

AA 172-05 Destefano, Gina
VAR 0043

MSA-S-1829-4598

Comments
5/2/05 RL

Robert L. Ehrlich, Jr.
Governor

Michael S. Steele
Lt. Governor



Martin G. Madden
Chairman

Ren Serey
Executive Director

STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS
1804 West Street, Suite 100, Annapolis, Maryland 21401
(410) 260-3460 Fax: (410) 974-5338
www.dnr.state.md.us/criticalarea/

May 2, 2005

Lori Rhodes
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road
Annapolis, Maryland 21401

Re: Variance 2005-0043-V Gina Destefano
(Tax Map 46, Parcel 273, Lot 2R)

Dear Ms. Rhodes:

Thank you for providing information on the above referenced variance. The applicant is requesting a variance to permit a dwelling with greater forest clearing than allowed. The property is designated a Limited Development Area (LDA) and is currently undeveloped. This office received supplemental information and revised site plans for this variance case on April 7, 2005 April 22, 2005 and April 27, 2005.

Providing the lot is properly grandfathered, this office does not oppose the variance. Based on the information provided, we have the following comments regarding the development proposal and variance request.

- 1) Because the proposed area of disturbance exceeds the threshold of 5,000 square feet, stormwater management must be provided for development of the lot. As reported in the variance application, the lot has clay-rich soils (Shadyoak, SoA), which prevent implementation of stormwater infiltration practices on the site. For this reason, structural stormwater best management practices are proposed, including pretreatment trenches and collection of stormwater via underground pipes to a central discharge point at Whitehall Creek.
- 2) The applicant proposes to clear greater than the maximum limit of 6,534 square feet for a grandfathered lot of less than one half acre to construct a dwelling and facilities (Anne Arundel County Zoning Ordinance Article 28, 1A-105(i)). The lot is fully forested and the applicant proposes 4,048 square feet or 25.6 percent impervious surface coverage. In

Lori Rhodes
Variance 2005-0043-V Gina Destefano
(Tax Map 46, Parcel 273, Lot 2R)
May 2, 2005
Page 2

addition, the implementation of structural stormwater management practices and associated grading result in a substantial increase in the amount of clearing necessary for development of the lot. Based on the most recent site plan, it appears that the applicant has attempted to minimize the amount of clearing necessary for the stormwater management facilities and has proposed reforestation on the site.

- 3) Mitigation, at a ratio of 1:1 for disturbance outside the Buffer, should be required. Plantings should be accommodated on the site to the extent possible; however, mitigation alternatives will need to be addressed.
- 4) Although not part of this variance request, we understand that installation of the stormwater pipes and outfall to Whitehall Creek, which convey stormwater from Lots 1, 2, 1R, 2R, and 22, will result in 2,850 square feet of additional clearing. The additional mitigation for installation of the stormwater pipes and outfall, at a ratio of 3:1 for disturbance within the Buffer and 1:1 for disturbance outside the Buffer, should be provided as part of the permitting process for the project.

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

Sincerely,

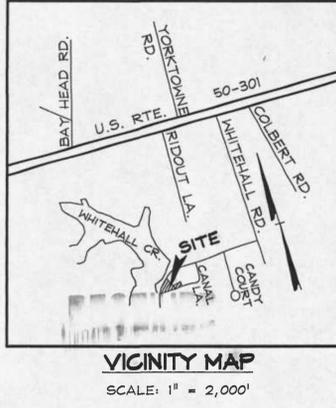


Julie V. LaBranche
Natural Resource Planner

cc: Vernon Husted (Sigma Engineering)

AA 172-05 Destefano Lot 2R

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SITE TABULATIONS

TOTAL SITE AREA: 1.88 AC.
 EXISTING ZONING: R-2
 CRITICAL AREA DESIGNATION: LDA
 EXISTING WATER: PRIVATE WELL
 EXISTING SEWER: PUBLIC SEWER
 ALLOWABLE MINIMUM LOT SIZE: 15,000 S.F.
 PROPOSED MINIMUM LOT SIZE: 15,710 S.F.

SETBACKS:
 FRONT: 30'
 SIDE: 7' MIN. / 20' COMBINED
 REAR: 25'
 MIN. LOT FRONTAGE: 80'
 ALLOWABLE LOT COVERAGE: 30%
 PROPOSED MINIMUM LOT COVERAGE: 15.6% (LOT 22)

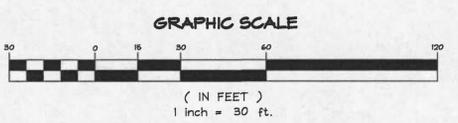
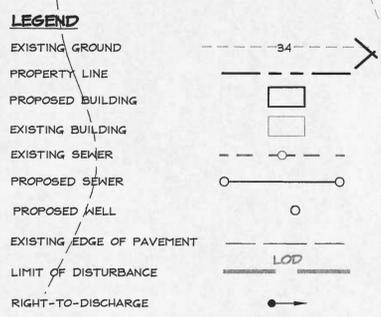
LOT #	LOT AREA	EX. WOODLANDS	WOODLANDS TO BE REMOVED	%
1R, BLK B	17,664 S.F.	17,664 S.F.	15,270 S.F.	75.1
2R, BLK B	15,823 S.F.	15,823 S.F.	11,932 S.F.	75.4
1, BLK E	16,288 S.F.	16,288 S.F.	9,842 S.F.	60.4
2, BLK E	16,410 S.F.	16,410 S.F.	11,393 S.F.	69.4
22, BLK B	15,710 S.F.	15,710 S.F.	8,962 S.F.	57.0
TOTAL	81,870 S.F.	81,870 S.F.	54,399 S.F.	66.4

LOT #	LOT AREA	ALLOWABLE COVERAGE	PROPOSED COVERAGE
1R, BLK B	17,664 S.F.	5,321 S.F. OR 31.26%	4,543 S.F. OR 25.73%
2R, BLK B	15,823 S.F.	4,945 S.F. OR 31.26%	4,048 S.F. OR 25.63%
1, BLK E	16,288 S.F.	5,081 S.F. OR 31.26%	3,090 S.F. OR 19.0%
2, BLK E	16,410 S.F.	5,128 S.F. OR 31.26%	3,185 S.F. OR 19.4%
22, BLK B	15,710 S.F.	4,924 S.F. OR 31.26%	2,449 S.F. OR 15.6%
TOTAL	81,870 S.F.	25,594 S.F. OR 31.26%	17,315 S.F. OR 21.1%

GENERAL NOTES

- THIS SITE IS LOCATED IN ZONE 'C' AS SHOWN ON FEMA FLOOD INSURANCE RATE MAPS 240009 0095 C, EFFECTIVE DATE MAY 2, 1993.
- BOUNDARY AND TOPOGRAPHIC SURVEY WAS PERFORMED BY CHARLES P. JOHNSON & ASSOC., INC. ON 10-13-04 AND 2-21-02. COORDINATES SHOWN HEREON ARE MARYLAND STATE PLANE COORDINATES (NAD83/91) AND DERIVED FROM GPS AND CONVENTIONAL OBSERVATIONS USING NATIONAL GEODETIC SURVEY CORS STATIONS GAIT, ANPI, AND RED1.
- THIS PROPERTY DOES LIE ENTIRELY WITHIN THE LDA CRITICAL AREA ZONE.
- LOTS 1R & 2R BLOCK B AND LOTS 1 & 2 BLOCK E ARE SUBJECT TO A RECENT CHANGE TO THE LOT LINES FOUND IN RECORD PLATS BK 262 PAGE 6 PLAT #13632 AND BOOK 262 PAGE 7 PLAT #13633. LOT 22 IS IDENTIFIED IN THE REVISED PLAT PART OF WHITEHALL MANOR RECORDED IN BOOK 33 PAGE 32 PLAT #1807.

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MAY 3 2005
CRITICAL AREA COMMISSION



OWNER/DEVELOPER
 STURBRIDGE SIGNATURE SERIES, LLC
 C/O GINA M. DESTEFANO
 2614 CHAPEL LAKE DRIVE
 GAMBRILLS, MD 21054
 TEL. (410) 451-5685

NO.	REVISIONS	APP'D BY	DATE



43 OLD SOLOMONS ISLAND ROAD
 SUITE 201
 ANNAPOLIS, MARYLAND 21401
 TELEPHONE (410) 266-5599
 FAX (410) 266-3871

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SCALE: AS SHOWN	VARIANCE PLAN
DATE: 4-26-05	WHITEHALL MANOR LOTS 1R & 2R- BLOCK B LOTS 1 & 2- BLOCK E LOT 22- BLOCK B
DRAWN BY: JGA	TAX: 4R BLOCK:1 PARCEL: 182 & 273
DESIGNED BY: VNH	3RD ASSESSMENT DISTRICT
CHECKED BY: VNH	ANNE ARUNDEL COUNTY, MD 21401
JOB NO. 02-07	
SHEET 1 OF 1	\\SIGMAD\C\PROJECTS\02-07\DWG\VARIANCE.DWG

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBERS 2009-0001-V, 2009-0002-V AND 2009-0003-V

STURBRIDGE SIGNATURE SERIES, LLC

THIRD ASSESSMENT DISTRICT

DATE HEARD: FEBRUARY 26, 2009

ORDERED BY:
DOUGLAS CLARK HOLLMANN, ADMINISTRATIVE HEARING OFFICER

PLANNER: WILLIAM ETHRIDGE

DATE FILED: MARCH 26th, 2009

RECEIVED

APR 2 2009

CRITICAL AREA COMMISSION
Chesapeake & Atlantic Coastal Bays

PLEADINGS

Sturbridge Signature Series, LLC, the applicant, seeks three variances (2009-0001-V, 2009-0002-V, and 2009-0003-V) to allow extensions in the time required for the implementation and completion of previously approved variances on properties located at 1671 and 1675 Homewood Landing Road, and 618 Canal Road, Annapolis.

PUBLIC NOTIFICATION

The hearing notice was posted on the County's web site in accordance with the County Code. The file contains the certification of mailing to community associations and interested persons. Each person designated in the application as owning land that is located within 175 feet of the property was notified by mail, sent to the address furnished with the application. The applicant submitted the affidavit of Dale Beahm (Petitioner's Exhibit 1-1) indicating that the property had been posted on February 11, 2009. I find and conclude that there has been compliance with the notice requirements.

FINDINGS AND CONCLUSIONS

This case concerns the same properties that were the subject of decisions by this office in Case Nos. 2005-0043-V, 2005-0049-V, and 2005-0052-V. (Two other properties were involved in those variance proceedings - 2005-0044-V and

2005-0045-V, which, for reasons set forth below, are not part of this 2009 application.) The 2005 Orders conditionally approved variances to allow the construction of dwellings and associated facilities with greater forest clearing than allowed.

The decisions granted by this Office were appealed to the Anne Arundel County Board of Appeals. In Case Nos. BA 64-05V through BA 68-05V, the Board conditionally granted variances in all 5 cases. There was no further appeal.

The applicant has apparently developed and sold two of the lots that were the subject of the initial proceedings before this Office. Thus, those variances are not part of this application. However, for reasons stated during the hearing, the applicant has not completed the construction of the dwellings and accessory structures on the three other properties. The clearing that was approved in the 2005 variances has been completed on all five properties, but the applicant is concerned that this work will not qualify them to keep the variances alive for the three properties that are the subject of this proceeding. Consequently, the applicant seeks an extension of time for the previously granted variances. For reasons that follow, I will grant the requested extensions.

A hearing was held on February 26, 2009. Evidence was presented that the applicant has diligently pressed forward in obtaining permits and approvals necessary to develop the properties that were the subject of the 2005 proceedings. Petitioner's Exhibit 2 contained an extensive listing of the steps taken to develop the properties. Two of the five properties have been developed and sold. The

other three properties have not been developed because of the mortgage financing crisis and other adverse national economic conditions. It is likely that the houses would be left empty if they were built at this time. It is also likely that they would be vandalized, which would have a negative effect upon the neighborhood where the properties lie.

Shep Tullier, a land-planning consultant to the applicant, testified that the applicant had diligently pursued developing the properties. Mr. Tullier pointed out that the applications for extensions of time were not caused by any action of the applicant but were intended to preserve the status quo. This contrasted with many other variance requests whose purpose was to allow more lots to be developed or to avoid environmental constraints that applied to similar properties. He further testified that there had been no change in circumstances that would affect a request for an extension.

William Ethridge, a planner with the Office of Planning and Zoning (OPZ), testified that his office has no objection to the extensions. The Department of Health has no objection to the request provided a plan is submitted and approved by their office. Mr. Ethridge recommended that the applications be granted with the conditions that were part of the original Orders.

No other agency comments were received related to this request. There was no other testimony in the matter.

Upon review of facts and circumstances, I find and conclude that the applicant is entitled to conditional relief from the code. In this regard, I adopt the

findings and conclusions of the prior Order. There is no indication of any significant change in circumstances. Although the failure to move forward is not considered exceptional circumstances, failure to extend these variances would impose an unnecessary hardship on the applicant. Furthermore, this is the minimum necessary to afford relief. Therefore, I will grant the applications. The approval incorporates the same conditions appended to the prior Order as affirmed by the Board of Appeals in its decision dated January 3, 2007 in Case No. BA 64-05V, et seq.

ORDER

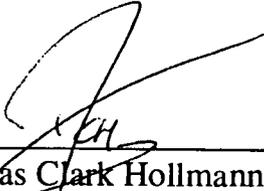
PURSUANT to the application of Sturbridge Signature Series, petitioning for variances to allow an extension in the time required for the implementation and completion of the variances previously approved; and

PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is this 26th day of March, 2009,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicant is **granted** variances to extend the time to obtain building permits in Case Nos. 2005-0043-V, 2005-0049-V, and 2005-0052-V, as affirmed by the Board of Appeals in its decision dated January 3, 2007 in Case

No. BA 64-05V, *et seq.*, until September 25, 2010, with completion in accordance with the permit.¹

1. Mitigation of 3:1 is imposed for all forest clearing.
2. Recommendations of the County Forester must be implemented in the development of the properties.
3. All deeds for the properties must contain a requirement running with the land that an annual, written report of a registered engineer or landscape architect must be delivered to the County each January, certifying that the stormwater management system is functioning as required by the County Regulations.



Douglas Clark Hollmann
Administrative Hearing Officer

NOTICE TO APPLICANT

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

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

¹ I recognize that the applicant already has the permits for the lots in question, which may obviate the need for these variances. However, the applications have straddled the old Code and the new one and all parties are unclear as to exactly what is needed since the clearing authorized by the variances has been completed. In an excess of caution, this Office will issue variances to extend the time to obtain permits since the existing permits may expire before the work is done. The new Code governs the terms of such extension. Therefore, the time period is 18 months from the date of this Order with construction in accordance with the building permit.

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JUN 8 2005

CRITICAL AREA COMMISSION

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBERS 2005-0043-V, 2005-0044-V, 2005-0045-V, 2005-0049-V and 2005-0052-V

IN RE: STURBRIDGE SIGNATURE SERIES, LLC

THIRD ASSESSMENT DISTRICT

DATE HEARD: MAY 5, 2005

ORDERED BY: STEPHEN M. LeGENDRE, ADMINISTRATIVE HEARING OFFICER

PLANNER: LORI RHODES

DATE FILED: JUNE 6th, 2005

PLEADINGS

These are companion cases. Sturbridge Signature Series, LLC, the applicant, seeks variances to permit dwellings and associated facilities with greater forest clearing than allowed. For Case Nos. 2005-0043-V and 2005-0052-V, the properties are located along the west side of Canal Lane, south of Homewood Landing Road. For Case Nos. 2005-0044-V and 2005-0045-V, the properties are located along the east side of Homewood Landing Road, south of Canal Lane. For Case No. 2005-0049-V, the property is located along the east side of Canal Lane, south of Homewood Landing Road. The properties are located in Annapolis.

PUBLIC NOTIFICATION

The cases were advertised in accordance with the County Code. The file contains the certifications of mailing to community associations and interested persons. Each person designated in the applications as owning land that is located within 175 feet of the properties was notified by mail, sent to the address furnished with the applications. Vernon Husted, a landscape architect and land planner employed by the applicant, testified that the properties were posted for more than 14 days prior to the hearing. I find and conclude that the requirements of public notice have been satisfied.

FINDINGS AND CONCLUSIONS

This matter concerns five unimproved lots in the Whitehall Manor subdivision, Annapolis. The properties are zoned R-2 residential and are located in the Limited Development Area (LDA) of the Chesapeake Bay Critical Area. The applicant seeks to construct five single-family dwellings and associated facilities with greater forest clearing than allowed.

Anne Arundel County Code, Article 28, Section 1A-104(c)(3) and Section 1A-105(i)(3)(iii) restrict woodland clearing to 30 percent. Finally, Section 1A-105(i)(3)(vi) limits clearing to the minimum necessary, not to exceed 6,534 square feet, for lots one-half acre or less in size that were in existence on or before December 1, 1985. The specifics of the applicant's development proposal are as follows:

<u>Case No.</u>	<u>Lot No.</u>	<u>Lot Area</u>	<u>Woodland Clearing</u>	<u>Variance</u>
2005-0052-V	1R, Blk. B	17,669 sq. ft.	13,270 sq. ft.	6,736 sq. ft.
2005-0043-V	2R, Blk. B	15,823 sq. ft.	11,932 sq. ft.	5,398 sq. ft.
2005-0045-V	1, Blk. E	16,258 sq. ft.	8,842 sq. ft.	2,308 sq. ft.
2005-0044-V	2, Blk. E	16,410 sq. ft.	11,393 sq. ft.	4,859 sq. ft.
2005-0049-V	22, Blk. B	15,710 sq. ft.	8,962 sq. ft.	2,428 sq. ft.

Lori Rhodes, a planner with the Office of Planning and Zoning, testified that the lots are below the minimum area for the R-2 district.¹ The proposal satisfies lot coverage and the impervious surface limitations. The excess forest clearing (on average, 66.4 percent) includes disturbance for stormwater management, water wells, a fire suppression tank and perimeter drainage around each house. The site plan has been revised to provide mitigation plantings along the limits of disturbance. The proposal also includes a use in common easement on Lot 1R in lieu of additional clearing. Ms. Rhodes summarized the agency comments. The Department of Health requires 50 feet of separation between each well and the sewer force main. The County Forester offered no objection. The County's Environmental Reviewer made no objection, subject to mitigation at a ratio of 3:1 and a planting plan and bond for the on-site portion of the mitigation. Finally, the Chesapeake Bay Critical Area Commission offered no objection, subject to mitigation for the disturbance, including the areas of the stormwater pipes and outfall. By way of ultimate conclusion, Ms. Rhodes supported the request, provided the applicant shows that the relief related to the size of the dwellings has been minimized.

On cross-examination by counsel to the applicant, Ms. Rhodes stated that she is unaware of prior variances of this nature. Additionally, the clay soils preclude stormwater infiltration and necessitate greater disturbance for

¹ The lots are shown on the record plat from 1954 and a resubdivision plat from May, 2004 which revised interior lot lines for Lots 1R and 2R in Block B and Lots 1 and 2 in Block E, abandoned a road identified as Winding Way and established the boundaries of Lot 38.

pretreatment trenches and a storm drain system. Finally, clearing for the water wells, driveways and parking spaces is needed without regard to the size of the dwellings. In response to inquire by Jack Blum, who resides across from the properties, Ms. Rhodes acknowledged that abandoned Winding Way extended between Lots 1 and 2 of Block B. Additionally, the use in common access does not serve as a planted buffer.

Gina DeStefano, vice president and general counsel to Sturbridge Homes, testified that the applicant purchased the properties and other lots presently under construction in 2002. She supplied various documents, including the original plat, a 1964-resubdivision plat, the 2004-resubdivision plat and a recorded Declaration of Right-of-Way and Maintenance Agreement (includes use in common easement on Lot 1R). The witness stated that the original plat and the 1964 resubdivision plat show four lot on the east side of Homewood Landing Road, albeit in different configurations. The purposes of the 2004 resubdivision plat included limiting the access to Homewood Landing Road to Lots 1 and 2 of Block E.² (The elimination of the access to Homewood Landing Road for Lots 1R and 2R of Block B in conjunction with the Declaration of Right-of-Way and Maintenance Agreement relieve the applicant from widening Homewood Landing Road.) Ms. DeStefano testified that the proposed dwellings are compatible with the character of the

² The fifth lot (Lot 22, Block B) is shown on the 1964 resubdivision plat but is not part of the changes made by the 2004 resubdivision plat.

neighborhood, including recent construction absent variances by the applicant on Candy Court.

In response to inquiry by Mr. Blum, the witness indicated that she did not know whether the applicant's predecessor in title paid property taxes on abandoned Winding Way. In response to inquiry by Frank Philip, who is building a home in the community, Ms. DeStefano conceded that some of the existing dwellings in the neighborhood occupy two platted lots.

Mr. Husted detailed the project constraints [dwelling setbacks, minimum driveway and parking spaces, grading for drainage and a working area around the dwelling, and utilities (well, grinder pump, stormwater management trenches and outfall and fire suppression tank)]. He provided lot disturbance calculations for the various features and testified that changing any feature alters all the other features. Therefore, decreasing the size of the homes by 25 percent would result in little reduction in the clearing.³ He also indicated that the impervious coverage ranges from 15.6 to 25.7 percent, versus an allowance of 31.25 percent.

Additionally, although the properties are entirely wooded, there is only canopy, which offers minimal habitat. By comparison, mitigation plantings include the diversity of shrubs and under story growth as habitat. Mr. Husted also submitted a Critical Area report and opined that the Critical Area variance standards are satisfied. Finally, he requested the flexibility to relocate the wells to meet the

³ The witness also testified that the average footprint of the proposed homes is less than the average of the 19 surrounding homes (2,608 square feet).

requirements of the Department of Health, provided the amount of woodland clearing does not increase.

In response to inquiry by Mr. Blum, Mr. Husted testified that the grading and over sizing of the storm drainage are intended to direct water away from Mr. Blum's downhill property. Finally, Mr. Husted estimated that there are 20 to 40 trees exceeding 80 feet in height but none are considered specimen trees.

Shep Tullier, a land planning consultant to the applicant, testified that the properties exhibit unique physical conditions, including the clay content of the soils and 100 percent forest cover. He reiterated the constraints on development identified by Mr. Husted and opined that the variance standards are satisfied. In particular, if the lots were devoid of forest cover, they would be eligible for building permits so long as the applicant provided 15 percent afforestation. By contrast, under the present request, the remaining plantings exceed 15 percent.

Mr. Blum opposed the applications. Matters of concern included the peculiar nature of the site and the history and type of surrounding development. In this regard, the lots on Whitehall Creek are much larger. These properties were part of a homestead and have always been heavily wooded. The applicant's proposal for clear cutting will result in uncontrolled runoff and the loss of trees will cause blow-downs of specimen trees on neighboring properties. There are alternatives to the proposed over development, including construction on slabs or over crawl spaces to minimize the clearing. Finally, the properties are

environmentally sensitive, including nesting sites for owls, eagles, osprey and woodpeckers.

I visited the properties and the neighborhood. The paved section of Homewood Landing Road west of Canal Lane is narrow. The lots in question are comparatively level. Older homes (ranchers and two-stories), many on wooded lots, and new homes (two-stories), typically on cleared lots, characterize the neighborhood. The homes on Whitehall Creek are well spaced and set well off the road.

The standards for granting variances are contained in Section 11-102.1. Under subsection (b), for a property in the Critical Area, a variance to the Critical Area program requirements may be granted only after determining that (1) due to unique physical conditions, peculiar to the lot, a strict implementation of the program would result in an unwarranted hardship to the applicant; (2) a literal interpretation of the program will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area; (3) the granting of the variance will not confer on the applicant any special privilege that would be denied by the program to other lands within the Critical Area; (4) the variance request is not based on circumstances resultant of actions by the applicant and does not arise from conditions relating to land use on neighboring property; and (5) the granting of the variance will not adversely affect water quality or adversely impact fish, wildlife or plant habitat within the Critical Area and will be in harmony with the general spirit and intent of the program. Under subsection

(c), any variance must be the minimum necessary to afford relief; and its grant may not alter the essential character of the neighborhood, substantially impair the appropriate use or development of adjacent property, or be detrimental to the public welfare.

Upon review of the facts and circumstances, I find and conclude that the applicant is entitled to conditional relief from the code. For these critical area properties, due to the extent of the woodlands, a strict implementation of the program would result in an unwarranted hardship. To literally interpret the program would deny the applicant the right to develop the properties with single-family dwellings, a right commonly enjoyed by other properties in similar areas of the critical area. Conversely, the granting of the variances does not create any special privilege that the program typically denies. In this regard, there have been a limited number of recent cases affording the same relief. See, Case No. 2004-0495-V (February 15, 2005), 2004-0325-V (October 7, 2004), 2004-0324-V (November 4, 2004) and 2004-0118-V (June 2, 2004). The present requests do not result from the actions of the applicant or from land use on neighboring property. Finally, with mitigation and other conditions, the variances will not adversely impact Critical Area resources and harmonize with the general spirit and intent of the program.

I further find that the variances represent the minimum relief. The applicant is proposing fairly substantial dwellings. But the clearing is a function of not only the footprint but also access, utilities, and stormwater management

facilities for the clay conditions. Mr. Husted testified without contradiction that the average footprint of the proposed homes is less than the average footprint for the surrounding homes and a fairly sizeable reduction to the proposed footprints would have little impact on the clearing. I further find that the granting of the variances will not alter the essential character of the residential neighborhood, substantially impair the use or development of adjacent property or constitute a detriment to the public welfare. The approval is subject to the conditions in the Order.

ORDER

PURSUANT to the application of Sturbridge Signature Series, LLC, petitioning for variances to permit dwellings and associated facilities with greater forest clearing than allowed; and

PURSUANT to the advertising, posting of the property, and public hearing and in accordance with the provisions of law, it is this 10th day of June, 2005,

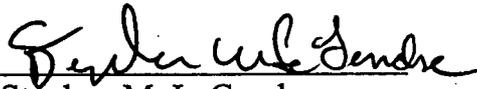
ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicant is hereby **granted** variances for excess clearing in the amounts shown on the revised site plan to permit dwellings and associated facilities. *The approval is subject to the following conditions:*

1. *The building permits are subject to the approval of the Department of Health.*

The applicant may revise the site plan to satisfy the requirements of the

Department of Health so long as the amount of clearing does not increase.

2. *The limits of disturbances shall be staked prior to building permits.*
3. *No further expansions of the dwellings are allowed and no accessory structures are allowed.*
4. *The applicant shall provide mitigation at a 3:1 ratio with plantings on-site to the extent practicable. The applicant shall provide a planting plan and bond for the on-site mitigation.*
5. *The conditions of the approvals shall be included in any contract of sale.*


Stephen M. LeGendre
Administrative Hearing Officer

NOTICE TO APPLICANT

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

Further Section 11-102.2 of the Anne Arundel County Code states:

A variance granted under the provision of this Article shall become void unless a building permit conforming to the plans for which the variance was granted is obtained within one year of the grant and construction is completed within two years of the grant.

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

AA 172-05
181-05
182-05
183-05
184-05

**RE: An Appeal From A Decision Of The
Administrative Hearing Officer**

**BEFORE THE
COUNTY BOARD OF APPEALS
OF ANNE ARUNDEL COUNTY**

STURBRIDGE SIGNATURE SERIES, LLC

**CASE NO.: BA 64-05V, BA 65-05V
BA 66-05V, BA 67-05V
BA 68-05V
(2005-0043-V, 2005-0044-V,
2005-0045-V, 2005-0049-V,
2005-0052-V)**

Petitioner

**Hearing Dates: Nov. 8 & 9, 2005
March 9, 2006
April 13, 2006
May 10 & 11, 2006
July 5 & 20, 2006**

MEMORANDUM OF OPINION

Summary of Pleadings

This is an appeal from decisions of the Administrative Hearing Officer, taken from the conditional granting of variances to permit the construction of dwellings and associated facilities with greater forest clearing than allowed. BA 64-05V is located 150' along the west side of Canal Ln.; 0' south of Homewood Landing Rd. BA 65-05V is located 100' along the east side of Homewood Landing Rd., 360' south of Canal Ln. BA 66-05V is located 100' along the east side of Homewood Landing Rd., 400' south of Canal Ln. BA 67-05V is located 110' along the east side of Canal Ln., 230' south of Homewood Landing Rd. BA 68-05V is located 22' along the west side of Canal Ln., 160' south of Homewood Landing Rd., Annapolis.

Summary of Evidence

Mr. Robert Myers, an expert in site design, testified that he evaluated the sites and reviewed soil and topographic studies. He conducted the utility verification with field run

topography. He described the sewer system that would serve the lots. There would be a 15' X 15' area dedicated to the County to provide access to the sewer. A duplex grinder sewage pump would be used for Lots 1 and 2, which would minimize the disturbance on site because the lots could share a pipe. The subject properties need more intensive stormwater management (SWM) due to the presence of clay soils, which limit infiltration. In an effort to reduce the amount of forest clearing necessary for SWM, rain gardens were implemented into the site plan. Perimeter plantings would also be used for SWM; one tree or three shrubs can treat up to 100 square feet of impervious area. Each of the Petitioner's lots exceeds the minimum design for treating the impervious surface proposed on the lots. Mr. Myers described each of the five lots and their special features, which require particular infrastructure to develop. He confirmed that the forest clearing on site is necessary to develop the properties given the County's requirements for stormwater management, sewerage, vehicular access and fire suppression.

Mr. Earl D. Reaves, an expert forester, testified, that he conducted a forest inventory on all five properties. The four lots located along Homewood Landing Road are referred to as Stand One and lot 22 is Stand Two. Stand One is a very mature oak forest with an age of 150± years trees. The average diameter of the trees ranges between 20 and 24 inches, but some trees measure 36 inches or more. Due to the tight canopy, there is almost no understory. He expects more trees to die in Stand One due to competition and there are no trees growing in the understory to fill in as the mature trees die. He recommends that the developer prune the roots at the limits of disturbance or drip line to assure the health of the retained trees. Stand Two is a pioneer stage forest. The lot used to be part of a clearing will saplings and herbaceous plants, including vines and invasive species, comprising the bulk of the vegetation. Stand Two presents a good habitat for birds and small animals but is not well located since it is separated from other

forest. The lots are located in the center of a forested peninsula. There are houses throughout the peninsula. Under the County and State forest regulations, the second 50 feet of the buffer can have up to 70% of basal forest removed. Measures used to ensure survival of trees in forested areas include root pruning and mats to prevent soil compaction. The spirit and intent of the Critical Area (CA) program is intended to guide development, but not eliminate it.

Mr. Michael Klebasko, an expert biologist, specializing in estuarine science, testified, that he prepared the CA Report for the Petitioner's project. The SWM proposed meets the requirements of the Anne Arundel County Stormwater Management Manual and the Maryland Department of the Environment (MDE) Stormwater Management Manual. The animal species currently living on the lots are typical of fragmented forest with little understory within residential developments. The forest is too small and fragmented for Forest Interior Dwelling Bird species. The clearing proposed is consistent with the clearing that occurred on other adjacent lots. The County imposes mitigation on all projects with forest clearing. A developer must either replant or pay a fee in lieu to provide reforestation in another location. There would be a mitigation of 3:1 for this project; which requires 3 square feet of forest for every 1 square foot cleared.

Mr. Vernon Hustead, an expert engineer, testified that there are several issues on these lots that are unique. The soil on the five lots is clay and requires greater spread for property stormwater management. Sewerage grinder pumps and a fire suppression tank are required here. The greatest hardship is that the majority of the lots are entirely wooded. He compared approximately 20 different homes and their footprints in the neighborhood. The neighboring home range from 1,900 square feet to 3,500 square feet with an average of 2,562 square feet. The proposed homes would range in size from 2,192 square feet to 2,370 square feet with an

average of 2,256 square feet, approximately 350 square feet smaller than other homes in the area. The regulations require that sites be afforested to at least 15 percent in the Critical Area. These lots would have approximately 30 percent forest following development. The need for the variances arises from the clay soils and the forested condition of the lots. The developer has accommodated neighbor's concerns by reducing the road widening and relocating the access to two of the lots to Canal Road. Given the unique situation of the lots being completely forested, the Petitioner has done everything possible to limit the disturbance. Clearing for a 2,100 square foot footprint would be 8,900 square feet and clearing for a 400 square foot footprint would be 7,100 square feet; the difference in clearing is negligible compared to the reduction in the size of the footprint. A clearing variance would be needed even if a smaller home were constructed on site.

Mr. Larry Duket, an expert in land planning and zoning, testified that he evaluated the variance requests that are before the Board. The subject properties are within the Limited Development Area (LDA) of the CA. The amount of clearing needed is related more to the lot shape, topography and drainage, among other things, than it is to the size of the footprint. The property owners in the area were promised by the General Assembly and the Critical Area Commission (CAC) that these lots were grandfathered. All five lots are grandfathered, even though two lots had line adjustments in 2004.

Ms. Gina DeStefano, the owner of the Petitioner, testified that the lots were acquired in 2002. The development process with the County began during the fall of 2002. Lots 1, 2, 1R and 2R were platted in 1964. Errors were made during the resubdivision process in 1964. Homewood Landing Road is a private road that would provide access for the lots, but would need to be reconstructed to meet County standards. The neighbors did not want it disturbed.

The Petitioner entered an agreement with the homeowners of the five lots on the opposite side of Homewood Landing Road, which clarified the maintenance agreement, placing the obligation of maintenance of the road on all homeowners who live on Homewood Landing Road. Lot 2R is proposed to hold a fire suppression tank that serves all of the lots on Homewood Landing Road. The County's latest SWM practices and requirements would be implemented on all of the lots. The original plan used a drainage pipe for SWM. The SWM plan was later revised to implement rain gardens in the place of the drainage pipe because there would be less clearing and disturbance with the rain gardens. There would be an average of 36.5% forested area left on the lots. Only the minimum clearing necessary has been requested.

Ms. Lori Rhodes, a planner with the Office of Planning and Zoning (OPZ), testified that the lots are located in the CA and classified as LDA. The Petitioner proposes to construct five single-family dwellings and associated facilities with greater forest clearing than allowed. Article 28, Section 1A-105(i)(3)(vi) of the Anne Arundel County Code (Code) limits clearing to the minimum necessary to accommodate a house, septic system, driveway and reasonable amount of yard provided that the clearing does not exceed 6,534 square feet for lots that have been in existence since December 1, 1985 or earlier and are half an acre or less. Lots 1, 2 and 22 fall within the type of lots limited by Section 1A-105(i)(3)(vi) and need variances to exceed the clearing limit. The Code also provides that an additional 10 to 30% of total forest or developed woodland may be disturbed if approved by the OPZ and replaced at one and a half acres to every one disturbed. *See*, Code, Article 28, Section 1A-104(c)(3). Lots 1R and 2R are subject to the 30% limitation and need variances to exceed the clearing limitation. Due to the May 20, 2004, re-subdivision of the area, lots 1R and 2R are not entitled to the grandfathering provisions for clearing limits or the impervious coverage limit of 31.25 percent. Under Section 1A-105(b)(3), a

lot of one acre or less that was a part of a subdivision approved after December 1, 1985, may be increased to 25 percent. The impervious coverage proposed for lot 1R is 25.7% and 25.6% is proposed for lot 2R. Since the proposed impervious coverage exceeds 25 percent for lots 1R and 2R, they both need variances. She recommended that the variances be approved.

Mr. Shep Tullier, an expert in land use and planning, testified that he evaluated the development plans for the subject properties. The Code allows for up to 6,534 square feet of clearing on any lot within the Critical Area. Here, there cannot be a reasonable significant use of the lots without clearing in excess of the limits due to the necessary infrastructure and clearing for the houses and driveways. These lots are unique because they are small and almost completely forested. The lots are not inside the buffer and there would not be any negative impacts on water quality or animal habitat. The proposed house footprints are consistent with the existing pattern of development in the neighborhood. Due to the extensive forest, a variance would be needed just to construct the infrastructure—without any residences on three of the lots.

Mr. Frank Philip, the owner of lot 23R, testified that the lots were redrawn during the early 1980's. He designed his house to limit the disturbance to the critical area. His house has 3,400 square feet of living area, on three floors. His SWM system consists of a pit at each of the four gutters located on the corners of his house. He believes that it is possible to build on the Petitioner's lots without impacting the Critical Area. The character of the neighborhood would change significantly with the addition of the proposed homes.

Mr. Clifton Bosley testified that he has lived in Whitehall Manor since 1974. He represents the community association, which consists of 39 lots. Nine of the homes are on double lots and ten of them are only one-story. The "community area" on the plat is owned by

the Petitioner, but it is the general consensus of the residents is that it should be transferred to the community. The amount of clearing proposed by the Petitioner is not reasonable.

Mr. Lawrence Lorenz testified that he recently purchased and moved into property in the community. He described the siltation and runoff from one of the lots under construction in the community. He is concerned that additional development will cause additional siltation in the creek which will impact water depth at his pier.

Mr. Pat Lynch, the past president of the Amberly association, testified that his community is on the opposite side of the creek from the proposed development. He is concerned regarding the water quality in Whitehall Creek. There has been excessive cutting of trees in the community. He requested that the Board deny the variances.

Mr. Nicholas Paul testified that he lives across Homewood Landing Road from the subject sites and has attempted to purchase the property for years. He described the history of the area and the Rose family.

Ms. June Paul, the president of the Homewood Community Association, testified that there are issues between the Petitioner and the association regarding the ownership and use of the "Community Area". The removal of trees will change the look and feel of the community. Even if the association were deeded the Community Area, she would remain opposed to the requests.

Mr. Jack Blum has lived in the community since 1976. He knew the Rose family well and described the history of the land use. He offered to purchase the lots from them. He is concerned regarding the runoff from several of the lots. He presented the Board with photos of his property and house, which was designed to preserve the trees.

Mr. Myers testified in rebuttal regarding revised site plans for the development. The rain gardens and plantings will exceed the required stormwater management control requirements.

The amount of clearing has been reduced by 1,329 square feet. The witness also provided an analysis of Mr. Phillips' recently developed Lot 23R in the community. He described the differences between the approved site plan for this lot and the actual conditions which exceed the permitted limits of disturbance.

All testimony was stenographically recorded and the recording is available to be used for the preparation of a written transcript of the proceedings.

Findings and Conclusions

The Petitioner proposes to construct five single-family dwellings and associated facilities with more clearing than allowed under the Anne Arundel County Code (Code). The subject lots are legal lots, zoned R2-Residential, located within the Critical Area (CA) and classified as Limited Development Area (LDA). The Petitioner has requested variances to permit the clearing of more forest cover than permitted on each of the five lots, as follows:

Lot Number	Permitted Clearing (in square feet)	Requested Clearing (in square feet)	Variance Requested (in square feet)
1	6,534	7,953	1,401
2	6,534	10,249	3,715
1R	4,958	12,925	7,967
2R	4,747	11,734	6,987
22	6,534	7,721	1,187

In order for this Board to grant the requested variances, the Petitioner must satisfy a rigorous series of requirements set out in Article 3, Section 2-107 of the Code; failing to meet even one of the Code requirements results in the denial of the requested variance.

The state law requires that applicants must satisfy “each one” of the variance provisions. See, Maryland Annotated Code, Natural Resources Article, Section 8-1808(d)(1)(ii). Under the new law, the Board must find that an applicant would be deprived of a use of land or structure permitted to others in accordance with the Critical Area Program. See, id., Section 1808(d)(1)(iii). In considering an application for a variance, the Board must also consider the “reasonable use of the entire parcel” (here, we have five, separate parcels to consider) for which the variance is requested. See, id., Section 1808(d)(2). We conclude that the Petitioner has met the criteria of Section 2-107 of Article 3 of the County Code and is consistent with the provisions set forth in the new State law.

The standards for the grant of a variance state that variances might be granted where “because of certain unique physical conditions, such as exceptional topographic conditions peculiar to and inherent in the particular lot, or irregularity, narrowness or shallowness of lot size and shape; strict implementation of the County’s critical area program would result in an unwarranted hardship to the applicant”. See, Code, Article 3, Section 2-107(b)(1). These lots are almost completely forested. The high percentage of forest coverage makes development within the Code limits impossible given the requirements for infrastructure required by the Code. As we all know, development of single-family dwellings requires room for a house and driveway. However, the necessary infrastructure facilities to support the dwellings, such as stormwater management controls, sewerage systems, required vehicular access and fire suppression, require even more clearing. The Code limits the amount of forest clearing in the Critical Area as the above table shows, however, if a lot is entirely covered with forest, there is

no way to provide all the infrastructure that the Code requires within the limit. The complete forest coverage of the lots is enough to satisfy the uniqueness required by the Code; however, these lots also have clay soils which reduce the permeability of the ground. Therefore, the stormwater management controls must be even larger to provide adequate infiltration. Also, lot 1R is a “flag” lot, which requires more driveway and makes strict adherence to the Code impossible. Without variances, no homes can be built on the properties—a classic case of unwarranted hardship¹. Therefore, we find that the Petitioner has satisfied its first burden in showing that there are unique conditions on the lots that warrant relief from the County’s Critical Area program.

A literal interpretation of the County’s Critical Area Program would deprive the Petitioner of rights commonly enjoyed by other properties in similar areas within the Critical Area of the County. See, Code, Article 3, Section 2-107(b)(2). Properties throughout the community have been developed with single-family homes. These lots existed prior to the enactment of the first Critical Area Program and are, therefore, developable lots. Although two of the lots had to be further resubdivided in 2004 to correct mistakes from the 1964 plat, we do not regard the correction of mistakes, where no new lots were created, to impact the grandfathered status of all five lots. The homes proposed by the Petitioner are within the average size for the community and the construction of smaller homes would not impact the need for variances. The clearing necessary for a 400 square foot footprint home would require 7,100 square feet of clearing compared to 8,900 square feet of clearing for a 2,100 square foot footprint. The difference in clearing is minimal compared to the difference in footprint size.

¹ It is well established that an applicant must show that the denial of the requested variance will result in an “unwarranted hardship”. See, Belvoir Farms Homeowners Association, Inc. v. North, 355 Md. 259, 734 A.2d 227 (1999). The “unwarranted hardship” standard is less restrictive than an unconstitutional taking standard. The key to determining whether an unwarranted hardship exists is whether an applicant would be denied a “reasonable and significant use” of the applicant’s property if the permission requested were not granted.

Accordingly, we find that without the requested variances, the Petitioner would be denied the right to develop its property with a reasonable residential use, a right commonly enjoyed by all owners of legal lots within the Critical Area.

The granting of the requested variances would not confer on the Petitioner a special privilege that would be denied by COMAR, Title 27, Subtitle 01 or the County's Critical Area Program. See, Code, Article 3, Section 2-107(b)(3). As we previously addressed, the surrounding community has been developed with single-family homes. We find that granting the Petitioner's requested variances to clear more than what is permitted by the Code would not confer a benefit on the Petitioner; it would simply allow the Petitioner to do what so many others in the community have done; develop its legal lots.

The variances requested are not based on conditions or circumstances that are the result of actions by the Petitioner. See, Article 3, Section 2-107(b)(4)(i). The Petitioner did not create the location of lots near the water, the forested conditions of the lots or the clay soils. The Petitioner requested the variances to clear more than the Code requires because the action of the Code on the physical conditions of the property prevent any development without relief. The requested variances are due to the extensive forest coverage, topography (which requires the use of grinder pumps), location (which requires a fire suppression system to serve the neighborhood) and soil conditions of the lots. The Petitioner also did not create the location of the site near the water or the steep slopes on site. Similarly, the need for the variances did not arise from any condition relating to the land use on any neighboring property. See, Code, Article 3, Section 2-107(b)(4)(ii). The on site conditions of the property have created the need for the requested variances. The uses on neighboring sites have not impacted the variance requests.

We find that the requested variances would not adversely affect water quality or adversely impact fish, wildlife or plant habitat within the Critical Area. See, Code, Article 3,

Section 2-107(b)(5)(i). The Petitioner's lots are non-waterfront lots within the LDA of the Critical Area. To reduce the amount of clearing necessary for SWM, rain gardens were implemented into the site plan. Rain gardens were approved for use as a SWM device late in 2005. A rain garden is a landscaping bed that uses plants and soil to filter runoff. The Maryland Department of the Environment (MDE) suggested using rain gardens in areas with limited space and/or steep slopes. Rain gardens are considered a non-structural practice when the impervious area that each rain garden would treat is 1,000 square feet or less. Perimeter plantings would also be used for SWM; one tree or three shrubs can treat up to 100 square feet of impervious area. Each of the Petitioner's lots exceeds the minimum design for treating the impervious surface proposed on the lots. The additional plantings and rain gardens would create new habitat for wildlife while enhancing water quality. As a result, we also conclude that the grant of the requested variances to clear the forest is in harmony with the general spirit and intent of the Critical Area Program. See, Code, Article 3, Section 2-107(b)(5)(ii). Natural Resources Article, § 8-1808(d)(2), of the State Code requires this Board to presume "that the specific development activity in the critical area that is subject to the application and for which a variance is required does not conform with the general purpose and intent of this subtitle, regulations adopted under this subtitle, and the requirements of the local jurisdiction's program." We find that the Petitioner has overcome its burden in this regard. The Petitioner has a right to develop these five lots. Without variances, no development could occur—a classic example of a taking. Pursuant to the conditions imposed, the development will be reasonable and will conform to the spirit and intent of the Critical Area Program.

The Code requires that a variance request must be the minimum necessary to grant the relief requested. See, Code, Article 3, Section 2-107(c)(1). Without variances to the Critical

Area Program, this property cannot be developed. The Petitioner has minimized the variances needed by careful site design and implementation of the newest stormwater management systems. There is simply no way to further reduce the amount of variances requested given the development standards of the modern Code. It is curious, however, that the Code's development requirements, most especially the stormwater management provisions (which seek to enhance water quality of runoff into the water's of the Chesapeake Bay, and its tributaries), are the same requirements that fuel the need for more clearing of forest, which the Code seeks to protect.

The variances would not alter the essential character of the neighborhood or district in which the lot is located. See, Code, Article 3, Section 2-107(c)(2)(i). The variances would permit the construction of dwellings and related infrastructure on these properties. The homes to be constructed will be average size for the community. We find particularly compelling the Petitioner's examination of the existing recent development of Lot 23R regarding the character of the community. Although the community members are apparently supportive of the development of this lot, upon closer examination, the lot is in violation of the forest preservation provisions of the approved site plan. The photographs of the lot show an attractive home (albeit larger than any proposed by the Petitioner) in a wooded community; however, the clearing and lawn maintenance on site is in excess of the Code standard. Even with this violation, the house is accepted as in keeping with the community and is demonstrative of the existing pattern of development in the community. If the five lots are developed as proposed, they will contain smaller houses and less clearing than that of Lot 23R. We are certain that the neighbors will carefully watch the Petitioner's properties to ensure compliance.

We also find that the grant of the variances would not substantially impair the appropriate use and development of adjacent properties. See, Code, Article 3, Section 2-107(c)(2)(ii). The stormwater runoff will be contained within the Petitioner's land. Nearly all other properties within this area are developed. The Petitioner has taken care to reconfigure the access points of

two of the lots so that Homewood Landing Road would not have to be further improved—a requirement that would destroy the scenic features of the road and approximately 13,300 square feet of forest cover.

As conditioned, the variances would not be contrary to the acceptable clearing and replanting practices required for development within the Critical Area. See, Code, Article 3, Section 2-107(c)(2)(iii). The subject property is within the LDA of the Critical Area. The proposal would require the removal of vegetation in excess of the permitted standards on these lots; however, mitigation at a rate of 3 to 1 will be required. Therefore more vegetation within the Critical Area will result. Additionally, the plantings on site will create more vegetative layers and increase habitats on these sites.

We understand that the neighbors have grown accustomed to the forested, undeveloped condition of them. However, the Petitioner satisfied us that the development plans show the absolute minimum clearing on the sites with the maximum environmental enhancement. Stormwater will be controlled. We note that while the County has recommended the stormwater management system, the County enforcement division is overworked and since the functioning of the stormwater management is integral to the grant of these variances, we will place some burden on the Petitioner and the ultimate homeowners regarding the maintenance of these systems (beyond the Code requirements). We will require that each deed contain a specific requirement for annual reporting of the compliance of the stormwater management system in managing the runoff. Without the deed language, we are not confident that the eventual homeowner will obtain the appropriate notice of the responsibility of the maintenance of the stormwater management system through the years. New vegetation and herbaceous layers will be established creating a forest stand more diverse than that currently on all but one of the lots. The variances will also permit the installation of a fire suppression tank into the neighborhood—

a potential boon to all in the event of a fire. For these reasons, we find that the grant of the variances would not be detrimental to the public welfare. See, Code, Article 3, Section 2-107(c)(2)(iv).

If the requested variances are not granted, this Petitioner would be denied the ability to construct residences on the lots--a reasonable and significant use of property. Therefore, the denial of the variances would result in an undue hardship against this applicant. As set forth in this opinion, the Petitioner has met each and every one of the criteria for variances to the Critical Area regulations.

ORDER

For the reasons set forth in the foregoing Memorandum of Opinion, it is this 3rd day of JANUARY, 2007, by the County Board of Appeals of Anne Arundel County, ORDERED, that the Petitioner's requested variances, as follows:

Lot Number	Permitted Clearing (in square feet)	Requested Clearing (in square feet)	Variance Requested (in square feet)
1	6,534	7,953	1,401
2	6,534	10,249	3,715
1R	4,958	12,925	7,967
2R	4,747	11,734	6,987
22	6,534	7,721	1,187

Are hereby **GRANTED** with the following conditions:

- (1) Mitigation of 3:1 is imposed for all forest clearing;

- (2) Recommendations of the County Forester must be implemented in the development of the properties; and
- (3) All deeds for the properties must contain a requirement running with the land that an annual, written report of a registered engineer or landscape architect must be delivered to the County each January, certifying that the stormwater management system is functioning as required by the County Regulations

Any appeal from this decision must be in accordance with the provisions of Section 604 of the Charter of Anne Arundel County, Maryland.

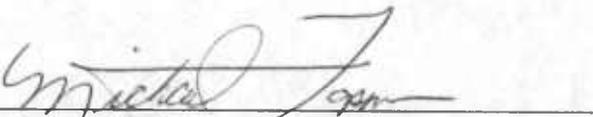
If this case is not appealed, exhibits must be claimed within 60 days of the date of the expiration of the appeals period; otherwise, they will be discarded.

Any notice to this Board required under the Maryland Rules shall be addressed as follows: Anne Arundel County Board of Appeals, Arundel Center, P.O. Box 2700, Annapolis, Maryland 21404, ATTN: Mary M. Leavell, Clerk.

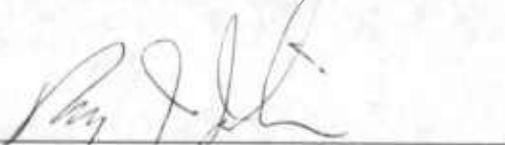
COUNTY BOARD OF APPEALS
OF ANNE ARUNDEL COUNTY



Anthony V. Lamartina, Chairman



Michael Topper, Vice Chairman



Ray J. Jicka, Member



William Moulden, Member


Vance N. Remillard, Member

(John W. Boring, Member did not participate in this appeal.)

CONCURRING

I disagree that the variances should be granted to permit the removal of so many large trees. However, the Critical Area Commission has approved the Critical Area Plan Report prepared and submitted by the applicant, thereby approving, in effect, the development. Notwithstanding the approvals, I oppose, in spirit, the development for the following reasons:

- The denial of the variances here would not constitute a taking. Neighbors have offered to buy the property and/or the developer could consolidate lots so the number of trees to be eliminated could be reduced.
- The proposed houses are not in keeping with the White Hall community and would change its character. Houses in the community are located fairly close together. The location of the proposed houses would be more separate. Also, the existing neighborhood is an eclectic mix of custom homes, the proposed "tract" homes do not match the aesthetic character of the existing residences.
- In the existing White Hall community, nine houses are on double lots, and ten are single-story residences. Therefore, combining lots is in character with the community.²
- I find it difficult to believe that the Critical Area Commission would condone a variance to remove 73.2% of the woodland on Lot No. 1R, Blk B. The 12,925 sq. ft. of requested clearing is 145% over the allowed clearing or 5,301 sq. ft.
- 74% of woodland would be cleared for Lot No. 2R, Blk. B. This is 147% over the allowed clearing of 4,747 sq. ft.
- Since lots 1, Blk. E; 2, Blk. E; and 22, Blk. B are grandfathered or pre-date the Critical Area Program, allowable clearing is 6,534 sq. ft. instead of 30% of the lot size. Despite

² I recognize that some of these, no doubt, are constructed on double lots to accommodate the septic fields (needed prior to the arrival of sewer service).

this, clearing on these lots is 52%, 67%, and 49% of the woodland on those lots, respectively. It is 29%, 68%, and 18% above the allowable 6,534 sq. ft.

- No environmental study was conducted for the creek (Bosley testimony).
- Petitioner has mentioned property rights, but is willing to have conservation easements on properties thereby restricting the owner's use of the properties – just for development, not for the long term home owner's benefit. (DeStefano).
- Lots are more valuable with trees. (DeStefano and Tullier).
- No easement has been approved for drainage plan (4-13-06).
- Trees to be removed are large caliber trees (Critical Area Report). Even though there is a 3:1 ratio to replace these trees, there is good probability that no one in the neighborhood will ever see the same sized trees remove in their lifetime after replanting smaller trees – despite the ratio.

Since the Critical Area Commission approved this development and it is “legal” in many respects, I reluctantly concur with the other Board members' decision.



Arnold W. McKechnie, Member

CRITICAL AREA PLAN REPORT

**White Hall Manor Subdivision
Block B - Lots 1R, 2R & 22 and Block E, Lots 1 & 2**

February 3, 2005

Prepared for:
Sturbridge Signature Series LLC
c/o Gina DeStefano
2614 Chapel Lake Drive
Gambrills, MD. 21054

Prepared by:
Sigma Engineering, Inc.
43 Old Solomons Island Road
Suite 201
Annapolis, MD. 21401

RECEIVED

MAR 14 2005

CRITICAL AREA COMMISSION

GENERAL SITE DESCRIPTION

The White Hall Manor property is a 1.88 acre site located in Annapolis, Maryland. The properties are identified as Whitehall Manor, Lots 1R, 2R and 22 of Block B and Lots 1 and 2 of Block E. They are referenced in Tax Map 46, Block 6 Parcel 182 and 273. The lots lie along Homewood Landing Road and Canal Lane. Four of the lots are located on the southeast side of Homewood Landing Road, from the intersection with Canal Lane and southward. Lot 22 is located on the northeast side of Canal Lane. The lots are currently vacant but are surrounded by properties that are all residential in use. The White Hall Manor property is zoned R-2 and is entirely within the LDA critical area classification. The property is part of the White Hall Manor subdivision, which was originally recorded in book 27, page 40, dated in the 1950s. A recent resubdivision plat relocated the property lines for Lots 1R and 2R on Block B and is recorded in book 262 page 6 dated 13632 dated May 2004.

ENVIRONMENTAL CONDITIONS

Several site visits were performed during the summer of 2002 to investigate the existing conditions for Lots 1R and 2R Block B, and Lots 1 and 2, Block E. An additional site visit was performed on February 3, 2005 to investigate the existing conditions of Lot 22

There are no steep slopes on the property and the properties have a gentle grade of 2 – 6% slope. All the sites sheet flow southward and into Homewood Cove. There were no signs of erosion on any of the lots or any areas downgrade of this project. These lots contain no wetlands or streams and are within the Floodplain Zone C, per FEMA Panel 35. The soils types for these lots are CxB- Cumberstone-Mattapex Complex and SoA-Shadyoak-Elkton Complex, which are clay soils. Although there was no specific evidence of wildlife habitat, the woodlands on these lots are connected to larger woodland areas to the south and west. It can be assumed that this area provides habitat value due to the size of the overall forest cover and its location to a water body. These lots have no direct waterfront, but are within close proximity to Canal Cove and Whitehall Creek.

FOREST COVER

All five lots are entirely wooded. The stand was identified as two separate stands – all of the lots along Homewood Landing Road and Lot 22. Canal Lane divides the two stands. Both stands were generally the same with the exception of the dominant tree species – Lot 22 favored the Sweet Gum, while the other four lots were dominated by American Beech.

Both stands contained a number of larger caliber trees but were dominated by almost a thicket of smaller trees. The canopy species included Red Oak (*Quercus rubra*), White Oak (*Quercus alba*), Sweet Gum (*Liquidambar styraciflua*), American Beech (*Fagus*

grandifolia), Shagbark Hickory (*Carya ovata*), Tulip Poplar (*Liriodendron tulipifera*), and red maple (*Acer rubrum*). Trees in this class ranged in size from 6 – 24" d.b.h.

The understory contained saplings of most of the canopy trees, especially Sweet Gum, Red Oak, Red Maple, Tulip Poplar and American Beech. This class of trees also included Flowering Dogwood (*Cornus florida*), American Holly (*Ilex opaca*) and Black Cherry (*Prunus serotina*). Tree sizes in this classification were in the range of 1 – 3" d.b.h.

There was not a substantial shrub layer consistent to this stand. Portions of the lots near Homewood Landing Road contained some pockets of Mountain Laurel (*Kalmia latifolia*). There were also some isolated areas of ferns. Both stands contained a thick layer of leaves along the ground plane.

The health condition of the woodland is generally in good condition. However, there are indications of poor health in certain isolated pockets of the woodland. There were about 30 dead, diseased or downed trees on the site. Along the edges to the forest can be found areas of honeysuckle, Greenbriar and English Ivy. All of these are invasive plant species and were encroaching into the stand. The English Ivy was found growing up (English Ivy) several of the larger trees.

PROPOSED CONDITIONS

The project proposes the development of a single-family house on each lot. The proposed house dimensions are similar or less in size than other home sites in this area. Pretreatment trenches are proposed at the rear of each house to address the stormwater management requirements.

Water service will be provided by drilling a water well within each lot. Sewer service will be provided by installation of grinder pumps, which will be connected to the existing low pressure public sewer lines within Homewood Landing Road and Canal Lane.

Stormwater management is provided by a pre-treatment trench on each lot with a storm drain outlet pipe to direct the overflow into tidal waters. We are proposing pre-treatment and water quality trenches within Lot 22 that will discharge to the Canal Lane curb cut and bituminous-lined channel, 15" X 18" CMP driveway culvert, and 12" HDPE pipe within the community area. This storm drain system discharges to the tidal waters of Homewood Cove. A storm drain trunk line is proposed from an inlet within Lot 2R and running across Lot 1R, Lot 2, Lot 1, Lot 38 and through the community area to outfall at the tidewaters of Homewood Cove. Please note that both Lot 38 and the community area are owned by Sturbridge Signature Series LLC. A private easement will be established over the private storm drain system and rights-to-discharge established. The storm drain outfall system discharges to the tidal waters of Homewood Cove. We are proposing pre-treatment and water quality trenches within Lots 1, 2, 1R, and 2R, which will connect to this outfall system via 4" PVC diameter dewatering pipes.

The proposed impervious coverage is less than the allowable coverage of 33.25%. The impervious coverage calculations are listed on Sheet 1 of the Critical Area Plans.

The area of woodland clearing calculations are listed on Sheet 1 of the Critical Area Plans. The proposed clearing includes areas required for the house, driveway, sidewalk and for drainage around each house. In addition, each lot is required to have a stormwater management device and private well. Each of these devices were designed and located in an effort to minimize disturbance to the existing forest. The remaining undisturbed woodlands will be placed within a conservation easement.

Short Form

Projects within the state designated Chesapeake Bay Critical Area must meet all the criteria for their classification. The information is to be supplied by the applicant. There should be FIVE copies each of the Plan and Narrative. The Critical Area package is to be included with the Minor subdivision submittal. Upon completion of the review of submitted material, comments will be made. Please include a vicinity map at 1" = 2000'. All accompanying maps must include property boundaries, not blobs, stars or arrows. Also include: Owner's name and address; address of parcel and Tax Map, Block, Parcel; total acreage in Critical Area; acreage by classification.

As a minimum, the following information is to be provided:

1. ON PLAN TO SCALE, USING TOPOGRAPHY, INDICATE OR SHOW:

- N/A Steep slopes (15-24%, 25% and greater)
- ✓ Existing tree line or individual trees; specimen trees; clarify which areas are forest
- All proposed clearing and areas to be disturbed (conceptual if not actual): include house, parking, driveway, yard, utilities, septic, stormwater management, wells and accessory structures
- N/A Tidal and/or nontidal wetlands (all nontidal wetlands must be verified by the Corps/State). Permits are required for disturbance in wetlands and 25' buffers.
- N/A Any tidal and/or nontidal floodplain (FEMA or calculated); streams (intermittent and perennial)
- N/A Lots with acreage, condition of shoreline, any proposed work along shore, water depths, and buffers
- N/A Habitat protection areas, including expanded buffers
- ✓ Predominant soil type(s)

2. IN NARRATIVE FORM, INDICATE OR GIVE:

- ✓ Parcel acreage, number of lots, average lot size, range of lot sizes
- ✓ Composition of predominant canopy trees, minor trees, shrubs and herbaceous layers (use Latin names as well as common) for each vegetative community on the property
- ✓ Acreage of woodland and woodland to be disturbed for all uses; reforestation plan; buffer planting plan
- ✓ Impervious coverage (existing and proposed). Can not exceed 15% in LDA and RCA. Individual lots less than 1 acre may have 25% if total site is less than 15%
- ✓ Method of stormwater management for impervious surfaces after any construction; must demonstrate criteria can be met (Bills 61-83 and 87-94)
- N/A Wild animals present; aquatic resources; breeding bird survey, if applicable
- N/A Habitat Protection Area description
- N/A Any specific measures to be taken to mitigate impacts of this project

✓ 3. Environmental Review Statement from Department of Natural Resources; additional information or studies may be required based on their comments.

✓ 4. Project Notification for Critical Area Commission

Should you need further assistance or have questions, please contact the Environmental reviewer for your area. Incomplete submittals will be returned. Projects which cannot meet the Critical Area requirements must obtain Variances prior to subdivision approval.

CRITICAL AREA COMMISSION

1804 West Street Suite 100

Annapolis, Md. 21401

NOTIFICATION OF PROJECT APPLICATION

Jurisdiction: Anne Arundel County Date: FEBRUARY 2, 2005

Name of Project (site name, subdivision name, or other): WHITE HALL MANOR

Local Case Number: BLOCK B, LOTS 1R, 2R & 22

Project location/Address: 618 CANAL LANE (LOT 22) BLOCK E, LOTS 1 & 2

HILWOOD LANDING ROAD (LOTS 1 & 2 BLOCK E & LOTS 1R & 2R BLOCK B)

Tax Map 40 Block 1 Lot Parcel 182 & 273

Type of Application (Select all applicable)

- Subdivision
Site Plan
[X] Variance
Buffer Slope
Imp Surf. Other
Special Exception
Conditional Use
Rezoning
Grading Permit
Bldg Permit
Intrafamily
Growth Allocation
Others

Type of Project: (Select all applicable)

- [X] Residential
Commercial
Water Dependent Facility/Pier/Marina
Industrial
Mixed Use
Redevelopment
Shore Erosion Protect.
Agricultural
Other (e.g. PUD)

Current Use: (Select all applicable)

- [X] Residential
Commercial
Agriculture
Forrest/Buffer/Woodland
Industrial
Institutional
Open Space/Rec
Surface Mining
[X] Vacant
Water Dependant Facility/Pier/Marina
Others

Describe Proposed use of project site: SINGLE FAMILY RESIDENTIAL HOMESITES

SITE INVENTORY OF AREA ONLY IN THE CRITICAL AREA

TOTAL ACRES IN CRITICAL AREA: 1.88 AC
IDA ACRES:
LDA ACRES: 1.88 AC
RCA ACRES:
AREA DISTURBED: 1.25 AC.
LOTS CREATED: N/A
DWELLING UNITS: N/A
AGRICULTURAL LAND: N/A
EXISTING FOREST/WOODLAND/TREES: 1.88 FOREST/WOODLAND/TREES REMOVED 1.85 AC
FOREST/WOODLAND/TREES CREATED:
EXISTING IMPERVIOUS SURFACE: 0 PROPOSED IMPERVIOUS SURFACE 0.40 AC
TOTAL IMPERVIOUS SURFACE: 0.40 AC REMOVED IMPERVIOUS SURFACE 0
GROWTH ALLOCATION DEDUCTED: N/A
RCA TO LDA: RCA TO IDA: LDA TO IDA

Local Jurisdiction Contact Person:
Telephone Number: Fax:
Response from Commission required by: Hearing Date:



Parris N. Glendening
Governor

Kathleen Kennedy Townsend
Lt. Governor

Maryland Department of Natural Resources

**Tawes State Office Building
580 Taylor Avenue
Annapolis, Maryland 21401**

J. Charles Fox
Secretary

Karen M. White
Deputy Secretary

November 6, 2002

Mr. Walt Rhee
Sigma Engineering, Inc.
45 Old Solomons Island Rd.
Suite 204
Annapolis MD 21401

**RE: Environmental Review for White Hall Manor, Block E-Lots 1&2, Homewood
Landing Rd., Tax Map 46 Block 6 Parcel 182, AA Co., MD.**

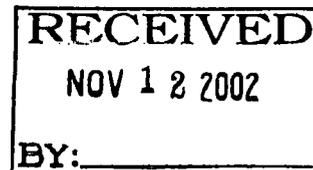
Dear Mr. Rhee:

The Wildlife and Heritage Service has no records for Federal or State rare, threatened or endangered plants or animals within this project site. This statement should not be interpreted as meaning that no rare, threatened or endangered species are present. Such species could be present but have not been documented because an adequate survey has not been conducted or because survey results have not been reported to us.

Sincerely,

Lori A. Byrne,
Environmental Review Specialist,
Wildlife and Heritage Service

ER# 2002.2068.aa



Telephone: (410) 260-8540
DNR TTY for the Deaf: (410) 260-8835
Toll Free#: 1-877-620-8DNR



February 7, 2005

Anne Arundel County
Office of Planning & Zoning
2664 Riva Road
Annapolis, MD. 21401

RE: Whitehall Manor Subdivision
 Block B - Lot 2R
 Tax Account # 3908-9022-0695
 Variance Request to disturb more Woodlands than Permitted
 Sigma Job # 02-07

We would like to submit this variance request to disturb more woodlands than is normally allowed per the critical area section of the zoning ordinance. This submittal involves a single-family lot, located at 1671 Canal Lane in the Whitehall Manor subdivision. The lot is identified as Tax Map 46 Block 1 Parcel 182 and consists of 15,823 square feet in size.

This lot is within the R-2 zoning district and entirely within the LDA critical area zone. The site will be served by a public sewer system and a private well. The lot is rectangular in shape and is entirely wooded.

The attached variance site plan indicates the proposed development for this lot, as well as the four adjacent lots that are being submitted in conjunction with this application. The site tabulations on this plan detail the zoning requirements and how the proposed development addresses each issue. Our plan indicates that we will be able to meet the required impervious coverage but not the woodland clearing threshold. The allowable woodland clearing is found in Section 1A-105 (i)(3)(vi) of Article 28 (the zoning code) states "*for legal residential lots one-half acre or less in size that were in existence on or before December 1, 1985, clearing shall be limited to the minimum necessary to accommodate a house, septic system, driveway, and reasonable amount of yard provided that the clearing does not exceed 6,534 square feet*" In addition, we are clearing woodlands of more than 30% of the site. This reference is found in Section 1A-104 (c) (3), which states, "*an additional 10% up to a total of 30% of the total forest or developed woodland may be disturbed if, ...*". This issue is also indicated in Section 1A-105 (i) (3) (iii) of the zoning ordinance. The proposed woodland clearing for each lot exceeds these requirements.

Given the small size of this lot and the numerous site requirements (to provide stormwater management, private wells, fire suppression tank and adequate drainage around each house), the maximum allowable area of woodland clearing is not possible and certainly not practical. The allowable 6,543 square feet of area is barely large enough for a house pad site and room for drainage around the house. It is not large enough to allow for a driveway and the required stormwater management devices, as

shown on the site plan. Our proposed lot development proposes woodland clearing of 11,932 square feet.

We are requesting that you allow the woodland clearing specified in this application so that our client may proceed with his grading permit submittal. We feel that this development proposes the minimum relief necessary and will not impair the intent and purpose of the requirement of this regulation. The proposed development will not present a threat to the public health, safety or welfare of the public.

Please contact me if you have any questions or require additional data to complete your review.

Sincerely,
Sigma Engineering, Inc.

A handwritten signature in black ink, appearing to read "Vern" followed by a stylized flourish.

Vernon Hustead
Vice President of Planning

cc: Gina DeStefano, Sager Williams, Robert Myers