

PRO. EXHIBIT# 1
CASE: 2024-0126-V
DATE: 9/17/24

Variance Application Case # 2024-0126-V

We, Alan Dynerman & Nancy Seybold, are opposing the application for a variance to the Critical Area requirements for the property at 975 Diggs Rd.

This variance application is flawed in several specific ways:

1. The applicant (The Civic Association of Palisades - hereafter referred to as CAP) claims a hardship based on reasons that are explicitly barred from consideration.
2. The applicant makes a claim that granting the variance would not adversely affect the environment, including wildlife, despite clear evidence to the contrary.
3. The applicant submits a plan that does not meet the requirement for the minimum variance to provide relief, and which cannot be built without significant disturbance to the steep slope.
4. We have reason to believe that there are inaccuracies and inconsistencies in the documentation submitted with the application.

Hardship claim is not applicable

The current owners of the property are not interested in developing this property. They are seeking this variance in order to sell the property. CAP's submission states "What makes this situation unique is that the sale of the lot by the civic association will provide needed revenue for the community to upgrade their public facilities; ..." The code bars financial issues from being considered in granting a variance, but furthermore, the facilities they refer to are not public. They are privately owned by CAP.

The applicant goes on to say that granting the variance presents a benefit to the surrounding community civic association. The civic association is not the general public and benefits that may result by granting the variance will be to this private group.

Finally, there is nothing prohibiting CAP from selling this property without a variance, but it seems clear that the sale to this developer, Michael Helfrich, is contingent upon receiving the variance.

The two key code references that we believe are applicable are the following:

1.18-16-305 states that a variance may be granted only if the Hearing Officer finds that:
a.2. Because of exceptional circumstances other than financial ... the grant of a variance is necessary ..."

b.1. The lot presents unique physical conditions that result in some kind of hardship - this lot does not present unique physical conditions and the applicant does not claim it does.

Variance would have an adverse effect on the environment and wildlife

The county code states:

B.5 The granting of the variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the County's critical area.

We have four specific examples of the adverse effects that granting this variance will produce:

1. This lot is the last piece of land in the area that offers wildlife unimpeded access to the water and connects a continuous and extended wooded/forested route from Little Round Bay almost to Rte 178, Generals Highway. Ref. exhibits 1-3
2. The specific area bounded by Crystal Cove to the northeast and Browns Cove to the southwest, in which this specific parcel is located, is an annual nesting area for ducks, herons and bald eagles. While it may be true that no nesting birds were found on the lot when visited by the applicant, this is not proof that waterfowl are not present or do not rely on this part of Little Round Bay on a regular basis. All of us who live on this side of Little Round Bay can attest to the yearly return of waterfowl to the immediate shoreline.
3. At least one endangered plant species (the May Apple) is present on site.
4. Because most of the steep slope on this property is at 45% or greater, the proposed development would create significant run-off into Little Round Bay.

On these points alone, the applicant has not overcome the presumption in Natural Resources Article 8-1808(d)(3)(ii) of the state law that the variance request should be denied.

Criteria for minimal disturbance not met

Per the code, a variance may not be granted unless additional factors are found. First among these is that the variance is the minimum variance necessary to afford relief.

The footprint of the submitted house plan is 1,440 sq. ft., including a garage. In the immediate neighborhood there are a number of homes with smaller footprints. The house directly across the street has a footprint of approximately 900 sq. ft., and farther up Diggs Rd there is a 2 story home with a footprint closer to 600 sq. ft. Many of the homes in the immediate neighborhood have a smaller footprint than the submitted plan. Ref.exhibits 4 - 7

The applicant's plan includes a garage, an unnecessary allotment of space. Within a 1000' radius of this lot, on Diggs Rd, along the immediate shoreline and Ivy Trail alone, there are 19 homes, 13 of these do not have garages. Ref. Exhibit 8

Furthermore, in an earlier pre-file submission the applicant asked for a steep slope disturbance variance. The Critical Area Team determined that it was possible to locate a house on the lot, with a 10' LOD, without any steep slope disturbance and would not support the request as then shown.

The applicant would have you believe that the relocated footprint and the site plan would not result in steep slope disturbance. Mr. Dynerman has been a practicing and licensed architect in MD for 40 years, specializing in residential design. He cites two specific examples to demonstrate how the plan is unbuildable without going beyond the steep slope line:

- Drywell #2, which is drawn at 5'x10', is sized as 5'x15'x13' deep and located approximately 2' from the steep slope line. The siting of the drywell does not take into account the conditions needed to install the drywell, neither the equipment necessary to dig nor the angle of repose for the excavated soil.
- Applicant shows the waterside deck and 2nd floor porch cantilevered to and over the steep slope line. In order to construct this, equipment, scaffolding, staging, silt fencing, and/or a silt sock would all need to be placed on the steep slope.

Inaccuracies in the variance submission:

We wish to note additional specific inaccuracies in the submission that we feel should be considered because of their impact on the feasibility of this project.

1. There are reasons to believe that the submitted site plan with regard to the location of the steep slope and contours is incorrect. We have 2 topo drawings, of the same area as the submitted plans, that contradict the applicant's site plan. Both of our plans were prepared by licensed MD civil engineers. One plan is by Drum, Loyka & Assoc., dated 3/14/24, the other is from Terrain Inc. dated June 2009. Ref exhibits 9 & 10.
 - a. We draw your attention to the bubbled area on exhibits 9 & 10. Specifically: the steep slope on the Drum Loyka and Terrain Inc. topo starts at elevation 54, approximately 53' from the NW PL. The applicant's topo shows the steep slope beginning at elevation 52, approximately 70' from the NW PL. The DLA and Terrain Inc. plans suggest an additional 6000 sq ft (approximately) of disturbed steep slope if this variance were approved.
2. The submission states that the property fronts a public road. This is not correct. The unpaved portion of Diggs Rd is owned by Belle Grove LLC (which also originally owned the parcel, before gifting it to CAP). Neither Belle Grove nor the county maintain this road in any way - therefore, there would need to be a provision for responsibility to repair the damage caused by heavy machinery required to do site work.
3. The plan indicates 7 trees will be removed. Photographs indicate that 5 additional trees of diameter over 12" will need to be removed. Ref exhibit 11

Conclusion

A variance to the Critical Area regulations requires demonstration of hardship. This submission is about profit, not hardship.


This proposal has been submitted by CAP, the current owners of the lot, but it appears to primarily benefit Michael Helfrich, who has reached an agreement with CAP to purchase the lot for well under market value contingent on obtaining a variance. The purpose of the Critical Area regulations are to preserve the land and waters for the benefit of all citizens of Maryland; there is no state interest in setting aside that protection to allow a private citizen to develop the land to sell at a profit.

It is also important to keep in mind that denying this variance application does not stand in the way of anyone's rights relative to the property. The owner, the Civic Association of Palisades, is not trying to build a house, they are trying to sell the lot. CAP does not need a variance to sell the lot. Whatever rights they may have related to owning a residentially zoned property are not being limited by denying the variance. Michael Helfrich doesn't own the property, so in fact he has no rights relative to the lot.

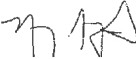
This lot was gifted to CAP by its prior owner, Belle Grove, with a provision that it not be developed but be preserved for the benefit of the community and the ecology of the local area. Belle Grove, as a longtime property developer, had correctly concluded that the parcel, under current and previous regulations, is not buildable and thus of limited value. To develop it for profit is contrary to the entire intent of the Critical Area regulations.

When CAP announced its intention to sell the lot, we offered to purchase it and put it into a conservation easement to preserve it. This offer was declined. We are still willing to buy the parcel and commit to keeping it undeveloped for the benefit of the community and the local ecosystem.

The fragility of the Chesapeake Bay's ecosystem is neither in dispute or overstated. This property is protected by the state because of its immediacy to the water and the linkage of its protection to that ecosystem. Having never been developed amplifies that importance. This application and applicant ignores that fact in the lack of effort shown in the house design. Rather than design a home that responds to this specific site, the applicant lifts a plan from a series of builders' plans that could be plopped down in any suburban development. In fact, Mr. Helfrich, during the community informational meeting, said he had built this design in another development somewhere else in Maryland. Anyone who wants to develop property on a protected lot should be held to a higher standard than the one presented in this submission.

Authentisign

09/09/24

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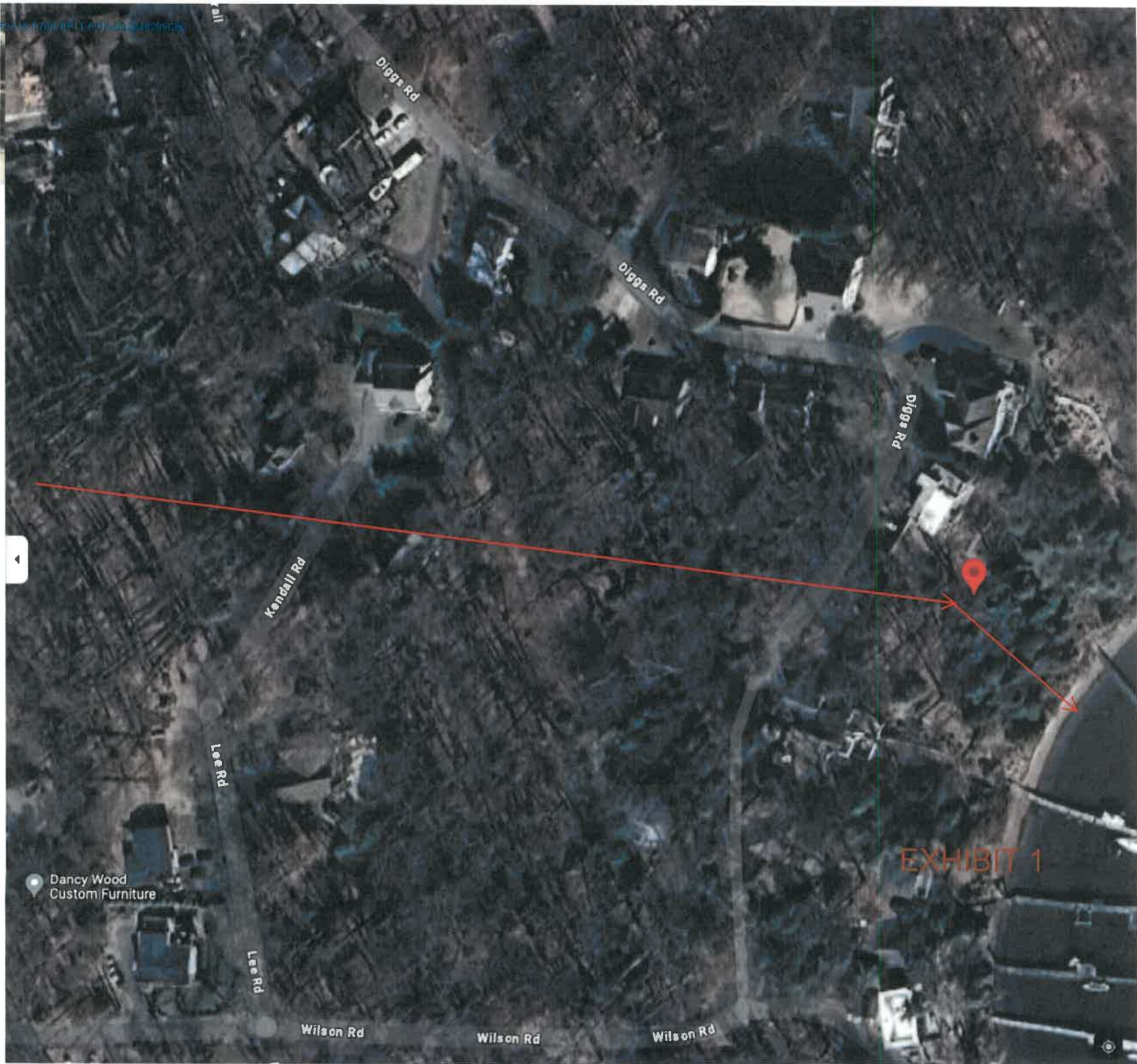




EXHIBIT 2

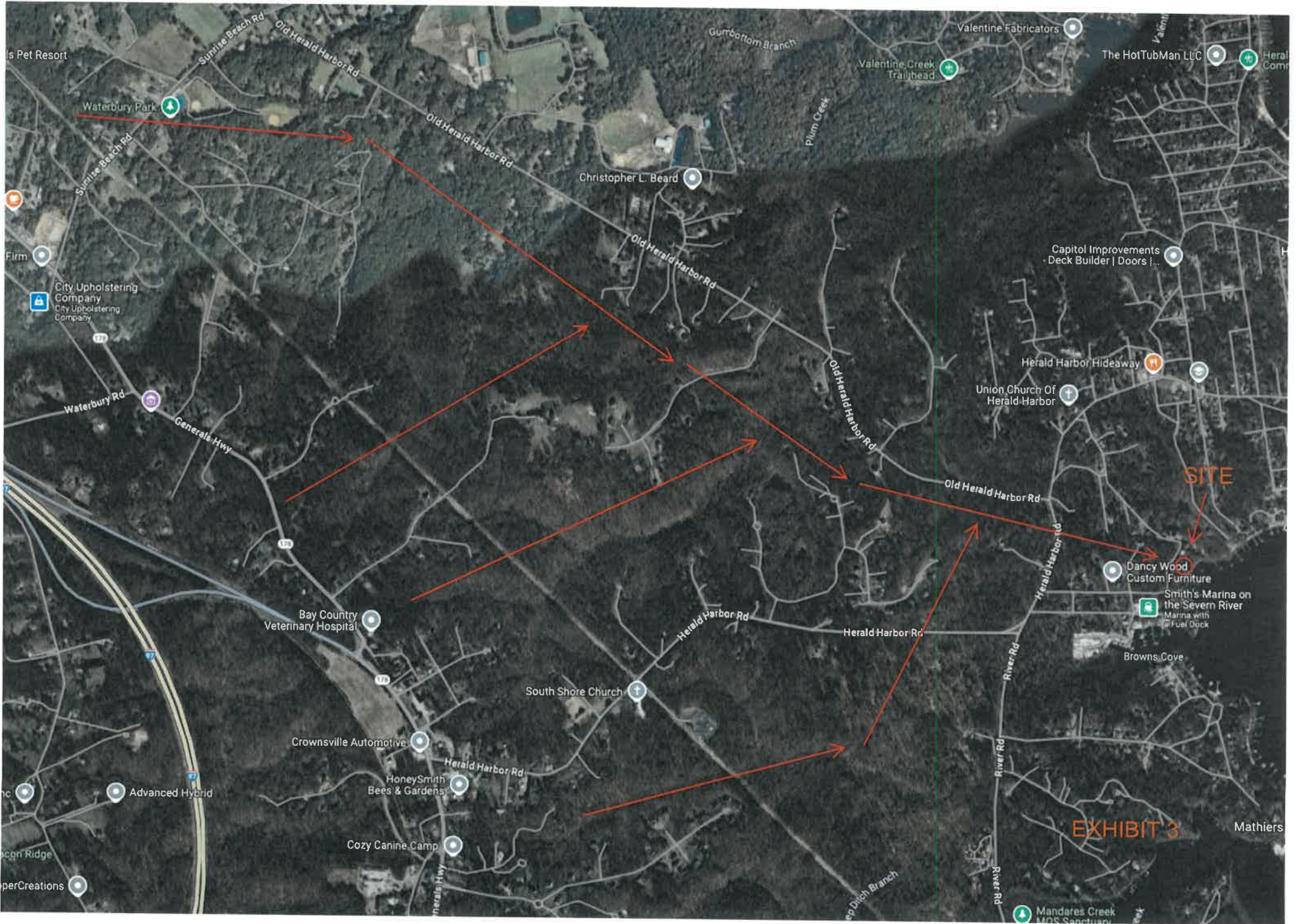




EXHIBIT 4



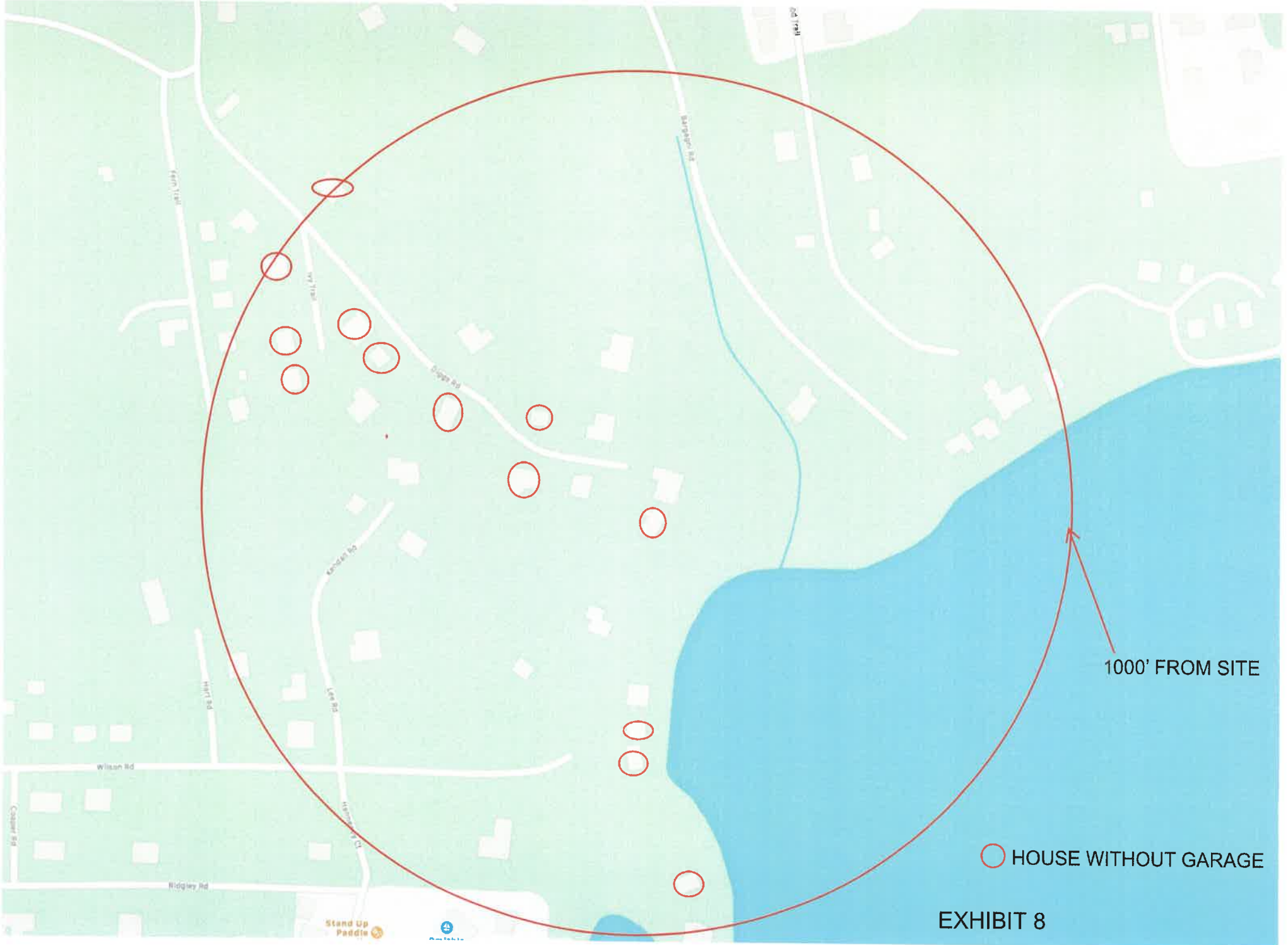
EXHIBIT 5



EXHIBIT 6



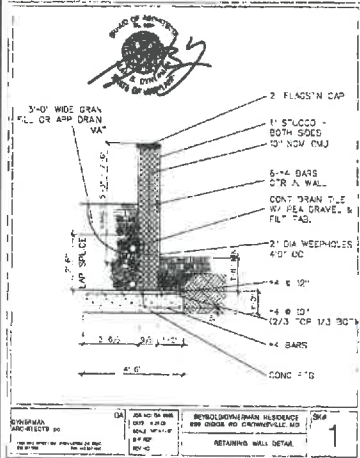
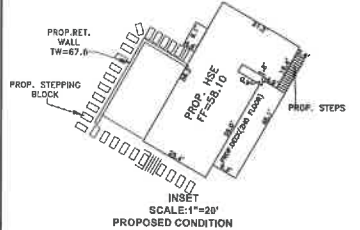
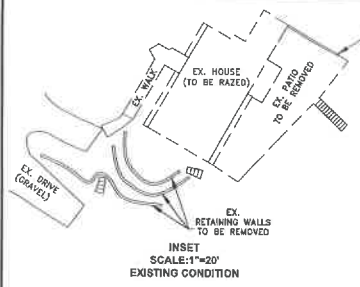
EXHIBIT 7



1000' FROM SITE

○ HOUSE WITHOUT GARAGE

EXHIBIT 8



LEGEND

EXISTING CONTOUR	---
PROPOSED CONTOUR	---
15%+ STEEP SLOPES	
25%+ STEEP SLOPES	
25' BUFFER TO STEEP SLOPES	---
PROPOSED SPOT ELEVATION	+45'
STABILIZED CONSTRUCTION ENTRANCE	▨
REINFORCED BILT FENCE	RF
TEMPORARY STOCKPILE AREA	▭
LIMIT OF DISTURBANCE	---
EXISTING TREE LINE	~
REFORESTATION AND MITIGATION PLANNING	○

PLAN
SCALE: 1"=20'

- DRIVEWAY NOTES**
- 30" MIN. STABILIZED CONSTRUCTION ENTRANCE WITH MOUNTABLE BERM.
 - CONTRACTOR TO MATCH SLOPE AND GRADE FOR DRIVEWAY AS SHOWN.
 - STABILIZE A.A. COUNTY DRIVEWAY APPROX DETAIL 1-6A.
 - PROPOSED DRIVEWAY STANDARDS:
4" - 8" CR-8
1 1/2" S1

EXISTING IMPERVIOUS	
EX. HOUSE (T.B.R)	1,378 S.F.
EX. DRIVEWAY	351 S.F.
EX. PATIO (T.B.R)	945 S.F.
EX. WALK+STEPS (T.B.R)	227 S.F.
EX. TOTAL	3,102 S.F.

PROP. & EX. IMP. TO REMAIN	
PROP. HOUSE	1,563 S.F.
PROP. EX. DRIVEWAY	833 S.F.
WALLS ETC.	330 S.F.
PROP. & EX. TOTAL	2,734 S.F.

LOT COVERAGE	
SITE AREA	28,649 S.F.
EX. IMPERVIOUS AREA	3,102 S.F.
PROP. AND EX. IMPERVIOUS TO REMAIN	3,734 S.F.
MAX. IMPERVIOUS ALLOWED	5,445 S.F.
EX. WOODLANDS	23,184 S.F.
PROP. CLEARING	0 S.F.

EXHIBIT 10

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REVISION BLOCK		
NO.	DATE	DESCRIPTION

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E-MAIL: TERRAIN@COMCAST.NET

G02013904

PLAN SHEET

GRADING, EROSION AND SEDIMENT CONTROL PLAN

PALISADES ON SEVERN
LOTS 7&8 BK 211 SEC J
969 DIGGS ROAD
CROWNSVILLE MD 21032
TAX MAP 34 BLOCK 4, PARCEL 3F

IND. TAX DISTRICT ANNE ARUNDEL COUNTY, MARYLAND

DATE: JUNE, 2009	DRAWN BY: K.L.B.
SCALE: AS SHOWN	CHECKED BY: T.N.S.
SHEET: 3 OF 3	TERRAIN JOB NO. 1957



TREES LOCATED ON THE LOD WITH TRUNK DIAMETER 12" OR GREATER

EXHIBIT 11