

AA 782-06 Hinson, Timothy
VAR 0398

MSA_S_1829-5535

Comments
12/8/06 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/

December 8, 2006

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

Re: 2006-0398-V; 1197 Bayview Vista
Timothy Hinson

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 and with disturbance to steep slopes. The lot is 8,554 square feet in size, designated as Limited Development Area (LDA) and currently developed with a single family dwelling.

Provided this lot is properly grandfathered, we do not oppose the variance to setbacks or steep slopes. 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. However, it would appear that the impact to steep slopes may be reduced if the applicant were to move the dwelling closer to the road.
2. Under Anne Arundel County Code 17-8-601, the applicant must mitigate for clearing on lots in the LDA. The woody vegetation must be included on the site plan and mitigated at a 1:1 basis for square footage of area disturbed. This mitigation is in addition to any plantings proposed to meet the stormwater management requirements. Plantings of one tree (2-inch caliper) or three shrubs for every 100 square feet (or portion thereof) of area disturbed should be required.
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". The signature is written in black ink and is positioned below the word "Sincerely,".

Kate Schmidt
Natural Resource Planner
cc: AA782-06

782-06

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 2006-0398-V

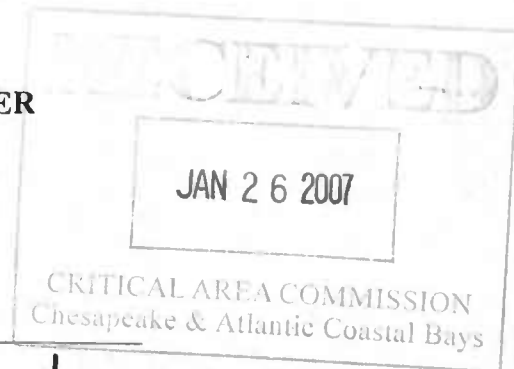
IN RE: TIMOTHY AND ELIZABETH HINSON

THIRD ASSESSMENT DISTRICT

DATE HEARD: JANUARY 11, 2007

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

PLANNER: **PATRICIA A. COTTER**



DATE FILED: JANUARY 22nd, 2007

PLEADINGS

Timothy and Elizabeth Hinson, the applicants, seek a variance (2006-0398-V) to allow 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. Mr. Hinson 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 a single-family residence with a street address of 1197 Bayview Vista, in the Cape St. Claire subdivision, Annapolis. The property comprises 8,954 square feet and is zoned R5 residential with a Chesapeake Bay Critical Area designation as Limited Development Area (LDA). The request is to raze the dwelling, followed by the construction of a new 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 steep slopes encompass more than half of the lot (middle and rear). The location of the water well in the front yard is a further constraint on development. The witness conceded the need for relief. However, she questioned the extent of the relief. In this regard, the County's Environmental Reviewer suggested relocating the dwelling three feet to the north to the minimum side setback (seven feet). Both the Soil Conservation District and the Chesapeake Bay Critical Area Commission suggested relocating the dwelling closer to the road. The Commission also requested mitigation. By way of conclusion, Ms. Cotter supported the request, subject to the suggested modifications.

Doug Bourquin, the applicants' land use consultant, testified that the 10-foot north side setback reflects the covenants of Cape St. Claire. Any change in the side setback would have very little impact on the limits of disturbance because of the need to accommodate structural stormwater management.¹

Mr. Hinson testified that the design includes handicapped accessibility.²

¹ Mr. Bourquin also testified that the design has been modified to partially incorporate the garage into the footprint of the dwelling as suggested by the Office of Planning and Zoning.

² The record was left open to allow the applicants to respond to a letter dated December 28, 2006, from the Cape St. Claire Improvements Association, Inc. in opposition to the request. Mr. Hinson's response is appended as Attachment A.

Finally Orlin Cantrell, who resides across from the property, testified in support of the request. There was no other testimony in the matter.

Upon review of the facts and circumstances, I find and conclude that the applicants are entitled to relief from the code. For this Critical Area property, due to the extent of the steep slopes, 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 by other properties in similar areas of the Critical Area. Conversely, the granting of the variance does not confer any special privilege that the program typically denies. There is no indication that the request results from the actions of the applicants or from land use on neighboring property. Finally, with mitigation, the variance will not adversely impact Critical Area assets and harmonize with the general spirit and intent of the program.

I further find that the relief has been minimized. The dwelling is appropriately sized. The design has already been modified to reduce the footprint. Although the reviewing agencies suggested reducing the slope disturbance by relocating the dwelling, given the location of the slopes and the limits of the disturbance needed for structural stormwater management, it is doubtful that the difference is significant. Additionally, the site plan shows extensive plantings in the front and north side yards. I further find that the granting of the variance will not alter the essential character of the neighborhood, substantially impair the

appropriate use or development of adjacent property or cause a detriment to the public welfare. The approval is subject to the conditions in the Order.³

ORDER

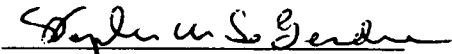
PURSUANT to the application of Timothy and Elizabeth Hinson, petitioning for a variance to allow a dwelling with disturbance to steep slopes; and

PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is this 22nd day of January, 2007,

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

The foregoing variance is subject to the following conditions:

1. The applicants shall provide mitigation and stormwater management as determined by the Permit Application Center.
2. No further development of the property is allowed.


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.

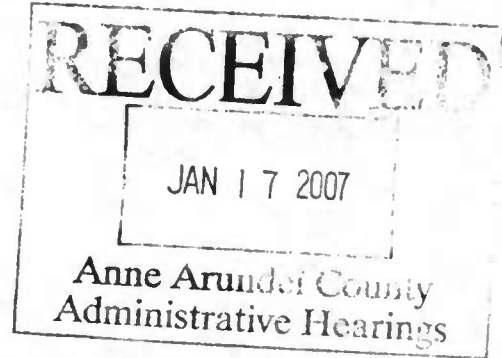
³ I have included a condition proscribing further development.

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.

Attachment A

Stephen M. LeGendre, Esq.
Administrative Hearing Officer
Anne Arundel County
Office of Administrative Hearings
Arundel Center
Annapolis MD, 21404



January 17, 2007

RE: Case No. 2006-0398-V 1197 Bay View Vista, Annapolis, MD 21401

Mr. LeGendre,

This letter is in response to your request to clarify the side set-back requirements of Cape St. Clair Community Improvement Association as they would apply to our variance application to your office for steep slopes.

A recommendation was made by the Environmental Review Staff to shift the dwelling to a seven foot side yard setback to further reduce the impact to the steep slopes. This would be less than required by Cape St. Clair and require approval by the Improvement Association.

I contacted Josephine Gardner, the President of Cape St. Clair Association to determine the likelihood of obtaining a seven foot side setback variance from the Cape. She explained that the Cape has taken a very firm position on side set-back and could recall only one situation involving a pair of very large Oak trees in which a variance was granted.

We have not made application as of yet to the Cape owing to lack of building plans. Ms. Gardner indicated that even with complete plans a side set-back variance would have a slim chance of being approved but would need to go through a complete review process by the Cape. This process would take a few months to complete.

Based on these findings, we would request that our application be considered with a ten (10) foot side setback in keeping with the Cape guidelines and that we address the water management with a proper containment system with the assistance of Doug Bourquin of Ed Brown and Associates.

Respectfully,

A handwritten signature in black ink, appearing to read "Timothy L. Hinson".

Timothy L. Hinson
1213 Summit Drive
Annapolis, MD 21409

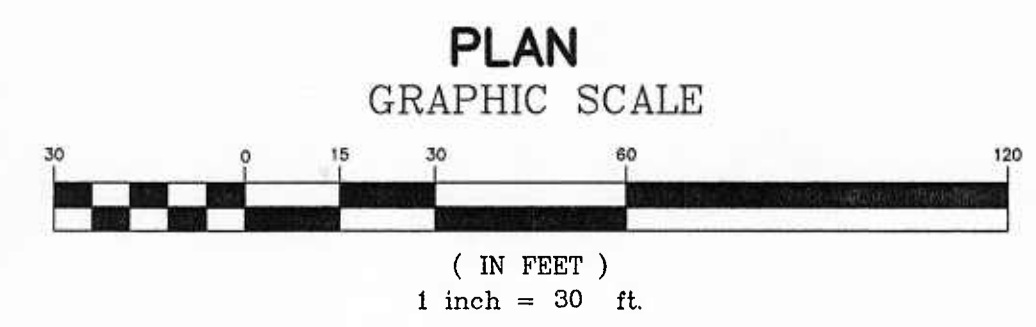
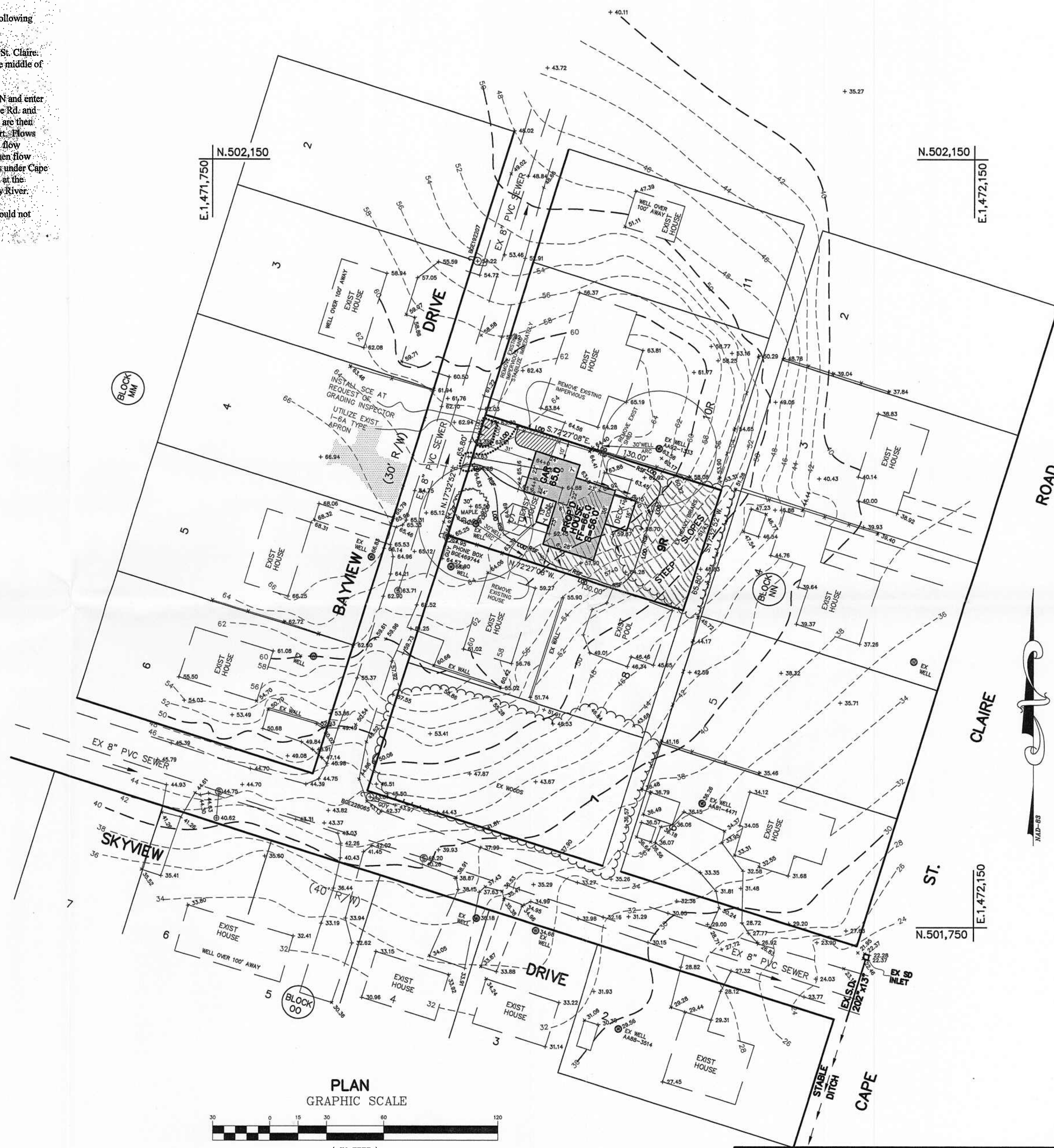
Outfall Statement:

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 on Bayview Vista in Cape St. Claire. The lot is wooded and slopes toward the right rear corner at the platted 10' path in the middle of block "NN".

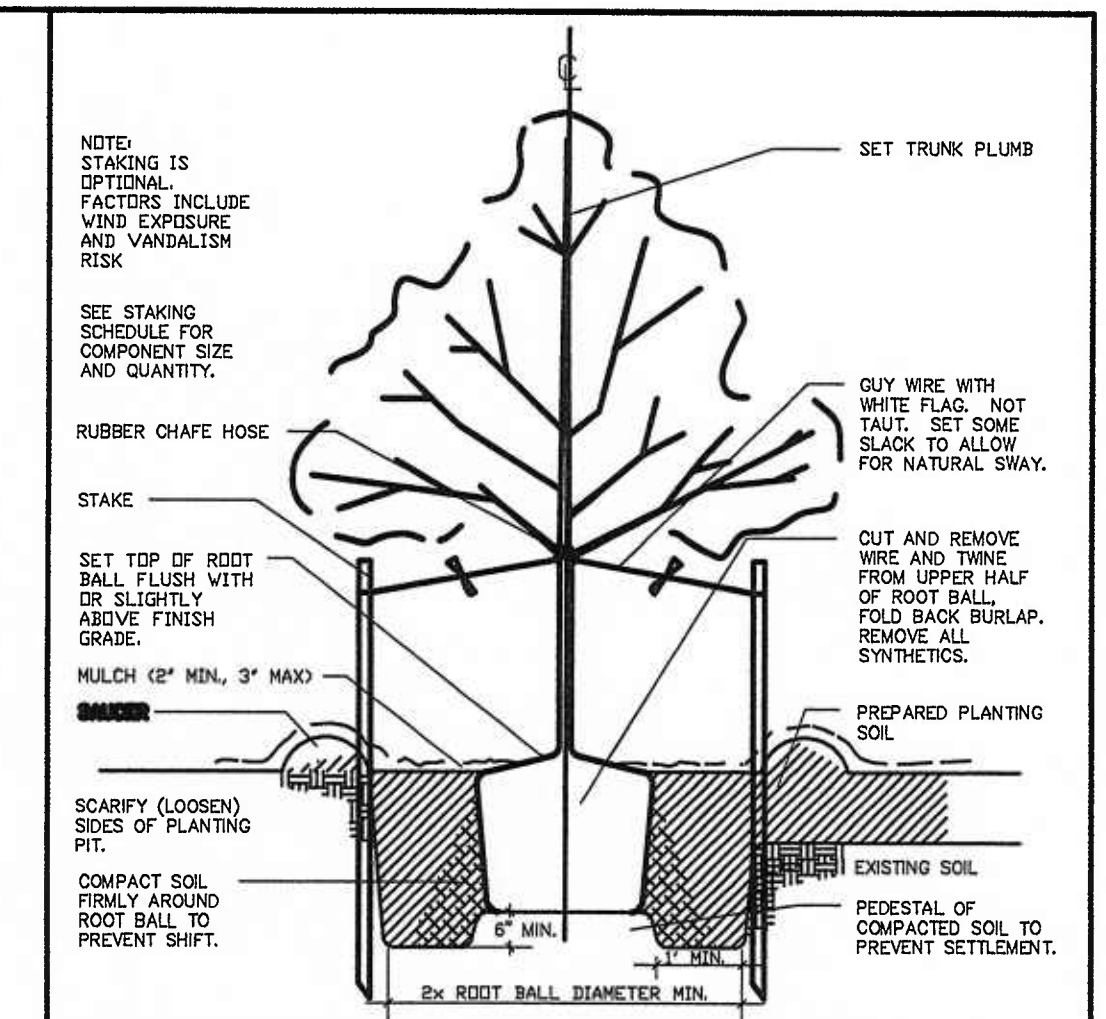
From there, storm flows travel unconcentrated through the vacant lot 5 Blk NN and enter a side ditch running along the edge of pavement along the west side of Cape St. Claire Rd. and drain to an inlet at the corner of Skyview Drive and Cape St. Claire Road. The flows are then intercepted by the inlet 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 Magothy River.

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

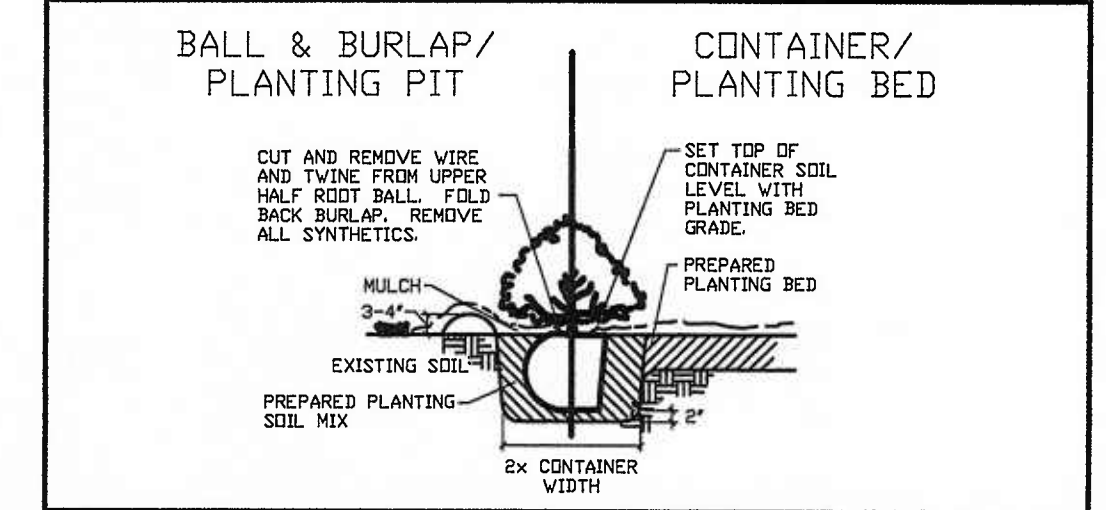


LEGEND

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



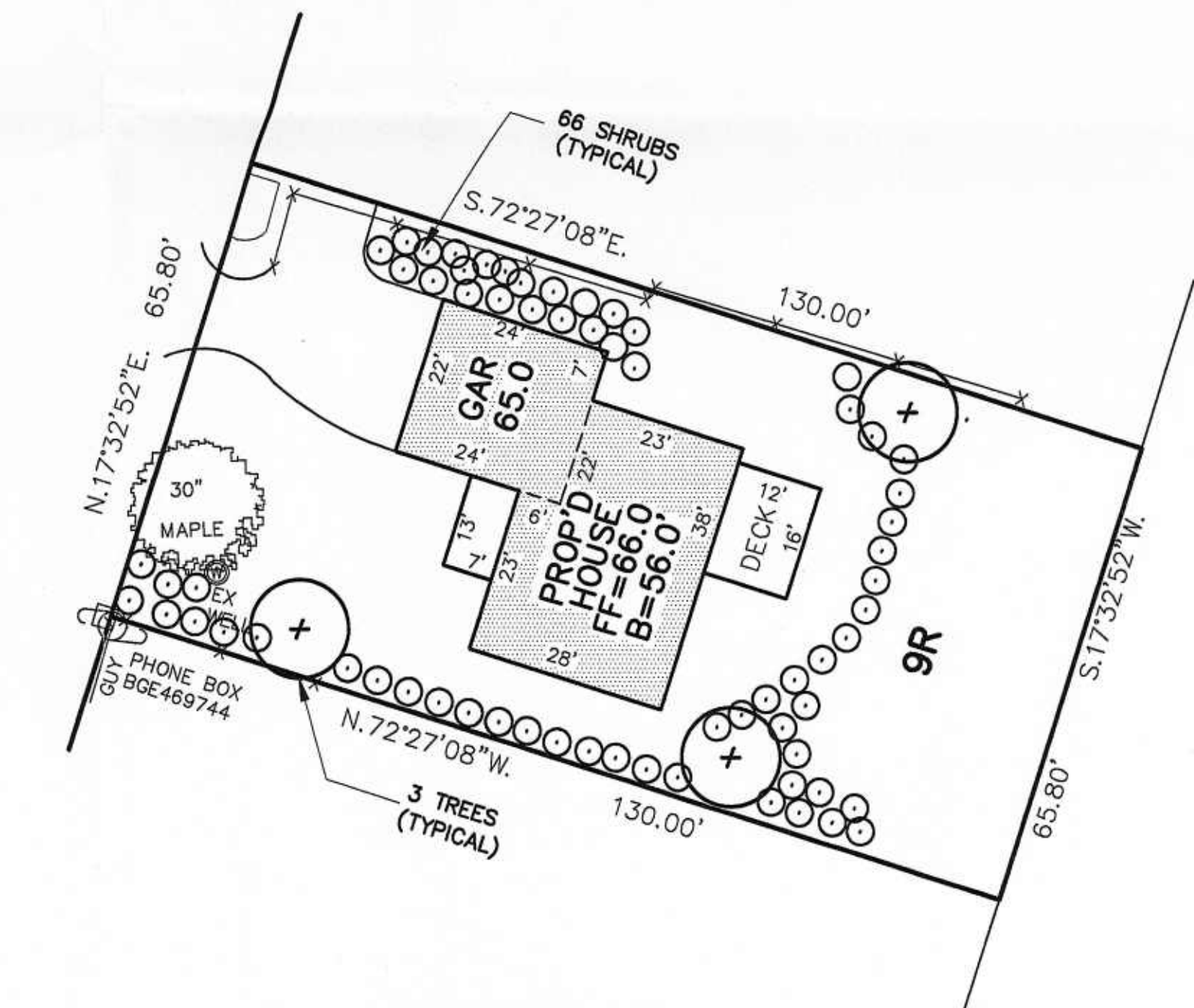
DETAIL - DECIDUOUS TREE PLANTING - TO 2 1/2" CALIPER
PLANTING PIT - SINGLE PLANTING PIT - PLANTING BED
NOT TO SCALE



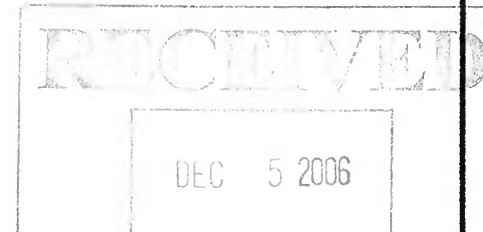
DETAIL - SHRUB PLANTING
NOT TO SCALE

STORMWATER MANAGEMENT PLANTING CHART

LEGEND NO.	SCIENTIFIC NAME	COMMON NAME	TYPE
3	ACER RUBRUM	RED MAPLE	1-1/2" CAL B & B TREE
66	MYRTICA PENNSYLVANICA OR APPROPRIATE ALTERNATIVE	BAY BERRY	3 GAL SHRUB



LANDSCAPE PLAN
SCALE: 1" = 20'



G02012

	<p>ED BROWN & ASSOCIATES, INC. LAND SURVEYORS - LAND PLANNERS DEVELOPMENT CONSULTANTS</p> <p>19 LORETTA AVENUE ANNAPOLIS, MARYLAND 21401 ANNAPOLIS 410-266-6199 BALTIMORE 410-841-0119</p>		<p>SCALE: AS NOTED</p>	<p>GRADING & SEDIMENT CONTROL PLAN</p>
	<p>DATE: OCTOBER, 2006</p>		<p>LOT 9R, BLOCK "NN" PLAT NO. 3 CAPE ST. CLAIRE</p>	<p>1197 BAYVIEW VISTA</p>
	<p>DRAWN BY: JAY</p>		<p>CHECKED BY: D.D.B.</p>	<p>TAX MAP 40, BLOCK 6, PARCEL 26, ZONING R5, ZIP CODE 21409</p>
	<p>JOB NO: 06-70</p>		<p>SHEET NO: 2 OF 2</p>	<p>THIRD DISTRICT ANNE ARUNDEL COUNTY, MARYLAND</p>