

**FINDINGS AND RECOMMENDATION
OFFICE OF PLANNING AND ZONING
ANNE ARUNDEL COUNTY, MARYLAND**


APPLICANT: Dale Willner

ASSESSMENT DISTRICT: 1

CASE NUMBER: 2024-0001-V

COUNCIL DISTRICT: 3

HEARING DATE: May 7, 2024

PREPARED BY: Joan A. Jenkins 
Planner II

REQUEST

The applicant is requesting a variance to allow a dwelling addition (deck) with less setbacks than required on property located at 682 Hilltop Road in Curtis Bay.

LOCATION AND DESCRIPTION OF SITE

The subject property consists of 6,250 square feet of land. This is a corner lot that is located with 48 feet of frontage on the northwest side of Hilltop Road, zero (0) feet northeast of Parkway Drive. The property is identified as Lots 96 and 97 in the Clearwater Beach subdivision, Parcel 237 in Grid 9 on Tax Map 11, and has been zoned R5 – Residential District since the adoption of comprehensive zoning for the Third Council District, effective January 29, 2012.

This non-waterfront property lies entirely in the Chesapeake Bay Critical Area designated as LDA – limited Development Area. The site is undersized for the R5 District. The property is improved with a two-story single-family dwelling.

APPLICANT'S PROPOSAL

The applicant is proposing to remove an existing deck on the rear of the house and a platform and stairs on the side of the house and construct stairs to an elevated, five feet high, walkway deck four feet by ten feet leading to a rear deck ten feet by twenty-two feet with four-foot wide stairs to grade.

REQUESTED VARIANCE

§ 18-4-701 of the Anne Arundel County Code requires a principal structure in the R5 District to be set back seven feet from the side lot line. The proposed walkway deck and rear deck will be located as close as two feet from the northeast side lot line, requiring a variance of five feet to the side lot line setback requirement.

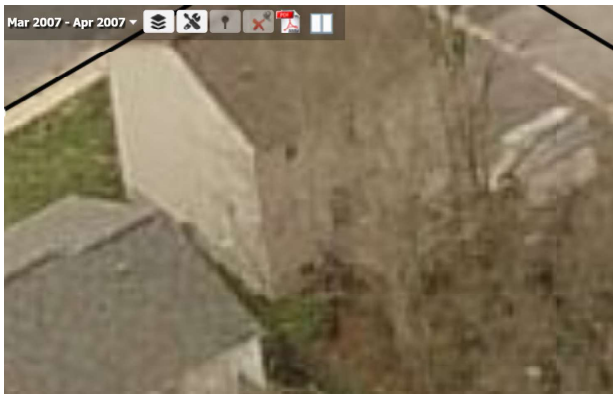
FINDINGS

The subject property is rectangular in shape. This Office finds that the 6,250 square foot site is slightly below the minimum area requirement of 7,000 square feet and at 48 feet in width, the site does not meet the minimum width requirement of 60 feet for a lot in the R5 District. According to

2024-0001-V

State tax assessment records, the house was built in 2008, however, the building permit for the house shows a certificate of occupancy was issued 6/21/2001 and the house is visible in 2002 aerial photos. The existing dwelling is non-conforming to current zoning setback standards.

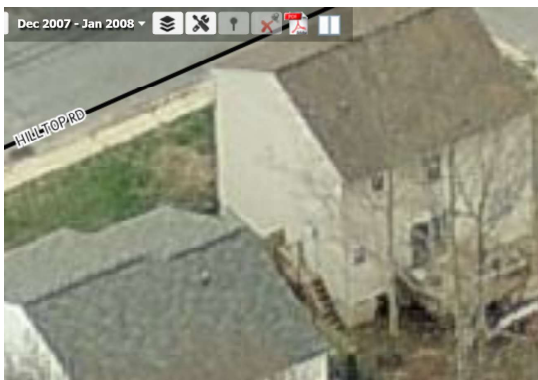
The property was the subject of a prior variance case number 1998-0374-V which granted the now existing dwelling setbacks of 20 feet from the front lot line and 15 feet from the side lot line. This Office notes that the front portico and steps, the side platform and steps, and the rear deck are not shown on the variance site plan. The front portico is closer than 20 feet and the side improvements are six feet from the side lot line. Both would have required a variance to be constructed. The house appears to have been built out of scope of the variance if not also a building permit.¹ A view from early 2007 Pictometry does not show the platform and stairs, but the view from Dec 2007-Jan 2008 does show them. A permit was not found to allow them.



Pictometry Mar 2007-April 2007 no steps or landing.

A review of the County 2023 aerial photograph shows that the neighborhood contains an eclectic mix of homes northeast of Parkway Drive which are zoned R5 - Residential District. Properties southwest of Parkway Drive are zoned commercially.

The applicants write that the side of the house is only six feet from the property line and that replacement of the existing landing is critical to ensure the long-term safety and usability of an elevated side egress.



Pictometry Dec 2007-Jan 2008 shows the landing and steps.

¹ The variance shows a house that is 30' by 26'. The permit for B02136198 indicates a house that is 30' by 27' which would account for the 1-foot difference.

The **Health Department** commented that the property is served by public water and sewer facilities and there is no objection to the request.

Approval of the variance for setbacks will not alter the essential character of the neighborhood as the proposed stairs and walkway deck on the side of the house will be in nearly the same location as the existing platform and stairs. The variances will not have an effect on the use or enjoyment of the abutting property to the northeast that is already developed and there is a fence along the lot line. The granting of the variances will not be contrary to acceptable clearing and replanting practices required for development in the Critical Area. Approval of the variances will not be detrimental to the public welfare.

The variance as requested is not considered to be the minimum variance necessary to allow reasonable use of the site. Measurements taken from a February 2024 Geocortex photo indicate that the existing platform and stairs are approximately three feet from the side lot line and three feet wide. The proposed walkway deck and stairs on the side of the house from the door could be minimized to be three feet wide, which is the minimum required by building code for safe egress. This modified walkway deck and stairs would be three feet from the side lot line allowing for construction and maintenance entirely on the property. The rear deck, likewise, could be reduced to be three feet from the side lot line to be in line with the proposed construction of the deck walkway.

RECOMMENDATION

With regard to the standards by which a variance may be granted as set forth under §18-16-305 of the County Code, the Office of Planning and Zoning recommends *modified approval* of a variance of four feet to the required seven-foot side lot line setback requirement to allow construction of an elevated walkway deck and rear deck located three feet from the northeast side lot line.

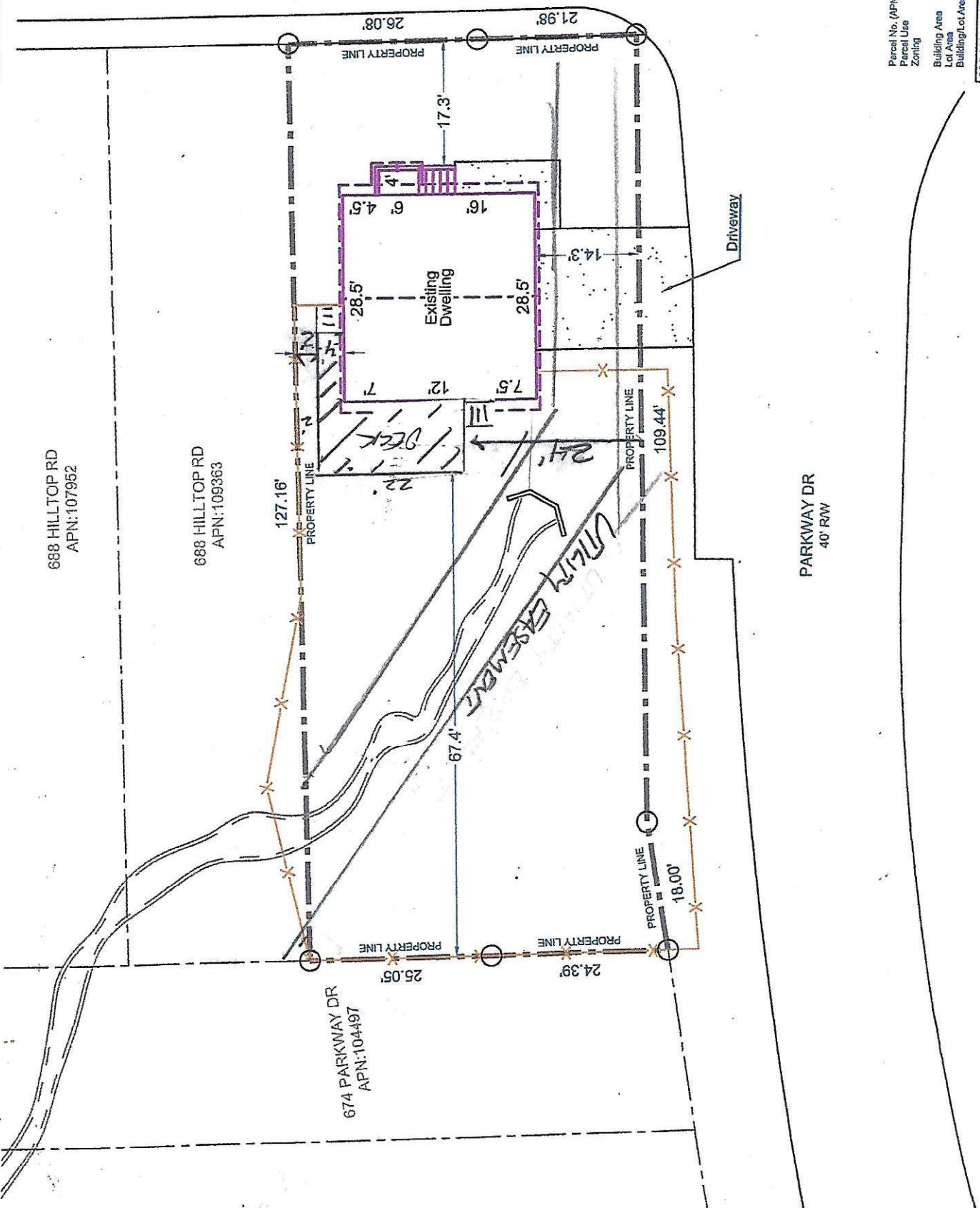
DISCLAIMER: This recommendation does not constitute a building permit. In order for the applicant to construct the structure(s) as proposed, the applicant shall apply for and obtain the necessary building permits, and obtain any other approvals required to perform the work described herein. This includes but is not limited to verifying the legal status of the lot, resolving adequacy of public facilities, and demonstrating compliance with environmental site design criteria.



HILLTOP RD
40' RM

Parcel No. (APN) 0320634394250
 Parcel Use XXXX
 Zoning R5
 Building Area 1352 SF
 Lot Area 6250 SF (0.143 ACRES)
 Building/Lot Area 0.22

682 HILLTOP RD
 BALTIMORE, MD 21226
 Scale: 1" = 20'



A zoning variance is being requested for the replacement of a deteriorated wooden landing on the side of the home with a new structure that would connect with the back deck and improve the safety and usability of the space. Following a review of the County Zoning Code, this request appears to meet all the standards required in § 18-16-305 and would not have any adverse impacts on the adjoining properties and surrounding neighborhood. The variance is necessary in this case due the narrowness of the lot on one side of the house which contains an elevated egress. This side of the house sits only 6 feet from the adjoining property line, which is below the minimum side yard setback for a residential structure. This means that the required structure needed to reach this egress could not comply with the existing zoning standards, but is nonetheless necessary for the safety of the residents. Replacement of the existing landing is critical to ensure the long-term safety and usability of this egress. The existing landing is 4 ft wide, leaving 2 feet to the adjoining property line and the square footage is XX SqFt. The new structure in the side yard will remain at 4 ft wide and would not encroach into the side yard any further than the already existing structure. It would simply be extended by a several feet to meet with the proposed new rear deck and total 80SqFt on the side of the home. The house itself is a two-story structure totaling approximately 1450 square feet (see attached plat for additional details).

The property does fall into a critical area and is used exclusively for residential purpose. The property contains an incidental number of shrubs of unknown species scattered amongst the yard, none of which will be disturbed during the proposed project. None of the property is considered to be vegetated beyond these sporadically located shrubs. There is no grading associated with this project and all ground disturbance will be limited to the digging of xx standard sized footer holes. All dirt that is removed for the placement of footers will be carefully contained in plastic storage containers to prevent any sediment runoff during construction. The existing side yard landing and 15 STAIRS is a total of 52 square feet and the new wraparound structure will be 289 square feet.

CRITICAL AREA COMMISSION
 CHESAPEAKE AND ATLANTIC COASTAL BAYS
 1804 WEST STREET, SUITE 100
 ANNAPOLIS, MD 21401

PROJECT NOTIFICATION APPLICATION

GENERAL PROJECT INFORMATION

Jurisdiction: Anne Arundel County

Date: 3/13/24

Tax Map #	Parcel #	Block #	Lot #	Section
0011	0237		96	

FOR RESUBMITTAL ONLY

- Corrections
- Redesign
- No Change
- Non-Critical Area

*Complete Only Page 1
 General Project Information

Tax ID: 34394250

Project Name (site name, subdivision name, or other)

Project location/Address 682 HILLTOP RD.

City ORCHARD BEACH Zip 21226

Local case number

Applicant: Last name RUBENSTON First name TOM

Company SUNSCOPE BEACH BUILDERS

Application Type (check all that apply):

- | | |
|---|--|
| Building Permit <input checked="" type="checkbox"/> | Variance <input checked="" type="checkbox"/> |
| Buffer Management Plan <input type="checkbox"/> | Rezoning <input type="checkbox"/> |
| Conditional Use <input type="checkbox"/> | Site Plan <input type="checkbox"/> |
| Consistency Report <input type="checkbox"/> | Special Exception <input type="checkbox"/> |
| Disturbance > 5,000 sq ft <input type="checkbox"/> | Subdivision <input type="checkbox"/> |
| Grading Permit <input type="checkbox"/> | Other <input type="checkbox"/> |

Local Jurisdiction Contact Information:

Last name AACo Zoning Administration Section First name

Phone # 410-222-7437 Response from Commission Required By TBD

Fax # Hearing date TBD

SPECIFIC PROJECT INFORMATION

Describe Proposed use of project site:

BUILD DECK WITH STAIRS ON SIDE OF HOUSE TO SERVE AS ACCESS TO DWELLING (INGRESS AND EGRESS)

Intra-Family Transfer	<input type="checkbox"/>	Growth Allocation	<input type="checkbox"/>
Grandfathered Lot	<input type="checkbox"/>	Buffer Exemption Area	<input type="checkbox"/>

Project Type (check all that apply)

Commercial	<input type="checkbox"/>	Recreational	<input type="checkbox"/>
Consistency Report	<input type="checkbox"/>	Redevelopment	<input type="checkbox"/>
Industrial	<input type="checkbox"/>	Residential	<input checked="" type="checkbox"/>
Institutional	<input type="checkbox"/>	Shore Erosion Control	<input type="checkbox"/>
Mixed Use	<input type="checkbox"/>	Water-Dependent Facility	<input type="checkbox"/>
Other	<input type="checkbox"/>		

SITE INVENTORY (Enter acres or square feet)

	Acres	Sq Ft	Total Disturbed Area	Acres	Sq Ft
IDA Area					
LDA Area					
RCA Area					
Total Area					

Total Disturbed Area: Sq Ft

of Lots Created:

	Acres	Sq Ft		Acres	Sq Ft
Existing Forest/Woodland/Trees			Existing Lot Coverage		
Created Forest/Woodland/Trees			New Lot Coverage		
Removed Forest/Woodland/Trees			Removed Lot Coverage		
			Total Lot Coverage		

VARIANCE INFORMATION (Check all that apply)

	Acres	Sq Ft		Acres	Sq Ft
Buffer Disturbance			Buffer Forest Clearing		
Non-Buffer Disturbance			Mitigation		

<u>Variance Type</u>		<u>Structure</u>	
Buffer	<input type="checkbox"/>	Acc. Structure Addition	<input type="checkbox"/>
Forest Clearing	<input type="checkbox"/>	Barn	<input type="checkbox"/>
HPA Impact	<input type="checkbox"/>	Deck	<input checked="" type="checkbox"/>
Lot Coverage	<input type="checkbox"/>	Dwelling	<input type="checkbox"/>
Expanded Buffer	<input type="checkbox"/>	Dwelling Addition	<input type="checkbox"/>
Nontidal Wetlands	<input type="checkbox"/>	Garage	<input type="checkbox"/>
Setback	<input type="checkbox"/>	Gazebo	<input type="checkbox"/>
Steep Slopes	<input type="checkbox"/>	Patio	<input type="checkbox"/>
Other	<input type="checkbox"/>	Pool	<input type="checkbox"/>
		Shed	<input type="checkbox"/>
		Other	<input type="checkbox"/>

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The property does fall into a critical area and is used exclusively for residential purpose. The property contains an incidental number of shrubs of unknown species scattered amongst the yard, none of which will be disturbed during the proposed project. None of the property is considered to be vegetated beyond these sporadically located shrubs. There is no grading associated with this project and all ground disturbance will be limited to the digging of xx standard sized footer holes. All dirt that is removed for the placement of footers will be carefully contained in plastic storage containers to prevent any sediment runoff during construction. The existing side yard landing and 15 STAIRS is a total of 52 square feet and the new wraparound structure will be 289 square feet.

Topographic Map - Lot outline is ref only NOT exact



Legend

- Foundation
- Parcels
- Parcels - Annapolis City
- Elevation
- Topo 2020
- Index
- Intermediate



This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.

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GeoTechnologies, Inc, METI/NASA,



THIS MAP IS NOT TO BE
USED FOR NAVIGATION

Notes 1" = 40 ft - Lot outline is ref only NOT exact




Topographic Map - Lot outline is ref only NOT exact



Legend



- Foundation
- Parcels
 - Parcels - Annapolis City
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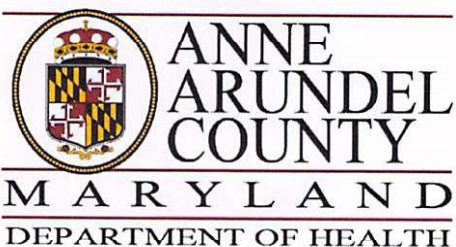
This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.

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Notes 1" = 100 ft Lot outline is ref only NOT exact




J. Howard Beard Health Services Building
3 Harry S. Truman Parkway
Annapolis, Maryland 21401
Phone: 410-222-7095 Fax: 410-222-7294
Maryland Relay (TTY): 711
www.aahealth.org

Tonii Gedin, RN, DNP
Health Officer

MEMORANDUM

TO: Sadé Medina, Zoning Applications
Planning and Zoning Department, MS-6301

FROM: Brian Chew, Program Manager 
Bureau of Environmental Health

DATE: March 12, 2024

RE: Dale M. Williner
682 Hilltop Road
Curtis Bay, MD 21226

NUMBER: 2024-0001-V

SUBJECT: Variance/Special Exception/Rezoning

The Health Department has reviewed the above referenced variance to allow mooring piles with less setbacks than required.

The Health Department has reviewed the above-referenced request. The property is served by public water and sewer facilities. The Health Department has no objection to the above-referenced request.

If you have further questions or comments, please contact Brian Chew at 410-222-7413.

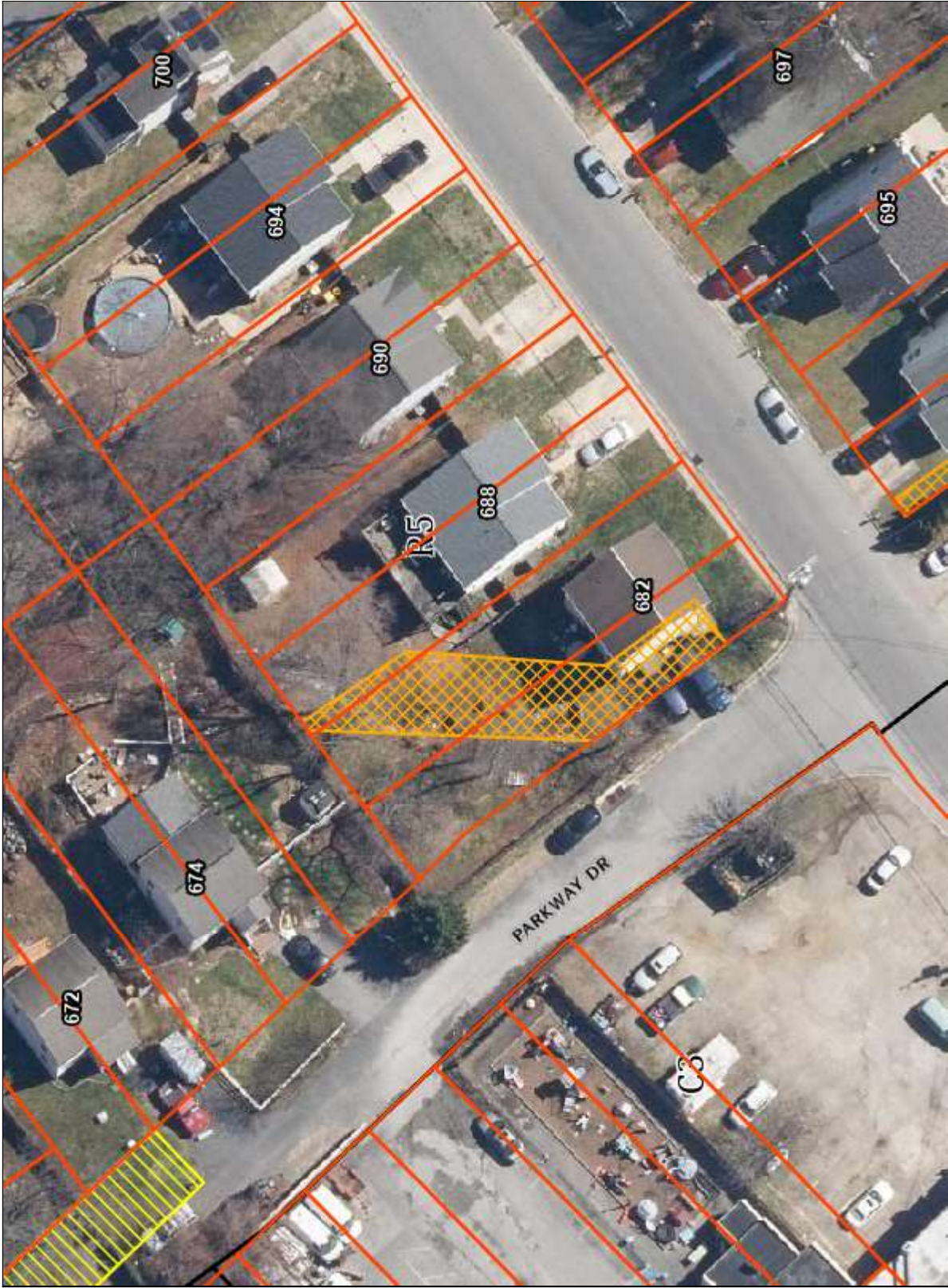
cc: Sterling Seay

682 Hilltop Rd



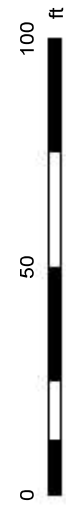
Legend

- Foundation
- Addressing
- Parcels
- Parcels - Annapolis City
- Planning
- County Planning
- Utility
- County Utility
- ACCESS
- CONSERVATION
- DRAINAGE
- UTILITY
- MULTI-PURPOSE
- OTHER



Notes

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THIS MAP IS NOT TO BE
 USED FOR NAVIGATION




THIS DEED OF EASEMENT AND AGREEMENT made this 7
day of October, in the year Nineteen Hundred and Seventy 4
between ZULVER REALTY COMPANY, INC. party of the first part; and
ANNE ARUNDEL COUNTY, MARYLAND, a body corporate and public,
party of the second part.

WHEREAS, the party of the second part desires to construct and
maintain sewers, drains, water pipes and other public utilities, services,
and appurtenances in and across the land hereinafter described and as indi-
cated on right of way Plat No. 1 of 3 and the party of the first part is will-
ing to grant such right.

NOW THEREFORE, in consideration of the premises and the sum of
One Dollar (\$1.00) the receipt whereof is hereby acknowledged, the said
party of the first part hereby grants and conveys unto ANNE ARUNDEL
COUNTY, MARYLAND, a body corporate and public, its successors and
assigns, the right to lay, construct and maintain sewers, drains, water pipes
and other public utilities, services and appurtenances in and through the
land of the party of the first part, situate in the third Assessment District of
Anne Arundel County, State of Maryland, said sewers, drains, water pipes
and other public utilities, services and appurtenances to be laid in the
Easement Area for Utilities which is described as follows:


Two (2) parcels of land on the easternmost side of Parkway
Drive: Beginning for the first of the said Parcels of Land at
the northwest corner of Lot 179 as shown on a plat entitled
Plat No. 2 CLEARWATER BEACH recorded among the Land
Records of Anne Arundel County, Maryland in Plat Book 20
Plat No. 899, Folio 49 and running thence with the northern-
most boundary of said Lot 179 as now surveyed by MCA
ENGINEERING CORPORATION OF ROCKVILLE North 52° 40'
38" East 5.00 feet to a point, thence leaving said boundary
to cross and include a part of Lot 179 South 36° 45' 22" East
30.00 feet to a point, thence South 52° 40' 38" West 5.00 feet
to a point on the westernmost boundary of Lot 179, thence
with the westernmost boundary of Lot 179 North 36° 45' 22"
West 30.00 feet to the point of beginning, containing 150.00
square feet or 0.0034 of an acre of land. Beginning for the
second of the said two (2) parcels at a point on the western-
most boundary of Lot 96 as shown on a plat entitled Plat No. 2

1374 DEC 31 PM 2:33
CLERM
A.G.
CLERM

CLEARWATER BEACH Recorded among the Land Records of Anne Arundel County, Maryland in Plat Book No. 2 as Plat No. 899 Folio 49. 20 feet from the southwest corner thereof and running thence with the westernmost boundary of said Lot 96 as now surveyed by MCA ENGINEERING CORPORATION OF ROCKVILLE North 36° 45' 22" West 44.13 feet to a point, thence leaving said westernmost boundary of Lot 96 to cross and include a part of Lots 96 and 97 as shown on the aforesaid plat North 00° 38' 01" East 70.86 feet to a point on the southerly right of way line of a 10 foot easement for storm drain as shown on said plat, thence with said southerly right of way line North 52° 40' 38" East 5.34 feet to a point on the easternmost boundary of said Lot 97, five (5) feet from the northeast corner of said Lot 97, thence with said easternmost boundary of said Lot 97 South 36° 45' 22" East 26.00 feet to a point, thence leaving said easternmost boundary to cross and include a part of said lots 96 and 97 South 00° 38' 01" West 54.95 feet to a point, thence South 36° 45' 22" East 30.67 feet to a point, thence South 52° 40' 38" West 15.00 feet to the point of beginning, containing 1888.47 square feet or 0.0434 of an acre of land. Said two (2) parcels of land also being shown thusly  on right of way plat number 1 of 3, HILLTOP ROAD attached hereto and recorded herewith.

Being a part of the conveyances from Warren B. Sayman to Zulver Realty Company, Inc., by deed dated August 15, 1956 and recorded among the Land Records of Anne Arundel County, Maryland in Liber 1228 at Folio 84 and from the Stoney Creek Shopping Center, Inc. to Zulver Realty Company, Inc. by deed dated June 5, 1956 and recorded among the aforementioned Land Records in Liber 1035 at Folio 411.

AND the party of the first part does hereby agree that Anne Arundel County, Maryland, a body corporate and public, its successors and assigns, shall have the right and privilege of entering upon the aforesaid land, whenever it may be necessary to make openings and excavations, and to lay construct and maintain said public utilities and appurtenances, provided, however, that the ground shall be restored and left in good condition; and it is further agreed that no buildings or similar structures of any kind shall be erected in, on or over the said Easement Area for Utilities by any of the parties hereto, their heirs, personal representatives, successors or assigns.

AND the party of the first part does further grant unto the party of the second part, its successors and assigns, the right to create use and maintain on the land shown hatched thusly  on the aforementioned right of way plat such slopes as are necessary to retain and support the highway and/or adjacent property, it being agreed between the parties hereto, however, that at such a time as the contour of the land from which this slope easement is granted is changed so the easement required for slopes is no longer necessary to support or protect the highway construction within the area conveyed in fee simple, then said easement for slopes shall cease to be effective.

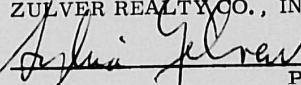
THE said party of the second part covenants and agrees to indemnify and save harmless the party of the first part, its heirs, successors and assigns, from any and all suits, actions or liabilities which may occur by reason of injury to person and/or property because of or due to construction operations carried on by said COUNTY, or its servants.

AS WITNESS the due execution hereof by the aforementioned party of the first part.

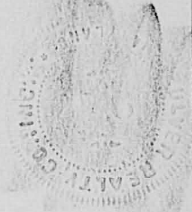
WITNESS:



ZULVER REALTY CO., INC.



President



STATE OF MARYLAND, HARFORD COUNTY, TO WIT:

I HEREBY CERTIFY , that on this 7 day of October in the year one thousand nine hundred and 74 before me, the subscriber a Notary Public of the State of Maryland, in and for the county aforesaid, personally appeared SYLVIA GELVAR PRESIDENT OF ZULVER REALTY CO. INC. and duly acknowledged the foregoing deed to be LEGAL act



Witness my hand and Notarial Seal

John H. Deitz

Approved as to Legal Form and sufficiency

APPROVED AND ACCEPTED

THIS 18th DAY OF December 1974.

Joseph W. Hy

Attest

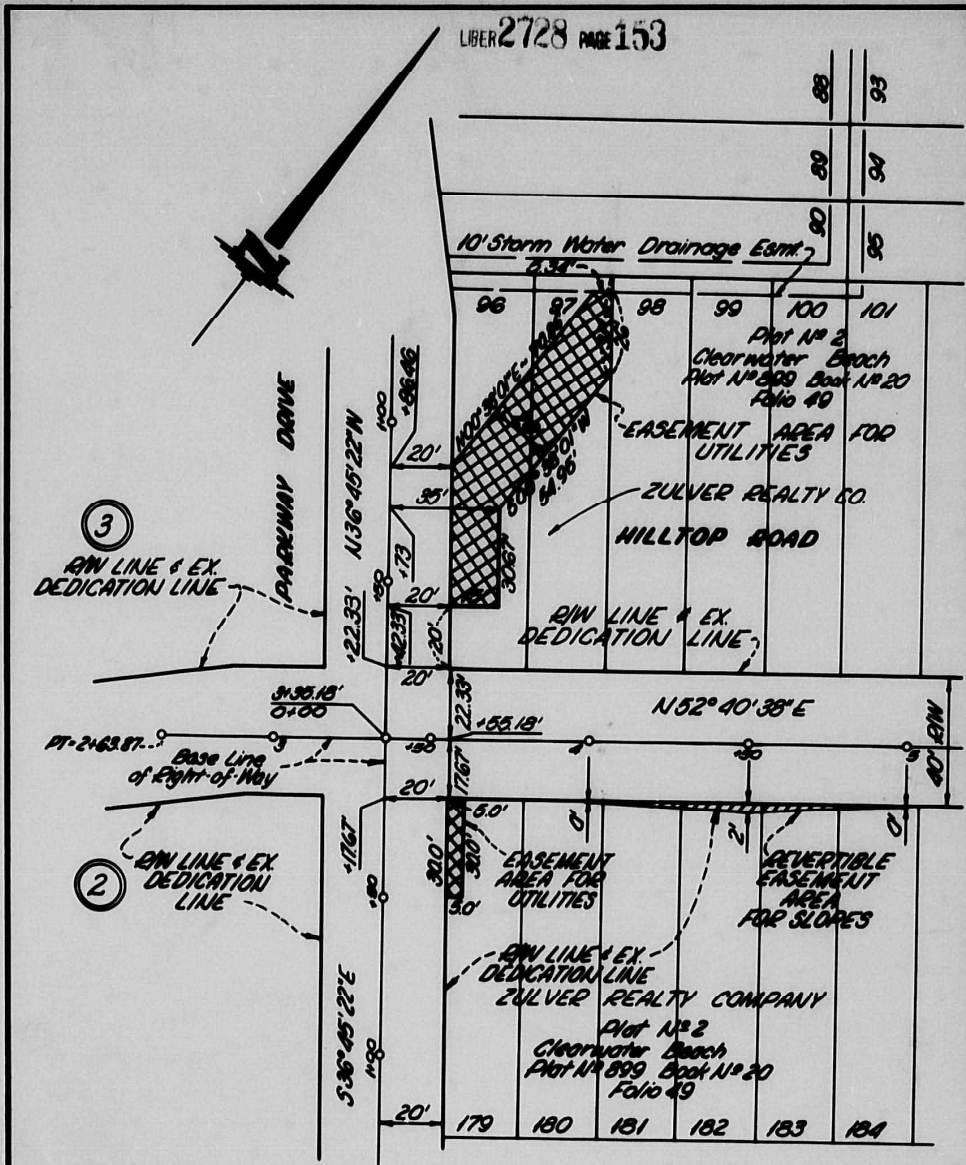
ANNE ARUNDEL COUNTY, MARYLAND

Mary St. Craig

BY:

Robert A. Pascal
ROBERT A. PASCAL
COUNTY EXECUTIVE

Mailed to Right of Way Div. Dept. of Public Works
See Plat on following page

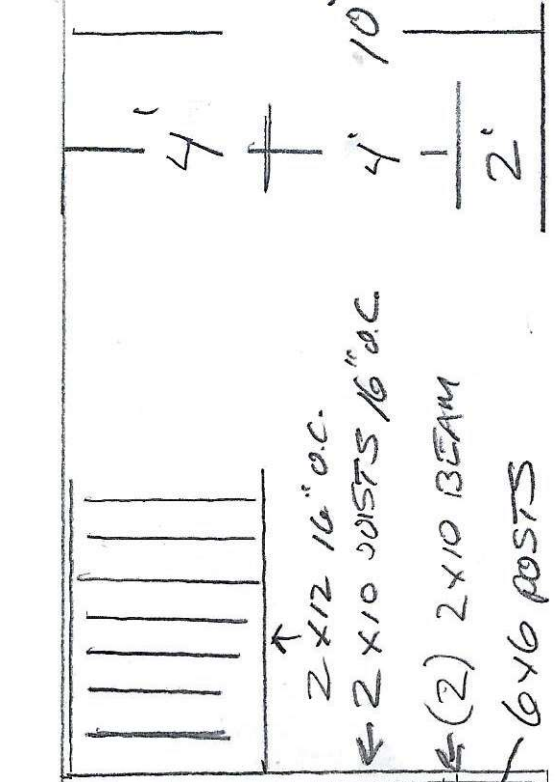
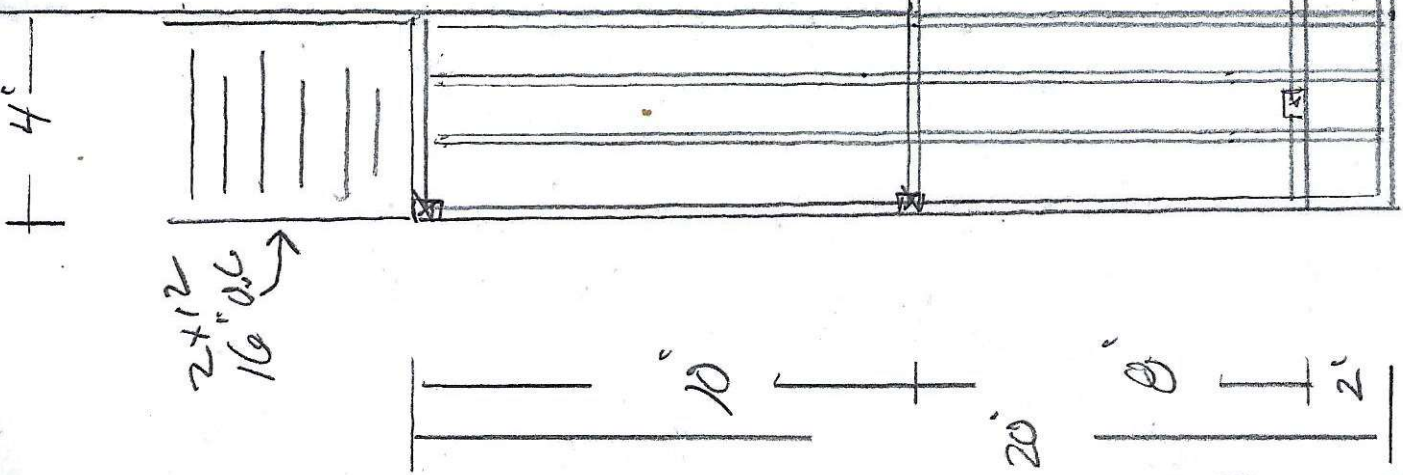


MCA □ ○ ▽
 MCA ENGINEERING CORPORATION

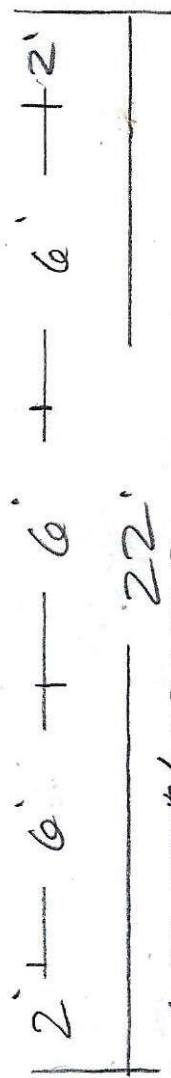
ENGINEERS PLAT NO. CHANGED FROM 1 of 10 to 1 of 4 5/74
SURVEYORS PLAT NO. CHANGED FROM 1 of 4 to 1 of 3 9/23/74

DRAWN BY <i>G.S.</i>	COUNTY OF ANNE ARUNDEL DEPARTMENT OF PUBLIC WORKS	SCALE	REVISIONS
		DATE	DATE BY
TRACED BY <i>D.E.</i>	<i>Easement for Utilities & Slopes</i>	PROJECT NO. <i>1442169</i>	
CHECKED BY <i>L.B.K.</i>	<i>Zulver Realty Company</i>		
DRAWING NO. <i>1 of 3</i>	<i>Hilltop Road - Election District # 3</i>	APPROVED <i>[Signature]</i> CHIEF ENGINEER	

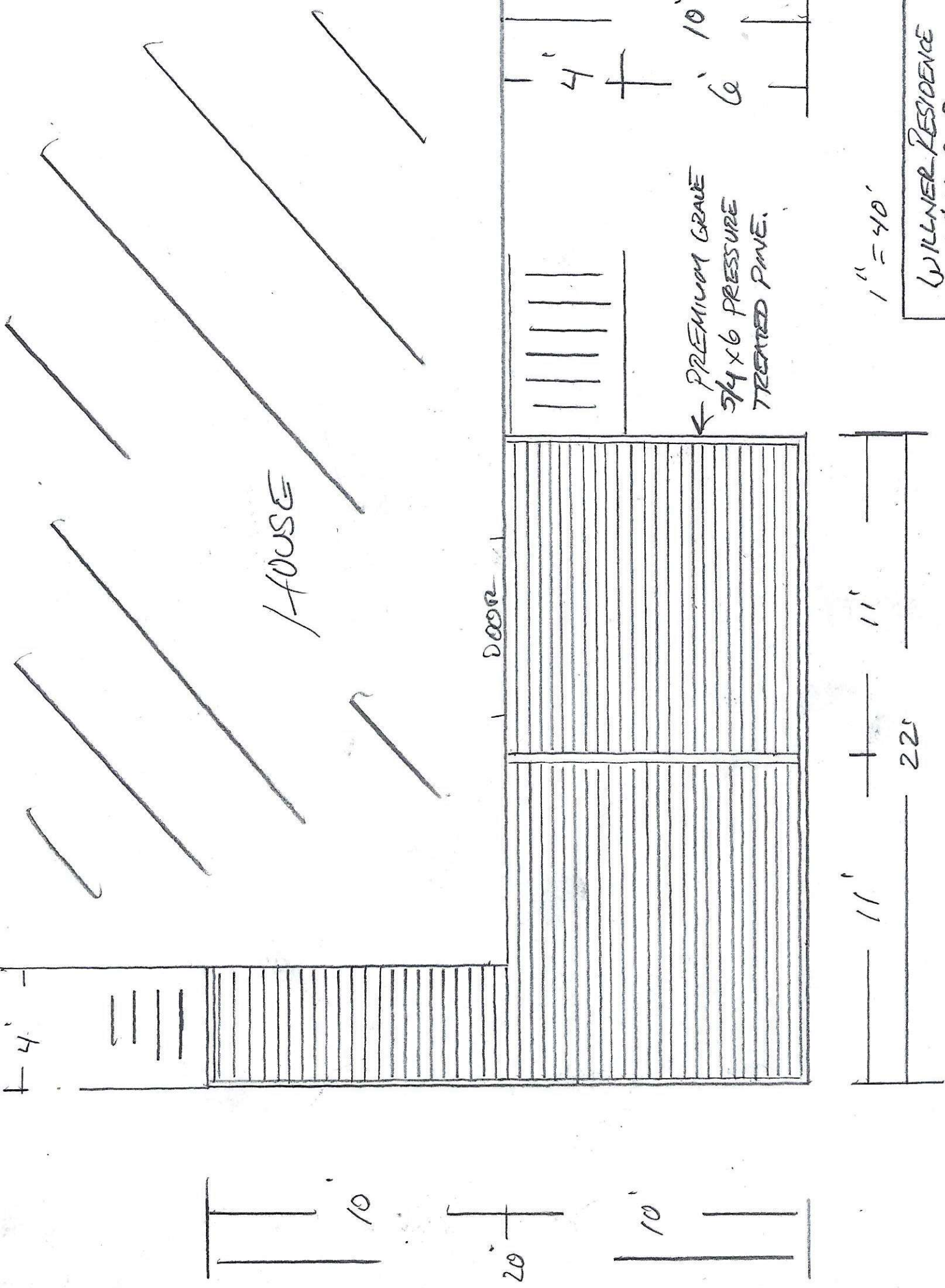
HOUSE



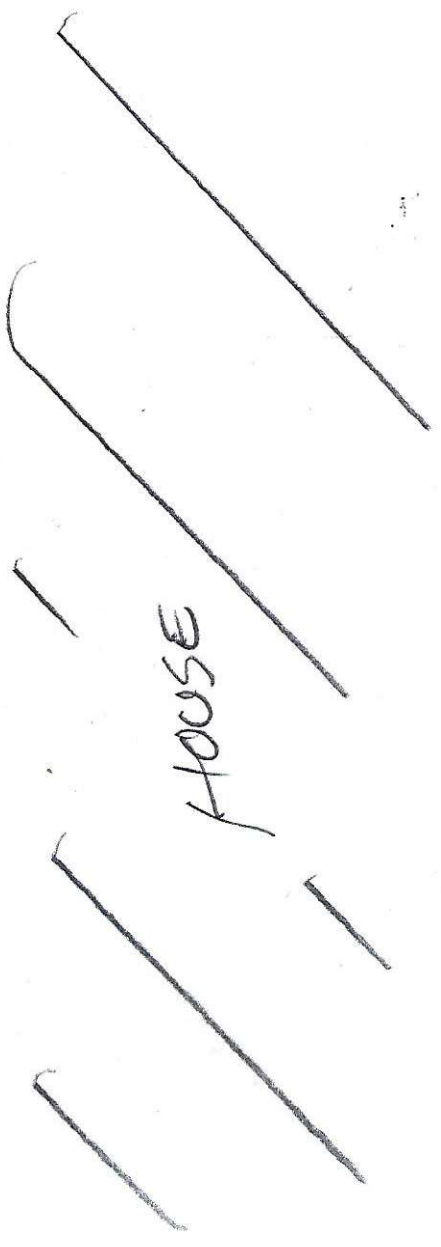
1" = 40'



WILLNER RESIDENCE
 682 HILLTOP RD
 ORCHARD BEACH MO. 21226



WILLNER RESIDENCE
 682 HILTOP RD.
 RICHARD BEACH, MD. 21226



HOUSE

2x6 TOP CAP

2x4 RUNNER

4x4 POST

2x4 RUNNER

2x10 JOISTS

(2) 2x10 BEAM

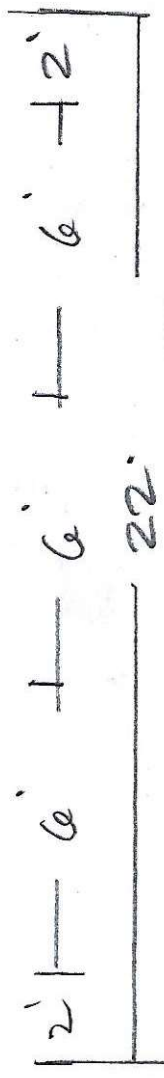
6x6 POSTS

NET PORED CONCRETE

3/4" MIN.

5'

30" MIN.



ALL MATERIAL TO BE #1 GRADE
PRESSURE TREATED PINE

WILLYER RESIDENCE
682 HILLTOP RD.
ORCHARD BEACH, MD. 21226

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 1998-0374-V

IN RE: NORMAN LUTKEFEDDER AND STEVEN R.A. INGATE

THIRD ASSESSMENT DISTRICT

DATE HEARD: DECEMBER 15, 1998

ORDERED BY: STEPHEN M. LeGENDRE, ADMINISTRATIVE HEARING OFFICER

ZONING ANALYST: PATRICIA A. MILEY

DATE FILED: JANUARY 6, 1999

PLEADINGS

Norman Lutkefedder and Steven R. A. Ingate, the applicants, seek a variance (1998-0374-V) to permit a dwelling with less setbacks and buffer than required on property located along the north side of Hilltop Road, east of Parkway Drive, Baltimore.

PUBLIC NOTIFICATION

The case was advertised in accordance with the provisions of the County Code. Mr. Lutkefedder testified that the property was posted for two weeks prior to the hearing.

FINDINGS AND CONCLUSIONS

The applicants own unimproved property with a street address of 682 Hilltop Road, in the subdivision of Clearwater Beach, Baltimore. The property comprises 6,046 square feet and is zoned R-5 residential with a Chesapeake Bay Critical Area designation as Intensely Development Area (IDA). This is a corner lot. The applicants propose to construct a 26' X 30' dwelling within 12 feet of nontidal wetlands; 20 feet from the front lot line; and 15 feet from the side street property line.

The Anne Arundel County Code, Article 28, Sections 1A-104(a)(1) establishes a minimum 25-foot buffer from nontidal wetlands. Sections 2-

506(a)(1) and (2) require a 25-foot front setback and a side building line 20 feet from and parallel to the side street line or right-of-way. Accordingly, the proposal necessitates a variance of 13 feet to the nontidal wetlands buffer; five feet to the front setback; and five feet to the side street setback.

Patricia A. Miley, a zoning analyst with the Department of Planning and Code Enforcement, testified that the property is below the standard for the district with respect to area and width. There is a County easement that runs diagonally through the rear of the property which roughly corresponds with the nontidal wetlands. These features in combination with the increased side setback imposed on a corner lot render the site unbuildable absent variance relief from the code. The witness considered the dwelling modest in size and sited to minimize the disturbance to the nontidal wetlands. She recommended approval of the application.

Mr. Lutkefedder submitted into the record project authorization from the Water Management Administration of the Maryland Department of the Environment. According to the witness, two lots (Lots 96 and 97) have been combined into a single site.

Robert Needy, the owner of the adjacent dwelling on the east side, testified in opposition to the request. Mr. Needy indicated that the proposed house location will be only 12 feet from a drainage ditch which carries up to three feet of water. He further commented that no other house in the block is within 20 feet of Hilltop

Road. He expressed concern related to increased traffic in an already congested area.¹

By way of rebuttal, Mr. Lutkefedder stated that the proposed dwelling, although smaller than others in the community, would maintain the same aesthetic appearance. According to the witness, the dwelling cannot be further from the street without encroachment into the drainage basin.

I visited the site and the neighborhood. This is a small wooded site. It is level near the road. The side street functions as a private drive. There are commercial properties to the west of the side street. There is a headwall for the outfall of a drainage pipe in the interior of the lot approximately 50 feet north of Hilltop Road. A pronounced drainage channel continues through the property to an inlet structure for a drainage pipe under Waterview Drive. The houses along this section of the north side of Hilltop Road maintain the minimum front setback.

The standards for granting variances are contained in Section 11-102.1. Under subsection (a), a zoning variance may be granted only after determining either (1) unique physical conditions, peculiar to the lot, such that there is no reasonable possibility of developing the lot in strict conformance with the code; or (2) exceptional circumstances such that the grant of a variance is necessary to avoid an unnecessary hardship, and to enable the applicants to develop the lot.

¹Mr. Needy also testified that when he acquired his property from the applicants, Mr. Ingate led him to believe that Lots 96 and 97 were unbuildable.

Under subsection (b), for a property in the Critical Area, a variance to the requirements of the County's Critical Area program may be granted if (1) due to features of the site, a strict implementation of the program would result in an unwarranted hardship; (2) a literal interpretation of the program will deprive the applicants of rights commonly enjoyed by other properties in similar areas within the Critical Area; (3) the granting of the variance will not confer on the applicants any special privilege that would be denied by the program to other lands within the Critical Area; (4) the request is not based on conditions resultant of actions by the applicants and does not arise from conditions relating to land use on neighboring property; and (5) the granting of the variance will not adversely affect water quality or adversely impact fish, wildlife or plant habitat within the Critical Area and will be in harmony with the general spirit and intent of the program. Under subsection (c), any variance must be the minimum necessary to afford relief; and its grant may not alter the essential character of the neighborhood, substantially impair the appropriate use or development of adjacent property, or be detrimental to the public welfare.

Upon review of the facts and circumstances, I find and conclude that the applicants are entitled to relief from the code. This is a legal lot. It is well settled that an unconstitutional taking occurs when a land use regulation denies "all economically beneficial or productive use of land." Lucas v. South Carolina Coastal Council, 505 U.S. 1003, 1015 (1992). See also, Steel v. Cape

Corporation, 111 Md. App. 1, 36 (1996), noting that the relief provisions protect the Critical Area regulations from constitutional challenge. In this case, due to the nontidal wetlands feature, a strict implementation of the program would result in an warranted hardship. That is, to literally interpret the program would deny the applicants the right commonly enjoyed by other properties in similar areas of the Critical Area in the County to be developed with a single-family residence.

Conversely, to grant the buffer variance does not confer any special privilege the program denies to other lands. The request does not result from actions by the applicants and does not arise from conditions on neighboring property. Finally, the granting of a conditional variance will not adversely affect water quality or adversely impact fish, wildlife or plant habitat and will be in harmony with the general spirit and intent of the program.

With respect to the zoning variances, the small area and width of the property, coupled with the County easement, constitute unique physical conditions such that there is no reasonable possibility of developing the lot in strict conformance with the code.

I further find that the applicant has minimized the critical area and zoning variances by proposing a small structure. The granting of the variances will not alter the essential character of the residential portion of the neighborhood.

Considering the separate aspects of this request, the variances to the wetlands buffer and the side street setback will have little impact on the appropriate use or

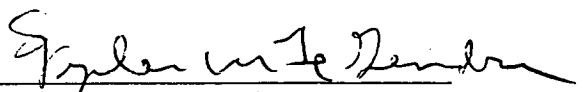
development of adjacent property. The variance to the front setback will have a greater impact, but will not substantially impair the appropriate use or development of adjacent property. Finally, the granting of the variance will not be detrimental to the public welfare. The approval shall be subject to the condition in the Order.

ORDER

PURSUANT to the application of Norman Lutkefedder and Steven R.A. Ingate, petitioning for a variance to permit a dwelling with less setbacks and buffer than required; and

PURSUANT to the advertising, posting of the property, and public hearing and in accordance with the provisions of law, it is this 6th day of January, 1999,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicants are granted variances of 13 feet to the nontidal wetlands buffer, 5 feet to the front setback and 5 feet to the side street setback to permit a 26' X 30' dwelling. The approval is subject to the condition that the applicants shall provide mitigation as required by the Maryland Department of the Environment.


Stephen M. LeGendre
Administrative Hearing Officer

NOTICE TO APPLICANT

Within thirty (30) days from the date of this Decision, any person, firm, corporation, or governmental agency having an interest therein and aggrieved thereby may file a Notice of Appeal with the County Board of Appeals.

Further, Section 11-102.2 of the Anne Arundel County Code states:

A variance granted under the provisions of this Article shall become void unless a building permit conforming to the plans for which the variance was granted is obtained within one year of the grant and construction is completed within two years of the grant.

If this case is not appealed, exhibits must be claimed within 60 days of the date of this order, otherwise they will be discarded.

**FINDING AND RECOMMENDATION
DEPARTMENT OF PLANNING AND CODE ENFORCEMENT
ANNE ARUNDEL COUNTY, MARYLAND**

APPLICANT:	Norman Lutkefedder Steven R. A. Ingate	ASSESSMENT DISTRICT:	Third
CASE NUMBER:	1998-0374-V	COUNCILMANIC DISTRICT:	Third
HEARING DATE:	December 15, 1998	PREPARED BY:	Patricia A. Miley Planner

REQUEST

The applicant is requesting a variance to permit a dwelling with less setbacks and buffer than required.

LOCATION AND DESCRIPTION OF SITE

The subject property consists of 6,250 square feet. It is located on the northeast corner of Hilltop Road and Parkway Drive. It is identified as Lot 96 and 97 on Plat 2 in the subdivision of Clearwater Beach. The site is also identified as Parcel 237 in Block 09 on Tax Map 11.

The property has been zoned R5-Residential since the adoption of comprehensive rezoning for the Northern Third Assessment District on September 11, 1989.

This is a nonwaterfront lot, which is located in the Chesapeake Bay Critical Area and is classified as Intensely Developed Area.

APPLICANT'S PROPOSAL

The applicant proposes to construct a 26' x 30' dwelling on a corner lot with less front and side street setbacks and less buffer from nontidal wetlands than required.

REQUESTED VARIANCE

Section 1A-104 (a)(1) of the Anne Arundel County Zoning Ordinance requires that there shall be a minimum 25 foot buffer from nontidal wetlands. The proposed dwelling is shown to be located 12 feet from the edge of the nontidal wetlands. This will necessitate a variance of 13 feet to the 25 foot Buffer requirements.

Section 2-506 (a) (1) of the Anne Arundel County Zoning Ordinance requires that each lot in an R5-Residential District shall have a front building line measuring at least 25 feet from and parallel to the front lot line. The applicant is proposing a front setback of 20 feet in lieu of the required 25 feet. This will necessitate a variance of five feet.

Additionally, Section 2-506 (a) (2) also requires that a corner lot shall have a side building line at least 20 feet from and parallel to the street right of way. In this case, the applicant has proposed the dwelling 15 feet from the side street property line. This will, also, necessitate a variance of five feet

FINDINGS

This Office finds that the subject property is nonconforming with respect to the lot size (7,000 square feet) and lot width (60 feet) requirements for a lot in an R5-Residential District. There is a utility easement that runs through the center of the property in a northerly direction. The site plan indicates the presence of nontidal wetlands within this easement area. It should be noted that the combination of the wetlands and their associated buffer, the easement area which is nonbuildable and the additional setbacks imposed by the side street all limit the development of this site without variance approval. The structure in question is very moderate in size and appears to be located in an area resulting in minimal disturbance to the nontidal wetlands.

The Critical Area Commission reviewed this request and deferred comment to the MD Department of the Environment.

RECOMMENDATION

Based upon the standards set forth in Section 11-102.1 under which a variance may be granted, this Office would recommend the following:

1. A variance of 15 feet to the 25 foot Buffer from nontidal wetlands be **granted;**
2. A variance of five feet to the 25 foot front setback be **granted;**
3. A variance of five feet to the 20 foot side street setback be **granted;**

CASE # 1498-0374
FEE PAID 150.00
DATE 10/14/98



ZONE R5 ALEX 971
200 MAP 117 1000 MAP _____
CRITICAL AREA:
IDA ___ LDA ___ RCA ___

VARIANCE APPLICATION

Applicant: NORMAN LUTKEFEDDER ← WATERVIEW DRIVE PARTNERSHIP, GP.
& STEVEN R. A. INGATE
(All persons having 10% or more interest in property)

Property Address: 682 HILLTOP ROAD CLEARWATER BEACH, PL 2

Property Location: 48.37 feet of frontage on the (n) s, e, w) side of
HILLTOP ROAD street, road, lane, etc.; 0 feet
(n, s, (e), w) of PARKWAY DRIVE street, road, lane, etc. (nearest intersecting street).
↳ A 200' LONG PRIVATE DRIVE

Tax Account Number 3205-3439-4250 Tax District 3 Council District 3

Waterfront Lot _____ Corner Lot X Deed Title Reference _____

Zoning of Property R-5 Lot # 96/97 Tax Map 11 Block 9 Parcel 237

Area (sq. ft. or acres) 6046 Subdivision Name CLEARWATER BEACH PL 2

A VARIANCE PERMIT ADWELLY WITH LESS SETBACKS & BUFFER
Description of Proposed Variance Requested (Explain in sufficient detail including distances from
property lines, heights of structures, size of structures, use, etc.) than required

(1) 20' INSTEAD OF 25' FRONT SETBACK FROM HILLTOP ROAD

(2) 15' INSTEAD OF 20' SIDE YARD SETBACK FROM PRIVATE PARKWAY DRIVE

(3) ABILITY TO USE 15' WIDE COUNTY EASEMENT AS PARKING PAD

(4) VARIANCE TO ALLOW SOME DISTURBANCE & BUILDING WITHIN 25' NON-TIDAL WETLAND
The applicant hereby certifies that he or she has a financial, contractual, or proprietary interest equal to or in
excess of 10 percent of the property; that he or she is authorized to make this application; that the information
shown on this application is correct; and that he or she will comply with all applicable regulations of Anne Arundel
County, Maryland.

Applicant's Signature [Signature]

Owner's Signature [Signature]

Print Name NORMAN LUTKEFEDDER

Print Name SAME

Street Number, Street, PO Box 1864 MILVALE ROAD

Street Number, Street, PO Box _____

City, State, Zip ANNAPOLIS, MD 21401

City, State, Zip _____

Home Phone 410-757-5018 Work Phone (SAME)

Home Phone _____ Work Phone _____

For Office Use Only

Application accepted by Anne Arundel County, Office of Planning and Zoning: 10/14/98

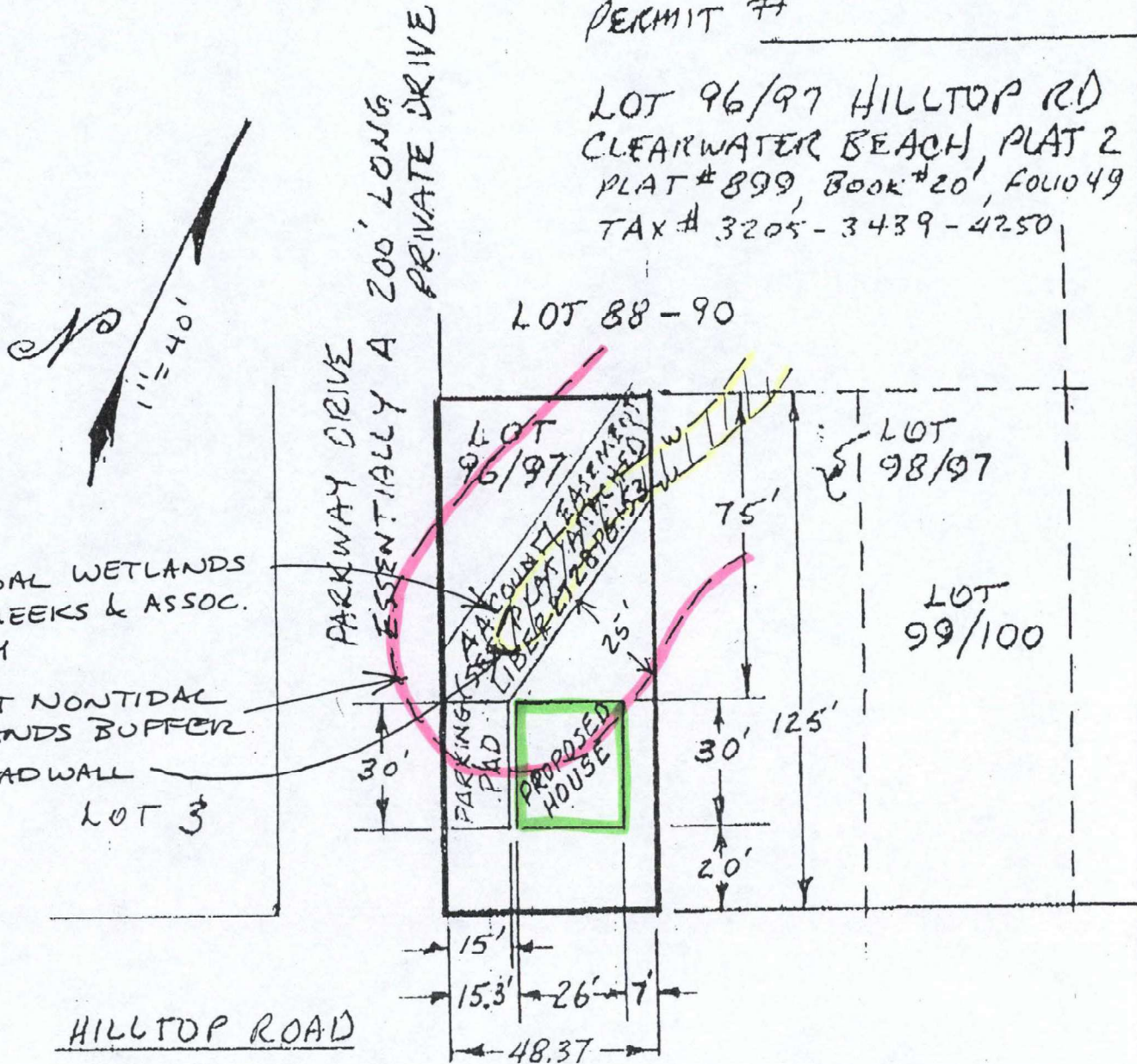
Signature [Signature]

Date _____

ANNE ARUNDEL COUNTY - PLOT PLAN

PERMIT # _____

LOT 96/97 HILLTOP RD
CLEARWATER BEACH, PLAT 2
PLAT # 899, BOOK # 20, FOLIO 49
TAX # 3205-3439-4250



CORNER LOT -- YES

[Signature]
 Applicant / Owner