

AA 92-06
VAR

Nye & Helfrich
0022

MSA-S-1829-5399

Comments
Aug 21/6/06

Robert L. Ehrlich, Jr.
Governor



Martin G. Madden
Chairman

Michael S. Steele
Lt. Governor

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/

February 16, 2006

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

RE: Variance 2006-0022-V John Nye and Michael Helfrich

Dear Ms. Cotter:

Thank you for providing information on the above referenced variance request. The applicant is requesting a variance to permit the construction of a two-story, single-family dwelling with attached garage, deck, driveway, septic system, and well with less setbacks and Buffer than required and impacts to steep slopes. The property is currently designated as Limited Development Area (LDA), and is vacant with forest and steep slopes.

Provided that the property is properly grandfathered, this office does not oppose a variance to permit the construction of the dwelling and associated additions; however, impacts must be minimized and the variance the minimum necessary. Based on the site plan, we have the following comments.

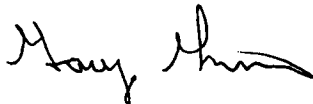
- 1) As stated on the site plan, steep slopes encumber a portion of the property. The expanded Buffer line stops in the middle of Lot 1901 on the plans; the expanded Buffer needs to be properly shown on Lot 1901. In addition, limits of 25% slopes are shown. In the Critical Area, slopes 15% and greater are considered steep. These should be shown on the plans.
- 2) The property consists of two non-contiguous lots that will be combined for a total of 15,451 square feet or 0.53 acres. The applicant proposes a total of 1,900 square feet of impervious surface coverage. The amount of ground disturbance is 3,760 square feet with 3,710 square feet of forest to be removed. 1,840 square feet of steep slopes will be disturbed by the proposed dwelling and improvements.

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Variance 2006-022-V John Nye and Michael Helfrich
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- 3) Mitigation, at a ratio of 3:1 for disturbance within the Buffer should be required. Plantings, consisting of native trees and shrubs, should be accommodated on the site to the extent possible.
- 4) Stormwater from the dwelling and driveway should be directed to stable vegetated outfalls away from steep slopes, to provide water quality benefits on the site.

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

Sincerely,



Gary Green
Environmental Analyst
cc: AA92-06

AA 92-06

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 2006-0022-V

IN RE: ELMAR EINBERG, JOHN NYE AND MICHAEL HELFRICH

THIRD ASSESSMENT DISTRICT

DATE HEARD: MARCH 7, 2006

ORDERED BY: STEPHEN M. LeGENDRE, ADMINISTRATIVE HEARING OFFICER

PLANNER: LORI RHODES

DATE FILED: MARCH 28, 2006

RECEIVED

APR 3 2006

CRITICAL AREA COMMISSION
Chesapeake & Atlantic Coastal Bays

PLEADINGS

Elmar Einberg, John Nye and Michael Helfrich, the applicants, seek a variance (2006-0022-V) to permit a dwelling with less setbacks and buffer than required and with disturbance to steep slopes on property located along the southwest side of Dover Road, north of Cambridge Road, 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. Mr. Helfrich 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 properties identified as 601 and 602 Dover Road, which are noncontiguous lots (Lots 189 and 1901) in the Laurel Acres subdivision, Pasadena. Lot 189 comprises 8,000 square feet; Lot 1901 comprises 15,451 square feet. The zoning is R2-Residential and the properties are located in the Chesapeake Bay Critical Area with a designation as Limited Development Area (LDA). Lot 1901 fronts on Cockey's Creek and is mapped as a buffer

modification area. The request is to combine the lots for development, with a dwelling on Lot 189 and a mulched access path and pier (future) on Lot 1901. The two-story dwelling has a footprint of 950 square feet (1431 square feet finished, plus 469 square foot garage). The dwelling is sited 85 feet from a tributary stream, in the Chesapeake Bay critical area buffer as expanded for steep slopes, and on steep slopes. The dwelling is also located 4 feet from the rear boundary of Lot 189.

Anne Arundel County Code, Article 18, Section 18-13-104 creates a 100-foot buffer from tidal waters, tributary streams and tidal wetlands. The buffer expands to include all lands within 50 feet of contiguous steep slopes. Article 17, Section 17-8-201 prohibits disturbances of slopes of 15% or greater in the LDA. Finally, Section 18-4-601 requires principal structures in the R2 district to maintain 25 feet from the rear lot line. Accordingly, the proposal requires variances to disturb the buffer, expanded buffer and steep slopes; and a variance of 21 feet to the rear setback.

Lori Rhodes, a planner with the Office of Planning and Zoning, testified that Lot 189 is below the area for the district, irregular in shape and steeply sloped. The property abuts community open space consisting of tidal and nontidal wetlands. The dwelling is proposed 60 feet from Dover Road, with the placement determined by the location of the septic system. The applicants are disturbing 3,710 square feet, including 1,488 square feet of the 100-foot and expanded buffers and 1,840 square feet of steep slopes. The project includes reforestation

and stormwater management plantings (11,600 square feet) on Lot 1901. The witness summarized the agency comments. The Health Department requires plan approval; the Chesapeake Bay Critical Area Commission requested mitigation and control of stormwater. By way of conclusion, Ms. Rhodes supported the variances for Lot 189. However, she questioned whether the two lots could be combined since they are not contiguous.

Mr. Helfrich testified that the septic system is located on the flattest portion of Lot 189, which pushes the dwelling towards the rear boundary. The adjacent community open space property is characterized by steep slopes and tidal wetlands. The expanded buffer encompasses the entirety of Lot 189. Lot 1901 is characterized by English Ivy, which has killed the ground cover and is attacking the trees. The mitigation plan includes mulching and cutting the ivy vines on Lot 1901. Although the applicants anticipated combining the lots by resubdivision, they may request a modification to the subdivision process instead.

Mr. Einberg testified that Lot 1901 had been in his family since the 1950's while Lot 189 was acquired in 1973.

Neighboring residents Greg Wilson and Sarah McLeod opposed the application. Matters of concern included the potential erosion to the floodplain and Cockey's Creek, the disturbance to steep slopes and the poor rate of percolation for the soils.

I visited the site and the neighborhood. Dead-end Dover Road bifurcates the two lots. Lot 189 is level near the road, and then falls off into a wooded ravine

that is traversed by a footpath. Lot 1901 is on the shoulder of another ravine with a second footpath down to Cockey's Creek. There are older houses on both sides of Dover Road, as well as on the opposite sides of the two ravines.

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 applicants to develop the lot. Under subsection (b), for a property in the Critical Area, a variance to the Critical Area program requirements may be granted only after determining that (1) due to unique physical conditions, peculiar to the lot, a strict implementation of the program would result in an unwarranted hardship to the applicants; (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 applicants 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 applicants and does not arise from conditions relating to land use on neighboring property; and (5) the granting of the variance will not adversely affect water quality or adversely impact fish, wildlife or plant habitat within the Critical Area and will be in harmony with the general spirit and intent of the program. Under

subsection (c), any variance must be the minimum necessary to afford relief; and its grant may not alter the essential character of the neighborhood, substantially impair the appropriate use or development of adjacent property, or be detrimental to the public welfare.

Upon review of the facts and circumstances, I find and conclude that the applicants are entitled to conditional relief from the code. Considering first the Critical Area variances, the extent of the expanded buffer - which encompasses all of Lot 189 - and steep slopes constitute unique physical conditions such that the variances are necessary in the avoidance of an unwarranted hardship. To literally interpret the program will forestall development of Lot 189 with a dwelling, which is a right commonly enjoyed by other properties in similar areas in the Critical Area. Conversely, the granting of the variances is not a special privilege that the program denies to other lands in the Critical Area. There is no indication that the request results from the actions of the applicants or land use on neighboring properties. Finally, with mitigation and other conditions, the granting of the variances will not adversely impact Critical Area resources and harmonizes with the general spirit and intent of the program.

Considering the zoning variance, Lot 189 meets the test of unique physical conditions, consisting of its reduced area, irregular shape, and steep slopes, such that there is no reasonable possibility of development in strict accordance with the code.

I further find that the variances represent the minimum relief. The dwelling is comparatively modest in size. There was nothing to indicate that the granting of the variances would alter the essential character of the residential neighborhood, substantially impair the appropriate 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

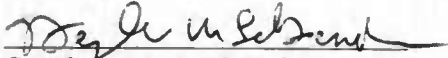
PURSUANT to the application of Elmar Einberg, John Nye and Michael Helfrich, petitioning for a variance to permit a dwelling with less setbacks and buffer than required and with disturbance to steep slopes; and

PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is this 28th day of March, 2006,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicants are **granted** a buffer variance of 15 feet, a variance to disturb the expanded buffer and a variance of 21 feet to the rear setback to permit a dwelling on Lot 189 in accordance with the site plan. The approvals are subject to the following conditions:

1. Lot 189 and Lot 1901 shall be combined to the satisfaction of the Planning and Zoning Officer.
2. The building permit shall be subject to the approval of the Health Department.

3. The applicants shall provide mitigation and control of stormwater to the satisfaction of the Permit Application Center.
4. No further expansion of the dwelling on Lot 189 is allowed and no accessory structures are allowed, other than a pier on Lot 1901.

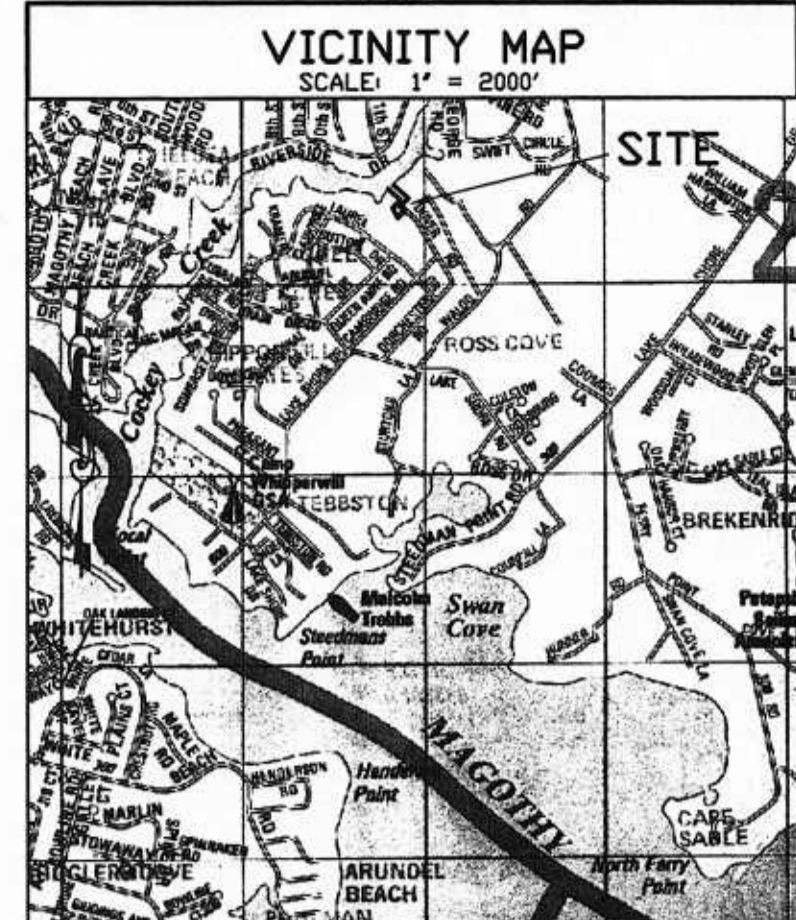
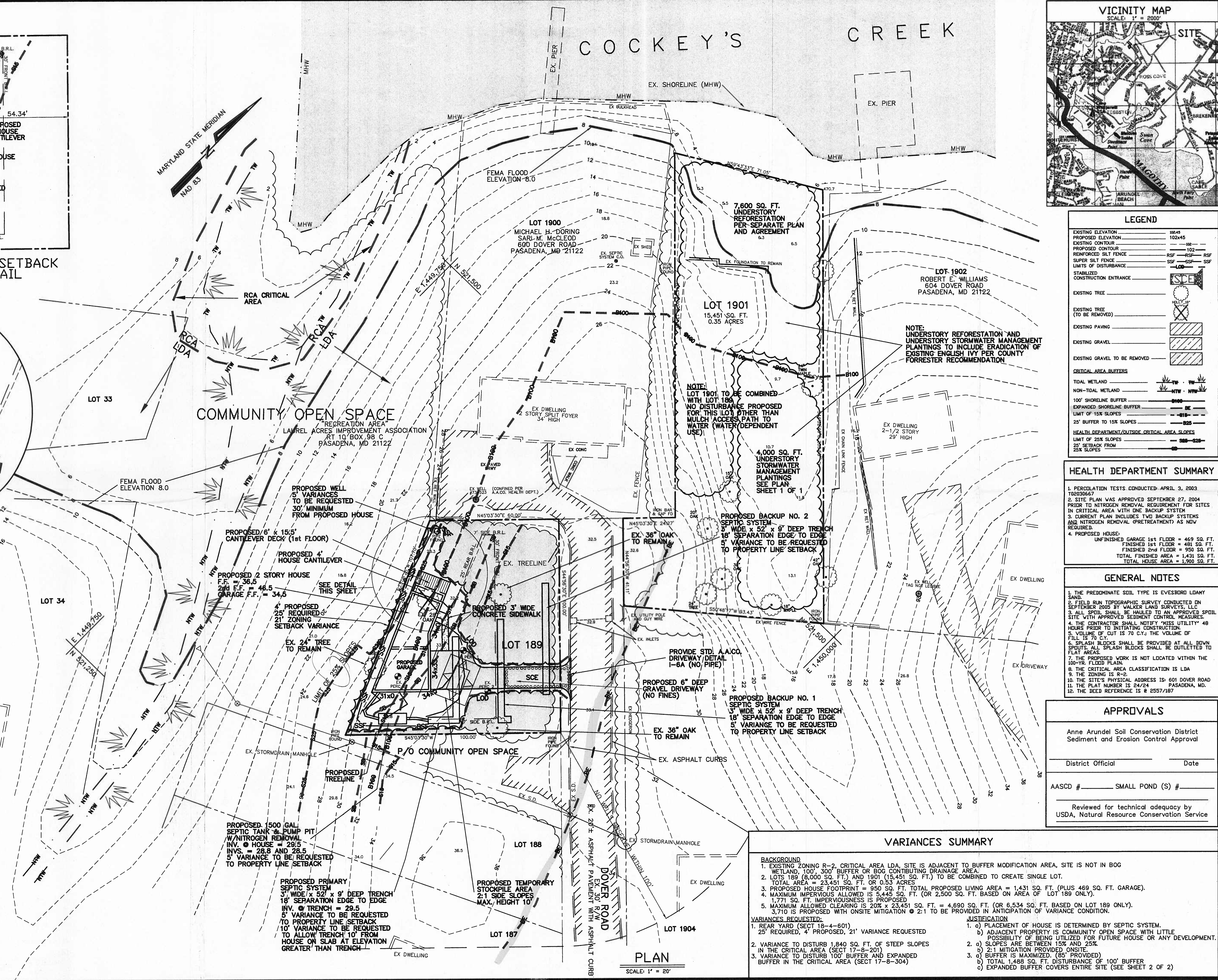
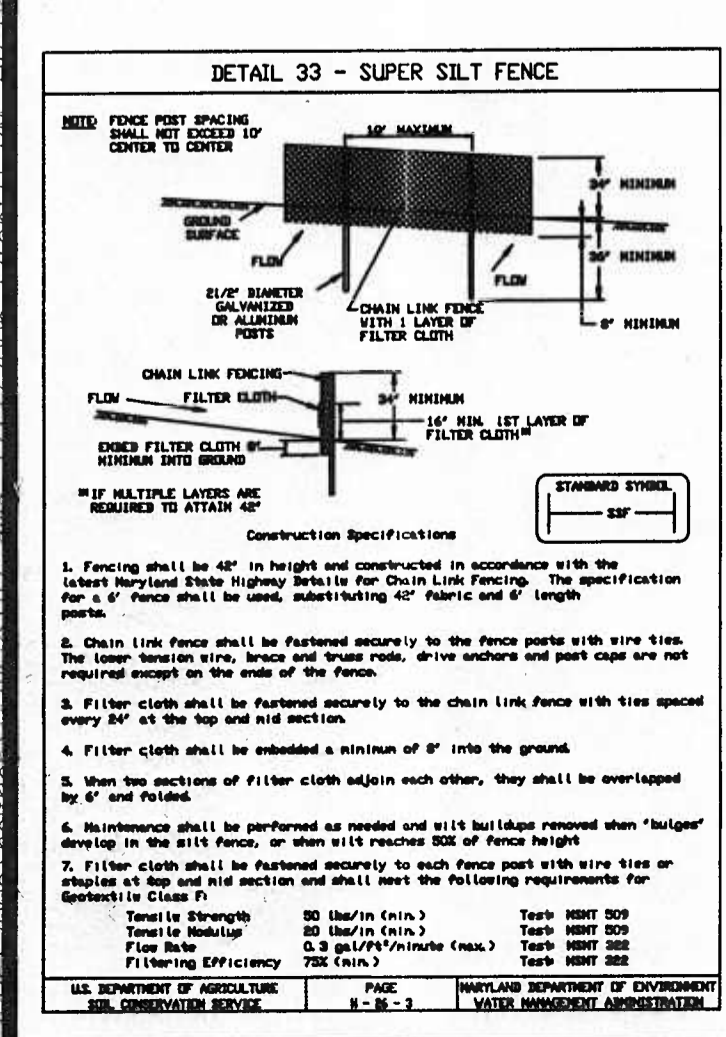
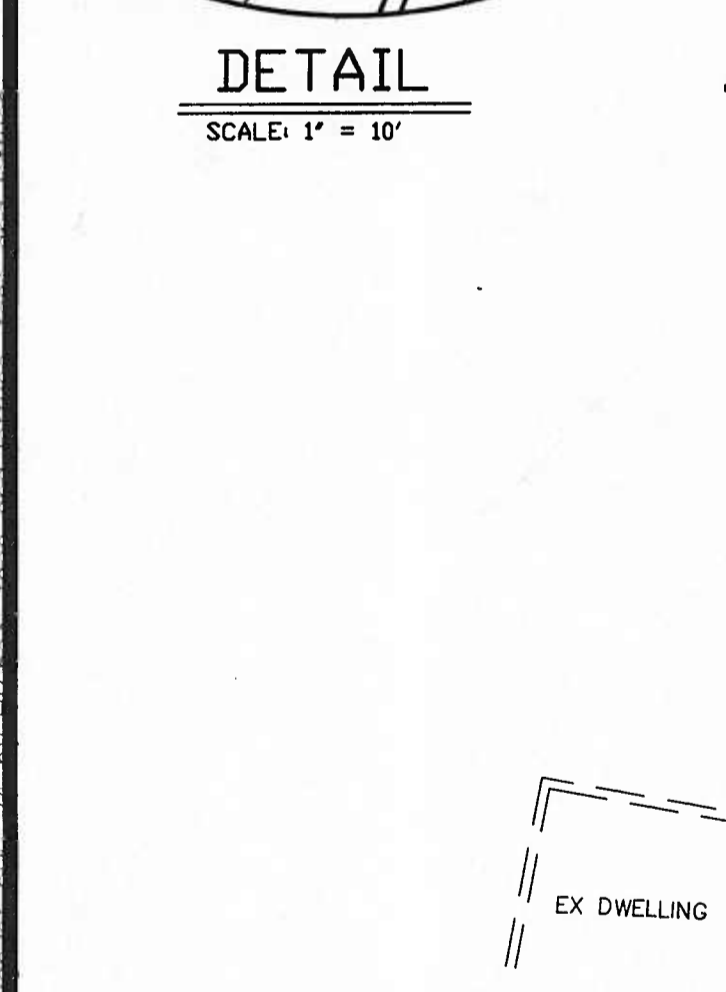
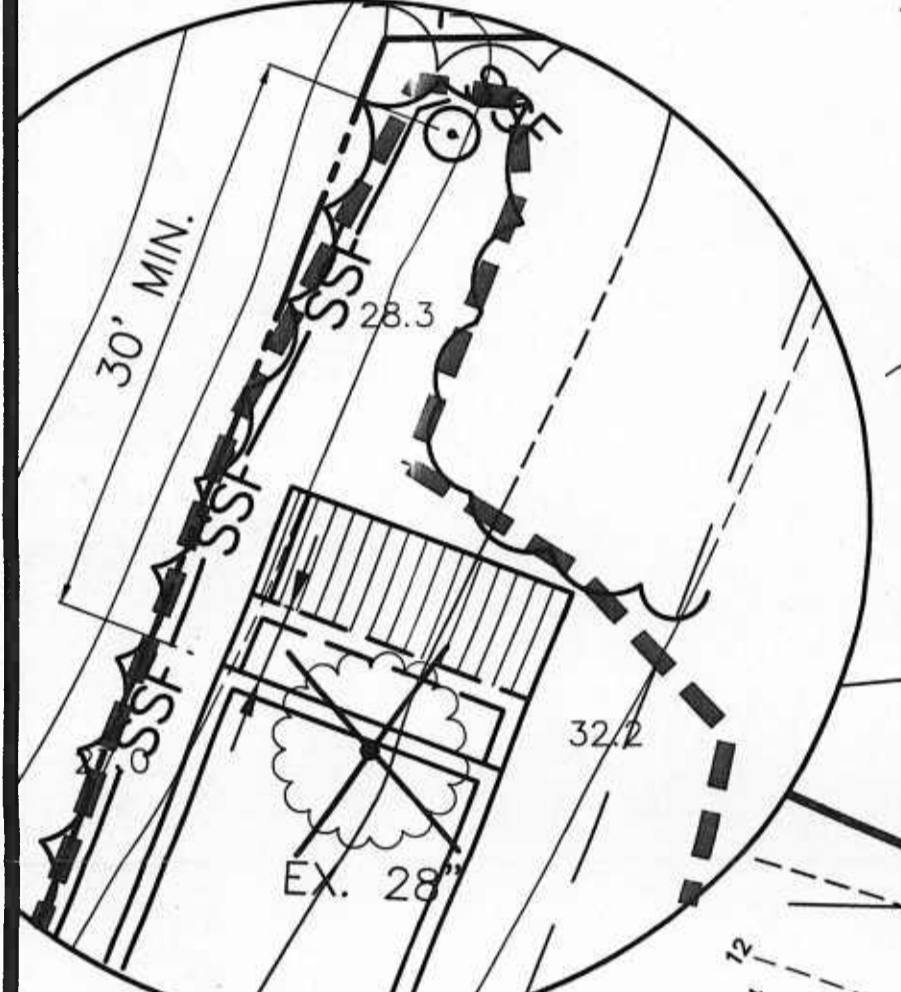
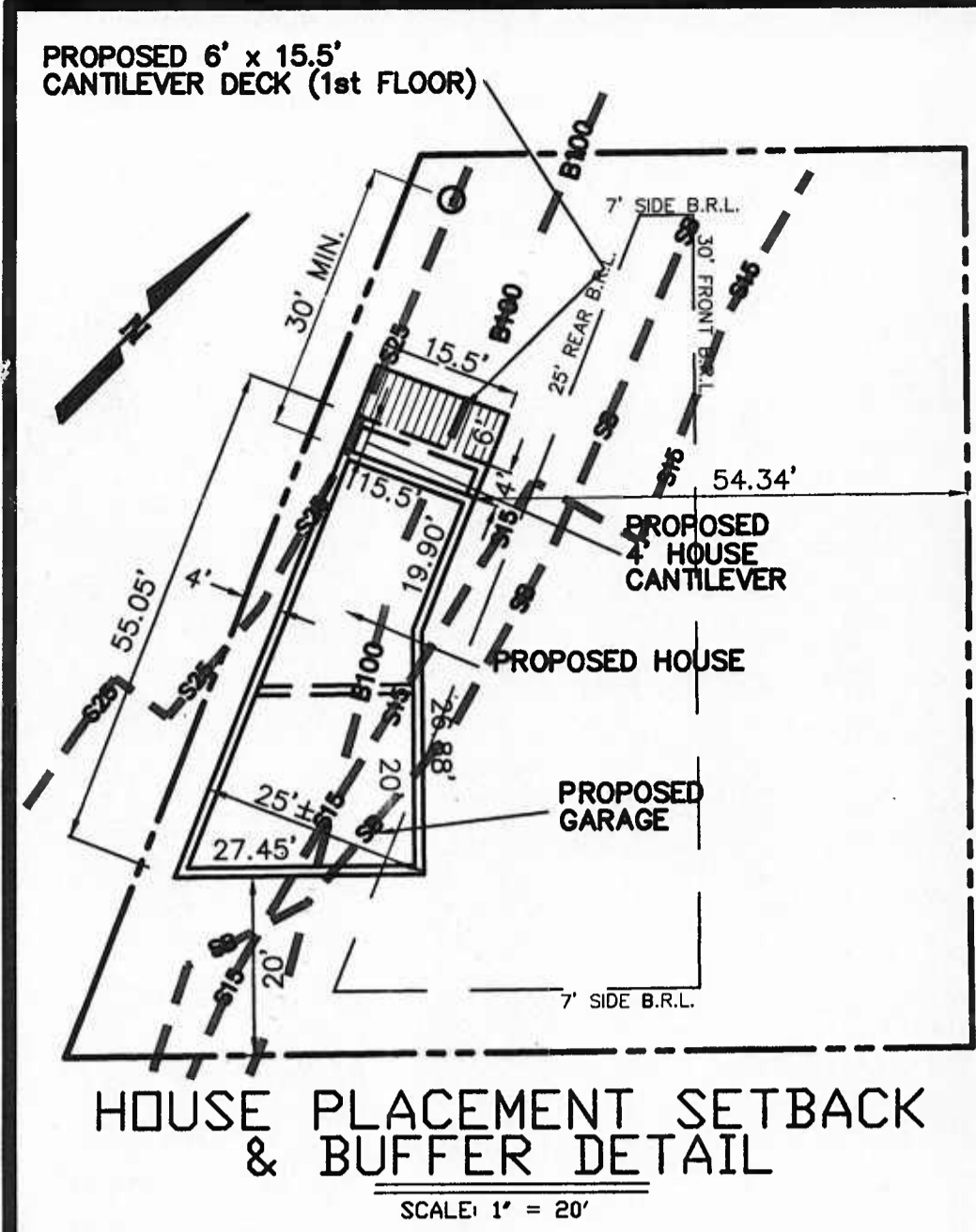

Stephen M. LeGendre
Administrative Hearing Officer

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.



LEGEND

EXISTING ELEVATION	10045
PROPOSED ELEVATION	10245
EXISTING CONTOUR	100
PROPOSED CONTOUR	102
REINFORCED SILT FENCE	RSF
SUPER SILT FENCE	SSF
LIMITS OF DISTURBANCE	LOD
STABILIZED CONSTRUCTION ENTRANCE	SCE
EXISTING TREE	(Symbol)
EXISTING TREE (TO BE REMOVED)	(Symbol)
EXISTING PAVING	(Symbol)
EXISTING GRAVEL	(Symbol)
EXISTING GRAVEL TO BE REMOVED	(Symbol)
CRITICAL AREA BUFFERS	
TIDAL WETLAND	(Symbol)
NON-TIDAL WETLAND	(Symbol)
100' SHORELINE BUFFER	(Symbol)
EXPANDED SHORELINE BUFFER	(Symbol)
LIMIT OF 15% SLOPES	(Symbol)
25' BUFFER TO 15% SLOPES	(Symbol)
HEALTH DEPARTMENT / OUTSIDE CRITICAL AREA SLOPES	
LIMIT OF 25% SLOPES	(Symbol)
25' SETBACK FROM 25% SLOPES	(Symbol)

HEALTH DEPARTMENT SUMMARY

- PERCOLATION TESTS CONDUCTED APRIL 3, 2003 TO203067
- SITE PLAN WAS APPROVED SEPTEMBER 27, 2004 PRIOR TO NITROGEN REMOVAL REQUIREMENT FOR SITES IN CRITICAL AREA WITH ONE BACKUP SYSTEM
- CURRENT PLAN INCLUDES TWO BACKUP SYSTEMS AND NITROGEN REMOVAL (PRETREATMENT) AS NOW REQUIRED
- PROPOSED HOUSE: UNFINISHED GARAGE 1st FLOOR = 469 SQ. FT. FINISHED 1st FLOOR = 481 SQ. FT. FINISHED 2nd FLOOR = 950 SQ. FT. TOTAL FINISHED AREA = 1,431 SQ. FT. TOTAL HOUSE AREA = 1,900 SQ. FT.

GENERAL NOTES

- THE PREDDMINATE SOIL TYPE IS EVESBORD LGAMY SAND.
- FIELD RUN TOPOGRAPHIC SURVEY CONDUCTED IN SEPTEMBER 2005 BY WALKER LAND SURVEYS, LLC
- ALL SPOIL SHALL BE HAULED TO AN APPROVED SPOIL SITE WITH APPROVED SEDIMENT CONTROL MEASURES.
- THE CONTRACTOR SHALL NOTIFY MISS UTILITY 48 HOURS PRIOR TO INITIATING CONSTRUCTION.
- VOLUME OF CUT IS 70 C.Y. THE VOLUME OF FILL IS 70 C.Y.
- SPLASH BLOCKS SHALL BE PROVIDED AT ALL DOWN SLOPES. ALL SPLASH BLOCKS SHALL BE OULETTED TO FLAT AREAS.
- THE PROPOSED WORK IS NOT LOCATED WITHIN THE FLOOD PLAIN.
- THE CRITICAL AREA CLASSIFICATION IS LDA
- THE ZONING IS R-2
- THE SITE'S PHYSICAL ADDRESS IS: 601 DOVER ROAD
- THE PLAT NUMBER IS 24/24 PASADENA, MD.
- THE DEED REFERENCE IS R 2557/187

APPROVALS

Anne Arundel Soil Conservation District
Sediment and Erosion Control Approval

District Official _____ Date _____

AAASCD # _____ SMALL POND (S) # _____

Reviewed for technical adequacy by
USDA, Natural Resource Conservation Service

VARIANCES SUMMARY

BACKGROUND

- EXISTING ZONING R-2, CRITICAL AREA LDA, SITE IS ADJACENT TO BUFFER MODIFICATION AREA, SITE IS NOT IN BOG WETLAND, 100' 300' BUFFER OR BOG CONTRIBUTING DRAINAGE AREA.
- LOTS 189 (8,000 SQ. FT.) AND 1901 (15,451 SQ. FT.) TO BE COMBINED TO CREATE SINGLE LOT.
- PROPOSED HOUSE FOOTPRINT = 950 SQ. FT. TOTAL PROPOSED LIVING AREA = 1,431 SQ. FT. (PLUS 469 SQ. FT. GARAGE).
- MAXIMUM IMPERVIOUS ALLOWED IS 5,445 SQ. FT. (OR 2,500 SQ. FT. BASED ON AREA OF LOT 189 ONLY).
- 1,771 SQ. FT. IMPERVIOUSNESS IS PROPOSED.
- 3,710 IS PROPOSED WITH ONSITE MITIGATION @ 2:1 TO BE PROVIDED IN ANTICIPATION OF VARIANCE CONDITION.

VARIANCES REQUESTED:

- REAR YARD (SECT 18-4-601) 25' REQUIRED, 4' PROPOSED, 21' VARIANCE REQUESTED
- VARIANCE TO DISTURB 1,840 SQ. FT. OF STEEP SLOPES IN THE CRITICAL AREA (SECT 17-8-201)
- VARIANCE TO DISTURB 100' BUFFER AND EXPANDED BUFFER IN THE CRITICAL AREA (SECT 17-8-304)

JUSTIFICATION

- PLACEMENT OF HOUSE IS DETERMINED BY SEPTIC SYSTEM.
- ADJACENT PROPERTY IS COMMUNITY OPEN SPACE WITH LITTLE POSSIBILITY OF BEING UTILIZED FOR FUTURE HOUSE OR ANY DEVELOPMENT.
- SLOPES ARE BETWEEN 15% AND 25%.
- 2:1 MITIGATION PROVIDED ONSITE.
- BUFFER IS MAXIMIZED, (85' PROVIDED)
- TOTAL 1,488 SQ. FT. DISTURBANCE OF 100' BUFFER
- EXPANDED BUFFER COVERS ENTIRE SITE (SEE SHEET 2 OF 2)

REVISIONS

NO.	DATE	DESCRIPTION

GAMMA ENGINEERING
1203 WEST STREET SUITE A
ANNAPOLIS, MD 21401
(410) 626-1070

RECEIVED
FEB 9 2006
ANNE ARUNDEL COUNTY COMMISSION

DEVELOPER:
FINE HOMES CORPORATION
322 PINEY POINT ROAD
PASADENA, MD 21122

DATE: 1/4/06

SHEET 1 OF 2

