

AA 781-06 Bready - Tubman
VAR 0395

MSA-S-1829-5534

Comments
12/8/66 K&



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/

May 1, 2007

Mr. John Fury
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road, MS 6401
Annapolis, Maryland 21401

Re: BA 17-07V
2006-0395-V; Lots 2&3, 481 Lymington Road
Dreamcraft Homes, Inc.

Dear Mr. Fury:

Thank you for providing information on the above referenced variance request to be presented before the Board of Appeals. The applicant is requesting a variance to allow a dwelling with less setbacks than required, greater forest clearing than allowed, and disturbance to steep slopes. The combined lots are 26,070 square feet in size, designated as Limited Development Area (LDA) and currently undeveloped.

Previously this office stated that provided the lot is properly grandfathered, we do not oppose the variance to setbacks, steep slopes or greater forest clearing as long as impacts were minimized. Based on additional information provided in the decision of the Administrative Hearing Office on February 13, 2007, and a site plan dated September 2006, I have the following comments:

1. It would appear the footprint of the dwelling, which is approximately 2,200 square feet, could be reduced further and minimize the extent of clearing and disturbance to steep slopes.
2. We recognize that nearly the entire lot contains steep slopes, thus a variance is necessary to permit development of the property.
3. Should the variance or a modified variance request be granted, we recommend the deck be constructed to be and remain pervious with a gravel substrate and vegetative stabilization at the perimeter. Additionally, the applicant must provide mitigation at a ratio of 3:1 and we recommend that as much planting occur on site as possible to assist with vegetative stabilization of the steep slopes.

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.

Mr. John Fury
May 1, 2007
Page 2 of 2

Sincerely,

Kate Schmidt

Kate Schmidt
Natural Resource Planner
cc: AA781-06

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/

December 8, 2006

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

Re: 2006-0395-V; Lots 2&3, 481 Lymington Road
Dreamcraft Homes, Inc.

Dear Ms Plociennik:

Thank you for providing information on the above referenced variance. The applicant is requesting a variance to allow a dwelling with less setbacks than required, greater forest clearing than allowed, and disturbance to steep slopes. The combined lots are 26,070 square feet in size, designated as Limited Development Area (LDA) and currently undeveloped.

Provided this lot is properly grandfathered, we do not oppose the variance to setbacks, steep slopes, or greater forest clearing. However, impacts must be minimized and the variance the minimum necessary to provide relief. Based on the information provided I have the following comments:

1. As indicated on the site plan, most of the lot contains steep slopes. We recognize that a variance is necessary to permit development of the property.
2. Under Anne Arundel County Code 17-8-602, the applicant must provide mitigation at a ratio of 3:1 for clearing more than 30%. To the extent possible, mitigation should take place onsite to assist with vegetative stabilization of the steep slopes.
3. The proposed deck should be constructed to be and remain pervious with a gravel substrate and vegetative stabilization at the perimeter.

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,

A handwritten signature in cursive script that reads "Kate Schmidt".

Kate Schmidt
Natural Resource Planner
cc: AA781-06

579-04
AA-781-06

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 2006-0395-V

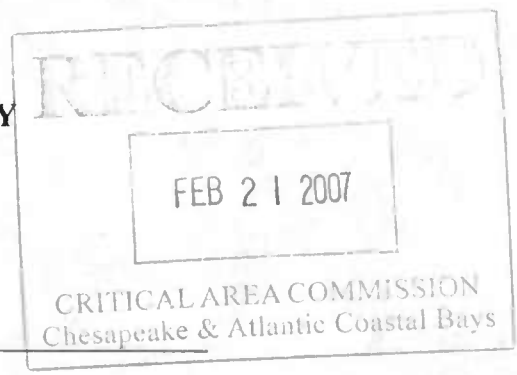
IN RE: DREAMCRAFT HOMES, INC.

SECOND ASSESSMENT DISTRICT

DATE HEARD: JANUARY 30, 2007

ORDERED BY: STEPHEN M. LeGENDRE, ADMINISTRATIVE HEARING OFFICER

PLANNER: JOHN FURY



DATE FILED: FEBRUARY 13, 2007

PLEADINGS

Dreamcraft Homes, Inc., the applicant, seeks a variance (2006-0395-V) to allow a dwelling with less setbacks than required, greater forest clearing than allowed and disturbance of steep slopes on property located along the southeast side of Lymington Road, south of Ledbury Road, 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. Jerry Tolodziecki, the applicant's engineering consultant, testified that the property was posted on January 8, 2007. I find and conclude that there has been compliance with the notice requirements.

FINDINGS AND CONCLUSIONS

This case concerns the same property the subject of a decision by this office in Case No. 2004-0324-V (November 4, 2004). The prior Order conditionally approved variances to disturb steep slopes and for excess clearing and a variance of 15 feet to the front setback to allow a dwelling. At the time of the approval, Anne Arundel County Code, Article 28, Section 11-102.2 provided that a variance

becomes void unless a building permit confirming to the plans is obtained within one year and construction is completed within two years. The approval having expired, the applicant refiled a similar request. More particularly, the irregularly configured dwelling (24 to 44 by 70 feet) is located on steep slopes with 47.5 percent clearing and 27 feet to the front lot line.

Anne Arundel County Code, Article 17, Section 17-8-201 proscribes the disturbance of steep slopes in the Limited Development Area (LDA) of the Chesapeake Bay Critical Area. Section 17-8-601(b) restricts the clearing to 30 percent. Finally, Article 18, Section 18-4-501 requires principal structures in the underlying R1 residential district to maintain 40 feet to the front lot line.

Accordingly, the proposal requires variances to disturb steep slopes and for excess clearing in the amount of 17.5 percent and a variance of 13 feet to the front setback.

John R. Fury, a planner with the Office of Planning and Zoning, testified that the impervious coverage (3,785 square feet) is less than the allowance (3,911 square feet). There were no adverse agency comments.¹ By way of conclusion, Mr. Fury supported the request.

Mr. Tolodziecki testified that the property measures 95 feet from front to rear. The lot was platted in the R5 residential district in 1980. Ninety percent of the building envelope is steeply sloped. Access is from the rear across a private

¹ The County's Development Division requested super silt fencing and mitigation; the Chesapeake Bay Critical Area Commission request pervious decking and mitigation.

easement rather than from the front across steep slopes. However, the utility connections are to the front for the reason that the County's Department of Public Works does not accept utilities in private easements. The project includes bio-retention stormwater management in the front yard. As compared to the prior application, the footprint of the dwelling is somewhat smaller; the variance to the front setback is two feet less; and the slope disturbance and clearing are slightly less. The witness opined that the property can be developed without adverse impacts to the Critical Area assets. Finally, the applicant has paid a mitigation fee for excess clearing and the grading plan is acceptable to the County.²

Milton Horn, the applicant's president, reiterated his testimony from the prior hearing that the dwelling is comparable in size to the surrounding homes.³

Frank Galloway submitted a letter in opposition to the front setback variance from the Colchester on Severn Community Association, Inc. In brief, the minimum front setback for the other homes on Lymington Road is 40 feet. Mr. Galloway also stated that while the footprint of the dwelling is comparable to the surrounding homes, the profile (four levels) is out of character with the neighborhood.⁴ Finally, he suggested that the dwelling could be relocated to the rear to provide the required 40-foot front setback. On cross-examination by

² Mr. Tolodziecki was cross-examined extensively by counsel to protestants Donald and Ann Boteler, who reside on the property to the northeast. There is an apparent discrepancy between the location of the driveway and the private easement. The offsite portion of the driveway comprises approximately 1,200 square feet of additional impervious coverage.

³ Mr. Horn submitted the same exhibit from the prior hearing, consisting of photographs of neighboring homes along with size information from the Maryland Department of Assessments and Taxation.

⁴ Mr. Galloway indicated that the enclosed living space is as much as 6,720 square feet.

counsel to the applicant, Mr. Galloway acknowledged that his calculation of enclosed living space included the basement level. He also agreed that the closest projection of the dwelling to the front lot line is an open deck. Finally, the lots across Lymington Road with increased front setbacks (70 to 100 feet) have greater front to rear measurements than the applicant's property.

Several other area residents testified. *Tracy Coster*, who owns two properties, favored the site plan over the prior plan, subject to maintaining the integrity of a platted easement to the rear and adequate stormwater management and drainage. *Theodore Brayman*, a registered professional engineer who resides across Lymington Road, objected to the irregularities in the site plan, the extent of tree clearing and slope disturbance, the cut and retaining wall for the driveway and the depth of the excavation for the utilities. Mr. Brayman believes that the utilities should be relocated to the rear. Finally, *Gordon Roberts*, a long-term resident of the community, asserted that the request is out of character with the neighborhood.

At this juncture, Mr. Tolodziecki identified four reasons for locating the dwelling 35 feet from the rear boundary: the desire of the client, compliance with the rear setback, in/out access to the garage, and the avoidance of the platted easement. Finally, Mr. Horn testified that the proposal minimizes the disturbance to the lot. In this regard, the profile reflects the steepness of the grade and includes a half-basement.⁵

⁵ Mr. Horn also supplied a full set of the house plans.

I visited the site and the neighborhood for the second time. My observations are the same. This is a densely wooded, shallow lot that is almost entirely slopes. Similarly, fairly large homes, typically two stories above grade, are set well apart on wooded slopes.

Since the last decision, the variance standards have been recodified in Section 18-16-405.⁶ Just as at the time of the prior hearing, an applicant for variances to the Critical Area program must satisfy each of the criteria; if even one of the criteria is not met, then the relief must be denied.

Upon review of the facts and circumstances, I am unable to grant the requested relief. Considering first the Critical Area variances, although some of the criteria are satisfied, others are not. Thus, just as the last time, a literal interpretation of the program would deprive the applicant of the right to develop the property with a single family dwelling, a right in common enjoyment elsewhere in similar areas of the Critical Area; and the granting of relief is not a special privilege typically denied by the program.

⁶ Under subsection (a), a zoning variance may be granted only after determining either (1) unique physical conditions, peculiar to the lot, such that there is no reasonable possibility of developing the lot in strict conformance with the code; or (2) exceptional circumstances such that the grant of a variance is necessary to avoid an unnecessary hardship, and to enable the applicant to develop the lot. Under subsection (b), for a property in the Critical Area, a variance to the Critical Area program requirements may be granted only after determining that (1) due to unique physical conditions, peculiar to the lot, a strict implementation of the program would result in an unwarranted hardship to the applicant; (2) a literal interpretation of the program will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area; (3) the granting of the variance will not confer on the applicant 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 applicant 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.

The prior decision states:

On the one hand, the applicants are proposing a fairly substantial dwelling, albeit one that is consistent with the character of the neighborhood. On the other hand, given the extent of the woodlands and slopes, there is little opportunity to further reduce the disturbance.

Opinion at 6. While as a general rule, a fact-finder may not reach a different conclusion on the same facts, there is no restriction against a different conclusion when the facts change or additional information is presented. The premise of the prior decision is no longer valid. Even though the applicant continues to assert that the dwelling is comparable in size to the surrounding homes and even resubmitted the same exhibit from the prior hearing, the present record contains the new information that the home has a vertical profile of four levels. Even discounting Mr. Galloway's calculation as inclusive of the basement, the profile would accommodate far more than the 2,500-3,00 square feet of living space mentioned in the first decision. Opinion at 3. The cover sheet of the house plans contains the following information:

First Floor	1,866 sq. ft.	
Second Floor	1,748 sq. ft.	
Opt. Lower Level #1		1,706 sq. ft.
Opt. Lower Level #2		828 sq. ft.
Total ⁷	3,592 sq. ft.	6,126 sq. ft.

And, the applicant's sales brochure mentions "4 Level Home" and "4 Beds, 4 Baths with 3 Levels of Decks". While the matter of determining the extent of the relief is always subjective, I am no longer able to find that the variances have been

⁷ This office is unable to reconcile the differences between the sums and the totals.

minimized. Simply put, if I accept the applicant's rationale for four levels, then the footprint is excessive. Compare, In Re: Princess Builders, Case No. BA 110-05V (May 26, 2006) (dwelling measuring 24 X 24 feet with alcove for stairs and elevator containing 2,256 square feet with three stories and a half basement and crawlspace hailed as "one of the best CA [Critical Area] plans this Board ever reviewed.") Opinion at 7.

Given the adverse finding on minimization, the variances are based in part on the actions of the applicant, and their grant does not harmonize with the spirit and intent of the program. Even accepting that the granting of the variances would not alter the essential character of the neighborhood or the use or development of adjacent property, the granting of the relief would constitute a detriment to the public welfare.

Because the applicant has not met its burden of proof, the denial of relief is not an unwarranted hardship.

In view of the decision on the Critical Area variances, the zoning variance is also denied.⁸

Footprint \approx 2200

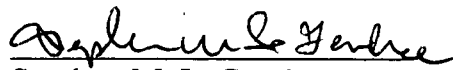
⁸ Nonetheless, I would be remiss if I failed to comment on the zoning variance. In this case, the lot offers 95 feet from front to rear. I have serious reservations about the four rationales offered by Mr. Tolodziecki for holding the rear setback in favor of encroaching 13 feet into the front setback. It may well be relocating the dwelling closer to the rear would have reduced the disturbance to Critical Area assets while maintaining a greater degree of consistency with the character of the neighborhood.

ORDER

PURSUANT to the application of Dreamcraft Homes, Inc. petitioning for a variance to allow a dwelling with less setbacks than required, greater forest clearing than allowed and disturbance of 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 13th day of February, 2007,

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


Stephen M. LeGendre
Administrative Hearing Officer

NOTICE TO APPLICANT

Within thirty days from the date of this Decision, any person, firm, corporation, or governmental agency having an interest therein and aggrieved thereby may file a Notice of Appeal with the County Board of Appeals.

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

INFILTRATION DRYWELL SETBACKS

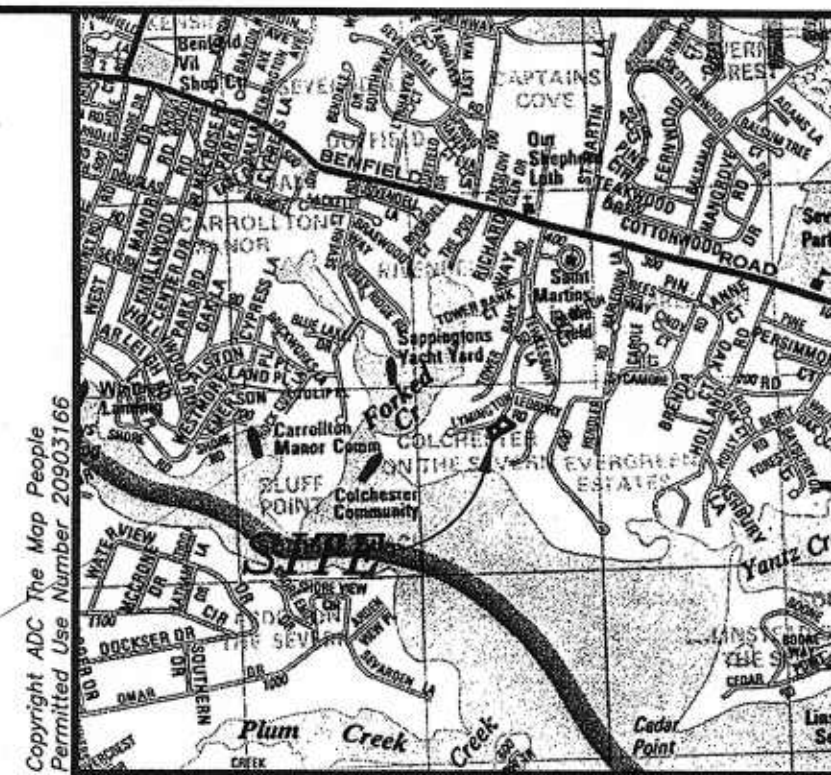
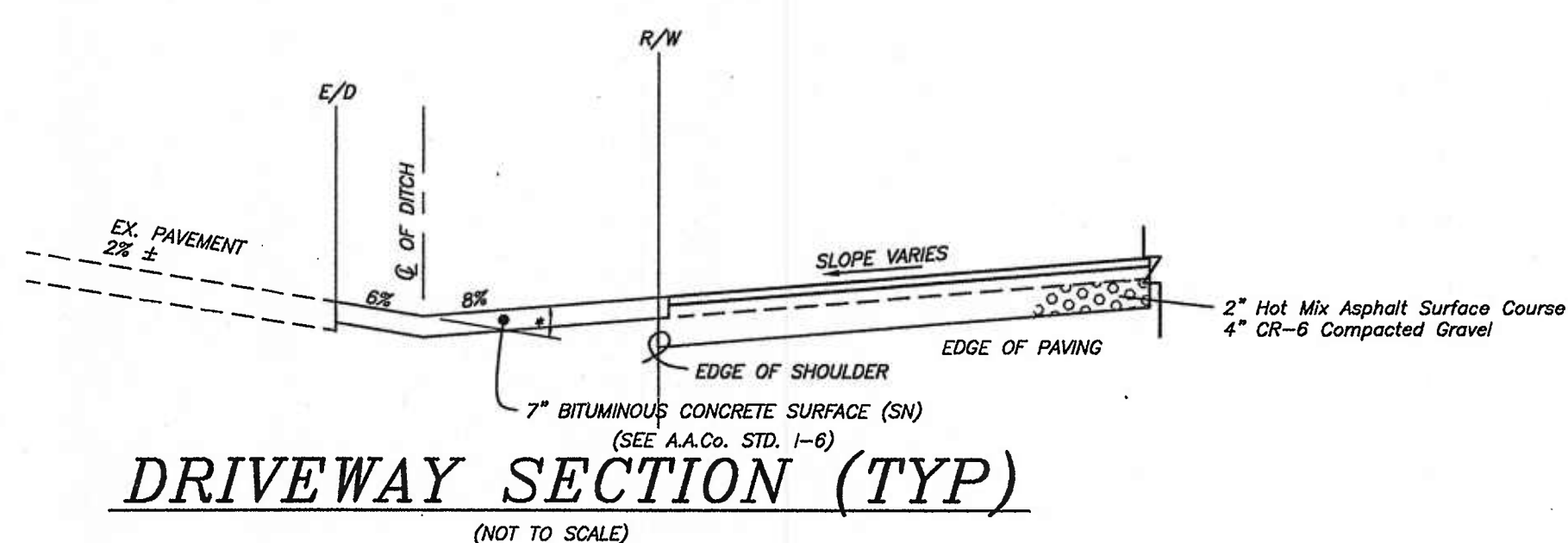
- The setback from structures on slab is 10 feet.
- Infiltration devices uphill from buildings and structures with basements shall be located a minimum of 20 feet from the structure, or the intersection of the structure foundation footing, with the phreatic line from the overflow depth of the device, whichever is greater.
- Infiltration devices downhill from buildings and structures with basements shall be located a least 10 feet from the structure, or the intersection of the foundation footing, with the phreatic line from the overflow depth of the device, whichever is greater.
- Infiltration devices shall be located a minimum of 10 feet from property lines.
- No infiltration devices shall be located within 100 feet of any water supply well for commercial and industrial development.
- No infiltration devices shall be located within 50 feet of any water supply well for residential development.
- All infiltration devices shall be located a minimum of 20 feet horizontally from the 100-year floodplain.
- Infiltration systems shall be located a minimum of 25 feet of in accordance with the latest Health Department criteria, whichever is greater, from a septic system and alternate systems. The clearance shall be maintained at the perimeter of the 10,000 square foot septic system area.
- All infiltration devices shall be located a minimum of 25 feet from the top of slopes 25% or greater and retaining walls. In no case shall the phreatic line from the overflow depth of the device intersect existing and/or final ground line of the slope or the retaining wall.
- Infiltration devices, including individual lot devices, shall be located a minimum of 10 feet horizontally from any public sanitary sewer or house connection.
- Where "O" ring or glue weld schedule 40 connections are not used for sanitary sewer or house connections, infiltration devices shall be located a minimum of 50 feet horizontally from any public sanitary sewer house connection.

HYDROLOGIC SOIL PROPERTIES CLASSIFIED BY SOIL TEXTURE*

TEXTURE CLASS	EFFECTIVE WATER CAPACITY (Cw) (INCH PER INCH)	MINIMUM INFILTRATION RATE (I) (INCHES PER HOUR)	HYDROLOGIC SOIL GROUPING
Sand	0.35	8.27	A
Loamy Sand	0.31	2.41	A
Sandy Loam	0.25	1.02	B
Loam	0.19	0.52	B
Silt Loam	0.17	0.27	C
Sandy Clay Loam	0.14	0.17	C
Clay Loam	0.14	0.09	D
Silty Clay Loam	0.11	0.06	D
Sandy Clay	0.09	0.05	D
Silty Clay	0.09	0.04	D
Clay	0.08	0.02	D

* Taken from the Maryland Department of Natural Resources, Water Resources Administration, Stormwater Management Division Standards and Specifications for Infiltration Practices.

- NOTE: 1. FOR THE MINIMUM PAVING FOR DRIVEWAYS IN THE COUNTY RIGHT OF WAY, SEE LOCAL ROAD PAVING SECTIONS, DETAIL P-8.
 2. DITCH LINING AND VELOCITY DISSIPATORS TO BE PROVIDED AS REQUIRED.
 3. ALLOWING SURFACE DRAINAGE TO CROSS A PAVED DRIVEWAY ON THE SURFACE IS SUBJECT TO THE APPROVAL OF THE DEPARTMENT OF PUBLIC WORKS.
 *4. MAXIMUM ALGEBRAIC GRADE DIFFERENCE IS 14%.



VARIANCE TABLE

	CLEARING	STEEP SLOPE DISTURBED
EX. VARIANCE # 2004-0324-V	10,217 Sq.Ft.	10,149 Sq.Ft.±
CURRENT PROPOSAL	10,169 Sq.Ft.	9,037 Sq.Ft.±

LEGEND

Existing Curb	=====
Existing Contour	---51---
Existing Wire Fence	-----
Existing Wood Fence	-----
Existing Woods line	~~~~~
Existing Gas Line	-----
Existing Gas Valve	○
Existing Stormdrain Inlet	⊞
Existing Stormdrain Manhole	⊙
Existing Sewer Manhole	⊙
Existing Sewer Cleanout	⊙
Existing Telephone Manhole	⊙
Existing Utility Pole	⊙
Existing Water Valve	⊙
Existing Water Meter	⊙
Proposed Contour	-----
Proposed Silt Fence	-----
Proposed Limit of Disturbance	-----
Stabilized Construction Entrance	⊞
15-25% Steep Slopes	-----
25% ± Steep Slopes	-----

SITE ANALYSIS

Total Site Area	26,070 Sq. Ft. ± or 0.60 Ac. ±
Ex. Woodlands	21,409 Sq. Ft. ±
Existing Zoning	R-1
Total Disturbed Area	11,581 Sq. Ft. ± (0.27 Ac. ±)
Vegetated Area	7,796 Sq. Ft. ± (0.18 Ac. ±)
Total Impervious Area	3,785 Sq. Ft. ± (0.09 Ac. ±)
Predominant Soil Type	SME-Sassafras and Croom loamy sand EUD-Evesboro and Galestown loamy sand
Grading Quantities	300 cu. yds. fill 300 cu. yds. cut
Total Critical Area	26,070 Sq. Ft. ± or 0.60 Ac. ± (LDA)
Ex. Woods w/in C.A. Cleared	10,169 Sq. Ft. ± or 47.5%
Reforestation Required	10,169 Sq. Ft. ± or 47.5%

VARIANCE NOTES

- In accordance with Article 17, Section 8-201 of the Anne Arundel County Code, a variance is required to permit development on slopes greater than 15%, as measured before development.
- In accordance with Article 17, Section 8-601(b) of the Anne Arundel County Code, a variance is required to permit disturbance of greater than 30% of the existing woodlands on site.
- In accordance with Article 18, Section 4-501, of the Anne Arundel County Code, a variance of 15 feet is required to permit a 25 foot setback in an area zoned R1, which was platted for subdivision under R5 zoning.

Chapter 5. Stormwater Credits

Figure 5.1 Schematic of Dry Well

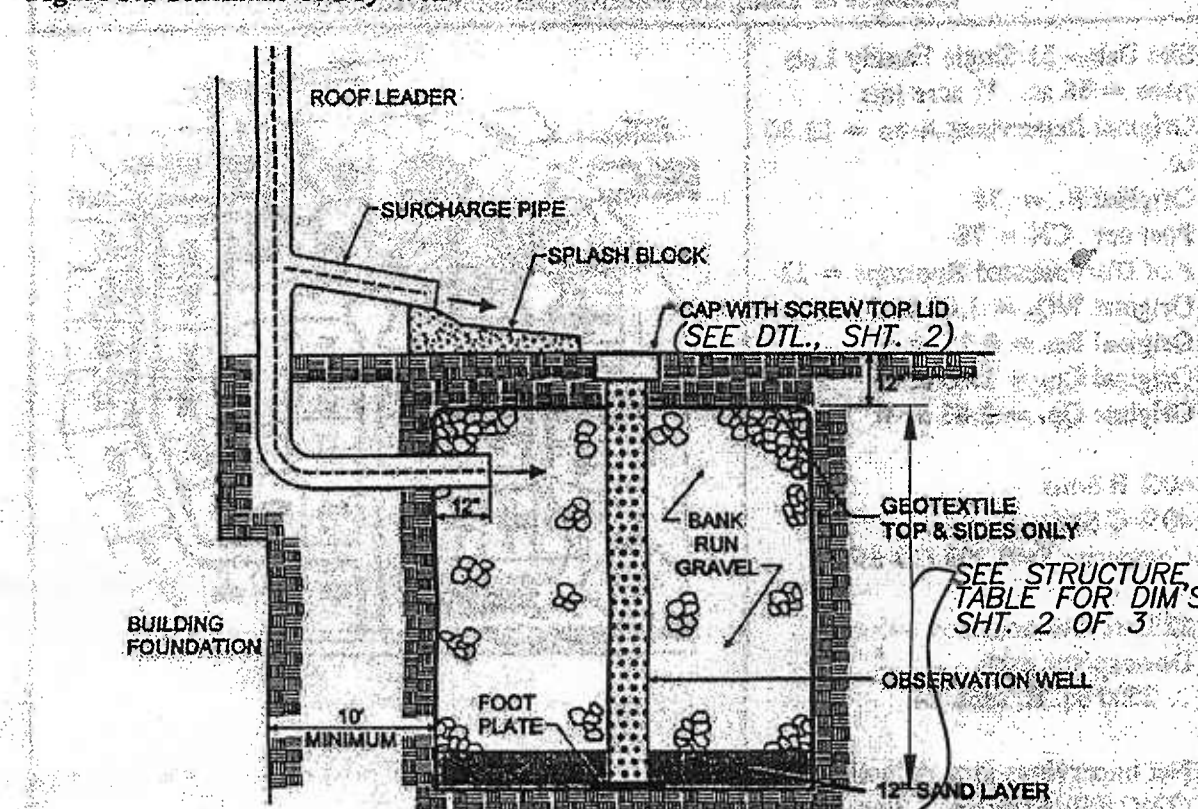


Table 5.2 Rooftop Disconnection Compensation Storage Volume Requirements (Per Disconnection Using Drywells, Rain Gardens, etc.)

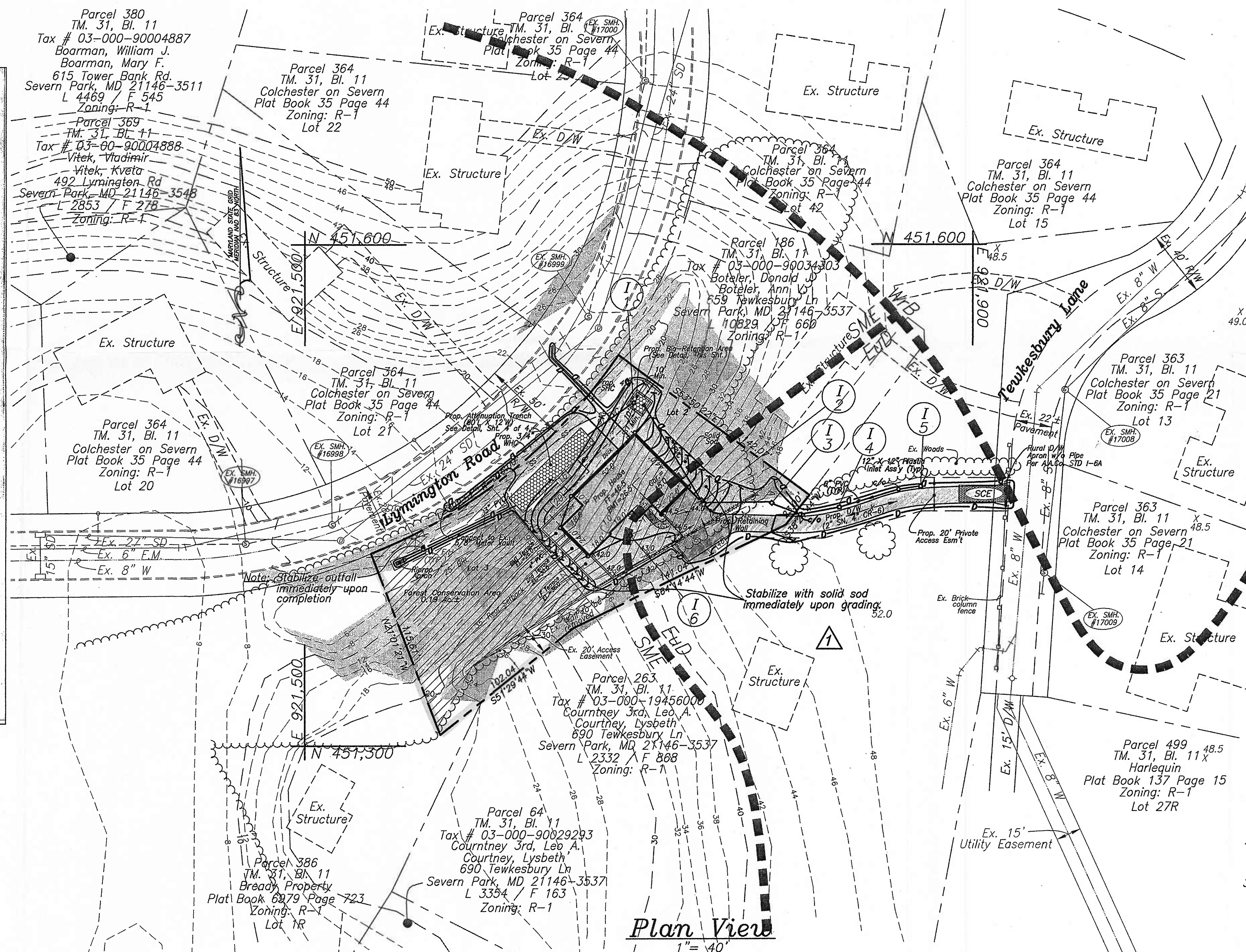
Disconnection Length Provided	0 - 14 ft.	15 - 29 ft.	30 - 44 ft.	45 - 59 ft.	60 - 74 ft.	≥ 75 ft.
% WQ. Treated by Disconnect	0%	20%	40%	60%	80%	100%
% WQ. Treated by Storage	100%	80%	60%	40%	20%	0%
Max. Storage Volume* (Eastern Rainfall Zone)	40 cu-ft.	32 cu-ft.	24 cu-ft.	16 cu-ft.	8 cu-ft.	0 cu-ft.
Max. Storage Volume* (Western Rainfall Zone)	36 cu-ft.	28 cu-ft.	21 cu-ft.	14 cu-ft.	7 cu-ft.	0 cu-ft.

*Assuming 500 square feet roof area to each downspout.

For construction specifications see this sheet.

IMPERVIOUS COVER TABLE

LOT #	LOT AREA (s.f.)	MAXIMUM IMPERVIOUS COVER (s.f.)	PROPOSED IMPERVIOUS COVER (s.f.)
2 & 3	26,070	3,911 (15%)	3,785 (14.5%)



B02218068

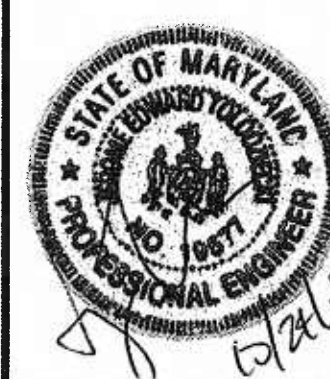
Variance Plan

Lots 2 & 3
 Jane A Brady & T.S. Tubman Property
 M.S. # 84-123, Plat Book 35, Page 44
 Tax Map 31 Block 11 Parcel 188 & 190

NO.	DATE	BY	REVISION	APPROVED	DATE
5-16-06	L.A.K.		REVISE PLAN TO SHOW REDUCED HOUSE FOOTPRINT PER DEVELOPER'S REQUEST.		

Developer
 Dreamcraft Homes, Inc.
 326 Spinner Road
 Severna Park, MD 21146
 (410) 544-7189

BOYD & DOWGIALLO, P.A.
 ENGINEERS*SURVEYORS*PLANNERS
 7678 Quarterfield Road
 Suite 201
 Glen Burnie, Maryland 21061
 (410) 863-1234



Job No.: 7662
 Sheet No.: 1 of 1
 Drawn By: LAK
 Checked By: JET
 Date: SEPTEMBER, 2006
 Permit # G02011162

Third District

