

- AA 490-05
VAR

Plus Properties, LLC
0224

MSA-5-1829-4681

Aug 7/26/05
APR 7/13/07
APR 10/30/07
Leased

Robert L. Ehrlich, Jr.
Governor

Michael S. Steele
Lt. Governor



Martin G. Madden
Chairman

Ren Serey
Executive Director

**STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS**

1804 West Street, Suite 100, Annapolis, Maryland 21401
(410) 260-3460 Fax: (410) 974-5338
www.dnr.state.md.us/criticalarea/

July 26, 2005

Ramona Plociennik
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road
Annapolis, Maryland 21404

RE: Variance 2005-0224-V Plus Properties LLC

Dear Ms. Plociennik:

Thank you for providing information on the above variance request. The applicant is requesting a variance to the expanded Buffer to permit the construction of a new dwelling on a wooded lot. The property is designated as Intensely Developed Area (IDA). The property is being developed with a single-family two-story dwelling with driveway and deck and backs up to the Franklin Point Park.

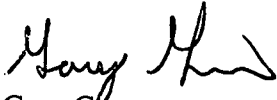
Providing this lot is properly grandfathered, we do not oppose this variance. We have the following comments regarding the current development proposal.

- 1) Because the property is designated an IDA, water quality improvements must be provided on the site. Reductions in pollutants from runoff can be achieved through the implementation of a best management practice or with plantings.
- 2) Mitigation at a ratio of 3:1 for disturbance within the Buffer should be required. Plantings, consisting of native trees and shrubs, should be accommodated on site to the extent possible.
- 3) Stormwater should be directed away from steep slopes to a best management practice or stable vegetated outfalls.

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

Ramona Plociennik
Variance 2005-0224-V
July 25, 2005
Page 2

Sincerely,

A handwritten signature in cursive script, appearing to read "Gary Green".

Gary Green
Environmental Analyst
cc: AA490-05

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



Margaret G. McHale
Chair

Ren Serey
Executive Director

**STATE OF MARYLAND
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October 30, 2007

Ms. Suzanne Schappert
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road, MS 6301
Annapolis, MD 21401

Re: 2007-0355-V Plus Properties, LLC

Dear Ms. Schappert:

I have received the information regarding the above-referenced variance request. A similar request was received and commented on in 2005. The applicant indicates that the previous permit expired before the work was performed. The applicant is again requesting a variance to allow a dwelling with less setbacks and Buffer than required. The lot is designated as Intensely Development Area (IDA) and is currently forested with non-tidal wetlands. This lot is 6,169 square feet and the applicant proposes to build a dwelling and driveway for a total of 1,436 square feet of impervious surface.

Provided that this lot is properly grandfathered, we do not oppose the request for a variance for a modestly sized dwelling and driveway in the IDA with less Buffer than required. The previous decision made by the hearing officer required mitigation at a 3:1 ratio for the area of disturbance in the Buffer; we recommend that this requirement be carried through to this variance request. As the majority of this lot is forested, we recommend that the Limit of Disturbance (LOD) is minimized where possible to preserve the natural forest cover that currently exists. Also, it appears from the site plan that there is adequate space to plant and that the applicant has provided the species, spacing, and size for the impervious surface associated with the house and driveway. However, the total number of plantings that the applicant has shown is unclear.

The applicant also proposes to construct a raingarden for stormwater management which satisfies a comment provided by planner Gary Green in his letter dated

Ms. Schappert
10/30/2007
Page 2 of 2

July 26, 2005. The County must verify that the proposed raingarden is adequately sized to address the pollutant removal requirement.

We have no comment regarding the variance to setbacks.

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 black ink, appearing to read 'Julie Roberts', with a long horizontal flourish extending to the right.

Julie Roberts
Natural Resources Planner

cc: AA 490-05

AA490-05

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 2005-0224-V

IN RE: PLUS PROPERTIES, LLC

SEVENTH ASSESSMENT DISTRICT

DATES HEARD: AUGUST 30, 2005

ORDERED BY: STEPHEN M. LeGENDRE, ADMINISTRATIVE HEARING OFFICER

PLANNER: LIZ WEST

DATE FILED: SEPTEMBER 27th, 2005

RECEIVED
SEP 30 2005
CRITICAL AREA COMMISSION

PLEADINGS

Plus Properties, LLC, the applicant, seeks a variance (2005-0224-V) to permit a dwelling with less buffer than required on property located along the northeast side of Columbia Beach Road, west of Ellington Drive, Shady Side.

PUBLIC NOTIFICATION

The hearing notice was posted on the County's web site in accordance with the County Code. The file contains the certification of mailing to community associations and interested persons. Each person designated in the application as owning land that is located within 175 feet of the property was notified by mail, sent to the address furnished with the application. Stan Serwatka, the applicant's engineering consultant, testified that the property was posted for more than 14 days prior to the hearing. I find and conclude that the requirements of public notice have been satisfied.

FINDINGS AND CONCLUSIONS

The applicant owns unimproved property with a street address of 1721 Columbia Beach Road, in the Columbia Beach subdivision, Shady Side. The property comprises 6,169 square feet and is zoned R2-Residential with a Chesapeake Bay Critical Area designation as Intensely Development Area (IDA). The request is to construct a two-story dwelling (34 X 36 feet) with a rear deck (10 X 12 feet) to be located 40 feet from tidal wetlands.

Anne Arundel County Code, Section 27-13-104 establishes a minimum 100 foot buffer from tidal wetlands. Accordingly, the proposal requires a buffer variance in the amount of 60 feet.

Liz West, a planner with the Office of Planning and Zoning, testified that the property is below the minimum area and width for the R2 district and almost fully encompassed by the buffer to tidal wetlands. The applicant is proposing a dwelling with a footprint measuring 1,224 square feet and impervious surfaces comprising 1,584 square feet. The request is considered consistent with the character of the neighborhood. There were no adverse agency comments.¹ By way of conclusion, Ms. West offered support for the application.

Mr. Serwatka testified that the dwelling would be installed on piles to minimize the limits of disturbance. The conditions suggested by the Commission are unobjectionable. The witness indicated that the proposed dwelling is larger than the home to the east but smaller than the home to the west. It is consistent with development in the neighborhood, with homes ranging from 2,000 to 3,000 square feet of living area.

James Olmsted, who resides on the adjacent property to the east, expressed concern that the home is too large and too close to the wetlands, especially given the size of the lot and the character of the neighborhood. Megan Jackson, who resides on the adjacent property to the west, opposed the application. She

¹ The Department of Health requested plan approval. The Chesapeake Bay Critical Area Commission recommended mitigation at a ratio of 3:1 for disturbance in the buffer with plantings onsite to the extent practicable. The Commission also requested that stormwater is directed away from tidal wetlands to a best management practice to provide water quality benefits.

anticipates trespasses on adjacent properties, the loss of natural spaces in the community and adverse environmental impacts. Col. Horace McCaskill, President of the Columbia Beach Citizens Improvement Association, expressed the same concerns. In particular, the buffer to tidal wetlands extends all the way up to Columbia Beach Road.

By way of rebuttal, Mr. Serwatka testified that Ms. Jackson's home comprises 2,540 square feet of living space and is located within 30 feet of the tidal wetlands.² The witness also supplied a preliminary drawing for the proposed home.

I visited the site and the neighborhood. This is a level, partially wooded lot that backs to the wetlands. Other homes ranging from older cottages to newer construction on a larger scale characterize the neighborhood. More particularly, there are about a dozen homes on the same side of this stretch of Columbia Beach Road with varying degrees of clearing in the wetlands.

The standards for granting variances are contained in Section 27-16-305. Under subsection (b), for a property in the Critical Area, a variance to the Critical Area program requirements may be granted only after determining that (1) due to unique physical conditions, peculiar to the lot, a strict implementation of the program would result in an unwarranted hardship to the applicant; (2) a literal interpretation of the program will deprive the applicant of rights commonly

² Ms. Jackson indicated that her home was constructed between 1987 and 1989. To her knowledge, a variance was not required. (The home includes a garage addition). Finally, her property is larger (five platted lots) than the applicant's property (three platted lots).

enjoyed by other properties in similar areas within the Critical Area; (3) the granting of the variance will not confer on the applicant 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 applicant 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 applicant is entitled to conditional relief from the code. For this Critical Area property, due to the extent of the tidal wetlands and buffer, which encompass nearly the entire property, a strict implementation of the program would result in an unwarranted hardship. To literally interpret the program would deny the applicant the right to develop the property with a single-family dwelling, a right commonly enjoyed by other properties in similar areas within the Critical Area. Conversely, the granting of the variance is not a special privilege that the program typically denies. There is no indication that the request results from the actions of the applicant or from land use of neighboring property. Finally, with mitigation

and other conditions, the variances will not adversely impact Critical Area resources and will harmonize with the general spirit and intent of the program

I further find that the variance represents the minimum relief. This is a fairly modest dwelling. The project is within the allowance for impervious coverage. I further find that the granting of the variance will not alter the essential character of the residential neighborhood, substantially impair the appropriate use or development of adjacent property, or cause a detriment to the public welfare. These findings consider that this is infill construction. The approval is subject to the conditions in the Order.³

ORDER

PURSUANT to the application of Plus Properties, LLC, petitioning for a variance to permit a dwelling with less buffer than required; and

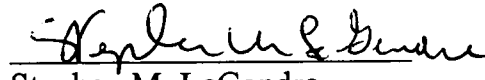
PURSUANT to notice, posting of the property, and public hearing and in accordance with the provisions of law, it is this 27th day of September, 2005,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicant is hereby **granted** a buffer variance of 60 feet to permit a dwelling in accordance with the site plan. *The approval is subject to the following conditions:*

- 1) *No further expansion of the dwelling is allowed and no accessory structures are allowed.*

³ The conditions include a restriction of no further expansion of the dwelling and no accessory structures.

- 2) *The building permit is subject to the approval of the Department of Health.*
- 3) *The applicant shall provide mitigation at a 3:1 ratio for disturbance in the buffer with plantings onsite to the extent practicable*
- 4) *Stormwater shall be directed away from tidal wetlands to a best management practice to provide water quality benefits.*
- 5) *The conditions of the approval run with the land and are binding on the applicant's successors and assigns.*


Stephen M. LeGenre
Administrative Hearing Officer

NOTICE TO APPLICANT

Within thirty 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 27-16-405(a) provides that a variance expires by operation of law unless the applicant obtains a building permit within one year. Thereafter, the variance shall not expire so long as construction proceeds in accordance with the permit.

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

490-05

RECEIVED

DEC 21 2007

CRITICAL AREA COMMISSION

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 2007-0355-V

PLUS PROPERTIES, LLC

SEVENTH ASSESSMENT DISTRICT

DATE HEARD: DECEMBER 6, 2007

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

PLANNER: **LORI RHODES**

DATE FILED DECEMBER 17th, 2007

PLEADINGS

Plus Properties, LLC, the applicant, seeks a variance (2007-0355-V) to allow a dwelling with less buffer than required on property located along the northwest side of Columbia Beach Road, west of Ellington Drive, Shady Side.

PUBLIC NOTIFICATION

The hearing notice was posted on the County's web site in accordance with the County Code. The file contains the certification of mailing to community associations and interested persons. Each person designated in the application as owning land that is located within 175 feet of the property was notified by mail, sent to the address furnished with the application. Stan Serwatka, the applicant's development consultant, testified that the property was posted for more than 14 days prior to the hearing. I find and conclude that there has been compliance with the notice requirements.

FINDINGS AND CONCLUSIONS

This case concerns the same property the subject of a decision by the County Board of Appeals of Anne Arundel County in Case No. BA 104-05V (April 21, 2006). The Board approved a variance to construct a 28 by 32-foot dwelling with 10 by 12-foot rear deck in the minimum required 100-foot Critical Area buffer. At the time of the approval, Anne Arundel County Code, Article 27, Section 27-16-405(a) provided that a variance expires by operation of law unless

the applicant obtains a building permit within one year; thereafter, the variance shall not expire so long as construction proceeds in accordance with the permit. The approval having expired, the applicant refiled the same request.¹

Lori Rhodes, a planner with the Office of Planning and Zoning, testified that the applicant was within days of obtaining the permits when the approval expired. She summarized the agency comments. The Department of Health requested plan approval; the County's Development Division suggested relocating the dwelling to minimize the buffer impacts; the Chesapeake Bay Critical Area Commission offered no objection, subject to mitigation, minimization of the disturbance and stormwater management. By way of conclusion, Ms. Rhodes supported the request.²

Mr. Serwatka testified that the US Army Corps of Engineers has authorized the wetlands disturbance. He also indicated that the applicant has relocated the well belonging to Megan Jackson, who resides on the property to the southeast.

Mighel Jackson expressed the same concerns raised in connection with the prior application: the dwelling is too large and too close to the wetlands; and the limits of disturbance is excessive. Mr. Jackson also stated that the connection of

¹ In the interim, the required 100-foot Critical Area buffer has been recodified in Anne Arundel County Code, Article 18, Section 18-13-104(a).

² The witness rejected the suggestion from the Development Division to relocate the dwelling because the change would limit the onsite parking.

the new well and the abandonment of the existing well serving Ms. Jackson's property are still pending.³

Upon review of the facts and circumstance, I find and conclude that the applicant is entitled to relief from the code. In this regard, I adopt the findings and conclusions of the Board's Order. There is no indication of any change in circumstances that would suggest a different result. The approval is subject to the conditions in the Order.

ORDER

PURSUANT to the application of Plus Properties, LLC, petitioning for a variance to allow a dwelling with less buffer than required, and

PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is this 17th day of December, 2007,

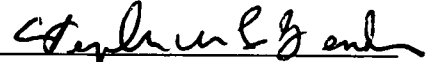
ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicant is **granted** a buffer variance to construct a 28 by 32-foot dwelling with a 10 by 32-foot rear deck in the minimum required 100-foot Critical Area buffer in accordance with the site plan.

The foregoing variance is subject to the following conditions:

1. The building permit is subject to the approval of the Department of Health.

³ The record was left open until December 13, 2007 to give Mr. Jackson the opportunity to review and comment on the site plan. However, the only correspondence received by this office since the hearing is from the applicant.

2. The applicant shall provide mitigation and stormwater management as determined by the Permit Application Center.


Stephen M. LeGendre
Administrative Hearing Officer

NOTICE TO APPLICANT

Within thirty 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 18-16-405(a) provides that a variance expires by operation of law unless the applicant obtains a building permit within eighteen months. Thereafter, the variance shall not expire so long as construction proceeds in accordance with the permit.

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

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IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 2009-0041-V

PLUS PROPERTIES, LLC

SEVENTH ASSESSMENT DISTRICT

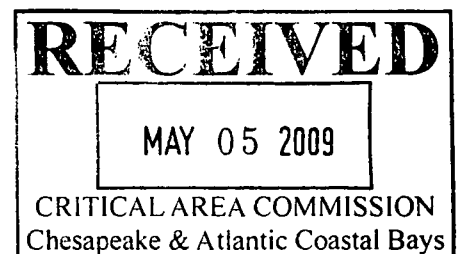
DATE HEARD: APRIL 16, 2009

ORDERED BY:

DOUGLAS CLARK HOLLMANN
ADMINISTRATIVE HEARING OFFICER

PLANNER: JOHN R. FURY

DATE FILED: MAY 5, 2009



PLEADINGS

Plus Properties, LLC, the applicant, seeks a variance (2009-0041-V) to extend the time for the implementation and completion of a previously approved variance on property located on the south side of Juniper Street, west of Linden Street, Shady Side.

PUBLIC NOTIFICATION

The hearing notice was posted on the County's web site in accordance with the County Code. The file contains the certification of mailing to community associations and interested persons. Each person designated in the application as owning land that is located within 175 feet of the property was notified by mail, sent to the address furnished with the application. James Wilson testified that the property was posted for more than 14 days prior to the hearing. I find and conclude that the requirements of public notice have been satisfied.

FINDINGS

This case concerns the same property the subject of decisions by this office in Case No. 2006-0002-V (February 24, 2006) and Case No. 2007-0289-V (October 5, 2007). The 2006 Order conditionally approved a modified variance of three feet to the side street setback to allow a dwelling measuring 26 by 44 feet. Anne Arundel County Code, Article 18, Section 18-16-405(a) provides that a variance expires by operation of law unless the applicant obtains a building permit

within 18 months. Thereafter, the variance shall not expire so long as construction proceeds in accordance with the permit.

The applicant timely requested an extension of the 2006 approval in Case No. 2007-0289-V, which was granted on October 5, 2007. The present application is a timely request to extend the 2007 approval.

Mr. John R. Fury, a planner with the Office of Planning and Zoning (OPZ), testified that the applicant presented evidence that the downturn in the economic situation has prevented the applicant from moving to the building permit stage and/or selling the property. He said that OPZ was not opposed to granting the request.

Mr. Wilson testified that the applicant has been unable to sell the property, despite having dropped the asking price by fifty percent. The applicant considered building a house on the property but does not have the financial resources to do so at this time. He asked that the applicant be granted more time to obtain a building permit and finish the project.

Ms. Betsy Baker presented photographs showing the high water table at the site and expressed her community's concern that the project be finished and that the house be built without damaging the environment. If that could be done, she was not opposed to the extension of time because a house on the property would definitely improve the present situation.

There was no other testimony in the matter.

DECISION

I find and conclude that the applicant is entitled to the requested extension, subject to the same conditions appended to the 2006 Order. In this regard, I readopt the same findings and conclusions. Other than the unexpected delay, nothing has changed. I have extended the date for the building permit for 18 months, with completion in accordance with the permit.

The approval is subject to the conditions in the Order.

ORDER

PURSUANT to the application of Plus Properties, petitioning for a variance to allow an extension in time for the implementation and completion of a previously approved variance; and

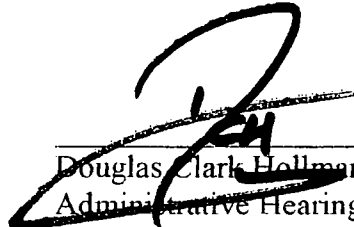
PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is this **5th day of May, 2009**,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicant is **granted** a variance to extend the time until November 4, 2010, to obtain the building permit with completion in accordance with the permit to allow a dwelling measuring 26 by 44 feet.

The foregoing variance is subject to the following conditions:

1. The site plan is revised to reduce the width of the dwelling to 26 feet and to increase the side street setback to 17 feet.
2. No further expansion of the dwelling is allowed.

3. No accessory structures are allowed.
4. The conditions of the approval run with the land and shall be included in any contract of sale.

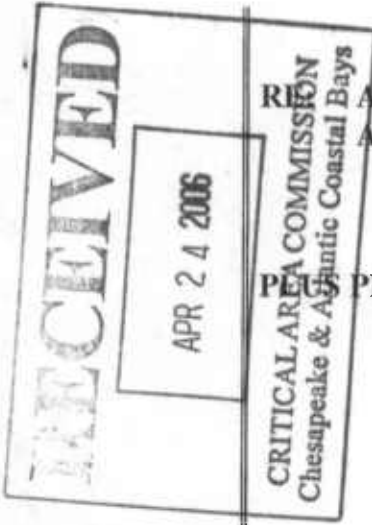


Douglas Clark Hollmann
Administrative Hearing Officer

NOTICE TO APPLICANT

Within thirty 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 that will be discarded.



An Appeal From A Decision Of The Administrative Hearing Officer

PEPPER PROPERTIES, LLC

Petitioner

* BEFORE THE
 * COUNTY BOARD OF APPEALS
 * OF ANNE ARUNDEL COUNTY
 * CASE NO.: BA 104-05V
 * (2005-0224-V)
 * Hearing Date: February 21, 2006
 *

MEMORANDUM OF OPINION

Summary of Pleadings

This is an appeal from a decision of the Administrative Hearing Officer, taken from the granting of a variance to permit construction of a dwelling with fewer buffers than required, on property known as 1721 Columbia Beach Road, Shady Side.

Summary of Evidence

Mr. Stan Serwatka, an engineer and representative of the Petitioner, testified that the subject property is located entirely within the 100-foot buffer. The proposed house would be a two-story dwelling built on pilings with a lower level garage. The size of the proposed house is average for the neighborhood with a total of less than 2,500 square feet; anything smaller would be inconsistent with the character of the neighborhood. The building plans include stormwater management and forest mitigation of 3:1. The subject property measures 60 feet across and is 127 feet deep. The Protestant, Ms. Megan Jackson, owns the property to the southeast of the Petitioner's. A survey shows that the Protestant's well is located on the Petitioner's property. The Petitioner has offered to drill the Protestant a new well.

Ms. Jackson testified that the property is too small to support a 2,500 square foot house. A 2,500 square foot home would stain the water supply and the septic systems of the neighborhood. The house would destroy the last tree line in the area and increase the risk of

flooding. She stated that the proposed house would leave an 8-foot side yard that would cause significant damage to adjacent properties during construction.

Ms. Liz West, a planner with the Office of Planning and Zoning (OPZ), testified that the property is zoned R2. The subject property is below the standard size for R2 properties; it is narrow and irregularly shaped. The property is located within the Critical Area (CA) and classified as Intensely Developed Area (IDA). As an IDA property, there are no limits on the amount of impervious surface permitted on the property. The plans for the house require a variance of 56 feet to the wetlands, in order to place a deck within 44 feet of the wetlands. The OPZ believes that the variance request is the minimum necessary to afford the Petitioner relief and supports the request. The house is an average size for the community and would be no closer to the water than any of the other homes in the community. Ms. West stated that the proposed house would not adversely affect the CA and is in harmony with the intent of the CA program. The Critical Area Commission (CAC) requested 3:1 mitigation for any disturbance to vegetation.

Mr. Charlie Wychi, Chairman, Bayside Chapel, testified that he has been in the area for over 30 years. Bayside Chapel is located two lots from the subject property. He stated that developed property is an asset to the community. The subject property in its undeveloped state has a large amount of debris that would be reduced if the property were occupied. When the Olmstead house was proposed, some of the neighbors objected to its construction; but it turned out well.

Mr. Jim Olmstead, neighbor, testified that he is opposed to the development of the subject property because there should not be any building in the wetlands. There are laws in place to protect the wetlands. The requested variance will continue the erosion of the wetlands

that the laws were enacted to protect. He stated that his house is for sale. He has no plans to demolish his house to return it to the wetlands.

Mr. Mighel Jackson, the Protestant's son, testified that he does not see how the proposed house is the smallest to afford the Petitioner relief. To determine whether the house is in character with the community, the square footage of other neighboring homes is available online and will be made clear to the Board when they visit the site.

All testimony was stenographically recorded and the recording is available to be used for the preparation of a written transcript of the proceedings.

Findings and Conclusions

The Petitioner has requested a variance to permit construction of a 2,500 square foot house inside the buffer. The proposed house would be built on pilings, allowing for a garage underneath the home. The entire property is located within the 100-foot buffer. It is zoned R2 and classified as IDA. The property is below the size required for R2 property and is narrow and irregular in shape. The footprint of the proposed house is 896 square feet, with a total of 1,328 square feet of impervious surface. The house as proposed meets the setback requirements of R2 properties. The granting of a variance requires the Petitioner to satisfy a rigorous series of requirements set out in the Anne Arundel County Code (Code). *See* Section 3-1-207. Failing to meet even one of the Code requirements results in the denial of the requested variance.

In order for this Board to grant the requested variance, the Petitioner must show that "because of certain unique physical conditions, such as exceptional topographical conditions peculiar to and inherent in the particular lot or irregularity, narrowness, or shallowness of lot size and shape, strict implementation of the County's critical area program or bog protection program would result in an unwarranted hardship." Code, § 3-1-207(b)(1). Here, not only is the subject property narrow, irregular and small for R2 property, the entire lot is within the 100-foot buffer.

Because of these qualities, we have no doubt that this property falls within the “unique physical conditions,” requirement set forth in the Code and “strict implementation of the County’s critical area program would result in an unwarranted hardship” to the Petitioner. *Id.* Testimony offered by Mr. Serwatka and the OPZ, support our finding that the subject property has unique physical conditions that would cause the Petitioner to suffer an unwarranted hardship, if the County’s CA program is strictly enforced. *See id.*

The Petitioner’s next burden is to show that “[a] literal interpretation of COMAR, 27.01, Criteria for Local Critical Area Program Development or the County’s critical area program and related ordinances will deprive the applicant of rights commonly enjoyed by other properties in similar areas as permitted in accordance with the provisions of the critical area program within the critical area of the County.” *Id.* § 3-1-207(b)(2)(i). Many (if not all) of the homes in the surrounding community are within the 100-foot buffer. The proposed footprint for the house is very modest at a total of 896 square feet and allows for a less than 2,500 square foot house. Neither the size of the footprint nor the size of the house is exorbitant; they simply allow the Petitioner to enjoy the same rights as other property owners in the community. We find that without a variance, the Petitioner would be deprived “of rights commonly enjoyed by other properties” throughout the community. *Id.*

The Petitioner must also show that “[t]he granting of a variance will not confer on an applicant any special privilege that would be denied by COMAR, 27.01, the County’s critical area program to other lands or structures within the County critical area, or the County’s bog protection program to other lands or structures within a bog protection area.” *Id.* §3-1-207(b)(3). Based on the testimony presented by Mr. Serwatka and the County, we find that granting the requested variance would not confer a special privilege on the Petitioner. We find that refusing the Petitioner’s requested variance would deny him the same privilege that many

property owners in the community have already received. The property owner would simply be able to build a small house on a legal lot.

Next, the Petitioner must establish that “[t]he variance request is not based on conditions or circumstances that are the result of actions by the applicant, including the commencement of development before an application for a variance was filed, and does not arise from any condition relating to land or building use on any neighboring property.” *Id.* §3-1-207(b)(4). As we addressed above, the Petitioner’s property is narrow and irregular; a condition created by nature, not the Petitioner. As such, we find that the requested variance is not due to any acts by the Petitioner.

The next burden that the Petitioner must overcome is to show that “[t]he granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the County’s critical area or a bog protection area and will be in harmony with the general spirit and intent of the County’s critical area program or bog protection program.” *Id.* §3-1-207(b)(5). The Petitioner’s property is a non-waterfront lot located within the CA. It is classified as IDA, which means that there is no limit on the amount of impervious surface that can be placed on the property. This IDA classification allows for CA properties to have more leeway in what may be constructed on the property. Thus, we find that there would be no adverse impact on the various CA ecosystems based on the exceptionally small footprint of 896 square feet and the limited amount of impervious surface proposed for the Petitioner’s house. In addition, we find that the proposed house would “be in harmony with the general spirit and intent of the County’s critical area program.” *Id.*

Because the subject property is not within the County’s bog protection area, Code Section 3-1-207(b)(6) is inapplicable and merits no discussion.

The Petitioner must then establish that through “competent and substantial evidence, [it] has overcome the presumption contained in the Natural Resources Article, § 8-1808(d)(2), of the State Code.” *Id.* § 3-1-207(b)(7). Under the above cited section of the Natural Resources Article it is presumed “that the specific development activity in the critical area that is subject to the application and for which a variance is required does not conform with the general purpose and intent of this subtitle, regulations adopted under this subtitle, and the requirements of the local jurisdiction's program.” Md. Code Ann., Natural Resources §8-1808(d)(2)(i). The Petitioner has clearly overcome this presumption. The subject property is classified as IDA, and as we stated previously in this opinion, the IDA classification allows for more flexibility in property improvements. Moreover, the location of the proposed house is no closer to the water than the other homes in the surrounding community. Accordingly, we find that the Petitioner’s proposed house is well within the intent of both State and County CA programs.

Next, the Petitioner has the burden of proving that “the variance is the minimum variance necessary to afford relief.” Code, § 3-1-207(c)(1). As we addressed earlier, the Petitioner’s proposed house will be less than 2,500 square feet and has a footprint of only 896 square feet. The plans provided by the Petitioner show the various footprints throughout the community, all but two of which are larger than what the Petitioner is proposing. Anything smaller would leave little to place on the pilings and unrealistic in today’s world. In addition, all proposed side yard setbacks meet those required of R2 properties, even with the narrowness, irregularity and substandard size of the subject property. Therefore, we find that the Petitioner’s requested variance is the minimum necessary.

The Petitioner must then show that “the granting of the variance will not alter the essential character of the neighborhood or district in which the lot is located.” *Id.* § 3-1-207(c)(2)(i). The proposed house is in conformity with other homes in the community in both its

size and its location in relation to the buffer. We find that the Petitioner's proposed house will not affect the essential character of the neighborhood.

The Petitioner must show that "the granting of the variance will not substantially impair the appropriate use or development of adjacent property." *Id.* § 3-1-207(c)(2)(ii). The plat map submitted by the Petitioner shows that the two adjacent properties are currently improved with single-family dwellings. We find that allowing the Petitioner to build a home on his property will not impair the use of the neighboring homes, nor will it impair development because they are already developed. Adjacent property owners will simply be getting a new neighbor.

Because the subject property is not within the limited development area or the resource conservation area of the CA, Code Section 3-1-207(c)(2)(iii) is inapplicable and merits no discussion.

Next, the Petitioner has the burden of proving that "the granting of the variance will not be contrary to acceptable clearing and replanting practices required for development in the critical area or a bog protection area." *Id.* § 3-1-207(c)(2)(iv). The subject property is classified as IDA, which does not restrict the amount of allowable impervious surface coverage. However, even with this IDA classification the Petitioner included mitigation of 3:1 and stormwater management in his proposal, both of which were recommended by the CAC. Accordingly, we find that the Petitioner's proposed house is not "contrary to acceptable clearing and replanting practices required for development in the critical area." *Id.*

Lastly, the Petitioner must show that "the granting of the variance will not be detrimental to the public welfare." *Id.* § 3-1-207(c)(2)(v). It is difficult to find that the building of a house could be detrimental to the public welfare. The testimony of the Protestant suggests that there would be a drain on neighborhood water and sewage facilities; however, no evidence was

presented to support that assertion. Therefore, we find that there is nothing detrimental to the public welfare in the Petitioner's proposal to build a house.

Within recent memory, there has not been a unanimous decision of this Board granting a variance to the Critical Area Program. It is an extremely difficult burden on an applicant to prove that each and every one of the criteria has been met. It is particularly difficult to prove to this Board's unanimous satisfaction that the variance is the minimum necessary to afford relief. This application shows that the Petitioner has carefully considered the sensitive nature of the site and will provide minimal development on this site.

ORDER

For the reasons set forth in the foregoing Memorandum of Opinion, it is this 21st day of APRIL, 2006, by the County Board of Appeals of Anne Arundel County, ORDERED, that Petitioner's request for a variance to construct a 28x32 dwelling with a 10x12 rear deck within the minimum required 100 foot Critical Area Buffer is hereby **GRANTED**.

Any appeal from this decision must be in accordance with the provisions of Section 604 of the Charter of Anne Arundel County, Maryland.

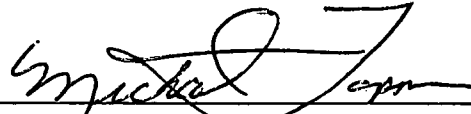
If this case is not appealed, exhibits must be claimed within 90 days of the date of this Order; otherwise, they will be discarded.

Any notice to this Board required under the Maryland Rules shall be addressed as follows: Anne Arundel County Board of Appeals, Arundel Center, P.O. Box 2700, Annapolis, Maryland 21404, ATTN: Mary M. Leavell, Clerk.

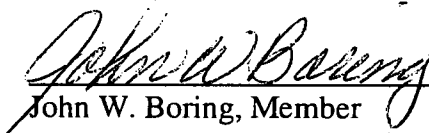
COUNTY BOARD OF APPEALS
OF ANNE ARUNDEL COUNTY



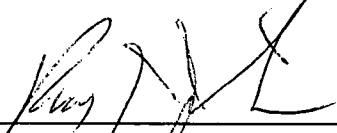
Anthony V. Lamartina, Chairman



Michael Topper, Vice Chairman



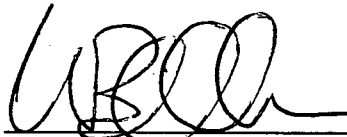
John W. Boring, Member




Ray J. Jicka, Member



Arnold W. McKechnie, Member



William Moulden, Member



Vance N. Remillard, Member

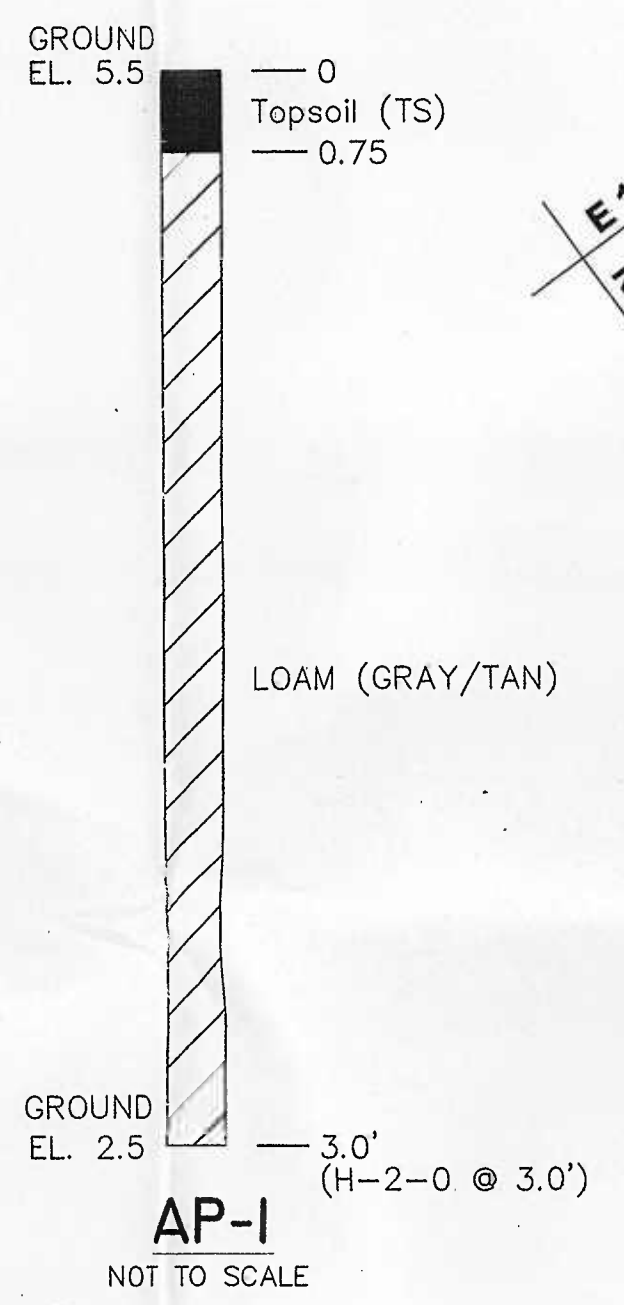
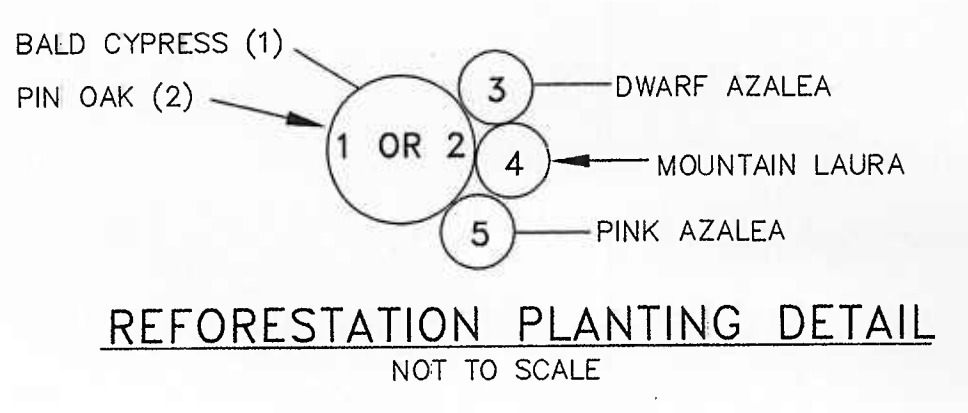
"REFORESTATION NOTES"

- TOTAL WOODLAND CLEARING/ BUFFER DISTURBANCE = 3,500 S.F. X 3:1 RATIO = 10,500 S.F. OF MITIGATION REQUIRED
- TOTAL CLEARING ON SIDE OF BUFFER = 600 S.F.
- MITIGATION REQUIRED = 10,500 S.F.+600 S.F. = 11,100 S.F.
- CREDIT APPLIED:
 LOT SIZE = 6,169 S.F.
 MINUS 1,436 S.F. (HOUSE AND DRIVE) =
 4,733 S.F. CREDIT
- TOTAL MITIGATION REQUIRED:
 11,100 S.F. - 4,733 S.F. =
 6,367 S.F. REQUIRED
- PLANTING PROVIDED ONSITE =
 3,184 S.F. (BONDED @ \$1.20 S.F.)
- FEE PAID IN LIEU OF PLANTINGS =
 3,184 S.F. x \$1.20 S.F. = \$3,820.20

1 TREE AND 3 BUSHES = 400 S.F.

PLANTING SCHEDULE FOR REFORESTATION

SPECIES	SPACING	SIZE	NO.	SYMBOL
BALD CYPRESS	10' o.c.	1-1/2" TO 2-1/2"	5	1
PIN OAK	10' o.c.	1-1/2" TO 2-1/2"	5	2
DWARF AZALEA	4' o.c.	18" TO 24"	10	3
MOUNTAIN LAURA	4' o.c.	18" TO 24"	10	4
PINK AZALEA	4' o.c.	18" TO 24"	10	5

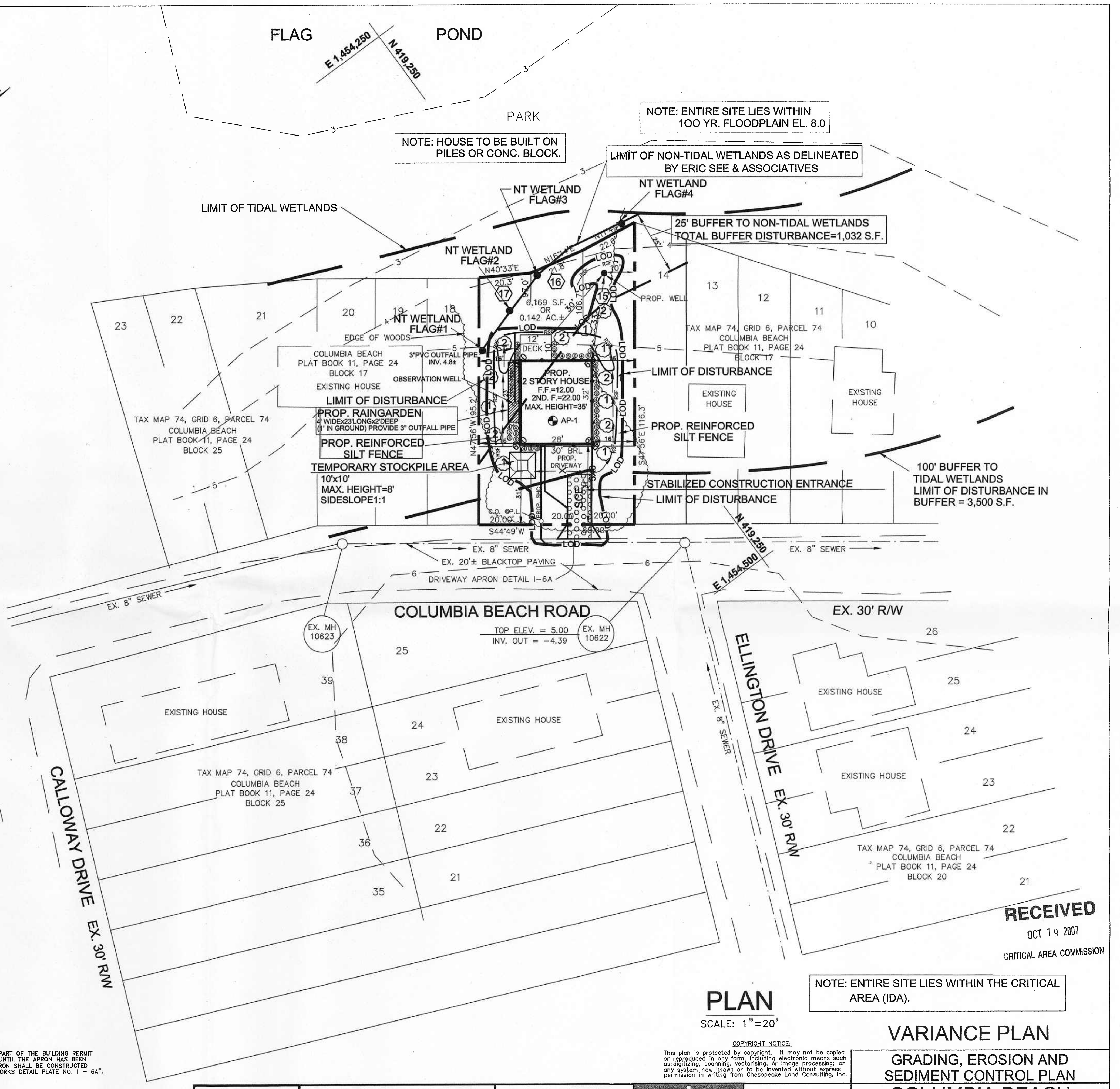
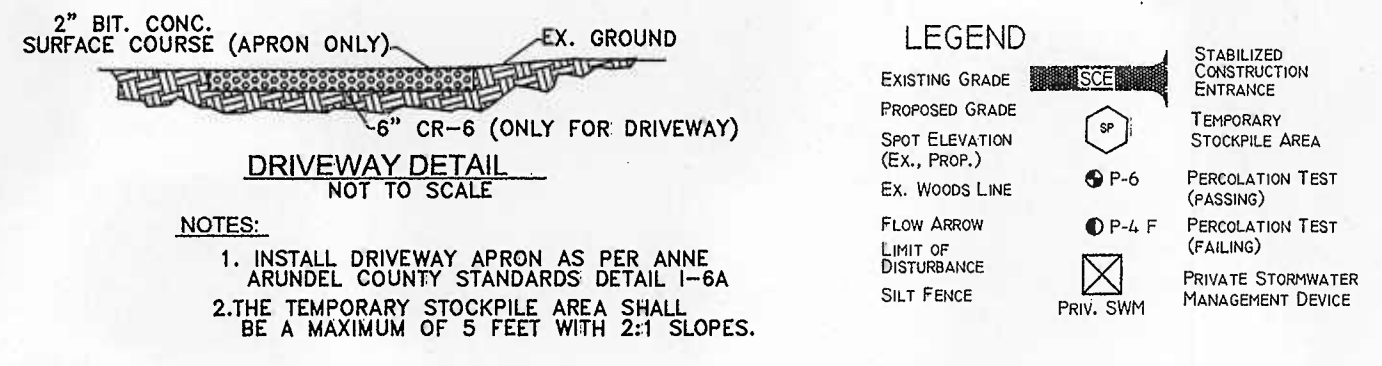


STORMWATER MANAGEMENT NOTE:

DUE TO POOR SOIL CONDITIONS, STORMWATER MANAGEMENT PLANTINGS WILL BE PROVIDED FOR THE IMPERVIOUS AREA OF THE DRIVE AND A RAINGARDEN WILL BE PROVIDED FOR THE PROPOSED ROOF AREA. BASED ON THE SOIL BORING, PLANTINGS AND A RAINGARDEN ARE NECESSARY. Qp AND Qe IS NOT REQUIRED DUE TO DISTURBANCE BEING LESS THAN 15,000 S.F.. THIS METHOD OF STORMWATER MANAGEMENT HAS BEEN CHOSEN DUE TO THE HIGH WATER TABLE AND THE SITE BEING WITHIN THE CRITICAL AREA (IDA).

OUTFALL NOTE
THIS SITE SHEET FLOWS TOWARDS THE REAR OF THE PROPERTY AND HAS A DIRECT TIDAL OUTFALL TO FLAG POND.

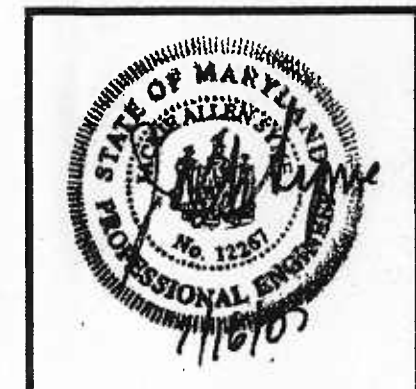
STANDARD DRIVEWAY NOTE
"A STANDARD DRIVEWAY APRON SHALL BE PROVIDED FOR EACH LOT AS PART OF THE BUILDING PERMIT REQUIREMENTS. THE CERTIFICATE OF OCCUPANCY SHALL NOT BE ISSUED UNTIL THE APRON HAS BEEN CONSTRUCTED TO THE SATISFACTION OF ANNE ARUNDEL COUNTY. THE APRON SHALL BE CONSTRUCTED IN ACCORDANCE WITH ANNE ARUNDEL COUNTY DEPARTMENT OF PUBLIC WORKS DETAIL PLATE NO. 1 - 6A."



PLAN
SCALE: 1"=20'

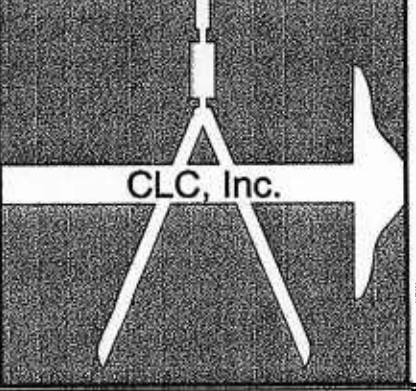
VARIANCE PLAN
NOTE: ENTIRE SITE LIES WITHIN THE CRITICAL AREA (IDA).

GRADING, EROSION AND SEDIMENT CONTROL PLAN
COLUMBIA BEACH
 1721 COLUMBIA BEACH ROAD, SHADY SIDE
 LOT 15 TO 17, BLOCK 17
 ANNE ARUNDEL COUNTY, MARYLAND 20764
 Tax Map: 74 Grid: 06 Parcel: 74
 TAX DISTRICT: 07 SUBDIV.: 156 TAX ACCT. NO.: 02361400



ANNE ARUNDEL COUNTY
MARYLAND

OWNER/DEVELOPER
 PLUS PROPERTIES LLC.
 504 TULIP ROAD
 ANNAPOLIS, MD., 21403
 TEL.: 410-974-4404
 C/O JAMES WILSON



CHESAPEAKE LAND CONSULTING, INC.
 Land Development and Permit Services
 313 NAJONES ROAD
 Suite J
 MILLERSVILLE, MD. 21108
 Phone: 410-729-5533
 Fax: 410-729-5533

RECEIVED
OCT 19 2007
CRITICAL AREA COMMISSION

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DRAWN BY: E.D.S. CLC Job #503
 CHECKED BY: S.J.S. SCALE: 1" = 20'
 DATE: JULY, 2007 SHEET 2 OF 3