

AA 183-05
VAR

Destefano, Gina
0049

MSA-S-1829-4609

Comments
5/2/85 JL

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 2005-0049-V Gina Destefano
(Tax Map 46, Parcel 273, Lot 22)

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 for this site, including pretreatment trenches and an outfall to Canal Lane.
- 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 2,449 square feet or 15.6 percent impervious surface coverage. In addition, the implementation of structural stormwater management practices results in a

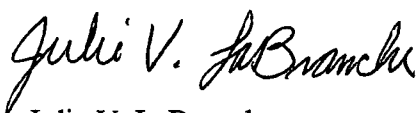
Lori Rhodes
Variance 2005-0049-V Gina Destefano
(Tax Map 46, Parcel 273, Lot 22)
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Page 2

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.

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 183-05 Destefano Lot 22

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

NIF

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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,

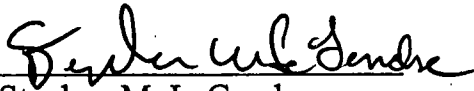
ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicant is hereby **granted** variances for excess clearing in the amounts shown on the revised site plan to permit dwellings and associated facilities. *The approval is subject to the following conditions:*

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.



February 7, 2005

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

RE: Whitehall Manor Subdivision
 Block B - Lot 22
 Tax Account # 3908-2588-9246
 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 6618 Canal Lane in the Whitehall Manor subdivision. The lot is identified as Tax Map 46 Block 1 Parcel 182 and consists of 15,710 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

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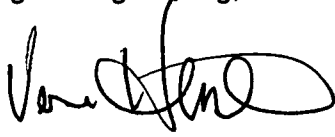
CRITICAL AREA COMMISSION

shown on the site plan. Our proposed lot development proposes woodland clearing of 8,962 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.

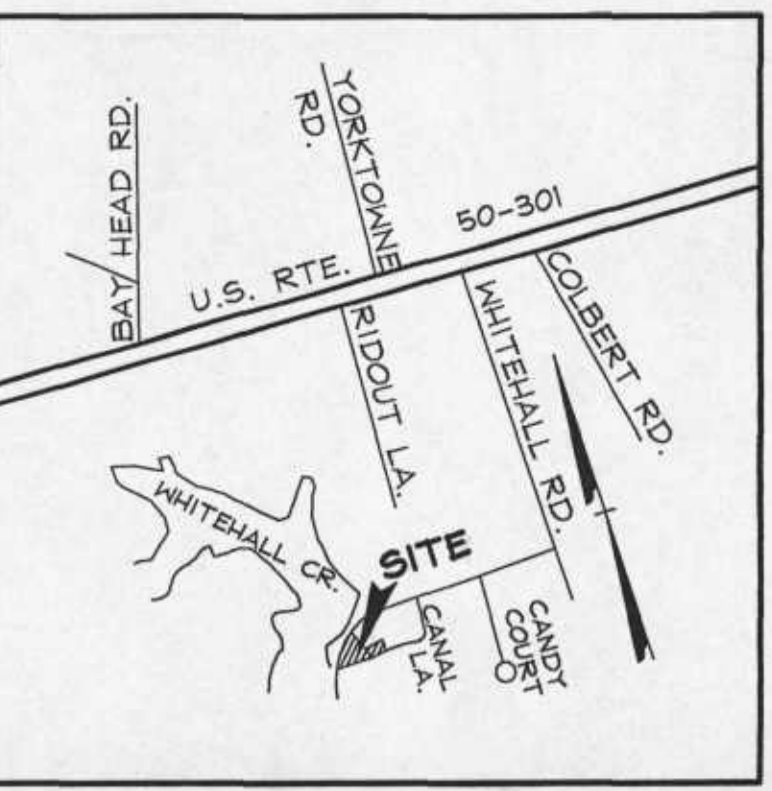
Please contact me if you have any questions or require additional data to complete your review.

Sincerely,
Sigma Engineering, Inc.

A handwritten signature in black ink, appearing to read 'Vernon Hustead', written over a faint, illegible typed name.

Vernon Hustead
Vice President of Planning

cc: Gina DeStefano, Sager Williams, Robert Myers



VICINITY MAP
SCALE: 1" = 2,000'

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)

WOODLAND CLEARING

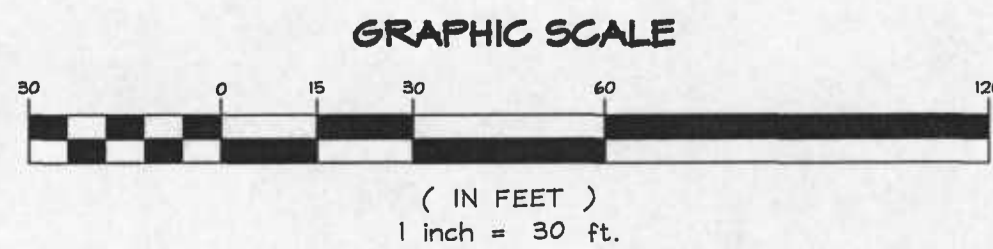
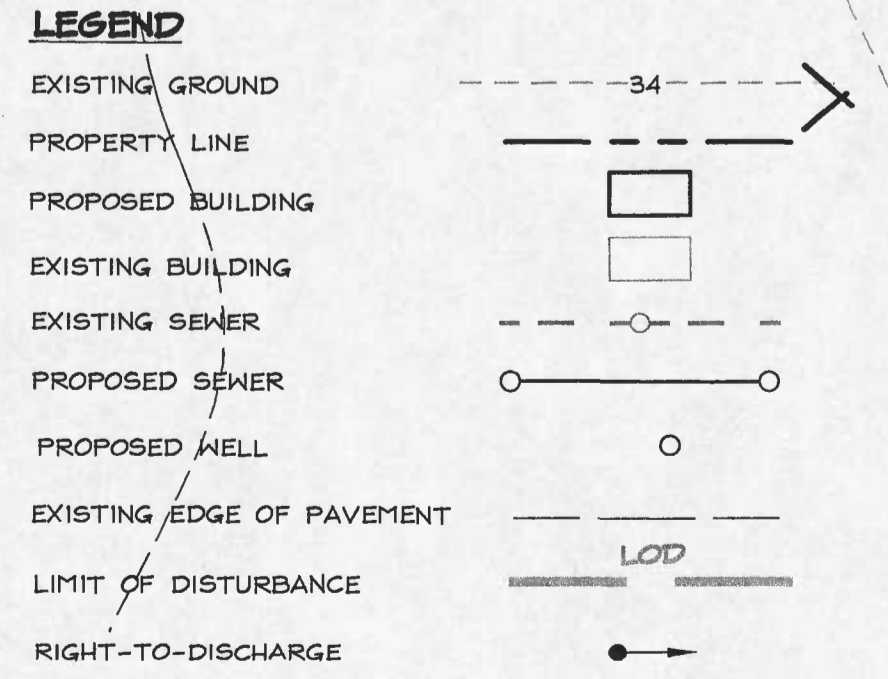
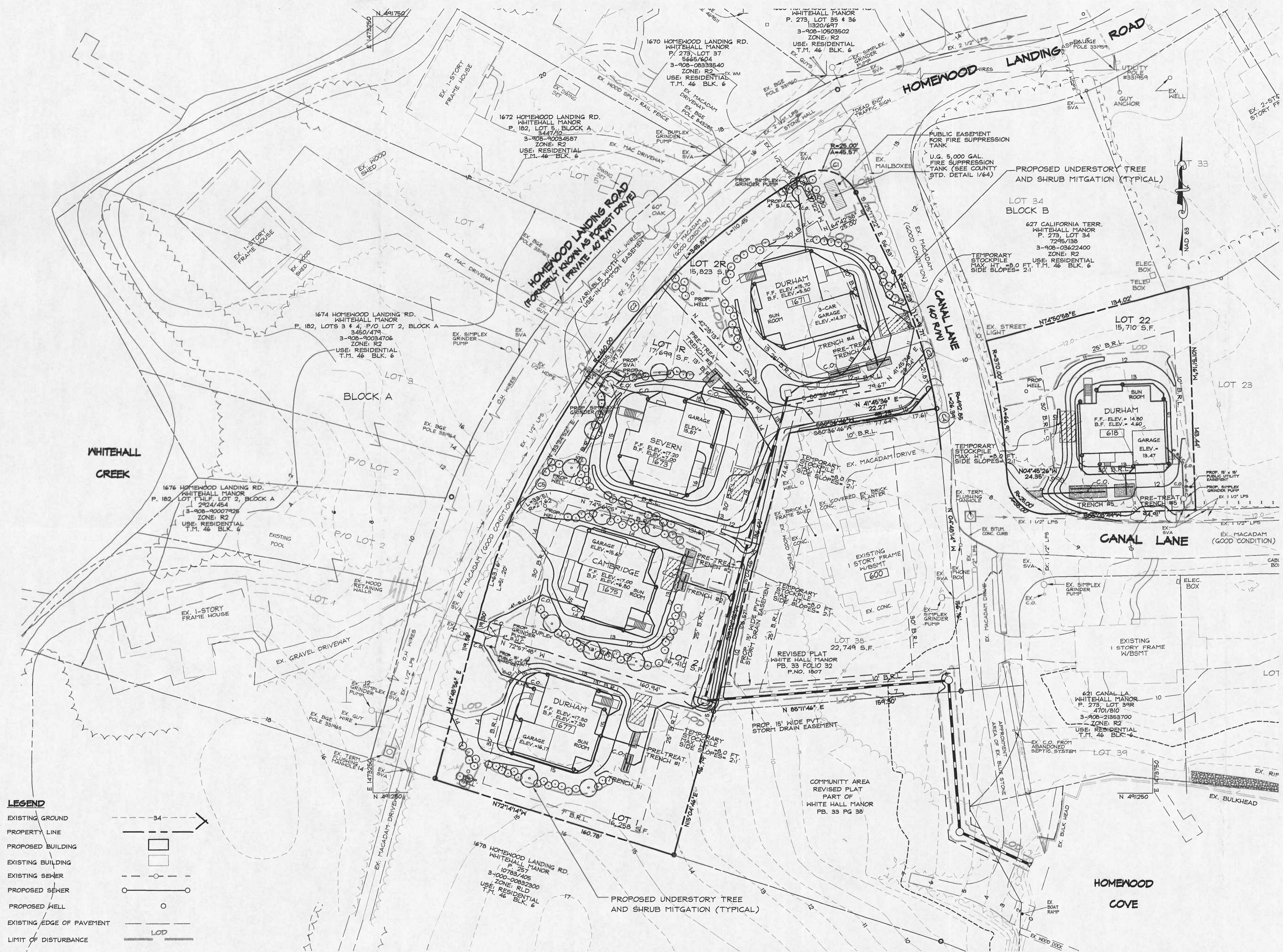
LOT #	LOT AREA	EX. WOODLANDS	WOODLANDS TO BE REMOVED	%
1R, BLK B	17,669 S.F.	17,669 S.F.	13,270 S.F.	75.1
2R, BLK B	15,823 S.F.	15,823 S.F.	11,932 S.F.	75.4
1, BLK E	16,258 S.F.	16,258 S.F.	8,842 S.F.	54.4
2, BLK E	16,410 S.F.	16,410 S.F.	11,323 S.F.	69.4
22, BLK B	15,710 S.F.	15,710 S.F.	18,962 S.F.	121.0
TOTAL	81,870 S.F.	81,870 S.F.	54,399 S.F.	66.4

IMPERVIOUS COVERAGE

LOT #	LOT AREA	ALLOWABLE COVERAGE	PROPOSED COVERAGE
1R, BLK B	17,669 S.F.	5,321 S.F. OR 31.25% OR 14,548 S.F. OR 25.7%	
2R, BLK B	15,823 S.F.	4,945 S.F. OR 31.25% OR 4,048 S.F. OR 25.6%	
1, BLK E	16,258 S.F.	5,081 S.F. OR 31.25% OR 3,090 S.F. OR 19.0%	
2, BLK E	16,410 S.F.	5,128 S.F. OR 31.25% OR 3,195 S.F. OR 19.4%	
22, BLK B	15,710 S.F.	4,909 S.F. OR 31.25% OR 2,449 S.F. OR 15.6%	
TOTAL	81,870 S.F.	25,584 S.F. OR 31.25% OR 17,315 S.F. OR 21.1%	

GENERAL NOTES

- THIS SITE IS LOCATED IN FLOOD ZONE 'C' AS SHOWN ON FEMA FLOOD INSURANCE RATE MAPS 240008 0035 C, EFFECTIVE DATE MAY 2, 1993.
- BOUNDARY AND TOPOGRAPHIC SURVEY HAS BEEN PERFORMED BY CHARLES P. JOHNSON & ASSOC., INC. ON 10-13-04 AND 2-21-02. COORDINATES SHOWN HEREON ARE MARYLAND STATE PLANE COORDINATES (NAD83/11) AND DERIVED FROM GPS AND CONVENTIONAL OBSERVATIONS USING NATIONAL GEODETIC SURVEY CORS STATIONS GAIT, ANP1, AND RED1.
- THIS PROPERTY DOES NOT 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.



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: 46 BLOCK: 1 PARCEL: 182 & 273
DESIGNED BY: VMH	3RD ASSESSMENT DISTRICT
CHECKED BY: VMH	ANNE ARUNDEL COUNTY, MD 21401
JOB NO. 02-07	\\SIGHAD\PROJECTS\02-07\DWG\VARIANCE.DWG
SHEET 1 OF 1	