

AA 508-99  
VAR

Lawson, Michael  
99-0376

MSA-S-1829-193

HL letter  
10/20/99

5-11-18

508-99

**RECEIVED**

NOV 23 1999

CHESAPEAKE BAY  
CRITICAL AREA COMMISSION

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

**CASE NUMBER 1999-0376-V**

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**IN RE: MICHAEL AND DONNA LAWSON**

THIRD ASSESSMENT DISTRICT

DATE HEARD: NOVEMBER 18, 1999

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

ZONING ANALYST: **PATRICIA A. MILEY**

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DATE FILED: NOVEMBER 19, 1999

## **PLEADINGS**

Michael and Donna Lawson, the applicants, seek a variance (1999-0376-V) to permit deck additions with less setbacks and buffer than required on property located along the south side of Red Cedar Road, east of Pleasant Plains Road, Annapolis.

## **PUBLIC NOTIFICATION**

The case was advertised in accordance with the provisions of the County Code. Ms. Lawson testified that the property was posted for 14 days prior to the hearing.

## **FINDINGS AND CONCLUSIONS**

The applicants own a single-family residence located at 673 Red Cedar Road, in the subdivision of Whitehall Beach, Annapolis. The property comprises 13,753 square feet and is zoned R-2 residential with a Chesapeake Bay Critical Area designation as Limited Development Area (LDA). This is a waterfront lot. The applicants propose to construct decking over existing sidewalk along the west side of the dwelling as well as a shelter over an existing entry deck and door. The construction will occur within 52 feet from the bulkhead. As a result of the project, the dwelling will measure 78 feet in length. It will have a 6-foot setback from the eastern most side property line and a combined side yard width of 16 feet.

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. Section 2-405(a) requires side yards to be seven feet wide with a combined width of 20 feet in the R-2 district. However, Section 10-104(e)(11) increases the side setback 1-foot for every 10 feet or fraction of 10 feet by which the dwelling length exceeds 50 feet. In this case, the east side setback increases from 7 feet to 10 feet. Accordingly, the proposal requires a variance of 48 feet to the buffer, four feet to the east side setback, and four feet to the combined side yard width.

Patricia A. Miley, a zoning analyst with the Department of Planning and Code Enforcement, testified that the property is below the minimum area and width for the R-2 district. The dwelling is long and narrow, with a sidewalk extending along the side connecting existing decks. The dwelling is already nonconforming as to setbacks and the project will not increase the degree of encroachment. In the circumstances, she supported the application, conditioned on satisfying Health Department requirements.

Ms. Lawson testified that the entrance to the dwelling is along the west side. The existing multi-level sidewalk is in poor condition. The purpose of the project is to improve the access. She submitted letters from the adjacent neighbors in support of the application. The applicants are in the process of resolving the concerns of the Health Department. They are also working on a joint landscaping plan with one of the adjoining property owners. There was no public opposition to

the request.

Upon review of the facts and circumstances, I find and conclude that the applicants are entitled to relief from the code. For this Critical Area property, due to the proximity to water, a strict implementation of the Critical Area program would result in an unwarranted hardship to the applicants. To literally interpret the program will deprive them of rights commonly enjoyed by other properties in similar area of the Critical Area. Conversely, 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 County Critical Area. There was nothing to suggest that the request is based on conditions or circumstances resultant of actions by the applicants; nor does it arise from conditions relating to land use on neighboring property. Finally, 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. Considering the zoning variances, this property satisfies the test of unique physical conditions, consisting of its small area and width, such that there is no reasonable possibility of developing the lot in strict conformance with the code. I further find that the variances are the minimum necessary to afford relief. The construction will be no closer to the water or to the side property line than the existing structure. There was nothing to suggest that the granting of the variance 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.

**ORDER**

PURSUANT to the application of Michael and Donna Lawson, petitioning for a variance to permit deck additions with less setback and buffer than required; and

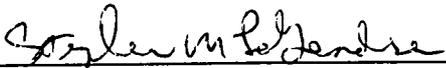
PURSUANT to the advertising, posting of the property, and public hearing and in accordance with the provisions of law, it is this 19<sup>th</sup> day of November, 1999,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicants are hereby **granted** the following variances to permit additions in accordance with the site plan:

1. A variance of 48 feet to the required 100-foot Critical Area buffer;
2. A variance of four feet to the required 10-foot east side property line setback; and
3. A variance of four feet to the required 10-foot combined side yard width.

The approval shall be subject to the following conditions:

- A. The applicants shall provide mitigation if required by PACE.
- B. The building permit shall be subject to the approval of 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

October 20, 1999

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

RE: Variance 1999-0376-V, Michael Lawson

Dear Mr. Dooley:

Thank you for providing information on the above referenced variance application. The applicant is requesting a variance to permit deck additions with less setbacks and Buffer than required. The property is designated LDA and is developed with a single family dwelling with an attached deck, a private pier and a driveway.

It appears that the requested variance is for two different proposed projects. The first is an extension of decking over existing sidewalks adjacent to the dwelling. The second appears to be a free-standing 12' by 12' grade level deck located 31 feet from the water. This office does not oppose the first of these projects (the decking over the existing sidewalk) as it appears that impacts would be minimal and the new decking would be no further waterward than the existing deck.

However, this office opposes the granting of the variance to permit the freestanding deck in the Buffer. The Anne Arundel County Zoning Ordinance in Article 28, Section 1A-103(e)(1) states "New development activities, except for water-dependent facilities, shall not be permitted in the Buffer." The proposed deck is not a water-dependent facility and therefore is not permitted in the Buffer. In addition, the applicants already have a deck located only 7 feet from the proposed location of the new deck. Denial of a second deck within the Buffer would not be an unwarranted hardship. In addition, the applicants can not meet, in general or otherwise, the other Critical Area variance standards. Therefore, due to the fact that a deck is not water-dependent and because the applicant can not meet the standard of unwarranted hardship, this office recommends denial of the variance to the Buffer requirements.

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 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: AA508-99

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

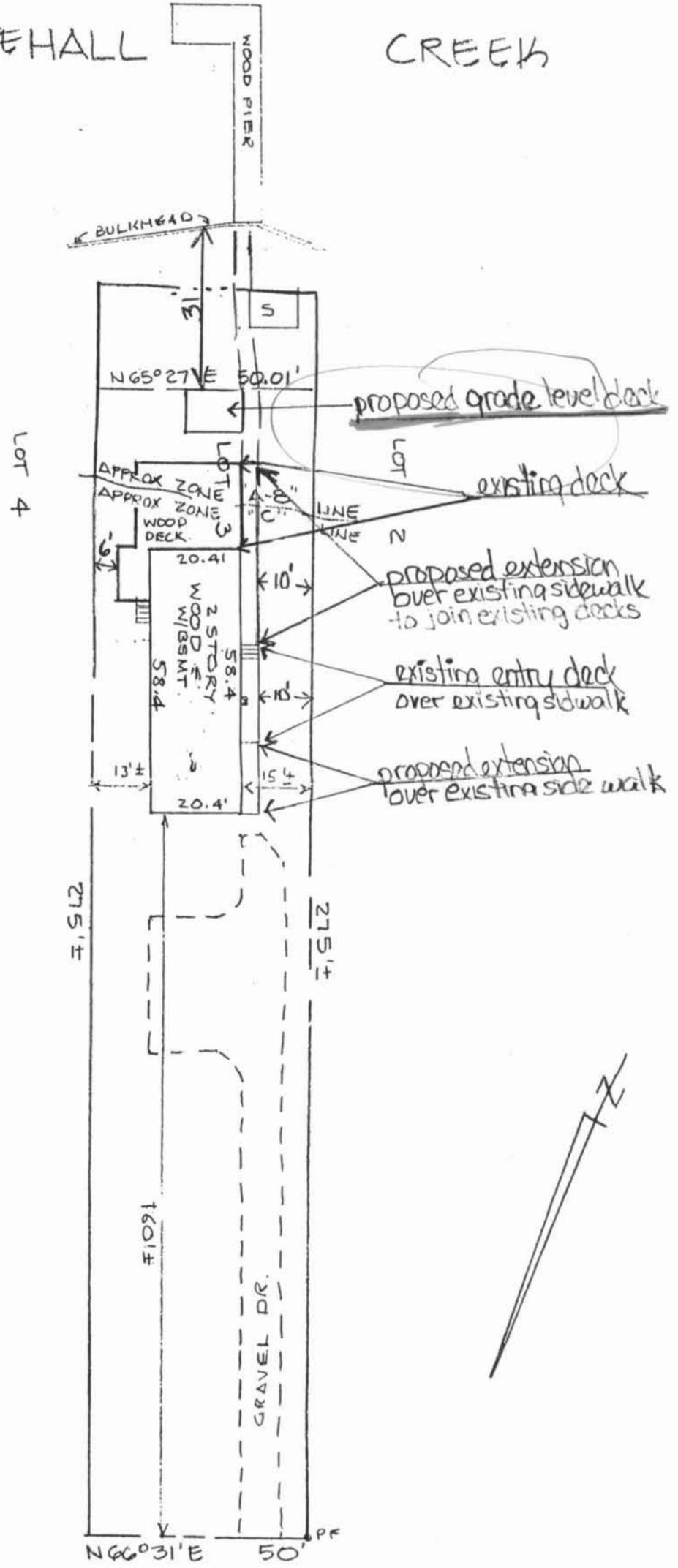
AH991-92 673 RED CEDAR RD ANNAPOLIS AA 4/12/99 COOCH Case#9922745  
 Fema Panel: 240008 0035C  
 Flood Zone: C,A8  
 LOT 3 PLAT 1  
 WHITEHALL BEACH  
 Book: 1  
 Folio: 2  
 Dist: 3  
 Co: ANNE ARUNDEL  
 MD  
 Scale 1"=30'

Large Lots: Boundaries on larger lots may not all be inspected.  
 Accuracy: Approximate average accuracy (SD of sideline distances) for small suburban lots is two feet, and for large lots and metes and bounds parcels varies from two feet to twenty feet. In case of doubt, we recommend a Boundary Survey.

LEGEND  
 Shed (unsurveyed) [S]  
 Gravel Drive [---]  
 Blacktop Drive [=====]  
 Concrete [=====]

This is an improvements Location Survey only, and must not be used for Boundary purposes. No Title Report furnished. No statement is made as to ownership of property or right of interest therein. Fences are approximate only and may not be shown. Not to be used for construction purposes (incl. permits) of any kind.

WHITEHALL CREEK



DAVID M. GREEN, Prop LS 311 MD

**SURVEY ASSOCIATES OF MARYLAND INC.**  
 9420 Annapolis Road  
 Lanham, MD 20706  
 Tel: 301-459-2760  
 Fax: 301-459-4409

108 Old Solomons Island Road #100  
 Annapolis, MD 21401  
 Tel: 410-266-7211  
 Fax: 410-266-0918

LOCATION SURVEY

LAWSUN 410-349-3888

DATE: 09/24/1999  
TIME: 14:04:31

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

PROGRAM ID: PNZ020C  
SCREEN ID: PNZMS20

AA508-99

APPLICATION TYPE	VARIANCE							
CASE NUMBER	TAX ACCT NBR	MAP	BLK	PARCEL	LOT	SQFT	TYPE	
1999-0376-V	3904-1592-3900	46	12	0189	3	13750.0	R	
APPLICANT NAME	LAWSON, MICHAEL					APPLICATION DATE	09/03/1999	
CLASS RESPRN	STANDARD	SETBUF	TYPE			APPLICATION FEE	150.00	
ANALYST	LSS	STATUS	OPEN	DECISION		COURT	APPEAL	
OWNER NAME/ADDRESS/PHONE							PROPERTY DESCRIPTION	
LAWSON, MICHAEL A							IMPSLT 3 PL 1	
673 RED CEDAR RD							673 RED CEDAR RD	
							WHITEHALL BEACH	

ANNAPOLIS	MD 21401	TELEPHONE	
PROPERTY LOCATION	50 FEET OF FRONTAGE ON S SIDE OF RED CEDAR RD.		
	200 FEET E OF PLEASANT PLAINS ROAD IN ANNAPOLIS		
TAX DIST	3	COUNCIL DIST	5
		ZONING	R2
WATERFRONT	Y	CORNER LOT	N
MAPS:	200 AA21	ALEX	21H5
		CRITICAL AREA:	IDA N LDA Y RCA N
		DEED:	LIBER 9136 FOLIO 538

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

DATE: 09/03/1999  
TIME: 10:58:12

ANNE ARUNDEL COUNTY, MARYLAND  
PACE ZONING APPLICATION SYSTEM  
CREATE DESCRIPTION AND RECOMMENDATION DATA

PROGRAM ID: PNZ021C  
SCREEN ID: PNZMS21

CASE NUMBER	1999-0376-V	APPLICATION TYPE	VARIANCE
DESCRIPTION	VARIANCE TO PERMIT DECK ADDITIONS WITH LESS SETBACKS AND BUFFER THAN REQUIRED		

RECEIVED

OCT 1 1999

CHESAPEAKE BAY  
CRITICAL AREA COMMISSION

RECEIVED  
SEP 24  
DEPARTMENT OF PLANNING  
& CODE ENFORCEMENT

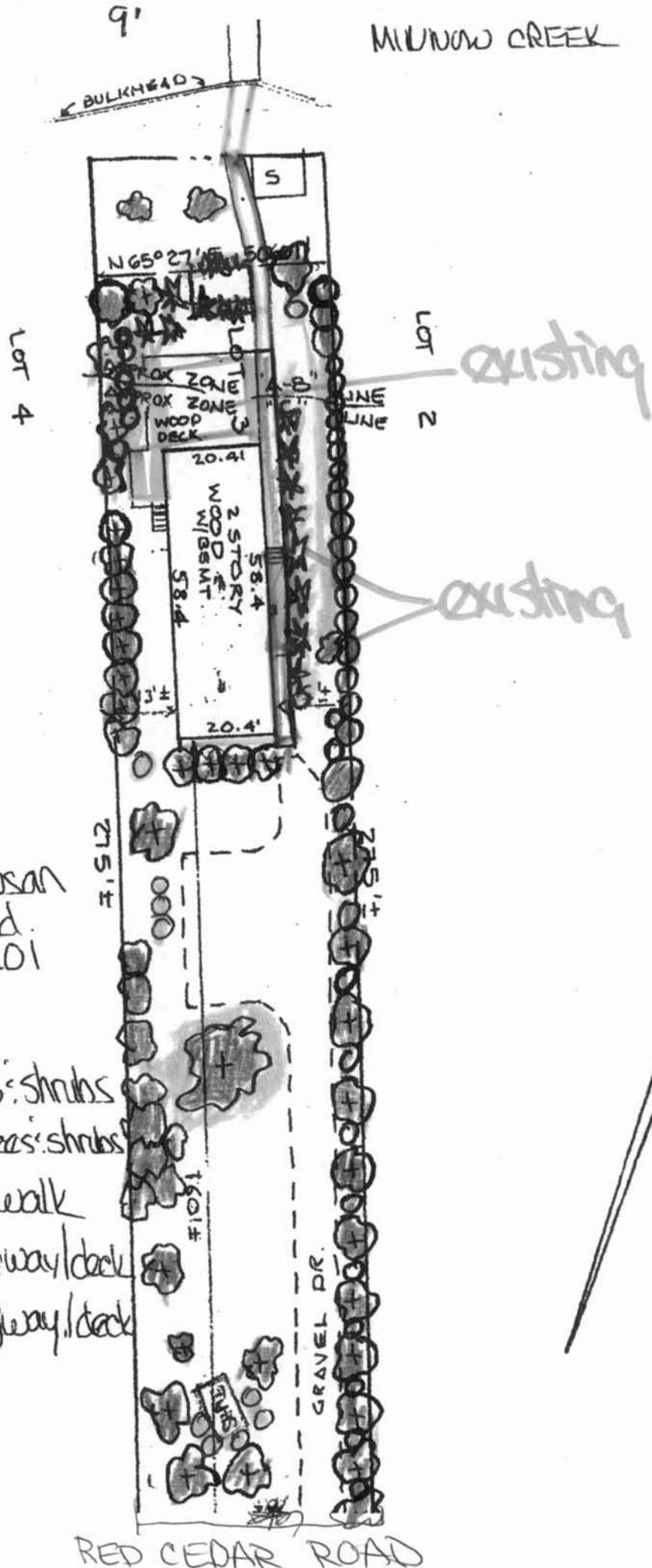
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SEP 24 1999  
DEPARTMENT OF PLANNING  
& CODE ENFORCEMENT

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SEP 24  
DEPARTMENT OF PLANNING  
& CODE ENFORCEMENT

ANNE ARUNDEL CO.  
RECEIVED  
SEP 24 1999  
PLANNING & CODE ENFORCEMENT

WHITEHALL CREEK

MILNOR CREEK



Michael & Donna Lawson  
 673 Red Cedar Rd.  
 Annapolis, MD 21401  
 410-349-3888

- - existing trees/shrubs
- - in progress trees/shrubs
- ▣ - existing sidewalk
- ▤ - existing entryway/deck
- ▥ - proposed entryway/deck