

AA 602-06 Bullen, Charles
VAR 0307

MSA_S_1829-5496

9/29/06 Comments
882

JAC 3/16/07
JAC 4/13/07



Martin O'Malley
Governor
Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair
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/

August 3, 2007

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

Re: Bullen – 2006-0307-V

By FAX and mail

Dear Ms. Cotter:

I have received the revised site plan for the above-referenced variance request. Previous letters (March 16, 2007, April 13, 2007, and September 29, 2006) recommended that stormwater management quality and quantity be addressed for this site. This revised site plan details proposed stormwater management techniques for the proposed dwelling unit. As the engineer has detailed in his letter dated June 13, 2007, the proposed driveway has been shifted from the front of the house to the side. A roof drain piping system has also been proposed to convey the runoff down the slope to a bioretention facility. While piping the stormwater over a long distance may not be the preferred method, in this case, it appears to address this office's previous concerns regarding how stormwater management will be handled on site.

Provided the Board determines that this request meets all variance standards and this lot is properly grandfathered, this office does not oppose this variance request. We recommend that the applicant provide 3:1 mitigation for the disturbance to steep slopes in the form of native species.

Ms. Patricia Cotter
8/3/2007
Page 2 of 2

Thank you for forwarding these revised materials. Please include this letter as part of the proceedings on August 22, 2007 and notify the Commission of the decision made in this case. I can be reached at 410-260-3476 should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Julie", followed by a long, horizontal, wavy flourish.

Julie Roberts
Natural Resources Planner

cc: Board of Appeals

AA 602-06



STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS

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April 13, 2007

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

Re: Bullen – 2006-0307-V

By ~~FAX~~ and mail

Dear Ms. Cotter:

Commission staff were asked to visit the Bullen property and reassess the plan to build a dwelling that will impact steep slopes. We have viewed the property, but have not had the opportunity to walk the site. We have, however, looked at the information submitted last year and as both my letter of March 16, 2007 and Jennifer Lester's letter of September 29, 2006 indicate, stormwater management techniques are necessary for this lot. No information regarding management has been provided except for the plat which shows the proposed stormwater facility to be at the south end of the property. It would seem from the topography of the lot that stormwater would be better managed on both the Kendall Road side of the property near the front of the house and the rear. Any stormwater that leaves the site to the rear of the dwelling can sheet flow through the forested area.

If the Board grants this request, we recommend a condition be added that stormwater management quality and quantity be addressed on both the Kendall Road side of the lot and the other side of the lot. Please include this letter as part of the proceedings on April 17, 2007 and notify the Commission of the decision made in this case. Thank you.

Sincerely,

Julie Roberts
Natural Resources Planner

cc: Board of Appeals

AA 602-06



**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/

March 16, 2007

Mr. William Knight
Board of Appeals
PO Box 2700
44 Calvert St., Rm. 160
Annapolis, MD 21404

Re: Charles Bullen Variance – 2006-0307-07

Dear Mr. Knight,

This office received notice that an appeal is being made on the above referenced variance. This variance allows the applicant to build a dwelling with disturbance to steep slopes. In our letter dated September 29, 2006 from planner Jennifer Lester, we did not oppose this variance due the unique shape of the lot and its grandfathered status. We recommended stormwater management techniques and mitigation plantings for disturbance to steep slopes. We maintain this position for the appeals process.

We have based this recommendation on the site plan submitted, which is dated 8/21/06. Our comments do not necessarily apply to a revised plan. We request notification if such revisions are made.

If you have any questions, please feel free to call me at 410-260-3476.

Sincerely,

A handwritten signature in black ink, appearing to read "Julie Roberts", with a long horizontal flourish extending to the right.

Julie Roberts
Natural Resources Planner

cc: AA 602-06

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**

September 29, 2006

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

Ms. Ramona Plociennik
Anne Arundel County
Office of Planning & Zoning
2664 Riva Road, MS 6301
Annapolis, Maryland 21401

**RE: AA 602-06 Charles Bullen
Local Case # 2006-0307-V Kendall Road**

Dear Ms. Plociennik:

Thank you for providing information on the above referenced variance. The applicant is requesting a variance to construct a dwelling with less setbacks than required and to disturb steep slopes. The parcel is 40,942 square feet, located in the LDA, and is currently vacant. The applicant is proposing to construct a single-family house, driveway and garage.

Provided that this lot is properly grandfathered we do not oppose this variance. It appears that this lot is uniquely shaped and that development of the parcel would not be possible without a variance. However, a variance should be the minimum necessary to provide relief. The application does not include a plan to manage stormwater on the site. The applicant should provide information regarding how stormwater will be managed on the site. This office recommends that all stormwater management devices be located within the limits of disturbance and that stormwater discharges be directed away from steep slopes on the site. If approved we recommend mitigation plantings for disturbance to steep slopes. In addition, all areas disturbed during construction should be replanted following completion of the project.

Thank you for the opportunity to provide comments on this variance request. If you have any questions please contact me at 410-260-3481. 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,

A handwritten signature in black ink, appearing to read "JBL", written over a horizontal line.

Jennifer B. Lester
Natural Resources Planner

AA 602-06

RE: An Appeal From A Decision Of The
Administrative Hearing Officer

BEFORE THE
COUNTY BOARD OF APPEALS
OF ANNE ARUNDEL COUNTY

CHARLES BULLEN / BELLE GROVE CORP.

CASE NO.: BA 87-06V
(2006-0307-V)

Hearing Date: August 22, 2007 &
September 11, 2007

RECEIVED

Petitioners

NOV 5 2007

CRITICAL AREA COMMISSION
Chesapeake & Atlantic Coastal Bays

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 a variance to permit a dwelling with disturbance to steep slopes on property located 67' along the southeast side of Kendall Road, 0' west of Parker Road, Crownsville.

Summary of Evidence

Mr. Peter E. Loyka, the Petitioner's professional engineering consultant, testified that the subject property was irregular in shape with steep slopes. Although some of the slopes had an incline of 15%, the majority were slopes greater than 25%. The house has been cited at the top of the lot. The soils are very sandy and non-hydric. There is no expanded buffer. The property is located in the Critical Area, (CA), almost entirely wooded, and is non-waterfront. The septic system must be located at the flat portion of the site on the southern end. All attempts were made to minimize the disturbance to the slopes including locating the stormwater management (SWM) on the east side of the property so that water would flow to the front of the property and not to the public road. The footprint of the proposed house is 1,455 square feet, which includes a 2-car garage. This leaves about 1,000 square feet of living area on the first floor. The dwelling

is a modest sized house with a deck that includes a stairway located on the side to prevent further disturbance of the steep slopes. A small portion of this deck is within the greater than 15% slopes, but would be cantilevered beyond the footers to minimize disturbance. The Petitioner has altered the original variance plan. The driveway has been shifted to decrease water flows to Kendall Road and the Protestant's property. The drainage pipes will be six inches in diameter and their depth will be minimized. The Petitioner has also added a check dam at the southwest corner of the site adjacent to Kendall Road to slow any drainage leaving the site. The percentage of clearing is 29%, which is less than the permitted 30%.

On questioning, Mr. Loyka stated that the site of the dwelling was chosen because of its access to the public road, (Kendall Road). He also stated that all of the gutters and drains around the house will be connected to the six-inch drainage pipes. The septic is discharged into a septic tank. If the septic drainfields were located on the northwest side of the property, then the effluent would need to be pumped up thirty feet in elevation. Mr. Loyka also stated that the SWM is within the Limit of Disturbance line (LOD).

Mr. Charles Bullen, the Vice President of Belle Grove Corp., testified that he has been with the company for twenty years and lived in the Palisades community for ten years where he has built about six houses. He stated that the house was being built for his brother and is similar to many of the other houses in the community. On questioning, Mr. Bullen testified that Belle Grove Corp. is a family-owned business that began in the 1940s-50s. His family built many of the houses in the community, of which, only one required a variance.

Mr. Eric E. See, an expert in environmental planning in the CA, testified that the property is accessed via Kendall Road and bordered by several other "paper" roads. There are steep slopes to the flat area on the southeast. The property is almost entirely wooded and is covered with English Ivy, which is a very invasive species. Mr. See testified that the clearing has been

kept under 30% of the forest, and the added impervious is well under the 15% allowed. SWM is being provided. He testified that the variance is the minimum disturbance necessary to provide relief. He doesn't believe that it will adversely impact water quality. However, he recommended that a forest management plan be provided to require removal of the English Ivy and invasive plants as part of the reforestation requirement. On questioning, Mr. See stated that he was not involved in the original design of the development plan. He observed that the community is a conglomeration of thirteen homes, about half of which, have steep slopes. Some are also wooded. Most of the lots were developed in violation of the CA standards. The lots are not flat, rectangular lots and do not have public water and sewer service.

Ms. Marion Beth Hosmer has lived in the community on 976 Lee Road for 25 years. A home, built in 2001 directly behind her lot, caused a lot of water drainage problems. She is concerned that the development of the subject property will cause more problems. On questioning, Ms. Hosmer stated that she does not know how close her property is to the subject property, her property is impacted by water from every direction.

Mr. Robert Murray Reid, a Protestant who has lived in the community on 507 Wilson Road for thirty years, testified that his property abuts the paper road called Parker, which is impacted by the water runoff. There have been about ten storms that have caused this road to become passable only by pick-up truck. Mr. Reid opined that Parker Road could not be improved for the purpose of accessing the subject property. In addition, Wilson Road becomes treacherous after storms. The water flows from the projected site of the new house, down the steep slopes to the south, and across Parker Road. The water runs across Parker Road and across his property in the northeast.

Mr. David Frampton, an adjoining property owner to the south, testified that his lot is located downhill from the subject property. The vast majority of his property is along Kendall

Road. He has several concerns with this variance request. First, he is concerned with the SWM issues in the area. He stated that SWM is a major issue on both Kendall Road and the lower part of his lot. There is no check dam on Kendall Road; and therefore, as water flows down the slopes, it picks up speed. One of the Petitioners' proposals was to relocate the driveway, but he believes that runoff will still occur in the steep slope area. He would like to see a swale installed to eliminate the runoff down the road and have it piped back into the SWM. He believes that the road should be inspected and modified to handle the runoff. Kendall Road is a private thoroughfare and is maintained by the neighbors in the area. There is no drainage control along Kendall Road or Lee Road. Mr. Frampton is also concerned with deforestation of the area. When the septic system is installed, timber will be cleared. He is concerned that this clearing will increase runoff.

Mr. Steven Rogers, a professional civil engineer, testified that he reviewed the site plan and has various concerns. Stormwater drains down the side of the road and causes erosion. He believes that the Petitioner should pay impact fees. He also observed that the Petitioner's drawing is not measured to scale. In addition, after reviewing the drawing and survey, he believes that sewage will float to the surface in certain areas. Mr. Rogers is also concerned with the percolation tests that were conducted. He believes that the Petitioner has only one "perc" that works. The other is a boring, which was not performed during the wet season. Mr. Rogers would like some form of mitigation in the development of the lot.

Ms. Pam Cotter, a planner with the Office of Planning and Zoning, (OPZ), testified that the lot is irregular in shape and there is no reasonable possibility to develop the property in strict conformance with the Code due to this and its steep slopes. It does not appear that a variance would alter the essential character of the neighborhood, nor impair the use and development of the property. The Critical Area Commission, (CAC), recommended 3:1 mitigation with native

plant species. The SWM has been approved by the County engineers. The Petitioners will be required to sign a private SWM agreement that will be recorded in the Land Records of Anne Arundel County. This will give the County the right to inspect the system. She recommended that the variance be granted.

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

This case concerns unimproved property identified as lots one through thirteen, block 209, in the subdivision of Palisades on the Severn. This non-waterfront property comprises 40,942 square feet and is zoned R-2 Residential within the Chesapeake Bay Critical Area (CA) and designated as a Resource Conservation Area (RCA) and Limited Development Area (LDA). The Petitioners request a variance to allow the construction of a single-family dwelling and associated stormwater management (SWM), septic systems and driveway with disturbance to steep slopes located on the subject property. These steep slopes comprise a majority of the property with the only moderately level areas to be occupied by the dwelling, driveway, septic, and SWM.

Section 17-8-201 of the Anne Arundel County Code, (Code), states that development in the LDA or RCA may not occur within 15% slopes unless it will facilitate slope stabilization or is necessary to access a public utility. *See Code § 17-8-201.* Therefore, a variance to disturb the slopes located on the Petitioners' property is required here.

Variations in the CA require the Petitioners to satisfy an extensive list of requirements set out in the Code. *See Code § 3-1-207.* The requirements established for variances within the CA are exceptionally difficult to overcome. An applicant for a variance to the Critical Area Program must meet each and every one of the conjunctive variance requirements of the Code. *See id.* For

the reasons that follow, we will grant the variance on the condition that the Petitioners provide 3:1 mitigation in the form of native species for disturbances of the steep slopes.

The Petitioners must first 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 . . . would result in an unwarranted hardship.” *Id.* § 3-1-207(b)(1). It is clear from the site plan that the subject property is irregularly shaped. It is also clear that the steep slopes of the property, most of which have inclines greater than 25%, constitute unique physical conditions, the prevalence of which, make it impossible to develop the lot in strict conformance to the Code. *See generally* Code § 3-1-207. In light of these physical conditions, the issue becomes whether this extreme difficulty constitutes an “unwarranted hardship” as defined by the Code. We find that it does.

Under Maryland law, an unwarranted hardship “means that, without a variance, an applicant would be denied reasonable and significant use of the entire parcel or lot for which the variance is requested.” Md. Natural Resources Code Ann. § 8-1808(d)(2). Here, there is a substantial shortage of flat area, upon which, the dwelling and its accompanying structures and facilities may be placed. In addition, the location of the dwelling is constrained by the location of the proposed well and septic system as well as the driveway and access road. The evidence suggests that the Petitioners have attempted to limit the disturbance to the slopes. However, if a variance is denied, the Petitioners would be deprived of the “reasonable and significant use of the entire parcel.” *Id.* Due to the abundance of steep slopes on their lot, the Petitioners have no viable location upon which to place a dwelling. Accordingly, we find that strict conformance with the Code in this case (since no dwelling could be built) would constitute an “unwarranted hardship” as defined under the Natural Resources Code. *Id.*

The Petitioners next must establish that “[a] literal interpretation of COMAR, 27.01, Criteria for Local Critical Area Program Development or the County’s critical area program and related ordinances will deprive the applicant of rights commonly enjoyed by other properties in similar areas as permitted in accordance with the provisions of the critical area program within the critical area of the County.” *Id.* § 3-1-207(b)(2)(i). The Code also requires the Petitioners to 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). There is nothing to indicate that granting this variance will bestow a special privilege upon the Petitioners. Instead, variances are granted specifically in situations, such as this, where there are extremely difficult circumstances that prevent applicants from developing their lots in strict conformance with the Code. *See id.* § 3-1-207(b). Therefore, denying the variance request here would deny the Petitioners a right that is commonly enjoyed by others in similar situations. *See id.* § 3-1-207(b)(2)(i). It is reasonable to be able to utilize a legal, residential parcel with a residence. Accordingly, the Petitioners satisfy these two requirements.

The Petitioners must next 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). This variance request is based on the irregular and unique physical conditions inherent in the Petitioners’ property. It does not arise from any condition related to adjacent property. Instead, it arises from the abundance of steep slopes on the Petitioners’ property and the resulting lack of area upon which to place a dwelling. Therefore, we find that the Petitioners have satisfied this requirement.

The next burden that the Petitioners 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.” *Id.* § 3-1-207(b)(5)(i). Mr. See testified that he does not believe that the development will adversely impact water quality. Indeed, his only concern was for the existing English ivy that permeates the Petitioners’ property. This ivy, he explained, is invasive and weakens trees as it grows. He suggested an agreement to enhance the environment that would provide for the removal of the ivy and the planting of native species as part of the 3:1 mitigation. However, the ivy problem described above is not the result of the development for which the Petitioners seek a variance. Accordingly, given Mr. See’s expert testimony, we find that granting this variance will not affect water quality or plant habitat. As a result, the Petitioners satisfy this requirement as well.

The subject property is not within the County’s bog protection area and thus, Code Section 3-1-207(b)(6) does not apply and need not be addressed.

Next, the Petitioners have the burden of proving that “the variance is the minimum variance necessary to afford relief.” Code § 3-1-207(c)(1). Mr. See testified that he believes this variance is the minimum necessary to afford relief. He points out that the clearing is kept under 30% of the forest and that the resulting impervious surface would be well under the 15% allowed. He also noted that SWM is being provided. The Petitioners have shifted the location of the proposed driveway to reduce the impervious area draining to Kendall Road. A check dam has also been added to suppress the speed of flowing stormwater. The building footprint has also been moved slightly to reduce its encroachment onto the steep slopes. The deck has been cantilevered beyond the footers to minimize its impact. The majority of the development occurs on the limited flat area existing on the lot. The disturbance to the steep slopes is minimal and is only a result of the deck addition and the extension of the septic line to the field located at the

rear of the property. Therefore, after review of the facts of this case, we find that the requested variance is indeed the "minimum variance necessary to afford relief." *See id.*

In addition, the Petitioners must show that the variance does not "alter the essential character of the neighborhood or district in which the lot is located." *Id.* § 3-1-207(c)(2)(i). As stated above, the construction of a single-family dwelling is a right commonly enjoyed by other properties similarly situated in the community and throughout the CA. In addition, Ms. Cotter testified that she does not believe that the development will alter the essential character of the community. Furthermore, Mr. Bullen testified that many similar dwellings have been constructed in the neighborhood. Therefore, we find that the Petitioner has satisfied this requirement also.

The Petitioners must next 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). Ms. Cotter testified that granting a variance here will not "substantially impair the appropriate use or development of adjacent property." *See id.* Ms. Hosmer, Mr. Frampton, Mr. Reid, and Mr. Rogers all testified that they were concerned with the stormwater flow from this site. However, the revised site plan (offered by the Petitioners) outlines their SWM plans. These include a roof drain system that flows into six-inch drainage pipes to a bio-retention area, and a check dam to slow water flow from the property along Kendall Road. The Development Division reviewed the site plan, steep slopes, and the requirement for SWM and offered no objection to the variance request. Furthermore, the SWM problems are not a cause of the Petitioners' development. Rather, the community itself has shared these problems for some time now. Preventing the Petitioners from developing their lot is not the solution to the community's concerns. Modern SWM will improve the problem. Therefore, we find that the Petitioners have satisfied their burden in regard to this requirement.

The Petitioners' next hurdle requires them to show 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). The Petitioners must also establish 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). Testimony offered by Mr. Loyka, Ms. Cotter and Mr. See, indicated that woodland removal falls below the 30% requirement set forth in the Code. The County recommended, however, that 3:1 mitigation for the disturbance to steep slopes be provided by the Petitioners in the form of native species. Indeed, Ms. Cotter indicated in her testimony that if replanting occurred on a 3:1 ratio, then it would, in effect, triple the net forest cover. Therefore, we find that, with 3:1 mitigation, the Petitioner will satisfy these two requirements.

Lastly, the Petitioners must show that "the granting of the variance will not be detrimental to the public welfare." *Id.* § 3-1-207(c)(2)(v). As stated above, many homes of similar type have been constructed in the community. The area is affected by various stormwater problems which have hampered road passage during heavy rains. However, the proposed construction that is the subject of this appeal is not the cause of these problems. Although the neighbors are concerned that stormwater flow may increase from the development of the Petitioners' lot, we find that the proposed SWM plans are sufficient to suppress these concerns. Accordingly, we find that the Petitioners' proposed construction will not constitute a detriment to the public welfare. *See id.*

The Petitioners' final burden is to establish that they have, through "competent and substantial evidence . . . 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 Petitioners have provided sufficient evidence to show that their revised site plan conforms to the "general purpose and intent" of the CA program. *See id.* Also, without a variance, no reasonable and significant use of the property could occur. We find that with a mandatory 3:1 mitigation imposed, the specific development activity will not adversely impact the CA. Furthermore, we find that the planned development remains consistent with the spirit of the CA program, and therefore, overcomes the above cited presumption.

To be granted a variance to the CA criteria, the Petitioners have the burden to satisfy each and every Code requirement. *See id.* §3-1-207. As discussed previously in this opinion, failure to meet even one of the conjunctive Code provisions requires this Board to deny the requested variance. Here, the Petitioners satisfied all of the applicable requirements of Section 3-1-207. Accordingly, we grant the requested variance.

ORDER

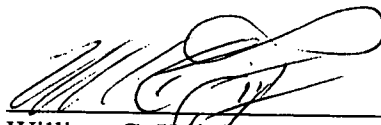
For the reasons set forth in the foregoing Memorandum of Opinion, it is this 1/17 day of NOV., 2007, by the County Board of Appeals of Anne Arundel County, ORDERED, that the variance to disturb slopes greater than 15% to permit a single-family dwelling in accordance with the revised site plan is hereby **GRANTED** with the condition that the Petitioners provide mitigation of 3:1 in the form of native species.

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.

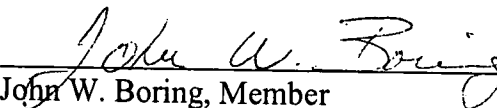
COUNTY BOARD OF APPEALS
OF ANNE ARUNDEL COUNTY



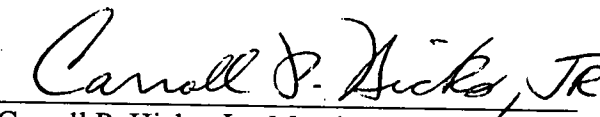
William C. Knight, III, Chairman



Arnold W. McKechnie, Vice Chairman



John W. Boring, Member



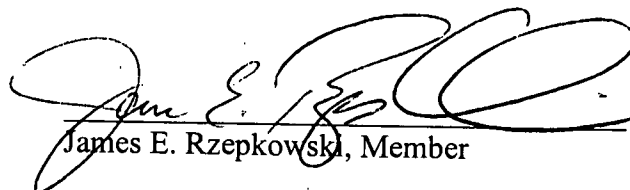
Carroll P. Hicks, Jr., Member



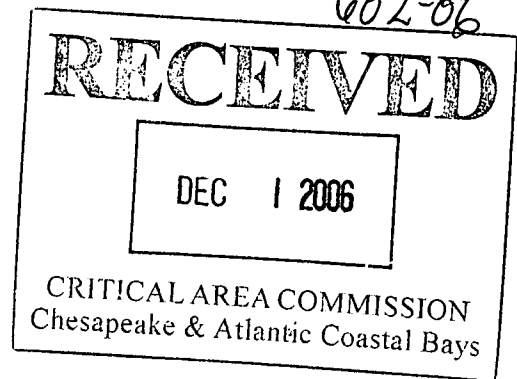
William Moulden, Member



Andrew C. Pruski, Member



James E. Rzepkowski, Member



IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 2006-0307-V

IN RE: CHARLES BULLEN AND BELLE GROVE CORPORATION

SECOND ASSESSMENT DISTRICT

DATE HEARD: NOVEMBER 2, 2006

ORDERED BY: STEPHEN M. LeGENDRE, ADMINISTRATIVE HEARING OFFICER

PLANNER: PATRICIA A. COTTER

DATE FILED: NOVEMBER 29, 2006

PLEADINGS

Charles Bullen and Belle Grove Corporation, the applicants, seek a variance (2006-0307-V) to allow a dwelling with disturbance to steep slopes on property located along the southeast side of Kendall Road, west of Parker Road, Crownsville.

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. Bullen testified that the property was posted for more than 14 days prior to the hearing. I find and conclude that there has been compliance with the notice requirements.

FINDINGS AND CONCLUSIONS

This case concerns unimproved property identified as Lots 1 through 13, Block 209, in the subdivision of Palisades on the Severn. The property comprises 40,942 square feet and is zoned R-2 residential with Chesapeake Bay Critical Area designations as Resource Conservation Area (RCA) and Limited Development

Area (LDA). The request is to construct a single-family dwelling with disturbance to steep slopes.¹

Anne Arundel County Code, Article 17, Section 17-8-201 proscribes disturbances of steep slopes in the RCA or LDA. Accordingly, the proposal requires a variance to disturb steep slopes.

Patricia A. Cotter, a planner with the Office of Planning and Zoning, testified that the property is irregularly configured and steeply sloped except for the level areas near the front (the location of the dwelling) and rear (the location of the septic system and stormwater management). The need to install a well and septic system are further constraints on development. The slope impacts relate to a portion of the rear deck addition, the limits of disturbance and the extension of a septic line to the field at the rear of the property. The witness summarized the agency comments. The Department of Health requested plan approval. The Chesapeake Bay Critical Area Commission offered no objection, subject to stormwater management and mitigation. By way of conclusion, Ms. Cotter supported the application.

Peter Loyka, the applicants' engineering consultant, testified that the County Department of Health has approved a waiver to reduce the setbacks from the property line for the well and septic from 10 feet to 5 feet. Access to the dwelling is from the improved portion of Kendall Road. The dwelling footprint

¹ The site plan was revised at the hearing to include a rear deck addition and stairs to grade.

(1,500 square feet, inclusive of integral garage) is comparatively modest and consistent with the character of the neighborhood.

Mark Evans, also a representative of the applicants' engineering firm, testified that the project includes on-site replanting for woodlands that are removed with the calculation based on one tree and four shrubs for each 400 square feet of impervious surfaces.

David Frampton, the adjoining property owner to the south, submitted several site and neighborhood photographs and expressed concern for the potential for increased flooding and erosion along both the Kendall Road frontage and at the rear septic area. Terrance Murray, who resides on the adjacent property to the north, expressed the same concerns.

By way of further explanation, Mr. Loyka indicated that the roof runoff would be piped to the stormwater management facility.

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

I visited the site and the neighborhood. The property is accessed from Kendall Road, a dead end street uphill from its intersection with Lee Road. The grade rises from the front lot line to a shallow plateau, and then falls steeply into a ravine that flattens out at the bottom. The lot is heavily wooded with several cut up trees and some evidence of erosion of the steep slope. Moderately sized houses are perched on the top of slopes surrounding the ravine. The other houses on Kendall Road have garage additions.

Upon review of the facts and circumstances, I find and conclude that the applicants are entitled to conditional relief from the code. For this Critical Area property, due to the extent of steep slopes – there is a band of steep slopes through the center of the property – a strict implementation of the program would result in an unwarranted hardship. Under a literal interpretation of the program, the applicants would be denied the right to construct a single-family dwelling, a right

commonly enjoyed by other properties in similar areas of the Critical Area. Conversely, the granting of the variance is not a special privilege that the program typically denies. There is no indication that the request results from the actions of the applicants or from land use on neighboring property. Finally, with mitigation and other conditions, the granting of the variance will not adversely impact Critical Area assets and harmonizes with the general spirit and intent of the program.

I further find that the variance represents the minimum relief. The applicants are proposing the majority of the development in the level areas. The disturbance to slopes reflects a modest deck addition, clearing for the construction of the improvements, and the extension of the septic line to the field in the rear. The footprint of the dwelling is not overly large. The project includes stormwater management and mitigation. I find and conclude that the granting of the variance will not alter the essential character of the neighborhood, substantially impair the appropriate use or development of adjacent property, or cause a detriment to the public welfare. The approval is subject to the conditions in the Order.

ORDER

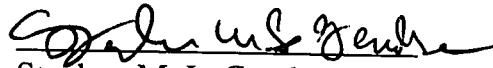
PURSUANT to the application of Charles Bullen and Belle Grove Corporation, petitioning for a variance to allow a dwelling with disturbance to steep slopes; and

PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is this 29th day of November, 2006,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicants are **granted** a variance to disturb steep slopes to allow a dwelling in accordance with the revised site plan.

The foregoing variance is subject to the following conditions:

1. No further expansion of the dwelling is allowed and accessory structures are not allowed.
2. The applicants shall provide mitigation and stormwater management as determined by the Permit Application Center.
3. The building permit is subject to the approval of the Department of Health.
4. The conditions of the approval 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.



Drum, Loyka & Associates, LLC

Civil Engineers - Land Surveyors

June 13, 2007

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

RE: Board of Appeals Case BA 87-06V (previous Variance Case No. 2006-0307-V)
Palisades on the Severn~Lots 1-13; Kendall Road, Crownsville, MD 21032
Tax map 38, Block 4, Parcel 26; Tax Account # 02-608-01169000

Dear Ms Cotter:

Enclosed please find a revised site plan for the above referenced project. This site plan addresses some of the concerns identified subsequent to the original variance hearing, while also indicating some of the specific measures proposed to address stormwater management for the site. Below is a summary of the changes to the site plan:

- The proposed driveway has been shifted from the front of the house to the side. This reduces the impervious area draining to Kendall Road along the front property line and therefore will decrease flows to the south along Kendall Road. Note that the location of the septic tank has been adjusted accordingly. We have also added a check dam at the southwest corner of the site adjacent to Kendall Road to slow any drainage leaving the site.
- The building footprint is slightly smaller in width than submitted with the original variance. The house has therefore been moved forward slightly towards Kendall Road to be further away from the steep slopes. We have also reduced the limit of disturbance at the rear of the house adjacent to the steep slopes, basically holding 10 feet away from the dwelling and a few feet from the edge of the deck. Note that the disturbance can be minimized for the deck construction as the footings will be located away from the outer edge, with the deck cantilevered beyond the footers.
- We have shown a roof drain piping system to convey the runoff from the dwelling down the slope to the proposed stormwater management facility at the southeast corner of the site. The drain pipe is shown to be placed parallel with the septic drain pipe with a 10 foot spacing between them. Note that these pipes will be very shallow (2 to 3 feet in depth) and therefore will disturb very little area adjacent to their immediate trenching. A trench drain is proposed along the lower edge of the driveway to collect drainage and convey it to the storm drain pipe. The stormwater management facility is proposed to be a bio-retention area.

We hope the above is useful to you in reviewing the revised plan. If you have any questions or need further information, please do not hesitate to contact us.

Sincerely,
DRUM, LOYKA AND ASSOCIATES, LLC

Peter E. Loyka, P.E.
Principal

CC: Chip Bullen
Tony Christhilf

209 West Street, Suite 203
Annapolis, Maryland 21401
(410) 280-3122 Fax (410) 280-1952

Chesapeake Bay Critical Area Report

Palisades on the Severn, Lot 1-13

Tax Map 38, Grid 4, Parcel 26

Tax Account No. 02-608-01169000

Property Address: Kendall Road
Crownsville, MD 21032

Property Owner & Variance Applicant: Belle Grove Corporation

Critical Area Designation: RCA/LDA **Zoning:** R2 **Lot Area:** 40,942 s.f.

Site Description

This property is an irregular shaped lot in the subdivision of Palisades on the Severn on the west shore of Little Round Bay. Access to the lot is from Kendall Road from the south. The lot is currently vacant with no structures. The lot contains steep slopes of 25% or greater, which are centrally located on the site. The property falls within the Critical Area of the Chesapeake Bay with an RCA and LDA land use designation, but is not waterfront.

Purpose of Variance

The applicants propose to construct a single-family dwelling and associated improvements including asphalt driveway at the north end of the lot. Well and septic area also proposed for this site. All R-2 setbacks for a principal structure have been met. Construction of the proposed house will require a variance to Article 17 Title 8-204 of the Anne Arundel County Code to allow development on slopes 15% or greater.

Vegetative Coverage

This entire site is currently forested with medium dense woods. Approximately 10,000-sf of forest will be removed to constructed the single family home, driveway, and install the well and septic. Reforestation for this lot will be addressed with under story plantings or a Fee-in-lieu.

Impervious Coverage

The site currently has no impervious coverage. The proposed impervious area for this property is 2,333 s.f. The proposed impervious coverage will not exceed the allowable impervious coverage of 6,141 s.f. The area to be disturbed on the lot by proposed work will roughly be 9,547 s.f.

Predominant Soils

The predominant soil type in the area is Annapolis fine sandy loam, 25 to 40 percent slopes. This soil is not a hydric soil.

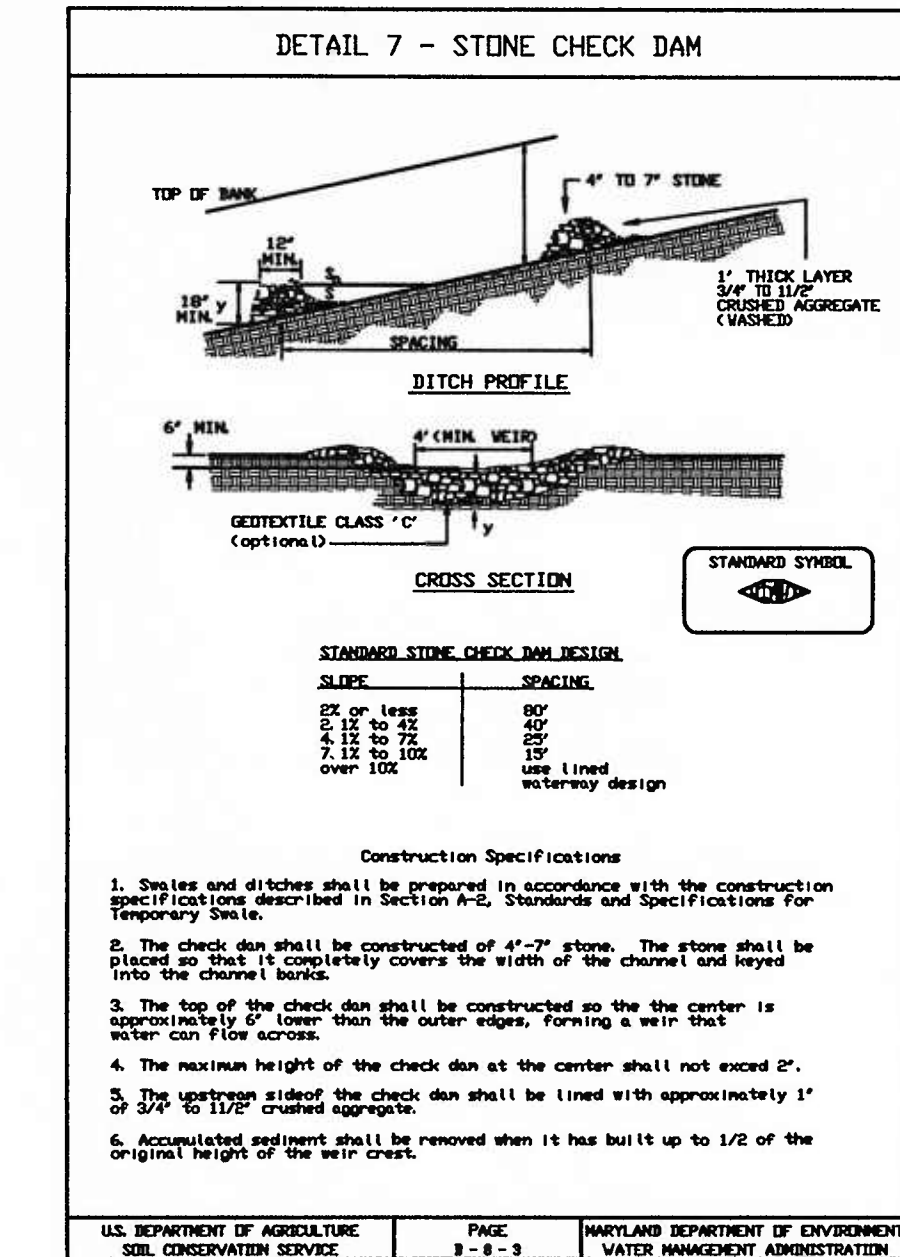
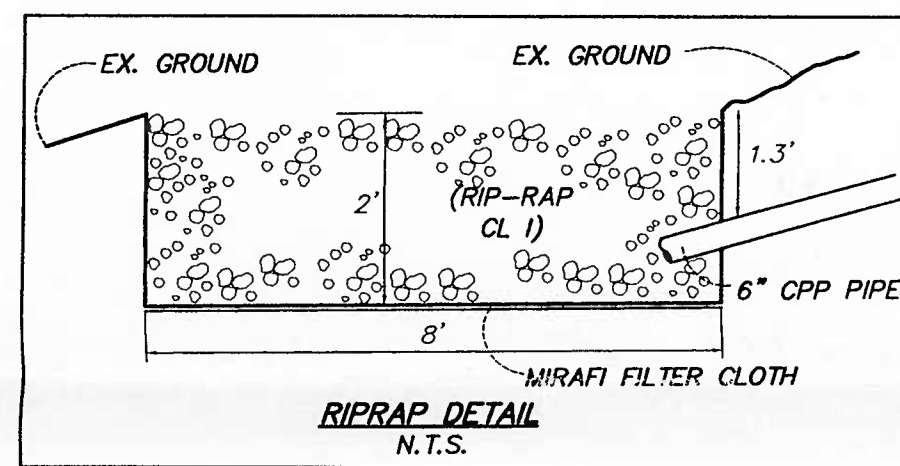
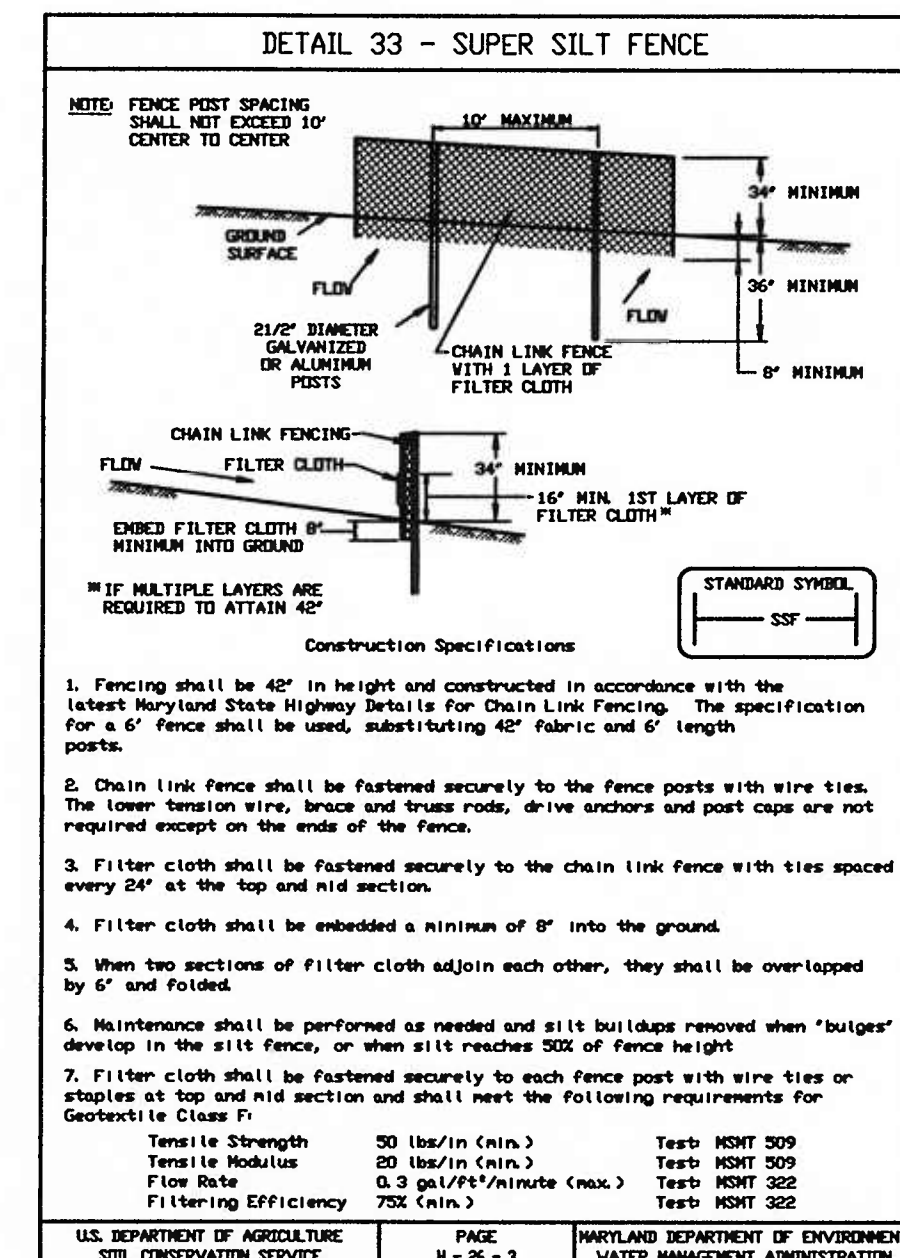
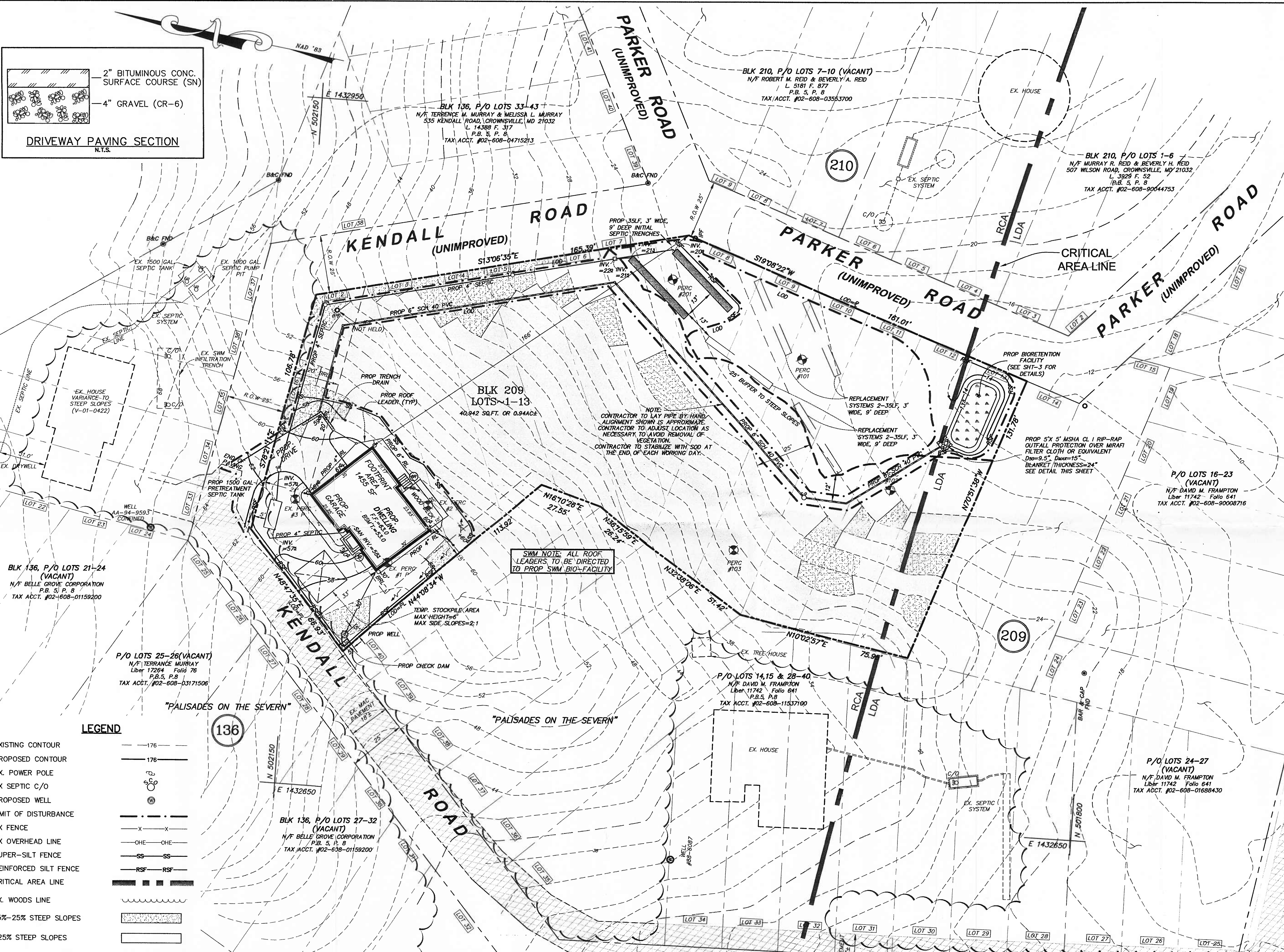
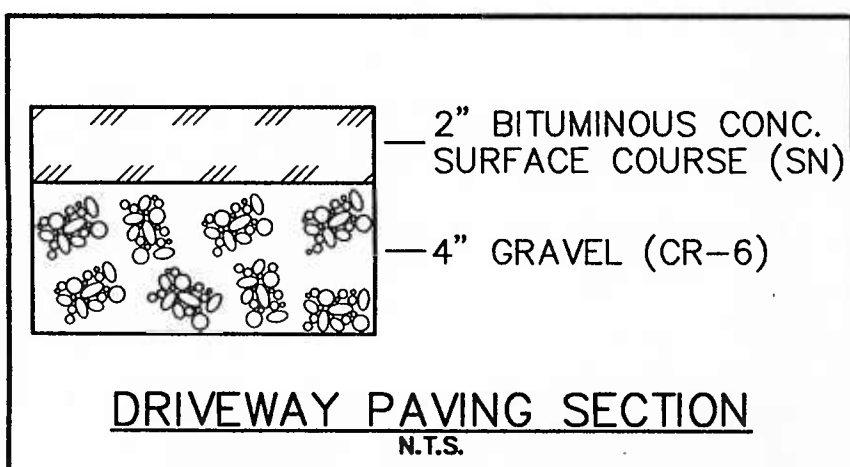
Drainage and Rainwater Control

Runoff from this property discharges to the Right-of-way of Parker Road. Stormwater management and erosion control for this property will be addressed at the time of grading permit.

Conclusions

The applicants propose to construct a new dwelling with associated improvements. With the proposed implementation of reforestation, sediment controls, and stormwater management, the proposed development will not cause adverse impacts to fish, wildlife, or water quality in the Critical Area.

This report is based on a Variance Plan prepared by Drum, Loyka & Associates, LLC and dated August 2006 and a site survey by Drum, Loyka & Associates, LLC. Copies of which are attached to this report.



LEGEND

EXISTING CONTOUR	---	176
PROPOSED CONTOUR	---	176
EX. POWER POLE	—○—	
EX. SEPTIC C/O	—○—	
PROPOSED WELL	—○—	
LIMIT OF DISTURBANCE	---	
EX. FENCE	—x—	
EX. OVERHEAD LINE	—O—O—	
SUPER-SILT FENCE	—SS—SS—	
REINFORCED SILT FENCE	—RSF—RSF—	
CRITICAL AREA LINE	—■—■—	
EX. WOODS LINE	—wavy—	
15%-25% STEEP SLOPES	—hatched—	
>25% STEEP SLOPES	—cross-hatched—	

DESIGNED: 11/2/06 DRAWN: KLY
 ORIG. DATE: 4/13/07
 MODIFIED BY/DATE: NWE / 4/17/07
 CADD DWG #: PB13604-BOA-Exhibit
 DSA PROJECT #: PB13604

REVISIONS TO APPROVED PLANS

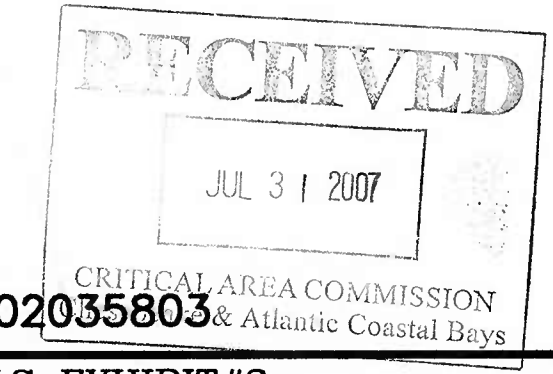
No.	DATE	BY	DESCRIPTION

DRUM, LOYKA & ASSOCIATES, LLC
 CIVIL ENGINEERS—LAND SURVEYORS
 209 WEST STREET, SUITE 203
 ANNAPOLIS, MARYLAND 21401
 410-280-3122

CLIENT
BELLE GROVE CORPORATION
 4024 BELLE GROVE ROAD
 BROOKLYN, MD 21225-2657
 301-731-2277

BOARD OF APPEALS EXHIBIT#3
PALISADES ON THE SEVERN, BLK 209 LOTS 1~13
 KENDALL ROAD
 TAX ACCOUNT #02-608-01169000
 GRID 4 PARCEL 26 2ND DISTRICT
 ANNE ARUNDEL COUNTY, MARYLAND

SCALE: 1"=20' DATE: 4/16/07 PROJ. NO: PB13604 SHEET 1 OF 1



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