

AA 224-05  
VAR

Petenbrink, Daniel  
05-0073

MSA-S-1829-4615

Comments  
4/25/05 JL

Martin O'Malley  
*Governor*

Anthony G. Brown  
*Lt. Governor*



Margaret G. McHale  
*Chair*

Ren Serey  
*Executive Director*

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

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

November 15, 2010

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

Re: Petenbrink Variance  
2010-0228-V

Dear Ms. Cotter:

Thank you for providing information on the above referenced variance request. The applicant is seeking a variance to disturb steep slopes to construct a dwelling. The subject property is 15,953 square feet in size and is located entirely within the Limited Development Area (LDA) of the Chesapeake Bay Critical Area. The property is currently undeveloped and heavily wooded. The applicant is proposing to construct a single family dwelling and paved driveway. The property was the subject of a variance request seeking to construct a single family dwelling in 2005 (2005-0073-V). That variance request, for a single story dwelling 72 x 46 feet, was granted on the condition the length of the structure be reduced by 3 feet to eliminate the need for one setback variance. Based on the information received I cannot support this variance as requested. However, if a plan were resubmitted addressing my comments below, I may be able to offer support.

1. The dwelling associated with the 2005 variance was of a different configuration that the dwelling which is the subject of the present variance request. The present proposed dwelling reduces the length of the dwelling by the 3 feet conditioned in the previous variance and adds a paved driveway and walkway. The proposed lot coverage of the 2005 variance request was 2,644 square feet. The current variance request would result in 3,189 square feet of lot coverage. Given that the 2005 plans demonstrates the ability to develop the property with a smaller footprint, the proposed amount of lot coverage associated with the current variance request cannot be considered the minimum necessary to afford relief.

2. The site plan does not include calculations of forest cover currently existing onsite. Note 7 indicates that approximately 5,200 square feet of forest is to be cleared to accommodate the dwelling. Forest clearing up to 20% of the existing forest or developed woodlands onsite must be mitigated at a ratio of 1:1 and clearing from 20%-30% must be mitigated at a ration of 1.5:1. Any clearing over 30% would require a variance. The current variance request pertains only to disturbance to buffer and steep slopes. The plan should be resubmitted with additional forest cover information and a reduction in the proposed clearing.
3. Under COMAR 27.01.09.01, a buffer is expanded for a steep slope at a rate of 4 feet for every 1 percent of slope or to the tope of the slope, whichever is greater. The plan delineates the 25-foot buffer for 25% slopes and does not show an expanded buffer to the top of 15% slopes. Without the expanded buffer, it is impossible to determine what portion of the proposed structure and the requisite clearing is occurring inside of the buffer. The plan should be resubmitted to include this information. Clearing inside the buffer requires 3:1 mitigation.
4. Once the amount of buffer disturbance is ascertained, the applicant should develop a Buffer Management plan in accordance with COMAR 27.01.09.01-3 that meets the landscaping stocking requirements of COMAR 27.01.09.01-2.

Thank you for the opportunity to provide comment. If you have questions regarding this project, please call (410) 260-3479.

Sincerely,



L. Turcan Hockaday  
Natural Resource Planner  
AA 224-05

Robert L. Ehrlich, Jr.  
*Governor*

Michael S. Steele  
*Lt. Governor*



Martin G. Madden  
*Chairman*

Ren Serey  
*Executive Director*

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April 25, 2005

Liz West  
Anne Arundel County  
Office of Planning and Zoning  
2664 Riva Road  
Annapolis, Maryland 21401

Re: Variance 2005-0073-V Daniel and Elizabeth Petenbrink

Dear Ms. West:

Thank you for providing information on the above referenced variance. The applicant is requesting a variance to permit a dwelling addition with less setbacks than required and with disturbance to steep slopes. The property is designated a Limited Development Area (LDA) and is currently undeveloped.

This office has no comment on the setback variance. Based on the information provided, we have the following comments regarding the development proposal and variance to permit disturbance to steep slopes.

- 1) As measured from the site plan, I estimate that 19 percent slopes are present across the property from northeast to southwest that are contiguous with steep slopes beyond the property boundary to the northeast and east. Due to the extent of steep slopes, we recognize that a variance is necessary to permit development of the site.
- 2) The applicant proposes to construct a dwelling and an attached garage with a footprint of 2,644 square feet or 16.6 percent impervious surface coverage. We note that a driveway is not shown on the site plan. Because it would be located on steep slopes, a driveway should be included as part of the variance request if anticipated by the applicant. The applicant should provide a revised site plan showing the limits of disturbance and area of clearing for all development activities associated with construction of the dwelling and utilities.

Liz West

Variance 2005-0073-V Daniel and Elizabeth Petenbrink


April 25, 2005

Page 2

- 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, particularly to stabilize steep slopes disturbed during construction.
- 4) Due to the extent of steep slopes on and adjacent to the site, the applicant should provide information about how stormwater will be managed to maintain water quality and prevent erosion of steep slopes. Stormwater management best management practices implemented on the site should be included as part of the variance request and located within the limits of disturbance on the site plan.

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: James Luff (McCrone, Inc.)

AA 224-05 Petenbrink

224-05

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 2010-0228-V

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**DANIEL PETENBRINK AND ELIZABETH PETENBRINK**

SECOND ASSESSMENT DISTRICT

DATE HEARD: DECEMBER 2, 2010

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ORDERED BY:

**DOUGLAS CLARK HOLLMANN**  
ADMINISTRATIVE HEARING OFFICER

PLANNER: JOHN R. FURY

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DATE FILED: DECEMBER 22, 2010

## **PLEADINGS**

Daniel Petenbrink and Elizabeth Petenbrink, the applicants, seek a variance (2010-0228-V) to allow a dwelling with less setbacks and buffer than required and with disturbance to steep slopes 15% or greater on property located along the north side of Holly Drive, east of Hickory Road, Annapolis.

## **PUBLIC NOTIFICATION**

The case was advertised 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. James Luff, the applicants' surveyor, testified that the property was posted for more than 14 days prior to the hearing. I find and conclude that the requirements of public notice have been satisfied.

## **FINDINGS**

A hearing was held on December 2, 2010, in which witnesses were sworn and the following evidence was presented with regard to the proposed variances requested by the applicants.

### **The Property**

This case concerns unimproved property identified as Lots 17-22 of the Severn Grove subdivision in Annapolis. The property comprises 15,953 square

feet and is zoned R-1 Residential with a Chesapeake Bay Critical Area designation as limited development area (LDA).

### **The Proposed Work**

The applicants propose to construct a single-family dwelling (69' x 46') in an area of steep slopes with a front setback of 25 feet, a rear setback of 25 feet and an east side setback of 10 feet as shown on the Variance Site Plan introduced into evidence at the hearing as County Exhibit 2.

### **The Anne Arundel County Code**

Article 17, §17-8-201 provides that development in the LDA may not occur within slopes of 15% or greater unless development will facilitate the stabilization of the slope or the disturbance is necessary to allow connection of a public utility.

Article 18, § 18-4-501 provides that a principal structure in an R1 district shall be located at least 40 feet from the front lot line, 35 feet from the rear lot line, and 15 feet from a side lot line.

### **The Variances Requested**

The work proposed will require the following variances:

1. A critical area variance from § 17-8-201 to disturb 3,189 square feet of steep slopes.
2. A zoning variance of fifteen (15) feet to the 40-foot front lot line setback requirements of § 18-4-501; and
3. A zoning variance of ten (10) feet to the 35-foot rear lot line setback requirements of § 18-4-501; and



4. A zoning variance of five (5) feet to the 15-foot side lot line setback requirements of § 18-4-501.

#### **The Evidence Submitted At The Hearing**

John R. Fury, a zoning analyst with the Office of Planning and Zoning (OPZ), testified in favor of granting the requested variances. Mr. Fury testified that the applicants applied for and obtained variances in Case No. 2005-0073-V to build the identical house depicted on the Site Plan in this application.<sup>1</sup> The applicants obtained perc approval from the Department of Health and installed the septic system but were unable to proceed farther because of financial difficulty. The 2005 variance expired by operation of law. The applicants seek the same relief granted to them in the 2005 case.

The Critical Area Commission opposed the granting of the requested variances because the amount of impervious surface was increased in this application from 2,644 square feet to 3,189 square feet. Because the earlier application showed that the site could be developed with a smaller impact, the Commission concluded this application did not meet the minimum standard in order to afford relief.

Mr. Fury explained that the reason for the difference between the two applications is because the driveway was not counted as impervious surface in the

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<sup>1</sup> The fact that a variance has been granted for the same work that is the subject of a current application does not mean that the earlier decision will be automatically followed.

2005 application. No change has been made to the planned work on the site. The proposed impervious coverage is within the limits for this site.

Mr. Fury also explained that the Commission's concerns about whether § 17-6-403 was being complied with will be determined at the permitting stage by a modification since variances to subtitle 6 are handled by modifications and not by the variance process.

The Commission was also concerned about the fact that while information regarding the 25-foot buffer to the 25% steep slopes was provided, no information was provided as to the expanded buffer for 15% steep slopes. Mr. Fury does not seem to answer this concern. It may have become lost in the determination of where the 25-foot buffer is (which is shown on the Site Plan). However, since the Commission indicates in note 3 of its letter of November 15, 2010 (County Exhibit 8) that the answer to this question will affect the amount of mitigation required, answering that question will be made a condition of the Order in this case rather than an outright dismissal.

James Luff confirmed the information supplied by Mr. Fury and submitted his report (County Exhibit 4). Mr. Luff testified that the applicants believe they have met the requirements of the Code to allow the variances to be granted. The site is grandfathered (platted in 1932) and burdened throughout with slopes of 15% or greater. The construction will take place outside the buffer to 25% steep slopes to the rear. Through mitigation, the applicants can develop the site without having a negative impact on the environment. The neighborhood has been

developed with similar homes, many of which have been built on lots with steep slopes.

There was no other testimony taken or exhibits received in the matter. The Hearing Officer did not visit the property.

### **DECISION**

Upon review of the facts and circumstances, I find and conclude that the applicants are entitled to conditional relief from the Code.

#### **State Requirements for Critical Area Variances**

§ 8-1808(d)(2) of the Natural Resources Article, Annotated Code of Maryland, provides in subsection (ii), that “[i]n considering an application for a variance [to the critical area requirements], a local jurisdiction shall presume that the specific development in the critical area that is subject to the application and for which a variance is required does not conform to the general purpose and intent of this subtitle, regulations adopted under this subtitle, and the requirements of the jurisdiction’s program.” (Emphasis added.) “Given these provisions of the State criteria for the grant of a variance, the burden on the applicant is very high.” *Becker v. Anne Arundel County*, 174 Md. App. 114, 124; 920 A.2d 1118, 1124 (2007).

The question of whether the applicants are entitled to the variances requested begins, therefore, with the understanding that, in addition to the other specific factors that must be considered, the applicants must overcome the

presumption, “that the specific development in the critical area that is subject to the application ... does not conform to the general purpose and intent of [the critical area law].”<sup>2</sup> Furthermore, the applicants carry the burden of convincing the Hearing Officer “that the applicant[s have] satisfied each one of the variance provisions.”<sup>3</sup> (Emphasis added.)

The variances sought are variances from the critical area law (buffers and steep slopes) and from the zoning law (setback requirements). “[A number of requests in the *Becker* decision] were for variances from the stringent critical area law. The request for a variance from the setback, however, is a request under the more lenient general zoning requirements. As indicated above, the criteria for a general zoning variance and the criteria for a critical area variance are not the same.” *Becker v. Anne Arundel County, supra*, 174 Md. App. at 141; 920 A.2d at 1134.

Therefore, the critical area variances must be considered separately from the general zoning or setback variances.<sup>4</sup> I will first analyze the facts in light of the critical area variances requested, and then analyze the facts in light of the zoning variance requested.

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<sup>2</sup> § 8-1808(d)(2)(ii) of the Natural Resources Article. References to State law do not imply that the provisions of the County Code are being ignored or are not being enforced. If any difference exists between County law and State law, or if some State criteria were omitted from County law, State law would prevail. *See*, discussion on this subject in *Becker v. Anne Arundel County, supra*, 174 Md. App. at 135; 920 A.2d at 1131.

<sup>3</sup> § 8-1808(d)(4)(ii).

<sup>4</sup> “We agree that the Board should have distinguished between the critical area variance and the setback variance.” *Becker v. Anne Arundel County, supra*, page 174 Md. App. at 141; 920 A.2d at 1134.

### County Requirements for Critical Area Variances

§ 18-16-305(b) sets forth six separate requirements (in this case) that must be met for a variance to be issued for property in the critical area. They are (1) whether a denial of the requested variance would constitute an unwarranted hardship, (2) whether a denial of the requested variance would deprive the applicants of rights commonly enjoyed by other property owners, (3) whether granting the variance would confer a special privilege on the applicants, (4) whether the application arises from actions of the applicants, or from conditions or use on neighboring properties, (5) whether granting the application would not adversely affect the environment and be in harmony with the critical area program, and (6) whether the applicants have overcome the presumption in Natural Resources Article, § 8-1808(d)(2)(ii), of the State law that the variance request should be denied.

Provided that an applicants meet the above requirements, a variance may not be granted unless six additional factors are found: (1) the variance is the minimum variance necessary to afford relief; (2) the granting of the variance will not alter the essential character of the neighborhood or district in which the lot is located; (3) the variance will not substantially impair the appropriate use or development of adjacent property; (4) the variance will not reduce forest cover in the limited development and resource conservation areas of the critical area; (5) the variance will not be contrary to acceptable clearing and replanting practices

required for development in the critical area; or (6) the variance will not be detrimental to the public welfare.

### **Findings - Critical Area Variances**

I adopt the findings reached in the 2005 Decision and Order cited above and conclude, based upon all the evidence that, for the reasons set forth below, the applicants are entitled to conditional relief from the Code.

#### **Subsection (b)(1) - Unwarranted Hardship.**

In *Becker v. Anne Arundel County, supra*, 174 Md. App. at 132-3; 920 A.2d at 1129, the Court of Special Appeals discussed the definition of unwarranted hardship found in § 8-1808(d)(1) of the Natural Resources Article in the State Code: “The amendment changed the definition of unwarranted hardship to mean that, ‘without a variance, an applicant would be denied reasonable and significant use of the entire parcel or lot for which the variance is requested.’”

I find that the denial of the variances would constitute an unwarranted hardship that would deny the applicants use of the entire parcel. The applicants have the right to develop this grandfathered lot with a single-family dwelling in order to have “reasonable and significant use of the entire ... lot” that is the subject of this application. Therefore, I find that the applicants have met the requirements of subsection (b)(1).

#### **Subsection (b)(2) - Deprive Applicants Of Rights**

I find that the applicants would be deprived of rights commonly enjoyed by other properties in similar areas as permitted in accordance with the provisions of

the critical area program, i.e., the right to construct a dwelling on a grandfathered lot. Therefore, I find that the applicants have met the requirements of subsection (b)(2).

**Subsection (b)(3) - Special Privilege**

I further find that the granting of the critical area variances requested will not confer on the applicants any special privilege that would be denied by COMAR, 27.01, the County's critical area program, to other lands or structures within the County's critical area. There was testimony that the proposed improvements are comparable to other houses in the neighborhood. *See*, County Exhibit 2. Therefore, I find that the applicants have met the requirements of subsection (b)(3).

**Subsection (b)(4) - Actions By Applicants Or Neighboring Property**

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

**Subsection (b)(5) - Water Quality, Intent Of Critical Area Program**

The granting of the critical area variances requested will not adversely affect water quality or adversely impact fish, wildlife or plant habitat within the County's critical area or a bog protection area and will be in harmony with the

general spirit and intent of the County's critical area program. The proposed work will be offset by mitigation that the applicants will undertake. Therefore, I find that the applicants have met the requirements of subsection (b)(5).

**Subsection (b)(7) - § 8-1808(d)(2)(ii) Presumption**

In *Becker v. Anne Arundel County, supra*, 174 Md. App. at 133; 920 A.2d at 1129, the Court of Special Appeals discussed the presumption found in § 8-1808(d)(2)(ii) of the Natural Resources Article: "The amendment also created a presumption that the use for which the variance was being requested was not in conformity with the purpose and intent of the critical area program."

I find that the applicants, by competent and substantial evidence, have overcome the presumption contained in the Natural Resources Article, § 8-1808(d)(2), of the State law (which is incorporated into § 18-16-305 subsection (b)(2)) for the reasons set forth above. Therefore, I find that the applicants have met the requirements of subsection (b)(7).

**Requirements for Zoning Variances**

§ 18-16-305 sets forth the requirements for granting a zoning variance. Subsection (a) reads, in part, as follows: a variance may be granted if the Administrative Hearing Officer finds that practical difficulties or unnecessary hardships prevent conformance with the strict letter of this article, provided the spirit of law is observed, public safety secured, and substantial justice done. A variance may be granted only if the Administrative Hearing Officer makes the following affirmative findings:



- (1) Because of certain unique physical conditions, such as irregularity, narrowness or shallowness of lot size and shape or exceptional topographical conditions peculiar to and inherent in the particular lot, there is no reasonable possibility of developing the lot in strict conformance with this article; or
- (2) Because of exceptional circumstances other than financial considerations, the grant of a variance is necessary to avoid practical difficulties or unnecessary hardship and to enable the applicants to develop the lot.

The variance process for subsection (1) above is a two-step process. The first step requires a finding that special conditions or circumstances exist that are peculiar to the land or structure at issue which requires a finding that the property whereupon the structures are to be placed or use conducted is unique and unusual in a manner different from the nature of the surrounding properties. The second part of the test is whether the uniqueness and peculiarity of the property causes the zoning provisions to have a disproportionate impact upon the subject property causing the owner a practical difficulty or unnecessary hardship. "Uniqueness" requires that the subject property have an inherent characteristic not shared by other properties in the area. *Trinity Assembly of God of Baltimore City, Inc. v. People's Counsel for Baltimore County*, 178 Md. App. 232, 941 A.2d 560 (2008); *Umerley v. People's Counsel for Baltimore County*, 108 Md. App. 497, 672 A.2d 173 (1996); *North v. St. Mary's County*, 99 Md. App. 502, 638 A.2d 1175 (1994), cert. denied, 336 Md. 224, 647 A.2d 444 (1994).

The variance process for subsection (2) - practical difficulties or unnecessary hardship - is simpler. A determination must be made that, because of exceptional circumstances other than financial considerations, the grant of a variance is necessary to avoid practical difficulties or unnecessary hardship, and to enable the applicants to develop the lot.

Furthermore, whether a finding is made pursuant to subsection (1) or (2) above, a variance may not be granted unless the hearing officer also finds that: (1) the variance is the minimum variance necessary to afford relief; (2) the granting of the variance will not alter the essential character of the neighborhood or district in which the lot is located, (3) substantially impair the appropriate use or development of adjacent property, (4) reduce forest cover in the limited development and resource conservation areas of the critical area, (5) be contrary to acceptable clearing and replanting practices required for development in the critical area, or (6) be detrimental to the public welfare.

#### **Findings - Zoning Variances**

I find, based upon the evidence, that because of the unique physical conditions peculiar to and inherent in the subject property, i.e., steep slopes in close proximity to the dwelling on the property, and the unusual shape of the lot, there is no reasonable possibility of developing the lot in strict conformance with the Code.

I further find that the requested critical area and zoning variances are the minimum variances necessary to afford relief, that the granting of the variances

will not alter the essential character of the neighborhood or district in which the lot is located, substantially impair the appropriate use or development of adjacent property, reduce forest cover in the limited development and resource conservation areas of the critical area, be contrary to acceptable clearing and replanting practices required for development in the critical area, or be detrimental to the public welfare.

### **ORDER**

PURSUANT to the application of Daniel Petenbrink and Elizabeth Petenbrink, petitioning for a variance to allow a dwelling with less setbacks and buffer than required and with disturbance to steep slopes 15% or greater; and

PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is this **22<sup>nd</sup> day of December, 2010,**

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

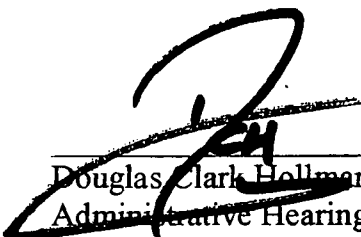
1. A critical area variance from § 17-8-201 to disturb 3,189 square feet of steep slopes.
2. A zoning variance of fifteen (15) feet to the 40-foot front lot line setback requirements of § 18-4-501; and
3. A zoning variance of ten (10) feet to the 35-foot rear lot line setback requirements of § 18-4-501; and

4. A zoning variance of five (5) feet to the 15-foot side lot line setback requirements of § 18-4-501.

*Furthermore, County Exhibit 2, referenced in this decision, is incorporated herein as if fully set forth and made a part of this Order. The proposed improvements shown on County Exhibit 2 shall be constructed on the subject property in the locations shown therein.*

The foregoing variances are subject to the following conditions:

- A. The applicants shall comply with the instructions and necessary approvals from the Permit Application Center, the Department of Health, and the Critical Area Commission. This condition specifically includes, but is not limited to, mitigation as determined by the Permit Application Center and/or the Critical Area Commission.
- B. The applicants shall provide mitigation as required by the Critical Area Commission and/or the Permit Application Center. See notes 2, 3, and 4 to the Commission's letter of November 15, 2010. A copy of which is attached to this Decision and Order.
- C. This Order does not constitute a building permit. In order for the applicants to construct the structures permitted in this decision, they must apply for and obtain the necessary building permits, along with any other approvals required to perform the work described herein.



Douglas Clark Hollmann  
Administrative Hearing Officer

224-05

**RECEIVED**

MAY 24 2005

CRITICAL AREA COMMISSION

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

**CASE NUMBER 2005-0073-V**

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**IN RE: DANIEL AND ELIZABETH PETENBRINK**

SECOND ASSESSMENT DISTRICT

DATE HEARD: MAY 17, 2005

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

**PLANNER: LIZ WEST**

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DATE FILED: MAY 18, 2005

## **PLEADINGS**

Daniel and Elizabeth Petenbrink, the applicants, seek a variance (2005-0073V) to permit a dwelling with less setbacks than required and with disturbance to steep slopes on property located along the north side of Holly Road, east of Hickory Road, Annapolis.

## **PUBLIC NOTIFICATION**

The case was advertised 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. Ms. Petenbrink testified that the property was posted for more than 14 days prior to the hearing. I find and conclude that the requirements of public notice have been satisfied.

## **FINDINGS AND CONCLUSIONS**

This case concerns unimproved property identified as Lots 17-22 of the Severn Grove subdivision, Annapolis. The property comprises 15,973 square feet and is zoned R-1 Residential with a Chesapeake Bay Critical Area designation as Limited Development Area (LDA). The request is to construct a one-story dwelling (72 X 46 feet) in an area of steep slopes with a front setback of 25 feet, a rear setback of 25 feet and an east side setback of 7 feet.

Anne Arundel County Code, Article 28, Section 1A-105(d) prohibits disturbances on steep slopes in the LDA. Section 2-305(a) requires a front building line 40 feet from the front lot line, a rear yard at least 35 feet deep and side yards 15 feet wide. Accordingly, the proposal requires a variance to disturb steep slopes and variances of 15 feet to the front setback, 10 feet to the rear setback and 8 feet to the east side setback.

Ms. West, a Planner with the Office of Planning and Zoning, testified that the property is a corner lot that is below the minimum area and width for the district. Severn Grove was platted in the 1930's and contains a mixture of older cottages and newer, more substantial, homes. The witness conceded the need for relief because the buildable area is 85 feet from front to rear. However, she questioned the extent of the relief and suggested reducing the long dimension of the dwelling, which would minimize the slope disturbance and the side setback variance. There were no adverse agency comments.<sup>1</sup> By way of conclusion, Ms. West offered support for the application.

James Luff, a registered landscape surveyor employed by the applicants, testified that the need for the variance results from the required separation to the septic system and the desire to retain forested areas. The slopes that are disturbed would be stabilized. The requirements of the Health Department will be addressed during the building permit process. Finally, the neighborhood is characterized by

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<sup>1</sup> The Chesapeake Bay Critical Area Commission requested mitigation at a 1:1 ratio with plantings to stabilize the slope and a stormwater best management practice. The Department of Health requested plan review.

other non-conforming structures, including the dwelling across Hickory Road (10 feet from the front lot line) and the dwelling to the rear (30 feet from the front lot line).

Ms. Petenbrink testified that her mother-in-law has attempted to purchase the vacant lot to the east (Lot 23). Victor Ignacio, her father, would occupy the dwelling for his retirement. The home has been sited to preserve a large tree and minimize the impacts on neighboring properties.

Anne Patterson, who resides on Hickory Road, sought and received clarification concerning the application.

Finally, following a discussion on the record, Mr. Ignacio agreed to reduce the long dimension of the dwelling by 3 feet, thereby increasing the east side setback to 10 feet.

Upon review of the facts and circumstances, I find and conclude that the applicants are entitled to relief from the Code. For this critical area property, due to the extent of steep slopes, a strict implementation of the program would result in an unwarranted hardship. To literally interpret the program would deny the applicants the right to develop the property with a single-family dwelling, a right commonly enjoyed by other properties in similar areas in the critical area. Conversely, the granting of the variance will not confer any special privilege that the program typically denies. There is no indication that the request results from the actions of the applicants or from land use on neighboring property. Finally,



with mitigation, the variance will not adversely impact critical area resources and will simply harmonize with the general spirit and intent of the program.

With respect to the zoning variances, this property satisfies the test of unique physical conditions, consisting of its reduced area and width, such that there is no reasonable possibility of development in strict conformance with the Code.

With respect to the extent of the relief, the applicants are proposing a fairly sizeable dwelling. However, the reduction of three feet to the long dimension will both reduce the extent of the slope disturbance and increase the side setback. So modified, the granting of the variances will not alter the essential character of the neighborhood, substantially impair the appropriate use or development of adjacent property, or cause a detriment to the public welfare. The approval is subject to the conditions in the Order.

### ORDER

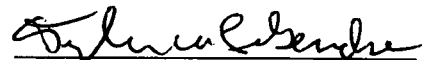
PURSUANT to the application of Daniel and Elizabeth Petenbrink, petitioning for a variance to permit a dwelling with less setbacks than required and with disturbance to steep slopes; and

PURSUANT to the advertising, posting of the property, and public hearing and in accordance with the provisions of law, it is this 18<sup>th</sup> day of May, 2005, ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicants are hereby **granted** a variance to disturb steep slopes and variances

in the amount of 15 feet to the front setback, 10 feet to the rear setback and 5 feet to the east side setback to permit a one-story dwelling.

The foregoing variance is subject to the following conditions:

1. The long dimension of the dwelling shall be reduced from 72 feet to 69 feet.
2. No further expansion of the dwelling is allowed.
3. The applicants shall provide mitigation at a ratio of 1:1 for disturbance outside the buffer with plantings on site to the extent practicable, especially to stabilize steep slopes disturbed by the construction.
4. The applicants shall provide a stormwater best management practice satisfactory to the Permit Application Center.
5. The building permit is subject to the approval of the Department of Health.



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.



- Engineering
- Environmental Sciences
- Construction Services
- Land Planning & Surveying

## CRITICAL AREA NARRATIVE

### Variance Request

For Daniel B. Petenbrink and Elizabeth I. Petenbrink  
Holly Road, Annapolis, Maryland

Tax Map 45 ~ Grid 9  
Parcel 57 ~ Lots 17-22

Critical Area Designation: LDA (Limited Development Area)  
Zoning: R1

February 17, 2005

### INTRODUCTION

Daniel and Elizabeth Petenbrink own 0.37 acres along Holly Road in the Severn Grove subdivision located in Annapolis, Maryland. The property is completely within the Chesapeake Bay Critical Area, with a Limited Development Area (LDA) land use designation.

This report is based on a 2005 site plan and subdivision plan by McCrone, Inc., a copy of which is enclosed with this report.

### CRITICAL AREA NARRATIVE SITE DESCRIPTION

The site consists of five unimproved lots with a total area 15,953.1 square feet, the lots front on Holly Road with a side yard facing Hickory Road. The variance request, of which this report is a part of, seeks relief to building setbacks due to the irregular shapes and size of the subject property. Proposed development of the residential site includes a two-story house with an attached garage for the Mrs. Petenbrink's father. The house would be served by a private dry well septic system and private well, as there are no public systems in the area.

Approximately 8,000 square feet of the site is wooded and less than 5,000 square feet of this area would be disturbed in the process of development. All clearing and replanting on site would be done in accordance with the development of sites within the Chesapeake Bay Critical Area. Any development within Anne Arundel County must be done according to the county's stormwater management regulations. This program

requires an intensive review of the site and development of proposed management measures for proposed building.

The site includes impervious surface coverage in the form of a proposed two-story house with an attached garage. The maximum allowable impervious coverage in the LDA is 31.25% or 4,985 square feet and the total proposed impervious coverage would be 2,644 square feet.

No plant species were observed that are considered rare, threatened or endangered by the U.S. Fish & Wildlife Service or the Maryland Department of Natural Resources (DNR). As there is no proposed development of this subdivision at this time, no comments on the vegetative community within this site are necessary.

# MCCRONE

- Engineering
- Environmental Sciences
- Construction Services
- Land Planning & Surveying

February 17, 2005

Lois Villemaire  
Anne Arundel County Department of  
Planning and Zoning  
2664 Riva Road  
Annapolis, MD 21401

**Re: VARIANCE REQUEST APPLICATION  
PETENBRINK LANDS  
BLOCK 17, LOTS 17-22, SEVERN GROVE  
TAX MAP 45, GRID 9, PARCEL 57  
TAX ACCOUNT NUMBER 02-746-08626803**

Dear Ms. Villemaire:

On behalf of our clients, Daniel B. Petenbrink and Elizabeth I. Petenbrink, we would like to request a variance for building setbacks, lot size and impervious surface coverage on the above referenced parcel of land. The property is recorded among the land records of Anne Arundel County in Liber 9575, folio 86 and was purchased from Joseph R. Meyers on December 12, 1999. The lots are also shown on a record plat entitled "Severn Grove", dated June 10, 1932 and recorded in Plat Book 8, page 41.

The subject property is zoned R1 and lies within the LDA designation of the Chesapeake Bay Critical Area.

The lots are served by private water and sewer systems.

★ The Petenbrinks own five adjacent lots that are unimproved and have a combined area of 15,953.1 square feet. Their goal is to build a house on these lots for Mrs. Petenbrink's father. The existing setbacks of record would require a very small house to be built. The Petenbrinks desire to build a house that would accommodate the father's needs. To accomplish this, variances to the following stipulations of the Anne Arundel County Zoning Ordinance requirements would be needed:

1. Front Setback: Article 28, 2-305(a)(1) requires a front yard setback of at least 40 feet. This variance request seeks relief to allow a front yard setback of 25 feet.

Lois Villemaire  
February 17, 2005  
Page 2

2. Side Setback: Article 28, 2-305(a)(2) requires a side yard setback of at least 15 feet. This variance request seeks relief to allow a side yard setback of 7 feet.
3. Rear Setback: Article 28, 2-305(a)(3) requires a rear yard setback of at least 35 feet. This variance request seek relief to allow a rear yard setback of 25 feet,

We believe there is justification for the granting of this variance. Severn Grove subdivision was created in 1932, prior to the enactment of the Anne Arundel County Zoning Ordinance. The majority of these lots are small and irregular. To develop them would require the acquisition of multiple lots. The adjacent properties have houses built on lands comprised of fewer lots, and subsequently, less square footage, than the five lots owned by the Petenbrinks. Also, these lot irregularities are the predominant factor in seeking the proposed building setbacks and allowable impervious coverage. The small size and shape of the lots allows for a small buildable area, requiring a long, narrow house that would not meet the essential character of the neighborhood.

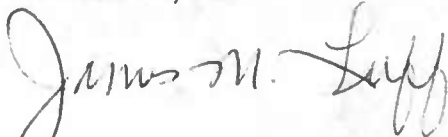
The relief sought in this request is the minimum amount necessary to allow a house to be built on this property. As both adjacent lots are already developed, granting of this variance will not alter the essential character of the neighborhood or impair the appropriate use or development of adjacent properties. Development of the subject property will be done in accordance with acceptable clearing and replanting practices required for development in the Critical Area.

Granting of this waiver request will not affect the intent or purpose of the General Development Plan of this County nor will it endanger the public safety.

If you have any questions or need additional information, do not hesitate to contact us.

Very truly yours,

McCRONE, INC.

  
James M. Luff, L.S.



**ATCS, P.L.C.**

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**PETENBRINK PROPERTY**

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**CRITICAL AREA REPORT**

**HOLLY ROAD,  
ANNAPOLIS, MARYLAND  
SECOND DISTRICT,  
ANNE ARUNDEL COUNTY, MARYLAND**

*Prepared for:*

**DANIEL B. PETENBRINK  
AND  
ELIZABETH I. PETENBRINK  
4443 OWENSVILLE SUDLEY RD.  
HARWOOD, MARYLAND 20776  
TAX MAP 45, BLOCK 9 PARCEL 57**

*Prepared by:*

**ATCS, P.L.C.  
304 Harry S. Truman Parkway  
Suite F  
Annapolis, MD 21401  
410-224-7497**

- ◆ Engineering
- ◆ Environmental Sciences
- ◆ Construction Services
- ◆ Land Planning & Surveying

**OCTOBER 2010**

## CRITICAL AREA REPORT

### PETENBRINK PROPERTY HOLLY ROAD, ANNAPOLIS, MARYLAND SECOND DISTRICT, ANNE ARUNDEL COUNTY, MARYLAND

The property is comprised of Lots 17-22, Block 17 of Severn Grove, with a total area of 15,953 square feet. The property is currently un-improved and is served by private water and sewer systems (septic system has been installed and approved by the Health Department). The dwelling has access from Holly Drive and Hickory Road. The property slopes from Holly Drive to the rear of the property at grades under fifteen percent (15%). Nearing the rear of the property the slopes exceed fifteen percent (15%), reaching twenty-five percent (25%) at the boundary line. The majority of the property contains a high, tree canopy and some under-story. The property lies within Chesapeake Bay Critical Area Limited Development Area (LDA) zone. The County zoning is R-1. The surrounding area is developed with single-family homes on the north, south and west sides.

The "Severn Grove Subdivision" was originally created on June 10, 1932, by plat filed among the plat records of Anne Arundel County, Maryland in Plat Book 3, folio 53.

The proposed use of the project site is for the construction of a single-family residential dwelling. The site contains approximately 8,900 square feet of forested area. The area contains deciduous trees with a high canopy and little understory. Most of the existing understory consists of mountain laurel. The area to be cleared for building the dwelling will be approximately 5,200 square feet. This area will be mitigated by the planting of trees and shrubs outside of the current forested area.

In order to minimize impacts on water quality and habitat from the proposed construction, a grading permit, which includes a stormwater management component, will be required by Anne Arundel County. This will be in addition to the required sediment and erosion control plan required by the County before issuing a building permit.

There are no habitat protection areas on this building parcel.

Article 17-8-401 of the Anne Arundel County Zoning Ordinance sets limits on impervious surfaces as follows:

15,953.1 square feet x 31.25% coverage = 4,985 square feet

The site information is as follows:

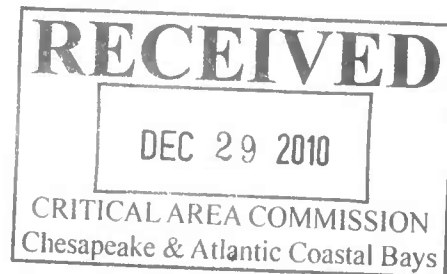
Existing impervious area = 0.00 square feet  
Proposed impervious area to be added = 3,189 square feet  
Allowed impervious area = 4,985 square feet

Therefore, the parcel will conform to the current zoning ordinance.



December 27, 2010

Layne Turcan Hockaday  
State of Maryland  
Critical Area Commission  
1804 West Street  
Suite 100  
Annapolis, Maryland 21401



**RE: ANNE ARUNDEL COUNTY GRADING PERMIT #: G02011893  
DANIEL & ELIZABETH PETENBRINK  
CRITICAL AREA COMMISSION #AA 224-05**

Dear Ms. Hockaday:

Our firm, ATCS, P.L.C., has been working with Daniel and Elizabeth Petenbrink for a number of years in an effort to help them obtain a building permit to construct a single-family residence for Mrs. Petenbrink's father. We prepared the latest variance application for them and represented them at the hearing on December 2, 2010. The variance request was granted by the hearing officer in his decision dated December 22, 2010, with the stipulation that *"The applicants shall provide mitigation as required by the Critical Area Commission and/or Permit Application Center. See notes 2, 3, and 4 to the Commission's letter of November 15, 2010."*

By way of background, we had prepared and designed plans for the proposed residence. These plans were submitted to the County and the County had given most approvals with the exception of changing some plant species in the landscape plan. The landscape plan was to provide mitigation for the area to be cleared for construction. With the impact of the recession, the Petenbrinks decided to suspend the project temporarily. They feel that the economy is rebounding enough to allow them to move forward with the project.

Please accept this letter as our response to your comments per your letter dated November 15, 2010. We offer the following responses:

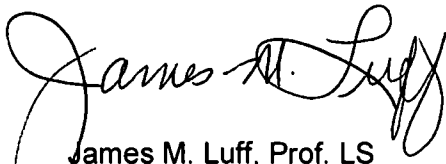
1. The house layout is the same as the original plan (width reduced by three (3) feet). The additional square footage comes from the fact that the original plan called for a pervious pave driveway. Anne Arundel County does not recognize pervious pave. Therefore, we have to include it with our lot coverage calculations.
2. We believe that the existing forest area is approximately 12,000 square feet (calculating canopy). Our plan calls for approximately 4,000 square feet of clearing. However, this could be less if some larger trees can be saved near the house site. We are using a rain garden system of stormwater management and the plan calls for the planting of a number of trees and shrubs. Our landscape plan calls for the planting of 92 trees and shrubs.

3. As far as the buffer is concerned, we are located approximately 700 feet from the shoreline of Saltworks Creek. The proposed house sits on a ridge that leads down to a floodplain area and then ultimately to Saltworks Creek. We do not control any of the land between our site and the mean high water line. The steep slope buffer we have shown on our plan is an Anne Arundel County requirement. We have enclosed a copy of part of the original subdivision plat and a larger scale topo plan for your reference purposes.

If you have any questions or need additional information, do not hesitate to contact us.

Very truly yours,

**ATCS, P.L.C.**



James M. Luff, Prof. LS  
Branch Manager



# ATCS, P.L.C.

ENGINEERING • PLANNING • SURVEYING

304 HARRY S. TRUMAN PARKWAY, SUITE F  
ANNAPOLIS, MARYLAND 21401

PHONE: (410) 224-7497 • FAX: (410) 224-7498

CULPEPER, VA. • DULLES, VA. • WALDORF, MD.

200 SCALE TOPOGRAPHY - AACo GIS

## DANIEL & ELIZABETH PETENBRINK LANDS

BLOCK 17, LOTS 17-22  
TM 45 GRID 9 PARCEL 57  
2ND ELECTION DISTRICT  
ANNE ARUNDEL COUNTY, MARYLAND

PREPARED FOR: ELIZABETH PETENBRINK

SCALE: 1" = 200'

DATE: 10-04-10

DRAWN BY: WGZ

CHECKED BY: WGZ

Job No.: A103-5141

Folder: 0004

SCALE: 1" = 100'

SALTWORKS CREEK

54°13'00"W · 7.6618'

516°35'E · 144.38' 59°37'E · 181.50'

200'

LOT 8

10°15'E · 214.28'



**RECEIVED**

DEC 29 2010

CRITICAL AREA COMMISSION  
Chesapeake & Atlantic Coastal Bays



**IMPERVIOUS SURFACES TABLE**

Total Site Area: 15,953.1 Sq. Ft.  
 Total Allowable Impervious Coverage: 31.25% or 4,985 sq. ft.  
 ( Per Anne Arundel County Zoning Ordinance  
 Article 28, 1A-105(a) )

PROPOSED IMPERVIOUS SURFACE	SQUARE FEET
Pr. Building	2,644.0
Total Proposed Impervious	2,644.0

**ZONING & SETBACKS**

Tax Map 45 - Grid 9 - Parcel 57  
 Zoning - R1 - Residential District  
 Area: 40,000 Square Feet  
 Coverage: Not more than 25% of net area  
 Building Restriction Lines  
 Front: 40'  
 Rear: 35'  
 Side: 15' minimum (40' in aggregate)  
 Corner Lot: 40' from side street



**VICINITY MAP**

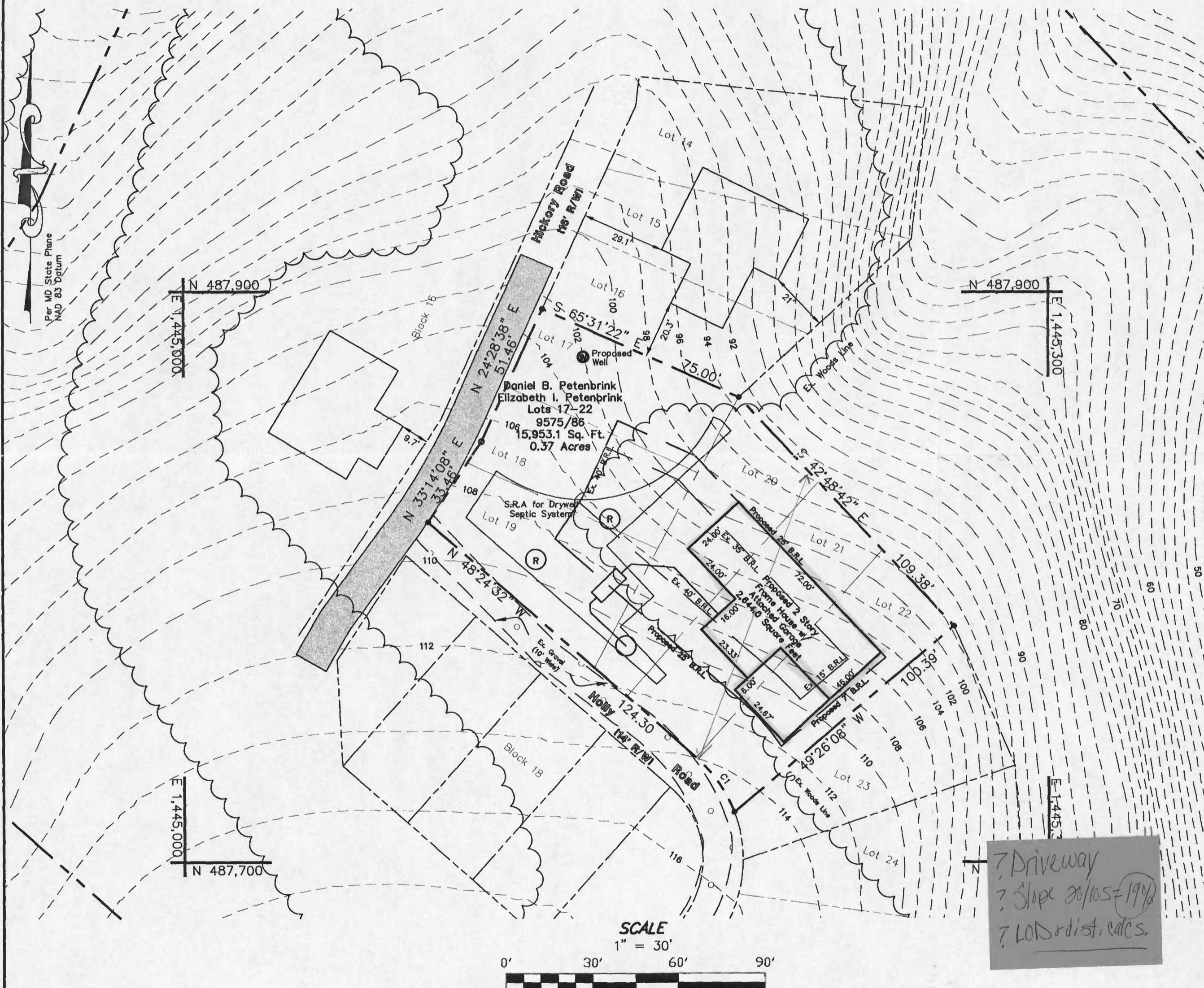
Scale -- 1"=2000'  
 Copyright ADC The Map People  
 Permitted Use No. 20402107

**GENERAL NOTES**

- The purpose of this variance site plan is to request relief to existing zoning ordinance for the subject property.
- This site was previously recorded in Liber 9575, Folio 86.
- The gridticks shown hereon are on NAD 83 datum.
- This site is served by private water and private sewer systems.
- This site is located within the area of minimal flooding (zone C), as shown on FEMA FIRM Map 24008 0033 C, effective May 2, 1983.
- This site is located within the LDA (Limited Disturbance Area) designation of the Chesapeake Bay Critical Area.

**VARIANCE RELIEF SOUGHT**

- Front Setback**  
 Article 28, 2-305(a)(1) requires a front building line of at least 40 feet. This variance request seeks relief to allow a front setback of 25 feet.
- Side Setback**  
 Article 28, 2-305(a)(2) requires a side yard setback of at least 15 feet. This variance request seeks relief to allow a side yard setback of 7 feet.
- Rear Setback**  
 Article 28, 2-305(a)(3) requires a rear yard setback of at least 35 feet. This variance request seeks relief to allow a rear yard setback of 25 feet.



7. Driveway  
 ? Slope 20/105 = 19%  
 ? LOD & dist. calc.

**CURVE TABLE**

CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C1	47.74'	23.46'	23.23'	S 34°17'49" E	28°09'47"



**McCRONE**

ENGINEERING & ENVIRONMENTAL SCIENCES  
 LAND PLANNING & SURVEYING  
 CONSTRUCTION SERVICES

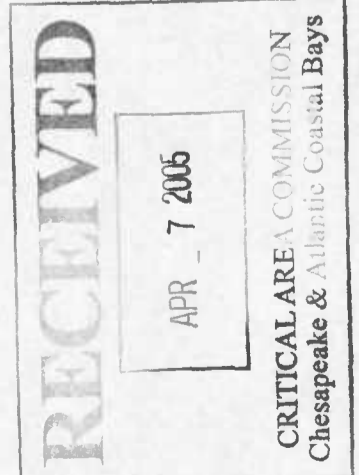
20 RIDGELY AVENUE \* ANNAPOLIS, MARYLAND 21401  
 (410) 267-8621 \* FAX (410) 267-9932  
 email annap@mcrcrone-inc.com  
 Web Site www.mcrcrone-inc.com

ANNAPOLIS CENTREVILLE ELKTON PRINCE FREDERICK SALISBURY

DATE	January 2005
JOB NUMBER	C1030275
SCALE	1" = 30'
DRAWN BY	S. Bissett
DESIGNED BY	N/A
APPROVED BY	J. Luff
FOLDER REFERENCE	1013

Critical Area Site Plan  
 Daniel & Elizabeth Petenbrink Lands

Severn Grove  
 Block 17 Lots 17-22  
 Tax Map 45 Grid 9 Parcel 57  
 2nd District, Anne Arundel County, Maryland



SHEET NO. 1 of 1  
 FILE NO. C1030275

