AA 499-07 Prager, Mindy
VAR 0265

51829-6322

JAC 7/17/09

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/

July 17, 2009

Mr. Douglas Clarke Holman
Hearing Officer
44 Calvert Street
Annapolis, MD 21401

Re: 2009-0153-V – Prager, Mindy L.

Dear Mr. Clarke Holman :

A variance request was forwarded to this office on the above referenced case. The applicant has applied for an after-the-fact variance to perfect an accessory structure (patio, sidewalk, steps) with less setbacks and Buffer than required and with disturbance to slopes greater than 15%. The property is designated as a Limited Development Area (LDA) and is currently developed.

On September 27, 2007, the Anne Arundel County Hearing Officer heard a similar after-the-fact variance request (Case Number 2007-0265-V) to permit concrete steps and a wooden walkway. This request was approved with the conditions that the concrete stairs be converted to pervious stairs and that no further disturbance be permitted in the Buffer (conditions 1 and 2 of Order). To date, the fine associated with the previous violation has not been paid, and the concrete stairs have not been removed or converted to wood. Subsequent to the 2007 variance case and decision, the applicant constructed a concrete patio in violation of the Hearing Officer's order and again, without a permit or variance. Based on the applicant's participation in the 2007 variance case, it can be assumed that the applicant was well aware of the County's variance process as well as the conditions of the previous variance decision. Given the initial outstanding violation onsite, the County should not have accepted the variance application to legalize a second violation. We recommend that you not hear this case, and return the application to the applicant.

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. If you have any questions, please call me at (410) 260-3476.

Sincerely,

Julie Roberts
Natural Resources Planner
cc: AA 499-07

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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September 10, 2007

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

Re: Prager- 2007-0265-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 allow a walkway and steps with less setbacks to the 100-foot Buffer than required. The property is currently developed with a dwelling and is designated as a Limited Development Area (LDA).

While this office typically does not oppose variance requests for disturbance to the Buffer in order to provide property owners with riparian access where the applicant shows minimization of the proposed Buffer disturbance, we cannot support the requested variance in this case. The applicant's constructed steps and walkway are not the minimum necessary disturbance to the Buffer to create riparian access. It appears that the applicant has cleared a substantial swath of a previously functioning vegetated Buffer to construct stone steps and a wooden walkway that is parallel to the shoreline and spans the entire width of the applicant's waterfront edge of the property. While this office would not oppose the construction of wooden steps and/or a walkway from a dwelling to the shoreline to create riparian access, impervious stone steps and a walkway that is parallel to the shoreline is in excess of what is reasonable riparian access and is inconsistent with demonstrating minimization of disturbance to the Buffer. Accordingly, we cannot support the requested variance to the extent that it includes the lateral walkway, and to the extent that the steps are installed in a way that creates impervious area. We recommend that the walkway be removed, that the stone steps be replaced with pervious wooden steps, and that the applicant be required to reestablish a vegetated Buffer along the shoreline. Also, the applicant should provide mitigation at a 2:1 ratio for the area of disturbance to the Buffer for the steps. These mitigation plantings should be provided on-site in the Buffer to the extent feasible.

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,

Amber Widmayer
Natural Resources Planner
cc: AA 499-07

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 2009-0153-V

MINDY PRAGER

THIRD ASSESSMENT DISTRICT

DATE HEARD: AUGUST 11, 2009

ORDERED BY:

DOUGLAS CLARK HOLLMANN
ADMINISTRATIVE HEARING OFFICER

PLANNER: WILLIAM ETHRIDGE

DATE FILED: **AUGUST 24, 2009**

STUDY POINT NO. 1 – ULTIMATE OUTFALL

PLEADINGS

Mindy L. Prager, the applicant,[1] seeks a variance (2009-0153-V) to perfect an accessory structure (patio, sidewalk, and steps) with less setbacks and buffer than required and with disturbance to slopes 15% or greater on property located along the east side of Canal Lane, south of Homewood Landing Road, Annapolis.[2]

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. Mindy L. Prager 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.

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[1] County Exhibit 5, admitted at the hearing on this application, is a deed that lists Mark Edward Prager and Mindy Lynn Prager, husband and wife, as the owners of the subject property. Mark Edward Prager did not sign the application for the variance, although he did appear and offered testimony at the hearing. The application requires that all persons owning 10% or more of the property that is the subject of the application sign it. The application, therefore, is defective. However, in light of the decision reached, the failure to have Mr. Prager sign the application is moot.

[2] The improvements that are the subject of this application were constructed before July 1, 2008. On that date, the Legislature changed the rules for cases dealing with attempts to "perfect" structures built without permits and/or variances. However, in the Circuit Court, the Honorable Paul Harris presiding, has decided that the amendment only affects structures built after July 1, 2008. The Critical Area Commission disagrees, and recommends that the hearing on this application not take place. However, until and unless the Court of Special Appeals, or the Circuit Court, decides otherwise, this Office is bound by the law as it is interpreted by the Circuit Court for Anne Arundel County.

Worksheet for Trapezoidal Section - SP1-PR

Project Description		
Flow Element:	Trapezoidal Channel	
Friction Method:	Manning Formula	
Solve For:	Normal Depth	

Input Data		
Roughness Coefficient:	0.040	
Channel Slope:	0.00433	ft/ft
Left Side Slope:	1.00	ft/ft (H:V)
Right Side Slope:	1.50	ft/ft (H:V)
Bottom Width:	4.00	ft
Discharge:	78.50	ft^3/s

Results		
Normal Depth:	2.95	ft
Flow Area:	22.70	ft^2
Wetted Perimeter:	13.50	ft
Top Width:	11.38	ft
Critical Depth:	1.87	ft
Critical Slope:	0.02545	ft/ft
Velocity:	3.46	ft/s
Velocity Head:	0.19	ft
Specific Energy:	3.14	ft
Froude Number:	0.43	
Flow Type:	Subcritical	

GVF Input Data		
Downstream Depth:	0.00	ft
Length:	0.00	ft
Number Of Steps:	0	

GVF Output Data		
Upstream Depth:	0.00	ft
Profile Description:		
Headloss:	0.00	ft
Downstream Velocity:	Infinity	ft/s
Upstream Velocity:	Infinity	ft/s
Normal Depth:	2.95	ft
Critical Depth:	1.87	ft
Channel Slope:	0.00433	ft/ft

FINDINGS

A hearing was held on August 11, 2009, in which witnesses were sworn and the following evidence was presented with regard to the proposed variances requested by the applicant.[3]

The Property

The applicant and her husband, Mark Edward Prager, own the subject property. They purchased the property in 2005. It is located on a canal off Homewood Cove, an extension of Whitehall Creek in St. Margaret's, with a street address of 607 Canal Lane, Annapolis, Maryland 21401. The property is zoned R2 Residential and is a waterfront lot located in the Chesapeake Bay Critical Area classified as limited development area (LDA). The property is mapped in the buffer modification area. The property is improved with a two-story single family dwelling.

The Proposed Work

The applicant is requesting a variance to perfect three accessory structures. The first structure consists of a set of stone steps from a door to the existing dwelling, which leads to a stone patio that is 377 square feet. The patio is partially

[3] The Critical Area Commission argued in a letter dated July 17, 2009 to the Hearing Officer, admitted as County Exhibit 13, that the variance not be heard because the has failed and refused to comply with the 2007 decision of this Office. The Commission's position is not without justification. However, the question of whether the applicant failed and refused to comply with the 2007 decision is a question of fact that can only be resolved after holding a hearing. In the interest of judicial economy, rather than holding a fact-finding preliminary hearing on this issue, the hearing proceeded because the testimony of the witnesses would provide evidence of whether the applicant had or had not complied with the 2007 decision. As reflected in this decision, the evidence supported the Commission's contention. The law is unclear as to whether the Hearing Officer can dismiss the application under these circumstances, or postpone the hearing until the applicant removes the stone steps and the other unpermitted improvements. In this case, I have decided to resolve the 2009 application rather than dismiss the application for failing to comply with the 2007 decision. Under other circumstances, an Order of dismissal, or postponement, may be appropriate.

Worksheet for Trapezoidal Section - SP1-PR

Critical Slope:	0.02545	ft/ft

surrounded by three 20-inch by 20-inch by 33-inch stone pillars connected by a 21-inch high stonewall, all attached to the north side of the principal dwelling (collectively referred to herein as the stone patio). The second structure is a 4' x 26.5' wide stone walkway of 106 square feet (referred to herein as the stone walkway). This leads to the third structure, an 8' x 20' section of stone steps (referred to herein as the stone steps) that end at a 7' x 8' wooden walkway.

The stone patio and accessories, except for a minimal protrusion toward the shoreline, are located behind a line drawn parallel to the forward wall of the existing dwelling. The stone walkway and the stone steps are located between the dwelling and the shoreline.

This application is complicated by the number of structures the applicant seeks permission to build or keep, as well as by their location behind or in front of the existing dwelling and the fact that the stone steps were the subject of a prior decision by this Office.

Furthermore, it appears that the stone steps were built on steep slopes. No one mentioned in the submittals or testimony why a variance to §17-8-201, which prohibits new structures in steep slopes, is not required for the stone steps (if not the other structures, since they may be located in the buffer to steep slopes).[4] The stone steps were denied in the earlier decision.

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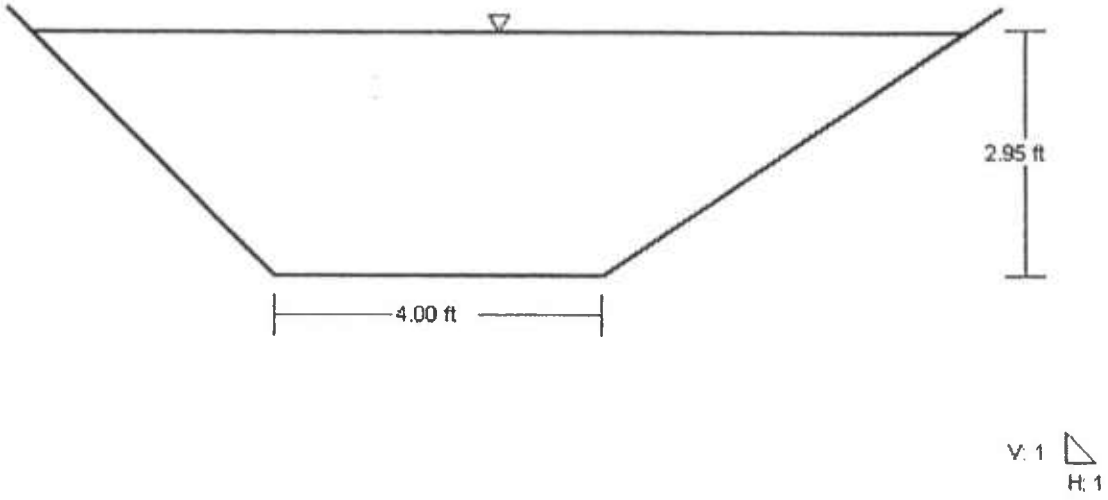
[4] This question was not raised in the 2007 decision of this Office discussed below. If the stone steps are located in steep slopes, they were located in steep slopes in 2007. Unlike § 17-8-301, which provides that the prohibition against new structures in the 100-foot buffer "does not apply to a buffer modification area", and § 18-13-104(a), which creates the 100-foot buffer, but exempts "buffer modification areas" in

SP1 - ULTIMATE OUTFALL

Cross Section for Trapezoidal Section - SP1-PR

Project Description		
Flow Element:	Trapezoidal Channel	
Friction Method:	Manning Formula	
Solve For:	Normal Depth	

Section Data		
Roughness Coefficient:	0.040	
Channel Slope:	0.00433	ft/ft
Normal Depth:	2.95	ft
Left Side Slope:	1.00	ft/ft (H:V)
Right Side Slope:	1.50	ft/ft (H:V)
Bottom Width:	4.00	ft
Discharge:	78.50	ft^3/s



The Anne Arundel County Code

Article 18, § 18-13-104(b) provides that there shall be a buffer modification area established on all or part of a lot created before December 1, 1985 on which the existing pattern of development prevents the 100-foot buffer from performing its functions. The subject property is located in a buffer modification area where, according to §17-8-702(b)(1), no new impervious surface may be placed nearer to the shoreline than the existing principal structure.

§ 17-8-201 provides that development in the LDA may not occur within slopes of 15% or greater unless development will facilitate the stabilization of the slope or the disturbance is necessary to allow connection of a public utility. There is no evidence that the stone steps are for the purpose of facilitating the stabilization of slopes or necessary to allow connection of a public utility. Because the evidence shows that the work will be performed in the steep slope area or the expanded buffer, steep slope disturbance will occur and a variance to § 17-8-201 is necessary to allow the proposed work to proceed.

The Variances Requested

The work proposed by the applicant, therefore, will require a number of variances to two separate provisions of the Code.

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subsection (b), the provisions of § 17-8-201 do not exempt buffer modification areas from the requirements of the steep slopes law.

Worksheet 2: Runoff curve number and runoff

Project **Quarantine Rd.** By **GSA** Date **2/14/2006**

Location **Study Point #1 - 695** Checked _____ Date _____

Circle one: Present [Developed] **PROPOSED CONDITIONS**

1. Runoff curve number (CN)

Soil name and hydrologic group	Cover description (cover type, treatment and hydrologic condition; percent impervious; unconnected/connected impervious area ratio)	CN* Table 2-2	CN* Fig. 2-3	CN* Fig. 2-4	Area acres	Product of CN x area
A	Urban areas; Open space (lawns, parks, golf courses, cemeteries, etc.); Good condition (grass cover > 75%)	*39*			*0.95*	*36.9*
C	Urban areas; Fully developed urban areas (vegetation established); Impervious areas; Paved parking lots, roofs, driveways, etc. (excluding right-of-way)	*98*			*5.17*	*507.1*
C	Urban areas; Open space (lawns, parks, golf courses, cemeteries, etc.); Good condition (grass cover > 75%)	*74*			*3.40*	*251.5*
B	Urban areas; Open space (lawns, parks, golf courses, cemeteries, etc.); Good condition (grass cover > 75%)	*61*			*1.75*	*106.8*
C	Other agricultural lands; Woods; Good conditon	*70*			*3.84*	*268.7*
B	Other agricultural lands; Woods; Good conditon	*55*			*6.15*	*338.2*
* Use only one CN source per line				Totals =	*21.26*	*1509.1*
				SQ. MILES =	*0.033214*	

CN (weighted) = total product / total area = *71.00* Use CN = *71.0*

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The Evidence Submitted At The Hearing

William Ethridge, a planner with the Office of Planning and Zoning (OPZ), testified that the subject site consists of 15,976 square feet. It is identified as Parcel 273 in Block 6 on Tax Map 46 of the Whitehall Manor Subdivision. The property has been zoned R2 Residential since the adoption of the Broadneck Small Area Plan Maps effective May 25, 2002.

Mr. Ethridge testified that the subject property exceeds the minimum size requirements for an R2 Residential lot. According to County records, the principal structure was built in 2003. Currently, the home is as close as 47 feet to mean high-water (MHW). A significant portion of the home was built within the 100-foot modified buffer. Additionally, County records indicate the presence of National Wetlands Inventory along the west side of Homewood Canal. The applicant's residence and all of the associated improvements related to this request are located inside this wetlands area.

The applicant is requesting a variance to perfect areas of new impervious surface within the modified buffer. Those areas are; stone steps leading from the north side of the home, out to a partially constructed stone patio, surrounded by a partially constructed stonewall, consisting of 377 square feet. Moving toward the water, from the patio, next is a 4-foot wide stone walkway of 106 square feet, which then leads to a set of stone steps measuring 8' x 20' (160 square feet), and lastly, a 7' x 8' (56 square feet) wooden walkway, connecting the stone steps to the bulkhead.

Worksheet 3: Time of concentration (Tc) or travel time (Tt)

Project : **Quarantine Rd.** By **GSA** Date **2/14/2006**

Location : **Study Point #1 - 695** Checked _____ Date _____

County : **Baltimore County, MD**

Circle one: Present [Developed] **PROPOSED CONDITIONS**

NOTE : Space for as many as three segments per flow type can be used for each worksheet. Include a map, schematic, or description of flow segments

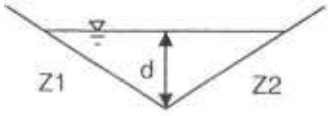
Sheet flow (Applicable to Tc only)		Segment ID	AB			
1. Surface Description (table 3-1)			Light underbrush			
2. Manning's roughness coeff., n (table 3-1)			0.400			
3. Flow length, L (total L ≤ 100 ft)	ft		100			
4. Two-yr 24-hr rainfall, P_2	in		3.2			
5. Upstream elevation			68.4			
6. Downstream elevation			55			
7. Land slope, s	ft/ft		0.134			
8. $T_t = 0.007\ (nL)^{0.8} / [(P_2^{0.5})(s^{0.4})]$	hr		0.167			= 0.167

Shallow concentrated flow		Segment ID	BC			
9. Surface description (Cerrelli Chart)			Wide Swale, Low Veg.			
10. Flow length, L	ft		227			
11. Upstream elevation			55			
12. Downstream elevation			32			
13. Watercourse slope, s	ft/ft		0.101			
14. Average velocity, V	ft/s		3.183			
15. $T_t = L / 3600*V$	hr		0.020			= 0.020

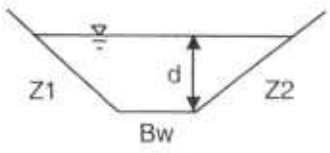
Channel Flow		Segment ID	CD	DE		
16. Channel Geometry			Triangular Ditch; Assume Depth = 1; Z1 = 2; Z2 = 3	PIPE		
17. Cross-sectional flow area, A	ft^2		2.5			
18. Wetted perimeter, P_W	ft^2		5.398345638			
19. Hydraulic radius, R	ft		0.463104841			
20. Upstream elevation			32			
21. Downstream elevation			27.4			
22. Channel slope, S	ft/ft		0.008			
23. Manning's roughness coeff., n			0.05			
24. Velocity	ft/s		1.622	5		
25. Flow length, L	ft		556	249		
26. $T_t = L / 3600*V$	hr		0.095	0.014		= 0.109

27. Watershed or subarea Tc or Tt ..... hr 0.296

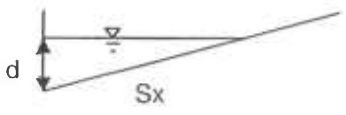
Triangular Ditch



Trapezoidal Ditch



Gutter



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This property is currently the subject of two open zoning compliance cases; B-2009-0124 was filed February 19, 2009 for "PB, Retaining Walls" and E-2009-0057 was filed February 17, 2009 for "Critical Area tree clearing (in the buffer)".

In 2007, the impervious surface amount for this property was identified as 4,699 square feet. This figure was obtained after improvements had been made. If allowed to complete their additions, the impervious amount would rise to 4,991 square feet, one square foot under the maximum allowed for this property.

This property is also the subject of a previous variance. In Case No. 2007-0265-V, the same applicant was granted a modified buffer variance of 35 feet and a variance of 28 feet to the front setback to perfect pervious stairs (6' x 20') and a full buffer variance and a full variance to the front setback to permit a pervious walkway of 6' x 90', with a 5' x 11' stubout, subject to the following conditions: (1) this site plan is revised to substitute pervious stairs (6' x 20'); (2) no other new development in the buffer is allowed; and (3) the applicant shall provide mitigation as determined by the Permit Application Center.[5]

Staff conducted a site visit of this property on August 5, 2009 to observe the structures on this property as well as any similar construction in the neighboring community. Looking left to right from the applicant's property, all of the addresses on the opposite side of the canal are improved with both wooden walkways and wooden boardwalks along the canal. Four of the five boardwalks measure 6' x 75', with the exception of one boardwalk which is 6' x 55'. All of the

[5] Granted October 16, 2007.

Worksheet 2: Runoff curve number and runoff

Project **Quarantine Rd.** By **GSA** Date **2/14/2006**

Location **Study Point #1 (OFFSITE1) - 695** Checked _____ Date _____

Circle one: Present [Developed] **PROPOSED CONDITIONS**

1. Runoff curve number (CN)

Soil name and hydrologic group	Cover description (cover type, treatment and hydrologic condition; percent impervious; unconnected/connected impervious area ratio)	CN* Table 2-2	CN* Fig. 2-3	CN* Fig. 2-4	Area acres	Product of CN x area
B	Urban areas; Fully developed urban areas (vegetation established); Impervious areas; Paved parking lots, roofs, driveways, etc. (excluding right-of-way)	*98*			*0.21*	*20.4*
B	Urban areas; Open space (lawns, parks, golf courses, cemeteries, etc.); Good condition (grass cover > 75%)	*61*			*0.03*	*2.1*
C	Urban areas; Fully developed urban areas (vegetation established); Impervious areas; Paved parking lots, roofs, driveways, etc. (excluding right-of-way)	*98*			*0.11*	*10.7*
C	Urban areas; Open space (lawns, parks, golf courses, cemeteries, etc.); Good condition (grass cover > 75%)	*74*			*0.14*	*10.6*
A	Urban areas; Open space (lawns, parks, golf courses, cemeteries, etc.); Good condition (grass cover > 75%)	*39*			*0.64*	*25.1*
A	Other agricultural lands; Woods; Good conditon	*30*			*0.65*	*19.5*
A	Urban areas; Fully developed urban areas (vegetation established); Impervious areas; Paved parking lots, roofs, driveways, etc. (excluding right-of-way)	*98*			*0.65*	*63.6*
* Use only one CN source per line				Totals =	*2.44*	*151.9*
				SQ. MILES =	*0.003806*	

CN (weighted) = total product / total area = *62.36* Use CN = **62.4**

riparian access steps along the east side of the canal are constructed of wood and measure 6' x 30' according to County building permit records. These observations would suggest the pattern of development along the east side of Homewood Canal has been to allow for wooden access stairways and boardwalks.

The Critical Area Team within the Development Division of the OPZ made the following comments in a memo dated July 31, 2009: In 2007 the applicant was denied a variance to keep the stone stairs and was told to remove those stairs, replace them with pervious stairs and not to add any additional development in the buffer. The fact that she is now in for a variance to perfect additional impervious material in the buffer is a clear indication of a lack of regard for critical area regulations. This request should be denied and the conditions of 2007-0265-V be upheld.

The Department of Health reviewed this case and offered the following comments: The Department has evaluated the on-site well water supply system for the above referenced property and has determined that the proposed request does no adversely affect these systems. Therefore the Department has no objection to the above referenced request.

The Anne Arundel County Soil Conservation District stated that they deferred to the OPZ.

The Critical Area Commission reviewed the above referenced variance case and submitted comments in a memo dated July 17, 2009. To summarize those comments, the Commission recommends that the Hearing Officer not hear this

Worksheet 3: Time of concentration (Tc) or travel time (Tt)

Project : **Quarantine Rd.** By **GSA** Date **2/14/2006**

Location : **Study Point #1 (OFFSITE1) - 69** Checked _____ Date _____

County : **Baltimore County, MD**

Circle one: Present [Developed] **PROPOSED CONDITIONS**

NOTE : Space for as many as three segments per flow type can be used for each worksheet.
Include a map, schematic, or description of flow segments

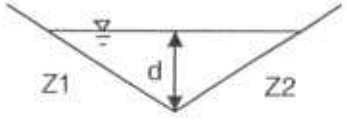
Sheet flow (Applicable to Tc only)		Segment ID				
1. Surface Description (table 3-1)						
2. Manning's roughness coeff., n (table 3-1)			#N/A			
3. Flow length, L (total L ≤ 100 ft)	ft					
4. Two-yr 24-hr rainfall, P_2	in					
5. Upstream elevation						
6. Downstream elevation						
7. Land slope, s	ft/ft					
8. $T_t = 0.007\ (nL)^{0.8} / [(P_2^{0.5})(s^{0.4})]$	hr				=	0.000

Shallow concentrated flow		Segment ID				
9. Surface description (Cerrelli Chart)						
10. Flow length, L	ft					
11. Upstream elevation						
12. Downstream elevation						
13. Watercourse slope, s	ft/ft					
14. Average velocity, V	ft/s					
15. $T_t = L / 3600*V$	hr				=	0.000

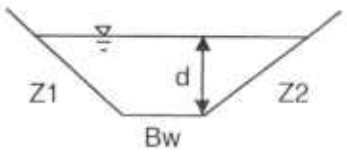
Channel Flow		Segment ID				
16. Channel Geometry						
17. Cross-sectional flow area, A	ft^2					
18. Wetted perimeter, P_W	ft^2					
19. Hydraulic radius, R	ft	#DIV/0!	#DIV/0!			
20. Upstream elevation						
21. Downstream elevation						
22. Channel slope, S	ft/ft					
23. Manning's roughness coeff., n						
24. Velocity	ft/s					
25. Flow length, L	ft					
26. $T_t = L / 3600*V$	hr				=	0.000

27. Watershed or subarea Tc or Tt ..... hr 0.100

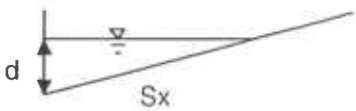
Triangular Ditch



Trapezoidal Ditch



Gutter



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case, and return the application to the applicant. In the previous case, (2007), the Commission chose not to support the variance on the grounds that they believed the constructed steps and walkway were not the minimum necessary disturbance in the buffer to create riparian access. They added that while they would not oppose the construction of wooden steps and/or a walkway from a dwelling to create riparian access, the impervious stone steps and extensive walkway are in excess of what is considered "reasonable" access and are inconsistent with demonstrating minimization of disturbance to the buffer. The Commission concluded by stating that they recommend the walkway be removed, that the stone steps be replaced with pervious wooden steps, and the applicant be required to provide mitigation at a ratio of 2:1 for the area of disturbance to the buffer. These plantings should be provided on-site in the buffer to the extent possible.

Mr. Ethridge testified that two years ago, the OPZ was inclined to take a pragmatic approach to this variance request, despite the objections from the Commission. OPZ noted that homeowners along the east side of Homewood Canal had been permitted to utilize pervious materials, specifically wood in the construction of their riparian access stairways and boardwalks, therefore approving the stone stairway proposed by the applicant would confer a special privilege typically denied to other lands or structures within the County's critical area. OPZ supported a variance to retain the boardwalk along the applicant's bulkhead and to retain a *pervious* stairway measuring 6' x 30'. Lastly, the County offered no objection to the 5' x 11' section of boardwalk protruding away from the

Worksheet 2: Runoff curve number and runoff

Project **Quarantine Rd.** By **GSA** Date **3/6/2006**

Location **Study Point #1 (OFFSITE2) - 695** Checked _____ Date _____

Circle one: Present [Developed] **PROPOSED CONDITIONS**

1. Runoff curve number (CN)

Soil name and hydrologic group	Cover description (cover type, treatment and hydrologic condition; percent impervious; unconnected/connected impervious area ratio)	CN* Table 2-2	CN* Fig. 2-3	CN* Fig. 2-4	Area acres	Product of CN x area
A	Urban areas; Urban districts; Commercial and business	***89***			***3.24***	***288.4***
	(BLANK)					***0.0***
* Use only one CN source per line				Totals =	***3.24***	***288.4***
				SQ. MILES =	***0.005063***	

CN (weighted) = total product / total area = ***89.00*** Use CN = ***89.0***

canal, towards the principle structure. In the 2007 decision, the Administrative Hearing Officer granted the applicant *more* than OPZ recommended.

The applicant demonstrated a knowledge and understanding of critical area laws and regulations, as well as the burden of proof that was reliant upon her, when she applied for a variance 2 years ago. Today, we find that the applicant has, ignored the Order of the variance that was granted to her in 2007, and has engaged in more unpermitted waterfront development, *increasing* the amount of disturbance and impervious on her property within the critical area buffer. OPZ believes that this applicant should be bound by the conditions in the previous variance and that no other new development in the buffer be allowed.

Based upon the standards set forth in § 18-16-305 under which a variance may be granted, Mr. Ethridge testified that OPZ recommends denial of the variance request and recommends that the Order of the original variance decision (2007-0265-V) be enforced.

Mr. Matthew Forgen, applicant's engineer, testified to the improvements that have been built on the property, and explained their location using County Exhibit 2.

Ms. Mindy Prager testified that she was concerned about the environmental impact of removing the stone steps to convert them to pervious steps as required by the previous decision. She consulted with contractors, but none was interested because of the proximity to the water, the location of nearby trees, and the difficulty of getting equipment to the site. Also, the cost, although not specified in

Worksheet 3: Time of concentration (Tc) or travel time (Tt)

Project : **Quarantine Rd.** By **GSA** Date **2/14/2006**

Location : **Study Point #1 (OFFSITE2) - 695** Checked _____ Date _____

County : **Baltimore County, MD**

Circle one: Present [Developed] **PROPOSED CONDITIONS**

NOTE : Space for as many as three segments per flow type can be used for each worksheet.
Include a map, schematic, or description of flow segments

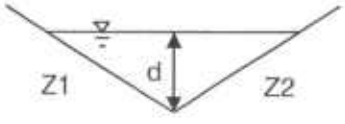
Sheet flow (Applicable to Tc only)		Segment ID				
1. Surface Description (table 3-1)						
2. Manning's roughness coeff., n (table 3-1)		#N/A				
3. Flow length, L (total L ≤ 100 ft)	ft					
4. Two-yr 24-hr rainfall, P_2	in					
5. Upstream elevation						
6. Downstream elevation						
7. Land slope, s	ft/ft					
8. $T_t = 0.007\ (nL)^{0.8} / [(P_2^{0.5})(s^{0.4})]$	hr				=	0.000

Shallow concentrated flow		Segment ID				
9. Surface description (Cerrelli Chart)						
10. Flow length, L	ft					
11. Upstream elevation						
12. Downstream elevation						
13. Watercourse slope, s	ft/ft					
14. Average velocity, V	ft/s					
15. $T_t = L / 3600*V$	hr				=	0.000

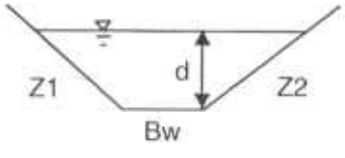
Channel Flow		Segment ID				
16. Channel Geometry						
17. Cross-sectional flow area, A	ft^2					
18. Wetted perimeter, P_W	ft^2					
19. Hydraulic radius, R	ft	#DIV/0!	#DIV/0!			
20. Upstream elevation						
21. Downstream elevation						
22. Channel slope, S	ft/ft					
23. Manning's roughness coeff., n						
24. Velocity	ft/s					
25. Flow length, L	ft					
26. $T_t = L / 3600*V$	hr				=	0.000

27. Watershed or subarea Tc or Tt ..... hr 0.100

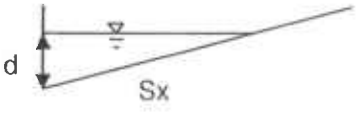
Triangular Ditch



Trapezoidal Ditch



Gutter



her testimony, was considerable. She also testified that she did not want to disturb too much of the land.

As to the new improvements she started to build (photos of the work in progress were admitted into evidence as County Exhibit 7), which consist of the stone patio and the stone walkway, Ms. Prager testified that an unidentified person at the County told her she didn't need a permit or variance to build them. Under questioning by Mr. Ethridge, she admitted that she did not tell the County employee advising her that her property was in the critical area, or that her property had been the subject of an earlier decision of this Office.

Mr. Ben McCauley, of McCauley, LLC, testified that he has been in the landscaping and construction business for 38 years and that, in his opinion, he did not recommend taking out the stone steps because of the proximity of cherry trees either side. He thought that the removal would adversely affect the trees and possibly kill them. The removal would have to be done by hand.

Ms. Prager's husband was present, but did not testify, although he was offered as a witness who would corroborate Ms. Prager's testimony.

Elizabeth Usry, who lives at 1668 Homeland Drive, supported the application, as did her husband, Dallas Usry. Barbara Stevanus, who lives at 601 Canal Lane, two houses away, also supported the application. A letter was introduced as Applicant's Exhibit 4 indicating the support of the homeowner's association.

Worksheet 2: Runoff curve number and runoff

Project **Quarantine Rd.** By **GSA** Date **3/6/2006**

Location **Study Point #1 (OFFSITE3) - 695** Checked _____ Date _____

Circle one: Present [Developed] **PROPOSED CONDITIONS**

1. Runoff curve number (CN)

Soil name and hydrologic group	Cover description (cover type, treatment and hydrologic condition; percent impervious; unconnected/connected impervious area ratio)	CN* Table 2-2	CN* Fig. 2-3	CN* Fig. 2-4	Area acres	Product of CN x area
A	Urban areas; Urban districts; Commercial and business	*89*			*2.52*	*224.3*
	(BLANK)					*0.0*
* Use only one CN source per line			Totals =		*2.52*	*224.3*
			SQ. MILES =		*0.003938*	

CN (weighted) = total product / total area = ***89.00*** Use CN = ***89.0***

There was no other testimony taken or exhibits received in the matter. The Hearing Officer visited the property, but did not speak with anyone.

DECISION

State Requirements for Critical Area Variances

§ 8-1808(d)(2) of the Natural Resources Article, Annotated Code of Maryland, provides in subsection (ii), that "[i]n considering an application for a variance [to the critical area requirements], a local jurisdiction shall presume that the specific development in the critical area that is subject to the application and for which a variance is required does not conform to the general purpose and intent of this subtitle, regulations adopted under this subtitle, and the requirements of the jurisdiction's program." (Emphasis added.) "Given these provisions of the State criteria for the grant of a variance, the burden on the applicant is very high." *Becker v. Anne Arundel County,* 174 Md.App. 114, 124; 920 A.2d 1118, 1124 (2007).

In *Becker v. Anne Arundel County, supra,* 174 Md.App. at 131; 920 A.2d at 1128, the Court of Special Appeals discussed the history of the critical area law in reviewing a decision from this County. The court's discussion of the recent amendments to the critical area law in 2002 and 2004, and the elements that must be satisfied in order for an applicant to be granted a variance to the critical area, is worth quoting at length:

> In 2002, the General Assembly amended the [critical area]

Worksheet 3: Time of concentration (Tc) or travel time (Tt)

Project : **Quarantine Rd.** By **GSA** Date **2/14/2006**

Location : **Study Point #1 (OFFSITE3) - 695** Checked _____ Date _____

County : **Baltimore County, MD**

Circle one: Present [Developed] **PROPOSED CONDITIONS**

NOTE : Space for as many as three segments per flow type can be used for each worksheet.
Include a map, schematic, or description of flow segments

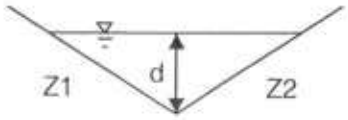
Sheet flow (Applicable to Tc only)		Segment ID				
1. Surface Description (table 3-1)						
2. Manning's roughness coeff., n (table 3-1)		#N/A				
3. Flow length, L (total L ≤ 100 ft)	ft					
4. Two-yr 24-hr rainfall, P_2	in					
5. Upstream elevation						
6. Downstream elevation						
7. Land slope, s	ft/ft					
8. $T_t = 0.007\ (nL)^{0.8} / [(P_2^{0.5})(s^{0.4})]$	hr				=	0.000

Shallow concentrated flow		Segment ID				
9. Surface description (Cerrelli Chart)						
10. Flow length, L	ft					
11. Upstream elevation						
12. Downstream elevation						
13. Watercourse slope, s	ft/ft					
14. Average velocity, V	ft/s					
15. T_t = L / 3600*V	hr				=	0.000

Channel Flow		Segment ID				
16. Channel Geometry						
17. Cross-sectional flow area, A	ft^2					
18. Wetted perimeter, P_W	ft^2					
19. Hydraulic radius, R	ft	#DIV/0!	#DIV/0!			
20. Upstream elevation						
21. Downstream elevation						
22. Channel slope, S	ft/ft					
23. Manning's roughness coeff., n						
24. Velocity	ft/s					
25. Flow length, L	ft					
26. T_t = L / 3600*V	hr				=	0.000

27. Watershed or subarea Tc or Tt ..... hr 0.100

Triangular Ditch



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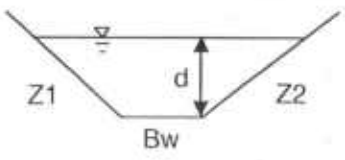
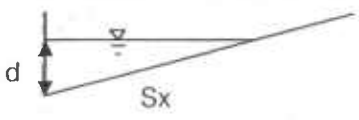


Gutter



JOHNSON, MIRMIRAN & THOMPSON
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law. ... The amendments to subsection (d) provided that, (1) in order to grant a variance, the Board had to find that the applicant had satisfied each one of the variance provisions, and (2) in order to grant a variance, the Board had to find that, without a variance, the applicant would be deprived of a use permitted to others in accordance with the provisions in the critical area program. ... The preambles to the bills expressly stated that it was the intent of the General Assembly to overrule recent decisions of the Court of Appeals, in which the Court had ruled that, (1) when determining if the denial of a variance would deny an applicant rights commonly enjoyed by others in the critical area, a board may compare it to uses or development that predated the critical area program; (2) an applicant for a variance may generally satisfy variance standards rather than satisfy all standards; and, (3) a board could grant a variance if the critical area program would deny development on a specific portion of the applicant's property rather than considering the parcel as a whole.

...

In 2003, the Court of Appeals decided *Lewis v. Dep't of Natural Res.*, 377 Md. 382, 833 A.2d 563 (2003). *Lewis* was decided under the law as it existed prior to the 2002 amendments (citation omitted), and held, *inter alia,* that (1) with respect to variances in buffer areas, the correct standard was not whether the property owner retained reasonable and significant use of the property outside of the buffer, but whether he or she was being denied reasonable use within the buffer, and (2) that the unwarranted hardship factor was the determinative consideration and the other factors merely provided the board with guidance. *Id.* at 419-23, 833 A.2d 563.

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**********80-80 LIST OF INPUT DATA FOR TR-20 HYDROLOGY**********

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 6 RUNOFF 1 003       3 .005063     89.0        .100        1         1 SP1o2
 6 RUNOFF 1 004       4 .003938     89.0        .100        1         1 SP1o3
 6 ADDHYD 4 005   1 2 5                                     1         1 SP1+o1
 6 ADDHYD 4 006   5 3 6                                     1         1 SP1-o2
 6 ADDHYD 4 007   6 4 7                                     1         1 SP1-o3
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   ENDJOB 2


**********END OF 80-80 LIST**********

*** WARNING - UNEXPECTED RECORD(S) ENCOUNTERED WHEN LOOKING FOR "JOB" RECORD.
              IMAGES OF FIRST 10 RECORDS IGNORED FOLLOW:                    ***

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03/08/** JOHNSON, MIRMIRAN, & THOMPSON          FILENAME: SP1OUT.DAT2.04TEST
07:34:41                  PASS   1   JOB NO.   1                    PAGE   1



EXECUTIVE CONTROL INCREM    MAIN TIME INCREMENT =   .100 HOURS


EXECUTIVE CONTROL COMPUT    FROM XSECTION   1  TO XSECTION   7
   STARTING TIME =   .00      RAIN DEPTH =  5.10       RAIN DURATION =  1.00
   ANT. RUNOFF COND. = 2      MAIN TIME INCREMENT =   .100 HOURS
   ALTERNATE NO. = 1          STORM NO. =10            RAIN TABLE NO. = 2


OPERATION RUNOFF   XSECTION   1

   PEAK TIME(HRS)              PEAK DISCHARGE(CFS)          PEAK ELEVATION(FEET)
      12.08                          51.3                       (RUNOFF)

   RUNOFF ABOVE BASEFLOW  (BASEFLOW =     .00 CFS)
                2.19 WATERSHED INCHES;      47 CFS-HRS;        3.9 ACRE-FEET.


OPERATION RUNOFF   XSECTION   2

   PEAK TIME(HRS)              PEAK DISCHARGE(CFS)          PEAK ELEVATION(FEET)
      11.96                           5.4                       (RUNOFF)

   RUNOFF ABOVE BASEFLOW  (BASEFLOW =     .00 CFS)
                1.53 WATERSHED INCHES;       4 CFS-HRS;         .3 ACRE-FEET.

*** WARNING - MAIN TIME INCREMENT (  .100) IS GREATER THAN 50% OF THE
              TIME OF CONCENTRATION (  .10) FOR SUBWATERSHED XSECTION   2.
              THIS WILL REDUCE THE COMPUTED PEAK BY ABOUT  4.5%.          ***


OPERATION RUNOFF   XSECTION   3

   PEAK TIME(HRS)              PEAK DISCHARGE(CFS)          PEAK ELEVATION(FEET)
      11.93                          17.9                       (RUNOFF)

   RUNOFF ABOVE BASEFLOW  (BASEFLOW =     .00 CFS)
                3.86 WATERSHED INCHES;      13 CFS-HRS;        1.0 ACRE-FEET.

*** WARNING - MAIN TIME INCREMENT (  .100) IS GREATER THAN 50% OF THE
              TIME OF CONCENTRATION (  .10) FOR SUBWATERSHED XSECTION   3.
              THIS WILL REDUCE THE COMPUTED PEAK BY ABOUT  1.1%.          ***
```

> Notwithstanding the fact that the Court of Appeals expressly stated that *Lewis* was decided under the law as it existed prior to the 2002 amendments, in 2004 Laws of Maryland, chapter 526, the General Assembly again amended State law by enacting the substance of Senate Bill 694 and House Bill 1009. The General Assembly expressly stated that its intent in amending the law was to overrule *Lewis* and reestablish the understanding of unwarranted hardship that existed before being "weakened by the Court of Appeals." In the preambles, the General Assembly recited the history of the 2002 amendments and the *Lewis* decision. The amendment changed the definition of unwarranted hardship [found in § 8-1808(d)(2)(i)] to mean 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." (Emphasis added.)

The question of whether the applicant is entitled to the variances requested begins, therefore, with the understanding that, in addition to the other specific factors that must be considered, the applicant must overcome the presumption, "that the specific development in the critical area that is subject to the application ... does not conform to the general purpose and intent of [the critical area law]."[6] Furthermore, the applicant carries the burden of convincing the Hearing Officer "that the applicant has satisfied each one of the variance provisions."[7] (Emphasis added.)

---

[6] § 8-1808(d)(2)(ii) of the Natural Resources Article. References to State law do not imply that the provisions of the County Code are being ignored, or are not being enforced. If any difference exists between County law and State law, or if some State criteria were omitted from County law, State law would prevail. *See*, discussion on this subject in *Becker v. Anne Arundel County, supra,* 174 Md.App. at 135; 920 A.2d at 1131.

[7] § 8-1808(d)(4)(ii).

```
 OPERATION RUNOFF   XSECTION   4
1
 TR20 ------------------------------------------------------------------- SCS -
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 03/08/** JOHNSON, MIRMIRAN, & THOMPSON          FILENAME: SP1OUT.DAT2.04TEST
 07:34:41                     PASS   1   JOB NO.   1                    PAGE   2


    PEAK TIME(HRS)              PEAK DISCHARGE(CFS)          PEAK ELEVATION(FEET)
       11.93                          13.9                       (RUNOFF)

    RUNOFF ABOVE BASEFLOW  (BASEFLOW =    .00 CFS)
                   3.86 WATERSHED INCHES;      10 CFS-HRS;        .8 ACRE-FEET.

 *** WARNING - MAIN TIME INCREMENT (  .100) IS GREATER THAN 50% OF THE
               TIME OF CONCENTRATION (  .10) FOR SUBWATERSHED XSECTION   4.
               THIS WILL REDUCE THE COMPUTED PEAK BY ABOUT  1.1%.           ***


 OPERATION ADDHYD   XSECTION   5

    PEAK TIME(HRS)              PEAK DISCHARGE(CFS)          PEAK ELEVATION(FEET)
       12.06                          54.1                       (NULL)

    RUNOFF ABOVE BASEFLOW  (BASEFLOW =    .00 CFS)
                   2.12 WATERSHED INCHES;      51 CFS-HRS;        4.2 ACRE-FEET.


 OPERATION ADDHYD   XSECTION   6

    PEAK TIME(HRS)              PEAK DISCHARGE(CFS)          PEAK ELEVATION(FEET)
       12.02                          66.9                       (NULL)

    RUNOFF ABOVE BASEFLOW  (BASEFLOW =    .00 CFS)
                   2.33 WATERSHED INCHES;      63 CFS-HRS;        5.2 ACRE-FEET.


 OPERATION ADDHYD   XSECTION   7

    PEAK TIME(HRS)              PEAK DISCHARGE(CFS)          PEAK ELEVATION(FEET)
       12.00                          78.5                       (NULL)

    RUNOFF ABOVE BASEFLOW  (BASEFLOW =    .00 CFS)
                   2.46 WATERSHED INCHES;      73 CFS-HRS;        6.0 ACRE-FEET.


 EXECUTIVE CONTROL ENDCMP    COMPUTATIONS COMPLETED FOR PASS   1
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 03/08/** JOHNSON, MIRMIRAN, & THOMPSON          FILENAME: SP1OUT.DAT2.04TEST
 07:34:41                      SUMMARY, JOB NO.   1                    PAGE   3


                            SUMMARY TABLE 1
                            ---------------
    SELECTED RESULTS OF STANDARD AND EXECUTIVE CONTROL IN ORDER PERFORMED.
    A CHARACTER FOLLOWING THE PEAK DISCHARGE TIME AND RATE (CFS) INDICATES:
 F-FLAT TOP HYDROGRAPH   T-TRUNCATED HYDROGRAPH   R-RISING TRUNCATED HYDROGRAPH

 XSECTION/  STANDARD                                        PEAK DISCHARGE
 STRUCTURE   CONTROL     DRAINAGE    RUNOFF    ------------------------------------
    ID       OPERATION     AREA      AMOUNT    ELEVATION     TIME      RATE     RATE
                         (SQ MI)     (IN)        (FT)        (HR)      (CFS)    (CSM)

 RAINFALL OF   5.10 inches AND  24.00 hr DURATION, BEGINS AT     .0 hrs.
 RAINTABLE NUMBER  2,    ARC 2
 MAIN TIME INCREMENT   .100 HOURS

    ALTERNATE    1   STORM   10
    -------------------------
 XSECTION   1  RUNOFF      .03      2.19        ---       12.08       51    1700.0
 XSECTION   2  RUNOFF      .00      1.53        ---       11.96        5 ********
 XSECTION   3  RUNOFF      .01      3.86        ---       11.93       18    1800.0
 XSECTION   4  RUNOFF      .00      3.86        ---       11.93       14 ********
 XSECTION   5  ADDHYD      .04      2.12        ---       12.06       54    1350.0
```

County Requirements for Critical Area Variances

§ 18-16-305 sets forth the requirements for granting a variance for property in the Critical Area. Subsection (b) reads, in part, as follows: a variance may be granted if the Administrative Hearing Officer finds that:

(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 would result in an unwarranted hardship, as that term is defined in the Natural Resources Article, § 8-1808(d)(1) of the State Code, to the applicant. Subsection (b)(1).

(2) 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 provision of the critical area program within the critical area of the County. Subsection (b)(2).

(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. Subsection (b)(3).

```
XSECTION   6  ADDHYD      .04      2.33        ---      12.02       67    1675.0
XSECTION   7  ADDHYD      .05      2.46        ---      12.00       79    1580.0
1
TR20 ------------------------------------------------------------------------ SCS -
        QUARANTINE RD. - SP#4OUT                                DATE: 3/0 VERSION
03/08/** JOHNSON, MIRMIRAN, & THOMPSON            FILENAME: SP1OUT.DAT2.04TEST
07:34:41                    SUMMARY, JOB NO.   1                        PAGE   4
```

SUMMARY TABLE 3

STORM DISCHARGES (CFS) AT XSECTIONS AND STRUCTURES FOR ALL ALTERNATES
QUESTION MARK (?) AFTER: OUTFLOW PEAK - RISING TRUNCATED HYDROGRAPH.

XSECTION/ STRUCTURE ID		DRAINAGE AREA (SQ MI)	STORM NUMBERS..... 10
XSECTION	1	.03	
ALTERNATE	1		51
XSECTION	2	.00	
ALTERNATE	1		5
XSECTION	3	.01	
ALTERNATE	1		18
XSECTION	4	.00	
ALTERNATE	1		14
XSECTION	5	.04	
ALTERNATE	1		54
XSECTION	6	.04	
ALTERNATE	1		67
XSECTION	7	.05	
ALTERNATE	1		79

```
1
TR20 ------------------------------------------------------------------------ SCS -
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03/08/** JOHNSON, MIRMIRAN, & THOMPSON            FILENAME: SP1OUT.DAT2.04TEST


END OF  1 JOBS IN THIS RUN


*** WARNING - UNEXPECTED RECORD(S) ENCOUNTERED WHEN LOOKING FOR "JOB" RECORD.
              IMAGES OF FIRST 10 RECORDS IGNORED FOLLOW:                    ***
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SCS TR-20, VERSION 2.04TEST
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OUTPUT = sp1out.OUT                              , DATED 03/08/**,07:34:41

         FILES GENERATED - DATED 03/08/**,07:34:41

                        NONE!
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(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 rise from any condition relating to land or building use on any neighboring property. Subsection (b)(4).

(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 and will be in harmony with the general spirit and intent of the County's critical area program. Subsection (b)(5).

(6) The applicant, by competent and substantial evidence, has overcome the presumption contained in the Natural Resources Article, § 8-1808(d)(2)(ii), of the State Code. Subsection (b)(7).[8]

Furthermore, a variance may not be granted unless it is found that: (1) the variance is the minimum variance necessary to afford relief; (2) the granting of the variance will not alter the essential character of the neighborhood or district in which the lot is located; (3) the variance will not substantially impair the appropriate use or development of adjacent property; (4) the variance will not reduce forest cover in the limited development and resource conservation areas of the critical area; (5) the variance will not be contrary to acceptable clearing and replanting practices required for development in the critical area; or (6) the variance will not be detrimental to the public welfare.

[8] Subsection (b)(6) refers to bogs, which are not present on the Property.

TOTAL NUMBER OF WARNINGS = 5, MESSAGES = 0

*** TR-20 RUN COMPLETED ***

Findings - Critical Area Variances

The Stone Steps

As noted above, the facts in this case are complicated, and complicated further by the fact that the applicant is asking for relief from a decision issued by this Office in 2007 that dealt with the stone steps.[9] That decision read as follows:

> ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicant is **granted** (1) a **modified** buffer variance of 35 feet and a variance of 28 feet to the front setback to permit pervious stairs (6 by 20 feet); and (2) a full buffer variance and a full variance to the front setback to permit a walkway [6 by 90 feet with stub-out (5 by 11 feet)].
>
> The approvals are subject to the following conditions:
>
> 1. The site plan is revised to substitute pervious stairs (6 by 20 feet);
> 2. No other new development in the buffer is allowed.
> 3. The applicant shall provide mitigation as determined by the Permit Application Center. (Emphasis added.)

The 2007 decision became final on or about November 16, 2007, 30 days after it was rendered. It cannot be modified or revised now. § 18-16-401. The 2007 decision basically denied the request for a variance for the stone steps, but granted the request if the stairs were replaced with pervious materials.

[9] For clarity, the wooden walkway and "stub-out" that exists along the shoreline is not part of this decision, and is presumed to be a legal improvement to the property. See, the 2007 decision. Also, although unclear, the existing wood walkway from the end of the stone steps to the wooden walkway is presumed to be a legal improvement to the property. This conclusion is based on the assumption that the wood walkway is pervious. If not, it shall be made so.

STUDY POINT NO. 3

The applicant has decided not to replace the stone steps with pervious steps. Instead, she has kept the stairs these past two years, and now claims that to remove them would cause too much damage. I do not agree. They were placed by hand (her testimony was that she and her husband built the stone steps). Therefore, they can be removed by hand. The damage that might occur to the surrounding vegetation and trees was not proven. Even if proven, however, the prior Order requires that they be replaced with pervious material. That Order is final. To make it clear, the applicant must remove the steps regardless of whether she replaces them with pervious material.

However, even if I had the power to modify the 2007, I would not do so. The 2007 decision was correct. Impervious surfaces so close to the water's edge is not in keeping with the spirit and intent of the critical area law (Subsection (b)(7) above), particularly where, as here, the problem to be resolved by the requested variance was created by the applicant when she built the stone steps without permits and variances.[10] *See*, Subsection (b)(4). Furthermore, a variance must be the minimum needed to obtain relief from the unwarranted hardship imposed by the critical area on a property. Stone steps are not the minimum relief needed so that the applicant can get from her dwelling to the shoreline; pervious steps are available, and are more in keeping with the spirit and intent of the critical area.

[10] Not to mention that she has refused to take them out.

SP3 - OUTFALL CHANNEL
Cross Section for Irregular Section - SP3-pr

Project Description		
Flow Element:	Irregular Section	
Friction Method:	Manning Formula	
Solve For:	Normal Depth	

Section Data		
Roughness Coefficient:	0.040	
Channel Slope:	0.00588	ft/ft
Normal Depth:	0.59	ft
Elevation Range:	20.00 to 22.00 ft	
Discharge:	78.20	ft^3/s

V: 1
H: 1

As explained above, the applicant must meet each of the separate requirements of § 18-16-305. Failure to meet even one of those requirements requires that the application be denied. The above discussion shows that she has failed to meet Subsections (a)(4), (5), and (6). Accordingly, the application as to the stone steps is denied. The stone steps must be removed.

The Stone Patio and Stone Walkway

The stone patio and stone walkway were not part of the 2007 decision. Examining them individually in light of the factors contained in § 18-16-305, I must deny the variances requested for these improvements.

I am aware that the stone patio is almost completely behind a line drawn across the shoreward side of the dwelling. At first blush, one might think that the stone patio is not subject to the provisions of § 17-8-702(b)(1), which prohibits new impervious surfaces nearer to the shoreline than an existing principal structure, because the patio is not closer to shoreline. However, the 2007 decision ruled that: "No other new development in the buffer is allowed." As noted above, the 2007 decision cannot be modified. The stone patio must also be removed.

The applicant apparently does not understand that conditions are sometimes granted in order to provide property owners relief from the Code.[11] The condition restricting new development in the 2007 decision was part of the reason a variance was granted to allow the applicant to keep a stairway to the shoreline. It was part

[11] The only alternative is to conclude that Ms. Prager chooses not to comply with the condition of the 2007 Order that no new development is allowed.

JOHNSON, MIRMIRAN & THOMPSON

PROJECT: QUARANTINE ROAD

JMT JOB # : 302-759.09

I a (structure 6)		BY	DATE
STA.	COMPUTED	GFF	1/31/2007
	CHECKED		

SOIL TYPE	% SLOPE	LANDUSE	AREA (ACRES)	2, 10-YR STORM		25-YR STORM	
				C	CA	C	CA
A	2-6%	COMMERCIAL	3.24	0.71	2.300	0.88	2.851
		TOTALS	3.24		2.30		2.85

COMPOSITE C FACTOR (2, 10-YR): **0.71**

COMPOSITE C FACTOR (25-YR): **0.88**

TIME OF CONCENTRATION

Tc = 5.0 MIN

STORM EVENT (YR)	RAINFALL INTENSITY (IN/HR)	DISCHARGE (CFS)
2	5.38	12.38
10	7.00	16.10
25	8.00	22.81

of the flexibility allowed for in the variance process to provide relief to property owners subject to the burden of the critical area. If the applicant thought the restriction against further development was inappropriate, she should have appealed the 2007 decision to the Board of Appeals. She did not do so. Instead, she ignored the 2007 decision. She neither removed the stone steps, nor refrained from further development.

The pattern is clear. When Ms. Prager wants improvements to her property, she goes ahead and builds them without permits or variances. Her explanations, particularly after having gone through the variance process in 2007, are not credible. Despite Ms. Prager's disregard of the critical area law and the 2007 decision, they continue in existence. The stone patio cannot remain.

The reason is clear. This property is heavily burdened with improvements, even though the limit on the amount of impervious surfaces has not been exceeded. In allowing the other improvements, the prior Hearing Officer decided that no further development must occur. A stone patio of the size proposed by the applicant is not allowed by the 2007 decision and is not in keeping with the spirit and intent of the critical area law.

This applies to the stone walkway as well. Permeable surfaces are extremely important on lots that are heavily developed as this one is. The factors set forth above in § 18-16-305 show that the stone walkway must be disallowed as well. Steps to the shoreline down the steep slope that parallels Canal Lane may be necessary to allow the applicant to have "reasonable and significant use of the

JOHNSON, MIRMIRAN & THOMPSON

PROJECT: QUARANTINE ROAD

JMT JOB # : 302-759.09

I b (structure 7)		BY	DATE
STA.	COMPUTED	GFF	1/31/2007
	CHECKED		

SOIL TYPE	% SLOPE	LANDUSE	AREA (ACRES)	2, 10-YR STORM		25-YR STORM	
				C	CA	C	CA
A	2-6%	COMMERCIAL	2.52	0.71	1.789	0.88	2.218
		TOTALS	2.52		1.79		2.22

COMPOSITE C FACTOR (2, 10-YR): 0.71

COMPOSITE C FACTOR (25-YR): 0.88

TIME OF CONCENTRATION

Tc = 5.0 MIN

STORM EVENT (YR)	RAINFALL INTENSITY (IN/HR)	DISCHARGE (CFS)
2	5.38	9.63
10	7.00	12.52
25	8.00	17.74

entire parcel." *Becker v. Anne Arundel County, supra,* 174 Md.App. at 132-3; 920 A.2d at 1129. However, a walkway to the top of those steps across what appears to be a level lawn cannot be justified, because the applicant would not be "denied reasonable and significant use of the entire parcel or lot for which the variance is requested" if she were not allowed the walkway. Put another way, it is not the minimum needed to allow the applicant to develop her property.

An additional basis for denying the applicant the right to build the stone walkway is that it constitutes additional development prohibited by the 2007 decision.

In conclusion, therefore, the applicant will have to remove the stone steps. If she wishes to replace them with pervious steps, she will be allowed to do so.[12] Also, the stone patio and its accessories, along with the stone walkway, must be removed.

ORDER

PURSUANT to the application of Mindy L. Prager, petitioning to perfect an accessory structure (patio, sidewalk, and steps) with less setbacks and buffer than required, and with disturbance to slopes 15% or greater, and

[12] The 2007 decision remains in effect. The 18-month window opened by the variance granted by the 2007 decision in October, 2007, would have closed in April, 2009, but for state legislation that tolled to June 30, 2010 the time period for variances in existence as of January 1, 2009. Accordingly, the applicant still has time to apply for a building permit to replace the stone steps under the 2007 decision. Absent the recent state legislation, the applicant would have lost her opportunity to replace the steps because the variance would have expired without her having sought and obtained a building permit to replace the stone steps with permeable ones.

JOHNSON, MIRMIRAN & THOMPSON

PROJECT: QUARANTINE ROAD

JMT JOB # : 302-759.09

I c (structure 9)		BY	DATE
STA.	COMPUTED	GFF	1/31/2007
	CHECKED		

SOIL TYPE	% SLOPE	LANDUSE	AREA (ACRES)	2, 10-YR STORM		25-YR STORM	
				C	CA	C	CA
A	2-6%	IMPERVIOUS	0.08	0.86	0.069	0.96	0.077
A	2-6%	OPEN SPACE	0.25	0.12	0.030	0.15	0.038
		TOTALS	0.33		0.10		0.11

COMPOSITE C FACTOR (2, 10-YR): 0.30

COMPOSITE C FACTOR (25-YR): 0.35

TIME OF CONCENTRATION

Tc = 5.0 MIN

STORM EVENT (YR)	RAINFALL INTENSITY (IN/HR)	DISCHARGE (CFS)
2	5.38	0.53
10	7.00	0.69
25	8.00	0.91

PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is this **24th day of August, 2009,**

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

The decision in Case No. 2007-0265-V remains in full force and effect, including the conditions set forth therein. The stone steps may be replaced, as set forth in the 2007 decision, in the location shown on County Exhibit 2 admitted at the hearing on this application. The applicant is required to obtain the necessary permits to remove and replace the stone steps.

Douglas Clark Hollmann
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. **A permit for the activity that was the subject of this variance application will not be issued until the appeal period has elapsed.**

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

JOHNSON, MIRMIRAN & THOMPSON

PROJECT: QUARANTINE ROAD

JMT JOB # : 302-759.09

I d (structure 10)		BY	DATE
STA.	COMPUTED	GFF	1/31/2007
	CHECKED		

SOIL TYPE	% SLOPE	LANDUSE	AREA (ACRES)	2, 10-YR STORM		25-YR STORM	
				C	CA	C	CA
A	2-6%	IMPERVIOUS	0.08	0.86	0.067	0.96	0.075
		TOTALS	0.08		0.07		0.07

COMPOSITE C FACTOR (2, 10-YR): **0.86**

COMPOSITE C FACTOR (25-YR): **0.96**

TIME OF CONCENTRATION

Tc = 5.0 MIN

STORM EVENT (YR)	RAINFALL INTENSITY (IN/HR)	DISCHARGE (CFS)
2	5.38	0.36
10	7.00	0.47
25	8.00	0.60

499-07

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 2007-0265-V

MINDY PRAGER

THIRD ASSESSMENT DISTRICT

DATE HEARD: SEPTEMBER 27, 2007

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

PLANNER: **WILLIAM ETHRIDGE**

DATE FILED **OCTOBER** 16, 2007

PLEADINGS

Mindy Prager, the applicant, seeks a variance (2007-0265-V) to allow a walkway and stairs with less setbacks and buffer than required on property located along the east side of Canal Lane, south of Homewood Landing, Annapolis.

PUBLIC NOTIFICATION

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

FINDINGS AND CONCLUSIONS

The applicant owns a single-family residence with a street address of 607 Canal Lane, in the subdivision of Whitehall Manor, Annapolis. The property comprises 15,976 square feet and is zoned R2 residential with a Chesapeake Bay Critical Area designation as Limited Development Area (LDA). This waterfront lot on Homewood Canal is mapped as a buffer modification area. The request is to perfect two accessory structures: (1) stone stairs (8 X 20 feet) 12 feet from mean high water; and (2) wood walkway [6 X 90 feet with stub-out (5 X 11 feet)]

attached to the bulkhead at water's edge. The dwelling is 47 feet from mean high water.

Anne Arundel County Code, Article 18, Section 18-13-104(a) establishes a 100-foot buffer from tidal waters. However, Section 18-13-104(b) creates a buffer modification area on lots platted prior to December 1, 1985 on which the existing pattern of development prevents the buffer from performing its protective functions. Under Article 17, Section 17-8-702(b), the placement of a new accessory structure on a buffer modified lot shall be no closer to the shoreline than the dwelling. Finally, Section 18-4-601 requires accessory structures in the R2 district to maintain 40 feet from the front lot line. Accordingly, the stairs require a buffer variance of 35 feet and a variance of 28 feet to the front setback; while the walkway requires a full buffer variance and a full variance to the front setback.

William Ethridge, a planner with the Office of Planning and Zoning, testified that the dwelling was constructed in 2003. During the course of a site visit, he observed several properties across the canal with wood walkways, typically 6 by 75 feet; and wood access stairs, typically 6 by 30 feet. County records indicate that the properties received permits for the walkways and stairs. The witness summarized the agency comments. The Critical Area team within the County's Development Division recommended converting the stairs to pervious construction and reducing the walkway to 75 feet. The Chesapeake Bay Critical Area Commission opposed the application as more than the minimum relief. The Commission further recommended pervious stairs and the reestablishment of a

vegetated buffer at water's edge. Finally, the Commission recommended mitigation at a 2:1 ratio for the area of disturbance. By way of ultimate conclusion, Mr. Ethridge adopted the recommendation of the County's Development Division.

Matt Forgen, the applicant's engineering consultant, testified that the stone stairs were installed by hand but their removal would require machinery with resultant disturbance in the buffer. Ms. Prager submitted a series of photographs showing a variety of stairs and walkways on the surrounding waterfront properties, including one example of a stone walkway. There was no other testimony in the matter.

I visited the site and the neighborhood. This is a large dwelling, including two full stories over a walk-out basement, three-car garage and waterside deck above screened porch. The front yard is planted in a level lawn that ends in a vegetated bank sloping down to the water. The stone steps traverse the slope with a board connecting to the walkway. There are two boatlifts parallel to the bulkhead. Homewood Canal is narrow. The adjacent properties on the same side of the canal enjoy water access without the same degree of construction in the buffer. However, the properties across the canal are improved with pervious stairs and walkways. The neighborhood is developed with a combination of older and newer homes.

The standards for granting variances are contained in Section 18-16-305. Under subsection (a), a zoning variance may be granted only after determining

either (1) unique physical conditions, peculiar to the lot, such that there is no reasonable possibility of developing the lot in strict conformance with the code; or (2) exceptional circumstances such that the grant of a variance is necessary to avoid an unnecessary hardship, and to enable the applicant to develop the lot. Under subsection (b), for a property in the Critical Area, a variance to the Critical Area program requirements may be granted only after determining that (1) due to unique physical conditions, peculiar to the lot, a strict implementation of the program would result in an unwarranted hardship to the applicant; (2) a literal interpretation of the program will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area; (3) the granting of the variance will not confer on the applicant any special privilege that would be denied by the program to other lands within the Critical Area; (4) the variance request is not based on circumstances resultant of actions by the applicant and does not arise from conditions relating to land use on neighboring property; and (5) the granting of the variance will not adversely affect water quality or adversely impact fish, wildlife or plant habitat within the Critical Area and will be in harmony with the general spirit and intent of the program. Under subsection (c), any variance must be the minimum necessary to afford relief; and its grant may not alter the essential character of the neighborhood, substantially impair the appropriate use or development of adjacent property, or be detrimental to the public welfare.

variances will not alter the essential character of the neighborhood, substantially impair the use or development of adjacent property or constitute a detriment to the public welfare. The approval is subject to the conditions in the Order.

ORDER

PURSUANT to the application of Mindy Prager, petitioning for a variance to allow a walkway and stairs with less setbacks and buffer than required, and

PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is this 16th day of October, 2007,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicant is **granted** (1) a **modified** buffer variance of 35 feet and a variance of 28 feet to the front setback to permit pervious stairs (6 by 20 feet); and (2) a full buffer variance and a full variance the front setback to permit a walkway [6 by 90 feet with stub-out (5 by 11 feet)]. The approvals are subject to the following conditions:

1. The site plan is revised to substitute pervious stairs (6 by 20 feet);
2. No other new development in the buffer is allowed.
3. The applicant shall provide mitigation as determined by the Permit Application Center.

Stephen M. LeGendre
Administrative Hearing Officer

vegetated buffer at water's edge. Finally, the Commission recommended mitigation at a 2:1 ratio for the area of disturbance. By way of ultimate conclusion, Mr. Ethridge adopted the recommendation of the County's Development Division.

Matt Forgen, the applicant's engineering consultant, testified that the stone stairs were installed by hand but their removal would require machinery with resultant disturbance in the buffer. Ms. Prager submitted a series of photographs showing a variety of stairs and walkways on the surrounding waterfront properties, including one example of a stone walkway. There was no other testimony in the matter.

I visited the site and the neighborhood. This is a large dwelling, including two full stories over a walk-out basement, three-car garage and waterside deck above screened porch. The front yard is planted in a level lawn that ends in a vegetated bank sloping down to the water. The stone steps traverse the slope with a board connecting to the walkway. There are two boatlifts parallel to the bulkhead. Homewood Canal is narrow. The adjacent properties on the same side of the canal enjoy water access without the same degree of construction in the buffer. However, the properties across the canal are improved with pervious stairs and walkways. The neighborhood is developed with a combination of older and newer homes.

The standards for granting variances are contained in Section 18-16-305. Under subsection (a), a zoning variance may be granted only after determining

either (1) unique physical conditions, peculiar to the lot, such that there is no reasonable possibility of developing the lot in strict conformance with the code; or (2) exceptional circumstances such that the grant of a variance is necessary to avoid an unnecessary hardship, and to enable the applicant to develop the lot. Under subsection (b), for a property in the Critical Area, a variance to the Critical Area program requirements may be granted only after determining that (1) due to unique physical conditions, peculiar to the lot, a strict implementation of the program would result in an unwarranted hardship to the applicant; (2) a literal interpretation of the program will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area; (3) the granting of the variance will not confer on the applicant any special privilege that would be denied by the program to other lands within the Critical Area; (4) the variance request is not based on circumstances resultant of actions by the applicant and does not arise from conditions relating to land use on neighboring property; and (5) the granting of the variance will not adversely affect water quality or adversely impact fish, wildlife or plant habitat within the Critical Area and will be in harmony with the general spirit and intent of the program. Under subsection (c), any variance must be the minimum necessary to afford relief; and its grant may not alter the essential character of the neighborhood, substantially impair the appropriate use or development of adjacent property, or be detrimental to the public welfare.

After reviewing the evidence and visiting the property, I will approve modified, conditional relief to the code. Considering first the subsection (b) criteria for the buffer variances, given the proximity to water, a strict application of the program would be an unwarranted hardship. To literally interpret the program would deny the applicant of access to the water, a right commonly enjoyed elsewhere in the Critical Area, including on the properties across Homewood Canal. Conversely, the granting of modified, conditional relief is not a special privilege typically denied to other Critical Area lands. Even though the work is unpermitted, the need for the variances is not the result of the actions of the applicant or of land use on neighboring properties. Finally, with mitigation and other conditions, the variances will not impair Critical Area assets and harmonize with the spirit and intent of the program.

Considering the zoning variances, this property minimally satisfies the test of unique physical conditions, consisting of the frontage on a canal, such that there is no reasonable possibility of development in strict conformance with the code.

The more difficult aspect of the application is to ascertain the minimum relief. Considering first the stairs, neither the construction of stone stairs on another property nor the difficulty of removal of the stone is justification for impervious construction. Additionally, the stairs exceed the minimum width for access. Therefore, the relief is condition on replacement with pervious stairs (6 by 20 feet). Considering the walkway, while reasonable minds may differ, I do not belief that the length is excessive. I find that the grant of modified, conditional

variances will not alter the essential character of the neighborhood, substantially impair the use or development of adjacent property or constitute a detriment to the public welfare. The approval is subject to the conditions in the Order.

ORDER

PURSUANT to the application of Mindy Prager, petitioning for a variance to allow a walkway and stairs with less setbacks and buffer than required, and

PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is this 16th day of October, 2007,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicant is **granted** (1) a **modified** buffer variance of 35 feet and a variance of 28 feet to the front setback to permit pervious stairs (6 by 20 feet); and (2) a full buffer variance and a full variance the front setback to permit a walkway [6 by 90 feet with stub-out (5 by 11 feet)]. The approvals are subject to the following conditions:

1. The site plan is revised to substitute pervious stairs (6 by 20 feet);
2. No other new development in the buffer is allowed.
3. The applicant shall provide mitigation as determined by the Permit Application Center.

Stephen M. LeGendre
Administrative Hearing Officer

NOTICE TO APPLICANT

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

Further Section 18-16-405(a) provides that a variance expires by operation of law unless the applicant obtains a building permit within eighteen months. Thereafter, the variance shall not expire so long as construction proceeds in accordance with the permit.

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

499-07

ANNE ARUNDEL COUNTY
MARYLAND

Office of Law

Jonathan A. Hodgson, County Attorney

County Executive John R. Leopold

2660 Riva Road, 4th Floor
P.O. Box 6675
Annapolis, Maryland 21401
(410) 222-7888

David A. Plymyer
Deputy County Attorney
dplymyer@aacounty.org

July 31, 2009

Ms. Julie Roberts
Natural Resources Planner
State of Maryland Critical Area Commission
1804 West Street, Suite 100
Annapolis, Maryland 21401

Re: Application of Mindy L. Prager
Case No. 2009-0153-V

Dear Ms. Roberts:

A copy of your letter dated July 17, 2009 to Anne Arundel County Administrative Hearing Officer Douglas Hollmann was sent to the County Office of Planning and Zoning and then to the Office of Law for comment. I respectfully disagree with your recommendation that Mr. Hollmann not hear the application for a variance submitted by Ms. Prager. That recommendation appears to be based on the erroneous conclusion that the applicant's failure to pay the fine for the underlying violation precludes further action by the County on the variance application. While a fine has been assessed against Ms. Prager by means of a civil citation, Ms. Prager has elected to contest that fine, as is her right under the law.

Under § 8-1808(d)(6)(ii) of the Natural Resources Article, an after-the-fact variance application may not be *accepted* by the County until there has been an "assessment" of an administrative or civil fine. However, the condition that the fine be "fully paid" is placed by § 8-1808(c)(4)(i) on the *issuance* of the variance, not on the acceptance.

In the above context, the term "assessment" clearly refers to the imposition or levy of the fine, rather than to its payment. Those are two different events, and the distinction allows an after-the-fact variance application to proceed at the same time that the applicant is exercising his or her right to contest the fine.

The construction of the statute that you urge upon Mr. Hollmann not only is inconsistent with the language of the statute as described above, it would have adverse practical consequences on many enforcement actions. As you know, § 8-1808(d)(6)(v)1 requires the removal or relocation of an unlawful structure and restoration of the site only if the application for an after-the-fact variance is *denied.* Therefore, in a situation in which an after-the-fact variance is denied, requiring the applicant to complete the process of adjudicating a fine before

even submitting a variance application could significantly delay the legal action necessary to have the structure removed and the site restored.

Finally, I note that your letter to Mr. Hollmann does not show a copy to Ms. Prager. In my opinion, if the Commission has a recommendation for action in a case pending before the Administrative Hearing Officer, it would be more appropriate for the Commission to formally participate in that case in order to give the applicant notice of and an opportunity to be heard on the Commission's recommendation. Any other course of action could be seen as interfering with the applicant's right to procedural due process.

Please call me if you have any questions, or wish to discuss in further detail.

Sincerely,

David A. Plymyer
Deputy County Attorney

cc: Marianne E. Dise, Assistant Attorney General
Nancy M. Duden, Supervising County Attorney

Fax: 410-222-7835 www.aacounty.org Mail Stop 9401

M.A.F. & Associates, LLC
Matthew A. Forgen
526 Hoods Mill Road
Woodbine MD 21797
(410) 552-5541

M.A.F. & Associates, LLC

June 16, 2009

Planner
Department of Planning & Zoning
2664 Riva Road
Annapolis MD 21401

RE: Whitehall Manor Lot 15R
607 Canal Lane, Annapolis MD.

Dear Planner:

Please accept this submittal of a variance on the above referenced project. Please see below for the variance that is being requested for this site.

We request a variance to Article 17-8-402 to allow impervious area to be place in the buffer or in front of the principal structure.

This site consists of a single-family lot that is improved with a one story single-family dwelling driveway and sidewalk. . The existing one story dwelling has the same setbacks as what is being request with this variance. We are proposing variance is to perfect the existing patio sidewalk and stone steps that were constructed without the proper permits. The patio is on the side of the existing dwelling and is 377 square feet in size. The 4' walk leading to the stone steps is in the buffer and is in front of the existing dwelling. This walk is 106 square feet in size. The stone steps leading to the shoreline were review under variance case number 2007-0265-V and were heard on September 27, 2007. This variance was denied. We feel that the removal of the stone step would cause more slope disturbance to remove than was disturbed installing them. We also feel the patio is minimal in size and is mostly on the side of the dwelling. The walk is small in size and provides access to the top of the slope.

If you should have any question regarding this submittal, please feel free to contact me at the number above.

Sincerely,

Matthew A. Forgen

WHITEHALL MANOR
LOT 15R

CRITICAL AREA REPORT

PREPARED FOR:
MINDY PRAGER
607 CANAL LANE
ANNAPOLIS, MD. 21409

PREPARED BY:
M.A.F. & ASSOCIATES, LLC
526 HOODS MILL ROAD
WOODBINE, MD 21797

410-552-5541

JUNE 16, 2009

CHESAPEAKE BAY CRITICAL AREA REPORT
CHECK LIST
Anne Arundel County, Maryland

ANNE ARUNDEL COUNTY MARYLAND

TO: Property Owners in the Chesapeake Bay Critical Area DATE: 6/17/09

FROM: Department of Planning and Code Enforcement

SUBJECT: Information Required for Submission of Critical Area Report - Zoning Applications

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Zoning Case Number _____ Applicant's Name PAGER

Critical Area Classification: (LDA)/RCA/IDA; Tax Map 46 Block 6 Parcel 273

Your property is located within the Chesapeake Bay Critical Area. In reviewing your application, Planning and Code Enforcement must determine the impact your proposal will have on stormwater management and plant and animal habitat in conformance to Critical Area criteria. Your plan must meet the criteria for your classification and satisfy COMAR 14.15.11 regarding variances. You are responsible for supplying five copies of the VICINITY MAP, NARRATIVE STATEMENT AND PLAN to the Zoning Administration Division of the Department of Planning and Code Enforcement with your zoning applicatior. Applications within the Critical Area will not be accepted without a complete Critical Area Report.

1. A brief explanation of why you need a variance or special exception. If you have applied for a building or grading permit, please list the permit number(s). _____ _____

2. A VICINITY MAP showing clear directions to your property and the address.

3. A short, 1 or 2 sentence per item, NARRATIVE STATEMENT which provides the following information (if checked):

   ✓ Type of predominant trees and shrubs (maple, oak, evergreen, etc.) on the entire parcel. (At least 15% of the lot must have trees and shrubs or additional plantings will be required. Trees and shrubs must cover the area 25' from the water on waterfront lots except for access area.)

   ✓ Method of control of rainwater from existing and proposed structures, driveways and parking. (Where does it go now? Where will additional runoff go? Any special techniques?)

   ✓ Methods to minimize impacts on water quality and habitat from proposed construction (e.g. stormwater management, sediment control, replanting, avoiding slopes).

   ✓ Square footage of site that is currently wooded or has trees and shrubs; square footage to be disturbed by proposed work; acreage of lot; total impervious coverage before and after work (Any lot in LDA or RCA that is 21,780 square feet or less cannot have more than 25% impervious surface covered unless further restricted by plat. Lots over 1/2 acre cannot exceed 15% coverage.)

   ✓ Habitat protection areas: Buffers, expanded buffers, wet ands, rare and endangered species, anadromous fish propagation waters, colonial water bird nesting sites, historic waterfowl staging and concentration areas, riparian forests 300' or more in width, forested blocks 100 acres or more, natural heritage areas, plant and wildlife habitats of local significance.

4. A PLAN of your property, drawn to scale (a plot plan, grading plan or building location survey can be used) showing (if checked):

   ✓ Steep slopes (15% or greater - show any slope if you aren't sure of percentage of slope)

   ✓ Existing tree line, individual trees and all proposed clearing, grading or any disturbance

   ✓ Wetlands (tidal and nontidal) ✓ Floodplain (tidal and nontidal)

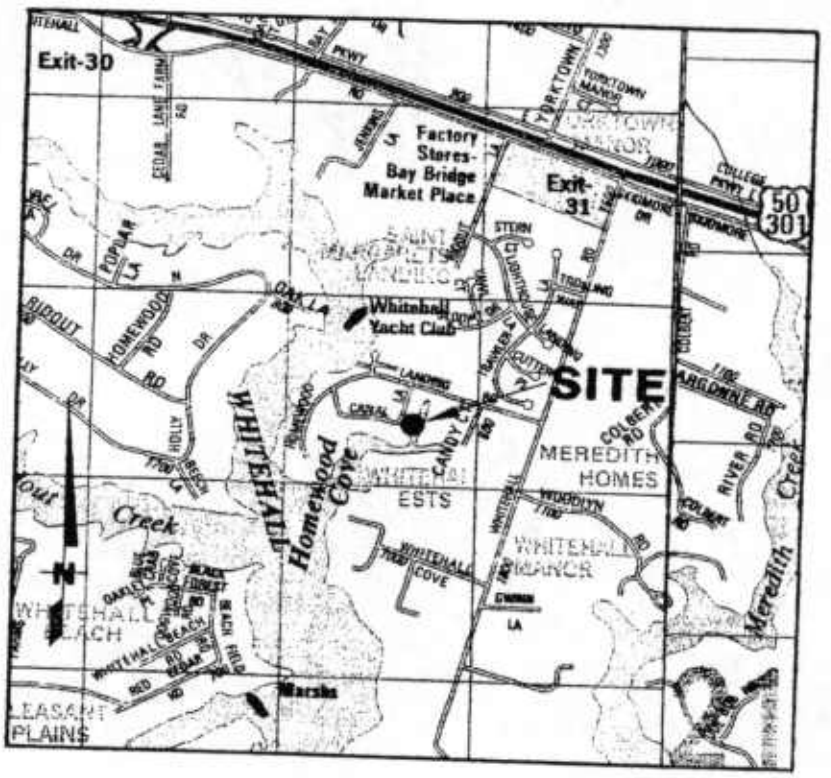
   ✓ Any proposed planting or landscaping on property

   ✓ Other (water depths, buffers as shown on record plat, habitat protection areas as identified in 3e, and plat notes)

5. ONE copy of a Notification of Project Application supplied with this check list.

Residential lots in IDA will be required to meet the criteria for LDA. Special circumstances where LDA criteria cannot be met will be reviewed in conjunction with the Critical Area Commission. Commercial, institutional or industrial uses in IDA must meet the 10% Pollutant Reduction Rule. If you have any questions or need assistance, please contact Lori Allen at (410) 222-7459.

VICINITY MAP
1" = 2000'



WHITEHALL MANOR
LOT 15R
CRITICAL AREA REPORT

INTRODUCTION

Whitehall Manor is a developed community that backs up to Homewood Canal. The lot in question border the canal and the owners constructed a patio, walkway and stone stairway that leads to the water. The purpose of the variance is to obtain after the fact improvements.

VICINITY MAP

Included in this report and shown on the attached plan is a vicinity map designating the location of the subject site. Also included in the report is a portion of the Critical Area Map with the site located.

NARRATIVE

EXISTING CONDITIONS

The property is completely improved at this time with a house, driveway, walkway along Homewood Canal, stair leading down the slope, stone patio and a stone walkway leading to the top of slope.

On the steep slopes leading down to the canal are various trees, including oaks, pines, hickories, black cherries and sweetgum in the 8 – 14" diameter size class. The ground cover is English ivy, which stabilizes the slope. The remainder of the lawn is maintained in grass.

There was no wildlife noted on the day of the fieldwork. Given the density of the development of the neighborhood, it is unlikely wildlife other than bird species would be found on the property.

STORMWATER MANAGEMENT

Stormwater management for the site has been provide by an attenuation device that was designed and install with the construction of the existing dwelling. The Stormwater management requirements for the improvements associated with this variance will be planting at a rate of 1 tree or 3 shrubs for every 100 square feet of impervious area.

IMPACT MINIMIZATION

All the improvement under this variance request have been completed and all areas have been stabilized. The magarity of the work was done on the flat area of the site and cause minimal environmental impacts.

HABITAT PROTECTION AREAS

The Habitat Protection Areas onsite include the shallow water habitat, the 100' buffer to the shoreline, and the buffer to the steep slopes. It would not be possible to access the water without impacting the steep slope its buffer or the 100' buffer.

AFTER CONSTRUCTION CONDITIONS AND SITE CALCULATIONS

The proposed conditions of the site include the construction of a new house utilizing the existing foundation and its associated structures such as a driveway. The site calculations are as follows:

Total site area	15,976 sf
Existing woodland	4,256 sf
Proposed clearing	0 sf
Proposed planting	to be determined
Existing impervious coverage prior to the newly constructed improvements	4,679 sf (171 to be removed)
Allowed impervious coverage	4,992 sf.
Additional impervious coverage after construction.	483 sf

Reforestation for clearing, stormwater management and impervious coverage in the buffer will be addressed with the grading and building permits.

CONCLUSIONS

The lot in question is a legal lot located in an established community. The work has been completed and the site is stabilized.

As constructed, the development of the lot does not have an adverse impact on the plant or wildlife habitat of the Critical Area. In fact, there will be more woodland established with this development, either through planting offsite or by payment into the reforestation fund. The improvements are similar to those enjoyed by others in the neighborhood and will not adversely impact adjacent properties.

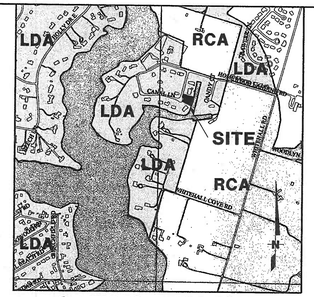
PLANS

A plan showing the site and its improvements is attached to this report.

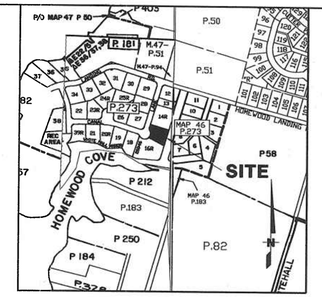
ADDITIONAL INFORMATION

A Notification of Project Application for the Critical Area Commission is included in this package.

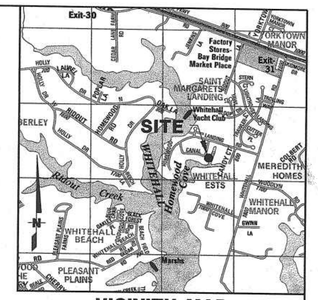
The fieldwork was conducted on June 15, 2009.



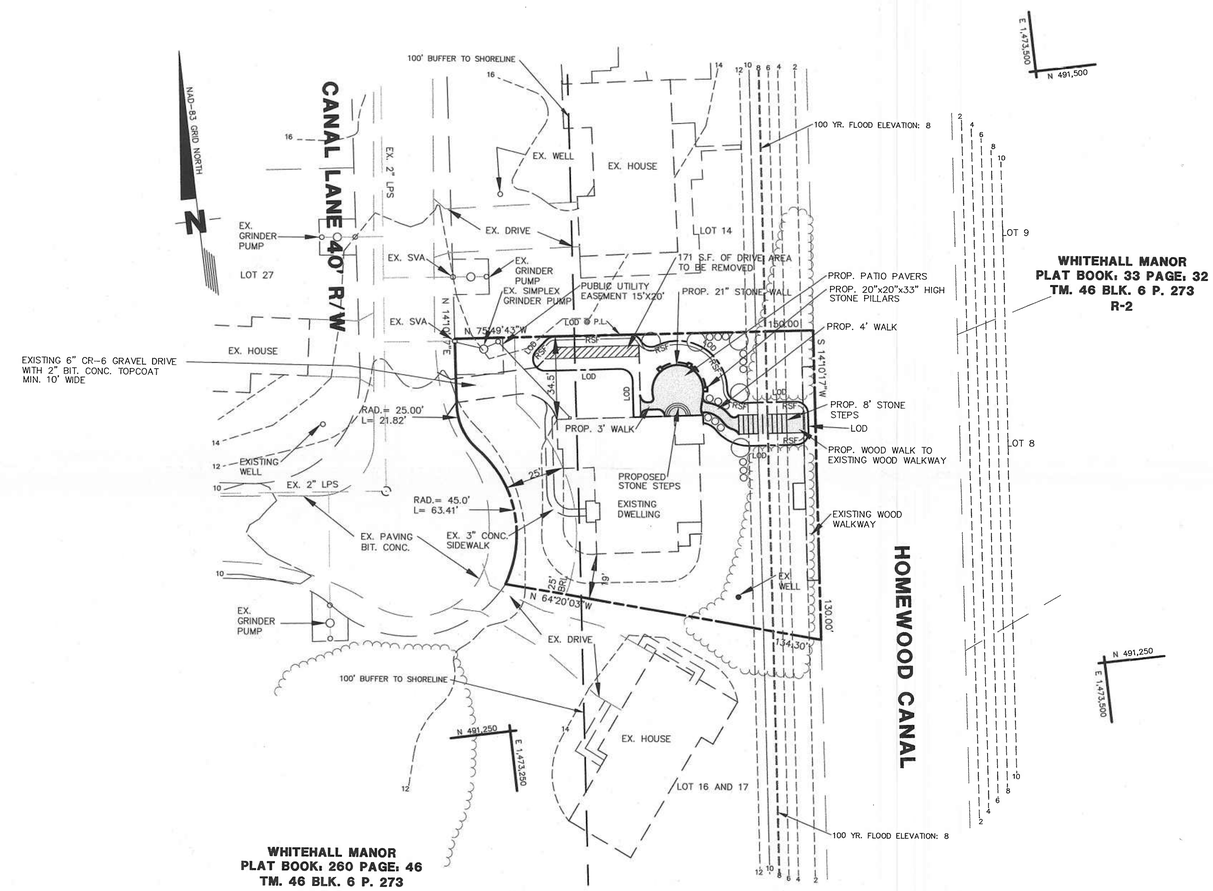
CRITICAL AREA MAP
SCALE: 1" = 1,000'



TAX MAP
SCALE: 1" = 600'



VICINITY MAP
SCALE: 1" = 2,000'
ADC MAP: 21, GRID: J3



WHITEHALL MANOR
PLAT BOOK: 260 PAGE: 46
TM. 46 BLK. 6 P. 273
R-2

WHITEHALL MANOR
PLAT BOOK: 33 PAGE: 32
TM. 46 BLK. 6 P. 273
R-2

SCALE: 1" = 30'

SITE DATA			
PROPERTY ADDRESS:	607 CANAL LANE ANNAPOLIS MD 21409		
OWNER:	MARK E. PRAGER MINDY L. PRAGER 607 CANAL LANE ANNAPOLIS, MD 21409		
DEVELOPER:	MINDY L. PRAGER 607 CANAL LANE ANNAPOLIS, MD 21409		
EXISTING USE: SINGLE FAMILY DWELLING		PROPOSED USE: LANDSCAPING	
EXISTING ZONING: R2	SETBACKS: FRONT: 30', SIDE: 7', REAR: 25'		
TAX MAP: 46	BLOCK: 6	PARCEL: 273	LOT: 15R
ASSESSMENT DISTRICT: 3rd			
TAX ACCOUNT NUMBER: 3-908-24456552			
CRITICAL AREA: LDA			
PREDOMINANT SOIL TYPE: CxB "C" SOILS			
TOTAL SITE AREA:	0.366 ACRES	15,976	SQUARE FEET
EXISTING IMPERVIOUS:	0.107 ACRES	4,976	SQUARE FEET
PROPOSED IMPERVIOUS:	0.0111 ACRES	483	SQUARE FEET
TOTAL DISTURBED AREA:	0.0523 ACRES	2,280	SQUARE FEET
CUT:	42 CUBIC YARDS		
FILL:	42 CUBIC YARDS		
AREA VEGETATIVELY STABILIZED:	0.0413 ACRES	200	SQUARE YARDS
AREA OF MECHANICAL STABILIZATION:	0.0111 ACRES	54	SQUARE YARDS

OWNERS WITHIN 175' OF PROPERTY

FLEER, ROBERT A.
FLEER, ANN M.
613 CANDY CT
ANNAPOLIS, MD 21409
TM: 46 BLK: 6 P: 273
LOT 5 REV PLAT

MEEK, ROBERT B.
GILL, PARABH K.
618 CANDY CT
ANNAPOLIS, MD 21409
TM: 46 BLK: 6 P: 273
PT LOT 6 AND LOT 7

BRUNGART, MARK A.
614 CANDY CT
ANNAPOLIS, MD 21409
TM: 46 BLK: 6 P: 273
LOT 8

CANO, ABEL
CANO, ROSA
610 CANDY CT
ANNAPOLIS, MD 21409
TM: 46 BLK: 6 P: 273
LOT 9 REV PLAT

AUBIN, PAUL R.
AUBIN, JESSA V.
606 CANDY CT
ANNAPOLIS, MD 21409
TM: 46 BLK: 6 P: 273
LOT 10 REV PLAT

STEVANUS, BARBARA M.
601 CANAL LN
ANNAPOLIS, MD 21409
TM: 46 BLK: 6 P: 273
LOT 12 & PART LOT 13

MANDRIN, JAMES J.
C/O MANDRIN CONSTRUCTION CO
8174 RITCHIE HWY
PASADENA, MD 21122
TM: 46 BLK: 6 P: 273
PART LOT 14R

SEIBERT, H. RICHARD
SEIBERT, MARY B.
14108 SAINT PAUL RD
CLEAR SPRING, MD 21722
TM: 46 BLK: 6 P: 273
PART LOT 14R

TOMPKINS, RICHARD F.
609 CANAL LN
ANNAPOLIS, MD 21409
TM: 46 BLK: 6 P: 273
LOT 16R

HEKLER, DONALD L.
613 CANAL LN
ANNAPOLIS, MD 21409
TM: 46 BLK: 6 P: 273
LOT 18

BRADLEY TRUSTEE, PETER F.
BRADLEY TRUSTEE, JESSICA B.
615 CANAL LN
ANNAPOLIS, MD 21409
TM: 46 BLK: 6 P: 273
LOT 19

RONSAVILLE III, EDWIN W.
RONSAVILLE, BIRUTA B.
604 CANAL LN
ANNAPOLIS, MD 21409
TM: 46 BLK: 6 P: 273
LOT 27

BOSLEY JR, CLIFTON B.
BOSLEY, NANCY R.
1657 HOMEWOOD LANDING RD
ANNAPOLIS, MD 21409
TM: 46 BLK: 6 P: 273
LOT 28

DURLING, ALLEN E.
1038 WHITEHALL CV
ANNAPOLIS, MD 21409
TM: 46 BLK: 6 P: 212

LEGEND

- Existing Grade
- Proposed Grade
- Limit of Disturbance
- Reinforced Silt Fence
- Stabilized Construction Entrance
- Temporary Stockpile Area
- Proposed Plantings
- Proposed Impervious

CRITICAL AREA NOTE

CRITICAL AREA CALCULATIONS (LDA)

1) Total site area: 15,976 s.f. or 0.366 AC.
2) Total impervious area allowed: 31.25% of lot or 4,992 S.F.
3) Existing impervious : House: 2,776 S.F. to remain
   Drive: 1,592 S.F. (171 S.F. to be removed)
   Sidewalk: 167 S.F. to remain
   Stone Steps: 144 S.F. to remain (CONSTRUCTED WITHOUT A PERMIT)
   Total: 4,679 S.F. = 0.107 AC. (171 S.F. to be removed)
4) Proposed impervious : Patio: 333 S.F. (CONSTRUCTED WITHOUT A PERMIT)
   Walks: 106 S.F. (CONSTRUCTED WITHOUT A PERMIT)
   Steps: 44 S.F. (CONSTRUCTED WITHOUT A PERMIT)
   Total: 483 S.F. = 0.011 AC. (CONSTRUCTED WITHOUT A PERMIT)
5) Total proposed impervious area: 483 S.F.
6) Total impervious after development: 4,991 S.F.
7) New impervious in the 100' buffer: 483 S.F.
8) Total woods on site: 4,256 S.F.
9) Total woods to be removed: 0 S.F.

VARIANCE NOTE

WE REUEST A VARINACE TO ARTICLE 17-8-402 (2) TO ALLOW IMPERVIOUS AREA TO BE PLACED IN THE BUFFER OR IN FRONT OF THE PRINCIPAL STRUCTURE.

M.A.F. &
ASSOCIATES, LLC
526 HOODS MILL ROAD
WOODBINE MD. 21797
PHONE: 410-552-5541
FAX: 410-552-5546

SHEET 1 of 1

VARIANCE PLAN

WHITEHALL MANOR
LOT 15R
LANDSCAPE IMPROVEMENT

3rd DISTRICT — ANNE ARUNDEL COUNTY, MARYLAND
SCALE: AS SHOWN — JUNE, 2009
TAX MAP 46 — BLOCK 6 — PARCEL 273
G.P. NO.: .
ZONING: R-2 — ZIPCODE: 21409