AA 0007-06 Creek Properties
VAR 2005-0490-V

MSA_S_1829-5371

Lt comment 2/6/06

Lt comment 10/3/06

Robert L. Ehrlich, Jr.
Governor

Michael S. Steele
Lt. Governor

Martin G. Madden
Chairman

Ren Serey
Executive Director

STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS
1804 West Street, Suite 100, Annapolis, Maryland 21401
(410) 260-3460 Fax: (410) 974-5338
www.dnr.state.md.us/criticalarea/

October 3, 2006

Ms. Lori Rhodes
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road, MS 6301
Annapolis, Maryland 21401

Re: Creek Properties, LLC – BA 32-06V

Dear Ms. Rhodes:

This office has received the above-referenced appeal. Unfortunately, we will not be able to attend the Board's hearing; however, we would like to provide comments on the request.

Unless the applicant has submitted a different plan, we are reviewing this request based on the plan submitted with the original variance request, which is dated December 2005. The applicant proposes to construct a single-family dwelling and associated utilities that will impact the 100-foot upland buffer, and 300-foot limited activity area in a Bog Protection Area, and will directly impact 15% or greater slopes in the Critical Area.

Since the review and subsequently the Administrative Hearing Officer's decision, this office has consulted with the Maryland Department of the Environment (MDE) concerning their review of this proposal. MDE has the expertise to review and evaluate development activities near the County's Bog Protection Areas. We are in receipt of a letter from Ms. Judy Broersma-Cole dated September 29, 2006, which provides MDE's position and recommendations for this proposal that is before the Board of Appeals. We note that Ms. Cole's letter does not provide a favorable recommendation. In addition, we also would note that MDE has not yet issued authorization for the proposed disturbance to this property.

In regard to the comments of Critical Area Commission staff, our position is that the applicant must demonstrate that all variance standards of the County Code have been met. In addition, Commission staff cannot support the request as presented on the December 2005 site plan due to the following issues:

1. The size of the proposed dwelling appears excessive for this highly sensitive lot. A smaller dwelling could eliminate direct steep slope impacts, and to the bog buffer.

2. Reducing the dwelling size might also reduce the size of the septic tank. I inquired with the Anne Arundel County Health Department as to the required size of septic tanks, and for dwellings between 0 and 1,500 square feet, only a 1,000 gallon tank is needed.

3. The Health Department also informed me that the current perc test number has been reviewed by their office, but not yet approved. We recommend that variances not be granted without this approval, particularly on a highly sensitive lot.

4. The current topography indicates that all runoff from the site of the proposed dwelling will flow directly into the bog. No proposed grading lines are shown on the plan submitted for review. We recommend this information be provided before a variance decision is made.

5. We recommend that a variance approval not be granted since MDE has not yet finished its review, or provided any authorizations for disturbance to this nontidal wetland system.

Thank you for the opportunity to comment. Please include this letter as part of the record for the appeal. Please notify this office of the decision made in this case.

Sincerely,

Lisa A. Hoerger

Lisa A. Hoerger, Chief
Project Evaluation Division

cc: AA 7-06

Robert L. Ehrlich, Jr.
Governor

Michael S. Steele
Lt. Governor

Martin G. Madden
Chairman

Ren Serey
Executive Director

STATE OF MARYLAND
CRITICAL AREA COMMISSION
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February 6, 2006

Ms. Lori Rhodes
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road, MS 6301
Annapolis, Maryland 21401

Re: Creek Properties. – 2005-0490-V

Dear Ms. Rhodes:

This office has received the above-referenced variance request for review and comment. The applicant proposes to construct a single-family dwelling and associated utilities that will impact the 100-foot upland buffer, and 300-foot limited activity area in a Bog Protection Area, and will directly impact 15% or greater slopes in the Critical Area. This office cannot support the request as presented, unless the following items are addressed.

1. The size of the proposed dwelling needs to be reduced. As currently shown, it does not appear to be the minimum disturbance necessary to develop this lot given all of the environmental constraints.

2. The current topography indicates that all runoff from the site of the proposed dwelling will flow directly into the bog. No proposed grading lines are shown on the plan submitted for review. If a variance is granted, we recommend that the site be graded to direct all stormwater away from the bog.

3. Mitigation at a 3:1 ratio shall be provided for all new disturbance. Disturbance includes grading, footprint and clearing.

4. The remaining area of the lot should be put in a perpetual conservation easement that permits no disturbance or clearing or dumping of lawn clippings or other natural or manmade debris. We further recommend that the area of the easement be surveyed and concrete monuments placed on the lot.

Thank you for the opportunity to comment. Please include this letter as part of the record for variance. Please notify this office of the decision made in this case.

Sincerely,

Lisa A. Hoerger
Natural Resources Planner

cc: AA 7-06

7-06

RE: An Appeal From A Decision Of The Administrative Hearing Officer	*	**BEFORE THE**
	*	**COUNTY BOARD OF APPEALS**
	*	**OF ANNE ARUNDEL COUNTY**
CREEK PROPERTIES, LLC	*	**CASE NO.: BA 32-06V (2005-0490-V)**
Petitioner	*	**Hearing Date: October 5, 2005**

MEMORANDUM OF OPINION

Summary of Pleadings

This is an appeal from a decision of the Administrative Hearing Officer. This appeal is taken from the conditional granting of variances to permit construction of a dwelling with fewer setbacks than required and with disturbance to a bog buffer and steep slopes on property known as 420 Georgia Avenue, Pasadena.

Summary of Evidence

Mr. Stan Serwatka, an expert land designer and consultant, testified that he prepared the site plan for the subject property. The septic system, one-half of the house and one-half of the stormwater management (SWM) system are within the 100 foot bog buffer. No construction is proposed within the bog. This wooded lot comprises 74,339 square feet. The lot is classified as a Limited Development Area (LDA) and a Resource Conservation Area (RCA) within the Critical Area (CA). The proposed impervious surface would be 1,533 square feet (3.2% of the site), all of which would be located in the LDA portion of the property. The Anne Arundel County Code (Code) allows for up to 15% of impervious coverage. There would be a total of 6,336 square feet of disturbance in the bog buffer. There would be 103 square feet of disturbance to steep slopes in the RCA to install the well and for SWM setbacks and 6,990

square feet of disturbance within the LDA. The proposed house would be 15 feet from the front lot line, which adjoins a private right-of-way. The average setback in the community is 30 feet from the road. The right-of-way is not needed for access because the surrounding lots use the public roads for access. The footprint for the proposed house would measure 36 by 26 feet. Without a variance the lot is not buildable. There are other houses in the surrounding community located inside the bog buffer. The proposed house was reduced in size and the well was located to eliminate any direct impact to the bog. The lot passed percolation tests on three different occasions. The septic system would feature a nitrogen pretreatment system and an additional system on the septic tank, which would eliminate the need for future backup systems. The initial septic system would be installed and an area would be reserved for a secondary system, but, it would not be installed. A drainage survey was conducted and the SWM system (infiltration drywell) was designed to direct all stormwater into the ground, not into the bog. Currently, all stormwater runoff from the site flows directly into the bog.

Mr. Eric See, an expert environmental consultant, testified that he conducted an environmental analysis of the subject property. Based on his analysis, if the variance were approved, as proposed, there would not be a detriment to the bog. The previous site plan that was approved by the Administrative Hearing Officer (AHO) had much more impact on the bog. The Petitioner's proposal meets all of the variance criteria for development in the bog and CA. The clearing and impervious coverage would be minimal. Disturbance within the CA and bog buffer would be necessary to build anything on the lot. The proposed driveway would be nine feet wide with additional area to install the culvert. The super silt fence and SWM can be developed on the property without adversely impacting the bog or the wetlands. Nearby, there is an existing SWM device put in place by the County that transfers stormwater away from the bog.

Mr. Scott Hobbs, one of the Protestants, testified that he is an engineer with the State of Maryland Division of Corrections and that he is certified in sediment erosion and SWM. His property is adjacent to the Petitioner's property. There are Maryland Class 2 endangered species on the subject property where the second septic system would be located. Eight to twelve months ago, the County spent $10,000 on a project that directed runoff away from the bog. Mr. Hobbs stated that he has two goals, he wants to protect the bog and he wants the house moved to a different location on the property. The subject property comprises 38,000 square feet; there are numerous other locations for the house.

Mr. James Kane, a neighbor residing at 408 Kentucky Avenue, testified that he has lived on his property for 14 years and has used the right-of-way numerous times. He would feel uncomfortable using the right-of-way with the house located right next to it.

Mr. Keith Underwood, an expert in bog preservation, testified that he has a background in bog preservation and rare and endangered species. Activity within the 100 foot bog buffer will damage the bog. Development of the lot with a house and a lawn area would increase impervious coverage on steep slopes and reduce the sandy soils' ability to infiltrate stormwater. The impervious surface would increase the amount and concentration of nutrients within the bog. A forested condition is the most desirable condition for stormwater management. Nothing should be built on the subject property because any development would adversely impact the bog. The property should be kept in its natural state and be used for science and education.

Mr. Robert Konowal, a planner with the Office of Planning and Zoning (OPZ), testified that development of the subject property would require on-site sanitation and water facilities. Strict adherence to the Code would deny the Petitioner reasonable use of the property. The Maryland Department of the Environment (MDE) has not finished their review of the project because the application was incomplete. Under the Code, applications must also be submitted to

the Critical Area Commission (CAC) for review. The CAC does not support the requested variances due to the size of the house and the amount of disturbance to the bog buffer. The OPZ recommends that the Board grant the requested variances on condition that impacts be mitigated at a three to one ratio and the remainder of the property placed in a conservation easement.

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

Findings and Conclusions

The Petitioner proposes the construction of a single-family dwelling with fewer setbacks than required, with disturbance within the 100 foot bog buffer and with disturbance to steep slopes of 15% or greater. Disturbance within the 100 foot bog buffer is prohibited by Section 17-9-206 of the Code. Section 17-8-201 prohibits the development of lots with slopes greater than 15% that are located in a LDA or RCA. A minimum 30 foot front setback is required by Section 18-4-601. Accordingly, the Petitioner has requested variances to each.

The subject property is zoned R2-Residential and meets the minimum lot width and area requirements. It is classified as within the LDA and the RCA of the CA. The footprint of the proposed house would measure 36 feet by 26 feet. There would be a total of 1,533 square feet of impervious coverage and 6,336 square feet of disturbance within the 100 foot bog buffer. Almost all of the property is impacted by the bog, the required 100 foot buffer thereto and steep slopes. The granting of the requested variances requires the Petitioner to satisfy a rigorous series of requirements set out in the Code. *See* Article 3, Section 1-207. Failure to meet even one of the Code requirements results in the denial of the variance. The Petitioner requested variances to the bog and CA criteria and an area variance, we will address each request individually.

To obtain a variance to the bog and CA criteria, the Petitioner must show "that because of certain unique physical conditions, such as exceptional topographical conditions peculiar to and

inherent in the particular lot or irregularity, narrowness, or shallowness of lot size and shape, strict implementation of the County's critical area program or bog protection program would result in an unwarranted hardship." Code, § 3-1-207(b)(1). Here, testimony provided by all parties established that the entire lot is completely wooded. Mr. Serwatka, Mr. See and Mr. Konowal testified as to the unique conditions of the property, including the existence of the bog, the bog buffer and the steep slopes comprising nearly all the property. Due to these physical conditions, we have no doubt that the applicant would suffer an unwarranted hardship if the Code is strictly applied. *See id.*

The Petitioner's next burden is to show that:

> [a] literal interpretation of COMAR, 27.01, Criteria for Local Critical Area Program Development or the County's critical area program and related ordinances will deprive the applicant of rights commonly enjoyed by other properties in similar areas as permitted in accordance with the provisions of the critical area program within the critical area of the County; or the County's bog protection program will deprive the applicant of rights commonly enjoyed by other properties within the bog protection area of the County.

Id. § 3-1-207(b)(2)(i) and (ii). The surrounding community is fully developed with homes and roads, many of which are within the CA. Mr. Serwatka testified that there are homes in the community that were constructed in the bog and/or inside the bog buffer. No testimony was provided to the contrary; thus, we find that the Petitioner would be deprived of rights others in the community enjoy if the requested bog and CA variances are denied.

The Petitioner must also show that "[t]he granting of a variance will not confer on an applicant any special privilege that would be denied by COMAR, 27.01, the County's critical area program to other lands or structures within the County critical area, or the County's bog protection program to other lands or structures within a bog protection area." *Id.* §3-1-207(b)(3). Mr. Serwatka testified that existing homes in the surrounding community were built inside the bog and/or inside the bog buffer. He also stated that an adjacent property to the

northwest is improved with a home, a pool and has a workshop under construction measuring 28 feet by 32 feet. Testimony provided by Mr. Serwatka and the County established that the lot could not be developed without the requested variances. Accordingly, we find that granting the requested variances would not confer a special privilege on the Petitioner. In fact, we find that refusing the Petitioner's requested variances would deny it the same privilege that other property owners in the community have already received.

Next, the Petitioner must establish that "[t]he variance request is not based on conditions or circumstances that are the result of actions by the applicant, including the commencement of development before an application for a variance was filed, and does not arise from any condition relating to land or building use on any neighboring property." *Id.* §3-1-207(b)(4). As we addressed above, the Petitioner's property is completely wooded and almost completely comprised of steep slopes, a bog and the 100 foot bog buffer. These conditions are the work of nature--not the handiwork of man. Accordingly, we find that the conditions on the property were not created by the Petitioner.

The next burden that the Petitioner must overcome is to show that "[t]he granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the County's critical area or a bog protection area and will be in harmony with the general spirit and intent of the County's critical area program or bog protection program." *Id.* §3-1-207(b)(5). The size of the proposed house and the septic system were reduced to have the least impact possible on the steep slopes, the bog and the bog buffer. The house was also angled on the property to minimize impacts. Testimony provided by Mr. Serwatka, Mr. See and the County all claim that there would not be any impact on the ecosystems of the CA or the bog. Mr. Serwatka pointed out that all runoff currently flows to the bog; however, when the house is built, all runoff will be redirected into the ground into a SWM infiltration system. We find this

distinction important when weighing the runoff concerns of Mr. Hobbs and Mr. Underwood because it appears that runoff would be handled better and have less impact after construction is complete. We recognize the impact of water runoff (with pollution, sediment and pH) into a bog. As such, we find that there would be no adverse impacts on the ecosystems of the CA or the bog and the Petitioner's proposal is "in harmony with the general spirit and intent of the County's critical area program [and] bog protection program." *Id.*

Next, the Petitioner must show that it "has maximized the distance between the bog and each structure, taking into account natural features and the replacement of utilities, and has met the requirements of § 17-9-208 of this Code." *Id.* § 3-1-207(b)(6). The location of the house was moved forward toward the right-of-way to keep the house as far from the bog as possible. One-half of the house and one-half of the SWM system are inside the bog buffer. The septic system is the only structure that will be completely in the bog buffer. There would not be any construction inside the bog. Thus, we believe that the Petitioner has satisfied this section of the Code.

The Petitioner must then establish that through "competent and substantial evidence, [it] has overcome the presumption contained in the Natural Resources Article, § 8-1808(d)(2), of the State Code." *Id.* § 3-1-207(b)(7). Under the above cited section of the Natural Resources Article it is presumed "that the specific development activity in the critical area that is subject to the application and for which a variance is required does not conform with the general purpose and intent of this subtitle, regulations adopted under this subtitle, and the requirements of the local jurisdiction's program." Md. Code Ann., Natural Resources §8-1808(d)(2)(i). The testimony provided by Mr. Serwatka, Mr. See and the County established that the Petitioner had met all of the necessary requirements of the Code to be granted a variance. The Petitioner has moved the location of the house forward to ensure that it is as far from the bog as possible. The house was

placed at an angle on the lot to minimize the disturbance to the steep slopes. The lot is permitted to have 15% impervious surface, the Petitioner's proposal provides for only 3.2% of impervious surface. Accordingly, we find that the Petitioner has overcome the presumption of the Natural Resources Article of the State Code and we find that the Petitioner's proposed house is well within the intent of both State and County CA programs.

Next, the Petitioner has the burden of proving that "the variance is the minimum variance necessary to afford relief." Code, § 3-1-207(c)(1). As we addressed earlier, the size of the house and the septic system were reduced to have the least impact on the bog and the bog buffer as possible. The house was moved forward so as to be as far from the bog as feasible without interfering with the right-of-way. In addition, the size of the house is smaller than average in the community. Therefore, we find that the variance requested is the minimum necessary.

The Petitioner must then show that "the granting of the variance will not alter the essential character of the neighborhood or district in which the lot is located." *Id.* § 3-1-207(c)(2)(i). Mr. Serwatka testified that the proposed house is comparable to or smaller than most houses in the community. He stated that it is in character with the neighborhood. We agree; thus, we find that granting the requested variances would not alter the essential character of the neighborhood.

In addition, the Petitioner must show that "the granting of the variance will not substantially impair the appropriate use or development of adjacent property." *Id.* § 3-1-207(c)(2)(ii). As we addressed earlier in this opinion, the surrounding community has been fully developed. Thus, we find that allowing the Petitioner to build would not have any affect on the "use or development of adjacent property." *Id.* While a neighbor raised concerns regarding the location of the home and its likely impact to his views we find that the environmentally sensitive

placement of the house more than outweighs the sight of the house from other properties. No property owner has an absolute right to view over the property of another.

The Petitioner must also establish that "the granting of the variance will not reduce forest cover in the limited development and resource conservation areas of the critical area." *Id.* § 3-1-207(c)(2)(iii). There will be disturbance within the LDA and RCA. However, mitigation of 3:1 would be required by this Board (or the payment of a fee in lieu of mitigation). The remaining, undisturbed portion of the property would be placed in a conservation easement. The proposed reforestation methods shall be acceptable County practices. Therefore, we find that there would not be a reduction in forest cover in the LDA and RCA post development.

Next, the Petitioner has the burden of proving that "the granting of the variance will not be contrary to acceptable clearing and replanting practices required for development in the critical area or a bog protection area." *Id.* § 3-1-207(c)(2)(iv). As we just addressed, the replanting and reforestation practices proposed for the site are acceptable County practices.

The Petitioner must show that "the granting of the variance will not be detrimental to the public welfare." *Id.* § 3-1-207(c)(2)(v). The Petitioner would like to develop its property with a house. The size of the house has been reduced and the location of the house has been changed to have the least amount of impact on the steep slopes, the bog and the bog buffer. Mr. See testified that the bog would actually be benefited by the SWM system proposed for use on the property. The protestants testified that the development of this lot would cause irreparable harm to the bog. We find more persuasive the testimony provided by the Petitioner's experts and the County which stated otherwise. Accordingly, we find that granting the requested variance would "not be detrimental to the public." *Id.* Like most people, we would prefer that the bog be maintained in a pristine condition and not subjected to encroachment by human development. However, this property is a legal lot and the owner has the right to develop it in a reasonable manner.

The Petitioner has satisfied the requirements necessary for a variance to the bog and CA criteria. We next must determine whether the Petitioner has satisfied the requirements necessary for an area variance. The Petitioner has requested a variance of 15 feet to the 30 foot minimum required front yard setback. In order for this Board to grant a variance, the Petitioner must make a successful showing of all of the requirements of the Code. *See id.* § 3-1-207.

The first requirement that the Petitioner must satisfy is "that because of certain unique physical conditions, such as irregularity, narrowness or shallowness of lot size and shape or exceptional topographical conditions peculiar to and inherent in the particular lot, there is no reasonable possibility of developing the lot in strict conformance with this article." *Id.* § 3-1-207(a)(1). Any development of the lot would require a variance. As we previously addressed, the property is within the CA, it is completely forested and almost entirely comprised of steep slopes, a bog and the bog buffer. These exceptional characteristics on the property lead us to find that the lot could not be developed in strict conformance with the Code.

Once again, the Petitioner must show that "the variance is the minimum variance necessary to afford relief." *Id.* § 3-1-207(c)(1). As we addressed previously, the Petitioner requested a variance of 15 feet to locate the house as far from the bog as possible and to minimize disturbance to the steep slopes. Granting the variance would allow the house to be 15 feet from a right-of-way instead of the required 30 feet. The right-of-way that is located at the front of the property is no longer used because the surrounding community has been developed and there are roads throughout the community. The existing right-of-way will give the home the appearance of being set back further from the front lot line, however. Accordingly, we find that the requested variance is the minimum necessary.

The Petitioner must also show that "the granting of the variance will not alter the essential character of the neighborhood or district in which the lot is located." *Id.* § 3-1-

207(c)(2)(i). Mr. Serwatka testified that there are other properties in the neighborhood with a right-of-way closer to homes than the required 30 foot minimum setback. The right-of-way will also ameliorate the impact of the house because the house will appear to be set back further from the front lot line due to the location of the undeveloped right-of-way. As such, we find that granting the requested variance would "not alter the essential character of the neighborhood." *Id.*

The Petitioner must to establish that "the granting of the variance will not substantially impair the appropriate use or development of adjacent property." *Id.* § 3-1-207(c)(2)(ii). As we previously addressed, the surrounding community has been fully developed. Allowing the Petitioner to locate the house closer to the right-of-way would not have any affect on the use or development of adjacent properties because the area has already been developed.

The Petitioner must also establish that "the granting of the variance will not reduce forest cover in the limited development and resource conservation areas of the critical area [and] the granting of the variance will not be contrary to acceptable clearing and replanting practices required for development in the critical area or a bog protection area." *Id.* § 3-1-207(c)(2)(iii)(iv). As we noted for the variances to the bog and CA criteria, mitigation of 3:1 or a fee in lieu of mitigation will be utilized in the replanting of the disturbed area. Mitigation and payment of a fee in lieu of mitigation are both acceptable replanting practices in the County. Therefore, we find that the Petitioner has satisfied these two requirements.

Lastly, the Petitioner must establish that "the granting of the variance will not be detrimental to the public welfare." *Id.* § 3-1-207(c)(v). In order to minimize disturbance to the steep slopes, the bog buffer and the bog, the Petitioner proposed locating the house closer to the right-of-way than the required 30 foot minimum setback. Development that attempts to reduce impacts to the environment are important to preserving our natural resources for future generations. In this case, we find that protection of the critical and bog areas is more important

to the public good than requiring compliance with the front lot line setback standards. Accordingly, we find that granting the requested variance would "not be detrimental to the public welfare." *Id.*

ORDER

For the reasons set forth in the foregoing Memorandum of Opinion, it is this 30 day of JAN., 2007, by the County Board of Appeals of Anne Arundel County, ORDERED, that the Petitioner's requests for:

1) A Variance to disturb within the 100 foot bog buffer, *see* Code § 17-9-206;

2) A Variance to disturb steep slopes greater than 15 percent, *see id.* § 17-8-201; and

3) A Variance of 15 feet to the 30 foot minimum required front yard setback, *see id.* § 18-4-601

are hereby **GRANTED** subject to the following conditions

1) All stormwater shall be directed into a ground infiltration system, which will contain an additional pretreatment system.

2) Mitigation for clearing shall be provided at a ratio of 3:1; and

3) The undisturbed portion of the property shall be placed in a conservation easement.

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

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

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

COUNTY BOARD OF APPEALS
OF ANNE ARUNDEL COUNTY

John W. Boring, Member

Ray J. Jicka, Member

Arnold W. McKechnie, Member

William Moulden, Member

DISSENT

The Petitioner has presented a plan of development that has evolved since it was first submitted for review. On the positive side, the Petitioner has relocated the house farther from the bog and reduced the amount of impervious coverage on the property. However, these amendments apparently came too late for review by the Critical Area Commission and the Maryland Department of the Environment. In the case of the MDE review, the analysis could not be completed by the agency because the application was incomplete. As explained by Mr. Konowal, there was simply insufficient time for review by the Critical Area Commission of the eleventh hour plan revisions made by the applicant. Therefore, the only agency comment from the Critical Area Commission is one that recommends denial of the application. Since these reviews are either incomplete or missing from this application, we find that the application

cannot be approved. At best, the application should be deferred until such time as the full range of comments become available.

There are several statutes at issue when a project is proposed within the Critical Area. The Md. Ann. Code, Nat. Res. Art., Section 8-1811 requires notice to the Critical Area Commission of certain projects, including variances (COMAR 27.03.01.03). The County Code also requires that development in a habitat protection area must be "in accordance with the recommendation of the Department of Natural Resources and other reviewing agencies"[1]. Code, Section 17-8-502. The Critical Area Commission is part of the Department of Natural Resources. To date, the only comment from the Critical Area Commission is a recommendation for denial. Clearly, the grant of the requested variances could not be in accordance with the recommendation of DNR.

Applicants often propose a plan of development that represents more of a wish list than a plan representative of the true minimum variance necessary to grant a reasonable and significant use of environmentally sensitive land. The applicant will then revise the plan at the last minute when it is apparent that the plan cannot meet the standards. As a result, the Reviewing Agencies are left out of the process and we are left wondering what their comments might include. No variance (particularly a variance to both the Critical Area and the Bog Protection Programs) should be acted upon until all Reviewing Agencies have had an opportunity to comment. Indeed, the Code requires such review.

We also agree with the position of Mr. Konowal that the Petitioner must bear the burden of ensuring that late revisions are reviewed by the various agencies. When an applicant revises plans at the last minute, the County staff is burdened by having to complete a hurried review and

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[1] The "reviewing agencies" are a defined term in the Code (Section 17-1-101(54)) and include the Critical Area Commission, as applicable for this request. *See*, County Website, Time to Process Applications, Variances.

to accomplish routing the revisions to all other agencies. If an applicant changes plans, that applicant must bear the burden of ensuring full review by all agencies and additional time to allow for a complete review or, if insufficient time exists, then the application must be denied.

Anthony V. Lamartina, Chairman

Vance N. Remillard, Member

(Michael Topper, Vice Chairman, did not participate in this appeal.)

AA0007-06

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 2005-0490-V

IN RE: **CREEK PROPERTIES, LLC**

THIRD ASSESSMENT DISTRICT

DATE HEARD: FEBRUARY 23, 2006
LAST EVIDENCE: MARCH 24, 2006

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

PLANNER: **ROBERT KONOWAL**

RECEIVED
MAY 1 2006
CRITICAL AREA COMMISSION
Chesapeake & Atlantic Coastal Bays

DATE FILED: **APRIL 26, 2006**

PLEADINGS

Creek Properties, LLC, the applicant, seeks a variance (2005-0490-V) to permit a dwelling with less setbacks than required and with disturbance to a bog buffer and steep slopes in the Critical Area on property located along the south side of Georgia Avenue, east of Tennessee Avenue, Pasadena.

PUBLIC NOTIFICATION

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

FINDINGS AND CONCLUSIONS

This case concerns unimproved property with a street address of 420 Georgia Avenue, in the Boulevard Park subdivision, Pasadena. The property comprises 38,250 square feet and is zoned R2-residential with Chesapeake Bay Critical Area designations as Resource Conservation Area (RCA) and Limited Development Area (LDA). The southern half of the property is located in South

Gray's Creek Bog. The applicant seeks to develop the property with a single-family dwelling measuring 26 X 36 feet. The dwelling, septic system and well are located within the 100-foot upland buffer to the bog and disturb steep slopes in the Critical Area. The dwelling maintains 15 feet from the front lot line.

Anne Arundel County Code, Article 17, Section 17-9-206(a) prohibits new development in the 100-foot upland bog buffer. Section 17-8-201 proscribes development on slopes 15% or greater in the RCA or LDA. Finally, Article 18, Section 18-4-601 requires principal structures in the R2 district to maintain a front setback of 30 feet. Accordingly, the proposal requires variances to disturb the bog buffer and steep slopes in the Critical Area and a variance of 15 feet to the front setback.[1]

Robert Konowal, a planner with the Office of Planning and Zoning, testified that the bog and the 100-foot bog buffer encompass the entire property. The site plan submitted at the hearing disturbs 6,018 square feet of steep slopes in the Critical Area. The dwelling is considered modest in size. By locating the dwelling near the road, the distance to the bog is maximized. The witness summarized the agency comments. The Health Department requested plan approval. The Chesapeake Bay Critical Area Commission requested minimization[2], grading to direct stormwater away from the bog, mitigation and a

[1] As will be developed below, the applicant submitted a revised site plan on Marsh 24, 2006. The revised plan relocated the dwelling 20 feet to the west. Although the variances are unchanged, there is a net reduction in the disturbance to the bog buffer and the steep slopes in the Critical Area.

[2] The Commission's comment letter was based on a larger footprint (26 X 45 feet) for the dwelling.

perpetual conservation easement for the remaining lot area. The Country's development division requested authorization from the Maryland Department of the Environment, a lot merger agreement and a conservation easement. The County's environmental reviewer requested a reforestation plan. By way of conclusion, Mr. Konowal supported the application.

Mr. Serwatka confirmed the reduction in the footprint, which also reduced the clearing and the disturbance. The project includes stormwater management infiltration, mitigation at a ratio of 3:1 and a conservation easement.

Scott Hobbs, the adjacent property owner to the west, submitted a written statement and exhibits in opposition to the application. In brief, the applicant purchased the property at a bargain price; the bog legislation contemplated only accessory structures and not principal structures in the 100-foot upland buffer; the access across and extension of Georgia Avenue conflicts with a fiscal 2007 County capital project to control road runoff to the bog; the project adversely impacts endangered species; and the roofline of the dwelling will be lower than the grade of his adjoining property.

Anne Pearson, Director of the Alliance for Sustainable Communities, opposed the request. The witness indicated that studies by the Smithsonian Institution indicate that any development within 500 meters of wetlands will cause degradation. The bog buffer serves as a small portion of the protection. Despite the nitrogen removal component, the septic system will nonetheless release some nitrogen to the bog and ground water.

Earl Bradley, a member of the County's Bog Committee, acknowledged the effort to minimize the relief. Nevertheless, the integrity of the bog will be lost, given the slopes and runoff and the potential for activation of the replacement septic system. The project also disturbs globally rare plants that the bog legislation was supposed to protect. In sum, while there may be a right to develop the property, there is no means to protect the bog. The witness suggested that the County should acquire the property, which the applicant purchased for only $13,000.

By way of further explanation, Mr. Serwatka testified that the design calls for construction of the dwelling at-grade with a walk out to the rear. More particularly, the two-story dwelling will have a first floor elevation of +21 feet.

Finally, as noted, the applicant submitted a revised site plan dated March 23, 2006. Mr. Serwatka's letter of explanation indicates that the improvements are 15 feet further from the bog (Attachment A). He advised this office that the disturbance to the 100-foot upland buffer is 7,095 square feet; and the disturbance to steep slopes in the Critical Area is 5,904 square feet.

I visited the site and the neighborhood. There is a barricade at the end of paved Georgia Avenue, then a rip-rap channel. The extension of Georgia Avenue is a wooded ravine. There is a cleared footpath perpendicular to the ravine that leads to South Gray's Bog. There is a dwelling on the north side of the extension of Georgia Avenue that is accessed from the parallel street (Kentucky Avenue) as

well as a dwelling to the east accessed from Magothy Road. Two-story dwellings characterize this established neighborhood.

The standards for granting variances are contained in Section 18-16-305. Under subsection (a), a zoning variance may be granted only after determining either (1) unique physical conditions, peculiar to the lot, such that there is no reasonable possibility of developing the lot in strict conformance with the code; or (2) exceptional circumstances such that the grant of a variance is necessary to avoid an unnecessary hardship, and to enable the applicant to develop the lot. Under subsection (b), a variance to the County's Critical Area program or the bog protection program[3] may be granted only after determining that (1) due to unique physical conditions, a strict implementation of the programs would result in an unwarranted hardship to the applicant; (2) a literal interpretation of the programs will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical area and the bog protection area of the County; (3) the granting of the variances will not confer on the applicant any special privilege that would be denied by the programs to other lands within the Critical Area or a bog protection area; (4) the variance requests are not based on circumstances resultant of the actions by the applicant and do not arise from conditions relating to land use on neighboring property; and (5) the granting of the variances will not

[3] This office has previously noted that the bog legislation (Bill No. 105-01) by its very terms authorizes variances to the bog protection program for properties located in bog protection areas. See, Case No. 2002-0411-V (December 4, 2002). See also, Case No. BA 73-03V (February 19, 2004) (County Board of Appeals for Anne Arundel County approved an above-ground pool in the bog protection area for property with a street address of 320 Tennessee Avenue, which backs to the right-of-way for Georgia Avenue.)

adversely impact water quality or fish, wildlife or plant habitat within the Critical Area or a bog protection area and will harmonize with the general spirit and intent of the programs. Under subsection (c), any variance must be the minimum necessary to afford relief; and its grant may not alter the essential character of the neighborhood, substantially impair the appropriate use or development of adjacent property, or be detrimental to the public welfare.

Upon review of the facts and circumstances, I find and conclude that the applicant is entitled to conditional relief from the code. Considering first the bog protection area and Critical Area variances, the proximity to the bog and the extent of slopes constitute unique physical conditions, such that a strict implementation of the programs would be an unwarranted hardship. To literally interpret the programs would deprive the applicant of the right to develop the property with a single-family dwelling, a right commonly enjoyed by other properties in similar areas in the bog protection area and the Critical Area; conversely, the granting of the variances is not a special privilege that the programs typically deny. There is no indication that the requests arise from the actions of the applicant or land use on neighboring property. Finally, the granting of conditional variances will not adversely impact the protected resources and harmonizes with the general spirit and intent of the programs.

Considering the zoning variance, the extent of the bog and its buffer constitute unique physical conditions such that there is no reasonable possibility of development in strict conformance with the code.

I further find that the revised site plan dated March 23, 2006 minimizes the variances. As noted, the footprint is a comparatively modest 26 X 36 feet. Compare, Case No. BA 104-05V (April 21, 2006) ("The proposed footprint for the house is very modest at a total of 896 square feet and allows for a less than 2,500 square foot house." Opinion at 4) The dwelling is sited near the front lot line in order to increase the distance to the bog. The revised site plan dated March 23, 2006 reduces the disturbances to the 100- foot upland buffer and the steep slopes in the Critical Area. I further find that the variances will not alter the essential character of the neighborhood, substantially impair the use or development of adjacent property or constitute a detriment to the public welfare. The approval is subject to the conditions in the Order.

ORDER

PURSUANT to the application of Creek Properties, LLC, petitioning for a variance to permit a dwelling with less setbacks than required and with disturbance to a bog buffer and steep slopes in the Critical Area; and

PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is this 26th day of April, 2006,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicant is **granted** variances to disturb the bog buffer and steep slopes in the Critical Area and a variance of 15 feet to the front setback to permit a

dwelling, septic system and well in accordance with the revised site plan dated March 23, 2006. The approval is subject to the following conditions:

1. No further expansion of the dwelling is allowed and accessory structures for storage are not allowed.
2. Disturbance to the 100-foot upland buffer shall not exceed 7,095 square feet and disturbance to steep slopes in the Critical Area shall not exceed 5,904 square feet.
3. The applicant shall obtain authorization from the Maryland Department of the Environment.
4. The applicant shall provide mitigation and a reforestation plan as determined by the Permit Application Center.
5. Stormwater shall be directed away from the bog.
6. The applicant shall provide a lot merger agreement and a conservation easement satisfactory to the Permit Application Center.
7. The building permit is subject to the approval of the Health Department.
8. The conditions run with the land and shall be included in any contract of sale.

Stephen M. LeGendre
Administrative Hearing Officer

NOTICE TO APPLICANT

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

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

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

Chesapeake Land Consulting, Inc.

313 Najoles Road, Suite J
Millersville, MD 21108
Phone/Fax: 410-729-5533

attachment A

March 23rd, 2006

Mr. Stephen M. LeGendre, ESQ.
Office of Administrative Hearings
Arundel Center, P.O. Box 2700
Annapolis, MD 21404

Re: Boulevard Park, Lots 63-71
Variance # 2005-049

Dear Mr. LeGendre,

Attached you will find the revised variance plan for the above referenced project. Per our phone conversation, we have revised the plan to relocate all the improvements 15 feet further away from the bog and the bog setbacks. It was determined that the owners of the property own 15 feet of the 30 foot right along Georgia Ave. such that we can now use part of that land as part of our site. Please review this new plan and let us know of any concerns that you might have.

If there is any additional information that would assist in the approval of this project, please contact this office directly.

Sincerely,
Chesapeake Land Consulting, Inc.

Stan Serwatka
President

disturbance to 100' buffer to bog 7095 ft
" " 15% + slopes 5904 ft

MDE

MARYLAND DEPARTMENT OF THE ENVIRONMENT

1800 Washington Boulevard • Baltimore MD 21230
410-537-3000 • 1-800-633-6101

Martin O'Malley
Governor

Anthony G. Brown
Lieutenant Governor

WATER MANAGEMENT ADMINISTRATION
NONTIDAL WETLANDS AND WATERWAYS DIVISION
Suite 430
Phone # 410-537-3768
Fax # 410-537 3751

Shari T. Wilson
Secretary

Robert M. Summers, Ph.D.
Deputy Secretary

RECEIVED
OCT 10 2007
CRITICAL AREA COMMISSION
Chesapeake & Atlantic Coastal Bays

October 3, 2007

Mr. Harry C. Blumenthal
Blumenthal, Delavan & Williams, PA
170 Jennifer Road, Suite 240
Annapolis, MD 21401

Project: 06-NT-0361/200665820
420 Georgia Avenue, AA County

Dear Mr. Blumenthal:

The Nontidal Wetlands and Waterways Division received your resubmittal of information on August 23, 2007. The application remains incomplete. In order to advertise the project on public notice for the opportunity to comment and/or request an informational hearing the following is required:

1. COMAR 26.23.02.05 A. requires an alternative sites analysis for permit application and processing. The Division guidance document is enclosed for your use in evaluating alternative sites and preparing the documentation for our review.
2. The avoidance and minimization document provided with the resubmittal does not address the minimal house size allowed by County requirements; relocation of the water-well outside of the 25-foot buffer to the Nontidal Wetlands of Special State Concern and/or further reductions in disturbances to regulated areas.
3. The Board of Appeals Opinion contains a number of errors and this Division does not concur with its findings. Specifically, no houses have ever been constructed in the any of the Mountain Road peninsula Bogs; stormwater runoff from an entirely forested site on steep slopes with highly erodable soils will not be improved by development of the property; there is no existing roadway accessing the property; the development of the property does reduce forest cover in the Critical Area and adversely impacts FIDS habitat; placement of the remainder of the property in a preservation easement does not generally protect fragile habitats; and most importantly, development of this property will cause significant adverse impacts to the Bog.

4. Because the Opinion states that the Bog will not be adversely impacted by SW runoff and changes in the hydrological seepage into the Bog, please provide a hydrological study that investigates that assertion and shows how the current rainfall on the property enters the Bog.
5. There has been a great deal of interest in this project by local politicians. In the Certification of Notification process, all local government officials should be notified of the project. According to the list in the resubmittal only the County executive was notified. Please notify the remainder of local government officials, including the County councilman and the District legislative delegation.

As soon as this information is received, we will promptly continue our review of the application. Please contact me in the Baltimore office at 410-537-3769 or by email at if you have any questions.

Sincerely,

Judy Broersma-Cole

Judy Broersma-Cole
Wetlands Specialist

cc: MDE: Gary Setzer
Amanda Sigillito
Adam Snyder
AA County OPZ – Kelly Krinetz
SES, Inc. – Eric See
CAC – Lisa Hoerger
MD DNR – Katharine McCarthy

MDE

MARYLAND DEPARTMENT OF THE ENVIRONMENT

1800 Washington Boulevard • Baltimore MD 21230
410-537-3000 • 1-800-633-6101

Robert L. Ehrlich, Jr.
Governor

Michael S. Steele
Lt. Governor

WATER MANAGEMENT ADMINISTRATION
NONTIDAL WETLANDS AND WATERWAYS DIVISION
Suite 430
Phone # 410-537-3745
Fax # 410-537-3751

Kendl P. Philbrick
Secretary

Jonas A. Jacobson
Deputy Secretary

RECEIVED
OCT 3 2006
CRITICAL AREA COMMISSION
Chesapeake & Atlantic Coastal Bays

September 29, 2006

Mr. Robert Konowal
AA County Office of Planning and Zoning
2664 Riva Road
Annapolis, MD 21401

Project: Creek Properties, Boulevard Park
BA 32-06V

Dear Mr. Konowal:

The Nontidal Wetlands and Waterways Division received an application (06-NT-0361/200665820) to permanently impact 8,580 square feet of expanded 100-foot, regulated nontidal wetlands buffer to South Gray's Creek Bog (Bog), a Nontidal Wetlands of Special State Concern, on August 24, 2006. The application is currently incomplete and we plan to request additional information from the consultant on or before October 10, 2006. The applicant proposes to construct a house, driveway, parking pad, septic system, stormwater management facility and water well entirely within this regulated buffer. The driveway proposes to cross a recently installed coastal plain step-pool stormwater discharge facility. The County Department of Public Woks constructed this facility and the County public school students planted it in April of this year.

It is unlikely that we will issue a favorable decision to grant a Nontidal Wetlands and Waterways Permit for this project as proposed. In general, the Division will not authorize further new construction in the expanded buffers to the bogs. We believe that the impacts, including the clearing of vegetation; grading and building on erodible soils and/or steep slopes; paving over the groundwater recharge area; increasing the impervious surface in the watershed; direct stormwater discharges to sensitive areas; discharges from the septic field into nutrient poor groundwater; drilling of a water well directly adjacent to the Bog and loss of habitat may cause irreparable harm to this unique and fragile habitat.

Please be advised that the Division recommends that the variance be denied in order to protect this valuable wetland resource. Please contact me at 410-537-3769 or by email at jcole@mde.state.md.us if I can be of any further assistance or if you have any questions.

Sincerely,

Judy B-Cole

Judy Broersma-Cole
Wetlands Specialist

cc: MD DNR – Katharine McCarthy
MD CBCAC – Lisa Hoerger

Critical Area Report
For
BOULEVARD PARK, LOTS 63-71,Blk.35
Tax Map 25, Block 14, Parcel 60
420 GEORGIA AVE.
PASADENA, MD 21122

December 2005

Prepared By:

CHESAPEAKE LAND CONSULTING, Inc.
313 NAJOLES # J
Millersville, MD 21108
(410)729-5533

RECEIVED
JAN 09 2006
CRITICAL AREA COMMISSION

CHESAPEAKE BAY CRITICAL AREA REPORT
BOULEVARD PARK, LOTS 63-71
TAX MAP 25, BLOCK 14, PARCEL 60
420 GEORGIA AVE.
PASADENA, MD 21122

INTRODUCTION

This is a 44,402 sq. ft. Or 1.02-acre property that is located on the South side of Georgia Ave. in Anne Arundel County, Maryland. The property is completely inside the Chesapeake Bay Critical Area Boundary and is designated as Resource Conservation Area (RCA) and Limited Development Area (LDA). The property is zoned R-2.The owner wishes to construct a single family dwelling with a well and septic the following variances are required: Nature of Variance: To allow Disturbance to 15%+ Slopes in the Critical Area, To allow Disturbance within the 100' Buffer to a Bog and to allow Disturbance to the 300' Limited Activity Area to a Bog. A 15' Variance to the required 30' in an R2 Zone.

EXISTING LAND USE

The site is currently vacant and wooded.

SURROUNDING LAND USE

The surrounding properties consist of Single Family Dwellings.

SOILS

The U.S. Department of Agriculture Soil Survey of Anne Arundel County shows the subject property to contain the soil type:

DWB- Downer Hammington- Urban Land Complete
ZBA- Zekiah and Issue Soils

FLOODPLAIN

The property is shown on the Federal Emergency Management Agency (FEMA) panel 240008 0021 C Zone A-9. This site does lie within the 100-year Hurricane Flood Zone Elev. 8.0.

TIDAL WETLANDS

Tidal wetlands do not exist within this site.

BODIES OF WATER

The property drains to GREYS CREEK WHICH FLOWS INTO THE MAGOTHY RIVER.

STEEP SLOPES

Steep slopes of 15%+ do exist on this site.

FOREST COVER

The site Is all wooded and contains hardwood and softwood trees with many bushes and shrubs.

RARE AND ENDANGERED SPECIES

An environmental review statement has been requested for this site.

STORMWATER MANAGEMENT

The existing runoff is conveyed via sheet flow over a wooded vegetated surface to a stable outfall with the outfall that flows to Grays Creek. The proposed runoff will be collected by gutters and downspouts and conveyed to an Infiltration device and Water Quality plantings will also be provided onsite at a 3 :1 Ratio of Woodlands removed.

FOREST MITIGATION

Reforestation will be provided on site at the time of grading permit.

DATES OF FIELD WORK

December 2005

SITE ANALYSIS

TOTAL SITE AREA =1.02 ACRES OR 44,402 SQ.FT.

TOTAL EXISTING WOODLANDS ON-SITE = 44,402 SQ. FT.

TOTAL WOODLANDS TO BE CLEARED For This Variance Requested =8580 SQ.FT. =19% of site

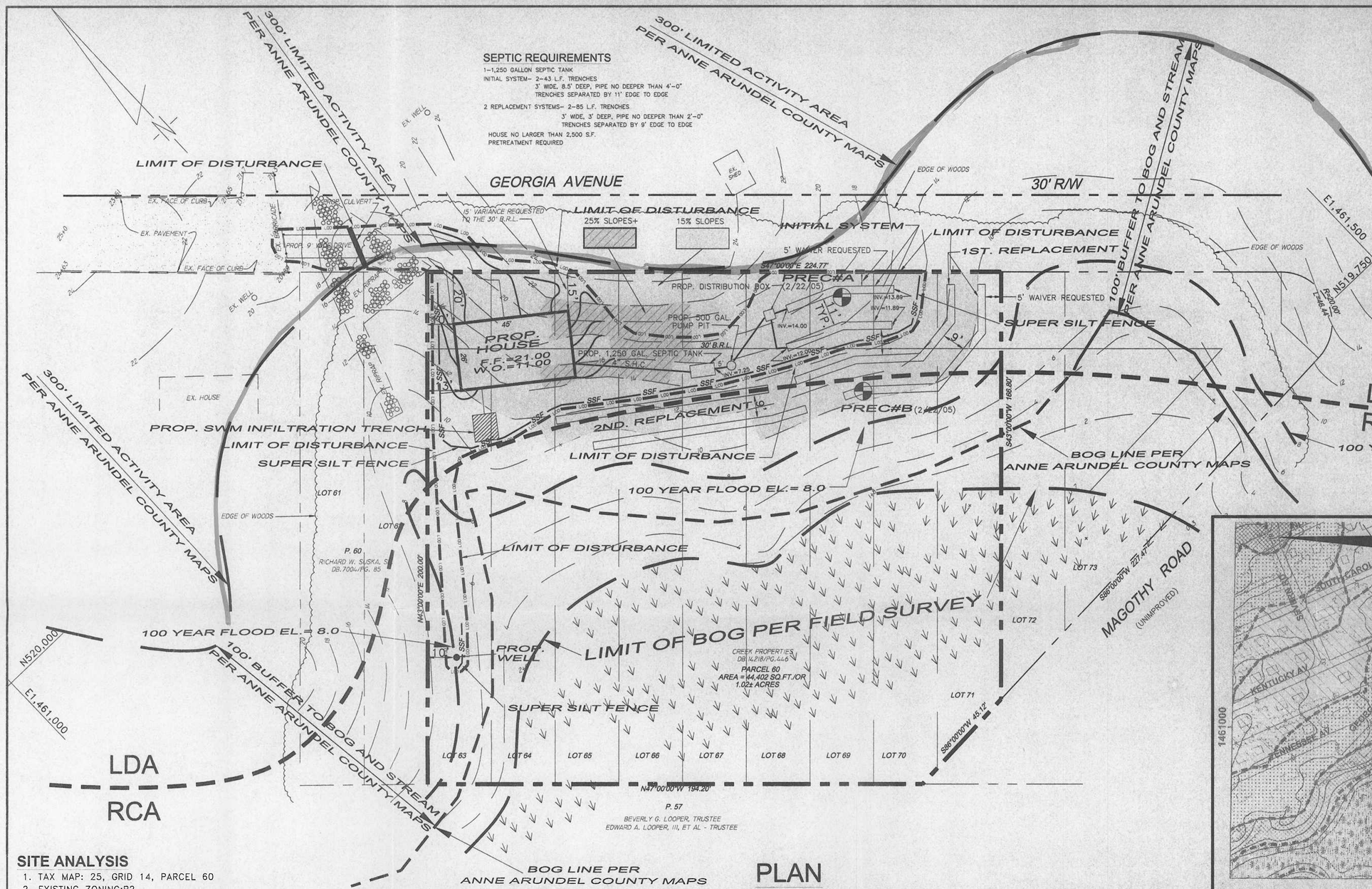
PROPOSED IMPERVIOUS AREA (HOUSE AND DRIVE) = 1,533 SQ. FT.=. 035 %

SEPTIC REQUIREMENTS

1-1,250 GALLON SEPTIC TANK
INITIAL SYSTEM- 2-43 L.F. TRENCHES
3' WIDE, 8.5' DEEP, PIPE NO DEEPER THAN 4'-0"
TRENCHES SEPARATED BY 11' EDGE TO EDGE

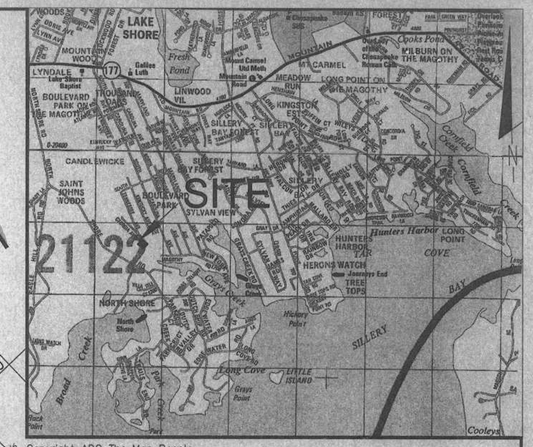
2 REPLACEMENT SYSTEMS- 2-85 L.F. TRENCHES
3' WIDE, 3' DEEP, PIPE NO DEEPER THAN 2'-0"
TRENCHES SEPARATED BY 9' EDGE TO EDGE

HOUSE NO LARGER THAN 2,500 S.F.
PRETREATMENT REQUIRED



PLAN

SCALE: 1"=20'



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VICINITY MAP

SCALE: 1"=2,000'

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JAN 09 2006
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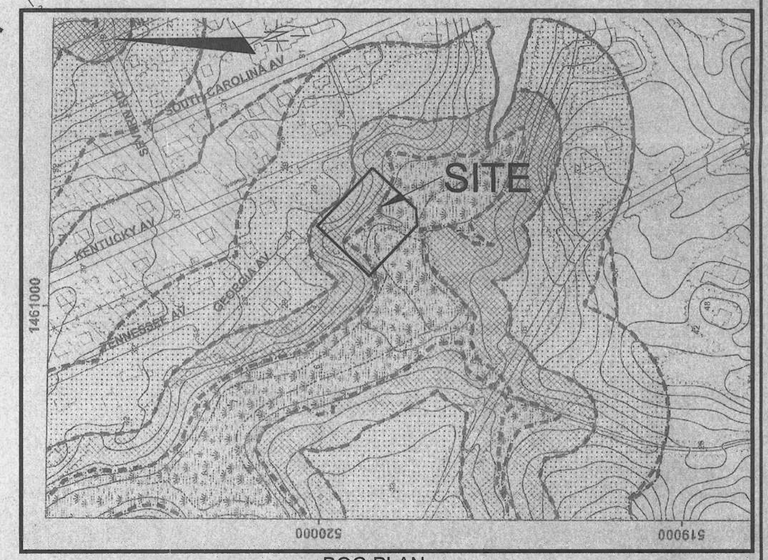

BOG PLAN

SCALE: 1"=200'

LEGEND:

- BOG AREA
- 100' BUFFER TO A BOG
- 300' LIMITED ACTIVITY AREA

SITE ANALYSIS

1. TAX MAP: 25, GRID 14, PARCEL 60
2. EXISTING ZONING:R2
   SETBACKS: FRONT:30'
   SIDE:7' COMB. 20'
   REAR:25'
   MAX. HEIGHT: 35'
   80' MIN. WIDTH, 18' MIN. ACCESS
3. SITE IS SERVED BY WELL AND SEPTIC
4. EXISTING USE: VACANT
5. PROPOSED USE: 1 SINGLE FAMILY DWELLING
6. TOTAL SITE AREA: 44,402 S.F. OR 1.02 AC.
7. SITE IS WITHIN THE CRITICAL AREA. (RCA AND LDA)
   RCA - 32,734 S.F. OR 0.75 AC.
   LDA - 11,668 S.F. OR 0.27 AC.
8. BOG AREA DOES EXIST WITHIN SITE.
9. THE SITE IS NOT WITHIN THE AIRPORT FLIGHT PATH OR NOISE ZONE.
10. FEMA-FIRM Map # 240008-0021C Zone A9 Elev. 8.0
11. PREDOMINANT SOIL TYPE:
    DwB- DOWNER HAMMONTON- URBAN LAND COMPLEX
    0-5% SLOPES
    ZBA- ZEKIAH AND ISSUE SOILS
    0-5% SLOPES

LEGEND:

- 25% SLOPES+
- 15% SLOPES

NOTE: TOPOGRAPHY SHOWN HEREON HAS BEEN PERFORMED BY A LICENSED MD. PROFESSIONAL LAND SURVEYOR. PROPERTY LINES HAVE BEEN STAKED.

NOTE: ALL REMAINING WOODLANDS OUTSIDE OF THE LIMIT OF DISTURBANCE AND REPLACEMENT SEPTIC AREAS WILL BE PLACED IN A PERMANANT CONSERVATION EASEMENT.

**NATURE OF VARIANCE: TO ALLOW DISTURBANCE TO 15%+ SLOPES IN THE CRITICAL AREA, TO ALLOW DISTURBANCE WITHIH THE 100' BUFFER TO A BOG AND TO ALLOW DISTURBANCE TO THE 300' LIMITED ACTIVITY AREA TO A BOG. A 15' VARIANCE TO THE REQUIRED 30' BRL IN AN R2 ZONE.

CRITICAL AREA NOTES (LDA AND RCA)

A.	Total Site Area:	44,402 sq. ft. or 1.02 Ac.±
B.	Total Existing Woodland Onsite: (100% of total site)	44,402 sq. ft. or 1.02 Ac.±
C.	Total Woodlands to be Cleared: (19% of woodlands)	8,580 sq. ft. or 0.20 Ac.±
D.	Total Existing Impervious Area Onsite:	0 sq. ft. or 0 Ac.±
E.	Existing Impervious Area to Remain:	0 sq. ft. or 0 Ac.±
F.	Existing Impervious Area to be Removed:	0 sq. ft. or 0 Ac.±
G.	Proposed Impervious Area (House = 1,170 sq.ft.)(Drive 363 S.F.)= 3.45%	1,533 sq. ft. or 0.035 Ac.±
H.	Total Impervious Area: After Construction= 3.45%	1,533 sq. ft. or 0.035 Ac.±
I.	Maximum Impervious Area Allowed: (15% OF SITE)	6,660 sq. ft. or 0.15 Ac.±

E1,461,000 N519,750

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PERC#T02033453

**VARIANCE PLAN

ANNE ARUNDEL COUNTY MARYLAND

OWNER/DEVELOPER
CREEK PROPERTIES LLC.
504 TULIP ROAD
ANNAPOLIS, MD., 21403
LIBER 14218, FOLIO 446
TEL.: 410-974-4404

CLC, Inc.
CHESAPEAKE LAND CONSULTING, INC.
Land Development and Permit Services
313 NAJOLES ROAD
Suite 1
MILLERSVILLE, MD. 21108
Phone: 410-729-5533
Fax: 410-729-5533

BOULEVARD PARK
ON THE MAGOTHY
LOTS 63 - 71, BK. 35
420 GEORGIA AVENUE
PASADENA, MD., 21122
ANNE ARUNDEL COUNTY, MARYLAND 21122
TAX MAP: 25 GRID: 14 PARCEL: 60
TAX DISTRICT: 03 SUBDIV.: 138 TAX ACCT. NO.: 2988 9335

DRAWN BY: ARCH	CLC Job #473
CHECKED BY: S. J. S.	SCALE: 1" = 20'
DATE: DECEMBER, 2005	SHEET 1 OF 1