buffer as the applicant is able to reasonably use the property for residential purposes without them.

*24.4.1.b – That strict interpretation of the Critical Area provisions of this Ordinance will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area of St. Mary's County*

A literal interpretation of St. Mary's County's regulation of impervious surfaces and the Buffer will not deprive the applicant of a right commonly enjoyed by other properties in similar areas. This office does not support variances for development in which the applicant has the opportunity to comply with the regulations. The applicant has not shown that construction of excess impervious surface for accessory structures or placing bricked areas in the Buffer is a right commonly enjoyed by any property in the Critical Area since the inception of the County Program, or a right enjoyed by other properties in similar areas within the St. Mary's County Critical Area. Additionally, the construction of amenities in the 100-foot Buffer which are not water-dependent is not a right commonly enjoyed by any property in the Critical Area.

*24.4.1.c – The granting of a variance will not confer upon the applicant any special privilege that would be denied by the Critical Area provisions of this Ordinance to other lands or structures within the Critical Area.*

If the variance is granted, it would confer upon the applicant a special privilege that would be denied to others in this area, as well as in similar situations in the County's Critical Area. This office would not support a similar variance request to exceed impervious surface or to disturb the Buffer where evidence has not been provided to show that it is necessary in order to establish reasonable use. The applicant has the burden of proof and the burden of persuasion to overcome the presumption that the requested variance does not conform to the Critical Area Law. We do not believe the applicant has overcome this burden.

*24.4.1.d – The variance request is not based upon conditions or circumstances that are the result of actions by the applicant*

The variance request is based upon the actions of the applicant. The applicant has created the additional impervious surface throughout the property, bringing the site further out of conformance with the impervious surface limit. The brick patio and parking area were constructed without required approval from the County. The encroachment of the development activities into the Critical Area Buffer is not permitted, and a proposal to do so would have been opposed by this office. By constructing the brick patio and parking area and any other structures not meeting regulations, the applicant has created the need for the variances. The applicant has not shown any reason that impervious surface could not be reduced to meet the 15% limit.

*24.4.1.e – The granting of the variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area, and that the granting of the variance will not be in harmony with the general spirit and intent of the Critical Area program*

In contrast with the above standard, granting the requested variances is not in harmony with the general spirit and intent of the Critical Area law and regulations. No after the fact variance should be approved for any structures or impervious surfaces placed in the Buffer on this site. The brick patio and parking area and any other structure placed without required permission should be removed from the Buffer. Additional development in the Buffer prevents establishment of a vegetated Buffer in that area and such vegetation would provide benefits to fish, wildlife, and plant habitat. The County law recognizes that a naturally vegetated fully

functioning 100-foot Buffer is vital to the water quality of the Chesapeake Bay and its Criteria are intended to assure that the integrity of the Buffer is not compromised by the individual and cumulative impacts of development within the County. This proposal not only further reduces the functions provided by the Buffer on this site, but would contribute to the individual and cumulative impacts of development on the Bay. The County should reject the request for after the fact variance to the Buffer regulations and impervious surface limit and should require removal of the above referenced bricked areas and other structures.

*24.4.1.f – The variance is the minimum necessary to achieve a reasonable use of land or structures*

The applicant already has full use of his property for residential purposes with a single family dwelling, large parking area, lawn yard, pier, shed and decks. Increasing impervious surface is unnecessary to maintain the residential use of the property. Therefore, the requested variance is not the minimum adjustment necessary to afford relief from the regulations because the regulations do not prevent the applicant from achieving reasonable use of their property. Once the above referenced bricked areas and other structures have been removed, any additional proposed impervious surface (such as the sun rooms) should be balanced by removal of equal amounts of impervious surface to ensure that the additions do not result in the site going further out of compliance.

This letter has addressed the relevant variance standards. Based on the information provided, none of these variance standards are met. The County and State law provide that in order to grant a variance, the applicant must meet and satisfy each and every variance standard. This applicant has failed to meet each and every County standard. Because the applicant has failed to meet all of the County and State variance standards, this office recommends that the Board deny the applicant's request for a variance to place sun rooms in the Buffer and to exceed impervious surface limits, as well as the after the fact variance and should require the applicant to remove all structures placed in the Buffer without appropriate permission, including the bricked areas.

Thank you for the opportunity to provide comments regarding this variance request. Please include this letter within the file and submit it as a part of the record for this variance. In addition, please notify the Commission in writing of the decision made in this case. If you have any questions, please call me at 410-260-3479.

Sincerely,



Marshall Johnson  
Natural Resource Planner

cc: SM 722-07

Critical Area Variance Standards to be addressed by the Applicant. Permit #07-3249

The house at 50465 Fresh Pond Neck Road in Ridge, Maryland was built in 1930 which was 54 years before the 1984 Critical Area Protection Act was enacted by the Maryland General Assembly and is within the 100 ft critical area. Our property is built on an embankment which is approximately 10 feet above sea level. As such, our property never floods (even during Isabel and Ernesto). Because our house is so close to the creek and has a high bank, the grandchildren were at risk of falling into the creek when playing outside. Prior to the installation of the patio, one ran toward the creek when their mother turned her back for a second and rolled into the water. After that we laid the patio block to provide a boundary for their safety. On the water's side, a flower bed has been planted to prevent any run-off and provide a natural barrier between where the children play and the water. The children have been told they are not allowed to play on anything but the concrete or block patio. The blocks are placed in sand and provide a means for water to seep in preventing any type of run-off. The block patio is approximately 35 feet from the mean high tide line. On the opposite side is a three foot flower bed between the patio and the house.

The concrete pad was laid because the gravel driveway and the ground surrounding it would become a bed of mud when it rained. Vehicles would get stuck and have to be winched out. We tried to get grass to grow, but because of the sand and gravel which had been installed years before our time, none would grow. Therefore, to prevent more damage to the land, we had the pad installed to park vehicles. Flower beds have been planted on both sides and provide a barrier for any rain water. There is approximately 75 foot between the concrete pad and the mean high tide line which is covered with grass. This is the area between where the crushed asphalt ends and the house.

Due to the height of my property above sea level and the flowerbed barriers preventing run-off, the granting of this variance will not adversely affect the water quality of the creek nor will it affect fish or wildlife. Because we are cognizant of the creek's water quality, we purchase oyster floats each year to help filter the water. The only plant habitat disturbed by the block patio was grass. Because the back concrete pad covered the sand and gravel driveway a minimal amount of grass was disturbed. Since the installation of the concrete pad and the block patio, I have planted numerous shrubs and flowers in the flower beds and intend to finish my flower beds with more when construction is finished. Since our wedding in 2004, we've planted 78 Silverberry shrubs, 2 boxwoods shrubs, 23 Enonymous shrubs, 5 Hollyhock, 9 large 8 foot Butterfly bushes, 10 Peony, 12 Azalea, 6 sedum, 2 Rhododendrum, 25 Iris bulbs which have multiplied, 50 Canus Lilies which have multiplied, more than 100 Daffodils, 3 large Spireara bushes, and filled all in with either mums or lariope ground cover which have all multiplied. During Isabel we lost one Locust tree that was over 40 feet high. During Ernesto we lost two more Locust that were also over 40 feet high. These three trees had been here since the house was built in 1930. Again we want to replace the three and add some additional ones when construction has been completed to provide shade for the house.



All flower beds have a mixture of shrubs and perennials. In addition, I fill all spaces with annuals that flower in the spring, and they flower through to the first hard frost.

With all the flowers, shrubs and trees, there is no additional water run-off into the creek.

We also have a request for a permit for revetment of our bank which has been approved through all the departments and is waiting for this variance to proceed. During Isabel and Ernesto's tides, we lost approximately 10 feet of our bank all the way around our property. One of the trees we lost was on the bank and fell into the water.

The granting of this variance will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood and the character of the district will not be changed.

In our creek, there are several homes within the critical area which have been allowed to build and/or install rooms, decks, patios, etc. The house across the creek on Bradburn Lane, which is in the critical area also is now under construction to enclose a porch running the entire length of the house. Therefore, I ask that you not deprive me of these rights enjoyed by others on our creek and within St. Mary's County. If you grant this variance, no special privileges will be granted that others are denied and as nearly as possible will be in harmony with the general spirit and intent of the Critical Area Program.

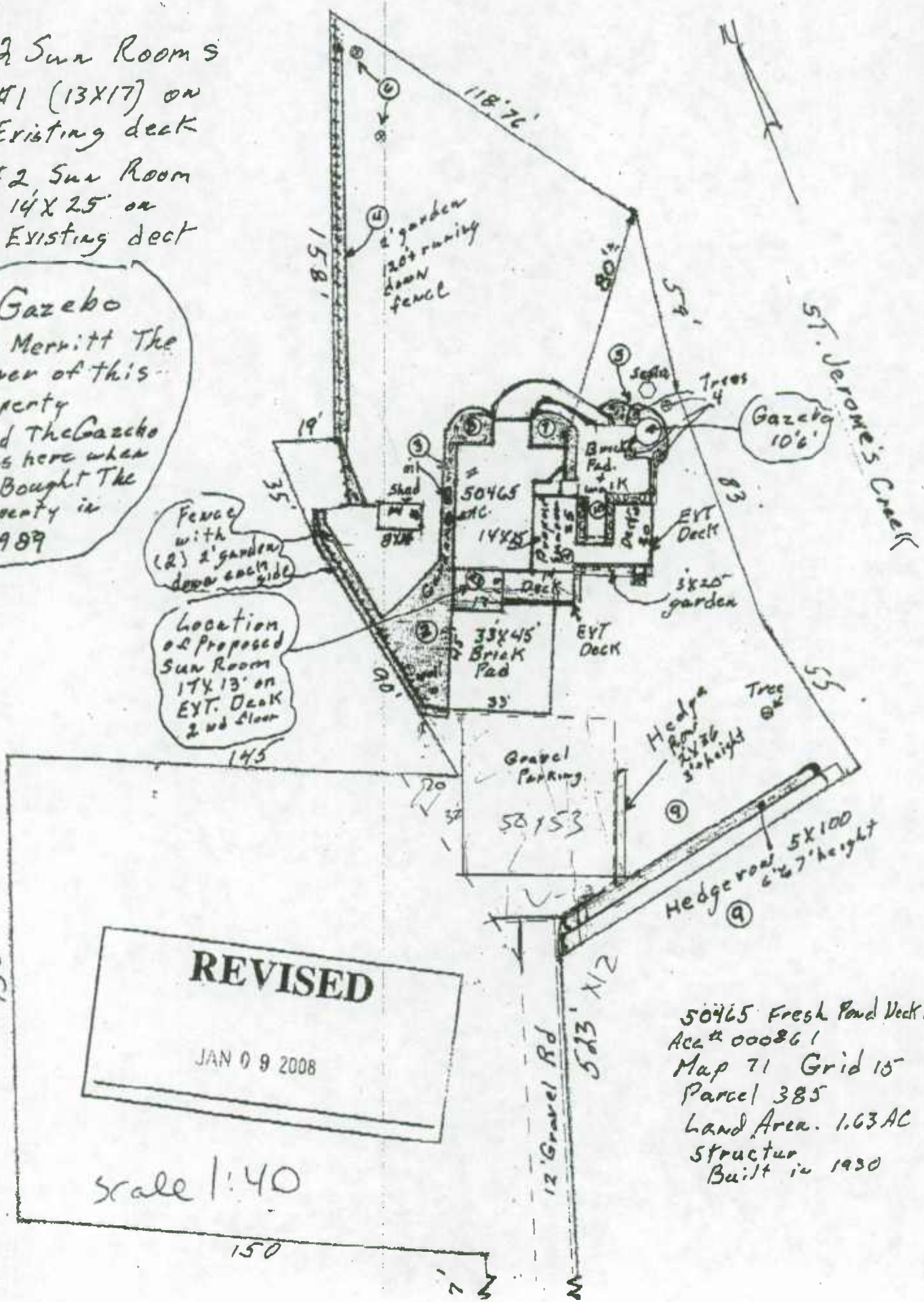
We were not aware of requirement for these two items to have permits prior to installation. If we had known, we would have submitted a request. Strict enforcement of the Critical Area provisions will result in an unwarranted hardship as the children will not have as safe a location to play as before when visiting. We respectfully request you grant this variance in order to achieve reasonable use of our land.

2 Sun Rooms  
 #1 (13X17) on Existing deck  
 #2 Sun Room 14'X25' on Existing deck

**Gazebo**  
 Mr Merritt The owner of this Property said The Gazebo was here when He Bought The Property in 1989

Fence with (2) 2' garden down each side

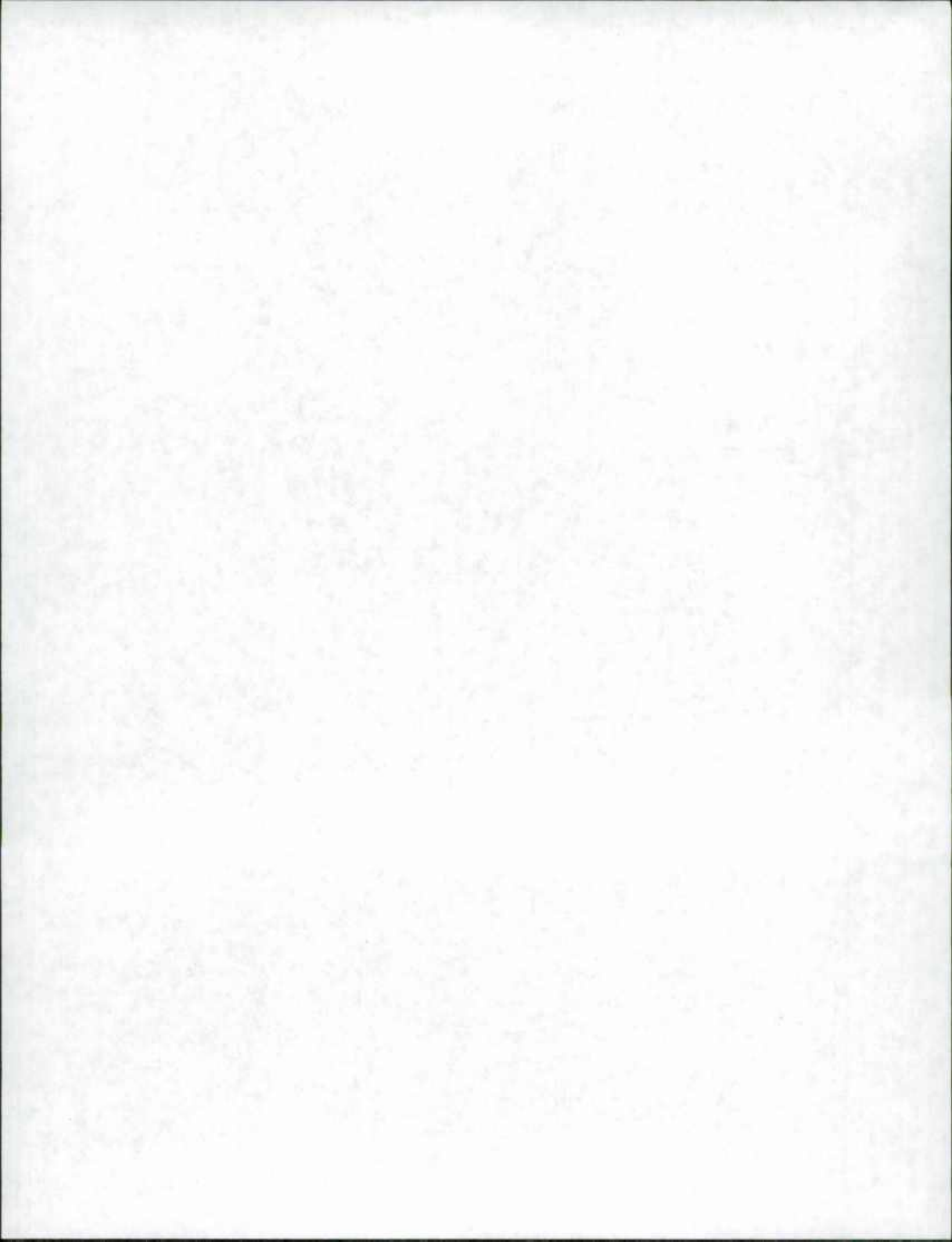
Location of Proposed Sun Room 17'X13' on EXT. DECK 2nd floor



**REVISÉ**  
 JAN 09 2008

scale 1:40

50465 Fresh Pond Deck Ri  
 Acc # 000861  
 Map 71 Grid 15  
 Parcel 385  
 Land Area. 1.63 AC  
 Structure  
 Built in 1930





Project: 2 Proposed sunrooms over existing I.S.

Reviewer/Date: 1/18/07 (1/9 Revised SP)

Site Visit Req.?:

**CRITICAL AREA ENVIRONMENTAL WORKSHEET**

Permit#: 07-3249 TM TT GR 15 PAR 385 LOT/BL        ZONE IDA

Tax I.D.: 01-000861 Address/Subdivision: 50465 Fresh Pond Neck Rd

Acreage: 1.63 Sq. Ft. 71,002.8 Fastland: ~ 71,002.8 (Ac. - Tidal Wetlands)

I.S. Allowed: 10,650.45  25% + 500 (0 - 8,000)  31.25% (8,001 - 21,780)  5,445 s.f. (21,781 - 36,300)  
 15% (>36,300)  IDA/No Limit  PUD/ Other  
 25% (1 acre or less, subdivided after 12/1/85)

Impervious Surface (I.S.) Calculations	Calculations				I.S. In Buffer (sq. ft)		Comments
	Existing	Removed	Adding	Total	Existing	Proposed	
Dwelling	1,250				1,250		2,295 A & B ATF
Walkways + patio	2,395				2,295		
Porches							I.S. in Buffer
Decks	1,070				1,070		
Pool							
Driveway/Parking	9,788				8,158		
Garage							
Roads							
Shed	512						
Gazebo	86				86		
<b>TOTALS</b>	<b>15,101</b>				<b>12,859</b>		Variance Required? <u>(Y) N</u>
Percent I.S.							<u>71.83</u> <u>41.53</u>

Minimum Forest Coverage req'd (15%): 10,650.45

Woody Vegetative Cover	Existing Veg.	Clearing	
		Non Buffer	Buffer
Individual Trees (400 sq.ft. each) ( )			
Individual Shrubs (200 sq.ft. each) ( )			
Forest/Woodland (sq.ft.)			
Other			
<b>TOTALS</b>	<b>7,548</b>		
Percentage of total veg. cover			

Mitigation	sq.ft.
Variance/Violation 3:1	7,185
Reforestation 1:1	
Reforestation 1.5:1	
Reforestation 3:1	
IDA I.S./ IDA & BMO	
BMO 2:1	
Afforestation	3,102.45
<b>TOTAL</b>	
<b>CAPA</b>	amt.
100% Trees	
60% Trees	
40% Shrubs	

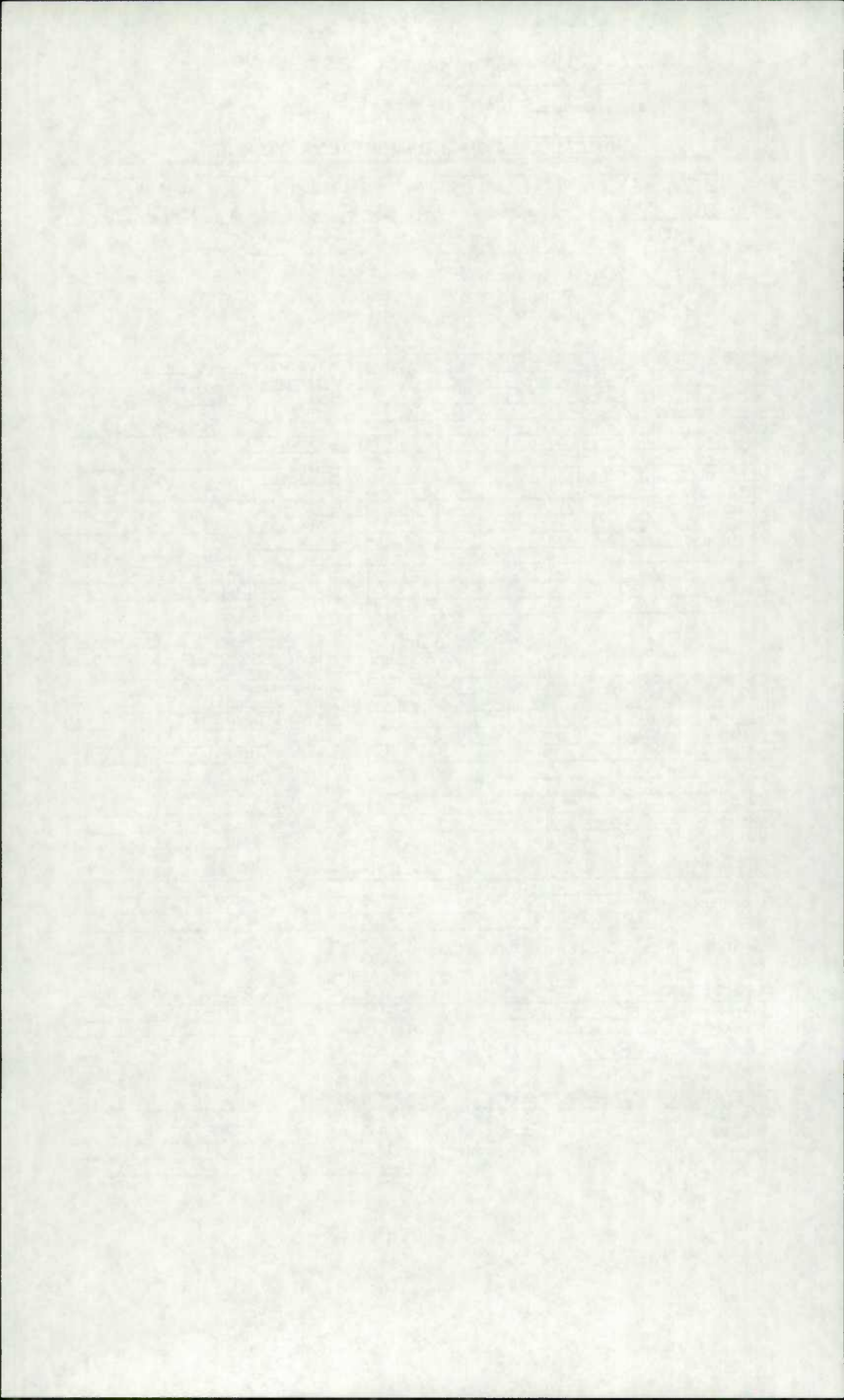
Variance = 117,155  
 offset = 57,75

Soil Description	Area Disturbed (sq.ft.)	Comments
<input type="checkbox"/> Hydric Soil		
<input type="checkbox"/> Highly Erodible		
<input checked="" type="checkbox"/> Other	<u>MuB2</u>	

Soil Survey Sheet # 29 inset copy in file

Floodplain	Elev. Certificate req'd?	Comments
Zone/ Elevation <u>A2/F4</u>	<input checked="" type="checkbox"/> Yes	<u>Structure on edge of Floodplain</u>
Zone/ Elevation	<input type="checkbox"/> No	
Floodplain Panel # <u>401 E</u>		

Wetlands	Streams	>15% Slopes	Comments
<input checked="" type="checkbox"/> Tidal (sq.ft. _____)	<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Yes	<u>Slopes + tidal on very edge of property</u>
<input type="checkbox"/> Non - Tidal	<input type="checkbox"/> No	<input type="checkbox"/> No	
<input type="checkbox"/> Adjacent	<input type="checkbox"/> Adjacent	<input type="checkbox"/> Adjacent	
<input type="checkbox"/> None			
		Topo Grid # <u>N1281</u>	

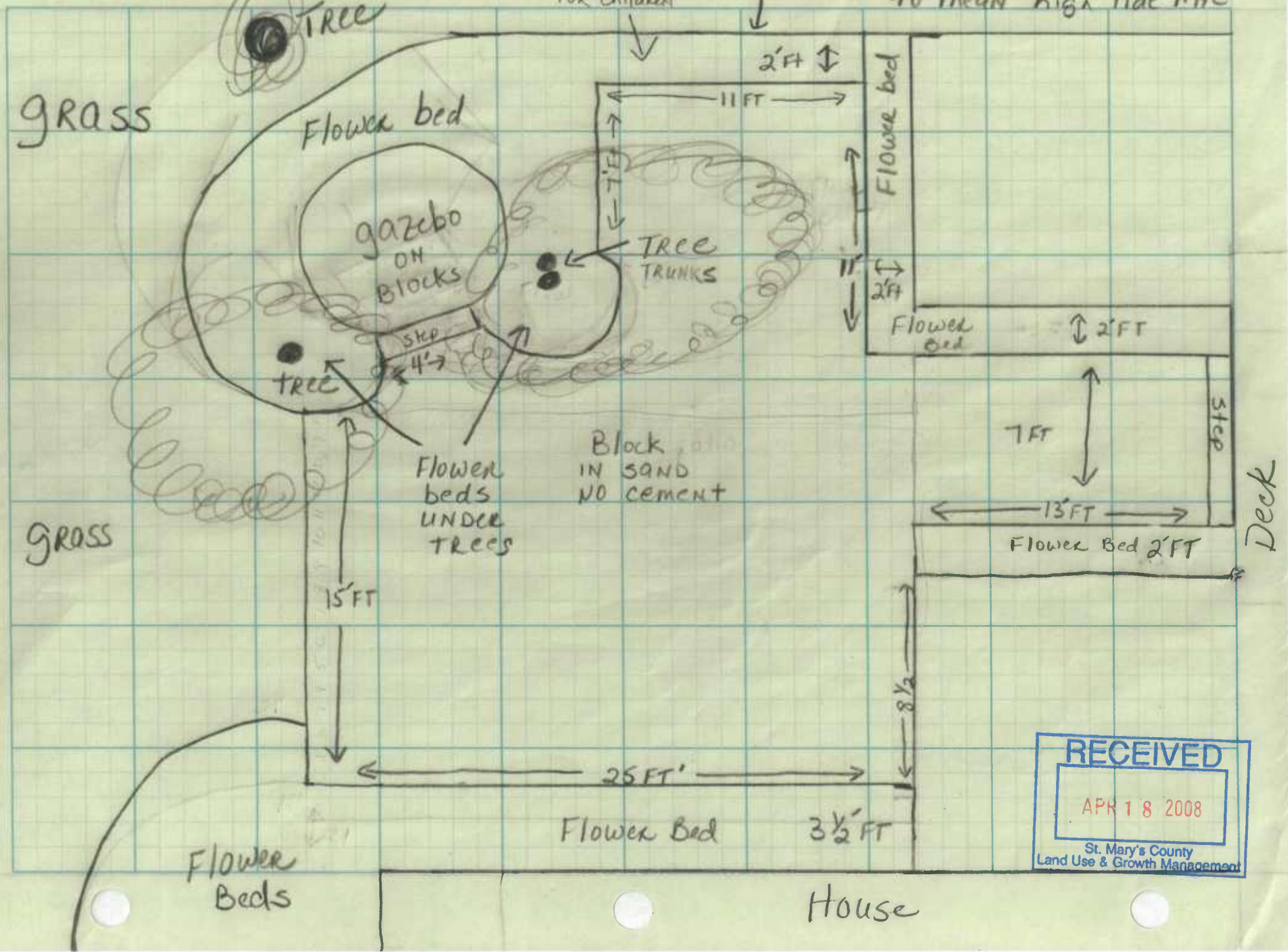


Brick pad

Each Block = 1 ft

Flower bed  
Barried  
For children

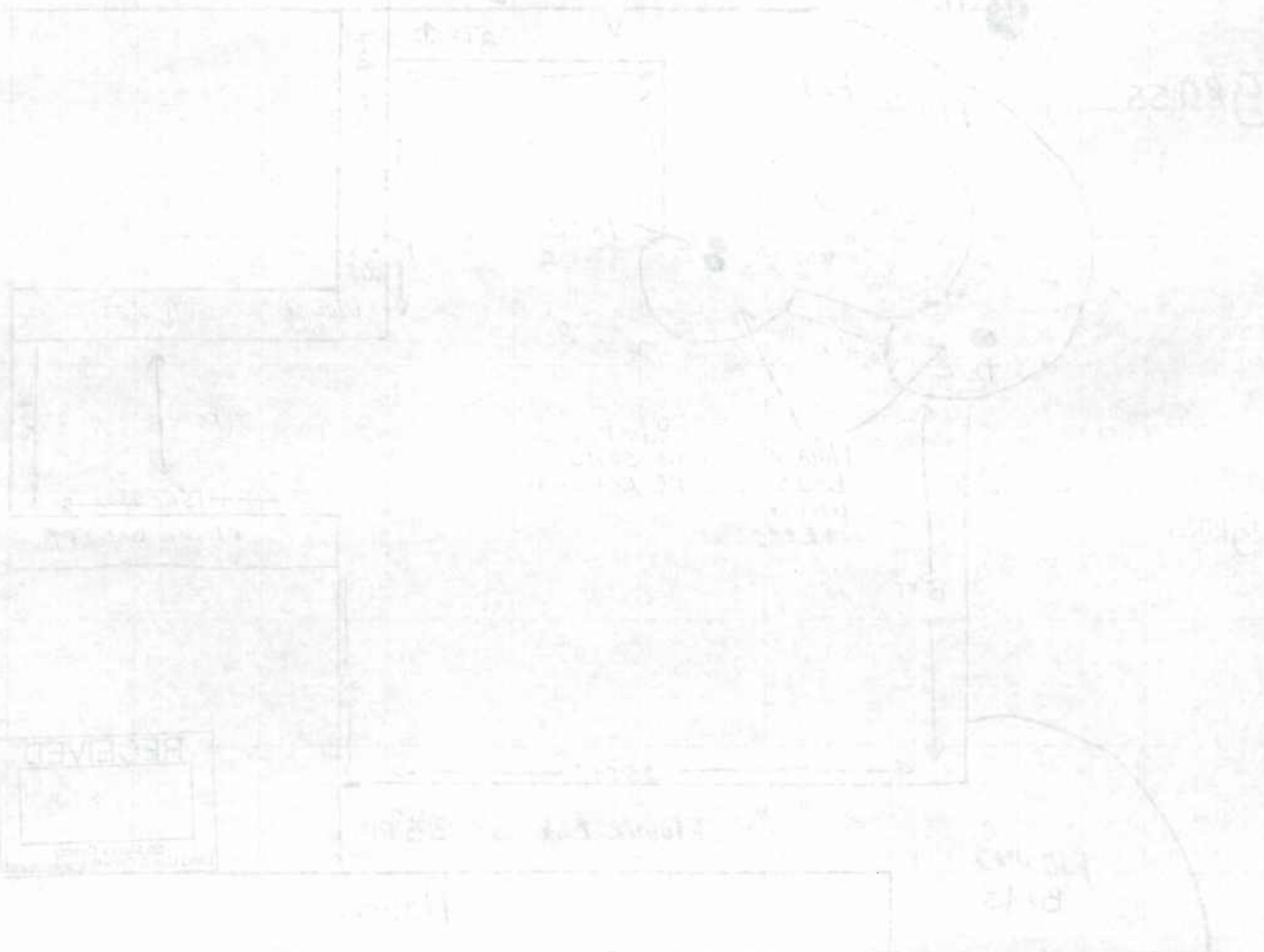
35' Ft of Bank + grass  
to mean high tide line



**RECEIVED**  
 APR 18 2008  
 St. Mary's County  
 Land Use & Growth Management

1904

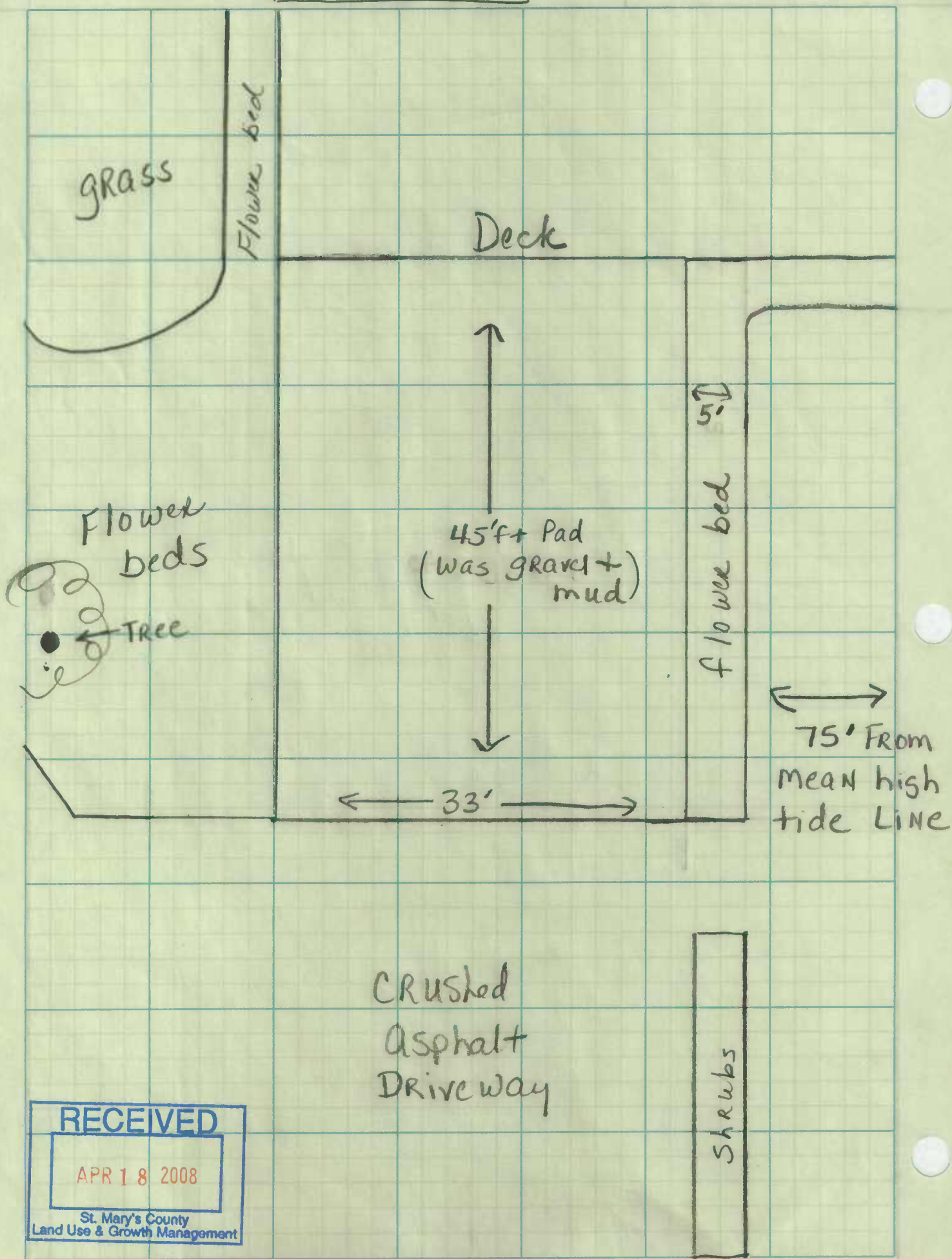
32 ft of concrete  
is in place the pipe



RECEIVED  
[Stamp]

33' x 45' Pad

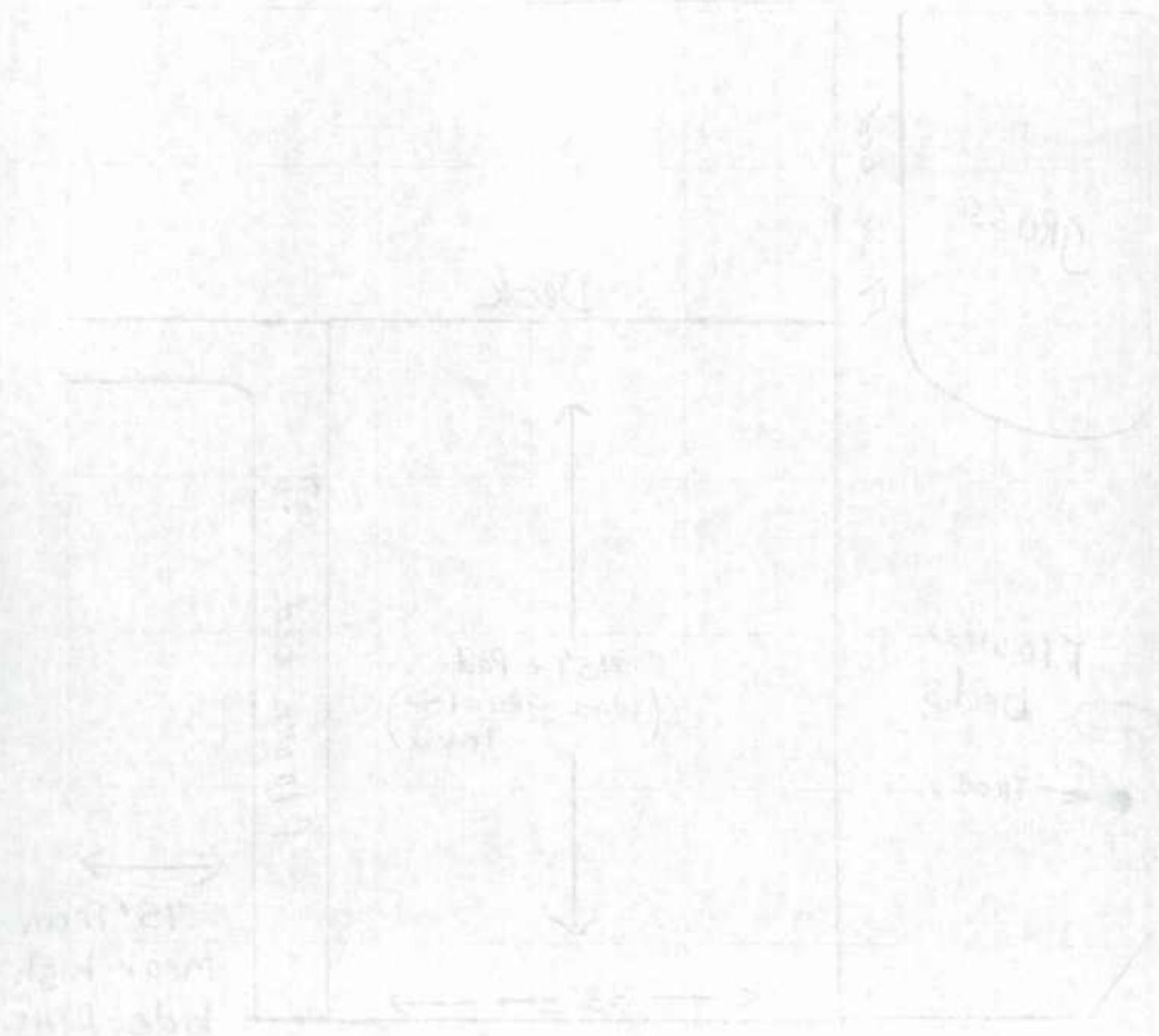
Each Block = 2 FT



**RECEIVED**  
 APR 18 2008  
 St. Mary's County  
 Land Use & Growth Management

Book Block 2 211

10 2 4



1000 + 1000  
1000 + 1000  
1000 + 1000

1000 + 1000

1000 + 1000  
1000 + 1000

Flowers  
Dubs

1000 + 1000

1000 + 1000  
1000 + 1000  
1000 + 1000

1000 + 1000



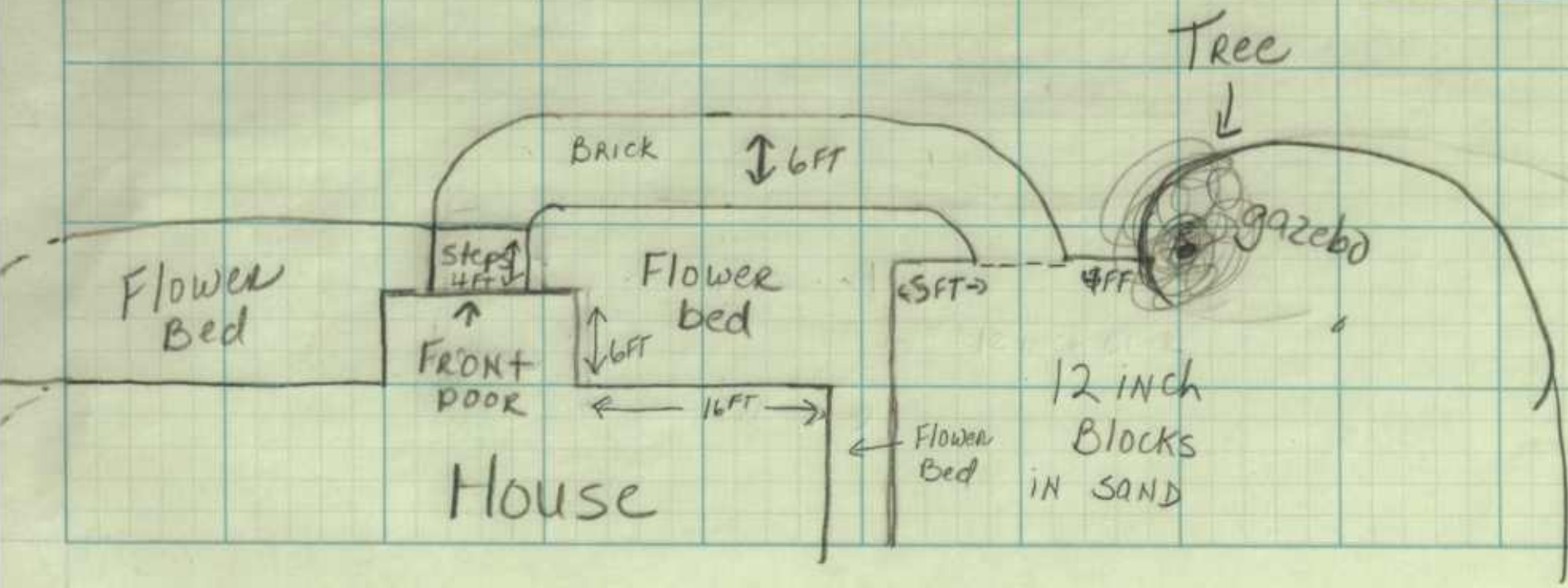
# FRONT walkway TO FRONT DOOR

100' to water mean high tide

All flower beds are lined with Lariope ground cover

Each Block = 2 FT  
Scale = 1:10

Grass



Handwritten text at the top of the page, possibly a title or header.

Handwritten text in the upper middle section of the page.



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Hedge Row #9



3' garden around deck



Brick Pad  
on Sand Bed.



Hedge Row #9 100ft 5wide  
36' 3wide

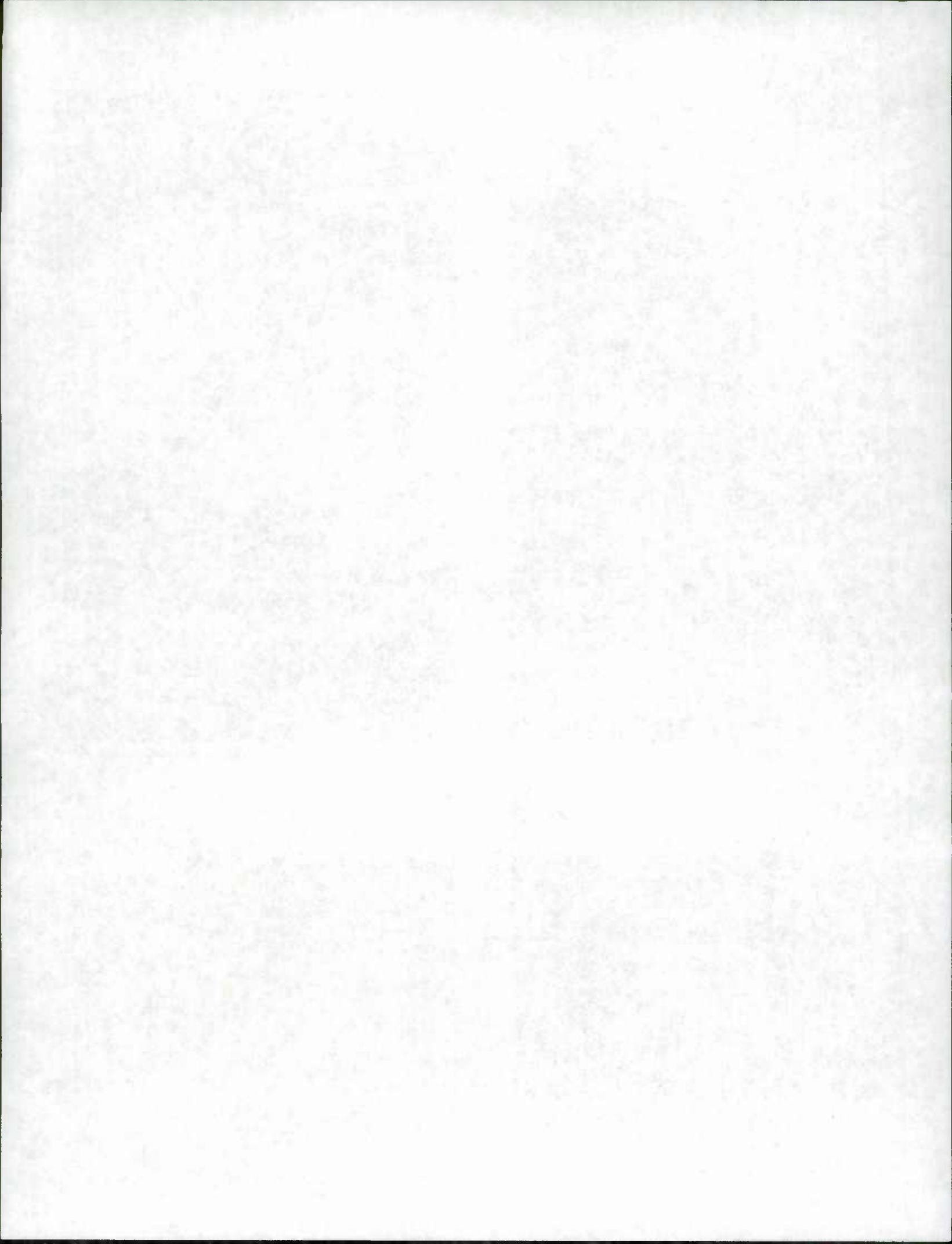


H<sub>10</sub>  
2'6" Above Bed  
45' long Total

Brick  
on Sand  
Bed



Brick Walk  
ON Sand Bed



#6  
Fence  
&  
Garden  
West  
Property  
Line



#7  
Left  
Garden  
  
+  
Brick  
Walk  
on Sand  
Bed



#5  
Trees  
&  
Gazebo  
10'6"



#8  
Right  
Garden  
&  
Brick  
Walk  
on Sand  
Bed



#4



#3  
garden  
down  
west  
side of  
house



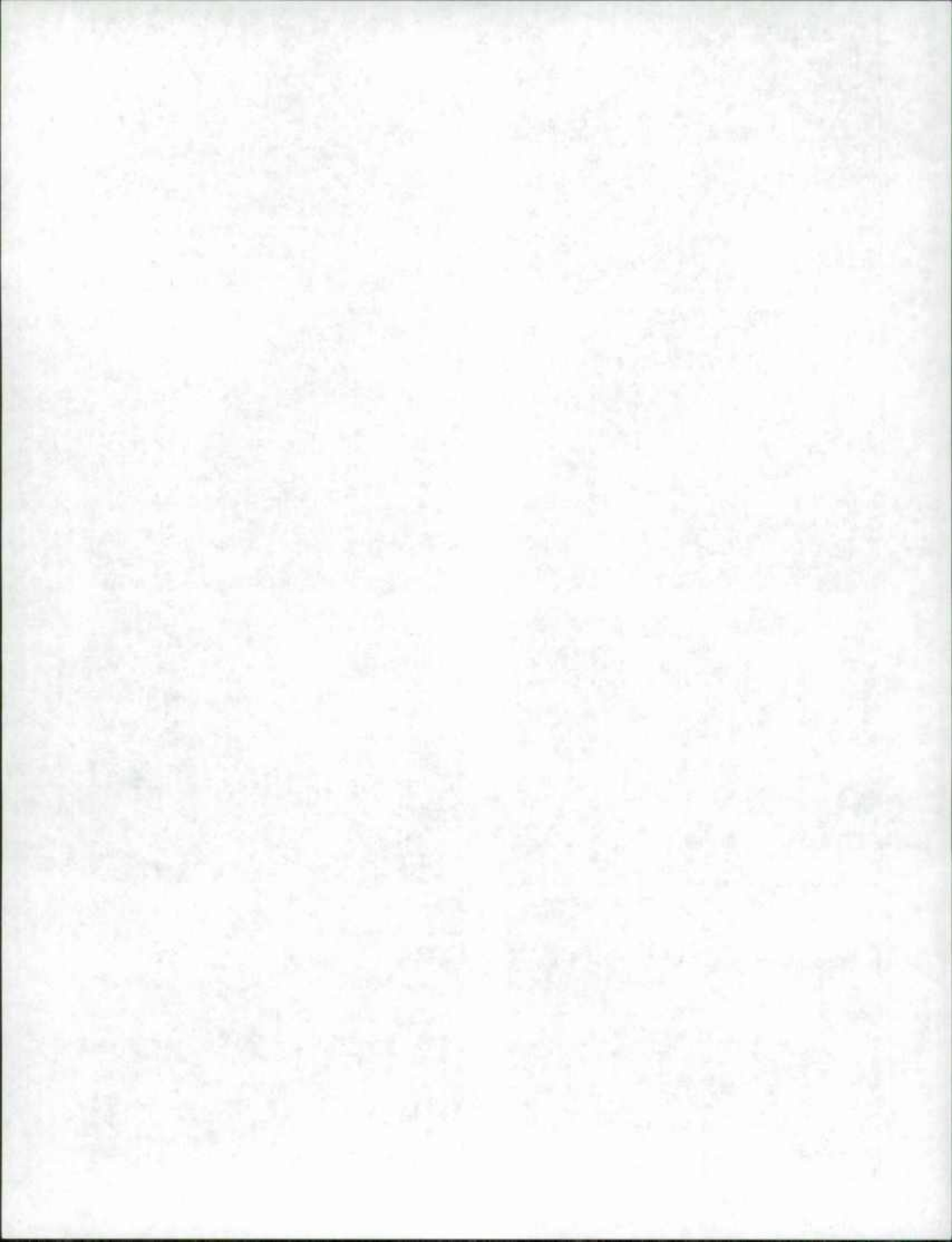
#2



#3



Garden Large on West  
Rear of house next to 33x45  
Pad



**Merritt 07-3249**

-  100' Critical Area Buffer
-  Tidal Wetlands
-  Property Boundary
-  Mean High Water
-  2' Contour (n1281)
-  4 Base Flood elevation ( NAVD 88)

Scale 1":100'

JBB 5/15/2008

Spring 2003 Orthophoto

