

7/27

MSA-S-1829-5461

Comments  
7/28/66 KS  
Comments  
1/17/67 KS

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/](http://www.dnr.state.md.us/criticalarea/)

July 28, 2006

Ms. Ramona Plociennik  
Anne Arundel County  
Office of Planning and Code Enforcement  
2664 Riva Road  
Annapolis, Maryland 21401

Re: 2006-0172V & 2006-0214V; 596 Old County Road, Round Bay on the Severn  
TM 32, Block 14, Parcel 184, Lots 410 R & 415R  
Converse Builders & Developers

Dear Ms. Plociennik:

Thank you for providing information on the above referenced variances. Variance 2006-172 is to allow the unmerger of lots with less lot area than required on an improved lot with a principal structure. Variance 2006-0214 is to allow greater density than allowed in an R2 district for resubdivision of lots. The applicant is proposing to remove an existing home that lies across both lots, resubdivide the properties and construct one new home on each lot (410R & 415R). The lots are designated a Limited Development Area (LDA) and are currently developed with a single family dwelling which will be removed.

Given the circumstances of this case we do not oppose these variances. However, the Critical Area report provided with the application incorrectly states the amount of allowable impervious surfaces. Once the lots are resubdivided, Lot 415R at 25,982 square feet, will be limited to 5,445 square feet of impervious surface. Lot 410R, at 15,691 square feet, will be limited to 31.25% impervious surface. The proposed impervious surface for Lot 415R is 6,640 square feet which will require a separate variance. Mitigation of 1:1 should be required for new disturbance.

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,

*Kate Schmidt*

Kate Schmidt  
Natural Resource Planner  
cc: AA455-06

TTY for the Deaf  
Annapolis: (410) 974-2609 D.C. Metro: (301) 586-0450



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January 17, 2007

Ms. Ramona Plociennik  
Anne Arundel County  
Office of Planning and Code Enforcement  
2664 Riva Road  
Annapolis, Maryland 21401

Re: BA 64-06V  
TM 32, Block 14, Parcel 184, Lots 410 R & 415R  
Converse Builders & Developers

Dear Ms. Plociennik:

This office has received notice of the Appeal Hearing for the above case on January 31, 2007. The applicant applied for two variances; variance 2006-172 is to allow the unmerger of lots with less lot area than required on an improved lot with a principal structure, variance 2006-0214 is to allow greater density than allowed in an R2 district for resubdivision of lots. The applicant was granted the variance to the net density requirements.

This office previously submitted comments on July 28, 2006 regarding these requests (see attached letter). We do not have additional comments at this time.

Sincerely,

Kate Schmidt  
Natural Resource Planner

Enclosure (1)

cc: AA455-06

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBERS 2006-0172-V AND 2006-0214-V

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IN RE: CONVERSE BUILDERS AND DEVELOPERS, INC., AND  
JOSEPH AND CARRIE GRUVER

THIRD ASSESSMENT DISTRICT

DATE HEARD: AUGUST 22, 2006

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ORDERED BY: STEPHEN M. LeGENDRE, ADMINISTRATIVE HEARING OFFICER

PLANNER: SUZANNE SCHAPPERT

RECEIVED

SEP 21 2006

CRITICAL AREA COMMISSION  
Chesapeake & Atlantic Coastal Bays

DATE FILED: SEPTEMBER 18, 2006

## **PLEADINGS**

Theses cases are presented in the alternative. Converse Builders and Developers, Inc., and Joseph and Carrie Gruver, the applicants, seek a variance (2006-0172-V) to unmerge two lots serving a principal use with one of the lots having less area and width than required. In the alternative, the applicants seek a variance (2006-0214-V) for greater density than allowed and a lot with less lot area and width than required in order to resubdivide the lots. The properties are located along the east side of Askewton Road, north of Edgewater Lane, Severna Park.

## **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 applicants submitted the affidavit of Kevin Best, Esq., indicating that the properties were posted on August 7 and 8, 2006, respectively. I find and conclude that the public notice requirements are satisfied.

## FINDINGS AND CONCLUSIONS

Converse Builders and Developers, Inc., owns property (14,613 square feet) with a street address of 596 Old County Road, also known as Lot 410R in the subdivision of Round Bay on the Severn. The Gruvers own property (26,559 square feet) with a street address of 105 Askewton Road, also know as Lot 415R of the same subdivision. The properties are zoned R-2 residential and are located in the Chesapeake Bay Critical Area with a designation as Limited Development Area (LDA). The applicants acquired their interests in separate deeds from the same grantor (Francis S. Gruver<sup>1</sup>) dated December 9, 2004. At the time of the transfers, an existing residence straddled the shared boundary (side lot line) between the two properties. More particularly, the dwelling is predominately located on Lot 415R but a narrow strip (1.4 feet) of the attached deck is located on Lot 410R. The objective of these applications is to raze the existing dwelling, followed by the construction of individual homes on each lot. There are two other operative facts: (1) Lot 410R is 60 feet wide; and (2) the rear yards of both lots contain steep slopes with a total area of 9,094 square feet.

Anne Arundel County Code, Article 18, Section 18-4-203(b) merged contiguous lots in common ownership separated by a boundary line crossed by a principal use on or after September 25, 2003. Under Section 18-4-203(d), lots merged by operation of law may be unmerged if:

- (1) the lots are no longer used in service of a principal use;

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<sup>1</sup> Joseph Gruver is the grandson of Francis Gruver.

- (2) the lots comply with the minimum area and dimensional requirements of the zoning district in which the lots are located in effect at the time of the unmerger;
- (3) all or part of any lots in the Critical Area were part of a subdivision approved on or before April 22, 1988; and
- (4) the owner executes and records in the land records of the County at the owner's expense an instrument unmerging the lots in the form required by the Office of Planning and Zoning.

Section 18-4-601 establishes bulk regulations applicable in an R-2 district, including minimum lot size with public sewer of 15,000 square feet, minimum width of 80 feet, and maximum net density of 2.5 dwelling units per acre. And finally, Article 17, Section 17-3-401 excludes steep slopes in determining the minimum required lot size. Accordingly, for Case No. 2006-00172-V, the applicants request unmerger despite continuing service of a principal use and area (387 square feet) and width (20 feet) variances for Lot 410R. Alternatively, for Case No. 2006-0214-V, the applicants request a net density variance (1,385 square feet per lot<sup>2</sup>); and area (387 square feet) and width (20 feet) variances for Lot 410R.

Suzanne Schappert, a planner with the Office of Planning and Zoning, testified that Lots 410R and 415R are part of an Administrative Plat that

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<sup>2</sup> The net density variance is calculated by subtracting the average lot area excluding steep slopes from the maximum net density. The calculation follows. Maximum density:  $(43,560 \text{ square feet (one acre)}) / 2.5 = 17,424 \text{ square feet}$ . Average lot area excluding steep slopes:  $(32,079 \text{ square feet} / 2.5) = 16,039 \text{ square feet}$ . And finally, net density variance:  $(17,424 \text{ square feet}) - (16,039 \text{ square feet}) = 1,385 \text{ square feet}$ .

reconfigured lot lines between Lots 350, 351, 409 through 412 and part of 415 in 1998. In brief, Francis Gruver resubdivided 1.699 acres into four lots.<sup>3</sup>

The Administrative Plat depicted the dwelling sought to be razed by these applications wholly within the boundaries of Lot 415R. General Note 3 on the Administrative Plat recites: "Removal of the existing wood deck on Lot 415R will be required prior to the issuance of any grading and/or building permits for Lot 410R based on inadequate setbacks." A survey conducted in 2005 showed that the deck addition extends across the common lot line between Lots 410R and 415R. Following discussion with the Office of Planning and Zoning, the applicants filed the present requests.

Ms. Schappert indicated that the County issued grading permits for the development of two lots following review for compliance with code requirements for sediment controls, stormwater management and reforestation. She summarized the agency comments. The Chesapeake Bay Critical Area Commission did not oppose the variances, subject to revisions to the impervious surfaces calculations.<sup>4</sup> The Commission also requested mitigation on an equal basis for areas of new disturbance. By way of conclusion, Ms. Schappert opposed the unmerger variance but supported the net density variance. } ←

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<sup>3</sup> The other lots resulting from the resubdivision are Lots 350R, which is improved with an existing dwelling and Lot 409R, which is vacant. (Francis Gruver conveyed Lot 409R to Converse Builders and Developers, Inc. in the same deed as Lot 410R).

<sup>4</sup> The Commission's letter dated July 28, 2006 states in pertinent part that the impervious coverage allowance is 5,445 square feet for Lot 415R and 31.25 percent for Lot 410R.



On cross-examination by counsel to the applicants, Ms. Schappert agreed that development pursuant to the net density variance, which also entails compliance with subdivision regulations, is more complicated than development under the unmerger variance. She also indicated that the lot reduction under the 1998 Administrative Plat is consistent with the goals of merger; and the facts and circumstances are so peculiar that approval of the unmerger variance would have little value as a precedent.

Mr. Gruver testified that his grandmother acquired the property the subject of the Administrative Plat in two transactions. She resided in the dwelling to be razed for 50 years, until the summer of 2003. He and his wife seek to redevelop Lot 415R in accordance with the zoning and Critical Area requirements. They have encountered 15-18 months of frustration and delay.

Michael Werner, the applicants' engineering consultant, testified that the County issued a grading permit for these two lots and Lot 409R in July of 2004. He theorized that the dwelling is shown incorrectly on the Administrative Plat either due to a drafting error or the margin of error in preparing the Plat. But for the mistake, permits would be allowed for Lots 415R and 410R absent variances. Instead, the circumstances of the applicants' co-ownership of Lots 415R and 410R bar each applicant from building. Mr. Werner supplied several site and neighborhood photographs. These lots are in the middle of other improved lots. The average lot size for the surrounding properties comprises 14,702 square feet, and includes some lots only 50 feet wide. The unmerger variance implicates two

code sections while the net density variance implicates three code sections. Therefore, the unmerger variance is considered to represent a lesser degree of relief as compared to the net density variance. Finally, the applicants have already paid the mitigation fees and recorded a conservation easement. However, development under the net density variance might entail additional mitigation.

Charles Converse confirmed the sequence of events. He was "blind-sided" when the County determined that the lots were merged. Among other impacts, he was unable to accept a contract for the sale of Lot 410R. ←

Eric See, an environmental consultant to the applicants, submitted a Critical Area Report and testified that the properties were reviewed for compliance with and met the applicable LDA criteria in 2004, including the payment of reforestation fees. Forest clearing is the same for development under either variance. However, the net density variance, which entails compliance with subdivision requirements, may restrict impervious coverage to 15 percent. This would be a particular hardship given the panhandle access. ←

Several area residents testified in opposition to the applications.

*Wade Thomas*, a member of the Round Bay Community Association<sup>5</sup> Executive Board, summarized a written statement. In brief, the unmerger variance increases density and school crowding and is inconsistent with the character of Round Bay. On cross-examination, Mr. Wade indicated that the lot size in the community is a hodge-podge. *John Vernon* disputed the hardship and suggested the availability of

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<sup>5</sup> The Association owns an unimproved right-of-way next to the lots.

other remedies. On cross-examination, Mr. Vernon agreed that his own lot comprises 12,700 square feet; nonetheless, the applicants' proposal to increase density is inconsistent with the character of the neighborhood. *Gary Winch* opposed the applications due to the adverse impact to the community and Critical Area assets. In sum, greater density detracts from natural features and increases the demand on public facilities. *Olivia McCleary* expressed similar concerns. And finally, *Al, Johnston*, the duly authorized representative of the Greater Severna Park Council, opposed the application for unmerger but expressed no view on the application for greater net density.

I visited the site and the neighborhood. The deteriorated dwelling is accessed across an overgrown gravel driveway from Old County Road. The properties are level and predominately lawn areas with wooded perimeters. The properties are surrounded on all sides by construction typical to the neighborhood, consisting of moderately sized dwellings in wooded settings.

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 (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.

As a preliminary matter, although the mistake in the Administrative Plat is a matter of first impression for this office, there are nonetheless other cases of merger by operation of law from serving a principal use.

In Case No. 2004-0022-V (April 19, 2004), after inquiry to the County in June, 2003, related couples acquired R-2 property in the LDA with a dilapidated dwelling straddling the lot lines with the expectation of subdividing into two building lots, one for each couple.<sup>6</sup> However, the lots merged because the principal use remained as of September 25, 2003. Among other findings, the community included other narrow lots and a neighboring property subdivided in the same manner prior to September 25, 2003. The decision conditionally approved a variance to permit lots with less width than required. One of the conditions limited impervious coverage to 15 percent for each lot. And finally, the decision specifically noted that the “case should not be construed as precedent for other situations that may arise involving merged lots.” Opinion at 5.

More recently, in Case Number 2005-0323-V (October 19, 2005), a Round Bay property with a nonconforming fire-damaged structure (Riverview Apartments) encompassing two lots received variances to lot area (1,069 square feet) and width (six feet) for one of the lots in order to subdivide the property to

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<sup>6</sup> The project also entailed the removal of impervious surfaces (pool) from the 100-foot Chesapeake Bay Critical Area buffer, followed by afforestation of the buffer.

construct two dwellings. Among other findings, the reduction in lot area was consistent with other development in the neighborhood.

Applying the law to the facts and circumstances, I find and conclude that the applicants are entitled to relief consisting of the net density variance.

Considering first the subsection (a) criteria, the applicants claim exceptional circumstances, consisting of the determination after they took title that the deck addition to the existing dwelling that is predominantly on Lot 415R encroaches 1.4 feet into Lot 410R, such that a variance is needed in the avoidance of an unnecessary hardship and to enable the applicants to develop the lots. While reasonable minds may differ, I am satisfied that the hardship is not self-created. In the first place, Note 3 on the Administrative Plat is clear and unambiguous that the removal of the deck is contemplated in the development of Lot 410R. And, prior to the transfer of the properties by Francis Gruber to the applicants, a grading permit issued for Lots 409R, 410R and 415 R. Third, Mr. Werner's theories of inaccurate draftsmanship or inattention to the margin of error in preparing the Plat are reasonable explanations for the error in the Administrative Plat.

Considering the subsection (c) standards, I find and conclude that the net density variance represents the minimum relief. Although the net density variance implicates the section of the code that excludes steep slopes from minimum lot size, the end result under the two applications is the same: the razing of the existing home, following by the development of two lots, where Lot 410R is substandard as to area and width. And, because the net density variance triggers

the subdivision requirements, the project is held to more restrictive standards, including reduced impervious coverage and additional mitigation. These standards will ensure that the granting of relief will not alter the essential character of the neighborhood, will not impair the appropriate use or development of the adjacent property, and will not constitute a detriment to the public welfare. The approval of the net density variance is subject to the conditions in the Order.

**ORDER**

PURSUANT to the application of Converse Builders and Developers, Inc., and Joseph and Carrie Gruver, petitioning for a variance to unmerge two lots serving a principal use with one lot having less area and width than required and in the alternative for a variance to net density and with less area and width than required for resubdivision of lots; and

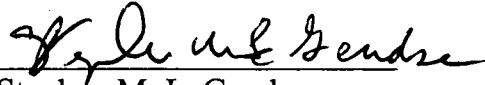
PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is this 18<sup>th</sup> day of September, 2006,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicants are **granted** a net density variance in the amount of 1,385 square feet per lot and area (387 square feet) and width (20 feet) variances for Lot 410R. The approval is subject to the following conditions:

1. The applicants shall submit an application for resubdivision satisfactory to the Office of Planning and Zoning.

2. No other variances are allowed in the development of Lot 410R and 415R.
3. The applicants shall provide mitigation as determined by the Permit Application Center.

FURTHER ORDERED, that the applicant's request for a variance for unmerger is **denied**.

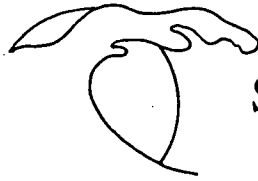
  
Stephen M. LeGendre  
Administrative Hearing Officer

**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.

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.



**SEE ENVIRONMENTAL  
SERVICES, INC.**

**CHESAPEAKE BAY CRITICAL AREA REPORT AND HABITAT ASSESSMENT**

Variance for Lots 410R, and 415R, Round Bay on the Severn Subdivision, Severna Park, Anne Arundel County

Applicant: Milt Horn, 325 Spinnaker Road, Severna Park, MD 21146

Tax Map 32, Grid 14, Parcel 27, Lot 184

Zoning: R2 Critical Area Designation: LDA

March, 2006

**Purpose of Requested Variance:**

The applicant owns three adjoining lots in the Round Bay Subdivision in Severna Park, all located within the Chesapeake Bay Critical Area. These lots were assembled by combining seven very small lots from the original subdivision to meet the "Antiquated Lots" requirements. The site is located off Old County Road and Askewton Road in the Round Bay Subdivision and is non-waterfront, with a Limited Development land use designation (see enclosed Critical Area Map).

An existing older home is located on the lots and is proposed to be removed and three new houses built. The Grading Permit was issued in 2004 and work began under the approved grading permit, including installation of sediment controls and tree clearing. However, because a survey found that a small portion of the house extends just over the property line from Lot 415R onto Lot 410R, County staff determined that the two lots were therefore "merged", and that a new subdivision would be required to move the common lot line and issued a "stop work" order.

The County staff then determined that under the new Zoning Ordinance adopted in 2005, variances are required for Lots 410R and 415R to 1) undo the lot merger and 2) to have less net building density (with steep slopes removed from the density). The re-subdivision will be processed if and when the variances are granted. Lot 409R is a separate, legal lot and because it is unaffected by subdivision requirements, is not part of this variance application.

**Critical Area Narrative/Site**

A site visit was conducted on March 9, 2006, by Eric E. See of See Environmental Services, Inc. The site composed of the two lots is 0.945 acre in size and is described as it existed that day, but reference is made to the previously-approved Anarex, Inc. Grading Plan, a reduced-scale version

The Woodbridge Center  
2444 Solomons Island Road, Suite 217  
Annapolis, Maryland 21401  
Tel: (410) 266-3828 Fax: (410) 266-3866



of which is enclosed at the end of this report. In addition, a Critical Area report by Cattail Associates was prepared in 1997. Except for the clearing done within the authorized limits of disturbance, the site is unchanged from that time.

The remaining forest on-site includes a few trees (mostly red oaks) along the property lines and at the top of steep slopes and mature tulip poplar woodlands on the steep slopes to the south. The trees and ground are mostly covered with English ivy. According to the Anarex, Inc. Grading Plan, approximately 4,800 square feet of the square feet of the pre-existing woodlands have been cleared within the LOD, with no further clearing required except for a few trees around the existing cottage. All forest on the steep slopes have already been placed into a conservation easement.

The pre-existing impervious coverage on the site was approximately 3,200 square feet, or 7.8% of the total site area. The proposed impervious coverage for three houses and their driveways would be 9,278 square feet, or 22.5% of the site. This would be spread onto both buildings lots. Details of the proposed impervious coverage on a lot-by-lot basis and tree clearing are provided on the enclosed table copied from the engineer's Grading Plan.

Soils mapped in the 1973 County Soil Survey are of the Collington series, which does not have a high "K-factor of soil erodibility, and the two houses are proposed on the level upland plateau, with no disturbances to the steep slopes in the rear. Sediment controls are already in place, and both lots would have a stormwater management infiltration trench behind the houses. Public water and sewer are available in the streets.

#### Conclusions:

The proposed development of the two lots was reviewed under and complied with the then existing County Code when the County issued the Grading Permit for the two lots. With the sediment controls as already approved by the County inspector, with the approved stormwater management, and reforestation, the development should not cause significant adverse effects to water quality and fish and wildlife habitat.

#### References

Anarex, Inc. 1994 Grading and Sediment and Erosion Control Plans.

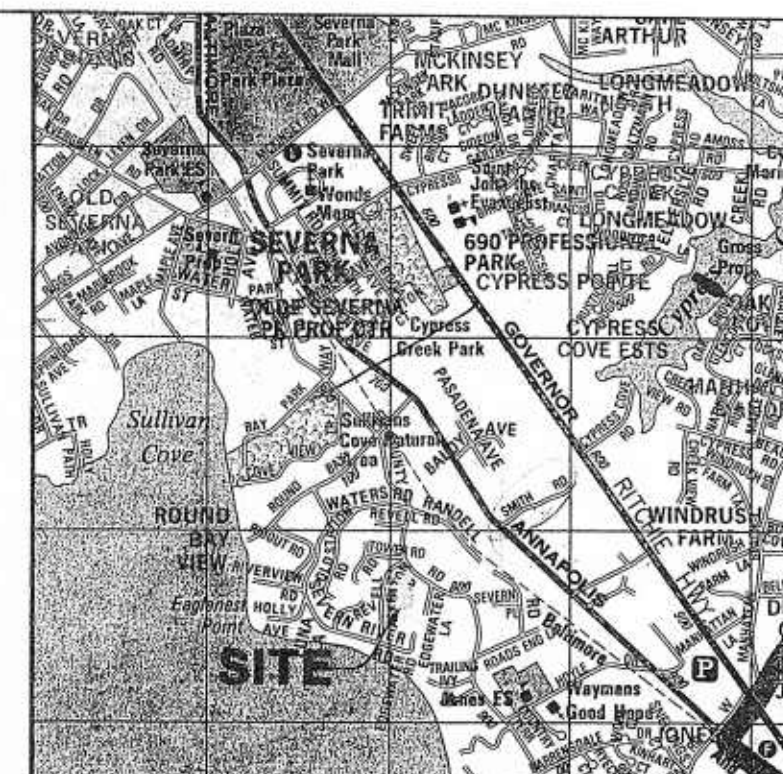
Anne Arundel County, Critical Area Map 15

Cattail Consulting; 1997 Critical Area Report

U. S. Soil Conservation Service, 1973 Soil Survey for Anne Arundel County, Maryland.

SEE ENVIRONMENTAL SERVICES, INC.

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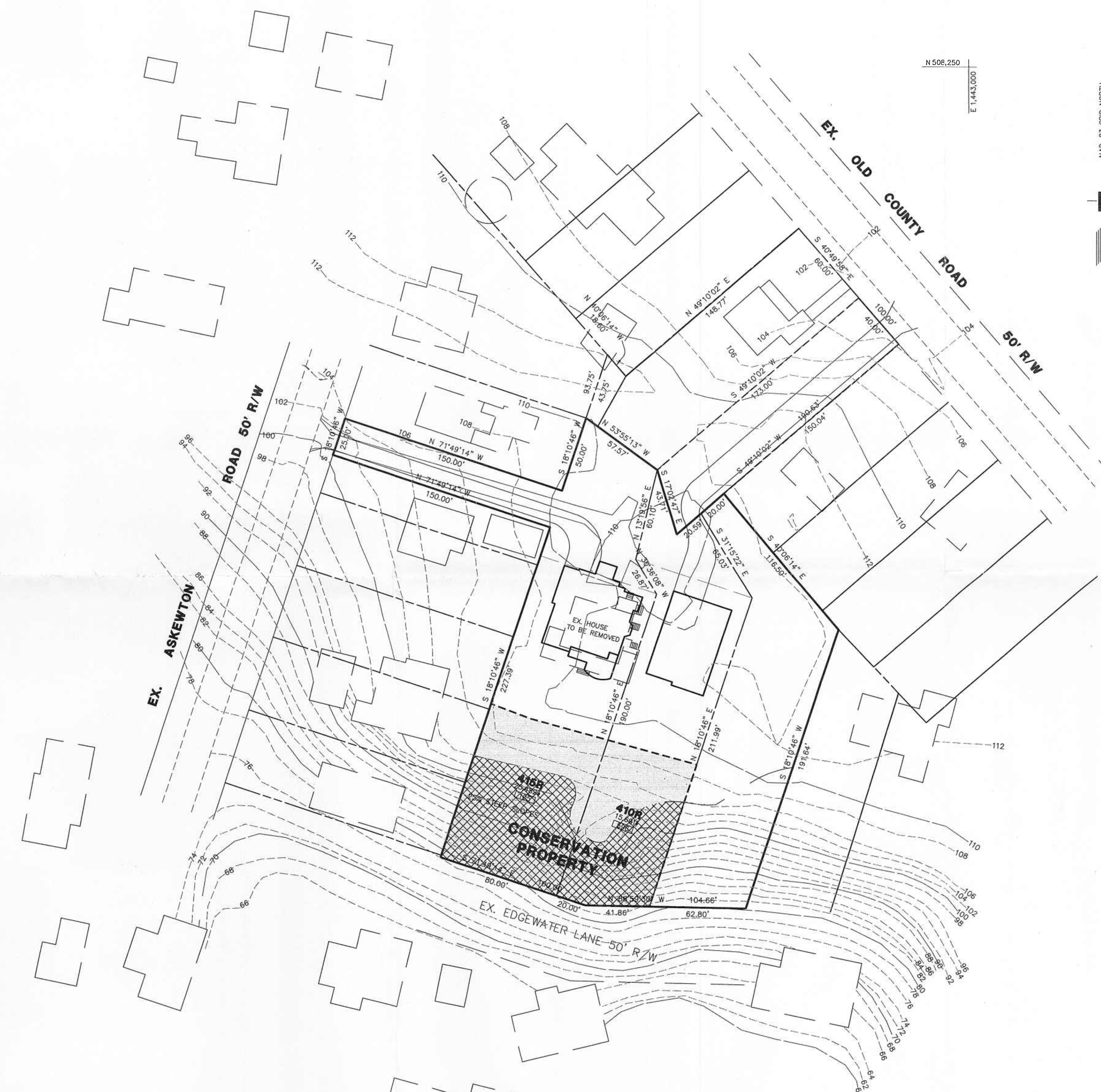


**VICINITY MAP**  
 SCALE: 1" = 2,000'  
 Copyright ADC The Map People  
 Permitted Use Number 20403131



E 1,442,250  
 N 508,250

N 508,250  
 E 1,443,000



**AREA TABULATION**

GROSS AREA	41,173 SF (0.945 Ac)
STEEP SLOPE AREA	9,094 SF (0.209 Ac)
NET AREA	32,079 SF (0.736 Ac)

**NATURE OF VARIANCE**

A VARIANCE TO NET DENSITY REQUIREMENT FOR THE R2 DISTRICT (ARTICLE 18-4-601) TO ALLOW RESUBDIVISION OF THE LOTS 410R AND 415R UNDER CODE ARTICLE 17-3-401. THE CODE REQUIRES THAT THE MAXIMUM NET DENSITY FOR LOTS IN R-2 DISTRICT, THAT ARE SERVED BY PUBLIC SEWER, ARE 2.5 DWELLING UNITS PER ACRE OR 17,424 SQ. FT. THE VARIANCE PLAN AREA TABULATION FOR THE 2 LOTS IS 41,173 SQ. FT. WHICH EQUATES TO AN AVERAGE GROSS DENSITY OF 20,586 SQ. FT. HOWEVER, THE TOPOGRAPHIC (STEEP SLOPES) CONDITION IN THE REAR OF THE LOTS RESULTS IN A NET DENSITY OF 32,079 SQ. FT. FOR AN AVERAGE OF 16,039 SQ. FT. THEN FOR A VARIANCE OF 1385 SQ.FT. PER LOT IS REQUESTED.

**PLAN**  
 SCALE: 1"=40'

**SHEET 1 of 1**  
**NET DENSITY VARIANCE PLAN**  
**ROUND BAY ON**  
**THE SEVERN**  
 FOR LOTS 410R & 415R  
 RECORDED IN PLAT BOOK 209 PAGE 33 PLAT#11009  
 THIRD DISTRICT ANNE ARUNDEL COUNTY, MARYLAND 21146  
 SCALE: AS SHOWN APRIL, 2006  
 TAX MAP 32 BLOCK 14 PARCEL 184  
 LOT 415R T.A. # 3-697-12531400 LOT 410R T.A. # 3-697-90101621  
 R-2 ZONING

**ANAREX, INC**  
 CIVIL ENGINEERING SERVICES  
 LAND SURVEYING

303 Naites Road - Suite 114  
 Millersville, MD 21108-2512  
 Phone: 410-987-6901

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