

Att
Comment
5/6/99

MSA - 51829 - 99

AA 226-99 Napolitano, Christopher
VAR 99-0186

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 find and conclude that the applicants are entitled to conditional relief from the code. For this Critical Area property, due to the expanded buffer features of the site, a strict implementation of the program would cause an unwarranted hardship. To literally interpret the program will deprive the applicants the right to develop the property with a single

family residence, a right typically enjoyed by other properties in similar areas in the Critical Area. Conversely, the granting of the variances does not confer a special privilege the program typically denies to other Critical Area properties. There is nothing to suggest that the request results from the applicants' actions. With mitigation, the variance will not adversely affect water quality or adversely impact fish, wildlife or plant habitat and will harmonize with the spirit and intent of the program.

The issue remains whether the applicants have minimized their request. Based on the totality of the record, I believe they have. Under the current proposal, the expanded buffer line traverses the long dimension of the structure. As a result, approximately 40% of the structure is outside the expanded buffer. By comparison, the improvements authorized in Case No. V-489-94 lie wholly in the expanded buffer. This difference alone would not be sufficient justification for an excessive variance. But the only way to further reduce the extent of the impact to the expanded buffer is to first relocate the stormwater management system to the southeast corner of the lot. There is a dispute of fact whether the stormwater management system can be moved. The best evidence on this issue is the opinion of the responsible design professional. It should also be noted that the current proposal comports with zoning setbacks, whereas the County's suggestion does not. I find and conclude that the granting of the variance does not alter the essential character of the neighborhood, substantially impair the use or development of adjacent property, and is not detrimental to the public welfare.

The approval shall be subject to the conditions in the Order.

ORDER

PURSUANT to the application of Christopher and Jacqueline Napolitano, petitioning for a variance to permit a dwelling with less setbacks than required; and

PURSUANT to the advertising, posting of the property, and public hearing and in accordance with the provisions of law, it is this 20th day of July, 1999,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicants are **granted** a variance to build in the expanded buffer in accordance with the site plan. The approval is subject to the following conditions:

1. A 25 foot forested buffer (minimum) shall be maintained between the top of slopes 25% and greater and all disturbance.
2. No stormwater runoff shall be allowed onto the 40% slopes.
3. A grading permit is required for the project.
4. The applicants shall provide stormwater management for peak flow and water quality.
5. The portion of the stormwater management trench located in the RCA shall be hand dug.
6. Mitigation for woodland removal shall be required at a 3:1 ratio for all woodland removed.
7. A conservation easement shall be required on all remaining woodland.

8. The building permit shall be approved by the Health Department.


Stephen M. LeGendre
Administrative Hearing Officer

NOTICE TO APPLICANT

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

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

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

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

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

July 9, 1999

Ms. Pam Miley
Anne Arundel County Department of Planning and Code Enforcement
2664 Riva Road, MS 6301
Annapolis, Maryland 21401

Re: Christopher Napolitano, Revised Plan
1999-0186-V

Dear Ms. Miley:

Thank you for faxing the revised plans for the above-referenced case. It appears the applicant has shifted the dwelling in order to avoid the required 25-foot setback to steep slopes. However, it appears no additional efforts were made to shift the dwelling farther outside the expanded Buffer to steep slopes required by the County Code. As stated in my previous letter to Mr. Dooley concerning this project, this office has no objection to the siting of a single family dwelling on this lot; however the applicant should demonstrate to the satisfaction of your office that every effort was made to minimize disturbance to this Habitat Protection Area.

We understand and appreciate the applicant's desire to construct the proposed dwelling on this lot. We also understand that it may not be possible to accommodate this dwelling entirely outside of the expanded Buffer; however there appears to be additional area outside the expanded Buffer and the required zoning setbacks whereby a portion of the proposed dwelling and/or stormwater management system can be sited, as suggested by County staff. Minimizing disturbance to the expanded Buffer will also reduce the required mitigation.

Please call me if you require additional comments or recommendations. Please include this letter in your file and submit it as part of the record for variance.

Sincerely,

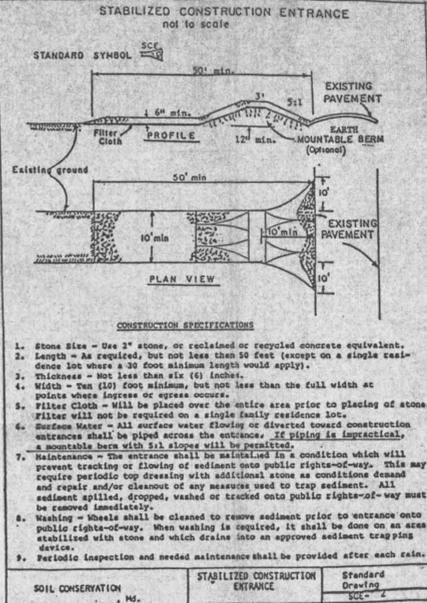
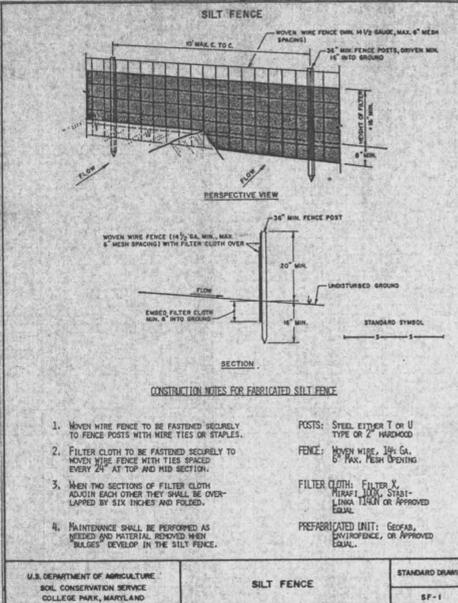
A handwritten signature in cursive script that reads "Lisa A. Hoerger".

Lisa A. Hoerger
Planner

cc: AA 226-99

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





DETAILS AND SPECIFICATIONS FOR VEGETATIVE ESTABLISHMENT

SITE PREPARATION:

- Stabilize as per Standard Responsibility Note # 3.
- Temporary perimeter dikes and silt traps, etc., are to be provided as per this plan prior to grading operations with location adjustments to be made in the field as necessary and to be maintained at the end of the working day. The minimum area practical shall be disturbed for the minimum amount of time possible.
- Permanent Seeding:**
 - Seedbed preparation:** Area to be seeded shall be loose and friable to a depth of at least 3". The top layer shall be loosened by raking, disking or other acceptable means before seeding occurs. In lieu of soil test results, apply 100 pounds of dolomitic limestone and 25 pounds of 10-10-10 fertilizer per 1,000 square feet. Harrow or disk line and fertilizer into the soil to a depth of at least 3" on slopes flatter than 3:1. No attempt should be made to drag any disked area to make the soil surface smooth after disking.
 - Seeding:** Apply 5-6 pounds per 1,000 square feet of Kentucky 31 tall fescue between February 1 and April 30 or between August 15 and October 31. Apply seed uniformly on a moist, firm seedbed with a cyclone seeder, cultipacker seeder or hydroseeder (slurry includes seeds and fertilizer, recommended on steep slopes only). Maximum seed depth should be 1/4" in clayey soils and 1/2" in sandy soils when using other than the hydroseeder method. Irrigate if soil moisture is deficient to support adequate growth, until vegetation is firmly established.
 - Mulching:** Mulch shall be unchopped, unrotted, small grain straw applied at a rate of 70 to 90 pounds per 1,000 square feet. Mulch materials shall be relatively free of all kinds of weeds and shall be free of prohibited noxious weeds. Spread mulch mechanically or uniformly by hand; mulch anchoring shall be accomplished immediately after mulch placement to minimize loss by wind or water. This may be done by peg and twine method, mulch anchoring tool, netting or liquid mulch binders.
- Temporary Seeding:**

Lime: 100 pounds of dolomitic limestone per 1,000 square feet

Fertilizer: 15 pounds of 10-10-10 per 1,000 square feet

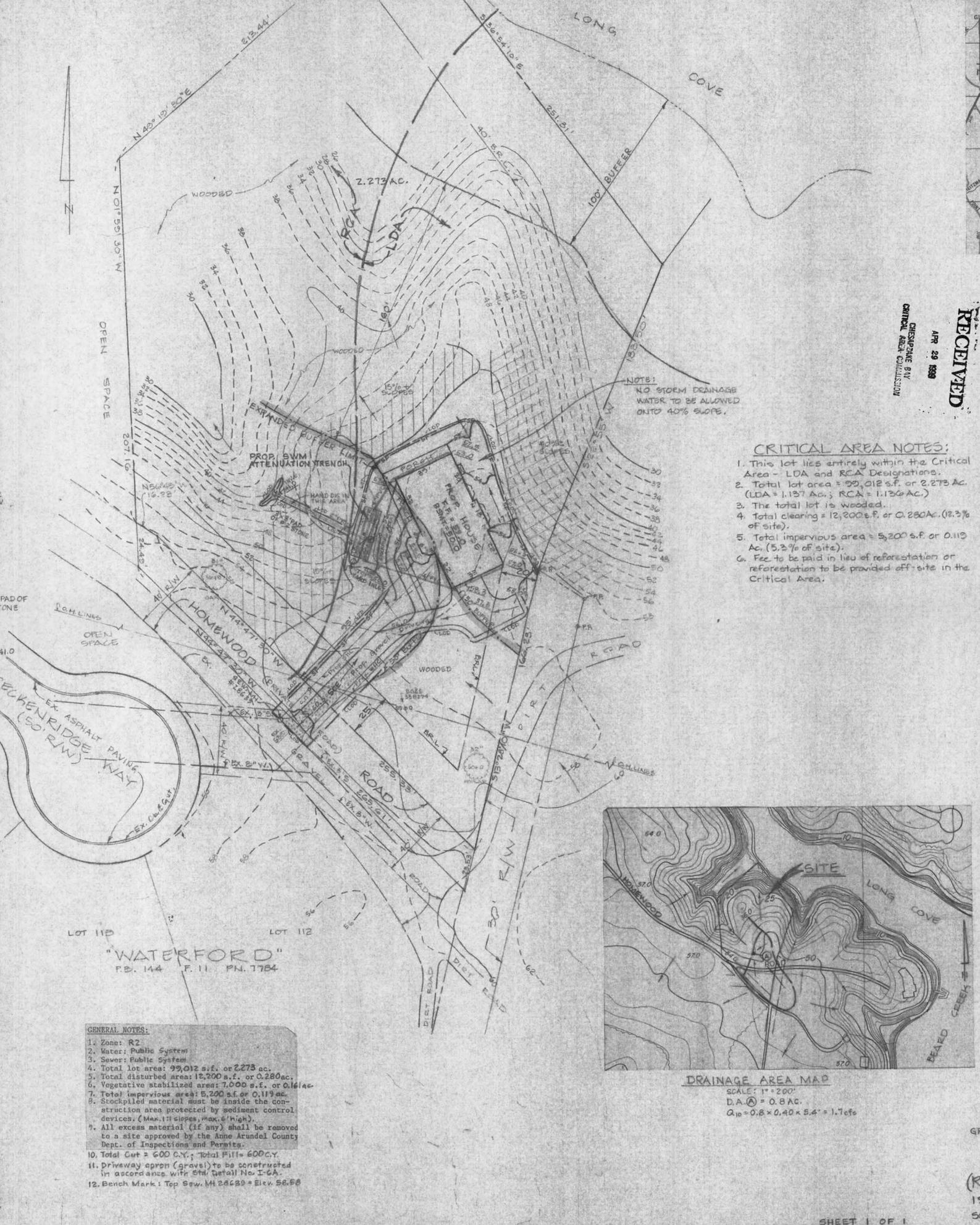
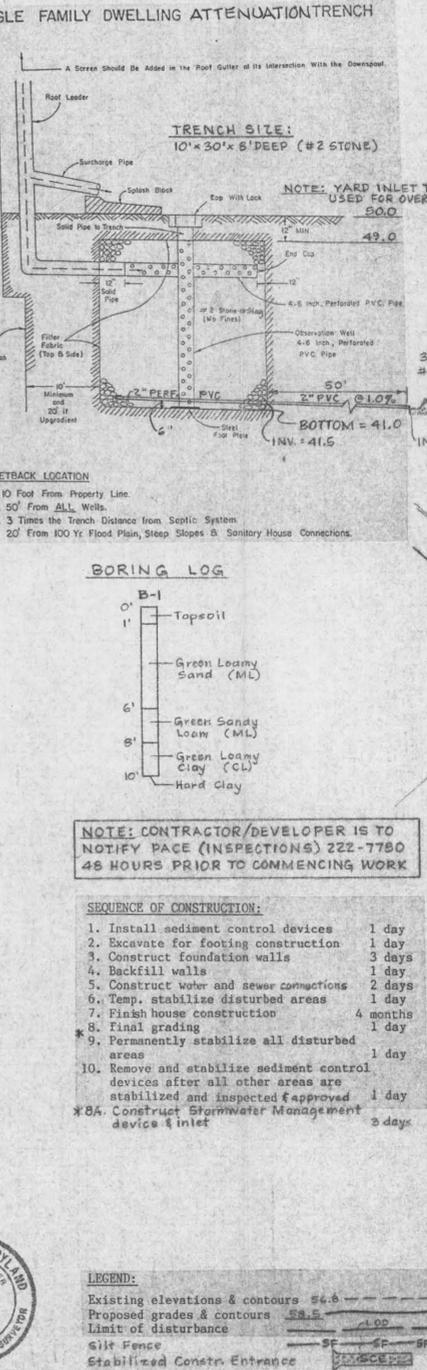
Seed: Perennial rye, Italian rye - 0.92 pounds per 1,000 square feet (February 1 through April 30 or August 15 through November 1)
Millet - 0.92 pounds per 1,000 square feet (May 1 through August 15)
Millet - 0.92 pounds per 1,000 square feet (May 1 through August 15)

Mulch: Same as 3 C above (November 2 through January 31)
- No fills may be placed on frozen ground. All fill to be placed in approximately horizontal layers, each layer having a loose thickness of not more than 6". All fill in roadways and parking areas is to be classified Type 2 as per Anne Arundel County Grading Ordinance, Section 12-2027, and compacted to 90% density; compaction to be determined by ASTM D-1557 (modified Proctor). Key fill within building area is to be compacted to a minimum of 95% as determined by methods previously mentioned. All other fills shall be compacted sufficiently so as to be stable and prevent erosion and slippage.
- Permanent Sod:** Permanent sod is to be Kentucky 31 tall fescue, state approved sod; lime and fertilizer per permanent seeding specifications and lightly irrigate soil prior to laying sod. Sod is to be laid on the contour with all ends tightly abutting. Joints are to be staggered between rows. Water and soil or tarp sod to insure positive root contact with the soil. All slopes greater than 3:1, as shown, are to be permanently sodded or protected with an approved erosion control netting. Additional seeding for establishment may be required. Sod is not to be applied on frozen ground.
- Mining Operations:** Sediment control plans for mining operations must include the following seeding dates and mixtures:

For seeding dates of:
February 1 through April 30 and August 15 through October 31 use seed mixture of Kentucky 31 Tall Fescue at the rate of 2 Pounds per 1000 square feet and Sericea Lespedeza at the rate of 0.5 pounds per 1000 square feet.

For seeding dates of May 1 through August 14 use seed mixture of Kentucky 31 Tall Fescue at the rate of 2 pounds per 1000 square feet and Weeping Lovegrass at the rate of 0.1 pound per 1000 square feet.

NOTE: Use of this information does not preclude meeting all of the requirements of the current Maryland Standards and Specifications for Soil Erosion and Sediment Control.



STANDARD RESPONSIBILITY NOTES

I (we) certify that:

- All development and construction will be done in accordance with this sediment and erosion control plan, and further, authorize the right of entry for periodic on-site evaluation by the Anne Arundel Soil Conservation District Board of Supervisors or their authorized agents.
- Any responsible personnel involved in the construction project will have a certificate of attendance from the Maryland Department of the Environment's approved training program for the control of sediment and erosion before beginning the project.

Responsible personnel on site:

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APR 29 1999
CHESAPEAKE BAY CRITICAL AREA COMMISSION

CRITICAL AREA NOTES:

- The appropriate enclosure will be constructed and maintained on sediment basins (as) included in this plan. Such structures will be in compliance with Article 21, Section 2-304 of the Anne Arundel County Code.
- The developer is responsible for the acquisition of all easements, rights, and/or rights-of-way that may be required for the sediment and erosion control practices, stormwater management practices and the discharge of stormwater onto or across adjacent or downstream properties included in this plan. He is also responsible for the acquisition of all easements, rights and/or rights-of-way that may be required for grading and/or work on adjacent properties included in this plan.
- Following initial soil disturbance or redistribution, permanent or temporary stabilization shall be completed within seven calendar days for the surface of all perimeter controls, dikes, swales, ditches, perimeter slopes, and all slopes greater than 3 horizontal to 1 vertical (3:1) and fourteen days for all other disturbed or graded areas on the project site.
- The sediment control approvals on this plan extend only to areas and practices identified as proposed work.
- The approval of this plan for sediment and erosion control does not relieve the developer/consultant from complying with any Federal/State/County requirements pertaining to environmental issues.
- The developer must request that the Department of Inspections and Permits approve work completed in accordance with the approved erosion and sediment control plan, the grading or building permit, and the Ordinance.
- On all sites with disturbed areas in excess of 2 acres, approval of the Department of Inspections and Permits shall be required on completion of installation of perimeter erosion and sediment controls, but before proceeding with any other earth disturbance or grading. Other building or grading inspection approvals may not be authorized until the initial approval by the Department of Inspections and Permits is given.
- Approval shall be requested on final stabilization of all sites with disturbed areas in excess of 2 acres before removal of controls.

Signature(s) of Developer/Owner: _____ Date: _____
PRINT: Name: CHRISTOPHER NAPOLITANO title: OWNER
Address: 172 SPRING PLACE WAY, ANNAPOLIS, MD. 21401
Telephone: (410) 721-7790

CONSULTANT'S CERTIFICATION

"The Developer's plan to control silt and erosion is adequate to contain the silt and erosion on the property covered by the plan. I certify that this plan of erosion and sediment control represents a practical and workable plan based on my personal knowledge of this site, and was prepared in accordance with the requirements of the Anne Arundel Soil Conservation District Plan Sediment Ordinances and the current Maryland Standards and Specifications for Sediment and Erosion Control. I have reviewed this erosion and sediment control plan with the owner/developer."

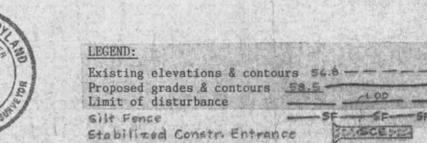
Signature: _____ MD P.E. License # _____ Date: _____
MD Land Surveyor License # 9154 Date: 4-29-99
Name (Print): PAUL K. MILLER Firm Name: PAUL K. MILLER & ASSOC.
Address: 1507 RITCHIE HWY., STE. 205, ARNOLD, MD 21012



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APR 29 1999
CHESAPEAKE BAY CRITICAL AREA COMMISSION

SITE PLAN GRADING AND SEDIMENT CONTROL PLAN
TAX MAP 55 BLM.10 PARCEL 421
NAPOLITANO PROP.
(RAYMOND AINSWORTH LOT)
1ST DISTRICT ANNE ARUNDEL CO., MD.
SCALE: 1" = 30' APRIL 1999

PAUL K. MILLER & ASSOCIATES, INC.
1507 RITCHIE HWY., SUITE 205
ARNOLD, MARYLAND 21012
PHONE: (410) 757-9202



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

May 6, 1999

Mr. Kevin Dooley
Anne Arundel County Department of Planning and Code Enforcement
2664 Riva Road, MS 6301
Annapolis, Maryland 21401

Re: Christopher Napolitano
1999-0186-V

Dear Mr. Dooley:

I have received the above-referenced request to permit construction of a new single family dwelling that will require less setbacks and Buffer. Provided this lot is properly grandfathered this office has no objection to siting a single family dwelling on this lot. The applicant should consider siting the dwelling closer to the road, and reducing the footprint in order to minimize disturbance to the expanded Buffer and to reduce clearing. Mitigation should be at a 3:1 ratio for all new disturbance in the expanded Buffer and at a 1:1 ratio for clearing outside the Buffer.

Thank you for the opportunity to comment. Please include this letter in your file and submit it as part of the record for variance. Please notify the Commission of the decision made in this case.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lisa A. Hoerger".

Lisa A. Hoerger
Natural Resources Planner

cc: AA 226-99

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

PAUL K. MILLER & ASSOCIATES, INC.
LAND SURVEYING AND PLANNING

Telephone: 410-757-9202
Fax: 410-757-9203

1507 RITCHIE HIGHWAY, SUITE 205
ARNOLD, MARYLAND 21012

April 13, 1999

Anne Arundel County
Dept. of Planning & Code Enforcement

Re: Napolitano Property
Tax Map 55, Block 10, Parcel 421
T.A.#100000082610
Variance Application for proposed construction
within the expanded buffer from tidal creek

CRITICAL AREA REPORT:

The entire site lies within the Critical Area, approx. half the site in LDA and half in RCA Designations.

The lot is totally wooded with mixed hardwoods from 4" to 24" in size, with little understory growth in the area of proposed development. There are several larger trees that are outside of the construction area and will not be disturbed.

There are steep slopes present on the property of 15% to 40%, creating an expanded buffer and 50 ft. buffers which, with the normal setbacks from property lines, nearly cover the entire lot.

Stormwater from the proposed impervious areas will be managed as required by Code. By keeping the proposed house out of the area, natural drainage across the property will not be hindered.

Standard sediment control practices will be applied during construction. No stormwater runoff from new development will be allowed onto the 40% slope.

The total lot area is 2.273 acres.

Area to be disturbed/woodland clearing will be 12,200 sq. ft. (12.3% of site).

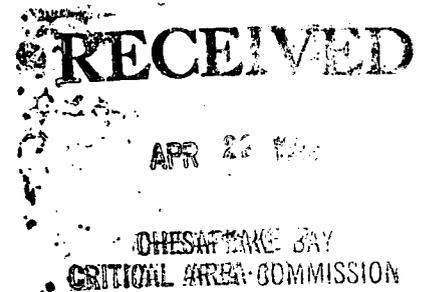
Total of proposed impervious areas will be 5,200 sq. ft. (5.3% of site).

Very truly yours,

Paul K. Miller
Paul K. Miller

Att. - Site Plan

cc - Christopher & Jaqueline Napolitano



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

AA226-99

NOTIFICATION OF PROJECT APPLICATION

Jurisdiction: Anne Arundel County

Date: April 13, 1999

Name of Project (site name, subdivision name, or other): Napolitano Property

Local case number: 1999-0186-V Christopher Napolitano

Project location/Address: East side old Homewood Road, 1 mile south of Riva Rd.
(at end of Breckenridge Way - east side)

Tax map# 55 Block# 10 Lot# _____ Parcel# 421

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

Type of Project:
(Select all applicable)

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

Current Use:
(Select all applicable)

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

Describe Proposed use of project site: Construction of new single family home.
w/less slb & buffer

SITE INVENTORY OF AREA ONLY IN THE CRITICAL AREA

TOTAL ACRES IN CRITICAL AREA: 2.273

IDA ACRES	_____	AREA DISTURBED: <u>0.28 Ac.</u>
<u>LDA</u> ACRES	<u>1.137</u>	# LOTS CREATED: _____
RCA ACRES	<u>1.136</u>	# DWELLING UNITS: <u>1</u>

AGRICULTURAL LAND: _____

EXISTING FOREST/WOODLAND/TREES: 2.27 Ac. FOREST/WOODLAND/TREES REMOVED: 0.28 Ac.

FOREST/WOODLAND/TREES CREATED: _____

EXISTING IMPERVIOUS SURFACE: _____ PROPOSED IMPERVIOUS SURFACE: 0.12 Ac.

TOTAL IMPERVIOUS SURFACE: 0.12 Ac.

GROWTH ALLOCATION DEDUCTED: _____

RCA to LDA: _____ RCA to IDA: _____ LDA to IDA: _____

RECEIVED

APR 29 1999

Local Jurisdiction Contact person: _____

Telephone number: _____

Response from Commission required by: 6/1/99

Hearing Date: _____

CHESAPEAKE BAY
CRITICAL AREA COMMISSION