

- AA 556-07
VAR

Arellano, Brian
0310

SI 829-6337

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



Margaret G. McHale
Chair

Ren Serey
Executive Director

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

1804 West Street, Suite 100, Annapolis, Maryland 21401
(410) 260-3460 Fax: (410) 974-5338
www.dnr.state.md.us/criticalarea/

September 25, 2007

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

Re: Arellano- VAR 310

Dear Ms. Cotter:

This office has received the above-referenced variance request for review and comment. The applicant is seeking a variance to construct a deck with less setbacks than required. We do not oppose the variance request provided that the deck is constructed in a pervious manner, with spacing between the boards, six inches of gravel substrate below the deck and native plantings surrounding the foundation.

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

If you have any questions, please telephone me at (410) 260-3481 or Lisa Hoerger at (410) 260-3478.

Sincerely,

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

Megan J. Sines
Natural Resources Planner

cc: AA 556-07

RECEIVED

OCT 25 2007

CRITICAL AREA COMMISSION

556-07

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 2007-0310-V

BRIAN AND LISA ARELLANO

THIRD ASSESSMENT DISTRICT

DATE HEARD: OCTOBER 23, 2007

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

PLANNER: **LORI RHODES**

DATE FILED OCTOBER ²⁴ 2007

PLEADINGS

Brian and Lisa Arellano, the applicants, seek a variance (2007-0310-V) to permit a deck addition with less buffer than required on property located along the east side of West Shore Road, south of Wise Avenue, Pasadena.

PUBLIC NOTIFICATION

The hearing notice was posted on the County's web page 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' of the property was notified by mail, sent to the address furnished with the application. Ms. Arellano testified that the property was posted for more than 14 days prior to the hearing. I find and conclude that the requirements of public notice have been satisfied.

FINDINGS AND CONCLUSIONS

This case concerns the same property the subject of a decision by this office in Case No. 2002-0037-V, In Re: Landplot Research, Inc. (April 10, 2002). The prior Order conditionally approved Critical Area and zoning variances to permit a dwelling. The applicants purchased the property in 2006. The present request is to construct a rear deck addition (10 by 14 feet with stairs to grade) 79 feet from a tributary stream in the Chesapeake Bay Critical Area buffer as expanded for steep

slopes

Anne Arundel County Code, Article 18, Section 14-104(a) establishes a minimum 100-foot buffer from tributary streams. The buffer expands to include all lands within 50 feet of the top of contiguous steep slopes. Accordingly, the proposal necessitates a buffer of 21 feet and a variance to disturb the expanded buffer.

Lori Rhodes, a planner with the Office of Planning and Zoning, testified that the property is below the minimum area and width for the underlying R-5 residential district, with a tributary stream and steep slopes at the rear. The deck addition is proposed in a comparatively level area within the limits of the disturbance from the construction of the home. The deck is pervious construction and unlikely to alter the character of the neighborhood. There were no adverse agency comments. By way of conclusion, Ms. Rhodes supported the request.

Ms Arellano confirmed the substance of the request. She also indicated that the rear façade of the dwelling includes a sliding door partially over the basement entrance. There was no other testimony in the matter.

Upon review of the facts and circumstance, I find and conclude that the applicants are entitled to relief from the code. For this Critical Area property, the proximity to the stream and the extent of the slopes constitute unique physical conditions, such that a strict implementation of the program would be an unwarranted hardship. A literal interpretation of the Critical Area program will

deprive the applicants of the right to develop the property with a deck addition, a right commonly enjoyed by other properties in similar areas of the Critical Area. Conversely, the variance will not confer any special privilege that the program typically denies. There is no suggestion that the request results from the actions of the applicants; nor does it arise from land use on neighboring property. Finally, with mitigation, the variance will not adversely impact the Critical Area resources and will harmonize with the general spirit and intent of the program.

I further find that the variances constitute the minimum relief. There is nothing to suggest that the granting of the variances will alter the essential character of the neighborhood, substantially impair the appropriate use or development of adjacent property or cause a detriment to the public welfare. The approval is subject to the conditions in the Order.

ORDER

PURSUANT to the application of Brian and Lisa Arellano, petitioning for a variance to permit a deck addition with less 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 24th day of October, 2007,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County that the applicants are hereby **granted** a buffer variance of 21 feet and a variance to disturb the expanded buffer to permit a deck addition in accordance with the site

plan.

The approval is subject to the following conditions:

1. The applicants shall provide mitigation as determined by the Permit Application Center.
2. The deck addition shall remain pervious construction.



Stephen M. LeGendre
Administrative Hearing Officer

NOTICE TO APPLICANT

Within thirty (30) 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 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 they will be discarded.

**ANNE ARUNDEL SOIL CONSERVATION DISTRICT
DETAILS AND SPECIFICATIONS FOR
VEGETATIVE ESTABLISHMENT**

Following initial soil disturbance or disturbance, permanent or temporary stabilization shall be initiated within seven calendar days from the start of all permanent controls, dikes, swales, ditches, gutter slopes, and all slope protection 5 horizontal to 1 vertical (5:1) and drainage ditches for all other disturbed or graded areas on the project site.

1. Permanent Seeding:

A. Soil Tests: Lime and fertilizer will be applied per soil test results for sites greater than 1 acre. Soil tests will be done in compliance with the following: 1. Testing or as recommended by the sediment control inspector. Rates and analysis will be provided to the grading inspector as well as the contractor.

1. Occurrence of acid sulfate soils (grayish black soils) will require covering with a minimum of 12 inches of clean soil with a minimum of 100 lbs of lime per acre. No application of fertilizer is allowed. Fertilizer will be applied to the soil after a 6-week incubation period to allow oxidation of sulfur.

The minimum soil conditions required for permanent vegetative establishment are:

- Soil pH shall be between 6.0 and 7.4.
- Soil shall contain less than 500 ppm per million (ppm).
- The soil shall contain less than 40% clay but enough clay to provide a minimum of 20% water holding capacity to provide the necessary moisture. Adequate soil structure or aeration is to be provided, this means soil shall contain 40% air.
- Soil shall contain 1.5% minimum organic matter by weight.
- Soil shall contain 1.5% minimum available phosphorus by weight.
- If the soil conditions do not meet the above, additional amendments are required in accordance with Section 21 Standards and Specifications for Topsoil or amendments made as recommended by a certified agronomist.

B. Seeded Preparation: Area to be seeded shall be bare and free of a depth of at least 3 inches. The top layer shall be loosened by digging or other acceptable means before seeding occurs. For all areas less than 5 acres, apply 100 pounds of lime per acre and 21 pounds of 10-30-10 fertilizer per 1,000 square feet. For areas greater than 5 acres, apply 100 lbs of lime per acre and 21 lbs of 10-30-10 fertilizer per 1,000 square feet. Fertilizer or lime shall be applied to a depth of at least 3 inches on slopes flatter than 3:1.

C. Seeding: Apply 5-6 pounds per 1,000 square feet of all species between February 1 and April 30 or between August 15 and October 31. Apply seed uniformly in a single row spaced with a precision, multipass seeder or hydroseeder (heavy mulch) and fertilizer, depending on steep slopes only. Maximum seed depth should be 1/4 inch in deep soils and 1/2 inch in sandy soils when using other than hydroseeder. Topsoil where necessary to support adequate growth will be applied as required. If other seed areas are to be used, refer to Table 25 entitled "Permanent Seeding for Low Maintenance Areas" from the current Standards and Specifications for Soil Erosion and Sediment Control. Mixes suitable for this use are 1, 3 and 5-7. Mixes 5-7 are suitable in non-erosive situations.

D. Mulching: Mulch shall be applied to all seeded areas immediately after seeding. During the time period when seeding is not permitted, mulch shall be applied immediately after grading.

Mulch shall be uniform, undisturbed, and shall contain a minimum of 2 lbs per square foot of 100% wood chips (2" hole). If a mulch-anchoring tool is used, apply 2.5 tons per acre. Mulch materials shall be relatively free of all sticks and debris. Mulch shall be applied to a depth of 1-2 inches. Spread mulch uniformly, randomly or by hand, to a depth of 1-2 inches.

E. Seeding After Mulch: Seeded mulch shall be secured immediately following mulch application to minimize movement by wind erosion. The following methods are permitted:

- Use a mulch-anchoring tool which is designed to anchor and anchor mulch into the soil surface to a minimum depth of 2 inches. This tool shall be used to anchor the mulch, however, it shall be used to anchor the mulch to the soil surface. Areas where equipment can operate safely.
- Wood cellulose fiber may be used for anchoring. Apply the fiber in a layer at a dry weight of 250 pounds per 1,000 square feet. Water, use 25 pounds of wood cellulose fiber per 100 gallons of water.

Detail Details and Specifications for Vegetative Establishment Continued:

(iii) Liquid binders may be used. Apply at higher rates at the edges where wind erodes mulch, such as in valleys and on areas of slopes. The remainder of the area shall be applied as recommended by the contractor. Binders listed in the 1994 Standards and Specifications for Soil Erosion and Sediment Control or approved equal shall be applied at rates recommended by the manufacturer.

(iv) Lightweight plastic mulch may be used to secure mulch. The mulch will be applied to the ground according to manufacturer's recommendations.

2. Temporary Seeding:

Liner: 100 pounds of 10-10-10 fertilizer per 1,000 square feet.

Fertilizer: 15 pounds of 10-10-10 per 1,000 square feet.

Seed: Perennial ryegrass - 0.22 pounds per 1,000 square feet (February 1 through April 30 or August 15 through November 31).
Annual ryegrass - 0.22 pounds per 1,000 square feet (May 1 through August 15).
Mixes as 1 D and 31 above.

Mulch: Same as 1 D and 31 above.

3. No fill may be placed on erosion gullies. All fill to be placed in approximately horizontal layers, each layer having a loose blower of the same size. All fill to be placed and packed as to be classified Type 2 as per Anne Arundel County Code - Article 21, Section 2-109, and compacted to 90% density according to be determined by ASTM D-1557-02T (Modified Proctor). Any fill within the building area to be compacted to 90% density according to be determined by previous specifications. This the soil amendments shall be compacted as per MDOT Construction Specifications. All fill shall be compacted sufficiently so as to be stable and prevent erosion and slippage.

4. Permanent Seed:

Justification of seed should follow permanent seeding data. Seeded preparation for seed shall be as noted in section (D) above. Permanent seed to be all species, state approved seed, lime and fertilizer per permanent seeding specifications and highly soluble and prior to being used. Seed is to be not in the container with any other species, mulch. Areas are to be exposed between rows. Water and soil or top soil to be placed positive top contact with the soil. All slopes steeper than 3:1, at steeper, see to.

Detail Details and Specifications for Vegetative Establishment Continued:

be permanently seeded or protected with an approved erosion control covering. Additional watering for establishment may be required, depending on soil moisture content. Seed shall not be transplanted when moisture content (dry or wet) and/or extreme temperature may adversely affect the seed. In the absence of adequate rainfall, irrigation should be provided to ensure establishment of seed.

5. Mining Operations:

Sediment control plans for mining operations must include the following seeding rates and dates:

For seeding dates of:

February 1 through April 30 and August 15 through October 31, use seed mixture of 100% ryegrass at 0.22 pounds per 1,000 square feet and topsoil at the minimum rate of 4.5 pounds per 1,000 square feet.

6. Topsoil shall be applied as per the Standards and Specifications for Topsoil from the current Maryland Standards and Specifications for Soil Erosion and Sediment Control.

NOTE: Use of this information does not provide seeding all of the requirements of the current Maryland Standards and Specifications for Soil Erosion and Sediment Control.

NOTE: Projects within 4 miles of the Annapolis Airport shall be subject to Maryland Federal Regulations.

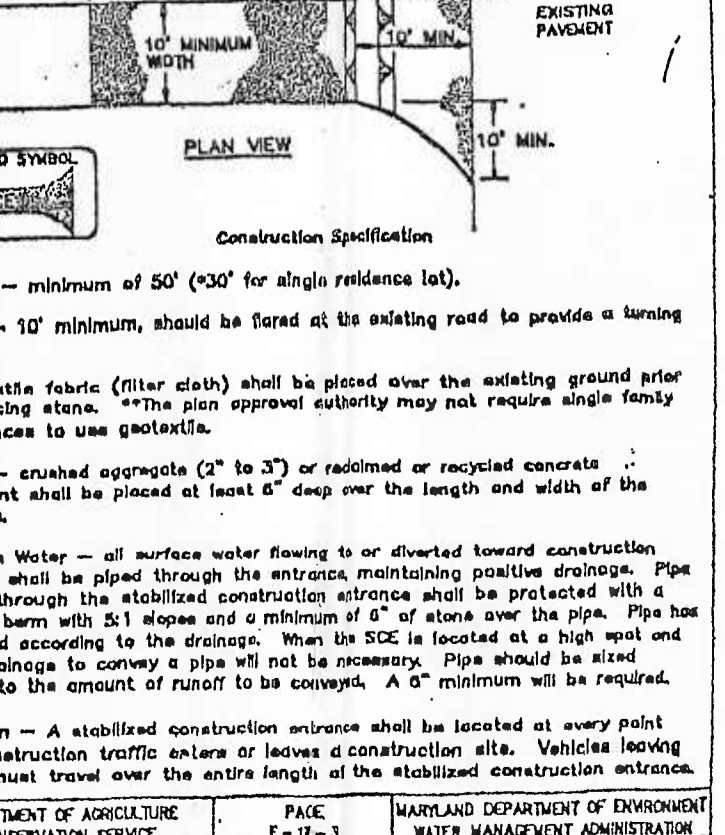
SEQUENCE OF CONSTRUCTION

1. NOTIFY THE ANNE ARUNDEL COUNTY DEPARTMENT OF INSPECTIONS AND PERMITS (410-222-7700) 48 HOURS BEFORE STARTING WORK ON THIS PERMIT. WORK MAY NOT START UNTIL THE PERMITTEE OR THE RESPONSIBLE PERSONNEL HAVE MET ON SITE WITH THE SEDIMENT AND EROSION CONTROL INSPECTOR TO REVIEW THE APPROVED PLANS.
2. STAKE OUT LIMIT OF DISTURBANCE IN THE FIELD. CLEAR JUST ENOUGH AREA TO INSTALL STABILIZED CONSTRUCTION ENTRANCE (SCE) AND SILT FENCE. CONSTRUCT SAID ITEMS.
3. CLEAR ALL REMAINING AREAS WITHIN THE LIMIT OF DISTURBANCE.
4. ROUGH GRADE SITE. BEGIN HOUSE CONSTRUCTION.
5. CONTINUE HOUSE CONSTRUCTION. BRING UNDERGROUND UTILITIES TO HOUSE. CONSTRUCT 6" IN WEST SHORE RD.
6. FINE GRADE SITE. CONSTRUCT WEST SHORE ROAD EXTENSION.
7. COMPLETE HOUSE; PAVE DRIVEWAY AND ROAD EXTENSION.
8. WITH COUNTY INSPECTOR'S APPROVAL REMOVE SEDIMENT CONTROL DEVICES AND STABILIZE DISTURBED AREAS WITH SEED AND MULCH.

SEDIMENT CONTROL - GENERAL NOTES

1. ALL REFERENCES TO THE STANDARDS AND SPECIFICATIONS SHALL MEAN THE 1994 MARYLAND STANDARDS AND SPECIFICATIONS FOR SOIL EROSION AND SEDIMENT CONTROL.
2. NOTIFY THE ANNE ARUNDEL COUNTY DEPARTMENT OF INSPECTIONS AND PERMITS 2 DAYS PRIOR TO STARTING WORK ON THIS PROJECT.
3. ALL DISTURBED AREAS ARE TO BE GRADED TO DRAIN TO THE SEDIMENT CONTROL DEVICES PROVIDED. NO DISTURBED AREAS ARE TO BE ALLOWED TO DRAIN DIRECTLY OFF SITE.
4. THE CONTRACTORS SHALL BE RESPONSIBLE FOR ASSURING THAT THE SEDIMENT CONTROL MEASURES ARE FUNCTIONAL ON A DAY-TO-DAY BASIS.
5. EXCAVATED MATERIAL SHALL BE FILLED BACK IN THE UTILITY TRENCH AT THE END OF ANY WORK DAY AND COMPACTED.
6. DISTURBED AREAS ALONG STORM DRAINS AND OUTFALLS SHALL BE STABILIZED IMMEDIATELY AFTER COMPLETION.
7. THE THREATS OF ALL STORM DRAIN INLETS SHALL BE PROTECTED AND KEPT FREE OF ANY DEPOSITS OF SEDIMENT AS SHOWN ON THE PLANS.
8. ALL SEDIMENT CONTROL FACILITIES ARE TO REMAIN IN PLACE UNTIL PERMISSION FOR REMOVAL HAS BEEN OBTAINED FROM ANNE ARUNDEL COUNTY SEDIMENT CONTROL INSPECTOR.
9. ALL DOWNSPOUTS WILL DISCHARGE ONTO CONCRETE SPLASH BLOCKS OR CASSED TO THE TOP OF FILL SLOPES.
10. ACCESS EXCAVATION WILL BE HAULED TO SITE APPROVED BY ANNE ARUNDEL COUNTY.
11. TOTAL ACRES TO BE VEGETATIVELY STABILIZED: 0.2515 (0.12746).
12. TOTAL ACRES TO BE VEGETATIVELY STABILIZED: 3.91027 (0.12746).
13. DISTURBED AREA: 3.91027 (0.12746).

DETAIL 24 - STABILIZED CONSTRUCTION ENTRANCE

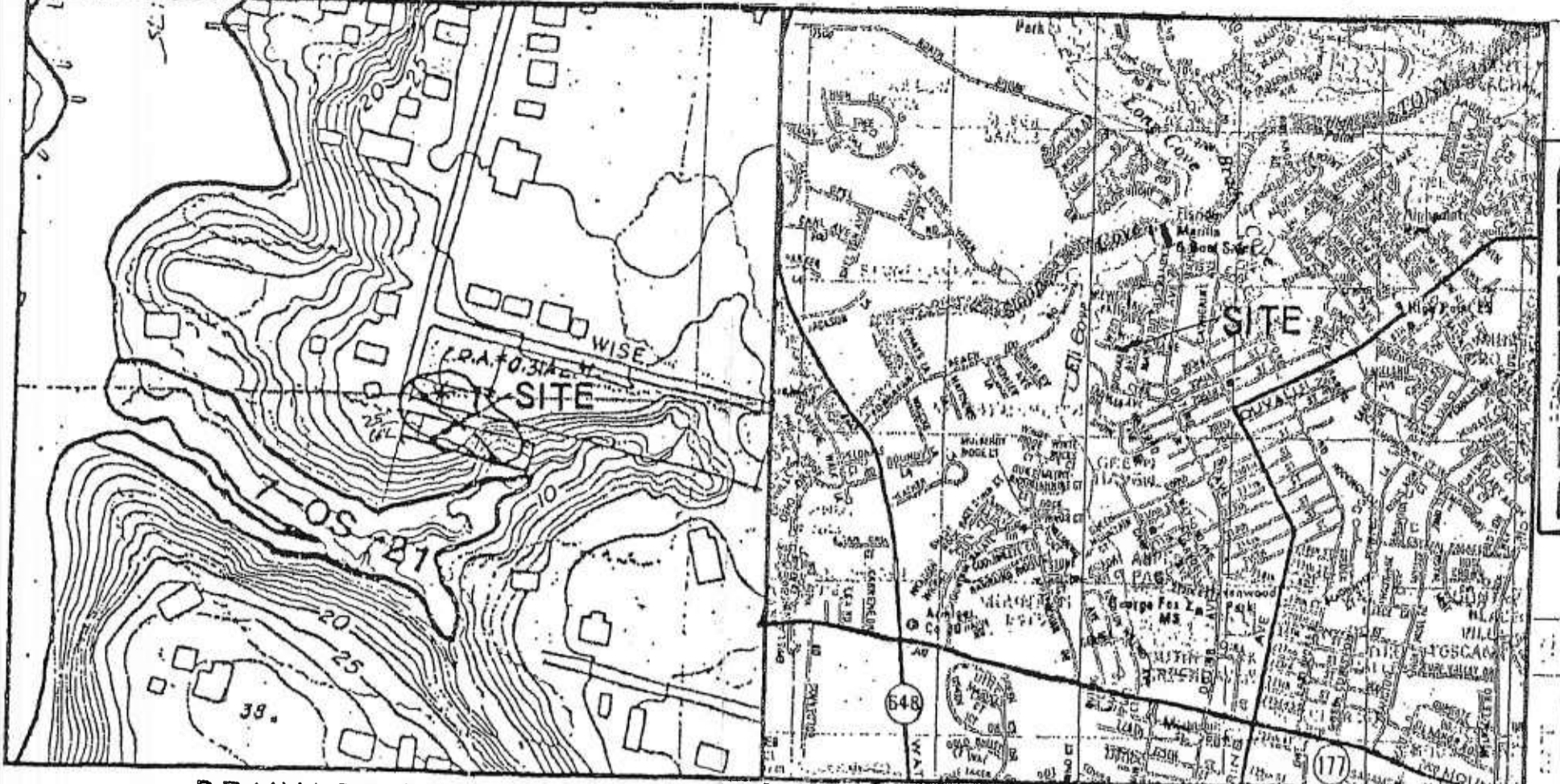


OUTFALL STATEMENT

A site visit was conducted on several different occasions. The property is vacant. The grade is between 5% and 15% with woodland covering the entire site. The woodlands on the east of the property will remain undisturbed. The site drains to a stream on the east side of the site. There are no signs of erosion within or on the perimeter of the site. Stormwater from the proposed disturbed area drains by sheet flow over an existing wooded slope of approximately 15 percent where it discharges into an existing stream. Due to the preservation of the slope in essentially its natural state, and being contained in a proposed Forest Conservation Area, the wooded slope will function as a water quality buffer, therefore, this development will not cause erosion or affect downstream properties.

STORMWATER MANAGEMENT EXEMPTION

(Stormwater Management Bill 53-01)
This development is exempt from the provisions of Stormwater Management Bill 53-01 by virtue of Article 21, Title 3, Subtitle 2, Section 3-202(A)(3); due to less than 5,000 square feet of disturbance planned during residential development. If more than 5,000 square feet is disturbed during development this site will become subject to the requirements of SVM Bill 53-01, including, but not limited to, the submission of a Stormwater Management Plan.



DRAINAGE AREA MAP
SCALE: 1" = 200'
A. A. CO. MAP 17
VICINITY MAP
SCALE: 1" = 2,000'
ADC MAP # 9, GRID: A-6

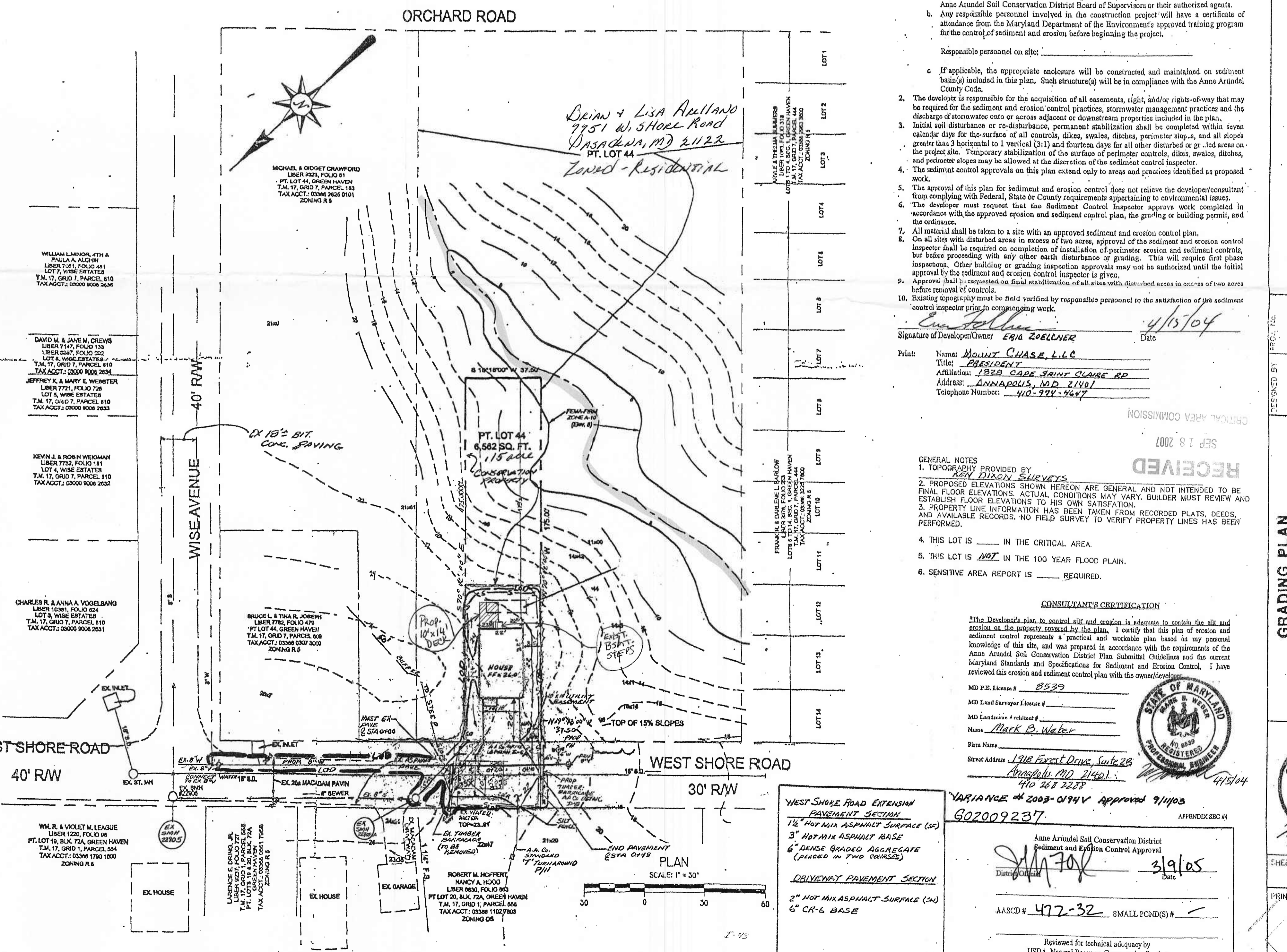
STANDARD RESPONSIBILITY NOTES

I (We) certify that:

1. All development and construction will be done in accordance with this sediment and erosion control plan, and further, authorize the right of entry for periodic on-site evaluation by the Anne Arundel Soil Conservation District Board of Supervisors or their authorized agents.
2. Any responsible personnel involved in the construction project will have a certificate of attendance from the Maryland Department of the Environment's approved training program for the control of sediment and erosion before beginning the project.

Responsible personnel on site:

3. If applicable, the appropriate enclosure will be constructed and maintained on sediment basin(s) included in this plan. Such structure(s) will be in compliance with the Anne Arundel County Code.
4. The developer is responsible for the acquisition of all easements, right, and/or rights-of-way that may be required for the sediment and erosion control practices, stormwater management practices and the discharge of stormwater onto or across adjacent or downstream properties included in the plan.
5. Initial soil disturbance or re-disturbance, permanent stabilization shall be completed within seven calendar days for the surface of all controls, dikes, swales, ditches, perimeter slopes, and all slopes greater than 2 horizontal to 1 vertical (2:1) and fourteen days for all other disturbed or graded areas on the project site. Temporary stabilization of the surface of perimeter controls, dikes, swales, ditches, and perimeter slopes may be allowed at the discretion of the sediment control inspector.
6. The sediment control approvals on this plan extend only to areas and practices identified as proposed work.
7. The approval of this plan for sediment and erosion control does not relieve the developer/contractor from complying with Federal, State or County requirements pertaining to environmental issues.
8. The developer must request that the Sediment Control Inspector approve work completed in accordance with the approved erosion and sediment control plan, the grading or building permit, and the ordinance.
9. All material shall be taken to a site with an approved sediment and erosion control plan.
10. On all sites with disturbed areas in excess of two acres, approval of the sediment and erosion control inspector shall be required on completion of installation of perimeter erosion and sediment controls, but before proceeding with any other earth disturbance or grading. This will require first phase inspections. Other building or grading inspection approvals may not be authorized until the final approval by the sediment and erosion control inspector is given.
11. Approvals shall be provided on final stabilization of all sites with disturbed areas in excess of two acres before removal of controls.
12. Existing topography must be field verified by responsible personnel to the satisfaction of the sediment control inspector prior to commencing work.



RECEIVED
SEP 18 2007
CRITICAL AREA COMMISSION
Chesapeake Bay

GRADING PLAN
PT. LOT 44, SECT. 85,
GREEN HAVEN
West Shore Road, Pasadena,
ANNE ARUNDEL COUNTY, MARYLAND 21122
TAX MAP: 17 GRID: 7 PARCEL: 444
TAX ACCT: 0336 1102703
TAX DISTRICT: 03 SUBDIV: 3584 TAX ACCT. NO: 80102357

DESIGNED BY: [Signature]
CHECKED BY: [Signature]
FILE NAME: [Signature]
SCALE: 1" = 20'
DATE: FEB. 2004

RECEIVED
SEP 18 2007
CRITICAL AREA COMMISSION

GENERAL NOTES

1. TOPOGRAPHY PROVIDED BY [Signature]
2. PROPOSED ELEVATIONS SHOWN HEREON ARE GENERAL AND NOT INTENDED TO BE FINAL FLOOR ELEVATIONS. ACTUAL CONDITIONS MAY VARY. BUILDER MUST REVIEW AND ESTABLISH FINAL FLOOR ELEVATIONS TO HIS OWN SATISFACTION.
3. PROPERTY LINE INFORMATION HAS BEEN TAKEN FROM RECORD PLATS, DEEDS, AND AVAILABLE RECORDS. NO FIELD SURVEY TO VERIFY PROPERTY LINES HAS BEEN PERFORMED.
4. THIS LOT IS [] IN THE CRITICAL AREA.
5. THIS LOT IS [] IN THE 100 YEAR FLOOD PLAIN.
6. SENSITIVE AREA REPORT IS [] REQUIRED.

CONSULTANT'S CERTIFICATION

The Developer's plan to control soil and erosion is intended to contain the fill and erosion on the property covered by this plan. I certify that this plan of erosion and sediment control represents a practical and workable plan based on my personal knowledge of this site, and was prepared in accordance with the requirements of the Anne Arundel Soil Conservation District Submittal Guidelines and the current Maryland Standards and Specifications for Sediment and Erosion Control. I have reviewed this erosion and sediment control plan with the owner/developer.

MD P.E. License # 8539
MD Land Surveyor License # []
MD Landscape Architect # []
Name: Mark B. Weber
Firm Name: []
Street Address: 1318 Forest Drive, Suite 2B
Annapolis, MD 21401
410 268 7228

Signature: [Signature] Date: 4/15/04

Signature of Developer/Owner: ERIC ZOELLNER Date: 4/15/04

Print: Name: MOUNT CHASE, L.L.C.
Title: []
Affiliation: 1328 CODE SAINT CLAUDE RD
Address: ANNAPOLIS, MD 21401
Telephone Number: 410-274-2477

APPENDIX BRC #4
VARIANCE # 2003-0794V Approved 9/14/03
602009237

Reviewed for technical adequacy by
USDA, Natural Resource Conservation Service