

AA 496-07 Aschenbak, Robert
VAR 0258

S1829-6319

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/

September 10, 2007

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

Re: Aschenbak, Robert- 2007-0258-V

Dear Ms. Cotter:

Thank you for forwarding the variance request for the above referenced project. The applicant has requested an after-the-fact variance to perfect an accessory structure with less Buffer to a bog than required. The property is currently developed with a dwelling, driveway and pool and is designated as a Limited Development Area (LDA).

This office cannot support the requested variance. Given the special protections provided by Anne Arundel County and the State for protection of bogs and their buffers, it is this office's position that a detached garage is an inappropriate use of the buffer to such a rare and sensitive natural resource. The applicant already has reasonable and significant use of the property since it is already developed with a dwelling, driveway and pool, and denial of a variance for a detached garage will not create an unwarranted hardship for the applicant. Accordingly, this office recommends that the unpermitted garage and its concrete pad be removed.

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

Sincerely,

A handwritten signature in dark ink, appearing to read "Amber Widmayer".

Amber Widmayer
Natural Resources Planner

cc: AA 496-07

496-07

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 2007-0258-V

**ROBERT ASCHENBAK (OWNER) AND
PAUL CAIN AND JULIE GARDNER (CONTRACT PURCHASERS)**

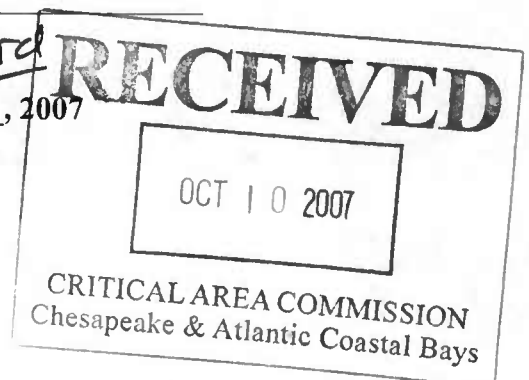
THIRD ASSESSMENT DISTRICT

DATE HEARD: SEPTEMBER 25, 2007

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

PLANNER: **JOHN FURY**

DATE FILED OCTOBER 3rd, 2007



PLEADINGS

Robert Aschenbak (owner) and Paul Cain and Julie Gardner (contract purchasers), the applicants, seek a variance (2007-0258-V) to allow a garage with less buffer to a bog than required on property located along the west side of Delaware Avenue, south of Patuxent Road, Pasadena.

PUBLIC NOTIFICATION

The hearing notice was posted on the County's web site in accordance with the County Code. The file contains the certification of mailing to community associations and interested persons. Each person designated in the application as owning land that is located within 175 feet of the property was notified by mail, sent to the address furnished with the application. Mr. Cain testified that the property was posted for more than 14 days prior to the hearing. I find and conclude that there has been compliance with the notice requirements.

FINDINGS AND CONCLUSIONS

This case concerns property with a street address 214 Delaware Avenue, in the Boulevard Park subdivision, Pasadena. The property comprises 17,250 square feet and is zoned R2 residential. The request is to perfect and complete the construction of a detached garage (24 by 36 feet) in the 100-foot upland buffer to the South Grays Creek Bog.

Anne Arundel County Code, Article 17, Section 17-9-206(a) proscribes new development in the 100-foot upland bog buffer. Accordingly, the applicants request a variance to locate the garage in the bog buffer.

John R. Fury, a planner with the Office of Planning and Zoning, testified that the property is below the minimum area for the district with development constrained by the bog buffer. The property is developed with a dwelling, porch, pool and deck in the bog buffer. Even though the granting of the variance would not alter the character of the neighborhood, the witness questioned the extent of the relief. In this regard, a smaller garage located closer to the road would cause less disturbance to the bog buffer. The witness summarized the agency comments. The Nontidal Wetlands and Waterways Division of the Maryland Department of the Environment (MDE) requires full permit review; the Chesapeake Bay Critical Area Commission opposed the request. By way of conclusion, Mr. Fury opposed the request.

Ms. Gardner testified that she and Mr. Cain paid a contractor cash for the construction of the garage. The work began in March 2006 and was stopped by the County in April 2006. The witness supplied several photographs of the construction site, which she characterized as an area of dirt, grass and weeds. The garage is needed for storage. Finally the request is unobjectionable to the neighbors.

Mr. Cain testified that the contractor has disappeared. Mr. Cain offered to offset the disturbance with landscape plantings. Finally, an existing storage shed (8 by 10 feet) would be removed.

Brenda Hodgson, a permit consultant to the applicants, acknowledged the need for a full application to MDE, revisions to the building permit and a grading permit. The area of new impervious surfaces would be offset by mitigation plantings.

There was no other testimony in the matter.

The standards for granting bog buffer variances are contained in Section 18-16-305. Under subsection (b), a variance to the County bog protection program may be granted only after determining that (1) due to unique physical conditions, a strict implementation of the program would result in an unwarranted hardship to the applicants; (2) a literal interpretation of the program will deprive the applicants of rights commonly enjoyed by other properties in similar areas within a bog protection area of the County; (3) the granting of the variance will not confer on the applicants any special privilege that would be denied by the program to other lands within a bog protection area; (4) the variance request is not based on circumstances resultant of the actions by the applicants and does not arise from conditions relating to land use on neighboring property; and (5) the granting of the variance will not adversely impact water quality or fish, wildlife or plant habitat within a bog protection area and will harmonize with the general spirit and intent of the program. Under subsection (c), any variance must be the

minimum necessary to afford relief; and its grant may not alter the essential character of the neighborhood, substantially impair the appropriate use or development of adjacent property or cause a detriment to the public welfare.

Although I am sympathetic to the applicants' situation, I am constrained to deny the request. There has been no showing that a literal interpretation of the County's bog protection program deprives the applicants of rights commonly enjoyed by other properties in similar bog protection areas. Rather, the granting of a variance confers on the applicants a special privilege that the program denies to other lands in bog protection areas. And, the request is based on circumstances resultant of unpermitted actions attributable to the applicants. Nor does the granting of the variance harmonize with the general spirit and intent of the bog protection program.

I further find that the variance exceeds the minimum relief. As indicated, the property is already developed with a home, porch, pool, and deck all in the bog buffer. Additionally, the applicants are proposing a very large detached garage that does not maximize the distance to the bog. In the circumstance, the granting of the relief would be detrimental to the public welfare.

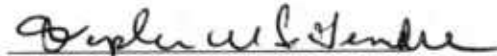
Because the applicants have not met their burden of proof of satisfying all of the bog variance criteria, the denial of the application is not an unwarranted hardship and does not deny reasonable use.

ORDER

PURSUANT to the application of Robert Aschenbak (owner) and Paul Cain and Julie Gardner (contract purchasers), petitioning for a variance to allow a garage with less buffer to a bog; and

PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is this 3rd day of October, 2007,

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


Stephen M. LeGenre
Administrative Hearing Officer

NOTICE TO APPLICANT

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

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

INTRODUCTION

The site is located in the LDA area of the Anne Arundel County Critical Area program. The site is known as 214 Delaware Avenue, Pasadena, Maryland 21122. The subdivision is known as Boulevard Park in is within the 100' bog buffer area. The property is zoned R2 and is considered approximately 17,250 Sq. ft. in size. The lot is below the minimum lot requirement for R-2. The property is served by well and septic.

PURPOSE

The purpose of this variance is to legalize the construction of a 24' X 36' detached garage. At the foundation was built without a permit.

Variance's requested. Construct a detached garage in the expanded 100' buffer to South Grays Creek Bog, a Non-tidal Wetlands of Special State Concern.

VICINITY MAP

Include in this report.

NARRATIVE STATEMENT

- a.) Approximately 25% of the site is wooded. There are several large tree with a canopy cover of approximately 2,000 sq. ft. 3 small trees located at the side and front of the property and scattered shrubs.
- b.) At present the existing rainfall is directed to the ground though downspouts. Additional runoff will be diverted the same way but planting around the entire structure will prevent water running off of the property.
- c.) The owners will minimize impacts to water quality by planting as directed by Administrative Hearing Officer, Critical Area Commission and the Permit Application Center and the Maryland Department of the Environment. A stormwater management device may need to be installed.

PAGE TWO

d.) The impervious coverage allowed is $31.25\% = 5,390$ sq. ft. on site:

Existing Impervious Coverage - House	4,275
Proposed Impervious -----	864
Removal of impervious coverage	-432
Total Impervious Coverage -----	4,707

Copy of the Notification of Project Application is enclosed.

VICINITY MAP



LEXANDRIA DRAFTING CO.

MD GRID 950,000 FT

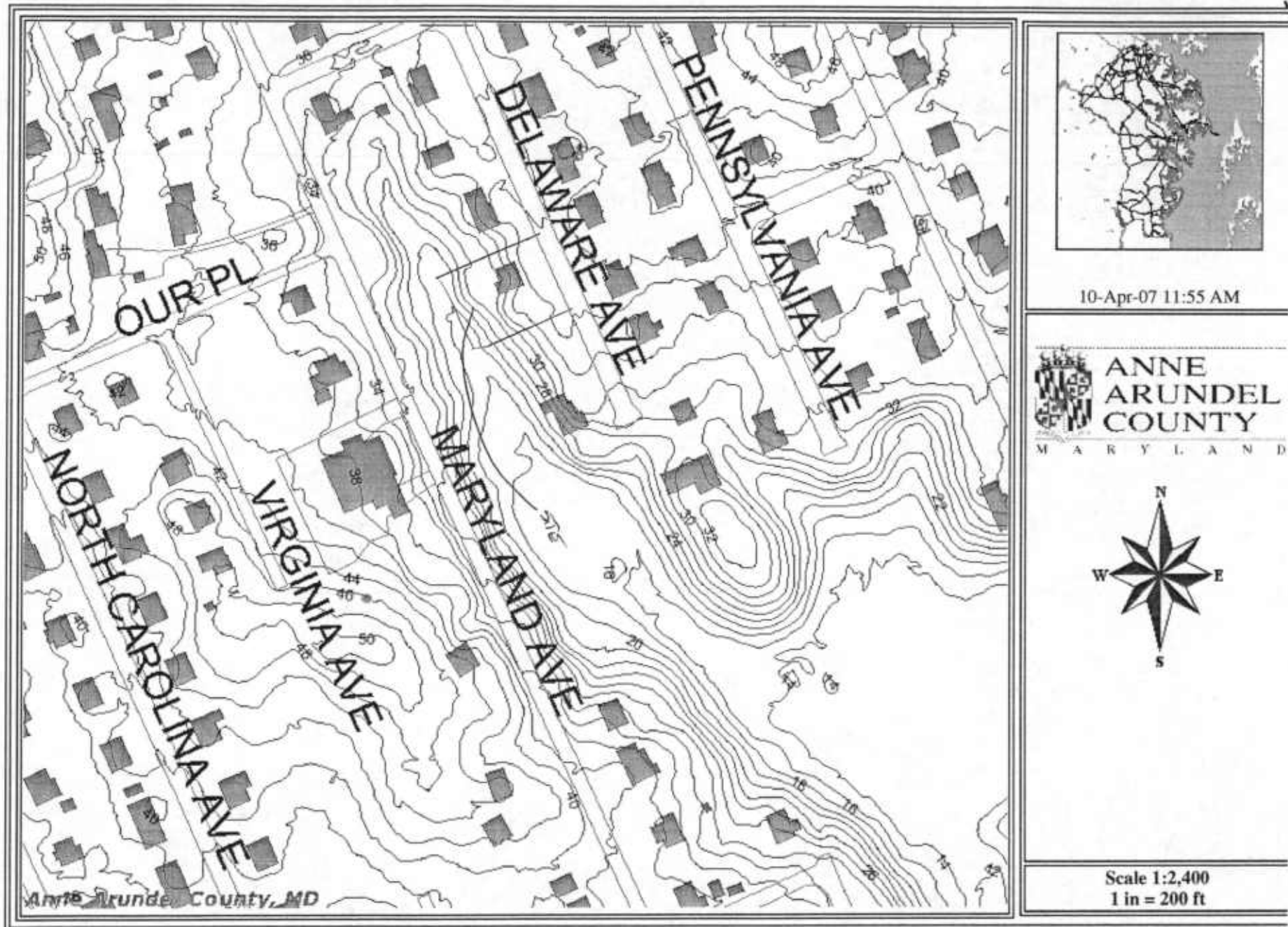
MAP 10 13 C

Map Control
 Full Extent Zoom In Zoom Out

Selection Control
 Select Layer Sewer Lines Clear Selected

Map Scale = 1: 2092 Go

[Home](#) [Form Query](#) [Survey](#) [Monuments](#) [MetaData](#) [Help](#) [Links](#)



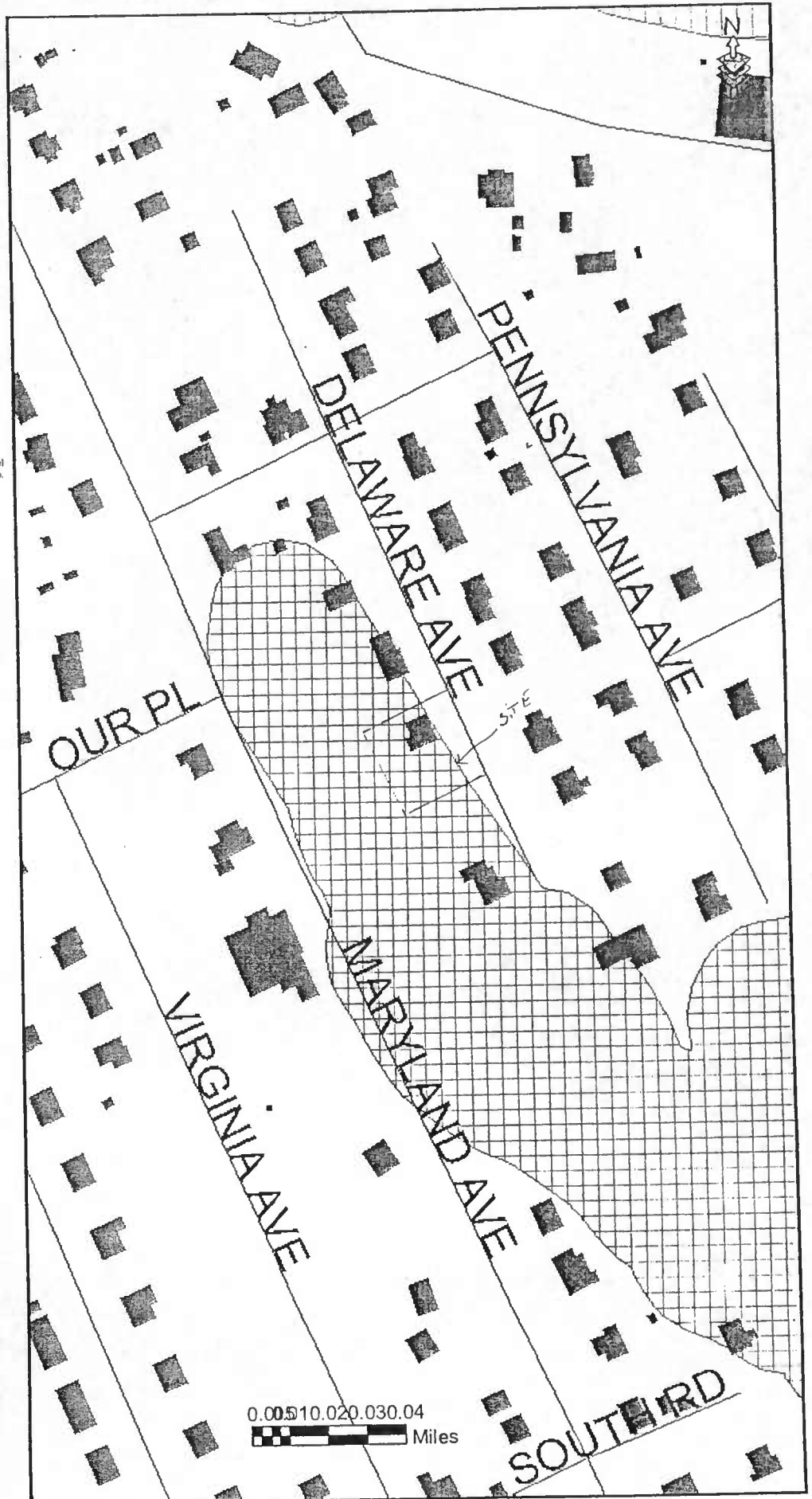
B02229758 - 100-Foot Bog Buffer



Paper Map DISCLAIMER:

By acceptance of this map material, you agree as follows:

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Legend

Street Names

Parcels

- Parcels

Street Centerlines

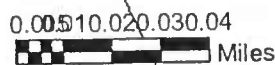
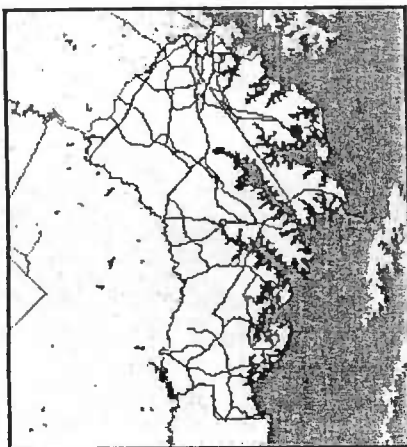
- Street Centerlines

Buildings

- Buildings

Bog 100 Foot Buffer

- Bog 100 Foot Buffer





Anne Arundel County Department of Public Works



Image data courtesy EarthData International, Inc.

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Scale = 1" = 50'

Proposed
Garage
Slab EXIST.

IMPERVIOUS COVERAGES

- DRIVEWAY + sidewalks - 2,045
- POOL - 1,075
- House - 1,155
- Garage slab = 864 = 432 = 432
- 1/2 WAS BUILT OVER
- EXISTING IMPERVIOUS

TOTAL IMPERVIOUS 4,707

Disturbed area 1,800

OWNER: Robert Aschenback
 214 Delaware Ave
 Boulevard Park
 Pasadena, Md 21122

Tax Map 25, Block 14, Parcel 60
 BUILDING PERMIT # B02229758

SCALE 1" = 30'

