

IN THE MATTER OF
THE APPLICATION OF
W. ALAN LYNAM
(Variance)

BEFORE THE CECIL COUNTY
BOARD OF APPEALS
CASE NO.: 3604

OPINION

Application of W. Alan Lynam. (“Lynam” or the “Applicant”) for a five (5) foot side yard setback variance, as well as a thirty five (35) foot front yard setback variance for construction purposes on real property located at 335 Veazy Cove Road, Earleville, Maryland 21919, which is designated as Parcel 360 on Tax Map 52, First Election District, Cecil County, Maryland. The subject property is presently zoned Rural Residential (RR), and is owned by W. Alan Lynam and Joy S. Lynam.

Under the provisions of Article XVII, Part I, Section 306, Paragraph 1 of the Ordinance, variances (as defined in Article II), may be granted by the Board of Appeals. Paragraph 2 of Section 306 requires the Board to examine all facts of the case and render a decision based upon the following criteria:

A. The variance request is based upon a situation where, because of special circumstances, a literal enforcement of the provisions of the Ordinance would deprive the applicant of a right commonly enjoyed by other parties in the same zone under the terms of this Ordinance.

B. Special conditions and circumstances exist that are peculiar to the land, buildings or structures involved, and that are not applicable to other lands, buildings, or structures in the same zone, such conditions and circumstances not being the result of actions by the applicant.

C. The granting of the variance will not confer upon the applicant any special privileges that are denied by this Ordinance to other properties in the same zone.

D. The variance request does not arise from any condition to land or building use, either permitted or non-conforming, on any neighborhood property.

In addition, the Board may not grant a variance request in the Critical Area District unless the decision is based on the following additional criteria:

(1) Special conditions or circumstances exist that are unique to the subject property or structure and a strict enforcement of the provisions within the Critical Area District would result in unwarranted hardship that is not generally shared by owners of property in similar management areas (i.e., IDA, LDA, RCA) of the Critical Area.

(2) Strict enforcement of the provisions within the Critical Area District would deprive the property owner of rights commonly shared by other owners of property in similar management areas within the Critical Area District.

(3) The granting of a variance will not confer upon an applicant any special privilege that would be denied to other owners of like property and/or structures within the Critical Area District.

(4) The variance request is not based upon conditions or circumstances that are self-created or self-imposed, nor does the request arise from conditions or circumstances either permitted or non-conforming that are related to adjacent parcels.

(5) The granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area District, and that the granting of the variance will be consistent with the spirit and intent of the County's Critical Area Program and associated ordinances as well as state law and regulations adopted under Subtitle 18 of the Natural Resources Article and COMAR 20.01.

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

The Applicant appeared before the Board with his attorney, Dwight E. Thomey, Esquire, Baker, Thomey and Emrey, P.A. Mr. Thomey testified that the Applicant is before the Board due to a unique problem with the Property. More specifically, the Applicant testified that the Property is long and narrow, which limits his ability to construct a garage. The testimony further demonstrates that the Property slopes twenty (20) feet down to the water (Veazy Cove/Bohemia River), and that construction is limited due to well and septic requirements, and Critical Area regulations (particularly, impervious surface requirements). There is a residential dwelling currently on the Property; the Applicant testified that the existing dwelling would be reconstructed to meet setback requirements and the driveway shortened, however, due to the Property's unique features, a variance from front and side setback requirements is necessary for the Applicant to also construct the garage. The Applicant testified that he has retained a professional design company to assist him in this construction and, in particular, to advise him on how to construct the dwelling and garage in the limited space available on the Property. The Applicant credibly testified that the design company has concluded that construction of the dwelling with a garage cannot be done without a variance. The Applicant testified that the Property has been in his spouse, Joy S. Lynam's family, since the 1950's, that other homes in the neighborhood have garages, and that his adjacent neighbors have no objection to the proposed construction.

No one appeared in favor of or in opposition to the application.

From the evidence presented the Board is satisfied that the criteria set forth in

the Ordinance has been met, and makes the following findings:

A. The criteria set forth in Section 306 has been met.

From the evidence presented the Board is satisfied that the criteria set forth in Section 306 has been met, and makes the following findings:

1. The variance request is based upon a situation where, because of special circumstances, a literal enforcement of the provisions of the Ordinance would deprive the applicant of a right commonly enjoyed by other parties in the same zone under the terms of this Ordinance. The Property is improved by an existing dwelling, which the Applicant will reconstruct on a location on the Property that is further from the waterfront with a shortened driveway. Due to the size of the Property, existing well and septic requirements and the topography of the land, the Applicant cannot reconstruct the dwelling and add a driveway without the requested setback variances. Credible testimony establishes that other parties in the same zone have garages and, further, that due to the topography of the Property, size of the parcel, well/septic requirements, and Critical Area regulations, a literal enforcement of the Ordinance would prevent the Applicant from adding a garage here as part of his reconstruction project. The Board thereby finds that, while other parties in the same zone have constructed dwellings improved by a garage, the Applicant will be deprived of that right unless the requested five (5) year side setback and thirty five (35) foot front setback variances are granted.

2. Special conditions and circumstances exist that are peculiar to the subject land, buildings or structures involved, and that are not applicable to other lands, buildings, or structures in the same zone. As set forth above, the Property is impacted by a slope that runs twenty (20) feet down to the water and, further, due to the size of the

Property, construction is limited by well and septic requirements, topography, and the Critical Area requirements. The existing dwelling was constructed in the 1950's, and predates that Ordinance and Critical Area regulations, and the Property is now impacted in a manner that was not an issue when the existing dwelling was constructed. The Applicant credibly testified that his design consultant cannot, due to the size of the Property, topography, and applicable regulations, design a permissible dwelling with garage unless the variances are obtained. The foregoing limitations and site conditions are peculiar to the subject Property, and are not applicable to other lands, building or structures in the RR zone.

3. The granting of the variance will not confer upon the applicant special privileges that are denied by this Ordinance to other properties in the same zone. As stated above, other properties in the RR zone have garages, and the Critical Area regulations are not applicable to other properties in this zone; as such, the proposed structure could be constructed without the need for a variance in other areas of the RR zone. In this respect, the Board finds that, based upon the evidence and testimony presented, other homes in the neighborhood of the Property have garages.

4. There is no evidence that the variance request arises from any condition to land or building use, either permitted or non-conforming, on any neighborhood property.

In addition, the Board finds that:

1. Special conditions or circumstances exist that are unique to the subject property or structure and a strict enforcement of the provisions within the Critical Area District would result in unwarranted hardship that is not generally shared by owners of property in similar management areas (i.e., IDA, LDA, RCA) of the Critical Area. As

stated above, the Property is currently improved by a residential dwelling that dates to the 1950's. However, the size and topography of the Property is that a strict enforcement of the provisions of the Critical Area regulations since enacted will preclude the Applicant from reconstructing the dwelling and adding a garage such as that which has been constructed by other property owners in the neighborhood.

3. As set forth above, the granting of a variance will not confer upon an applicant any special privilege that would be denied to other owners of like property and/or structures within the Critical Area District.

4. There is no evidence that the variance requests are based upon conditions or circumstances that are self-created or self-imposed, or that the requests arise from conditions or circumstances either permitted or non-conforming that are related to adjacent parcels.

5. There is no evidence that the granting of the variances requested here will adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area District, and the Board finds that the granting of the variance will be consistent with the spirit and intent of the County's Critical Area Program and associated ordinances as well as state law and regulations adopted under Subtitle 18 of the Natural Resources Article and COMAR 20.01.

6. There is no evidence that greater profitability or lack of knowledge of the restrictions underlie the variances requested here.

The Board also specifically finds that the variance requested here is not contrary to the public interest and, further, finds that, based upon the foregoing evidence and testimony:

1. The Applicant has shown good and sufficient cause for the requested variances;

2. Failure to grant the variances would result in exceptional hardship due to the physical characteristics of the Property;

3. There is no evidence that granting of the requested variances will result in increased flood heights beyond that which is allowed in the regulations;

4. The granting of a variance will not result in additional threats to public safety; extraordinary public expense, nuisances, fraud or victimization of the public, or conflict with existing local laws;

5. The proposed garage is protected by methods to minimize flood damages;

6. The variance is the minimum necessary to afford relief, considering the flood hazard;

7. There is little, if any, danger that materials may be swept onto other lands to the injury of others;

8. The proposed garage (and dwelling) will be constructed further away from the waterfront than the existing dwelling, and will be above a twenty (20) foot slope that runs down to the water, and will allow the Applicant to shorten the existing driveway, thereby minimizing any danger to life and property due to flooding or erosion damage;

9. There is no evidence or testimony that the neighborhood is susceptible to flooding, and credible testimony demonstrates that the Applicant's adjacent neighbors have no objection to the proposed construction.

10. There is little, if any, importance to the community provided by the proposed construction;

11. Due to the size of the Property, the topography, and sell/septic restrictions, there are no reasonably available alternative locations for the proposed use which are not subject to, or are subject to less, flooding or erosion damage;

12. As stated above, the Applicant's design consultant has advised that there are no reasonably available alternative locations for the proposed garage.

13. The proposed garage is compatible with existing development;

14. The proposed use is consistent with the character and nature of the existing neighborhood as well as the current Comprehensive Plan;

15. There is no evidence that the Property is without safe access in times of flood for passenger vehicles and emergency vehicles;

16. There is no evidence or testimony before the Board related to expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site, nor is there evidence or testimony as to the costs of providing government services during and after flood conditions; and,

17. Neither MDE or the NFIP State Coordinator have expressed opposition to the variances.

For the reasons stated, by unanimous vote, the Board concludes that:

1. As to the five (5) foot side yard setback variance, the criteria set forth in Section 306 of the Ordinance has been met, and the application for a five (5) foot side yard setback variance for construction purposes is, therefore, GRANTED; and, further

2. As to the thirty five (35) foot front yard setback variance, the criteria set forth in Section 306 of the Ordinance has been met, and the application for a thirty five (35) foot front yard setback variance is, therefore, GRANTED; and, further

3. The variances are to the floodplain management requirements of the floodplain regulations only, and the cost of Federal flood insurance will be commensurate with the increased risk, with rates up to twenty five dollars (\$25.00) per one hundred dollars (\$100.00) of insurance coverage; and, finally,

4. A record of this variance action shall be maintained pursuant to Section 229.2(K) of the Ordinance.

Date

7/24/12


Mark Saunders, Acting Chairperson

BOARD OF APPEALS APPLICATION
CECIL COUNTY, MARYLAND

MEET. MONTH: June 2012
 FILE NO. 3604

- THIS REQUEST IS FOR:
 SPECIAL EXCEPTION RENEWAL ()
 SPECIAL EXCEPTION ()
 VARIANCE (X)
 APPEAL ()

DATE FILED: 5-10-12
 AMOUNT PD: 200.00 / 9504
 ACCEPTED BY: [Signature]

RECEIVED
 MAY 10 2012

A. APPLICANT INFORMATION

mail to

W. ALAN LYNAM
 APPLICANT NAME - PLEASE PRINT CLEARLY
184 OSAGE LANE NEWARK DE 19711-7503
 ADDRESS CITY STATE ZIP CODE
[Signature] (302) 690-4487
 APPLICANT SIGNATURE PHONE NUMBER

B. PROPERTY OWNER INFORMATION

W. ALAN & JOY S. LYNAM
 PROPERTY OWNER NAME - PLEASE PRINT CLEARLY
SAME AS ABOVE CITY STATE ZIP CODE
 ADDRESS
[Signature] [Signature] PHONE NUMBER
 PROPERTY OWNER SIGNATURE

C. PROPERTY INFORMATION

335 VEAZEY COVE ROAD, EARLVILLE 1ST 024175
 PROPERTY ADDRESS ELECTION DIST. ACCT. NUMBER
52 7 360 N/A 0.75 RR
 TAX MAP # BLOCK PARCEL LOT # #ACRES ZONE

D. PURPOSE OF APPLICATION - Indicate reasons why this application should be granted. (attach separate sheet if necessary)

REQUEST 5' BRL FOR PROPOSE GARAGE; DUE TO RESTRICTIVE LOT WIDTH; TO KEEP GAR. FARTHER FROM RIVER & PROVIDE 30' WALK SEPARATION
5' side yard setback variance and 35' front yard setback variance

E. On an attached sheet, PLEASE submit a sketch of the property indicating the proposed project. Show distances from the front, side and rear property lines and the dimensions of the project.

F. LAND USE DESIGNINATION

Is property in the Critical Area? no critical area needed YES NO
 If yes, Pertinent provision of the Chesapeake Bay Critical Area Program: REA
 Is property in the 100 year Floodplain? YES NO
 Is property an Agricultural Preservation District? YES NO

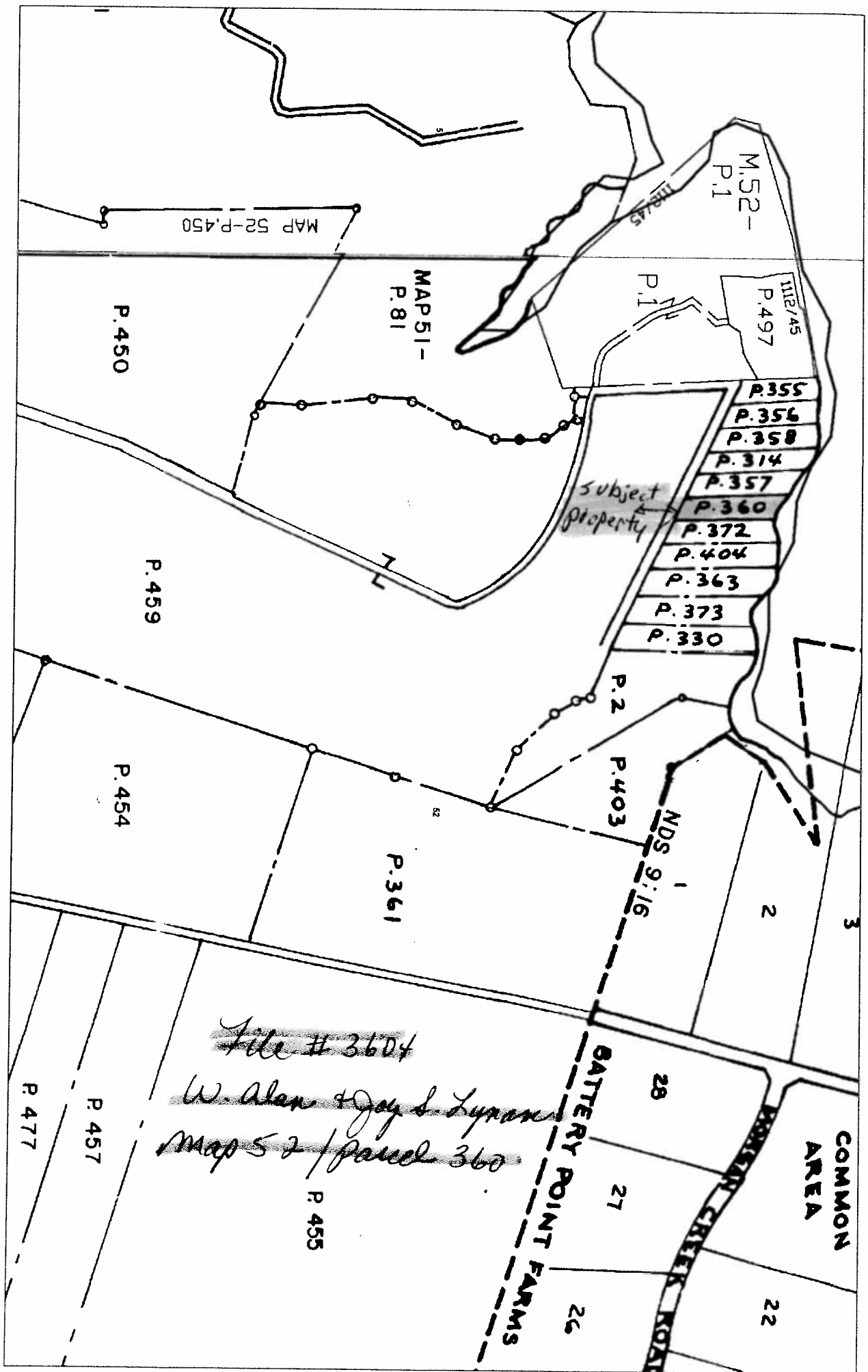
If property is located in the Critical Area, all provisions and requirements must be met as outlined in Article XVII, Part I, II & III of the Zoning Ordinance.

G. PROVISION OF ZONING ORDINANCE: Section 306

H. SPECIAL EXCEPTION RENEWAL - PREVIOUS FILE NO. & CONDITIONS FOR APPROVAL: N/A

I. SPECIAL EXCEPTION FOR A MANUFACTURED HOME - Please fill out the following information:

Will unit be visible from the road? N/A If yes, distance: _____
 Will unit be visible from adjoining properties? _____ If yes, distance: _____
 Distance to nearest manufactured home: _____ Size/Model/Year of Unit: _____
 Number of units on property at present time: _____



~~File # 3604~~
~~W. Alan & Jay S. Lyman~~
~~Map 52 / parcel 360~~

P. 455

COMMON
AREA

BATTERY POINT FARMS

BERRAN CREEK ROAD

NDS 9:16

P. 2 P. 403

P. 361

P. 454

P. 459

P. 450

MAP 51-
P. 81

MAP 52-P.450

M.52-
P.1

TIE/45
P.497

P.355

P.356

P.358

P.314

P.357

P.360

P.372

P.404

P.363

P.373

P.330

Subject
Property

2

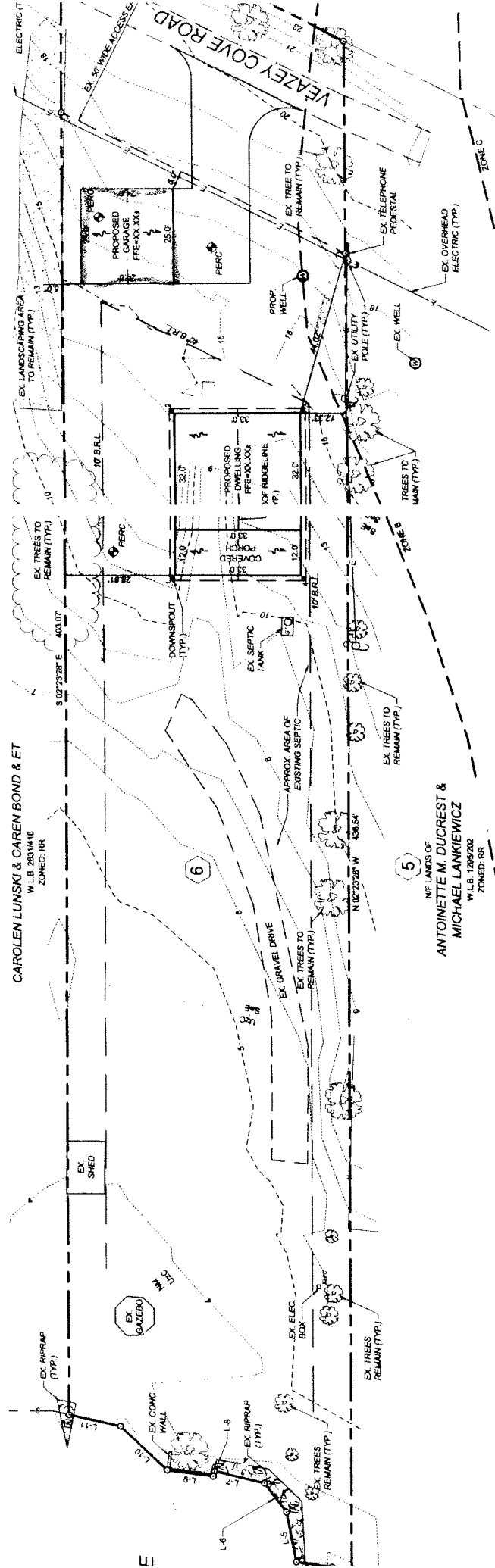
3

26

27

28

22



LINE TABLE

LINE	BEARING	DISTANCE
L-1	S39°28'26"E	4.62'
L-2	S1°00'44"E	22.86'
L-3	S39°11'35"E	4.92'
L-4	S84°27'53"E	9.53'
L-5	S13°15'57"E	13.37'
L-6	S39°13'34"E	9.56'
L-7	S78°52'49"E	13.58'
L-8	N7°15'08"E	1.38'
L-9	S84°39'45"E	12.19'
L-10	S48°43'57"E	16.85'
L-11	S79°29'41"E	13.90'



SOILS LEGEND

TYPE	SOIL NAME & DESCRIPTION	HYDROLOGIC GROUP	K FACTOR	% SLOPE	HES CRITERIA
NM	Nanticoke and Murrington soils, very frequently flooded, tidal	D	0.37	-	-
SAB	Sassafras sandy loam, 2 to 5 percent slopes	B	0.24	-	-
SAE	Sassafras sandy loam, 15 to 25 percent slopes	B	0.24	17%	Slope
LTC	Lortonents, 0 to 10 percent slopes	B	0.2	-	-

SOURCE: 2009 Cecil County Digital Soil Survey Data

*W. Alan & Joy Lynn
Map 52 / panel 360*

File # 3604

7 AC.)
 W.L.B. 2831841B
 ZONED: RR
 THE 2008 CECIL COUNTY
 FIELD RUN BY MACRONE
 LOCATED IN ZONE "A" 7'
 CA) OF THE CHESAPEAKE
 THE BENEFIT OF A TITLE
 METHODS SHALL BE IN
 DEPARTMENT OF PUBLIC
 S. AND SPECIFICATIONS
 T TO A 5' DRAINAGE AND
 AND REAR LOT LINES
 J.F.T.