

AA 691-06 Ladas, James
VAR 0358

MSA-5-1829-5518

Comments
10/26/06
KS

Robert L. Ehrlich, Jr.
Governor



Michael S. Steele
Lt. Governor

Martin G. Madden
Chairman

Ren Serey
Executive Director

**STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS**

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

October 26, 2006

Ms. Ramona Plociennik
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road, MS 6401
Annapolis, Maryland 21401

Re: 2006-0358-V; 201 McLean Place
James Landas

Dear Ms. Plociennik:

Thank you for providing information on the above referenced variance. The applicant is requesting a variance to allow a dwelling addition (deck with hot tub) with less Buffer than required. The lot is 65,588 square feet in size, designated as Limited Development Area (LDA) and is entirely within the 100-foot Buffer.

Based on the information provided, this office would not support this variance request. In this instance, the applicant is proposing to increase the size of deck in the Buffer and proposes to install a hot tub. The applicant already has significant deck space available, approximately 450 square feet, waterward of the dwelling (see attached image). The proposed expansion is 180 square feet in size, of which 50 square feet will be impervious surface. In 2002 and 2004, the Maryland General Assembly reiterated its commitment to the protection of the water quality and habitat of the Chesapeake and Atlantic Coastal Bays Critical Area by strengthening and clarifying the Critical Area law, especially emphasizing the importance of the 100-foot Critical Area Buffer. In particular, the General Assembly stated that variances to a local jurisdiction's Critical Area program may be granted only if a zoning board finds that an applicant has satisfied the burden to prove that the request meets each one of the County's variance standards, including the standard of "unwarranted hardship." The General Assembly defined that term to mean that without the variance, the applicant would be denied reasonable and significant use of the entire parcel or lot. I do not believe the applicant can meet the standard of unwarranted hardship given that they already enjoy significant outdoor use of their property.

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

Sincerely,

Kate Schmidt

Kate Schmidt
Natural Resource Planner
cc: AA691-06

691-06

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 2006-0358-V

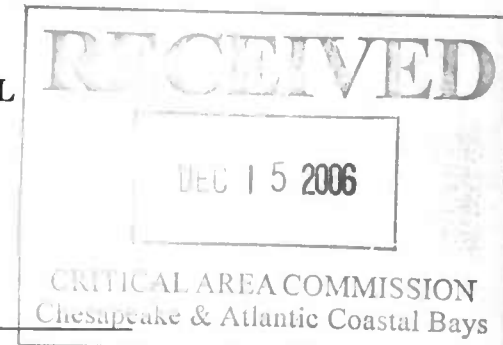
IN RE: JAMES AND WENDY LADAS

THIRD ASSESSMENT DISTRICT

DATE HEARD: NOVEMBER 21, 2006

ORDERED BY: STEPHEN M. LeGENDRE, ADMINISTRATIVE HEARING OFFICER

PLANNER: ROBERT KONOWAL



DATE FILED: DECEMBER 8, 2006

PLEADINGS

James and Wendy Ladas, the applicants, seek a variance (2006-0358-V) to allow a deck addition with less buffer than required on property located along the south of McLean Place, south of South Drive, Severna Park.

PUBLIC NOTIFICATION

The hearing notice was posted on the County's web site in accordance with the County Code. The file contains the certification of mailing to community associations and interested persons. Each person designated in the 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. Ladas 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

The applicants own single-family residence with a street address of 201 McLean Place, in the subdivision of Lower Magothy Beach, Severna Park. The property comprises 65,584 square feet and is zoned R5 residential with a Chesapeake Bay Critical Area designation as Limited Development Area (LDA).

This is a waterfront lot on Cattail Creek. The request is to construct a 12 by 15 foot deck addition to be located 75 feet from mean high water.¹

Anne Arundel County Code, Article 18, Section 18-13-104(a) creates a 100-foot buffer from tidal waters. Accordingly, the proposal requires a buffer variance of 25 feet.

Robert Konowal, a planner with the Office of Planning and Zoning, testified that the property exceeds the standards for the district. The dwelling is located on a peninsula and is entirely in the buffer. Although development is constrained by the site conditions, this is comparatively new (2003) construction with the result that any hardship is considered self-created. Furthermore, the applicants already enjoy a waterside deck addition. Nor is a hot tub in the buffer a right commonly enjoyed by other properties in the Critical Area. On the other hand, the granting of the variance would 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 witness summarized the agency comments. The County's Development Division opposed the application. The Department of Health requested plan approval. Finally, the Chesapeake Bay Critical Area Commission opposed the application on the grounds that the standards for approval of a variance have not been satisfied. By way of conclusion, Mr. Konowal opposed the request.

¹ A hot tub would be installed on the deck.

Mr. Ladas testified that the property is part of a three-lot subdivision. Ms. Ladas testified that the property is elevated 20 feet above the water. The applicants have stabilized the eroding slopes. The request is unobjectionable to their neighbors. The unfavorable recommendations were a surprise because the applicants accommodated the suggestions made by the County representative at the pre-filing meeting. Finally, the witness acknowledged that it would be possible to install the hot tub on the existing deck.

I visited the site and the neighborhood. This is a well-maintained property at the end of a long right-of-way. The dwelling is two and one-half stories over a basement with an integral two-car garage, covered entrance porch and an irregularly configured waterside deck addition that wraps from the east side façade across the front façade. The neighboring dwellings are similar in size and amenities.

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.

Upon review of the facts and circumstances, I am constrained to deny the application. While the application satisfies some of the Critical Area variance criteria², the applicants' burden of proof is to satisfy them all. Considering the subsection (b) criteria, even conceding that the need for relief is not the result of the actions of the applicants, new development and impervious coverage in the buffer represent a special privilege rather than a right commonly enjoyed by other lands in the Critical Area. This is especially the case where the dwelling is recent construction in the buffer.³ I further find that the granting of the variance is not in harmony with the general spirit and intent of the program.

² Thus, the dual requirements in subsection (c)(2) are satisfied: the granting of the variance will not alter the essential character of the neighborhood or impair the use or development of adjacent property.

³ This office has been unable to find evidence of an approved variance for the dwelling. It would appear that the building permit issued prior to subdivision on the basis of the former buffer exemption mapping (now known as buffer modification mapping). After subdivision, the mapping no longer applies. See, Section 18-13-104(b) (buffer modification only available for lots created **before** December 1, 1985).

Considering the remaining subsection (c) criteria, even though the requested relief is not excessive, the granting of the variance is nonetheless detrimental to the public welfare.

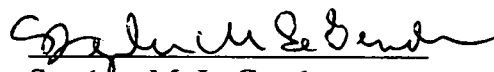
Because the applicants have not met their burden of proof with respect to all the Critical Area variance criteria, the denial of the application is not an unwarranted hardship.⁴

ORDER

PURSUANT to the application of James and Wendy Ladas, petitioning for a variance to allow a deck addition with less 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 8th day of December, 2006,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicants' request is **denied**.


Stephen M. LeGenre
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.

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

⁴ In closing, I would be remiss if I failed to note that the alternative of locating a hot tub on the existing deck would still require a variance for the new impervious coverage in the LDA. While the relief would be even less, the result is unchanged.

Outfall Statement

A field investigation of the outfall of this site was performed on August 12, 2002 by Drum, Snell & Associates, L.C. On Lots 10AR through 12AR, stormwater runoff from the rear of the dwellings and east, sheetflows overlaid toward the eastern portion of these lots, with the eventual outfall at Cattail Creek. The front portion of these lots and the private road drain toward the grass channel on the eastern side of the private road. The grass channel flows south toward Cattail Creek. Lot 13AR is on a peninsula which extends into Cattail Creek. This lot outfalls on all three sides of the peninsula into Cattail Creek.

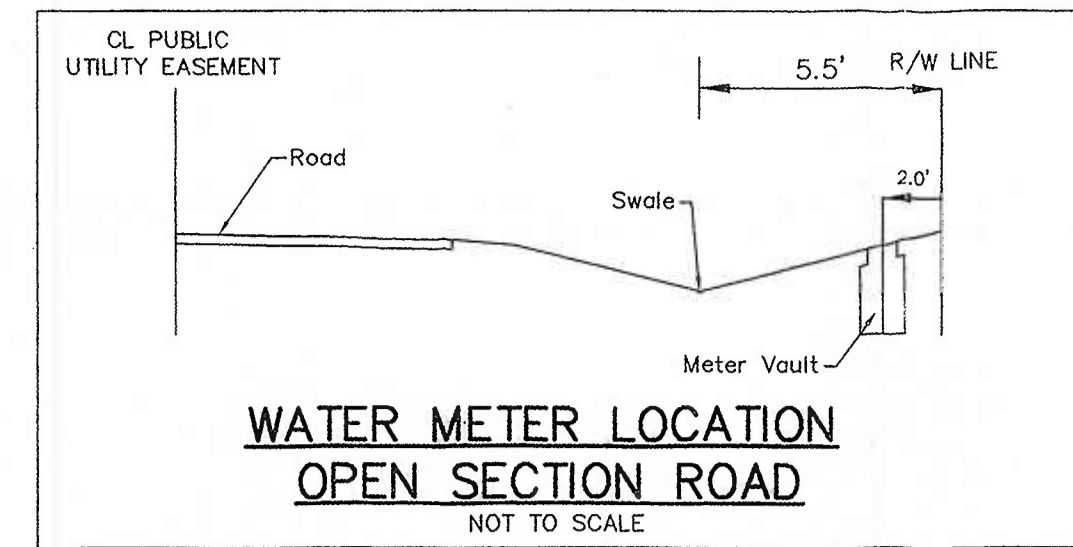
The northern, eastern, and southern perimeter of the site is surrounded by woods in good condition, with no signs of erosion. A Conservation Property protects 60,968 s.f. of these woods.

TOTAL PROPERTY AREA
154,932 S.F. (3.56 Ac.)

LINE	BEARING	DISTANCE
L1	N79°24'36"W	18.44
L2	S11°27'22"W	50.33
L3	S10°02'26"W	48.14
L4	S01°31'10"E	64.35
L5	S09°47'13"E	58.19
L6	S16°54'24"E	113.01
L7	S43°44'44"W	44.86
L8	S76°40'46"W	32.86
L9	N80°17'56"W	79.32
L10	N58°27'01"W	39.95
L11	N33°46'44"W	24.48
L12	N25°20'06"W	37.08
L13	N28°10'48"W	39.80
L14	N14°13'49"W	35.29
L15	N29°25'12"W	35.69
L16	N18°54'03"W	11.14
L17	N75°30'05"W	20.44

REFORESTATION NOTE:

Reforestation area required and provided, as well as the amount to be paid for by fee-in-lieu is detailed on the Reforestation Plan that was approved during the subdivision process for Magothy Beach, Lots 10A-14A Revised Major Subdivision.



WATER METER LOCATION
OPEN SECTION ROAD
NOT TO SCALE

Stormwater Management Summary Table

Minimum Sizing Criteria	Symbol	Area	Volume Required (Cu. Ft.)	Volume Provided (Cu. Ft.)	SWM Practice	Notes
Water Quality	Wq _v	Entire Site Area	966	1,002	Credits, Infiltration Trench	
Recharge Volume	Rev	Entire Site Area	406 c.f. struct. 9,761 s.f. non-struct.	406 c.f. struct. 9,761 s.f. non-struct.	Credits, Infiltration Trench	Volume included with Wq _v
Channel Protection Storage Volume	Cp _v		N/A			Exempt; Site has direct discharge
Overbank Flood Protection Volume	Qp ₁₀		N/A			Exempt; Site has direct discharge
Extreme Flood Volume	Q _t		N/A			Exempt; Site has direct discharge

SWM Procedure
For New Development
Based Upon September 2001 SWM Practices and Procedures Manual
Project Name: Magothy Beach, Lots 10A - 14A Resubdivision
Designer: D.C. Grimm
Date: October 2, 2002

Site Information	Entire Site Area
A Site Area (A) =	154,932 s.f. = 3.56 ac
B Site Area Used to Compute Water Quality Volume (A _q) =	77,264 s.f. = 1.77 ac
A _q = (Total Site Area - Construction Property Area - Area Draining to Grass Channel)	A _q = (154,932 s.f. - 60,968 s.f. - 16,700 s.f.)
C Land Area Disturbance	> 15,000 s.f. =
D Proposed 15% Max. Imperv. Area (IM _{max}) =	23,240 s.f. = 0.53 ac
Prop. Imp. Area Used to Compute Rev (A _{imp}) =	17,425 s.f. = 0.40 ac
A _{imp} = (IM _{max} - Rooftop Disconnect Impervious Area - Nonrooftop Disconnect Impervious Area)	A _{imp} = (23,240 s.f. - 3,668 s.f. - 2,147 s.f.)
E Proposed Impervious Covg. =	11.2%
F Soil Type =	Evesboro and Galctown loamy sand
Per TR-55, Appendix A, hydrologic soil group (HSG) =	A
Soil Specific Recharge Factor, S =	0.42

Required

Determine (A) Recharge Volume, (B) Water Quality Volume, and (C) Channel Protection Volume

Solution

STEP 1 Rev = Volumetric Runoff Coefficient = 0.05 + 0.009 x (1) = 0.05 + 0.009 x (11.2) = 0.15
Rev = Recharge Vol. (structural so'n) = [(S) x (Rev) x (A_q)] / 12 = [(0.15) x (0.15) x (77,264)] / 12 = 406 c.f. (structural so'n)
Rev = Recharge Vol. (non-struct. so'n) = [(S) x (A_{imp})] = [(0.42) x (17,425)] = 7,318 s.f. (non-struct so'n)

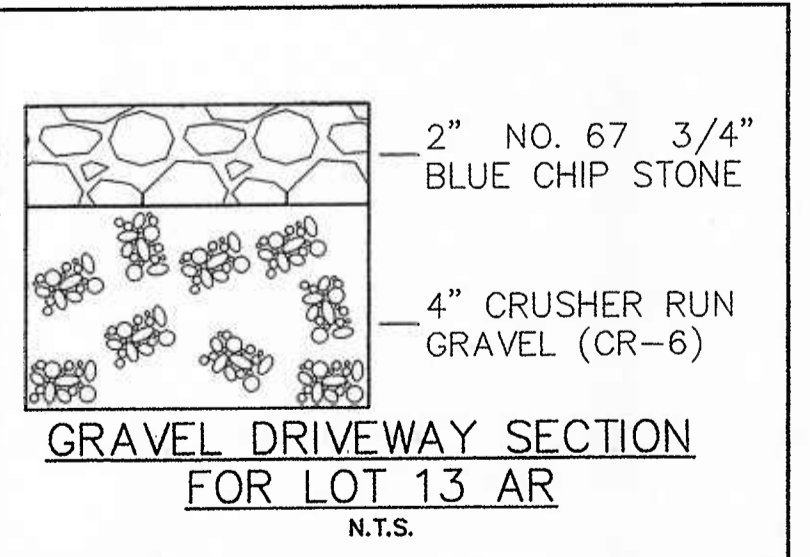
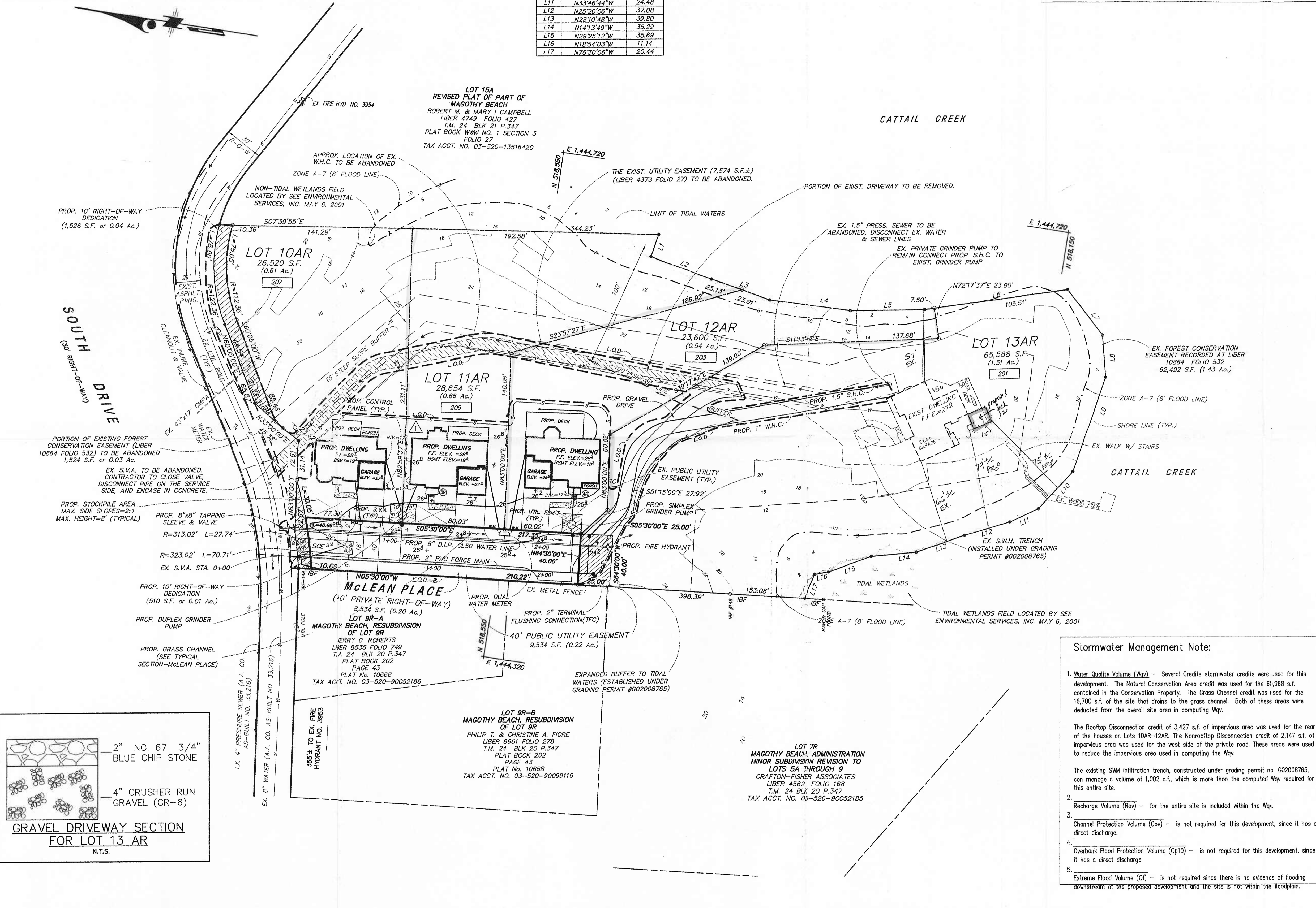
STEP 3 Wq_v = Water Quality Volume = [(P) x (Rev) x (A)] / 12 where P = 1.0 inch
Wq_v = [(1.0) x (0.15) x (77,264)] / 12 = 966 s.f.

STEP 4 Channel Protection Volume (Cp_v) is not required. This site has a direct discharge.

STEP 5 Overbank Flood Protection Volume is not required. This site has a direct discharge.

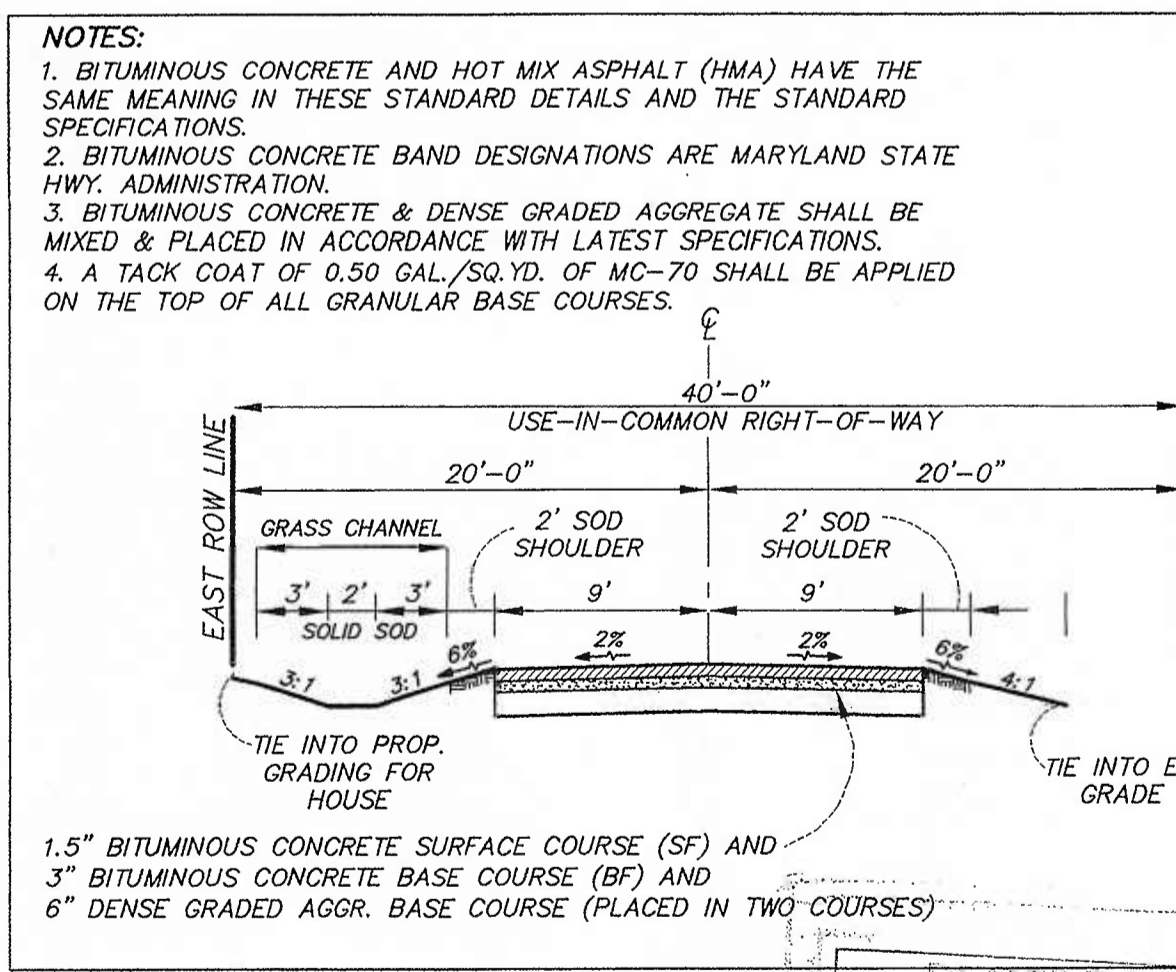
STEP 6 Extreme Flood Volume is not required. There is no evidence of flooding downstream from this site.

STEP 7 Volume Required, Provided
Required volume to be managed = Wq_v = 966 s.f.
Volume Provided (infiltration trench on 13AR) = Wq_v = 1,002 s.f.
Additional Volume Required = Wq_v = 0 s.f.



Stormwater Management Note:

- Water Quality Volume (Wq_v)** - Several Credits stormwater credits were used for this development. The Natural Conservation Area credit was used for the 60,968 s.f. contained in the Conservation Property. The Grass Channel credit was used for the 16,700 s.f. of the site that drains to the grass channel. Both of these areas were deducted from the overall site area in computing Wq_v.
- The Rooftop Disconnection credit of 3,427 s.f. of impervious area was used for the rear of the houses on Lots 10AR-12AR. The Nonrooftop Disconnection credit of 2,147 s.f. of impervious area was used for the west side of the private road. These areas were used to reduce the impervious area used in computing the Wq_v.
- The existing SWM infiltration trench, constructed under grading permit no. G02008765, can manage a volume of 1,002 c.f., which is more than the computed Wq_v required for this entire site.
- Recharge Volume (Rev)** - for the entire site is included within the Wq_v.
- Channel Protection Volume (Cp_v)** - is not required for this development, since it has a direct discharge.
- Overbank Flood Protection Volume (Qp₁₀)** - is not required for this development, since it has a direct discharge.
- Extreme Flood Volume (Q_t)** - is not required since there is no evidence of flooding downstream of the proposed development and the site is not within the floodplain.



P:\MC1104\CA020001\MC1104B.dwg, SHEET 2, 10/13/2004 09:06:02 AM

DESIGNED: DCG	DRAWN: MKS	REVISIONS TO APPROVED PLANS
ORIG. DATE: JANUARY 6, 2003		
MODIFIED BY/DATE: OCT. 12, 2004 DAW		
CADD DWG #: MC 11104B		
DSA PROJECT #: MC 11104		

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

OWNER / DEVELOPER
MR. & MRS. KEVIN McLEAN
192 McQUAY ROAD
SEVERNA PARK, MARYLAND 21146
410-431-5050

RECEIVED
OCT 18 2006
SITE, GRADING & SEDIMENT CONTROL PLAN
McLEAN PLACE
CRITICAL AREA COMMISSION
Chesapeake & Atlantic Coastal Bays
SUBDIVISION NO. 96-136 PROJECT NO. 02-227
TAX MAP 24 GRID 20 PARCEL 347 DISTRICT 2ND
ANNE ARUNDEL COUNTY, MARYLAND
SCALE: 1" = 40' DATE: OCT. 12, 2004 PROJ. NO: MC 11104 SHEET 2 OF 2