

AA 257-07 BR & WT Properties
VAR 0129

S1829-6254



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

1804 West Street, Suite 100, Annapolis, Maryland 21401

(410) 260-3460 Fax: (410) 974-5338

www.dnr.state.md.us/criticalarea/

May 3, 2007

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

Re: 2007-0129 BR & WT Properties

Dear Ms. Schappert:

Thank you for providing information on the above referenced variance. The applicant is requesting a variance to allow a dwelling with less setback and buffer to a non-tidal wetland than required. The total area of the site is 10,000 square feet (.22 acres), with 6000 square feet located in a Limited Development Area (LDA) and 4,000 square feet located in a Resource Conservation Area (RCA). The site is completely forested, and a non-tidal wetland is located on the site. A permit to impact the wetlands has been acquired from the Maryland Department of the Environment (MDE).

The applicant proposes to build a single family residence with a driveway and wood deck. A total of 4,400 square feet of forest will be cleared (44% of the site), with 2,105 square feet of forested woodland replanted. Wetland impacts are being replaced at a rate of 2:1 on the site. The total amount of impervious surface on the site will be 2,105 feet, or 21.05%. This falls below the 31.25% limit allowed in the Critical Area.

Based on the information provided, we do not oppose this variance for a dwelling and less setbacks. However, we do have the following comment on the project:

- Please ensure that the applicant submits a copy of the MDE non-tidal wetlands permit.
- Currently, the applicant plans to replace 2,105 square feet of the total 4,400 square feet of forest removed. This does not meet the Critical Area forest mitigation requirements. As stated in the Critical Area and County Code, removal of over 30% of forest cover on a site within the Critical Area requires replanting at a ratio of 3:1; therefore, the remaining mitigation must be performed offsite, or a fee in lieu must be paid.
- Please have the applicant show the LDA and RCA designation line on the parcel.

- We recommend that the footprint on this site be reduced to further minimize impacts to the non-tidal wetlands.

Thank you for the opportunity to provide comments on this variance request. 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. If you have any additional questions please contact me at (410) 260-3483.

Sincerely,



Nick Kelly

Natural Resource Planner

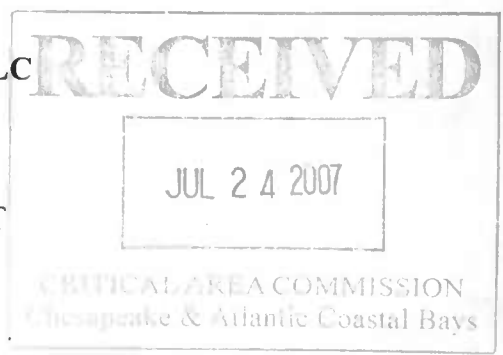
AA 257-07

257-07

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 2007-0129-V

IN RE: BR & WT PROPERTIES, LLC



SECOND ASSESSMENT DISTRICT

DATE HEARD: JUNE 19, 2007

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

PLANNER: **PATRICIA A. COTTER**

DATE FILED JULY 18th, 2007

PLEADINGS

BR & WT Properties, LLC the applicant, seeks a variance (2007-0129-V) to allow a dwelling with less buffer than required on property located along the southwest side of Arundel on the Bay Road, northwest of Booker Road, Annapolis.

PUBLIC NOTIFICATION

The hearing notice was posted on the County's web site in accordance with the County Code. The file contains the certification of mailing to community associations and interested persons. Each person designated in the application as owning land that is located within 175 feet of the property was notified by mail, sent to the address furnished with the application. Brandon Trevillian 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 unimproved property with a street address of 3336 Arundel on the Bay Road, in the Oyster Harbor subdivision, Annapolis. The property comprises 10,000 square feet and is zoned R2 residential with a Chesapeake Bay Critical Area designation as Limited Development Area (LDA). The request is to construct a single-family dwelling [34 by 54 feet, inclusive of rear deck addition (10 by 34 feet)] in nontidal wetlands.

Anne Arundel County Code, Article 17, Section 17-8-502 proscribes disturbance of habitat protection areas. Accordingly, the proposal requires a variance to disturb nontidal wetlands.

Patricia A. Cotter, a planner with the Office of Planning and Zoning, testified that the property is below the minimum area and width for the district and entirely nontidal wetlands. While a variance to disturb nontidal wetlands is needed, Ms. Cotter questioned the extent of the relief. By reducing the size of the dwelling, both the disturbance to nontidal wetlands and the clearing would be reduced.¹ The proposed dwelling is larger than the adjacent dwelling to the west and the dwelling across Arundel on the Bay Road. The witness summarized the agency comments. The Chesapeake Bay Critical Area Commission suggested reducing the footprint of the dwelling. The Commission also requested mitigation at a ratio of 3:1. By way of ultimate conclusion, Ms. Cotter opposed the application as filed but supported a variance for a dwelling with a smaller footprint that reduces clearing to 30 percent or less.

Matthew Forgen, the applicant's engineering consultant, testified that the clearing is a function of both the front setback as well as a 10-foot building envelope around the dwelling. The change suggested by Ms. Cotter would reduce

¹ Ms. Cotter initially suggested that the clearing (4,400 square feet) exceeded the allowance of 30% under Section 17-8-601(b). However, the limitation of 30% does not apply to lots of one-half acre or less in existence on or before December 1, 1985. Rather, the clearing allowance for this property is under Section 17-8-601(b): "the minimum necessary to accommodate a house, septic system, driveway, and reasonable amount of yard, but the clearing may not exceed 6,534 square feet."

the long dimension of the dwelling to 30 feet, inclusive of 10 feet for the rear deck addition.²

William Trevillian testified that the dwelling to the west is further from the road with greater clearing than this proposal. The applicant's design incorporates a two-car garage in the basement with living space elevated 10 feet above the FEMA floodplain. The design is consistent with other 50-foot lots in the neighborhood. Finally, the applicant has been assessed \$9,695 for 7,921 square feet of wetlands mitigation by the Maryland Department of the Environment (MDE).

Area resident John Boris testified that stormwater runoff from the road floods the property. The witness submitted several photographs showing the condition.

By way of rebuttal, Mr. Forgen testified that the runoff will continue to drain to the nontidal wetlands after the installation of side swales and stormwater management plantings.

I visited the site and the neighborhood. This is a heavily vegetated lot that is fairly level with the road in an older neighborhood. The majority of the homes are modest in size, with one or two floors. But there are a few large, three-story homes. On the same side of the street, the homes to the west are the same distance or further from the road than the proposed dwelling, while the homes to the east

² Mr. Forgen also testified that he originally proposed 2:1 mitigation. Subsequently, he deleted the mitigation based on the review comment by the County's Environmental Section. The comment reads: "on a lot of one-half acre or less, mitigation for the woodland removal is no longer required."

are closer to the road. The homes across the street are also closer to the road than the proposed dwelling.

The standards for granting variances are contained in Section 18-16-305. Under subsection (b), for a property in the Critical Area, a variance to the Critical Area program requirements may be granted only after determining that (1) due to unique physical conditions, peculiar to the lot, a strict implementation of the program would result in an unwarranted hardship to the applicant; (2) a literal interpretation of the program will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area; (3) the granting of the variance will not confer on the applicant any special privilege that would be denied by the program to other lands within the Critical Area; (4) the variance request is not based on circumstances resultant of actions by the applicant and does not arise from conditions relating to land use on neighboring property; and (5) the granting of the variance will not adversely affect water quality or adversely impact fish, wildlife or plant habitat within the Critical Area and will be in harmony with the general spirit and intent of the program. Under subsection (c), any variance must be the minimum necessary to afford relief; and its grant may not alter the essential character of the neighborhood, substantially impair the appropriate use or development of adjacent property, or be detrimental to the public welfare.

Applying the facts to the law, I find and conclude that the applicant is entitled to modified, conditional relief to the code. For this Critical Area property,

due to the extent of the nontidal wetlands, which encompass the entire site, a strict application of the program would be an unwarranted hardship. Under a literal interpretation of the program, the applicant would be unable to develop the property with a single-family dwelling, a right commonly enjoyed elsewhere in the Critical Area. Conversely, the granting of some relief does not confer a special privilege that the program typically denies to other Critical Area lands. The need for some relief is not the result of the actions of the applicant or land use on neighboring property. Finally, with conditions, the grant of a modified variance will not adversely impact Critical Area assets and harmonizes with the spirit and intent of the program.

As is frequently the case, the more difficult question is to establish the minimum relief. In this case, the dwelling has a footprint of 1,836 square feet, including the rear deck addition (340 square feet). This is a substantial structure. It does not matter that there are other homes that are comparable in size in the neighborhood. After due consideration, I have reduced the footprint of the dwelling to 25 by 40 feet, inclusive of rear deck addition measuring 8 by 25 feet. The result is comparable to the outcome for a property the subject of recent decisions by the County Board of Appeals and this office. Compare, Case No. BA 129-05V (September 20, 2006) and Case No. 2007-0148-V (July 17, 2007). In Case No. BA 129-05V, the Board denied a variance to disturb nontidal wetlands and buffer for dwelling with a footprint measuring 27 by 40 feet. But in Case No. 2007-0148-V, this office approved a dwelling measuring 25 by 32 feet. I further

find that the granting of the modified variance will not alter the essential character of the neighborhood, substantially impair the 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 BR & WT Properties, LLC, petitioning for a variance to allow a dwelling with less 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 18th day of July, 2007,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicant is granted a **modified** variance to disturb nontidal wetlands for a dwelling measuring 25 by 40 feet, inclusive of rear deck addition measuring 8 by 25 feet. The approval is subject to the following conditions:

1. The site plan is revised to reduce the dwelling to 25 by 40 feet, inclusive of rear deck addition measuring 8 by 25 feet.
2. The site plan is revised to relocate the dwelling to the minimum front building restriction line (30 feet).
3. The limits of disturbance for construction shall be staked prior to the release of the building permit.
4. The applicant shall obtain a grading permit satisfactory to the Permit Application Center.

5. The applicant shall provide mitigation as determined by the Permit Application Center with plantings of native species onsite to the extent practicable.
6. The applicant shall provide stormwater control satisfactory to the Permit Application Center.
7. No further expansion of the dwelling is allowed and accessory structures are not allowed.
8. The conditions of the approval run with the land and shall be included in any contract of sale.

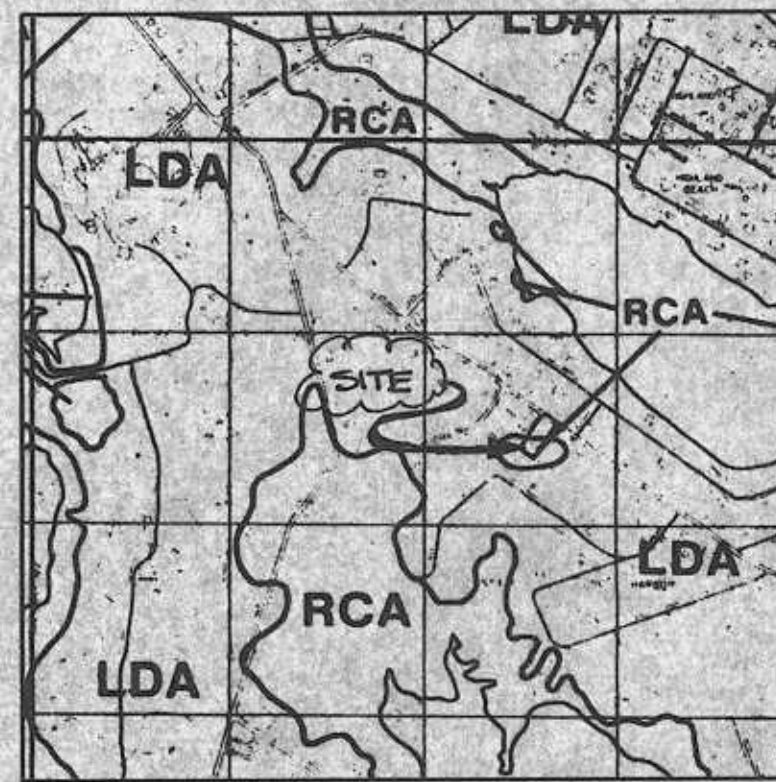

Stephen M. LeGendre
Administrative Hearing Officer

NOTICE TO APPLICANT

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

Further Section 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.



CRITICAL AREA MAP
SCALE: 1" = 1,000'



**DRIVEWAY SECTION
N.T.S.**

CRITICAL AREA CALCULATIONS ILDAI

- 1) Total site area: 10,000 s.f. or 0.230 AC.
- 2) Total impervious area allowed: 31.25% OF SITE = 3,125 S.F.
- 3) Total woods on site: 10,000 square feet
- 4) Total woods to be removed on site: 4,400 square feet
- 5) Total proposed impervious: House 1,504 s.f. 15% of the site
Driveway 600 s.f. 6% of the site
Walk: 87 s.f. 0.87% of the site
Total: 2,191 s.f. 21.87% of the site
- 6) Total wetlands to be disturbed on site: 4,400 square feet



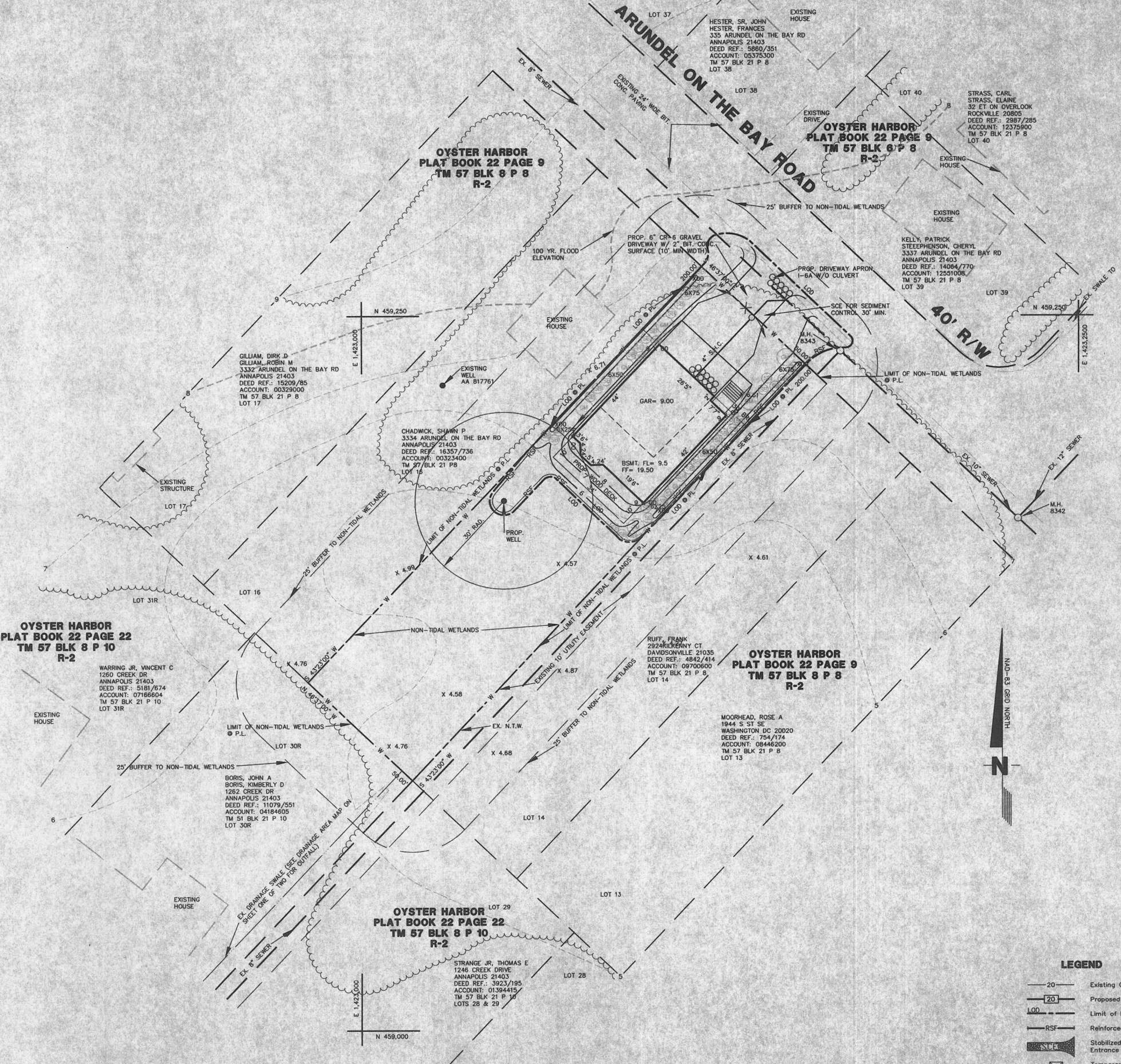
VICINITY MAP
SCALE: 1" = 2,000'

GENERAL NOTES:

1. THIS SITE CONSISTS OF 2.30 ACRES = 10,000 SQUARE FEET.
2. EXISTING ZONING R-2.
3. SETBACKS: FRONT: 30', SIDE: 7' REAR: 25'
4. EXISTING USE: VACANT
5. PROPOSED USE: SINGLE FAMILY DWELLING
6. PROPERTY ADDRESS: 3338 ARUNDEL ON THE BAY RD ANNAPOLIS MD 21403
7. OWNER: BR AND WT PROPERTIES LLC 7885 QUARTERFIELD ROAD SEVERN MD 21144
8. DEVELOPER: BR AND WT PROPERTIES LLC 7885 QUARTERFIELD ROAD SEVERN MD 21144
9. NO PROPERTY LINE SURVEY HAS BEEN MADE AT THIS TIME. IT IS THE RESPONSIBILITY OF THE CONTRACTOR TO OBTAIN THE LOCATION OF THE EXISTING UTILITIES PRIOR TO COMMENCEMENT OF ANY GRADING ACTIVITY.
10. PARKING SPACES REQUIRED AND PROVIDED: 2
11. PROPOSED DWELLING HEIGHT: 34.5'
12. PROPOSED DWELLING COVERAGE: 1,504 S.F. = 15% OF SITE

FLOOD NOTES

1. BUILDING PERMIT NUMBER: B02229831
2. BENCHMARK STATION: CONC. MON. 1170, EL. 11.74'
3. 100 YEAR FLOOD ELEVATION: 8.00'
4. SEE FLOOD INSURANCE RATE MAP PANEL 240008 0044C
5. LOWEST FLOOR ELEVATION: 8.00' FOR HOUSE
6. STRUCTURE TO BE BUILT ON POURED FOUNDATION
7. ALL ELECTRICAL OUTLETS TO BE ABOVE THE FIRST FLOOR ELEVATION AND PANEL BOX TO BE LOCATED 1' ABOVE F.F.
8. ALL ELECTRIC HEAT PANEL SHALL BE ABOVE ELEVATION: 9'
9. ALL PLUMBING FIXTURES SHALL BE ABOVE ELEVATION: 9'



SCALE: 1" = 20'

LEGEND

- 20- Existing Grade
- 20- Proposed Grade
- LOD Limit of Disturbance
- RSF Reinforced Sit Fence
- Stabilized Construction Entrance
- Temporary Stockpile Area
- x 4.61 Ex. ground elevation
- Limit of Non-Tidal wetlands

VARIANCE NOTE

WE ARE REQUESTING A VARIANCE TO ARTICLE 17 SECTION 17-8-503 TO ALLOW DISTURBANCE OF NON-TIDAL WETLANDS TO ALLOW THE CONSTRUCTION OF A SINGLE FAMILY DWELLING

SHEET 1 of 1

VARIANCE PLAN

**OYSTER HARBOR
LOT 15 BLOCK 8
SINGLE FAMILY DWELLING**

2nd DISTRICT ANNE ARUNDEL COUNTY, MARYLAND
SCALE: AS SHOWN FEBRUARY, 2006
TAX MAP 57 BLOCK 21 PARCEL 8
ZONING: R-2 ZIP CODE: 21403
GRADING PERMIT# G02011996

**M.A.F. &
ASSOCIATES, LLC**
526 HOODS MILL ROAD
WOODBINE MD. 21797
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FAX: 410-552-5546