

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 2007-0366-V

JOSEPH AND LUCILLE MULHERN

SECOND ASSESSMENT DISTRICT

**DATE HEARD: JANUARY 8, 2008
LAST EVIDENCE: MARCH 14, 2008**

ORDERED BY: STEPHEN M. LeGENDRE, ADMINISTRATIVE HEARING OFFICER

PLANNER: PATRICIA A. COTTER

DATE FILED: MARCH 17th, 2008

PLEADINGS

Joseph and Lucille Mulhern, the applicants, seek a variance (2007-0366-V) to allow a dwelling addition with less setbacks than required on property located along the north side of east Lake Drive, northwest of Mayo Avenue, Annapolis.

PUBLIC NOTIFICATION

The hearing notice was posted on the County's web site in accordance with the County Code. The file contains the certification of mailing to community associations and interested persons. Each person designated in the application as owning land that is located within 175 feet of the property was notified by mail, sent to the address furnished with the application. Mr. Mulhern testified that the property was posted on December 27, 2007. I find and conclude that there has been compliance with the notice requirements.

FINDINGS AND CONCLUSIONS

The applicants own a single-family residence with a street address of 134 East Lake Drive, in the Bay Ridge subdivision, Annapolis. The property comprises 19,021 square feet and is zoned R2 residential with a Chesapeake Bay Critical Area designation as Limited Development Area (LDA). This waterfront lot on Lake Ogleton is mapped as a buffer modification area. The applicants seek to renovate and expand the dwelling. The addition includes a side entry-garage

and a porch to be located as close as 9 feet from an unimproved right-of-way (Mayo Avenue).

Anne Arundel County Code, Article 18, Section 18-4-601 requires principal structures in the R2 district to maintain 20 feet from a corner side lot line. Accordingly, the proposal requires a variance of 11 feet.

Patricia A. Cotter, a planner with the Office of Planning and Zoning, testified that the property is long and narrow. The driveway serving the dwelling is located in the unimproved right-of-way, which appears to be owned by the Bay Ridge Community Association. The new construction is no closer to the right-of-way than a portion of the existing dwelling. The request is considered consistent with the character of the neighborhood and unlikely to impair the use or development of adjacent property. There were no adverse agency comments.¹ By way of conclusion, Ms. Cotter supported the application.

Mr. Mulhern testified that the dwelling, which was built in the early 1980's, needs renovating. The existing dwelling does not include a garage. The proposal is considered modest in scope and in keeping with the character of the neighborhood. The request is unobjectionable to the neighbors and is not opposed by the Board of Directors of the Bay Ridge Community Association. Mike Drum, the applicants' engineering consultant, testified that the property meets the impervious coverage allowance (5,060 square feet vs. 5,944 square feet) and there

¹ The Health Department requested plan approval.

would be minimal removal of vegetation. He opined that the variance standards are satisfied.

Area resident Beverly Jack sought and received clarification that the impervious coverage calculation includes the portions of the existing and proposed driveway within the boundaries of the property. As a condition of the approval, she requested the prior authorization from the Community Association for the expansion of the existing access in the right-of-way.

At this juncture, Mr. Mulhern indicated that a letter agreement with the Board of Directors is pending. Accordingly, the record was left open for its submission (Attachment A).

Upon review of the facts and circumstances, I find and conclude that the applicants are entitled to conditional relief from the code. This property satisfies the test of unique physical conditions, consisting of its long and narrow configuration and the location of the home, such that there is no reasonable possibility of development in strict conformance with the code. I further find that the variance represents the minimum relief. As indicated, the new construction follows the line of the existing dwelling. There was nothing to suggest that the granting of the variance would alter the essential character of the neighborhood, substantially impair the appropriate use or development of adjacent property, or cause a detriment to the public welfare. The approval is subject to the conditions in the Order.

ORDER

PURSUANT to the application of Joseph and Lucille Mulhern, petitioning for a variance to allow a dwelling addition with less setbacks than required, and

PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is this 17th day of March, 2008,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicants are **granted** a variance of 11 feet to the corner side setback to permit a dwelling addition in accordance with the site plan. The variance is subject to the following conditions:

1. The building permit is subject to the approval of the Health Department.
2. The approval incorporates the terms and conditions in Attachment A.

Stephen M. LeGendre
Stephen M. LeGendre
Administrative Hearing Officer

NOTICE TO APPLICANT

Within thirty 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 18-16-405(a) provides that a variance expires by operation of law unless the applicant obtains a building permit within eighteen months. Thereafter, the variance shall not expire so long as construction proceeds in accordance with the permit.

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

RK 19969 PG 020

DECLARATION

Attachment A

WHEREAS: Joseph J. Mulhern and Lucille L. Mulhern (collectively the "Mulherns") are the owners of the property located at 134 East Lake Drive, Lot 14 and p/o Lot 13, Bay Ridge, Annapolis, Maryland 21403; and

WHEREAS: the Mulherns have filed a Variance Application with Anne Arundel County for the purpose of constructing an attached garage, driveway and entry porch; and

WHEREAS: the proposed driveway will connect to the existing driveway that is currently located on an unimproved "paper road" right of way (also known as Mayo Avenue) to which Bay Ridge Civic Association ("BRCA") believes that it is the legal and equitable owner thereof;

NOW THEREFORE, in consideration of the mutual promises herein set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the parties agree as follows:

RECEIVED
RECORDED REC
hand for
hereby
80 119
10 2000

1. BRCA expressly permits the Mulherns to construct a paver style driveway into the right of way as is more fully described in the Variance Application.
2. The Mulherns agree that they shall maintain the improvement and this obligation shall be made known to and run to successors in interest to the Mulhern's property.
3. The Mulherns may enjoy nonexclusive use of the right of way and the improvements thereon.
4. The Mulherns expressly disclaim any ownership right, whether asserted or unasserted, now or in the future, to the right of way property and acknowledge BRCA's exclusive ownership claim thereto.
5. This Declaration must be communicated to the property successors and must be recorded among the land records for Anne Arundel County.

Joseph J. Mulhern

Date _____

Lucille I. Mulhem

Date

BAY RIDGE CIVIC ASSOCIATION
By Tom Stuckey
Tom Stuckey
President

Date 3/10/08

EX 19969 PG 021

STATE OF MARYLAND, COUNTY OF ANNE ARUNDEL, TO WIT:

I HEREBY CERTIFY, that on this 6th day of March, 2008, before me, the subscriber, a Notary Public of the State of Maryland, personally appeared **Joseph J. Mulhern**, to me known (or sufficiently proven to me) to be the individual described in, and who executed, the foregoing Declaration, and he thereupon acknowledged to me that he executed the same for the purposes therein contained and that it is his deliberate and voluntary act and deed.

AS WITNESS my hand and Notarial Seal.


NOTARY PUBLIC

My Commission Expires:

5-11-2011**STATE OF MARYLAND, COUNTY OF ANNE ARUNDEL, TO WIT:**

I HEREBY CERTIFY, that on this 6th day of March, 2008, before me, the subscriber, a Notary Public of the State of Maryland, personally appeared **Lucille L. Mulhern**, to me known (or sufficiently proven to me) to be the individual described in, and who executed, the foregoing Declaration, and she thereupon acknowledged to me that she executed the same for the purposes therein contained and that it is her deliberate and voluntary act and deed.

AS WITNESS my hand and Notarial Seal.


NOTARY PUBLIC

My Commission Expires:

5-11-2011

EX 19969 PG 022

STATE OF MARYLAND, COUNTY OF ANNE ARUNDEL, TO WIT:

I HEREBY CERTIFY, that on this 10th day of March, 2008, before me, the subscriber, a Notary Public of the State of Maryland, personally appeared **Tom Stuckey**, to me known (or sufficiently proven to me) to be the individual described in, and who executed, the foregoing General Power of Attorney, and he thereupon acknowledged to me that he executed the same for the purposes therein contained and that it is his deliberate and voluntary act and deed.

AS WITNESS my hand and Notarial Seal.


NOTARY PUBLICMy Commission Expires: 4/30/2008

Mr. Joseph Mulhern
134 E. Lake Dr.
Annapolis, MD 21403

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 2018-0123-V

RICHARD B. SCHWITZER AND KRISTIN H. SCHWITZER

SECOND ASSESSMENT DISTRICT

DATE HEARD: JULY 12, 2018

ORDERED BY:

JONATHAN A. HODGSON
ADMINISTRATIVE HEARING OFFICER

PLANNER: **ROBERT KONOWAL**

DATE FILED: **JULY 19, 2018**

PLEADINGS

Richard B. Schwitzer and Kristin H. Schwitzer, the applicants, seek a variance (2018-0123-V) to allow a dwelling addition (deck) that does not comply with the designated location of a principal structure on a waterfront lot on property located at 132 East Lake Drive, Annapolis, MD 21403.

PUBLIC NOTIFICATION

The hearing notice was posted on the County's website in accordance with the County Code. The file contains the certification of mailing to community associations and interested persons. Each person designated in the application as owning land that is located within 175 feet of the subject property was notified by mail, sent to the address furnished with the application. Roy Little, of Terrain, Inc., testified that the required signs were posted at least 14 days prior to the hearing and were still in place on the day of the hearing. Therefore, I find and conclude that there has been compliance with the notice requirements.

THE HEARING

A hearing was held on July 12, 2018, in which witnesses were sworn and the following evidence was presented with regard to the proposed variance requested by the applicants.

THE PROPERTY

The applicants own the subject property which has 38 feet of frontage on the north side of East Lake Drive, 0 feet northeast of Mayo Avenue, Annapolis. The site is shown on Lot 7 of Parcel 29 in Block 10 on Tax Map 57. The property

comprises 18,586 square feet and is zoned R2-Residential District. This property is designated in the Chesapeake Bay Critical Area as limited development area (LDA) and is also mapped in a buffer modification area (BMA).

The property is currently improved with a one-story single-family dwelling with walkout basement on the waterside of the dwelling. A pier is also located on the property. These lands are served by public sewer and private water.

THE PROPOSAL

The proposal calls for the construction of a 33' by 6' attached deck on the waterside (i.e. front) of the existing dwelling.

THE ANNE ARUNDEL COUNTY CODE

§ 18-2-402 regulates the location of a principal structure on a waterfront lot based on a number of criteria. Three of the criteria include 1) that the structure be relatively in line with structures on abutting lots, 2) the relative necessity of the structure and 3) the protection of on-site environmental features. In this regard, it has been determined that the proposed deck is not relatively in line with structures on abutting lots. A variance is required to allow the proposed deck as shown on the attached site plan.

THE HEARING RECORD

Recommendation of the Office of Planning and Zoning (OPZ)

Robert Konowal, a zoning analyst with the OPZ, presented the following findings and recommendations:

- OPZ finds that the subject property meets the minimum lot area requirement for the R2 district but is undersized with respect to the minimum lot width required (80 feet required, 42 feet provided). More importantly, compliance with the code is hampered by the location of existing construction (c. 1978) that predates the introduction of critical area law. A front attached amenity area is a common feature of waterfront properties and denial would cause hardship in the use of these lands.
- The six-foot deep deck is very modest in size and is essentially a balcony providing for only very limited seating.
- The variance requested is considered to be the minimum necessary to afford relief.
- The variance request will not reduce forest cover in the LDA that would be contrary to acceptable clearing and replanting practices, nor will it be detrimental to the public welfare.
- Approval of the variance will not alter the essential character of the neighborhood as the improvement is uncovered and will not be visible when viewed from the dwellings of abutting properties.
- Approval of the variance would not negatively impact the use of any adjacent property as the improvement is located well enough away from dwellings on abutting properties so as to have no effect on the use or enjoyment of their lands.
- The Department of Health indicated that they do not have an approved plan for this project but would have no objection to the request provided a plan is submitted to and approved by the Health Department.
- With regard to the standards by which a variance may be granted as set forth under § 18-16-305, OPZ recommends *approval*.

Testimony and Exhibits

Kristin Schwitzer endorsed and adopted the contents and findings contained in the OPZ findings and recommendations. Specifically, Ms. Schwitzer, with the assistance of Mr. Little, the applicants' engineer, asserted that the subject property meets the minimum lot area requirement for the R2 district but is undersized with respect to the minimum lot width required (80 feet required, 42 feet provided). They claim that compliance with the code is hampered by the location of existing construction (c. 1978) that predates the introduction of critical area law. A front attached amenity area is a common feature of waterfront properties and denial would cause hardship in the use of these lands.

There was no other testimony taken or exhibits received in the matter. The Hearing Officer did not visit the property.

FINDINGS AND CONCLUSION

Upon review of the facts and circumstances, I find and conclude that the applicants are entitled to relief from the code. The evidence shows that, because of the unique physical constraints of the subject property, the applicants cannot construct the proposed deck without the requested variance. I further find that the granting of a zoning variance will not alter the essential character of the neighborhood or district in which the lot is located, substantially impair the appropriate use or development of adjacent property, reduce forest cover in the limited development and resource conservation areas of the critical area, be

contrary to acceptable clearing and replanting practices required for development in the critical area, or be detrimental to the public welfare.

ORDER

PURSUANT to the application of Richard B. Schwitzer and Kristin H. Schwitzer, petitioning for a variance to allow a dwelling addition (deck) that does not comply with the designated location of a principal structure on a waterfront lot;

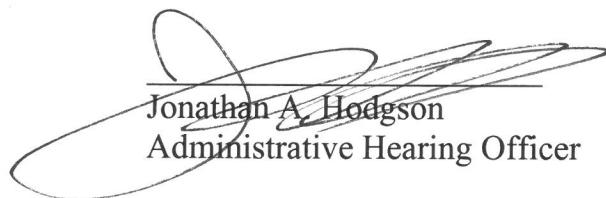
PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is this **19th day of July, 2018**,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicants are **granted** a zoning variance to § 18-2-402 to allow a 33' by 6' deck that will not be relatively in line with the location of structures on abutting lots in accordance with County Exhibit 2.

The foregoing variance is subject to the condition that the applicants shall comply with any instructions and necessary approvals from the Office of Planning and Zoning, the Department of Inspections and Permits, the Department of Health, and/or the Critical Area Commission.

This Order does not constitute a building permit. In order for the applicants to construct the structures permitted in this decision, they must apply for and obtain the necessary building permits, along with any other approvals required to perform the work described herein.

Furthermore, County Exhibit 2, referenced in this decision, is incorporated herein as if fully set forth and made a part of this Order. The proposed improvements shown on County Exhibit 2 shall be constructed on the subject property in the locations shown therein. The decision and order shall not prohibit the applicants from making minor changes to the facilities as presently shown on County Exhibit 2 to adjust for changes made necessary by comments or requirements that arise during plan review or construction, provided those minor changes do not exceed the variance granted herein. The reasonableness of any such change shall be determined by the Office of Planning and Zoning.



Jonathan A. Hodgson
Administrative Hearing Officer

NOTICE TO APPLICANTS

Within thirty 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, § 18-16-405(a) provides that a variance or special exception that is not extended or tolled expires by operation of law unless the applicants within 18 months of the granting of the variance or special exception (1) obtains a building permit or (2) files an application for subdivision. Thereafter, the variance or special exception shall not expire so long as (1) construction proceeds in accordance with the permit or (2) a record plat is recorded among the land records pursuant to the application for subdivision, the applicants obtains a building permit within one year after recordation of the plat, and construction proceeds in accordance with the permit.

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

CO. EXHIBIT#:
CASE: 2018-0123-V
DATE: 7/12/18

N/F
MACEY, JR. GROVER E. & HARRIET W.
130 EAST LAKE DRIVE, 21403
LIBER 3677, FOLIO 638
T.M. 57, GRID '0, PARCEL 29
T.A.# 2-047-00167977

OGLETON
LAKE
PIER

LINE	BEARING	DISTANCE
L1	N 78°33'51" E	19.49'
L2	N 74°26'23" E	18.02'
L3	N 66°19'12" E	12.61'
L4	N 65°32'09" E	23.79'
L5	N 65°29'54" E	7.99'
L6	S 27°58'12" E	4.20'
L7	N 65°02'35" E	1.27'

CURVE	ARC LENGTH	RADIUS	DELTA ANGLE	CHORD BEARING	CHORD LENGTH
C1	38.00'	770.00'	2°49'40"	S 55°17'00" W	38.00'

EXISTING AREA TABULATIONS

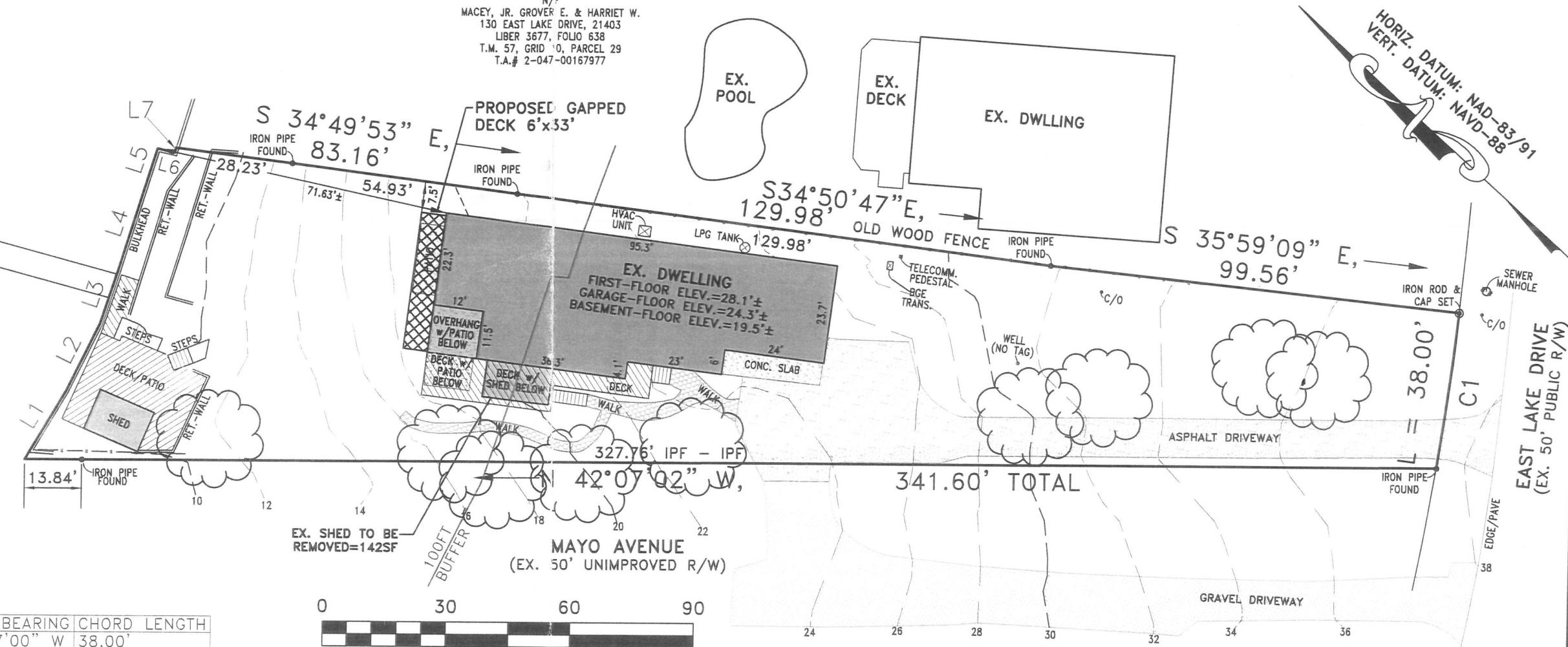
EX. STRUCTURE & ATTACHED OVERHANG = 2,883 sq.ft.±
EX. SHEDS = 288 sq.ft.±
EX. DRIVEWAY = 2,421 sq.ft.±
EX. PATIOS = 693 sq.ft.±
EX. WALKWAYS = 467 sq.ft.±
EX. TOTAL IMPERVIOUS IMPERVIOUS = 6,752 sq.ft.±
TOTAL LOT AREA = 18,586 sq.ft.±
TOTAL MAXIMUM IMPERVIOUS SURFACE ALLOWED (PER CODE) = 5,808 sq.ft.±
*TOTAL MAXIMUM IMPERVIOUS SURFACE ALLOWED (w/REDUCTION) = 6,658 sq.ft.±
EX. WOODLANDS = 2,473 sq.ft.±
**NO NEW PROP. LC
TOTAL LOT COVERAGE = 6,610 sq.ft.±
*(LOT COVERAGE REDUCTION)
6,752 - 5,808 = 944 x 10% = 94
6,752 - 94 = 6,658 s.f.
REMOVE SHED UNDERNEATH EX. DECK = 142 SF

EX.
SHED

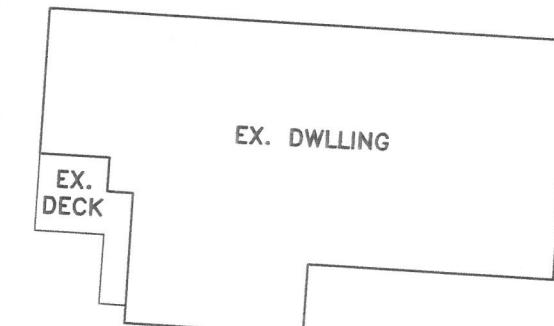
TERRAIN INC.

CIVIL ENGINEERING & SURVEY COMPANY
106 OLD SOLOMONS ISLAND ROAD
ANNAPOLIS, MD 21401
PHN: (410) 266-1160
FAX: (410) 266-6129

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N/F
MULHERN, JOSEPH J. & LUCILLE L.
134 EAST LAKE DRIVE, 21403
LIBER 12834, FOLIO 673
T.M. 57, GRID 10, PARCEL 29
T.A.# 2-047-02066400



VARIANCE PLAN

132 EAST LAKE DRIVE, 21403

LOT 7

BAY RIDGE

DEED: Liber 23340, Folio 440
PLAT RECORDED in Liber 2436, Folio 181
TAX MAP 57 GRID 10 PARCEL 29
SECOND TAX DISTRICT
ANNE ARUNDEL COUNTY, MARYLAND
SCALE: 1"=30' MAY 2018
DRAWN BY: D.J.B CHECKED BY: R.C.L.

JOB No. 2741-1.DWG