APPLICANT:
Maryland Reclamation Associates, Inc.

REQUEST: A series of variances to enable the use of a 55 acre parcel as a rubble fill

HEARING DATES: June 1, 2005 - April 3, 2006

BEFORE THE

ZONING HEARING EXAMINER

FOR HARFORD COUNTY

BOARD OF APPEALS

Case No. 5458

ZONING HEARING EXAMINER'S DECISION

APPLICANT: Maryland Reclamation Associates, Inc.

LOCATION: South side of Gravel Hill Road, 0.7 miles south of Maryland Route 155 and approximately 0.6 miles east of Maryland Route 462.
Tax Map: 44 / Grid: 2A and 2B / Parcels: 439 and 457
Second (2nd) Election District

ZONING: AG / Agricultural

REQUEST: The Applicant requests a series of variances to enable the use of its 55 acre parcel as a rubble-fill. The requested variances are as follows:

- Variance pursuant to Section 267-28C to permit the disturbance of the 30 foot buffer yard.
- Variance pursuant to Section 267-28D(4) to permit disturbance within the 200 foot buffer from adjoining property lines.
- Variance to Section 267-28E permit disturbance within the 75 foot historic landmark buffer.
- Variance to Section 267-40.1A, B, C and D to permit the operation of a rubble landfill on less than 100 acres.
- Variance to Section 267-40.1A, B, C and D to permit the operation of a landfill without satisfying the buffer requirement.
- Variance to Section 267-40.1A, B, C and D to permit the deposit of solid waste less than 500 feet from the flood plain district.
- Variance to Section 267-40.1A, B, C and D to permit the disturbance of the 1,000 foot buffer from a residential or institutional building.

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- Variances to Section 267-41D(2)(c); (3)(b); (5)(e); and (6) to permit the use of a landfill within a Natural Resource District, to permit the disturbance of the Natural Resources District buffer, and to disturb the minimum 75 foot wetlands buffer in the Agricultural District.

TESTIMONY AND EVIDENCE OF RECORD:

Roger Mainster, who identified himself as being a real estate appraiser in the real estate business for 50 years, was the first witness called by the Applicant. Mr. Mainster appraises commercial and agricultural property for land development and other uses.

Mr. Mainster has been retained by the Applicant to give an opinion as to whether property values in the neighborhood of the MRA property would be affected if the property were used for its proposed purposes.

Mr. Mainster described the property as being zoned agricultural, and unimproved. The property was purchased in February 1990, as part of a larger parcel, for a price of $732,500.00.

The uses in the area are predominantly residential with lots improved by mobile homes, modulars, bungalows, ranchers and cape cods. St. James AME Church is also located in the area. Approximately 10 properties actually touch the Applicant's property.

Mr. Mainster described the neighborhood around the proposed site as being, for the most part, attractive and well maintained. Public water and sewer does not service the area, nor is it planned.

In order to formulate his opinion Mr. Mainster looked at homes which had been sold in the area of the subject property and around other landfills or rubble fills in Harford County and Baltimore County. He also has information concerning recent sales that had occurred along Gravel Hill Road.

Mr. Mainster then identified certain properties along Gravel Hill Road. 4102 Gravel Hill Road was sold in 1999 for $110,000.00, with the owner netting $104,000.00. Mr. Mainster said that despite having a deteriorated condition, the house had been resold for $101,000.00, which indicates that property values have increased in the area.

He then identified 4033 Gravel Hill Road, indicating it had been sold once in March 2003, and again in October 2004 for $240,000.00, which was greater than the asking price. He identified no other sales on Gravel Hill Road.

Mr. Mainster then looked at homes around the Joppa area rubble fill. He indicated that generally some homes in the area of the Joppa rubble fill are well kept; some are not. Rubble at that location is stacked high above the road level. Trucks and equipment can be heard.

He identified a home at 805 Pine Avenue that sold for $212,000.00 in March 2002. It is an attractive house and is about a block from the Oak Avenue landfill. He also identified another house on Joppa Road, overlooking the landfill as having been sold for $157,000.00.

He identified a property at 1031 Joppa Road which backs-up to the landfill operations on Oak Avenue. It settled in November 2003 and netted the owner $137,000.00. It had sold earlier in June 2002 for $120,000.00.

Another property examined was 919 Pine Road, also close to the Oak Avenue landfill. This property was listed for $180,000.00, but Mr. Mainster did not know the sales price.

In November 2001, 1901 Joppa Road sold for $119,000.00.

He also considered properties more removed from the landfill to determine if there was any difference in the prices being paid. He identified a property at 1609 Old Joppa Road, well away from the Oak Avenue landfill. It sold in January 2003 for $160,000.00. That property, even though it was some distance from Oak Avenue, did not sell for as much as the homes closer to the Oak Avenue rubble fill. Mr. Mainster stated that the reason is that the lot is smaller, 1.88 acres versus 3 acres for the lot closer to Oak Avenue.

He also identified a property at 914 Trimble Road which sold for $135,000.00, which compares favorably with the sales price of the other homes closer to Oak Avenue.

Mr. Mainster also examined the Scarborough Landfill in the northern part of the County, but was unable to find any sales of homes in the area of the entrance into and out of that facility. He did, however, find a home located farther north, at 3029 Dublin Road. That property is about a mile and a half from the Scarborough Landfill and sold for $143,000.00. He identified other properties along Scarborough and Dublin Roads, and located a mile to a mile and a half from the Scarborough Landfill.

Mr. Mainster also reviewed sales prices of homes located around the Bush Landfill in the Abingdon area. The Bush Landfill is closed and the site is used for maintenance of County road equipment. Mr. Mainster identified subdivisions and property sales in the area of that landfill.

Mr. Mainster also identified a rubble fill at White Marsh off Route 7 known as the Honeygo Reclamation Center. He identified subdivisions and sales prices of homes in that area. He identified a subdivision of homes having a starting price of $580,000.00 in the general vicinity of the Honeygo Rubble Fill.

Mr. Mainster was asked his professional opinion as to whether the proposed rubble landfill site would have an affect on the value of property in its immediate vicinity. His answer was that he did not believe it would affect the value of property in the immediate vicinity.

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Mr. Mainster identified the zoning of the property that he examined as being either residential or agricultural. He stated that he had walked around each property. There was only one property examined within 200 feet of a landfill area, that being on Joppa Road.

Next testified Michael W. Clem, who identified himself as an employee of KCI Technologies. Mr. Clem was offered and accepted as an expert in the field of anthropology and archeology.

Mr. Clem then described his task, which was to form an opinion about the impact of the rubble fill project on the historic resource neighboring the proposed rubble fill site. To do so he visited the site, walked the property, and viewed the St. James AME Church and its cemetery. The last time he visited, which was in late May, 2005, the perimeter of the cemetery appeared to have been landscaped. Mr. Clem took photographs during his visit, and described those photographs during his testimony.

Mr. Clem had performed a search of the Church history through the Harford County Historical Society. According to Mr. Clem, the church building dates from the mid 19th century, having been built in 1888. An earlier church had been replaced. The church congregation had branched-off from another St. James Church in the second half of the 19th century. The congregation had been started in the home of two of the members in approximately 1849.

The cemetery contained the remains of four U.S. Colored Troop Veterans from the Civil War. Three graves have markers; one is missing. There may be two others, which are also unmarked. There may be as many as three hundred graves in the cemetery altogether. The Church served the community of Gravel Hill as a center of worship. The cemetery is a designated Harford County landmark. Mr. Clem had reviewed the petition that was submitted to the County for designation as a County historic landmark, and the lands of Maryland Reclamation were specifically not included in that request.

Mr. Clem does not believe that the church building or cemetery is eligible for inclusion on the U.S. or State of Maryland list of historical places. There are very specific criteria for inclusion, which he does not believe the church or cemetery can meet. Mr. Clem does not believe that the operation of the landfill next to the Church and cemetery would cause the Church or the cemetery to be de-listed from either of those two sites if they were otherwise eligible.

Mr. Clem was asked if any part of the cemetery was actually on the Maryland Reclamation property. His response was that it was very hard to say without further research. However, upon looking at a photograph and part of a 1985 U.S.G.S. Quad Map (accepted as Applicant's 16), Mr. Clem believed that he could identify the approximate boundary line of the property.

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Harford County Code Section 267-28E, establishes a 10 foot to 75 foot buffer with respect to historic properties. Mr. Clem believes that the Historical Preservation Commission is to make a recommendation as to the buffer. The Harford County Department of Planning and Zoning Staff Report made no mention of a Historic Preservation Commission recommendation of a buffer. Mr. Clem believes that 10 feet would be a sufficient buffer, which is the minimum buffer requirement of the Code. What really counts, in his opinion, is that the graves are not impacted. He was, however, aware that the Applicant is suggesting a 30 foot buffer from the graves. Mr. Clem believes that a 30 foot buffer will be an adequate protection of the graves. Mr. Clem identified a steep drop-off from the cemetery property down to the existing MRA property of about 20 feet. This causes the potential for erosion and loss of graves. He believes that filling-in the MRA property in that area would help preserve the cemetery.

Mr. Clem is aware that there has been sand and gravel extraction at the MRA site since the 1940's. The landscape around the cemetery and Church has been severely altered and is somewhat of an eye sore, in his opinion. To fill the area would actually tend to restore the landscape.

His opinion is that the Applicant's proposal will not adversely affect the church or the cemetery. He believes a better 'view shed' will result once the surrounding area is filled and re-landscaped and would also provide more protection against erosional forces.

For the Applicant next testified Jeffrey F. Lawrence, who identified himself as a Senior Associate and Project Manager for traffic engineering with KCI Technologies. Mr. Lawrence was offered and accepted as an expert in traffic impact analysis.

Mr. Lawrence had prepared a Traffic Impact Analysis to determine the proposal's impact on traffic operations and safety within the defined study area around the proposed Gravel Hill Rubble Landfill. Mr. Lawrence identified for the record a copy of his analysis and findings, which was accepted as Applicant's Exhibit 19.

Mr. Lawrence described the procedure he and his staff had used in preparing the analysis. They referred to the applicable local Harford County Ordinances, including the Harford County Adequate Facilities Ordinance, as well as the Institute of Traffic Engineers' Traffic Access and Impact Studies for Site Development. The standard methodology is to visit the site, collect applicable physical and traffic data, analyze existing conditions, look at future growth, and then develop mitigation measures that may be necessary.

Mr. Lawrence described the study site as being on the south side of Gravel Hill Road between Maryland 462 (Paradise Road), and Earlton Road. Existing Gravel Hill Road is about 22 feet wide in the area of the proposed access road. Approximately 1 foot to 2 foot gravel shoulders exist on Gravel Hill Road. The existing speed limit is posted 30 m.p.h. Gravel Hill Road widens a bit as it approaches Paradise Road. The approach lanes at that point are 14 feet to 15 feet wide. Particular

attention was paid to the intersection of Gravel Hill Road and Paradise Road because all truck traffic will come to the site from that direction.

Paradise Road is a major collector, with a 50 m.p.h. posted speed limit. It has 12 foot lanes and 11 foot shoulders. Gravel Hill and Paradise Road form a "T" intersection.

Mr. Lawrence stated that the Harford County Adequate Public Facility Ordinance is very clear in that any proposed development which generates more than 249 trips per day must have a traffic impact analysis formally submitted to the County for review. The proposed use will have 3 full time employees plus 1 County employee, with an average of 50 trucks per day accessing the site, for a total of 108 trips per day. Accordingly, the County's Adequate Public Facility Ordinance does not apply.

Mr. Lawrence had received information from Harford County about other subdivisions which have been approved but not yet built out. Mr. Lawrence included these projections in his traffic count numbers. All of the proposed subdivisions identified were located over a mile from the proposed site. Standard procedures exist to determine the number of trips which will be generated by these new subdivisions. As those subdivisions are scattered, Mr. Lawrence used a background of 4% per year to account for these projected traffic volumes. He characterized this as a fairly conservative growth rate. The County proposed a 2.2% per year background growth rate.

Mr. Lawrence or his staff visited the site on three separate occasions in April and May 2005. They performed intersection turning counts at the Paradise Road and Gravel Hill Road intersection. They looked at peak hours of operation at the intersections, which in this case they determined to be 6:30 a.m. to 7:30 a.m., and from 3:30 p.m. to 6:30 p.m. The single hour that had the highest traffic count was actually 4:30 p.m. to 5:30 p.m.

Mr. Lawrence and his staff then performed a use and capacity analysis at this intersection, based upon the Highway Capacity Manual which sets forth the standard procedure for calculating capacity at intersections. A capacity analysis is an objective assessment of the operating conditions under the existing physical conditions of an intersection. A use analysis results in a determination of level of Service which ranges from Level of Service A, the best, to Level of Service F, which is the worst. Level of Service D is considered the minimum acceptable level of service. Based on his analysis, Mr. Lawrence determined that the existing 2005 level of service at the intersection of Paradise Road at Gravel Hill Road is a Level of Service B in the morning, and a Level of Service B in the afternoon.

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Mr. Lawrence then determined the level of service with the existence of traffic from the proposed Gravel Hill Landfill operation. This was arrived at with a background growth rate of 4% per year. Based on this calculation, during the year 2007 the intersection will continue to operate at a Level of Service B during both the morning and afternoon peak hours. Mr. Lawrence also doubled the amount of traffic which would be generated by the Gravel Hill Landfill to approximately 200 trips per day. With this increase truck traffic, and assuming a background growth rate of 4% per year, the intersection will continue to operate at a Level of Service B in the year 2007. (see Table 3, Page 11). Mr. Lawrence noted that the average delay in vehicles approaching the intersection does get slightly worse. The Level of Service on Gravel Hill Road at the site access road will function at a Level of Service A.

Mr. Lawrence described Gravel Hill Road itself as somewhat winding but in fairly good condition, with no major pot holes, rutting or cracking.

Mr. Lawrence opined that the proposed use will not result in dangerous traffic conditions. Furthermore, from a traffic impact analysis viewpoint, he does not believe that the proposed use would result in any dangerous odor, gas, fumes, noise, vibration, or glare. The size the site of the proposed rubble fill would make no difference to his findings.

Mr. Lawrence described the conclusions of his report. His findings assume a worse case scenario, which is 20 truck trips during the a.m. and p.m. peak hours. Factoring existing volumes to the projected 2007 full operation year results in findings of no adverse traffic impacts to the roadways leading to the site.

The geometrics and conditions of the existing road serving as the exclusive access point to the site are adequate and present no adverse safety conditions.

Mr. Lawrence made certain recommendations. He suggests a deceleration lane be provided on eastbound Gravel Hill Road into the proposed site. The deceleration lane should be a minimum of 150 feet long, including a 100 foot taper and a 50 foot full width lane. If site conditions warrant or allow, he recommends a width of 250 feet with a 100 foot taper and a 150 foot full width lane. He further recommends that the site operations comply with the conditions summarized in the Harford County letter dated November 16, 1989, included in his report. That letter includes conditions relating to the cleaning of public roads, notification of pre-approved haulers, and the posting of signs restricting access. It also includes an obligation to reimburse Harford County for costs incurred by the County with regard to wear and tear on Gravel Hill Road.

Mr. Hooper, for the Applicant, then proffered that the Applicant recognizes the 27 conditions in the November 16, 1989 letter as being binding upon the Applicant, and that the Applicant will comply with those conditions.

Mr. Lawrence stated on cross-examination that he did not interview anyone who currently lives on Gravel Hill Road. He does not have any idea how many children live on Gravel Hill Road. He did not take into account school bus stops along the road. He does not know if there will be any concern with safety related to the children getting on and off school buses in the area. He further did not take into account the existence of the park on Gravel Hill Road in his traffic study.

Mr. Lawrence was asked if his opinion would change if he assumed that some of the homes on Gravel Hill Road sit closer to the road than do homes in new subdivisions. He responded that the opinion he gave was based on his observations in the area. He does not know what is conforming or non-conforming as far as setbacks are concerned. He further stated that he did no measurement of noise from the vehicles going up and down Gravel Hill Road. He was also asked if his conclusion would change if traffic were going eastbound on Gravel Hill Road instead of westbound to the Paradise Road intersection. He answered that if traffic were distributed in some proportion east to west, traffic volume impact at any intersection would be less than the worse case that he had examined. He did not, however, study eastbound traffic on Gravel Hill Road so he cannot confirm any impacts there.

The percentage of southbound truck traffic on Paradise Road during peak traffic hours is negligible. He further stated that his estimate of 50 trucks per day visiting the landfill site is based on a March 6, 1991 report from Morris Ritchie & Associates. He admitted that this was an average figure. He assumes on some days traffic will be a little higher and some days a little lower. Mr. Lawrence does not know how the 50 trucks per day number was calculated. His analysis assumes that all traffic would be going to or coming from Maryland Route 155 to Gravel Hill Road. This assumption is based upon discussions with his client. He did not account for any traffic that may come north on Paradise Road from the Maryland Route 22 and I-95 exit.

Mr. Lawrence stated that his analysis was based on the rubble fill being open from 7:00 a.m. to 5:00 p.m. If the hours of operation were reduced, his analysis would change. He was told, and he assumes, that it will take about 5 to 7 minutes for a vehicle to be inspected at the inspection point at the proposed rubble fill site before it proceeds to unload. Based on 50 trucks per day, 1 truck will be entering the property about every 6 minutes. If the deceleration lane is constructed as recommended, there will be room for 1 or 2 trucks in the deceleration lane. Additionally, 2 trucks could be inspected at the same time, with up to 6 vehicles behind those 2. Without a deceleration lane, trucks could block one lane of Gravel Hill Road.

Mr. Lawrence believed, based on his observation, that homes between Paradise Road and the proposed access to the rubble fill are as close as 70' to 75' from the road.

Mr. Lawrence confirmed that the deceleration lane would be constructed on Maryland Reclamation's property. Gravel Hill Road would not need to be widened to accommodate the lane, although Mr. Lawrence was uncertain if an existing right-of-way is available.

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Mr. Lawrence also reiterated that his study was based upon the assumption of 100 trucks using the rubble fill per day, not the 50 which is actually proposed by the Applicant. Even doubling the number of trucks does not result in a loss of service to any of the intersections or along Gravel Hill Road.

Next was called Richard Schafer, who identified himself as President and CEO of Maryland Reclamation Associates, Inc. Maryland Reclamation Associates is a Maryland Corporation, in good standing, and is the owner of the subject property.

The Applicant took ownership of the property in February 1990. It consists of approximately 55.4 acres.

Prior to its purchase the property has been used for a sand and gravel mining operation. It also had an existing Industrial Waste Permit. The property had been used for sand and gravel extraction for at least the 60 years prior to its purchase by the Applicant.

Mr. Schafer stated that the property had received, prior to the Applicant's purchase of it, a Surface Mining Permit and Industrial Waste Permit. Pursuant to those permits, rubble consisting of concrete, asphalt, stumps, brush, etc. was approved for internment on the site. Mr. Schafer testified that the Surface Mining Permit remains valid. The Maryland Department of the Environment has indicated that under the Industrial Waste Permit materials could be disposed of until the site was full. Mr. Schafer referred to Applicant's Exhibit 20, which delineates the area covered by the Surface Mining Permit, the Industrial Waste Permit, and the old surface mining area.

Mr. Schafer next described the general topography of the property. At Gravel Hill Road the property drops off approximately 20 feet, and then gradually falls downward toward the southern property line. The greatest change is between 70 feet and 100 feet. At its lowest point the property is approximately 100 feet below the elevation of Gravel Hill Road.

Mr. Schafer then described the general process in which MRA engaged to have a Refuse Disposal Permit issued by the Maryland Department of the Environment ("MDE"). The Applicant was required to submit a Phase I Report. That Report addressed certain items required by the State, and was submitted to the Maryland Department of the Environment. MDE then reviewed the application and performed a site visit. Based on that, an applicant is then either placed in the Solid Waste Management Plan or not. After Phase I, a Phase II is prepared, which is a Geology and Hydro-Geology study of the site. Next a Phase III is prepared, which is a description of the actual operation of the landfill once it is up and running. Throughout the process drawings are submitted to MDE.

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According to Mr. Schafer, MDE gave the Applicant a Phase I approval in approximately November 1989. At that time the Harford County Council held hearings on the Solid Waste Management Plan Amendment, and also on MRA's site plan approval. Hearings were held November 7th and November 14th, 1989. Mr. Schafer stated that various witnesses testified before the Council at that time.

The Applicant agreed that it would voluntarily subject itself to the 27 conditions contained in the letter dated November 16, 1989. The first 14 of those conditions were developed by the Harford County Department of Public Works and the Department of Planning and Zoning, with the last 13 developed by the Harford County Council.

Mr. Schafer then testified that in November 1989 the property was a little over 55 acres in size. He acknowledged that MRA will comply with the 27 conditions that remain part of its site plan approval in 1989. MRA is not seeking a variance from any of those conditions or from the approved site plan.

The witness testified that MRA purchased the property in February, 1990, based upon the site plan approval and its inclusion in the Solid Waste Management Plan. The purchase price was approximately $735,000.00. After purchasing the property, the Applicant acquired necessary permits from Harford County, including an Entrance Permit, a permit to construct a chain link fence around the property, and a Grading Permit.

According to Mr. Schafer, MRA did ultimately receive its Phase II and Phase III approval. Approximately 35 of the 55 acres is actually permitted for rubble fill. MRA also has a validly issued Refuge Disposal Permit. (Applicant's Exhibit 27)

The witness testified that MRA is continuing to remove small quantities of sand and gravel from the site. Furthermore, both monitoring wells and production wells have been installed. MRA must install a leachate collection system and liner before the landfill goes into operation.

Turning to the current site plan, Mr. Schafer stated that Cell E will be eliminated. This cell originally was where asbestos removal would occur. (Applicant's Exhibit 28.) Mr. Schafer stated that Cell E is to be eliminated as the area is so small that economically it cannot be used. Furthermore, MRA no longer has plans to accept asbestos.

Mr. Schafer described the phasing of the construction of the landfill. Celle D will be a wet weather cell, to be used only when weather makes it difficult for trucks to reach the other cells. After disposal area A is filled, material would probably be placed near disposal area C or B. The whole property will not be deforested. It will be done in phases with smaller cells. The landfill will move from cell to cell as one goes along. As each cell is filled it will be capped, and then the next cell will be moved into.

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While working in disposal area A and B, MRA will not disturb the graves which are on the church cemetery property. MRA will agree to establish a 30 foot landscape buffer around the cemetery along Gravel Hill Road and around the two residences on the north side of the property in the area of disposal area A. MRA agrees to comply with all Federal, State and local laws with respect to the operation of the rubble landfill. The landfill, once it begins operation, will have about a 5 year life. The property may be dedicated to Parks and Recreation once it is closed. The property has one development right.

Under present zoning MRA will need approximately 230 acres to operate a rubble landfill, without the variances requested.

MRA will provide a 150 foot stacking lane along Gravel Hill as recommended by KCI's traffic engineer.

Mr. Schafer testified that MRA was intending to do a graves registration at the Church, which would require a professional to locate and register all of the graves, including graves that may be on MRA property. Mr. Schafer stated that in the past two years the church has buried people on MRA's property. He indicated that the 30 foot buffer would be from the location of the actual graves, including the graves that may be on MRA's property. However, Mr. Schafer also stated that it is possible fill material would come closer than 50 feet to existing graves, depending upon the slope of the land, and the need to perform grading.

In addition to the 150 foot stacking lane along Gravel Hill Road, MRA will stage trucks on its own property. On cross examination Mr. Schafer stated that a Grading Permit was never received for the site.

The Applicant anticipates an average of 50 trucks per day will enter the rubble fill site. The expected life expectancy of the landfill is, accordingly, close to five years.

The last time the monitoring wells were actually monitored, with reported results, was around 1993.

Mr. Schafer described the process of inspecting the materials which are brought onto the site. The tarps are taken off after the trucks enter the site, and the load is then videotaped. An inspector searches the load as best he can, and uses instruments to determine unacceptable substances. At that time the vehicle is taken to a cell where it is dumped, with the debris gone through by an inspector to again make certain there are no unacceptable materials. The tests and videotapes are maintained. An MRA employee and a County employee will be on-site, with both inspecting loads.

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The witness stated the County employee would be responsible for making certain MRA is operating within the terms and conditions of its permit. Mr. Schafer's understanding is that the County employees will monitor the loads.

If all approvals are eventually received, at least one additional year of data which must be submitted to MDE before construction can commence, according to Mr. Schafer.

Next for the Applicant testified Edward A. Serp. Mr. Serp is a Senior Engineer at KCI Technologies, having a speciality in environmental engineering. He is a licensed Professional Engineer. Mr. Serp was offered and accepted as an expert witness in the field of civil engineering.

Mr. Serp was asked to identify the plans that had been placed into evidence as Applicant's Exhibit 31. He explained that the first sheet shows existing conditions, basically conditions which exist on the project's start. Sheet two is of the access road. The third sheet is of details related to the support facilities, the location of driveways, office entrance road, etc. Sheet four is the restoration grading plan. Sheet five is the drainage area map. Sheet seven is a restoration sediment control plan, and shows sediment control after filling has taken place. Basin one is shown on Sheet nine. Basin two is shown on Sheet ten. He then described miscellaneous other site details which are shown on Sheet eleven, including a mud rack, level spreaders, outfall protection, etc. Sheet twelve shows details associated with the construction of Basin three. These documents are part of Phase III of the landfill application.

Mr. Serp was asked, based on this information, to discuss the operations of the proposed landfill. He agreed that the hours of operation would be 7:00 a.m. to 5:00 p.m., Monday through Friday, and 7:00 a.m. to Noon and Saturday. According to Addendum One of the Operations Report (Applicant's Exhibit 32), there would be approximately 50 truck loads per day. Each truck, again according to exhibits already in evidence, would be visually inspected, and a video recording would be made of the loads at the entrance site. Each truck should be on-site for less than half an hour. A truck washing site will be constructed, and trucks will be inspected as they leave in order to remove soil and mud. The area from the initial inspection site to the bridge would be paved, and thereafter would be an all weather surface, probably gravel. There will be room for six stacked trucks at the entrance. Fumes and dust will be controlled by the application of water on roads and on the landfill face as it is being placed. The area is to be policed on a regular basis. Perceived noise should be equivalent to that of a gravel operation. The landfill will be fenced with a perimeter fence around the entire landfill. The entrance to the site from Gravel Hill Road will be gated. Total acreage encompassed by the area in which the fill is to be deposited amounts to about 31 acres. The site will require a liner and a leachate collection system.

The collection system will consist of a filter fabric adjacent to the landfill. The landfill itself will be enclosed by a high density polyethylene membrane liner. Debris, such as cement, concrete, bricks, lumber, plaster, would be deposited in the fill. Harford County will not allow appliances to be dumped. Neither hazardous waste nor medical waste is permitted. Automobiles are not permitted; radioactive materials are not permitted; animal carcases are not permitted. Untreated sewage waste is not permitted, nor is chemical, petroleum clean-up materials. Incinerator ash, yard waste, scrap tires are not permitted.

Mr. Serp stated that the liner will be a membrane liner, with a drainage area sandwiched between the membrane liner. This is a "witness layer". A primary membrane would then be installed, then a filter fabric, and a gravel layer that functions as a drainage layer. Protective fill goes on top of that. The liner prevents leachate from being discharged uncontrolled from the landfill. Leachate is liquid that accumulates from the waste in the landfill, on open portions of the landfill, or from any decomposition that might be taking place. The leachate collection system is a drainage layer across the entire floor with perforated pipe. Leachate is then discharged through the line to an approved collection container. The container itself could be one of a number of forms. Primarily one would expect it to be a tank. Leachate is then pumped out of the tank periodically and disposed of at an approved waste water treatment facility. The leachate protection system will protect the aquifer. The liner itself is impervious and should not effect wetlands on-site. The leachate protection system prevents the discharge of pollutants from into existing wetlands.

Mr. Serp explained the fill process. Approximately 6 to 12 months in advance of the completion of the finished grades in Area A, the Applicant will start preparing Area B. After Area A is filled, cover requirements must be met, then a cap is installed within the specific time frame as indicated in the permit.

After Area B is completed, fill activities will move to Area C, and then Area D.

Mr. Serp then identified cross sectional drawings of the landscaping buffer in the area of St. James Church. (Applicant's Exhibit 34.) The drawings indicate proposed excavation for the cell and finished grade, with final restoration of Area A with respect to Gravel Hill Road. The drawing shows the 30 foot landscape buffer.

Mr. Serp then described a drawing of the property on the west side of the church and immediately adjacent to Gravel Hill Road. (Applicant's Exhibit 35) The dotted line indicates the grave area which existed in 1990. Mr. Serp indicated that Area E will have enough undisturbed area so the buffer will not be necessary.

Mr. Serp stated that the cap placed on the property after the fill prevents water from an outside source entering into the landfill, and greatly reduces leachate production. The cap consists of a foot of material over top of waste and eventually is brought up to a minimum of two feet of cover.

High density polyethylene, an impervious membrane, is used as a cover material over waste. Drainage material is then used as a drainage layer. This is a good system which conveys water that infiltrates through the soil. A plastic grid has a filter fabric on top which prevents soils from clogging the grid. This in turn discharges to a series of collection pipes and those collection pipes then carry the flow off the slopes of the landfill to the on-site storm water management facilities. Mr. Serp stated that in order to maintain the 200 foot buffer, it may be necessary to establish a modified cap, one which may be as much as 5 feet deep. Permission from MDE must be obtained to plant trees on the slope. The purpose of this cap material is to isolate infiltration into the landfill and into the waste. It intercepts percolation through the soil on the vegetative cap, and runs it through the storm water management facility. The cap should prevent storm water management from being any greater threat than it is at the present time.

Mr. Serp stated that a permit has been issued by MDE. It covers all of the safeguards that are normally associated with the operation of any landfill. Based on the conditions of the permit, he believes it can be operated without an adverse impact.

Mr. Serp is familiar with the design requirements of leachate collection systems from his previous work on landfills. He knows of no leachate collection system which had clogged. He has known liners to leak only if there has been some mechanical damage. He agrees that all liner systems will eventually leak.

Leachate collection systems generally clog for biological reasons, the growth of material in the collection system. The way to prevent or eliminate this is to flush out the system. Leachate collection systems are tested periodically, at six month intervals. It is very unusual that these systems would clog because of the build up of silt or mud. Generally, this would not occur unless there has been some material breach of the liner. If a leak shows up, which would normally show up in the leak protection layer between the two impervious membranes of the liner, that material could be excavated and the leak fixed. A plan to monitor leachate collection system and the liner for leaks and clogs has not yet been developed.

Mr. Serp stated that the 35 acre rubble fill area will consist of areas A, B, C and D. A footprint of the fill itself will be around 31 acres.

The vehicle weigh station on the subject property has not yet been located, as this is a fairly new requirement. The weigh station itself is a raised platform which has weight sensors attached. Mr. Serp assumes all of the heavy equipment will stay at the face of the landfill. He notes no equipment repair or storage building on the site plan. He does not know the anticipated quantity of waste which will be deposit at the facility. The site will be fenced in order to control unauthorized access. He does not know the details of any other site security. In his opinion there is normally little trouble with vermin at a rubble fill. The wells will be monitored quarterly. If a load were to enter the site with unacceptable material, the load would be rejected and the operator would be told to

leave the site. If unacceptable material were dumped in the site a process exists for notification to MDE, with the need to submit a remedial clean-up plan. This could include removing the undesirable material. Hazardous waste fill is handled on a case by case basis. Mr. Serp stated it is possible that contaminates which leave the leachate collection system could contaminate the ground water.

Mr. Serp has no experience, based on his recollection, with a rubble fill which is as close to homes as is the proposed rubble fill, although all landfills have some residential component. He has never worked on a rubble landfill which is in such close proximity to a cemetery or church.

Mr. Serp stated that the Addendum to the Phase III Report (Applicant's Exhibit 33), is actually included in the Operating Permit of the proposed MRA site. The operating procedures and conditions set forth in the Phase III report (Applicant's Exhibit 32) are the conditions which will apply if the variances requested by MRA are approved. Mr. Serp stated that the operating plan does not recognize work after dark. The permits allow artificial lighting. However, the Applicant is proposing not to use artificial lighting.

He understands that only emergency action will take place beyond the specified hours of operation. Emergency action could be caused by loads being brought in late in the day which may contain unacceptable or hazardous materials. There could be firefighting equipment on-site after hours if the Fire Department were called in the event of a fire. Mr. Serp believes that the bull dozer on-site will be operating fairly continuously between 7:00 a.m. and 5:00 p.m. A front-end loader will be working somewhat more sporadically. These pieces of equipment are equipped with back-up alarms. The dump truck stationed permanently on-site will also be used sporadically, normally to place cover material. Dump trucks are also normally equipped with back-up alarms. The water truck to be stationed permanently on-site will work as conditions require. The power broom sweeper will also work as conditions require.

The operating plan calls for a self-loading, earth moving pan. This is a machine used as an alternate to the dump truck for excavating purposes. It is used to excavate cells, and to place cover material. Occasionally this machine will be used at the same time as the dump truck and bull dozer are operating. The operating plan also lists a hydro-seeder and mulcher. This device will be used for either temporary or permanent surface stabilization. This machine will not be used on a daily basis.

The witness testified that burning of refuse will not be allowed. Spontaneous fires are normally associated with municipal waste which have a lot of organic material. Fires are less likely in rubble fills which hold inorganic materials. State law requires all loads to be covered. Neither liquid nor hazardous waste, including septic tank waste, is to be disposed of at the facility. Any material which has a decomposition process could produce an odor. These are generally controlled by the placement of fill material.

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The witness understands that the wooded area which currently exists around the Church property would be removed.

Cover material is placed, as required by the permit, on every 8' vertical lift. There is no specific requirement that material be covered the day it is deposited. Mr. Serp believes that it must be done every third day or at the end of the work week, whichever first occurs.

Mr. Serp stated that the 1990 Plan must be updated as, for instance, a liner was not required in 1990. A liner is now required. The cap configuration will be somewhat different today then it was in 1990, although functionally it serves the same purpose. This plan has not yet been designed. Even with the cap and liner, monitoring wells remain necessary to make certain no leakage is generated by the facility.

Mr. Serp stated that the liner and leachate collection system will not be designed until all approvals are first obtained from MDE and Harford County. The ultimate design must be reviewed and approved by MDE.

The material which is brought onto the site is dumped directly onto the face of the cell. The operator then attempts to smooth the surface as best he can and to fill-in voids in the material. The cap is then placed on top. There is no periodic inspection of this process. There is no quality control on the placement of material other than to try to fill these voids. The operator attempts to compact it to the smallest volume possible.

Next testified Holly P. Shipley, employed by KCI Technologies as a Senior Environmental Scientist. Ms. Shipley was offered and accepted as an expert Environmental Scientist.

Ms. Shipley personally conducted a site assessment on April 28, 2005, including a site investigation of the entire site for existing conditions and a review of existing conditions of the wetlands. She also performed a function and value assessment. In doing so she used the New England Method which is the most often used methodology by the Corp of Engineers.

Ms. Shipley described the site. The northern part of the site is boarded by Gravel Hill Road. The eastern most part is bordered by private property and a stream valley. The western part of the site is a stream valley. The southern part of the site is owned by Mr. Hynes. The topography generally slopes from Gravel Hill Road down to the bottom of the stream valleys, from north to south. The land appears to be greatly disturbed from previous mining operations. In the center there is an appearance of an on-going operation. It appears that the majority of the site, although not the stream valleys, have been disturbed by prior mining operations.

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Ms. Shipley attempted to determine if any threatened or endangered species existed on-site, either animal or plan. She identified no such species. She verified this finding with the U.S. Fish and Wildlife Service. (See Applicant's Exhibit 38).

No part of the site is a State designated species protection area.

Ms. Shipley stated that two head water wetlands systems which form a part of a perennial stream valley are located on the site. One is on the western part of the property and drains in an east to west direction; the other is on the eastern part of the property and drains from a north to south direction. She preformed a function and value assessment on these two streams. She defined a function and value assessment. A function is a self-sustaining property of the wetland. It is related to its ecological significance. 'Value' is a benefit that is provided. It is derived from the function or from the physical characteristics of that wetland. Typically values are based on human judgment.

In performing this type of assessment various factors are taken into consideration. There are 13 function and values which are reviewed. They include ground water recharge and discharge, flood flow alteration, fish and shell fish habitat, sediment toxicant retention, nutrient removal, production export, sediment and shoreline stabilization, wildlife habitat, recreation, educational and scientific value, uniqueness, heritage, visual quality and aesthetics, and endangered species habitat.

The function and value assessment is important, according to Ms. Shipley, as it assists in assessing the value of the system, and in helping to design a buffer around it for protection. She has performed such an analysis on the subject property.

Ms. Shipley then described the wetland systems. The western system on the subject property flows from east to west. It begins at head water wetlands. It is forested. These forested wetlands and head waters together form a perennial stream which then drains off-site and converges with another perennial steam. The eastern stream system also begins as a head waters forested wetland. These combine into a perennial stream and, as they drain downslope, pick-up more head waters and seep.

From a function and value assessment point of view, the systems have production export-they provide food. They provide habitat for animals. Ground water recharge and discharge is predominate because there is so much outflow of water coming from them. This is probably their dominate feature.

Five vernal pools are on-site. A vernal pool is manmade, being a depression in the landscape that does not have an outlet. It collects storm flow or storm water and/or ice melt, snow melt, and supports amphibian species including frogs and salamanders. Vernal pools dry up in the summer months and disappear. Vernal pools do not, at least on the subject property, contribute to wetlands.

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On the subject property, four vernal pools are located southwest of the existing access road, closer to the center of the site. One is located at the southern boundary of the property. Ms. Shipley observed the pools during her site visit. They are areas that have contained water and have amphibian life in them. This observation is typical of this time of the year. The only thing adjacent to the vernal pools is upland forest. These pools function, predominantly, as habitat value.

Ms. Shipley had prepared a drawing of the site. (Applicant's Exhibit 39.) This drawing shows the wetlands and the streams. Ms. Shipley noted that the wetlands are estimated wetlands. The boundaries had not been surveyed. The drawing shows by a red dashed line the 75 foot buffer. The green dashed line is the State's 25 foot buffer. The tan area is the proposed buffer area request.

Ms. Shipley's exhibit does not address the drainage area. However, Applicant's Exhibit 40, also produced under Ms. Shipley's supervision, shows the drainage area. Applicant's Exhibit 40 shows the drainage area to the stream on the Gravel Hill site using Harford County topography. The dark lines on that exhibit delineate the drainage area.

A document entitled "Natural Resource District 150 Foot Stream Buffer Variance" (Applicant's Exhibit 40) shows the area of the variance requested from the Natural Resource District 150' stream buffer. The red dashed line shows a 150 foot buffer based on a greater than 400 acre drainage area. The blue dashed line shows a 75 foot buffer based on a less than 400 acre drainage area. The exhibits show that the drainage area is much smaller than 400 acres and, accordingly, the Applicant need not comply with the 150' buffer. The applicable buffer would then be 75 feet. If a variance were requested, which Ms. Shipley believes is not necessary, the map shows the extent of the variance necessary.

The threshold requirement for inclusion in the National Resources District is a drainage area of 400 acres. The drainage area as shown on Applicant's Exhibit 40 is 208 acres. Accordingly, the site does not drain an area that would qualify or meet the threshold for inclusion in the National Resources District.

The witness compared the 1989 wetland delineation to her findings. She indicated that the 1989 delineation was not a surveyed wetlands. Based on her observations in the field during a recent visit, it appears that both her findings on wetlands and the 1989 delineation are similar.

The witness testified that the engineering drawings which were approved by both the State and Harford County agree that the drainage area is less than 400 acres. Those drawings are in evidence as Exhibit 31.

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With reference to the wetlands on the eastern side, the request is for a variance from the 75 foot buffer. There is no proposed disturbance to the streams or wetlands themselves other than the access road crossing, located on the western stream valley in the approximate middle of the property. Other than the access road, there will be no significant disturbance of any major wetland system on-site.

According to the witness, the required 25 foot State buffer will be adequate to protect the streams and wetlands on-site. The witness bases this conclusion upon existing environmental regulations to which the rubble landfill must conform, including the type of construction and the monitoring which goes along with that activity.

With the regulations placed on the rubble landfill, and if constructed and maintained as planned, the variances to which the witness had testified to, if granted, will not adversely affect the Natural Resources District, in her opinion.

The witness further stated that FEMA has updated flood plain maps. A 100 year flood plain is now shown, based on the year 2000 update. In 1990 no flood plains were identified on this site. The flood plain is now shown on what was introduced as Applicant's Exhibits 42 and 43.

Section 267-41.C of the Harford County Development Regulations prohibits the disposal of solid waste in an area less than 500 feet from the flood plain. Applicant's Exhibit 44 shows the limits of the flood plain. The solid red line on that Exhibit shows the limits of the 100 year flood plain, and the red dashed line shows the limit of the 500 foot flood plain buffer. The tan area shows the variance requested. At its widest, according to the witness, the variance requested is 200 feet. Some portion of the area over which the variance covers is in support areas as opposed to fill areas. Support areas, according to the witness, are not covered by Section 267-40.1.C. If this variance were granted, according to the witness, the health, safety, and general welfare of people living in the community would not be affected. The witness stated that the 500 foot buffer is a political boundary and not scientifically based.

Ms. Shipley reiterated that 400 acres is the threshold drainage area for a stream to have a required 150 foot buffer. The actual site drainage, as determined by KCI Technologies and as shown on Applicant's Exhibit 40, is 208 acres. If that is correct then no variance to the 150 foot stream buffer requirement is necessary. If the drainage area is in fact 400 acres or more, a disturbance will be necessary as shown in tan on Applicant's Exhibit 41. However, the disturbance of that area will not have a negative impact on the stream as shown on the western boundary of the property. No development is allowed in the 100 year flood plain.

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Before MRA will be permitted to do any work the actual boundaries of the Natural Resources District must be delineated by field survey. MRA is now seeking a variance to establish a 25 foot buffer rather than a 75 foot buffer surrounding the Natural Resources District. The State only requires a 25 foot buffer.

Ms. Shipley stated that the request to allow a 25 foot buffer, and no more, will, if granted, have no negative impact on the non-tidal wetland areas. The 25 foot State mandated buffer, in her opinion, is sufficient.

The light tan area within the 500 foot flood plain buffer, as shown on Applicant's Exhibit 44, is the area in which MRA proposes to deposit solid waste. A variance is requested in order to deposit fill in this area. This variance will not adversely affect the health, safety and welfare of the persons or property living adjacent to the site. The 500 foot flood plain is a political boundary and not scientifically based. The 100 year flood plain elevation is the one set for the health and welfare of human life. That is the elevation which one needs to adhere to. If granted, such a variance would not impair in any material way the flood plain or wetlands.

Upon cross-examination, Ms. Shipley stated she did not conduct a routine environmental wetland delineation. She did a site assessment, which was a review of the wetland delineation conducted in 1989. She did this to determine if the wetlands were similar in nature to what they were then. She compared them to see if they were grossly different, and also to conduct a function and value assessment on those wetlands. Ms. Shipley is familiar with the Corp of Engineers' definition of wetlands. She followed the routine wetland delineation methodology. The routine methodology is to take soil vegetation samples, and through visual observation make a determination of wetlands.

She did not conduct a full wetland delineation. She did not do stringent soil sampling. Accordingly, she cannot describe the soils other than to say the soils have been disturbed from mining activities. Based on her observations she believes a combination of soils exist, including clay soils, gravel soils, and sand soils. Vegetation consists of upland communities. The entire site is predominately forested. The forest consists of red maple and southern arrowood, a common wetland shrub. High bush blueberry is also present, a common wetland shrub. These are in the two stream valleys. She did not, however, do a soil survey. Soil surveys will be done at the time the wetland delineation is done.

Ms. Shipley had reviewed aerial photographs of the property. She also examined the National Wetland Inventory maps and the Harford County Soil Survey. She reviewed topographical maps, and the previous wetland delineation maps. She does not know the permeability of the soil, or the saturation level. She did not do an independent evaluation of the source of water that enters the site.

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Ms. Shipley was not familiar with the letter to MRA from Maryland Department of the Environment dated November 9, 1999 which indicated a recent evaluation of surface water had determined that emerging wetlands could be developing within the landfill area. (Protestants' Exhibit No. 1.) Ms. Shipley said it was pointless to do a full wetland delineation at this point as that is only good for 5 years, and MRA first needed to get the variances and other permitting before they did.

Ms. Shipley was aware of the Maryland darter, which is a rare species. She agrees that, for its protection, run off should be excluded from a stream where the darter exists. She acknowledged the darter has been found to exist in Swan Creek, although it had not been seen for many years. When asked what MRA should do to protect snail darter, Ms. Shipley stated that MDE is very stringent about the construction of the landfill, including erosion control measures. The streams on-site are headwater streams with little depth, maximum of one inch. They are tiny, shallow streams. If MRA follows all the regulations in place, and remains in compliance, there is nothing further it must do to help protect Maryland darter habitat.

The witness described the reasons for buffers as including the need to control nutrient run-off, to collect sediments, and to provide habitat protection. A buffer is a transition between upland and wetland. It is a buffer between transition of vegetation species. The buffer can be constructed with almost anything. On the subject property the buffers around the stream valley are forested. They will remain. The 25' buffers, including the State mandated buffer, would remain forested. Her recommendation is that the buffers remain forested.

Ms. Shipley stated that the Applicant is not requesting a variance for any of the vernal pools. The pools are shown as being part of Disposal Area B. No vernal pools will be disturbed. Ms. Shipley does not believe that a buffer necessarily needs to be monitored. If the landfill is constructed properly, and built according to MDE regulations, then the wetland and buffer should not need additional monitoring. If the buffer is disturbed in the future, then remediation will be necessary. The 5 vernal pools are not regulated by the Corp of Engineers, although the Maryland Department of the Environment may regulate them. They are not technically wetlands; they are puddles. They have a value for amphibian species. She would define disturbance to a wetland as fill being placed in the wetland, earth or vegetation being disturbed or removed, pollutants going into it, sediment going into it, or debris being placed in it. Dust would not be a disturbance unless it was to the point where it began to clog the system.

She had referred earlier in her testimony to a 500 foot buffer from the flood plain as being a "political boundary". While a 500 year flood plain elevation is a boundary placed for health and welfare, the 500' boundary is placed based on other reasons. She does not know the reasons for it, although she stated it was not based on health or welfare. It was not based on science. There is no other flood plain jurisdiction or regulation that is similar to that. It is her understanding that the 500 foot flood plain buffer is for this project alone.

Ms. Shipley believes a 25 foot buffer is acceptable, instead of a 75 foot buffer, because a 25 foot buffer is allowable throughout the rest of the State. A large buffer could be more protective of the environment.

Ms. Shipley stated that she had not recently reviewed the Harford County Code provisions which relates to flood damage prevention. She indicated that her statement that the 500 foot flood plain buffer is a political buffer is based upon her understanding that this buffer was applied only to this particular project. It would take the largest flood in the world to raise the stream from its banks to that elevation. While she walked the entire site, she did not specifically walk the flood plain district line, nor did she walk the 500 foot buffer line. She did not determine during her visit the 500 foot flood plain buffer limits.

Based on her observations, the majority of the trees on-site are less than 50 years old, and she accordingly assumed that the site was disturbed within the past 50 years. She saw no evidence that the site had been timbered.

Ms. Shipley stated that the Army Corp of Engineers does not regulate vernal pools, as they are not connected to either waters of the United States or other contiguous wetlands. MDE may regulate them as they are considered a viable habitat for amphibian species. She says that their classification as a wetland is under debate. She does not know if they are considered wetlands by Harford County Code. Ms. Shipley then identified on Applicant's Exhibit 28 the location of the vernal pools. Ms. Shipley stated that each vernal pool is roughly 25 feet in diameter.

First for the Applicant was called Jacqueline Seneschal, employed by KCI Technologies as a Senior Associate engaged in community and environmental planning. Ms. Seneschal described her experience as Chief of Development Review for Harford County during the rewrite of the 1992 Zoning Ordinance. She was engaged in the location of major public facilities while with Harford County. Ms. Seneschal was accepted as an expert in zoning and land use planning.

Ms. Seneschal was retained by MRA and asked to review the record of the case and to make recommendations with regard to the variances requested. As part of her preparation she had reviewed all Board of Appeals cases going back to the 1970's related to the subject property, as well as correspondence from the staff and MRA. She reviewed the approved site plan. She has been on the site itself 4 to 5 times. She also has visited and is familiar with other landfills in Harford County.

Ms. Seneschal described the variances which were being requested by MRA.

Based on her experience, Ms. Seneschal believes the Development Regulations were written to permit an Amendment of the Solid Waste Plan and the approval of the site plan for a landfill to happen simultaneously after a single public hearing. This would avoid a situation in which the County Council had to deal repeatedly with requests for the same landfill which may have arisen

because of the political sensitivity of the location of landfills. In the late 1980's the Solid Waste Management Plan and site plan approvals were to occur contemporaneously through hearings before the County Council.

The County at that time, as well as today, had a combined permit application process which included an application for a grading permit. Approval for a landfill in the late 1980's required a Solid Waste Management Plan, site plan approval, and a grading permit. Ms. Seneschal stated that no separate zoning certificate was required. She further stated that as part of the site plan and grading permit approval, the County was required to consider Section 267-9I of the Harford County Code, Limitations, Guides and Standards. She believes that language still exists today at Section 267-28D which specifically states that the County Council, in reviewing the site plan, is to consider Section 267-9I to which special exceptions and variances are subject. The standards have not changed in any appreciable way since the 1980's.

Ms. Seneschal and KCI recommended to the Applicant that a 30 foot buffer be installed. She and her company also recommended that the Applicant not develop Cell E. By deleting Cell E from development a large part of the 200 foot buffer around the residential properties can be provided. Furthermore, since 1989 the Maryland Department of the Environment has required that rubble fills be lined and that they have leachate collection systems. The development of a liner and leachate system for Cell E would require substantial disturbance to the stream. The elimination of Cell E eliminates this potential disturbance. MRA has accepted these recommendations.

The variances now requested by MRA match those listed in the Staff Report of March 18, 2005. However, Ms. Seneschal does not believe the variance for a 30 foot buffer is necessary.

Ms. Seneschal referred to Applicant's Exhibit 46, which indicates locations, in green, of the proposed 30 foot buffer yard. The red area indicates an area which will not have an installed buffer. For the most part, those are areas that will not be disturbed at all because existing vegetation will be retained. The areas marked in green are areas where the 30 foot buffer yard from the property line will be established and planted in vegetation. They will be disturbed by the construction of a landfill and the installation of the liner, but a buffer yard would be installed along the edge as the liner itself is installed. In her opinion a variance to the 30 foot buffer yard is not necessary. MRA will maintain a 30 foot buffer in all areas indicated in green and will maintain vegetation in the areas indicated in red, except for the area immediately at the driveway.

Concerning the boundary of the Natural Resources District on the western edge of the site, as shown on Applicant's Exhibit 41, MRA believes that the drainage area of the stream is less than 400 acres and, therefore, the buffer is 75 feet from the center line of the stream. However, the request for the variance is made in the event one is found to be necessary. It would affect those areas shown in tan on the exhibit. No rubble fill is proposed to be placed in the 150 foot stream buffer area.

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County G.I.S. topographical data was used to calculate the water shed of the stream on the west side of the property from its confluence with the small stream that runs across the center of the site. A February 22nd letter from the Harford County Department of Planning and Zoning raised uncertainties concerning the extent of the drainage area. That letter suggested a more in depth analysis be undertaken. Ms. Seneschal believes that Section 267-41D(9) allows adjustment of the Natural Resources District by the Zoning Administrator upon presentation of engineering data to more precisely delineate the boundaries of the District. Ms. Seneschal does not know how the County arrived at its calculations.

If the drainage basin is less than 400 acres the required buffer for the stream on the western side of the property will, therefore, be 75 feet' from the center line of the stream and 75 feet from any associated wetlands. The 75 foot line is shown on Applicant's Exhibit 41. There will be no disturbance within the 75 foot line.

KCI prepared a site plan showing the 200' buffer as required by § 267-28D(4). (Applicant's Exhibit 47.) It shows, by red line, the area within 200' from the property line. The area in tan is the area within that 200' buffer which will be disturbed by development.

Ms. Seneschal stated that the 200 foot undisturbed buffer requirement at Section 267-28(D)(4) of the Code has been interpreted differently over time by Harford County. Originally, in 1988 or 1989, Mr. Carroll of the Harford County Department of Planning and Zoning took the position that in the case of a pre-existing sand and gravel site, a 200 foot buffer was to be installed as fill occurred. It would not be required to be left undisturbed. This interpretation was applied to the Oak Avenue rubble fill. Harford County has now changed its policy and requires that a 200 foot buffer be undisturbed. Ms. Seneschal stated that one of the 27 conditions attached to the site plan approval in 1989 applied to the 200 foot buffer. Condition 10 requires a minimum landscape buffer zone of 200 feet be established and stabilized on all finished elevations. This buffer zone shall be constructed on completed elevations, in increments of 25 feet as construction progresses.

According to her findings, the rubble fill is primarily for the disposal of construction and demolition debris. It will operate during daylight only between the hours of 7:00 a.m. and 5:00 p.m. Monday through Friday, 7:00 a.m. to 12:00 p.m. on Saturday. Plans do not include the installation of outdoor lighting. The number of vehicles will be limited to an average of 50 trucks per day visiting the site. They will not come onto the site without an appointment or otherwise having notified the operators of their arrival. Each load will be screened visually and recorded on a camera. A County employee will be at the site during the hours of operation. Vehicles entering the site will be limited to the use of Maryland Route 155, Level Road, to Paradise Road to Gravel Hill.

The subject property is zoned agricultural. Other uses allowed in the AG District include agricultural operations. The stated purpose of the agricultural district is to maintain and promote the rural character of the land as well as permit the continuation and viability of the farming and

agricultural uses. Low density residential development is also permitted. Continued operation of agricultural purposes shall be permitted. Typical equipment used in an agricultural operation could be construction equipment, bulldozers, earthmovers. There is no 1,000 foot or 200 foot buffer requirement for agricultural uses. According to Ms. Seneschal, the storage of commercial vehicles associated with an agricultural use is allowed, as are saw mills, and agricultural products processing. Single family residential use is allowed at a density of one per ten acres, with a minimum lot size of two acres. Saw mills do not require a 1,000 foot buffer. Nurseries do not require a 1,000 foot buffer or a 200 foot buffer.

A liner will be required for this landfill. Environmental standards contained at Section 109-8.3 of the Harford County Code were also considered by Ms. Seneschal. The Applicant will be required to comply with the conditions of that section.

Ms. Seneschal described the first phase of the landfill as being in the access area coming off Gravel Hill Road on the west side of the property. This is indicated in green on Applicant's Exhibit 28. As disposal Area A fills, development will then began at disposal Area B. The operation will then move to disposal Area C. As disposal Area B is filled-in, it will be filled from the road toward the south, working backwards. As B closes out, C will be opened with a stock pile for disposal Area C located on the disposal Area D site. As disposal Area C is filled and gets close to capacity, disposal Area D will be lined, and etc.

Ms. Seneschal understands that before any rubble is deposited in the landfill a liner is to be installed, and a leachate collection system installed to the satisfaction of MDE. The operation as planned would be approved by MDE, and the County Department of Public Works would certify compliance with applicable Code provisions. Only then could rubble be placed in disposal Area A. The 30 foot buffer will be established at the time the liner is installed, which will be before operations begin.

The Operations Plan approved by MDE calls for one bulldozer, a truck, and a third piece of heavy equipment. This equipment will operate on a daily basis. There will be a sweeper used along the County road. A watering truck will be used on the interior roads to control dust. A seeder will help control sediment run-off by seeding the site.

The rubble fill process would take approximately 5 years. The fill would then be closed in accordance with the requirements of the Maryland Department of the Environment. After closure the subject property would appear as a series of hills, vegetated with grass. A 200 foot area closer to the church and road would be designed to accommodate heavier vegetation. At the time of closure and re-vegetation the site will primarily be used as open space. No structures will be allowed on the site. Active recreation could take place as long as no structures were erected.

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Ms. Seneschal described the site as being very rugged. It has been mined for at least 50 years.

Ms. Seneschal took various photographs on the site. She described Applicant's Exhibit 50-A as showing an area of the site that has been mined, with ongoing erosion. It shows trees of different ages indicating that mining was discontinued at different times. There also appears to shown an old access road leading to the western most part of the property.

Applicant's Exhibit 50-B shows a hole on the site. A 20 foot to 30 foot hill on the photographs represents a drop off from the edge of the graveyard into the property.

Applicant's Exhibit 50-C shows an area which Ms. Seneschal described as an informal shooting range.

Applicant's Exhibit 50-D shows the western stream at Gravel Hill Road. This is the stream that MRA contends actually requires only a 75 foot stream buffer, not a 150 foot stream buffer. This also drains a sub-basin of less than 400 acres, according to the Applicant. Ms. Seneschal described this as a small stream.

The 1982 aerial photograph of the site shows an area (Applicant's Exhibit 52) of disturbance generally in the vicinity of the access road. In Ms. Seneschal's opinion, the disturbance shown in the photographs is from surface mining.

No public water or sewer service is planned for the subject property in the future.

She believes that the rubble landfill will be consistent with objectives of the County's Comprehensive Master Plan. The graveyard has been designated as a County historic landmark. This designation does not extend to the property owned by MRA.

The general area contains a mix of low density, low intensity residential and agricultural uses. The property at the corner of Paradise Road and Gravel Hill Road is a large farm, as is the property immediately to the south of the site. Located on Paradise Road appears to be a commercial vehicle storage setback on the north side of Gravel Hill Road.

Scattered residential uses exist along Gravel Hill Road. At the corner of Earlton Road and Gravel Hill Road appears to be an existing fill operation, on what is referred to the Stancil property. Material is buried on-site. That site does not have a rubble landfill permit.

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For the Applicant testified Ian Botts. Mr. Botts is employed by KCI Technologies as a geographical information systems analyst. As such he is familiar with Geographical Information Systems (GIS) and software produced by Environmental Systems Research Institute (ESRI). These systems are used to perform impact analysis for wetlands and highway studies. They also have applications relating to noise and cultural resource analysis, 3-D modeling, and spatial overlay operations. Harford County Government uses the ESRI software.

Mr. Botts had been asked to use the software to produce a map, or visual display, of existing conditions at the Gravel Hill site. To do so he obtained data from Harford County, and utilized components of the GIS software to produce a "fly-through" animation.

The procedure used to create his visualization is summarized at Applicant's Exhibit 53.

Mr. Botts explained that his animation depicts a fly over of the Gravel Hill site. One sees various relief differences at the site, and sometimes drastic contour interval changes, steep slopes, etc. Mr. Botts has visited the site and determined that the fly-through animation is accurate in closely resembling the actual physical features of the site. The DVD which contained the animation was accepted as Applicant's Exhibit 57.

Mr. Botts then narrated the animation. The animation begins as one flies over Gravel Hill Road toward the church property. The subject property is then circled. In total, 7 or 8 different depictions from different angles of the subject property are shown on the animation.

On cross-examination, Mr. Botts admitted that none of the buildings shown on the animation had elevation data. A standard height of 10 feet was assigned to all buildings. He did not know, specifically, the height of the Church building.

The Applicant then offered an amended site plan which does not include the property described as the Hyne Property. The Hyne Property is not a part of the application.

The Applicant then presented Exhibit 59, which shows a 75 foot property buffer around the Church.

Jacqueline Magness Seneschal was then recalled to testify. Ms. Seneschal described the Stancill property which is located down Gravel Hill Road from the subject property. On the Stancill property were stored 4 pieces of construction equipment on the dates she had most recently observed the property, including a roller and a vehicle with a bucket on the front. Ms. Seneschal identified a grading permit which had been issued for the Stancill property by Harford County. The Stancill property is approximately a quarter mile from the subject property. Ms. Seneschal identified another piece of each moving equipment operating at the end of the driveway which is opposite the entrance to the subject property.

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Ms. Seneschal gave her professional opinion that the Applicant's property has unusual topographical conditions which make it unique among properties in the area. The variation in topography on the subject property is significantly greater than the variation in topography of other sites in the area. She called the topographical conditions exceptional as they appear to be not natural in form, but largely a result of the prior mining operations which began long before there was zoning in Harford County. She believes evidence exists of historic mining on the property. She believes the property was mined at least into the 1950's and perhaps as early as the 1940's.

Ms. Seneschal next discussed Harford County Code Section 267-28(C), which is the 30 foot buffer yard requirement. She believes the purpose behind this section is to "ameliorate" conflicting adjacent uses.

Ms. Seneschal explained that MRA is requesting variances to this buffer yard requirement. The first variance would be along Gravel Hill Road at the entrance to the site. Using Exhibit 58, Ms. Seneschal described this area as the entrance of the proposed rubble landfill. Existing vegetation would be retained except to allow an actual driveway into the site.

The second location for which a variance is requested to the buffer is immediately along Gravel Hill Road between the land of Wilson and the land of Blake. The Applicant has no intention of removing existing vegetation. Accordingly, rather than install a formal buffer area, the witness suggested that the existing vegetation be retained.

The third area is to the south of the lands of Holmes and the lands of Blake, next to Cell E. The Applicant's proposal to develop that cell has been withdrawn so there will be no disturbance of the existing vegetation. As the existing vegetation is to be retained, there is no plan to install a buffer.

It is not typical to require a buffer at the point where cars or other vehicles are entering a site. This is to provide an allowance for an entrance to a property. She believes that the requirement of a buffer at the entrance point would cause a hardship to MRA. She does not believe that the granting of these variances would be detrimental to adjacent properties, not would the granting of the variances impair the public interest.

Ms. Seneschal then addressed Section 267-40.1A of the Harford County Development Regulations which mandates the 100 acre minimum site requirement. The subject property is not 100 acres; it is 55 acres. A variance of 45 acres is being requested. Ms. Seneschal believes that imposing the 100 acre requirement causes MRA a practical difficulty or unreasonable hardship.

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Ms. Seneschal states;

> *"It's not clear what enlarging the site would gain. It would be a significant hardship to purchase an additional site, additional land, when their purpose is to essentially reclaim a former sand and gravel operation."*

Granting a variance to the 100 acre minimum requirement would not be detrimental to adjacent properties, says Ms. Seneschal, nor would it impair the public interest.

Ms. Seneschal next addressed Section 267-28E of the Development Regulations, which contains the 75 foot historic landmark buffer requirement. Ms. Seneschal states that this requirement is an effort to protect the integrity of identified historic sites and the impacts of adjacent development. The portion of the graveyard owned by the church is identified as a County landmark. The church itself is not a noted County landmark. Ms. Seneschal stated that MRA is not aware that the project had been reviewed by the Historic Preservation Commission, which is charged with the responsibility of making a recommendation for the buffer. She does not believe Harford County followed proper procedure. MRA is proposing a 30 foot landscape buffer around the graveyard. This would be located by first identifying the limits of the existing graves on-site and would be accomplished by an archeologist hired by MRA. The buffer would then extend for 30 feet from the limits of the existing graves. MRA has agreed to undertake this work. No rubble would be placed within the 30 foot buffer, only clean fill. The area would then be vegetated. This fill would help stabilize the existing edges of the graveyard where the slopes are steepest and where there is little present vegetation. Failing to grant the variance would cause MRA practical difficulty or unreasonable hardship:

> *"if this buffer was determined to need to be an undisturbed buffer, then you essentially create a situation where you're retaining the existing slope which has some erosion issues and creating a ditch, if you will, between there and the rubble fill which initially will be below grade and would ultimately go above grade; so essentially you'd have a situation where you'd have the grounds of the graveyard, it would drop off, and then the ground would start to rise again, and you would actually crate a ditch."*

If this variance were not granted the actual buffer area, which would be remaining in its natural state, would be sloping down from the graveyard and would continue to suffer erosion.

Ms. Seneschal next addressed Code Section 267-28D(4), which requires a 200 foot undisturbed buffer yard. Ms. Seneschal stated the reason for the requirement is to provide buffering to adjacent uses. For the most part, MRA is not able to meet this 200 foot setback requirement. These areas were identified on Applicant's Exhibit 47.

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MRA proposes to eventually create a 200 foot buffer, but it would be created and landscaped as the landfill progresses. This is also in compliance with Harford County's approved plan in 1989. Without this, the subject property would simply have a "big ditch" through the middle of the property. She believes that a buffer would be more protective of adjoining property if it is built as a landscape buffer, rather than if it were left in its undisturbed state.

Forcing MRA to comply with the 200 foot undisturbed buffer requirement would cause it unreasonable hardship in developing the proposed landfill site. The granting of the variance would not be detrimental to adjoining properties as it would help to reduce some of the trash dumping that takes place in the area and, over time, would provide a better situation. "It will take time for the property to be filled, but once it is filled, you will end up with an open space that will be in perpetuity."

Ms. Seneschal next addressed Section 267-40.1D of the Development Regulations which requires a 1,000 foot buffer from residential and institutional buildings. She stated there is no place on the site which would allow the development for a rubble landfill if this requirement were to be met. A 1,000 foot buffer from the 32 acres of fill area would consume approximately 240 acres of land. MRA would need to acquire 240 acres adjacent to the property in order to satisfy this requirement. MRA is accordingly requesting a variance to the entire 1,000 foot buffer requirement. Requiring a 1,000 foot undisturbed buffer area would cause unreasonable hardship or practical difficulty to MRA. It is excessively burdensome to require MRA to control all of the property within 1,000 feet of the 32 acres which they control. This would require MRA to control 7 or 8 times as much property as it intends to actually fill.

The granting of this variance would not detrimentally impact adjoining properties. Impacts from the proposed rubble fill will be comparable to other impacts permitted as a right in the agricultural district, in which the rubble fill and surrounding properties are located. Agricultural uses are not required to provide a 1,000 foot undisturbed buffer. The granting of the variance would not impair the public interest, according to Ms. Seneschal. The Scarborough Landfill, for instance, does not meet the 1,000 foot undisturbed buffer requirement.

Ms. Seneschal then addressed Section 267-40.1C of the Development Regulations, which is the 500 foot flood plain buffer requirement. Ms. Seneschal used Exhibit No. 44 in her testimony. She does not know the purpose of the 500 foot flood plain buffer requirement. All otherwise permitted uses are allowed within the 500 foot flood plain buffer except the proposed rubble fill. Exhibit No. 44 shows the extent of the 500 foot flood plain buffer which would be impacted if the requested variance were granted.

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MRA proposes to maintain approximately 350 feet to 400 feet of buffer between the flood plain and the area where the rubble is to be located. However, MRA is not proposing any rubble fill within the designated flood plain itself, simply within 100 feet to 150 feet of the 500 foot buffer. She believes that maintaining a 350 foot to 400 foot flood plain buffer would satisfy the purposes of the 500 foot flood plain buffer requirement. A 350 foot to 400 foot buffer will be as protective as a 500 foot buffer.

Ms. Seneschal then addressed Section 267-41D(6) of the Development Regulations, which provides that the Board may grant a variance to subsection D(3), (4) or (5) upon a finding by the Board that the proposed development will not adversely affect the Natural Resources District. This is a different standard than is Section 267-11, Variances. In addressing Section 267-41D(6), which requires a 75 foot non-tidal wetland buffer, Ms. Seneschal stated that the purpose of this Section is to provide additional filtering effect for surface water that might travel into wetlands. MRA is requesting a 25 foot buffer to the wetland opposed to the required 75 foot buffer, or a variance of 50 feet. Ms. Seneschal would advise MRA to obtain a new wetlands delineation. She does not believe it is possible to delineate the wetlands until they have secured the variances and have an indication of whether the project will be able to proceed. Ms. Seneschal also stated that the last field delineation of wetlands was 1989 or 1990, and typically a wetland delineation is good for between 3 to 5 years. MRA will honor its 25 foot State non-tidal wetlands buffer. No disturbance to actual areas of non-tidal wetlands have been proposed. The granting of a 50 foot variance will not adversely effect the Natural Resources District, as the combination of the 25 foot buffer and the design requirements of the Maryland Department of the Environment should adequately protect the Natural Resource District and wetlands. Requiring MRA to adhere to the 75 foot buffer requirement would unreasonably prohibit it from using a significant portion of its property.

Ms. Seneschal stated that the Harford County Master Land Use Plan calls for the subject property to have low intensity use. It also recommends a ban of old sand and gravel operations and their conversion to recreation and operation space. Accordingly, she believes the proposed rubble and land fill in conformity with the Harford County Master Land Use Plan. She believes that the proposal would be a relatively small scale operation that will be limited in time. At the end of its use, the property would be reclaimed and it will be suitable for use as a recreation area or open space.

Addressing the vernal pools, her firm had determined that none of the vernal pools were larger than 40,000 square feet in size. Accordingly, she does not believe that the vernal pools are subject to County Natural Resource District regulations, as only wetlands in excess of 40,000 square feet are regulated.

Ms. Seneschal then addressed the tributary stream buffer issue and the requirement that a 150 foot buffer is necessary from a stream that drains a sub-basin of 400 acres or more. In researching this, Ms. Seneschal reviewed the Harford County Geological Map of 1968 and the Harford County Hydrology Map which was attached to legislation adopted by Harford County as Bill No. 83-12. The

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Harford County Hydrology Map has a legend which indicates major streams are those which have tributaries that drain more than 400 acres. Ms. Seneschal cannot identify on this map a confluence of the two streams on MRA's property. The map is not precise enough to identify where these streams are located. Accordingly, Ms. Seneschal reviewed more current engineering. Specifically, Ms. Seneschal reviewed Exhibit 40 which outlines the watershed of the stream on the western edge of the property and its confluence with the sub-tributary that feeds into it. Exhibit 40 was prepared by Ms. Seneschal's engineering firm based on information in the County's GIS system. Utilizing this information it is possible to determine the location of the confluence of the two streams. It is also possible to calculate the area in which the sub-basin drains. She calculated that area, using tools which are available through the GIS software, as containing about 208 acres. The Harford County Department of Public Works and the Harford County Department of Planning and Zoning signed off on plats, prepared by the Applicant's engineer, which indicated that no stream drains an area of more than 400 acres.

Accordingly, Ms. Seneschal believes that the stream buffer is required to be 75 feet, not 150 feet as the drainage area of the sub-basin is less than 400 acres. MRA does not require a variance to the 75 foot setback requirement.

Ms. Seneschal and her firm also determined the extent of slopes surrounding the Church on its west side. Most of the slopes on the west side of the Church are in excess of 25%. Slopes to the south of the Church are between 15% and 25%. On the east slopes are approximately 15% to 25%. Only slopes more than 25% are defined as steep slopes by the Harford County Development Regulations.

In addressing Section 267-9I, Limitations, Guides and Standards, Ms. Seneschal made the following observations:

- She does not believe that the rubble fill of the size proposed will have a significant impact on the public health, welfare and safety of people or properties in the area given the conditions that will be imposed by the County Council and the regulatory requirements of the Maryland Department of the Environment.

- The rubble fill will not effect the number of people living in the area.

- She does not agree that additional truck traffic will adversely impact the residents ability to enter or exit their property. The level of traffic is 50 trucks or 100 trips per day. 10 or 12 trips per hour is not going to adversely impact the residents' ability to get into or out of their property.

- She does not agree that the proposal will impact the orderly growth of the community and neighborhood. The development is consistent with the Harford County Master Plan which calls for the area to be developed for low intensity uses.

- She believes that the use will have a positive fiscal impact on Harford County.

- Ms. Seneschal does not agree with the Staff's conclusion that there will be an impact on surrounding property. She points out that Staff's conclusion is based on a finding that activities will come as close as 10 feet to 15 feet to some of the adjacent residential properties and the Church. By eliminating Cell E, those distances are increased to as much as 200 feet. In any event, a 30 foot buffer will be established by the developer at such time as a liner is installed and there will be a resulting greater distance between the use and residential properties.

- She does not agree effects on the surrounding community cannot be mitigated. She believes that the 27 existing site conditions which MRA must comply with, along with the general conditions contained in the Development Regulations, will mitigate the adverse effects of any rubble fill activity on adjacent property. She does not believe the effects of odor, dust, gas, smoke, fumes, vibration, glare and noise will be beyond that which would normally be expected in the agricultural zone.

- She agrees with the Staff's conclusions concerning the adequacy of existing facilities for police and fire protection, sewer, water, trash and garbage collection.

- The rubble fill, as regulated, is consistent with the generally accepted engineering principles. She also believes the project is consistent with generally accepted planning principles and practices.

- Restrictions on hours on operation will preclude operations during hours when the Church is usually active. The Applicant will be installing a 30 foot landscape buffer around the existing cemetery. Furthermore, the equipment will operate only intermittently. When completed in five years the operation will have a 200 foot landscape buffer around the entire outside of the use. Accordingly, Ms. Seneschal does not believe the proposal would have any direct detrimental affect on the operation of the Church.

- She disagreed with the Staff Report's findings that the proposal is not consistent with the Harford County Ten Year Solid Waste Management Plan. The County's Solid Waste Master Plan, as approved by the Maryland Department of the Environment, shows that the site will be used as a rubble fill. The Applicant's proposal is considered by the Maryland Department of the Environment to be part of the Harford County Solid Waste Management Plan.

- The proposal will not impact any identified non-tidal wetlands or the State's 25 foot non-tidal wetland buffer, or the 100 year flood plain. However, some filling is proposed within the County's 75 foot non-tidal wetland buffer.

- If the project is developed consistent with the requirements of Maryland Department of the Environment and the conditions which the Harford County Council had approved, the proposed use would have no detrimental impact on the environment or sensitive environmental features. It will provide an opportunity for additional recreation and open space.

- She believes that the use would have no adverse impact upon the graveyard at the Church property. The grading which would take place on the rubble fill property would be no different from what had taken place in the past when the property was used as a sand and gravel operation. A 30 foot landscape buffer will be installed which will help preserve the Church's property, reduce erosion, and help define the limits of the graveyard. Accordingly, her opinion is that the proposed rubble fill and landfill will have no adverse impact on the preservation of the cultural and historic landmark which the Church represents.

Upon cross-examination, Ms. Seneschal acknowledged that she had not interviewed residents of any of the properties along Gravel Hill Road. She did not interview any residents or members of the Church about plans for expansion of their individual properties.

Ms. Seneschal stated that the proposed fill operation would take place on about 32 acres of the entire 66 acre site. MRA has a current Mining Permit, and it does some periodic mining. Total acreage for the Mining Permit is about 7 acres.

She agreed that the only cemetery in the County which contains the remains of African-American Civil War soldiers, and that is a County Historic Landmark, is the St. James AME graveyard.

Ms. Seneschal stated that a 30 foot buffer between the landfill and the graveyard is sufficient because the applicable ordinance requires a 30 foot buffer. Additionally, the buffer will provide a level of protection which does not exist at present.

Ms. Seneschal stated that, in her opinion, the St. James AME Church has no historical significance.

The parties stipulated that the subject property is currently in the 2005 Solid Waste Management Plan.

For the Applicant testified Michael Staiano, who is employed by Staiano Engineering as an acoustical engineer. Mr. Staiano was accepted as an expert acoustical engineer. Mr. Staiano is familiar with the subject property, and has visited it and the surrounding area. He has reviewed engineering drawings, aerial photographs, and other Exhibits. Mr. Staiano believes he understands the nature of the proposed operation.

Mr. Staiano evaluated the noise impacts from the proposed rubble landfill operation on nearby properties. Briefly stated, Mr. Staiano determined the types of equipment that would be on-site, evaluated sound exposure from the operation of that equipment, and calculated the maximum sound levels on various receptors around the site, taking into account the attenuation of sound due to distance and other factors.

Mr. Staiano considered in his evaluation a worst case scenario. He assumes all machinery will be operating at existing grade level, that all machines were at the closest point to the receptor, were operating in the noisiest possible conditions, and that all machines would be operated at the same time. He believes this analysis to be a worst case analysis.

Mr. Staiano then reviewed the Code of Maryland Agency Regulation (COMAR) standard for noise, which is 65 decibels for residential exposure, and 80 decibels for noise created by construction activities. These are daytime limits between the hours of 7:00 a.m. and 10:00 p.m. Mr. Staiano then performed an analysis to determine the sound levels which would be generated from the operation of the proposed rubble landfill. Mr. Staiano's findings were that with proper mitigation the proposed operation will comply with COMAR noise standards at ground level in close proximity to the residences and the Church adjoining the proposed rubble landfill.

Mr. Staiano's findings demonstrated that mitigation is required in order to avoid exceedances of COMAR regulations. He suggested that the most appropriate mitigation for this type of facility is to build a berm along the perimeter of the fill in proximity to the sensitive receptors. Mr. Staiano has identified 8 areas where he recommends the construction of a 17 foot to 20 foot berm. The fill material itself is used to build the noise barrier, the berm. The perimeter accordingly blocks the operations which occurs behind it. Prior to the initiation of each "lift" in the fill a berm is created

above the top of the lift elevation so that as the lift is completed, the berm height is built up additionally to provide sufficient mitigation for the next layer of material.

Mr. Staiano is also suggesting a 20 foot supplemental setback in addition to the 30 foot setback, also in locations 2, 3 and 0. (Applicant's Exhibit 65.)

Mr. Staiano applied the residential receptor criteria in applying his noise calculations to the Church. This criteria assumes that people will be at the Church during hours of operation. He understands there will be no landfill operations on Saturday afternoons after noon, or on Sundays.

Mr. Staiano explained his recommendation that the setback be increased. For construction activity COMAR allows noise levels up to 90 decibels. Without the additional setback noise impacts on receptors during construction of the berm will be 91 decibels. An increased setback will reduce the decibel exposure. Mr. Staiano stated that MRA representatives had agreed with his recommended mitigation, and have agreed to comply with his recommendations.

Mr. Staiano stated that the development of the site as proposed will generate the type of noise as is generated by other, similar types of construction activities such as farming or development for homes.

Upon cross-examination, Mr. Staiano testified that he did not examine any noise associated with the construction of the liner. He did not calculate the noise produced by equipment that would be cutting trees, nor did he calculate or assess noise associated with the construction of a storm water management facility. He also assumed back-up alarms which are relatively noisy. He also assumed that back-up alarms would be pointed toward receptors, and not away from receptors. He did not attempt to quantify every single piece of equipment on-site. He quantified those that he believed to be significant.

Mr. Staiano testified that at a normal speaker-listener distance of about 3 feet, one is normally perceived to speak at a decibel level of between 60 to 65.

Mr. Staiano also acknowledged that he did not review the sound levels of any of the equipment, including vehicles, approaching the site on Gravel Hill Road. He did not take into account the possibility that trucks may be lined up outside of the facility with engines running. He described a way to mitigate noise from trucks queing up to unload would be to provide space within the facility where trucks can park and be shielded with berms so that adjacent dwellings are not adversely effected.

Mr. Staiano stated that COMAR exempts from noise standards motor vehicles traveling on public roads.

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For the Harford County Department of Planning and Zoning testified Anthony McClune. Mr. McClune described the subject property as being located outside the development envelope, having an agricultural designation on the Land Use Plan, and zoned agricultural.

Mr. McClune then addressed, in turn, the variances requested.

First request is a variance to Section 267-41(2)(c) which regulates buffers for stream protection. Two streams are located on the western side of the subject property. The stream that runs north to south requires a 150 foot buffer. The stream which runs generally east to west requires a 75 foot buffer. Mr. McClune explained, by using the Hydrology Map from the Harford County Department of Planning and Zoning, that the stream which runs north to south drains 900 acres, which is well over the 400 acre requirement. Accordingly, the stream requires a 150 foot buffer. The Department has heard no reason why the access road to the subject property could not be relocated so as to eliminate the need for a variance to impact the buffer. Accordingly, the Department does not feel that a necessary showing has been made for a variance to the 150 foot or 75 foot buffer. If approved, the variances would have an adverse impact on the stream systems and on the Natural Resource District.

The stream located on the east side of the property requires a 75 foot buffer only. While no variance is required to disturb that area, wetlands exist which require a 75 foot buffer.

The Applicant further requires a variance to Subsection (3)(b) to allow fill to be placed within the Natural Resource District. If granted, the Department feels this would have an adverse impact on the Natural Resource District and the natural features on-site.

The Applicant requests a variance to Subsection (5) to allow a disturbance of non-tidal wetlands within Disposal Areas A, B and D. The Department recommends denial of this request. The Department has not been provided any information concerning proposed mitigation or alternative analysis that explains why an impact in these areas cannot be avoided.

Mr. McClune then addressed Subsection (6) which requires a recommendation from the Department of Natural Resources. These comments are attached to the Staff Report and state, in summary, that there are areas on-site that provide a valuable Natural Resources buffer, and that the Applicant has not provided sufficient evidence to support the requested variances.

Mr. McClune then addressed Section 267-28(C) of the Code which requires a 30' buffer yard. At some locations, Mr. McClune notes, the disturbance appears to come as close as 10' to the adjacent properties. Mr. McClune feels that these variances, if granted, would adversely affect adjacent properties.

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Mr. McClune then addressed Section 267-28(D)(4) which requires an undisturbed buffer area to be designed to adequately screen the landfill activity from the view of adjoining properties. This buffer must be a minimum of 200 feet. Uses proposed by the Applicant come within the 200 foot buffer. This area is now heavily wooded. Mr. McClune and the Department believe that it is unrealistic to expect adequate buffering to the adjacent properties could be maintained. Without adequate screening those properties will be adversely impacted.

Mr. McClune then addressed Section 267-28(E), which requires buffering and landscaping if a use is located adjacent to a structure designated as a historic landmark.

Mr. McClune and the Department feel that disturbing an area as close as 10 feet to the cemetery will adversely impact that historical landmark. The property of the Applicant, which surrounds the Church and cemetery property on the west, south and east side, would be cleared and filled with rubble. A double row of pine trees would then be planted by the Applicant. Mr. McClune believes this would constitute an artificial look, going from a natural wooded buffer around the property to an artificially looking double row of pine trees.

Mr. McClune then briefly discussed the other variances requested, which include a variance to Section 267-40.1 requiring a rubble fill to be located on a site of at least 100 acres in size. The subject property is only 55 acres in size. Subsection (C) requires a 500 foot buffer be established in a flood plain. The scale house, Disposal Area D, stockpile area roadways, sediment control basin and numerous other activities will be located within that buffer, according to Mr. McClune. The Department opposes these variances.

Section 28(D)(4) requires the solid waste disposal area be at least 1,000 feet from any lawfully permitted residential institutional building. A variance is requested to this requirement.

The Department believes that since the Applicant cannot meet any buffer requirements, approval of the requested variances would impact adjacent properties, many of which were built prior to 1957 and sit close to the road. Many of these buildings have non-conforming front yard setbacks. The additional truck traffic along Gravel Hill Road and the operation of the facility will have an adverse impact on existing dwellings.

The Department believes that the proposal is not appropriate at the location proposed. Furthermore, the Department believes that odors, dust, gas, smoke and fumes will adversely impact the surrounding community. Furthermore, the Applicant is unable to maintain adequate screening to adjacent properties.

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The proposal is not consistent with accepted planning principles and practices. The property is located on a winding, narrow County road. This location is not suitable for a rubble fill. Furthermore, the property surrounds on three sides an adjacent Church property which contains a County historic landmark.

Mr. McClune believes the proposed site is within the County Ten Year Solid Waste Management Plan. Furthermore, the Department is of the opinion that the proposed landfill is not compatible with surrounding land uses and is accordingly not compliant with the Harford County Master Land Use Plan.

The Department believes that the project will impact sensitive natural features on-site.

Mr. McClune did not know how much land would be left for the landfill if all required buffers were met. However, he believed that essentially the entire site would be unusable as a landfill. Mr. McClune stated that portions of the property appear to have been mined in the past, generally around the central area of the property. Mr. McClune, based on his review of the aerial photographs in the file, believes that mainly the areas shown on the revised site plan as Disposal Areas B and D were the areas that had been historically mined.

In 1989 site plan approval was for 68 acres, Mr. McClune believes.

The witness agreed that the 500 foot flood plain buffer is not applicable to sanitary landfills, which have no corresponding buffer requirement.

Pursuant to Section 41(B)(2), the drainage area of a stream is measured from its confluence with another stream as shown on the Hydrology Map. The Department of Planning and Zoning's calculations were done in conformance with the Development Regulations, and were taken from the confluence of the streams identified on the Hydrology Map. Mr. McClune marked the streams he was identifying on Exhibit 62. The area overlapping the stream circled by Mr. McClune on Exhibit 62 is the confluence of the streams. Mr. McClune stated that a tributary of Swan Creek is actually on MRA's property.

Mr. McClune agreed that the Applicant did not propose any impact to the 100 year flood plain. Disposal Area B shows grading and disturbance within the non-tidal wetland. This apparently is the only area that shows disturbance of a non-tidal wetland area.

Mr. McClune believes that maintaining existing heavily forested area on-site would be better for the neighborhood than the rubble fill operation even though the rubble fill operation would eventually result in the filling, capping and landscaping of the existing pit.

Mr. McClune stated that the confluence of the two streams necessary to determine the drainage of the sub-basin is nowhere near the site. It is some hundreds of feet away. Applicant's Exhibit 40 incorrectly shows the confluence used to determine the drainage area as that of a stream and a small tributary that is not shown on the Hydrology Map. Accordingly, this is an inaccurate drawing as the Code requires the sub-basin to be considered. The confluence of the two streams are Swan Creek, and draining just north of Swan Creek to the west of the site is a tributary of Swan Creek, although Mr. McClune did not know the name of the tributary. It is shown on the Hydrology Map. (Exhibit No. 62). Mr. McClune then demonstrated the location of the confluence on Exhibit No. 61. Mr. McClune then stated that he did not believe the stream was actually considered to be Swan Creek at its confluence.

Mr. McClune stated his belief that the 100 acre minimum size for a rubble fill is so that required buffers and setbacks would be maintained.

Mr. McClune and the Department are not suggesting any mitigation as they do not believe the variance requirements have been met so as to justify the granting of a variance.

The type of vegetation to be installed in the buffer is not the issue. The issue of concern to the Department is that the removal of existing forest and vegetation would create an impact that would be difficult to mitigate. Accordingly, the Department's concerns are on the depth of the buffer and its overall appearance.

Mr. McClune does not believe the subject property is unique. It is fairly similar to other properties within the area. Properties from two acres to two hundred acres are fairy common throughout the area. The property has some slopes that are steep because of the past gravel operation. There are areas that contain steep slopes, as do other properties that have streams and other water systems that run through them. This area of the County contains many streams. Some of these streams run next to steep slopes. It is not uncommon for properties in this area to have steep slopes within their property boundaries. There are also a number of parcels of different size in the area that have contained sand and gravel operations, especially along the Route 40 corridor.

Mr. McClune believes that the facility without the necessary buffers will adversely impact the value of adjacent properties. Mr. McClune disagreed with Ms. Seneschal's opinions in certain respects. He does not believe that the mining on the property has been as extensive as had been testified to by Applicant's witnesses. The property has steep slopes which are very similar to other properties in the area. Areas exist on the property which are similar to other existing wooded sites within the County and neighborhood. Steep slopes encumber approximately 15% to 20% of the property. About 90% of the property is covered by vegetation. Mr. McClune believes, based on his knowledge of the case and review of historical records, that approximately 20 acres of the site has been subject to mining in the past.

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Next testified Reverend Violet Hopkins-Tann. Reverend Tann identified herself as the Pastor of St. James AME Church. She has been Pastor for 23 years.

Reverend Tann stated that the AME (African Methodist Episcopal) Church is 220 years old, having first been established in 1787. The Church overall currently has almost two million members and seven thousand congregations. The St. James AME congregation itself has been in existence for 156 years. Originally, the congregation met in a local home, with the deed for the St. James property showing it had been established about 1849.

In about 1982 Reverend Tann first became aware of the existence of the graves of black Civil War soldiers in the St. James AME graveyard.

Reverend Tann identified the petition prepared on behalf of St. James AME Church for its designation by Harford County as a historic landmark. The petition was accepted as Protestants' Exhibit 3. As a result of this petition Harford County added the St. James AME Church cemetery to the County list of Historic Landmarks. (Protestants' Exhibit No. 4.)

Reverend Tann explained the significance of the resolution to the members of the St. James AME Church congregation. Reverend Tann believes that one of the Civil War soldiers buried in the cemetery was a trustee of St. James.

The St. James congregation currently has 103 members.

According to Reverend Tann, the relationship between the Church and the surrounding community is friendly. The Church has been a central location for people to congregate, and is a social gathering spot.

Services are normally held at 11:15 a.m. on Sundays. Reverend Tann explained that various social activities take place and are community oriented in nature. Bible study takes place on Wednesday or Thursday evening. Choir rehearsals are Mondays or Wednesdays. Various committees and boards of the congregation meet regularly. Activities take place on most days of the week. Funerals usually take place on Saturdays, in the daytime. During funerals cars are parked along Gravel Hill Road. Someone is always in charge of helping to direct traffic during these events. Weddings are held occasionally, normally on Saturdays. Wedding rehearsals take place on the evening before the wedding. Sometimes rehearsal dinners or lunches are held.

A portion of the graveyard remains in use. Members of the community continue to be buried there. The graveyard is located to the right as one proceeds up Gravel Hill Road from Paradise Road. That part of the graveyard still in use is located approximately 15' from the entrance to the MRA property.

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Reverend Tann believes that the rubble fill proposal, if allowed, would depreciate the value of the community. She described her community as a "Freedman's Community".

Reverend Tann believes the proposed operation will have a negative impact because of the dust and traffic which it will generate. She believes the use will generate dust which will affect the community and will have a physical impact on the Church. It will impact people who have asthma, and the airborne debris will be harmful. Gravel Hill Road, in her opinion, is not wide enough for projected traffic. She is concerned that children's safety will be impacted by the truck traffic. There are no shoulders on the road; Gravel Hill is a narrow road. People can hardly walk on the road given the traffic.

Reverend Tann is concerned that the operation will affect the historic nature of the cemetery.

Reverend Tann is also concerned about the well water supply to the Church. The well was dug in 1983. The Congregation's water supply is poor, and the Congregation intends to dig another well. The Congregation has plans for an adult daycare center. These plans are on hold pending the outcome of the Applicant's zoning proposal.

Reverend Tann testified that the Church building itself will hold approximately 220 people.

Next testified Carl B. Westmoreland. Mr. Westmoreland is Senior Advisor for Historic Preservation for the National Underground Railroad Freedom Center, and is a Trustee Emeritus of the National Trust for Historic Preservation in Washington D.C. He is President-Emeritus of the Ohio Preservation Alliance, which he identified as a state wide historic preservation organization in the state of Ohio.

Mr. Westmoreland has focused his research on the place of Americans of African descent within the context of the United State of America. He believes that people in the United States have forgotten their historic origins and the contributions that people of all colors have made to the building of America. Mr. Westmoreland has also researched the history of the African American Church within this country.

Mr. Westmoreland was accepted as an expert in the preservation of African American Historic Sites. Mr. Westmoreland explained that the National Trust for Historic Preservation declared the Black Church in 1995 as a threatened American historic resource. This was due to the rash of church burnings which were occurring at that time. As a result of his involvement in this area, Mr. Westmoreland became nationally known as interested in the preservation of African American places of worship. He eventually came to hear of the St. James AME Church. Mr. Westmoreland has visited the St. James AME Church an average of 3 times a year for the last 9 years. He also has visited the graveyard. He is very familiar with the community.

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Mr. Westmoreland believes that the "isolated spot" of St. James AME Church has special meaning. Frederick Douglas was known to have gone through Havre de Grace on his journey from Maryland to New York. Enslaved people probably did not hide in Havre de Grace, but rather on its outskirts. The properties surrounding the Church go back to the early 1800's, and represent a cluster of black ownership. The AME Church has historically been an abolitionist organization. Its founder was an active abolitionist, and he encouraged all of his worshipers to help other people of color.

Mr. Westmoreland believes the community surrounding St. James AME Church is historically significant. The people of this "free community" were allowed to develop their own destiny in the years prior to the Civil War. This, in turn, allowed them to construct their own place of worship – St. James – and to become "vested" to the point where they felt motivated to volunteer for the Civil War. Mr. Westmoreland described their process as similar to that engaged in by George Washington and other Revolutionary War heros. These black people from the St. James AME community fought for America, and came home to become leaders and contributors to the well being of the community. He believes the community is a living museum;

> *"I don't see it as a little modest church, but I see it as a major monument, a major site that talks about constructive black self-determination."*

He believes that the proposed rubble fill would;

> *"create an industrial environment that would be in conflict with the eighteenth and nineteenth century atmosphere that predominates in the community, and would compromise the historical integrity and cultural legitimacy of this community as it has existed for over 150 years and has attempted to function within the mores and the cultural traditions of Maryland."*

He sees the Church, with the Civil War memorials as typical of what one sees in the Maryland landscape. He sees this as a result of the struggle of the people of Havre de Grace and Gravel Hill "to become a part of the American mainstream. . . " The Church and community documents their efforts, it ". . . sanctifies their journey."

Next testified James Chrismer. Mr. Chrismer is a member of the Harford County Historic Preservation Committee and has done research related to civil war soldiers in Harford County. He is familiar with the fact that black civil war soldiers are buried in the graveyard at St. James AME Church. Three graves are marked. He believes three or four additional graves are not marked. There are at least twice as many black civil war soldiers buried at the St. James AME cemetery than at any other cemetery in the County.

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Mr. Chrismer stated that Alfred B. Hilton, an African American from Harford County, enlisted in the United States Army in August 1863. Alfred B. Hilton was the only native born Harford Countian awarded the Congressional Metal of Honor. He was only one of sixteen African American soldiers in the United States to have been awarded the Congressional Metal of Honor for service during the Civil War. An article written by Mr. Chrismer concerning Mr. Hilton was accepted as Exhibit No. 5.

Alfred B. Hilton lived on Gravel Hill Road directly across from what is now called Alfred B. Hilton Park. Some land on Gravel Hill Road remains in the hands of the Hilton family.

Mr. Chrismer believes that the history of Alfred B. Hilton is important. He believes it is important that local people understand the significance of their ancestors. He also believes it is significant that Mr. Hilton received the Congressional Metal Honor, and was from Harford County. It also helps the people of Harford County to give them a "sense of place". Mr. Hilton is not buried at Gravel Hill. Mr. Hilton is buried at Hampton National Cemetery along with two other Harford County men.

Alfred B. Hilton was a Color Bearer, a Sergeant, and lead the charge of April 29, 1963 at the battle of New Market. He fell of his injuries after passing through the first line of confederate troops, and died of his injuries approximately three weeks later. He was awarded the Congressional Metal of Honor six months after his death.

Mr. Chrismer believes the proposed rubble fill will impact the historic significance of the community. He also believes it is possible that additional graves are on-site, but not marked.

Next for the Protestants was called Dr. James G. Gibb. Dr. Gibb is an archeologist, and was retained to give an opinion on the historical and architectural significance of St. James AME Church and surrounding graveyard. Dr. Gibb has worked with cemeteries throughout the State of Maryland and has experience with African American cemeteries. Dr. Gibb was accepted as an expert in the field of archeology.

Dr. Gibb believes the Church and surrounding graveyard is historically significant. It represents an important historical event. It has the 'potential to yield important information on the communities history and on the history of African American life in this State.' He believes that the creation of the rubble landfill will affect the historical significance of the Church and cemetery for several different reasons. It will affect the context in which the Church sits. It will affect the setting. In order to use the property as proposed the surrounding property will be deforested. This will affect the historical setting of the community, which was generally woodland. Many early African American communities were on land that was poor for agricultural use, similar to the land around the subject property. Furthermore, the dust generated by the operation and trucks will affect the Church and may affect the gravestones as well.

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A summary of Dr. Gibb's findings was admitted as Protestants' Exhibit No. 7. In his opinion, additional unmarked graves exist on-site. He believes that ground penetrating radar should be used to determine if additional graves exist. The slopes around the grave site are now stable and have re-vegetated. There is 30 to 40 years of growth on those slopes. Clearing that growth, filling in the surrounding property with a rubble landfill, and then re-vegetating would not be beneficial. Dr. Gibb accordingly disagreed directly with Mr. Clem's comments that the cemetery would be positively impacted by a better view shed and the graves would be better protected from erosional forces by filling if the proposed landfill were allowed to proceed.. He does not believe that a 1' buffer is adequate to protect graves in the cemetery. Dr. Gibb believes it would be very difficult to establish a good sustainable buffer around the existing quarry. The location of the graves are not fully known. Their location must first be determined in order to determine the extent of the required buffer.

Next was called George Herbert Jonas, who has resided at the corner of Gravel Hill and Paradise Roads since 1959. Mr. Jonas has observed bus traffic on Gravel Hill Road. Four different buses drive down Gravel Hill Road. Four buses also utilize Gravel Hill Road in the afternoon. Mr. Jonas described where each bus stopped along Gravel Hill Road. He marked these locations on MRA's Exhibit 51. He noted six stops in the morning, and six stops in the afternoon. One bus stops before 7:00 a.m.; the remainder stop after 7:00 a.m. In the afternoon all buses come through before 5:00 p.m. Three of the buses came from west to east; one came from east to west. The buses service the Havre de Grace and Aberdeen school districts.

Mr. Jonas explained that the surface of Gravel Hill Road was changed from tar and chip to pavement since 1988. The road configuration itself was not changed. He sees other commercial vehicles traveling Gravel Hill Road, including an occasional dump truck, trash trucks and other delivery vehicles.

For the Protestants testified Mecca Woods. Ms. Woods has resided on Gravel Hill Road directly across from Alfred B. Hilton Park since 2004. Ms. Woods was not aware of the proposed rubble land fill at the time she purchased her property. Ms. Woods has 3 children, ages 12, 8 and 6. They attend local public schools and are transported to school by Harford County Public School buses. One child is picked up at 7:10 a.m. and returned at 3:05 p.m. Two children are picked-up at 8:13 a.m. and returned about 4:00 p.m.

The children ride bikes, play soccer and roller skate at the park. Ms. Woods is aware of the MRA proposal and the projected 50 trucks per day along Gravel Hill Road. She is concerned about the safety of her children. The children cross Gravel Hill Road frequently.

Next in opposition testified Charlie Vaughn. Mr. Vaughn lives at 4140 Gravel Hill Road, directly across the street from St. James AME Church. Mr. Vaughn has lived at his property since 1990, and has lived on Gravel Hill Road since 1961. Mr. Vaughn's source of water is by private well. He has had 3 wells since 1990. Mr. Vaughn's water supply is very tenuous, he said. He must

be careful washing cloths, watering the lawn, etc. He and his family limit the amount of showers and baths they take. They cannot wash cars; they cannot water their garden. Mr. Vaughn spent close to $10,000.00 in 2004 to drill his last well. He is getting approximately 1 gallon of water per minute from his newly dug well.

Mr. Vaughn stated that other people on Gravel Hill Road also have problems with wells. He is concerned about the effect of the rubble fill on the ground water that services his well. He has lost water in the past, and he is concerned by the fact that the new rubble fill will be deeper than the old gravel pit.

Mr. Vaughn is familiar with the Gravel Hill property, having gone on the property often. He described deer, squirrels and fox on the property. There are piles of material, perhaps 3 feet tall, scattered around.

On cross-examination, Mr. Vaughn stated that the noise from the Stancill property, farther to the east on Gravel Hill Road, is bothersome. Noise and heavy equipment can be heard at the Church building.

The witness is not familiar with current conditions on a large part of the property, as the portion of the property he is most familiar with is located directly behind the Church and to the north.

According to Mr. Vaughn, the slopes around the Church are covered with trees and other vegetation. If one were to look to the Church property from the quarry pit one would see hills covered with trees. The slopes are basically covered with vegetation, although there may be some open spaces. Otherwise, the visibility of the Church is determined by where one stands on the property. The Church is visible from the entrance road to the subject property. The Church from the MRA property if one were standing directly behind, or south of the Church.

Next testified Delores Walke. Ms. Walke resides at 4112 Chapel Road, Havre de Grace, which is situated on the south side of the MRA property. She has lived on her 48 acre parcel since 1980. About 15 acres of her lands are tilled. She has a well which is 100 feet deep. She has no problem with the quantity of water flow from the well.

Since the vegetation has grown up on the subject property she has had no problem with water run-off. Her property is at a lower elevation than Gravel Hill Road. She fears that the operation of the rubble fill will adversely effect the use and enjoyment of her property. She worries about the impact on her water. She is also worried about the impact of noise and dust.

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Next for the Protestants' was called David Toney who has resided at 4103 Gravel Hill Road for about 13 years. Mr. Toney can see the Applicant's property from his property. He believes that the rubble fill, if constructed, will adversely effect the use and enjoyment of his property.

He and his family enjoy the outdoors during the summer. They throw horseshoes, have picnics and engage in other outdoor activities. His granddaughter is picked-up at his home every morning by school bus at 8:20 a.m. and is returned about 4:00 p.m. At mornings she is picked-up on his side of Gravel Hill Road; in the afternoon she is dropped off on the opposite side of Gravel Hill Road. If the trees on the MRA property were removed Mr. Toney would have a direct view into the MRA property from his house.

Mr. Toney's house is serviced by well water. His house is set back about 100 feet from Gravel Hill Road. The proposed entrance to the rubble fill site is about 25 feet from Mr. Toney's house. Truck traffic accessing and leaving the rubble fill property would pass about 25 feet from his property. He would be able to hear, from inside his house, truck traffic on Gravel Hill Road.

While there is some tree growth between his property and the proposed entrance, Mr. Toney believes that if the entrance were put in he would be able to see and hear the truck traffic.

For the Protestants' was called Bryan MacKay. Mr. MacKay is a senior lecturer at the University of Maryland Baltimore County. He teaches plant biology, and in the past has taught ecology.

Mr. MacKay described his observations made while walking along Gravel Hill Road. From Gravel Hill Road, the site of the proposed rubble fill appears to be heavily vegetated. Trees on the property line the entire edge along the road. The trees are 30 feet to 50 feet in height and he believes about 30 years old. These trees included sweet gum, tulip poplar, Virginia pine, and several oak species. There is also a tangled under-story of shrubs and vines. The area along Gravel Hill Road is well vegetated.

The removal of the forest will have a variety of effects. The temperature of the soil may rise; erosion may increase; there may be a reduction in plant species and animal species.

Next testified Jennifer Bridges. Mrs. Bridges lives with her husband and two young children approximately a half mile from the rubble fill. She and her children walk to the Alfred Hilton Park. They are also on sports teams that practice regularly in the park. Her children are at the park, usually during the summer, every evening beginning about 5:00 p.m.

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Mrs. Bridges described the park as being very actively used. It is a very nice field. Often, she and her children arrive at the park before 5:00 p.m. on weekdays. Mrs. Bridges enjoys her neighborhood. It is full of nice people and nice homes that are well maintained. The neighborhood is great for her children, who are able to ride their bikes on the neighborhood roads. She would not have purchased her house had she been aware of the rubble fill operation. She is concerned about the proposed truck traffic, and its effect on the safety of her children if the proposal were allowed. She is also worried that the dust and dirt will be stirred up by the use on the property and the truck traffic accessing it. She is worried about the impact on her well water, and the value of her property.

Next testified Mike Pascuzzi, who resides at 4045 Gravel Hill Road. Mr. Pascuzzi's property borders MRA's property. His home is located about 60' off Gravel Hill Road, on a 2.2 acre parcel.

Mr. Pascuzzi objects to the proposed use because of potential noise impacts, impact from dust and dirt, and potential adverse impact on his well water. He feels his property value may go down because of these impacts. Mr. Pascuzzi will be able to see at least part of the rubble fill activity and truck traffic from his property.

Next in opposition testified Troy Echols. Mr. Echols resides in Havre de Grace and has been a member of the St. James AME Church for about 14 years. Mr. Echols attends Church on Sundays and also attends activities at other times during the week. He described activities on the Church grounds such as picnics, children's activities, etc. Mr. Echols is on the Church property about 200 times per year. He believes that the proposed rubble fill will adversely effect the Church services and activities. Truck traffic will interfere with the passage of private vehicles on Gravel Hill Road. Noise will interfere with the Church services weekday activities. Dust will also affect the health of the residents. Rubble fill activity will be visible from the St. James AME grounds.

Next testified Jocelyn Erby, who has resided at 4124 Gravel Hill Road for about a year. She believes the operation of the rubble fill will adversely affect the enjoyment of her home on Gravel Hill. The entrance to the proposed rubble fill will be directly across the street from her house. She is concerned about the safety of her 4 year old, and the 2 year old daughter of her fiancé. She also has concerns about noise and truck traffic from the proposed uses. Her son is picked-up by a school bus on Gravel Hill Road around 8:30 a.m.

Next testified Robert Dillon. Mr. Dillon is testifying as a member of the congregation of St. James AME Church. Mr. Dillon described the atmosphere of the Church as peaceful, tranquil and quiet. He has visited the cemetery and finds it interesting as far as its history and age. Vegetation surrounds the Church property. Once the trees are taken down, the permit is issued, one will be able to see the rubble fill operation from the Church grounds.

A number of residents and other individuals of the area then identified themselves and indicated their general opposition to the request for reasons placed on record by earlier witnesses.

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Next testified Patrick N. Breysse. Dr. Breysse is a Board Certified Industrial Hygienist. Dr. Breysse was accepted as an expert in Environmental Health Sciences.

Dr. Breysse explained that air pollution can be a significant source of exposure to people living near high traffic areas. Air pollution can be a source of morbidity for sensitive populations such as asthmatic children or adults.

Dr. Breysse was familiar with the rubble fill proposal, and has reviewed the traffic impact analysis. He understands as many as 50 trucks a day will use Gravel Hill Road to access the subject property. Dr. Breysse explained that particles from the exhaust of diesel trucks are routinely implicated as a significant contributor to fine particulate matter. Fine particulate matter has been implicated as a particular source of morbidity and mortality in large U.S. cities.

In reviewing the literature Dr. Breysse found and discussed a finding that children's exposure to diesel exhaust particles should be decreased. He is of the opinion that diesel traffic will increase air pollution in the neighborhood of Gravel Hill. Dr. Breysse has done studies of air pollution along roads in situations similar to that proposed by Gravel Hill. On days of truck traffic, he found a 3 to 7 fold increase in particulate matter in the front yards of homes along side of the road where the truck traffic existed. Truck traffic will increase air pollution exposure. The magnitude will be from a 3 to a 7 fold increase. Air pollution kills people. It kills the elderly with existing conditions who are particularly susceptible to increased air pollution. Diesel truck air pollution will also affect persons with preexisting asthma. Dr. Breysse concludes that if susceptible people live in the area who are asthmatics, whether children or adults, exposure to diesel trucks that traverse Gravel Hill Road will have an adverse impact on their health. Furthermore, the least amount of air pollution is generated when vehicles are traveling at 60 m.p.h. and that speed is maintained. Anything which causes trucks to speed up or slow down, stop or turn, is going to increase air pollution from those vehicles. Accordingly, a deceleration lane would actually make air pollution worse.

Dr. Breysse has no specific knowledge about the State of Maryland permitting scheme. There is a large body of literature which suggests that living near highways is, in fact, not healthy. Houses along I-95 would be exposed to more diesel air pollution than would people along Gravel Hill Road.

Next in opposition testified Tina Hartsock who resides at 111 Holloway Lane, Aberdeen. She visits the Gravel Hill neighborhood approximately four times per week and is familiar with the residences and structures there. Her parents reside at 4031 Gravel Hill Road.

The witness does not believe the application should be approved. She feels that truck traffic will be a safety hazard to her children and to the parents and children who use the playground and rec center. She feels that the project will devalue her father's home, for which he had worked very hard. Her children have asthma. Truck traffic will affect their health.

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Next testified Kenneth Hutchins who resides at 326 North Earlton Road, within half to three-quarters of a mile from St. James AME Church. He believes the application should be denied because of health issues. He believes the proposed landfill will interfere with the aquifer which supplies his well water.

Next in opposition testified Robert Moore who resides at 4026 Gravel Hill Road. Mr. Moore is concerned that the liner proposed to contain the rubble fill will crack and as a result the aquifer will be polluted. He cannot actually see the proposed rubble fill from his house, but Mr. Moore believes he will be effected by the diesel trucks which will be traversing Gravel Hill Road. He lives on Gravel Hill Road in the location of a steep hill. Today, not nearly 100 trucks a day go by his house. Occasionally he will see a dump truck. A garbage truck goes by once a week or so. He worries that the rubble fill will also be a trash dump. He believes the value of his home will depreciate once the rubble fill is installed.

Next testified, in opposition, Robert Curry who resides at 132 North Paradise Road at the corner of Gravel Hill and Paradise Roads. He would like to see the application denied. He believes the proposal would interfere with his well water. He also thinks that 100 trucks a day will interfere with his ability to get in and out of his driveway. Air pollution will be worse. At present there may be 100 trucks a day going past his home on Paradise Road, but not on Gravel Hill. On Gravel Hill he may see 3 or 4 trucks per day.

Stanley A. Kollar was next to testify. Mr. Kollar teaches Biological and Environmental Sciences at Harford Community College, and has been employed at the college since 1976. Mr. Kollar was admitted as an expert in wetlands and forest conservation. Mr. Kollar is familar with the application, has reviewed some of the past testimony the site plan, certain aerial photographs, and has viewed the site from St. James AME Church.

Mr. Kollar believes that the forest on the site is in the range of 20-25 years of age. He also observed areas that he believed could be wetlands, although they were not delineated on the wetlands delineation plan prepared in the 1990's.

Mr. Kollar identified a photograph of an area on the property which he believes shows evidence of being inundated by water for a lengthy period of time. Mr. Kollar identified other photographs which he had taken of the site, including Exhibit 17D. The photographs are evidence, he believes, of his findings that the soil on the site is stabilized by vegetation, and that there is very little erosion.

Mr. Kollar explained that the purpose of buffers is to protect a resource. When the resource is a wetland buffer or stream, their purpose is to ensure that sediments and/or nutrients do not move off the land and into the stream or wetland. Movement of these materials into a stream or wetlands

is not beneficial to the environment. Wetlands act as filters. Sediment tends to build up in the wetlands and clog the filter effect of the wetlands. Wetlands are also wildlife nurseries.

Mr. Kollar described a vernal pool. A vernal pool is a type of wetland, but only for a portion of the year. They are typical in the spring of the year. Vernal pools can be very important areas for amphibian reproduction and, in some cases, they may be the only area a particular species of amphibian breeds for a considerable radius. The location of vernal pools tends to change. A wetland delineation that took place 10 years ago is not necessarily accurate today. Wetland delineations are good for about 3 years and then must be redone. If one does not have an accurate wetland delineation, one does not have an accurate assessment of where the wetland buffer is to go. In order to ensure the resource is protected, one must know where the edges of the wetlands are. Once one knows the edges, a buffer can be applied. A typical landfill that is capped very rarely reverts to forest because of the thinness of the soil placed on top of the cap. Also, methane produced in a fill tends to move upward and compromises the roots of trees and shrubs. A typical capped landfill very rarely reverts to forest. Slumping of the soil also tends to occur when slopes are developed.

This vegetation now on the site acts as a screen or buffer to the surrounding residences and Church. The removal of this buffer, unless replanted with similar vegetation, would reduce and lessen the effect of the existing buffer.

In his view of the site Mr. Kollar did not see any examples of erosion.

Mr. Kollar believes the variances, if granted, would have more of a detrimental impact than if the required buffers were maintained. As the site is developed the slopes will become steeper and cause more erosion. The closer the impact is to the stream of wetlands, the greater will be the impact on the stream or wetlands. The greater the buffer, the less detrimental impact to the root source.

On cross-examination Mr. Kollar stated he had not done a wetlands delineation on the MRA property.

Next for the Applicant was called Basil D. Stanley who has resided at 825 Earlton Road, Havre de Grace, Maryland for about 68 years. Mr. Stanley is familiar with the area, including the proposed rubble fill area.

Mr. Stanley was able to describe the subject property as it looked in 1942. At that time it was farmed, in hay and pasture. He believes that mining on the property started about 1942. During the 1950's there may have been some mining. He believes that gravel eventually just ran out. Digging, for the most part, ended in 1952-1953. Mr. Stanley indicated that mining generally began in the southern to middle part of the property and proceed north, to behind the Church. Some mining extended to the east side of the Church as well.

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Next for the Applicant was called Richard Schafer. Mr. Schafer, for the Applicant, agreed to the installation of a flashing light or other traffic warning device on Gravel Hill Road when school buses are on the road. He will do so at the Applicant's expense, provided the variances are granted. Mr. Schafer also noted that the rubble fill will not operate during times when weddings or funerals are held at the Church.

Mr. Schafer identified a series of photographs of the current condition of the proposed rubble fill site. A number of the photographs described by Mr. Schafer show, in his opinion, uncontrolled dumping of trash on-site. Mr. Schafer suggested this would be controlled once the property were developed as a rubble fill. Some of the trees and vegetation shown in the photographs, particularly Exhibits 7, 9 and 11, will remain even after the rubble fill operation begins. The Applicant has also agreed to eliminate disposal Area E from the plan.

Gerald Wolff, a professional land surveyor next testified for the Applicant. Mr. Wolff was offered and accepted as an expert in Harford County subdivision development. Mr. Wolff disagrees with the County's interpretation of the requirement for the 150 foot stream buffer. He has reviewed the Harford County Hydrology Map (Exhibit 62), and compared it to the Department of Planning and Zoning Exhibit 3 "Harford County Streams and Their Buffers", dated April 2002. Mr. Wolff explained that the tributaries originally shown in magenta on the Hydrology Map were changed to black on the 2002 County Map. On the 2002 County Map everything with a black line is identified as requiring a 150 foot buffer. Accordingly, the County, in Mr. Wolff's opinion, took all the streams that were indicated on Exhibit 62 and put them in black on Planning & Zoning's Exhibit 3. This resulted in a greatly expanded inventory of streams which required a 150' buffer.

In Mr. Wolff's opinion the County did not properly interpret the 150' stream buffer requirement in the instant case. Mr. Wolff explained that the Harford County Development Regulations, at page 28, define 'Tributary Streams' as;

> *"Those perennial and intermittent streams as mapped on the most recent United States Geological Survey 7 1/2 Minute Topographic Quadrangle Maps [scale: One to twenty-four thousand (1:24,000)], the Harford County Soil Survey or as may be identified through site inspection."*

This is the definition used by the Harford County Development Regulations in Section 267-4. This definition has not changed, according to Mr. Wolff. Section 267-41D(2)(c) of the Harford County Development Regulations outlines the major streams that are covered by this section of the Code. Each one is named individually. It further states that the tributaries to the above streams which drain a sub-basin of more than 400 acres are included in Natural Resource District stream designation. He believes that Mr. McClune's definition is wrong. This section was interpreted just a few years earlier by the Department as requiring nothing more than 75 feet.

Furthermore, Mr. Wolff says it has been interpreted by Planning and Zoning in this fashion for many years, until about 2002 when the Department came out with the revised map and began to impose the buffer requirement. The County Regulations do not refer to Planning and Zoning Exhibit 3. They refer to the County Hydrology Map (Exhibit 62).

Next for the Applicant was recalled Jacquelyn Seneschal. Ms. Seneschal was previously qualified as an expert in Harford County land use planning. Ms. Seneschal disagrees with Mr. McClune's analysis that the site plan notice is only applicable to County sites, and that the notice requirement of Section 267-28D(4)(b) is not applicable. She stated that at the time of the 1989 site plan approval involving the subject property, notice was published and there was a public hearing. The 27 conditions attached to the 1989 site plan approval are relevant to proceedings. Typically, an increase in buffers does not require new Council approval for a site plan. Generally, these changes do not constitute a new site plan, says Ms. Seneschal. However, the relocation of an entrance road, being a substantive change, would require new site plan approval by the Council.

Ms. Seneschal stated that the entrance to the site is exactly as shown on the 1989 site plan approval, as is the location of the cells and major features on-site. Ms. Seneschal believes that the buffering proposed by the Applicant will provide a noise barrier as indicated by Mr. Staiano, and a limited visual barrier from the actual operation of the rubble fill. It would stabilize the graveyard, clearly defining its boundaries and provide it with a reasonably improved permanent setting. She does not agree with Mr. McClune's testimony that a 75' buffer on a steeply sloped "chasm" around the graveyard would be more protective of the graveyard than the proposed 50' buffer with a vegetated berm. Ms. Seneschal further stated that larger sites (by acreage), would have more of an impact on the neighborhood. They would either have greater truck traffic or a longer life than the proposed site. Ms. Seneschal stated, for the Applicant, that the edge of the graveyard will be located by the Applicant, and it will not be impacted by the rubble fill use.

APPLICABLE LAW:

Section 267-11 of the Harford County Development Regulations allows the granting of a variance to the requirements of the Code:

"Variances.

A. Except as provided in Section 267-41.1.H., variances from the provisions or requirements of this Part 1 may be granted if the Board finds that:

(1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Part 1 would result in practical difficulty or unreasonable hardship.

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(2) *The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.*

B. *In authorizing a variance, the Board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary, consistent with the purposes of the Part 1 and the laws of the state applicable thereto. No variance shall exceed the minimum adjustment necessary to relieve the hardship imposed by literal enforcement of this Part 1. The Board may require such guaranty or bond as it may deem necessary to insure compliance with conditions imposed.*

C. *If an application for a variance is denied, the Board shall take no further action on another application for substantially the same relief until after two (2) years from the date of such disapproval."*

Section 267-28C of the Harford County Code states:

"C. *[Amended by Bill Nos. 87-28; 88-85; 94-73; 97-12] Buffer yard requirements. The following minimum buffer yard requirements shall be applicable to all districts:*

Proposed Use	***Adjacent District or Use***	***Buffer Yard Width (feet)***
Agricultural service use	*Residential use*	*10*
Proposed residential use of a net density twice that of the adjacent existing or proposed residential project	*Residential use*	*10*
Continuing care retirement community [Added by Bill No. 98-36]	*Residential use*	*15*

Residential rear yard	*Collector and arterial public roads*	*10*
Active public recreation of over 2 acres	*Residential use*	*10*
Business use		
RO District	*Residential use*	*10*
B-1 District	*Residential use*	*10*
B-2 District	*Residential use*	*15*
B-3 District	*Residential use*	*20*
Shopping center	*Residential district*	*25*
Commercial, Industrial District	*Residential district*	*15*
Light Industrial District	*Residential*	*15*
General Industrial District	*Residential district*	*20*
Extraction or landfill	*Residential use and public roads*	*30*
Public utility facility	*Residential use and public roads*	*10*
Sewage pumping station	*Residential use and public roads*	*10*
All proposed uses	*Historic landmark, as designated by Historic Preservation Commission*	*10 - 75 (See Sub-sections E and F"*

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Section 267-28D(4) of the Harford County Code states:

> *"(4) Sanitary landfill requirements.*
>
> *(a) An undisturbed buffer area shall be maintained between the fill area and adjoining properties. The undisturbed buffer area shall be designed to adequately screen the landfill activities from the view of adjoining properties. The undisturbed buffer area shall be a minimum of 200 feet from adjoining property lines. The distance shall be determined by the County Council after a site plan is developed by the Departments of Planning and Zoning and Public Works. The site plan shall consider and address the topography of the area, the ability to effectively screen the landfill area and such other factors as the Departments of Planning and Zoning and Public Works and the County Council deem relevant in conformity with Section 267-9I, Limitations, guides and standards.*
>
> *(b) The Department of Public Works shall cause, prior to submission of the site plan to the County Council, a notice to be published once a week for 2 consecutive weeks in 2 newspapers of general circulation in the county. The notice shall identify the location of the site, the acreage and a physical description of the site."*

Section 267-28E of the Harford County Code states:

> *"E. [Added by Bill No. 94-73] If a proposed use will be on property that is adjacent to a structure designated as a historic landmark by the Historic Preservation Commission, and if the proposed use will be located within 500 feet of the historic landmark, the proposed use shall have a buffer and landscaping in accordance with this subsection. The Department shall determine the required width and landscaping of the buffer. The width shall be at least 10 feet and not more than 75 feet, and the landscaping shall be one of the alternatives established by Subsection D of this section. Before determining the required width and the landscaping alternative to be used, the Department shall obtain a recommendation from the Historic Preservation Commission. In forming its recommendation, the Commission shall consider the nature and extent of the proposed*

use, the degree of compatibility of the proposed use and the historic landmark, the extent to which the buffer will help preserve the character of the historic landmark, the size of the property on which the proposed use will be located, the distance of the proposed use from the historic landmark, and the size of the property on which the historic landmark is located. The Department shall require the buffer width and landscaping recommended by the Commission unless the Department finds, based on written reasons, that the recommendation of the Commission was not supported by competent or material evidence or was arbitrary or capricious."

Section 267-40.1 of the Harford County Code states:

"A rubble landfill may be permitted in the AG, RR, R, R1, R2, R3, R4, RO, VR, VB, B1, B2, B3, CI, and GI Districts only if:

A. The site is at least one hundred (100) acres in size;

B. The site has a buffer that satisfies the requirements of § 267-28D(4) of this chapter;

C. All areas in which solid waste is deposited are at least five hundred (500) feet from the Floodplain District established by Chapter 131 of this Code;

D. Notwithstanding Section 267-28D(4) of this chapter, all areas in which solid waste is deposited are at least one thousand (1,000) feet from any lawfully permitted off-site residential or institutional building;

E. The rubble landfill is contoured to substantially conform to the original grade of the site and, in any case, the height of the landfill does not exceed the height of the tallest structure or natural feature within two thousand five hundred (2,500) feet of the parcel."

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Section 267-41D(2)(c); (3)(b); (5)(e); (6) of the Harford County Code states:

> *"(2) Application. The Natural Resources District shall apply to the following environmental features:*
>
> *(c) Streams: the following streams, including Broad Creek, Bynum Run, Carsins Run, Deer Creek, Grays Run, Ahha Branch, Herring Run, Little Gunpowder Falls, Rock Run, Peddler Run, Swan Creek, Winters Run and their tributaries, as identified on the Harford County Hydrology Map (1976 Revised Maryland Geological Survey Base Map 1:62,500). Tributaries to the above streams which drain a subbasin of more than four hundred (400) acres are included in the Natural Resources District stream designation. The acreage of a subbasin is determined at the point of confluence with another stream identified on the County Hydrological Map. The Natural Resources District area for stream protection shall be a minimum distance of one hundred fifty (150) feet on both sides of the center line of the stream or fifty (50) feet beyond the one-hundred-year floodplain, whichever is greater, and along their tributaries for a minimum of seventy-five (75) feet on both sides of the center line of the tributary. The Natural Resources District boundaries under this provision shall include the buffer requirements of Subsection D(4)(b) and (5)(b) of this section."*
>
> *"(4)(b) Forestry. Commercial timber operations shall be permitted, provided that a Forest Management Plan (FMP) is approved by the Maryland Forest, Park and Wildlife Service and the Department of Planning and Zoning. Along streams, a buffer of fifty (50) feet, plus four (4) feet for each one-percent increase in slope, measured from the water's edge, shall be provided. The restriction on harvesting within this buffer may be waived, provided that a site-specific Buffer Management Plan is prepared and approved as an amendment to the Forest Management Plan (FMP). The Buffer Management Plan shall address potential water-quality impacts and shall include a minimum undisturbed buffer designed according to site characteristics. Trees within the buffer may also be harvested to remove diseased, insect-damaged or fire-damaged trees in order to salvage the same or reduce*

potential stream blockage due to fallen timber. Landowners are exempted from the Forest Management Plan (FMP) requirement when timber is harvested for personal use only. Forestry operations within the urban residential districts (R1, R2, R3 or R4) shall be required to meet the conservation requirements under Subsection D(5) below."

"(5)(b) Clearing or removal of natural ground cover and vegetation in preparation for development shall be minimized. Site development shall be clustered or designed in such a manner to preserve large contiguous tracts of woodland. Clearing of woodlands shall not reduce the area coverage of trees below seventy percent (70%). Along streams, a buffer with minimum width of fifty (50) feet, plus four (4) feet for each one-percent increase in slope, measured from the water's edge, shall be provided. Trees within the buffer may be harvested to remove diseased, insect-damaged or fire-damaged trees to salvage the same or reduce potential stream blockage due to fallen timber. Essential access roads may be permitted to traverse the buffer.

(3) Use restrictions. The following uses shall be prohibited:

(b) Deposit or landfills of refuse or solid or liquid waste, except manure. Acceptable fill permitted by the United States Army Corps of Engineers may be used for stream bank erosion control.

(5) Conservation requirements. The following conservation measures are required within this district:

(e) Nontidal wetlands shall not be disturbed by development. A buffer of at least seventy-five (75) feet shall be maintained in areas adjacent to wetlands.

(6) Variances. The Board may grant a variance to Subsection D(3), (4) or (5) of the Natural Resources District regulations upon a finding by the Board that the proposed development will not adversely affect the Natural Resources District. Prior to rendering approval, the Board shall request advisory comments from the Zoning Administrator, the Soil Conservation Service and the Department of Natural Resources."

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Harford County Code Section 267-9I, Limitations, Guides and Standards, is also applicable to this request.

COMMENT ON APPLICABLE STANDARDS:

While the Applicant asserts that its case presents factual issues more complex than normal, the standard to be applied is the same as in all variance cases which come before the Board. Variances are statutory creations. A deviation to the terms of the Development Regulations is allowed, by way of a variance, if certain statutory requirements are met and if certain findings of fact are made. A large body of case law has also been developed which guides the reviewing authority in determining whether applicable elements of the variance standard have been met. Variances are the creations of local municipalities, and the language of each variance statute may vary from municipality to municipality. Nevertheless, variance standards are strictly applied, and the grant of a variance is a relatively rare occurrence.

A seminal case on the history and application of the variance concept is Cromwell v. Ward, 102 Md. App. 691, 651 A.2d 424 (1995) which observed:

> *"One indication of the general rule that variances are rarely appropriate is that, in our review of the reported Maryland cases since the creation of the state zoning enabling act in 1927, we have found only five reported Maryland cases in which the grant of a variance has been affirmed or the denial of a variance has been reversed."*[1]

It is also clear, and is important to an understanding of the Applicant's case, that a property is not "unique" in the variance context simply because an Applicant cannot do what he wants to do. See Citrano v. North, 123 MD App. 234, 717 A.2d 960 (1998).

The Applicant's requests are actually to be judged by two variance standards. The first is the most traditional. Section 267-11 allows (but does not require) the Board to grant a deviation to the requirements of the Development Regulations if:

> *"1. By reason of uniqueness of the property or topographical conditions, literal enforcement of this Part I would result in practical difficulty or unreasonable hardship.*

[1] Judge Cathell, writing for the Court, was apparently not convinced that even these five variances were properly granted, as he described three of the five favorable decisions as being ". . . somewhat at odds with accepted Maryland Law."

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> 2. *The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part I or the public interest."*

This provision allows the Board to impose conditions upon the granting of any variance. Furthermore, the variance may not exceed the minimum relief necessary to "relieve the hardship."

In the simplest form, the application of Section 267-11 is a three step process. First of all, a particular piece of property, or its topographical conditions, must be determined to be "unique". If found to be unique, it must then be determined if this uniqueness results in a practical difficulty or unreasonable hardship. If this analysis is answered in the affirmative, then one must then determine if substantial detriment to adjacent properties would result, or if the purpose of the Development Regulations would be materially impaired. Only upon a finding of no substantial or material adverse impact or harm may the variance then be approved. As noted above, conditions may be applied to approval.

The second type of variance requested by the Applicant are to various requirements of the Natural Resources District, specifically [Sections 267-41.9(2)(c), (3)(d), (5)(e) and (6)]. The applicable standard is contained at Section 267-41(D)(2)(c)(6), and is less stringent. Variances to the Natural Resource District can be granted:

> *"Upon a finding by the Board that the proposed development will not adversely effect the Natural Resources District."*

PROCEDURAL BACKGROUND:

While not necessary to the resolution of the variance requests, an examination of how this case has come before the Board and its relatively convoluted history is helpful in understanding why the parties – the Applicants and the neighbors – have so strenuously contested every aspect of this case.

Evidence was presented that the subject property – 55 acres in size – was first used as a source of mined minerals as early as the 1940's. According to Mr. Stanley, steam shovels were actually used during the original surface mining of the property. At the time mining began the property was in pasture and grass. Of course, the St. James AME Church was in existence at that time, with the existing church building constructed around 1888. Mining eventually took place around three sides of the church property. Mining activities came close to St. James AME Church graves. It is in fact possible that some of these graves may actually be on what is now the MRA property.

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The present topography of the site suggests extensive mining occurred on a large area of the Property. It would seem, from the testimony of Mr. Stanley and the other evidence presented, that mining declined in the 1950's, although it has continued at a much lower intensity to the present time. Most of the site is now overgrown and appears to be relatively stable. Throughout these years Church services and activities continued, including the use of the graveyard.

In 1989 the Applicant began its approval process for a rubble landfill permit. In that year, the Harford County Council approved the property for inclusion in the Solid Waste Management Plan in 1989. The site plan before the Council for approval was similar to that for which the Applicant now requests approval. The Council imposed 27 conditions on use. The Applicant has stipulated that these conditions will be observed by MRA. By Bill 91-10 the Harford County Council instituted the present standards and limitations on development of sanitary landfills within Harford County. These standards are applicable to MRA's use of the subject property, and are much more stringent than the standards on use which existed in November 1989. The Applicant suggests, correctly, that Bill 91-10 standards, if allowed to stand without variance, preclude the use of Applicant's property for its proposed rubble-fill.

MRA challenged the enactment and application of Bill 91-10 to its property. By decision dated April 2, 2002 the Harford County Zoning Hearing Examiner determined that Bill 91-10 is validly applied to the subject property. The Harford County Board of Appeals adopted that recommended decision. By its June 20, 2004 opinion, the Maryland Court of Appeals in Maryland Reclamation Associates, Inc. v. Harford County, Maryland remanded the case, finding that MRA must "apply for the zoning variances assertedly needed to obtain relief from Bill 91-10." As a result, the present variances are requested.

The record developed in this case amply demonstrates that the Applicant's plans have been contested every inch of the way by the opponents, who, for the most part, consist of the residents of the immediate neighborhood and St. James AME Church. It is also clear that MRA has continued to assert its challenge against what it alleges is a denial of its lawful right to use its property for the purposes proposed.

Nevertheless, despite the fairly protracted history of this case, the issues now before the Board, as mentioned above, are straight forward. Many of the issues and arguments about which the parties spar are irrelevant to a decision on the Applicant's requests, which are governed by the very precisely written variance standards of the Harford County Development Regulations.

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FINDINGS OF FACT AND CONCLUSIONS OF LAW:

I. VARIANCES TO THE REQUIREMENTS OF THE NATURAL RESOURCES DISTRICT

The Applicant requests variances to a series of Natural Resource District development regulations, including a variance to the 75 foot non-tidal wetland buffer; disturbance of the 75 foot buffer in the Natural Resource District; a variance to locate a landfill within the Natural Resource District; and a variance to locate a rubble fill within a Natural Resource District as determined by a tributary to Swan Creek which drains a sub-basin of 400 acres. As discussed above, the standard of review is whether the Applicant can show that the proposed development will not 'adversely effect the Natural Resources District'.

Variance to the Natural Resources District as Determined by Tributary

The Applicant proposes to operate the landfill partially within the Natural Resources District ("NRD"), and accordingly requests a variance to Section 267-41(D)(2)(c). The proposed rubble fill will be within a 150 foot tributary stream buffer only if the drainage sub-basin is determined to be more than 400 acres in size. If less than 400 acres in size, then the required stream buffer is 75 feet. MRA meets the 75 foot tributary stream buffer requirement, but cannot meet the 150 foot stream buffer requirement. Therefore, while a variance is requested, MRA disputes the existence of the sub-basin and the need for the variance itself.

Evidence presented on this issue concerned a relatively obscure discussion of how stream sub-basins are determined, and how the County Hydrology Map – Exhibit 62 – is to be interpreted. Unfortunately, Exhibit 62 is virtually indecipherable, as pointed out by MRA. It is 8-1/2 inches by 11 inches in size, is of the entire County, and is of an indeterminate scale. Rightly so, the Applicant objects to the stream sub-basin being determined by a map which is so clearly imprecise. The Applicant also argues that the Department of Planing and Zoning has inconsistently interpreted this map, and that by its past interpretations the drainage basin would have been found to be much less extensive. In response, the Applicant presented testimony that the applicable drainage basin drains 208 acres only, not the 400 acres suggested by the Department of Planning and Zoning. Accordingly, MRA argues it does not meet the threshold for inclusion in the Natural Resources District and the resulting variance to the 150 foot buffer is not necessary.

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Perhaps due to the relatively confusing nature of this discussion of sub-basins, hydrology maps, mapping errors, map color codes, etc., the point at issue was ignored – if a 150 foot buffer requirement is applicable, and if a variance were granted, would the Natural Resources District be somehow offended? Can it be found that the proposed development, which the variance would allow, would adversely affect the NRD? In fact, no persuasive testimony or evidence was presented of an adverse impact if the 150 foot buffer were found to be applicable, and if a variance to it were granted. The opponents' testimony was to the effect that a 75 foot buffer is good, but a 150 foot buffer is better. The opponents, however, identified no specific or persuasive evidence of increased harm, nor did they identify specific adverse impacts if the buffer were reduced as requested by the Applicant. Their arguments can be characterized as speculative and generalized concerns about potential harm only, and do not rise to a level sufficient to justify a finding of adverse impact.

On the other hand, there was persuasive evidence presented by the Applicant of no adverse impact to the Natural Resources buffer if a variance were granted. The Applicant argues that an existing 75 foot buffer, together with the other conditions and regulations which will control the operation of the rubble fill, are sufficient safeguards to insure that no negative impact will threaten the Natural Resources District. Such an argument is found to be persuasive, and is accepted. Accordingly, it is found that the granting of a variance to the 150 foot buffer yard requirement would cause no adverse effect upon the Natural Resource District.

Variance to the Natural Resource District and Wetlands Buffer

The Applicant also requests variances to the 75 foot non-tidal wetlands buffer, the 75 foot buffer to the NRD, required by Sections 267-41D(5)(e) and 267-41D(6), and to Section 267-41D(3)(b) prohibiting a landfill within the NRD. Applicant's Exhibit 39 graphically shows the extent of the variances requested. Again, the issue is whether the granting of the variances would cause adverse impact to the NRD. The Applicant has presented testimony that if granted the variances it would nevertheless remain subject to the State mandated 25 foot wetland buffers. While the opponents presented testimony that, in general, wetlands are beneficial and buffers help protect wetlands, no testimony was presented that a reduction of wetland buffer would actually cause an impact to the remaining wetlands, or to the NRD. Again, the opponents' testimony in this regard can be characterized as speculative, at best.

Testimony was also presented by the Applicant's expert witnesses, including Holly K. Shipley, that no adverse impact to the NRD would result due to the combination of the State's 25 foot buffer, plus the relatively stringent design and operational standards to which the Applicant would be subject due to the nature of the proposed uses, i.e., a landfill. Much of the operational safeguards which are imposed upon landfills have the purpose of preventing sediment and pollutants from reaching neighboring wetlands. Those safeguards, in additional to the 25 foot State mandated setback are, in the Applicant's opinion, more than sufficient to adequately protect the NRD. This testimony and those arguments are credible and persuasive, and are adopted herein.

It is accordingly found that the Applicant's requests for variances to the NRD requirements will, if granted, not cause the proposed development to have an adverse effect upon the NRD.

Accordingly, for the above reasons it is recommended that all requested variances to the NRD requirements be granted.

II. VARIANCES REQUIRING AN APPLICATION OF SECTION 267-11

The requested variances which require the application of the standard contained in Section 267-11, are discussed as follows.

Variance to Permit Disturbance of 30 foot Buffer

The Applicant requests a variance to Section 267-28C, which requires a 30 foot buffer yard between an extraction or landfill activity and residential uses and public roads. The Applicant's request to vary the terms of the requirements of Section 267-28C is actually two-fold. First, the Applicant is seeking permission to construct its access road through the 30 foot buffer. The requested variance in this regard surely seems reasonable in that the Applicant would have no ability to access its property without some lessening of the requirement that it maintain a buffer yard. Section 267-28A describes the purpose and location of the buffer yard requirement. A buffer;

> *". . . shall be included within the setback areas or yards otherwise provided in this Part I."*

It appears that buffers are treated similarly to setbacks. Obviously, setbacks can be crossed by access roads. To hold otherwise would be to preclude all development on any parcel of property in Harford County. It would accordingly seem that a proper interpretation of Section 267-28C would allow an access road to be installed within a buffer. In any event, the Applicant, having no way to access his property except through its buffer, has shown a sufficient practical difficulty so as to justify the granting of a variance to the 30 foot buffer requirement to allow the installation of an access road. It is further found that such an access road, in and of itself, would have no adverse impact upon any adjoining property.

However, and secondly, the Applicant also requests a variance to disturb the 30 foot buffer in certain locations along Gravel Hill Road. The County's and the opponents' position is that such a variance should be denied as the purpose of a buffer, and this buffer in particular, is to help protect adjoining properties from the impact of a proposed use.

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The proposed rubble landfill has the potential of causing a great impact on the neighbors who reside on Gravel Hill Road, and on users of Gravel Hill Road. Certainly the testimony of the neighbors, a review of the Exhibits, and testimony of the witnesses justifies a finding, which is herein made, that the proposed rubble landfill has a high potential for adversely impacting the lives, well being and property values of the residents in the area. Fifty (50) tractors and trailers (if not more) will be accessing the site on a daily basis. They will be using Gravel Hill Road, a road which seldom if ever has experienced this type of vehicular activity. Many of the houses are located close to Gravel Hill Road with some, in fact, having non-conforming front yards due to their age. Some of the homes will be as close as 200 feet to fill activity. The Church building and graveyard will be surrounded on three sides by fill activity. Residents walk the roads; children bicycle the roads; school buses use Gravel Hill Road and pick-up and drop off children.

Various pieces of equipment will be on site, including a dump truck, bulldozer, backhoe and street sweeper. Employees will be entering in and leaving the property. Trucks will, at least occasionally, be stacked on the property and onto Gravel Hill Road. Material will be dumped on site, moved around by various types of equipment, and compacted. Liners will be installed at the beginning and at the end of the operation. Soil caps will be installed on the liner. Leachate collection systems will be installed. While not as impactful an operation as, for instance, a truck terminal, the proposed use will certainly be more intense, and busier, than almost any agricultural operation that one can imagine. A 30 foot buffer will tend to mitigate this impact. A reduction of or impact into the buffer will decrease the protection otherwise afforded the neighbors and the St. James AME Church and graveyard.

On the other hand, the Applicant has made no good showing for a grant of the variance. Indeed, its witness Jacqueline Seneschal testified that the variance may not actually be necessary. The Applicant argues that the buffer can be disturbed by the rubble fill operation with the buffer then reinstalled after the fill operation is complete. If the Applicant suggests that a removal and reinstallation of a required buffer after the disturbance is complete is somehow allowed by Code, the Applicant is mistaken. A buffer is not only required to the final use, i.e., a capped and stable rubble-fill site, by is also required to the actual rubble-fill activity itself. A fair reading of the Harford County Development Regulations, particularly Section 267-28, requires a buffer to be maintained, improved or installed at the very beginning of the operation, and throughout the operation to final completion.[2] It may not be removed, and reinstalled, at the discretion of the Applicant.

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[2] The Development Regulations define Buffer as: "Land left in its natural state or which is vegetated and managed to protect significant/specific natural features from the adverse impacts of adjacent land uses or Development."

Buffer Yard is defined as: "A portion of a lot included within setbacks and improved with plantings, earth berms or fences."

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The 30 foot buffer must remain from the beginning of the operation, through completion and thereafter. No good reason has been suggested by the Applicant for modification of this variance requirement, except for the installation of an access road. No unique topographical characteristic of the site has been identified that would create a hardship or practical difficulty which would require relief by the granting of a variance. An adverse impact to neighbors would result if a reduction in the buffer were allowed. The Applicant's request for a variance to the 30 foot buffer yard requirement, except for its access road, is recommended to be denied.

Variance to Allow Disturbance of the 200 foot Buffer

The Applicant requests a variance to the requirements of Section 267-28D(4), that a 200 foot undisturbed buffer area be maintained between the fill area and adjoining properties. [This requirement is repeated at Section 267-40.1(B).]

It would appear that the Applicant proposes to disturb the 200 foot buffer area in most locations around the rubble-fill. The Applicant argues, however, that much of the 200 foot buffer has already been disturbed by prior mining activities and that the maintenance of the 200 foot buffer would;

> *". . . have the effect of leaving a 200 foot trough with no noise or visual shields from the landfill activities."* (See Applicant's Brief, page 16.)

The Applicant further argues that the installation of a vegetative landscape buffer is more protective of adjacent properties than if an existing 200 foot buffer were left undisturbed. Furthermore, says the Applicant, recreational use of the site would be better served by not having a 200 foot "trash filled trough" located along the site perimeter. The Applicant's argument is similar to its argument in support of its request to the variance to the 30 foot buffer yard requirement. It would be better for MRA to fill into the 200 foot buffer, as requested – which in some spots would come to within 10 feet of Gravel Hill – and then landscape the buffer at the conclusion of mining activities, then it would be to simply leave the buffer in its current undisturbed state. Again, the Applicant appears to misinterpret the buffer yard requirement.

The buffer, which is specifically to be "undisturbed", is to be in place between the rubble-fill *operations* and the surrounding properties, as well as between the *completed* rubble-fill site and surrounding properties. The requirement of an undisturbed buffer area would be mere surplusage and of no effect if a property owner could disturb it at will, upon the promise that it will create the buffer at the conclusion of its operation.

The Applicant makes no argument that its property is somehow unique which causes a resulting hardship if the 200 foot buffer yard is required. Even if such an argument were made, however, it is herein found that the property has no unique characteristic or topographical condition which would create a hardship to the Applicant so as to justify a relaxation of the 200 foot buffer yard requirement as requested by the Applicant.

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The Applicant's allegation that the property is unique due to the disturbed nature of the buffer is noted. At least part of the 200 foot buffer around the perimeter of the site has been disturbed in years past. The testimony of Jacqueline Seneschal for the Applicant is that a total of about 15 acres of the total site had been disturbed. Nevertheless, testimony was also presented that much of the historically disturbed area is now covered in vegetative growth.

The Applicant also, primarily through its witness Jacqueline Seneschal, asserts that the topography of the site is unique compared to other properties in the neighborhood. This suggestion was refuted by Anthony McClune of the Harford County Department of Planning and Zoning. In truth, nothing distinguishes the subject property from other lands in the area except for disturbance due to past mining activity. While the extent of disturbance on the property may set it apart from other properties, this feature has nothing to do with an application of pertinent development standards. The suggested "uniqueness" of the property, to the extent it exists, does not cause a disproportionate impact of use restrictions and, accordingly, is not a cause of "practical difficulty" or "unreasonable hardship".

As a result of these findings it cannot be concluded that the existing 200 foot buffer would serve no purpose in helping to lessen the impact of the proposed use onto adjoining properties. Indeed, the opposite conclusion can readily be reached, which is that the disturbance of the 200 foot buffer during the rubble landfill operation would increase the disturbance to be seen and experienced by adjoining owners and residents. As a result, they would suffer an adverse impact.

The true hardship of the Applicant is that it would lose area within which to place its rubble-fill if the 200 foot buffer is required. The argument that a rebuilt buffer would be better for the neighbors is not a practical difficulty. A hardship which results due to the necessity of complying with the applicable setback requirements is not the type of hardship which the variance statute allows as a justification for relaxation of the standard. Simply being unable to do what one wants to do with ones property is not a hardship related to a underlying unique characteristic of the property or its topography. The Applicant's hardship is a direct result of required compliance with applicable use restrictions. Such a hardship is not sufficient to justify the granting of a variance. (See Chester Haven Beach Partnership v. Board of Appeals, 103 Md. App. 324, 653 A.2d 532 (1995).

Accordingly, it is recommended that the variance to the 200 foot buffer yard requirement be denied.

Variance to Allow Deposit of Solid Waste Within 500 feet of a Flood Plain District

The Applicant requests a variance to Section 267-40.1(C) of the Development Regulations which requires, among other things;

> *"All areas in which solid waste is deposited are at least five hundred (500) feet from the Flood plain District established by Chapter 131 of this Code."*

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The Applicant acknowledges that it cannot meet this requirement, and that it will impact the Flood plain buffer by 100 feet to150 feet. In support of its requested variance MRA argues that the Flood plain buffer is not scientifically based, but is, in fact, a "political boundary". MRA suggests, through its witnesses, that a 350 foot to 400 foot Flood plain buffer would be as protective of the Flood plain as would a 500 foot buffer. In other words, a granting of this variance would make no difference to the Flood plain.

Unfortunately for the Applicant's position, an argument that a requirement is of no positive effect, or is somehow more than necessary, is not a reason for the granting of a variance.[3] Not to belabor the obvious, a unique feature of the property or its topographical conditions must result in a practical difficulty in order to at least meet the first stage of the variance process. However, no unique feature of the property or topographical condition is identified by the Applicant in support of this request. It merely states that the 500 foot setback request is not necessary. Indeed, such an argument is similar to arguments made by the Applicant in support of other variances. There is no statutory or case law such supports such an argument and, without a finding of uniqueness and resulting practical difficulty, the variance cannot be granted. Accordingly, it is recommended that the requested variance to the 500 foot buffer to the Flood Plain District be denied.

Variance to the 75 foot Historic District Buffer

There was much testimony concerning the historic significance of St. James AME Church not only to its congregants, but also to its larger neighborhood and to the history of the African American life within Harford County and the State of Maryland.

Testimony of Mr. Westmoreland was persuasive that the Church and its graveyard be preserved, that its significance to the African American community is pronounced. Being the final resting place of African American soldiers who fought in the Civil War is itself a factor sufficient to mandate that the Church and its graveyard be given all possible protections to help preserve their historical significance and the prominent place they continue to play in the history of our County and State.[4]

Harford County Development Regulations at Section 267-28E require that a use have a;

> *". . . buffer and landscaping between 10 feet and 75 feet from any historic landmark as designated by the Historic Preservation Commission."*

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[3] Again, the standard under discussion is Section 267-11, not the less stringent standard applicable to Natural Resources District variances.

[4] It is acknowledged that only the graveyard, not the Church building, is listed on the Harford County Inventory of Historic Sites. Of course, this does not make the Church itself any less important to its members, or to the larger community.

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The St. James AME Church graveyard is such an historic landmark. In determining the extent of this "buffer and landscaping", the Department of Planning and Zoning is to have the recommendation of the Historic Preservation Commission. The Department is to then require a buffer yard as determined by the Historic Preservation Commission, unless the Commission's decision is determined to be "arbitrary and capricious". It should be noted that the determination of the landscaping and buffer is not one for the Board of Appeals to make. The Development Regulations specifically charge the Department[5] with that obligation. However, there was no evidence that this process was complied with. Furthermore, and more importantly, no basis exists for requesting a variance to this process. In effect, the Applicant is requesting an interpretation of the application of the Code, not a variance. The proper procedure would be for the Applicant to appeal an interpretation of the Zoning Administrator once that interpretation is made. This is not an appeal of the interpretation; this is a request for a variance. The Applicant proposes a disturbance to within 10 feet of the graveyard. Presumably, the Applicant anticipates the Department of Planning and Zoning requiring the 75 foot buffer. Quite obviously it has not yet made such a determination since it does not have the recommendation of the Historic Preservation Commission. Accordingly, the requested variance to Section 267-28(E) cannot be granted.

Variance to the Code Requirement that the Rubble-Fill be Located on Not Less Than 100 Acres

MRA's parcel is 55 acres in size. Section 267-40.1(A) requires that the site be at least 100 acres. Obviously, the Applicant will not have a rubble-fill, regardless of the findings on the other variances, unless it is granted a variance to the 100 acre requirement. The variance requested is substantial, with the Applicant suggesting that an area of just slightly more than one-half of the minimum acreage requirement is sufficient for approval.

[5] The Development Regulations, in fact, are unclear as to what it is referred to when it states the "Department". Section 267-28 refers generally to both the Departments of Planning and Zoning and Public Works. Subsection E then discusses the obligation of the "Department" to make the finding as to width and landscaping. It is assumed that this reference is to the Department of Planning and Zoning, and not Public Works, as the Department of Planning and Zoning generally is charged with the obligation to determine landscaping requirements in its site plan review process.

Again, the Applicant's argument in favor of this argument is that;

> *"Enlarging the site to 100 acres would serve no purpose and would be a practical difficulty."*

Again, no statutory or case authority exists which would justify the granting of a variance based on a perceived lack of need for the requirement for which the variance is requested. 80' rear yard setbacks may not, in property owners' opinions, be necessary, but they are nevertheless required in certain districts. Building height restrictions may not be necessary, in the eyes of certain property owners. Nevertheless, building height limits are contained throughout the Development Regulations. The decision on whether a property is 'unique' has literally nothing to do with a subjective perception of the need for the requirement for which a variance is sought. The initial steps of the variance standard only concerns uniqueness and resulting hardship or practical difficulty, not need for the particular requirement or the lack thereof. "Need" is a concept related to adverse impact, not to unique characteristics or practical difficulty.

Furthermore, the Applicant cannot allege a disproportionate impact of the 100 acre requirement upon it. All properties of less than 100 acres in size are similarly impacted by the prohibition against rubble-fills on parcels of less than that size. The Applicant is treated no differently than any other similarly situated property owner.

Accordingly, it is recommended that the requested variance to the 100 acre minimum lot size requirement be denied.

Variance to Allow the Disturbance of the 1,000 foot
Buffer for Residential or Institutional Building

Similar to its argument in support of its request to allow the rubble fill to be located on not less than 100 acres, the Applicant requests a relaxation of Section 267-40.1(D) to permit the disturbance of the 1,000 foot required buffer from residential or institutional buildings. Quite plainly, the Applicant cannot meet this requirement as the nearest residences, and St. James AME Church, are located on Gravel Hill Road, and well within the required buffer. The Applicant suggests, and its suggestion is accepted as correct, that the imposition of this buffer requirement would preclude its use of the site for a rubble fill.

Exhibit 61 shows the extensive area which would be required if MRA were to comply with the 1,000 foot buffer condition.

MRA's argument is, again, that a practical difficulty results if it is forced to comply with the 1,000 foot buffer. That practical difficulty is MRA's inability to use the site for a rubble fill.

Again, without being unnecessarily redundant, the requirement that one conform ones' use to the requirements of the Code is not a practical difficulty sufficient to justify the granting of a

variance. MRA says, in effect, that it cannot operate its rubble fill if it is required to conform with the 1,000 foot buffer. No other suggestion is made that the property is somehow otherwise unique, or has topographical conditions which cause a practical difficulty. Indeed, the difficulty arises from the application of the Development Regulations, not from any characteristic inherent to the property itself.

Furthermore, MRA suggests that if granted the variance the resulting impact would not be adverse to the surrounding neighbors as the rubble fill use would be similar to those uses allowed as of right in the agricultural district. While this argument has an patina of persuasiveness, such a suggestion is, at heart, simply incorrect. Certainly, some, perhaps all, of the equipment which will be operating on the MRA property is, at least occasionally, also used in agricultural operations. Tractors and trailers occasionally come onto farm properties to haul grain and to deliver feed. A backhoe may be used to dig trenches and perform irrigation work. A dump truck may be used to remove feed or materials around a farm. Perhaps a road sweeper and water truck is occasionally used. However, those vehicles are not, generally, operated five ½ days a week, eight hours per day, as they are proposed to be used on the MRA property. Furthermore, it is difficult to imagine any agricultural operation which would be visited by 50+ semi-tractor and trailers every day, for 200 and more days per year, for 5 years or more. It is accordingly correct that some of the characteristics of the rubble fill site are characteristics of agricultural operations. However, the scope, intensity, duration and scale of the proposed use greatly exceeds almost any conceivable agricultural operation.

Accordingly, for the reasons set forth earlier in this opinion, it is found that a relaxation of the buffer, even if the Applicant can show a practical difficulty resulting from some unique feature of the property or its topography, would have an adverse impact which would be detrimental to the neighbors and their property.

Furthermore, a discussion of the Applicant's request to relax the 1,000 foot buffer requirement, as well as the other buffer requirements, cannot be concluded without note made of the severe impact such relaxations would impose upon St. James AME Church and its congregation. For reasons clearly set forth in the testimony of Mr. Westmoreland, the St. James AME Church, and its graveyard, occupy a significant historical position in the Havre de Grace area and within Harford County and the State of Maryland in general. Mr. Westmoreland was eloquent in his description of the Church and its place in our history and culture;

> *"... to me the community is a living museum. It's, you know, for example, we have a museum where we go out and get things and bring them in; but to walk into a community where the church is there that was there when this community was emancipating itself, to see the records that are there in the courthouse documenting the fact that people here of African decent (sic) were beginning to try to build lives on their own, that they were taking out mortgages, that they were buying their freedom and yet it has a contextual relationship to what is still there, so I don't see it as a little modest church, but I see it as a major monument, a major site that talks about constructive black self-determination."*

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MRA has certain rights to use its property. However, it cannot use its property in derogation of the rights of other residents, and of adjoining institutions, to exist, thrive and continue to contribute to their community without unnecessary adverse impact. A relaxation of the 1,000 foot buffer, or for that matter a relaxation of any of the other non-NRD buffer requirements would cause harm to those residents and the institution of St. James AME Church.

It is accordingly recommended that the variance to the 1,000 foot buffer requirement be denied.

CONCLUSION:

For the above reasons, it is recommended that the variances to the requirements of the Natural Resources District be approved.

For the above reasons, it is recommended that the variance to the 30 foot buffer yard requirement for an access road be granted.

For the above reasons, it is recommended that all other variances be denied.

Date: February 28, 2007

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on MARCH 28, 2007.