

AA 642-06 Westhaven Community Pool
Site Plan 06-0075

518229-6179

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



Margaret G. McHale
Chair

Ren Serey
Executive Director

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

1804 West Street, Suite 100, Annapolis, Maryland 21401

(410) 260-3460 Fax: (410) 974-5338

www.dnr.state.md.us/criticalarea/

May 31, 2011

Ms. Kelly Krinetz
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road, MS 6301
Annapolis, Maryland 21401

Re: Site Development Plan #2006-0075-1; Resubmittal #5
Westhaven Community Pool

Dear Ms. Krinetz:

Thank you for submitting the above referenced site plan for additional review and comment. The applicant is proposing to develop a new community pool and parking area in the Limited Development Area (LDA). A new step pool stream conveyance system will be constructed to restore an existing outfall. The project requires 1:1 mitigation for clearing of forest and 3:1 mitigation for impacts to steep slopes and expanded Buffer. The applicant is working with the County Forester to obtain an off-site reforestation bank for all required mitigation. Based on the information provided I have the following remaining comment:

1. COMAR 27.01.09.01-2.D requires the applicant to plant on site in the Buffer. If County staff determines that is not available then the applicant may plant on site outside the Buffer. If the County staff determines on site planting is not feasible, then the County may collect a fee-in-lieu of \$1.50 for the mitigation planting. Please provide written confirmation that the County staff has made a determination to accept fee-in-lieu for the entire mitigation obligation for Buffer plantings.

Thank you for the opportunity to provide written comment. If you have any questions or concerns please contact me at (410) 260-3475.

Sincerely,

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

Kate Charbonneau
Regional Program Chief
AA642-06

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



Margaret G. McHale
Chair

Ren Serey
Executive Director

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January 31, 2011

Ms. Kelly Krinetz
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road, MS 6301
Annapolis, Maryland 21401

Re: Westhaven Community Pool
C06-0075-01NC, G02012426

Dear Ms. Krinetz:

Thank you for forwarding the above-referenced site plan for review and comment. The applicant proposes to construct a community pool, parking lots and an eight-foot wide asphalt trail over an existing dirt trail. This office previously reviewed and provided comments on this proposal as a variance request for disturbance to slopes 15% and greater to construct the parking lot and pave the trail. Since that time, the variance for such disturbance was granted. The 6.81 acre property is mostly within the Critical Area with 6.02 acres designated as a Limited Development Area (LDA). Currently, the property is mostly forested within the exception of a small area developed as a basketball court, a playground and an existing dirt trail through the woods. The applicant has addressed some of this office's previous comments from my October 25, 2010 letter. I have provided my remaining comments below:

1. The Anne Arundel County Board of Appeals conditioned the granting of the variance to disturb slopes 15% or greater as follows: "Mitigation is required at a ratio of 3:1 for the area of disturbance to the steep slopes and expanded buffer, to be performed on-site (insofar as possible)." Accordingly, the applicant must quantify the area of disturbance within the slopes 15% greater and expanded buffer that is proposed for the 8-foot wide asphalt trail and other development activities and indicate on the plans how this area of disturbance will be mitigated at a 3:1 ratio, on-site insofar as possible. This includes the footprint of paving as well as the area disturbed by clearing or grading. We note that the applicant indicates that the preference is to leave currently open areas around the basketball courts unplanted for recreational uses. It is unclear what recreational uses could

Ms. Krinetz
January 31, 2011
Page 2 of 2

take place in these areas since they are steeply sloped. Please provide a plan showing plantings on site to the extent feasible as required by the Board of Appeals condition.

2. The applicant indicates in its response to this office's request for information about the stream restoration note on the plans that plans will be provided once the overall stormwater scheme is approved for the project. However, as this office may have comments at this point on the stormwater scheme and stream restoration plans which may require revisions to the overall project, we suggest that the applicant submit stream restoration plans and stormwater scheme plans to this office for review at this point.

Thank you for the opportunity to comment. Please telephone me if you have any questions at (410) 260-3467.

Sincerely,



Amber Widmayer
Natural Resources Planner

cc: AA 642-06

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



Margaret G. McHale
Chair

Ren Serey
Executive Director

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October 25, 2010

Ms. Kelly Krinetz
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road, MS 6301
Annapolis, Maryland 21401

Re: Westhaven Community Pool
C06-0075-01NC, G02012426

Dear Ms. Krinetz:

Thank you for forwarding the above-referenced site plan for review and comment. The applicant proposes to construct a community pool and parking lots and pave an existing dirt trail. This office previously reviewed and provided comments on this proposal as a variance request for disturbance to the expanded Buffer to construct the parking lot and pave the trail. Since that time, the variance for such disturbance was granted. The 6.81 acre property is mostly within the Critical Area with 6.02 acres designated as a Limited Development Area (LDA). Currently, the property is mostly forested within the exception of a small area developed as a basketball court, a playground and an existing dirt trail through the woods. I have provided comments on the most recently submitted site plan below:

1. Mitigation is required for the disturbance within the expanded Buffer for contiguous slopes 15% or greater under COMAR 27.01.09.01 and as specified in the second condition of the Anne Arundel County Board of Appeals' January 22, 2010 decision which granted the variance for the proposed disturbance within slopes 15% and greater for paving the path and constructing the parking lot. The total area of disturbance in the Buffer from grading, clearing or the footprint of paving must be mitigated with plantings at a 3:1 ratio, on site to the extent feasible. The applicant must submit and obtain approval of a Buffer Management Plan quantifying this area and showing how this requirement will be addressed. The plan must address all of the provisions within the Buffer regulations in COMAR 27.01.09.01 such as providing information about the size, number,



species and location of the proposed plantings, as well as providing information about how the plantings will be permanently protected.

2. Please have the applicant quantify the percentage of existing tree cover within the Critical Area that will be cleared. Clearing which exceeds 30% of the existing cover is prohibited in the absence of a clearing variance. Clearing greater than 20% but less than 30% of the existing tree cover requires mitigation for the portion of the clearing outside of the expanded Buffer or steep slopes at a 1.5:1 ratio, and clearing less than 20% of the tree cover within the Critical Area requires mitigation at a ratio of 1:1 for the area outside of the Buffer and slopes. Areas within the expanded Buffer or steep slopes that are cleared require mitigation at a ratio of 3:1 as described in the comment above.
3. The applicant notes on the plans that the entire Critical Area mitigation planting requirement will be addressed by a fee in lieu payment. However, the first condition of the Anne Arundel County Board of Appeals decision requires that the mitigation for the disturbance approved by the variance be located on site in so far as possible. Accordingly, please have the applicant submit a planting plan showing that plantings will be provided in the open areas on the site. For instance, it appears there is room to accommodate plantings in the area surrounding the basketball court.
4. The plans label an area outside of the project's limits of disturbance as a proposed stream restoration. Please provide additional information on this proposed activity. If a stream restoration is proposed on the site within the scope of this project, please revise the plans to include this area within the limits of disturbance.

Thank you for the opportunity to comment. Please telephone me if you have any questions at (410) 260-3467.

Sincerely,



Amber Widmayer
Natural Resources Planner

cc: AA 642-06

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



Margaret G. McHale
Chair

Ren Serey
Executive Director

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CRITICAL AREA COMMISSION
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November 6, 2008

Mr. John Fury
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road, MS 6301
Annapolis, Maryland 21401

Re: West Haven Community Pool, 2007-0303-V

Dear Mr. Fury:

Thank you for forwarding the above-referenced variance request for review and comment. The applicant has requested a variance to allow disturbance to slopes 15% or greater within the Critical Area to construct a parking lot and pave an existing trail to serve the proposed community swimming pool and its associated structures. The 6.02 acre portion of the 6.8 acre property that is within the Critical Area is designated as a Limited Development Area (LDA) and is currently developed with a basketball court and trail.

It is our understanding that there is no other location in which the parking lot could be located without creating a greater amount of disturbance to the slopes and expanded Buffer on the property than that which is currently proposed. The applicant must sufficiently demonstrate to the Hearing Officer that if he were to deny the requested variance and the property could not be developed with a pool and associated structures and parking, that this would create an unwarranted hardship for the property owner.

We note that while the extent of the originally proposed disturbance to the nontidal wetland and its 25-foot buffer has been reduced by eliminating the previously proposed access road, it appears there still may be some disturbance to the nontidal wetland and its buffer from the proposed paving of the trail. We note that if any such disturbance is required within the wetland or its buffer, the applicant may be required to obtain permits from MDE for this disturbance.

Mr. Fury
November 6, 2008
Page 2 of 2

If the requested variance is approved, we recommend that as a condition of the variance, the applicant be required to provide mitigation plantings at a 3:1 ratio for the total area of disturbance to slopes 15% or greater for the proposed parking area and trail paving, in addition to the required 1:1 reforestation mitigation for clearing on the property.

Thank you for the opportunity to comment. Please include this letter in your file and submit it as part of the record for variance. Please notify the Commission of the decision made in this case.

Sincerely,



Amber Widmayer
Natural Resources Planner

cc: AA 642-06

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
CRITICAL AREA COMMISSION

September 12, 2007 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/

Mr. Tom Burke
Development Division
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road, MS 6301
Annapolis, Maryland 21401

Re: Site Plan #C06-0075-1-Revised
Westhaven Community Pool

Dear Mr. Burke:

I have received the resubmital of the above referenced site plan for review and comment. The applicant is proposing to construct a pool, pool house, driveway, parking area, and stormwater management facilities on a community recreation parcel currently designated as a Limited Development Area (LDA). My comments are outlined below:

1. It appears the Buffer from the tributary stream needs to be expanded for steep slopes. If the expanded Buffer extends onto the proposed parking lot a variance would be required.
2. It appears that the parking area is being proposed on steep slopes which also will require a variance. We recommend the applicant avoid the variance process by moving the parking area closer to the pool area. To avoid disturbance.
3. From the information provided it appears the applicant is unable to meet the variance standards given the area available for development outside the expanded Buffer and slopes.
4. The numbers on all plans and reports should be consistent. For example, Sheet 1 lists total site in Critical area as 223,080; whereas, Sheet 1 of 2 of the Critical Area Site Plan lists total site in Critical Area as 262,296.

Thank you for the opportunity to provide comments on this site plan submittal. Please telephone me at (410) 260-3481 or Lisa Hoerger at (410) 260-3478 if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Megan J. Sines".

Megan J. Sines
Natural Resource Planner
cc: AA 642-06

TTY for the Deaf

Annapolis: (410) 974-2609 D.C. Metro: (301) 586-0450



STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS

1804 West Street, Suite 100, Annapolis, Maryland 21401
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June 4, 2007

Ms. Kelly Krinetz
Development Division
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road
Annapolis, Maryland 21401

Re: Site Plan #C06-0075-1-Revised
Westhaven Community Pool

Dear Ms. Krinetz:

Thank you for providing information on the above referenced revised site plan. This letter is in response to our continuing review of the proposal to construct a pool, pool house, driveway, parking area, and stormwater management facilities on a community recreation parcel currently designated as a Limited Development Area (LDA).

Based on the revised plan provided, we have the following comments:

1. The applicant has previously stated that the necessary variances to disturb steep slopes and to impact the expanded 100-foot Buffer have been applied for. However, the applicant has still not shown the limits of the expanded Buffer correctly. These limits must be expanded to include contiguous steep slopes. Please have the limits of the expanded Buffer corrected on the site plan and please ensure that the requested variances include the appropriate amount of disturbance to the expanded Buffer as well as include a request for a variance to disturb to a Habitat Protection Area (the expanded Buffer).
2. The Critical Area report included within the revised site plan submission is dated September 2006 and appears to contain information that is different than that stated on the site plan. For example, the report states that 1.36 acres of clearing are proposed while the site plan indicates 0.83 acres are proposed. The report indicates that 3,740 square feet of impact to nontidal wetlands is proposed while the site plan indicates that no impacts to nontidal wetlands are proposed. Please have the applicant provide a revised report which matches the information stated on the site plan.

3. Similar to comment #2 above, Sheet 1 of 2 of the revised site plan contains different information regarding the Critical Area impacts than Sheet 2 of 2. Specifically, the acreage of forest cleared and proposed impervious surface areas differ significantly. Please have the applicant make any corrections necessary to ensure that the impacts stated on Sheet 1 match those stated on Sheet 2. It is not clear which sheet is accurate.
4. The Critical Area Report submitted (dated September 2006) indicates that the applicant is awaiting verification regarding the limits of wetlands and streams onsite. Please have the applicant indicate whether this verification has been received to date.
5. The site plan indicates that a proposed 6-foot wide macadam walkway is proposed within the property. While it appears that a natural pathway currently exists in some portions of the property, it is not clear whether the entirety of the new trail will be constructed of macadam or whether the existing portions will remain natural. Within the Buffer and expanded Buffer areas, or on areas of steep slopes, the trail should be constructed so as to create the minimum disturbance necessary. Throughout the property, but in these areas in particular, the applicant should address why the trail cannot be composed entirely of natural materials.

Thank you for the opportunity to provide comments on this revised site plan submittal. Due to the outstanding concerns, please have the applicant submit a revised site plan and Critical Area report which addresses our concerns. If you have any questions, please contact me at 410-260-3482.

Sincerely,



Kerrie L. Gallo
Natural Resource Planner
AA 642-06

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/

January 12, 2007

Mr. Gary Maragos
Development Division
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road
Annapolis, Maryland 21401

Re: Site Plan #C06-0075-Revised
Westhaven Community Pool

Dear Mr. Maragos:

Thank you for providing information on the above referenced revised site plan. The applicant is requesting approval of a site plan to construct a community pool facility, with a pool house, access road, and parking lot for 27 vehicles. The property is designated a Limited Development Area (LDA) and is currently utilized as a community recreation parcel.

Based on the revised plan provided, we have the following comments:

1. We acknowledge that the applicant has applied for the necessary variance(s) to disturb steep slopes and for impacts to the expanded 100-foot Buffer. However, the applicant has not shown the limits of the expanded Buffer which must include the contiguous steep slopes to the south which drain to the nontidal wetlands. Please have the limits of the expanded Buffer shown on the site plan.
2. While it appears that the applicant was previously instructed to remove the contiguous nontidal wetlands from the expanded 100-foot Buffer, this information appears to be incorrect. The 100-foot Buffer from the tributary stream must be expanded to include contiguous nontidal wetlands. Impacts to the nontidal wetlands will subsequently be considered impacts to a Habitat Protection Area and will need to be included within the variance request.
3. We note that the proposed clearing exceeds the 20% permitted within the County's ordinance. Please clarify whether the Planning and Zoning office has currently granted an

Gary Maragos
Westhaven Community Pool
January 12, 2007
Page 2

exception to exceed 20% clearing. In addition, please indicate how the applicant will mitigate for the clearing.

Thank you for the opportunity to provide comments on this revised site plan submittal. If you have any questions, please contact me at 410-260-3482.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kerrie Gallo".

Kerrie L. Gallo
Natural Resource Planner
AA 642-06



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/

October 17, 2006

Mr. Steve Callahan
Development Division
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road
Annapolis, Maryland 21401

Re: Site Plan #C06-0075
Westhaven Community Pool

Dear Mr. Callahan:

Thank you for providing information on the above referenced site plan. The applicant is requesting approval of a site plan to construct a community pool facility, with a pool house, access road, and parking lot for 27 vehicles. The property is designated a Limited Development Area (LDA) and is currently utilized as a community recreation parcel.

Based on the site plan provided, it appears that the applicant is proposing to construct an access road which disturbs steep slopes. Section 26-8-201 of the County's zoning code states that development in the LDA may not occur within slopes of 15% or greater unless development will facilitate stabilization of the slope or the disturbance is necessary to allow connection to a public utility. Therefore, it appears that a variance will be required in order to construct the access road as proposed. In addition, it appears that the limits of 100-foot Buffer from the intermittent stream may require expansion for contiguous steep slopes. If the access road proposes to disturb the expanded Buffer, a variance to the 100-foot expanded Buffer may also be necessary.

Thank you for the opportunity to provide comments on this site plan submittal. If you have any questions, please contact me at 410-260-3482.

Sincerely,

Kerrie L. Gallo
Natural Resource Planner
AA 642-06

McCARTHY & ASSOCIATES, INC.

REGULATORY and ENVIRONMENTAL
CONSULTANTS

C 06 - 0075

RECEIVED

SEP 21 2006

PERMIT APPLICATION CENTER

August 31, 2006

Via Facsimile (410) 260-8596 (2 pages)

Ms. Lori Byrne
Maryland Department of Natural Resources
Wildlife and Heritage Division, E-1
Tawes State Office Building
580 Taylor Avenue
Annapolis, Maryland 21401

Re: Westhaven: Section 3 Rec Area-Pool
Anne Arundel County, Maryland

Dear Ms. Byrne:

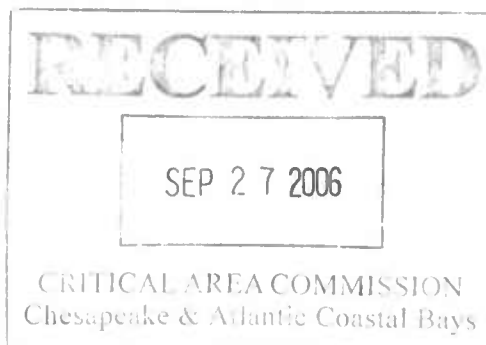
I am formally requesting an environmental review (ER) for rare, threatened, or endangered species on the above referenced property located off Tolstoy Lane, in Anne Arundel County, Maryland. The majority of the 6.8-acre site is forested, but the section of the site fronting Tolstoy Lane is generally comprised of a mowed lawn area with a concrete basketball court. The property is surrounded by existing residential homes and contains a natural surface trail system throughout the woods. I have attached a vicinity map depicting the location of the subject property. Please feel free to contact me if you have any questions or need additional information.

Sincerely,



Michael J. Klebasko, P.W.S.

Enclosure(s)



14458 Old Mill Road • #201
Upper Marlboro, MD 20772

Phone: 301-627-7505 • Fax: 301-627-5571

Sep 20 06 02:08p

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p. 1

C06-0075

SEP 21 2006

PERMIT APPLICATION CENTER



MARYLAND
DEPARTMENT OF
NATURAL RESOURCES

Robert L. Ehrlich, Jr., Governor
Michael S. Steele, Lt. Governor
C. Ronald Franks, Secretary

September 20, 2006

Mr. Michael J. Klebasko
McCarthy & Associates, Inc.
14458 Old Mill Road, #201
Upper Marlboro, MD 20772

FAX: One page only
Attn: M. Klebasko
FAX # 301-627-5571
From: L. Byrne @ DNR
ph. # 410 260 8573

RE: Environmental Review for Westhaven Section 3, Rec. Area Pool. Off of Tolstoy Lane, Anne Arundel County, Maryland.

Dear Mr. Klebasko:

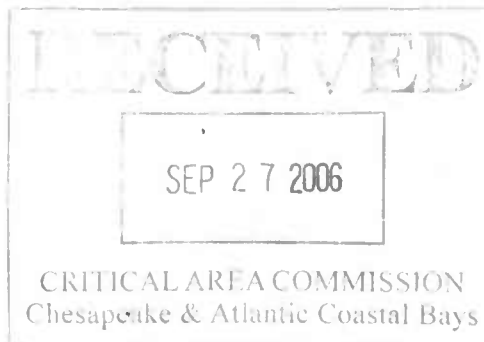
The Wildlife and Heritage Service has determined that there are no State or Federal records for rare, threatened or endangered species within the boundaries of the project site as delineated. As a result, we have no specific comments or requirements pertaining to protection measures at this time. This statement should not be interpreted however as meaning that rare, threatened or endangered species are not in fact present. If appropriate habitat is available, certain species could be present without documentation because adequate surveys have not been conducted.

Thank you for allowing us the opportunity to review this project. If you should have any further questions regarding this information, please contact me at (410) 260-8573.

Sincerely,

Lori A. Byrne,
Environmental Review Coordinator
Wildlife and Heritage Service
MD Dept. of Natural Resources

ER #2006.2137.aa



RECEIVED
JAN 25 2010
CRITICAL AREA COMMISSION
Chesapeake & Atlantic Coastal Bays

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

WEST HAVEN HOMEOWNERS
ASSOCIATION, INC.

Petitioner

* BEFORE THE
*
* COUNTY BOARD OF APPEALS
*
* OF ANNE ARUNDEL COUNTY
*
* CASE NO. BA 2-09V
* (2007-0303-V)
*
* Hearing Dates: 4/22, 4/23, 7/21,
* 7/22, 7/23, 10/6, 10/14, & 10/15/2009
*

MEMORANDUM OF OPINION

Summary of Pleadings

This is an appeal from a decision of the Administrative Hearing Officer. This appeal is taken from the denial of a variance to permit parking and a path for a community swimming pool with disturbance to slopes 15% or greater, on property known as 280 Tolstoy Lane, Severna Park.

Summary of Evidence

Mr. Sean Lee, the President of the homeowner's association, testified regarding the community plans for a swimming pool and related areas. The West Haven community, also known as Stewart's Landing, has 261 homes. Approximately 200 homes have voted for the pool and the community received more than the required 2/3 vote for approval of the loan. Wade Associates was consulted to design the facility. The County required the full complement of parking—it did not grant a waiver. An existing path is proposed to be paved for emergency access and handicapped access. The County recommended the use of the basketball court for parking as with other communities (Oakleigh Forest, North Cape Arthur, and Berrywood). The residents will walk to the pool. Mr. Lee described the use of shortcuts through the community and foot traffic to other social events in the community. There will be 30 parking spaces in the basketball court. The path will be eight feet wide and paved from the parking facility to the pool

(approximately 870 feet long). He recognized that there are concerns about parking on the streets and described pool rules designed to prevent or mitigate this problem.

Mr. Steven Andraka, DFI, Inc., an expert in civil engineering and site plans, performed the feasibility investigation of the recreation area to identify the best location for the pool. He noted that the majority of the property is in the Critical Area and designated as Limited Development Area. He described the site as oddly shaped and cut in half by wetlands and slopes. The slopes by the basketball court and proposed parking are human-made, while the slopes in the wooded area are natural. Stormwater management ("SWM") will be provided via an infiltration trench and another trench just inside the wood line at the parking area, not on steep slopes. He mentioned that the landscaping plan exceeds the Code requirements – there is a 50 foot setback from the pool and additional landscaping will be installed between the pool and residences and along the access road. He described other proposed plans and explained that one site was too small, another plan received opposition from the Office of Planning and Zoning, but the selected site was the largest and most centrally located. Regarding the need for a variance for that plan, he testified that if the eroded path were not repaved, requiring the variance, the community would be deprived of the reasonable use of the recreation area. Furthermore, this was not a condition caused by the Petitioner – the recreation area was platted "long ago." Also, other communities in the area have pools with parking lots and some have macadam paths on slopes, such as Quiet Waters Park.

Mr. Michael Klebasko, an expert environmental consultant, prepared an environmental study and a supplement thereto as well as a wetlands delineation. There is no 100 year flood plain on the property, and the 100 foot Critical Area buffer does not extend onto the site. Although the expanded buffer encompasses non-tidal wetlands, the project's use of an existing pedestrian bridge prevents disturbance. Furthermore, environmental impact is minimized by constructing the macadam path over an existing dirt trail. Forest clearing will be mitigated by

fee in lieu and 3.75 acres of Critical Area forest will be permanently preserved. SWM will be provided where there is none, so there will be improvement in water quality. Paving will stabilize the slopes from erosion from foot traffic. There will be minimal impact to fish, wildlife, and plant habitat as the proposal involves the existing path and paved basketball court. The spirit and intent of the Critical Area Program is not to protect 17 feet of fill. Regardless of the proposal, upgrading the path is appropriate because rain causes erosion and prevents vegetation growth. Mulch can move and may not stabilize steep slopes; paving could occur on slopes and mulch could remain on flat portions. Mr. Andraka testified during cross-examination regarding the need for parking, the modification the County granted to allow for parking beyond the six hundred foot limit, and the various configurations of the parking facility. People would be able to play basketball when no one is parked. He noted that parking is available on the street, but he was not involved in discussions with the County. He also answered questions about the recreation area. The recreation area, which is currently passive, would become active by addition of a pool. COMAR does not distinguish between man-made and natural slopes. A variance is required to stabilize the path and disturb slopes for the parking lot. It would be difficult to push a stroller or ride a bicycle on the path if it were only improved with wood chips.

Mr. Wayne Wade, president of Wade Associates and an expert in pool design and construction, was contracted to design and build the pool facility. He made recommendations based on the needs of the community and his professional expertise. There is no authority governing size of a pool, but COMAR provides an equation for determining pool user load: square feet of water surface plus depth plus diving boards. In this case, the pool has a 305 person capacity, which must be posted and enforced by the user. An over capacity pool discourages pool use and creates a liability issue. He designed the pool to provide access to everyone, including those in wheelchairs, by way of a zero-depth special purpose area which connects to the general purpose area of the pool. This allows for greater versatility and a broad

variety of uses, including swimming lessons, and water aerobics. He described the design as conservative for the community size, although a larger or smaller pool would be feasible.

Mr. Shep Tullier, an expert in land planning and consulting, stated that he is familiar with the subject property and the Code standards for a variance. The mulch path and small bridge crossing the stream provide access to the larger portion of the 6.8 acre site, which can also be accessed from Tolstoy Lane. The community has been restricted to using some exercise stations along the path, a gazebo, swings, a tot lot, and the basketball court on this large parcel. He testified that, when compared to others, this is not a reasonable use of nearly seven acres of what has always been platted as recreation area. Whitehurst has a pool, pool house and club house both on the water, a volleyball court, basketball court, and tot lot; Fair Oaks has a beach, pier, canoe racks, swing sets, pool, and tot lot; Berrywood has two tennis courts, a pool, marina, soccer field, tot lot, etc; and Oakleigh Forest and North Cape Arthur have similar recreation facilities. Every one of these communities has fewer homes and four have smaller recreation areas. He explained that denial of the variance to disturb steep slopes would deny use of the entire parcel. There were two cases in 1990 in which variances were granted to disturb steep slopes for construction of piers. He noted that the Petitioner explored several iterations of its plan in an effort to satisfy the Maryland Department of the Environment and the County by minimizing environmental impact. Use of the basketball court for parking, paving of the existing path, etc. are all improvements on earlier plans. There will also be a 50 foot buffer and landscaping between the pool and other parcels. Answering questions about using the recreation area for tennis courts, he stated that the necessary parking and path improvement would still require a variance to disturb steep slopes. Moreover, that use would not benefit some people who could benefit from a pool.

Mr. Wayne Newton, President of Messick & Associates, and an expert in civil engineering testified in regard to alternative plans for parking facilities. His plans include

reducing the amount of disturbance from 6,922 square feet to 6,104 square feet, expanding the existing basketball court, installing a shorter retaining wall, and providing an entrance that directly lines up with Poe Court, where the Petitioner's planned entrance is offset 20 feet. He also planned to place an SWM device beneath the end of the basketball court, but has not done calculations or soil borings, and he has not submitted his plan for approval. His plan involves an access road that would require an additional variance. However, it would cost less overall and involve less impervious surface, while providing an equal number of parking spaces.

Mr. Jeffrey Smith resides at 232 Lower Magothy Beach Road and testified primarily in regard to the parking and the harm he believes the variance will cause himself, other West Haven residents, and those in neighboring communities. He suggested that people will elect to take the shortest route, along the planned emergency access road, instead of parking in the lot and walking along the designated path. They will park on Lower Magothy Road. This will result in "stranger danger" to his children, danger from the vehicles using the road while his children play nearby, and will increase the chance of litter on his property. This problem will be exacerbated by West Haven selling outside memberships. He discussed the proposed solution of revoking membership after several complaints of illegal parking pursuant to pool rules to be adopted. He explained that enforcing these rules would be financially detrimental to the pool, which will need to maintain high membership levels, and therefore they would not be enforced. Mr. Smith also noted that the plans have changed since residents were last given an opportunity to review them. The residents were given tours and purchased pool bonds based on a now-outdated plan. Additionally, there is a great risk of danger to public welfare in maintaining a dual use basketball court/parking lot, especially when used by small children who frequently run between the court and the tot lot. He next noted the current recreational use of the area for exercise, basketball, enjoying the gazebo, and playing in the tot lot. He is not opposed to the slope disturbance for the

basketball court parking, just the danger of the double use. He also does not oppose improvement of the walking path.

Ms. Ruth Stemberger is a resident of Wilderness Point whose home backs to the proposed pool area. She opposes the parking and access plans, not the pool. She anticipated that people will park in front of her and her neighbor's houses and will walk the short distance to the pool along a path between those houses. This would result in noise pollution, danger to kids crossing the street, and other problems such as undelivered mail. Sixteen other Wilderness Point residents were also present indicating that they would be similarly impacted. She does not want to be responsible for policing improper parking. Disturbing the slopes would impair the use of their property, public welfare, and would alter the essential character of the neighborhood. She recognized that the path is very steep and would be easier to use if paved. She has not discussed alternatives for policing the parking problem because she is not a member of the West Haven Homeowner's Association.

Mr. Rick Polland resides at 277 Capote Court West. He testified regarding current severe erosion problems and the likelihood that development would aggravate them. When he moved in 22 years ago, he could straddle the stream, but now he cannot even jump across. The existing culverts and storm drain have not been taken care of, resulting in erosion of an estimated 900 cubic yards of earth from his property. He has spent over \$60,000 in landscaping to mitigate the erosion. He noticed increased erosion after construction of the tot lot; runoff from additional impervious surface required by the current plan will seriously impact his property. He noted inaccuracies in the current site plan including that the proposed parking lot is actually three feet higher. He suggested making no judgments based on the plan. Mr. Polland also expressed concerns about possible trespassing, vandalism, dumping, and arson. He enjoys the wildlife including eagles, herons, and terrapins, and is concerned that increased hard surface will reduce the habitat of these creatures. When the predators move away, the number of rodents will

increase. He noted that there are no SWM devices around the basketball court. He believes that the landscaping and stabilization plans are merely decorative, that they will not hold the soil in place, and he doubts they will control erosion.

Mr. Bryan Widmer lives at 230 Lower Magothy Beach Road and testified in opposition to the variance. He noted his concerns related to traffic and parking congestion resulting from the pool use. The County informed him that the request had been withdrawn due to environmental concerns and based on that information, he purchased his home. His household would suffer the unfair financial burden of having to install fencing and heavy shrubs to decrease intrusion from security lights and noise. Berrywood has a much smaller pool than the one proposed, which was constructed prior to the imposition of the Critical Area Program. Approximately one-half of his one-half mile trips to the pool are by car and the other half by bicycle. Berrywood pool membership has decreased and 41 memberships have been offered outside the community. Over time, outside memberships to a West Haven pool will increase and parking/traffic congestion and other impacts will increase. He thinks that conditions related to the access gate and fencing around the pool would be appropriate.

Mr. Curtis Jeffries lives on Lower Magothy Beach Road and the rear of his home would be 125 feet from the pool house. He has lived in Berrywood for 23 years. West Haven has not discussed the proposal with Berrywood. He believed that the subject property was to be preserved, other than the fitness trail. Mr. Jeffries is particularly concerned regarding the impact of security lights, parking, noise, trespassing to access the pool, and security issues. The pool site would be physically, visually, and acoustically isolated from West Haven/Stewart's Landing by the 4.5 acre environmental property.

Mr. George Soteropoulos, who lives at 284 Tolstoy Lane (Lot 12), has been a community resident for 25 years. In 1985, his children begged him to buy his property because it was located adjacent to the tot lot area. The community tried to build a pool for years. He bought a

pool bond when the proposal showed the parking near to the pool. When the proposed parking was moved adjacent to his house, he became opposed. He presented the Board with alternative parking proposals on the basketball court and adjacent to the road, as well as photos of the property to be impacted by the parking. He is concerned about security, decreases to property values, and complications from parking cars. He is opposed to the parking only—not the pool.

Mr. Gary Evans, a resident of Wilderness Road (Magothy Forest Homeowner's Association), lives immediately adjacent to the pool and pool house, but is not a part of the Stewart's Landing Community. He took a survey of his community and Wilderness Point, which demonstrated their lack of support of the pool proposal. His home is separated from the pool by the Magothy Forest recreational parcel.

Mr. John Fury, a planner with the Office of Planning and Zoning, testified regarding the County's support of the requested variances. He presented the Board with the findings and recommendations of the Office of Planning and Zoning along with relevant agency comments. Section 13-3-104 requires one space for each 10 persons of design capacity of the pool. There is a 25 foot required buffer between the parking and the lot line. A request was made by the applicant to decrease the parking provided, but it was denied. A modification was requested (and granted) to permit parking 870 feet from the pool use as opposed to the required 600 foot maximum. Issues with the design of the emergency access will be examined in greater detail during the development process. The Department of Public Works prohibits the use of the public streets for parking for a proposed use. Mitigation will be required at a ratio of one to one for impact to environmentally sensitive areas. Paving the access path is reasonable and would be reasonable if associated with another permitted use—distinct from the current pool request. Mr. Fury discussed the ability of the Board to place conditions on a variance and recommended that the Board utilize that authority in this case. Upon questioning, Mr. Fury noted that landscaped

buffers could be increased, lighting on the pool could be shielded, and parking on the basketball court could be maximized.

Mr. Daniel O'Sullivan, the head of the community's pool committee, testified regarding the likely positive environmental impacts from the construction of the local pool vis-à-vis reduced driving and nitrous oxide creation. Additionally, the impervious surface to be created by the community pool would be less than that created if homeowners build pools of their own at the typical rate.

Ms. Marcie Taylor, a member of the West Haven Board of Directors, testified that there are existing sidewalks and paths in the community. The pool committee resolved many issues in the pool design. The committee wants to work with neighboring communities to resolve their issues.

Mr. Thurman Reynolds has lived at 293 Tolstoy Lane for 10 years and testified that the recreational area receives little use considering the 800 residents, 300 of which are children. Furthermore, the current use does not meet the needs of his older children. This community should not be deprived of a right enjoyed by other smaller communities.

Ms. Karen Kontello-O'Hay, a resident of West Haven for seven years, testified regarding the importance of exercise and fitness. Her family has a long history with swimming and diving. She has to drive to her current pool three times per day. She desires a community pool to reduce driving and to provide social outlets.

Mr. Fred Faire moved to the community in 1986. He has supported the idea of the pool since the pool committee performed a survey 16 years ago.

Ms. Sharon Brazell has lived in Stewarts Landing since 1986. She was told that the recreational parcels were available for pool use by the community. The witness has lost good neighbors waiting for the pool to be built. She would like a close pool to use for swimming.

Berrywood restricted the number of members in each family and required sponsorship by a Berrywood resident.

Mr. Jason Brazell has lived in the community for 23 years. He had really good memories from using the other community pools. A pool would be a good asset to the neighborhood.

Ms. Laura Hyde is a resident who adjoins the tot lot and would be able to see the pool. She fully supports the pool despite its likely direct impact on her.

Mr. Neil MacDonald, lives in Stewarts Landing, the pool would be in his backyard and he supports it. He bought his property in 2006. The lack of a community pool divides school children during the summer.

Ms. Julie Butler lives directly across the street from the proposed parking area. At community events, there are no parking difficulties. She supports the pool.

Mr. Charles Feihe, an original resident of the community, testified that the salesman told him where the marina and pool would be built. The builder would not fund the marina or pool. The pool would complete the community.

Mr. Chuck Cochran moved into the community in 1984. He was informed regarding the likely location for a community pool. Mr. Cochran lives across the street from the proposed parking area, and believes it will not be detrimental.

Ms. Nancy Disney moved in to her home in 2001. She believes that children should be given opportunities to swim—particularly with all the water in the area.

Mr. Andrew Lentz testified as a resident of the subdivision in support of the pool request. The existing path is not popular. He asked his neighbors in support to stand.

Mr. Drew Lenear, a resident of Magothy Forest since 2001, testified in favor of the pool as a mechanism for building a sense of community. His wife grew up in Stewarts Landing and her mother still lives there. The pool plans were shared with the Magothy Forest Board of Directors.

Mr. Martin Urquhart moved into the community in August 2009. He wanted to live in a community with a pool and was pleased that the pool bond of the former owner would convey.

Ms. Leila Wagner, a real estate agent who works predominately with relocations, described the difficulties placing residents in a community without a pool.

Ms. Sherry Leiken testified that the Berrywood community pool requires a sponsorship. She was not able to get into Berrywood and had to wait two summers to get into a local pool.

Dr. Scott Truver lives on 5 acres of land on Old Man Creek in Wilderness Point. He was advised that nothing would be built on the subject property that would have an adverse impact on the community. Mr. Truver expressed his concern regarding safety and security concerns due to increase in foot traffic. He described past difficulties with vandalism, fires in the woods, and trespassers. He is concerned regarding negative impacts to his privacy. He suggested several conditions to be imposed on the variance, if granted, i.e. dusk to dawn security lighting, monitored security cameras, impervious fencing, soundproofing, a gated entrance to handicapped access, and shielding properties with line of sight barriers.

Ms. Cheryl Heemstra, a resident of Wilderness Point, testified that Stewarts Landing will not suffer an unwarranted hardship if the variance is denied. Stewarts Landing has a marina, tot lot, basketball courts and trail. Her dogs alert her to trail use each day. She described the undue impact to other communities from the proposed pool.

Mr. Brian Stemberger, a resident of Wilderness Point, noted that the variance has been denied. The pool and related facilities simply do not fit in the space in the community.

Ms. Laura Burke, a 25 year resident of Stewarts Landing, testified that the path is used consistently. Her property backs up to part of the path. The pool has not been approved because of the Critical Area requirements. The parking will alter the essential character of the community. Her family joined the Berrywood pool 10 years ago.

Ms. Norma Slade, a resident on Magothy Beach Road, testified in opposition to the application. The proposed plan is not the same plan as voted on by the community membership. Parking will be a problem because the pool is on such an extreme portion of the community.

Ms. Kathy Armiger, a resident on Magothy Beach Road, walked the path on the day of the hearing. It was a difficult walk and would be much more difficult with children, heat, and pool equipment.

Ms. Cynthia Enoiu testified in opposition to the variance due to parking, impervious surface, and environmental impacts.

Mr. Steven Andraka testified in rebuttal. He described concerns with the proposed parking plan drafted by Mr. Newton, the Protestants' expert witness. The access driveway would have a 14 degree slope. The cross slope of the parking lot would have a four foot fall. Mr. Newton's plan would block the pedestrian access path with two parking spaces. If cars were parked in these spaces, the residents would have to traverse a 2:1 slope (which is not walkable); therefore, the limit of disturbance of the project would have to be expanded. The SWM plan shown on the Newton plan lacks a grass swale and fails to take into account the excessive fill dirt on the site, which cannot lawfully support SWM. The Newton plan would have more than 100 feet of pavement in the access road versus the Petitioner's plan that shows a 35 foot long driveway.

The Board was presented with proposed conditions by both the Petitioner and the Protestants to be considered by the Board, if the Board were inclined to grant the request.

All testimony was stenographically recorded and the recording is available to be used for the preparation of a written transcript of the proceedings.

Findings and Conclusions

The subject property is a non-waterfront site that has been "split-zoned" R5-Residential District/Open Space district. Furthermore, the lot is partially located in the Chesapeake Bay

Critical Area and is classified as Limited Development Area ("LDA"). The Petitioner desires to improve an existing community recreation area and foot path and to provide a portion of the required parking for a community swimming pool facility. The Petitioner, therefore, has requested a variance. Section 17-8-201 of the Anne Arundel County Code (the "Code") sets forth that development in the "Limited Development Area... may not occur within slopes of 15% or greater." The proposed community swimming pool itself requires no variances to conform to the Critical Area criteria. However, the improvement of the foot path and provision of the required parking examined herein will disturb slopes of 15% or greater, and therefore, does require a variance.

Variances to the Critical Area criteria oblige the Petitioner to satisfy an extensive list of requirements set out in the Code. § 3-1-207. The requirements established for variances within the Critical Area are exceptionally difficult to overcome and an applicant must meet each and every one of the variance requirements of the Code. *See id.* If an applicant fails to meet even one of the criteria, the variance must be denied. In light of the discussion below, we find that the Petitioner has met its onerous burden of proof regarding the variance criteria. Thus, the Board grants the requested variance as conditioned below.

The Petitioner is first required to show that "because of certain unique physical conditions, such as exceptional topographical conditions peculiar to and inherent in the particular lot, or irregularity, narrowness, or shallowness of lot size and shape, strict implementation of the County's critical area program would result in an unwarranted hardship..." § 3-1-207(b)(1). The site is irregularly shaped and is bisected by slopes leading down to existing wetlands. The Board was provided testimony that while the total recreational area is 6.8 acres, the existing recreational uses occupy merely 0.52 acres. The largest, and currently unused, portion of the recreation area is on one side of the wetlands and the majority of the residents live on the other side. Any use of the larger portion of the recreational area requires most West Haven residents to use the existing

mulch path. However, that path is eroding and requires improvement before it is useable by anyone in a wheelchair, pushing a stroller, or who has difficulty walking. A variance is required to improve this path. The County has denied a waiver for parallel parking on the street. Consequently, on-site parking for the pool is required for thirty vehicles based on the pool's capacity. The Petitioner proposes to transform the existing basketball court into a parking facility, thereby minimizing environmental impact. However, the variance is required to develop access to the parking facility and for a portion of the required parking. Denial of the variance will result in the community being unable to enjoy the largest portion of its recreational area and will prevent it from providing adequate parking for the proposed community pool, rendering the entire pool project impracticable. Therefore, the Board finds that denial of the variance would result in an unwarranted hardship.

The Petitioner next must establish that "[a] literal interpretation of COMAR, 27.01, Criteria for Local Critical Area Program Development or the County's Critical Area Program and related ordinances will deprive the applicant of rights commonly enjoyed by other properties in similar areas as permitted in accordance with the provisions of the critical area program within the Critical Area of the County." § 3-1-207(b)(2)(i). The Board has heard evidence that many surrounding communities, which are also in Critical Area, already have pools and paved paths, such as the Berrywood, Fair Oaks, and North Cape Arthur communities. The County has denied West Haven community a waiver to permit parking on the street. The most environmentally sound alternative is to provide for at least a portion of the parking on the existing basketball court. If the community completes this part of the project and improves the eroding and largely unusable mulch path from the parking facility to the pool site, it could realize its goal of building a community pool. However, the presence of steep slopes greater than 15% and the location of the wetlands on this site render any development of the unused portion of the recreational area or improvement of the existing mulch path in compliance with the County's Critical Area program

impossible. Absent granting the variance, neither of these improvements is possible. Therefore, the Board finds that strict application of COMAR 27.01 would deprive West Haven of rights enjoyed by other similarly situated properties.

Next, the Petitioner must show that “[t]he granting of a variance will not confer on an applicant any special privilege that would be denied by COMAR, 27.01, the County’s critical area program, to other lands or structures within the County’s critical Area, or the County’s bog protection program to other lands or structures within a bog protection area.” § 3-1-207(b)(3). The Board was presented evidence of two cases where variances were granted for slope disturbance in the Critical Area in order to build piers. Furthermore, as noted above, several other neighboring communities currently enjoy developed recreation facilities in the Critical Area. However, the variance is not required to develop the pool, but to improve the existing mulch path and to comply with County regulations relative to the parking facility. If the variance is denied, the community would be unable to improve the existing mulch path, resulting in it being unusable to anyone in a wheelchair, pushing a stroller, or who has difficulty walking. Upgrading a path so that it is useable by all is not a special privilege. Moreover, the Board has heard evidence that paving the path will also stabilize the slopes, and the additional SWM will reduce the erosion caused by the existing path. Therefore, granting this variance would not confer a privilege on West Haven that would be denied others.

The Petitioner also must establish that “[t]he variance request is not based on conditions or circumstances that are the result of actions by the applicant, including the commencement of development before an application for a variance was filed, and does not arise from any condition relating to land or building use on any neighboring property.” § 3-1-207(b)(4). The recreational area in question was platted in the 1980s, before the Critical Area laws. The need for the variance arises from the lack of alternatives for parking, the County’s denial of a parking waiver, and the unique topography of the site. The Petitioner has not begun development. Also,

nothing suggests that any uses on neighboring property have led to this variance request. Accordingly, we find that the requested variance is necessary because of the presence of steep slopes and wetlands—natural conditions or conditions that pre-existed any plans for the site—rather than any unjustified action by the Petitioner.

The next burden that the Petitioner must overcome is to show that “[t]he granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the County’s critical area or a bog protection area; and will be in harmony with the general spirit and intent of the County’s critical area program or bog protection program.” § 3-1-207(b)(5)(i)-(ii). The Board was provided evidence that SWM currently in place is ineffectively handling runoff from the existing impervious surface. The proposal includes plans for providing additional SWM. This would enhance water quality and benefit the environment. While the proposed project will clear 1.14 acres of forest, the applicant will place 3.75 acres in a conservation easement and, as suggested by the Critical Area Commission, will provide mitigation replanting in a ratio of three to one or greater, pursuant to conditions this Board shall impose. Also, evidence was provided that the basketball court does not support vegetation or wildlife; the mulch path does not support vegetation; and there are no recorded or observed rare, endangered, or threatened species on the property so any disturbance will be minimal. The Board finds, therefore, that the proposed variance will be consistent with the County’s Critical Area Program and will not result in harm to the environment.

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

The Petitioner’s next burden is to establish “by competent and substantial evidence, [that it] has overcome the presumption contained in the Natural Resources Article, § 8-1808(d)(2), of the State Code.” § 3-1-207(b)(7). Under the above-cited section of the Natural Resources Article, it is *presumed* “that the specific development activity in the critical area that is subject to

the application and for which a variance is required does not conform with the general purpose and intent of this subtitle, regulations adopted under this subtitle, and the requirements of the local jurisdiction's program." Md. Code Ann., Natural Resources Art., §8-1808(d)(2)(i) (emphasis added). Upon completion of the development considered herein, the property will benefit from additional plantings and SWM, which did not exist previously. Also, evidence shows that the existing mulch path is contributing to the erosion of steep slopes. These slopes will likely benefit from the stabilizing effect of paving the path. Also, evidence was presented that the slopes around the basketball court and tot lot area involved were, in large part, created by the developer during initial development of the property. Although the statutes do not distinguish between natural and man-made slopes, the Board finds it unlikely that the legislature's general purpose to protect natural resources encompasses man-made slopes. Currently, less than one acre of 6.8 total recreation area acres is being used. Like other communities in the Critical Area, Petitioner wants to build a community swimming pool, a reasonable use of this large recreational area. Denial of the variance would preclude access to the pool thereby depriving the community of a reasonable and significant use of its land. Access to land is a reasonable and significant use. This would be contrary to the general purpose and intent of the statute.

Next, the Petitioner has the burden of proving that "the variance is the minimum variance necessary to afford relief." § 3-1-207(c)(1). The evidence indicates that the proposed development plan, after several revisions, appropriately balances the need for parking, access from that parking to the pool, preservation of wetlands, and disturbance of steep slopes, all with minimal disturbance to the Critical Area. Considering the availability of parking, the location of the available space, and the condition of the existing path, any planned use of the recreation area would require a variance. Although Mr. Newton presented some evidence that an alternative plan could be implemented which would further minimize the required variance, his plan did not

take account of any SWM calculations and he did not perform soil borings to determine the feasibility of his own SWM plan. Furthermore, Mr. Andraka testified that many of the benefits Mr. Newton anticipated would be outweighed by additional environmental costs and failed to account for the fill material on site. The proposed plan takes advantage of an existing bridge crossing the wetlands, minimizes the need for additional impervious by using the existing basketball court, in part, for parking, and requires only the additional impervious necessary to pave the mulch path and add parking to meet the County's parking criteria. Evidence was also presented that any use of the recreation area would require paving the path to ease use by strollers, bicycles, wheelchairs, and any residents who have difficulty walking. Therefore, the Board finds that the variance requested is the minimum variance required to afford relief.

Additionally, the Petitioner must show that granting the variance will not "alter the essential character of the neighborhood or district in which the lot is located." § 3-1-207(c)(2)(i). As noted above, several neighboring communities are similarly improved with swimming pools. Also, several residents in West Haven currently have private swimming pools on their property. However, the variance is merely to allow for paving of the mulch path and to provide access to and modification for the parking lots in part utilizing the basketball court. To some extent these conditions already exist in the community, so while granting the variance might alter some aspects of the neighborhood, the Board finds that it will not alter its essential character. The community will remain residential in nature following the installation of the paving. The Board recognizes the Protestants' concerns about parking and security; therefore, the Board imposes the conditions below as prerequisites to the granting of the variance. The conditions limiting and controlling access points through gates, lighting and fence will ameliorate these concerns.

Similarly, the granting of the variances "will not substantially impair the appropriate use or development of adjacent property." § 3-1-207(c)(2)(ii). Owners of properties in the surrounding communities reside on fully developed land within the Critical Area. While some

aspects of the proposed project have generated concerns related to property value, lighting, security, and parking, which do impact the nearby property owners, the Board finds that granting the variance will not "substantially impair" their use or development of their own property. The variance will permit the paving of a path and installation of parking. The Petitioner will be required to landscape the area around Lot 12 so as to buffer Mr. Soteropoulos' property. The Petitioner's expert ably answered the concerns raised by the Protestants relative to the topography and depth and screening to be accomplished through the landscaping plan. Furthermore, the Board's imposition of the conditions below should mitigate many of the stated concerns.

The Petitioner next must show "the granting of the variance will not reduce forest cover in the limited development and resource conservation areas of the critical area." § 3-1-207(c)(2)(iii). The property is classified as a Limited Development Area. The Board finds no evidence that forest cover will be reduced by paving the existing path or development of the parking facility. The path exists and the parking will be provided in the open, tot lot area. Little, if any, vegetation will be impacted. Mitigation will be required for any disturbance at a three to one ratio resulting in an increase in vegetation, post development.

Likewise, the grant of the variance "will not be contrary to acceptable clearing and replanting practices required for development in the critical area or a bog protection area." § 3-1-207(c)(2)(iv). The area being newly disturbed is within a cleared tot lot area. Moreover, these disturbances would not affect the clearing and replanting practice in the Critical Area since vegetation in the Critical Area will increase post development due to the required level of mitigation. Therefore, the Board finds that Petitioner satisfies §3-1-207(c)(2)(iv).

Lastly, the Board finds that the variance will not "be detrimental to the public welfare." § 3-1-207(c)(2)(v). The swimming pool will transform a passive recreation area into an active one, thereby providing increased opportunities for exercise and benefiting those who use the pool.

However, West Haven needs no variance to install the pool. The variance is necessary to provide safe access (through paving the path) and comply with County parking regulations. Paving of the path will allow for its use by many who could not use it as is, including parents pushing strollers, bicyclists, wheelchair users, and anyone else who has difficulty walking. Also, a neighborhood swimming pool can increase the opportunity for socialization among the residents providing opportunities for community-building. The Protestants have expressed concerns that this development plan entails increased safety risks. We find that Mr. Newton's plan was less safe due to the installation of two parking spaces at the trail head. The conditions the Board will impose should minimize the safety concerns. Some Protestants have also suggested that during the off-season, the pool will invite an increase in destructive behavior; however, the pool itself is not the subject of this variance.

To be granted a variance to the Critical Area Program requirements, the Petitioner has the burden to satisfy each and every Code requirement. §3-1-207. As the foregoing discussion detailed, failure to meet even one of the Code provisions requires this Board to deny the requested variance. Here, the Petitioner has satisfied all of the applicable requirements of Section 3-1-207. Therefore, the Board grants the Petitioner's requested variance as described below.

ORDER

For the reasons set forth in the foregoing Memorandum of Opinion, it is this 22nd day of JAN., 2010, by the County Board of Appeals of Anne Arundel County, ORDERED, that the variance requested herein be **GRANTED** for disturbance to slopes of 15% or greater in the Critical Area in connection with the improvement of an existing path and development of a parking facility. However, we understand and recognize the valid concerns of the Protestants. We, therefore, condition this grant on Petitioner's satisfaction of the following conditions:


- (1) Mitigation is required at a ratio of 3:1 for the area of disturbance to the steep slopes and expanded buffer, to be performed on-site (insofar as possible);
- (2) The Petitioner must also provide forest conservation easements to ensure that all remaining woodlands adjacent to Berrywood, Magothy Forest, and Wilderness Point will remain undisturbed after development of the pool facility;
- (3) The Petitioner is required to install an electronic access gate on the emergency/maintenance and handicapped access entrance from Lower Magothy Beach Road to limit access;
- (4) The Petitioner shall provide screened and directional lighting in addition to installing a six (6) foot high chain link fence around the pool site providing only a single access point to the pool for pedestrians, the location and type to be as required by County staff;
- (5) The Petitioner shall bond and implement the planting and landscape plan and the Lot 12 landscaping plan through the County permit process in order to visually screen adjacent properties from the pool facility and parking areas;
- (6) And, the Petitioner's variance site plan may be amended as required to meet new State SWM criteria, so long as the area of disturbance to steep slopes is not increased.

Any appeal from this decision must be in accordance with the provisions of Section 604 of the Charter of Anne Arundel County, Maryland.

If this case is not appealed, exhibits must be claimed within 90 days of the date of this Order; otherwise, they will be discarded.

Any notice to this Board required under the Maryland Rules shall be addressed as follows: Anne Arundel County Board of Appeals, Arundel Center, P.O. Box 2700, Annapolis, Maryland 21404, ATTN: Mary M. Leavell, Clerk.

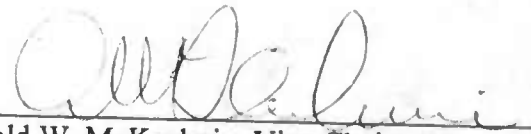
COUNTY BOARD OF APPEALS
OF ANNE ARUNDEL COUNTY



William C. Knight, III, Chairman

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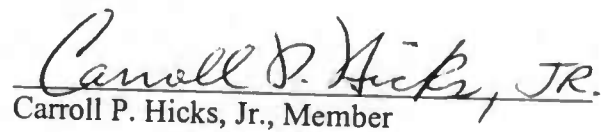


Arnold W. McKechnie, Vice Chairman

(William Moulden, Member, did not participate in this appeal. John W. Boring, Member, did not participate in the deliberations on this appeal)

CONCURRING

We concur with the decision set forth above, the variance to permit parking and a path for a community swimming pool should be granted. However, the Office of Planning and Zoning should revisit the requested parking waiver. It is reasonable to permit the use of existing street-side and neighborhood parking for this use. Had the Office of Planning and Zoning granted the parking waiver, the Petitioner's plan could have been amended to further minimize both its environmental impact and the possible tension between those wishing to play basketball and pool visitors who are required to park on the basketball court.



Carroll P. Hicks, Jr., Member



James E. Rzepkowski, Member

RECEIVED

MAY 21 2007

C 06 - 0075 - 1

PERMIT APPLICATION CENTER



MARYLAND
DEPARTMENT OF
NATURAL RESOURCES

Robert L. Ehrlich, Jr., Governor
Michael S. Steele, Lt. Governor
C. Ronald Franks, Secretary

September 20, 2006

Mr. Michael J. Klebasko
McCarthy & Associates, Inc.
14458 Old Mill Road, #201
Upper Marlboro, MD 20772

FAX: One page only
Attn: M. Klebasko
FAX # 301-627-5571
From: L. Byrne @ DNR
ph. # 410 260 8573

RE: Environmental Review for Westhaven Section 3, Rec. Area Pool. Off of Tolstoy Lane, Anne Arundel County, Maryland.

Dear Mr. Klebasko:

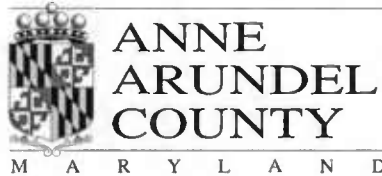
The Wildlife and Heritage Service has determined that there are no State or Federal records for rare, threatened or endangered species within the boundaries of the project site as delineated. As a result, we have no specific comments or requirements pertaining to protection measures at this time. This statement should not be interpreted however as meaning that rare, threatened or endangered species are not in fact present. If appropriate habitat is available, certain species could be present without documentation because adequate surveys have not been conducted.

Thank you for allowing us the opportunity to review this project. If you should have any further questions regarding this information, please contact me at (410) 260-8573.

Sincerely,

Lori A. Byrne,
Environmental Review Coordinator
Wildlife and Heritage Service
MD Dept. of Natural Resources

ER #2006.2137.aa



Office of Planning and Zoning
Development Division

INTER-OFFICE CORRESPONDENCE

www.aacounty.org

DATE: September 5, 2007
TO: Kelly Krinetz
FROM: Thomas Burke/OPZ, Planning, Environmental and Landscape Review
SUBJECT: Westhaven Community Pool;
C2006-0075-1

Planning

This review agency offers no objection to the approval of this project, conditional upon meeting the requirements of all other review agencies.

Environmental

This review agency withholds recommendation for approval of this project based on the following comments:

1. The clearing tabulations are not consistent on the plans. The Grading and Sediment Control Plans, sheet 1 of 6 shows a total of 36,148 sf of clearing. The Proposed Conditions Critical Area Plan sheets 1 and 2 of 2 shows 49,675 sf of Critical Area Clearing. If the actual proposed clearing is the larger of the two, mitigation will be assessed at a ratio of 1.5:1 since it exceeds 20% of woodland. Revisit the plan to accurately tabulate the clearing, as it appears less woodland is proposed for removal than with the previous submittal;
2. A plan, bond, agreement and 7% inspection fee will be required for reforestation. If on-site reforestation is not possible, a fee-in-lieu will be accepted. The mitigation and bond or fee-in-lieu amount will be based on the percentage of removal;
3. Once/if the variance for disturbance to the 15% or greater slopes within the Critical Area has been granted, supply this office with a copy of the Variance Order and address any conditions set forth. For variance information, contact the Zoning Division at 410-222-7437;
4. Once/if the modifications for disturbance of 25% steep slopes and the associated 25 ft. buffer and the non-tidal wetland buffer have been granted, supply this office with the approval and address any conditions set forth. For information on applying for a modification refer to the County Website, www.aacounty.org;

Landscape

This review agency offers no objection to the approval of this project conditional upon addressing the following:

1. The plan must be updated with each revision to the Site Development Plan such that the final Landscape Plan is consistent with all other approved plans. As submitted, it still shows the grading and infiltration as proposed with the first submittal;
2. All required landscaping will be bonded based on a cost estimate with the grading and sediment control bond of the grading permit. The Landscape Plan must be included as part of the plan-set of the grading permit.



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
BALTIMORE DISTRICT, U.S. ARMY CORPS OF ENGINEERS
P.O. BOX 1715
BALTIMORE, MD 21203-1715

APR 30 2007

C06-0075-1

RECEIVED

JUL 24 2007

PLANNING AND ZONING
DEVELOPMENT

Operations Division

Subject: Westhaven – Section 3 Recreation Area

McCarthy & Associates
Attn: Mr. Michael Klebasko
14458 Old Mill Road; Suite 201
Upper Marlboro, Maryland 20772

Dear Mr. Klebasko:

This is in response to your letter dated April 11, 2006, regarding application **CENAB-OP-RMN(WESTHAVEN HOA/POOL FACILITY/JD) 2006-63322**, requesting a jurisdictional determination (JD) and verification of the delineation of waters of the United States, including wetlands, on your client's property located in Anne Arundel County, Maryland.

A review of the information submitted with your request indicated that the delineation of waters of the United States, including wetlands within the "Area of Review" on the enclosed plan dated January 2006, is accurate. Those areas indicated as waters of the United States, including tidal or non-tidal wetlands are regulated by this office pursuant to Section 10 of the River and Harbor Act of 1899 and/or Section 404 of the Clean Water Act. Enclosed is a document that outlines the basis of our determination of jurisdiction over these areas.

This letter contains an approved jurisdictional determination for your subject site. This approved JD is valid for five years from the date of issuance unless new information warrants a revision before the expiration date. If you object to this approved determination you may request an administrative appeal under Corps regulations at 33 CFR Part 331. Enclosed you will find a Notification of Appeal Process (NAP) fact sheet and request for Appeal (RFA) form. If you request to appeal this determination you must submit a completed RFA form to the North Atlantic Division Office at the following address:

James W. Haggerty
Regulatory Appeals Review Officer
North Atlantic Division, US Army Corps of Engineers
Fort Hamilton Military Community
General Lee Avenue, Bldg 301
Brooklyn, NY 11252-6700

In order for this RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 CFR part 331.5 and that it has been received by the Division Office within 60 days of the date of the NAP. Should you decide to submit a RFA form, it must be received at the above address within 60 days from the date of this letter.

It is not necessary to submit an RFA form to the Division office if you do not object to the determination in this letter.

The Supreme Court handed down a decision on June 19, 2006, in the Rapanos and Carabell cases. That decision addresses the scope of Clean Water Act (CWA) jurisdiction over certain waters of the United States, including wetlands. We anticipate that the decision will lead the Corps and the EPA to make some changes in our scope of jurisdiction.

Your project/property includes areas, which are regulated under the current interpretation of Federal jurisdiction under Section 404 of the Clean Water Act. You will have an opportunity to re-address the Federal jurisdiction following issuance of the anticipated EPA/Army substantive Rapanos/Carabell guidance, if such guidance affects Federal jurisdiction on your project site.

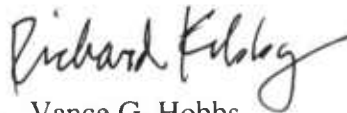
Please be advised that various development activities, within jurisdictional waters of the United States, including wetlands may be regulated by the Corps. Wetlands under the jurisdiction of the Maryland Department of the Environment (MDE) may also be located on the parcel. You may contact the MDE for information regarding jurisdiction and permitting requirements at (410) 537-3768.

You are reminded that any grading or filling of waters of the United States, including wetlands, is subject to Department of the Army authorization. State and local authorizations may also be required to conduct activities in the locations. In addition, the Interstate Land Sales Full Disclosure Act may require that prospective buyers be made aware, by the seller, of the Federal authority over any waters of the United States, including wetlands, being purchased.

In future correspondence and permit applications regarding this parcel, please include the file number located in the first paragraph of this letter.

If you have any questions concerning this matter, please call Mr. Richard Kibby of this office at 410-962-0694.

Sincerely,



 Vance G. Hobbs
Chief, Maryland Section Northern

Enclosure

JURISDICTIONAL DETERMINATION

U.S. Army Corps of Engineers

DISTRICT OFFICE: Baltimore
FILE NUMBER: 2006-63322

PROJECT LOCATION INFORMATION:

State: MD
County: AA Co
Center coordinates of site (latitude/longitude): N39° 5' 39" 39 / W76° 32' 30"
Approximate size of area (parcel) reviewed, including uplands: 6.81 acres.
Name of nearest waterway: Magothy River
Name of watershed: Magothy River

JURISDICTIONAL DETERMINATION

Completed: Desktop determination Date: 4/26/ 2007
Site visit(s) Date(s):

Jurisdictional Determination (JD):

- Preliminary JD - Based on available information, *there appear to be* (or) *there appear to be no* "waters of the United States" and/or "navigable waters of the United States" on the project site. A preliminary JD is not appealable (Reference 33 CFR part 331).
- Approved JD - An approved JD is an appealable action (Reference 33 CFR part 331).
Check all that apply:
 - There are* "navigable waters of the United States" (as defined by 33 CFR part 329 and associated guidance) within the reviewed area. Approximate size of jurisdictional area:
 - There are* "waters of the United States" (as defined by 33 CFR part 328 and associated guidance) within the reviewed area.
 - There are* "isolated, non-navigable, intra-state waters or wetlands" within the reviewed area.
 - Decision supported by SWANCC/Migratory Bird Rule Information Sheet for Determination of No Jurisdiction.

BASIS OF JURISDICTIONAL DETERMINATION:

A. Waters defined under 33 CFR part 329 as "navigable waters of the United States":

- The presence of waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

B. Waters defined under 33 CFR part 328.3(a) as "waters of the United States":

- (1) The presence of waters, which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.
- (2) The presence of interstate waters including interstate wetlands¹.
- (3) The presence of other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate commerce including any such waters (check all that apply):
 - (i) which are or could be used by interstate or foreign travelers for recreational or other purposes.
 - (ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
 - (iii) which are or could be used for industrial purposes by industries in interstate commerce.
- (4) Impoundments of waters otherwise defined as waters of the US.
- (5) The presence of a tributary to a water identified in (1) - (4) above.
- (6) The presence of territorial seas.
- (7) The presence of wetlands adjacent² to other waters of the US, except for those wetlands adjacent to other wetlands.

Rationale for the Basis of Jurisdictional Determination (applies to any boxes checked above). *If the jurisdictional water or wetland is not itself a navigable water of the United States, describe connection(s) to the downstream navigable waters. If B(1) or B(3) is used as the Basis of Jurisdiction, document navigability and/or interstate commerce connection (i.e., discuss site conditions, including why the waterbody is navigable and/or how the destruction of the waterbody could affect interstate or foreign commerce). If B(2, 4, 5 or 6) is used as the Basis of Jurisdiction, document the rationale used to make the determination. If B(7) is used as the Basis of Jurisdiction, document the rationale used to make adjacency determination: Jurisdictional wetlands and waters of the U.S. which flow into an unnamed tributary which flow into the Magothy River.*

Lateral Extent of Jurisdiction: (Reference: 33 CFR parts 328 and 329)

- Ordinary High Water Mark indicated by:
 - clear, natural line impressed on the bank
 - the presence of litter and debris
 - changes in the character of soil
 - destruction of terrestrial vegetation
 - shelving
 - other:
- High Tide Line indicated by:
 - oil or scum line along shore objects
 - fine shell or debris deposits (foreshore)
 - physical markings/characteristics
 - tidal gages
 - other:
- Mean High Water Mark indicated by:
 - survey to available datum; physical markings; vegetation lines/changes in vegetation types.
- Wetland boundaries, as shown on the attached wetland delineation map and/or in a delineation report prepared by: McCarthy & Associates, Inc.

Basis For Not Asserting Jurisdiction:

- The reviewed area consists entirely of uplands.
- Unable to confirm the presence of waters in 33 CFR part 328(a)(1, 2, or 4-7).
- Headquarters declined to approve jurisdiction on the basis of 33 CFR part 328.3(a)(3).
- The Corps has made a case-specific determination that the following waters present on the site are not Waters of the United States:
 - Waste treatment systems, including treatment ponds or lagoons, pursuant to 33 CFR part 328.3.
 - Artificially irrigated areas, which would revert to upland if the irrigation ceased.
 - Artificial lakes and ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.
 - Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons.
 - Water-filled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States found at 33 CFR 328.3(a).
 - Isolated, intrastate wetland with no nexus to interstate commerce.
 - Prior converted cropland, as determined by the Natural Resources Conservation Service. Explain rationale:
 - Non-tidal drainage or irrigation ditches excavated on dry land. Explain rationale:
 - Other (explain):

DATA REVIEWED FOR JURISDICTIONAL DETERMINATION (mark all that apply):

- Maps, plans, plots or plat submitted by or on behalf of the applicant.
- Data sheets prepared/submitted by or on behalf of the applicant.
 - This office concurs with the delineation report, dated April 2006, prepared by (company): McCarthy & Associates, Inc.
 - This office does not concur with the delineation report, dated _____, prepared by (company): _____
- Data sheets prepared by the Corps.
- Corps' navigable waters' studies:
- U.S. Geological Survey Hydrologic Atlas:
- U.S. Geological Survey 7.5 Minute Topographic maps:
- U.S. Geological Survey 7.5 Minute Historic quadrangles:
- U.S. Geological Survey 15 Minute Historic quadrangles:
- USDA Natural Resources Conservation Service Soil Survey:
- National wetlands inventory maps:
- State/Local wetland inventory maps:
- FEMA/FIRM maps (Map Name & Date):
- 100-year Floodplain Elevation is: _____ (NGVD)
- Aerial Photographs (Name & Date):
- Other photographs (Date):
- Advanced Identification Wetland maps:
- Site visit/determination conducted on:
- Applicable/supporting case law:
- Other information (please specify):

¹Wetlands are identified and delineated using the methods and criteria established in the Corps Wetland Delineation Manual (87 Manual) (i.e., occurrence of hydrophytic vegetation, hydric soils and wetland hydrology).

²The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes, and the like are also adjacent.

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Westhaven HOA

File Number: 2006-63322

Date: APR 30 2007

Attached is:

See Section Below

	INITIAL PROFFERED PERMIT (Standard Permit or Letter of Permission)	A
	PROFFERED PERMIT (Standard Permit or Letter of Permission)	B
	PERMIT DENIAL	C
X	APPROVED JURISDICTIONAL DETERMINATION	D
	PRELIMINARY JURISDICTIONAL DETERMINATION	E

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <http://usace.army.mil/inet/functions/cw/cecwo/reg> or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations (JD) associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact:
 Sandy Zelen
 Regulatory Branch Baltimore District
 P.O. Box 1715
 Baltimore, MD 21203-1715
 (410) 962-6028 or 3670

If you only have questions regarding the appeal process you may also contact:
 James W. Haggerty
 Regulatory Appeals Review Officer
 North Atlantic Division, US Army Corps of Engineers
 Fort Hamilton Military Community
 General Lee Avenue, Building 301
 Brooklyn, NY 11252-6700
 (718) 765-7150

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

 Signature of applicant or agent.

Date:

Telephone number:

RECEIVED

JUL 24 2007

PLANNING AND ZONING
DEVELOPMENT

C06-0075-1

**CHESAPEAKE BAY
CRITICAL AREA REPORT &
HABITAT ASSESSMENT**

for

**Westhaven - Sect. 3 Rec. Area-Pool
Anne Arundel County, Maryland**

Prepared for:

DFI

**504 Baltimore-Annapolis Boulevard
Severna Park, Maryland 21146**

Prepared by:

McCarthy & Associates Inc.

Wetland and Environmental Regulatory Consultants

14458 Old Mill Road, Suite 201

Upper Marlboro, Maryland 20772

Phone: (301) 627-7505

FAX: (301) 627-5571

June 2007

INTRODUCTION

The applicant proposes to construct a residential community pool facility containing a pool house and parking lot providing 27 parking spaces. The parking lot will be located adjacent to Tolstoy Lane, with a 6-foot wide by 800± foot long macadam trail providing access from the parking area to the pool facility. An emergency access driveway that will also provide handicap access to the pool facility will provide a direct connection from Lower Magothy Beach Road. The property is identified as Parcels 687 and P/O 56, Block 14, Tax Map 24 in Anne Arundel County, Maryland (Figure 1).

PROJECT DESCRIPTION AND EXISTING SITE CONDITIONS

Although the subject property covers 6.80 acres of land, 6.02 acres are located within the Chesapeake Bay Critical Area (critical area). Therefore, the remainder of this report will discuss that portion of the site contained within the critical area (hereafter referred to as the "study area"). The study area is not located within the 100-foot critical area buffer, however, a narrow band within the central portion of the site is located within the expanded buffer. The majority of the study area is comprised of a mixed-hardwood forest totaling 5.12 acres (223,080 square feet). A natural surface trail system with a wooden bridge across the existing nontidal wetland area is located within the forest. The remaining portions of the study area adjacent to Tolstoy Lane are comprised of mowed lawn, an existing concrete basketball court, a swing set, and landscaped areas. The existing conditions features of the study area are depicted on Sheet 1 of 2 of the attached *Existing Conditions Critical Area Plan*.

The Westhaven Homeowners Association proposes to construct a community pool facility, pool house, parking lot with 27 parking spaces, an emergency/handicap access driveway, and a 6-foot wide macadam path from the parking area to the pool facility, which will require the clearing of 49,675 square feet (1.14 acres) or 25.8% of the existing critical area forest. Forest mitigation will be provided in a manner to be determined at a later date. A total of 163,498 square feet (3.75 acres) of the existing on-site forest will be placed in conservation easements.

The proposed 6-foot wide macadam path will require permanent disturbance to 881 square feet of the 25-foot wetland buffer. Because the macadam trail will be constructed over an existing dirt trail, no significant environmental disturbances will occur. In addition, because the existing pedestrian bridge will be used, no other impacts to jurisdictional areas (including wetlands and streams) will occur as a result of the proposed project.

Impervious surface allowed in the LDA critical area zoning is not to exceed 15%. The site currently contains 4,310 square feet of impervious surface for the existing basketball court and concrete apron adjacent to Tolstoy Lane, which is 1.0% of the total site area. The project, as proposed, is designed to have a total impervious coverage of 21,750 square feet (0.50 acre). This equates to a total impervious coverage of 10.8% of the gross tract critical area.

Water quality volume (WQv) is addressed by infiltration trenches 1 and 2 and grass channel credits for pre-treatment and non rooftop disconnection credits. Groundwater recharge (Rev) is provided by infiltration trenches 1 and 2 and grass channel credits for pre-treatment and non rooftop disconnection credits. Channel Protection Volume (CPV) is provided by demonstrating that less than 2 cfs leaves the site under developed conditions for the one-year storm event. Flood Protection Volume (QP10) is provided by managing the increase from impervious surfaces for the 10-year storm. Extreme Flood Volume (QF) is provided by having direct tidal outfall. Public water and sewer will be used for this project.

According to the revised Anne Arundel County soil survey, four (4) soil types have been mapped on the property: Evesboro-Galestown Urban Land Complex, 5-15% slopes (EuD); Evesboro-Galestown Soils, 5-10% slopes; Patapsco-Fort Mott-Urban Land Complex (PgB); and Sassafras and Croom Soils, 15-25% slopes. None of the soil types are classified as hydric by the U.S.D.A. Soil Conservation Service. The locations of the mapped soil types are demarcated on the enclosed Sheet 1 of 2 of the *Existing Conditions Critical Area Plan*.

HABITAT PROTECTION AREAS

Nontidal Wetlands and Streams

A formal wetland delineation in accordance with the 1987 U.S. Army Corps of Engineers' *Wetland Delineation Manual* was conducted on the site by Michael J. Klebasko (Certified Wetland Delineator #WDCP94MD0310109B) of McCarthy & Associates, Inc on November 8, 2005. The limits of nontidal wetlands, as well as segments of ephemeral and intermittent stream channels, are depicted on Sheets 1 and 2 of the attached *Critical Area Plan*. The jurisdictional limits of waters of the U.S. (including wetlands) have been confirmed in writing by the U.S. Army Corps of Engineers, Baltimore District in a letter dated April 30, 2007.

An ephemeral stream channel originates at an existing culvert in the extreme southeast corner of the property. The ephemeral stream flows in a northerly direction for distance of approximately 235 feet before emptying into the upper limits of a larger, forested nontidal wetland complex contained within Stand B and described in more detail in the **Existing Vegetative Cover** section of this report. The wetland eventually drains to an intermittent stream channel that continues in a northerly direction off the property.

Tidal Wetlands/Waters

Tidal wetlands do not exist on the property. Because the study area does not front tidal wetlands or waters, this project will not adversely affect historic waterfowl staging areas, shellfish beds, anadromous fish propagation waters, or submerged aquatic vegetation.

100-foot Buffer

Although the 100-foot buffer is not located on the property, the expanded critical area buffer does extend as a narrow band through the center of the property. Construction of the 6-foot wide macadam trail will utilize the existing pedestrian bridge, therefore, no disturbance to the expanded critical area buffer will occur.

Rare, Threatened & Endangered Species

In a letter dated September 20, 2006, the Maryland Department of Natural Resources - Wildlife and Heritage Service stated that "there are no State or Federal records for rare, threatened or endangered species within the boundaries of the project site as delineated". In addition, no threatened or endangered species, or colonial waterbird nesting areas were observed while performing the wetland delineation and forest stand delineation field work.

Steep Slopes

Steep slopes are defined as areas with greater than 25% slope or areas with greater than 15% slope on soils with a K-value greater than 0.35. Steep slopes exist on the property and demarcated on the attached Sheets 1 and 2 of the *Critical Area Plan*.

EXISTING VEGETATIVE COVER

Two forest stands exist on the subject property: Stand A which is comprised of mature mixed-hardwoods on the steep slopes and higher elevations and is 4.22 acres in size; and Stand B, which is dominated by bottomland mixed-hardwoods located within the nontidal wetlands and is 0.90 acre in size. The existing woods are divided into distinct stands based on their geographic separation and species composition, and are summarized in Table 1.

Stand A has a canopy dominated by chestnut oak (*Quercus prinus*), northern red oak (*Quercus rubra*), white oak (*Quercus alba*), Virginia pine (*Pinus virginiana*), and southern red oak (*Quercus falcata*). Diameters-at-breast-height for the trees generally range from 12 to 26 inches. The understory/shrub layer is relatively open in most areas and is dominated by American holly (*Ilex opaca*), Sassafras (*Sassafras albidum*), and blueberry (*Vaccinium sp.*). The vine/herbaceous layer contains common greenbriar (*Smilax rotundifolia*) and American holly.

Stand B is dominated by bottomland mixed hardwoods, including red maple (*Acer rubrum*) and black gum (*Nyssa sylvatica*). Diameters-at-breast-height for the trees in Stand B generally range from 8 to 22 inches. The relatively thick shrub and herbaceous layers are dominated by Sweetbay magnolia (*Magnolia virginiana*), black gum, spicebush (*Lindera benzoin*), sweet pepperbush (*Clethra alnifolia*), common greenbriar, and highbush blueberry (*Vaccinium corymbosum*).

The proposed project will clear 1.14 acres of the existing forest. The applicant will place 3.75 acres of the remaining forest in a permanent forest conservation easement, and will provide forest mitigation in a manner to be determined at a later date.

WILDLIFE

Wildlife observed during the site visits included eastern gray squirrel, robin, and other common songbirds. A forest interior dwelling bird survey should not be required because the property is surrounded on all sides by existing residential development and the forest on the property is less than 7 acres in size.

DATES OF FIELD WORK

November 8, 2005 - Michael J. Klebasko, McCarthy & Associates, Inc.
March 20, 2006 - Michael J. Klebasko, McCarthy & Associates, Inc.

TABLE 1

Forest Stand 1
(Upland Mature Mixed-hardwood Forest)

<i>Canopy</i>		Percent	DBH Range
Common Name	Species Name	Coverage	(Inches)
American Holly	<i>Ilex opaca</i>	5	2-6
Black Gum	<i>Nyssa sylvatica</i>	<5	6-11
Virginia Pine	<i>Pinus virginiana</i>	20	12-20
Sycamore	<i>Platanus occidentalis</i>	<5	2-5
White Oak	<i>Quercus alba</i>	15	9-15
Southern Red Oak	<i>Quercus falcata</i>	10	15-22
Chestnut Oak	<i>Quercus prinus</i>	25	11-29
Northern Red Oak	<i>Quercus rubra</i>	20	17-23
Sassafras	<i>Sassafras albidum</i>	<5	2-6
 <i>Understory/Shrub Layer</i>			
Red Maple	<i>Acer rubrum</i>	5	
Sweet Pepperbush	<i>Clethra alnifolia</i>	5	
American Holly	<i>Ilex opaca</i>	30	
Mountain Laurel	<i>Kalmia latifolia</i>	5	
Sweetbay Magnolia	<i>Magnolia virginiana</i>	<5	
Virginia Pine	<i>Pinus virginiana</i>	5	
Black Cherry	<i>Prunus serotina</i>	<5	
Sassafras	<i>Sassafras albidum</i>	30	
Blueberry	<i>Vaccinium sp.</i>	15	
 <i>Vine/Herbaceous Layer</i>			
Sweet Pepperbush	<i>Clethra alnifolia</i>	5	
American Holly	<i>Ilex opaca</i>	10	
Sweetbay Magnolia	<i>Magnolia virginiana</i>	10	
Greenbriar	<i>Smilax rotundifolia</i>	75	

Forest Stand 2
(Bottomland Mixed-hardwood Forest)

<i>Canopy</i>		Percent	DBH Range
Common Name	Species Name	Coverage	(Inches)
Red Maple	<i>Acer rubrum</i>	50	15-22
Black Gum	<i>Nyssa sylvatica</i>	50	5-18
Loblolly Pine	<i>Pinus taeda</i>	<5	20-25
 <i>Understory/Shrub Layer</i>			
Sweet Pepperbush	<i>Clethra alnifolia</i>	20	
American Holly	<i>Ilex opaca</i>	5	
Spicebush	<i>Lindera benzoin</i>	15	
Sweetbay Magnolia	<i>Magnolia virginiana</i>	20	
Black Gum	<i>Nyssa sylvatica</i>	25	
Highbush Blueberry	<i>Vaccinium corymbosum</i>	15	
 <i>Vine/Herbaceous Layer</i>			
Indian Mock Strawberry	<i>Duchesnia indica</i>	10	
Sweet Pepperbush	<i>Clethra alnifolia</i>	25	
Jap. Honeysuckle	<i>Lonicera japonica</i>	15	
Sweetbay Magnolia	<i>Magnolia virginiana</i>	25	
Greenbriar	<i>Smilax rotundifolia</i>	20	
Blueberry	<i>Vaccinium sp.</i>	5	



Taken from:
 Anne Arundel County ADC Map
 (Scale: 1" = 2000')

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Westhaven
 Anne Arundel County, Maryland

Critical Area Report & Habitat Assessment
Figure 1

Revised Statement of Justification
Variance Application
Recreation Area (Section 3) Community Pool
Stewart's Landing Community
West Haven Homeowner's Association, Inc.
Site Plan Revision Date August 1, 2008

Background

The community of Stewart's Landing ("Stewart's Landing") is a water-privileged subdivision of 261 single-family homes located in the northeastern portion of Severna Park, Maryland along Old Man Creek, a tributary of the Magothy River. Pursuant to a deed recorded in the land records in 1984 at Liber 3797, Folio 230 creating the recreation area and a Declaration of Covenants, Conditions, and Restrictions ("Declaration") recorded at Liber 3710, Folio 254 governing the community, the West Haven Homeowner's Association, Inc. ("Association" or "Applicant") owns, maintains and regulates the common areas within the community of Stewart's Landing.¹ In addition to a community marina, the Association owns two (2) other recreation parcels set aside for the common use and enjoyment of this large residential community.

In July 2005, and in accordance with the Declaration, the Association's members voted to approve the financing of a community swimming pool facility to be located in the Section 3 recreation area. The Section 3 recreation area (6.80 acres) proposed for development is described as Parcel 687 and p/o Parcel 56 Recreation Area on Tax Map 24 ("Property") and is located in the western corner of Stewart's Landing adjacent to the neighboring communities of Magothy Forest and Berrywood.² Membership in the community swimming pool will be open to lot owners in Stewart's Landing as well as the adjoining communities.

Of the three, platted recreation areas within the Stewart's Landing community, only the Property is physically suitable for the proposed community pool facility. One recreation area is the community marina and that site is too small and narrow to accommodate the proposed community pool facility. (See Exhibit 1 – Tax Map 24). The second potential site is a wooded, approximately three-acre parcel along Thomas Avenue shown on Section 2 of the West Haven plats.

The Thomas Avenue site is constrained by nontidal wetlands and their buffers, an odd, panhandle lot configuration and areas of steep slopes. Since this site is one-half the acreage of the Property, it would require a high percentage of forest clearing. Furthermore, Thomas Avenue is a private road that is not available for use by the residents of Stewart's Landing. Therefore, the only available access would be from Lower Magothy Beach Road across the panhandle, which is constrained by nontidal wetlands, steep slopes and a storm drain. The odd configuration of the site also makes it difficult to meet the 50' setback requirement for a community pool. Due to the

¹ Stewart's Landing was originally platted as "West Haven".

² A deed of consolidation was recorded combining the two (2) parcels.

constraints on the other two (2) platted recreation areas, the Property was selected as the only viable location for the community pool facility.

The Property

The Property is partially located (6.02 acres) within the Chesapeake Bay Critical Area ("Critical Area") and is zoned R5 and OS. The Property is further classified within the Critical Area as Limited Development Area ("LDA"). See Critical Area Report prepared by McCarthy & Associates (June 2007) and August 12, 2008 update letter.

Except for the remote western one-quarter portion proposed for the community recreational facility, the majority of the Property includes sensitive areas including steep slopes, wetlands, as well as an intermittent and ephemeral stream and its buffers.³ A small portion of the Property's northern panhandle is located within the 100-foot Critical Area Buffer. The majority of the Property is wooded (5.12 acres) and includes walking/jogging trails and exercise stations. A portion of the Property adjacent to Tolstoy Lane was previously cleared and graded and is developed with a basketball court, tot lot, concrete drive apron and picnic area. This portion of the Property is characterized by steep slopes that surround the existing concrete basketball court.

A wooden pedestrian bridge currently spans nontidal wetlands and steep slopes interconnecting sidewalks along Tolstoy Lane with the walking/jogging trails within the wooded interior of the Property and the sidewalks along Lower Magothy Beach Road. A 20' x 125' strip of land ("Pipe Stem") currently serves as a footpath connection of the Property to the sidewalks along Lower Magothy Beach Road.

The Applicant originally proposed to provide vehicular access from Tolstoy Lane across the wetlands to the proposed swimming pool facility. This would have required some impacts to the wetlands and directly adjacent steep slopes. After consultation with State and County officials, the Applicant decided to reduce environmental impacts of the project by keeping the pedestrian/biker path connection and locating the principal parking facility close to Tolstoy Lane. By utilizing the existing basketball court area for parking and locating additional parking in areas that are mostly already cleared, environmental impacts were further reduced.

Proposed Development

The Applicant proposes to construct a residential community swimming pool facility to include a pool house and three (3) handicapped parking spaces. Aside from a paved access road to allow emergency vehicles with direct access to the community swimming pool facility from Lower Magothy Beach Road, an additional 27 parking spaces are proposed within an off-street parking lot abutting Tolstoy Lane. See the Administrative Site Plan dated August 1, 2008. A community swimming pool requires one (1) parking

³ The ephemeral stream channel is protected by a 40' storm drain easement depicted on a Plat of West Haven (Section One) recorded in the land records of Anne Arundel County at Plat Book 79, Page 3 (Plat No. 4128).

space for every ten (10) persons based on facility design capacity of the facility. Code, §18-3-104. The design capacity of the pool is 305 persons which is the minimum size necessary to accommodate the 261 homes and approximately 831 residents of the community. It is anticipated that residents will also bring other family members and guests to the pool.

Both the paved access road off Lower Magothy Beach Road and a 6' wide macadam pathway leading from Tolstoy Lane will provide access to the pool facility.⁴ The proposed 6' macadam path from Tolstoy Lane is currently a woodchip walking path and includes an existing wooden bridge across the wetlands which will remain. Community swimming pools and recreational facilities are permitted by right in the R5 zone, but require a 50' setback from the property line. Code, §18-4-106. The proposed pool facility is located on the flattest, most suitable portion on the Property for this facility and will comply with the setback requirement.

Public water and sewer will serve the community swimming pool facility. A total of approximately 0.97 acres (18.9%) of the existing forest within the Critical Area will be cleared, however, mitigation will be provided and a total of approximately 4.48 acres of existing woodland will be permanently preserved through a proposed perpetual forest conservation easement.

The Property currently contains 4,310 s.f. (1%) of impervious surface primarily due to the basketball court and existing concrete access apron on Tolstoy Lane. After construction, total impervious surfaces will be approximately 10.5%. Environmental impacts have been minimized by the careful location of the proposed facilities and elimination of any vehicular connection through the site to Tolstoy Lane. However, in order to accommodate sufficient onsite parking, disturbance of certain areas of steep slopes near Tolstoy Lane are necessary. These slopes are principally man-made and not forested. Photographs of the existing condition of the proposed parking area are attached to this Statement as Exhibit 2.

Variance Requested

Development in the limited development area (LDA) or in the resource conservation area (RCA) may not occur within slopes of 15% or greater unless development will facilitate stabilization of the slope or the disturbance is necessary to allow connection to a public utility. Code, § 17-8-201. A variance is requested for approximately 8,891 square feet (0.20 acres) of steep slope disturbance in order to provide required parking spaces on the Tolstoy Lane side

⁴ The community association made substantial efforts to acquire additional right-of-way from the two abutting lot owners to the 20' pipe stem connecting the Property to Lower Magothy Beach Road with the intent of expanding and reconfiguring the driveway accomplish all access from that road. The existing driveway right-of-way is substandard for serving as the sole means of vehicular ingress and egress for the site but is adequate for the proposed limited purpose of handicapped, maintenance and emergency access. The efforts to acquire additional right-of-way were unsuccessful and the Association cannot compel either of the two lot owners to sell their property so that all access to the pool facility is from Lower Magothy Beach Road.

of the property and to pave the existing pedestrian/biking path from Tolstoy Lane to the community swimming pool. This application meets the requirements for variance approval as set forth below:

(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 or bog protection program would result in an unwarranted hardship, as that term is defined in the Natural Resources Article, § 8-1808, of the State Code, to the applicant;

The community Property is irregularly shaped and is bifurcated by an area of wetlands and steep slopes that prevent it from being reasonably developed to serve the recreational needs of the residents of Stewart's Landing in strict conformance with Code standards. The most level, developable portion of the Property is remotely located away from the adjoining public streets. A regular access road from Lower Magothy Beach Road to the proposed facility is not feasible due to the narrow 20' Pipe Stem adjoining Lot 1 (Section 1). The narrow 20' Pipe Stem will be converted to a paved access road (14' macadam) to accommodate emergency and maintenance vehicles and the required number of handicapped parking spaces. Since the required access and parking cannot be accomplished from Lower Magothy Beach Road, the Applicant explored extending a road from Tolstoy Lane. However, State and County environmental authorities advised against the impacts to steep slopes and wetlands from such a crossing. Therefore, the Applicant eliminated the proposed access road and has located required parking spaces in the area of the existing basketball court. However, minimal disturbance to steep slopes is needed to construct the parking spaces near Tolstoy Lane and avoid the impacts of an access road across the wetland area. According to Md. Code Ann., N.R. Article, §8-1801(d)(1), an "unwarranted hardship" means that, without a variance, an applicant would be denied reasonable and significant use of the entire parcel or lot for which the variance is requested. Without the requested variance that is needed solely to avoid the environmental impacts of a vehicular crossing and provide adequate parking and pedestrian access for this community recreational facility, the Applicant would be denied reasonable and significant use of this community common area. The Property serves a large residential community with a population of over 800 persons. Improved recreational facilities are needed to serve the community and these cannot be accomplished without disturbance to a minimal area of steep slopes in order to accommodate the required onsite parking.

(2) (i) A literal interpretation of COMAR, 27.01, Criteria for Local Critical Area Program Development or the County's critical area

program and related ordinances will deprive the applicant of rights commonly enjoyed by other properties in similar areas as permitted in accordance with the provisions of the critical area program within the critical area of the County; or

Community swimming pools are commonly found in communities located within the Critical Area in Anne Arundel County (e.g. Berrywood Swim and Tennis Club) and are a typical amenity provided by numerous homeowners associations. Community recreational facilities are also found in the Critical Area. The Berrywood Swim and Tennis Club (located .36 miles from the subject Property) operates an Olympic-sized swimming pool that is approximately 235' from Cattail Creek and its tennis courts are less than 70' from Cattail Creek. The Mil Bur Community Pool is located at 63 Milburn Circle, Pasadena, Maryland and is situated near Cornfield Creek, a tributary of the Magothy River. The Mil Bur Community Pool is located within the 100' Buffer and is owned by the Mil-Bur Club, Inc. In many communities, steep slope impacts were necessary to develop recreational facilities for the residents.

(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, or the County's bog protection program to other lands or structures within a bog protection area;

No special privilege will be granted to the Applicant in this case. The variances relate to minimal impacts to accomplish required parking and pedestrian/bicyclist access to the facility. Access is provided from the parking area to the pool facility via minimal improvements to an existing footpath and bridge. As stated above, several existing communities have similar or greater improvements within the Critical Area to serve the recreational and health needs of the residents.

(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 arise from any condition relating to land or building use on any neighboring property;

The physical characteristics and configuration of the Property and the surrounding development create the conditions that necessitate the subject variance request.

(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 or a bog protection area and will be in harmony with

the general spirit and intent of the County's critical area program or bog protection program;

A Critical Area Report is included with this variance application. This report prepared by McCarthy & Associates Inc. in June 2007 and updated by letter dated August 12, 2008 contains written findings addressing the impact of the proposed construction on the property and the measures that will be taken to lessen or eliminate these impacts. Some of the noteworthy findings include the following:

- *Although 0.97 acres (18.9%) of the site's existing Critical Area forest will be removed, a total of 4.48 acres (3.91 Critical Area acres) will be placed in forest conservation easements (p. 2) and forest mitigation will be provided),*
- *Impervious surfaces will not exceed 10.5% of the gross tract Critical Area (See p. 2),*
- *Water quality volume and groundwater recharge will be more than adequately addressed by appropriate stormwater management techniques and conservation areas (p. 3),*
- *Storm water will be handled by two infiltration trenches,*
- *The project will not adversely affect historic waterfowl staging areas, shellfish beds, anadromous fish propagation waters or submerged aquatic vegetation (p. 3), and*
- *No forest interior dwelling bird survey is required due to the Property's size and surrounding residential development (p. 5).*

(7) 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.

Through this Statement of Justification, the Applicant makes a prima facie case that the community swimming pool facility to be located within the Critical Area conforms with the general purpose and intent of Critical Area Law and the requirements of the local jurisdiction's program.

(c) **Requirements for all variances.** A variance may not be granted unless it is found that:

(1) the variance is the minimum variance necessary to afford relief; and

(2) the granting of the variance will not:

(i) alter the essential character of the neighborhood or district in which the lot is located;

Conclusion

Stewart's Landing requests variance approval in order to provide adequate parking and access to a permitted recreational facility use proposed to serve the needs of this large residential community.

F:\West Haven Homeowners Association\Documents\Statement of Justification FINAL.08.08.08.doc
August 12, 2008



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SYSTEM NOW KNOWN OR TO BE INVENTED WITHOUT PERMISSION IN
WRITING FROM THE MARYLAND DEPARTMENT OF PLANNING.

SCALE IN FEET



929

932

EXHIBIT "1"

Tax Map 24



Tolstoy Lane



Concrete Entrance



Proposed Parking Lot Area



Path to Playground



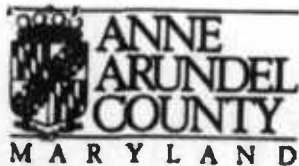
Basketball Court



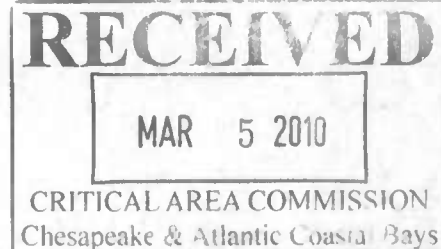
Existing Path to Footbridge



Existing Footbridge



BOARD OF APPEALS
P O BOX 2700
44 CALVERT STREET, RM. 160
ANNAPOLIS, MARYLAND 21404
410-222-1119



March 2, 2010

**RE: Appeal to Circuit Court
BA 2-09V
Jeffrey Smith, et al**

To Whom It May Concern:

This is to notify you that a Petition for Judicial Review has been filed in the Circuit Court, Case No. C-10-149288.AA, Jeffrey Smith, et al (West Haven HOA, Inc.)

A party wishing to oppose the petition must file a response within 30 days after the date this notice was mailed, unless the Court shortens or extends the time. If you wish to file a response, it must be filed in Circuit Court.

If you have any questions, call the Circuit Court directly at 410-222-1547.

Sincerely,

A handwritten signature in cursive script that reads "Mary M. Leavell".

Mary M. Leavell
Clerk to the Board

cc: Clerk of the Court
Cathleen F. Ward Pratz, Esq.
James A. Chance, Esq.
Harry C. Blumenthal, Esq.
Critical Area Commission
John Fury (2007-0303-V)
Shep Tullier
Sean & Jennifer Lee
Steven Andraka
Michael Klebasko
Richard W. Ratcliffe
W. Michael Gould

Salvador De Perignat
Rich Polland
Andrew Lentz.
David Hall
Jim Cox
Charles & Susan Feine
Wayne Wade
Wayne Newton
Brian & Ruth Stemberger
Scott Truver
Rich LaFleche
Judith Reid

Keaton & Valerie Thomas
Karen O'Kane
David Chaisson
Larry & Sherry Leikin
Mac & Julie Butler
Lisa Haste
Daniel O'Sullivan
Thurman & Karen Reynolds
Neil Mac Donald
Frederick A. Robinson
Marcia Taylor
Drew Lenear
Laur Hyde
Fred Fave
Jason & Sharon Brazell
Nancy Disney
Susanne Smythe
Chuck Cochran
Leila Wagner
Martin Urquhart
David M. Plott, Esq.

MAR 02 2010

SIGNATURE: _____

IN THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY

PETITION OF JEFFREY SMITH, MILENA SMITH, *
CHERYL HEEMSTRA, DAVID HEEMSTRA, *
VONNIE EMBREY, CHERYL GUNDRY, *
GEORGE SOTEROPOULOS, JOANN TOLLENGER,
LAURA BURKE, CHARLIE SLADE, NORMA *
SLADE, BRYAN WIDMER, CATHERINE WIDMER, *
GARY EVANS, BILL RUPPERT, LENNY RUPPERT, *
ROY ARMIGER, KATHY ARMIGER, *
PHILIP GOLDBERG, MIDGE GOLDBERG, *
CURT JEFFRIES, KAREN JEFFRIES, *
CYNTHIA ENOIU, ANDRE ENOIU *

FOR JUDICIAL REVIEW OF THE DECISION
OF THE ANNE ARUNDEL COUNTY BOARD
OF APPEALS

* CIVIL CASE NO: C-10-149288

IN THE CASE OF: In re: An Appeal From a
Decision of the Administrative Hearing Officer

WEST HAVEN HOMEOWNERS ASSOCIATION,
INC.

CASE NO: BA 2-09V
Hearing Dates: 4/22, 4/23, 7/21, 7/22, 7/23, 10/6,
10/14 and 10/15 2009

* * * * *

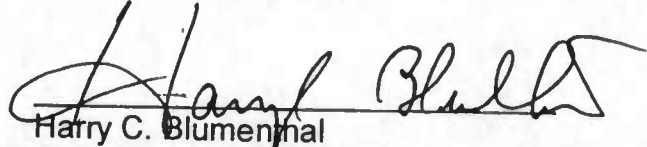
REQUEST FOR JUDICIAL REVIEW

Jeffrey Smith, Milena Smith, Cheryl Heemstra, David Heemstra, Vonnie Embrey, Cheryl Gundry, George Soteropoulos, JoAnn Tollenger, Laura Burke, Charlie Slade, Norma Slade, Bryan Widmer, Catherine Widmer, Gary Evans, Bill Ruppert, Lenny Ruppert, Roy Armiger, Kathy Armiger, Phillip Goldberg, Midge Goldberg, Curt Jeffries, Karen Jeffries, Cynthia Enoiu, and Andre Enoiu, Protestants and parties in the above-captioned decision of the Anne Arundel County Board of Appeals, request judicial review of the decision of the County

CIVIL
2010 FEB 17 A 13:47

Board of Appeals of Anne Arundel County, in Case No. BA 2-09V, rendered by said Board on January 22, 2010.

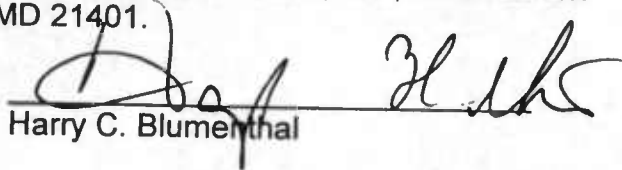
Respectfully submitted,



Harry C. Blumenthal
Blumenthal, Delavan & Williams, P.A.
170 Jennifer Rd., Suite 240
Annapolis, MD 21401
410-573-2900
Attorney for Jeffrey Smith, et al.
Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of February 2010, a copy of the foregoing Request for Judicial Review was mailed, postage prepaid, to David Plott, Esq., attorney for West Haven Homeowners Association, Inc., Linowes and Blocher, LLP, 145 Main St., Annapolis, MD 21401.



Harry C. Blumenthal

TRUE COPY,
TEST: Robert P. Duckworth, Clerk
By: _____ Deputy



DRAINAGE AREA MAP
SCALE: 1" = 100'

ERODED REACH 1 DRAINAGE AREA COMPUTATIONS

ULTIMATE ZONING CONDITIONS

D.A.	AREA (ACRES)	TC (HRS) (HOURS)	CN	Q-10year (C.F.S.)
TOTAL D.A. TO ERODED REACH 1	24.83	0.58	70*	42.67
SITE D.A. TO ERODED REACH 1	2.85	0.58	70*	4.89

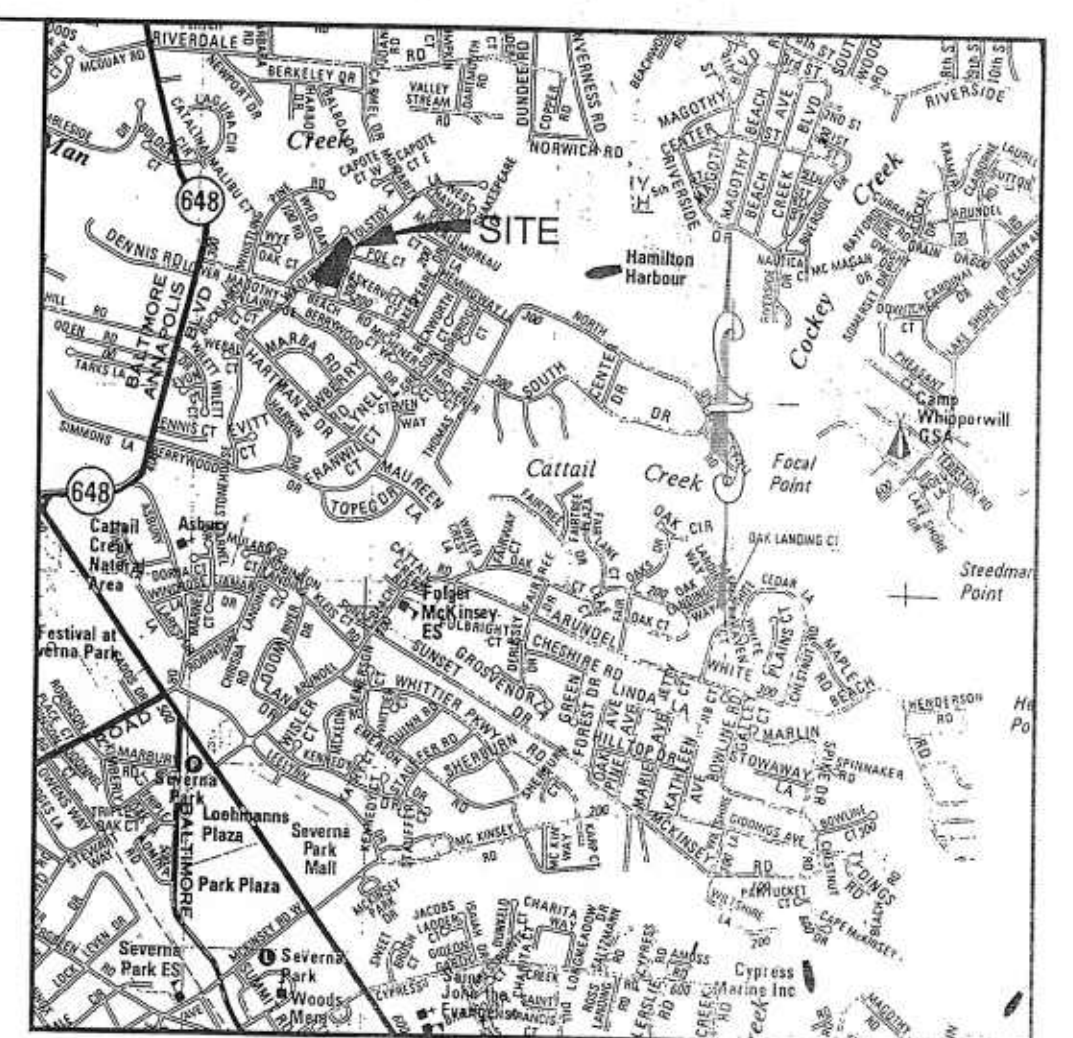
*NOTE: RCN BASED ON ULTIMATE R5 ZONING FOR BOTH ONSITE AND OFFSITE AREAS PER AACO SWM MANUAL APPX. 'F'.

ACTUAL PROPOSED CONDITIONS

D.A.	AREA (ACRES)	TC (HRS) (HOURS)	CN	Q-10year (C.F.S.)
TOTAL D.A. TO ERODED REACH 1	24.83	0.58	67*	37.30
SITE D.A. TO ERODED REACH 1	2.85	0.58	42*	0.30

*NOTE: RCN BASED ON ACTUAL PROPOSED ONSITE CONDITIONS (IMPERVIOUS AREA, LAWN AREA AND WOODS FOR THE F.C.P. ULTIMATE R5 ZONING FOR OFFSITE AREAS PER AACO SWM MANUAL APPX. 'F'.

TIME OF CONCENTRATION SEGMENT CHART				
D.A.	A-B	B-C	C-D	D-E
TOTAL D.A.	100' SHEET FLOW @ 1.0% WOODED	312' SHALLOW CONC. FLOW @ 1.0% UNPAVED	650' CHANNEL FLOW @ 7.0 fps (EX. STORM DRAIN)	300' CHANNEL FLOW @ 3.0 fps (EX. STREAM)



VICINITY MAP
SCALE: 1"=2000'
© ADC THE MAP PEOPLE
PERMITTED USE NUMBER: 2091189

ERODED REACH 2 DRAINAGE AREA COMPUTATIONS

ULTIMATE ZONING CONDITIONS

D.A.	AREA (ACRES)	TC (HRS) (HOURS)	CN	Q-10year (C.F.S.)
TOTAL D.A. TO ERODED REACH 2	32.26	0.62	71*	55.31
SITE D.A. TO ERODED REACH 2	6.81	0.62	73*	12.66

*NOTE: RCN BASED ON ULTIMATE R5 ZONING FOR BOTH ONSITE AND OFFSITE AREAS PER AACO SWM MANUAL APPX. 'F'.

ACTUAL PROPOSED CONDITIONS

D.A.	AREA (ACRES)	TC (HRS) (HOURS)	CN	Q-10year (C.F.S.)
TOTAL D.A. TO ERODED REACH 2	32.26	0.62	65*	41.93
SITE D.A. TO ERODED REACH 2	6.81	0.62	46*	1.56

*NOTE: RCN BASED ON ACTUAL PROPOSED ONSITE CONDITIONS (IMPERVIOUS AREA, LAWN AREA AND WOODS FOR THE F.C.P. ULTIMATE R5 ZONING FOR OFFSITE AREAS PER AACO SWM MANUAL APPX. 'F'.

TIME OF CONCENTRATION SEGMENT CHART					
D.A.	A-B	B-C	C-D	D-E	E-F
TOTAL D.A.	100' SHEET FLOW @ 1.0% WOODED	312' SHALLOW CONC. FLOW @ 1.0% UNPAVED	650' CHANNEL FLOW @ 7.0 fps (EX. STORM DRAIN)	300' CHANNEL FLOW @ 3.0 fps (EX. STREAM)	642' CHANNEL FLOW @ 4.0 fps (EX. STREAM)

REQUIRED OUTFALL MITIGATION COMPUTATIONS

Required Mitigation to the end of Eroded Reach 1:	
Length of Eroded Reach-1 (South of Existing Pedestrian Bridge) = 105 feet	
Ultimate Zoning Conditions:	Actual Proposed Conditions:
Op for Total D.A. = 42.67 cfs	Op for Total D.A. = 37.30 cfs
Op for Site D.A. = 4.89 cfs	Op for Site D.A. = 0.30 cfs
The percent of runoff from the Site Area compared with the Total Drainage Area to the eroded channel is:	
Ultimate Zoning Conditions % = 4.89 / 42.67 = 11.38% (Worst Case - Use Ultimate Zoning %)	
Actual Proposed Conditions % = 0.30 / 37.30 = 0.80%	
To Determine the proportionate share of mitigation improvements we apply this percentage to the total length of erosion:	
Required Length of Mitigation = 11.38% of 105' = 11.95' feet	
Required Mitigation to the end of Eroded Reach 2:	
Length of Eroded Reach-2 (North of Existing Pedestrian Bridge) = 325 feet	
Therefore, the total length of eroded stream channel = 105' + 325' = 430 feet	
Ultimate Zoning Conditions:	Actual Proposed Conditions:
Op for Total D.A. = 55.31 cfs	Op for Total D.A. = 41.93 cfs
Op for Site D.A. = 12.66 cfs	Op for Site D.A. = 1.56 cfs
The percent of runoff from the Site Area compared with the Total Drainage Area to the eroded channel is:	
Ultimate Zoning Conditions % = 12.66 / 55.31 = 22.89% (Worst Case - Use Ultimate Zoning %)	
Actual Proposed Conditions % = 1.56 / 41.93 = 3.72%	
To Determine the proportionate share of mitigation improvements we apply this percentage to the total length of erosion:	
Required Length of Mitigation = 22.89% of 430' = 98.42' feet (Worst Case - Min. Mitigation is 98.42 Feet of Eroded Channel)	

** THEREFORE, 105 FEET OF STREAM RESTORATION IN THE FORM OF REGENERATIVE STORM CONVEYANCE/COASTAL PLAIN OUTFALLS (RSC/CPO) WILL BE CONSTRUCTED TO REPAIR ERODED REACH-1 SOUTH OF THE EXISTING PEDESTRIAN BRIDGE.

LEGEND

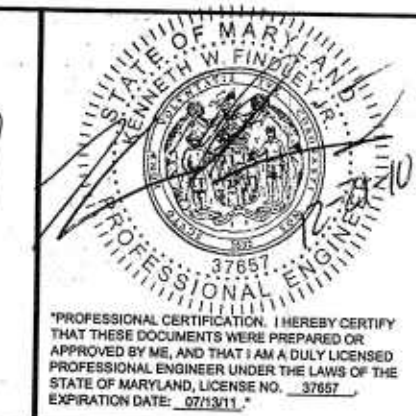
- 22 --- EXISTING CONTOURS
- 20 --- SOIL AREA LIMITS
- RhD --- SITE BOUNDARY
- A/C --- TIME OF CONCENTRATION FLOW POINT
- B --- DRAINAGE AREA TO ERODED REACH 1
- --- DRAINAGE AREA TO ERODED REACH 2
- --- ERODED CHANNEL REACH
- --- TREE LINE
- --- EPHEMERAL STREAM CHANNEL
- --- INTERMITTENT STREAM CHANNEL
- --- NON-TOTAL WETLANDS
- 8 --- PHOTO LOCATIONS

RECEIVED
MAY 24 2011
CRITICAL AREA COMMISSION
Chesapeake & Atlantic Coastal Bays

OWNER / DEVELOPER:
C/O SEAN LEE, PRESIDENT
WEST HAVEN HOMEOWNERS ASSN. INC.
P.O. BOX 741
SEVERNA PARK, MD 21146

DESIGNED	DATE	BY	DESCRIPTION	APPROVED
KWF	12.10			
DATE				
DRAWN	12.10			
DATE				
CHECKED	12.10			
DATE				
APPROVED	12.10			
DATE				

DFI ENGINEERS-SURVEYORS-PLANNERS
CONSTRUCTION MANAGERS
1497 BUSINESS PARK
1127 BENFIELD BLVD, SUITE K
MILLERSVILLE, MD 21108
WWW.DFIENGINEERING.COM
443-308-2100 FAX 443-308-2108

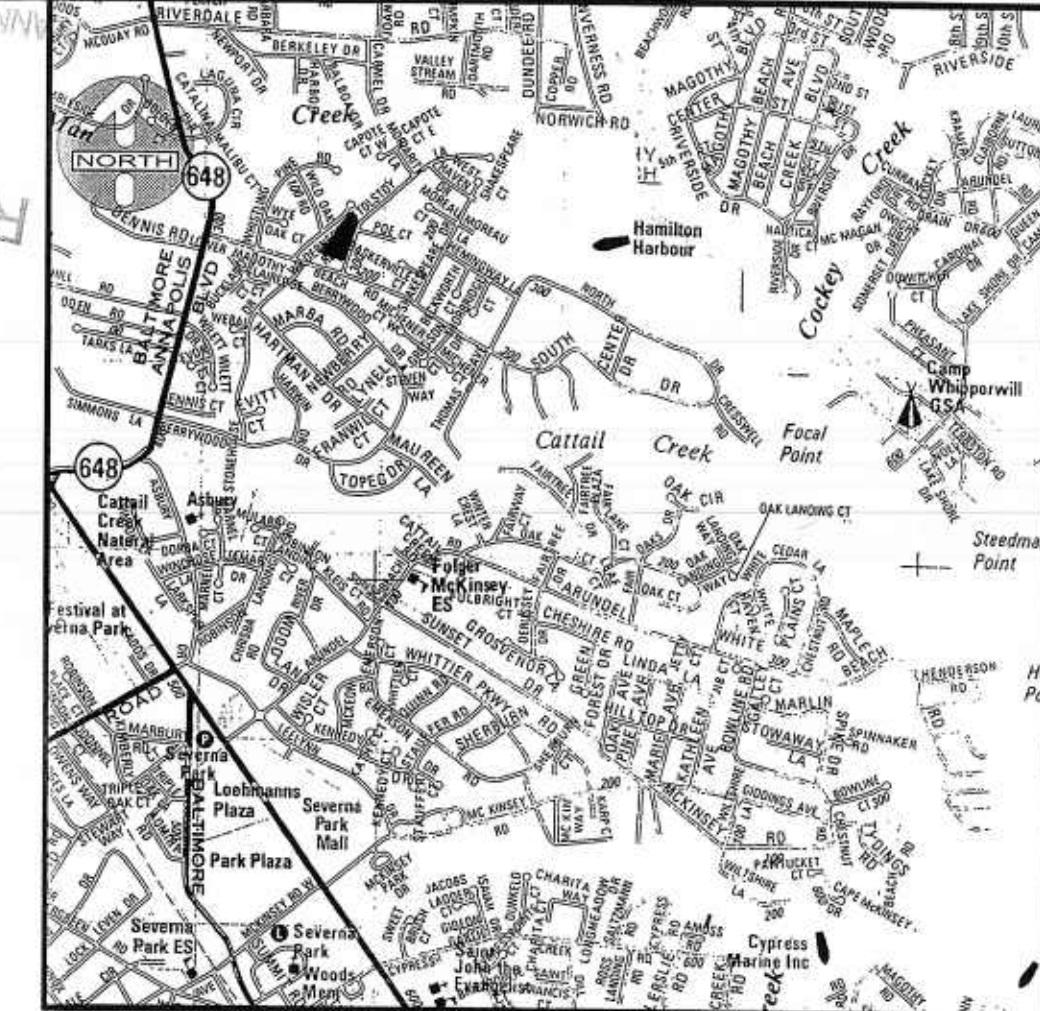


OFFICE OF PLANNING AND ZONING			
REVISED	APPROVED	DATE	
DATE	BY		
	CHIEF ENGINEER		
	APPROVED	DATE	

OUTFALL MITIGATION PLAN
WEST HAVEN COMM. POOL
SECTION 3 RECREATION AREA
TAX MAP 24, BLOCK 14, PARCEL 66
ZIP: 21146 ZONING: R-5 & OS
THIRD ASSESSMENT DISTRICT ANNE ARUNDEL COUNTY, MARYLAND

WESTHAVEN COMMUNITY POOL FACILITY CRITICAL AREA PLAN

- LEGEND**
- 92--- EXISTING CONTOUR
 - 20--- SOIL AREA LIMITS
 - EPHEMERAL STREAM CHANNEL
 - INTERMITTENT STREAM CHANNEL
 - 15% STEEP SLOPES
 - 25% STEEP SLOPES
 - NON-TIDAL WETLANDS
 - EXPANDED BUFFER (FOR HYDRIC SOILS)
 - 25' WETLAND BUFFER
 - 50' STREAM BUFFER
 - EXISTING TREE LINE
 - ZONING BOUNDARY LINE



CRITICAL AREA SITE CALCULATIONS (LDA)

TOTAL SITE	6.81 AC / 236,437 SF
TOTAL SITE (INSIDE CRITICAL AREA)	4.02 AC / 138,296 SF
EX. WOODS	5.59 AC / 193,689 SF
INSIDE CRITICAL AREA	4.86 AC / 167,957 SF
PERMITTED CLEARING = 30%	1.46 AC / 50,587 SF
PERMITTED IMPERVIOUS = 15%	0.91 AC / 31,227 SF
PERMITTED IMPERVIOUS (INSIDE CRITICAL AREA)	0.70 AC / 24,022 SF
EX. IMPERVIOUS ON SITE	0.10 AC / 3,410 SF
EXPANDED CRITICAL AREA	0.0 AC / 0.0 SF
NON-TIDAL WETLAND DISTURBANCE	0.0 AC / 0.0 SF
NON-TIDAL WETLAND BUFFER DISTURBANCE	0.02 AC / 692 SF
STEEP SLOPE (15%+) DISTURBANCE	0.30 AC / 10,391 SF
STEEP SLOPE EXPANDED BUFFER DISTURBANCE	0.0 AC / 0.0 SF
FOREST CONSERVATION AREA	4.41 AC / 152,309 SF
INSIDE CRITICAL AREA	3.95 AC / 135,030 SF
AMOUNT OF FOREST DISTURBED INSIDE CRITICAL AREA	0.91 AC / 31,227 SF

SITE NOTES

- TOTAL AREA OF SITE IS 6.81 AC, OR 236,437 SF.
 - EXISTING ZONING IS R-5 & OPEN SPACE.
 - EXISTING USE OF THE SITE: ACTIVE AND PASSIVE REC. AREA.
 - PROPOSED USE: COMMUNITY POOL.
 - THE SITE IS WITHIN THE CRITICAL AREA.
 - THE SITE IS WITHIN THE 100 YEAR FLOODPLAIN AS SHOWN ON FIRM # 24008 0555C.
 - TOPOGRAPHY AND BOUNDARY INFORMATION IS BASED UPON A SURVEY PERFORMED BY DFI, INC. (COMPLETED APRIL 2008).
- R-5 ZONING SETBACKS**
- | | |
|--------|-----|
| FRONT | 25' |
| REAR | 20' |
| SIDE | 7' |
| CORNER | 20' |
- SITE TABULATION**
- | | |
|-----------------------|---------------|
| PROPOSED BUILDING | 1,999 SQ. FT. |
| COVERAGE BY STRUCTURE | 11.8% |
| BUILDING HEIGHT | 30' |
- PARKING CALCULATIONS**
- REQUIRED:
- SPACE FOR EVERY 10 PERSONS BASED ON FACILITIES DESIGN CAPACITY. THE POOL IS DESIGNED FOR A CAPACITY OF 305 PEOPLE. TOTAL SPACES REQUIRED = 30 SPACES.
- PROVIDED:
- TOTAL SPACES PROVIDED = 30

OWNER / DEVELOPER:
C/O SEAN LEE
WEST HAVEN HOMEOWNERS ASSN. INC.
P/O BOX 741
SEVERNA PARK, MD. 21146

DESIGNED	DATE	BY	DESCRIPTION
WDN	09.10		
DRAWN	09.10		
CHECKED	09.10		
APPROVED	09.10		

REVISIONS

DATE	BY	DESCRIPTION

DFI ENGINEERS-SURVEYORS-PLANNERS
CONSTRUCTION MANAGERS
1127 BENFIELD BLVD, SUITE K
MILLERSVILLE, MD 21108
WWW.DFIENGINEERING.COM
443-308-2100 FAX 443-308-2108

I HEREBY CERTIFY THAT THESE DOCUMENTS WERE PREPARED BY ME AND THAT I AM A QUALIFIED PROFESSIONAL UNDER THE REQUIREMENTS OF ANNE ARUNDEL COUNTY FOR LANDSCAPE PLANS.

CRITICAL AREA PLAN
WESTHAVEN
SECTION 3 REC AREA-POOL
TM 24 BLOCK 14 PARCEL 687 & P/O 56

ZONING: R-5 & OS
ZIP CODE 21146
SCALE: 1"=40'
MAY 2011
THIRD ASSESSMENT DISTRICT ANNE ARUNDEL COUNTY, MARYLAND

MAY 24 2011
CRITICAL AREA COMMISSION
Chesapeake & Atlantic Coastal Bays

SHEET
1
OF
1