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Moreland, LLC
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MSA-S-1829-4736

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Comments

IN THE COURT OF APPEALS OF
MARYLAND

No. 55

September Term, 2010

CRITICAL AREA COMMISSION FOR
THE CHESAPEAKE AND ATLANTIC
COASTAL BAYS, et al.

v.

MORELAND, LLC, et al.

Bell, C.J.
Harrell
Battaglia
Greene
Murphy
Adkins
Barbera

JJ.

Opinion by Battaglia, J.

Filed: January 28, 2011

Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, et al. v. Moreland, LLC, et al., No. 55, September Term 2010.

**REAL PROPERTY – CRITICAL AREA COMMISSION – VARIANCE – BUFFER
– SUBSTANTIAL EVIDENCE REVIEW**

Meaningful judicial review was possible in the present case, because the Board of Appeals marshaled substantial evidence in support of its conclusion that the proposed development by Moreland would have an adverse impact on the water quality of Warehouse Creek.

In this case involving the denial of an application for variances from requirements of a local critical area program, we are asked to consider what level of detail a Board of Appeals must employ in supporting its findings with evidentiary references, in order to enable meaningful judicial review. The Anne Arundel County Board of Appeals had denied variance¹ requests of Moreland, LLC,² in connection with the proposed construction of two residences on Warehouse Creek in Edgewater, within the critical area buffer in Anne Arundel County.³ The variances requested would have enabled the construction of both

¹ A variance refers to “administrative relief which may be granted from the strict application of a particular development limitation in the zoning ordinance.” *Mayor & Council of Rockville v. Rylyns Enterprises, Inc.*, 372 Md. 514, 537, 814 A.2d 469, 482 (2002), quoting Stanley D. Abrams, *Guide to Maryland Zoning Decisions*, § 11.1 (3d. ed. Michie 1992).

² Moreland, LLC, a real estate developer, purchased two parcels, “Site 1” and “Site 2,” on Warehouse Creek in 2003. Thereafter, in June of 2008, while the present case was pending in the Court of Special Appeals, Moreland sold Site 2 to Anthony and Barbara Grimaldi; all parties agreed that the Grimaldis should be joined as parties, and they were on March 17, 2009 before the Court of Special Appeals. We shall, therefore, refer to Moreland, LLC and the Grimaldis collectively as “Moreland.”

³ The critical area buffer is defined in Section 18-13-104(a) of the Anne Arundel County Code as follows:

(a) **Buffer and expanded buffer.** Except as provided in subsection (b), there shall be a minimum 100-foot buffer landward from the mean high-water line of tidal waters, tributary streams, and tidal wetlands. The 100-foot buffer shall be expanded beyond 100 feet to include contiguous sensitive areas, such as slopes of 15% or greater and hydric soils or highly erodible soils whose development may impact streams, wetlands, or other aquatic environments. If there are contiguous slopes of 15% or greater, the buffer shall be expanded by the greater of four feet for every 1% of slope or to the top of the

houses within the buffer, in contravention of Section 17-8-301(b) of the Anne Arundel County Code⁴ and also would have allowed the clearing of a greater percentage of vegetation from the sites than otherwise permitted by Section 17-8-601(b) of the Code.⁵

Initially, an administrative hearing officer had denied the variance requests, and the Board of Appeals, after conducting three nights of evidentiary hearings over the course of several months in 2006, affirmed in a fourteen-page memorandum opinion. Moreland sought judicial review in the Circuit Court for Anne Arundel County,⁶ which remanded the

slope and shall include all land within 50 feet of the top of the slopes.

⁴ Section 17-8-301(b) of the Anne Arundel County Code, governing new structures, provides:

(b) Prohibitions and exceptions. New structures are prohibited in the 100-foot buffer and expanded buffer provided for in § 18-13-104 of this Code, except that water dependent uses or shore erosion protection measures are allowed and roads, bridges, and utilities may be located in the buffer if there is no other feasible alternative and the roads, bridges, and utilities are located, designed, constructed, and maintained in accordance with the requirements of § 17-8-505.

⁵ Section 17-8-601(b) of the Anne Arundel County Code, governing the clearing of vegetation, states:

(b) Other lots. Clearing on lots in the [Limited Development Area] and [Resource Conservation Area] other than residential lots of one-half acre or less in existence on or before December 1, 1985 may not exceed 20% of the lot, except that the Office of Planning and Zoning may approve clearing up to 30%.

⁶ Moreland filed a "Petition for Judicial Review" in the Circuit Court, seeking a reversal of the Board of Appeals's decision denying the variance requests. Appearing in opposition was the South River Federation, a private non-profit organization with a mission

case to the Board, having determined that the Board failed to adequately support in its written decision any of its adverse findings with references to specific evidence. The Critical Area Commission for the Chesapeake and Atlantic Coastal Bays⁷ and the South River Federation appealed, and the Court of Special Appeals, in a reported opinion, *Critical Area Comm'n for the Chesapeake and Atlantic Coastal Bays v. Moreland, LLC*, 191 Md. App. 260, 991 A.2d 138 (2010), agreed with the Circuit Court. We granted certiorari, 415 Md. 40, 997 A.2d 790 (2010), to consider the following questions:

1. Did the Board of Appeals provide sufficient reasoning for its conclusion that the variance applicants had failed to establish that their proposed development would not adversely affect

to “protect, preserve, restore, and celebrate the South River and its interdependent living community,” South River Federation Mission,

<http://southriverfederation.net/index.php/about-us/mission> (last visited Jan. 25, 2011). The South River Park Citizens Association, another private non-profit organization, also filed a “Notice of Intent to Participate” pursuant to Rule 7-204(a), which provides:

- (a) **Who may file; contents.** Any person, including the agency, who is entitled by law to be a party and who wishes to participate as a party shall file a response to the petition. The response shall state the intent to participate in the action for judicial review. No other allegations are necessary.

The Association contended that it was “an interested person through its members Ross Voorhees and Peter Quirk,” who had offered testimony before the Board of Appeals. Similarly, Kenneth Malley, a neighbor of the property, also filed a “Notice of Intent to Participate” pursuant to Rule 7-204(a).

⁷ Section 8-1812(a) of the Natural Resources Article, Maryland Code (1974, 2000 Repl. Vol., 2005 Supp.), authorizes the Critical Area Commission to “intervene in any administrative, judicial, or other original proceeding or appeal in this State concerning a project approval in the Chesapeake Bay Critical Area”

water quality and that their variances were the minimum necessary to afford the applicants relief from applicable Critical Area development restrictions, where the Board of Appeals, in a fourteen page Memorandum Opinion, summarized and repeatedly referenced expert and professional testimony regarding the adverse environmental impacts associated with the proposed development?

2. Did the Court of Special Appeals erroneously conclude that the Board of Appeals, when reviewing whether a variance to construct a home in the Critical Area buffer is the “minimum variance necessary,” must consider the size of the proposed construction relative to the size of homes on neighboring parcels, when such community comparisons are separately considered under the variance criteria?

3. Did the Court of Special Appeals incorrectly apply the presumption that construction proposed in the buffer will harm water quality?

We shall hold that the evidentiary support cited in the decision of the Anne Arundel County Board of Appeals was adequate for purposes of enabling meaningful judicial review, specifically regarding the adverse impact on water quality associated with the proposed development by Moreland, and we, therefore, shall reverse the Court of Special Appeals’s decision. Because our holding regarding the first question disposes of the matter, we need not address questions 2 and 3 and shall not.

In 1984, the General Assembly enacted the Chesapeake Bay Critical Area Protection Program, *see* Maryland Code (1973, 2000 Repl. Vol., 2005 Supp.), Sections 8-1801 to 8-1817 of the Natural Resources Article,⁸ embracing several key policy choices, namely that

⁸ All references to Sections 8-1801 to 8-1817 throughout are to the Natural Resources Article, Maryland Code (1974, 2000 Repl. Vol., 2005 Supp.). All references are

the Chesapeake Bay and its tributaries “are natural resources of great significance to the State and the nation,” that the shoreline constitutes “a valuable, fragile, and sensitive part of this estuarine system,” that “[h]uman activity is harmful in these shoreline areas,” and that “[t]he cumulative impact of current development and of each new development activity in the buffer is inimical” to the restoration of the quality and productivity of the waters of the Bay.⁹ Sections 8-1801(a)(1), (2), (4), and (9).

to the 2005 Supplement to the 2000 Replacement Volume, which was in effect at the time the acts in question occurred, although Section 8-1801 *et seq.* has not been substantially altered in the 2007 Replacement Volume.

⁹ There appears to be a number of significant environmental benefits of requiring a permanently protected buffer between upland land uses and tidal waters, tidal wetlands, and tributary streams, including:

- The removal or reduction of sediments, nutrients, and potentially harmful or toxic substances in runoff entering the Bays and their tributaries.
- Minimization of the adverse effects of human activities on wetlands, shorelines, stream banks, tidal waters and aquatic resources.
- Maintenance of an area of transitional habitat between aquatic and upland communities.
- Maintenance of the natural environment of streams.
- Protection of riparian wildlife habitat.

Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, *Bay Smart, A Citizen's Guide to Maryland's Critical Area Program*, 47-50, (Dec. 2008), <http://www.dnr.state.md.us/criticalarea/download/baysmart.pdf>.

The Program required all local jurisdictions, under the direction of a newly created Chesapeake Bay Critical Area Commission, to formulate and implement a plan to control development in the “critical” or protected area. Section 8-1801(b). That area generally consists of the Chesapeake Bay, its tributaries to the head of tide,¹⁰ all designated State and private wetlands, and all land and water areas within 1,000 feet beyond the landward boundaries of designated State or private wetlands and the heads of tides of the Chesapeake Bay and its tributaries. Section 8-1807(a). The Critical Area Commission, which is comprised of twenty-nine members, including representatives from many counties, is vested with authority to adopt regulations, implement programs, and conduct hearings designed to control development and ameliorate adverse effects of human activity on, in, and near the Bay. Sections 8-1804(a), 8-1806(a).

Anne Arundel County adopted a critical area protection program, embodied in Articles 17 and 18 of the Anne Arundel County Code. Specifically, Section 17-8-301(b) prohibits the construction of “new structures” within the 100-foot buffer:

(b) Prohibition and exceptions. New structures are prohibited in the 100-foot buffer and expanded buffer

The “buffer” is defined in Section 18-13-104(a), generally, as a 100-foot strip of land near the shoreline:

¹⁰ The “head of tide” is defined by the National Oceanic and Atmospheric Administration as “[t]he inland or upstream limit of water affected by the tide.” NOAA Shoreline Website: A Guide to National Shoreline Data and Terms, <http://shoreline.noaa.gov/glossary.html> (last visited Jan. 25, 2011).

(a) **Buffer and expanded buffer.** Except as provided in subsection (b), there shall be a minimum 100-foot buffer landward from the mean high-water line of tidal waters, tributary streams, and tidal wetlands. . . .

Section 17-8-601(b) permits the clearing of vegetation within a limited range inside the critical area to prevent erosion and other environmental impacts:

(b) **Other lots.** Clearing on lots in the [Limited Development Area] and [Resource Conservation Area] other than residential lots of one-half acre or less in existence on or before December 1, 1985 may not exceed 20% of the lot, except that the Office of Planning and Zoning may approve clearing up to 30%.

The County may grant variances when applicants for such meet various specific requirements detailed in Section 3-1-207 of the Code:

(b) **Variances in the critical area or a bog protection area.** For a property located in the critical area or a bog protection area, a variance to the requirements of the County critical area program or bog protection program may be granted only upon an affirmative written finding that:

(1) 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 would result in an unwarranted hardship, as that term is defined in the Natural Resources Article, § 8-1808, of the State Code, to the applicant;

* * *

(3) the granting of a variance will not confer on an applicant any special privilege

(4) that the variance request:

(i) is not based on conditions or circumstances that are the result of actions by the applicant, including the commencement of development activity before an application for a variance was filed; and

(ii) does not arise from any condition relating to land or building

- use on any neighboring property;
- (5) that the granting of the variance:
 - (i) will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the County's critical area . . . ;
 - (ii) will be in harmony with the general spirit and intent of the County critical area protection program . . . ;

* * *

- (7) the applicant, by competent and substantial evidence, has overcome the presumption contained in the Natural Resources Article, § 8-1808(d)(2), of the State Code.
- (c) **Required findings.** A variance may not be granted under subsection (a) or (b) unless the Board finds that:
 - (1) the variance is the minimum necessary to afford relief;
 - (2) the granting of the variance will not:
 - (i) alter the essential character of the neighborhood or district in which the lot is located;
 - (ii) substantially impair the appropriate use or development of adjacent property;
 - (iii) reduce forest cover in the limited and resource conservation areas of the critical area;
 - (iv) be contrary to acceptable clearing and replanting practices required for development in the critical area . . . ; or
 - (v) be detrimental to the public welfare.

Failure by the applicant to satisfy even one of the variance criteria requires the denial of the variance application. Section 8-1808(d)(4)(ii) of the Natural Resources Article; Anne Arundel County Code, Section 3-1-207. The proponent of the variance, moreover, bears the burden of proof and persuasion to overcome the presumption that granting the variance requests does not conform to the critical area law. Section 8-1808(d)(3) of the Natural Resources Article.

In 2003, Moreland purchased two parcels, Site #1 and Site #2, on the north shore of Warehouse Creek in Anne Arundel County, within the critical area, upon which the

developer sought to construct two single-family homes. Thereafter, Moreland requested variances from the Anne Arundel County Office of Planning and Zoning in order to construct the houses and accompanying septic systems within the buffer and also to remove more vegetation than otherwise permitted within the buffer. In support of the variance requests, Moreland asserted that, "without variance relief from the prohibition on development within the buffer area and from tree clearing limitations, [it] [could] not build any reasonably sized home on these residentially zoned lots."

Specifically, on Site #1, Moreland proposed to construct a single-family home, attached garage, screened porch and deck totaling 3,343 square feet. To overcome the prohibition in Section 17-8-301(b) of the Code against construction of new structures within the 100-foot buffer, the developer requested a variance of 34 feet. In addition, Moreland sought to clear more than 51 percent of the lot's vegetation, exceeding the maximum 30 percent that the County's Office of Planning and Zoning may approve pursuant to Section 17-8-601(b).

On Site #2, Moreland sought to construct a home, attached garage, screened porch and uncovered deck totaling 2,615 square feet. To overcome the prohibition in Section 17-8-301(b) of the Code against construction of new structures within the 100-foot buffer, the developer requested another variance of 34 feet into the buffer. In addition, Moreland sought to clear nearly 34 percent of the total vegetation on Site #2, exceeding the maximum permitted by Section 17-8-601(b) of the Code, and therefore requested an additional variance.

An administrative hearing officer denied Moreland's variance requests, and the Board of Appeals affirmed. On appeal, the Circuit Court, applying *Becker v. Anne Arundel County*, 174 Md. App. 114, 920 A.2d 1118 (2007), reversed, reasoning that the Board failed to make "clear findings" so as to "facilitate meaningful judicial review." The Court of Special Appeals affirmed, also relying upon *Becker*, and determined that the Board failed to indicate "what specific evidence it relied upon" to reach any of its controverted findings. *Moreland*, 191 Md. App. at 286, 991 A.2d at 153.

The *Becker* opinion is obviously the fount in which this controversy rests. In *Becker*, our colleagues on the intermediate appellate court determined that the Board of Appeals, in denying several variance requests, failed to cite any evidence or reasonable inferences to be drawn from the evidence, to support its findings, in the context of no evidence or testimony in opposition to the variances having been adduced before the Board.

In that case, William and Jane Becker had purchased two adjoining lots fronting on the Magothy River and Park Creek in Pasadena on which they sought to build a two-story, ranch-style home, consisting of 2,499 square feet of living space and a 529 square foot two-car garage, within the critical area buffer. To do so, the Beckers requested three variances, namely a variance of 56 feet from the 100-foot critical area buffer, a variance to disturb the steep slopes on both parcels to install the septic system, and a 10-foot variance from the 25-foot rear yard requirement. *Becker*, 174 Md. App. at 122, 920 A.2d at 1123. An administrative hearing officer granted the variances, and an appeal to the Board of Appeals ensued. *Id.* at 119 n.2, 920 A.2d at 1121 n.2.

During a hearing before the Board, the Beckers presented testimony that without the variance allowing construction within the 100-foot buffer, the Beckers would not be able to build a house, that the requested variances were the minimum necessary to afford relief, and that the construction “should not have any adverse impact on water quality.” *Id.* at 123, 920 A.2d at 1123. Further, testimony was adduced by the Beckers that the granting of the variances “would not be contrary to the spirit and intent of the critical area program.” *Id.* No evidence was presented in opposition to the variance requests.

The Board thereafter issued a memorandum opinion denying the Beckers’ application, reasoning that the Beckers had failed to demonstrate that the variances requested were the minimum necessary, because “[t]here was no explanation of why 2,500 square feet of living area was necessary. We are left wondering, why not 2,490 square feet, 2,200 square feet or 600 square feet?” *Id.* at 125, 920 A.2d at 1125. The Board further found, without citing support in the record, that granting the variances would adversely affect water quality, would impair the use and development of the neighboring property, and would be detrimental to the public’s welfare, because the Beckers had failed to “convince the Board on these points.” *Id.* at 129, 920 A.2d at 1127.

The Court of Special Appeals reversed. Faced with the issue of whether the Board must have made findings based upon articulated evidence, the intermediate appellate court noted that,

a reviewing court may not uphold an agency’s decision if a record of the facts on which the agency acted or a statement of reasons for its actions is lacking. . . . Findings of fact must be

meaningful and cannot simply repeat statutory criteria, broad conclusory statements, or boilerplate resolutions,

id. at 138-39, 920 A.2d at 1132-33 (citations omitted) (internal quotation marks omitted), and reasoned that there was no evidence of water quality or developmental impairment on the record before the Board:

We note that we can find no evidence or reasonable inferences to be drawn from the evidence to support certain of the Board's conclusions. Specifically, we did not see evidence of an adverse impact on water quality, or that the use would impair the use or development of the adjacent property.

Id. at 143, 920 A.2d at 1135. Our job, obviously in the present case, is to evaluate the Board of Appeals's decision to determine whether it does permit meaningful judicial review and if so, should it be upheld.

Our role in reviewing the final decision of an administrative agency, such as the Board of Appeals, is "limited to determining if there is substantial evidence in the record as a whole to support the agency's findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law." *Maryland Aviation Admin. v. Noland*, 386 Md. 556, 571, 873 A.2d 1145, 1154 (2005), quoting *Bd. of Physician Quality Assurance v. Banks*, 354 Md. 59, 67, 729 A.2d 376, 380 (1999). In doing so, a reviewing court decides whether the Board's determination was supported by "such evidence as a reasonable mind might accept as adequate to support a conclusion." *People's Counsel for Baltimore County v. Surina*, 400 Md. 662, 681, 929 A.2d 899, 910 (2007) (citation omitted); see also *Mayor of Annapolis v. Annapolis Waterfront Co.*, 284 Md. 383, 398-99, 396 A.2d

1080, 1089 (1979) (citation omitted) (“The heart of the fact-finding process often is the drawing of inferences made from the evidence. . . . The court may not substitute its judgment on the question whether the inference drawn is the right one or whether a different inference would be better supported. The test is reasonableness, not rightness.”). Moreover, a reviewing court “must review the agency’s decision in the light most favorable to it; . . . the agency’s decision is prima facie correct and presumed valid.” *Noland*, 386 Md. at 571, 873 A.2d at 1154, quoting *CBS v. Comptroller*, 319 Md. 687, 698, 575 A.2d 324, 329 (1990).

In the present case, Moreland contends that the central issue “is not whether there is substantial evidence in the record,” but rather, whether the Board of Appeals’s opinion denying the variance requests is amenable to meaningful judicial review. The rub comes from the manner of presentation of the Board of Appeals’s opinion.

Moreland argues that, as in *Becker*, the Board of Appeals’s opinion in the present case failed to provide sufficient detail and reasoning to enable meaningful judicial review, because each of the Board’s findings was not immediately followed by supportive and specific evidentiary references. The Commission counters that the Board of Appeals’s opinion adequately reflected that substantial evidence existed in support of its penultimate finding that the proposed construction, because of the large area of impervious surface and the removal of significant amounts of vegetation, would adversely affect the water quality of Warehouse Creek. The Commission further argues that *Becker* is inapposite, because in the present case, evidence was adduced in opposition to the variance requests upon which the Board explicitly relied.

In denying the variance requests, the Board found that Moreland met various burdens of proof, specifically with regard to Section 3-1-207(b)(1) (that strict implementation of the critical area program would result in unwarranted hardship); (b)(2)(i) (that a literal interpretation of the program would deprive the applicant of rights commonly enjoyed by similarly situated property owners); (b)(3) (that granting the variance would not confer on the applicant any special privilege); (b)(4)(i) (that the hardship was non self-created); (b)(4)(ii) (that the hardship was not caused by a condition on neighboring property); (c)(2)(iii) (that granting the variance would not reduce forest cover); and (c)(2)(iv) (that granting the variance would not be contrary to replanting practices). The Board further found, however, that granting the variances would adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the critical area, in contravention of Section 3-1-207(b)(5)(i), that the variances requested were not the minimum necessary to afford relief pursuant to (c)(1), and that granting the variances would alter the essential character of the neighborhood pursuant to (c)(2)(i), substantially impair the appropriate use or development of adjacent property pursuant to (c)(2)(ii), and be detrimental to the public welfare pursuant to (c)(2)(v). The crux of all of the Board's adverse findings was that the large area of impervious surface of the proposed construction, coupled with clearing large areas of vegetation on the sites, would contribute to excess runoff and the flow of harmful matter into Warehouse Creek.

The Board opined as follows, regarding the large area of impervious surface of the proposed construction, namely, according to the Critical Area Commission, 2,167 square feet

of impervious surface on Site #1 and 1,751 square feet of impervious surface on Site #2, adversely affecting water quality:

The proposed sizes of the houses would create additional impervious surface, which would result in an adverse impact on wildlife and the plant habitat of the lots and a significant detriment to water quality of the creek. . . . The large amount of impervious coverage so close to the creek would reduce vegetative cover and alter the hydrology of the area.

* * *

[B]ecause of the environmentally sensitive nature of the properties and the surrounding area, we believe that the addition of such large structures within the 100 foot [critical area] buffer and with the additional woodland clearing would alter the character of the surrounding neighborhood.

* * *

[W]e find the testimony of Mr. Flood^[11] persuasive and agree that the addition of such large structures will create a significant amount of additional water quality problems that could render the creek impassable within the coming years.

* * *

[H]ere we believe that the size of the proposed houses would add too much impervious surface and would cause a significant drop in the quality of the water.

The Board further found that clearing of large areas of vegetation from the sites would foster erosion and excess runoff, harming the water quality of the creek:

[B]ecause of the environmentally sensitive nature of the properties and the surrounding area, we believe that the addition of such large structures within the 100 foot [critical area] buffer and with the additional woodland clearing would alter the

¹¹ Mr. Flood, a neighbor of the properties and a long time South River resident, was accepted by the Board as an environmental expert.

character of the surrounding neighborhood.

* * *

[H]ere, [Moreland] proposes to build two houses inside the 100 foot buffer and with more clearing than permitted by the Code. Allowing [Moreland] to build the houses as proposed is not necessary to avoid denying [the developer] a reasonable and significant use of his property. Alternative plans exist that would provide for less disturbance to the [critical area].

In reaching the above findings and conclusions, the Board explicitly referred to the testimony presented by John Flood, a neighbor and long time South River resident, who was accepted by the Board as an environmental expert, albeit the summary of his testimony was in a section separate from the conclusory findings of the Board. The Board summarized Mr. Flood's testimony as follows:

The South River contains sedimentary soils that were deposited in layers. When the soils become saturated, it becomes unstable and the clay layers become mobile. Impervious surface within the 100 foot buffer contributes to the migration of nutrients from the site and into the water. The benefits of the vegetation that is removed to provide area for impervious surface cannot be replicated by the replanting of similar vegetation. Every foot of impervious surface that is removed from the plan would reduce runoff by 6/10 of a gallon in the first one inch rain event. Unlike the subject properties, other properties in the surrounding area are buffer exempt and have been grandfathered. Comparing the subject properties to those in the surrounding community is like comparing apples to oranges. Mr. Flood created the non-structural erosion control (living shoreline) models that have been adopted by the County and the State.

The Board also explicitly included a summary of the testimony presented by Andrew

Koslow, the South Riverkeeper,¹² regarding the adverse impact of construction near Warehouse Creek, again separate from its conclusory findings expressed in its decision. The Board summarized Mr. Koslow's testimony as follows:

Mr. Andrew Koslow, the South Riverkeeper, testified that he has been conducting water quality sampling for the past three years. The water quality of Warehouse Creek is impaired. In 2005, 50% of the water samples had dissolved oxygen levels below 5 milligrams per liter, which is considered critical to aquatic resources by the Maryland Department of Natural Resources. In 2006, the number of water samples that had dissolved oxygen levels below 5 milligrams per liter dropped to 35%. The development proposed by [Moreland] will generate significant runoff and carry nutrients and sediment into the creek, further contributing to the decline in water quality. He does not believe that [Moreland] has shown that the development would not adversely impact water quality or fish, wildlife or plant habitat within the [critical area].

The Board also found persuasive testimony presented by several neighbors of the tracts, regarding the removal of large amounts of vegetation from the parcels causing erosion and contributing to the decline in water quality of the creek, albeit, again, the following summaries were separate from the Board's conclusory findings in its decision:

Mr. Kenneth Malley stated that he has lived directly across the

¹² The South Riverkeeper is apparently employed by the South River Federation and serves as an advocate for the South River by patrolling the waterway, monitoring water quality, and surveying the shoreline. See South River Federation Staff, <http://southriverfederation.net/index.php/about-us/staff> (last visited Jan. 25, 2011); see also *Ask an Expert: What exactly is a Riverkeeper?* http://www.dnr.state.md.us/mydnr/askanexpert/river_keeper.asp (last visited Jan. 25, 2011); see also Waterkeeper Alliance, www.waterkeeper.org (last visited Jan. 25, 2011).

creek from the subject properties since 1986. The South River Park Community Association represents approximately 150 people in the area who are very concerned about the health of the creek and the siltation of the water. The creek will not be protected if forest cover and vegetation are removed.

* * *

Mr. Ross Vorhees stated that . . . [t]he size of the proposed houses is excessive for the lots and would have an adverse impact on the creek. Development of these lots will require the clearing of mature trees and create additional sediment and erosion to the creek. A study funded by the County found that the quality of the creek could be improved by protecting the buffer, reducing the areas of impervious surface and reducing the sediment deposited in the creek.

* * *

Mr. Peter Quirk testified that he is concerned with how the development of the subject properties will add to the erosion problems of the creek. His house was built in 1997 and had to be located 125 feet from the water because of the required additional 25 foot expanded buffer to steep slopes. . . .

In the present case, the Board of Appeals's opinion contained clear adverse findings, as well as summaries of substantial evidence supporting those findings, in contrast with the Board's opinion in *Becker*, in which the Board failed to articulate any evidence supporting its adverse findings. Here, the Board referred to the testimony of John Flood and others supporting the findings that the removal of large amounts of vegetation, despite proposed replantings,¹³ would adversely impact the water quality of Warehouse Creek, subverting the

¹³ According to Moreland, the Board's finding regarding the clearing of vegetation from the lots adversely impacting water quality is "difficult to reconcile" with the Board's favorable conclusion regarding plans for replanting on the sites. The Board determined that Moreland had offered an adequate replanting proposal, satisfying Section 3-1-207(c)(2)(iii) and (c)(iv) of the Code. Moreland's proposal to mitigate the removal of great

spirit and intent of the critical area program.

Moreland's assertion that the Board of Appeals must describe the evidentiary foundation for each of its findings, immediately following each finding, to enable meaningful judicial review does not have a foundation in our jurisprudence. What does have a grounding in our jurisprudence is that there has to be articulated evidence in support of a conclusory finding.¹⁴ In *Bucktail, LLC v. County Council of Talbot County*, 352 Md. 530, 723 A.2d 440 (1999), a real estate developer, Bucktail, sought review of the denial of an application for a "growth allocation" under a local critical area program. Bucktail had purchased over ninety acres of land in Talbot County, most of which was located within the critical area, such that development was limited to "one unit per twenty acres." *Id.* at 538-39, 723 A.2d at 443. As a result, because Bucktail could construct only three dwelling units on the entire acreage without a growth allocation, the company applied to reclassify the seventy acre parcel from "Resource Conservation Area" to "Limited Development Area," in order to be able to

percentages of vegetation from the parcels with replantings, as mandated by the Code, however, has no bearing on the Board's finding regarding the removal of vegetation in the first place and its impact on Warehouse Creek.

¹⁴ Moreland refers us to *United Steelworkers of America v. Bethlehem Steel Corp.*, 298 Md. 665, 472 A.2d 62 (1984) and *Carriage Hill-Cabin John, Inc. v. Maryland Health Resources Planning Commission*, 125 Md. App. 183, 724 A.2d 745 (1999), as support for the proposition that "a reviewing court may not search the record for a basis to support an agency's conclusions." Here, we have not had to engage in any search, as the Board of Appeals clearly articulated supporting evidence, although in a separate section from its conclusory findings. It requires no great training in logic to infer reasonably that the prior recitation of relevant adverse testimony became the persuasive fulcrum which leveraged the Board into concluding as it did.

develop fourteen houses on the property. The planning staff opined that “[Bucktail’s] application has met all mandatory submittal requirements,” and the Planning Commission recommended approval of Bucktail’s application. *Id.* at 539, 723 A.2d at 444 (alteration in original). The County Council, however, summarily denied the application, concluding that the request “d[id] not comply with all of the Critical Area Policies and applicable design standards” outlined in the relevant zoning ordinances. *Id.* at 540, 723 A.2d at 444. The Circuit Court affirmed, determining that there was substantial evidence to support the Council’s denial of the requested growth allocation.

We granted certiorari prior to any proceedings in the intermediate appellate court and reversed, reasoning that the relevant findings were merely “conclusory statements” and failed to advise the developer, “in terms of the facts and circumstances of the record,” the manner in which the application failed, thereby evading “meaningful judicial review.” *Id.* at 558, 723 A.2d at 453. We emphasized that because the “planning staff and the Planning Commission ha[d] recommended approval of Bucktail’s project and found that it complie[d] with all applicable requirements, it [wa]s not sufficient for the Council simply to express conclusions, without pointing to the facts found by the Council that form[ed] the basis for its contrary conclusion.” *Id.* at 558, 723 A.2d at 453.

In *Annapolis Market Place LLC v. Parker*, 369 Md. 689, 802 A.2d 1029 (2002), Annapolis Market Place, LLC, owned about 33 acres of land in Annapolis and sought to build a “novel mix[ed]-use” development that would integrate residential, commercial, and retail spaces. In order to do so, the company filed an application to rezone the property to

C3-Commercial, which would permit such mixed-use development. The relevant provision of the county code provided that the rezoning could not be granted, however, “except on the basis of an affirmative finding that,” *inter alia*:

(3) transportation facilities, water and sewerage systems, storm drainage systems, and fire suppression facilities adequate to serve the uses allowed by the new zoning classification . . . are either in existence or programmed for construction;

Id. at 698, 802 A.2d at 1034. An administrative hearing officer denied the company’s application, and Annapolis Market Place appealed the decision to the Board of Appeals. In the hearing before the Board, the company presented evidence regarding water supply systems, on-site storm drainage systems, sewerage systems, and roads. No evidence was presented, however, regarding the impact of the proposed development on existing fire suppression facilities, off-site storm drainage systems, or schools. The Board, nevertheless, found that Annapolis Market Place “had presented sufficient evidence to meet the standards for the requested rezoning.” *Id.* at 699, 802 A.2d at 1035. Thereafter, the Circuit Court reversed the order of the Board, reasoning that “no storm water management plan was ever presented to the Board” and “no showing was made that the schools in the area were adequate” under the requested zoning classification, such that there was no evidentiary basis for the Board’s finding; the Court of Special Appeals affirmed. *Id.* at 701, 802 A.2d at 1036.

We affirmed, reasoning that there was no evidentiary basis for the Board’s findings regarding the adequacy of the fire suppression facilities, storm drainage systems, or schools, to support the zoning reclassification. Most notably, we emphasized that the company failed

to present “one scintilla of evidence that indicate[d] that the schools [we]re adequate to serve the development” of the property with apartments, as Annapolis Marketplace had proposed. *Id.* at 722, 802 A.2d at 1049 (alteration in original).

Similarly, in *Mastandrea v. North*, 361 Md. 107, 760 A.2d 677 (2000), *superceded by statute on other grounds as stated in Chesley v. City of Annapolis*, 176 Md. App. 413, 933 A.2d 975 (2007), the Mastandreas purchased land to which they made substantial improvements, including pathways to accommodate their disabled daughter’s wheelchair. A portion of the pathways were placed within the critical area buffer, although the Mastandreas failed to apply for the requisite variances from the requirements of the Talbot County critical area program. *Id.* at 113, 760 A.2d at 680. Discovery by the authorities of the unauthorized installation led, among other things, to the Mastandreas filing a variance application with the Board in an effort to validate the pathways inside the buffer. At the Board’s hearing, the Mastandreas, in support of their principal argument that “the variance should be granted as a reasonable accommodation of [their daughter] Leah’s disability so that she could access the pier and enjoy the shoreline of Glebe Creek,” offered testimony and exhibits:

They explained that the pathways were located to allow a wheelchair to get close enough that Leah could enjoy the waterfront, but not so close as to be dangerous. According to the Mastandreas, the natural slope and the soil composition of the lot near the shoreline (except for the direct pier access) did not permit wheelchair access directly to the waterfront. Placing the pathways outside the 100 foot buffer, however, would deny a wheelchair occupant access to and enjoyment of the waterfront, they contended. The pathways permitted Leah to

enjoy the natural and recreational aspects of her family's waterfront lot and were the only means by which Leah could accompany her brothers and sisters on walks and other activities on the lot. . . .The (brick-in-concrete) pier access pathway was designed to prevent a wheelchair from gaining momentum on the natural downslope from the house to the water. A pathway constructed in a straight line from the house to the pier, without the slope break provided by the Mastandreas's construction, would create a dangerous situation for a person confined to a wheelchair.

Id. at 115-16, 760 A.2d at 681-82. The Mastandreas also presented testimony by an environmental consultant, accepted as an expert by the Board, that the brick-in-sand construction of the pathways actually reduced the runoff of harmful materials into the creek:

An environmental consultant, Ronald Gatton, testified that he was familiar with the Mastandreas's property and the intent of the Critical Area laws to reduce the amount of runoff into the Chesapeake Bay and its tributaries. Mr. Gatton testified that the soil of the lot was one of the heaviest clay soils that he had ever tested. He conducted an infiltration test on the brick-in-sand path and determined that water permeated the brick-in-sand pathway faster than the surrounding undisturbed soil, making the path three times as permeable as the surrounding lawn. Mr. Gatton stated that because the natural soil conditions in the area tended to be very stiff, with a "plastic" quality, it was his opinion that the pathway parallel to the creek actually intercepts much of the runoff from the lawn between the house and the path before entering Glebe Creek.

Id. at 116-17, 760 A.2d at 682 (footnotes omitted). The Board granted legitimizing variances for the existing pathways, reasoning that the paths provided reasonable access to the waterfront, accommodating Leah's disability, and also found persuasive testimony presented regarding the permeability enhancement of the brick-in-sand pathway. The Circuit Court reversed, determining that Leah's disability was not an appropriate consideration under the

local critical area law, and that the Mastandreas had failed to satisfy the pertinent variance criteria.

We granted certiorari prior to any proceedings in the intermediate appellate court and reversed, determining that the Board had clearly articulated evidence in support of its finding that granting the variances conformed with the local critical area law and provided a reasonable accommodation of Leah's disability. We emphasized that the Board had recognized, based upon the Mastandreas's expert's testimony, that the brick-in-sand path dramatically improved permeability, safeguarding the water quality and wildlife of Glebe Creek. *Id.* at 142, 760 A.2d at 696.

In *Alviani v. Dixon*, 365 Md. 95, 775 A.2d 1234 (2001), Phyllis Dixon and Jonathan Aaron requested a special exception and variances from applicable zoning ordinances in order to construct an automotive service facility in Anne Arundel County, near Route 50. An administrative hearing officer denied the special exception and variance requests, and the Board of Appeals reversed, finding that the applicants had satisfied the various zoning criteria. Specifically, the Board determined that the variances "would not alter the essential character of the area as the neighborhood is mixed with residential and commercial uses and is impacted by its proximity to Route 50." *Id.* at 106, 775 A.2d at 1240. The Circuit Court and the Court of Special Appeals affirmed.

Before us, several neighbors protesting the granting of the special exception and variance requests asserted that the Board of Appeals "failed to make the necessary findings required in order to grant a variance," alleging that the Board failed to properly define the

relevant neighborhood that was considered when the Board determined that the variances would not affect the neighborhood. *Id.* at 117, 775 A.2d at 1247. We disagreed, reasoning that the Board amply described the neighborhood as “developed with a mix of residential and commercial uses” and “heavily impacted” by its close proximity to Route 50. *Id.* at 119, 775 A.2d 1248. The Board’s description, we reasoned, was “precise enough to enable a party or an appellate court to comprehend the area that the Board considered when deciding to grant the variances.” *Id.*

When the Board of Appeals merely states conclusions, without pointing to the evidentiary bases for those conclusions, such findings are not amenable to meaningful judicial review and a remand is warranted, as we determined in *Bucktail* and *Annapolis Market Place*. In contrast, our discussions in *Mastandrea* and *Alviani* make clear, that when the Board of Appeals refers to evidence in the record in support of its findings, meaningful judicial review is possible. The present case falls within the ambit of the latter cases, because, in its determination that the Moreland variances should be denied, the Board explicitly summarized evidence presented by several witnesses supporting its conclusions, albeit in a separate section, enabling meaningful judicial review. That evidence, intellectually and logically, can be viewed only as bearing on what persuaded the Board to conclude as it did.

We obviously differ from our Circuit Court and Court of Special Appeals colleagues in their decisions that the separation of the findings from the evidence in the present case obviated meaningful judicial review. We can discern no statutory or jurisprudential basis for

the conclusion that summarizing the evidence in a separate section deprived the Board's conclusory findings of adequate evidentiary support. Semantically, on this record, to find the organizational structure of the Board's written decision defective or incomprehensible would be to elevate form over substance. Rather, the Board clearly articulated the evidence in support of its findings, referring to the testimony presented by John Flood, as well as others, regarding detriment to the water quality of Warehouse Creek posed by the construction.¹⁵ That evidence, as conceded by the parties before us, was substantial, namely that the water quality of Warehouse Creek was "impaired" and would be adversely impacted by the proposed construction due to the large area of impervious surface, "contribut[ing] to the migration of nutrients from the site and into the water," further compounded by the removal of mature trees and vegetation from the buffer, which "cannot be replicated by the replanting of similar vegetation."

In sum, meaningful judicial review was possible in the present case, because the Board of Appeals summarized substantial evidence in support of its conclusory findings. Because the Board marshaled the evidence in its written decision in support of its conclusion, at least, that Moreland failed to carry the day as to the requirements in Sections 3-1-207(b)(5)(i) and (c)(2)(v), the Board's decision should be affirmed.

¹⁵ In oral argument before us, counsel for Moreland suggested that the Board of Appeals, in addition to adequately explaining its findings, must also give "guidance" to the applicant on what it must prove or do differently than what it did here to successfully secure a variance. No such requirement is set forth in Section 3-1-207 of the Anne Arundel County Code, nor Section 8-1808(d) of the Natural Resources Article, governing the granting of variances.

JUDGMENT OF THE COURT OF SPECIAL APPEALS REVERSED; CASE REMANDED TO THE COURT OF SPECIAL APPEALS WITH DIRECTIONS TO REVERSE THE JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AND REMAND THE CASE TO THE CIRCUIT COURT WITH DIRECTIONS TO AFFIRM THE DECISION OF THE BOARD OF APPEALS OF ANNE ARUNDEL COUNTY. COSTS TO BE PAID BY RESPONDENTS.

TO: Marianne Dise
Saundra Canedo

DATE: June 6, 2008

IN RE: Moreland, LLC Variance Appeal

MEMO

Issue:

Whether the CAC Chair should appeal the decision by Circuit Court for Anne Arundel County regarding the Moreland variance request or participate in the remand proceedings?

Procedural History:

1. On January 5, 2006 Moreland, LLC (hereafter "Applicant") appeared before the Anne Arundel County Zoning Board seeking two variances (2005-0394-V and 2005-0395-V) construct dwellings and associated facilities on two properties located on Warehouse Creek Lane, Edgewater, MD.
2. The Administrative Hearing Officer of Anne Arundel County denied the applicant's request for both variances.
3. The applicant appealed to the Anne Arundel Board of Appeals.
4. On August 16, 2006, October 4, 2006, and December 6, 2006 the Anne Arundel Board of Appeals held hearings on Applicant's request for a variance.
5. On January 3, 2007 the Anne Arundel Board of Appeals denied Applicant's request.
6. Applicant appealed to Anne Arundel Circuit Court.
7. On November 26, 2007 the Anne Arundel Circuit Court held a trial and on May 15, 2008 Judge Goetzke remanded the matter back to the Board of Appeals.

Board of Appeals Decision

The Anne Arundel County Board of Appeals heard testimony from the following people:

- **Mr. Mike Baldwin:** Applicant and site owner
- **Mr. Terry Schurman:** Civil engineer and site planner who testified as to the age, size, and physical nature of the lots. Mr. Schurman also testified the buffer would be enhanced under the proposed replantings by Mr. Baldwin and that water quality would be preserved if proper SWM devices were used.
- **Ms. Debra Schwab:** Landscape architect who prepared the applicant's vegetative plan. She also testified the requested variance would not have an adverse impact

on the wildlife or bird habitats within the CA and that the proposed plan would in fact provide more vegetative cover than currently present on the lot.

- **Ms. Catherine Purple Cherry:** Architect who designed the proposed dwellings as well as consulted with engineer and Health Dept. in regards to the septic system. She testified as to the difficulties in designing a septic system that complied with Health Dept. regulations due to perpetual easements held by HA and the 100 foot CA buffer.
- **Mr. John Flood:** Environmental expert in tidal wetlands testified that “the benefits of the vegetation removed to provide area for impervious surface cannot be replicated by replanting similar vegetation.” Board of Appeals Opinion pg. 3. He testified that other properties in the area are BEA unlike the applicant’s property. He stated that comparing the applicant’s property to neighboring properties would be like comparing “apples to oranges”.
- **Mr. Andrew Koslow:** South Riverkeeper who testified the water quality of Warehouse Creek is impaired. In 2005, 50% of water samples had dissolved oxygen levels below 5 milligrams which is “critical” according to DNR guidelines. He testified the applicant’s proposed development would generate significant run-off and further impair water quality. He also testified he believed the applicant’s proposal would adversely impact fish, wildlife and plant habitat in the CA.
- **Ms. Lori Rhodes:** Planner with Office of Planning and Zoning testified to the nature of the applicant’s proposal including the physical characteristics of the lots (existence of steep slopes, both lots almost entirely within the CA, the existence of perpetual easements for streams), as well as proposed clearing (more than 30% on both sites), and the 5, 445 sq ft of impervious surface area which is below the maximum limit. She also testified to the OPZ’s opposition to the applicant’s development as well as the CAC’s recommendation of denial.
- **Mr. Anthony Grimaldi:** Buyer of one of the proposed lots; would consider it a privilege to live on the water.
- **Mr. Kenneth Malley:** Lives across the creek from applicant’s property and wishes to see CA rules and regulations enforced to maintain the health of Warehouse Creek.
- **Mr. James Gracie:** Environmental consultant with 21 years experience in SWM in MD. Testified as to his concern regarding the highly erodible soils and steep slopes on which applicant proposes to construct dwellings.
- **Mr. Ross Voorhees:** Testified he believed granting the variance would confer a special privilege on the applicant and that the size of the proposed houses are excessive.

- **Mr. Richard Maio:** Performed an analysis of the enclosed square footage of houses on the north side of the creek and concluded the houses proposed by applicant are significantly larger and would not be in character with the area.
- **Mr. Peter Quirk:** Local resident concerned with applicant's proposed developments' affect on the creek.
- **Ms. Elizabeth DelCastillo:** Local resident concerned with applicant's proposed developments' affect on the creek.
- **Mr. Fred Hunt:** Testified to the existence of "a huge sandbar" next to the subject properties which has resulted from SHA breaking promises.

Based on the above surmised testimony and evidence, the Board of Appeals found the applicant had not met the burden of proof regarding variance requirements as set forth in Md. Code §17-8-301(b). The Board then proceeded to state each criterion and offer an analysis as to why the applicant had or had not satisfied the requirement. The Board ultimately denied the variance request.

As to the requirement that there be unique characteristics to the land and the existence of an unwarranted hardship if the CA program were to be strictly adhered to, the Board found it undeniable that the lots were unique and a hardship existed. Secondly, as to the requirement that the applicant would be denied rights commonly enjoyed by other properties in similar areas, the Board found given the developed nature of the surrounding area, the applicant would be denied a commonly enjoyed right. The Board next concluded that should they grant the variance, they would not be conferring a special privilege on the applicant otherwise prohibited by local regulations, the county bog program, COMAR, or the CA program. The Board further concluded the variance request was not a result of the applicant's own actions, noting that just because the applicant bought the property knowing it may be difficult to develop does not in and of itself create a hardship.

In regards to the requirement that the variance not adversely affect water quality, impact fish, plant, or wildlife habitat the Board found the addition of impervious surfaces in the amount of the proposed dwellings would result in an adverse impact on water quality of the creek. The Board was also not satisfied as to the sufficiency of the proposed SWM system. Therefore the Board found the applicant did not meet this requirement.

The Board was also not satisfied the applicant had overcome the presumption of non-compliance. While the Board recognized the applicant's right to develop his land, they noted the denial to build the proposed houses did not deny the applicant of a reasonable and significant use of his property. Ultimately the Board found the applicant's proposal inharmonious with the intent of the CA programs.

The Board was not satisfied that the proposed variance was the minimum necessary to grant relief. The Board stated the minimum relief "must protect the CA- not the Petitioner's idea of what size home they prefer on the property." The Board noted that although the style and nature of the homes themselves would not alter the character of the neighborhood as prohibited, the homes' impact on the buffer would. The Board stated that although the area was developed, they found Mr. Flood's testimony persuasive and determined applicant's development would create a significant amount of water quality issues thereby impairing the appropriate use of the adjacent properties.

As to the requirement that the granting of the variance not reduce forest cover in the LDA, the Board found the proposed 3:1 mitigation satisfactory. The same proposed mitigation also satisfied the Board as to the requirement that the granting of the variance not be contrary to acceptable clearing or replanting practices.

Finally, the Board concluded that the size of the proposed homes would result in too great an increase in impervious surfaces, adversely affecting Warehouse Creek and surrounding wildlife. The variance was therefore found to be detrimental to public welfare.

Anne Arundel Circuit Court Opinion

The Court finds the standard of review of decisions by administrative agencies as prima facia correct and on appeal must be viewed in light most favorable to the agency. The Court states that Moreland has raised a single issue on appeal: "Whether the Board's decision contains meaningful explanation of its findings supported by specific references to evidence?"

In the Opinion, the Court quotes *Becker v. Anne Arundel County*, 174 v. Md. App. 114 (2007) extensively and then moves to apply the standards set forth above to determine if the Board of Appeals has decided incorrectly. In regards to the Board's decision that the applicant's variance would adversely affect water quality, fish, plant and wildlife habitat, the Court states the quantity of impervious surface area is not included, nor does the Board explain "why it is 'not convinced' that the storm water management plan will provide the necessary controls..." In examining the Board's application of the "unwarranted hardship" standard, the Court refers to *Mastandrea v. North*, 361 Md. 107 (2000) to determine the Board had incorrectly applied the law to the entire lot as opposed to the entire buffer area. The Court also stated the Board's opinion was lacking evidentiary support for their finding the application did not conform to the intent of CA programs.

The Court cites *Becker* and states the Board's opinion "inaccurately states the law" in regards to the applied "absolute minimum" standard used. Furthermore the Court found the Board failed to provide a "meaningful explanation of how the variances would substantially impair" the adjacent properties. The Court finds the requirement to be that a variance project will not "substantially" impair the 'appropriate' use or development of adjacent property" and not that the variance "impair the use of adjacent properties" as applied by the Board. The Court also found the Board's reliance on Mr. Flood's testimony inconsistent with the assertion that the creek would become impassable. Finally the Court found the Board's finding of detriment to public welfare unsupported by evidence.

The Court concluded it was unable to meaningfully review the conclusions of the Board and "that the requirements of *Becker* had not been satisfied." The Court remanded the case back to the Board of Appeals with instructions to consider the requirements set forth in *Becker*.

IN THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY

PETITION OF MORELAND, LLC
277 K. Peninsula Farm Road
Arnold, Maryland 21012

FOR JUDICIAL REVIEW OF THE
DECISION OF THE ANNE ARUNDEL COUNTY
BOARD OF APPEALS
Arundel Center, Room 160
Annapolis, Maryland 21401

IN THE CASE OF A DECISION OF THE
THE ANNE ARUNDEL COUNTY
BOARD OF APPEALS IN CASE NO.'S
BA 15-06V AND BA 16-05V
MADE ON JANUARY 3, 2007

By _____

CIVIL ACTION
NO. C-07-120131

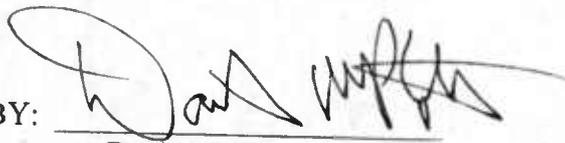
2007 FEB - 2 P 4: 26

PETITION FOR JUDICIAL REVIEW

Petitioner Moreland, LLC, by and through its attorneys, David M. Plott and Linowes and Blocher LLP, request judicial review of the decision of the Anne Arundel County Board of Appeals ("Board") to deny certain variances (BA 15-06V and BA 16-05V) requested by the Petitioner. The Petitioner was a party to the proceedings before the Board on August 16, 2006, October 4, 2006, and December 6, 2006 leading to the final decision made on January 3, 2007, (Exhibit 1) and is the owner of the real property that is the subject of the Board's decision.

Respectfully submitted,

LINOWES AND BLOCHER LLP

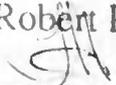
BY: 

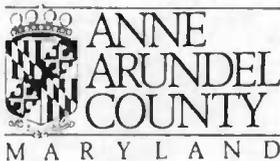
David M. Plott

Linowes and Blocher LLP
145 Main Street
Annapolis, Maryland 21401

TRUE COPY,

TEST: Robert P. Duckworth, Clerk

By:  Deputy



BOARD OF APPEALS
P.O. BOX 2700, 44 CALVERT ST., RM. 160
ANNAPOLIS, MARYLAND 21404
410-222-1119

July 3, 2006

NOTICE OF APPEAL HEARING

BA 15-06V, BA 16-06V
Moreland, LLC

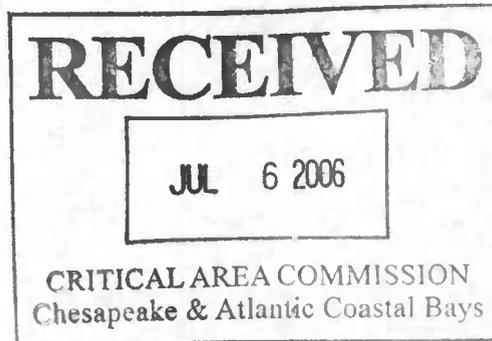
The Board of Appeals will conduct a public hearing on the above case on Wednesday, August 16, 2006, at 6:30 p.m., in the Council Chambers, First Floor, Arundel Center, 44 Calvert Street, Annapolis, Maryland.

This is an appeal from a decision of the Administrative Hearing Officer. This appeal is taken from the denial of variances to permit dwellings and associated facilities with less buffer than required and with greater clearing than allowed on properties located 125' along the southeast side of Warehouse Creek Ln., 700' east of MD Rt. 2 and 120' along the southeast side of Warehouse Creek Ln., 700' east of MD Rt. 2, Edgewater.

Interested persons are advised to contact the Board of Appeals at 410-222-1119 to confirm that the hearing will proceed as advertised. The Board may choose to close a portion of the meeting to obtain legal advice or to discuss personnel matters as authorized by Section 10-508(a)(7) or Section 10-508(a)(1) of the Open Meetings Act. **Road construction in Annapolis is underway, which may increase travel time.**

Mary M. Leavell
Clerk to the Board

- cc: Property Owners
- News Media
- Critical Area Commission
- David M. Plott, Esq.
- Pat Logan, Esq.
- Lori Rhodes (2005-0394-V, 2005-0395-V)
- Suzanne Schappert
- Stephen LeGendre



IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBERS 2005-0394-V AND 2005-0395-V

IN RE: **MORELAND LLC**

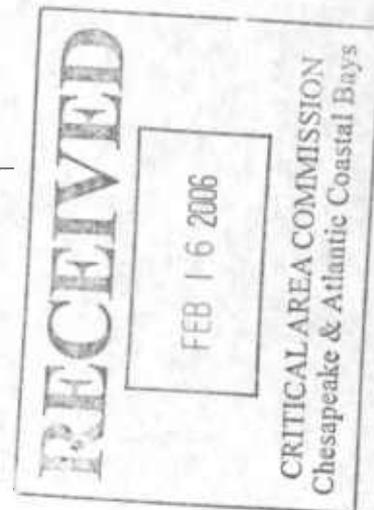
FIRST ASSESSMENT DISTRICT

DATE HEARD: JANUARY 5, 2006

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

PLANNER: **LORI RHODES**

DATE FILED: **FEBRUARY 13**, 2006



PLEADINGS

Moreland LLC, the applicant, seeks variances (2005-0394-V and 2005-0395-V) to permit dwellings and associated facilities with less buffer than required and with greater clearing than allowed on two properties located along the southeast side of Warehouse Creek Lane, east of Maryland Route 2, Edgewater.

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 applications as owning land that is located within 175 feet of the properties was notified by mail, sent to the address furnished with the applications. The applicant submitted the affidavit of Gary Evans indicating that the properties were posted on December 21, 2005. I find and conclude that the requirements of public notice have been satisfied.

FINDINGS AND CONCLUSIONS

These cases concern unimproved properties identified as Parcel 156 in Block 12 on Tax Map 55. Site 1 (Case No. 2005-0395-V) comprises 35,414 square feet; Site 2 (Case No. 2005-0394-V) comprises 26,408 square feet. The zoning is R-1 residential. These are waterfront lots on Warehouse Creek with a Chesapeake Bay Critical Area designation as Limited Development Area (LDA).

The request is to develop each lot with a single-family dwelling and associated facilities. For Site 1, the dwelling is 51 feet from the water and the woodland clearing is 41.6 percent (14,721 square feet). For Site 2, the dwelling is 66 feet from the water and the woodland clearing is 24.7 percent (6,534 square feet).

Anne Arundel County Code, Article 18, Section 18-13-104(a) creates a 100-foot buffer from tidal waters. Article 17, Section 17-8-301(b) prohibits new structures in the 100-foot buffer. Section 17-8-302 provides that the buffer shall remain in natural vegetation unless planted vegetation is necessary to protect, stabilize or enhance the shoreline. Finally, Section 17-8-601(b) restricts clearing on lots in the LDA to 20 percent of the lot. Accordingly, Site 1 requires a buffer variance of 49 feet and a variance for excess clearing in the amount of 21.6 percent (7,638 square feet); while Site 2 requires a buffer variance of 34 feet and a variance for excess clearing in the amount of 4.7 percent (1,252 square feet).

Lori Rhodes, a planner with the Office of Planning and Zoning, testified that the properties are below the minimum area for the district with an eroding shoreline, pockets of steep slopes and a Maryland State Highway Administration (SHA) perpetual easement for stream change. There is a septic easement on Site 1 for Site 2. The project satisfies the allowances for impervious coverage and the slopes are undisturbed. The witness summarized the agency comments. The County's Development Division and the Chesapeake Bay Critical Area Commission offered no objection, subject to mitigation and stormwater management. The Department of Health requested plan approval. By way of

conclusion, Ms. Rhodes supported the applications, which are considered consistent with the development of the adjacent property to the east under Case No. 1999-0424-V, in Re: Milton and Marie Livesay (January 18, 2000).

Mike Baldwin, the applicant's representative, submitted several site and area photographs, an aerial photograph and typical building elevations as evidence that the granting of the variances would not alter the character of the neighborhood. The witness testified that the requests are unobjectionable to the Livesays.

Terry Schuman, the applicant's engineering consultant, testified that the land was previously cleared for farming but is now overgrown with invasive species. Access is via a private road to Route 2. The driveway for Site 2 traverses Site 1. The witness provided a color-coded diagram showing the site constraints: steep slopes along the water, 25-foot buffer to 25 percent slopes, septic fields and their setbacks, and SHA easement. The site plan has been revised to relocate the dwellings outside the steep slopes and the steep slope buffer. The Site 1 dwelling has a footprint of 2,169 square feet (including the garage but excluding porches and decks) with 2,066 square feet of the footprint located in the buffer. The footprint for the Site 2 dwelling is 1,828 square feet and wholly in the buffer. According to the witness, the proposals are consistent with neighboring development, including the Livesay residence, which is located 66 feet from water. Mr. Schuman opined that the variance standards are satisfied. In particular, the excess clearing is offset by mitigation at the increased ratio of 3:1. Finally, the

applicant is not clearing the steep slopes along the water - but the area could be the subject of a future buffer management plan.

In response to inquiry by Drew Koslow,¹ Mr. Shuman testified that the Site 1 dwelling offers approximately 3,500 square feet of living space, and the Site 2 dwelling is slightly smaller. The Livesay dwelling has 4,000 - 4,500 square feet of living space. Finally, other homes on the creek exceed 5,000 square feet of living space.

Nancy Matthews, an environmental consultant to the applicant, submitted a Critical Area report indicating that the properties contain pockets of steep slopes and are overgrown with undesirable species. Disturbance in the buffer and clearing greater than 20 percent is unavoidable due to the septic areas and SHA easement. The witness indicated that mitigation with native species at a 3:1 ratio would result in a net improvement of the habitat quality. She anticipated little adverse impact to Critical Area assets because the project includes mitigation, stormwater management and sediment controls and septic systems with nitrogen removal. She opined that the Critical Area variance standards are satisfied.²

Mr. Koslow testified that he has observed clearing and filling violations in the buffer in connection with the construction of other large homes on the water. He anticipates that the variances would result in continued deterioration to the creek from sediment and nutrient pollutant. He supplied a list of eight houses on

¹ Mr. Koslow is the South River Keeper and an employee of the South River Federation.

² In response to inquiry by Mr. Koslow, Ms. Matthews conceded the need for the exercise of care during construction to avoid adverse impacts to Warehouse Creek.

Warehouse Creek ranging from 816 square feet to 3,133 square feet of living space as evidence that the present requests are excessive.³ He also suggested conditions to protect water quality, including multi-level mitigation plantings on an area basis and stormwater management infiltration trenches.

In response to my inquiry, Mr. Schuman indicated that the stormwater management would be part of the grading permit and could include infiltration trenches, provided the setbacks to the well and septic system are satisfied. The witness conceded that there is limited opportunity for onsite mitigation, including some cleared areas. Mr. Baldwin indicated that implementation of a buffer management plan is governed by the grading permit.⁴

I visited the site and the neighborhood. The site is accessed across a graveled drive that parallels paved Warehouse Creek Lane. It is cleared and level near the access, then slopes through woodlands to the water. The access drive terminates at the paved driveway serving the Livesay residence. There are several older dwellings and a few that are more recent construction along the northeast side of Warehouse Creek Lane. There are two very substantial homes to the west of the property, one recently occupied and the other still under construction.

The standards for granting variances are contained in Section 18-16-305. Under subsection (b), for a property in the Critical Area, a variance to the Critical

³ On cross-examination by counsel to the applicant, Mr. Koslow acknowledged that he did not know the zoning classification for five properties on his list.

⁴ The witness agreed to a condition - suggested by Mr. Koslow - requiring hand removal of invasive species from the steep slopes and replacement with beneficial species.

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 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 circumstance, I am constrained to deny the applications. The applicant's burden in cases like these is absolute: unless all criteria are proved, then the relief must be denied. While many of the criteria have been satisfied, some have not been.

Beginning with the subsection (b) criteria, there is no doubt that a literal application of the program would mean that neither property could be developed,

which is a right in common enjoyment elsewhere in the Critical Area. The converse is also true: the granting of some form of relief is not a special privilege that the program typically denies to other lots in the Critical Area. While the need for relief does not result from the actions of the applicants, to the extent of the septic easement, the Site 1 variance results in part from the land use on Site 2. See, Case No. BA 4-04V, In Re: Elizabeth Sherrill and Robynn Squires (October 14, 2004) and Case Nos. BA 125-V and 126-V, In Re: William and Jane Becker (August 17, 2005)⁵. Nor am I able to conclude that the granting of the requested variances will not adversely impact Critical Area assets and will harmonize with the general spirit and intent of the program. In this regard, the stormwater management has yet to be defined.

Considering the subsection (c) criteria, I do not believe that the relief has been minimized. Even though there are other large homes on the creek, the applicant is not entitled to particular footprints, square footages or amenities. True, the code no longer specifies a minimum house size. But there can be no serious dispute that these houses are too big, especially since they are predominately in the buffer and given the extent of the clearing. This office is under no obligation to specify the minimum relief. But I cannot ignore that there are ample opportunities to lessen the relief. For example, smaller septic trenches for smaller homes would reduce the percentage of clearing. Alternatively, the

⁵ Case Nos. BA 125-03V and 126-03V has been appealed to the Circuit Court for Anne Arundel County, where the matter is pending (Case No. C-05-108146).

elimination of covered parking would increase the buffer. Finally, the project may require a redesign that would include zoning setback variances. Even though the granting of the variances would not alter the essential character of the neighborhood and the use or development of adjacent property, the request is detrimental to the public welfare.

Because all of the criteria are not met, the denial of the applications is not an unwarranted hardship.

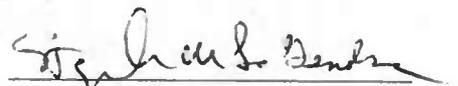
In closing, I would be remiss if I failed to observe that Case No. 1999-0424-V was decided under an earlier- and less strict - set of regulations. In any event, the redevelopment proposal included the removal of a second dwelling (closer to Warehouse Creek) and accessory structures to achieve a reduction in impervious coverage.

ORDER

PURSUANT to the application of Moreland, LLC, petitioning for a variance to permit dwellings and associated facilities with less buffer than required and with greater clearing than allowed; and

PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is this 13th day of February, 2006,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicant's requests are **denied**.


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.

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

Bay Engineering Inc.
Engineers, Planners and Surveyors



December 28, 2005

Mrs. Lori Rhodes, Planner II
Anne Arundel County Office of Planning and Zoning
2664 Riva Road, Third Floor
Heritage Office Complex
Annapolis, Maryland 21401

Re: **Moreland LLC**
Variance Case 2005-0394-V and 2005-0395-V
Warehouse Creek Lane, Edgewater, Maryland 20137

Dear Mrs. Rhodes:

The applicant met with Mr. David Plott of Linowes and Blocher on December 28, 2005 in preparation of the hearing on January 5, 2005 at 11:00 am. I attended the session to review the agencies recommendations, plans, and documents, which support the application.

Toward maintaining the favorable findings and conclusion of the critical area commission and the Office of Planning and zoning we made some minor adjustments to sheet 3 of 4 - Site Plan as our result of preparing for the hearing and we ask that this plan be presented into the record. Our office is providing copies of the same to the Critical Area Commission and the Administrative Hearing Office. It is important to note that the disturbance limits remained the same as the previously reviewed plans.

The changes are summarized as follows: the proposed dwellings have been reduced slightly so they are located outside the 25' buffer to isolated 25% slopes. An uncovered wooden deck has been placed on the house located on Site #2, (third described parcel) to be consistent with Site #1 (second described parcel) and the surrounding properties.

The ownership data and site information on the adjacent parcel 191 has been updated to reflect the approved variance case 1999-0424-V.

If you have any comments or questions please contact me at 410.897.9290

Sincerely,

Gary M. Evans

Cc: David Plott
Administrative Hearing Office
Critical Area Commission, Mrs. Regina Esslinger, AICP

RECEIVED

DEC 28 2005

CRITICAL AREA COMMISSION

Bay Engineering Inc.
Engineers, Planners and Surveyors



0395 V
0394 V

October 13, 2005

Anne Arundel County- Planning and Zoning
2664 Riva Road
Annapolis, MD 21401
Attention: Mr. Joe Rutter

**RE: MORELAND LLC
TAX MAP 55, GRID 12, PARCEL 156
Site 1: Tax Id 01-000-90220269
Site 2: Tax id 01-000-90220268
TWO BUILDING LOTS
WAREHOUSE CREEK LANE
VARIANCE REQUEST LETTER OF EXPLANATION**

Dear Office of Planning and Zoning:

The purpose of this letter is to outline the applicant's request for variances for the above referenced properties. The subject properties are located on the waters of Warehouse Creek, Edgewater, Maryland and will be accessed from an existing service road, Warehouse Creek Lane. The lots are located entirely within the "LDA" Chesapeake Bay Critical Area. No portion of the site is without overlay zone impacts and therefore can not be developed without variances, those specific requests are as follows:

- Article 26-8-301, Article 27-13-104, new principal structures, wells and septic system located in 100-foot buffer to tidal waters.
- Article 26-8-302 For removal of vegetation in 100 buffer
- Article 26-8-601 For Clearing in excess of permitted limits due to septic and irregular shape of lots.

The property is zoned R1 Residential and the lot areas are less due land loss of the tidal waters of Warehouse Creek. The proposed principal structures meet the yard setbacks provided for in the bulk regulations of the R1 zoning table.

The site contains areas of slopes 15% or greater and the enclosed applicant and plan does not propose disturbance to slopes. Some portions of the development are located with the 25' buffer to steep slopes.

The lots are located in a "No Planned Service Area" for public water and sewer service therefore private septic and well systems are proposed for each lot. In addition Site #2 relies on access and septic reserve areas from within the boundaries of Site #1. The applicant is currently seeking approval of the nitrogen reducing private on-site septic systems.

October 13, 2005

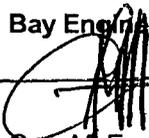
The applicant is seeking approval to clearing over the 30% threshold. That clearing is necessary to install the septic systems, wells, driveway access lanes and the principal dwellings. Mitigation rates are proposed in accordance with Article 26-8-602. The proposed house footprints have been reduced during planning and design to fit a reasonable duplication of the surrounding much larger homes; further reducing the house would not eliminate the need for the above variances.

In closing, based on the site plan the applicant concludes that the variances requested are the minimum necessary to afford relief, and is not based on conditions or circumstances that are a result of actions by the applicant. The granting of these variances will allow the applicant to construct a dwelling on each lot that is in harmony with the immediate surrounding area. The applicant is required to obtain grading and building permits for the above referenced lots.

Should you have any questions, comments, or require any additional information, please do not hesitate to contact me directly at 410-897-9290.

Sincerely,

Bay Engineering, Inc.



Gary M. Evans, Project Manager

Cc: Moreland LLC

MORELAND LLC
WAREHOUSE CREEK LANE
CRITICAL AREA REPORT

PREPARED FOR:
BAY ENGINEERING, INC.
190 ADMIRAL COCHRANE DRIVE #175
ANNAPOLIS, MD 21401

PREPARED BY:
CATTAIL CONSULTING
POST OFFICE BOX 1599
SEVERNA PARK, MD 21146

410-544-0133

JULY 2005

CHESAPEAKE BAY CRITICAL AREA REPORT
CHECK LIST
Anne Arundel County, Maryland



TO: Property Owners in the Chesapeake Bay Critical Area

DATE: 7-31-05

FROM: Department of Planning and Code Enforcement

SUBJECT: Information Required for Submission of Critical Area Report - Zoning Applications

Zoning Case Number _____ Applicant's Name MORELAND LLC
Critical Area Classification: LDA/RCA/IDA; Tax Map 55 Block 12 Parcel 156

Your property is located within the Chesapeake Bay Critical Area. In reviewing your application, Planning and Code Enforcement must determine the impact your proposal will have on stormwater management and plant and animal habitat in conformance to Critical Area criteria. Your plan must meet the criteria for your classification and satisfy COMAR 14.15.11 regarding variances. You are responsible for supplying five copies of the VICINITY MAP, NARRATIVE STATEMENT AND PLAN to the Zoning Administration Division of the Department of Planning and Code Enforcement with your zoning application. Applications within the Critical Area will not be accepted without a complete Critical Area Report.

1. A brief explanation of why you need a variance or special exception. If you have applied for a building or grading permit, please list the permit number(s). _____
2. A VICINITY MAP showing clear directions to your property and the address.
3. A short, 1 or 2 sentence per item, NARRATIVE STATEMENT which provides the following information (if checked):

Type of predominant trees and shrubs (maple, oak, evergreen, etc.) on the entire parcel. (At least 15% of the lot must have trees and shrubs or additional plantings will be required. Trees and shrubs must cover the area 25' from the water on waterfront lots except for access area.)

Method of control of rainwater from existing and proposed structures, driveways and parking. (Where does it go now? Where will additional runoff go? Any special techniques?)

Methods to minimize impacts on water quality and habitat from proposed construction (e.g. stormwater management, sediment control, replanting, avoiding slopes).

Square footage of site that is currently wooded or has trees and shrubs; square footage to be disturbed by proposed work; acreage of lot; total impervious coverage before and after work (Any lot in LDA or RCA that is 21,780 square feet or less cannot have more than 25% impervious surface covered unless further restricted by plat. Lots over 1/2 acre cannot exceed 15% coverage.)

Habitat protection areas: Buffers, expanded buffers, wetlands, rare and endangered species, anadromous fish propagation waters, colonial water bird nesting sites, historic waterfowl staging and concentration areas, riparian forests 300' or more in width, forested blocks 100 acres or more, natural heritage areas, plant and wildlife habitats of local significance.

4. A PLAN of your property, drawn to scale (a plot plan, grading plan or building location survey can be used) showing (if checked):

Steep slopes (15% or greater - show any slope if you aren't sure of percentage of slope)

Existing tree line, individual trees and all proposed clearing, grading or any disturbance

Wetlands (tidal and nontidal)

Floodplain (tidal and nontidal)

Any proposed planting or landscaping on property

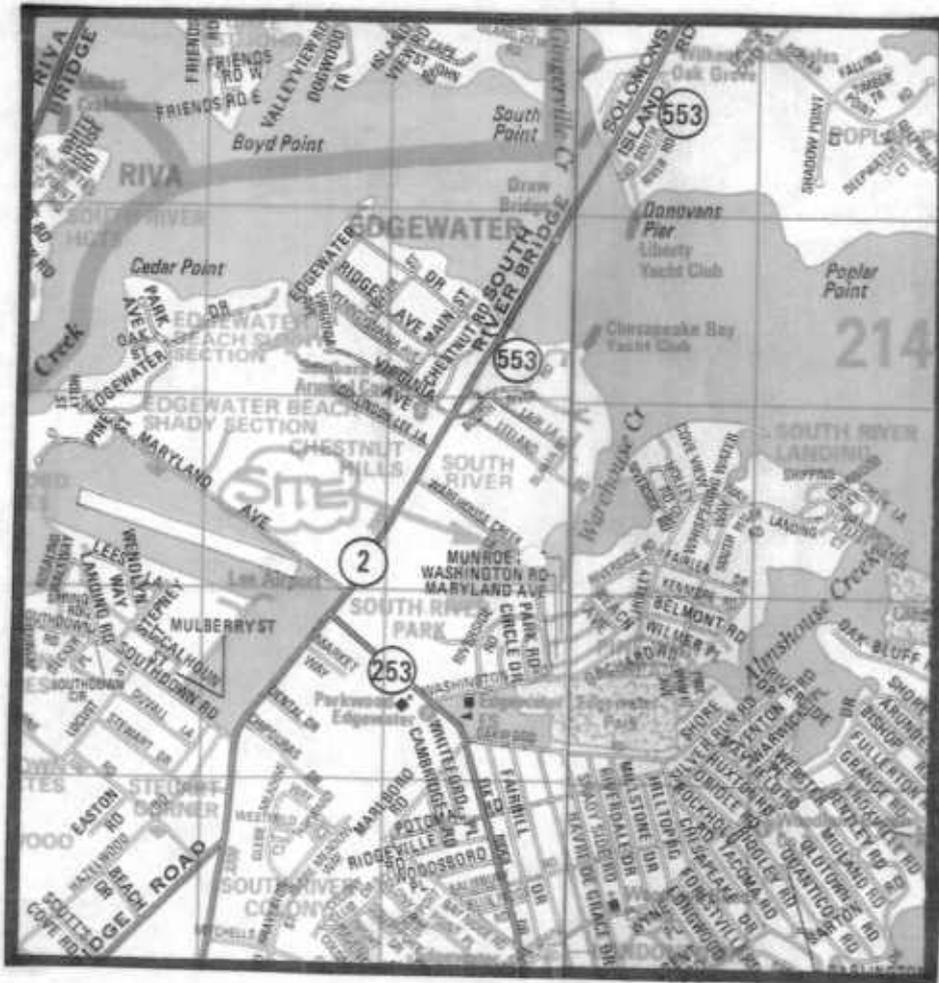
Other (water depths, buffers as shown on record plat, habitat protection areas as identified in 3e, and plat notes)

5. ONE copy of a Notification of Project Application supplied with this check list.

Residential lots in IDA will be required to meet the criteria for LDA. Special circumstances where LDA criteria cannot be met will be reviewed in conjunction with the Critical Area Commission. Commercial, institutional or industrial uses in IDA must meet the 10% Pollutant Reduction Rule. If you have any questions or need assistance, please contact Lori Allen at (410) 222-7459.

WAREHOUSE CREEK SITE ANNE ARUNDEL COUNTY

VICINITY MAP
1" = 2000'



MORELAND LLC

WAREHOUSE CREEK LANE

CRITICAL AREA REPORT

INTRODUCTION

The two parcels located on Warehouse Creek Lane are part of a prior subdivision including the new CVS in Edgewater. This total property is 1.27 acres in size, comprised of two legal lots, and is located within the Limited Development Area of the Critical Area. Two single-family residences are proposed to be constructed and will impact the 100' buffer to Warehouse Creek and the 100' buffer to a tributary to Warehouse Creek. It is not possible to construct these houses and their associated structures without impacting these buffers and that is the reason for the variances requested.

VICINITY MAP

Included in this report and shown on the attached plan is a vicinity map designating the location of the subject site. Also included in the report are portions of the nontidal wetland map and soil survey of the area and the Critical Area Map with the site located.

NARRATIVE

EXISTING CONDITIONS

The site is about 80% wooded with many alien and/or invasive species. Along the shoreline are some willow and red oaks and red maple in the 6 -10" size class. The understory, 2 - 4" in diameter, contains dogwood, black cherry, holly and sassafras along with highbush blueberry. The interior woodland has quite a few overstory yellow poplar and Virginia pine with similar understory species as described. The site is almost completely overgrown with multiflora rose, trumpet creeper, Japanese honeysuckle, Asiatic bittersweet, poison ivy, grapevines, greenbriar and black locust. The edges of the woodland are vegetated with lespedeza, Kentucky fescue, pokeweed, raspberry and grapevines.

The Environmental Review Statement refers to the potential for an endangered extirpated species (*Solidago rigida*) to be found onsite. The preferred habitat of the goldenrod, sandy soils, prairies, dry thickets, are not found on the property. A survey of the plant was not required, however a detailed survey was conducted on this and the adjacent properties. No populations of the goldenrod were noted.

The shoreline is stable and there are minimal steep slopes on the lot. The soil type found on the properties is Collington and Annapolis soils, which are neither hydric nor highly erodible.

STORMWATER MANAGEMENT

At this time there is no stormwater management on the lots because they are not improved. As with all Critical Area lots, sediment control will be addressed during construction and stormwater management post-construction, most likely with onsite vegetative plantings.

IMPACT MINIMIZATION

The site is located within two 100' buffers leaving little of the property unencumbered. Due to the need for an onsite septic area, it is not possible to develop the lots without impacting the buffers. The clearing will be kept to the minimum needed to place the house, driveway, well, and septic areas on each lot. It should be noted that the vegetation removed is not of a high quality and any that is removed will have to be replaced with native species on a not less than equal area basis. The amount of impervious coverage will be no greater than permitted.

HABITAT PROTECTION AREAS

The Habitat Protection Areas onsite include the 100' buffer to the shoreline, within which are minimally steep slopes and their buffer, and the 100' buffer to the tributary to Warehouse Creek. It is not possible develop the site without impacting these areas.

PROPOSED CONDITIONS AND SITE CALCULATIONS

The proposed conditions of the site include the construction of two single-family houses, driveways, septic areas and wells. The calculations are as follows:

Total site area	55,365 sq ft
Existing woodland	44,574 sq ft
Proposed clearing	25,177 sq ft
Existing impervious coverage	-0- sq ft
Proposed impervious coverage	8,425 sq ft 15%

CONCLUSIONS

The development of these lots will be similar to the development of adjacent lots. There will be no special privilege granted to the property owners of the lots, nor will adjacent property owners be adversely impacted. The amount of woodland removed will be replaced on a not less than equal area basis and will result in the replacement of alien

and invasive species with native species. There will be no net loss of plant and wildlife habitat in the Critical Area.

PLANS

A plan showing the site and its proposed improvements is attached to this report.

ADDITIONAL INFORMATION

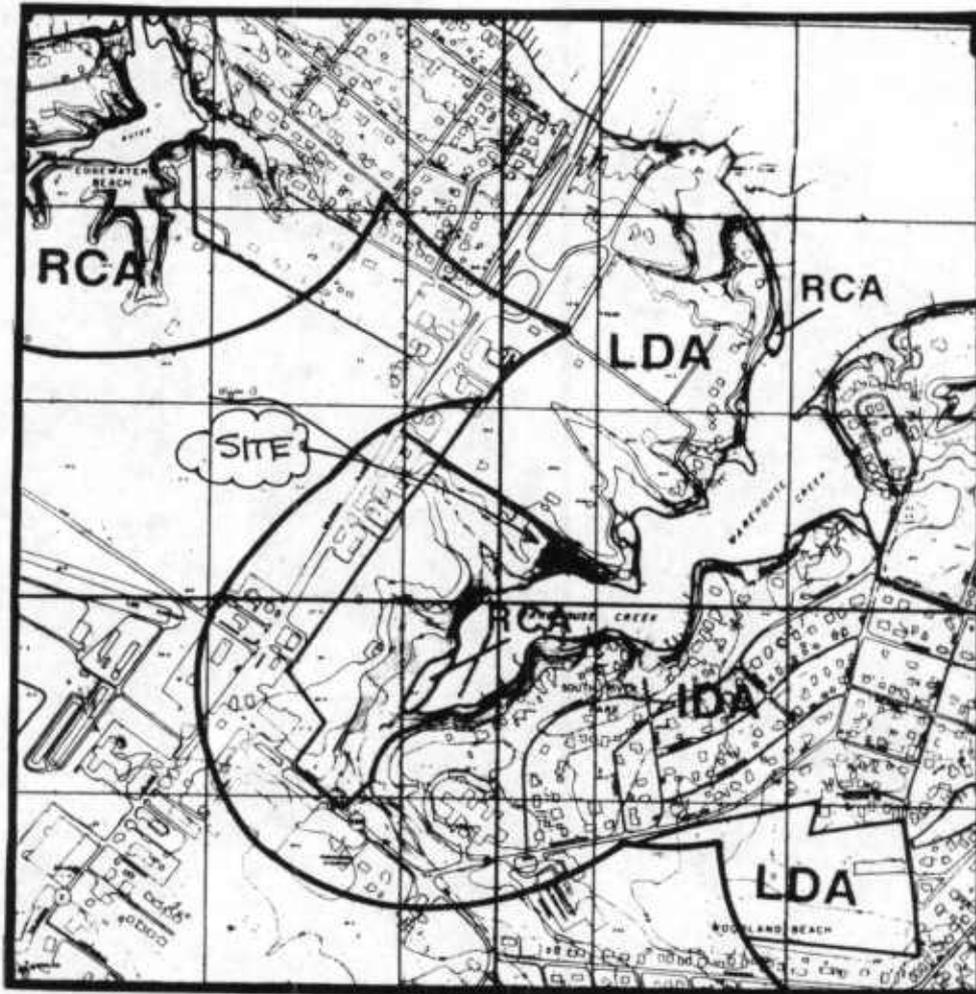
A Notification of Project Application for the Critical Area Commission is included in this package.

An Environmental Review Statement from the Department of Natural Resources is included in the report.

The fieldwork was conducted on 10/22/04.

CRITICAL AREA MAP

1" = 1000'



ANNE ARUNDEL COUNTY
SOIL SURVEY



NONTIDAL WETLAND MAP
1" = 700'





Robert L. Ehrlich, Jr., Governor

Michael S. Steele, Lt. Governor

C. Ronald Franks, Secretary

November 24, 2004

Ms. Nancy L. Matthews
Cattail Consulting
P.O. Box 1599
Severna Park, MD 21146

RE: Environmental Review for Warehouse Creek Site, Edgewater Area, Anne Arundel County, Maryland.

Dear Ms. Matthews:

The Wildlife and Heritage Service has determined that there are no State or Federal records for rare, threatened or endangered species within the boundaries of the project site as delineated. As a result, we have no specific comments or requirements pertaining to protection measures at this time. Please note however that the utilization of state funds, the need to obtain a state-authorized permit, or changes to the plan might warrant additional evaluations that could lead to protection or survey recommendations by the Wildlife and Heritage Service. Please contact us again for further coordination if this project falls into one of those categories.

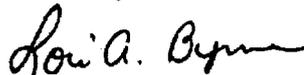
We would also like to point out that our initial evaluation of this project should not be interpreted as meaning that it is not possible for rare, threatened or endangered species to be present. Certain species could be present without documentation because adequate surveys may not have been conducted in the past. Although we are not requiring any surveys, we would like to bring to your attention that Wildlife and Heritage Service's Natural Heritage database records do indicate that there is a record for Hard-leaved Goldenrod (*Solidago rigida*), a species with endangered extirpated state status, known to occur within the vicinity of the project site. If the appropriate habitat is present for this species, it could potentially occur on the project site itself. Since the population of this native plant has declined historically we would encourage efforts to help conserve it across the state. Feel free to contact us if you would like technical assistance regarding the conservation of this important species.

Page 2

November 24, 2004

Thank you for allowing us the opportunity to review this project. If you should have any further questions regarding this information, please contact me at (410) 260-8573.

Sincerely,



Lori A. Byrne,
Environmental Review Coordinator
Wildlife and Heritage Service
MD Dept. of Natural Resources

ER #2004.2112.aa
Cc: K. McCarthy, WHS
R. Esslinger, CAC

CRITICAL AREA COMMISSION

1804 West Street Suite 100
Annapolis, Md. 21401

NOTIFICATION OF PROJECT APPLICATION

Jurisdiction: ANNE ARUNDEL Date: 7-30-05
Name of Project (site name, subdivision name, or other): MARBLELAND LLC
Local Case Number: _____
Project location/Address: WAREHOUSE CREEK LANE, EDGEWATER

Tax Map 55 Block 12 Lot _____ Parcel 156

Type of Application (Select all applicable)	Type of Project: (Select all applicable)	Current Use: (Select all applicable)
<input type="checkbox"/> Subdivision	<input checked="" type="checkbox"/> Residential	<input type="checkbox"/> Residential
<input type="checkbox"/> Site Plan	<input type="checkbox"/> Commercial	<input type="checkbox"/> Commercial
<input checked="" type="checkbox"/> Variance	<input type="checkbox"/> Water Dependent Facility/Pier/Marina	<input type="checkbox"/> Agriculture
Buffer <input checked="" type="checkbox"/> Slope _____	<input type="checkbox"/> Industrial	<input checked="" type="checkbox"/> Forrest/Buffer/Woodland
Imp Surf. _____ Other _____	<input type="checkbox"/> Mixed Use	<input type="checkbox"/> Industrial
<input type="checkbox"/> Special Exception	<input type="checkbox"/> Redevelopment	<input type="checkbox"/> Institutional
<input type="checkbox"/> Conditional Use	<input type="checkbox"/> Shore Erosion Protect.	<input type="checkbox"/> Open Space/Rec
<input type="checkbox"/> Rezoning	<input type="checkbox"/> Agricultural	<input type="checkbox"/> Surface Mining
<input type="checkbox"/> Grading Permit	<input type="checkbox"/> Other _____ (e.g. PUD)	<input type="checkbox"/> Vacant
<input type="checkbox"/> Bldg Permit		<input type="checkbox"/> Water Dependant Facility/Pier/Marina
<input type="checkbox"/> Intrafamily		<input type="checkbox"/> Others _____
<input type="checkbox"/> Growth Allocation		
<input type="checkbox"/> Others _____		

Describe Proposed use of project site: CONSTRUCTION OF TWO HOUSES, EACH ON THEIR OWN LEGAL LOT, WITH IMPACTS TO THE 100' BUFFER, STEEP SLOPES + STEEP SLOPE BUFFER.

SITE INVENTORY OF AREA ONLY IN THE CRITICAL AREA

TOTAL ACRES IN CRITICAL AREA: <u>55,364</u>	
IDA ACRES: _____	AREA DISTURBED: _____
LDA ACRES: <u>55,364</u>	# LOTS CREATED: _____
RCA ACRES: _____	# DWELLING UNITS: _____
AGRICULTURAL LAND: _____	
EXISTING FOREST/WOODLAND/TREES: <u>44,574</u>	FOREST/WOODLAND/TREES REMOVED: <u>25,177</u>
FOREST/WOODLAND/TREES CREATED: <u>40,000</u>	
EXISTING IMPERVIOUS SURFACE: <u>-0-</u>	PROPOSED IMPERVIOUS SURFACE: <u>8,425</u>
TOTAL IMPERVIOUS SURFACE: <u>8,425</u>	REMOVED IMPERVIOUS SURFACE: _____
GROWTH ALLOCATION DEDUCTED: _____	
RCA TO LDA: _____	RCA TO IDA: _____ LDA TO IDA: _____

Local Jurisdiction Contact Person: _____
 Telephone Number: _____ Fax: _____
 Response from Commission required by: _____ Hearing Date: _____

PROPOSED DISTURBED AREA

- INSIDE BUFFER
- OUTSIDE BUFFER
- WITHIN 15% SLOPES OR GREATER

5,759 = ~~6,500~~ SQ. FT.
 10,881 = ~~10,900~~ SQ. FT.
 = 0 SQ. FT.

SITE #2

TOTAL DISTURBED AREA
PROPOSED DISTURBED AREA

- INSIDE BUFFER
- OUTSIDE BUFFER
- WITHIN 15% SLOPES OR GREATER

5,770 = ~~6,490~~ SQ. FT.
 5,770 = ~~6,490~~ SQ. FT.
 = 0 SQ. FT.
 = 0 SQ. FT.

*Mooreland LLC
 Hearing
 12/6/06*

SITE 2
CASE BA#15-0

SITE 1 TABULATIONS
(2nd DESCRIBED PARCEL)

TOTAL NET LOT AREA = 35,414 SQ. FT.
LOT AREA MINUS SLOPES 15% + = 28,834 SQ. FT.
LOT AREA MINUS 100' BUFFER = 13,032 SQ. FT.
SLOPE 15%+ WITHIN 100' BUFFER = 28,384 SQ. FT.
IMPERVIOUS AREA TO BE REMOVED = 0 SQ. FT.
PROPOSED IMPERVIOUS AREA 4,842 = ~~4,709~~ SQ. FT. OR 13.7%
IMPERVIOUS COVERAGE PERMITTED = 5,445 SQ. FT.
TOTAL WOODLAND = 27,547 SQ. FT.
TOTAL WOODLAND REMOVED 14,102 = ~~14,721~~ SQ. FT. OR 53.4% 51.2

SITE 2 TABULATIONS
(3rd DESCRIBED PARCEL)

TOTAL NET LOT AREA = 26,408 SQ. FT.
LOT AREA MINUS SLOPES 15% + = 10,214 SQ. FT.
LOT AREA MINUS 100' BUFFER = 95 SQ. FT.
SLOPE 15%+ WITHIN 100' BUFFER = 10,214 SQ. FT.
IMPERVIOUS AREA TO BE REMOVED = 0 SQ. FT.
PROPOSED IMPERVIOUS AREA = 2,457 SQ. FT. OR 9.3%
IMPERVIOUS COVERAGE PERMITTED = 5,445 SQ. FT.
TOTAL WOODLAND = 17,027 SQ. FT.
TOTAL WOODLAND REMOVED 5,770 = ~~6,490~~ SQ. FT. OR 38.4% 33.9

PLOTTED: Oct 04, 2006 - 10:02am

6201-40

CALL "MISS UTILITY"
 TELEPHONE 1-800-257-7777
 FOR UTILITY LOCATION AT
 LEAST 48 HOURS BEFORE
 BEGINNING CONSTRUCTION.

RECEIVED

DEC 04 2006

CRITICAL AREA COMMISSION

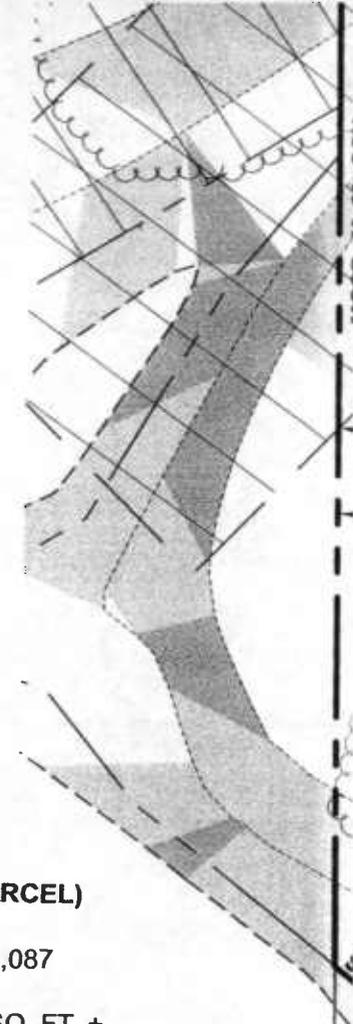
EX. FOREST CONSERVATION AREA



EX. PERPETUAL EASEMENT FOR STREAM CHANGE PER SHA R/W PLAT NO. 55038



PROPOSED GRAVEL DRIVEWAY



IMPERVIOUS COVERAGE SUMMARY

DESCRIPTION	AREA
* NET LOT AREA	
SITE #1	35,414 SQ. FT. ±
SITE #2	26,408 SQ. FT. ±
EXISTING IMPERVIOUS AREA	
SITE #1	0 SQ. FT.
- W/IN 100' BUFFER	0 SQ. FT.
- OUTSIDE 100' BUFFER	
SITE #2	
- W/IN 100' BUFFER	0 SQ. FT.
- OUTSIDE 100' BUFFER	0 SQ. FT.
PROPOSED IMPERVIOUS AREA	
SITE #1	2,326 2,429 SQ. FT. ±
- W/IN 100' BUFFER	2,365 2,280 SQ. FT. ±
- OUTSIDE 100' BUFFER	4,691 4,709 SQ. FT. ±
TOTAL	
SITE #2	2,457 SQ. FT. ±
- W/IN 100' BUFFER	0 SQ. FT. ±
- OUTSIDE 100' BUFFER	2,457 SQ. FT. ±
TOTAL	

*** AREA EXCLUDING TIDAL WATERS.**

1. BREAKDOWN OF PROPOSED IMPERVIOUS AREAS ARE AS FOLLOWS :

**SITE #1 (2nd DESCRIBED PARCEL)
(WITHIN 100' BUFFER)**

- HOUSE = 2,066-SQ. FT. ± 1,445
- GARAGE = 277 SQ. FT. ±
- SCREENED PORCH = 267 SQ. FT. ±
- DRIVEWAY = 337 SQ. FT. ±
- STOOP/WALK = 26-SQ. FT. ± 0

(OUTSIDE 100' BUFFER)

- HOUSE = 403-SQ. FT. ± 0
- GARAGE = 176 SQ. FT. ±
- SCREENED PORCH = 0 SQ. FT. ±
- DRIVEWAY = 2,095-SQ. FT. ± 2,246
- STOOP/WALK = 82-SQ. FT. ± 94

TOTAL = 4,709-SQ. FT. ± 4,842
IMPERVIOUS COVERAGE IN
ACCESS EASEMENT = 1,192 SQ. FT. ±

**SITE #2(2nd DESCRIBED PARCEL)
(WITHIN 100' BUFFER)**

- HOUSE = 4,720-SQ. FT. ± 1,087
- GARAGE = 441 SQ. FT. ±
- SCREENED PORCH = 223 SQ. FT. ±
- DRIVEWAY = 652 SQ. FT. ±
- WALK = 85-SQ. FT. ± 54

(OUTSIDE 100' BUFFER)

- HOUSE = 0 SQ. FT.
- GARAGE = 0 SQ. FT.
- SCREENED PORCH = 0 SQ. FT.
- DRIVEWAY = 0 SQ. FT.
- SIDEWALK = 0 SQ. FT.

TOTAL = 2,457 SQ. FT. ±

2. THE TWO SITES ARE LOCATED WITHIN THE LDA AND ARE NON-BUFFER EXEMPT, ALLOWABLE IMPERVIOUS COVERAGE WILL NOT EXCEED 5,445 SQ. FT. / LOT.

RECEIVED

DEC 04 2006

CRITICAL AREA COMMISSION

12 24 000

ARE AS FOLLOWS :

**E #2(2nd DESCRIBED PARCEL)
(THIN 100' BUFFER)**
HOUSE = 4,720 SQ. FT. ± 1,087
GARAGE = 441 SQ. FT. ±
SCREENED PORCH = 223 SQ. FT. ±
DRIVEWAY = 652 SQ. FT. ±
DECK = 85 SQ. FT. ± 54

(INSIDE 100' BUFFER)
HOUSE = 0 SQ. FT.
GARAGE = 0 SQ. FT.
SCREENED PORCH = 0 SQ. FT.
DRIVEWAY = 0 SQ. FT.
DECK = 0 SQ. FT.

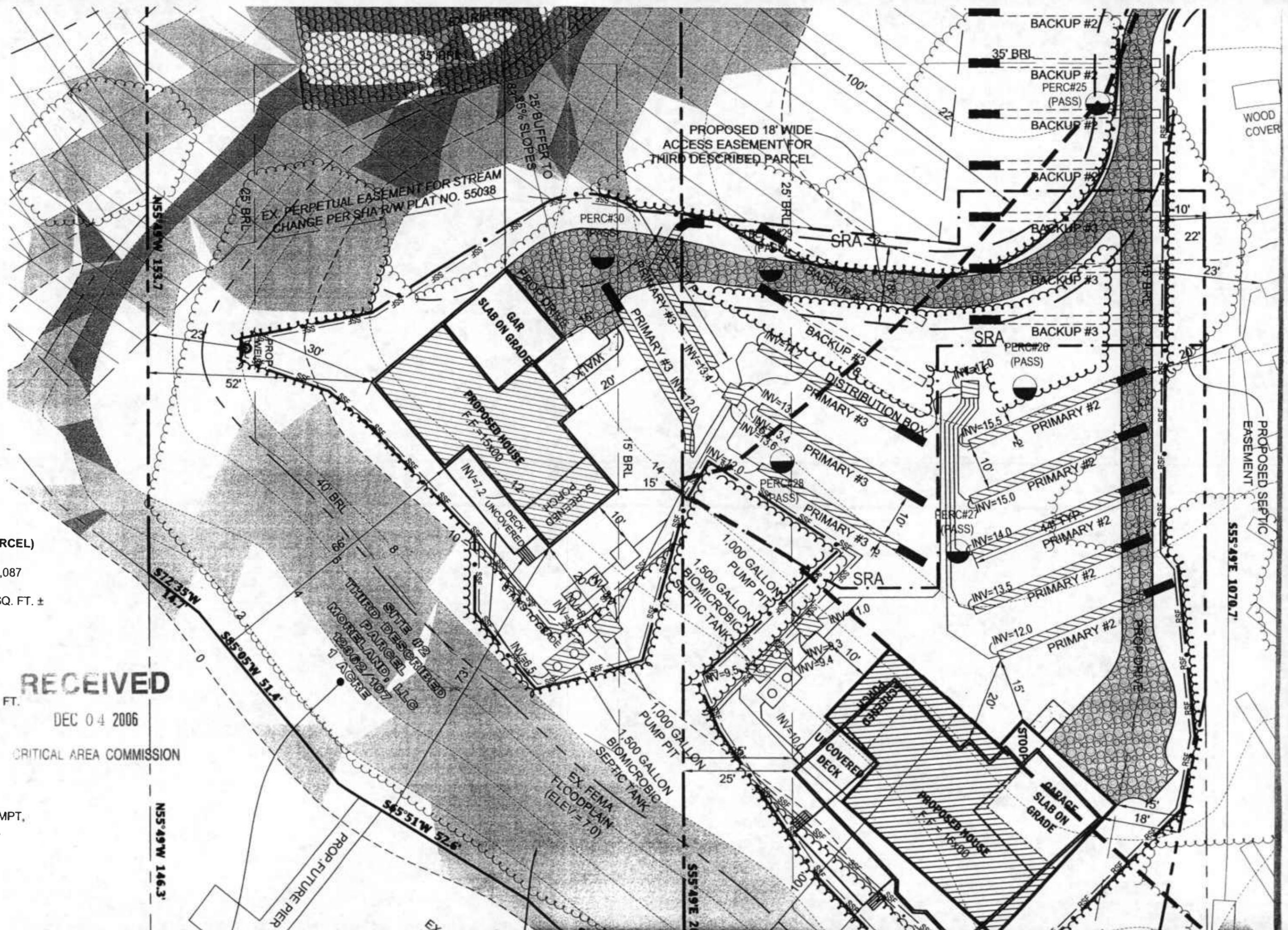
TOTAL = 2,457 SQ. FT. ±

**NON-BUFFER EXEMPT,
TOTAL = 5,445 SQ. FT. / LOT.**

RECEIVED

DEC 04 2006

CRITICAL AREA COMMISSION



N55°49'W 146.3'

S72°35'W 14.7'

S45°05'W 51.4'

S45°51'W 52.6'

S55°49'E 1070.7'

N55°49'W 153.7'

S55°49'E 20.7'

SEQUENCE OF CONSTRUCTION

1. PRE-CONSTRUCTION MEETING: NOTIFY THE DEPARTMENT OF INSPECTIONS AND PERMITS AT 410-222-7780 48 HOURS BEFORE COMMENCING WORK. WORK MAY NOT COMMENCE UNTIL THE PERMITTEE OR THE RESPONSIBLE PERSONNEL HAVE MET ON SITE WITH THE SEDIMENT AND EROSION CONTROL INSPECTOR TO REVIEW THE APPROVED PLANS. (1 DAY)
2. INSTALL S.C.E. AND SILT FENCE AS SHOWN ON THE PLAN. (7 DAYS)
3. CLEAR AND GRUB FOR EXCAV. AND PREPARE SITE FOR NEW HOUSE. (5 WEEKS)
4. EXCAVATE FOR & CONSTRUCT FOOTERS AND FOUNDATION. PRIOR TO FRAMING THE HOUSE, THE FOUNDATION MUST BE BACKFILLED AND SITE TEMPORARILY STABILIZED. MUST GET GRADING INSPECTOR'S APPROVAL BEFORE CONTINUING. (3 WEEKS)
5. BEGIN EARTHWORK AND HOUSE CONSTRUCTION. (2 MONTHS)
6. INSTALL UTILITIES. (1 MONTH)
7. CONSTRUCT HOUSE. (9 MONTHS)
8. FINE GRADE, FINAL PAVE WALKS AND DRIVE. INSTALL LANDSCAPING. (4 WEEKS)
9. STABILIZE ALL DISTURBED AREAS WITH SEED AND MULCH AS INDICATED. WITH THE INSPECTORS APPROVAL REMOVE ANY REMAINING SEDIMENT CONTROL DEVICES. (2 DAYS)
10. FINAL CLEAN UP BY BUILDER AND MAINTENANCE BY OWNER.

STANDARD RESPONSIBILITY NOTES

I (WE) CERTIFY THAT:

1. 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.
 2. 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 PERSON ON-SITE: TO BE DETERMINED.
3. IF APPLICABLE, THE APPROPRIATE ENCLOSURE WILL BE CONSTRUCTED AND MAINTAINED ON SEDIMENT BASIN(S) INCLUDED IN THIS PLAN. SUCH STRUCTURE(S) WILL BE IN COMPLIANCE WITH THE ANNE ARUNDEL COUNTY CODE.

2. THE DEVELOPER IS RESPONSIBLE FOR THE ACQUISITION OF ALL EASEMENTS, RIGHT, 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 THE PLAN.
3. INITIAL SOIL DISTURBANCE OR REDISTURBANCE, PERMANENT STABILIZATION SHALL BE COMPLETED WITHIN SEVEN CALENDAR DAYS FOR THE SURFACE OF ALL 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. TEMPORARY STABILIZATION OF THE SURFACE OF PERIMETER CONTROLS, DIKES, SWALES, DITCHES, AND PERIMETER SLOPES MAY BE ALLOWED AT THE DISCRETION OF THE SEDIMENT CONTROL INSPECTOR.
4. THE SEDIMENT CONTROL APPROVALS ON THIS PLAN EXTEND ONLY TO AREAS AND PRACTICES IDENTIFIED AS PROPOSED WORK.
5. THE APPROVAL OF THIS PLAN FOR SEDIMENT AND EROSION CONTROL PLAN DOES NOT RELIEVE THE DEVELOPER/CONSULTANT FROM COMPLYING WITH ANY FEDERAL, STATE OR COUNTY REQUIREMENTS APPERTAINING TO ENVIRONMENTAL ISSUES.
6. THE DEVELOPER MUST REQUEST THAT THE SEDIMENT CONTROL INSPECTOR APPROVE WORK COMPLETED IN ACCORDANCE WITH THE APPROVED EROSION AND SEDIMENT CONTROL PLAN, THE GRADING OR BUILDING PERMIT, AND THE ORDINANCE.
7. ALL MATERIAL SHALL BE TAKEN TO A SITE WITH AN APPROVED SEDIMENT AND EROSION CONTROL PLAN.
8. ON ALL SITES WITH DISTURBED AREAS IN EXCESS OF 2 ACRES, APPROVAL OF THE SEDIMENT AND EROSION CONTROL INSPECTOR 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 SEDIMENT AND EROSION CONTROL INSPECTOR IS GIVEN.
9. APPROVAL SHALL BE REQUESTED ON FINAL STABILIZATION OF ALL SITES WITH DISTURBED AREAS IN EXCESS OF 2 ACRES BEFORE REMOVAL OF CONTROLS.
10. EXISTING TOPOGRAPHY MUST BE FIELD VERIFIED BY RESPONSIBLE PERSONNEL TO THE SATISFACTION OF THE SEDIMENT CONTROL INSPECTOR PRIOR TO COMMENCING WORK.

SIGNATURE OF DEVELOPER/OWNER _____ DATE _____

PRINT: NAME: MICHAEL A. BALDWIN
 TITLE: MANAGING SOLE MEMBER
 AFFILIATION: MORELAND, LLC
 ADDRESS: C/O RELIABLE CONTRACTING
 1 CHURCH VIEW ROAD, MILLERSVILLE MARYLAND, 21108
 TELEPHONE NUMBER: 410-544-2200

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 THIS 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 SUBMITTAL GUIDELINES AND THE CURRENT MARYLAND STANDARDS AND SPECIFICATIONS OF SEDIMENT AND EROSION CONTROL. I HAVE REVIEWED THIS EROSION AND SEDIMENT CONTROL PLAN WITH THE OWNER/DEVELOPER."

BY: TERRY L. SCHUMAN, P.E.
 BAY ENGINEERING, INC.
 MARYLAND REGISTERED PROFESSIONAL ENGINEER # 19593



POST DEVELOPMENT OWNER/DEVELOPER'S STABILIZATION CERTIFICATION

"ALL GRADING DRAINAGE STRUCTURES AND/OR SYSTEMS, EROSION AND SEDIMENT CONTROL PRACTICES INCLUDING FACILITIES AND VEGETATIVE MEASURES HAVE BEEN COMPLETED IN CONFORMANCE WITH THE APPROVED PLANS AND SPECIFICATIONS."

OWNER/DEVELOPER _____ DATE _____

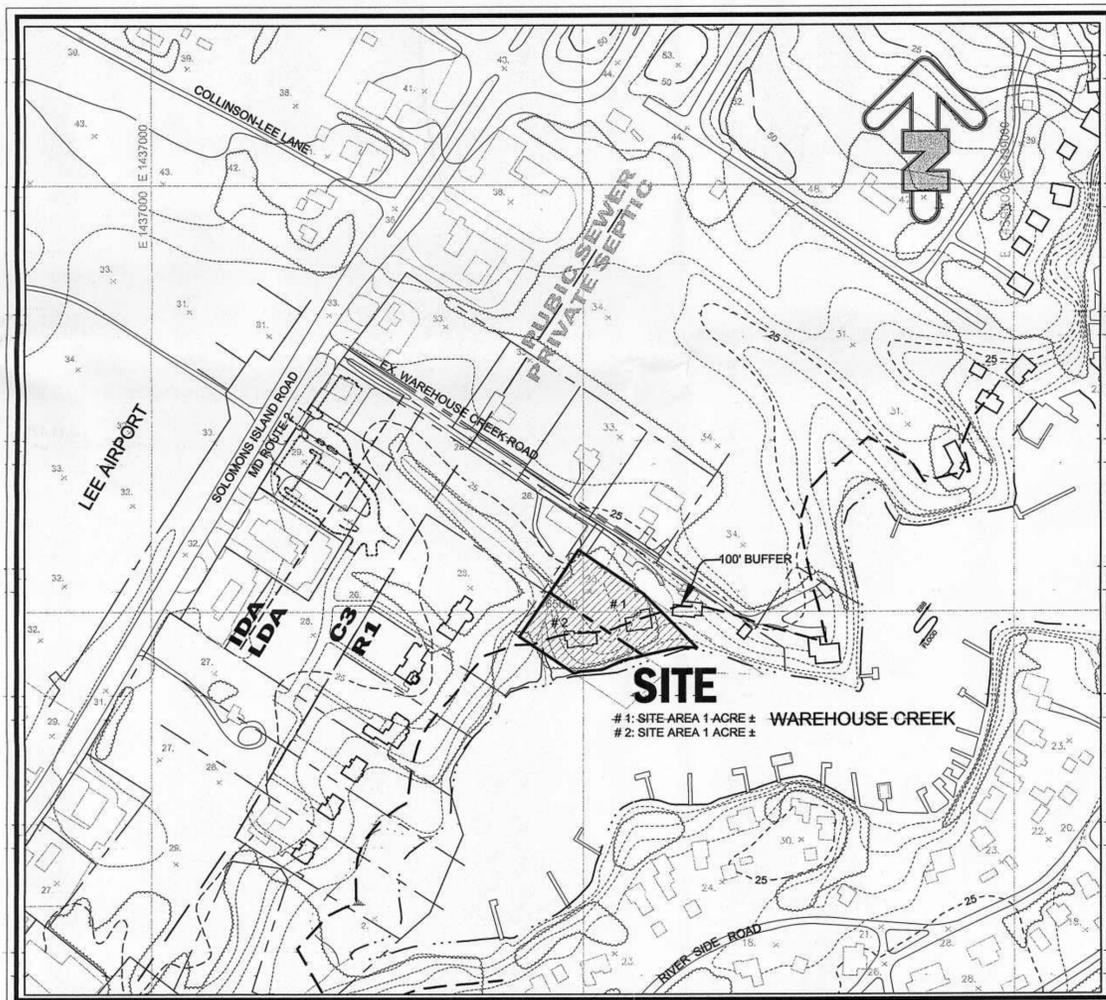
STORMWATER MANAGEMENT RECORD DRAWING CERTIFICATION

"THIS CERTIFIES TO THE BEST OF MY PROFESSIONAL BELIEF AND KNOWLEDGE, THE APPROVED S.W.M. SYSTEM(S) AS SHOWN HEREON HAVE BEEN CONSTRUCTED IN SUCH A MANNER THAT WOULD BE CONSISTENT WITH THE APPROVED PLANS. ANY CHANGES/MODIFICATIONS ARE IDENTIFIED IN RED."

TERRY L. SCHUMAN, III, P.E., #19593 _____ DATE _____

LEGEND

- PROPERTY LINE / RIGHT-OF-WAY
- EXISTING CONTOUR
- EXISTING SPOT ELEVATION
- EXISTING TREE / TREE TO BE REMOVED
- EXISTING ZONING DESIGNATION
- EXISTING UTILITY POLE W/ OVERHEAD WIRE
- PROPOSED CONTOUR
- PROPOSED SPOT ELEVATION
- PROPOSED WOODS LINE
- LIMIT OF DISTURBANCE
- REINFORCED SILT FENCE
- 100' BUFFER
- 15% SLOPES OR GREATER
- 25% SLOPES OR GREATER
- EX. FOREST CONSERVATION AREA
- EX. PERPETUAL EASEMENT FOR STREAM CHANGE PER SHA RW PLAT NO. 55038



OVERALL SITE AREA AND DRAINAGE AREA MAP

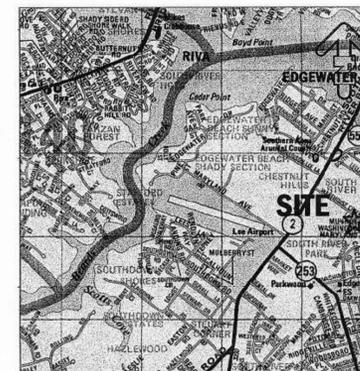
SCALE: 1"=200'
 TOPO: A.A.Co., D.P.W.

PERMIT INFORMATION

SITE 1 (2nd DESCRIBED PARCEL)	SITE 2 (3rd DESCRIBED PARCEL)
GRADING PERMIT #: G02	GRADING PERMIT #: G02
BUILDING PERMIT #: B02	BUILDING PERMIT #: B02
PERC APPLICATION #: T02030069	PERC APPLICATION #: T02032897
	PERC APPLICATION #: T02032757

DRAWING INDEX

- 1 OF 4COVER SHEET, OVERALL D.A. MAP AND NOTES
- 2 OF 4 EXISTING CONDITIONS PLAN
- 3 OF 4 SITE, GRADING AND SEDIMENT CONTROL PLAN
- 4 OF 4 NOTES AND DETAILS



VICINITY MAP
 SCALE: 1" = 2000'
 COPYRIGHT ADC THE MAP PEOPLE
 PERMITTED USE NO. 20400770

GENERAL NOTES

- PURPOSE STATEMENT: THE PURPOSE OF THIS PLAN IS TO REFLECT THE EXISTING AND PROPOSED CONDITIONS FOR PLACING A NEW SINGLE FAMILY STRUCTURE ON SECOND AND THIRD DESCRIBED PARCEL.
- 1.) ALL SITE WORK SHALL BE PERFORMED IN ACCORDANCE WITH THE LATEST EDITIONS OF THE ANNE ARUNDEL COUNTY DEPARTMENT OF PUBLIC WORKS REQUIREMENTS AND SPECIFICATIONS UNLESS OTHERWISE DETAILED OR SPECIFIED ON THE PLANS.
 - 2.) THE EXISTING UTILITIES AND OBSTRUCTIONS SHOWN ARE FROM THE BEST AVAILABLE RECORDS AND SHALL BE FIELD VERIFIED BY THE CONTRACTOR TO HIS OWN SATISFACTION PRIOR TO ANY CONSTRUCTION. ANY UTILITIES DAMAGED DUE TO THE CONTRACTORS NEGLIGENCE SHALL BE REPAIRED IMMEDIATELY AT THE CONTRACTOR'S EXPENSE.
 - 3.) THE CONTRACTOR SHALL CALL "MISS UTILITY" (1-800-257-7777) A MINIMUM OF 5 DAYS IN ADVANCE OF ANY EXCAVATION, BORING, PILE DRIVING, AND/OR DIGGING FOR THE LOCATIONS OF GAS, ELECTRIC, WATER, SEWER, AND TELEPHONE LINES.
 - 4.) THE CONTRACTOR SHALL BE RESPONSIBLE FOR REPLACING ANY FENCE, DRIVEWAY, LANDSCAPING, ETC. DAMAGED OR REMOVED BY HIM DURING CONSTRUCTION. ALL DISTURBED AREAS OUTSIDE THE RIGHT OF WAY LINES SHALL BE RETURNED TO THEIR ORIGINAL CONDITION UNLESS OTHERWISE INDICATED AND SPECIFIED.
 - 5.) IT SHALL BE DISTINCTLY UNDERSTOOD THAT FAILURE TO MENTION SPECIFICALLY ANY WORK THAT WOULD NATURALLY BE REQUIRED TO COMPLETE THE PROJECT SHALL NOT RELIEVE THE CONTRACTOR OF HIS RESPONSIBILITY TO PERFORM SUCH WORK.
 - 6.) THESE DRAWINGS DO NOT INCLUDE THE NECESSARY COMPONENTS FOR CONSTRUCTION SAFETY. ALL CONSTRUCTION MUST BE DONE IN COMPLIANCE WITH THE LATEST VERSION OF OSHA STANDARDS AND/OR REGULATIONS.
 - 7.) IT SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR TO NOTIFY THE ENGINEER OF ANY DEVIATION TO THIS PLAN PRIOR TO ANY CHANGE BEING MADE. ANY CHANGE IN THIS PLAN MADE WITHOUT THE WRITTEN AUTHORIZATION FOR SAID CHANGE FROM THE ENGINEER SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR OR THE SUBCONTRACTOR. SAID CHANGES MAY WARRANT COUNTY REVIEW AND APPROVAL.
 - 8.) THE CONTRACTOR SHALL NOTE THAT IN THE CASE OF A DISCREPANCY BETWEEN THE SCALED AND THE FIGURED DIMENSIONS SHOWN ON THESE PLANS, THE FIGURED DIMENSION SHALL GOVERN.
 - 9.) THE CONTRACTOR SHALL BE RESPONSIBLE FOR COORDINATION OF HIS CONSTRUCTION WITH THE CONSTRUCTION BY OTHER CONTRACTORS, SUBCONTRACTORS.
 - 10.) IF NECESSARY, ALL UTILITY POLES SHALL BE BRACED WHEN NECESSARY AT THE CONTRACTORS EXPENSE. THE UTILITY POLES SHALL BE RELOCATED AT THE OWNER'S EXPENSE ONLY IN CASES WHERE THEY WILL INTERFERE WITH CONSTRUCTION.
 - 11.) ALL AVAILABLE UTILITIES (IE., ELECTRIC, WATER, GAS, AND COMMUNICATIONS) SHALL BE PROVIDED FROM EXISTING ADJACENT FACILITIES AND IN ACCORDANCE WITH THE UTILITY COMPANY REQUIREMENTS.
 - 12.) THE CONTRACTOR IS CAUTIONED THAT UNDERGROUND CABLES MAY EXIST IN THE PUBLIC RIGHT OF WAY AND BEYOND. WORK IN AND OUT OF THE RIGHT OF WAY SHOULD NOT BEGIN UNTIL THE CONTRACTOR IS FAMILIAR WITH THE LOCATION AND DEPTH OF CABLES. ANY DAMAGE TO EXISTING UTILITY SERVICES SHALL BE REPAIRED IMMEDIATELY AT THE CONTRACTOR COST.
 - 13.) JOB SAFETY IS THE SOLE RESPONSIBILITY OF THE CONTRACTOR, SUBCONTRACTORS AND VENDORS.
 - 14.) THE SITE IS SERVED BY PRIVATE WELL AND PRIVATE SEPTIC.
 - 15.) ALL STRUCTURAL FILL MATERIALS SHALL BE PLACED IN 8" LOOSE LAYERS AND COMPACTED TO 95% MAXIMUM DRY DENSITY AT OPTIMUM MOISTURE CONTENT AS DETERMINED BY AASHTO T-99 METHOD. THE CONTRACTOR SHALL USE CLASS 1 SELECT MATERIALS FOR THE FOOTINGS FOUNDATIONS AND BACK FILL FOR ALL FOUNDATION AND RETAINING WALLS.
 - 16.) THE TOPOGRAPHIC INFORMATION SHOWN ON THE SITE PLAN WAS DERIVED FROM SURVEY PREPARED BY BAY ENGINEERING, INC IN SEPTEMBER, 2004.
 - 17.) THE LIMITS OF THE FLOODPLAIN AS SHOWN HEREON WERE OBTAINED FROM FEMA MAPS AND STUDIES AND DO NOT CONSTITUTE THAT A DETAILED FLOODPLAIN STUDY HAS BEEN PERFORMED BY BAY ENGINEERING, INC. PORTIONS OF THIS SITE ARE LOCATED WITHIN A FEMA FLOOD ZONE A6(E)-7), B AND C, MAP #240008 0038 C, PANEL 38 OF 61.
 - 18.) THE UNITED STATES DEPARTMENT OF AGRICULTURE SOIL SURVEY REVIEWED ON FILE WITH ANNE ARUNDEL COUNTY SOIL CONSERVATION DISTRICT INDICATED THAT THE MAJOR SOIL CLASSIFICATION IS Mve, AS PER MAP 26 OF SOIL SURVEY OF A.A.CO., MD.
 - 19.) ALL ROOF DRAINS SHALL BE DISCHARGED ONTO SPLASH BLOCKS.
 - 20.) ZONING IS R1/LDA
 YARDS AND SETBACKS: FRONT 40, SIDE 15/40 COMBINED, REAR 35.
 THE SITE IS DESIGNATED NON-BUFFER EXEMPT PER MAP # 50.

THIS SITE IS NOT WITHIN THE SEVERN RIVER WATERSHED

Anne Arundel Soil Conservation District
 Sediment and Erosion Control Approval

District Official _____ Date _____

AASCD # _____ SMALL POND (S) # _____ N/A DEC 28 2005

Reviewed for technical adequacy by
 USDA, Natural Resources Conservation Service

Revisions	Description	Date	By	Rev. #



Bay Engineering Inc.
 Engineers, Planners and Surveyors

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 Annapolis, Maryland 21401
 410.887.9290
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 www.bayengineering.com

Date	DECEMBER 27, 2005
Job Number	04-1056
Scale	AS SHOWN
Drawn By	L.K.C.
Designed By	G.M.E.
Approved By	T.L.S.
Folder Reference	BAYLAND PARCEL 2

COVER SHEET, OVERALL D.A. MAP AND NOTES

AN R1/LDA SINGLE FAMILY DEVELOPMENT PLAN
 WAREHOUSE CREEK LANE, EDGEWATER MD.
 - FOR TWO PARCELS -

SITE 1 (2nd DESCRIBED PARCEL)
 Tax Id # 01-000-90220268

SITE 2 (3rd DESCRIBED PARCEL)
 Tax Id # 01-000-90220269

"MORELAND, LLC."
 TAX MAP 55, GRID 12, PARCEL 156
 DEED 12362 / 107 "EDGEWATER"
 FIRST DISTRICT ANNE ARUNDEL COUNTY

Sheet No. **1 OF 4**
 File No. 04-1056

