

AA 148-99
VAR

Andraka, Steven
99-1012

MSA-S1829-58

Letter LC 3-26-99

Letter #2 LC 4-29-99

Letter #3 3-8-00 re

Apr 15th
4:00 pm



Judge John C. North, II
Chairman

Ren Serey
Executive Director

**STATE OF MARYLAND
CHESAPEAKE BAY CRITICAL AREA COMMISSION**

1804 West Street, Suite 100, Annapolis, Maryland 21401
(410) 260-3460 Fax: (410) 974-5338

May 16, 2001

Mr. Steven Andraka
403 Beech Trail
Crownsville, Maryland 21032

RE: Revised development plan for property on Kyle Road

Dear Mr. Andraka:

This letter is meant to summarize the discussion which took place at a meeting between Commission staff, Commission counsel and yourself on May 16, 2001. The purpose of the meeting was to review revised development plans for property on Kyle Road, which was the subject of a previous variance case (1999-0102-V).

The revised plans which you showed us included a proposed dwelling in the northern (roadside) section of the property, a stormwater management device in the vicinity of the existing farm road down slope from the house, a boat house in the level area which approaches Fox Creek, and a gazebo on the knoll. It appears that a variance to disturb steep slopes would be necessary for the house location. A variance to have an accessory structure in the front yard of a waterfront lot would be necessary for the boat house, though it is outside of the Buffer. A variance from the Buffer requirements would be necessary for the gazebo.

Based on our discussion and the hand-drawn plans which you provided, this office would not have an objection to a variance to allow construction of the dwelling on steep slopes nor an objection to the boat house (provided it is outside of all Buffers). We could not support a variance for the non-water dependent gazebo within the expanded Buffer. The newly proposed location for the dwelling was recommended by this office in the previous variance case. We also discussed mitigation for the forest clearing; you indicated that you think it can be accomplished on site.

Thank you for the opportunity to review your preliminary plans. If you have any questions or concerns as you move forward with your development, please feel free to contact me at (410) 260-3477.

Sincerely,

LeeAnne Chandler
Natural Resources Planner

cc: Marianne Mason, Esq.
Charlene Morgan
AA148-99

Branch Office: 31 Creamery Lane, Easton, MD 21601
(410) 822-9047 Fax: (410) 820-5093

August 15, 2000

RE: Anne Arundel County Judicial Appeal
/§8-1812(a) Notice

Dear Commission Member:

On August 10, 2000 we filed a Petition for Judicial Review stating our intent to appeal the variances granted to Steven Andraka (Anne Arundel Board of Appeals Case No. BA66-99V).

I believe that the decision of the Anne Arundel County Board of Appeals improperly approved the request. The applicant requested variances to permit construction of a dwelling with less Buffer than required and with disturbance to steep slopes. The applicant is the contract purchaser of a 2.3 acre undeveloped, forested lot. The lot has irregular boundaries and is shaped like a "dumbbell" with one bulbous end along the road and the other at the waterfront. The lot is shaped in such a way that there were two potential house locations. One is located within the expanded Buffer and steep slopes approximately 100 feet from the water. In order to access the house in this location the driveway would be 400 feet long (totaling 4000 square feet in size) and cross steep slopes and the 100-foot Critical Area Buffer. The alternative location is not within the Buffer, although its location adjacent to the road is partially within an area of steep slopes. The applicant proposed to develop the house in the former location, necessitating a number of variances. Commission staff provided written and verbal testimony at the Board's hearing in opposition to the proposed Buffer disturbance based on the fact that it could be avoided by using the alternative location.

The Board of Appeals approved the requested variances for the house location adjacent to the water, finding that the applicant would otherwise be denied a water view from his residence resulting in denial of reasonable and significant use of the property. The Board also found that the selected site would have fewer environmental impacts. Our analysis indicates otherwise, but the more troubling aspect of the Board's decision is the creation of a guaranteed property right to have a water view. State law does not waive Buffer requirements in order to guarantee waterfront property owners the right to view the water from their residences.

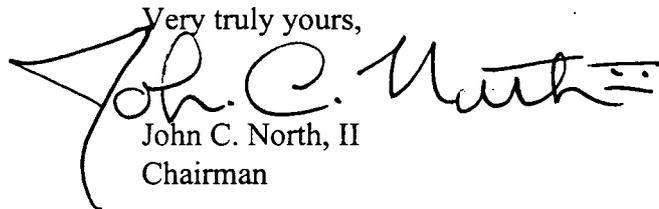
August 15, 2000

Page Two

In accordance with Natural Resources Article §8-1812, Annotated Code of Maryland, copy enclosed, if you disapprove of my action in this case, please notify me in writing within 35 days after the date of this notice. As provided in §8-1812, if 13 members of the Commission indicate disapproval of my action in a timely manner, I shall withdraw the action initiated. Please note the other procedural safeguards set forth in §8-1812.

Thank you for your anticipated cooperation. The full Commission file on this matter is available at the Commission office for your review. If you have questions or need additional information, please contact Ms. LeeAnne Chandler at (410) 260-3477.

Very truly yours,

A handwritten signature in black ink, appearing to read "John C. North, II". The signature is written in a cursive style with a horizontal line at the end.

John C. North, II
Chairman

JCN/LAC/jjd

Enclosure

cc: Marianne D. Mason, Esquire



Judge John C. North, II
Chairman

Ren Serey
Executive Director

**STATE OF MARYLAND
CHESAPEAKE BAY CRITICAL AREA COMMISSION**

45 Calvert Street, 2nd Floor, Annapolis, Maryland 21401
(410) 260-7516 Fax: (410) 974-5338

March 8, 2000

Mr. Anthony V. Lamartina, Chairman
Anne Arundel County Board of Appeals
Arundel Center
Annapolis, Maryland 21401

RE: Variance 1999-0102-V, Steven Andraka

Dear Chairman Lamartina:

Anne Arundel County Department of Planning and Code Enforcement has provided information on the above referenced variance application. The property owner has applied for a variance to permit a dwelling with less setbacks and Buffer than required and with disturbance to steep slopes. The property is designated LDA and is currently undeveloped.

On behalf of the Chesapeake Bay Critical Area Commission, I offer the following comments and recommendations:

I. Environmental Impacts Should be Minimized

Provided this parcel is properly grandfathered, this office does not object to the siting of a single family dwelling on it; however, impacts to sensitive features must be minimized and the variance must be the minimum necessary to provide relief. As currently proposed, it does not appear that impacts have been minimized. While part of the lot is encumbered by steep slopes and the expanded Buffer (although the extent of the expanded Buffer is not shown on the site plan), it appears that impacts to the steep slopes would be greatly reduced if the dwelling were sited on the northern section of the lot, adjacent to the road. If the dwelling were sited adjacent to the road, there would likely be no impact to the expanded Buffer. While some impacts to steep slopes would be unavoidable due to the need for the extensive septic reserve area, overall site impacts would be significantly reduced.

Branch Office: 31 Creamery Lane, Easton, MD 21601
(410) 822-9047 Fax: (410) 820-5093

The most recent site plan (received in our office March 7, 2000) shows the dwelling and limits of disturbance outside of the 100-foot Buffer; however, it appears that impacts can be further minimized. As currently proposed, construction will cause extensive disturbance to steep slopes and the expanded Buffer. It does not appear that the dwelling has been located to minimize overall site disturbance. Also, we question whether the limits of disturbance on the most recent plan are realistic. Typical limits of disturbance for construction of a dwelling are 10 to 15 feet from the structure. Given that this dwelling is to be constructed into the side of steep slopes, with significant excavation for installation of a full basement, a four to eight-foot limit of disturbance seems overly optimistic.

II. Avoid any Disturbance to the Buffer

It appears that construction of the dwelling may require disturbance of steep slopes no matter where it is located (i.e., adjacent to the road or in the area close to the water); however, the area close to the water is within the expanded Buffer, a designated Habitat Protection Area. The Buffer is established to act as a natural filter for runoff and to provide habitat to both terrestrial and aquatic species. The ability of the Buffer to perform these functions is greatly reduced when impervious surfaces are placed in the Buffer. The Buffer is expanded for sensitive site features, such as steep slopes. New development activities are prohibited in the Buffer except for water dependent facilities. The proposed house is not a water dependent facility. The subject property is 617 feet deep from the shoreline to the road. At the very least and as the most recent revised plans show, the plans for development can be accommodated without disturbance to the 100-foot Buffer. In addition, the house could be constructed near the road, with no impact to the expanded Buffer.

III. Avoid Any Impacts to the Riparian Forest

The forest on this property appears to qualify as a habitat protection area (HPA). According to the definition of "habitat protection area" in the County Zoning Ordinance (§1-101(28B)),

riparian forests 300 feet or more in width are HPAs. The riparian forest on this site, as shown on the site plan, is several hundred feet in width. It may be habitat for forest interior dwelling birds, as it appears that there is a closed canopy as well as an understory. The County Zoning Ordinance (§1A-104(a)(5)) states that "existing forests and developed woodlands identified as habitat protection areas shall be protected." This office recommends that clearing and disturbance be kept to the minimum. If the dwelling is sited adjacent to Kyle Road (an existing forest opening), it would avoid creating a significant gap in the riparian forest and minimize impacts to the Habitat Protection Area.

IV The Variance Requested is Not the minimum Necessary

The Anne Arundel County Zoning Ordinance in Section 11-102.1 lists the standards for granting variances. Part c states that "A variance may not be granted unless it is found ... that the variance is the minimum necessary to afford relief." This office would support a variance to disturb steep slopes in the area of the lot adjacent to Kyle Road in order for the applicant to construct a significantly sized single family dwelling that would be in character with the neighborhood. However, for the reasons stated above, we can not support the variance currently requested.

V. The Property Can support Reasonable and Significant Use Without disturbance to a Habitat Protection Area

We believe that denial of the variance does not create an unwarranted hardship for the applicant. As stated in *Belvoir Farms V. North*, 355 Md. 259 (1999) , the unwarranted hardship standard and its similar manifestations, are equivalent to the denial of reasonable and significant use of the property. The use of the entire property must be considered when determining whether a property owner has been denied reasonable and significant use of his property. In this case, the applicant can develop the property and enjoy the use for which the property is zoned (i.e., a residence) without a variance to the Buffer requirements.

Chairman Lamartina
March 8, 2000
Page Four

Mitigation should be provided in accordance with the County Zoning Ordinance for any approved development of this lot.

Thank you for the opportunity to comment. Please notify the Commission in writing of the decision made in this case.

Sincerely,

A handwritten signature in cursive script that reads "LeeAnne Chandler".

LeeAnne Chandler
Natural Resources Planner

LAC/jjd

cc: Marianne Mason, Esq.

JUL 17 2000

RE: An Appeal for Variances to the Zoning Regulations

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BEFORE THE
CHESAPEAKE BAY
COUNTY BOARD OF APPEALS

STEVEN T. ANDRAKA

OF ANNE ARUNDEL COUNTY

Petitioner

**CASE NO. BA 66-99V
(1999-0201-V)**

**Hearing Date: October 27, 1999 &
March 8 & April 5, 2000**

MEMORANDUM OF OPINION

Summary of Pleadings

This is an appeal from a decision of the Administrative Hearing Officer. This appeal is taken from the denial of a variance to permit the construction of a dwelling with fewer setbacks and buffer than required and on steep slopes. The property is located 187 feet along the south side of Kyle Road, 380 feet of Hazel Trail, Crownsville.

Summary of Evidence

Ms. Kay Dambach, an area resident, testified in opposition to the request. She asked that the existing laws and rules be enforced. She has environmental concerns and believes that the proposed home would be too close to the water.

Mr. Roy Little, an expert professional engineer, testified that he was in charge of the subdivision of Severn Side Farm (a subdivision that adjoins the subject property). He noted that in 1989, Parcel 296 (which constitutes a part of the subject property) was a legal lot. A sketch plan for subdivision was presented to the County in 1990, which depicted Parcel 151 (Severn Side Farm) and Parcel 296. Parcel 296 was to have additional property added to provide access to Kyle Road via an existing farm road. The Department of Planning and Code Enforcement determined that the subdivision of the parcels must be submitted under separate applications. In 1992, Parcel 296 was to

Board of Appeals
Anne Arundel County
Arundel Center
Annapolis, Maryland 21401

8 March 1999
1:00

RE: Board of Appeals Case No. BA 66-99V [PACE Variance Case No. 1999-0089-V (AD 2, CD 4)]
Wesley S. Kyle (current owner) & Steve Andraka (contract purchaser)

Dear Members of the Board:

I would very much appreciate your serious consideration of my statement in your review of Case No. BA 66-99V.

This hearing is my first involvement with the County's Board of Appeals process. I hope that I adequately portray my concern over the environmentally unsound site plan that is before you. I appreciate the opportunity that my neighbors and I have to participate in the changing character of our immediate environment. It is my hope that these changes, however, respect both the spirit and the letter of our County's Critical Area regulations.

Apparently, minor modifications have been made from the original submissions. The following principal points, however, remain unchanged:

- The new driveway requires significant filling and regrading within the 25%-steep-slopes area;
- The site allows for a suitable area for a home on the northeast portion of the lot (an area the applicant argued would cause *more* environmental degradation if disturbed); and
- The plan erroneously labels tidal wetlands as non-tidal wetlands and open space along the western boundary of the site. Fox Creek is tidally influenced, and as such, the wetlands are considered tidal. In other words, the 100' buffer has been omitted from this entire section of the property. Plotted correctly, the proposed driveway falls well within the protected buffer zone. (The applicant's engineer noted during the variance hearing that the plat showed this water body to be non-tidal. This is truly disturbing, for either the engineer does not recognize tidal wetlands, or worse, had not made a site visit in designing the building location).

The Critical Area restrictions for this property are spelled out on the subdivision plat 2 of 4 (signed by AACo 10 June 1994). As such, it is difficult to consider new construction on a subdivision approved almost 10 years after the Critical Areas' grandfather cut-off date of 1 December 1985 a hardship condition [1A-105(h)]. The *contract purchaser* and the current owner are and have been well aware of the Critical Area development restrictions.

Though I recognize that a strict enforcement of the regulations would not allow for any construction, I find it disconcerting that the applicant reconfigured the lot size through an administrative plat revision and did not attempt to accommodate the topographical restrictions at that time. I wish that development of the parcel in question be limited to the greatest extent practical under the community's Critical Area classification, Limited Development Areas (LDA). These minimum requirements are:

- 15% impervious surface [1A-105(a)]; and
- no more than 20% of the developed woodland be cleared [1A-104(c)(2)] – taking into account that ground disturbance within a mature tree's dripline will kill it.

In addition, I feel that the proposed design runs against the standards for granting a variance. A variance will:

- adversely impact the wildlife within the County's Critical Area [11-102.1(b)(5)] – the avian activity alone in Fox Creek includes Bald Eagle (1 siting), Blue Heron, Kingfisher, Red Tail Hawk, Osprey, Pileated and Red-Bellied Woodpecker, Eastern Bluebird, Flicker, Barn Swallow, Purple Martin, Chickadee, Nuthatch, Ruby-Throated Hummingbird, Goldfinch, Crackle, Robin, Mockingbird, Cardinal, Baltimore Oriole, Seagull, and Mallard;
- alter the essential character of the neighborhood [11-102.1(c)(2)(i)]; and
- reduce forest cover in the LDA of the Critical Area [11-102.1(c)(2)(ii)] – the site is developed woodland, contrary to what is noted in the application's Critical Area report of, "grass, areas with a few trees and shrubs." Please see attached color photos taken in March 1999.

Furthermore, conceding a variance on this property will set the scene to allow additional variances to Mr. Kyle's other lots adjacent Fox Creek – further degrading the environmental sanctity of this precious waterway.

A minor note: the date on the "Variance Site Plan" entitled Kyle Property on Fox Creek is July 1992. If the plan has been revised since then, perhaps the date should be made current.

I respectfully request your serious consideration of the points made herein. I also ask that I be afforded written notification of your final decision in this matter.

Sincerely,



Margaret B. Martin, P.E.
334 Long Point Road
Crownsville Maryland 21032
410.962.3500 (w)
410.923.6045 (h)

cc: Steven Legendre, AACo Hearing Officer
Charlene Morgan, Zoning Analyst, PACE, MS6301
LeeAnne Chandler, Chesapeake Bay Critical Area Commission (AA148-99)

Andraka 557-94
148-99

RECEIVED

JUN 9 1999

CHESAPEAKE BAY
CRITICAL AREA COMMISSION

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 1999-0102-V

**IN RE: WESLEY KYLE, OWNER
STEVEN ANDRAKA, CONTRACT PURCHASER**

SECOND ASSESSMENT DISTRICT

DATE HEARD: MAY 4, 1999

ORDERED BY: **STEPHEN M. LeGENDRE**, ADMINISTRATIVE HEARING OFFICER

ZONING ANALYST: **CHARLENE L. MORGAN**

DATE FILED: JUNE 2 1999

PLEADINGS

Wesley Kyle, owner, and Steven Andraka, contract purchaser, the applicants, seek a variance (1999-0102-V) to permit a dwelling with less setbacks and buffer than required and on steep slopes on property located along the south side of Kyle Road, east of Hazel Trail, Crownsville.

PUBLIC NOTIFICATION

The case was advertised in accordance with the provisions of the County Code. Mr. Andraka submitted an affidavit indicated that the property was posted on both the road and the waterfront on April 18, 1999. The file contains the written certification of mailing of the notice to all community associations and others requesting receipt of the notice information. This office notified each person designated in the application as owning land that is located within 175 feet of the property of the time of the hearing. The hearing was well attended. I conclude that all notice requirements were satisfied.

FINDINGS AND CONCLUSIONS

This case concerns a wooded property with a street address of 325 Kyle Road, in the subdivision of Severn Side Farm at Kyle Point, Crownsville. The only improvements are a dirt path that extends from Kyle Road in a southerly direction through the site (a distance of approximately 600 feet) to Fox Creek; and a stone chimney on a bluff overlooking Fox Creek. The property comprises 2.343

acres and is split zoned R-1 and R-5 residential with a Chesapeake Bay Critical Area designation as Limited Development Area (LDA). The proposal calls for the construction of a single-family dwelling within the 100-foot Critical Area buffer and on steep slopes.¹

The Anne Arundel County Code, Article 28, Section 1A-104(a)(1) establishes a minimum 100-foot buffer landward from the mean high-water line of tidal waters. The buffer expands to include all land within 50 feet of the top of contiguous steep slopes. Section 1A-103(e) prohibits new development activities, except for water dependent facilities, in the buffer. Section 1A-104(a)(5) requires the protection of existing forest and developed woodlands identified as habitat protection areas. Finally, Section 1A-105(c) prohibits development on slopes of 15 percent or greater in the Limited Development Area (LDA). Accordingly, this proposal necessitates Critical Area variances to disturb the buffer, the expanded buffer, habitat protection areas, and steep slopes.

Charlene L. Morgan, a zoning analyst with the Department of Planning and Code Enforcement, described the property as a grandfathered lot narrow at its center but wider along the road and the creek. According to the witness, the dwelling and its access will impact steep slopes, tidal floodplains and the Critical Area 100-foot buffer and expanded buffer. Even though the site impervious coverage will not be exceeded, she objected to the long gravel access. She

¹The dwelling is sited on the bluff with the septic system adjacent to Kyle Road.

reported that the Critical Area Commission requested relocating the dwelling from the knoll to the north outside of the buffer or reducing the footprint so that the limit of disturbance is outside of the buffer. The County's Environmental Division suggested relocating the dwelling to the northeast corner of the property. The witness concluded that the property is developable with less impacts. In the circumstances, she opposed this application; but supported a modified variance to permit a dwelling near Kyle Road with disturbance to steep slopes. In the event of approval of a dwelling near the creek, she recommended the imposition of the following conditions:

1. The footprint of the proposed house shall be reduced and shifted to avoid the 100-foot buffer.
2. Grading and clearing shall be kept to a minimum.
3. The canopy closure over the proposed driveway shall be maintained.
4. Forest mitigation shall be provided at a 3:1 ratio for all disturbance.

Bob Lee, the applicants' engineer, submitted into the record a July 1992 site plan depicting the lot (then known as Parcel 296) with an off-site septic easement and access easement on the adjacent parcel to the northeast (Parcel 151). An administrative plat approved on June 10, 1994 added the excess area from the subdivision of Parcel 151 to Parcel 296, with the revised parcel designated "296R". The witness testified that most of the site is steeply sloped, including extended areas of 25 percent slopes. Development adjacent to Kyle Road impacts continuous steep slopes in the amount of 4,640 square feet. Development adjacent

to Fox Creek disturbs 3,780 square feet of steep slopes, and the disturbance is not continuous. The witness submitted a cross section depicting the difficulty in locating the house adjacent to Kyle Road. The grade at the front of the house is 17 feet higher than the grade at the rear of the house. He indicated that the area close to Fox Creek is the location of prior construction and is easier to stabilize. The witness contended that this application meets each and every variance criteria. In particular, he concluded that the environmental impacts have been minimized. With respect to Ms. Morgan's suggested conditions, he testified that there is no opportunity to reduce the footprint; the grading and clearing have been minimized; the canopy will be preserved along with specimen trees; and mitigation will be provided.

Mr. Andraka testified that the proposed dwelling contains 1,300 square feet of living space on the first floor, 1,200 square feet of living space on the second floor, a 2½ car garage, a deck and porches. He testified that the purpose of the administrative plat was to locate the septic within the lot rather than to relocate the dwelling proximate to Kyle Road.

Nancy Matthews, an environmental consultant to the applicants, stated her opinion that building adjacent to Fox Creek would have less environmental impacts than building adjacent to Kyle Road.

Wesley Kyle testified that the purpose of the administrative plat was to relocate the septic system and its resultant pollutants far from Fox Creek. He insisted that the knoll is the only logical area for development.

There was substantial opposition to the application. Eric Zacharias, who resides across Fox Creek, testified that the site is a secluded wildlife habitat. He recognized the right to develop the lot, but stated the construction should be on a smaller scale and close to Kyle Road. Claudia Zacharias testified that the proposal will impact the view from across the creek. She further stated that the dwelling is larger than anything on the opposite shore. Other witnesses expressed concern for the environment and the wildlife. Margaret Martin, a professional engineer, disputed that the proposal minimizes the environmental impacts. Among other observations, she noted that the footprint of the dwelling extends into the 100-foot buffer; the driveway impacts 25 percent slopes; and the plan incorrectly labels tidal wetlands as nontidal. She disputed the hardship and disagreed that the variance standards have been satisfied. She requested a strict implementation of the Critical Area Program.

I visited the site and the neighborhood. This lot is just beyond the edge of Herald Harbor, where Severn Side Farm begins. The property is certainly unique, in the shape of an elongated hourglass. The site is heavily wooded. The dirt path descends from Kyle Road across steep slopes, crosses the relatively flat narrow portion of the site, and then ascends across steep slopes to the proposed dwelling site. There is a commanding view from the vantage of the knoll.

“An applicant for a variance bears the burden of overcoming the presumption that the proposed use is unsuitable. This is done, if at all, by satisfying fully the dictates of the statute authorizing the variance.” North v. St.

Mary's County, 99 Md. App. 502, 510 (1994).

The standards for granting variances are contained in Section 11-102.1. Under subsection (b), for a property in the Critical Area, a variance to the Critical Area program requirements may be granted if (1) due to features of the site, a strict implementation of the program would result in an unwarranted hardship to the applicants; (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 variance request is not based on circumstances 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 am unable to grant the requested relief. There are certainly features of this site, including its shape and grade, such that a strict implementation of the Critical Area Program would result in an unwarranted hardship. That is, to literally interpret the program would mean

that the site cannot be developed with a single-family residence. Yet, single-family use is a right commonly enjoyed by other properties in similar areas of the Critical Area. Accordingly, some relief does not constitute a special privilege. Furthermore, it is possible to condition relief so that there will be no adverse affect to water quality or adverse impacts to fish, wildlife or plant habitat; and to achieve harmony with the spirit and intent of the program. However, these particular requests arise at least in part from the actions of the applicants. The configuration of this site is certainly unusual. The shape is one of the very features relied upon as justification for relief. Yet the shape is a direct result of the administrative plat. Admittedly, the applicants rely on other features of the site, primarily the topography, to justify the request. Because I find that the applicants have failed to meet the Subsection (c)(1) criterion, I need not resolve whether the additional features justify the requested relief.

The applicants' more significant failure in this case is that they have not minimized the variances. The primary focus of the analysis was to compare the impact of a particular footprint on steep slopes for the two potential dwelling locations. This approach is inadequate for several reasons. Most fundamentally, a different footprint might be in order adjacent to Kyle Road as compared to along Fox Creek. Second, despite protestations to the contrary, this irregular footprint is far from modest. It is conceivable that a smaller house would require a smaller septic system, providing additional land area for a dwelling near Kyle Road away from the 25 percent slopes. But even the precise comparison that is made has its

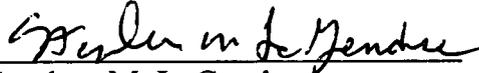
shortcomings. The applicants pay little attention to the fact that the Fox Creek site is within the 100-foot buffer. Nor does the comparison consider the additional steep slopes impacted by the long access from Kyle Road to the proposed site. In sum, and as noted by the Critical Area Commission, "there are opportunities to further minimize impacts to this sensitive site." Accordingly, the application shall be denied.

ORDER

PURSUANT to the application of Wesley Kyle and Steven Andraka, petitioning for a variance to permit a dwelling with less setbacks and buffer; and

PURSUANT to the advertising, posting of the property, and public hearing and in accordance with the provisions of law, it is this 2nd day of June, 1999,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicants' request is hereby **denied**.


Stephen M. LeGenre
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.

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



Judge John C. North, II
Chairman

Ren Serey
Executive Director

**STATE OF MARYLAND
CHESAPEAKE BAY CRITICAL AREA COMMISSION**

45 Calvert Street, 2nd Floor, Annapolis, Maryland 21401
(410) 260-7516 Fax: (410) 974-5338

April 29, 1999

Ms. Charlene Morgan, Zoning Analyst
Anne Arundel County Dept. of Planning and Code Enforcement
2664 Riva Rd., MS 6301
Annapolis, Maryland 21401

RE: Variance 1999-0102-V, Steven Andraka - REVISED PLAN

Dear Ms. Morgan:

This office is in receipt of the revised plans for the variance application referenced above. According to the cover letter, revisions to the plan were required by the Health Department for approval of the septic system. The revised plans do not alleviate any of the concerns and issues raised in our March 26, 1999 comment letter for this case. Therefore, please refer to that letter for the Commission's comments on this variance.

Please include this letter 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.

Sincerely,

A handwritten signature in cursive script that reads "LeeAnne Chandler".

LeeAnne Chandler
Natural Resources Planner

cc: AA148-99

Branch Office: 31 Creamery Lane, Easton, MD 21601
(410) 822-9047 Fax: (410) 820-5093

TTY FOR DEAF ANNAPOLIS-974-2609 D.C. METRO-586-0450



Stephen Legendre
Administrative Hearing Officer
Anne Arundel County
Arundel Center
Annapolis, Maryland 21401

4 May 1999

RECEIVED

MAY 10 1999

CHESAPEAKE BAY
CRITICAL AREA COMMISSION

RE: Planning and Code Enforcement (PACE) Variance Case No. 1999-0102-V
Steve Andraka / Wesley S. Kyle

Dear Mr. Legendre:

I would very much appreciate your serious consideration of my statement in your review of Variance Case No. 1999-0102-V.

Apart from the somewhat concurrent Variance Case No. 1999-0089-V, this hearing is my first involvement with the County's Critical Area variance process. As I noted in my letter concerning 1999-0089-V, neither I nor my neighbors in the Herald Harbor and Long Point communities have received a notice of these proposed variances. My reading of the County code [11-104(c)(3), 11-109(b)] would lead me to believe that we were to be notified. Maybe this is not so. However, it stands to reason that the intent of this section of the Code is to allow those adjacent property owners the opportunity to be involved in the changing quality and character of their immediate environment. In the case of shoreline property, as we have here with Fox Creek, the adjacent properties would include those immediately across the water body. In this case, those property owners along Long Point Road could best speak to the environmental impact of encroaching development.

In reviewing the 1999-0102-V proposal, it appears that opportunities abound to minimize its environmental impact. The following principal points stand out:

- The house footprint extends well into the 100' buffer, including a deck, a porch and a not-insignificant portion of the main building;
- The new driveway requires significant filling and regrading within the 25%-steep-slopes area; and
- The plan erroneously labels tidal wetlands as non-tidal wetlands and open space along the western boundary of the site. Fox Creek is tidally influenced, and as such, the wetlands are considered tidal. In other words, the 100' buffer has been omitted from this section of the property. Plotted correctly, the pump pit, the driveway and approximately 20% of the proposed garage fall within the protected buffer zone.

The Critical Area restrictions for this property are spelled out on the subdivision plat 2 of 4 (signed by AACo 10 June 1994). As such, it is difficult to consider new construction on a subdivision approved almost 10 years after the Critical Areas' grandfather cut-off date of 1 December 1985 a hardship condition [1A-105(h)]. The contract purchaser and the current owner are and have been well aware of the Critical Area development restrictions.

I wish that development of the parcel in question be limited to what is permitted for the community's Critical Area classification, Limited Development Areas (LDA):

- 15% impervious surface [1A-105(a)];
- not on slopes of 15% or greater [1A-105(c)];
- no more than 20% of the developed woodland be cleared [1A-104(c)(2)] (how is this calculated, verified and enforced?); and
- that the 'buffer shall be expanded to include any contiguous, sensitive areas such as steep slopes and shall include all land within 50 feet of the top of the bank of steep slopes' [1A-104(a)(1)].

In addition, I feel that the proposed design runs against the standards for granting a variance. A variance will:

- adversely impact the wildlife within the County's Critical Area [11-102.1(b)(5)] – the avian activity alone in Fox Creek includes Bald Eagle (1 siting), Blue Heron, Kingfisher, Red Tail Hawk, Osprey, Pileated and Red-Bellied Woodpecker, Eastern Bluebird, Flicker, Barn Swallow, Purple Martin, Chickadee, Nuthatch, Ruby-Throated Hummingbird, Goldfinch, Crackle, Robin, Mockingbird, Cardinal, Baltimore Oriole, Seagull, and Mallard;
- alter the essential character of the neighborhood [11-102.1(c)(2)(i)]; and
- reduce forest cover in the LDA of the Critical Area [11-102.1(c)(2)(ii)] – the site is developed woodland, ~~contrary to the intent of the application's Critical Area map of "open areas with a forest canopy"~~ Please see attached color photos taken in March 1999.

A minor note: the date on the "Variance Site Plan" entitled Kyle Property on Fox Creek is July 1992. If the plan has been revised since then, perhaps the date should be made current.

I respectfully request your serious consideration of the points made herein. Please call me should you wish any additional information or clarification. I also ask that I be afforded written notification of your final decision in this matter.

Sincerely,

COPY

Margaret B. Martin, P.E.

334 Long Point Road
Crownsville Maryland 21032
410.962.3500 (w)
410.923.6045 (h)

cc: Charlene Morgan, PACE, MS6301
LeeAnne Chandler, Chesapeake Bay Critical Area Commission (AA148-99)

CHESAPEAKE BAY CRITICAL AREA COMMISSION
 45 CALVERT STREET, 2ND FLOOR
 ANNAPOLIS, MD 21401

NOTIFICATION OF PROJECT APPLICATION

Jurisdiction: ANNE ARUNDEL

Date: 3-1-99

Name of Project (site name, subdivision name, or other): ADRAKA PROP (KYLE LOT 296R)

Local case number: _____

Project location/Address: 325 KYLE RD / CROWNSVILLE

Tax map# 31

Block# 24

Lot# _____

Parcel# 296R

Type of application:
(Select all applicable)

- SUBDIVISION
- SITE PLAN
- VARIANCE:
Buffer Slope
Imp. Surf. Other
- SPECIAL EXCEPTION
- CONDITIONAL USE
- REZONING
- GRADING PERMIT
- BLDG PERMIT
- INTRAFAMILY
- GROWTH ALLOCATION
- OTHERS _____

Type of Project:
(Select all applicable)

- RESIDENTIAL
- COMMERCIAL
- WATER DEPENDENT
FACILITY/PIER/MARINA
- INDUSTRIAL
- MIXED USE
- REDEVELOPMENT
- SHORE EROSION PROTEC.
- AGRICULTURE
- OTHERS _____
e.g. PLD

Current Use:
(Select all applicable)

- COMMERCIAL
- RESIDENTIAL
- AGRICULTURE
- FOREST/BUFFER/WOODLAND
- INDUSTRIAL
- INSTITUTIONAL
- OPEN SPACE/RECRE.
- SURFACE MINING
- VACANT
- WATER DEPENDENT
FACILITY/PIER/MARINA
- OTHERS _____

Describe Proposed use of project site: TO PERMIT A DWELLING WITH LESS SETBACKS & BUFFERS THAN REQUIRED AN ON STEEP SLOPES

SITE INVENTORY OF AREA ONLY IN THE CRITICAL AREA

TOTAL ACRES IN CRITICAL AREA: <u>2.343</u>		AREA DISTURBED: _____
IDA ACRES _____	LDA ACRES <u>2.343</u>	# LOTS CREATED: _____
RCA ACRES _____	AGRICULTURAL LAND: _____	# DWELLING UNITS: <u>1</u>
EXISTING FOREST/WOODLAND/TREES: <u>1.912</u>	FOREST/WOODLAND/TREES REMOVED: <u>0.345</u>	18%
FOREST/WOODLAND/TREES CREATED: <u>0</u>	PROPOSED IMPERVIOUS SURFACE: <u>0.120</u>	5%
EXISTING IMPERVIOUS SURFACE: <u>0</u>	TOTAL IMPERVIOUS SURFACE: <u>0.120</u>	
GROWTH ALLOCATION DEDUCTED: _____	RCA to LDA: _____	RCA to IDA: _____
		LDA to IDA: _____

Local Jurisdiction Contact person: _____

Telephone number: _____

Response from Commission required by: _____

Hearing Date: _____

See Anne
FYI

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

RECEIVED
OCT 22 1999
CHESAPEAKE BAY
CRITICAL AREA COMMISSION

APPLICANT: Andraka, Steven

ASSESSMENT DISTRICT: ~~Second~~ CHESAPEAKE BAY
CRITICAL AREA COMMISSION

CASE NUMBER: 1999-0102-V

COUNCILMANIC DISTRICT: Fourth

HEARING DATE: May 4, 1999

PREPARED BY: Charlene L. Morgan
Planner

REQUEST

The applicant is requesting a variance to permit a dwelling with less setbacks and buffer and on steep slopes on a lot split zoned R1-Residential and R5-Residential.

DESCRIPTION OF SITE

The subject property contains 2.343 acres. The property is designated as Parcel 296R on the subdivision plat of Severn Side Farm at Kyle Point in Crownsville, Maryland. Located on Tax Map 31, Block 24, Parcel 296R, the site is currently undeveloped. The property is within the Chesapeake Bay Critical Area, designated Limited Development Area (LDA) and is subject to Buffer requirements.

The current R1- and R5-Residential District classifications of the site were received as a result of the comprehensive rezoning for the Second Assessment District, effective February 13, 1989.

APPLICANT'S PROPOSAL

The applicant proposes to construct a single family dwelling, porches, deck and an attached garage within the 100-foot buffer and on steep slopes.

REQUESTED VARIANCE

Section 1A-103(e) prohibits new development activities in the buffer. Section 1A-104(a)(1) requires a minimum 100-foot buffer landward from the mean high-water line of tidal waters and requires the buffer to be expanded to include contiguous slopes of 15% or greater plus 50 feet from the top of the slope. Section 1A-104(a)(5) requires existing forests and developed woodlands identified as habitat protection areas to be protected. 1A-105(c) prohibits

development on slopes of 15% or greater in Limited Development Areas.

As such, a variances to the 100-foot buffer, the expanded buffer, disturbance of habitat protection areas and of steep slopes are requested.

FINDINGS

With regard to the standards by which a variance may be granted, as set forth under Section 11-102.1, this Office offers the following:

The subject property is a grandfathered lot that has a narrow center with two larger areas to the front and rear. The dwelling and access placement as proposed would impact steep slopes, floodplains designated A9 (100-foot tidal floodplain) and the 100 foot buffer and expanded buffer. Although the proposed layout will not exceed the impervious allowed on the site, the addition of gravel to the driveway will increase the impervious surface beyond the minimum necessary. The 'driveway' is actually a dirt path and is currently considered pervious.

The Chesapeake Bay Critical Area Commission (CBCAC) suggests that as a minimum, the disturbance be located outside of the 100-foot buffer. They also comment that the forested area may qualify as a habitat protection area (HPA) and recommends that the impacts to this sensitive site be minimized. The Permit Application Center (PACE/PAC) recommends re-siting the dwelling in the northeast corner near Kyle Road to reduce the impacts to the buffer and to minimize impervious surface. A site visit revealed tidal waters immediately west of the site, which requires the same 100 foot buffer and is not noted on the proposed plan.

There is no reasonable possibility of developing the lot without some variance, however, this Office believes that this property is developable with less impacts. If the dwelling is located near the road adjacent to the septic area it would impact only steep slopes and would reduce the amount of impervious surface required to construct the long access to the waterfront location. This alternate location would also protect the potential habitat protection area. The driveway may be constructed over the septic area and a home designed to fit the topography.

RECOMMENDATIONS

Based on the above, this Office cannot support the variance as submitted but would support a variance to the disturbance of steep slopes only in the area near Kyle Road.

Should the Hearing Officer grant the variances needed to permit the location of the house on the site near the water, we ask that the following conditions from the CBCAC and PACE/PAC be placed on the approval:

1. The footprint of the proposed house shall be reduced and shifted to avoid the 100-foot buffer.

2. Grading and clearing shall be kept to the minimum.
3. The canopy closure over the proposed driveway shall be maintained.
4. Forest mitigation shall be provided at a 3 to 1 ratio for all disturbance.

Lee Anne
FYI

1

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 1999-0102-V

IN RE: WESLEY KYLE, OWNER
STEVEN ANDRAKA, CONTRACT PURCHASER

SECOND ASSESSMENT DISTRICT

DATE HEARD: MAY 4, 1999

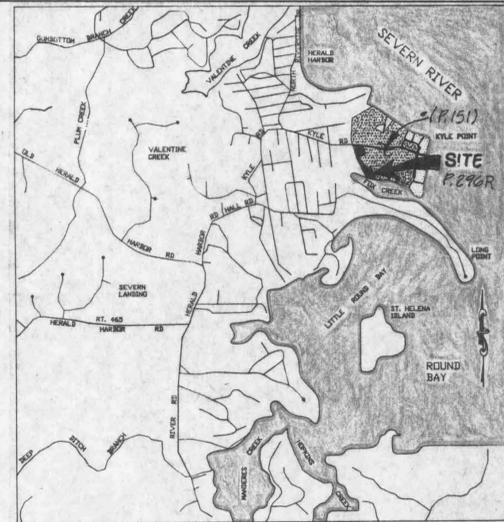
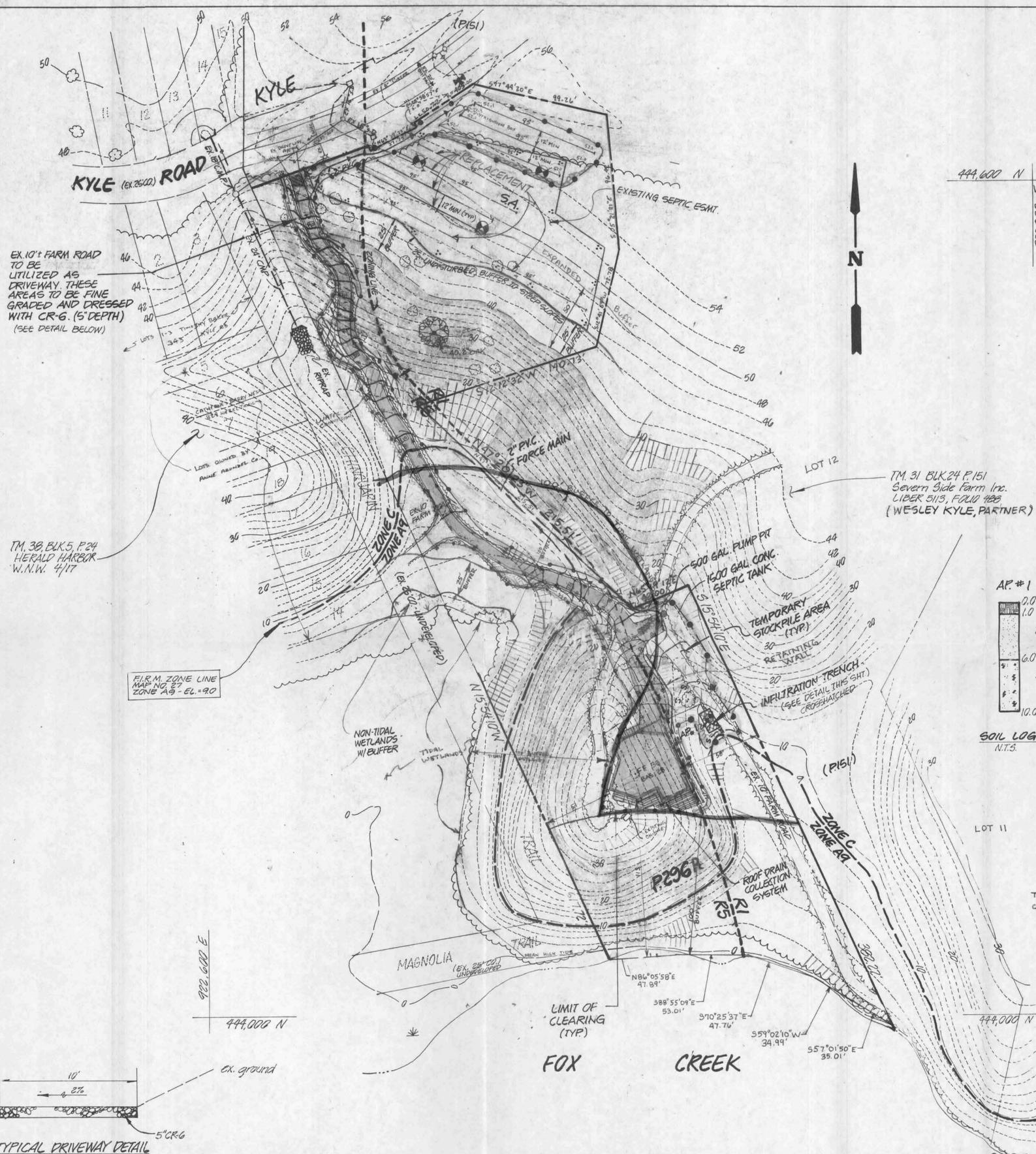
RECEIVED
OCT 22 1999
CHESAPEAKE BAY
CRITICAL AREA COMMISSION

ORDERED BY: **STEPHEN M. LeGENDRE**, ADMINISTRATIVE HEARING OFFICER

ZONING ANALYST: **CHARLENE L. MORGAN**

PAUL H. ARUNDEL CO.
RECEIVED
JUN 2 1999
PLANNING & CODE ENFORCEMENT

DATE FILED: JUNE 2 1999



VICINITY MAP
1"=2000'

LEGEND

- Temporary stockpile Area
- EXISTING CONTOUR
- EXISTING TREELINE
- SLOPES 25%+ W/ 25' BUFFER
- SLOPES 15% TO 25%
- PROPOSED CONTOUR
- PROPOSED HOUSE W/ FINISHED FLOOR EL.
- SILT FENCE
- LIMIT OF CLEARING
- SEPTIC SYSTEM
- 10,000 S.F. SEPTIC AREA
- PASSING PERC
- INDIVIDUAL INFILTRATION TRENCH
- ROOF DRAIN COLLECTION SYSTEM
- LIMIT OF DISTURBANCE
- PROP. GROUND ELEV.
- STABILIZED CONSTRUCTION ENTRANCE
- Ex. Shortline
- SUPER SILT FENCE
- FIRM ZONE LINE
- ZONING LINE
- NON-TIDAL WETLANDS W/ 25' BUFFER
- EX. DRIVE TO REMAIN
- EX. DRIVE TO BE REMOVED
- PROP. DRIVE
- EX. STORM DRAIN
- AUGER PROBE
- EX. SIGNIFICANT TREE
-

AP #1

2.0	1) TOPSOIL: (DARK BROWN SAND)
1.0	2) TAN SAND: (USDA: SAND - USCS: SP-SW)
6.0	3) TAN WET SANDY CLAY: (USDA: SANDY CLAY USCS: MH)
9.0	
10.0	

SOIL LOG
N.T.S.

CRITICAL AREA SITE CALCULATIONS

TOTAL SITE 2.343 ac / 102,048 sq ft

LOT 11

EX WOODS 1.912 ac / 83,280 sq ft

PERMITTED CLEARING = 25% = 20,820 sq ft

PROP CLEARING 0.348 ac / 15,160 sq ft (18.2% OF EX WOODS)

PERMITTED IMPERVIOUS = 15% = 15,307 sq ft

PROP IMPERVIOUS = 0.167 ac / 7280 sq ft (= 7.13% OF THE SITE)

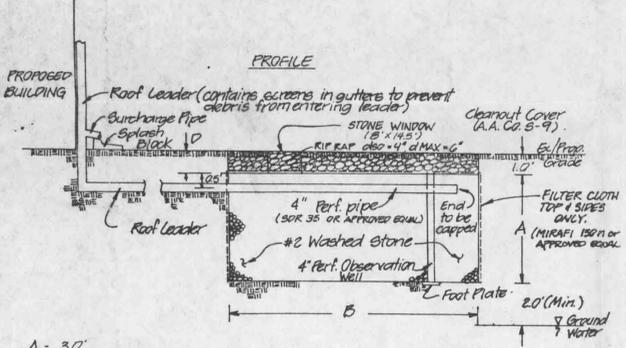
THE ENTIRE SITE IS WITHIN THE CRITICAL AREA (LDA)

RECEIVED
APR 4 2000
CHESAPEAKE BAY
CRITICAL AREA COMMISSION

SEPTIC AND VARIANCE SITE PLAN

NOTE: ALL ROOF LEADERS ARE TO BE PIPED TO THE DRYWELL

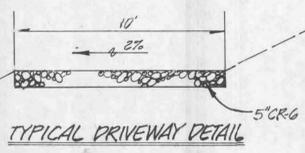
Infiltration Drywell Detail
NOT TO SCALE



- A = 3.0'
- B = 14.5'
- C = 3.0'
- D = 1.0' min.
- E = 2.0'
- F = 4.0'
- G = 4.0'

SEPTIC SYSTEM

- Note:
- All methods, materials, clearances, and dimensions to conform with the Anne Arundel County plumbing code.
 - Trenches to be 2' wide; 18" deep; pipe in trenches no deeper than 4' application # 702023462
 - Pump and line to be field sized.



NO.	REVISION	DATE	BY
1	FIELD LOCATE THE WETLANDS AND FARM ROAD REVISE BUFFERS ACCORDING TO FIELD LOCATED WETLANDS BOUNDARY AND LOT LINES	4/6/99	
2	REVISE SEPTIC SYSTEM PER HEALTH DEPT. COMMENTS TO PROVIDE EQUAL LENGTH TRENCHES		
3	SHIFT HOUSE, DRIVEWAY AND LIMITS OF DISTURBANCE OUT OF THE 100' BUFFER. LOCATE GARAGE IN THE BASEMENT OF HOUSE.	10/99	
4	ADJUST DRIVEWAY ALIGNMENT TO AVOID FIELD LOCATED TREE ADJUST HOUSE AT THE TOP OF THE KNOLL TO AVOID THE TREE REVISE STEEP SLOPE DISTURBANCE OF DRIVEWAY AND REDUCE LIMITS OF DISTURBANCE	3/00	
5			

GRADING, SEDIMENT AND EROSION CONTROL PLAN

DRAWN BY: A.B.MCG
CHECKED BY: TNS.
DATE: APRIL 2000

SCALE: 1"=40'
SHEET NO. 1 OF 1
Project No: 92-1092

KYLE PROPERTY
ON FOX CREEK
Tax Map 31, Block 24 Parcel 296A
35th Tax District Anne Arundel Co MD
Scale: 1"=40'
JULY, 1992

CONTRACT PURCHASER
STEVEN ANDRAKA
403 BEECH TRAIL
CROWNSVILLE MD 21032
(410) 923-0924