

AA 685-07
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Pleasant, Randy
0394

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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/

February 24, 2009

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

Re: 2009-0018-V – Pleasant, Randy

Dear Ms. Cotter:

Thank you for providing information on the above referenced variance. The applicant is requesting a variance to allow a dwelling addition (porch and garage) with less setbacks and Buffer than required. This lot was the subject of a previous Order with conditions which we understand to be null and void in light of this new variance request. This lot is 16,973 square feet and is located in the Intensely Developed Area (IDA). This lot is entirely encumbered by the 100-foot Buffer. The applicant is proposing to construct a garage and porch no further waterward than the existing dwelling.

Based on the information submitted, we do not oppose this variance request. It appears that the applicant is proposing a bioretention planting area waterward of the existing dwelling. In addition, the applicant proposes to pay into fee in lieu of for the two trees proposed to be cut for the associated improvements to the dwelling. As necessary, the County may require additional mitigation.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Julie Roberts", written over a horizontal line.

Julie Roberts
Natural Resource Planner
cc: AA 685-07

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



Margaret G. McHale
Chair

Ren Serey
Executive Director

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December 31, 2007

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

Re: Pleasant Variance
2007-0394-V

Dear Ms. Schappert:

Thank you for sending the above-referenced variance request for review and comment. The applicant is requesting a variance to allow a dwelling unit with less setbacks and Buffer than allowed. The property is 16,973 square feet in size and is located in an Intensely Developed Area (IDA). The property is currently developed with a single-family house, walkways, sheds, stockpile, driveway, and pier. The applicant requests to raze the existing house and driveway and construct a new single-family house, driveway, and pervious deck. Total impervious surface on this site is currently 2,700 square feet (15.9%); if the variance is granted, impervious surface will increase to 3,872 square feet (22.8%).

In general, this office generally does not oppose the modest additions and renovations requested for an existing dwelling on a grandfathered lot; however, in this instance, the applicant's request to allow a dwelling unit with less setbacks and Buffer is in direct conflict with Anne Arundel County's Zoning Code provisions regarding new structures in the 100-foot Buffer. Anne Arundel County Code §17-8-702(b)(1) states that "no new impervious shall be placed nearer to the shoreline than the existing principal structure and landscape or retaining walls, pergolas, patios, and swimming pools may not be considered as part of the principal structure." The proposed house and deck are both located closer to Mean High Water (MHW) than the existing dwelling unit. Therefore, we recommend that the applicant reduce the size and location of the proposed house so that it does not encroach closer to the shoreline than the existing home and that no new development be permitted closer to MHW than the existing dwelling footprint. In addition, we recommend that the proposed pervious deck be removed from the site plan and, in an effort to minimize the impacts of development activities on wetlands and shorelines, recommend that the applicant removes the existing sheds that are located within 100 feet of tidal wetlands. Mitigation for any clearing or disturbance within the Buffer for this project must be performed at a 2:1 ratio.

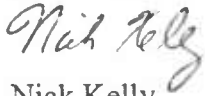
TTY for the Deaf

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



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

Sincerely,

A handwritten signature in cursive script that reads "Nick Kelly".

Nick Kelly
Natural Resource Planner
cc: AA 685-07

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 2009-0018-V

RANDY PLEASANT

FIFTH ASSESSMENT DISTRICT

DATE HEARD: MARCH 17, 2009

ORDERED BY:

DOUGLAS CLARK HOLLMANN
ADMINISTRATIVE HEARING OFFICER

PLANNER: LORI RHODES



DATE FILED: APRIL 1, 2009

PLEADINGS

Randy Pleasant, the applicant, seeks a variance (2009-0018-V) to allow a dwelling addition (garage, porch and steps) with less setbacks and buffer than required on property located along the north side of Magothy Road, southeast of Cypress Road, Severna Park.

PUBLIC NOTIFICATION

The hearing notice was posted on the County's web site in accordance with the County Code. The file contains the certification of mailing to community associations and interested persons. Each person designated in the application as owning land that is located within 175 feet of the property was notified by mail, sent to the address furnished with the application. Mr. Pleasant 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

A hearing was held on March 17, 2009, in which the witnesses were sworn and the following was presented with regard to the proposed variances requested by the applicant.

The Applicant And The Property

The subject property is a single-family residence with a street address of 330 Magothy Road, in the Manhattan Beach subdivision, Severna Park (the

Property). The property comprises 16,973 square feet and is zoned R2-residential district with Chesapeake Bay Critical Area designations as intensely developed area (IDA) and resource conservation area (RCA). This waterfront lot on the Magothy River is mapped as a buffer modification area. There is an area of tidal wetlands inside the shoreline. Both the shoreline and tidal wetlands features continue along the eastern side of the property.

The Proposed Work

The applicant proposes to construct a 13' by 30' garage addition and a new 9' by 9' porch area and steps. The proposed garage will be 65 feet from tidal wetlands and the porch area and steps will be 54 feet from tidal wetlands.

The Anne Arundel County Code

Anne Arundel County Code, Article 18, § 18-13-104 requires that there shall be a minimum 100-foot buffer landward from the mean high-water line of tidal waters, tributary streams, and tidal wetlands.

§ 17-8-301(b) prohibits new structures in the 100-foot buffer, except for water dependent uses or shore erosion protection measures. The evidence shows that the proposed accessory structures will be located in the 100-foot buffer.

§ 17-8-501 provides that the 100-foot buffer is a habitat protection area. § 17-8-502 provides that a habitat protection area shall be preserved and protected. The evidence shows that the proposed accessory structures will be located in a habitat protection area.

As the Property is classified IDA, no variances from the lot coverage requirements of the Code are required.

The Variances Requested

The proposed work by the applicant will require variances to the above provisions of the Anne Arundel County Code, specifically:

1. Critical area variances of different distances to the buffer requirements of § 18-13-104 for the various proposed improvements because the work will be located in the buffer.
2. A critical area variance to § 17-8-301(b) because the work will create new structures in the 100-foot buffer.
3. A critical area variance to § 17-8-502 because the proposed work will be located in a habitat protection area.

The Evidence Submitted At The Hearing

Lori Rhodes, a planner with the Office of Planning and Zoning, testified that a significant portion of the site is tidal wetlands with the balance as buffer to tidal wetlands. The Property is irregularly shaped and is below the minimum lot width and area for a lot in the R2 zone. She summarized the agency comments. The County's Development Division recommended relocating the stockpile away from the buffer, and maximizing the distance between the shoreline and the proposed stormwater management device. The Chesapeake Bay Critical Area Commission did not oppose the application but had concerns about the placement of the bio-retention device as shown on the site plans for the Property and the

mitigation that will be required. The Department of Health had no comment as the Property is served by public water and sewer.

The applicant obtained variances from this Office in Case No. 2007-0394-V to rebuild the existing dwelling but decided not to go forward with those plans. Instead, the applicant has filed this application to modify the existing dwelling with a porch and steps and add a detached garage as shown on County Exhibit 13.

Because the Property does not meet the minimum size requirements for a lot in the R2 Residential District because of its reduced size and width, reasonable improvements to the dwelling cannot be accomplished without obtaining a variance. Ms. Rhodes testified that her Office believes that the requested improvements are modest and in keeping with the character of the neighborhood. There are no objections from neighboring property owners or other agencies. Ms. Rhodes testified that the variance was acceptable to her Office, and would not alter the essential character of the neighborhood if proper stormwater management steps are implemented onsite. However, the stockpile area should be relocated away from the shoreline, the distance between the proposed stormwater device and the wetlands should be maximized, and mitigation plantings be placed shoreward of the dwelling. She also testified that the granting of the critical area variances requested will not adversely affect water quality or adversely impact fish, wildlife or plant habitat within the County's critical area or a bog protection area and will be in harmony with the general spirit and intent of the County's critical area program.

Randy Pleasant and his engineer, Richard Sellars, testified in support of the application, and explained the reasons for the placement of the proposed improvements. The location of wetlands severely restricts the Property. The garage has been placed on the side of the Property away from the water, and located outside the setbacks required. The proposed porch will occupy an open corner of the existing dwelling and will not need any setback variances as well.

Concerns about the handling of runoff from the dwelling and garage were raised by the County and by Mr. Randy Bruns who testified for the Magothy River Association. Specifically, it appears that the bio-retention device may not be sufficient to handle the runoff from the improvements on the Property, in particular, the runoff from the garage. These concerns are better addressed during the permitting stage and will be left to the technicians who can better determine what is feasible and what is needed to address this problem.

The shed shown on the site plan (admitted as County Exhibit 13, which exhibit was used in the earlier hearing and was recycled for this hearing) has been removed. The trees on the waterside of the Property will be retained. The applicant and his engineer were receptive to measures that would improve the control of runoff from the proposed work.

There was no other testimony taken or exhibits received in the matter.

DECISION

Upon review of the facts and circumstances, I find and conclude that the applicant is entitled to conditional relief from the Code.¹

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 said the following:

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

¹ Because the two proposed accessory structures are both located in the same area of the Property, the discussion that follows applies to both of them.

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.

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].”² Furthermore, the applicant carries the burden of convincing the Hearing Officer “that the applicant has satisfied each one of the variance provisions.”³ (Emphasis added.) “*Anne Arundel County's local critical area variance program contains 12 separate criteria. ...Each of these individual criteria must be met. If the applicant fails to meet just one of these 12 criteria, the variance is required to be denied. Becker v. Anne Arundel County, supra, 174 Md.App. at 124; 920 A.2d at 1124.* (Emphasis in original.)

² § 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.*

³ § 8-1808(d)(4)(ii).

Critical Area Variances

Variance to the 100-Foot Buffer Requirements

§ 18-13-104 requires that there shall be a minimum 100-foot buffer landward from the mean high-water line of tidal waters, tributary streams, and tidal wetlands. The 100-foot buffer is expanded beyond 100 feet to include contiguous sensitive areas, such as slopes of 15% or greater, and hydric soils and highly erodible soils whose development may impact streams, wetlands, or other aquatic environments. If there are contiguous slopes of 15% or greater, the buffer is expanded by the greater of 4 feet for every 1% of slope or to the top of the slope, and shall include all land within 50 feet of the top of the slopes.

The evidence shows that the area to be disturbed by the proposed work lies entirely within the buffer. Therefore, the proposed work requires variances of different distances to the buffer requirements of § 18-13-104.

In addition, a critical area variance to § 17-8-301(b) is required because there will be new structures in the 100-foot buffer.

Variance To Allow New Structures In Buffer

§ 17-8-301(b) prohibits new structures in the 100-foot buffer, except for water dependent uses or shore erosion protection measures. The evidence shows that the garage, porch and steps will be located in the 100-foot buffer. Therefore, the proposed work requires a variance to § 17-8-301(b).

Variance To The Habitat Protection Area Limitations

§ 17-8-501 provides that the 100-foot buffer is a habitat protection area. § 17-8-502 provides that a habitat protection area shall be preserved and protected. The evidence shows that the garage, porch and steps will be located in a habitat protection area. Therefore, the proposed work requires a variance to § 17-8-502.

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:⁴ 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 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

⁴ Subsection (b)(6) is not set forth below because it concerns variances to develop property with bogs. There is no evidence that bogs are present on the Property. Therefore, this criteria is not relevant to the application being considered.

the critical area program within the critical area of the County. Subsection (b)(2).⁵

- (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).⁶
- (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 or bog protection program. Subsection (b)(5).

⁵ The remainder of Subsection (b)(2) is not set forth as it relates to bogs.

⁶ The remainder of Subsection (b)(3) is not set forth as it relates to bogs.

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

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, substantially impair the appropriate use or development of adjacent property, reduce forest cover in the limited development and resource conservation areas of the critical area, be contrary to acceptable clearing and replanting practices required for development in the critical area, or be detrimental to the public welfare.

Findings - Critical Area Variances

I find, based upon the evidence, that the applicant is entitled to conditional relief from the Code:

The evidence shows that, because of the unique physical constraints of the Property, i.e., the narrowness of the Property and the proximity of wetlands and tidal waters, some relief from the Code is necessary to allow this grandfathered lot to be developed. To deny this variance would result in an unwarranted hardship and deprive the applicant of rights commonly enjoyed by other properties in

⁷ Subsection (b)(6) refers to bogs, which are not present on the Property, and is not a factor in this application. Therefore, it is not repeated here. Subsection (b)(7) thereby becomes the 6th factor to be considered in deciding whether to grant or deny a variance to perform work in the critical area.

similar areas as permitted in accordance with the provisions of the critical area program within the critical area of the County. Subsection (b)(1) and (2).

Furthermore, the granting of the critical area variances requested will not confer on the 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. There was testimony that the proposed improvements are comparable to similar additions to other dwellings in the neighborhood.

Subsection (b)(3).

I find that the critical area variances requested are not based on conditions or circumstances that are the result of actions by the applicant, including the commencement of development before an application for a variance was filed, and does not arise from any condition relating to land or building use on any neighboring property. Subsection (b)(4).

The granting of the critical area variances requested will not adversely affect water quality or adversely impact fish, wildlife or plant habitat within the County's critical area or a bog protection area and will be in harmony with the general spirit and intent of the County's critical area program. The proposed work will be offset by the mitigation that the applicant will undertake. Subsection (b)(5).

Furthermore, I find that the applicant, by competent and substantial evidence, has overcome the presumption contained in the Natural Resources Article, § 8-1808(d)(2), of the State Code [which is incorporated into § 18-16-305

subsection (b)(2)] because I find that the applicant would be denied reasonable and significant use of the entire parcel or lot for which the critical area variances are requested if the proposed work was not allowed. However, a strict interpretation of subsection (b)(7) would result in an unwarranted hardship to the applicant that would deprive him of rights commonly enjoyed by other properties in similar areas as permitted in accordance with the provisions of the critical area program within the critical area of the County, i.e., to improve their existing dwelling with a porch and detached garage. This result is buttressed by the minimal disturbance that will occur to the buffer if the work is performed, and the fact that the subdivision was platted before the critical area was passed. This conclusion is supported by the location of the proposed garage on the side of the Property that is farthest from critical area assets, and the small size of the proposed porch and steps.

I further find that the critical area variances represent the minimum relief. There was nothing to suggest that the granting of the critical area variances would alter the essential character of the neighborhood, substantially impair the appropriate use or development of adjacent property, reduce forest cover in the limited development and resource conservation areas of the critical area, or cause a detriment to the public welfare. Other properties in the area have garages and porches.

Accordingly, for the above reasons, I will grant critical area variances to § 18-13-104 (100-foot buffer requirement), to § 17-8-301(b) (prohibition against

new structures in the 100-foot buffer), and to § 17-8-502 (prohibition against disturbance in a habitat protection area) for the garage, and porch and steps as shown on County Exhibit 13.

ORDER

PURSUANT to the application of Randy Pleasant, petitioning for variances to allow a dwelling addition (garage, porch and steps) 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 **1st day of April, 2009**,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicant is **granted** the following variances:


1. A critical area variance of thirty-five (35) feet to § 18-13-104 (100-foot buffer requirement), to § 17-8-301(b) (prohibition against new structures in the 100-foot buffer), and to § 17-8-502 (prohibition against disturbance in a habitat protection area), for the garage as shown on County Exhibit 13.
2. A critical area variance of forty-six (46) feet to § 18-13-104 (100-foot buffer requirement), to § 17-8-301(b) (prohibition against new structures in the 100-foot buffer), and to § 17-8-502 (prohibition against disturbance in a habitat protection area), for the porch and steps as shown on County Exhibit 13.

Furthermore, County Exhibit 13, referenced in this decision, is incorporated herein as if fully set forth and made a part of this Order. The

proposed improvements shown on County Exhibit 13 shall be constructed on the Property in the locations shown therein.

The foregoing variances are subject to the condition that the applicant shall comply with any instructions and necessary approvals from the Permit Application Center, the Department of Health, and/or the Critical Area Commission. Notwithstanding any instructions from these agencies, the applicant shall relocate the stockpile away from the buffer and maximize the distance between the shoreline and the proposed stormwater management device.

No further expansion of the dwelling or any accessory structures is allowed.



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.**

Further Section 18-16-405(a) provides that a variance expires by operation of law unless the applicant obtains a building permit within 18 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.

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 2007-0394-V

RANDY PLEASANT

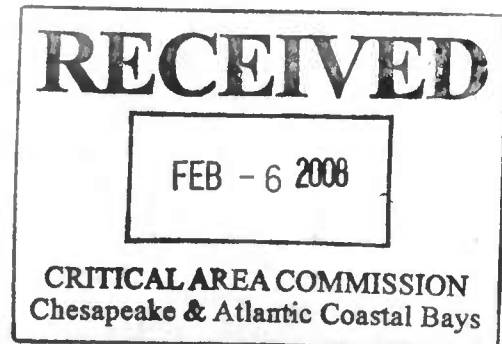
THIRD ASSESSMENT DISTRICT

DATE HEARD: JANUARY 15, 2008

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

PLANNER: **ROBERT KONOWAL**

DATE FILED: FEBRUARY 5^{HL}, 2008



PLEADINGS

Randy Pleasant, the applicant, seeks a variance (2007-0394-V) to permit a dwelling with less buffer than required on property located along the north side of Magothy Road, southeast of Cypress Road, Severna Park.

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. Patrick Pyles, the applicant's contractor, 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 330 Magothy Road, in the Manhattan Beach subdivision, Severna Park. The property comprises 24,959 square feet and is split zoned R2-residential and OS-open space districts with Chesapeake Bay Critical Area designations as Intensely Developed Area (IDA) and Resource Conservation Area (RCA). This waterfront lot on the Magothy River is mapped as a buffer modification area. There is an area of tidal

wetlands inside the shoreline. Both the shoreline and tidal wetlands features continue along the eastern side of the property. The applicant seeks to raze the existing dwelling (28 by 52 feet) followed by the construction of a new dwelling (42 by 77 feet) with waterside deck addition.¹ The replacement dwelling is located as close as 35 feet from tidal wetlands in the east side yard.

Anne Arundel County Code, Article 18, Section 18-13-104(a) requires a minimum 100-foot buffer from tidal wetlands. Accordingly, the proposal requires a variance of 65 feet to the tidal wetlands buffer.

Robert Konowal, a planner with the Office of Planning and Zoning, testified that a significant portion of the site is tidal wetlands with the balance as buffer to tidal wetlands. He conceded the need for a variance to the tidal wetlands buffer but questioned the extent of the relief. He recommended a smaller dwelling (30 by 42 feet) and deck with the new construction at the minimum (7 feet) west side lot line. He summarized the agency comments. The County's Development Division recommended relocating the stockpile from the shoreline and on-site plantings to the extent practicable. The Chesapeake Bay Critical Area Commission recommended that the new dwelling be located no closer to the shoreline than the existing dwelling. By way of ultimate conclusion, Mr. Konowal

¹ The applicant originally requested a deck measuring 12 by 42 feet. At the hearing, he agreed to reduce the long dimension to 16 feet.

opposed the application as filed but offered support for a modified variance for a smaller dwelling to be located 47 feet from tidal wetlands.²

Richard Sellars, the applicant's engineering consultant, testified that the area of disturbance is located in the LDA, which does not restrict the amount of impervious coverage. Although the deck addition is closer to mean high water than the existing dwelling, the deck addition is pervious construction. Finally, there is no objection to relocating the stockpile and removing the existing shed near the wetland.

Kim Pleasant submitted a series of photographs of dwellings along Magothy Road and in the neighborhood, some in the buffer and presumed approved by variance. The existing and new dwelling both include basement, main living level and upper level. The new dwelling includes a street-side garage addition. Mr. Pleasant testified that freestanding garages are common in the neighborhood. Although the new dwelling is wider than the existing dwelling, the expansion is towards the west side lot line rather than the east side wetlands. He believes that the request is consistent with the character of the neighborhood.

John and William Venizelos, who reside on the adjacent property to the west, support the redevelopment of the property but opposed the expansion

² Mr. Konowal also suggested reducing the limits of disturbance to tidal wetlands to no more than 10 feet and the incorporation of the east side stairs into the structure.

towards the west side lot line, or forward, which would impair their view to water.³

I visited the site and the neighborhood. This is the last property on a short, dead-end block. The existing dwelling is centered in a level area accessed across a graveled drive. The topography slopes down to the prominent feature of tidal wetlands in the east side yard and extending to the River. There are two sheds, both near tidal wetlands. The yard area includes a few mature trees. The Venizelos dwelling is 10 to 12 feet from a fence along the common lot line. The Venizelos dwelling is two-stories with a two-level waterside deck addition and porches built into the east side façade. There is also a driveway in the east side yard extending down to the water. There is no garage, but there is surface parking behind the dwelling and an older cottage near the common lot line closer to the road. This is an older community with a number of nonconforming structures, including accessory structures on the street side.

The standards for granting variances are contained in Section 18-16-305. 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

³ John Venizelos also suggested that the site plan does not reflect a triangular area between the two properties. And finally, William Venizelos testified that the applicant has already disturbed the tidal wetlands. In response, Ms. Pleasant testified that the triangular area was divided between the two properties prior to 1928. Mr. Pleasant testified that the only disturbance to the wetlands has been the authorized removal of phragmites.

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.

Upon review of the facts and circumstances, I have determined that the applicants are entitled to modified, conditional relief from the code. This property satisfies the test of unique physical conditions, consisting of the extent of the wetlands and buffer, such that a strict application of the program would result in an unwarranted hardship. Under a literal application of the program, the applicant would be denied the right to redevelop the property with a dwelling, a right commonly enjoyed elsewhere in the Critical Area; conversely, the granting of relief is not a special privilege that the program typically denies. There is no indication that the need for relief results from the actions of the applicant. Nor

will a conditional, modified variance adversely impact Critical Area assets.

As is often the case, the more difficult aspect of the case is to ascertain the minimum relief. For this application, there are several choices: the applicants' proposal; Mr. Konowal's suggestion of a much smaller house at the minimum west side lot line; the Commission's suggestion of no new development closer to mean high water; and the Venizelos' suggestion of no new development closer to the west side lot line or mean high water. Weighing the choices, I find and conclude that the minimum relief is a dwelling measuring 36 by 52 feet with a pervious waterside deck addition measuring 12 by 16 feet. The replacement dwelling shall be located no closer than 38 feet from tidal wetlands and no closer than 10 feet from the west side lot line. In addition, the deck addition shall be no closer to mean high water than the front façade of the existing dwelling. I also find that the grant of the modified, conditional relief 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 modified approval is subject to the conditions in the Order.


ORDER

PURSUANT to the application of Randy Pleasant, petitioning for a variance to permit a dwelling 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 5th day of February 2008,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicant is **granted a modified** buffer variance of 62 feet to permit a dwelling measuring 36 by 52 feet with pervious waterside deck addition measuring 12 by 16 feet. The approval is subject to the following conditions:

1. The waterside deck addition shall be no closer to mean high water than the front façade of the existing dwelling.
2. The west side yard shall be no less than 10 feet wide.
3. The stockpile shall be relocated from the shoreline as directed by the Permit Application Center and the applicant shall provide mitigation plantings as determined by the Permit Application Center.
4. The storage sheds shall be removed from the premises.


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 they will be discarded.

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

Following initial soil disturbances or disturbance, permanent or temporary stabilization shall be completed within seven calendar days for the surface of all perimeter controls, ditches, swales, protection slopes, and all slopes greater than 3 horizontal to 1 vertical (3:1) and fourteen days 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 5 acres. Soil tests will be done at completion of initial rough grading or as recommended by the sediment control engineer. Rates and analyses will be provided to the grading inspector as well as the contractor.

B. Occurrence of acid sulfate soils (grayish black color) will require covering with a minimum of 12 inches of clean soil with 6 inches minimum capping of top soil. No stockpiling of material is allowed. If exposed, soil tests should be done before and after a 6-week incubation period to allow oxidation of sulfides.

The minimum soil conditions required for permanent vegetative establishment are:

- a. Soil pH shall be between 6.0 and 7.0.
- b. Soluble salts shall be less than 500 parts per million (ppm).
- c. The soil shall contain less than 40% clay but enough fine grained material (> 30% silt plus clay) to provide the capacity to hold a moderate amount of moisture. An exception is low organic or service landscapes to be planted, then a sandy (< 30% silt plus clay) would be acceptable.
- d. Soil shall contain 1.5% minimum organic matter by weight.
- e. Soil must contain sufficient pore space to permit adequate root penetration.

C. Seeding: Areas to be seeded shall be loose and friable to a depth of at least 3 inches. The top layer shall be loosened by raking, disking or other acceptable means before seeding occurs. For sites less than 5 acres, apply 100 pounds of dolomitic limestone and 21 pounds of 10-10-10 fertilizer per 1,000 square feet. Harrow or disk lime and fertilizer into the soil to a depth of at least 3 inches on slopes flatter than 3:1.

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

Mulch shall be unchopped, unchipped, small grain straw applied at a rate of 2 tons per acre or 90 pounds per 1,000 square feet (2 bales). If a mulch-anchoring tool is used, apply 2.5 tons per acre. Mulch materials shall be relatively free of all kinds of weeds and shall be completely free of prohibited noxious weeds. Spread mulch uniformly, mechanically or by hand, to a depth of 1-2 inches.

E. Seeding Straw Mulch: Straw mulch shall be secured immediately following mulch application to minimize movement by wind or water. The following methods are permitted:

- (i) Use a mulch-anchoring tool which is designed to punch and anchor mulch into the soil surface to a minimum depth of 2 inches. This is the most effective method for securing mulch, however, it is limited to relatively flat areas where equipment can operate safely.
- (ii) Wood cellulose fiber may be used for anchoring straw. Apply the fiber binder at a net dry weight of 750 pounds per acre. If mixed with water, use 50 pounds of wood cellulose fiber per 100 gallons of water.
- (iii) Liquid binders may be used. Apply a higher rate at the edges where wind catches mulch, such as in valleys and on crests of slopes. The remainder of the area should appear uniform after binder application. 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 netting may be used to secure mulch. The netting will be stapled to the ground according to manufacturer's recommendations.

2. Temporary Seeding:

- Lime:** 100 pounds of dolomitic limestone per 1,000 square feet.
- Fertilizer:** 15 pounds of 10-10-10 per 1,000 square feet.
- Seed:** Perennial ryegrass - 0.92 pounds per 1,000 square feet (February 1 through April 30 or August 15 through November 1).
Mixture - 0.92 pounds per 1,000 square feet (May 1 through August 15).
- Mulch:** Same as 1 D and E above.

3. No fills may be placed on frozen ground. All fill to be placed in approximately horizontal layers, each layer having a slope thickness of not more than 8 inches. All fill in roadways and parking areas is to be classified Type 2 as per Anne Arundel County Code - Article 21, Section 2-208, and compacted to 90% density, comparison to be determined by ASTM D 1557-60T (Modified Proctor). All fill within the building area is to be compacted to a minimum of 95% density as determined by methods previously mentioned. Fills for pond embankments shall be compacted as per MD-178 Construction Specifications. All other fills shall be compacted sufficiently, as to be stable and prevent erosion and slippage.

4. Permanent Seed:

Installation of seed should follow permanent seeding dates. Seeded preparation for seed should be as noted in section (B) above. Permanent seed to be tall fescue, state approved sod, lime and fertilizer per permanent seeding specifications and lightly irrigate soil prior to laying sod. Sod to be laid on the contour with all ends tightly abutting. Joists are to be engaged between rows. Water and roll or tamp sod to insure positive root contact with the soil. All slopes steeper than 3:1, as shown, are to be seeded.

District Details and Specifications for Vegetative Establishment Continued:

be permanently seeded or protected with an approved erosion control setting. Additional watering for establishment may be required. Soil is not to be installed on frozen ground. Sod shall not be transplanted when moisture content (dry or wet) and/or extreme temperature may adversely affect its survival. In the absence of adequate rainfall, irrigation should be performed to ensure establishment of sod.

5. Mining Operations:

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

For seeding dates of:
February 1 through April 30 and August 15 through October 31, use seed mixture of tall fescue at the rate of 2 pounds per 1,000 square feet and service landscape at the minimum rate of 0.2 pounds per 1,000 square feet.

February 1 through April 30 and August 15 through October 31, use seed mixture of tall fescue at the rate of 2 pounds per 1,000 square feet and service landscape at the minimum rate of 0.2 pounds per 1,000 square feet.

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

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

NOTE: Projects within 4 miles of the BWI Airport will need to adhere to Maryland Aviation Administration's seeding specification restrictions.

CONSULTANT'S CERTIFICATION

"The Developer's plan to control silt and erosion is adequate to contain the silt and erosion on the property controlled by the plan. I certify that this plan of erosion and sediment control represents a practical and workable plan based on my personal knowledge of the site, and was prepared in accordance with the requirements of the Anne Arundel Soil Conservation District Plan 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 # 16724
Name: **RICHARD B. SELLARS, JR.**
Firm Name: **MAGOTHY ENVIRONMENTAL SERVICES, INC.**
Street Address: **400 BEACH ROAD, ARNOLD, MARYLAND 21012**

Signature of Developer: *[Signature]*
Title: **Owner**
Address: **187 FRANKLIN COURT, SEVERNA PARK, MD 21146**
Telephone Number: **410-394-7338**

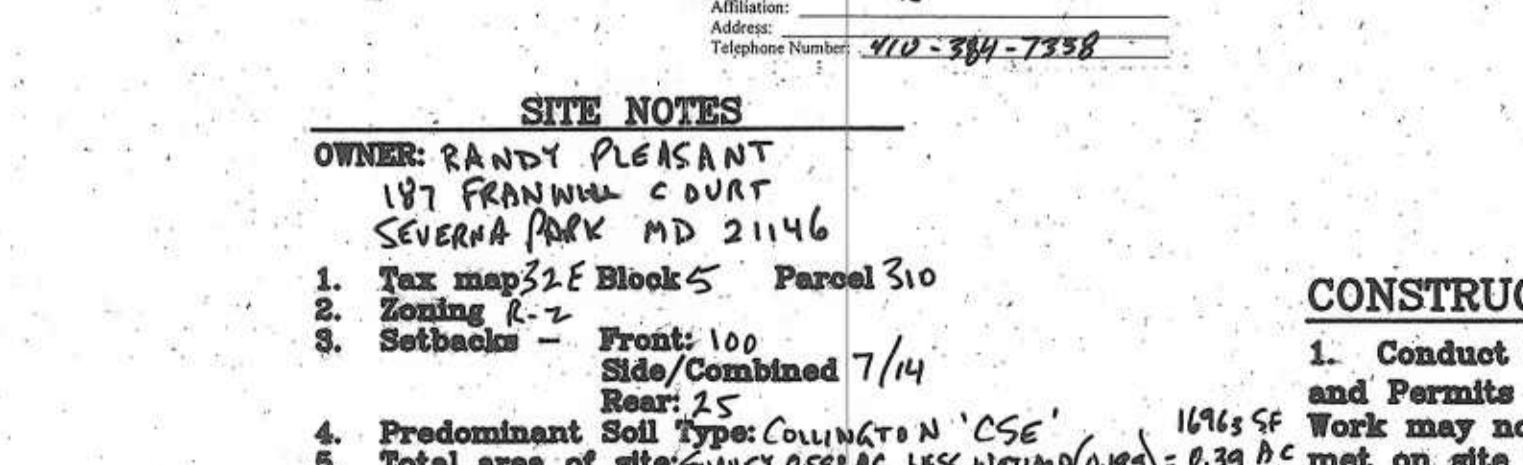
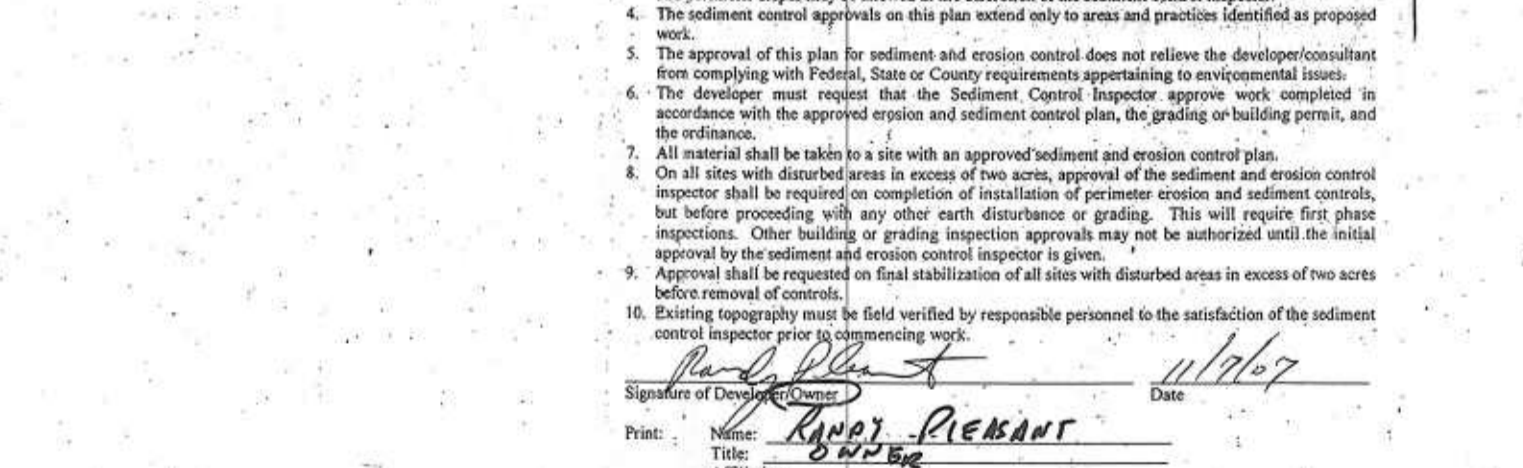
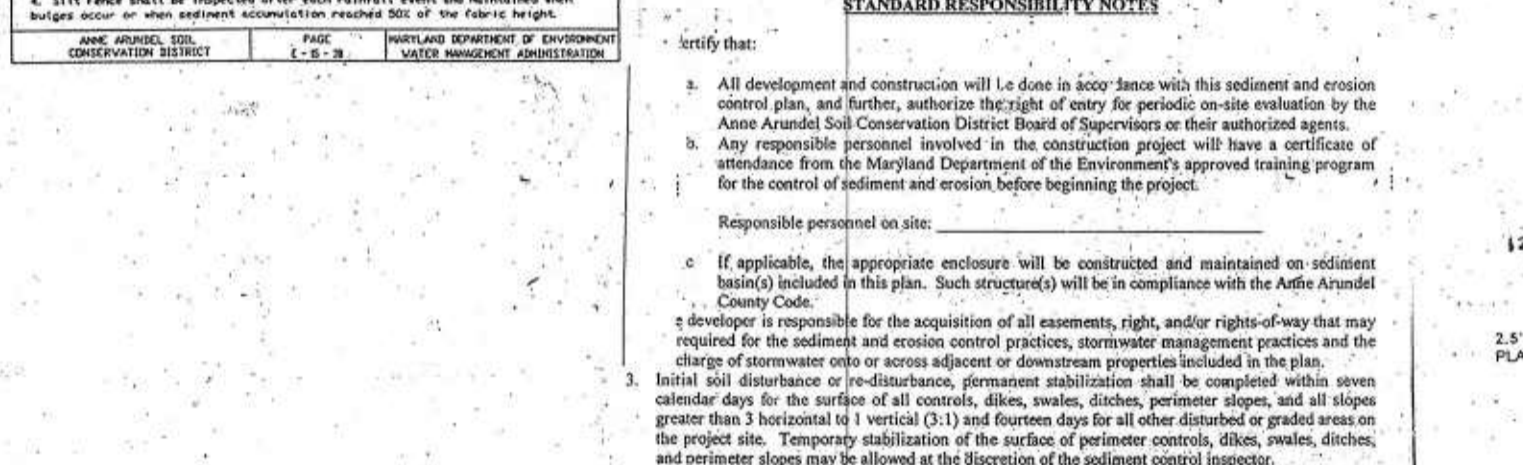
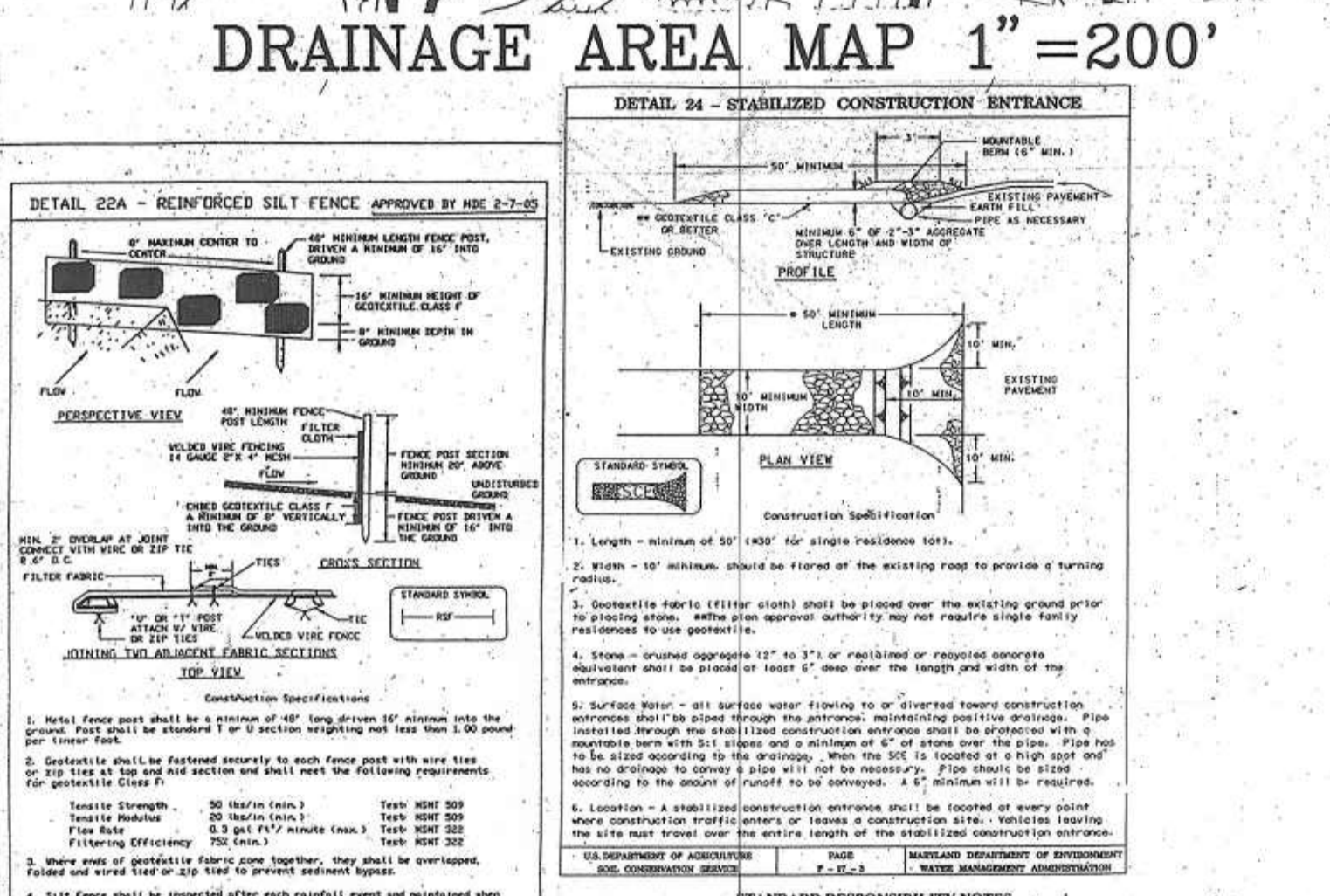
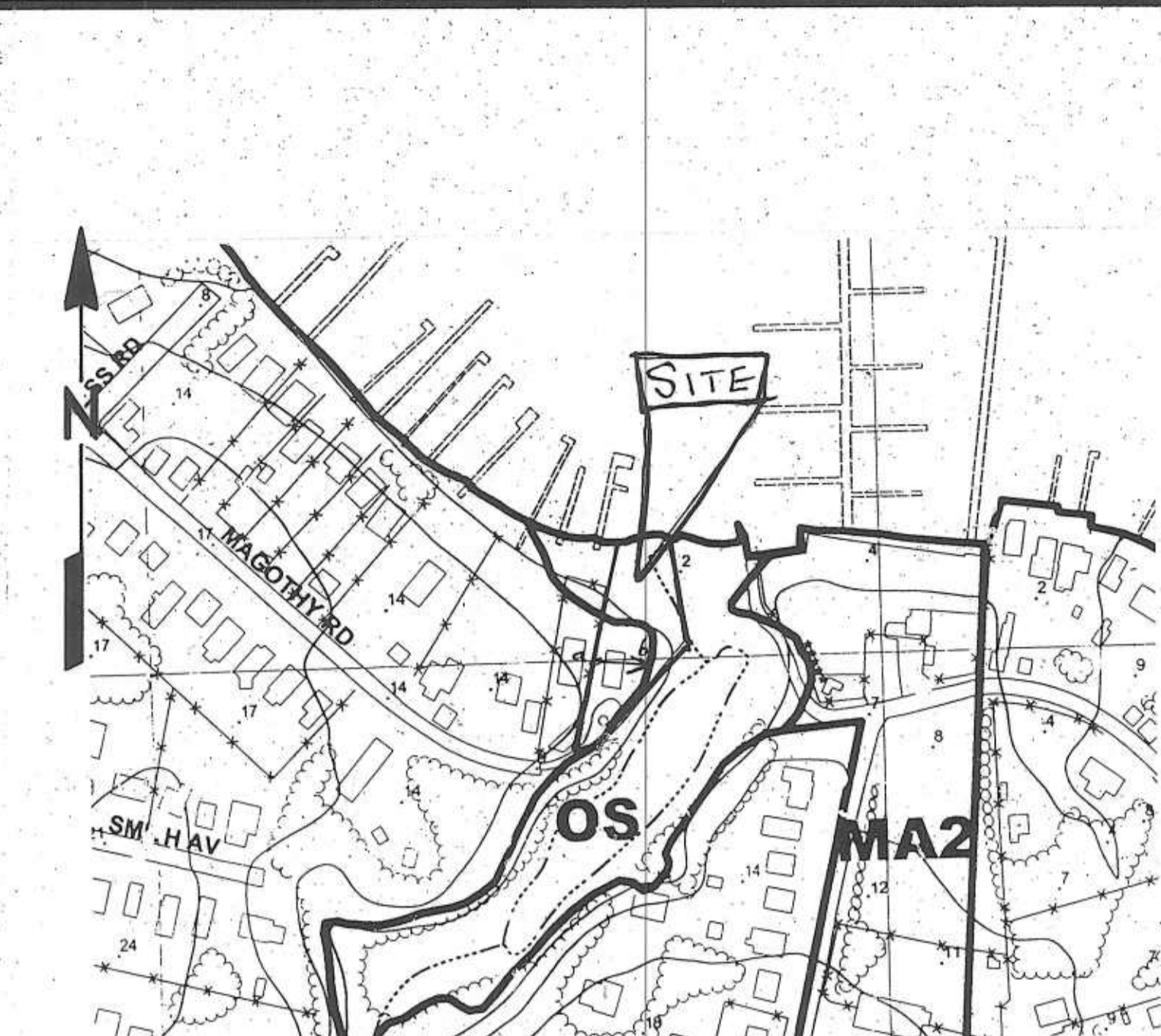
Signature of Consultant: *[Signature]*
Title: **Professional Engineer**
Address: **400 BEACH ROAD, ARNOLD, MARYLAND 21012**
Telephone Number: **410-394-7338**

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

NOTE: Projects within 4 miles of the BWI Airport will need to adhere to Maryland Aviation Administration's seeding specification restrictions.

LEGEND

- EXISTING GRADE
- PROPOSED GRADE
- LIMIT OF DISTURBANCE
- SILT FENCE - REINFORCED
- STABILIZED CONSTRUCTION ENT.
- TEMP. STOCKPILE AREA



SITE NOTES

- OWNER: RANDY PLEASANT, 187 FRANKLIN COURT, SEVERNA PARK MD 21146
- Tax map 32E Block 5 Parcel 510
- Zoning R-2
- Setbacks - Front: 100, Side/Combined: 7/14
- Beam 1.5
- Total area of site: 2,195,088 AC USG WITHIN (0.14) = 1746 SF NET
- Proposed disturbed area: 10,200 SF
- Total woodland on site: 600 SF
- Proposed woodland clearing: 1000 SF
- Proposed woodland replanting: 0
- Net woodland loss: 1000 SF
- Impervious area: 3,872
- Area to vegetatively stabilize:
- Cut: CY, Fill: CY
- FEMA Rate Map: 740008-0027C, Zone: A7 EL 8/10
- This lot is not in the 100 year floodplain (Bdg 15 NOT)
- Topography from: MAGOTHY ENV
- Public/Private sewer: Public/Private water
- Per. test # N/A
- Plat 3/39 # 105 deed 18945/704
- Critical Area IDA

STORMWATER MANAGEMENT DESIGN

330 MAGOTHY RD, INDIVIDUAL LOT DEVELOPMENT, LOT BETWEEN 5000 SF AND 15000 SF

OUTFALL SUITABILITY: 3530-3425-1900 Pt. Lot 13, Manhattan Beach, 330 Magothy Road, Severna Park, MD 21146

OUTFALL STATEMENT: A field investigation of the outfall and ground downstream of the outfall was performed in May, 2007 by Magothy Environmental Services. Off site drainage is prevented from entering the site from the West by an existing concrete block wall. All drainage is developed on site only. It crosses the lot toward the east on a moderate slope and discharges to the tidal marsh. No erosion or excessive velocities are expected from the project.

STORMWATER MANAGEMENT NOTES:

- The water quality volume is provided by a bio retention device along the top of slope leading to the tidal marsh. The soils are sandy and will drain to ground water. No underdrain is proposed.
- The recharge volume is provided by the above method.
- The channel protection volume is not required as the 1 year post development peak is 0.06 CFS or less than 2.0 CFS.
- The flood protection volume is not required since this is an individual existing lot to be developed and LOD is between 5000 SF and 15000 SF.
- The flood protection volume is not required since this is an individual existing lot to be developed and LOD is between 5000 SF and 15000 SF.

PLEASANT PROPERTY
330 MAGOTHY ROAD
STORMWATER MANAGEMENT SUMMARY TABLE

MINIMUM SIZING CRITERIA	SYMBOL	VOLUME	SWM PRACTICE	NOTES
WATER QUALITY VOLUME	WQv	361	BIORETENTION 3.5' X 75' 12" POND	
RECHARGE VOLUME	Re	282	SAME	INCL IN WQV
CHANNEL PROTECTION VOLUME	Cp	N/A	N/A	QI < 2 CFS NOT REQUIRED
OVERBANK FLOOD PROTECTION	Qp	N/A	N/A	LOD < 15000
EXTREME FLOOD	Q	N/A	N/A	LOD < 15000

TOTAL VOLUME (REV IS PART OF WQV): 361 CF

SIZE BIORETENTION DEVICE: 3.5' X 75' X 12" (SEE PLAN)

RECHARGE VOLUME: 282 CF

CHANNEL PROTECTION VOLUME: N/A

OVERBANK FLOOD PROTECTION: N/A

EXTREME FLOOD: N/A

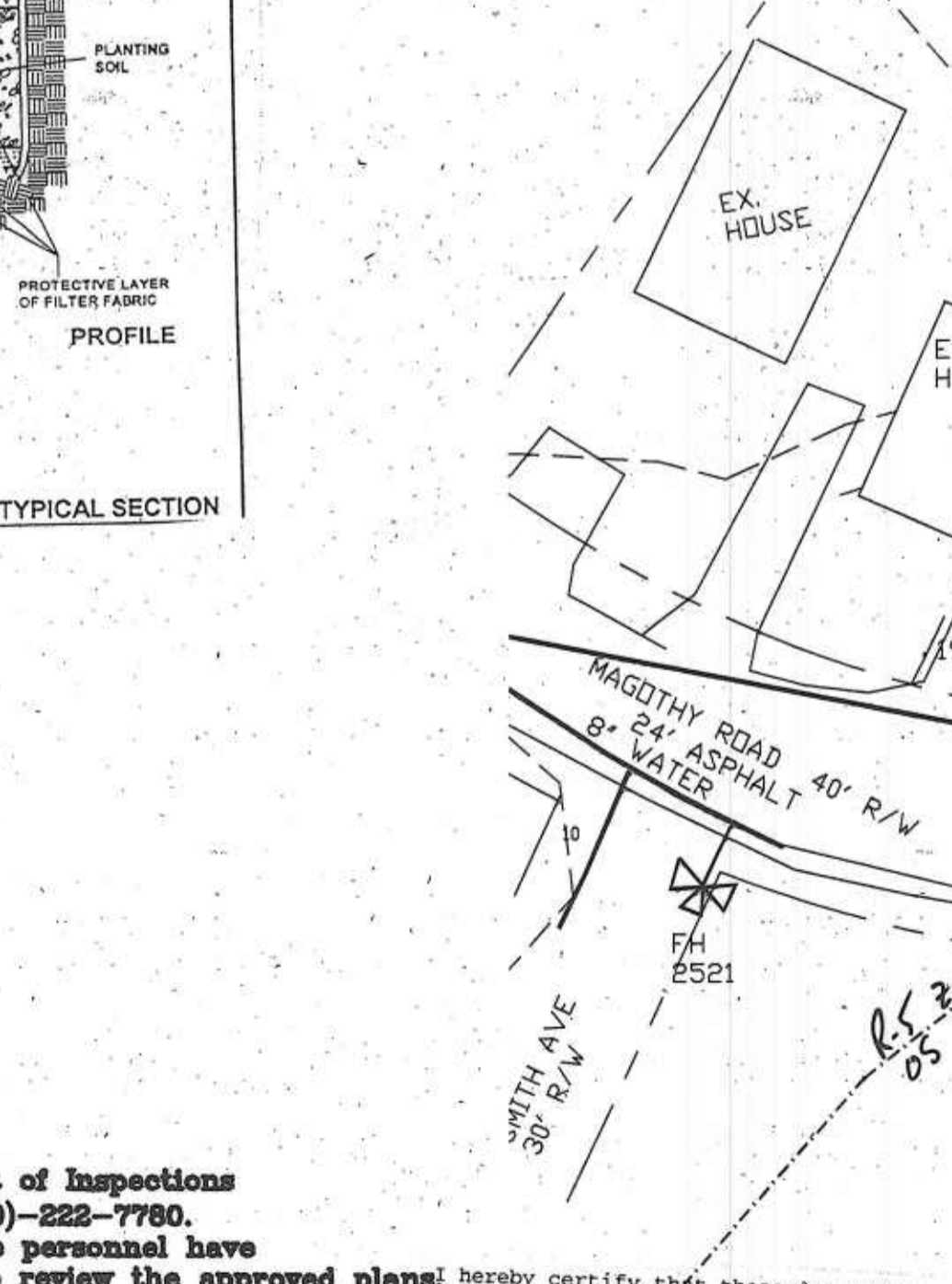
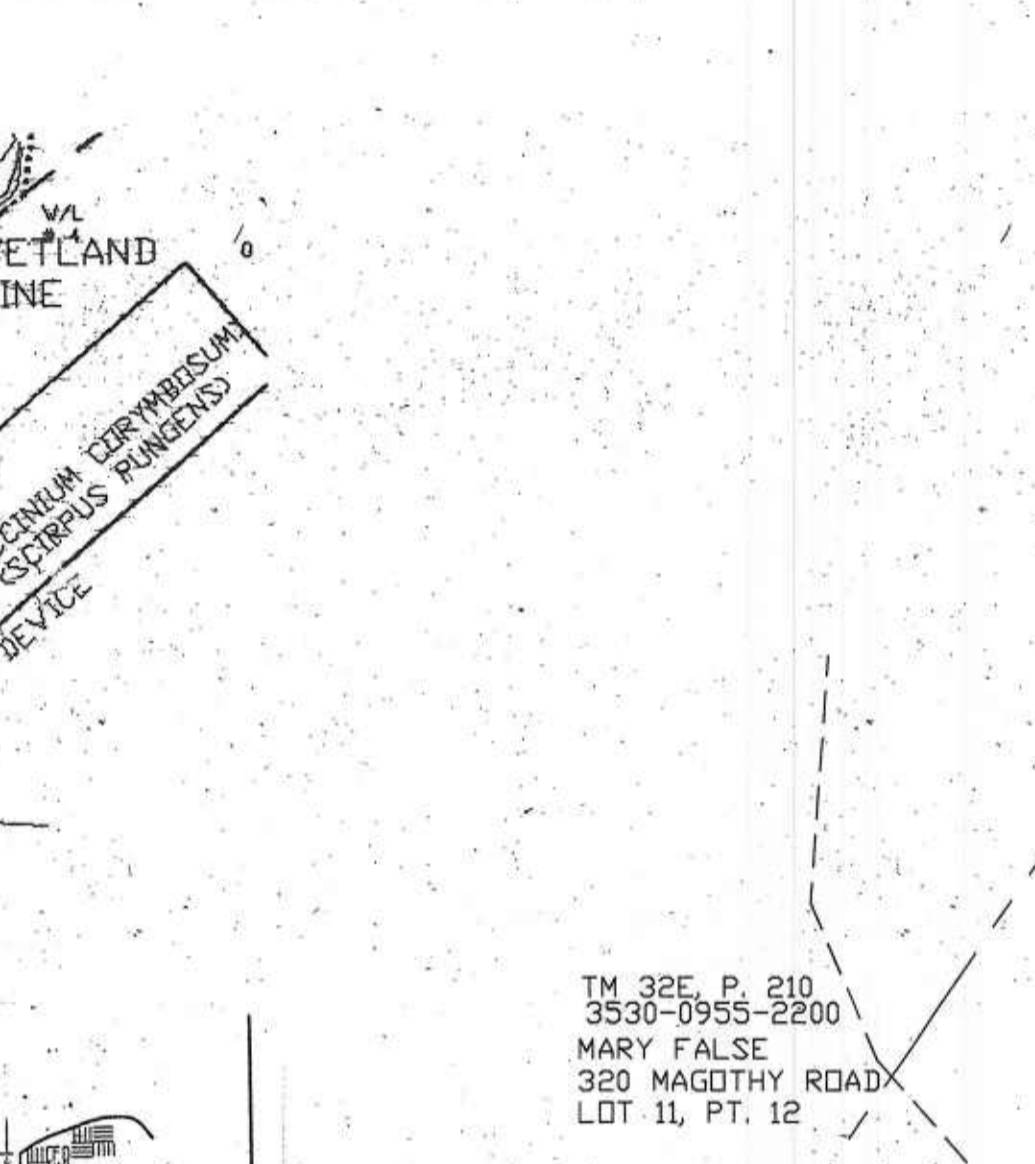
CHANNEL PROTECTION VOLUME: 0.00481 AC FT. OR 22.8122 CU FT.

WATER QUALITY VOLUME: 361.208 CU FT.

RECHARGE VOLUME: 282.863 CU FT.

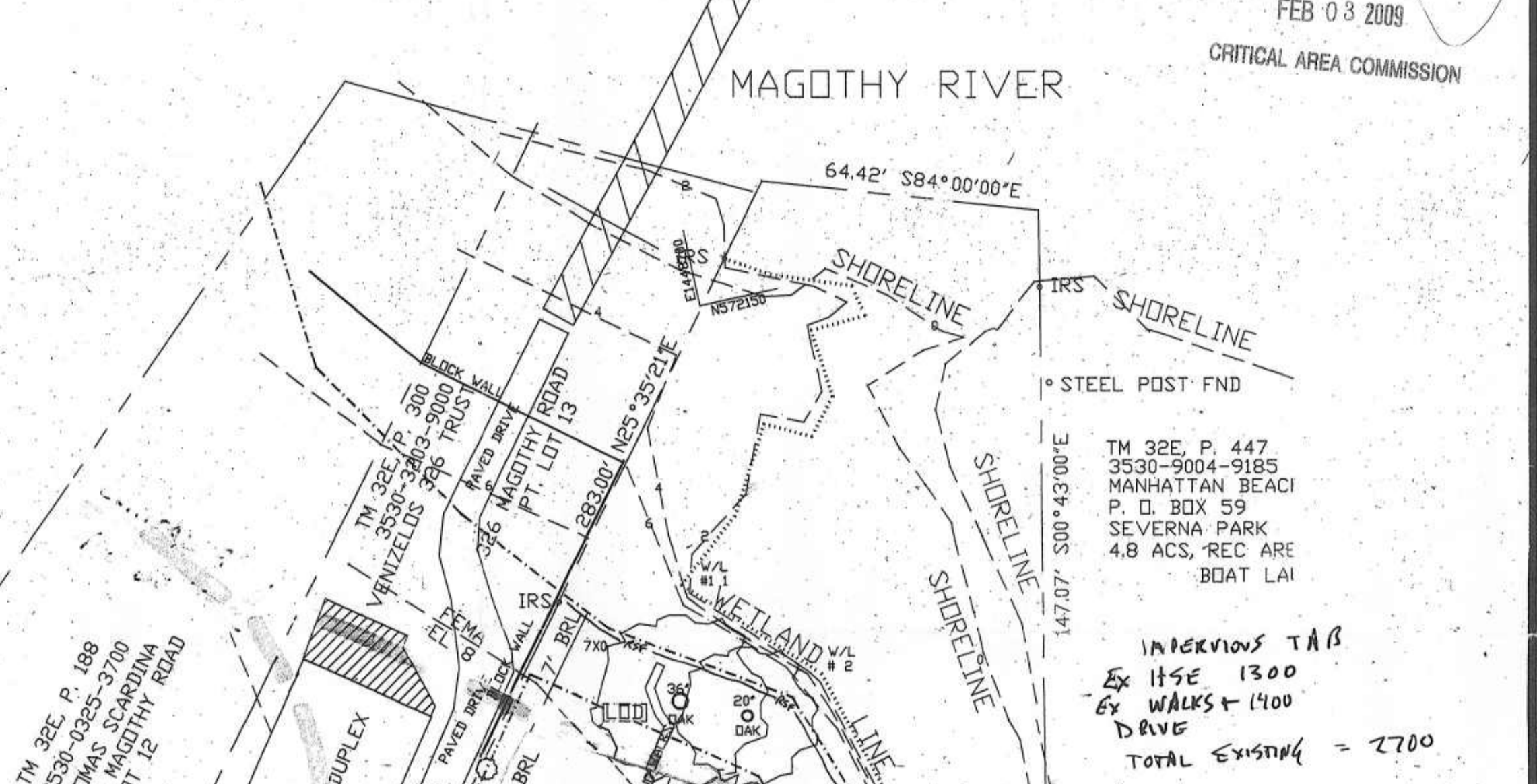
OVERBANK FLOOD PROTECTION: 104.725 CU FT.

EXTREME FLOOD: 0.025776 AC



STANDARD RESPONSIBILITY NOTES

- All development and construction will be 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 Inspectors or their authorized agents.
- 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:
- If applicable, the appropriate enclosures will be constructed and maintained on sediment basins included in this plan. Such enclosures will be in compliance with the Anne Arundel County Code.
- A developer is responsible for the acquisition of all easements, right-of-way rights that may be required for the sediment and erosion control practices, stormwater management practices and the design of stormwater pipes or areas adjacent or downstream properties included in the plan.
- Initial soil disturbance and erosion control practices, stormwater stabilization shall be completed within seven calendar days for the surface of all contours, ditches, swales, ditches, perimeter slopes, and all slopes greater than 3 horizontal to 1 vertical (3:1) and fourteen days for all other disturbed or graded areas on the project site. Temporary stabilization of the surface of perimeter controls, ditches, swales, ditches, and perimeter slopes shall be allowed at the discretion of the sediment control inspector.
- The sediment control approach on this plan extends only to areas and practices identified as proposed work.
- The approval of this plan by sediment and erosion control does not relieve the developer/consultant from complying with Federal, State or County requirements pertaining to environmental issues.
- The developer must require that the Sediment Control Inspector approve work completed in accordance with the approved erosion and sediment control plan, the grading or building permits, and the redlines.
- All material shall be taken to a site with an approved sediment and erosion control plan.
- 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 initial approval by the sediment and erosion control inspector is given.
- Approval shall be required on final stabilization of all sites with disturbed areas in excess of two acres before removal of controls.
- Erosion topography must be field verified by responsible personnel to the satisfaction of the sediment control inspector prior to commencing work.



**ANNE ARUNDEL SOIL CONSERVATION DISTRICT
SEDIMENT AND EROSION CONTROL APPROVAL**

District Official: _____ Date: _____

AASCD # _____ SMALL POND # _____

Reviewed for technical adequacy by
USDA, Natural Resources Conservation Service

DEVELOPMENT AND GRADING PLAN
B02
G0201378

T. A. 3530-3425-1900
330 MAGOTHY ROAD
PLEASANT PROPERTY
PT. 13, Bk R, R 2
MANHATTAN BEACH
3RD DISTRICT, ANNE ARUNDEL CO.
ZIP 21146

MAGOTHY ENVIRONMENTAL SERVICES, INC.

400 BEACH ROAD
ARNOLD, MARYLAND 21012
410-544-7826
FAX 410-544-6381

STATE OF MARYLAND PROFESSIONAL ENGINEER

REVISED DATE	BY

DRAWN BY: CAD
CHECKED BY: RS
DATE: 11-5-07

SHEET NO. 1 OF 1
PROJECT NO.
PROPOSAL NO.
DRAWING NO. 0706