

AA 411-99  
VAR

Michelsen, Stephen  
99-0325

USA-S-1829-165

LC letter  
8/9/99

411-99

**RECEIVED**

OCT 22 1999

CHESAPEAKE BAY  
CRITICAL AREA COMMISSION

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

**CASE NUMBER 1999-0325-V**

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IN RE: **STEPHEN AND TONI MICHELSEN**

THIRD ASSESSMENT DISTRICT

DATE HEARD: OCTOBER 7, 1999

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

ZONING ANALYST: **KEVIN DOOLEY**

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DATE FILED: OCTOBER 20, 1999

## **PLEADINGS**

Stephen and Toni Michelsen, the applicants, seek a variance (1999-0325-V) to permit a dwelling with disturbance to steep slopes and with less setbacks and buffer than required on property located the north side of Harbor Glen Court, west of Joyce Lane, Arnold.

## **PUBLIC NOTIFICATION**

The case was advertised in accordance with the provisions of the County Code. Mr. Michelsen testified that the property was posted for four weeks prior to the hearing.

## **FINDINGS AND CONCLUSIONS**

This case concerns unimproved property with a street address of 1234 Harbor Glen Court, in the subdivision of Harbor Glen, Arnold. The property comprises 2.02 acres and is zoned RLD Residential Low Density with a Chesapeake Bay Critical Area designation as Resource Conservation Area (RCA). The applicants seek to develop the site with a single-family dwelling. The construction will encroach onto 15 percent slopes and the 50-foot planted buffer to 25 percent slopes. It will also cause disturbance to the Critical Area buffer from a tributary stream as expanded for steep slopes.

The Anne Arundel County Code, Article 28, Section 2-2A-12(a) prohibits development on slopes of 15 percent or greater. Section 2-2A-12(b) requires a 50-

foot planted buffer between the principal structure and the crest of slopes with a 25 percent grade. Section 1A-104(a)(1) establishes a minimum 100-foot buffer landward from a tributary stream. The buffer expands to include all lands within 50 feet of the top of contiguous steep slopes. Accordingly, the proposal necessitates a variance to encroach onto 15 percent slopes without the requisite buffer to 25 percent slopes and a variance to permit development within the expanded Critical Area buffer.

Kevin Dooley, a zoning analyst with the Department of Planning and Code Enforcement, testified that the site is an older grandfathered lot, platted before the adoption of the Critical Area program. The site is severely impacted by the expanded Critical Area buffer. The area of disturbance is restricted to a knoll at the center of the site and avoids two conservation easement areas. The witness noted that the applicants have decreased the footprint of the dwelling. In the circumstances, he supported that application, conditioned on mitigation at a 3:1 ratio.

Dan Werner, the applicants' engineer, testified that the footprint of the dwelling has been revised from an irregular 50' X 60' to an irregular 45' X 54'. Subsequent to the hearing, Mr. Michelsen provided correspondence indicating that the proposed septic field has been eliminated in favor of a dry well. As a result of the changes, the woodlands to be cleared have been reduced from 0.58 acres (28 percent) to 9,480 square feet (less than 11 percent). In the circumstances, he sought to reduce the required ratio of mitigation to 1:1.

Upon review of the facts and circumstances, I find and conclude that the applicants are entitled to conditional relief from the code. Considering the zoning variances, this case satisfies the test of unique physical conditions, consisting of extensive steep slopes, such that there is no reasonable possibility of developing the lot in strict conformance with the code. Considering the Critical Area variance, due to the expanded buffer features of the site, a strict implementation of the program would result in an unwarranted hardship to the applicants. To literally interpret the program would deprive the applicants of the right commonly enjoyed by other properties in similar areas within the Critical Area to be developed with a single-family dwelling. Conversely, the granting of the variance will not confer on the applicants any special privilege that the program denies to other land within the Critical Area. There was nothing to suggest that the request is based on circumstances resultant of actions by the applicants; nor does it arise from conditions relating to land use on neighboring property. With mitigation, 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. Considering both the zoning and Critical Area variances, I find and conclude that they are the minimum necessary to afford relief. There is nothing to suggest that their grant will alter the essential character of the neighborhood, substantially impair the appropriate use or development of adjacent property or be detrimental to the public welfare. The

approval shall be subject to the conditions in the Order.<sup>1</sup>

**ORDER**

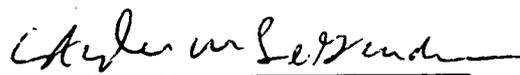
PURSUANT to the application of Stephen and Toni Michelsen, petitioning for a variance to permit a dwelling with disturbance to steep slopes; and

PURSUANT to the advertising, posting of the property, and public hearing and in accordance with the provisions of law, it is this 20<sup>th</sup> day of October, 1999,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicants are hereby **granted** a variance to permit disturbance onto 15 percent slopes without the requisite buffer to 25 percent slopes and to permit development within the expanded Critical Area buffer.

The foregoing variance is subject to the following conditions:

1. The applicants shall adhere to the revised site plan, including footprint, dry well and conservation easements.
2. Clearing shall not exceed 11 percent.
3. The applicants shall provide mitigation at a 1:1 ratio for all disturbance on the lot.

  
\_\_\_\_\_  
Stephen M. LeGendre  
Administrative Hearing Officer

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<sup>1</sup>In view of the reduction in the forest clearing to well below 20 percent, and the extent of the conservation easements, the mitigation has been imposed at a 1:1 ratio.

## **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

August 9, 1999

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

**RE: Variance 1999-0325-V, Stephen Michelsen**

Dear Mr. Dooley:

Thank you for providing information on the above referenced variance application. The applicant is requesting a variance to permit a dwelling with less setbacks and Buffer than required and with disturbance to steep slopes. The property is designated RCA and is currently undeveloped.

Provided this lot is properly grandfathered, this office does not oppose the siting of a single family dwelling on it. However, impacts should be minimized as much as possible. Limits of clearing should be kept as close to the proposed dwelling as possible. Mitigation should be provided for all disturbance within the expanded Buffer at a 3:1 ratio. From the site plan, it appears that there may be some room to accomodate some mitigation on site within the access easement.

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

Sincerely,

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

LeeAnne Chandler  
Natural Resources Planner

cc: AA411-99

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



DATE: 07/27/1999  
TIME: 14:32:42

ANNE ARUNDEL COUNTY, MARYLAND  
PACE ZONING APPLICATION SYSTEM  
UPDATE APPLICATION REQUEST

PROGRAM ID: PNZ020C  
SCREEN ID: PNZMS20

AA 411-99

APPLICATION TYPE	VARIANCE						
CASE NUMBER	TAX ACCT NBR	MAP	BLK	PARCEL	LOT	ACRES	TYPE
1999-0325-V	3411-9005-2965	39	16	0271	7R	2.020	R
APPLICANT NAME	MICHELSEN, STEPHEN			APPLICATION DATE	07/26/1999		
CLASS RESPRN	STANDARD	SETBUF	TYPE	APPLICATION FEE	125.00		
ANALYST	LSS	STATUS	OPEN	DECISION	COURT	APPEAL	
OWNER NAME/ADDRESS/PHONE	HARBOUR GLEN INC			PROPERTY DESCRIPTION			
PO BOX 878				LT 7R PL 2			
				1234 HARBOUR GLEN CT			
				HARBOUR GLEN			
GLEN BURNIE	MD 21060	TELEPHONE					
PROPERTY LOCATION	80 FEET OF	FRONTAGE ON N SIDE OF HARBOUR GLEN CT.					
	900 FEET W	OF JOYCE LANE IN ARNOLD					
TAX DIST	3	COUNCIL DIST	5	ZONING	RLD		
WATERFRONT	N	CORNER LOT	N	CRITICAL AREA: IDA N LDA N RCA Y			
MAPS:	200	ALEX		DEED:	LIBER 4249	FOLIO	566

CLEAR-MENU RECORD SUCCESSFULLY UPDATED  
PF2-HEA PF3-SIG PF5-CNT PF6-COM PF11-FWD

DATE: 07/26/1999 ANNE ARUNDEL COUNTY, MARYLAND PROGRAM ID: PNZ021C  
TIME: 16:08:11 PACE ZONING APPLICATION SYSTEM SCREEN ID: PNZMS21  
CREATE DESCRIPTION AND RECOMMENDATION DATA

CASE NUMBER 1999-0325-V APPLICATION TYPE VARIANCE  
DESCRIPTION  
variance to permit a dwelling with disturbance to steep slopes and  
with less setbacks and buffer than required.

# HARBOUR GLEN

## LOT 7R

### CRITICAL AREA REPORT

#### I. INTRODUCTION

The Harbour Glen community is located off Harbour Glen Court west of Joyce Lane in Arnold. Lot 7R is 2.02 acres in size, is located in the Resource Conservation Area of the Critical Area, and is zoned R-2<sup>FD</sup>. One single family dwelling is proposed. The purpose of this variance request is to allow disturbance to the steep slopes and their buffer in the Critical Area.

#### II. VICINITY MAP

A vicinity map at 1" = 2000' is included in this report. Other maps also included are: Critical Area, soil survey, and nontidal wetland.

Attached to this report is a site plan at 1" = 40'. This plan shows the existing conditions and the proposed house construction.

#### III. NARRATIVE

##### A. EXISTING CONDITIONS

Presently the lot is 98% wooded with chestnut oak and black oak being the dominant overstory trees. The understory is mainly American holly, beech, and downy juniper, with mountain laurel and lowbush blueberry being the shrub species. The woodland is a mature, healthy community. There were no specimen trees seen onsite.

The wildlife seen or heard during the field work include squirrels, crows, bluejays, and evidence of white-tailed deer. Based on the available woody species providing food and cover, it is expected that the site would have quite a bit of use by wildlife species adapted to residential areas.

There is a swale traversing the site from south to north but there was no evidence of wetland features in the swale. It appears to be used to pass water that may be transported by the culvert going under the existing gravel driveway. There are no other wetland areas or water features on this lot.

The lot is bordered on three sides by steep slopes and this variance request is to allow disturbance to the buffer of those slopes. Because the soil type of the lot is Monmouth, which is a highly erodible soil, the buffer is expanded to take in the entire lot.

There were no rare, threatened, or endangered species encountered during the field work. No historical or archaeological features were found onsite. Based on the available literature, no critical habitats were expected onsite and none were seen.

#### B. STORMWATER MANAGEMENT

There are no improvements on the lot at this time, so there is no stormwater management. An infiltrations drywell will be constructed at the same time as the house and will manage the stormwater runoff from all impervious surfaces. During construction, the site will have the required sediment control measures.

#### C. IMPACT MINIMIZATION

The house proposed to be constructed on this lot will be placed as far from the steep slopes as is practical. There will be some unavoidable disturbance to the slopes for the placement of the septic area but will be kept to the minimum necessary.

#### D. HABITAT PROTECTION AREAS

The only Habitat Protection Area located on the lot is the buffer area. As stated, construction cannot occur on the lot without some disturbance to the steep slopes and buffer and that will be kept to the minimum needed to construct the driveway, house, septic area, and stormwater management system.

#### E. PROPOSED CONDITIONS

The proposed conditions for this property include the construction of a driveway, house, septic system, and stormwater management drywell. The site calculations are as follows:

Existing site area	2.02 acres	
Existing woodland	1.98 acres	
Existing impervious coverage	-0- acres	
Proposed clearing	0.56 acres	28%
Proposed impervious coverage	0.10 acres	5%

Due to the site being almost entirely wooded at this time, there is no space for reforestation onsite and a fee-in-lieu of reforestation will be proposed.

#### IV. ADDITIONAL INFORMATION

Included in this report is the Notifications of Project Application for the Critical Area Commission.

The field work was conducted on 7/7/99.

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

NOTIFICATION OF PROJECT APPLICATION

Jurisdiction: ANNE ARUNDEL

Date: 7-15-99

Name of Project (site name, subdivision name, or other): HARBOUR GUEN LOT 7R

Local case number: \_\_\_\_\_

Project location/Address: OFF HARBOUR GUEN COURT WEST OF JOYCE LANE ARNOLD  
ADC 15 F13

Tax map# 39

Block# 16

Lot# 7R

Parcel# 271

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 \_\_\_\_\_  
15.700

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: CONSTRUCTION OF ONE SINGLE  
FAMILY RESIDENCE ON 2 WOODED ACRES

SITE INVENTORY OF AREA ONLY IN THE CRITICAL AREA

TOTAL ACRES IN CRITICAL AREA: 2.02 Ac

IDA ACRES	_____	AREA DISTURBED:	<u>0.56 Ac</u>
LDA ACRES	_____	# LOTS CREATED:	_____
RCA ACRES	<u>2.02 Ac</u>	# DWELLING UNITS:	<u>1</u>
AGRICULTURAL LAND:	_____		
EXISTING FOREST/WOODLAND/TREES:	<u>1.98 Ac</u>	FOREST/WOODLAND/TREES REMOVED:	<u>0.56 Ac</u>
FOREST/WOODLAND/TREES CREATED:	<u>-0-</u>		
EXISTING IMPERVIOUS SURFACE:	<u>-0-</u>	PROPOSED IMPERVIOUS SURFACE:	<u>0.10 Ac</u>
TOTAL IMPERVIOUS SURFACE:	<u>0.10 Ac</u>		
GROWTH ALLOCATION DEDUCTED:	_____		
RCA to LDA:	_____	RCA to IDA:	_____
		LDA to IDA:	_____

Local Jurisdiction Contact person: \_\_\_\_\_

Telephone number: \_\_\_\_\_

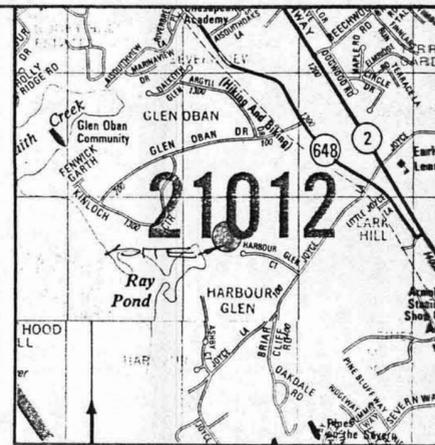
Response from Commission required by: \_\_\_\_\_

Hearing Date: \_\_\_\_\_

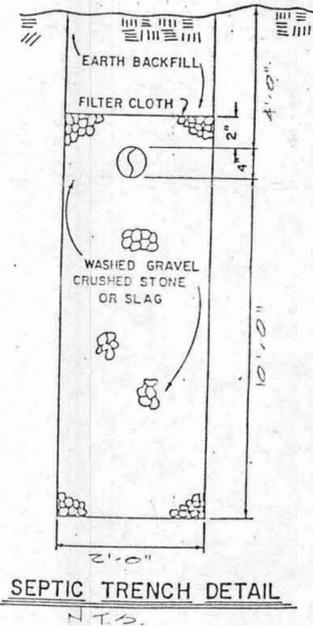
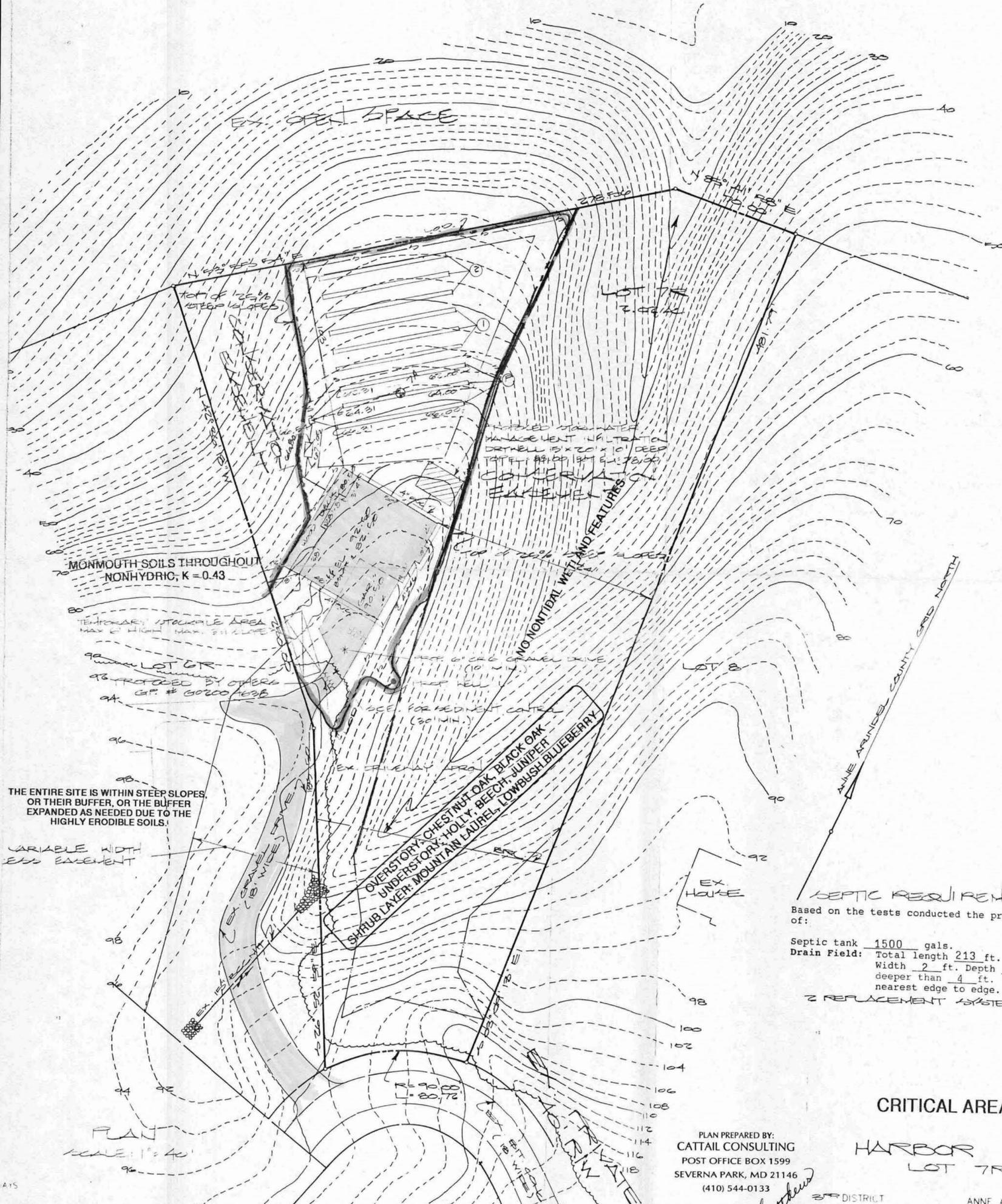
**CRITICAL AREA NOTES**

- 1) TOTAL SITE AREA: 2.02 AC.
- 2) EXISTING WOODLANDS ON SITE 1.983 AC.
- 3) WOODLANDS ALLOWED TO BE CLEARED 30% OR 0.594 AC.
- 4) WOODLANDS TO BE CLEARED: 0.560 AC. OR 28% OF WOODLANDS ON SITE.
- 5) TOTAL INTERVIOUS AREA ALLOWED ON SITE: 15% OF SITE OR 0.303 AC.
- 6) INTERVIOUS AREA ON SITE: 0.100 OR 5% OF SITE
- 7) CRITICAL AREA DESIGNATION: RCA (RESOURCE CONSERVATION)

Due to the site being almost entirely wooded, a fee-in-lieu of reforestation will be proposed.



**VICINITY MAP**  
SCALE 1" = 2,000'



**SEPTIC REQUIREMENTS**  
Based on the tests conducted the proposed initial septic system will consist of:  
Septic tank: 1500 gals.  
Drain Field: Total length 213 ft. # of trenches 3 length 71 ft. Width 2 ft. Depth 10 ft. Pipe in trenches no deeper than 4 ft. Trenches separated by 6 ft. from nearest edge to edge.  
**2 REPLACEMENT SYSTEMS REQUIRED**

**CRITICAL AREA PLAN**

**HARBOR GLEN LOT 7R**

PLAN PREPARED BY:  
**CATTAIL CONSULTING**  
POST OFFICE BOX 1599  
SEVERNA PARK, MD 21146  
(410) 544-0133

3RD DISTRICT  
SCALE AS SHOWN  
G.P. NO.  
TAX MAP 39 BLOCK 16  
TAX ACCOUNT NO 3-411-90052965  
PERC. NO. T02024431  
ANNE ARUNDEL COUNTY, MARYLAND  
APRIL, 1999  
A.A.S.C.D. NO.  
PARCEL 271

- LEGEND**
- - - 27 - - - Existing Grade
  - - - 27 - - - Proposed Grade
  - - - - - Limit of Disturbance
  - - - - - Silt Fence
  - - - - - Stabilized Construction Entrance
  - ⊠ Temporary Stockpile Area

VERTICAL AND HORIZONTAL CONTROL BASED ON ANNE ARUNDEL COUNTY MONUMENTS:

A. MON 18 BEING AN ALUMINUM MONUMENT SET IN THE MEDIAN OF RITCHIE HWY. 51.4' EAST OF THE E OF THE S.B.L. JUST NORTH OF JOYCE LANE N 438, 422.423 E 791, 168.867

B. MON 18A2 BEING A MONUMENT SET IN THE MEDIAN OF RITCHIE HWY. 1.47 MILES SOUTH OF JONES STATION ROAD 2.42 FT. OF THE WEST EDGE OF N.B.L. 0.80 DEEP N 439, 821.822 E 938, 267, 345 EL: 119.056

- LEGEND**
1. Primary System..... (P)
  2. 1st Replacement..... (1)
  3. 2nd Replacement..... (2)
  4. Perc. Location..... (P)
  5. Distribution Box..... (□)
  6. Septic Tank..... (□)

Anne Arundel Soil Conservation District  
Sediment and Erosion Control Approval

District Official \_\_\_\_\_ Date \_\_\_\_\_

A.A.S.C.D.# \_\_\_\_\_ SMALL POND(S)# \_\_\_\_\_

Reviewed for technical adequacy by  
USDA, Natural Resource Conservation Service