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Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



Margaret G. McHale
Chair

Rcn 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 6, 2007

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

Re: 2007-0059-V

Dear Ms. Schappert:

I have received revised information for the above-referenced variance request to allow a dwelling with less setbacks and Buffer than required and with disturbance to slopes of 15% or greater. According to your office, this lot was deeded by residue parcel in 1927 and is properly grandfathered. This lot is located in expanded Buffer and is designated as a Resource Development Area (RCA). Based on the information provided, I have the following comments:

- The applicant has attempted to minimize the disturbance by reducing the square footage of the deck, the square footage of the driveway, by flipping the footprint of the house and moving it away, as far as possible, from the steep slopes and edge of tidal wetlands. Should the hearing officer deem that the footprint of the house be decreased, this would show further minimization on this lot.
- The applicant's engineer indicated during a phone conversation that pervious pavers will be used for the driveway. Although this office supports the use of pervious pavers, it is our understanding that the County no longer gives pervious credit to meet the impervious surface limitations.

This office does not oppose this variance request, but recognizes that this a very sensitive lot with steep slopes and tidal wetlands. We recommend that the applicant provide 3:1 mitigation for the disturbance in the Buffer in the form of native species. These plantings should be done in the area between the house and the tidal wetlands to help alleviate runoff issues, particularly as the applicant indicated that there are no

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Annapolis: (410) 974-2609 D.C. Metro: (301) 586-0450

Ms. Schappert

7/6/2007

Page 2 of 2

stormwater management facilities or devices on this lot; however, stormwater will be managed by plantings.

Thank you for the opportunity to comment. Please include this letter in your file and submit it as part of the record for variance. Please notify the Commission of the decision made in this case.

Sincerely,

A handwritten signature in cursive script, appearing to read "Julie", followed by a long horizontal flourish.

Julie Roberts
Natural Resources Planner

cc: AA 259-07



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

1804 West Street, Suite 100, Annapolis, Maryland 21401
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www.dnr.state.md.us/criticalarea/

May 1, 2007

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

Re: 2007-0059-V

Dear Ms. Schappert:

I have received the above-referenced variance request to allow a dwelling with less setbacks and Buffer than required and with disturbance to slopes of 15% or greater. According to your office, this lot was deeded by residue parcel in 1927. If the lot was recorded by deed but the subdivision was not recorded prior to December 1, 1985, it is not grandfathered and no variances should be issued. If the County determines that this lot is properly grandfathered, we recommend that the deck be eliminated, the footprint reduced, and the dwelling be pulled as close to the front lot line as permitted.

This application states that the proposed impervious surface constitutes only 5% of the total parcel, however, more than $\frac{3}{4}$ of the parcel is tidal wetlands. Absent a more detailed delineation, it is unclear how much of the tidal wetlands are State-owned versus private wetland. Even if one were to assume the entirety of the tidal wetland is private, only a small portion of the parcel is upland, which means the percent of the impervious cover in the upland is greater than 5%. Since the proposed dwelling will impact the Buffer and steep slopes, we recommend 3:1 mitigation.

Ms. Schappert

Page 2 of 2

5/1/2007

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

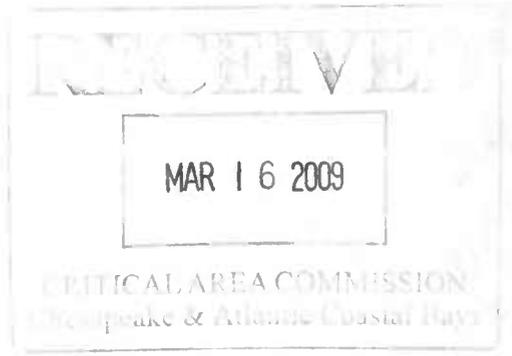
Sincerely,

A handwritten signature in black ink, appearing to read 'Julie Roberts', with a long, sweeping horizontal line extending to the right.

Julie Roberts

Natural Resources Planner

259-07



IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 2009-0016-V

NANCY STANSBURY

THIRD ASSESSMENT DISTRICT

DATE HEARD: MARCH 10, 2009

ORDERED BY:
DOUGLAS CLARK HOLLMANN, ADMINISTRATIVE HEARING OFFICER

PLANNER: JOHN R. FURY

DATE FILED: MARCH 12th, 2009

PLEADINGS

Nancy Stansbury, the applicant, seeks a variance (2009-0016-V) to allow an extension in the time required for the implementation and completion of a previously approved variance on property located along the north side of Sharps Point Road, west of Greenbury 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. Nancy Stansbury 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 that was the subject of a decision by this office in Case No. 2007-0059-V (August 6, 2007). The 2007 Order conditionally approved zoning variances to front and side yard setbacks, to disturbance to steep slopes, to the planted buffer requirement, and to disturbance in the 100-foot buffer, all to allow the applicant to construct a dwelling. There was no appeal. At the time of the approval, Anne Arundel County Code, Article 18, § 18-16-405(a) provided that a variance expires by operation of law unless a building permit is obtained within 18

months and construction proceeds in accordance with the permit. The approval was set to expire February 6, 2009, thus, the applicant filed a timely extension on January 23, 2009, for the requested relief.

A hearing was held on March 10, 2009. Evidence was presented that the applicant had modified the plans submitted at the 2007 hearing to meet the conditions set by the Order in that case. Furthermore, design issues and other factors have impeded the applicant's ability to obtain the necessary building permit within the required time period.

John Fury, a planner with the Office of Planning and Zoning, testified that his office has no objection to an extension. The Department of Health has no objection provided a plan is submitted and approved by their office. No other agency comments were received related to this request.

There was no other testimony in the matter.

Upon review of facts and circumstances, I find and conclude that the applicant is entitled to conditional relief from the code. In this regard, I adopt the findings and conclusions of the prior Order. There is no indication of any significant change in circumstances. Although the failure to move forward is not considered exceptional circumstances, failure to extend the variance would cause an unnecessary hardship on the applicant. Furthermore, this is the minimum necessary to afford relief. Therefore, I will grant the request. The approval incorporates the same conditions appended to the prior Order (2007-0059-V), with the further condition that the applicant obtain plan approval from the Department of Health.

ORDER

PURSUANT to the application of Nancy Stansbury, petitioning for a variance to allow an extension in the time required for the implementation and completion of a previously approved variance; and

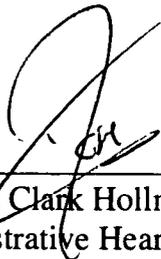
PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is this 12th day of March, 2009,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicant is **granted** a variance to extend the time to obtain a building permit until September 12, 2010 with completion in accordance with the permit.

The foregoing variance is subject to the following conditions:

1. The building permit is subject to the approval of the Department of Health.
2. The site plan is revised to reduce the footprint of the dwelling to 25 by 32 feet and to eliminate the deck addition.
3. The site plan is revised to reduce the limits of disturbance to 5 feet in the rear yard.
4. No further expansion of the dwelling is allowed and accessory structures are not allowed.
5. The applicant shall provide mitigation and stormwater management as determined by the Permit Application Center.

6. The Conditions of the Order run with the land and shall be included in any contract of sale.



Douglas Clark Hollmann
Administrative Hearing Officer

NOTICE TO APPLICANT

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

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

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

* **BEFORE THE**
*
* **COUNTY BOARD OF APPEALS**
*
* **OF ANNE ARUNDEL COUNTY**
*
* **CASE NO.: BA 15-99V**
* **(1998-0353-V)**
*
* **Hearing Date: May 1, 2008**
*

NANCY R. STANSBURY

Petitioner

**SECOND SUPPLEMENTAL
MEMORANDUM OF OPINION**

RECEIVED
DEC 15 2008
CRITICAL AREA COMMISSION
Chesapeake & Atlantic Coastal Bays

Summary of Pleadings

This matter is before this Board as a second remand from the Circuit Court of Anne Arundel County in Case No. C-2005-108134 after a review by the Court of Special Appeals. Therefore, this Second Supplemental Memorandum is offered pursuant to the direction of the Court.

This case had previously been the subject of a remand from the Circuit Court of Anne Arundel County in Case No. C-2000-63770.AA after a review by the Court of Special Appeals and the Court of Appeals. As part of the first case, the Court of Appeals determined that the acts of subdivision that created the subject parcel could not be utilized as acts amounting to a self-created hardship¹, which could preclude the grant of variances.

This appeal was originally taken from the conditional granting of variances² to permit the construction of a dwelling within the Critical Area, on steep slopes and with fewer setbacks and

¹ *Stansbury v. Jones*, 372 Md. 172 (2002).

² The zoning regulations have been repealed and reenacted into Article 18 of the Code pursuant to Council Bill 4-05. However, that Council Bill specifically excludes applications for special exceptions and variances filed on or before April 4, 2005, from its application. Therefore, we apply the standards as they existed prior to the effective date of Bill 4-05, being May 12, 2005.

less buffer than required. The property is located 23 feet along the east side of Pleasant Lake Road, 1,500 feet south of Cherry Road, Annapolis.

Summary of Evidence

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

Findings and Conclusions

Based on the two reviews of this case by the appellate courts, we believe that the issues relative to whether any hardship in this case is self-created or whether this lot is a legal, buildable parcel have been resolved in favor of the Petitioner. Therefore, neither of these issues need be further analyzed by this Board.

Having read the direction of the Circuit Court's Order vacating our prior decision in this case and remanding the matter for further consideration pursuant to the decision of the Court of Special Appeals, we now grant the Petitioner additional relief as to 13 of the 15 variances requested. Thus, allowing the Petitioner to improve the Reserve Parcel No. 2 she created some time ago.

The Anne Arundel County Code (the "Code"), Art. 28, § 2-107³ sets forth the standards for variances that this Board must apply to each of the Petitioner's requests. Since some of the variances pertain to the Critical Area Program and some pertain to the bulk regulations, we turn to each of them separately.

The Critical Area Variances

The Petitioner has requested relief from the following provisions of the Critical Area Program:

³ See, footnote 2.

- 1) A variance to develop within the buffer area (Article 28, Zoning, § 1A-103(e)(1));
- 2) A variance to allow impervious surface within the vegetated buffer (Article 28, Zoning, § 1A-103(e)(2));
- 3) A variance to remove trees within the buffer (Article 28, Zoning, § 1A-103(e)(3));
- 4) A 68 foot variance to the 100 foot tidal wetlands buffer (Article 28, Zoning, § 1A-104(a)(1));
- 5) A variance to protect certain amounts of forest (Article 28, Zoning, § 1A-104(a)(1));
- 6) A variance to permit development on slopes of 15% or greater (Article 28, Zoning, Title 1A-105(c)); and
- 7) A variance to permit a single family dwelling with a driveway and septic system, all of which to be constructed within the buffer (Article 28, Zoning, § 1A-105(f)).

All such Critical Area variances require the Petitioner to satisfy an extensive list of requirements set out in the Code. *See*, Art. 28, § 2-107(b).

(b) For a property located in the critical area or a bog protection area, a variance to the requirements of the County critical area program or bog protection program may be granted after determining that:

- (1) because of certain unique physical conditions, such as exceptional topographical conditions peculiar to and inherent in the particular lot, or irregularity, narrowness, or shallowness of lot size and shape, strict implementation of the County's critical area program would result in an unwarranted hardship to the applicant;
- (2) a literal interpretation of the Code of Maryland Regulations, ("COMAR"), Title 27, Subtitle 01, Criteria for Local Critical Area Program Development the County critical area program and related ordinances, or the County's bog protection program will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the critical area or bog protection area of the County;
- (3) the granting of a variance will not confer on an applicant any special privilege that would be denied by:
 - (i) COMAR, Title 27, Subtitle 01 or the County critical area program to other lands or structures within the County critical area; or
 - (ii) the County's bog protection program to other lands or structures within a bog protection area;

- (4) the variance request:
 - (i) is not based on conditions or circumstances that are the result of actions by the applicant; and
 - (ii) does not arise from any condition relating to land or building use, either permitted or non-conforming, on any neighboring property; and
- (5) the granting of the variance:
 - (i) 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
 - (ii) will be in harmony with the general spirit and intent of the County critical area program or bog protection program.
- (c) A variance may not be granted under subsection (a) or (b) of this section unless the Board finds that:
 - (1) the variance is the minimum variance necessary to afford relief;
 - (2) the granting of the variance will not:
 - (i) alter the essential character of the neighborhood or district in which the lot is located;
 - (ii) substantially impair the appropriate use or development of adjacent property;
 - (iii) be contrary to acceptable clearing and replanting practices required for development in the critical area or bog protection area; or
 - (iv) be detrimental to the public welfare.

The requirements established for variances within the Critical Area are exceptionally difficult to overcome and an applicant for variances to the Critical Area Program must meet each and every one of the variance requirements of the Code. *See id.* If an applicant fails to meet even one of the criteria, the variance must be denied. In the instant case, we find that the Petitioner has met her onerous burden of proof regarding those certain Critical Area variance criteria. Thus, all Critical Area variances requested are granted, on condition that the residence is constructed on piers or pilings, for reasons we will discuss in greater detail later.

The Petitioner must first show that "because of certain unique physical conditions, such as exceptional topographical conditions peculiar to and inherent in the particular lot, or irregularity, narrowness, or shallowness of lot size and shape, strict implementation of the County's critical area program . . . would result in an unwarranted hardship." *Id.* § 2-107(b)(1).

Here, the lot is rife with physical conditions and uniqueness; enough such conditions to meet the irregularity requirements set forth above. In particular, the lot is a reserve parcel formed from excess land from the other subdivision lots. As such, its shape is out of synch with any other property within the subdivision. It is a "pan-handle" lot with the means of vehicular access limited, which requires (at a minimum) that land within the expanded buffer to steep slopes be used for access. The remaining shape of the lot is irregular by nature, given the contours of the coastline of the State's tidal waters that adjoin the property. The topography of the property contains extreme steep slopes generally parallel to the coastline, which require expansion of the 100 foot minimum Critical Area buffer from tidal wetlands. The property also contains non-tidal wetlands and mature woodlands, natural conditions that further impact the Petitioner's ability to develop this site consistent with the Code criteria. The only remaining lot area on site outside the required buffers (most acutely the "slope buffer" shown on the site plan) to the natural features is far too small and too close to the lot line adjacent to Lot 136R for the construction of any home. As Mr. Bourquin explained, the property cannot be improved without variances. If the Petitioner cannot utilize the site for any residence, then there can be no reasonable and significant use of the property. Without a reasonable and significant use of property, the property owner would suffer an unwarranted hardship. For these reasons, the Board finds that the requirements of Art. 28, § 2-107(b)(1) have been met.

The Petitioner next must establish that "[a] literal interpretation of COMAR, 27.01, Criteria for Local Critical Area Program Development or the County's critical area program and related ordinances will deprive the applicant of rights commonly enjoyed by other properties in similar areas as permitted in accordance with the provisions of the critical area program within the critical area of the County." *Id.* § 2-107(b)(2)(i). This particular lot is a waterfront lot that has been determined to be a lawfully buildable parcel. Similar areas in the Critical Area would

include waterfront properties within the RLD and OS zones. As explained in several decisions of the Court of Appeals, the Critical Area Program must provide property owners a reasonable and significant use of their land. See, *Belvoir Farms Homeowner's Association, Inc. v. North*, 355 Md. 259, 734 A.2d. 277 (1999); *White v. North*, 356 Md. 31 (1999); *Mastandrea v. North*, 361 Md. 107 (2000). Since the action of the various Critical Area criteria on this parcel leave no reasonable possibility of development, as explained in greater detail in our discussion of Art. 28, § 2-107(b)(1), we find that the program would deprive the Petitioner of rights commonly enjoyed by other properties in "similar areas" within the Critical Area. We believe that "rights commonly enjoyed" include the right to develop reasonably a lawfully buildable waterfront parcel.

Next, the Petitioner must show that "the granting of a variance will not confer on an applicant any special privilege that would be denied by: (i) COMAR, Title 27, Subtitle 01 or the County critical area program to other lands or structures within the County critical area ..." *Id.* § 2-107(b)(3)(i). We believe that no special privilege will be conferred unto Ms. Stansbury if she is granted sufficient relief from the Critical Area Program under which she can construct a reasonably sized structure on the property. As stated previously, there is no area on this property that meets all Code criteria for the construction of a dwelling. Since the Courts have determined that a property owner with a site impacted by the Critical Area Program has the right to a reasonable and significant use, we cannot deny variances on this property. The only remaining issue relative to any "special privilege" granted to Ms. Stansbury is the scale and scope of the residence – not its mere existence. We reserve our discussion of scale and scope of this proposal under the discussion of § 2-107(c)(1).

The Petitioner must establish that "(4) the variance request: (i) is not based on conditions or circumstances that are the result of actions by the applicant; and (ii) does not arise from any

condition relating to land or building use ... on any neighboring property.” *Id.* § 2-107(b)(4). The variance requests are based on the physical conditions on the property that render development of the lot in accordance with the Code nearly impossible. Although the Petitioner designed her subdivision to leave the subject location as a reserve parcel, we are compelled by the decision of the Court of Appeals that her actions did not create any hardship suffered here. *See, Stansbury v. Jones*, 372 Md. 172 (2002). From that decision⁴ and these very particular set of facts, we conclude that the Petitioner did not create her own hardship. *Id.* § 2-107(b)(4). The neighboring properties are improved with residences and contain residential uses. There is nothing in the record to indicate that the need for the variances has arisen from conditions relating to land or building use on neighboring property. Only the conditions of this site led to the need for variances.

⁴ In following the prior decision of the Court of Appeals, we give due regard to the role of the Antiquated Lots Law in this County. *See* Article 28 § 1-101 par. 36. The Antiquated Lots Law provides relief to those who seek to build on ill-equipped parcels that are undersized, but legal. *Id.* The Court suggests that at the original subdivision, the Antiquated Lots Law permitted the Petitioner to subdivide to leave all subject lots conforming and the reserve parcel effectively a collection of remainder land. The Court concluded that the Petitioner made no affirmative action exclusively by herself as owner of the subject property. *Id.* At 26. To conclude, the Court distinguishes from other typical self-created hardship facts. *Salisbury Board of Zoning Appeals v. Bounds*, 240 Md. 547, 214 A. 2d 810 (1965) (A property owner did not procure a building to convert a building into a four unit apartment space); *Marino v. Mayor and City Council of Baltimore*, 215 Md. 206, 137 A.2d 198 (1957) (Where Baltimore City Council denied relief because a zoning ordinance, in place when property was purchased, did not allow the owners to conduct their business). Here, the Court found the Petitioner was realigning her property in the subdivision process because of the several environmental and variance constraints on her land.

The subdivision process, as the Court explains, is subject to reservation of lots which are designed as outparcels and such acts are not involuntary in some cases. *Whittaker v. Zoning Board of Appeals of the Town of Trumbull*, 179 Conn. 650, 427 A.2d 1346 (1980). In the present case, the subject location has a restriction as to percolation tests, which tests are imposed by governmental regulation. As such, the Court concludes, as we do here, that “the nature of the designation and the restriction is subject to...property law...developed in respect to the creation of restrictions” 372 Md. 172 at 30. This body of law, as the Court has previously held elsewhere, can be upheld by its reasonableness and lean toward the freedom of one to develop property. *Bellevue Construction Company, Inc. v. Rugby Hall Community Association, Inc.*, 321 Md. 152; *Woodland Beach Property Owner's Association, Inc. v. Worley*, 253 Md. 442; *Peabody Heights Company of Baltimore City v. Wilson*, 82 Md. 186, 203; *Markey v. Wolfe*, 92 Md. App. 137. In these cases, some governmental regulation prohibited the use of property on some condition. *Id.* Here, a satisfactory percolation test will render the property a buildable lot in the eyes of the County. Therefore, we find the Petitioner may seek variance because the lot is made buildable by the County and no role of the Petitioner could render this parcel different. Thus, the Petitioner's hardship was not self-created because the Petitioner had little to do with the acceptance of the subdivision design and the subject location.

The Petitioner must also show that the granting of variances “will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the County’s critical area ... and will be in harmony with the general spirit and intent of the County critical area program.” *Id.* § 2-107(b)(5). Ms. Nancy Matthews testified that the proposed construction would impact the buffers to tidal or nontidal wetlands and a small portion of steeply sloped areas. Although there will be 5,000 square feet of vegetation removed by the proposed construction, such removal will not negatively impact the site because the vegetation is noxious and poisonous. Nonetheless, the Petitioner will mitigate the removal of said vegetation at a 3:1 mitigation ratio. Therefore, the resulting woodland coverage will increase following construction and much of the site will be placed within a conservation easement. According to Ms. Matthews, the super silt fence is acceptable stormwater management under the Critical Area Program. Furthermore, Ms. Lisa Hoerger, a representative of the Critical Area Commission, testified in favor of the requests since the property has been deemed a legal, buildable parcel. In light of this testimony, we find that the Petitioners’ proposal is “in harmony with the general spirit and intent of the County’s Critical Area program. *Id.*”

Next, the Petitioner must establish that “by competent and substantial evidence [it] has overcome the presumption contained in the Natural Resources Article, § 8-1808(d)(2), of the State Code.” *Id.* § 2-107(b)(7). Under Md. Code Ann., Natural Resources, § 8-1808(d)(2) of the Natural Resources Article, it is presumed “that the specific development activity in the critical area that is subject to the application and for which a variance is required does not conform with the general purpose and intent of this subtitle, regulations adopted under this subtitle, and the requirements of the local jurisdiction’s program.” Md. Code Ann., Natural Resources, § 8-1808(d)(2)(i). Here, the Petitioner seeks to improve a reserve parcel with a principal dwelling and some impact to the Critical Area. Without variances, the Petitioner cannot use the lot. With

the guidance of Ms. Lisa Hoerger, Ms. Matthews and Mr. Bourquin, we find that the proposed structure will be placed where it will cause the least amount of disturbance to the Critical Area. Given the testimony of building professionals, we find that the Petitioner has overcome the presumption of the Natural Resources Article.

The Petitioner also must show that the variances are “the minimum variance necessary to afford relief.” Code, Art. 28, § 2-107(c)(1). As indicated herein, a structure cannot be built on this lot without variances. Specifically, only a 500 square foot “window” of non-Critical Area Program impacted exists on this site. If the home were to be placed in the “window” it would affect the placement of the septic system. The area on the lot outside of the buffer is the only location available (and approved by the Health Department) for the septic system (some of the septic will be within the buffer, however). As such, there is but one position for the home as desired by the Petitioner. The proposed house is comparable to other homes in the community. Accordingly, we find that the requested variances are the minimum necessary.

The Petitioner next must show that the granting of the variances will not alter the essential character of the neighborhood or district in which the lot is located or substantially impair the appropriate use or development of adjacent property. *Id.* § 2-107(c)(2)(i) and (ii). The houses in the surrounding community are similar in size to the house that the Petitioner proposes to construct. The community has covenants that impose a 2,700 square foot minimum on homes and the Petitioner is proposing to construct a 3,000 square foot home. The neighborhood’s character is a large lot, waterfront, residential community typical of this portion of Anne Arundel County. The construction of another residence on a lawful, buildable lot will not alter the character⁵ of the neighborhood.

⁵ We note, however, that if the residence is built closer to the side lot line than required, our view on this point differs. The homes in this community are well set back from each other and an alteration of these setbacks

As to whether the proposed home will impair the use and development of other homes and properties in the neighborhood, we disagree with the position of the Protestants. The neighboring properties are already developed. Even if the homes had not yet been constructed, the proposed home does not impact the buildable envelope on the other properties. Furthermore, the subject lot is very large (1.45 acres) and the dwelling will not encroach unreasonably towards houses on neighboring lots⁶. In fact, the granting of variances to the Critical Area Program permit the location of the main structure within steep slopes which are farther from neighboring homes than the flat portions of this site.

The neighbors also expressed concern as to the impact to the value of their homes from the construction on this lot. We acknowledge that the proposed structure will sit where a once unfettered view of the water from at least one nearby home existed; and we believe that the neighbors were assured that the subject location would not be developed and paid thousands in premiums under such an assumption. Nonetheless, these neighbors gain no proprietary right to the view across the subject property or to prevent development of this lot from the County Code⁷. The variances to the Critical Area Program will not impact the reasonable use of these adjoining properties.

Next, the Petitioner must show that "the granting of the variance will not be contrary to acceptable clearing and replanting practices required for development in the critical area." *Id.* § 2-107(c)(2)(iii). As described by Ms. Matthews, the construction as proposed would reduce forest cover. The forest cover to be impacted may well contain noxious and invasive species, which should be controlled and native species should be established for the best Critical Area

may well change the character of this community. We discuss this point in greater detail in the section of this opinion relative to the variances to the bulk regulations.

⁶ See, footnote 5.

⁷ We render no opinion as to whether any private contract exists or existed among these parties.

buffer possible. While some may argue that removal of vegetation is more desirous than the maintenance of invasive vegetation, the Code is clear (and the State's Critical Area Program is clear) that vegetation is to be maintained. We find, therefore, that impacts to vegetation within the Critical Area must be mitigated and we will require that any such impacts be mitigated at a 3:1 ratio. If this ratio is maintained, the development will keep within acceptable replanting practices within the Critical Area.

Lastly, the Petitioner must also show that "the granting of the variance will not be detrimental to the public welfare." *Id.* § 2-107(c)(2)(iv). Although the Petitioner upset many within the subdivision by planning to build on this property, we must examine the welfare of the public as a whole. The Critical Area Program is meant to protect the public by protecting the sensitive area around the Chesapeake Bay and its tributaries (and more recently the Atlantic Bays region). The Critical Area Program permits variances. Integral to the Critical Area Program is the need to balance the public goals with the private property rights. It is clear that the Petitioner can build on this property (and the Courts have told us so) and that some variances to the Code criteria must be granted to permit that development—the site is consumed by the various required setbacks to sensitive features.

That said, we find persuasive the testimony of Mr. Bourquin relative to the location of the septic system. The Health Department requires the septic system to be located at the top of the grade on this site in the flattest portion of the lot. The location of the septic system is impacted by the well and septic facilities on this and neighboring properties and the types of soils and the percolation test results on this property. The septic system has been set and the remaining development must be located subject to that system. Runoff into the Bay and its tributaries is among the worst impacts to public safety and we believe that runoff of septic effluent would

most greatly impact public health, thus we defer to the Health Department's greater expertise regarding the required location of the septic system.

We examined the site plan presented by the applicant and noted the location of all the various required setbacks and environmental features. There is no area of sufficient size to permit the construction of a house without variances. Thus, subject to limitations of size and building type, we find that the granting of variances would not harm the public's welfare.

There is no need to maximize development of this site. In fact, development should be reasonably minimized. One of the most troubling aspects of this development plan from our view is the adherence of the Petitioner to typical methods and types of construction. The building size was selected because it was typical of the other homes in this subdivision. But this site is not typical (if it were typical, variances would not be needed). This site is special and special care should be taken in its development. We will, therefore, require that a pier and piling foundation be utilized for the residence. Mr. Bourquin's testimony regarding the use of a standard foundation did not persuade us otherwise.

Non-Critical Area Variance Request

The Petitioner made a request for eight non-Critical Area variances to enable her to build a dwelling on her reserved parcel. These variances are as follows:

- 1) A variance of 68 feet to the minimum required 100 foot front yard setback on waterfront lots within the the RLD Zone, Art. 28, § 2-2A-08(a)(2);
- 2) A variance to permit construction and a residence on slopes in excess of 15% within the RLD Zone, Art. 28, § 2-2A-12(a);
- 3) A variance to permit a residence within the 50 foot required planted buffer to the top of 25% slopes, Art. 28, § 2-2A-12(b);
- 4) A variance to permit the discharge of downspouts onto 15% and 25% slopes, Art. 28, § 2-2A -12(c);

- 5) A variance of 68 feet to the minimum required 100 foot buffer from the edge of tidal wetlands, Art. 28, § 2-2A-14(b)(2);
- 6) A variance of 33 feet to the minimum required 50 foot setback from Open Space zoning, Art. 28, § 6-207(1);
- 7) A variance to Art. 28, § 10-104(b) to permit the setbacks required by the RLD zone to be applied to this property, despite the inclusion of Open Space zoning thereon.
- 8) A variance of five feet to the 30 foot minimum required expanded side yard setback of Art. 28, § 2-2A(a)(2), which requires that all yard and setbacks be increased by 1 foot for each foot that the structure exceeds 25 feet high; and
- 9) A variance to permit construction of a residence with a conventional foundation on slopes of 15% and greater, Art. 28, § 2-2A-12(a).

We grant all but the final two.

As described in the Critical Area variance section of this opinion, the physical shape and other natural characteristics of this property result in such irregular physical conditions, “peculiar to and inherent in the particular lot, there is no reasonable possibility of developing the lot in strict conformance” with the Code requirements. The property is consumed by the various setbacks and protection of sensitive environmental features set forth in the Code, such that variances are necessary to avoid practical difficulties or unnecessary hardship, and to enable the applicant to develop such lot.” *Id.* § 2-107(a)(1). Testimony offered by Ms. Morgan, the County’s planner, and Mr. Bourquin, the applicant’s expert, support our finding that the subject property has unique physical conditions that would cause the Petitioner to suffer an unnecessary hardship, if the Code is strictly enforced. *See id.* Accordingly, the Petitioner has satisfied the first of her several burdens relative to the requirements for a variance to the bulk regulations.

The Petitioner must next show that the variances are the minimum variance necessary to afford relief. *Id.* § 2-107(c)(1). We have already established here that some variances are necessary, but the size and scope of the relief needed is often the most difficult portion of the

criteria for an applicant to meet. As stated in the prior section of this opinion, we find that the house site is governed by the location of the septic, well facilities, road access and environmental features. If the house is located elsewhere on site, it will impact more areas of State and County concern, like the non-tidal wetlands in the middle of the site and other steep slopes. The proposed location of the house would concentrate development activity into the most reasonable area of the property. While steep slopes and forest would be impacted, the structure's distance from the tidal water has been maximized. Once we are satisfied that the proposed location of the house on this site has been set (and we are convinced from our review of the testimony of Mr. Bourquin, Ms. Morgan and Ms. Matthews that this is the best site therefor) several of the variances meet the minimum necessary criteria. For example, since certain of the RLD bulk criteria are mirror provisions to those of the Critical Area Program, we have made the required minimum necessary finding in the Critical Area variance section of the opinion. The Petitioner requests a front lot line setback variance of 68 feet to the minimum required 100 foot front yard setback and from tidal wetlands and she has been granted the same amount of variance through the Critical Area variance discussion herein. We have found that a setback of 32 feet is the maximum setback available on this site. Therefore, for the same reasons, it represents the minimum relief necessary. There is no way to develop a home without impacting slopes in excess of 15% on this site, once the septic system has been placed by the Health Department. Since the residence will be partly located within and at the top of steep slopes, the residence must be within the 50 foot planted buffer on this site. Given the size of the property and relatively small amount of area beyond the top of 25% slopes, the area required for planting will be impacted by any development. The only way to impact less of the planted buffer area is to place the house closer to the water, which would increase the potential for direct impact to the tidal

waters. Since the house must be located on the steeply sloped area, the only place to discharge downspouts will be onto 15% and 25% slopes. The water cannot flow uphill.

The Board has not established whether the Petitioner has met the minimum necessary test for the other requested variances, however. Based on our review of the site plan, a variance of 33 feet to the minimum 50 foot setback from Open Space zoning is the minimum for this site. Once the septic area is set, the dwelling location is fixed (with little room for movement) on this site without greater (closer) encroachment to the waterfront. Since the Open Space line is imposed on this property (it is split zoned) the only available building envelope will require impacts closer than 50 feet from the Open Space line. While the Code requires that the more restrictive setbacks shall be applied on split zoned properties, it is not reasonable to do so here. The property is already consumed by the impact of the regulations. There is no greater need to apply the Open Space setback criteria.

There are two requested variances for which we find that the minimum necessary standard has not been met. First, there is no reason to violate the requirement that side yards be expanded by one foot for each foot that the structure exceeds 25 feet high. We believe that the setback of the building from the side lot line could be increased by decreasing the size of the building footprint if a structure taller than 25 feet is desired by the property owner. The request for this side yard variance is based on the desire of the property owner to exceed a 25 foot height limitation or to expand the footprint of the structure (or both). We find that the reason for the exact size of the rectangular footprint of the residence is due to the Petitioner's ease (perhaps laziness) in design. The proposed footprint was described as merely typical in size and shape of other homes in this subdivision, not, a well thought out design to minimize impact to the site and the side lot line. The impact can be reduced and the property owner has done nothing to minimize this particular impact.

For similar reasons, we find that the request for a variance to permit the construction of a residence with a conventional foundation on slopes of 15% or more is not the minimum necessary to afford relief. Again, we believe that the reason for the use of a conventional foundation on this site is merely convenience of the property owner. If a pier/piling foundation is used, we believe that permanent impact to the steep slopes can be reduced. The justification cited by the Petitioner's witnesses is scant and does not compel us.

The Petitioner must also show 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; be contrary to acceptable clearing and replanting practices required for development in the critical area; or be detrimental to the public welfare." *Id.* § 2-107(c)(2)(i-iv). We address these issues in order. First, the Petitioner's proposed home will not alter the essential character of the neighborhood. *See id.* § 2-107(c)(2)(i). The house will meet the size range of other homes in the community. The large property (1.45 acres) will contain only one house. The same character of the community, reasonably large homes on reasonably large lots within the Critical Area will be maintained, post development. The Petitioner's proposal will also not substantially impair the use of adjacent property so long as the side yard setback of 30 feet is maintained. *See id.* § 2-107(c)(2)(ii). The home can be reduced in height so that it does not exceed 25 feet or reduced in side yard setback so that it does not encroach closer than 30 feet to the neighbor's lot. The minimum setback of 30 feet would decrease the potential for any impact to the neighbors and while they would be impacted by a home on this lot, the regular setback would be maintained.

The Petitioner's residence would require the clearing of property. Therefore, the clearing must be mitigated for development within the Critical Area. We will require, therefore, that any clearing be mitigated at a ratio of 3 to 1, with mitigation to occur on site, if possible. As

conditioned, this variance meets the clearing and replanting practices required for development in the Critical Area. *See id.* § 2-107(c)(2)(iii).

Lastly, granting the variances for the Petitioner's proposal "will not be detrimental to the public welfare." *Id.* § 2-107(c)(2)(iv). So long as adequate setbacks are maintained and the loss of vegetation is properly mitigated, the variances would not negatively impact the welfare of the public as a whole. Without proper 30 foot side yard setbacks, the integrity of the subdivision could be altered, which would damage the public's welfare.

ORDER

For the reasons set forth in the foregoing Memorandum of Opinion, it is this 27th day of DEC., 2008, by the County Board of Appeals of Anne Arundel County, ORDERED, that the following variance requests be **GRANTED**:

- 1) A variance to permit new development activities in the buffer, Article 28, § 1A-103(e)(1);
- 2) A variance to remove vegetation and maintain impervious surface within the buffer, Article 28, § 1A-103(e)(2);
- 3) A variance to permit the removal of trees in the buffer, Article 28, § 1A-103(e)(3);
- 4) A variance of 68 feet to the minimum required 100 foot buffer for the construction of the house and related facilities, Article 28, § 1A-104(a)(1);
- 5) A variance to remove forest within a habitat protection area, Article 28, § 1A-104(a)(5);
- 6) A variance to develop on slopes of 15% or greater, Article 28, § 1A-105(c);
- 7) A variance to permit structures, septic systems, roads, parking, etc. as impervious surfaces in the buffer and expanded buffer, Article 28, § 1A-105(c);
- 8) A variance of 68 feet to the minimum required 100 foot front yard setback on waterfront lots within the RLD Zone, Art. 28, §2-2A-08(a)(2);

- 9) A variance to permit construction and a residence on slopes in excess of 15% within the RLD Zone, Art. 28, §2-2A-12(a);
- 10) A variance to permit a residence within the 50 foot required planted buffer to the top of 25% slopes, Art. 28, § 2-2A-12(b);
- 11) A variance to permit the discharge of downspouts onto 15% and 25% slopes, Art. 28, §2-2A-12(c);
- 12) A variance of 68 feet to the minimum required 100 foot buffer from the edge of tidal wetlands, Art. 28, §2-2A-14(b)(2);
- 13) A variance of 33 feet to the minimum required 50 foot setback from Open Space zoning, Art. 28, §6-2-207(1);
- 14) A variance to Art. 28, §10-104(b) to permit the setbacks required by the RLD zone to be applied to this property, despite the inclusion of Open Space zoning thereon.

ALL OF THE ABOVE SUBJECT TO THE FOLLOWING CONDITIONS: the dwelling shall be constructed on piers and/or pilings to reduce, in so far as possible, the impact to the slopes, buffer and habitat protection area and any impact to vegetation must be mitigated at a ratio of three to one with mitigation to be supplied on site, wherever possible.

AND it is further **ORDERED** that the following variance requests be **DENIED**:

- 15) A variance of five feet to the 30 foot minimum required expanded side yard setback of Art. 28, § 2-2A-11(a)(2), which requires that all yard and setbacks be increased by 1 foot for each foot that the structure exceeds 25 feet high;
- 16) A variance to permit construction of a residence with a conventional foundation on slopes of 15% and greater, Art. 28, § 2-2A-12(a).

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

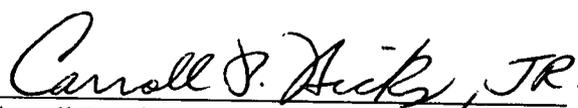
If this case is not appealed, exhibits must be claimed within 90 days of the date of this Order; otherwise, they will be discarded.

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

COUNTY BOARD OF APPEALS
OF ANNE ARUNDEL COUNTY



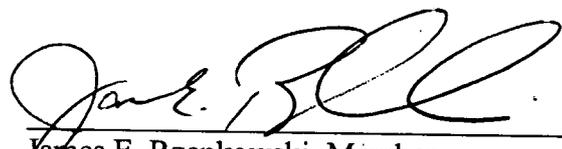
William C. Knight, III, Chairman



Carroll P. Hicks, Jr., Member



Andrew C. Pruski, Member



James E. Rzepkowski, Member

*(Arnold W. McKechnie, Vice Chairman, did not
participate in this remand.)*

DISSENT

Although this case has been remanded to this Board on two occasions, there is no directive from the appellate courts that Ms. Stansbury's request (15 variances in total) be granted. Accordingly, I find no reason to grant her requests on my third review of the same facts.

The County Code requires that an applicant for a Critical Area variance must meet ALL the variance criteria. The applicant has the sole burden of proof in these cases. If the Board remains unconvinced on even one point of law at the conclusion of all testimony, evidence and argument in any case, we are required to deny the request. I remain particularly unconvinced, despite the Court of Appeals' and Court of Special Appeals' interpretive assistance, that the Petitioner's plan is the minimum necessary to provide relief. Furthermore, there is no Code requirement requiring that (or even allowing) this Board redesign Ms. Stansbury's plan so that it meets the Code criteria.

As presently proposed, this plan is not in keeping with the spirit and intent of the County's Critical Area Program. From there, the Petitioner's case continues a cascading series of statutory non-compliance that includes adversely impacting flora and fauna habitat and water quality and being demonstrably contrary to sound clearing and replanting practices as required elsewhere in the Code. I am ultimately left with the conclusion that the entire enterprise is detrimental to the public welfare.

Ms. Stansbury proposes to construct a 3,000 square foot dwelling with a 30 by 50 foot rectangular foundation because, she testified that such dwelling type, shape and size is consistent with other homes in the community. I find nothing in the record to indicate that these other homes were constructed after the Critical Area Program was revised to standards relevant to Ms. Stansbury's proposal. Of course, earlier development was different and less sensitive to the

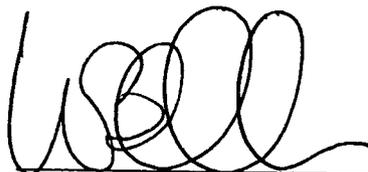
environmental features of a property, but the Petitioner's reliance on consistency with prior development within this community is misplaced. The point of the Critical Area Program is to change the nature of development within the Critical Area generally, and particularly within the Critical Area buffer, expanded buffer, forest and steep slopes. While these areas have been designated by the State of Maryland as "habitat protection areas", where development is verboten, this is where Ms. Stansbury proposes a 3,000 square foot home.

I remain hopeful that the Petitioner would revise her plan if she was applying before this Board today, but I can only review the record as she made it in 1999. In contrast to the testimony of Ms. Stansbury's experts, Mr. Blaha (the Protestants' expert) described other ways to develop the property that would enable development without variances or with at least fewer variances. I found his testimony reliable and convincing. Since there are other reasonable ways to develop this property without as many variances and farther from the tidal waters and with less impact to steep slopes, Ms. Stansbury's plan cannot be the minimum to afford her relief.

The Petitioner also relies heavily on the actions of the Health Department in approving a standard septic facility for this property. The septic facility would comprise 10,000 square feet of the lot that is least impacted by the sensitive environmental features of the property. If the Petitioner would explore an alternative septic system for this property, perhaps the Petitioner could utilize more of the "developable" area of the property for a dwelling rather than sewage disposal. If a smaller home were proposed, the septic facility would be correspondingly smaller and the house could be located with less permanent impact to the buffer.

Although private covenants are not subject to the jurisdiction of this Board, we were told that this community has covenants limiting the size of the dwelling to no less than 2,700 square feet. However, Ms. Stansbury did not request a home even minimally consistent with the covenants and did not request from the homeowner's association any relief from this

requirement. A home with 2,700 square feet of floor area would be at least 150 square feet smaller in footprint and would result in at least 150 feet less square feet of permanent impact to the Critical Area. How can her proposal of 3,000 square feet meet the minimum necessary standard?

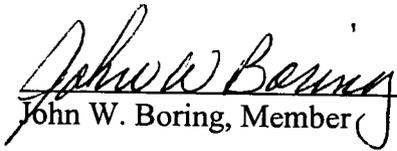
A handwritten signature in black ink, appearing to read 'W. Moulden', written over a horizontal line.

William Moulden, Member

DISSENT

With respect, I cannot join in the decision to grant the variances requested today. The source of my dissent is grounded in the contentious topic of the Petitioner's self-created hardship. The hardship, or lack there of, was ably argued by the County and equally supported by facts from the testimony. For these reasons, I respectfully dissent from the conclusions and analysis of this Board.

As compelled by the Court of Appeals, this Board decides, in error, that the Petitioner did not create her own hardship. To arrive at this conclusion the Board finds that when the County confirms the Petitioner's design for a reserve parcel, the County, *ipso facto*, shields the Petitioner from any repercussion of such a design. The testimony and evidence all point to the conclusion that the Petitioner re-subdivided her property with the express purpose of economic gain by the addition of one or more lots. Also, the Petitioner gained thousands in premiums by warranting to buyers that the reserve parcel would go undeveloped. Now, the Petitioner asks the Board to find unwarranted hardship by the mere existence of circumstances created by the Petitioner. To support such a conclusion would test my duty to this Board


John W. Boring, Member

RECEIVED

AUG 10 2007

CRITICAL AREA COMMISSION

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 2007-0059-V

IN RE: NANCY STANSBURY

THIRD ASSESSMENT DISTRICT

DATE HEARD: JULY 12, 2007

ORDERED BY: STEPHEN M. LeGENDRE, ADMINISTRATIVE HEARING OFFICER

PLANNER: ROBERT KONOWAL

DATE FILED: AUGUST 6th, 2007

PLEADINGS

Nancy Stansbury, the applicant, seeks a variance (2007-0059-V) to allow a dwelling with less setbacks and buffer than required and with disturbance to steep slopes on property located along the north side of Sharps Point Road, west of Greenbury 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. Ms. Stansbury submitted an affidavit indicating 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 identified on Tax Map 46, Block 18, Parcel 203 as part of Lots 171 through 175 in the Pleasant Plains subdivision, Annapolis. The property comprises 47,390 square feet and is split zoned OS Open Space and RLD Residential Low Density districts with a Chesapeake Bay Critical Area designation as Resource Conservation Area (RCA). The request is to

develop the property with a single-family dwelling (30 by 34 feet) with rear deck addition (8 by 10 feet). The project disturbs 2,224 square feet of steep slopes with the dwelling 20 feet from the edge of tidal wetlands and the limits of disturbance 15 feet from the wetlands. The dwelling is also located 15 feet from the front lot line and three feet from the east side boundary.

Anne Arundel County Code, Article 18, Section 18-13-104(a) establishes a 100-foot buffer from tidal wetlands. Article 17, Section 17-8-201 proscribes the disturbance of steep slopes in the RCA. Section 18-4-401 requires principal structures in the RLD district to maintain a front setback of 50 feet and a side setback of 20 feet. Finally, the same section also requires a 50-foot planted buffer to the crest of steep slopes. Accordingly, the applicant requests buffer variances of 80 feet for the dwelling and 85 feet for the limits of disturbance; a variance to disturb steep slopes in the Critical Area; variances of 35 feet to the front setback and 17 feet to the side setback; and a full variance to the required planted buffer to the crest of steep slopes.

Robert Konowal, a planner with the Office of Planning and Zoning, testified that only a small portion of the property is zoned residential, with the RLD land wholly in the 100-foot buffer and predominately steep slopes. The applicant is proposing a modest dwelling located near the road to increase the distance from tidal wetlands. The witness anticipated little impact to the character of the neighborhood or the use or development of adjacent property. There were

no adverse agency comments. By way of conclusion, Mr. Konowal supported the request.

Doug Bourquin, a land-planning consultant to the applicant, testified that the property was created by a deed dated and recorded in 1929, long before the County's initial adoption of subdivision regulations in 1952. The site is mostly steep slopes and tidal wetlands and vegetated (Kudzu). The two and one-half story dwelling has 2,550 square feet of living space (no basement or garage). With the exception of the home approved by this office for Lots 8A and 9A (also owned by the applicant) under Case No. 2006-0444-V (February 23, 2007), the footprint is smaller than the surrounding homes. The applicant has established a septic easement in the roadbed of Sharps Point Road leading to an offsite septic drain field on Lot 176 (also owned by the applicant). Mr. Bourquin opined that the variance standards are satisfied. Colin MacLachlan, an environmental consultant and landscape architect employed by the applicant, offered the same opinion.

Michael Reisinger, who resides across Sharps Point Road, questioned the responsibility for maintenance of the right-of-way. (An unidentified County representative told Mr. Reisinger that the County owns the right-of-way.) Mr. Reisinger also anticipates adverse impacts to the tidal wetlands, given the size of the dwelling.

There was no other testimony in the matter.

I visited the site and the neighborhood. A graveled access extends about 200 feet to the west of paved Sharps Point Road. The property is located on the north side of the access near its end. There is a small, triangular area of vegetated uplands in the northeast corner of the property. The balance of the property is tidal wetlands. There are several properties along the south side of the access, with all the homes set far back from its edge.

The standards for granting variances are contained in Section 18-16-305. Under subsection (a), a zoning variance may be granted only after determining either (1) unique physical conditions, peculiar to the lot, such that there is no reasonable possibility of developing the lot in strict conformance with the code; or (2) exceptional circumstances such that the grant of a variance is necessary to avoid an unnecessary hardship, and to enable the applicant to develop the lot. 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.

I find and conclude that the applicant is entitled to conditional, modified relief from the code. Considering first the subsection (b) criteria applicable to the Critical Area variances, due to the extent of the tidal wetlands and steep slopes, a strict application of the program would result in an unwarranted hardship. Under a literal application of the program, the applicant would be denied the right to develop the property with a single-family dwelling, a right commonly enjoyed by other properties in similar areas of the Critical Area. Conversely, the granting of some relief is not a special privilege that the program typically denies to other Critical Area lands. I further find that the variance is not the result of the actions of the applicant or land use on neighboring property. Finally, with mitigation and other conditions, the grant of a modified variance will not adversely impact Critical Area assets and harmonizes with the general spirit and intent of the program.

With respect to the subsection (a)(1) criterion for the zoning variances, this property satisfies the test of unique physical conditions, consisting of the limited

uplands and resultant slopes, such that there is no reasonable possibility of development in strict conformance with the code.

The record reflects that this is an extremely sensitive site. Yet, the applicant is proposing a two and one-half story dwelling with a footprint of 1,020 square feet. Notwithstanding Mr. Bourquin's contrary assertion, I do not believe that the request represents the minimum relief under subsection (c). In the first place, the size of the surrounding homes is not controlling. In the second place, the particular homes have not been identified, except for the home in Case No. 2006-0444-V. In the third place, Case No. 2006-0444-V and the variances for other lots in the neighborhood are not controlling. Thus, Case No. 2006-0444-V approved a redevelopment proposal in the Limited Development Area with the new dwelling further from tidal wetlands and steep slopes.¹ See also, Case No. 2005-0075-V, In Re: W. Robert and Joyce Nay (June 3, 2005) (zoning variances for dwelling); Case No. 1997-0271-V and 1997-0272-V, In Re: David and Charlotte Caldwell et al (October 21, 1997) (critical area variances for stormwater management system and well; zoning variances for dwelling)². After considering the totality of the evidence and visiting the site, I have reduced the footprint of the dwelling to 25 by 32 feet and eliminated the deck addition. The modifications

¹ The applicant appealed Case No. 2006-0444-V to the Anne Arundel County Board of Appeals on the alternate grounds that "the tax assessments reflect too high of a value to be restricting the size of a home." However, the appeal was subsequently withdrawn. See, Case No. BA 19-07V.

² The approved variances concern Mr. Reisinger's property. The variances were extended in Case Nos. 1999-0329-V (October 12, 1999) and 2001-0299-V (October 9, 2001). On August 2, 2007, Mr. Reisinger and the applicant participated in a Show Cause hearing on the County's Motion to Rescind Variance or to Suspend or Modify the Decision of the Administrative Hearing Office. The matter has been continued.

increase the distance to the edge of tidal wetlands to 33 feet for the dwelling and 28 feet for the limits of disturbance. The modifications also decrease the disturbance to steep slopes. Finally, the distance to the east side boundary is increased to five feet. So modified, the granting of conditional relief will not alter the essential character of the residential neighborhood, substantially impair the use or development of adjacent property, or constitute a detriment to the public welfare. These findings consider the development in the surrounding neighborhood, including development under approved variances. The modified variance is subject to the conditions in the Order.³

The modified relief in this case is consistent with the decision in Case No. 2007-0148-V, In Re: Blue Heel, LLC (July 17, 2007) (zoning variance approved for dwelling measuring 25 by 32 feet). See also Case No. BA 110-05V, In Re: Princess Builders (May 26, 2006) (critical area buffer and steep slope variances approved for dwelling measuring 24 by 24 feet); Case No. 2007- 0131V, In Re: Lance Johnson (July 30, 2007) (modified, conditional variance to disturb steep slopes in the Critical Area for a dwelling addition).

³ I have included additional conditions proscribing any other new development and requiring a reduction in the limits of disturbance to five feet in the rear yard.

ORDER

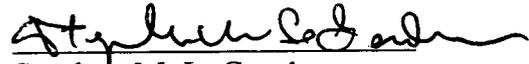
PURSUANT to the application of Nancy Stansbury, petitioning for a variance to allow a dwelling with less setbacks and buffer than required and with disturbance to steep slopes; and

PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is this 6th day of August, 2007,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicant is **granted a modified** buffer variances of 67 feet for the dwelling and 72 feet for the limits of disturbance, a variance to disturb steep slopes, a variance of 35 feet to the front setback, a **modified** variance of 15 feet to the side setback and a full variance to the required planted buffer to the crest of steep slopes to permit a dwelling measuring 25 by 32 feet. The approval is subject to the following conditions:

1. The site plan is revised to reduce the footprint of the dwelling to 25 by 32 feet and to eliminate the deck addition.
2. The site plan is revised to reduce the limits of disturbance to 5 feet in the rear yard.
3. No further expansion of the dwelling is allowed and accessory structures are not allowed.
4. The applicant shall provide mitigation and stormwater management as determined by the Permit Application Center.

5. The Conditions of the Order 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 REPORT
for
PLEASANT PLAINS p/o LOTS 171 to 175
Tax Map 46, Block 18, Parcel 203
Anne Arundel County, Maryland

Prepared For:

ED BROWN & ASSOCIATES, INC.
19 Loretta Avenue
Annapolis, Maryland 21401

Prepared By:

BRAY HILL, LLC
10357 Whitewasher Way
Columbia, MD 21044

December 2006

ORIG.
2.16.07

CHESAPEAKE BAY CRITICAL AREA REPORT
CHECK LIST
Anne Arundel County, Maryland



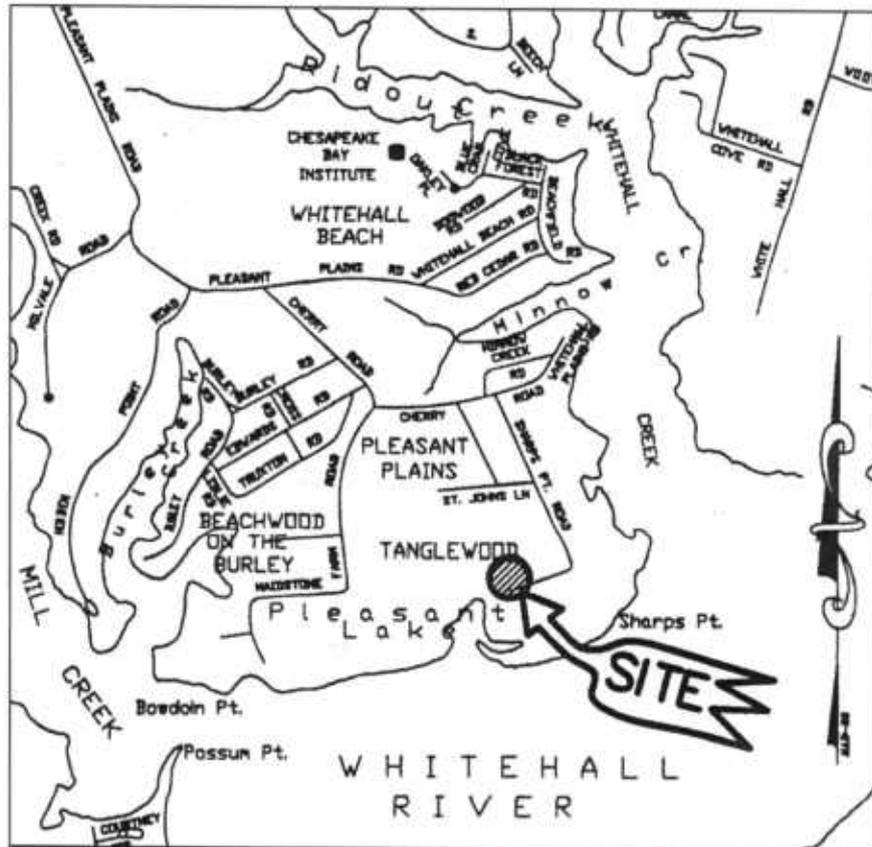
TO: Property Owners in the Chesapeake Bay Critical Area DATE: _____
FROM: Department of Planning and Code Enforcement
SUBJECT: Information Required for Submission of Critical Area Report - Zoning Applications

Zoning Case Number _____ Applicant's Name NANCY STANSBURY
Critical Area Classification: LDA (RCA) IDA; Tax Map 46 Block 18 Parcel 203

Your property is located within the Chesapeake Bay Critical Area. In reviewing your application, Planning and Code Enforcement must determine the impact your proposal will have on stormwater management and plant and animal habitat in conformance to Critical Area criteria. Your plan must meet the criteria for your classification and satisfy COMAR 14.15.11 regarding variances. You are responsible for supplying five copies of the VICINITY MAP, NARRATIVE STATEMENT AND PLAN to the Zoning Administration Division of the Department of Planning and Code Enforcement with your zoning application. Applications within the Critical Area will not be accepted without a complete Critical Area Report.

1. A brief explanation of why you need a variance or special exception. If you have applied for a building or grading permit, please list the permit number(s). _____
2. A VICINITY MAP showing clear directions to your property and the address.
3. A short, 1 or 2 sentence per item, NARRATIVE STATEMENT which provides the following information (if checked):
 - Type of predominant trees and shrubs (maple, oak, evergreen, etc.) on the entire parcel. (At least 15% of the lot must have trees and shrubs or additional plantings will be required. Trees and shrubs must cover the area 25' from the water on waterfront lots except for access area.)
 - Method of control of rainwater from existing and proposed structures, driveways and parking. (Where does it go now? Where will additional runoff go? Any special techniques?)
 - Methods to minimize impacts on water quality and habitat from proposed construction (e.g. stormwater management, sediment control, replanting, avoiding slopes).
 - Square footage of site that is currently wooded or has trees and shrubs; square footage to be disturbed by proposed work; acreage of lot; total impervious coverage before and after work (Any lot in LDA or RCA that is 21,780 square feet or less cannot have more than 25% impervious surface covered unless further restricted by plat. Lots over 1/2 acre cannot exceed 15% coverage.)
 - Habitat protection areas: Buffers, expanded buffers, wetlands, rare and endangered species, anadromous fish propagation waters, colonial water bird nesting sites, historic waterfowl staging and concentration areas, riparian forests 300' or more in width, forested blocks 100 acres or more, natural heritage areas, plant and wildlife habitats of local significance.
4. A PLAN of your property, drawn to scale (a plot plan, grading plan or building location survey can be used) showing (if checked):
 - Steep slopes (15% or greater - show any slope if you aren't sure of percentage of slope)
 - Existing tree line, individual trees and all proposed clearing, grading or any disturbance
 - Wetlands (tidal and nontidal) Floodplain (tidal and nontidal)
 - ~~None~~ Any proposed planting or landscaping on property @ this time .
 - Other (water depths, buffers as shown on record plat, habitat protection areas as identified in 3e, and plat notes)
5. ONE copy of a Notification of Project Application supplied with this check list.

VICINITY MAP



SCALE 1" = 2000'

BRAY HILL, LLC

Ecological Assessment • Environmental Planning • Restoration Design

10357 Whitewasher Way • Columbia, MD 21044

Ph: 443-745-6133 Fax: 410-715-1262

PLEASANT PLAINS P/O LOTS 171-175
Sharps Point Road
Anne Arundel County, Maryland

DECEMBER 2006

CRITICAL AREA MAP, PLEASANT PLAINS P/O LOTS 171 TO 175

Property Maps

AA Property Map 47



AA Property Map 46



Sensitive Areas

Critical Areas

Area outside of buffer

- Corporate Limit
- Intensely Developed Area
- Limited Development Area
- Resource Conservation Area
- Wetland Area

Photo 1998 1m

Annapolis NW 3.75' B/W 1998



Annapolis NE 3.75' B/W 1998



Gibson Island SW 3.75' B/W 1998



N 147854.56m E 448705.92m



Coordinates at center of image in Maryland State Plane, NAD 1983 meters

2006, Maryland Department of Natural Resources, www.mdmerlin.net

Created with TNTserver™ from MicrolImages, Inc



INTRODUCTION

This report has been prepared for parts of lots 171 thru 175 in the Pleasant Plains community which was previously subdivided and is hereafter referred to as the "parcel". This parcel is located on Sharps Point Road in the Tanglewood area of Anne Arundel County and lies entirely within the Resource Conservation Area (RCA) of the Critical Area. In addition, almost all of the buildable portions of the lot are located on steep slopes or their buffers. Consequently, a variance is being requested for construction of single family home and essential infrastructure within the 100 foot buffer along with variances for steep slope impacts, steep slope buffer impacts, and forest clearing.

VICINITY MAP

A vicinity map showing the location of the parcel is included with this report. In addition, a copy of the Critical Area map is also provided with the "site" marked.

NARRATIVE

Existing Conditions

The 1.08 acre site is currently undeveloped and consists of a slope covered by Kudzu (*Pueraria lobata*), eight (8) mature trees, and a large, emergent tidal wetland system dominated by Common Reed Grass (*Phragmites australis*). With the exception of one White Pine (*Pinus strobus*), the trees on the property have grown naturally. Half of the trees are Chestnut Oaks (*Quercus prinus*), the remaining three trees are Blackgum (*Nyssa sylvatica*), Mockernut Hickory (*Carya tomentosa*), and Black Cherry (*Prunus serotina*). The one specimen Chestnut Oak on the property is hollow at the base and does present some risk of failure. The Hickory on the property is in poor condition - its main leader is missing due to a previous storm event and several main branches are dead. In addition to Kudzu, the upland ground cover includes English Ivy (*Hedera helix*), Japanese Honeysuckle (*Lonicera japonica*), Wineberry (*Rubus phoeniculatus*), and turfgrass. Kudzu and English Ivy are growing into the canopy of most of the trees and will eventually kill them if not removed.

No rare, threatened or endangered species were found on the property during the environmental assessment. No historic or archaeological features were noted either. The adjacent tidal wetlands (delineated by Bray Hill, LLC in August of 2006) provide wildlife cover and nesting material. However, the largest component of these wetlands, Common Reed Grass, is an invasive exotic that has few known wildlife benefits apart from cover. Waterfowl were not observed on the property during the survey and it is unlikely that they would appear on this property since there are no open water areas within the wetland complex to attract them.

Stormwater Management

There are no stormwater management facilities or devices on these lots at this time. Upland areas currently drain to the adjacent, non-tidal wetlands. Run-off is a combination of concentrated flow (in spots where small channels have formed in the slope) and sheet flow. In order to provide the required stormwater management for this site, one tree or three shrubs will be planted for every 100 square feet of proposed impervious area. These plantings will be positioned to intercept run-off from the impervious areas. The plantings will slow run-off rates, encourage infiltration, and provide some filtering of pollutants. In addition, the plantings and planting beds will eliminate concentrated flows in favor of sheet flow.

Impact Minimization

Two things have been done to minimize the impact of the proposed site developments and enhance the natural environment. First, the proposed impervious area for the site has been kept well below the 15% threshold. Proposed impervious cover represents less than 5% of the total parcel. Second, native shrubs and trees will replace the invasive exotic vine, Kudzu, which currently blankets most of the upland area on the parcel and has killed some of the existing trees. Replacing Kudzu with native trees and shrubs will add species diversity and improve wildlife benefits (food and shelter), thereby restoring some components of the natural ecosystem at this location.

Habitat Protection Areas

The habitat protection areas at this site are the tidal wetlands, the slopes and their associated buffers. Under the proposed site development plan, there are no proposed impacts to the wetlands. However, the site can not be developed without impacts to steep slopes, slope buffers, and the critical area buffer since the entire buildable portion of the site is located within one of these. Due to these constraints, variances are being requested.

Proposed Conditions and Site Calculations

The proposed conditions include the construction of a single-family dwelling, gravel driveway, well, and septic system. The site calculations are as follows:

Total Site Area	47,390 SF	?
Existing Tree Canopy Cover	5,984 SF	
Proposed Clearing	3,472 SF	
Existing Impervious Cover	0 SF	
Allowed Impervious Cover (15%)	7,108 SF	
Proposed Impervious Cover	2,080 SF	

Stormwater Management Planting Calculations

As previously stated, stormwater management on the property will be provided via planting. Since the proposed impervious cover is 2,080 square feet, 63 shrubs or 21 trees or a combination thereof will be planted. These plants will be installed between the proposed residence and the adjacent wetlands to intercept run-off. The goals are to slow run-off, capture any particulate matter, and encourage water infiltration. The proposed tree species are Black Gum (*Nyssa sylvatica*), Tulip Poplar (*Liriodendron tulipifera*), Chestnut Oak (*Quercus prinus*), and Red Maple (*Acer rubrum*). The proposed shrub species are Summersweet (*Clethra alnifolia*), Bayberry (*Myrica pennsylvanica*), Inkberry (*Ilex glabra*), Arrowwood (*Viburnum dentatum*), Winged Sumac (*Rhus copallina*), and Fragrant Sumac (*Rhus aromatica*).

Mitigation for Impervious Area

In accordance with Article 17, Section 8-702 of the County Code, native trees and shrubs must be planted at a 2:1 ratio for the proposed impervious area. Since the proposed impervious area is 2,080 square feet, the mitigation requirement is 4,160 square feet. At Anne Arundel County's specified rate of three shrubs and one tree for every 400 square feet of impervious area, 11 trees and 32 shrubs will be required. These trees and shrubs will be planted on the property or reforestation "credits" will be purchased from an approved off-site forest mitigation "bank".

Forest Clearing Mitigation

Under the current site plan, 3,472 square feet of forest/woodland will be cleared. Since this represents less than 20% of the total site, the clearing is permitted under Article 17, Section 8-601 of the Anne Arundel County Code. In accordance with Article 17, Section 8-602 of the County Code, compensation for this clearing must be provided at a 3:1 ratio since it represents more than 30% of the existing tree cover at the site. Therefore, a total of 10,416 square feet reforestation must be. At the County rate of one tree and three shrubs for every 400 square feet, reforestation mitigation at this site will consist of 26 trees and 78 shrubs. This mitigation will be provided on-site or purchased from an approved off-site forest mitigation "bank".

CONCLUSIONS

The proposed single family dwelling for this parcel will result in critical area buffer, steep slope, and steep slope buffer impacts. These impacts are unavoidable due to the physical constraints of the property (i.e., extensive tidal wetlands, entire buildable area located on steep slopes or within steep slope buffer and critical area buffer). A variance is also required for forest clearing which exceeds 30%. Forest clearing is also unavoidable due to the physical constraints of the property. While the percentage of clearing appears significant, only four to five trees will be removed. Of the trees to be removed, one is the specimen Chestnut Oak which is a potential hazard. A second is

the Hickory previously mentioned as being in very poor health. A third is the introduced White Pine.

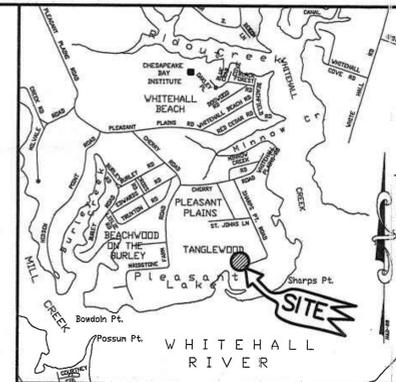
Variances for the above-mentioned impacts and forest clearing are being requested as a result of the site constraints. All impacts have been kept to the minimum necessary to accomplish the proposed work. To offset these impacts, the on-site planting will be designed to maintain water quality, increase species diversity, provide wildlife benefits, and eliminate a particularly troublesome invasive exotic plant from the parcel.

PLANS

A plan showing existing and proposed conditions is enclosed with this report. A buffer management plan showing the species and precise locations of all plantings will be submitted separately upon the granting of a variance.

ADDITIONAL INFORMATION

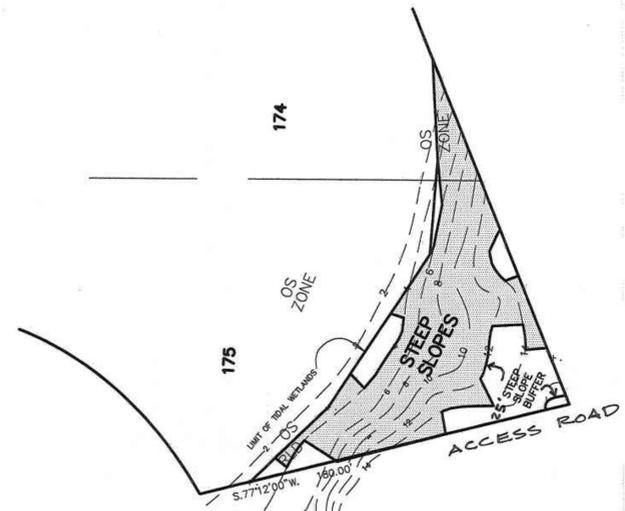
A copy of the Notification of Project Application for the Critical Area Commission is enclosed with this report.



VICINITY MAP
SCALE: 1" = 2,000'

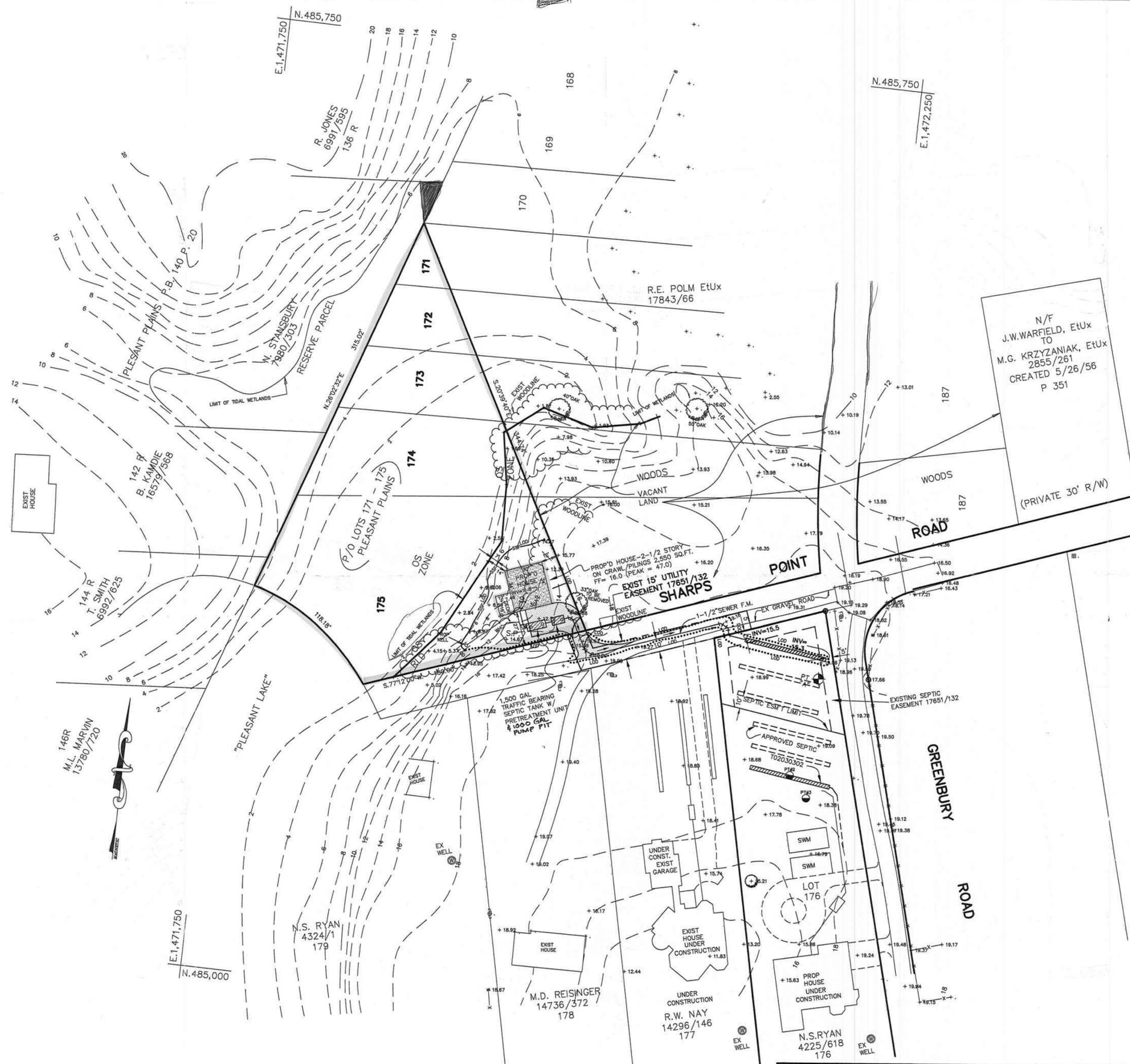
GENERAL NOTES:

- OWNER/APPLICANT: NANCY STANSBURY
P.O. BOX 9742
ARNOLD, MARYLAND 21012
PHONE 410-757-9002
- TITLE REFERENCE: L 7980 F 303
- TAX ID # 3661-9005-2736
- ZONING: OS & RLD (USING R-2 SETBACK CRITERIA)
- SITE AREA: 47,390 SQ.FT., 1.08 AC.
- ON-SITE DISTURBED AREA: 5,159 SQ.FT.
- UTILITIES: WELL AND SEPTIC (T02034773)
- CRITICAL AREA DESIGNATION: RCA
- CRITICAL AREA TABULATION
 - a. SITE AREA: 47,390 SQ.FT.
 - b. FORESTED AREA: 5,984 SQ.FT.
 - c. CLEARING 3,472 SQ.FT. (58%)
 - d. IMPERVIOUS COVER: 2,080 SQ.FT.
 - e. TIDAL WETLAND AREA: 38,110 SQ.FT. 0.87 AC.
 - f. UPLAND AREA: 9,280 SQ.FT.
 - g. IMPERVIOUS AS PERCENTAGE OF TOTAL: 4.4%
 - h. IMPERVIOUS AS PERCENTAGE OF UPLAND: 22.7%
10. AREA OF SLOPES (UPLAND): 7040 \$
PERCENTAGE OF UPLAND AREA: 76%
AREA OF SLOPES BEING DISTURBED: 3640 \$ (55%)



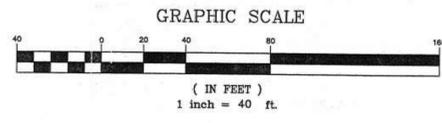
DETAIL - STEEP SLOPES (>15%) (UPLAND)
SCALE 1" = 40'

RECEIVED
NOV 15 2006
CRITICAL AREA COMMISSION



LEGEND

EXISTING GRADE	---110---
PROPOSED GRADE	---110---
EXISTING ELEVATION	110.8
PROPOSED ELEVATION	110.8
SILT FENCE	SF
LIMIT OF DISTURBANCE	LOD
STABILIZED CONSTRUCTION ENTRANCE	S.C.E.
STOCK PILE	SP



ED BROWN & ASSOCIATES, INC.
LAND SURVEYORS - LAND PLANNERS
DEVELOPMENT CONSULTANTS
19 LORETTA AVENUE
ANNAPOLIS, MARYLAND 21401
ANNAPOLIS 410-266-6199 BALTIMORE 410-841-0119

SCALE: AS NOTED
DATE: NOVEMBER, 2006
DRAWN BY: JAY
CHECKED BY: EAB
JOB NO: 02-51
SHEET NO: 1 OF 1

VARIANCE SITE PLAN
P/O LOTS 171-175
PLEASANT PLAINS
SHARPS POINT ROAD, ANNAPOLIS
TAX MAP 46, BLOCK 18, PARCEL 203, ZONING RLD, ZIP CODE 21401
THIRD DISTRICT ANNE ARUNDEL COUNTY, MARYLAND