

AA 683-06    Howard, Kevin  
VAR            0355

MSA-S-1829-5515

10-23-06  
Comments JBC

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/)

October 23, 2006

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

**RE: AA 683-06 Kevin and Melinda Howard  
Local Case # 2006-0355-V**

Dear Ms. Plociennik:

Thank you for providing information on the above referenced variance. The applicant is requesting a variance to impact steep slopes for the construction of a dwelling. The parcel is 9,100 square feet, located in the LDA and is currently unimproved. The applicant is requesting this variance to construct a single-family dwelling.

Provided that the lot is properly grandfathered we do not oppose this variance. The property appears to be severely constrained by steep slopes and the applicant has minimized impacts to the greatest extent possible. 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. 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. 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. If you have any additional questions please contact me at 410-260-3481.

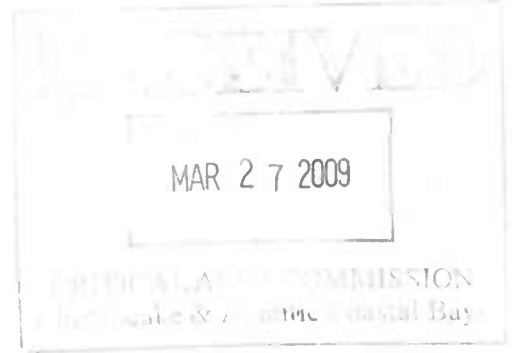
Sincerely,

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

Jennifer B. Lester  
Natural Resources Planner

083-06

~~780-03~~



IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 2009-0011-V

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**KEVIN D. HOWARD**

THIRD ASSESSMENT DISTRICT

DATE HEARD: MARCH 5, 2009

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ORDERED BY:  
**DOUGLAS CLARK HOLLMANN, ADMINISTRATIVE HEARING OFFICER**

**PLANNER: PATRICIA A. COTTER**

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DATE FILED: MARCH 24, 2009

## **PLEADINGS**

Kevin Howard, the applicant, seeks a variance (2009-0011-V) to allow a dwelling addition (deck) with less setbacks and buffer than required, on property located along the north side of Beach Drive, northwest of Pleasant Drive, 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. Howard 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**

A hearing was held on March 5, 2009, in which witnesses were sworn and the following evidence was presented with regard to the proposed variances requested by the applicant.

The subject property is owned by the applicant, Kevin Howard, and has a street address of 7582 Beach Drive, Pasadena, Maryland 21122 (the Property). The Property is also known as Lot 5 of Parcel 77 in Block 3 on Tax Map 17. The

Property consists of 14,450 square feet and is zoned R5 Residential. The Property is classified in the Chesapeake Bay Critical Area as intensely developed area (IDA). The Property is improved with a single-family dwelling.

### **The Proposed Work**

The applicant is seeking variances to allow a deck to be added to an existing single-family dwelling. The deck will be 14 feet by 20 feet and will be located 68 feet from the shoreline.

### **The Anne Arundel County Code**

Anne Arundel County Code, Article 18, § 18-13-104 requires that there shall be a minimum 100-foot buffer landward from the mean high-water line of tidal waters, tributary streams, and tidal wetlands.

§ 17-8-301(b) prohibits new structures in the 100-foot buffer except for water dependent uses or shore erosion protection measures. The evidence shows that the deck will be located in the 100-foot buffer.

§ 17-8-501 provides that the 100-foot buffer is also a habitat protection area. § 17-8-502 provides that a habitat protection area shall be preserved and protected. The evidence shows that the deck will be located in a habitat protection area.

### **The Variances Requested**

The work proposed by the applicant, therefore, will require a number of variances.

1. The work requires a critical area variance from the 100-foot buffer requirement of § 18-13-104 because the proposed deck will extend further into the buffer than the principal structure existing on the Property. The existing principal structure is 84 feet from the shoreline. The deck will be 16 feet closer, necessitating a variance of 16 feet.
2. The work requires a critical area variance from § 17-8-301(b) because the proposed deck will be a new structure, which is otherwise prohibited in the 100-foot buffer.
3. The work requires a critical area variance from § 17-8-502, which provides that a habitat protection area shall be preserved and protected. The evidence shows that the deck will be located in a habitat protection area.

### **The Evidence Submitted At The Hearing**

Patricia A. Cotter, a planner with the Office of Planning and Zoning (OPZ), testified that the Property is a legal (grandfathered) building lot abutting the waters of Stony Creek. Ms. Cotter testified that the applicant is proposing to construct a 14 feet by 20 feet deck on the waterfront of an existing dwelling. Ms. Cotter testified as to the variances required. The Property exceeds the minimum lot size for a lot in an R5 district. However, it is nonconforming with regard to lot width. The Property is improved with a single-family dwelling.

There have been two prior cases regarding this Property. In Case No. 2003-0438-V, the applicant was granted a buffer variance of 11 feet to perfect the construction of a 12'5" by 24' sunroom addition and to remove and reconstruct the

previously existing dwelling. One of the four conditions of that decision dated December 17, 2003, was that "no further disturbance in the Buffer is allowed."

The second variance application (Case No. 2005-0362-V) was a request to perfect the construction of both a 12 feet by 24 feet waterfront deck with less buffer than required and a 24 feet by 30 feet detached garage in the rear yard with less setbacks than required. In a decision dated December 16, 2005, this office denied both variance requests. Because both structures were constructed without benefit of building permit and variance approval, the applicant was required to remove both structures. This has apparently happened.

The current application is to request approval to reconstruct the deck that was denied in the 2005 decision. The reason for the application is that the applicant became aware of the granting of a variance by this office in Case No. 2008-0170-V on July 17, 2008 to allow for the construction of a waterfront deck on Lot 7, which is nearby.

Ms. Cotter testified that both Critical Area Commission and the review staff of OPZ recommended denial of the request. The Property does not appear to be unique in any regard. It has no physical constraints nor is there topographic conditions that would result in an unwarranted hardship to the applicant if the critical area program were implemented. Furthermore, the applicant enjoys the full use and enjoyment of the property in question and a variance has already been granted to allow construction of all the improvements on the Property. Also, to grant the current request would be to confer a special privilege on the applicant

because of the previously granted variances allowing him to develop the property. This is a right not given to other property owners. The situation in which the applicant seeks the variances in this application are the result of his own actions and do not arise from any condition relating to land or building use on any neighboring property. While the granting of the variance would not adversely affect water quality or impact, fish, wildlife or plant habitat, it would not be in harmony with the general spirit and intent of the critical area program because it is not the minimum variance necessary to develop this lot. To grant the variance would violate the stricture that new construction not be allowed in the buffer.

For all the above reasons, including the prohibition in the December 17, 2003 Order that there be no further disturbance in the buffer, OPZ recommended that the application be denied.

Mr. Howard, and his mother, Ms. Belinda Harris, testified that the now existing dwelling on the Property was designed with French doors on the front to walkout onto a wooden deck. The deck that had been constructed without permits has been torn down. They admitted that the deck they want to construct now is identical to the deck that was denied in the 2005 decision. They thought that it was unfair that their neighbor down the street was allowed to put a deck on their house when they had been previously been granted a variance. There were no other reasons that they gave, aside from the desire to have a deck off the sunroom, for the application.



The Critical Area Commission, in a letter dated February 9, 2009 (County Exhibit 7), recommended denial of the request because of the earlier decisions<sup>1</sup> regarding variance requests and the prohibition in the prior decision of this office that there be no further disturbance in the buffer.

There was no other testimony taken or exhibits received in the matter.

### **DECISION**

Upon review of the facts and circumstances, I find and conclude, for the reasons stated below, that the applicant is not entitled to relief from the code as to the critical area variances they have requested.

§ 8-1808(d)(2) of the Natural Resources Article, Annotated Code of Maryland, provides in subsection (ii), that “[i]n considering an application for a variance [to the critical area requirements], a local jurisdiction shall presume that the specific development in the critical area that is subject to the application and for which a variance is required does not conform to the general purpose and intent of this subtitle, regulations adopted under this subtitle, and the requirements of the jurisdiction’s program.” (Emphasis added.) “Given these provisions of the State criteria for the grant of a variance, the burden on the applicant is very high.” *Becker v. Anne Arundel County*, 174 Md.App. 114, 124; 920 A.2d 1118, 1124 (2007).

The critical area law was changed in 2002 and 2004. The changes were

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<sup>1</sup> See discussion of these decisions below.

discussed in *Becker v. Anne Arundel County*, *supra*. 174 Md.App. at 131; 920

A.2d at 1128:

In 2002, the General Assembly amended the [critical area] law. ... The amendments to subsection (d) provided that, (1) in order to grant a variance, the Board had to find that the applicant had satisfied each one of the variance provisions, and (2) in order to grant a variance, the Board had to find that, without a variance, the applicant would be deprived of a use permitted to others in accordance with the provisions in the critical area program. ... The preambles to the bills expressly stated that it was the intent of the General Assembly to overrule recent decisions of the Court of Appeals, in which the Court had ruled that, (1) when determining if the denial of a variance would deny an applicant rights commonly enjoyed by others in the critical area, a board may compare it to uses or development that predated the critical area program; (2) an applicant for a variance may generally satisfy variance standards rather than satisfy all standards; and, (3) a board could grant a variance if the critical area program would deny development on a specific portion of the applicant's property rather than considering the parcel as a whole.

In 2003, the Court of Appeals decided *Lewis v. Dep't of Natural Res.*, 377 Md. 382, 833 A.2d 563 (2003). *Lewis* was decided under the law as it existed prior to the 2002 amendments (citation omitted), and held, *inter alia*, that (1) with respect to variances in buffer areas, the correct standard was not whether the property owner retained reasonable and significant use of the property outside of the buffer, but whether he or she was being denied reasonable use within the buffer, and (2) that the unwarranted

hardship factor was the determinative consideration and the other factors merely provided the board with guidance. *Id.* at 419-23, 833 A.2d 563.

Notwithstanding the fact that the Court of Appeals expressly stated that *Lewis* was decided under the law as it existed prior to the 2002 amendments, in 2004 Laws of Maryland, chapter 526, the General Assembly again amended State law by enacting the substance of Senate Bill 694 and House Bill 1009. The General Assembly expressly stated that its intent in amending the law was to overrule *Lewis* and reestablish the understanding of unwarranted hardship that existed before being “weakened by the Court of Appeals.” In the preambles, the General Assembly recited the history of the 2002 amendments and the *Lewis* decision. The amendment changed the definition of unwarranted hardship [found in § 8-1808(d)(2)(i)] to mean 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.” (Emphasis added.)

The question of whether the applicant is entitled to the variances requested begins, therefore, with the understanding that, in addition to the other specific factors that must be considered, the applicant must overcome the presumption, “that the specific development in the critical area that is subject to the application ... does not conform to the general purpose and intent of [the critical area law].”<sup>2</sup>

Furthermore, the applicant carry the burden of convincing the Hearing Officer

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<sup>2</sup> § 8-1808(d)(2)(ii) of the Natural Resources Article. References to State law do not imply that the provisions of the County Code are being ignored or are not being enforced. If any difference exists between County law and State law, or if some State criteria were omitted from County law, State law would prevail. See, discussion on this subject in *Becker v. Anne Arundel County*, *supra*, 174 Md.App. at 135; 920 A.2d at 1131.

‘that the applicant has satisfied each one of the variance provisions.’<sup>3</sup> (Emphasis added.) “*Anne Arundel County's local Critical Area variance program contains 12 separate criteria. ...Each of these individual criteria must be met.*” If the applicant fails to meet just *one* of these 12 criteria, the variance is *required* to be denied.<sup>4</sup> *Becker v. Anne Arundel County, supra*, 174 Md.App. at 124; 920 A.2d at 1124. (Emphasis in original.)

### **Critical Area Variances**

The variances needed by the applicant will be considered as one because they all relate to the fact that, if they are granted, there will be work performed and a new structure (the deck) erected in the 100-foot buffer.

### **Requirements for Critical Area Variances**

§ 18-16-305 sets forth the requirements for granting a variance for property in the Critical Area. Subsection (b) reads, in part, as follows:<sup>5</sup> a variance may be granted if the Administrative Hearing Officer finds that:

- (1) Because of certain unique physical conditions, such as exceptional topographical conditions peculiar to and inherent in the particular lot or irregularity, narrowness, or shallowness of lot size and shape, strict implementation of the County’s critical area program would result in an

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<sup>3</sup> § 8-1808(d)(4)(ii).

<sup>4</sup> The requirements for a variance from a general zoning requirement are fewer than for a variance from the critical area requirements.

<sup>5</sup> Subsection (b)(6) is not set forth below because it is concerned with variances to develop property with bogs. There is no evidence that bogs are present on the Property. Therefore, this criteria is not relevant to the application being considered.

unwarranted hardship, as that term is defined in the Natural Resources Article, § 8-1808 of the State Code, to the applicant. Subsection (b)(1).

- (2) 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 provision of the critical area program within the critical area of the County. Subsection (b)(2).<sup>6</sup>
- (3) The 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. Subsection (b)(3).<sup>7</sup>
- (4) The 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 rise from any condition relating to land or building use on any neighboring property. Subsection (b)(4).
- (5) The granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the County's critical area and will be in harmony with the general spirit and intent of the

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<sup>6</sup> The remainder of Subsection (b)(2) is not set forth as it relates to bogs.

<sup>7</sup> The remainder of Subsection (b)(3) is not set forth as it relates to bogs.

County's critical area program or bog protection program. Subsection (b)(5).

- (6) The applicant, by competent and substantial evidence, has overcome the presumption contained in the Natural Resources Article, § 8-1808(d)(2), of the State Code. Subsection (b)(7).<sup>8</sup>

Furthermore, a variance may not be granted unless it is found that: (1) the variance is the minimum variance necessary to afford relief; (2) the granting of the variance will not alter the essential character of the neighborhood or district in which the lot is located, substantially impair the appropriate use or development of adjacent property, reduce forest cover in the Limited Development and Resource Conservation Areas of the Critical Area, be contrary to acceptable clearing and replanting practices required for development in the critical area, or be detrimental to the public welfare.

### **Findings - Critical Area Variances**

I find, based upon the evidence, that I am unable to grant the critical area variances requested for the following reasons:

#### **Subsection (b)(1) - Unique Physical Conditions**

The Property does not contain unique physical conditions, such as exceptional topographical conditions peculiar to and inherent in the subject

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<sup>8</sup> Subsection (b)(6) refers to bogs, which are not present on the Property, and is not a factor in this application. Therefore, it is not repeated here. Subsection (b)(7) thereby becomes the 6th factor to be considered in deciding whether to grant or deny a variance to perform work in the critical area.

Property, i.e., steep slopes in close proximity to the dwelling on the Property, that would cause the applicant unwarranted hardship if the variance is not granted. 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.” Natural Resources Article § 8-1808(d)(1). (Emphasis added.)

The Legislature has made it clear that an analysis of the facts underlying an application for a variance from the critical area must consider whether the denial of the variance would deny the applicant “reasonable and significant use of the entire parcel or lot” they own. This has been confirmed by the courts. *Becker v. Anne Arundel County, supra*. The Property is developed, but the denial of the requested variances does not prevent the applicant the “reasonable and significant use of the entire parcel or lot” they own. Therefore, he has failed to satisfy subsection (b)(1) and show that the critical area requirements have created a hardship from which he needed to be exempted in order to use his entire property. Accordingly, the request for the critical area variances must be denied.

This conclusion is confirmed when the nature of the application is analyzed to determine whether the requested critical area variances constitute a hardship that warrants variances from the critical area law, or whether the requested variances are for improvements that are merely a “convenience” desired by the property owner.

“It generally is not a hardship to be without a desired convenience or amenity on one's property, because zoning restrictions are to be enforced in the absence of a ‘substantial and urgent’ need for a variance. See Belvoir Farms Homeowners Ass'n, 355 Md. at 261, 734 A.2d 227. When a variance would be required to build within the critical area buffer, for example, the fact that a particular improvement would enhance the owner's enjoyment of the property did not establish that it would be a hardship to continue using the property without the variance. See, e.g., Citrano v. North, 123 Md.App. 234, 717 A.2d 960 (1998) (fact that proposed deck created “pleasant amenity” did not create hardship); North v. St. Mary's County, 99 Md.App. 502, 519, 638 A.2d 1175 (owner's desire to build gazebo to read and view creek is not evidence of hardship), cert. denied sub nom. Enoch v. North, 336 Md. 224, 647 A.2d 444 (1994).

Chesley v. City of Annapolis, 176 Md.App. 413, 435, 993 A.2d 475, 488-489 (2007).

The need for a deck on an existing dwelling with a sunroom is a desire to have a convenience. Therefore, the applicant has not carried his burden in showing that a denial of the critical area variances constitutes a hardship that would deprive him of the “reasonable and significant use of the entire parcel or lot” they own.

While the applicant must meet each element contained in § 18-16-305,<sup>9</sup> and the denial of a variance under the first element contained in

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<sup>9</sup> § 8-1808(d)(4)(ii); Becker v. Anne Arundel County, supra, 174 Md.App. at 131; 920 A.2d at 1128. There is no doubt that each element must be satisfied because the connector “and” separates Subparagraphs (a)(6) and (a)(7) of § 18-16-305.



Subparagraph (b) may make the analysis of the remaining five elements unnecessary, I will make findings under those elements as well.

**Subsection (b)(2) - Denial Of Rights Enjoyed By Others**

I cannot conclude that the denial of the requested critical area variances would 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. The history of the Property and the attempts by the applicant to obtain permission to have a deck is important in understanding this point.

First, the applicant was granted a buffer variance of 11 feet to perfect the construction of a 12 foot 5 inch by 24 foot sunroom in Case No. 2003-0438-V and remove and construct the original dwelling on the Property. An application for a variance cannot be granted unless it is the minimum needed to grant the applicant relief from the critical area laws. The applicant did not ask for a deck when he applied for variances in the 2003 case. The Order issued in Case No. 2003-0438-V recognized that the sunroom's intrusion further into the buffer and closer to the shoreline than permitted was the minimal relief the applicant was entitled to. Since that expansion was the minimum, the present request is not the minimum and must be denied.

Moreover, the restrictions on further development were made explicit in the 2003 Order. One of the conditions specifically stated that "no further disturbance

in the buffer is allowed.” Therefore, the present request in this application is barred by the restrictions in the 2003 Order.

Furthermore, in violation of the 2003 Order, the applicant constructed not one but two structures on the Property: a garage on the street side of the Property, and a deck on the waterfront side. Applications for variances to perfect these two illegal structures were denied in Case No. 2005-0362-V. Both the garage and the deck were subsequently removed.

The present application is to obtain a variance to erect the same-sized deck that was torn down. The applicant has reentered the variance process because he has learned that this Office granted a variance for a waterfront deck to the owner of a similar property located 100 feet to the west of the Property. In Case No. 2008-0170-V, this Office granted a variance for a waterfront deck where the previous owner had rebuilt a previously existing dwelling without asking for a deck. The new owner asked for a deck. The Hearing Officer granted the application.

The Order granting the variance in Case No. 2008-0170-V granted relief because of the fact that the razed dwelling had included a deck, that the new owners had bought the rebuilt dwelling with doors in the facade, and, most importantly, there had been revetment work at the waterside that extended the distance from the dwelling to the water by 10 to 15 feet.

By comparison, the applicant before me has not had changed circumstances since the last variance request such as revetment work moving the shoreline

farther away from the dwelling. The applicant does have a home that now has doors on the facade like his neighbor, but this condition is caused by the applicant's construction of the sunroom and the 2003 request that did not ask for a deck. Furthermore, the neighbor did not have a prior variance Order that denied any further encroachments into the buffer.

Regardless of the comparisons between the two properties, I am not bound by the earlier decision granting the neighbor a deck. Otherwise, one deck would require approval of every other deck in a community. Each case must be considered on its own merit. There are too many factors, set forth above, to conclude that the applicant is being denied rights currently enjoyed by others in the critical area. Accordingly, I find that the applicant has failed to carry the burden on this element.

**Subsection (b)(3) - Special Privilege**

Since I am denying the critical area variances requested by the applicant for reasons set forth in this decision, it is unnecessary to consider whether the granting of the variances would confer a special privilege on them that would be denied by COMAR, 27.01, the County's critical area program, to other lands or structures within the County's critical area.

**Subsection (b)(4) - Actions By The Applicant Or Conditions  
On Neighboring Properties**

I find that the critical area variances requested are not based on the commencement of development before an application for a variance was filed, and

do not arise from any condition relating to land or building use on any neighboring property. However, I find that the variances requested are based on conditions or circumstances that are the result of actions by the applicant. The history of the applicant's attempts to develop the Property is set out above. The applicant has forged ahead to add structures to the Property without obtaining permits and has had to remove them. The situation before me was created by the applicant, not by conditions on neighboring properties or by the critical area law. A property owner is not supposed to build in the buffer without obtaining the necessary variances and permits. Variances to do so are grudgingly granted. The applicant has been granted variances to develop the Property, and the applicant is enjoying the Property. There is no right to have a deck on a waterfront property unless the critical area laws allow it. It does not here. Therefore, the applicant has failed to carry his burden as to this element of § 18-16-305.

**Subsection (b)(5) - Environmental Impacts**

The grant of variances to build the deck further into the buffer is not the minimum needed to grant relief to the applicant and, therefore, is not in harmony with the general spirit and intent of the critical area law. I find that this element of § 18-16-305 has not been satisfied.

**Subsection (b)(7) - Presumption**

I find that the applicant has not overcome the presumption contained in the Natural Resources Article, § 8-1808(d)(2), of the State Code [which is incorporated into § 18-16-305 subsection (b)(2)] "that the specific development in

the critical area that is subject to the application ... does not conform to the general purpose and intent of [the critical area law].”<sup>10</sup> This is because I have determined that the applicant would not be denied reasonable and significant use of the entire parcel or lot for which the critical area variances are requested if the proposed work is not allowed [subparagraph (b)(1)], because the denial of the requested critical area variances would not deprive the applicant of rights commonly enjoyed by other lands or properties in similar areas that are permitted in the critical area [subparagraph (b)(2)], because the granting of the requested critical area variances would confer a special benefit upon the applicant that is denied to other lands or properties in similar areas under the critical area law [subparagraph (b)(3)], and because the need for the requested critical area variances is the result of the actions of the applicant since the applicant’s request is based on convenience and not hardship [subparagraph (b)(4)]. For these reasons, I find that the applicant has not overcome the presumption in § 8-1808(d)(2) that the application does not conform to the general purpose and intent of the critical area law, regulations adopted under the critical law, and the requirements of the County’s critical area program.

There was nothing to suggest that the granting of the critical area variances would alter the essential character of the neighborhood, substantially impair the appropriate use or development of adjacent property, reduce forest cover in the limited development and resource conservation areas of the critical area, or cause

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<sup>10</sup> § 8-1808(d)(2)(ii) of the Natural Resources Article.

a detriment to the public welfare. The proposed improvements to the Property are certainly *de minimis*. However, because the applicant is already using the entire Property, the denial of the requested critical area variances will not prevent them from the "reasonable and significant use of the entire parcel or lot" they own. Accordingly, any variance granted would not be the minimum variance necessary to overcome any hardship caused by the strict implementation of the critical area law, not to mention the restrictions that no further disturbance to the buffer contained in the 2003 Order cited above.

Accordingly, for the above reasons, the requested critical area variances are denied.

### **ORDER**

PURSUANT to the application of Kevin Howard, petitioning for a variance to allow a dwelling addition (deck) with less setbacks and buffer than required, and

PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is this 24<sup>th</sup> day of March, 2009,

ORDERED, that the application for a variance to allow a deck 14 feet by 20 feet, located 68 feet from the shoreline is hereby **denied**.

  
\_\_\_\_\_  
Douglas Clark Hollmann  
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. **A permit for the activity that was the subject of this variance application will not be issued until the appeal period has elapsed.**

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

Le83-06

**RECEIVED**

DEC 1 2006

CRITICAL AREA COMMISSION  
Chesapeake & Atlantic Coastal Bays

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

**CASE NUMBER 2006-0355-V**

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**IN RE: KEVIN AND MALINDA HOWARD**

**THIRD ASSESSMENT DISTRICT**

**DATE HEARD: NOVEMBER 14, 2006**

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

**PLANNER: PATRICIA A. COTTER**

**DATE FILED: NOVEMBER 22<sup>nd</sup>, 2006**



## **PLEADINGS**

Kevin and Malinda Howard, the applicants, seek a variance (2006-0355-V) to permit a dwelling with disturbance to steep slopes on property located along the east side of Bayview Vista, north of Skyview Drive, Annapolis.

## **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. Ms. Howard testified that the property was posted on October 29, 2006. I find and conclude that there has been compliance with the notice requirements.

## **FINDINGS AND CONCLUSIONS**

This case concerns unimproved property with a street address of 1201 Bayview Vista, also known as Lot 7, Block "NN", Plat No. 3, Cape St. Claire. The property comprises 9,100 square feet and is zoned R5-Residential with a Chesapeake Bay Critical Area designation as Limited Development Area (LDA). The request is to construct a single-family dwelling with disturbance to steep slopes.

Anne Arundel County Code, Article 17, Section 17-8-201 proscribes the disturbance of steep slopes in the 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 entirely steep slopes. The proposal is within the allowance for impervious coverage and clearing. The request is considered consistent with other development in the neighborhood. The witness summarized the agency comments. The Chesapeake Bay Critical Area Commission offered no objection subject to stormwater management and the revegetation of disturbed areas. By way of conclusion, Ms. Cotter anticipated little adverse impact to critical area assets and supported the request.

Doug Bourquin, a site planner to the applicants, testified that the property drains from the northwest corner to the southeast corner with runoff carried along Skyview Drive to an inlet at Cape St. Claire Road. The garage is located at the lower level and the dwelling includes a rear cantilever to minimize the slope disturbance. The project includes a grading permit and stormwater management consisting of plantings and infiltration trenches. The impervious coverage is 2,133 square feet versus an allowance of 2,844 square feet. The witness opined that the variance standards are satisfied. In particular, the request is consistent with the construction on the surrounding lots and other steeply sloped lots in the community.

Nancy Matthews, an environmental consultant to the applicants, submitted a Critical Area report and testified that the variance standards are satisfied. The request is consistent with clearing and replanting practices in the critical area because the project includes on site replanting with native species or payment of a fee in lieu for invasive species that are removed.

Ms. Howard submitted several site photographs as well as photographs of other homes recently built in the critical area.

George Zinkgraf, who resides across from the property, expressed concern that the project would increase runoff to his property and then to the Magothy River and cause interference with parking along the narrow road. Area residents Orlin Cantrell and Tim Hinson both supported the application, which would result in the removal of vegetation growing in the right-of-way and debris dumped at the property.

The standards for granting variances are contained in Section 18-16-405. 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.

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 the steep slopes, which encompass the entire property, a strict implementation of the program would result in an unwarranted hardship. To literally interpret the program would deny the applicants the right to develop the property with a single-family dwelling, a right commonly enjoyed on other properties in similar areas of the critical area, including in Cape St. Claire. 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 of neighboring property. Finally, with mitigation and other conditions, 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 dwelling

is appropriately sized and has been sited with due regard to the topography. The project includes stormwater management and the property is well within the allowance for coverage. Finally, the granting of a conditional variance will not alter the essential character of the residential neighborhood, substantially impair the use or development of adjacent property, or cause a detriment to the public welfare. These findings consider the surrounding development. The approval is subject to the conditions in the Order.

### **ORDER**

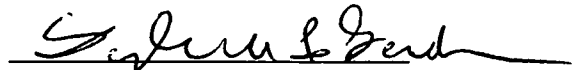
PURSUANT to the application of Kevin and Malinda Howard, petitioning for a variance to allow a dwelling with disturbance to steep slopes; and

PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is this 22<sup>nd</sup> 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 permit a dwelling in accordance with the site plan. *The approval is subject to the following conditions:*

- 1. The applicants shall obtain a grading permit satisfactory to the Permit Application Center.*
- 2. The applicants shall provide mitigation and control of stormwater as required by the Permit Application Center.*

3. *The applicants shall provide off-street parking as required by the Permit Application Center.*
4. *No further expansion of the dwelling is allowed and accessory structures are not allowed.*
5. *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.

**DETAILS AND SPECIFICATIONS FOR VEGETATIVE ESTABLISHMENT**

Following initial soil disturbance or redistribution, permanent or temporary stabilization shall be completed within seven calendar days for the surface of all perimeter controls, dikes, weirs, ditches, perimeter slopes, and all slopes greater than 3:1 horizontal to 1 vertical (3:1) and fourteen days for all other disturbed or graded areas on the project site.

1. Permanent Seeding:

a. Soil tests: Lime and fertilizer will be applied per soil test results for site greater than 5 acres. Soil tests will be done at completion of initial grading or as recommended by the sediment control inspector. Rates and analyses will be provided to the grading inspector as well as the contractor.

b. Occurrence of soil sulfate salts (grayish block color) will require covering with a minimum of 12 inches of clean soil with 6 inches of topsoil. The stabilizing of sulfate is allowed. If needed, soil tests should be done before and after a 6-week incubation period to allow oxidation of sulfates.

c. The minimum soil permanent vegetative establishment area:

(1) Slope shall be between 6:0 and 7:0.

(2) Soluble salts shall be less than 500 parts per million (ppm).

(3) The soil shall contain less than 400 clay but enough (grained material) (.306 #10 plus clay) to provide the capacity to hold a moderate amount of moisture. An exception is if lowgrass or sorghum is to be planted, then a sandy soil (LOE #10 plus clay) would be acceptable.

(4) Soil shall contain 1.5% minimum organic matter by weight.

(5) Soil must contain sufficient pore space to permit adequate root penetration.

(6) If these conditions cannot be met by soils on site, adding topsoil is required in accordance with Section 21 Standards and Specifications for Topsoil or amendments made as recommended by a certified agronomist.

(7) If these conditions cannot be met by soils on site, adding topsoil is required in accordance with Section 21 Standards and Specifications for Topsoil or amendments made as recommended by a certified agronomist.

d. Seeded Preparation: Area to be seeded shall be loose and friable to a depth of at least 3 inches. The top layer shall be loosened by raking, disk or other acceptable means before seeding occurs. Seeding rates shall be 5 cwt/acre apply fertilizer into the soil to a depth of at least 3 inches on slopes flatter than 3:1.

e. Seeding: Apply 5-8 pounds per 1,000 square feet of fall fescue between February 1 and April 30 or between August 15 and October 31. Apply seed uniformly on a moist firm seedbed with a cyclone seeder, cutlapper seeder or hydroseeder. (Seeder) includes seed and fertilizer; recommended on steep slopes on maximum seed depth should be 1/4 inch in clayey soils and 1/2 inch in sandy soils when using other than the hydroseeder method. Irrigate if soil moisture is deficient. To assure adequate uniform soil vegetation is properly established, if seed does not come up, apply 1/4 inch of fertilizer from Table 25, entitled "Permanent Seeding For Low Maintenance Areas" from the current Maryland Standards and Specifications for Soil Erosion and Sediment Control. Mixture suitable for this are 1, 3, and 6-7. Mixture 5 is not suitable for non-irrigated situations.

f. Mowing: Mow shall be applied to all seeded areas immediately after seeding. During the time periods when seeding is not permitted, mow shall be applied immediately after seeding.

g. Mulch: Mulch shall be applied to all seeded areas immediately after seeding. Mulch shall be applied at a rate of 2 tons per acre or 80 pounds per 1,000 square feet (2 tons). If a mulch covering is used, apply 2.5 tons per acre. Mulch materials shall be relatively free of all kinds of weeds and shall be completely free of prohibited noxious weeds. Spread mulch uniformly, mechanically or by hand, to a depth of 2 inches.

h. Seeding Straw Mulch: Straw mulch shall be secured immediately following mulch application to minimize movement by wind and water. The following methods are permitted:

(1) Use a mulch anchoring tool which is designed to push and anchor mulch into the soil surface to a minimum depth of 1 inch. This is the most effective method for securing mulch, however, it is limited to relatively flat areas where equipment can operate safely.

(2) Wood cellulose fiber may be used for anchoring straw. Apply the fiber binder at a net dry weight of 750 pounds per acre. If mixed with water, use 50 pounds of wood cellulose fiber per 100 gallons of water.

(3) Liquid binders may be used. Apply at higher rates at the edges where wind catches mulch, such as in valleys and on eroded areas. The binder should be applied in a uniform manner. The binder should be applied at a rate recommended by the manufacturer.

(4) Lightweight plastic may be used to secure mulch. The netting will be stapled to the ground according to manufacturer's recommendations.

2. Temporary Seeding:

Lime: 100 pounds of dolomitic limestone per 1,000 square feet.

Fertilizer: 15 pounds of 10-10-10 per 1,000 square feet (February 1 through April 30 or August 15 through November 1).

Mix: 250 pounds per 1,000 square feet (May 1 through August 15).

Mulch: Same as 1 D and E above.

The fill may be placed on frozen ground. All fill to be placed in approximately horizontal layers, each layer having a loose thickness of not more than 8 inches. All fill in roadways and parking areas is to be classified Type 2 as per Anne Arundel County Code Article 121, Section 2-306. The composition to be determined by ASTM-D1557-98T (ASTM-D1557-98T Modified Practice). Any fill within the building area is to be compacted to a minimum of 98% density as determined by methods specified in this plan and amendments. The fill shall be compacted per MD-278 Construction Specifications. All other fill shall be compacted sufficiently so as to be stable and prevent erosion and slippage.

3. Permanent Seed:

Installation of seed should follow permanent seeding dates. Seeded preparation for seed shall be as noted in section (f) above. Permanent seed to be tall fescue, state approved seed, lime and fertilizer per permanent seeding specifications and lightly irrigate soil prior to laying seed. Seed is to be laid in the center with all ends lightly covered. Seeds are to be staggered between rows. Water and roll or tamp soil to insure positive root contact with the soil. All slopes steeper than 3:1, as shown, are to be permanently seeded or covered with approved erosion control netting. Additional seeding for establishment may be required. Seed is not to be installed on frozen ground. Seed shall not be trampled when moisture content (dry or wet) and/or extreme temperature may adversely affect its survival. In the absence of adequate rainfall, irrigation should be performed to assure establishment of seed.

4. Mining Operations:

Sediment control plans for mining operations must include the following seeding dates and mixtures:

For seeding dates of February 1 through April 30 and August 15 through October 31, use seed mixture of tall fescue at the rate of 2 pounds per 1,000 square feet and sorghum sorghum at the rate of 0.5 pounds per 1,000 square feet.

Topsoil shall be applied as per the Standards and Specifications for Topsoil from the current Maryland Standards and Specifications for Soil Erosion and Sediment Control.

NOTE: Use of this information does not preclude meeting all of the requirements of the "1994 Maryland Standards and Specifications for Soil Erosion and Sediment Control".

NOTE: Projects within 4 miles of the BWI Airport will need to adhere to Maryland Aviation Administration's seeding specification restrictions.

**STANDARD RESPONSIBILITY NOTES**

- I (We) certify that:
- All development and construction will be done in accordance with this sediment and erosion control plan, and further, authorize the right of periodic on-site evaluation by the Anne Arundel Soil Conservation District Board of Supervisors or their authorized agents.
  - Any responsible personnel involved in the construction project will have a certificate of attendance from the Maryland Department of the Environment's approved training program for the control of sediment and erosion before beginning the project.
  - Responsible personnel on site:
  - If applicable, the appropriate enclosures will be constructed and maintained on sediment basins included in this plan. Such structures will be in compliance with the Anne Arundel County Code.
  - The developer is responsible for the acquisition of all easements, rights, and/or rights-of-way that may be required for the sediment and erosion control practices, stormwater management practices and the discharge of stormwater onto or across adjacent or downstream properties included in this plan. He is also responsible for the acquisition of all easements, rights, and/or rights-of-way that may be required for grading and/or work on adjacent properties included in this plan.
  - Initial soil disturbance or redistribution, permanent or temporary stabilization shall be completed within seven calendar days for the surface of all perimeter controls, dikes, weirs, ditches, perimeter slopes, and all slopes greater than 3:1 horizontal to 1 vertical (3:1) and fourteen days for all other disturbed or graded areas on the project site. Temporary stabilization of the surface of perimeter controls, dikes, weirs, ditches and perimeter slopes may be allowed at the discretion of the sediment control inspector.
  - The sediment control practices on this plan extend only to areas and practices identified as proposed work.
  - The approval of this plan for sediment and erosion control does not relieve the developer/consultant from complying with Federal, State or County requirements pertaining to environmental issues.
  - The developer must request that the Sediment Control Inspector approve work completed in accordance with the approved erosion and sediment control plan, the grading or building permit, and the ordinance. On all sites with disturbed areas in excess of 2 acres, approval of the Department of Inspections and Permits is required.
  - All material shall be taken to a site with an approved sediment and erosion control plan.
  - On all sites with disturbed areas in excess of 2 acres, approval of the sediment and erosion control inspector shall be required on completion of installation of perimeter erosion and sediment controls, but before proceeding with any other earth disturbance or grading. This will require first phase inspections. Other building or grading inspection approvals must be authorized until the initial approval by the sediment and erosion control inspector is given.
  - Approval shall be requested on final stabilization of all sites with disturbed areas in excess of 2 acres before removal of controls.
  - Existing topography must be field verified by responsible personnel to satisfaction of the sediment control inspector prior to commencing work.

Signature(s) of Developer/Owner: *[Signature]* Date: 9-25-06

Print Name: KEVIN HOWARD

Title: OWNER

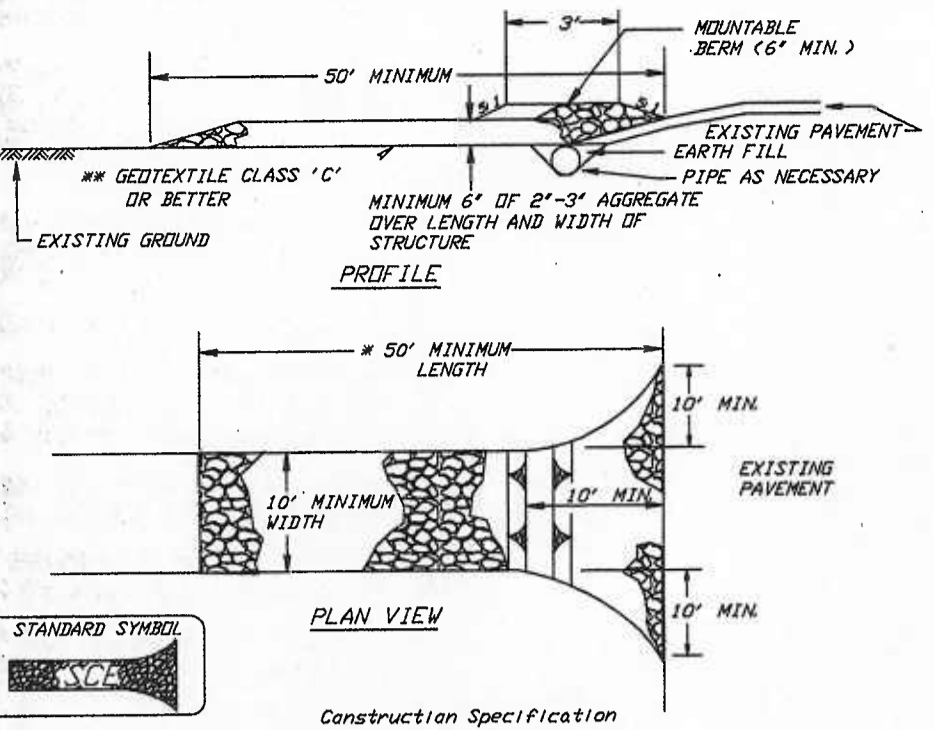
Affiliation:

Address: 7585 BEACH DRIVE

PASADENA, MARYLAND 21122

Telephone Number:

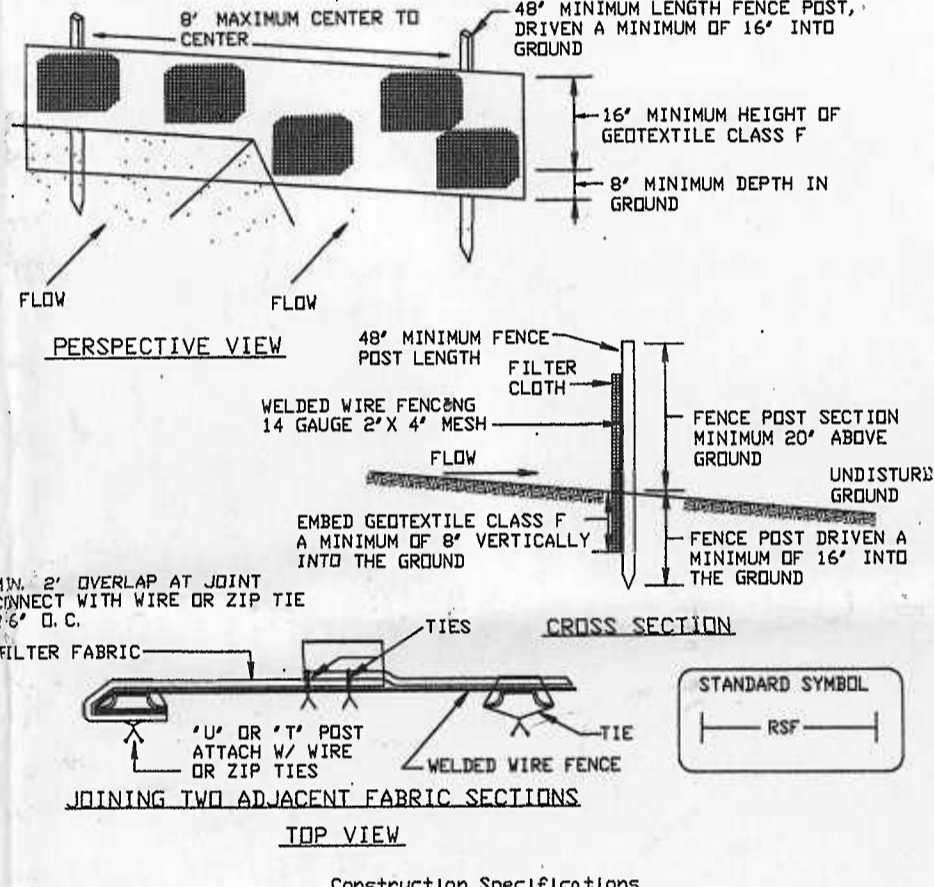
**DETAIL 24 - STABILIZED CONSTRUCTION ENTRANCE**



- Length - minimum of 50' (+30' for single residence lot).
- Width - 10' minimum, should be floored at the existing road to provide a turning radius.
- Geotextile fabric (filter cloth) shall be placed over the existing ground prior to placing stone. The plan approval authority may not require single family residences to use geotextile.
- Stone - crushed aggregate (2" to 3") or reclaimed or recycled concrete equivalent shall be placed at least 6" deep over the length and width of the entrance.
- Surface Water - all surface water flowing to or diverted toward construction entrances shall be piped through the entrance, maintaining passive drainage. Pipe installed through the stabilized construction entrance shall be protected with a maintainable curb with 5:1 slopes and a minimum of 6" of stone over the pipe. Pipe has to be sized according to the drainage. When the SCE is located at a high spot and has no drainage to convey a pipe will not be necessary. Pipe should be sized according to the amount of runoff to be conveyed. A 6" minimum will be required.
- Location - A stabilized construction entrance shall be located at every point where construction traffic enters or leaves a construction site. Vehicles leaving the site must travel over the entire length of the stabilized construction entrance.

U.S. DEPARTMENT OF AGRICULTURE SOIL CONSERVATION SERVICE PAGE 7-19-3 MARYLAND DEPARTMENT OF ENVIRONMENT WATER MANAGEMENT ADMINISTRATION

**DETAIL 22A - REINFORCED SILT FENCE APPROVED BY MDE 2-7-05**



- Metal fence post shall be a minimum of 48" long driven 16" minimum into the ground. Post shall be standard I or U section weighing not less than 1.00 pound per linear foot.
  - Geotextile shall be fastened to each fence post with wire ties or zip ties at top and mid section and shall meet the following requirements for geotextile fabric:
    - Tensile Strength 50 lbs/in (min.) Test: MSMT 509
    - Tensile Modulus 80 lbs/in (min.) Test: MSMT 509
    - Flow Rate 0.3 gal/ft<sup>2</sup>/minute (max.) Test: MSMT 552
    - Filtering Efficiency 75% (min.) Test: MSMT 322  - Where ends of geotextile fabric cone together, they shall be overlapped, folded and wired tied or zip tied to prevent sediment bypass.
  - Silt fence shall be inspected after each rainfall event and maintained when bulges occur or when sediment accumulation reached 50% of the fabric height.
- ANNE ARUNDEL SOIL CONSERVATION DISTRICT PAGE 8-18-3 MARYLAND DEPARTMENT OF ENVIRONMENT WATER MANAGEMENT ADMINISTRATION

**21.0 STANDARD AND SPECIFICATIONS FOR TOPSOIL**

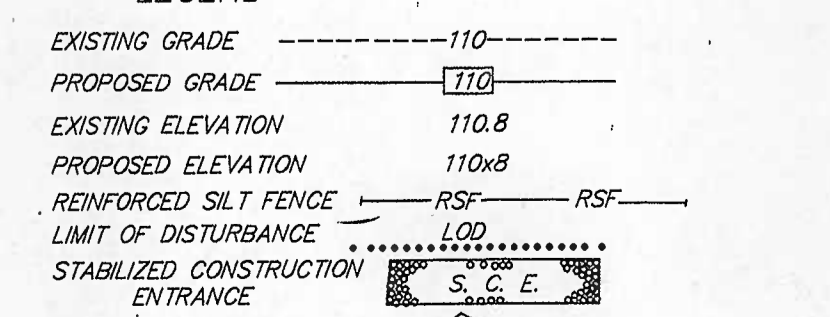
1. Topsoil Application:
- When topsoiling, maintain needed erosion and sediment control practices such as diversions, Grade Stabilization Structures, Earth Dikes, Slope Silt Fence and Sediment Traps and Basins.
  - Grades on the area to be topsoiled, which have been previously established, shall be maintained, about 4" - 8" higher in elevation.
  - Topsoil shall be uniformly distributed in a 4" - 8" layer and lightly compacted to a minimum thickness of 4". Spreading shall be performed in such a manner that sodding or seeding can proceed with a minimum of additional soil preparation and tillage. Any irregularities in the surface resulting from topsoiling or other operations shall be corrected in order to prevent the formation of depressions or water pockets.
  - Topsoil shall not be placed while the topsoil or subsoil is in a frozen or muddy condition, when the subsoil is excessively wet or in a condition that may otherwise be detrimental to proper grading and seeded preparation.
  - Alternative to Permanent Seeding - Instead of applying the full amount of lime and commercial fertilizer, composted sludge and amendments may be applied as specified below:
    - Composted sludge material for use as a soil conditioner for site having disturbed areas over 5 acres shall be tested to prescribe amendments and for sites having disturbed areas under 5 acres shall conform to the following requirements:
      - Composted sludge shall be supplied by, or originate from, a person or persons that are permitted (at the time of acquisition of the compost) by the Maryland Department of the Environment under COMAR 26.04.06.
      - Composted sludge shall contain at least 1 percent nitrogen, 1.5 percent phosphorus, and 0.2 percent potassium and have a pH of 7.0 - 8.0. If compost does not meet these requirements, the appropriate constituents must be added to meet the requirements prior to use.
      - Composted sludge shall be applied at a rate of 1 ton/1,000 square feet.
    - Composted sludge shall be amended with potassium fertilizer applied at the rate of 4 lbs/1,000 square feet, and 1/3 the normal lime application rate.
  - References: Guidelines Specifications, Soil Preparation and Sodding, MD-104, PUB.#1, Cooperative Extension Service, University of Maryland Polytechnic Institute. Revised 1993.

**QUANTITIES**

- CUT 400 C.Y.
- FILL 100 C.Y. WASTE 300 C.Y.
- AREA TO BE VEGETATIVELY STABILIZED: 3,185 S.F. 0.07 ACRES.
- AREA TO BE MECHANICALLY STABILIZED: 2,835 S.F. 0.07 ACRES.

NOTE: THE EARTHWORK QUANTITIES SHOWN ARE FOR THE PURPOSE OF PERMIT FEE CALCULATION. THE CONTRACTOR SHALL VERIFY ALL QUANTITIES AND SOIL TYPES TO HIS OWN SATISFACTION.

**LEGEND**



**CONSULTANT'S CERTIFICATION**

The Developer's plan to control silt and erosion is adequate to contain the silt and erosion on the property covered by the plan. I certify that this plan of erosion and sediment control represents a practical and workable plan based on my personal knowledge of the site, and was prepared in accordance with the requirements of the Anne Arundel Soil Conservation District Plan Submittal Guidelines and the current Maryland Standards and Specifications for Sediment and Erosion Control. I have reviewed this erosion and sediment control plan with the owner/developer.

M.D. License # \_\_\_\_\_  
 Md. Land Surveyor License # 10714  
 Md. Landscape Architect # \_\_\_\_\_  
 Name (Print) EDWARD A. BROWN Firm Name: ED BROWN & ASSOCIATES, INC.  
 Street Address: 19 LORETTA AVENUE ANNAPOLIS, MARYLAND 21401

**STORMWATER MANAGEMENT STATEMENT:**

- WITH REGARD TO ARTICLE 16, SECTION 3 OF THE COUNTY CODE THE FOLLOWING APPLIES TO THIS SITE:
- THE DISTURBED AREA IS 6,020 SQ.FT.
  - THEREFORE, ARTICLE 16, SECTION 3-204(B) STATES:
    - FOR ALL INFILL DEVELOPMENT THAT DISTURBS LESS THAN 15,000 SQUARE FEET THE MINIMUM CONTROL REQUIREMENTS ARE:
      - RECHARGE VOLUME (RE V);
      - WATER QUALITY VOLUME (WQ V);
      - CHANNEL PROTECTION VOLUME (CP V), UNLESS:
        - THE DEVELOPMENT HAS A DIRECT DISCHARGE;
    - THE RE V AND THE WQ V ARE ADDRESSED IN THIS CASE, DUE TO STEEP SLOPES AND LIMITED AREA BY PROVIDING NATIVE PLANT MATERIALS (TREES AND SHRUBS) IN A QUANTITY SUFFICIENT (2,700 SQ.FT.) TO OFF-SET THE ON-SITE IMPERVIOUS AREAS.
    - THE CP V IS ADDRESSED BY THE FACT THAT THE SITE GENERATES LESS THAN 2.0 CFS QP 1.

**STORMWATER MANAGEMENT SUMMARY TABLE**

MINIMUM SIZING CRITERIA	SYMBOL	VOLUME DRAINAGE AREA	VOLUME REQUIRED (CUBIC- FEET)	VOLUME PROVIDED (CUBIC- FEET)	SWM PRACTICE	NOTES
WATER QUALITY VOLUME	(WQ V)	0.21 ACRES	0	0	NATIVE SPECIES PLANTS	DUE TO STEEP SLOPES AND LIMITED SITE AREA
RECHARGE VOLUME	(RE V)	0.21 ACRES	0	0	NATIVE SPECIES PLANTS	DUE TO STEEP SLOPES AND LIMITED SITE AREA
CHANNEL PROTECTION STORAGE VOLUME	(CP V)	0.21 ACRES	N/A	N/A	N/A	NOT REQUIRED DUE TO QP 1 BEING LESS THAN 2 c.f.s.

**SEQUENCE OF CONSTRUCTION**

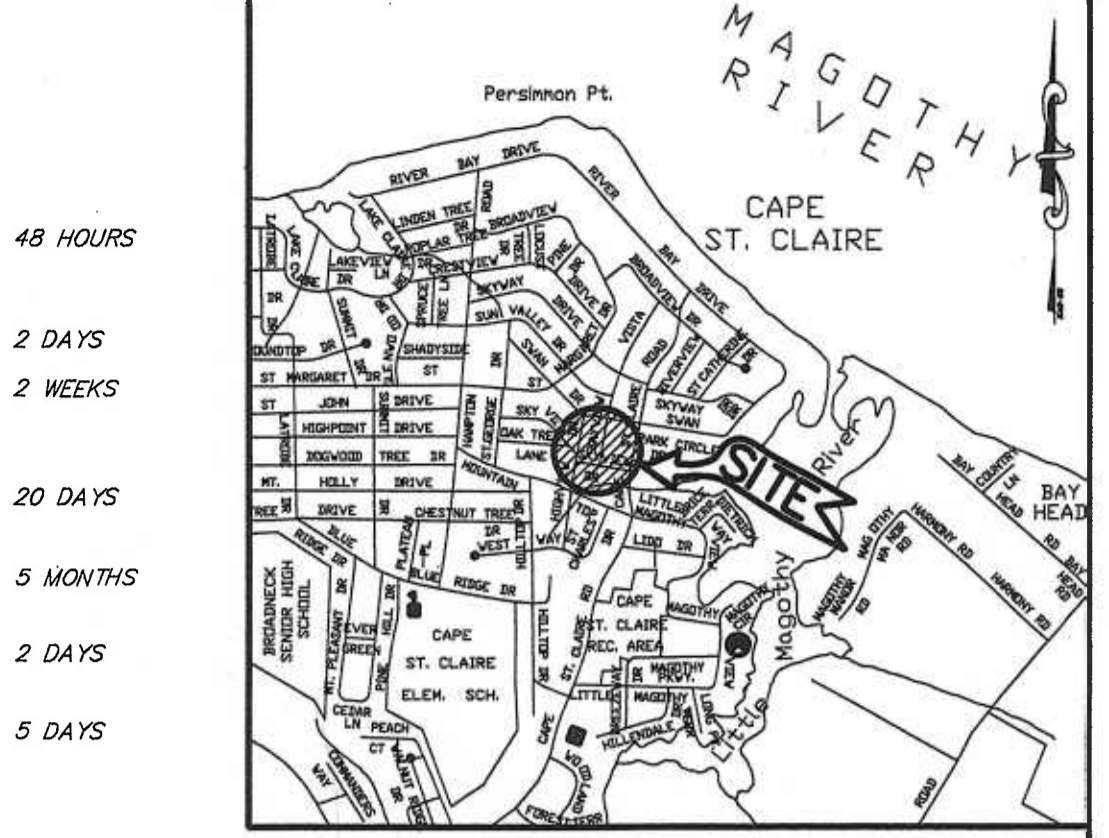
- PRE-CONSTRUCTION MEETING: NOTIFY THE DEPARTMENT OF INSPECTIONS AND PERMITS AT LEAST 48 HOURS BEFORE COMMENCING WORK. WORK MAY NOT COMMENCE UNTIL THE PERMITS OR THE RESPONSIBLE PERSONNEL HAVE MET ON SITE WITH THE SEDIMENT AND EROSION CONTROL INSPECTOR TO REVIEW THE APPROVED PLANS. 48 HOURS
- INSTALL ALL TEMPORARY EROSION CONTROL MEASURES SUCH AS REINFORCED SILT FENCE, STABILIZED CONSTRUCTION ENTRANCE, CONTACT INSPECTIONS AND PERMITS FOR "PHASE ONE" INSPECTION. 2 DAYS
- ROUGH GRADE LIMIT OF DISTURBANCE. 2 WEEKS
- EXCAVATE FOR AND CONSTRUCT FOUNDATION (AT HOUSE BACKFILL, STABILIZE ALL AFFECTED AREAS AS PER THE STABILIZATION SPECIFICATIONS) GRADE AND STABILIZE REMAINDER OF SITE. MAINTAIN SEDIMENT CONTROL MEASURES. 20 DAYS
- CONSTRUCT HOUSE, WATER WELL, PUBLIC SEWER SYSTEM AND DRIVEWAY AND MAINTAIN SEDIMENT CONTROL MEASURES. 5 MONTHS
- INSTALL THE REQUIRED STORMWATER MANAGEMENT PLANTS INSPECT BY COUNTY AND ENGINEER OF RECORD. 2 DAYS
- FINAL CLEANUP, STABILIZATION AND REMOVAL OF REMAINING SEDIMENT CONTROL MEASURES WITH INSPECTOR'S APPROVAL. 5 DAYS

**CRITICAL AREA TABULATION (LDA)**

- SITE AREA = 9,100 SQ.FT.
- EXISTING WOODS = 8,600 SQ.FT.
- WOODLAND CLEARING = 5,400 SQ.FT.
- PROPOSED IMPERVIOUS = 2,610 SQ.FT.
- ALLOWABLE IMPERVIOUS = 2,844 SQ.FT.

**SITE ANALYSIS**

DRAINAGE AREA: 0.21 ACRES  
 Tc: = 0.50  
 Td: = 15 MINUTES  
 I 10: = 5.35  
 Q 10: = 0.50 x 5.35 x 0.21 = 0.6 C.F.S.



**VICINITY MAP**  
SCALE: 1" = 2,000'

**GENERAL NOTES**

- ZONING: R5
- SETBACKS: FRONT: 25' REAR: 20' SIDE: 7' 20' CORNER
- PREDOMINANT SOIL TYPE: GpD COLLINGTON "B" SOILS
- TOTAL AREA OF SITE: 9,100 S.F. 0.21 ACRES.
- PROPOSED DISTURBED AREA: 6,020 S.F. 0.14 ACRES.
- A. A. COUNTY TOP SHEET: AA-18
- F.E.M.A. RATE MAP: 240008029 C ZONE: C
- THIS LOT IS NOT IN THE 100 YEAR FLOOD AREA.
- FIELD RUN TOPOGRAPHY BY ED BROWN AND ASSOCIATES, INC.
- PRIVATE WATER.
- PUBLIC SEWER.
- EARTH MOVING: ANY STOCKPILE NECESSARY SHALL REMAIN WITHIN THE LIMITS PROTECTED BY SEDIMENT CONTROL MEASURES. ANY EXCESS SPILL OR BORROW MATERIAL SHALL BE TAKEN TO OR OBTAINED FROM A. A. CO. APPROVED SITE.
- DOWNSPOUT PROTECTION: ALL DOWNSPOUTS ARE TO BE CARRIED TO THE TOE OF THE FILL SLOPES, SPLASH BLOCKS ARE TO BE PROVIDED AT ALL DOWNSPOUTS NOT DISCHARGING ONTO A PAVED SURFACE.
- DISTURBANCE WITHIN SKYVIEW DRIVE MUST BE STABILIZED IMMEDIATELY USING COLD PATCH BITUMINOUS MATERIAL. PERMANENT PAVE PATCHING IN THESE AREAS WITH HOT MIX BITUMINOUS MATERIAL MUST BE COMPLETED WITHIN 14-30 DAYS TO MATCH THE EXISTING PAVEMENT SECTION OF ROAD.
- THE EXISTING UTILITIES AND OBSTRUCTIONS SHOWN ARE FROM THE BEST AVAILABLE RECORDS AND SHALL BE VERIFIED BY THE CONTRACTOR TO HIS SATISFACTION PRIOR TO CONSTRUCTION. NECESSARY PRECAUTIONS SHALL BE TAKEN BY THE CONTRACTOR TO PROTECT EXISTING SERVICES AND MAINS AND ANY DAMAGE TO THEM SHALL BE REPAIRED AT HIS OWN EXPENSE.
- THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE OBSERVANCE OF ALL APPLICABLE OSHA REGULATIONS CONCERNING EXCAVATION AND BACKFILL.
- THIS SITE LIES ENTIRELY IN THE LDA CRITICAL AREA
- PROPOSED IS A NEW SINGLE FAMILY DWELLING WITH TWO OFF STREET PARKING SPACES.

**CP V Computation:**

With reference to the proposed development of this site, we offer the following computations in accordance with Appendix D-11 of the State Manual.

- The time of concentration is 0.25 hours or around 15 minutes.
- The one-year post-development run-off depth in inches (Qa) is 1.09.
- ln = 200/81 - 2 = 0.4691
- ln^P = 0.4691/2.7 = 0.1738
- Qa = 700
- A = 0.21/640 = 0.0003
- One year post-development peak discharge: q1 = qa x A x Ca = 700 x 0.0003 x 1.09 = 0.23 cfs
- Therefore, since QP1 is less than 2.0 CP V SWM is not required.

District Official: \_\_\_\_\_ Date: \_\_\_\_\_

ASDC# \_\_\_\_\_ SMALL POND(S)# \_\_\_\_\_  
 OCT 11 2006  
 Reviewed for technical adequacy by  
 USDA, Natural Resource Conservation Service  
 CRITICAL AREA COMMISSION  
 Chesapeake & Atlantic Coastal Bays  
**G02012**

**DRAINAGE AREA MAP**  
SCALE: 1" = 100'

The Developer's plan to control silt and erosion is adequate to contain the silt and erosion on the property covered by the plan. I certify that this plan of erosion and sediment control represents a practical and workable plan based on my personal knowledge of the site, and was prepared in accordance with the requirements of the Anne Arundel Soil Conservation District Plan Submittal Guidelines and the current Maryland Standards and Specifications for Sediment and Erosion Control. I have reviewed this erosion and sediment control plan with the owner/developer.

M.D. License # \_\_\_\_\_  
 Md. Land Surveyor License # 10714  
 Md. Landscape Architect # \_\_\_\_\_  
 Name (Print) EDWARD A. BROWN Firm Name: ED BROWN & ASSOCIATES, INC.  
 Street Address: 19 LORETTA AVENUE ANNAPOLIS, MARYLAND 21401



**ED BROWN & ASSOCIATES, INC.**

LAND SURVEYORS - LAND PLANNERS  
 DEVELOPMENT CONSULTANTS  
 19 LORETTA AVENUE ANNAPOLIS, MARYLAND 21401  
 ANNAPOLIS 410-266-6199 BALTIMORE 410-941-0719

SCALE: AS NOTED  
 DATE: SEPTEMBER, 2006  
 DRAWN BY: JAY  
 CHECKED BY: D.D.B.  
 JOB NO: 06-80  
 SHEET NO: 1 OF 2

**GRADING & SEDIMENT CONTROL PLAN**  
**LOT 7, BLOCK "N"**  
**PLAT NO. "3"**  
**CAPE ST. CLAIRE**  
 1201 BAYVIEW VISTA  
 TAX MAP 40, BLOCK 6, PARCEL 26, ZONING R5, ZIP CODE 21409  
 THIRD DISTRICT ANNE ARUNDEL COUNTY, MARYLAND

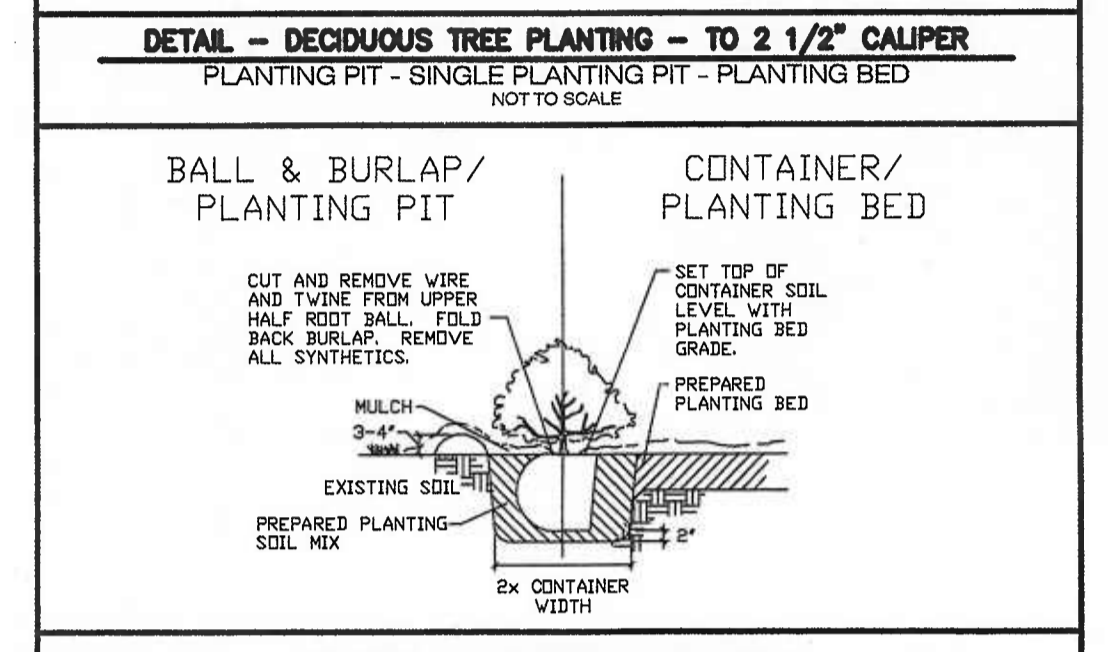
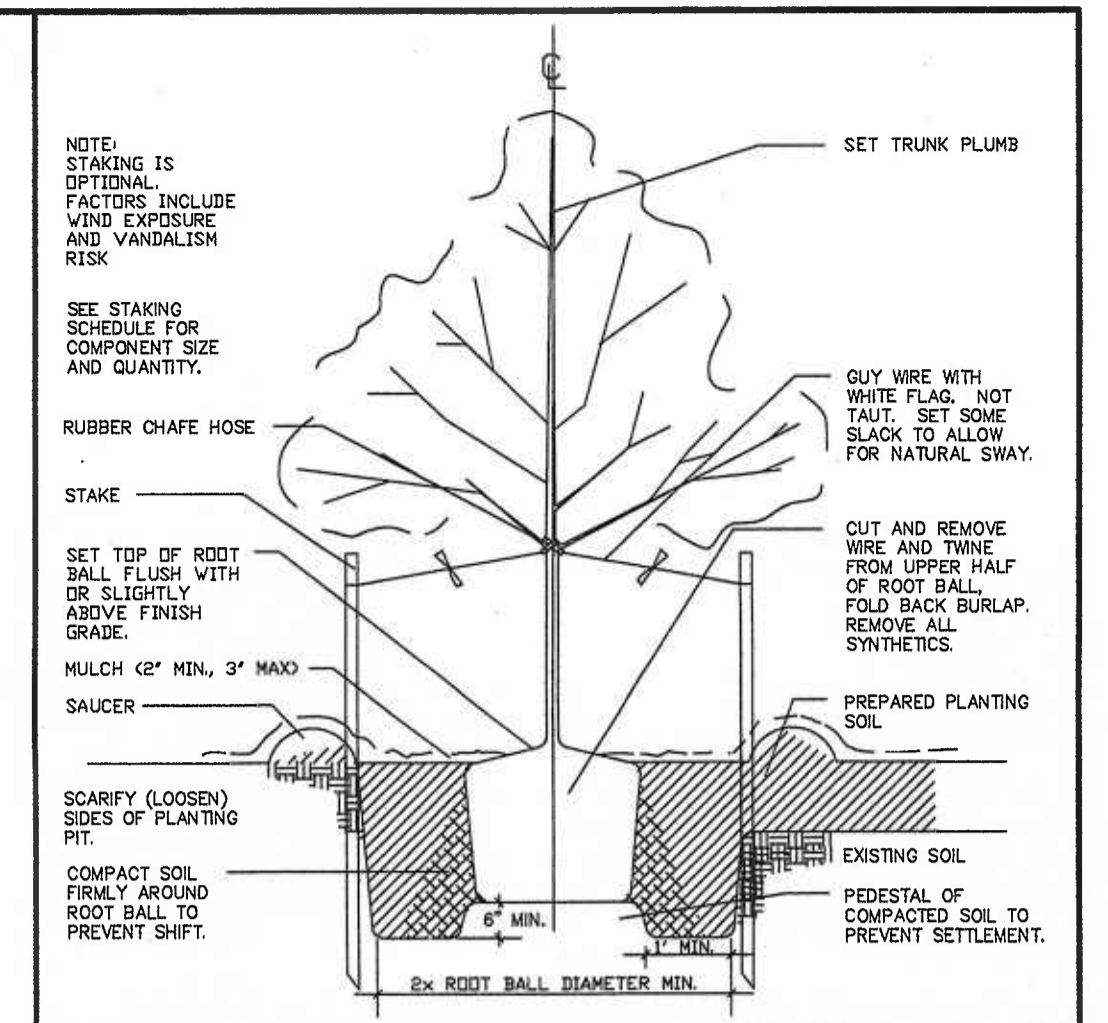
**Outfall Statement:**

In June, 2006, Ed Brown & Associates surveyed the subject property and report the following regarding the outfall conditions.

The subject property is an unimproved lot situated at the corner of Skyview Drive and Bayview Vista in Cape St. Claire. The lot is wooded and slopes toward the right rear corner at Skyview Drive.

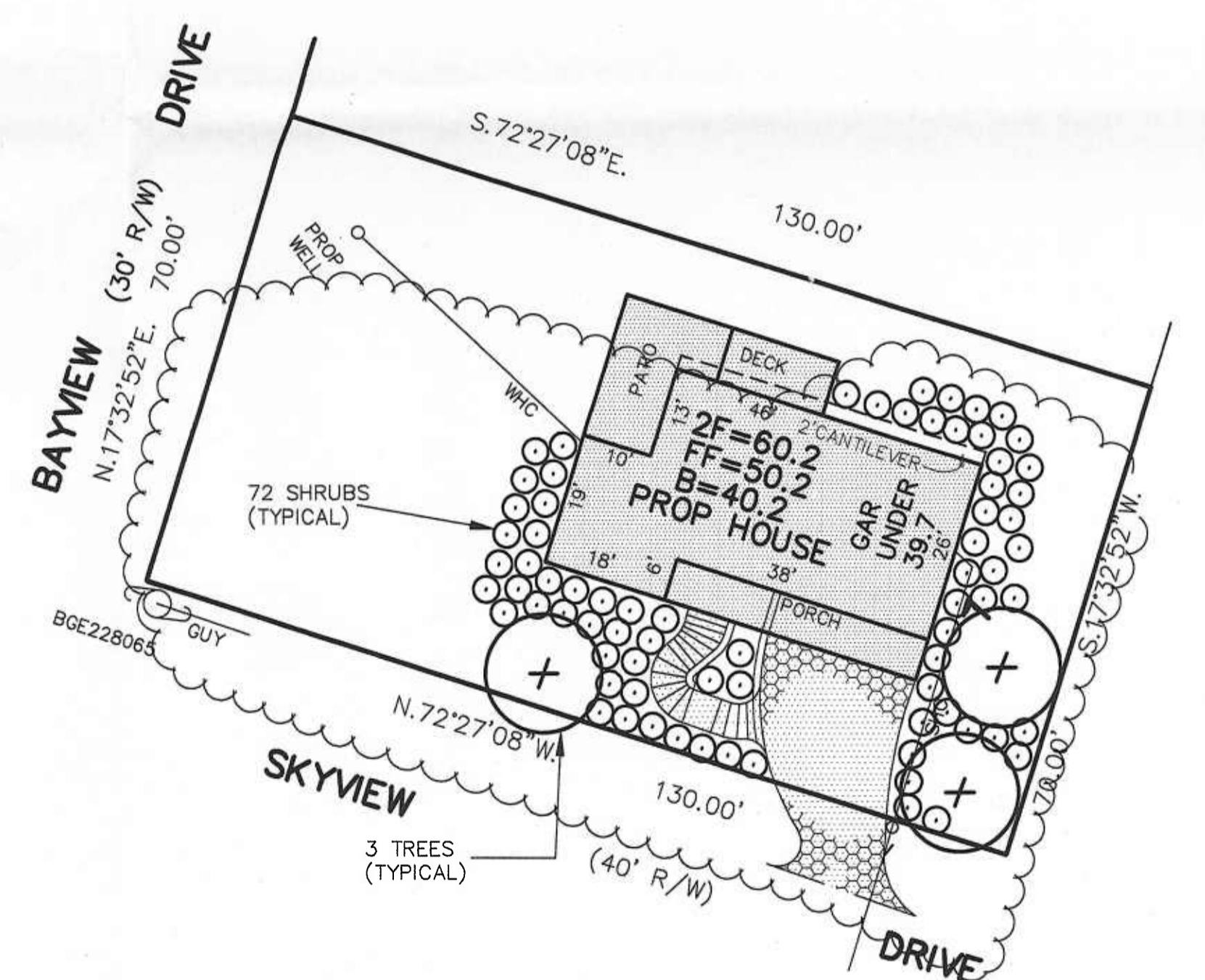
From there, storm flows enter a side ditch running along the edge of pavement along the north side of Skyview Drive and drain to an inlet at the corner of Skyview Drive and Cape St. Claire Road. The flows are then intercepted by the inlet and carried under Skyview Drive in an existing 22 x 13 culvert. Flows then enter a stable side ditch running along the west side of Cape St. Claire Road and flow through a 12 inch CMP under the next driveway down along Cape St. Claire Road, then flow down an existing concrete spillway into a stormdrain channel that then conveys flows under Cape St. Claire Road via twin 48" CMP culverts. Flows then reach a stable rip-rapped pad at the downstream end of the twin 48" culverts and ultimately run down into Little Magotly River.

There are no inadequacies noted. The development of the subject infill lot should not create any adverse effects downstream.



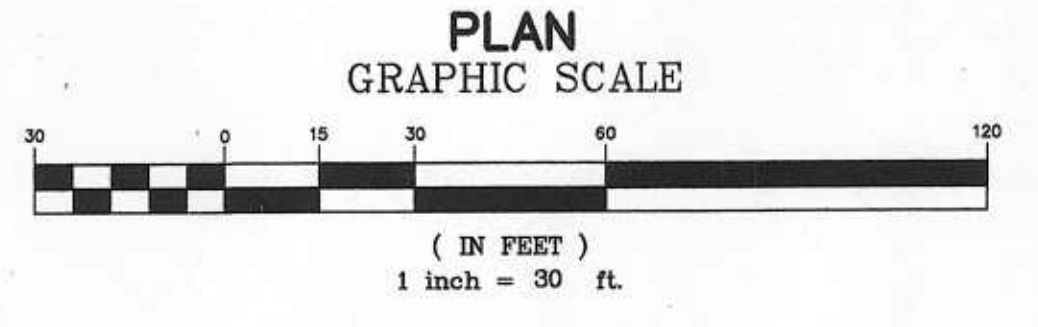
**STORMWATER MANAGEMENT PLANTING CHART**

LEGEND	NO.	SCIENTIFIC NAME	COMMON NAME	TYPE
+	3	ACER RUBRUM	RED MAPLE	1-1/2" CAL B & B TREE
o	72	MYRTICA PENSYLVANICA OR APPROPRIATE ALTERNATE	BAYBERRY	3 GAL. SHRUB



**LEGEND**

EXISTING GRADE	---
PROPOSED GRADE	---
EXISTING ELEVATION	110.8
PROPOSED ELEVATION	110x8
REINFORCED SILT FENCE	RSF
LIMIT OF DISTURBANCE	---
STABILIZED CONSTRUCTION ENTRANCE	S.C.E.
STOCK FILE	SP



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**RECEIVED**  
OCT 11 2006

CRITICAL AREA COMMISSION  
Chesapeake & Atlantic Coastal  
G02012

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