

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

**APPLICANT:** Timothy & Jessica Everett

**ASSESSMENT DISTRICT:** 3rd

**CASE NUMBER:** 2023-0204-V

**COUNCILMANIC DISTRICT:** 3rd

**HEARING DATE:** February 6, 2024

**PREPARED BY:** Jennifer Lechner  
Planner II

**REQUEST**



The applicants are requesting a variance to perfect an accessory structure (shed) with less setbacks than required and with new lot coverage nearer to the shoreline of the existing principal structure in a buffer modified area on property located at 377 Valley Stream Road in Severna Park.

**LOCATION AND DESCRIPTION OF SITE**

The subject site consists of 14,750 square feet of land and is located with approximately 50 feet of road frontage on the south side of Valley Stream Road, 200 feet west of Dunmoen Road. The property is identified as Lot 72 of Parcel 339 in Block 14 on Tax Map 24 in the Riverdale subdivision.

The property is zoned R2 – Residential District, as adopted by the comprehensive zoning for Council District 3, effective January 29, 2012. This waterfront site lies entirely within the Chesapeake Bay Critical Area, is designated LDA – Limited Developed Area, and is mapped as a BMA – Buffer Modification Area. It is currently improved with a two-story dwelling with a basement, detached garage, the subject shed, pier, and associated facilities.

**PROPOSAL**

The applicants are proposing to perfect the construction of a 10' x 15' kayak storage shed with a roof deck.

**REQUESTED VARIANCES**

§ 18-4-601 of the Anne Arundel County Zoning Ordinance provides that the minimum setbacks for accessory structures in an R2 District is 40 feet from the front lot line<sup>1</sup>, and 7 feet from the side and rear lot lines. The shed is as close as 26 feet from the mean high water line, necessitating a variance of 14 feet.

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<sup>1</sup> Per § 18-1-101(78) "Lot line, front" means the boundary of a lot that abuts the road right-of-way or, for a waterfront lot, the mean high-water line.

§ 17-8-702(b)(1) provides that, in a BMA - Buffer Modification Area, no new lot coverage shall be placed nearer to the shoreline than the closest facade of the existing principal structure. The 10' x 15' shed created 150 square feet of new lot coverage nearer to the shoreline than the principal structure, necessitating a variance.

§ 17-8-201(a) provides that development in the limited development area (LDA) may not occur within slopes of 15% or greater unless development will facilitate stabilization of the slope; is to allow connection to a public utility; or is to provide direct access to the shoreline; and, all disturbance shall be limited to the minimum necessary. Excavation to construct the shed with a rooftop deck disturbed approximately 1,600 square feet of slopes of 15% or greater, necessitating a variance. The final amount of disturbance will be determined during permit review.

## **FINDINGS**

The subject property is rectangular in shape and is undersized at 14,750 square feet in area and 50 feet in width, with regard to the 20,000 square foot minimum area required for new lots not served by public sewer, and to the minimum width of 80 feet, in an R2 District. The property is encumbered by steep slopes along the waterfront. The current Critical Area lot coverage of the site (including the subject shed) is 2,633<sup>2</sup> square feet which is below the lot coverage allowed under §17-8-402 (31.25% or 4,609.375 square feet).

No structure is visible in the area of the subject shed in the County's aerial photography as far back as 1995, until 2006 when there appears to be the crumbled remains of walls in the area of the newly constructed shed.

Undated photographs submitted under pre-file 2023-0036-P show, in the area of the subject shed, rubble walls, a shade structure, and then the subject shed with a rooftop deck.

Photographs available under violation case B-2023-0220 show the shoreline of the subject property from 2015 to 2023. A previously existing structure is not visible in the location of the subject shed until 2018 and 2019, when a shade structure had been installed. A permit for the shade structure was not found. Photos from 2023 show the excavation of the area of the subject shed and progress of construction, as taken from the opposite bank of the creek, and the County Inspector dated evidence photos.

An existing concrete slab cannot be verified in any of the aforementioned photographs.

The variance request is the result of violation case B-2023-0220 for an out of scope complaint against building permit B02400416. The building permit had been issued on February 19, 2023 to demo the existing garage and construct a new garage with a carport, and to replace in kind a 10' x 15' shed. During the course of construction, County inspectors determined that the shed

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<sup>2</sup> Noted lot coverage is per the Critical Area documents submitted with the variance application. However, as measured using the County's GIS mapping system, the existing coverage, as of February 2023, is approx. 3,500 sq ft (not including the 150 sq ft subject shed), which is still below the allowable Critical Area lot coverage.

was not an in-kind replacement<sup>3</sup>, and the permit was revoked on June 29, 2023. Because a variance is required, approval must be obtained prior to the building permit being reissued.

The applicants' letter explains that they had hired a permit expeditor to apply for a permit, and were advised that because there was a concrete slab, the shed could be considered a replacement in kind. The applicants state that the approval agencies reviewing the permit did not inform them otherwise, and the permit was issued. The applicant further explains that after construction, the County received a complaint and determined that the shed was not a replacement in kind.

### Agency Comments

The **Health Department** has determined that the proposed request does not adversely affect the on-site sewage disposal system, and has no objection to the above referenced request.

The **Development Division (Critical Area Team)** commented that it is difficult to make a determination based on the information provided. It is clear that the shed constructed was not an in kind replacement of the existing structure. It cannot be determined if there is or was an existing slab of concrete under the tent which is being used as justification for the location of the new shed. If it cannot be demonstrated that the slab was existing this Section cannot support this variance request. If there was an existing slab we would not have an objection provided the footprint of the new structure is no larger than the existing slab. Mitigation shall be required at a rate of 3:1 for any additional disturbed area that requires a variance. Mitigation shall be maximized within the 100 foot buffer.

The **Critical Area Commission** finds that the variance request fails to meet the variance standards and opposes the variance request. Their Office states that allowing the applicant to retain an unpermitted<sup>4</sup> accessory structure in the Buffer when there is a clear opportunity to relocate the accessory structure outside of the Buffer does not meet the standard of unwarranted hardship, as the applicant already has reasonable and significant use of the lot with the existing house and associated development. In fact, their office does not consider, and has not previously considered, accessory structures such as a storage shed with a rooftop deck in the Buffer to meet the standard of unwarranted hardship, as it is not within the limits of reasonable and significant use of the lot. Therefore, denying this variance request would not result in an unwarranted hardship.

Denying the request to retain the unpermitted accessory structure in the Critical Area Buffer when there is opportunity to relocate it outside of the Buffer is not depriving the applicant of a use that would be permitted to others under the local Critical Area program as no individual has the right to construct an accessory structure within the Buffer closer to the shoreline than the primary structure in the BMA. Therefore, denial of this variance would not deprive the applicant

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<sup>3</sup> Per § 17-1-101(60), "In-kind replacement" means the removal of a permanent structure and the construction of another permanent structure in the same location that is smaller than or identical to the original structure in use, footprint, area, height, width and length.

<sup>4</sup> Although identified as "unpermitted" throughout the Critical Area Commission comments, the accessory structure is actually out-of-scope of the issued permit.

of a right commonly enjoyed by other properties in similar areas within the Critical Area in Anne Arundel County.

Their Office believes that the granting of this variance would absolutely confer a special privilege upon the applicant. The Anne Arundel County Code and the Critical Area regulations place strict limits on disturbance to the Critical Area Buffer in order to meet the goals of the Critical Area law. Approval of this variance would grant the applicant a special privilege that would be denied others within the Critical Area, as no individual is permitted to construct an accessory structure within the Buffer when there is room to do so outside of the Buffer. This office has previously opposed similar variance requests from others; therefore, granting this applicant's request would confer upon the applicant a special privilege denied to others.

Their Office further states that this request is unequivocally the result of actions caused by the applicant, including the commencement of unpermitted development that resulted in lot coverage located in the Buffer. The County's Inspections and Permits Division cited this property for the unpermitted construction of the accessory structure, noting that it was outside of the scope of work authorized under the permit the County issued to allow for minor improvements on the garage and dwelling. Additionally, the County does not consider the previous tent to be a structure (legally nonconforming or otherwise) that could be used as a basis to justify the unpermitted construction of a kayak storage shed with rooftop deck in the Buffer. While the previous property owners may have put up a tent in front of an unstable slope, the applicant could have removed the tent and stabilized the slope with nonstructural methods approved by the County and in compliance with COMAR. The applicant willfully proceeded of their own accord without proper permits and constructed the accessory structure in the Buffer, showing complete disregard for the requirements and Critical Area law.

The Critical Area law and regulations are designed to foster more sensitive development for shoreline areas to minimize damage to water quality and habitat. The unpermitted storage shed with rooftop deck within the Buffer increases runoff, which carries with it pollutants that will negatively impact the water quality of Old Man Creek, a tributary to the Magothy River and Chesapeake Bay. The unpermitted lot coverage hinders the ability for vegetation to grow in the Buffer which adversely impacts habitat and water quality benefits as the unpermitted accessory structure will exacerbate runoff and stormwater pollutants from the top of the slope into the creek.

Ecologically sensitive areas such as the Critical Area Buffer within the LDA are purposefully protected within the Critical Area regulations and the County's Critical Area program because of their importance in meeting the goals of the Critical Area law. The goals of the Critical Area law are to (1) minimize adverse impacts on water quality that result from development, (2) conserve fish, wildlife, and plant habitat, and (3) establish land use policies that accommodate development while recognizing that development adversely affects the first two goals. Granting a variance to allow for the retention of an unpermitted accessory structure within Critical Area Buffer that results in increased runoff into Old Man Creek when there is an opportunity to relocate the unpermitted structure outside of the Buffer would not be in harmony with the spirit and intent of the Critical Area law and would be contrary to the goals of the Critical Area law.

Their Office concludes by stating that, in requesting a variance, the applicant bears the burden of demonstrating that each and every one of the variance standards have been met, including the standard of unwarranted hardship. The applicant has failed to meet six of the seven variance standards as described above; therefore, their Office opposes this variance.

### Variance Requirements

For the granting of a Critical Area variance, a determination must be made as to whether, because of certain unique physical conditions peculiar to and inherent in the particular property, strict implementation of the County's Critical Area Program would result in an unwarranted hardship preventing development of the lot. COMAR defines unwarranted hardship as that, without a variance, an applicant shall be denied reasonable and significant use of the entire parcel or lot for which the variance is requested.

There is nothing unique about the subject property as it relates to other nearby residential lots with similar zoning and environmental features; and, there are no unique circumstances preventing the applicant from complying with the Code.

In this particular case, the existing house, decks, garage, and associated improvements provide the applicants with reasonable and significant use of the property. A literal interpretation of the County's Critical Area program will not deprive the applicant of rights that are commonly enjoyed by other properties in similar areas within the Critical Area of the County because no property in the BMA may place new lot coverage nearer to the shoreline than the closest facade of the existing principal structure. As such, the granting of the variance will confer on the applicant special privileges that would be denied by COMAR, Title 27.

The variance request is based on conditions or circumstances that are the result of actions by the applicant, including the commencement of development before an application for a variance was filed, and does not arise from any condition relating to land or building use on any neighboring property.

The granting of a variance will adversely affect water quality and adversely impact fish, wildlife, and plant habitat within the County's critical area. The proposal will not be in harmony with the general spirit and intent of the County's critical area program.

The applicants have not overcome the presumption that the specific development does not conform to the general purpose and intent of the Critical Area law, nor have they evaluated and implemented site planning alternatives.

Although the existence of a structure of some kind can be presumed, based on the rubble walls, there is no evidence to indicate what type of structure it was, whether it was a retaining wall or a shed, nor whether there was a concrete pad. Whatever may have existed had long ago fallen into disrepair. The existence or condition of any possible remaining concrete pad cannot be confirmed in any available photography. It is possible that one had existed, but, like the rubble walls, had deteriorated over the past 28+ years. Therefore, the subject shed is considered new lot coverage. Allowing new lot coverage within the Buffer Modification Area would undermine the Critical

Area laws which were enacted to protect environmentally sensitive areas of the Chesapeake Bay.

An error made at the time of permitting, based on misrepresented information provided on the site plan<sup>5</sup>, is unfortunate, but does not justify the variance. Because the applicants already enjoy reasonable and significant use of the property, other storage alternatives exist on the property, and no property within the BMA may add new lot coverage nearer to the shoreline than the closest facade of the principal structure, the requested variances are not considered the minimum necessary to afford relief, nor have they met the requirements of a variance.

The granting of the variances will alter the essential character of the neighborhood in which the property is located, may substantially impair the appropriate use or development of adjacent property, will reduce forest cover in the limited development area of the critical area, will be contrary to acceptable clearing and replanting practices required for development in the critical area, and may be detrimental to the public welfare. As such, this Office cannot support the variance requests.

### **RECOMMENDATION**

Based upon the standards set forth in § 18-16-305 of the Code under which a variance may be granted, this Office recommends ***denial*** of a zoning variance to § 18-4-601 to allow an accessory structure as close as 26 feet from the front property line, ***denial*** of a Critical Area variance to §17-8-702(b)(1) to allow new lot coverage nearer to the shoreline than the principal structure, and ***denial*** of a Critical Area variance to § 17-8-201(a) to allow disturbance within slopes of 15% or greater in the LDA. If granted, the amount of disturbance will be determined at permitting.

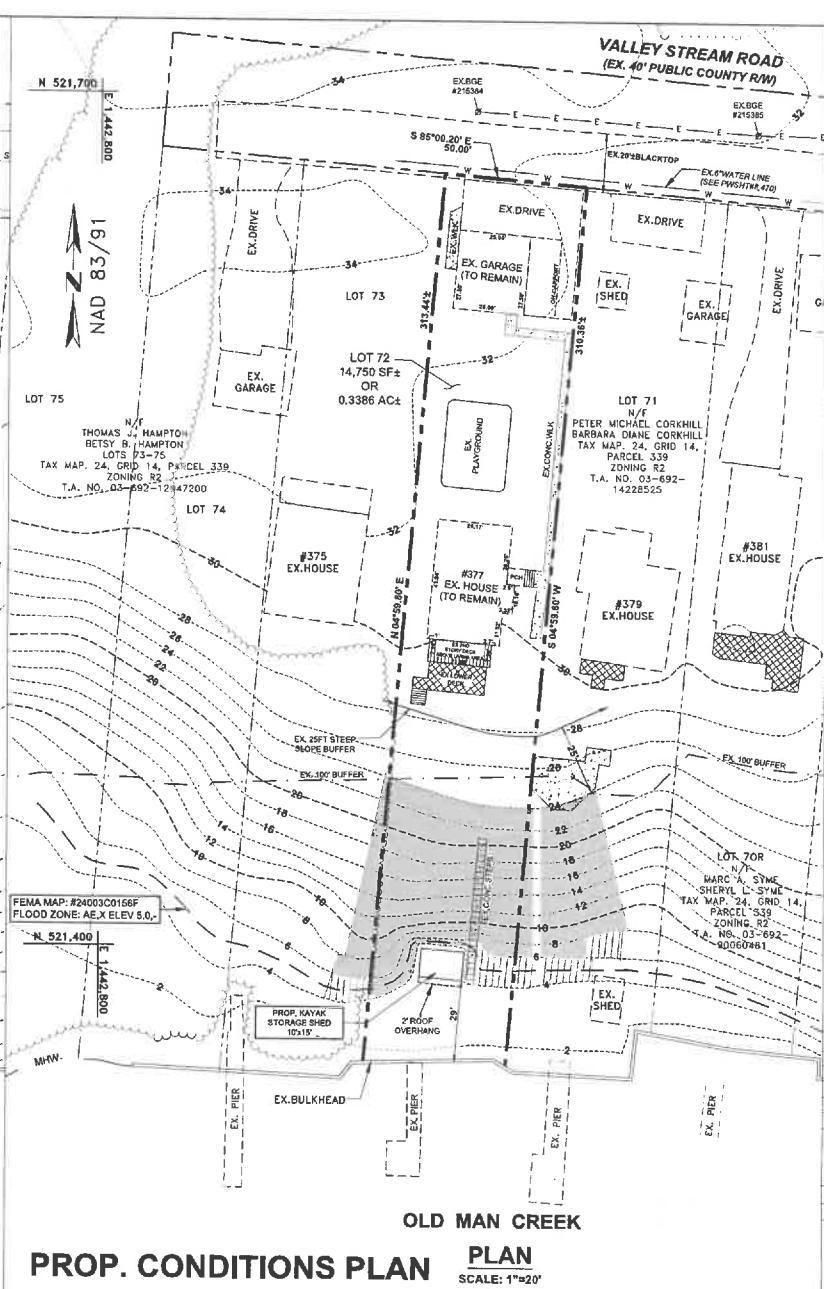
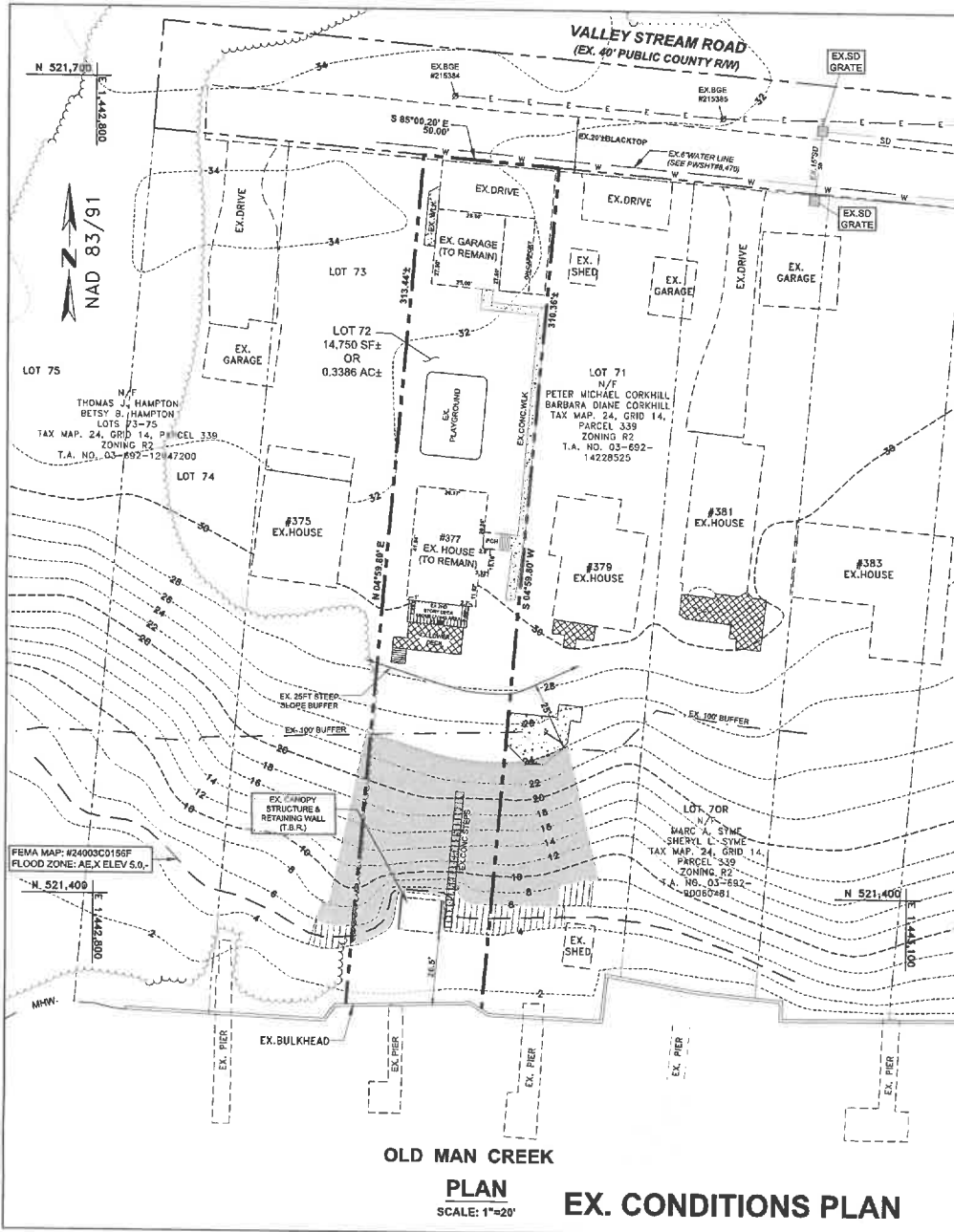
If the Variance is granted it shall be conditioned on the applicant completing the following within 90 days of the date of decision, as applicable:

- (i) obtaining an approved mitigation or restoration plan;
- (ii) completing the abatement measures in accordance with the County critical area program; and
- (iii) paying any civil fines assessed and finally adjudicated.

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.

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<sup>5</sup> The site plan for B02400416 indicates a “replace in kind damaged 10’x 15’ storage building” with “all footers dug by hand” and “all supplies to be wheel borrowed to site no machinery”.



**OWNERS**  
 THOMAS J. HAMPTON  
 BESSIE C. EVERETT  
 377 VALLEY STREAM ROAD  
 SEVERNA PARK, MD 21144

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**GRADING PLAN AND SEDIMENT EROSION CONTROL PLAN**  
 RIVERDALE ON HAGOWAY  
 PB. 15, PG. 25, PLAT B-175  
 377 VALLEY STREAM ROAD  
 LOT 72, LOT 73  
 SEVERNA PARK, MD 21144

TAX MAP: 24  
 GRID: 11  
 PARCEL: 339  
 TAX ACCT#95-483-2567312  
 180 T&L DISTRICT  
 A.A. COUNTY, MARYLAND

**ADSG**  
 ATLANTIC DESIGN GROUP, LLC  
 SERVICES GROUP, LLC

REVISION BLOCK

SHEET TITLE:  
**SITE PLAN**

DATE: AUGUST, 2023  
 SCALE: AS SHOWN  
 SHEET NUMBER:  
**1 of 1**



**Atlantic Development Services Group, LLC**  
P.O. Box 567  
Crownsville, Maryland 21032-1218

Anne Arundel County  
Office of Planning and Zoning  
2664 Riva Road  
Annapolis, Maryland 21401

RE: Variance - Everett Property Tax Acct. 3692-2266-7312  
377 Valley Stream Dr.  
Severna Park, Md. 21146

Dear Sir or Madam:

We are applying for a variance to allow for the construction of a 10'X15' shed within the 100 ft buffer. . The lot is located in the Riverdale subdivision and is in critical area. The lot is 14,750 square feet , zoned R-2 with a LDA critical area designation and is buffer modified. The house constructed in 1950, is a two story structure on a basement. There has been changes to the lot over the years and there is a recently constructed garage where a smaller one existed. The two car garage was constructed under permit # B02400416. This permit was issued September 13,2021 and at that time included the 10x15 shed, The shed was completed with a footer inspection in place with the final inspection with held due to the question of the validity of the shed inclusion to the permit.After construction the county department of inspections and permits received a compliant and investigated. The date according to the code compliance site inspection report was 5/12/23. Subsequent to that date a note was added that the shed was not a replacement in kind and then the shed was removed from that permit. The shed part of the permit was deemed not a "replacement in kind then required the owner to obtain a building permit for the shed. The compliant was B-2023-220 issued by Inspector Kessler with the Code Compliance division. The owner had hired a permit expeditor to apply for his permits and he was told that the fact there was a concrete slab that the shed could be considered a replacement in kind. Mr. Everett was not given any indication by the permit expeditor, the county inspectors or all reviews performed that it wasn't. This is to say that while it is considered a violation,the approval agencies that looked at and reviewed the project did not at anytime inform him that this was the case. We have attached a photo of the property when it was for sale and how that area was presented. The main reason for the shed was to store his kayaks, and stablize the slope.Upon review of this project it was apparent that at minimum a variance would be needed. If the client prevails and is granted a variance then a building permit will be applied for and pursued to

Phone 443-871-3340 Email [Damon@adsgonline.com](mailto:Damon@adsgonline.com)



issuance. The shed already constructed is appox. 37' from the bulkhead. Constructed according to the approved plans and is basically completed(see photos) Should you have any questions please feel free to contact me. Thank you ,Damon Cogar



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: 11-8-23

Tax Map #	Parcel #	Block #	Lot #	Section
24	339		72	

**FOR RESUBMITTAL ONLY**

Corrections

Redesign

No Change

Non-Critical Area

\*Complete Only Page 1  
General Project Information

Tax ID: 3692 2266 7312

Project Name (site name, subdivision name, or other)		EVERETT PROPERTY	
Project location/Address		377 VALLEY STREAM RD.	
City	SEVERNA PARK	MD.	Zip 21146
Local case number			
Applicant: Last name	EVERETT	First name	TIMOTHY
Company			

**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:

**RESIDENTIAL -**

Intra-Family Transfer	<input type="checkbox"/>	Yes	Growth Allocation	<input type="checkbox"/>	Yes
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
IDA Area		
LDA Area		14,750
RCA Area		
Total Area		14,750

Total Disturbed Area 

Acres	
Sq Ft	170

# of Lots Created

	Acres	Sq Ft		Acres	Sq Ft
Existing Forest/Woodland/Trees		2200	Existing Lot Coverage		2633
Created Forest/Woodland/Trees			New Lot Coverage		
Removed Forest/Woodland/Trees			Removed Lot Coverage		
			Total Lot Coverage		2633

**VARIANCE INFORMATION (Check all that apply)**

	Acres	Sq Ft		Acres	Sq Ft
Buffer Disturbance		170	Buffer Forest Clearing		0
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 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 checked="" type="checkbox"/>	Patio	<input type="checkbox"/>
Other	<input type="checkbox"/>	Pool	<input type="checkbox"/>
		Shed	<input checked="" type="checkbox"/>
		Other	<input type="checkbox"/>



**Atlantic Development Services Group**  
P.O. Box 567  
Crownsville, Maryland 21032-1218

## **CHESAPEAKE BAY CRITICAL AREA REPORT**

Everett Property  
377 Valley Stream Rd.  
Severna Park, Md. 21146

Tax Map 24; Grid 14; Parcel 0339  
Anne Arundel County Zoning :R-2 Critical Area Designation: LDA

### **Purpose of Variances**

The applicant owns a 14,750 sq. ft. lot in the Riverdale subdivision in Severna Park. The entire property is located within the Chesapeake Bay Critical Area (is waterfront) and has an LDA land use designation. The property owner wishes to legitimize an 10'x15' kayak storage shed initially approved under permit #B02400416. It was later determined after several inspections were completed that the permit did not actually represent a "replacement in kind" status and as a result the part of the permit which had approved the shed was then rescinded and Mr. Everett was required to file for a variance in order to keep the structure.

### **Critical area site description**

The applicant's lot 14,750 Sq. Ft. in size. (Site plan attached). The site consists of mowed lawn mature and growth trees and shrubs surrounding the property.

The applicant's lot contains a two-story dwelling with a driveway; newly constructed garage, the remainder of the site is mowed lawn with numerous plantings and mature trees surrounding the lot. The lot is mostly stabilized.

The County Soil Survey has the site mapped with the Rumford Urban Land Complex which is a low eroding material. No tidal or non-tidal wetlands are located on the lot.

## **III. Critical Area Narrative**

### **A. Existing and Proposed Vegetation Coverage:**

\* Mobile (443) 871-3340 \* E-Mail: [damon@adsgonline.com](mailto:damon@adsgonline.com)

### III. Critical Area Narrative

#### A. Existing and Proposed Vegetation Coverage:

Existing Conditions: The lot has a small lawn with mostly large trees and shrubs

Proposed Conditions: No tree clearing will be required for the construction of shed construction. Any SWM will be required at permit review.

#### B. Stormwater and Water Quality:

Existing Conditions: Stormwater management is not currently present on this site.

Proposed Conditions: The shed exists so no additional clearing will occur. Any stormwater management requirement would be determined at time of building permit. The fact is the construction of the shed served to correct an erosive condition in which a sloped area was eroding prior to the shed construction but has now stopped..

#### C. Aquatic Resources:

Existing Conditions: Water quality and aquatic resources in the area are probably somewhat degraded by existing surrounding development.

Proposed Conditions: With the construction of the shed, utilizing the walls of the shed has stabilized the slope stopping the erosive condition. Including proper stabilization, no adverse impacts on aquatic resources are anticipated as a result of this construction.

#### D. Forest Clearing and Impervious Coverage

Existing Conditions: "forest" cover is present on the site.

Proposed Conditions: No tree clearing will be necessary

### IV. Conclusions

The requested variance is for construction of a 10'X15' shed in the 100' in the 100' buffer. No adverse impacts to fish, wildlife, and plant habitat and water quality are anticipated.

### V. Site Investigation

A site investigation to obtain data to prepare this Critical Area Report was conducted on August 14, 2023 by Damon F. Cogar of Atlantic Development Services Group.



## OFFICE OF PLANNING AND ZONING

### CONFIRMATION OF PRE-FILE (2023-0038-P)

DATE OF MEETING: 10/2/2023

P&Z STAFF: Sara Anzelmo and Kelly Krinetz

APPLICANT/REPRESENTATIVE: Timothy Everett/Damon Cogar EMAIL: DAMON@ADSGONLINE.COM

SITE LOCATION: 377 Valley Stream Road, Severna Park LOT SIZE: 14,750 sf ZONING: R2

CA DESIGNATION: LDA BMA: YES or BUFFER: NO APPLICATION TYPE: Critical Area Variance

The applicant seeks a Critical Area variance to perfect the construction of a 10' by 15' shed in the BMA - Buffer Modification Area with new Critical Area lot coverage nearer to the shoreline than the closest facade of the existing principal structure.

The applicant obtained a building permit (B02400416) for construction of a two-car garage. That permit also included the subject shed in place of an existing structure. The shed was constructed in accordance with the approved permit; however, approval of the final inspection was withheld when a County Inspector visited the property in response to a complaint and determined that the shed was not an in-kind replacement. A compliance case was opened (B-2023-220). The applicant contends that he had hired a permit expeditor to apply for his permits and was told that, because there was an existing concrete slab, the shed could be considered an in-kind replacement. He was not given any indication that it wasn't an in-kind replacement by the permit expeditor, the County Inspectors, or throughout all the reviews performed.

The main reason for the shed is to store kayaks and to stabilize the slope.

#### COMMENTS

The **Critical Area Team** commented that the structure does not qualify as an in-kind replacement; therefore, it is not qualified by right under the BMA requirements. However, the reconstruction did not result in additional lot coverage. Provided that the applicant can comply with all of the standards for approval of a variance application, the Team has no objection.

The **Zoning Administration Section** notes that it is not entirely clear whether the new shed was constructed entirely over existing coverage. In order for the County to perform a proper review, the site plan should indicate the location and dimensions of the previously existing structure and concrete pad vs. the newly erected shed. The applicant must demonstrate how the proposal meets ALL of the Critical Area variance standards provided under Section 18-16-305(b) and (c) of the Anne Arundel County Zoning Code.

#### INFORMATION FOR THE APPLICANT

Section 18-16-201 (b) Pre-filing meeting required. Before filing an application for a variance, special exception, or to change a zoning district, to change or remove a critical area classification, or for a variance in the critical area or bog protection area, an applicant shall meet with the Office of Planning and Zoning to review a pre-file concept plan or an administrative site plan. For single lot properties, the owner shall prepare a simple site plan as a basis for determining what can be done under the provisions of this Code to avoid the need for a variance.

\*\*\* A preliminary plan checklist is required for development impacting environmentally sensitive areas and for all new single-family dwellings. A stormwater management plan that satisfies the requirements of the County Procedures Manual is required for development impacting environmentally sensitive areas OR disturbing 5,000 square feet or more. State mandates require a developer of land to provide SWM to control new development runoff from the start of the development process.

Section 18-16-301 (c) Burden of Proof. The applicant has the burden of proof, including the burden of going forward with the production of evidence and the burden of persuasion, on all questions of fact. The burden of persuasion is by a preponderance of the evidence.

A variance to the requirements of the County's Critical Area Program may only be granted if the Administrative Hearing Officer makes affirmative findings that the applicant has addressed all the requirements outlined in Article 18-16-305. Comments made on this form are intended to provide guidance and are not intended to represent support or approval of the variance request.





PREFILE PHOTOS - PAGE 1 OF 4





PREFILE PHOTOS - PAGE 2 OF 4

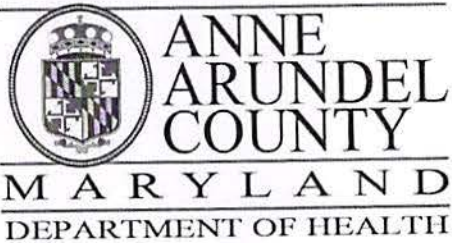












J. Howard Beard Health Services Building  
3 Harry S. Truman Parkway  
Annapolis, Maryland 21401  
Phone: 410-222-7095 Fax: 410-222-7294  
Maryland Relay (TTY): 711  
www.aahealth.org

**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 *BC*

DATE: November 21, 2023

RE: Timothy E. Everett  
377 Valley Stream Road  
Severna Park, MD 21146

NUMBER: 2023-0204-V

SUBJECT: Variance/Special Exception/Rezoning

The Health Department has reviewed the above referenced variance to perfect an accessory structure (shed) with less setbacks than required and with new lot coverage nearer to the shoreline of the existing principal struct.

The Health Department has reviewed the on-site sewage disposal property. The Health Department has determined that the proposed request does not adversely affect the on-site sewage disposal system. 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

**Critical Area Variance Guidance  
Critical Area Review Team/Development Division**

**Applicant:** Timothy Everett  
**Case #:** 2023-0204-V  
**Date:** 3/3/2023

**For a property located in the critical area, a variance to the requirements of the County's Critical Area Program may be granted if the Administrative Hearing Officer makes the findings based on the following criteria.**

- **Because of certain unique physical conditions, such as exceptional topographical conditions peculiar to and inherent in the particular lot or irregularity, narrowness or shallowness of lot size and shape, strict implementation would result in an unwarranted hardship.**

It is hard to determine if this site is truly unique. The site does appear to have steep slopes with an area around the previous tent that looks like it may have been previously excavated. There is not enough information to determine if there was an existing concrete slab in the location of the shed or not. If there was an existing slab then there would be existing lot coverage within the 100 foot buffer modified area making this a unique situation.

- **A literal interpretation of the Critical Area Laws would deprive the applicant of rights commonly enjoyed by other properties in similar areas as permitted in accordance with the provision of the critical area program.**

A literal interpretation may deprive the applicant if they are not permitted to replace an existing pad that would be permitted to be replaced within the BMA. The applicants would have also been permitted to stabilize what appears to be cut slopes on the sides and rear of the tent area. However, the shed that was constructed can hardly be considered the minimum necessary to stabilize the existing slopes and far exceeds what could be completed even if the concrete slab did exist at time of permitting.

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

The granting of this variance would allow a special privilege if the applicants constructed the shed in an area with no previous existing development or the constructed shed expanded the area that was previously covered by lot coverage.

- **The request is not the result of actions by the applicant including the commencement of development before an application for a variance was filed and does not rise from any condition relating to land or building use on any neighboring property.**

The request is a result of the actions by the applicant as they constructed a new shed under the false pretense that the work would be considered replace in kind.

- **The granting of a 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 County's Critical Area program.**

The granting of this variance would not necessarily affect water quality or adversely impact fish, wildlife or plant habitat within the Critical Area.

It is difficult to make a determination on based on the information provided. It is clear that the shed constructed was not a replace in kind of the existing structure. It cannot be determined if there is or was an existing slab of concrete under the tent which is being used as justification for the location of the new shed. If it cannot be demonstrated that the slab was existing this section cannot support this variance request. If there was an existing slab we would not have an objection provided the footprint of the new structure is no larger than the existing slab. Mitigation shall be required at a rate of 3:1 for additional disturbed area that required a variance. Mitigation shall be maximized within the 100 foot buffer.

Wes Moore  
Governor

Aruna Miller  
Lt. Governor



Erik Fisher  
Chair

Katherine Charbonneau  
Executive Director

STATE OF MARYLAND  
CRITICAL AREA COMMISSION  
CHESAPEAKE AND ATLANTIC COASTAL BAYS

January 8, 2024

Ms. Sterling Seay  
Planning Administrator  
Anne Arundel County Zoning Division  
2664 Riva Road, MS 6301  
Annapolis, Maryland 21401

**Re: Everett After-The-Fact Variance (2023-0204-V)**

Dear Ms. Seay:

Thank you for providing information on the above-referenced variance request to perfect an unpermitted 150-square foot accessory structure (a kayak storage shed with a rooftop deck) located within the Buffer approximately 27-feet landward of the mean high water (MHW), closer to the shoreline than the primary structure. The property is a 14,750 square-foot lot located within the Limited Development Area (LDA) and is mapped as a Buffer Modified Area (BMA). The lot coverage limit for a lot of this size is 4,609 square feet (or 31.25% of the site). The existing lot coverage on the subject site totals 2,633 square feet (or 17.85% of the site).

The application materials indicate that the kayak storage shed with a rooftop deck was constructed by the applicant under Anne Arundel County Permit #B0240016 as an in-kind<sup>1</sup> replacement. However, it was later determined by the County's Inspections and Permits Division that the constructed accessory structure was outside of the scope of the permit for minor improvements of the existing house and garage. Therefore, the property was cited for a Critical Area Buffer violation for unpermitted construction of the accessory structure. Furthermore, the application materials submitted by the applicant state the purpose of the unpermitted accessory structure was slope stabilization. It is unclear the original cause of the slope instability, but we note that there are several nonstructural methods that could have been employed by the applicant and permitted by the County to stabilize the slope that does not involve the construction of an unpermitted storage shed with rooftop deck in the Critical Area Buffer. Per COMAR 27.01.02.04.C.(5), disturbance to steep slopes is prohibited "unless the project is the only effective way to maintain or improve the stability of the slope." The current structure, a boat storage shed with a rooftop deck, does not meet this regulation.

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<sup>1</sup> The applicants originally requested an in-kind replacement for a lean-to tent that was located on the property prior to when the applicants purchased the property. It was determined the construction of a kayak storage shed with rooftop deck was not an in-kind replacement of the tent. Furthermore, the County does not consider the previous tent to be a structure (legally nonconforming or otherwise) that provides justification for an in-kind replacement request or construction of a new accessory structure in the Buffer.

## **Variance**

Maryland's Critical Area law provides that variances to a local jurisdiction's Critical Area program may be granted only if the County's Administrative Hearing Officer (AHO) finds that an applicant has satisfied the burden to prove that the request meets each and every one of the variance standards under COMAR 27.01.12, including the standard of unwarranted hardship. Furthermore, State law establishes the 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 and County's Critical Area Program. The AHO must make an affirmative finding that the applicant has overcome this presumption, based on the competent and substantial evidence presented from the applicant.

This office finds that the variance request fails to meet the variance standards, as described below.

## **Variance Standards**

1. *Due to special features of the site or special conditions or circumstances peculiar to the applicant's land or structure, a literal enforcement of the local Critical Area program would result in an unwarranted hardship to the applicant;*

State law defines "unwarranted hardship" to mean that, without the requested variance, an applicant shall be denied reasonable and significant use of the entire parcel or lot. The property is currently developed with a house with an attached deck, patio, and porch, a driveway/parking area, walkways, playground, and riparian access. Allowing the applicant to retain an unpermitted accessory structure in the Buffer when there is clear opportunity to relocate the accessory structure outside of the Buffer does not meet the standard of unwarranted hardship, as the applicant already has reasonable and significant use of the lot with the existing house and associated development. In fact, this office does not consider, and has not previously considered, accessory structures such as a storage shed with rooftop deck in the Buffer to meet the standard of unwarranted hardship, as it is not within the limits of reasonable and significant use of the lot. Therefore, denying this variance request would not result in an unwarranted hardship.

2. *A literal interpretation of the local Critical Area program would deprive the applicant of a use of land or a structure permitted to others in accordance with the provisions of the local Critical Area program;*

Denying the request to retain the unpermitted accessory structure in the Critical Area Buffer when there is opportunity to relocate it outside of the Buffer is not depriving the applicant of a use that would be permitted to others under the local Critical Area program as no individual has the right to construct an accessory structure within the Buffer closer to the shoreline than the primary structure in the BMA. Therefore, denial of this variance would not deprive the applicant of a right commonly enjoyed by other properties in similar areas within the Critical Area in Anne Arundel County.

3. *The granting of the variance would not confer upon the applicant any special privilege that would be denied by the local Critical Area program to other lands or structures in accordance with the provisions of any local Critical Area program;*

The granting of this variance would absolutely confer a special privilege upon the applicant. The Anne Arundel County Code and the Critical Area regulations place strict limits on disturbance to the Critical Area Buffer in order to meet the goals of the Critical Area law. Approval of this variance would grant the applicant a special privilege that would be denied others within the Critical Area, as no individual is permitted to construct an accessory structure within the Buffer when there is room to do so outside of the Buffer. This office has previously opposed similar variance requests from others; therefore, granting this applicant's request would confer upon the applicant a special privilege denied to others.

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

This request is unequivocally the result of actions caused by the applicant, including the commencement of unpermitted development that resulted in lot coverage located in the Buffer. The County's Inspections and Permits Division cited this property for the unpermitted construction of the accessory structure, noting that it was outside of the scope of work authorized under the permit the County issued to allow for minor improvements on the garage and dwelling. Additionally, the County does not consider the previous tent to be a structure (legally nonconforming or otherwise) that could be used as a basis to justify the unpermitted construction of a kayak storage shed with rooftop deck in the Buffer. While the previous property owners may have put up a tent in front of an unstable slope, the applicant could have removed the tent and stabilized the slope with nonstructural methods approved by the County and in compliance with COMAR. The applicant willfully proceeded of their own accord without proper permits and constructed the accessory structure in the Buffer, showing complete disregard for the requirements and Critical Area law.

5. *The variance request does not arise from any conforming or nonconforming condition on any neighboring property;*

Based on the information provided, it appears that this variance request is not the result of any conforming or nonconforming condition on any neighboring property.

6. *The granting of the variance would not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the jurisdiction's local Critical Area; and*

The Critical Area law and regulations are designed to foster more sensitive development for shoreline areas to minimize damage to water quality and habitat. The unpermitted storage shed with rooftop deck within the Buffer increases runoff, which carries with it pollutants that will negatively impact the water quality of Old Man Creek a tributary to the Magothy River and Chesapeake Bay. The unpermitted lot coverage hinders the ability for vegetation to grow in the Buffer which adversely impacts habitat and water quality benefits as the

unpermitted accessory structure will exacerbate runoff and stormwater pollutants from the top of the slope into the creek.

7. *The granting of the variance would be in harmony with the general spirit and intent of the Critical Area law, the regulations in this subtitle, and the local Critical Area program.*

Ecologically sensitive areas such as the Critical Area Buffer within the LDA are purposefully protected within the Critical Area regulations and the County's Critical Area program because of their importance in meeting the goals of the Critical Area law. The goals of the Critical Area law are to (1) minimize adverse impacts on water quality that result from development, (2) conserve fish, wildlife, and plant habitat, and (3) establish land use policies that accommodate development while recognizing that development adversely affects the first two goals. Granting a variance to allow for the retention of an unpermitted accessory structure within Critical Area Buffer that results in increased runoff into Old Man Creek when there is an opportunity to relocate the unpermitted structure outside of the Buffer would not be in harmony with the spirit and intent of the Critical Area law and would be contrary to the goals of the Critical Area law.

In requesting a variance, the applicant bears the burden of demonstrating that each and every one of the variance standards have been met, including the standard of unwarranted hardship. The applicant has failed to meet six of the seven variance standards as described above; therefore, we oppose this variance.

Thank you for the opportunity to provide comments. Please include this letter of opposition in your file and submit it as part of the record for this variance. Also, please notify the Commission in writing of the decision made in this case. If you have any questions about these comments, please contact me at (410) 260-3468 or [jennifer.esposito@maryland.gov](mailto:jennifer.esposito@maryland.gov).

Sincerely,

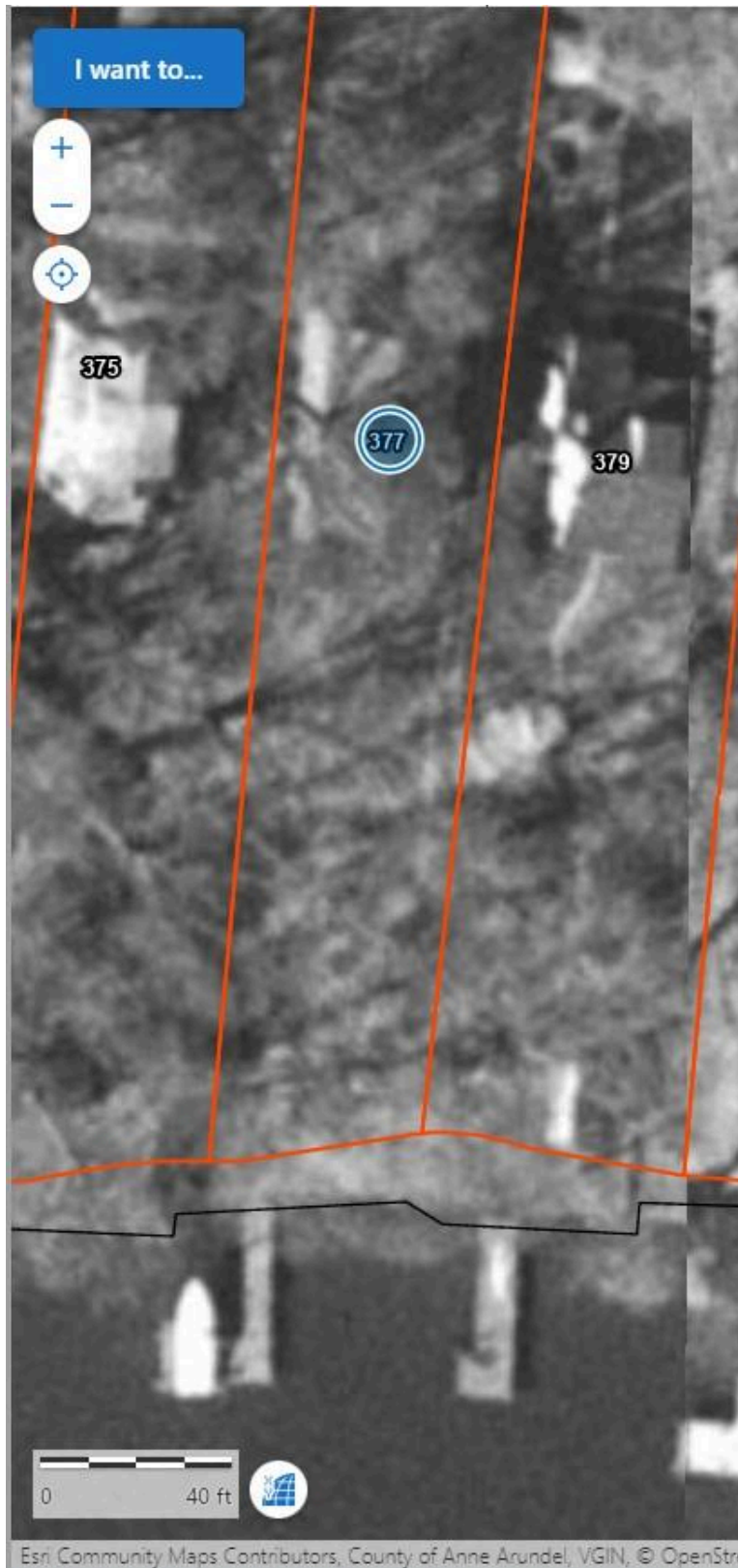


Jennifer Esposito  
Natural Resources Planner

cc: Kelly Krinetz, Anne Arundel County  
James Haupt, Anne Arundel County  
Charlotte Shearin, CAC  
Katherine Charbonneau, CAC  
Emily Vainieri, Office of the Attorney General



**1995 B&W aerial**



**1998 Color aerial**



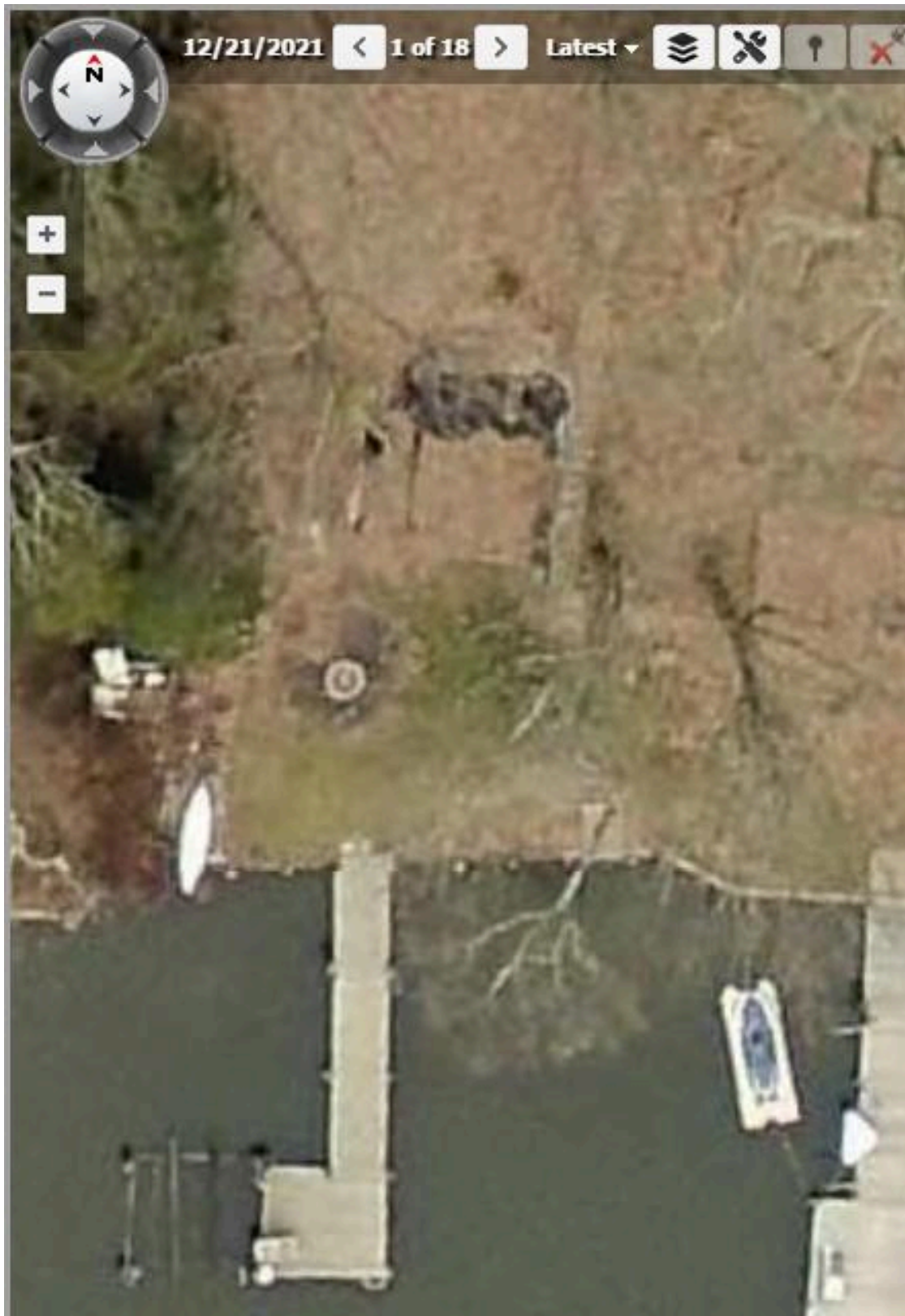
2023-0204-V

**DECEMBER 2006 oblique (facing north)**

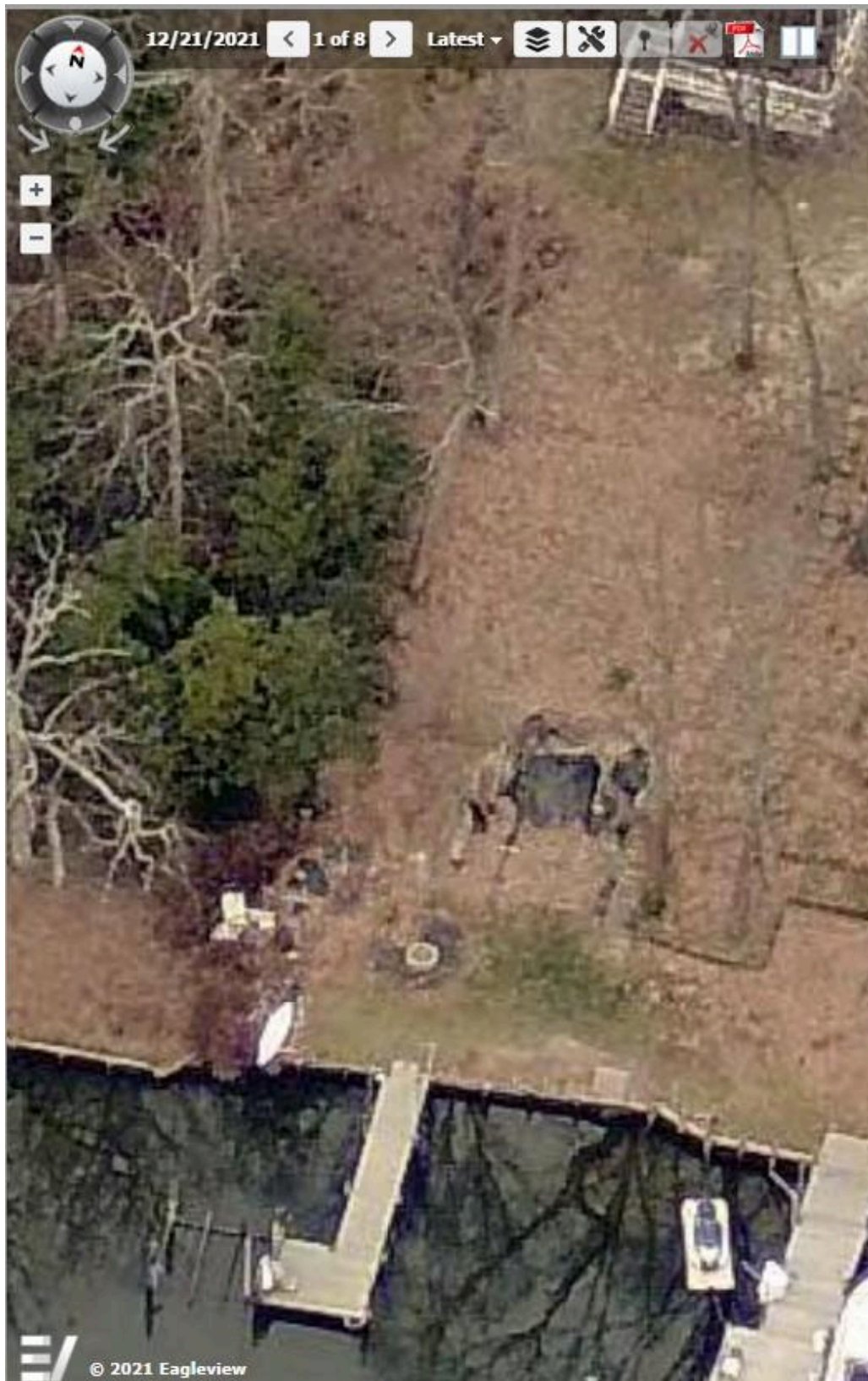




December 2021 - oblique overhead



December 2021 - oblique looking north





December 2021 - oblique looking south



2023 aerial





2015



2016



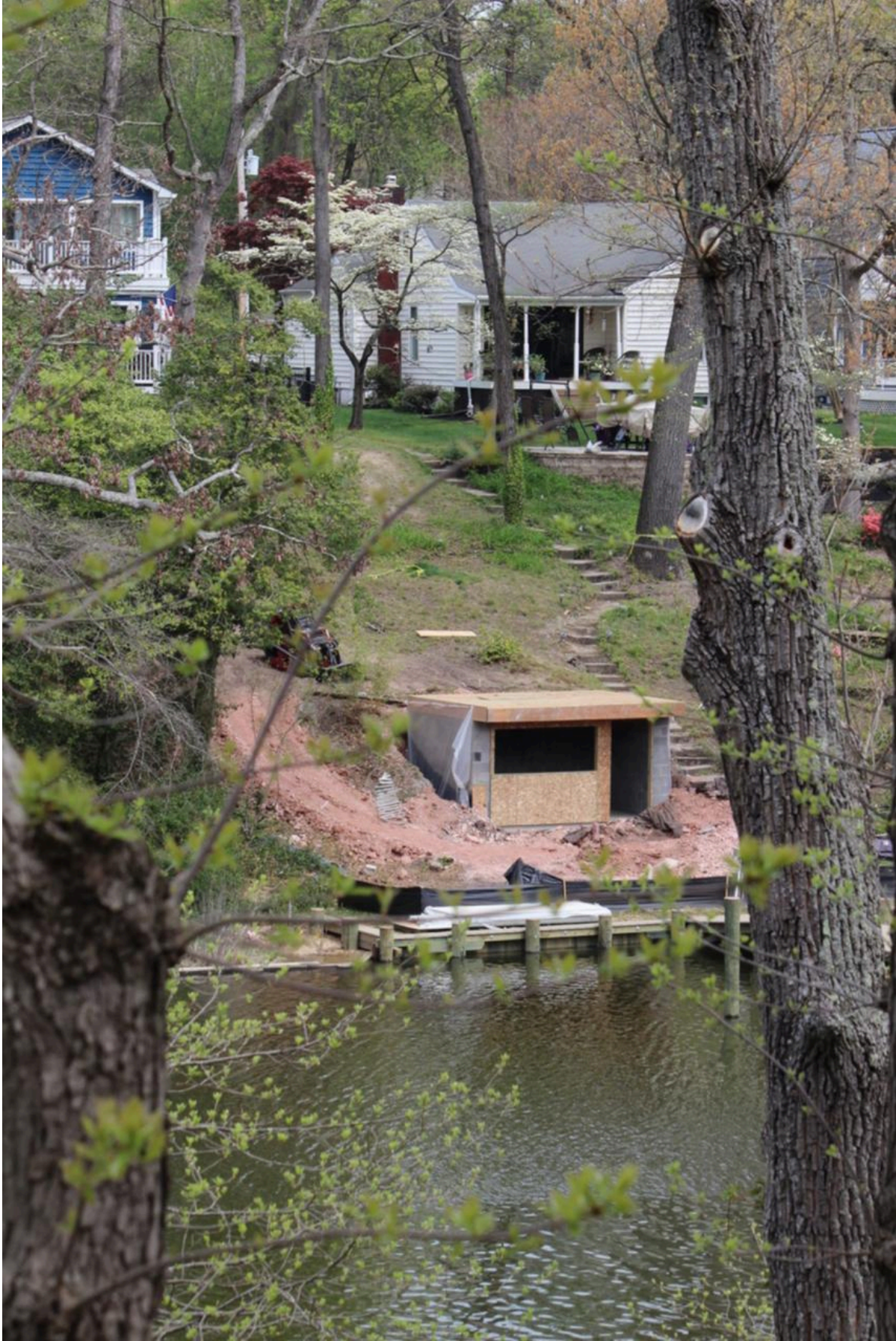


























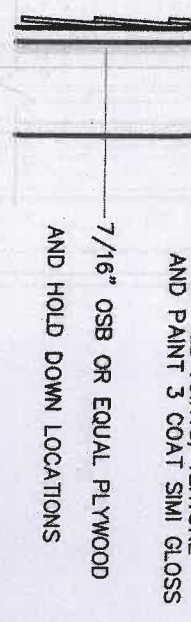
**PERMANENT STABILIZATION**

AREAS SHALL BE STABILIZED TO PREVENT EROSION. STABILIZATION SHALL BE PLANT MATERIALS, LANDSCAPING AND SEEDING.

**PERMANENT FENCES**

CERTIFICATION SILT FENCE MANUFACTURER'S CERTIFICATION SHALL BE REQUIRED TO ALL PROPERTIES GIVEN FOR SYNTHETIC FILTER FABRIC PER THE CONSTRUCTION MANUAL SPECIFIED IN THE CURRENT FAIRFAX COUNTY CHECKLIST FOR EROSION AND SEDIMENTATION CONTROL. THIS CERTIFICATION SHALL BE PRESENTED TO THE FAIRFAX COUNTY ENGINEER AT THE TIME OF INSTALLATION IN THE FIELD.

TO BE 'NULEX' GEO FABRIC FENCE ON WOOD STAKE PER MANUFACTURERS SPECIFICATIONS.

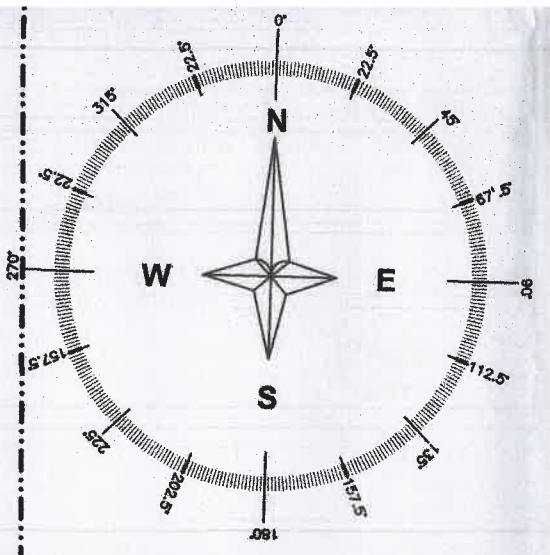


INDICATED ON FLOOR PLAN

5 2x" WOOD WALL EXTERIOR  
1-1/2" = 1'-0"

PRESCRIPTIVE ENERGY COMPLIANCE METHOD USED FOR ADDITION. ALL NEW WINDOWS SHALL BE U-FACTOR .35, SHGC .40. ALL EXTERIOR WALLS SHALL BE MIN. R-13 SHEATHED WITH R-5 BUILDING WRAP. ATTIC INSULATION SHALL BE R-38

ALL FOOTERS HAND DUG  
ALL SUPPLIES TO BE WHEEL BARROWED TO SITE NO MACHINERY  
ALL SPOILS TO BE REMOVED FROM SITE  
CRANE MATTS TO BE USED ALONG WALK WAY IF NEEDED TO KEEP ZERO DISTURBANCE



Building Permit B02400416  
(detail from site plan)

300' + PROPERTY LINE

EX. CEMENT WALK WAY

294' +

PROPERTY LINE

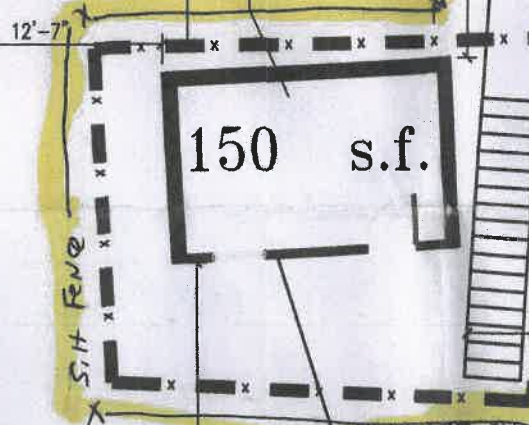
150 s.f.  
REPLACE IN KIND  
3'x 50' CONCRETE  
WALK

EXISTING TREE CANDPY  
TO REMAIN

REPLACE IN KIND  
DAMAGED 10' x 15'  
STORAGE BUILDING

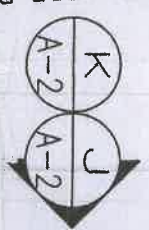
REPLACE STORAGE

SILT FENCE AND LIMIT OF  
DISTURBANCE



EXISTING TREE CANDPY  
TO REMAIN

EXISTING BULKHEAD TO REMAIN



OLD MAN CREEK

Pier  
Issued  
under  
B02408467

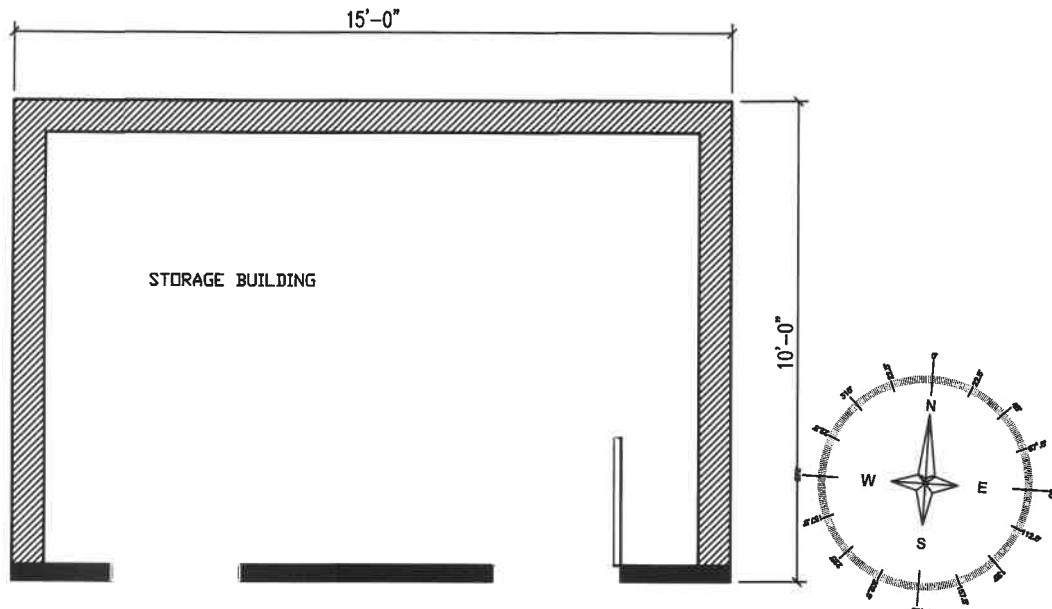
MHW 1.2' MLW 0.0'

FETCH 169'

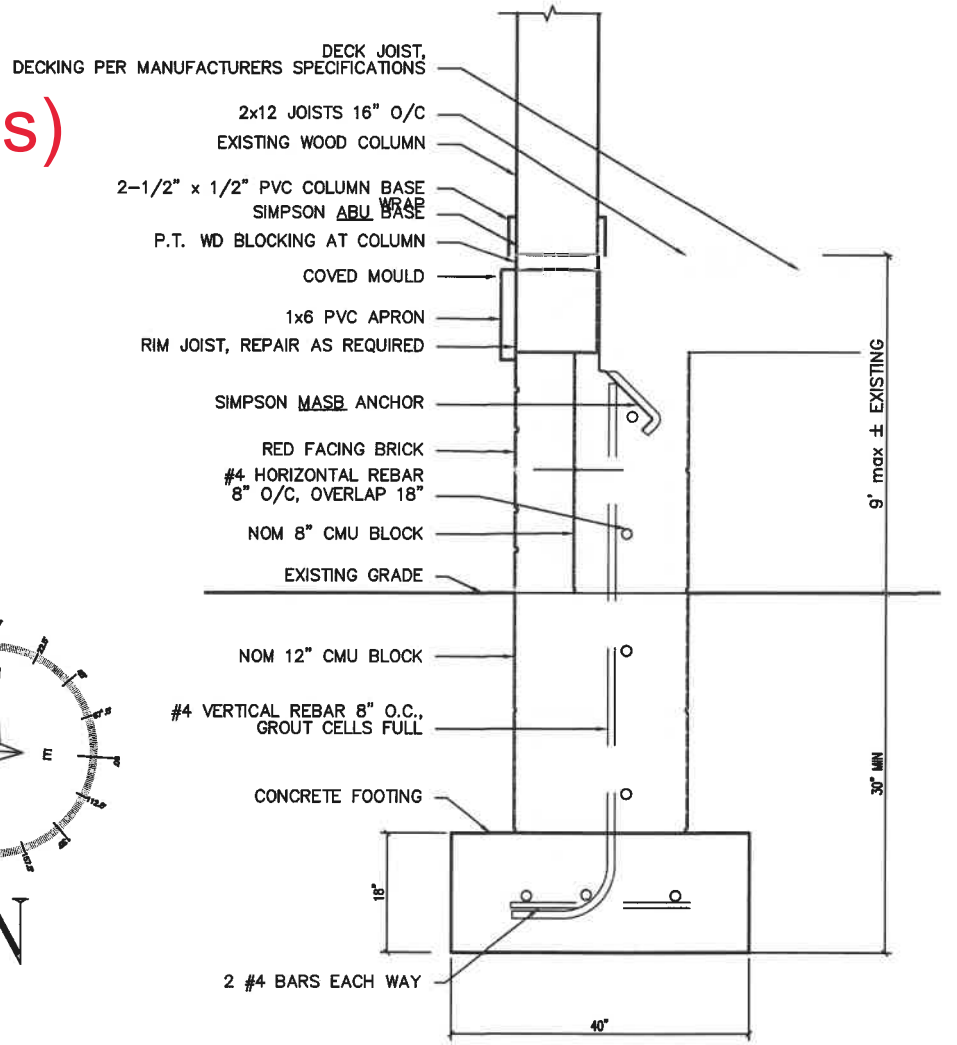
C1



# Building permit B02400416 (detail from construction plans)



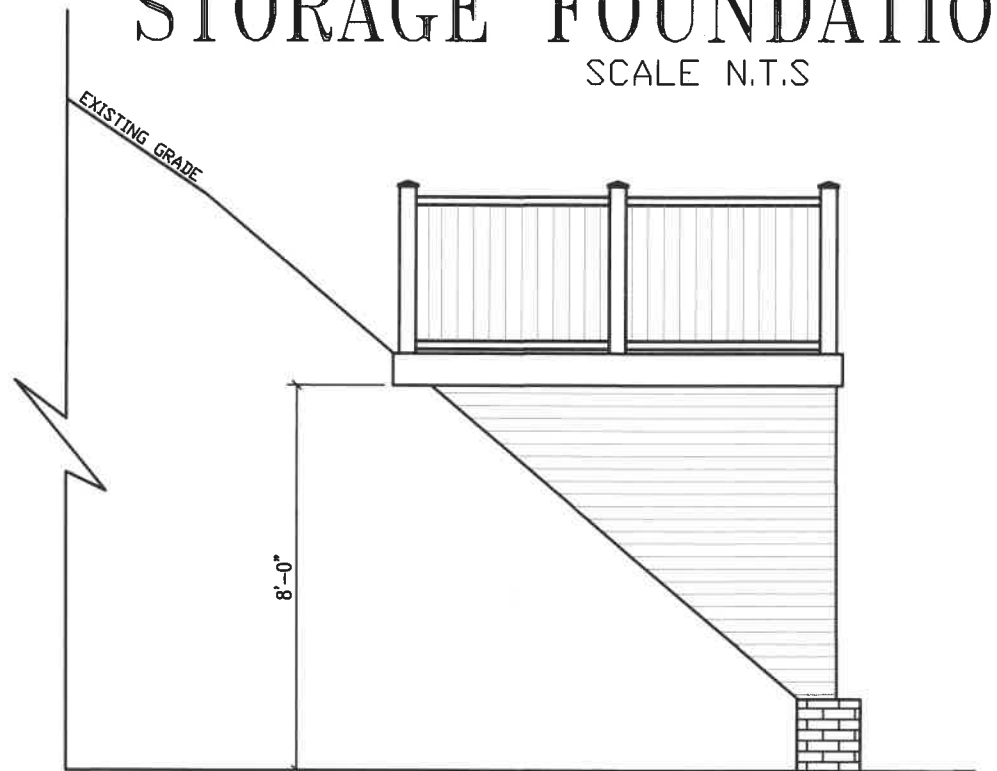
**STORAGE FLOOR PLAN**  
SCALE 1/4" = 1'-0"



**STORAGE FOUNDATION**  
SCALE N.T.S



**STORAGE FRONT**  
SCALE 1/4" = 1'-0"



**SIDE**  
SCALE 1/4" = 1'-0"

## REPLACED STORAGE BUILDING

SCALE 1/4" = 1'-0"

PROPERTY INFORMATION

