

AA 0008-06
VAR

Clark, Jerome & Pat
2005-0489-V

MSA - S - 1829 - 5372

00/2/11
for

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/

July 18, 2007

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

Re: Clark, Jerome & Pat
~~2005-0489-V~~

2007-0181
Dear Ms. Schappert:

Thank you for sending the above-referenced variance request for review and comment. The applicant is requesting a variance to allow for an accessory structure with less setbacks and Buffer than required. The area is 1.10 acres, is zoned Limited Development Area (LDA), and is currently being developed with a single-family dwelling unit, garage, wood ramp, breezeway, two decks, retaining wall, covered porch, timber walk and steps, wood platform, shed, and pier. The applicant plans to remove the existing shed and construct a gazebo over the existing footprint, which is composed of sand and cinder blocks. The gazebo will be located as close as 12 feet from Mean High Water (MHW). Current impervious surface on this site is 4,202 square feet (8% of the site) and will remain the same if this variance is granted. Total forested area on-site is .26 acres, and no trees will be cleared for this project.

The office generally does not oppose modest additions and renovations requested for an existing dwelling on a grandfathered lot. However, we do oppose the variance to build a free-standing gazebo within the Buffer. In 2002 and 2004, the General Assembly strengthened the Critical Area Law and reiterated its commitment to the Chesapeake Bay Critical Area's water quality and wildlife habitat values, particularly emphasizing the importance of the 100-foot Critical Area Buffer. Specifically, the General Assembly reaffirmed the stringent standards of the law, which an applicant must meet in order for a local jurisdiction to grant a variance to the Critical Area law. The State law provides that variances to a local jurisdiction's Critical Area program may be granted **only** if a Board of Appeals finds that an applicant has satisfied its burden to prove that the applicant meets each one of the county's variance standards, including the standard of "unwarranted hardship." The General Assembly defined that term as follows: "without

the variance, the applicant would be denied reasonable and significant use of the entire parcel or lot." Furthermore, the State law establishes a presumption that a proposed activity for which a Critical Area variance is requested does not conform to the purpose and intent of the Critical Area law. The County must make an affirmative finding that the applicant has overcome this presumption, based on the evidence presented.

In this case the applicant is proposing to construct a gazebo within the Buffer. The Critical Area Buffer establishes an area of undisturbed natural forest vegetation, or an area for enhancement with vegetation native to the Critical Area, managed to protect shorelines, streams, wetlands, and riparian biological communities from adverse effects of land use. Thus, the County has enacted a specific set of provisions to recognize the importance of the 100-foot Buffer and maintain its integrity by prohibiting the construction of new structures unless they are water dependent (Anne Arundel County Code 17-8-301(b)).

The variance to the 100-foot Buffer cannot be granted unless the applicant proves, and the Board of Appeals finds that, without the variance, the applicant would suffer an unwarranted hardship; that is, "denial of reasonable and significant use of the entire parcel or lot." We do not believe that this standard is met, and accordingly the variance should be denied. I have discussed each one of the variance standards below as it pertains to this site:

1. *That special conditions or circumstances exist that are peculiar to the land or structure within the jurisdiction's Critical Area program that would result in an unwarranted hardship to the applicant.*

The lot is currently being developed with a single-family dwelling unit, garage, wood ramp, breezeway, two decks, retaining wall, covered porch, timber walk and steps, wood platform, shed, and pier. Overall, 4202 square feet of impervious surface is located on-site. However, 356 square feet of this total impervious is located on cinder blocks within the Buffer where the shed currently exists. This area is planned to be a gazebo. As stated above, the General Assembly defined "unwarranted hardship" to mean that the applicant must prove that, without the requested variance, he would be denied reasonable and significant use of **the entire parcel or lot**. Considering the amount of development that is already being developed on-site, we do not believe that the County has evidence on which to base a finding that, without the roof porch, the entire parcel would lack reasonable and significant use.

2. *That a literal interpretation of this subtitle or the local Critical Area Program and related ordinances will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area of the local jurisdiction.*

The applicant has a reasonable use of this property for residential purposes, and therefore, would not be denied a right commonly enjoyed by neighboring properties, such as constructing an addition that is attached to a house. No property owner has the right to build a free-standing accessory structure within the 100-foot Buffer.

the variance, the applicant would be denied reasonable and significant use of the entire parcel or lot." Furthermore, the State law establishes a presumption that a proposed activity for which a Critical Area variance is requested does not conform to the purpose and intent of the Critical Area law. The County must make an affirmative finding that the applicant has overcome this presumption, based on the evidence presented.

In this case the applicant is proposing to construct a gazebo within the Buffer. The Critical Area Buffer establishes an area of undisturbed natural forest vegetation, or an area for enhancement with vegetation native to the Critical Area, managed to protect shorelines, streams, wetlands, and riparian biological communities from adverse effects of land use. Thus, the County has enacted a specific set of provisions to recognize the importance of the 100-foot Buffer and maintain its integrity by prohibiting the construction of new structures unless they are water dependent (Anne Arundel County Code 17-8-301(b)).

The variance to the 100-foot Buffer cannot be granted unless the applicant proves, and the Board of Appeals finds that, without the variance, the applicant would suffer an unwarranted hardship; that is, "denial of reasonable and significant use of the entire parcel or lot." We do not believe that this standard is met, and accordingly the variance should be denied. I have discussed each one of the variance standards below as it pertains to this site:

- 1. That special conditions or circumstances exist that are peculiar to the land or structure within the jurisdiction's Critical Area program that would result in an unwarranted hardship to the applicant.*

The lot is currently being developed with a single-family dwelling unit, garage, wood ramp, breezeway, two decks, retaining wall, covered porch, timber walk and steps, wood platform, shed, and pier. Overall, 4202 square feet of impervious surface is located on-site. However, 356 square feet of this total impervious is located on cinder blocks within the Buffer where the shed currently exists. This area is planned to be a gazebo. As stated above, the General Assembly defined "unwarranted hardship" to mean that the applicant must prove that, without the requested variance, he would be denied reasonable and significant use of **the entire parcel or lot**. Considering the amount of development that is already being developed on-site, we do not believe that the County has evidence on which to base a finding that, without the roof porch, the entire parcel would lack reasonable and significant use.

- 2. That a literal interpretation of this subtitle or the local Critical Area Program and related ordinances will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area of the local jurisdiction.*

The applicant has a reasonable use of this property for residential purposes, and therefore, would not be denied a right commonly enjoyed by neighboring properties, such as constructing an addition that is attached to a house. No property owner has the right to build a free-standing accessory structure within the 100-foot Buffer.

Therefore, the rejection of a variance for the gazebo would not deny the applicants a right commonly enjoyed.

3. *The granting of a variance will not confer upon an applicant any special privilege that would be denied by this subtitle or the local Critical Area program to other lands or structures within the jurisdiction's Critical Area.*

If the variance is granted, it would confer upon the applicant a special privilege, in this case building a gazebo on cinder blocks within the 100-foot Buffer, which would be denied to others in this area, as well as similar areas found elsewhere within the County's Critical Area. To grant a variance to the Buffer would confer a special privilege on the applicant (Section 190-97). The applicant has the burden of proof and the burden of persuasion to overcome the presumption that his proposed variance does not conform to the Critical Area Law. We do not believe the applicant has overcome this burden.

4. *The variance request is not based upon conditions or circumstances which are the result of the actions by the applicant, nor does the request arise from any condition conforming on any neighboring property.*

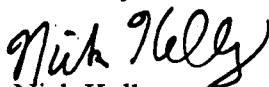
From the information provided, it does not appear that the variance request is based on conditions or circumstances that are the result of the applicant or from a neighboring property. Therefore, it appears that the applicant has met this standard.

5. *The granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the jurisdiction's Critical Area, and that the granting of the variance will be in harmony with the general spirit and intent of the Critical Area law and the regulations.*

Given that the applicant can adequately develop this property and enjoy outdoor activities without the addition of a gazebo within the 100-foot Buffer, approval of this variance would not be in harmony with the general intent and spirit of the Critical Area law and regulations.

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,



Nick Kelly

Natural Resource Planner

cc: AA 0008-06

8-06

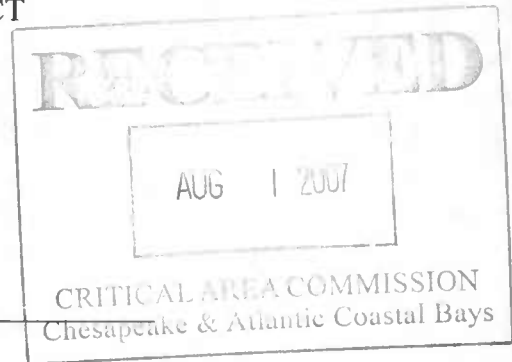
IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 2007-0181-V

IN RE: JEROME AND PATRINA CLARK

SECOND ASSESSMENT DISTRICT

DATE HEARD: JULY 24, 2007



ORDERED BY: STEPHEN M. LeGENDRE, ADMINISTRATIVE HEARING OFFICER

PLANNER: WILLIAM ETHRIDGE

DATE FILED JULY 26th, 2007

PLEADINGS

Jerome and Patrina Clark, the applicants, seeks a variance (2007-0181-V) to allow an accessory structure with less setbacks and buffer than required on property located along the north side of Poplar Lane, south of Pinewood Drive, 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. Mr. Clark testified that the property was posted for more than 14 days prior to the hearing. I find and conclude that there has been compliance with the notice requirements.

FINDINGS AND CONCLUSIONS

This case concerns the same property the subject of a decision by this office in Case No. 2005-0489-V (February 22, 2006). The prior Order conditionally approved a variance to disturb steep slopes to allow a dwelling and septic system in accordance with the site plan. The present request is to raze and replace in-kind an accessory structure (16 by 22 feet) located 12 feet from mean high water.

Anne Arundel County Code, Article 18, Section 18-13-104(a) establishes a 100-foot buffer from tidal water. Accordingly, the proposal requires a buffer variance of 88 feet.

William Ethridge, a planner with the Office of Planning and Zoning, testified that the existing structure is deteriorated from storm and flood related events. The replacement structure will be elevated above the flood level. The property is within the allowance for impervious coverage. There were no adverse agency comments.¹ By way of conclusion, Mr. Ethridge supported the request.

Mr. Clark confirmed the substance of the application. The existing shack predated the applicants' purchase of the property in August, 2004.

Allyson DeMatteo, the applicants' engineering consultant, anticipated no adverse impact to water quality. She also indicated that the conditions of the prior Order have been satisfied.

There was no other testimony in the matter.

Upon review of the facts and circumstance, I find and conclude that the applicants are entitled to relief from the code. For this Critical Area property, due to the proximity to water, a strict implementation of the program would result in an unwarranted hardship. Under a literal interpretation of the program, the applicant would be unable to replace the preexisting structure in kind, a right commonly enjoyed by other properties in similar areas of the Critical Area. Conversely, the granting of the variance is not a special privilege that the program

¹ The County's Development Division requested mitigation at a 2:1 ratio based on the area of disturbance.

typically denies. There is no indication that the request results from the actions of the applicants or from land use on neighboring property. I further find that the variance represents the minimum relief. As indicated, the property is within the allowance for coverage. There was nothing to indicate that the granting of the variance would 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 Jerome and Patrina Clark, petitioning for a variance to allow an accessory structure with less setbacks and buffer than required; and

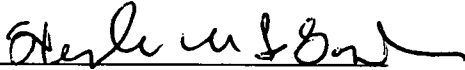
PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is this 26th day of July, 2007,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicants are **granted** a buffer variance of 88 feet to permit an accessory structure in accordance with the site plan.

The foregoing variance is subject to the following conditions:

1. The applicants shall provide mitigation as determined by the Permit Application Center.

2. No other new accessory structures for storage are allowed.


Stephen M. LeGendre
Administrative Hearing Officer

NOTICE TO APPLICANT

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

Further Section 18-16-405(a) provides that a variance expires by operation of law unless the applicant obtains a building permit within eighteen months. Thereafter, the variance shall not expire so long as construction proceeds in accordance with the permit.

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

Chesapeake Bay Critical Area Report

South River Manor Lots 52 & 53

Tax Map 50, Grid 10, Parcel 29

Tax Account No. 02-754-90011309

02-754-90021008

Property Address: 2741 Poplar Lane
Annapolis, MD 21405

Property Owner & Variance Applicant: Jerome & Patrina Clark

Critical Area Designation: LDA **Zoning:** R2 **Lot Area:** 47,701 s.f.

Site Description

2741 Poplar Road is an irregular shaped property. The existing dwelling and garage are currently under construction. The lot construction was approved under permit # G02012045. Variance Number 2005-0489-V was approved on February 22, 2006 for disturbance to steep slopes to permit the dwelling and septic system that are currently under construction. The existing crab shack was allowed to remain under that variance decision. The property is located between the northeast side of Poplar Lane and the west side of Broad Creek. The lot steeply slopes northward toward the southeast side and the northwest side of the property. It lies within the critical area with an LDA land use designation and is a waterfront lot.

Description and Purpose of Variance Request

The applicants propose to raze and remove the existing shed structure and construct a roof porch structure on the property, in the same location. The construction will require a variance to **Article 17-8-201** of the Anne Arundel County Code for development within the 100-foot shoreline buffer to tidal waters.

Vegetative Coverage

This property is densely forested in the steep slope regions. A lawn area goes from west to east towards Broad Creek, and has several mixed hardwoods surrounding the existing impervious area. No trees will be removed to construct the proposed structure.

Impervious Coverage

The site currently has 4,202 s.f. of impervious coverage. The proposed impervious area for this property will remain the same. The proposed impervious coverage does not exceed the allowable impervious coverage of 7,155 s.f. The area to be disturbed by proposed work will roughly be 2,518 s.f., in order to access the existing shed structure.

Predominant Soils

The predominant soil types in the area are Annapolis-Urban land complex, 0 to 5 percent slopes (AuB) and Annapolis fine sand loam, 25 to 40 percent slopes (AsF). Both soil types are within the "C" Hydraulic Grouping.

Drainage and Rainwater Control

This property slopes southwest toward Poplar Lane and northwest toward the rear corner of the lot, neighboring lot 54. The proposed structure will be the same size and shape as the exiting structure. Stormwater management in the form of plantings was provided for the existing shed structure under permit G02012045. A revision to the previously approved grading permit and sediment control plan will be completed with Maryland Department of the Environment soil erosion and sediment control devices utilized during the construction process to minimize impacts on water quality to the local and regional watersheds.

Conclusions – Variance Standards

The applicants propose to raze and remove the existing shed structure and construct a new covered porch structure with associated improvements. With the other requirements met with a revision to grading permit G02012045. Including reforestation and sediment controls. The proposed development will not cause adverse impacts to fish, wildlife, or water quality in the Critical Area.

This report is based on a Variance Plan prepared by Drum, Loyka & Associates, LLC and dated June 2007 and a site survey by Drum, Loyka & Associates, LLC. Copies of which are attached to this report.

Reference:

ADC: The Map People, 2002 Anne Arundel County, Maryland, Street Map Book

Anne Arundel County Office of Planning & Zoning , 1988 Critical Area Map

Anne Arundel County Office of Planning & Zoning, 1995 Buffer Exemption Map

Anne Arundel County, Maryland; Chesapeake Bay Critical Area Mapping Program, 1988, Critical Area Map

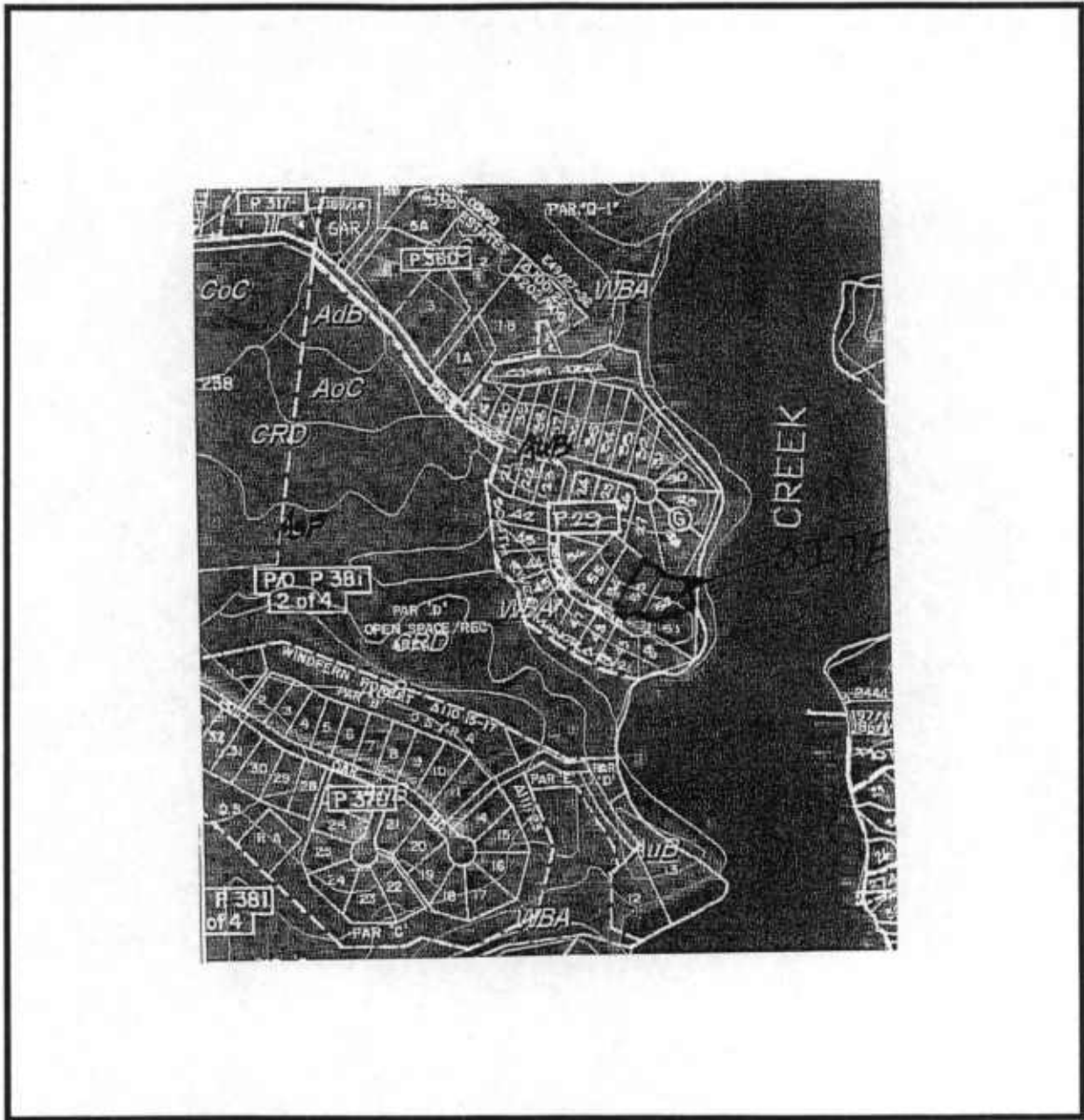
Federal Emergency Management Agency , 1985. Flood Insurance Rate Map

First American Real Estate Solutions, 2002, Realty Atlas: Anne Arundel County Maryland

Drum Loyka and Associates. 2005 Site Plan

U.S. Department of Agriculture, Natural Resource Conservation Service –2003 Soil Survey of Anne Arundel County Maryland.

State Highway Administration of Maryland, 1989. Generalized Comprehensive Zoning Map: Third Assessment District



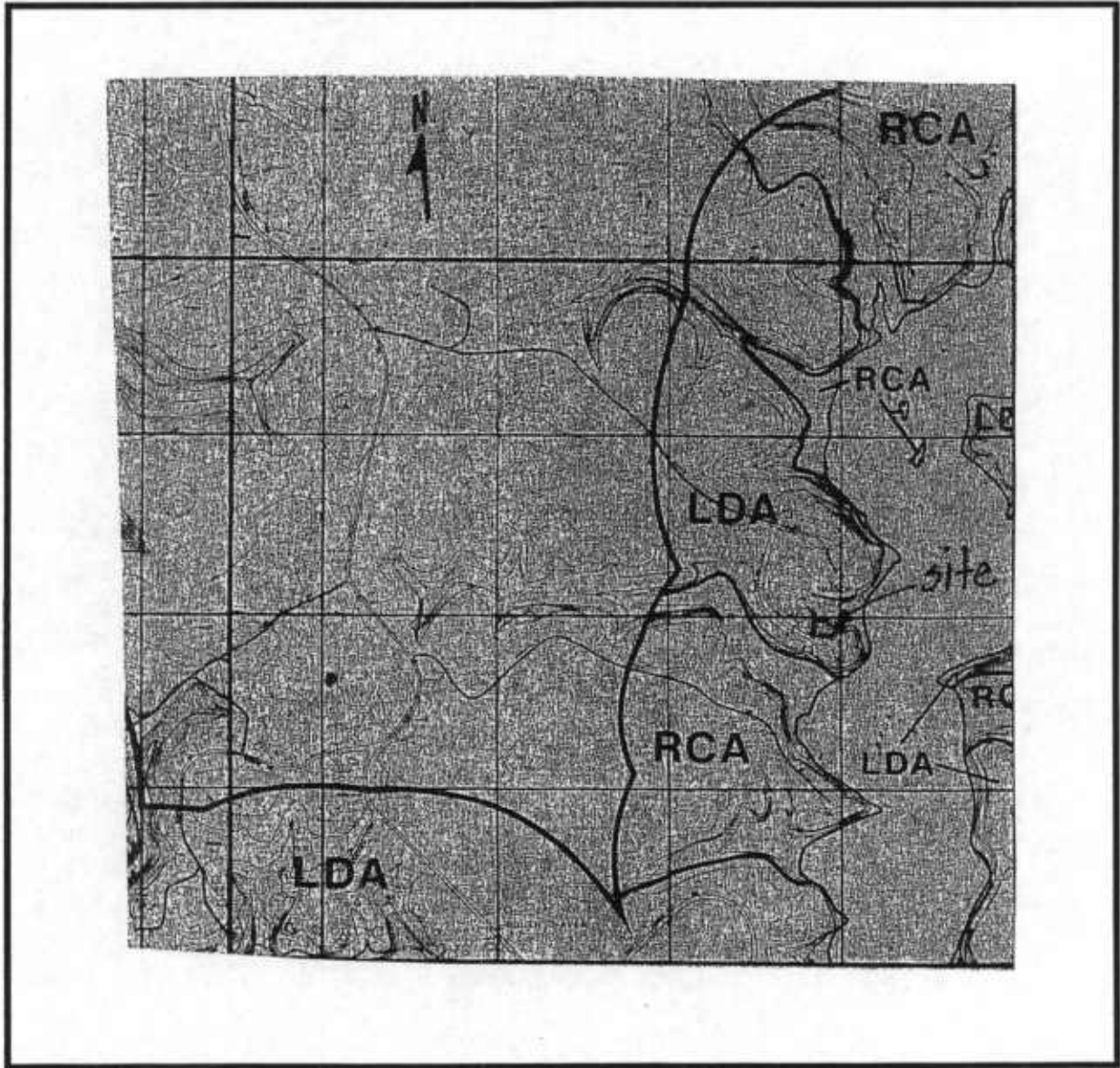
SOILS MAP

SCALE: 1" = 20,000"

South River Manor Lots 52 & 53

PREDOMINANT SOILS

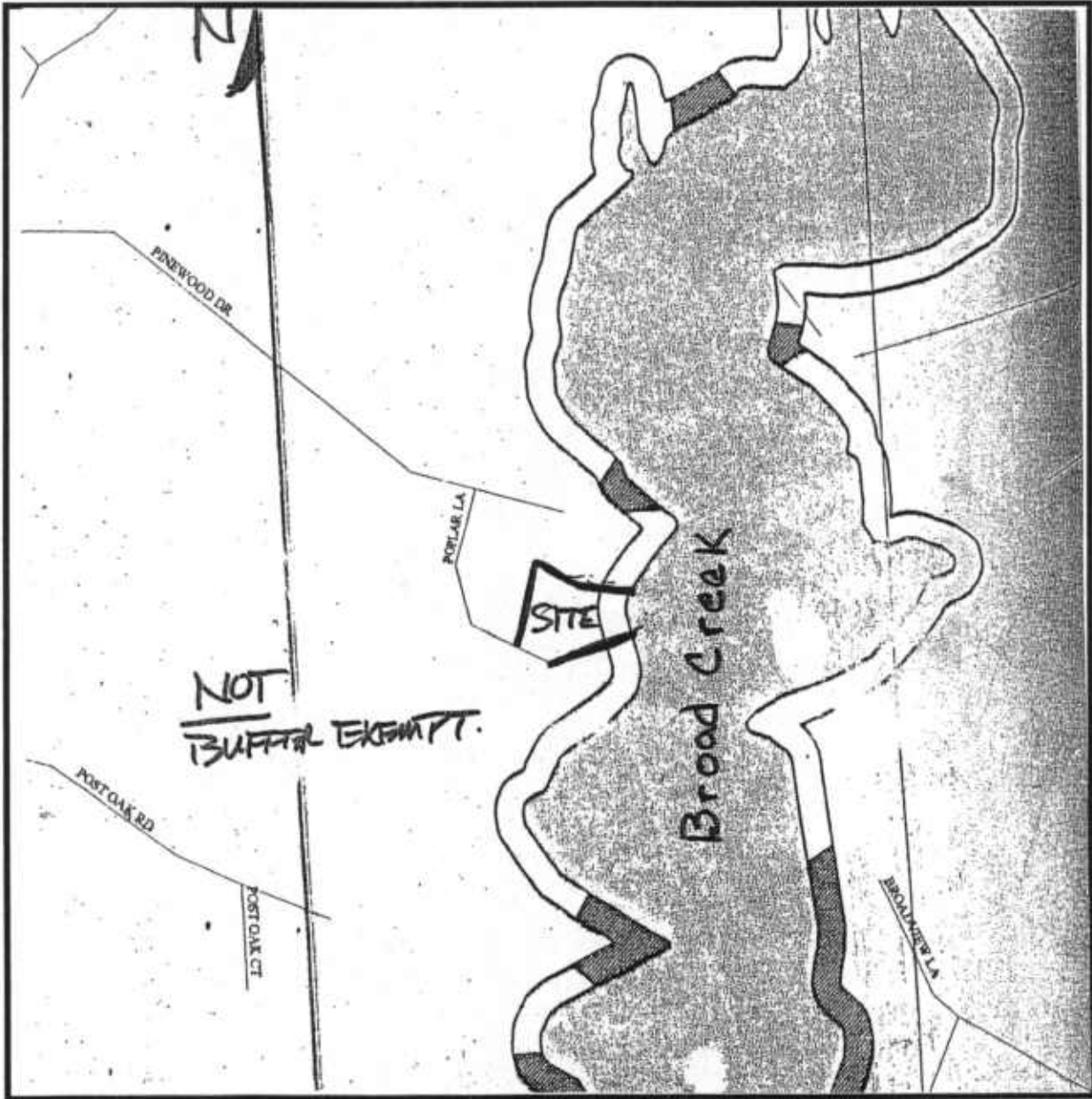
- AuB Annapolis-Urban land complex (0-5%)
- AsF Annapolis fine sandy loam (25-40%)



CRITICAL AREA MAP #19

SCALE: 1" = 1000'

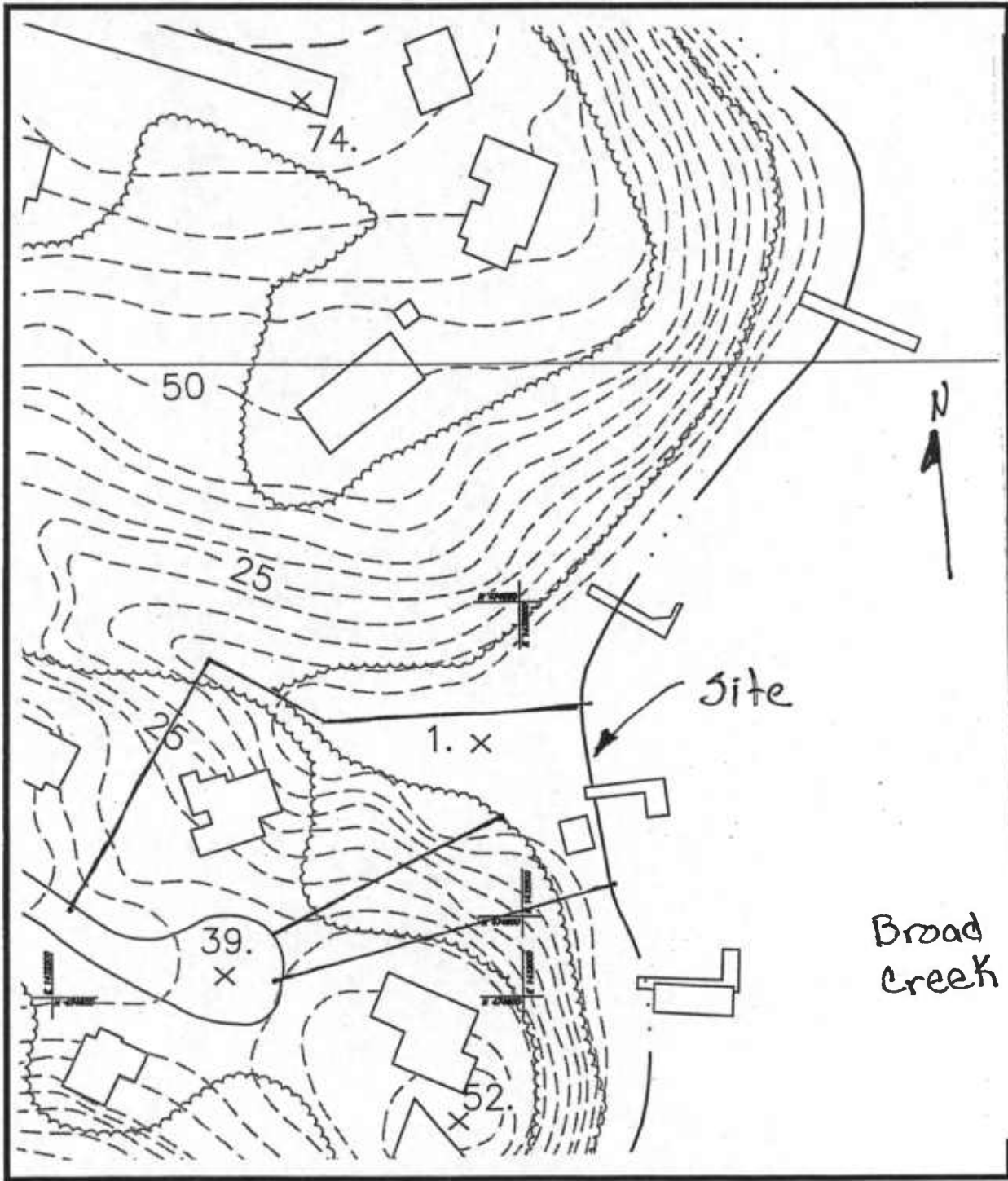
South River Manor Lot 52 & 53



BUFFER EXEMPTION MAP

SCALE: 1" = 600'

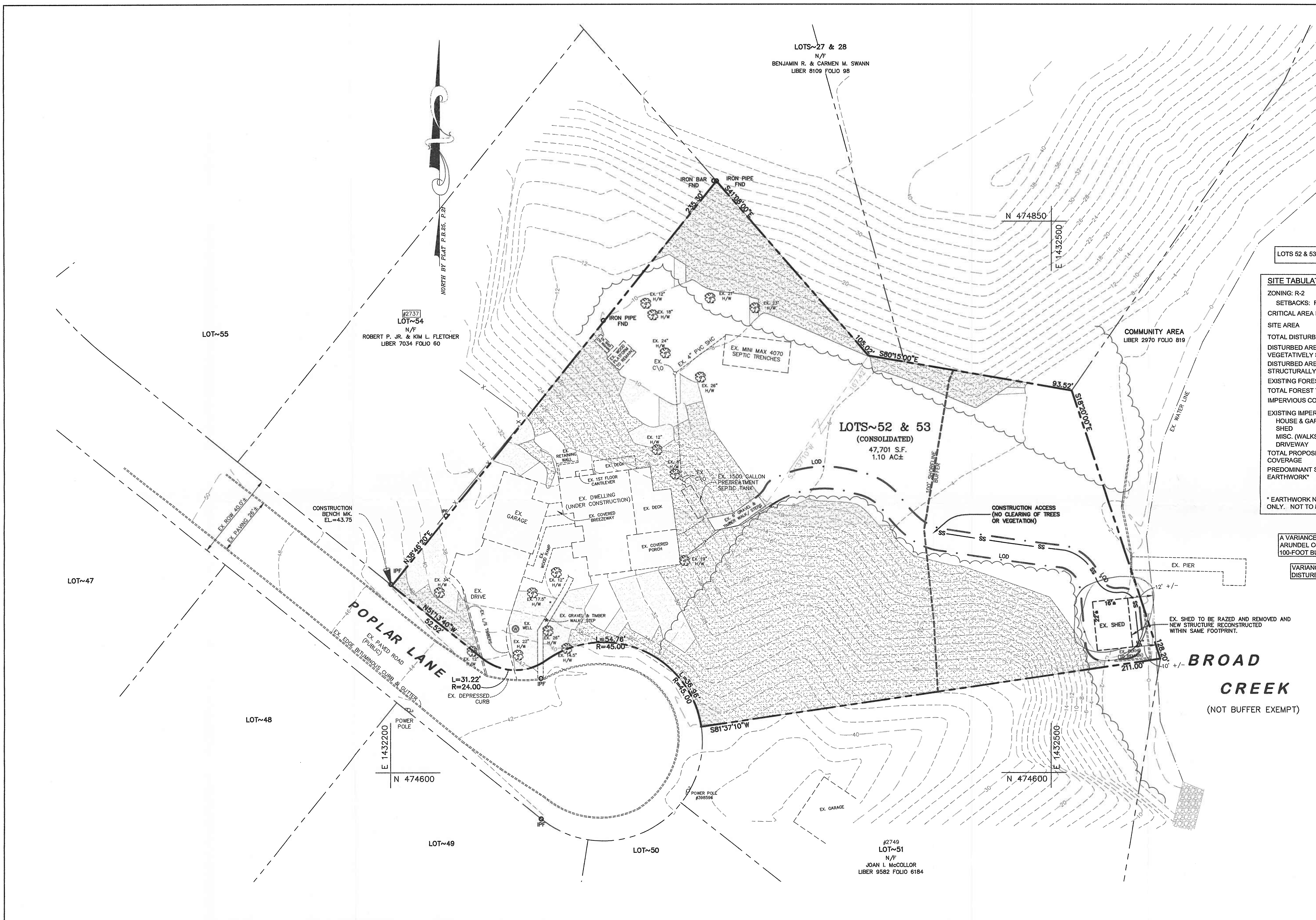
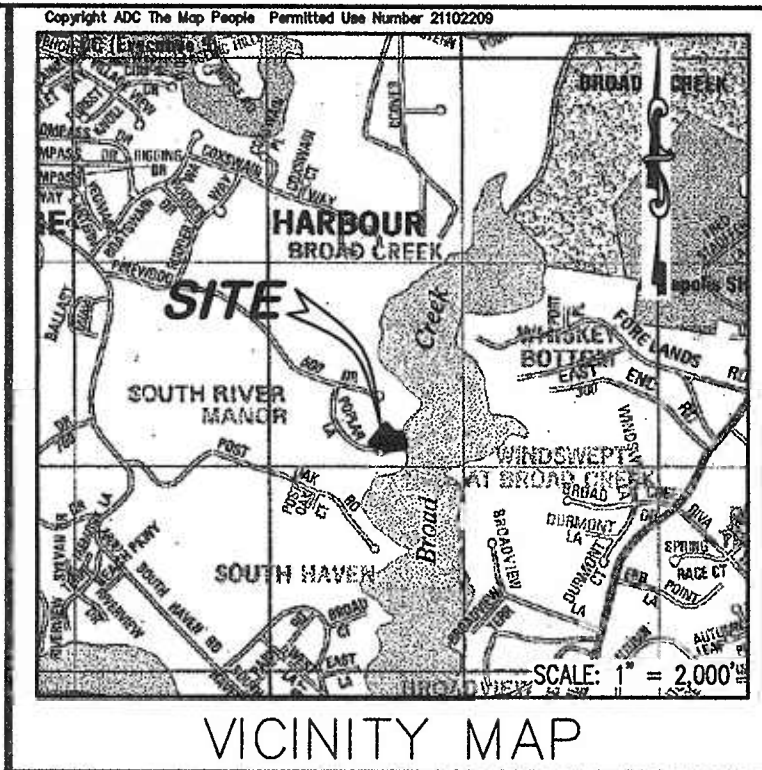
South River Manor Lots 52 & 53



TOPOGRAPHY MAP

SCALE: 1" = 200'

South River Manor Lots 52 & 53



SITE TABULATIONS

ZONING:	R-2
SETBACKS:	FRONT=30', REAR=25', SIDE=7' MIN., COMB. 20'
CRITICAL AREA DESIGNATION	LDA (NOT BUFFER EXEMPT)
SITE AREA	47,701 SF OR 1.10 AC
TOTAL DISTURBED AREA	2,518 SF OR 0.06 AC
DISTURBED AREA TO BE VEGETATIVELY STABILIZED	2,162 SF OR 0.05 AC
DISTURBED AREA TO BE STRUCTURALLY STABILIZED	356 SF OR 0.01 AC
EXISTING FOREST ON SITE	11,108 SF OR 0.26 AC
TOTAL FOREST TO REMAIN	11,108 SF OR 0.26 AC
IMPERVIOUS COVERAGE ALLOWED	5,445 SF OR 0.13 AC
EXISTING IMPERVIOUS COVERAGE	4,202 SF OR 0.10 AC
HOUSE & GARAGE	2,792 SF
SHED	350 SF
MISC. (WALKS, WALLS, ETC.)	279 SF
DRIVEWAY	775 SF
TOTAL PROPOSED IMPERVIOUS COVERAGE	4,202 SF OR 0.10 AC
PREDOMINANT SOIL TYPE	Annapolis Urban Land Complex
EARTHWORK*	CUT = 13 CY FILL = 0 CY EXPORT = 13 CY

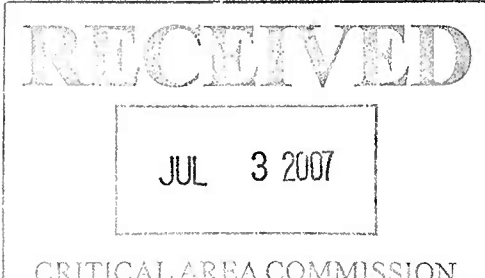
* EARTHWORK NUMBERS ARE FOR GRADING PERMIT SUBMITTAL ONLY. NOT TO BE USED FOR BID PURPOSES.

A VARIANCE IS REQUESTED TO ARTICLE 18-13-104 OF THE ANNE ARUNDEL COUNTY CODE FOR DEVELOPMENT WITHIN THE 100-FOOT BUFFER TO TIDAL WATERS.

VARIANCE NO. 2005-0489-V APPROVED FEB. 22, 2006, FOR DISTURBANCE TO STEEP SLOPES

LEGEND

EXISTING CONTOUR	16
PROPOSED CONTOUR	16
SUPER SILT FENCE	SS SS SS
LIMIT OF DISTURBANCE	---
STEEP SLOPES - ≥15%	□
TREE LINE	○



DESIGNED: MWE	DRAWN: BTB
ORIG. DATE: 5/2/07	
MODIFIED BY/DATE: 5/7/07	
CADD DWG #: SC04807-CRAB-SHED-V	
DSA PROJECT #: SC04807	

REVISIONS TO APPROVED PLANS			
No.	DATE	BY	DESCRIPTION

DRUM, LOYKA & ASSOCIATES, LLC
 CIVIL ENGINEERS—LAND SURVEYORS
 209 WEST STREET, SUITE 203
 ANNAPOLIS, MARYLAND 21401
 410-280-3122

OWNER
JEROME & PATRINA CLARK
 2741 POPLAR LANE
 ANNAPOLIS, MD 21401

VARIANCE PLAN~CRAB~SHED
SOUTH RIVER MANOR, LOTS~52 & 53
 2741 POPLAR LANE
 TAX MAP 50 TAX ACCOUNT #02-754-90011309
 GRID 10 PARCEL 29 2ND DISTRICT
 ANNE ARUNDEL COUNTY, MARYLAND

SCALE: 1"=20' DATE: 6/1/07 PROJ. NO: SC04807 SHEET 1 OF 1

P:\S\18804\Crab Shed\18804-V-Crab Shed.dwg, Variance, 04/20/07 10:38:39 AM

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/

January 17, 2006

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

RE: Variance 2005-0489-V Jerome and Patrina Clark

Dear Ms. Plociennik:

Thank you for providing information on the above referenced variance request. The applicant is requesting a variance to permit the construction of a dwelling, porch and deck on the existing dwelling footprint and the construction of wood ramp, breezeway, garage, driveway, well, and septic drain field with disturbance to steep slopes. The property is currently designated as Limited Development Area (LDA), and is developed with a single-family dwelling, decks, walkway, well, and septic system.

Provided that the property is properly grandfathered, this office does not oppose a variance to permit the construction of the dwelling and associated improvements; however, the impacts must be minimized and the variance the minimum necessary. Based on the site plan, we have the following comments.

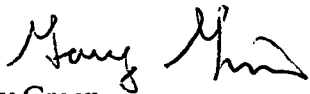
- 1) As stated on the site plan, steep slopes encumber most of the property.
- 2) The property is 47,701 square feet (1.10 acres) and the applicant proposes a total of 4,389 square feet of impervious surface coverage. 5,079 square feet of impervious surface exists on the site. The amount of impervious surface allowed on the site is 7,155 square feet or 15%. The amount of ground disturbance is 9,170 square feet.
- 3) The application indicates that the site contains 17,913 square feet of vegetation with no trees or vegetation to be removed. The site plan clearly indicates that three trees will be removed for the proposed driveway. The applicant must clarify how many trees or forest vegetation will be removed.

Ms. Ramona Plociennik
Variance 2005-0489-V Jerome and Patrina Clark
January 17, 2006
Page 2

- 4) Mitigation, at a ratio of 3:1 for disturbance within the Buffer should be required. Plantings consisting of native trees and shrubs, should be accommodated on the site to the extent possible.
- 5) Stormwater from dwelling and driveway should be directed to stable vegetated outfalls away from steep slopes to provide water quality benefits on the site.

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,



Gary Green
Environmental Analyst
cc: AA0008-06

AA8-06

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 2005-0489-V

IN RE: JEROME AND PATRINA CLARK

SECOND ASSESSMENT DISTRICT

DATE HEARD: FEBRUARY 16, 2006

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

PLANNER: **PATRICIA A. COTTER**

RECEIVED

FEB 23 2006

CRITICAL AREA COMMISSION
Chesapeake & Atlantic Coastal Bays

DATE FILED: FEBRUARY 22, 2006

PLEADINGS

Jerome and Patrina Clark, the applicants, seek a variance (2005-0489-V) to allow a dwelling and septic system with disturbance to steep slopes on property located along the north side of Poplar Lane, east of Pinewood Drive, 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. Mark Evans, the applicant's engineering consultant, 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

The applicants own a single-family residence with a street address of 2741 Poplar Lane, in the subdivision of South River Manor, Annapolis. The property comprises 1.10 acres and is zoned R-2 residential with a Chesapeake Bay Critical Area designation as Limited Development Area (LDA). This is a waterfront lot on Broad Creek. The applicants seek to raze the existing dwelling, followed by the

construction of a new dwelling, including waterfront deck and covered porch and rear garage addition, attached via a breezeway. The project disturbs steep slopes.

Anne Arundel County Code, Article 17, Section 17-8-201 prohibits disturbances on slopes of 15 percent or greater in the LDA. Accordingly, the applicants request a variance to disturb steep slopes.

Patricia A. Cotter, a planner with the Office of Planning and Zoning, testified that the property is irregular in shape and characterized by extensive steep slopes. The existing dwelling impacts areas of steep slopes. The applicants have revised the site plan to relocate the garage, narrow the driveway and cantilever a deck addition in the north façade. As a result, the slope disturbance is limited to a corner of the waterside covered porch addition and a small area along the east side of the driveway. More particularly, the limits of disturbance have been reduced from 9,170 square feet to 8,400 square feet. And, impervious coverage has been reduced from 5,079 square feet to 4,202 square feet. The witness summarized the agency comments. The Department of Health requested plan approval. The Critical Area Commission requested mitigation and control of stormwater. By way of conclusion, Ms. Cotter supported the application.

Mr. Evans provided a composite drawing showing the existing and proposed footprints. With the exception of the garage wing, they are in large measure the same. The garage is not located on steep slopes. The variance for the septic system is limited to a pipe that crosses steep slopes. The witness also

indicated that the applicants have consolidated two lots (Lots 52 and 53) into a single site.

Ms. Clark testified that the applicants purchased the property in August 2004. The existing dwelling is beyond repairs.

Upon review of the facts and circumstances, I find and conclude that the applicants are entitled to conditional relief from the code. For this Critical Area property, due to the extent of the 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 redevelop 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 does not convey 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 and other conditions, the variance will not adversely impact Critical Area resources and harmonizes with the general spirit and intent of the program.

I further find that the variance to disturb steep slopes represents the minimum relief. The applicants are proposing substantial improvements; however, the area of additional slope disturbance is very minor. There was nothing to indicate that the granting of the variance would 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 Jerome and Patrina Clark, petitioning for a variance to allow a dwelling and septic system with disturbance to steep slopes; and

PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is this 22nd day of February, 2006,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicants are **granted** a variance to disturb steep slopes to permit a dwelling and septic system in accordance with the site plan.

The foregoing variance is subject to the following conditions:

1. No further expansion of the dwelling or accessory structures for storage are allowed.
2. The applicants shall provide mitigation at a ratio of 3:1 for disturbance in the buffer with plantings of native species onsite to the extent practicable.
3. Stormwater from the dwelling and driveway shall be directed to stable, vegetated outfalls away from steep slopes to provide water quality benefits.
4. 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 18-16-405(a) provides that a variance expires by operation of law unless the applicant obtains a building permit within eighteen months. Thereafter, the variance shall not expire so long as construction proceeds in accordance with the permit.

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

Chesapeake Bay Critical Area Report

South River Manor Lots 52 & 53

Tax Map 50, Grid 10, Parcel 29

Tax Account No. 02-754-90011309

02-754-90021008

Property Address: 2741 Poplar Lane
Annapolis, MD 21405

Property Owner & Variance Applicant: Jerome & Patrina Clark

Critical Area Designation: LDA **Zoning:** R2 **Lot Area:** 47,701 s.f.

Site Description

2741 Poplar Road is an irregular shaped property. The existing split-foyer dwelling is roughly 960 s.f. with five wood deck areas and a covered porch. The property is located between the northeast side of Poplar Lane and the west side of Broad Creek. The lot steeply slopes northward toward the southeast side and the northwest side of the property. It lies within the critical area with an LDA land use designation and is a waterfront lot.

Description and Purpose of Variance Request

The applicants propose to raze and remove the existing dwelling and construct a new single-family dwelling on the property, in the same location as the existing dwelling. The construction will require a variance to **Article 17-8-201** of the Anne Arundel County Code for development on slopes of 15% or greater in the LDA and RCA.

Vegetative Coverage

This property is densely forested in the steep slope regions. A lawn area goes from west to east towards Broad Creek, and has several mixed hardwoods surrounding the existing impervious area.

Impervious Coverage

The site currently has 5,079 s.f. of impervious coverage. The proposed impervious area for this property is 4,389 s.f. The proposed impervious coverage will not exceed the allowable impervious coverage of 7,155 s.f. The area to be disturbed by proposed work will roughly be 9,170 s.f., in order to remove and stabilize existing impervious area from the site.

Predominant Soils

The predominant soil types in the area are Annapolis-Urban land complex, 0 to 5 percent slopes (AuB) and Annapolis fine sand loam, 25 to 40 percent slopes (AsF). Both soil types are within the "C" Hydraulic Grouping.

RECEIVED

JAN 09 2000

CRITICAL AREA COMMISSION

Drainage and Rainwater Control

This property slopes southwest toward Poplar Lane and northwest toward the rear corner of the lot, neighboring lot 54. The existing building is moderate in size and basic in design. A stormwater management design will be proposed during the grading/building permit process to meet Anne Arundel County design criteria. An Anne Arundel County approved grading and sediment control plan with Maryland Department of the Environment soil erosion and sediment control devices will be utilized during the construction process to minimize impacts on water quality to the local and regional watersheds.

Conclusions – Variance Standards

The applicants propose to raze and remove the existing dwelling and construct a new dwelling with associated improvements. With the other requirements set at time of grading permit including reforestation, sediment controls, and stormwater management, the proposed development will not cause adverse impacts to fish, wildlife, or water quality in the Critical Area.

This report is based on a Variance Plan prepared by Drum, Loyka & Associates, LLC and dated December 2005 and a site survey by Drum, Loyka & Associates, LLC. Copies of which are attached to this report.

Reference:

ADC: The Map People, 2002 Anne Arundel County, Maryland, Street Map Book

Anne Arundel County Office of Planning & Zoning , 1988 Critical Area Map

Anne Arundel County Office of Planning & Zoning, 1995 Buffer Exemption Map

Anne Arundel County, Maryland; Chesapeake Bay Critical Area Mapping Program, 1988, Critical Area Map

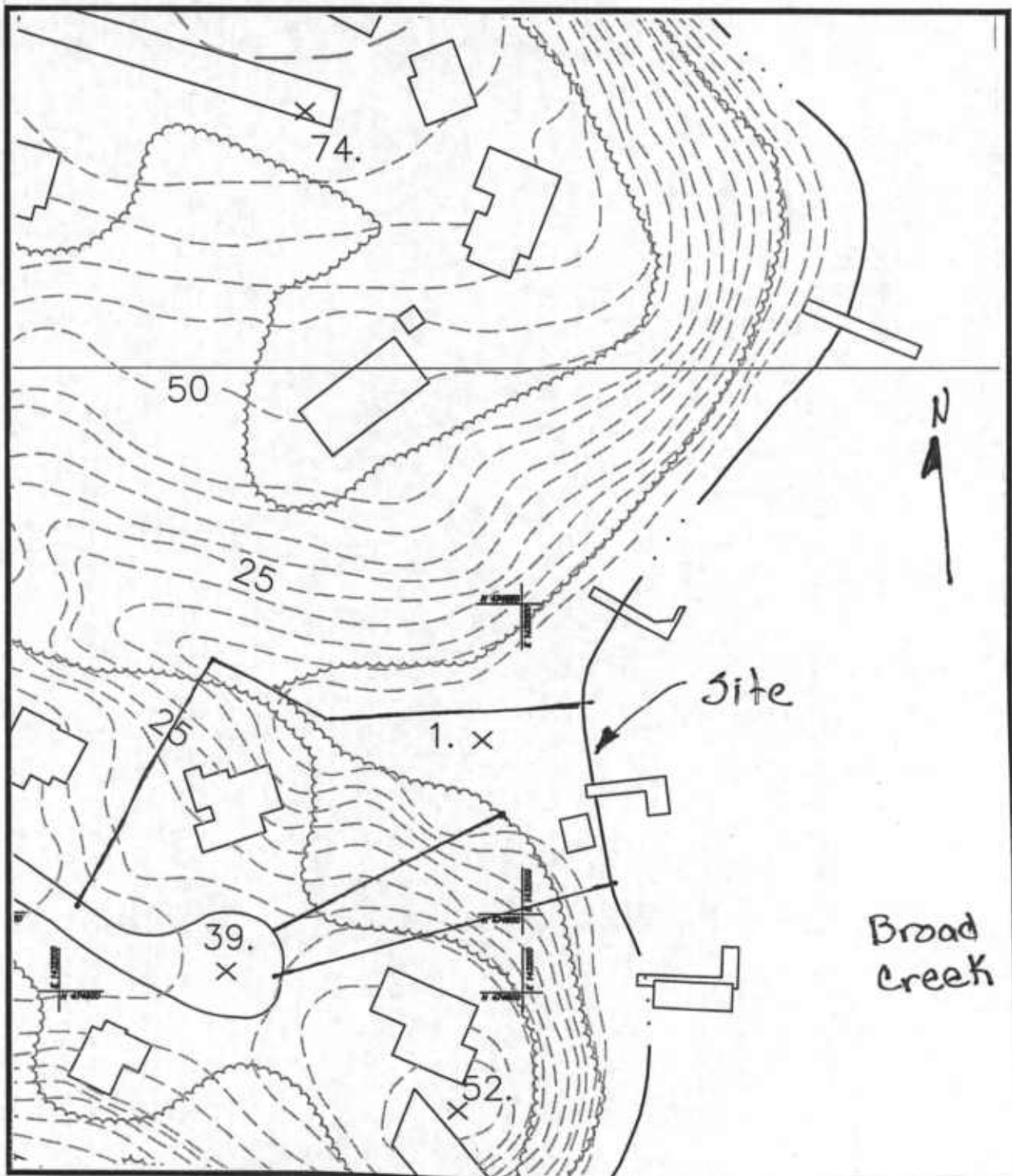
Federal Emergency Management Agency , 1985. Flood Insurance Rate Map

First American Real Estate Solutions, 2002, Realty Atlas: Anne Arundel County Maryland

Drum Loyka and Associates. 2005 Site Plan

U.S. Department of Agriculture, Natural Resource Conservation Service --2003 Soil Survey of Anne Arundel County Maryland.

State Highway Administration of Maryland, 1989. Generalized Comprehensive Zoning Map: Third Assessment District



TOPOGRAPHY MAP

SCALE: 1" = 200'

South River Manor Lots 53 & 54



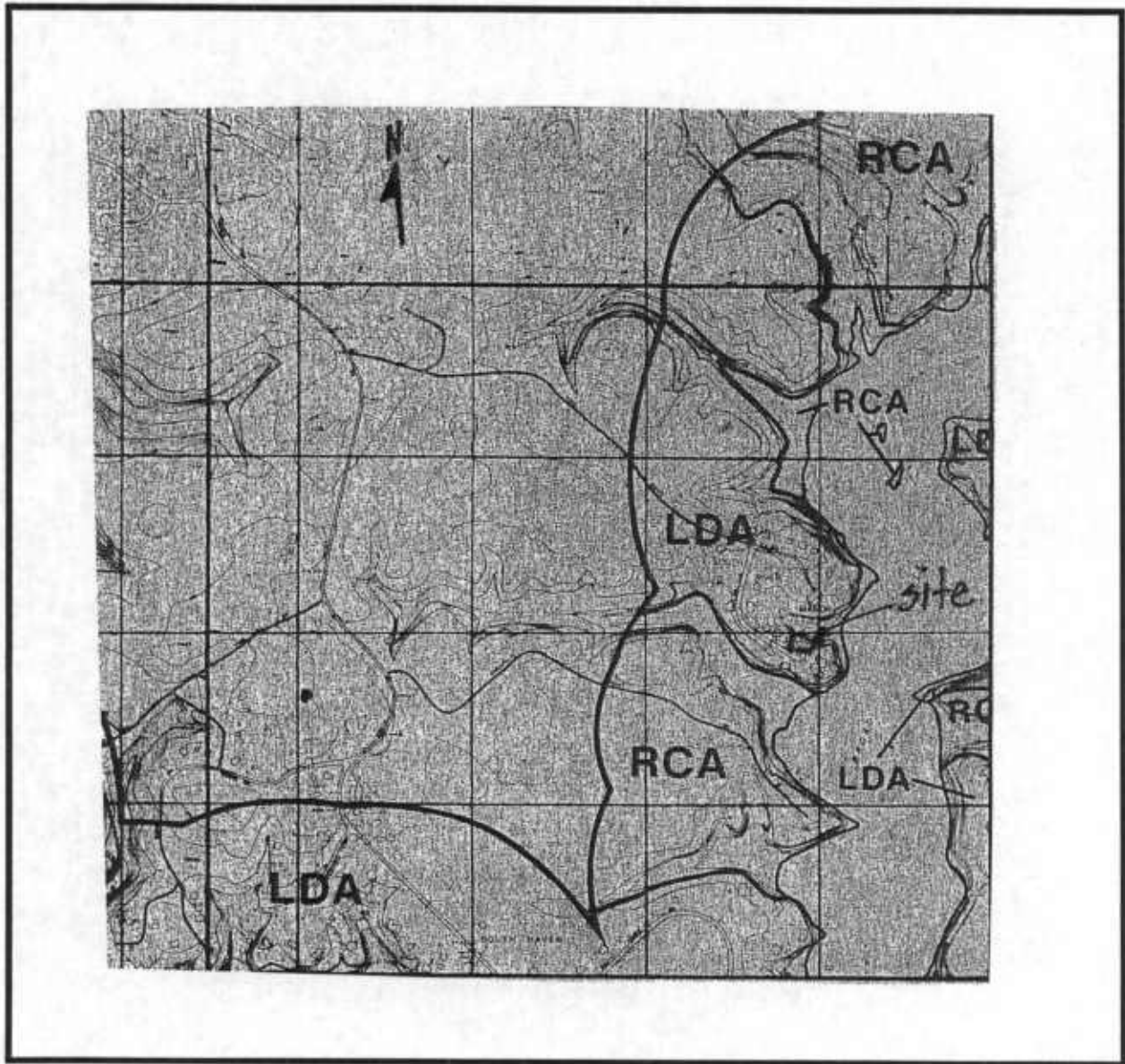
SOILS MAP

SCALE: 1" = 20,000"

South River Manor Lots 53 & 54

PREDOMINANT SOILS

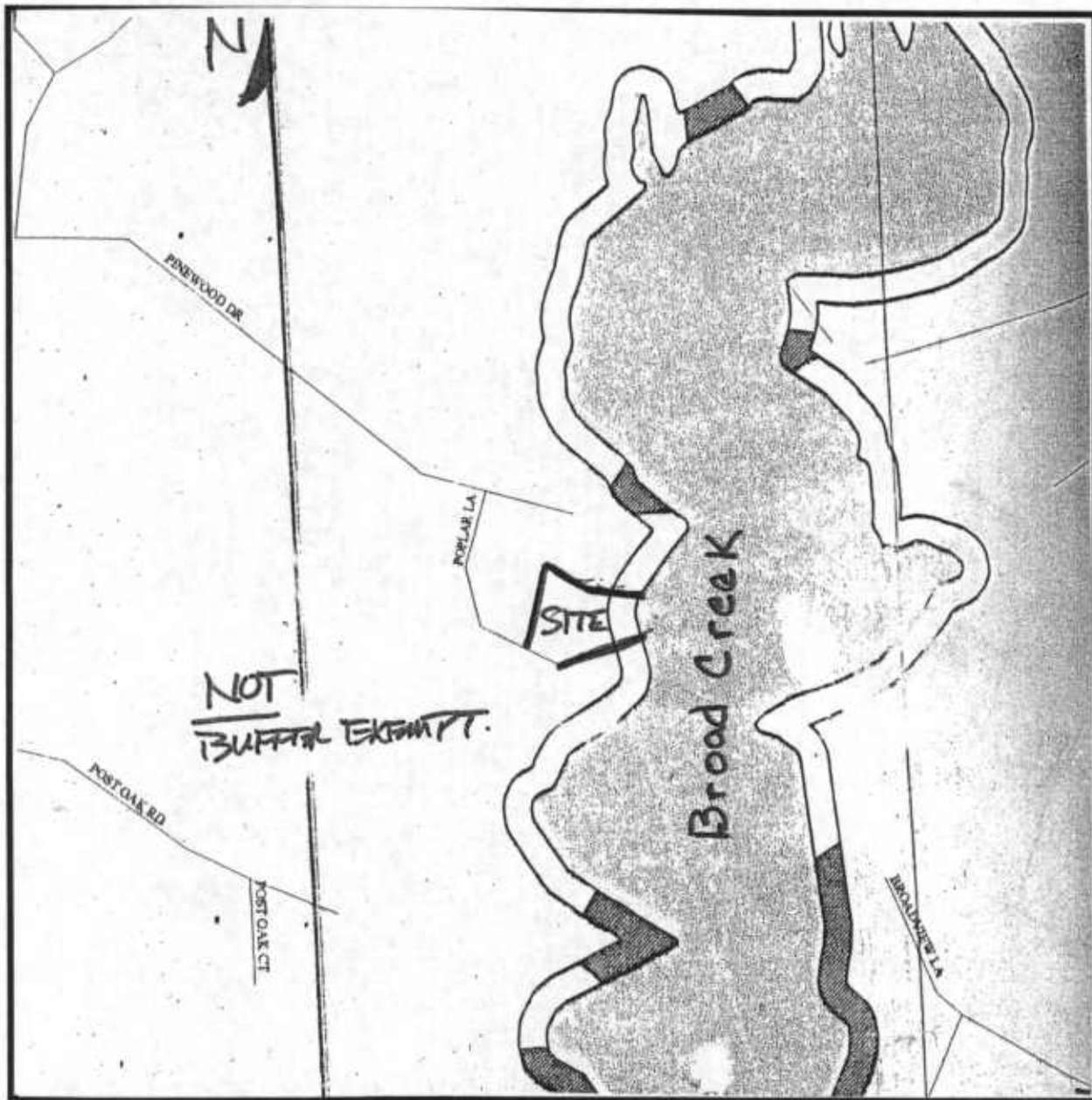
AuB	Annapolis-Urban land complex (0-5%)
AsF	Annapolis fine sandy loam (25-40%)



CRITICAL AREA MAP #19

SCALE: 1" = 1000'

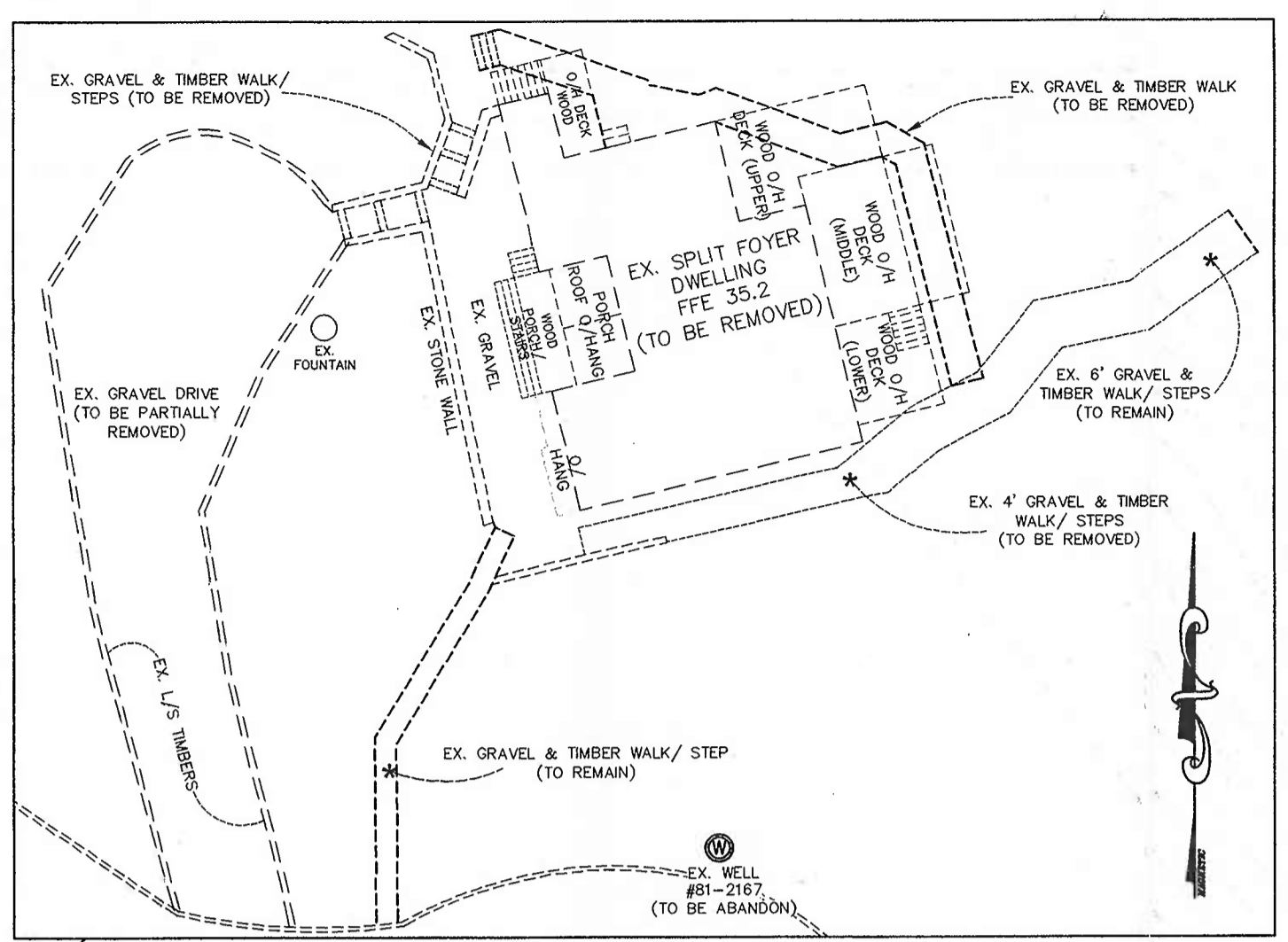
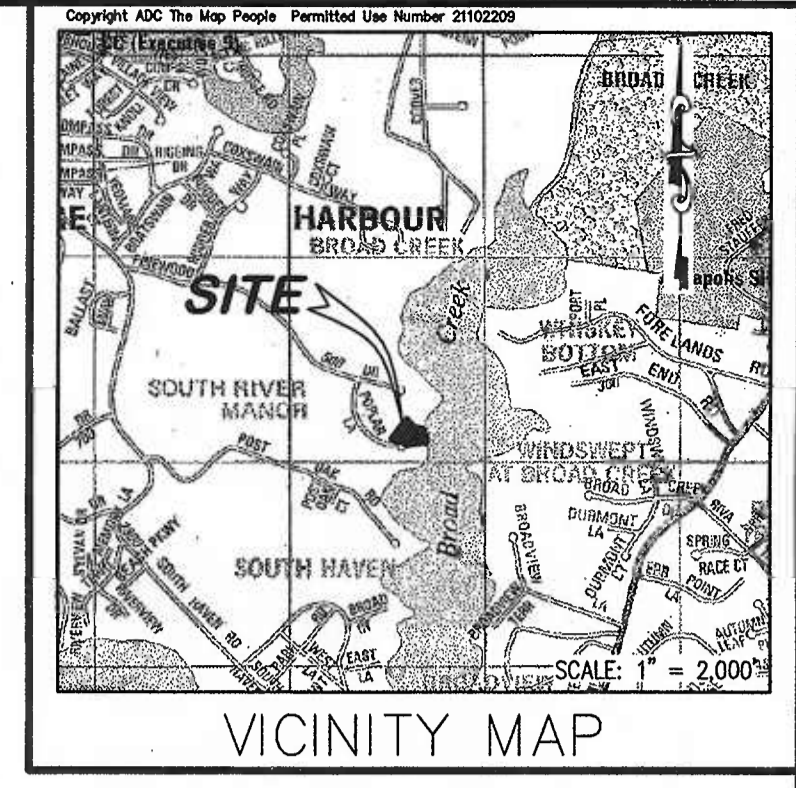
South River Manor Lot 53 & 54



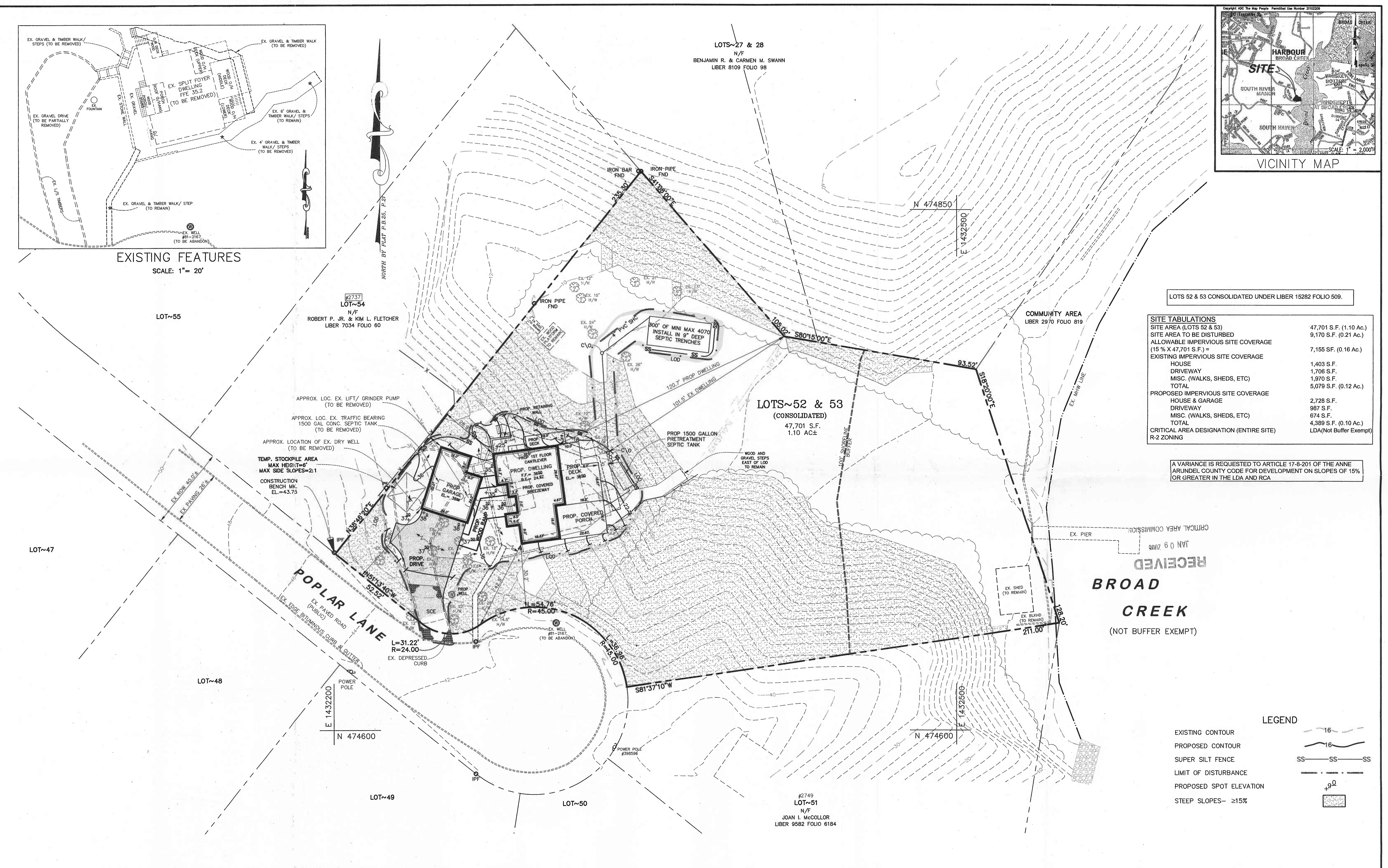
BUFFER EXEMPTION MAP

SCALE: 1" = 600'

South River Manor Lots 53 & 54



EXISTING FEATURES
SCALE: 1" = 20'



LOTS 52 & 53 CONSOLIDATED UNDER LIBER 15282 FOLIO 509.

SITE TABULATIONS	
SITE AREA (LOTS 52 & 53)	47,701 S.F. (1.10 Ac.)
SITE AREA TO BE DISTURBED	9,170 S.F. (0.21 Ac.)
ALLOWABLE IMPERVIOUS SITE COVERAGE (15% X 47,701 S.F.) =	7,155 SF. (0.16 Ac.)
EXISTING IMPERVIOUS SITE COVERAGE	
HOUSE	1,403 S.F.
DRIVEWAY	1,706 S.F.
MISC. (WALKS, SHEDS, ETC)	1,970 S.F.
TOTAL	5,079 S.F. (0.12 Ac.)
PROPOSED IMPERVIOUS SITE COVERAGE	
HOUSE & GARAGE	2,728 S.F.
DRIVEWAY	987 S.F.
MISC. (WALKS, SHEDS, ETC)	674 S.F.
TOTAL	4,389 S.F. (0.10 Ac.)
CRITICAL AREA DESIGNATION (ENTIRE SITE)	LDA(Not Buffer Exempt)
R-2 ZONING	

A VARIANCE IS REQUESTED TO ARTICLE 17-8-201 OF THE ANNE ARUNDEL COUNTY CODE FOR DEVELOPMENT ON SLOPES OF 15% OR GREATER IN THE LDA AND RCA

RECEIVED
BROAD CREEK
(NOT BUFFER EXEMPT)

LEGEND

EXISTING CONTOUR	16
PROPOSED CONTOUR	16
SUPER SILT FENCE	SS — SS — SS
LIMIT OF DISTURBANCE	---
PROPOSED SPOT ELEVATION	90
STEEP SLOPES - ≥15%	[Hatched Box]

DESIGNED: MWE	DRAWN: NCT
ORIG. DATE: 11/23/04	
MODIFIED BY/DATE: amd 12/27/05	
CADD DWG #: SL18604B	
DSA PROJECT #: SL18604	

REVISIONS TO APPROVED PLANS			
No.	DATE	BY	DESCRIPTION

DRUM, LOYKA & ASSOCIATES, LLC
 CIVIL ENGINEERS—LAND SURVEYORS
 209 WEST STREET, SUITE 203
 ANNAPOLIS, MARYLAND 21401
 410-280-3122

OWNER
JEROME & PATRINA CLARK
 2741 POPLAR LANE
 ANNAPOLIS, MD 21401

VARIANCE PLAN
SOUTH RIVER MANOR, LOTS~53 & 54
 2741 POPLAR LANE
 TAX ACCOUNT #02-754-90011309
 TAX MAP 50 GRID 10 PARCEL 29 2ND DISTRICT
 ANNE ARUNDEL COUNTY, MARYLAND

SCALE: 1"=20' DATE: 12/27/05 PROJ. NO: SL18604 SHEET 1 OF 1

P:\SL18604\Cadd\SL18604.dwg\variance.dwg, Variance, 12/27/2005 11:00:11 AM