

- AA 643-07 Quandt, Earl
VAR 0376 -

S1829-6358

JAC 11/15/07

20/52/123/07
part 2

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



Margaret G. McHale
Chair

Ren Serey
Executive Director

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

1804 West Street, Suite 100, Annapolis, Maryland 21401

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

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

November 15, 2007

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

Re: 2007-0376-V Quandt

Dear Ms. Schappert:

I have received the information regarding the above-referenced variance request. The applicant requests a variance to construct a dwelling addition less setbacks than required and with disturbance to steep slopes. The lot is designated as Limited Development Area (LDA) and is currently improved with a gravel pad and a portion of a shed and retaining wall. This lot is 12,851 square feet and is not waterfront. The proposed impervious surface for this lot is 3,423 square feet which is within the limits for a lot of this size. The applicant has indicated that 6,476 square feet of forest cover of this almost fully forested lot will be removed; this is within the limits for a lot of this size.

Provided that this lot is properly grandfathered, we do not oppose the request for a primary dwelling unit on this lot with slopes greater than 15%. Per the County's requirements, mitigation in the form of plantings is required for the area of forest cover cleared; if the plantings cannot be done on site, a fee in lieu may be substituted. Also, the applicants should provide the specifications for the stormwater improvements proposed on the Winchester Road side of the lot.

We have no comment regarding the variance to setbacks.

TTY for the Deaf

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

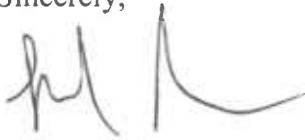
Ms. Schappert

11/15/2007

Page 2 of 2

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 black ink, appearing to be 'Julie Roberts', written in a cursive style.

Julie Roberts
Natural Resources Planner

cc: AA 643-07

JR

643-07

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 2007-0376-V

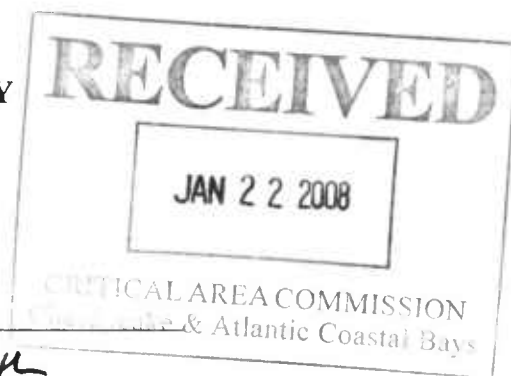
EARL AND ALICE QUANDT

THIRD ASSESSMENT DISTRICT

DATE HEARD: DECEMBER 13, 2008

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

PLANNER: **JOHN R. FURY**



DATE FILED: JANUARY 16th, 2008

PLEADINGS

Earl Quandt, Jr. and Alice Quandt, the applicants, seek a variance (2007-0376-V) to allow a dwelling with less setbacks than required and with disturbance to slopes of 15 percent or greater on property located along the northwest side of Riverside Drive, northeast of St. Swithins Lane, 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. Michael Drum, the applicants' engineering consultant, 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

The applicants own unimproved property with a street address of 1604 Riverside Drive, in the subdivision of Winchester on the Severn, Annapolis. The property comprises 13,100 square feet and is zoned R2 residential with a Chesapeake Bay Critical Area designation as Limited Development Area (LDA). The request is to construct an irregularly configured dwelling (maximum

dimensions 36 by 56 feet, inclusive of garage) with disturbance of steep slopes to be located 21 feet from the front lot line along St. Swithins Lane.

Anne Arundel County Code, Article 17, Section 17-8-201 proscribes the disturbance of steep slopes in the LDA. Article 18, Section 18-4-601 requires principal structures in the R2 district to maintain 30 feet from the front lot line. Accordingly, the proposal requires a variance to disturb steep slopes and a variance of nine feet to the front setback.

John R. Fury, a planner with the Office of Planning and Zoning, testified that the property is irregular in shape, below the minimum area for the district and predominately steep slopes. The impervious coverage is less than the allowance (3,423 square feet versus 4,016 square feet); so is the forest removal (6,476 square feet versus 6,534 square feet). The request is considered consistent with the character of the neighborhood and not likely to impair the use or development of adjacent property. The slope disturbance has been minimized by moving the dwelling forward. There were no adverse agency comments.¹ By way of conclusion, Mr. Fury supported the application.

Mr. Quandt testified that the applicants purchased the property as a building lot in 1964. They resided on the adjacent property to the rear until 1988, when they built their present three-level home across Riverside Drive. They hope to build a more accessible dwelling for their senior years.

¹ The applicant has reduced the limits of disturbance at the behest of the County's Development Division; the Chesapeake Bay Critical Area Commission requested mitigation and stormwater management; the Department of Health requested plan approval.

Mr. Drum testified that the lot was recorded in 1954. Approximately 80 percent of the property is slopes. The property is served by public water and septic. The septic design has technical approval from the Department of Health. The dwelling is comparatively modest (one and one-half stories over basement). The proposal includes retaining walls and there is no driveway turnaround to minimize the disturbance. Finally, the project includes sediment controls, stormwater management and reforestation.

Several area residents opposed the application. They include Mary Lou Baker, Nancy Cooper, Will Candler and Joan and Gerard Church. Among other objections, the slope disturbance would result in runoff; the property is located at a dangerous intersection; the proposal will have an adverse impact on air, light and view; the proposal will result in excessive tree removal; the lot is not considered buildable; it will be difficult for the applicants to back from their driveway to Riverside Drive; and the request is inconsistent with the character of the neighborhood.

By way of further explanation, Mr. Quandt indicated that the dwelling is 38 feet from Riverside Drive and the removal of dense bushes along its boundary would improve the visibility.

I visited the site and the neighborhood. The property is located near the crest of a fairly steep hill on Riverside Drive at the angled intersection with dead-ended St. Swithins Lane. There is a narrow, level area along St. Swithins Lane and then the topography falls steeply across a wooded slope. The property backs

to two developed lots accessed from Winchester Road. The dwelling to the east has a carport for one car; the dwelling to the west has a one-car garage addition. There are other homes on wooded slopes, including three lots across Riverside Drive. The three properties have on-site parking areas but do not have covered parking.

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 applicants 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 applicants; (2) a literal interpretation of the program will deprive the applicants 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 applicants 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 applicants 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.

The law is well settled that the applicants have the burden of satisfying all of the Critical Area variance criteria. If the evidence is lacking as to even a single criterion, then the relief must be denied.

Upon review of the facts and circumstances, I am constrained to deny the relief.

Considering first the Critical Area variance, some of the subsection (b) criteria are satisfied. Thus, a literal application of the program would deprive the applicants of the right to develop the property with any dwelling, a right in common enjoyment elsewhere in the Critical area. Conversely, the granting of some relief would not be a special privilege that the program typically denies to other Critical Area lands. And, the need for relief is not the result of the actions of the applicants or land use on neighboring property. See, subsections (b)(2), (b)(3) and (b)(4). However, I find that the present application fails to satisfy the requirement under subsection (b)(5). Rather, given the extent of the slope disturbance and the amount of clearing - even absent a driveway turnaround, the proposal approaches the allowance for forest clearing - the granting of the variance

would adversely affect Critical Area assets and does not harmonize with the general spirit and intent of the program.

Considering the subsection (c) criteria, I find that the applicants have not minimized the extent of the relief. In this case, the applicants are proposing an irregularly configured dwelling which is as much as 36 feet wide and 56 feet long, inclusive of garage addition (30 by 20 feet). There are opportunities to develop the property with a dwelling with a smaller footprint. Compare, Case No. BA 65-06V, In Re: John and Karen Barry (December 14, 2007) (variance to disturb steep slopes for dwelling with footprint of 836 square feet, inclusive of garage addition measuring 20 by 20 feet); Case No. 2007-0279-V, In Re: Emma Elder (October 29, 2007) (Critical Area variances for dwelling measuring 20 by 25 feet); Case No. BA 110-05V, In Re: Princess Builders (May 26, 2006) (Critical Area variances for dwelling measuring 24 by 24 feet, parking pad for two cars and walkway). Even conceding that the granting of the variance would not alter the essential character of the neighborhood or substantially impair the use or development of adjacent property, the granting of the variance would constitute a detriment to the public welfare.

Because the applicants have not met their burden of proof, the denial of the application does not deny reasonable use and does not constitute an unnecessary hardship.


Given the decision on the Critical Area variance, the zoning variance is moot and is also denied.

ORDER

PURSUANT to the application of Earl Quandt, Jr. and Alice Quandt, petitioning for a variance to allow a dwelling with less setback and with disturbance to slopes of 15 percent or greater, and

PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is this 16th day of January, 2008,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicants' request is **denied**.


Stephen M. LeGenre
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 they will be discarded.

RECEIVED

JUL 15 2008

CRITICAL AREA COMMISSION
Chesapeake & Atlantic Coastal Bays

An Appeal From A Decision Of The
Administrative Hearing Officer

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BEFORE THE
COUNTY BOARD OF APPEALS
OF ANNE ARUNDEL COUNTY
CASE NO.: BA 6-08V
(2007-0376-V)
Hearing Date: May 7, 2008

EARL & ALICE QUANDT

Petitioners

MEMORANDUM OF OPINION

Summary of Pleadings

This is an appeal from a decision of the Administrative Hearing Officer. This appeal is taken from the denial of a variance to allow construction of a home with disturbance to slopes of 15% or greater, on property known as 1604 Riverside Drive, Annapolis.

Summary of Evidence

Ms. Alice Quandt testified that she is current owner of three lots in the community association known as Winchester on the Severn. She and her husband Mr. Earl Quandt (the "Petitioners") reside as 45 year members and former officers of Winchester on the Severn at 1605 Riverside Drive. Across the street from their current residence is 1604 Riverside Drive, the subject property of this appeal. Recently, the Petitioners have been commuting to Florida during the winter. They have decided to move back permanently and to a home designed for their later life needs. The Petitioners want a home that could be used by an individual in a wheelchair. Their current home is far from accessible. After taking into account stairs and steps there are five different levels in their narrow, three story home. The bottom floor has access to a bedroom, family room, bath and utility room. Two steps up and on the same floor is a kitchen, living room, bath, study and dining room. The upper floors have bedrooms, a loft and a study. The home is an "Acorn" home. It lacks a continuous column that would allow the installation of an

elevator. The variances, if granted, would allow the Petitioners to build a home across the street and without any of these barriers. Ms. Quandt testified that the new home would feature wider doorways and have wheelchair access to one of two floors via an elevator. An elaborate plan by architects engaged by Ms. Quandt found a way to tuck the garage underneath the main floor. Access to the garage would be by Riverside Drive as opposed to St. Swithins' Lane. The Petitioners' architects decreased the footprint of the home from 1675 square feet to 1435 square feet after a hearing before the AHO. The Petitioners' architects also decreased the garage size from 22 by 30 feet to 22 by 22 feet. The home was relocated seven feet.

Mr. Michael Drum is a civil and registered professional engineer and principal at the engineering firm of Drum & Loyka Associates. Ms. Quandt engaged Mr. Drum's firm in 2007 to perform percolation tests and site design. Mr. Drum surveyed the property and prepared a site plan. Almost 80% of the property contains slopes greater than 15%. All of property is in the Critical Area. Most of lots in this subdivision are improved and developed. The Petitioners' lot, however, is irregular in shape and sits at the corner of Riverside Drive and St. Swithins Lane. Said lot is zoned R2 with an LDA Critical Area designation. The lot could not be improved without a variance to impact the slopes. The site design of the new house began with the septic system. The County requires a primary drywell and tank as well as two, backup drywells shown on the site plan. The septic system is set back appropriately to comply with the County's Health Code. All variable components of the site plan are minimized to lower disturbance. The requirements for mitigation of forest removal are at a 3:1 ratio. Mr. Drum and the construction crew will attempt to reforest on site (but because 5,095 square feet of forest will be removed) some of the reforestation will need to be provided off site. The footprint of the building will be similar to other homes in the area. There will not be an adverse impact on the Critical Area and

Severn River. Impacts to fish, wildlife and plant habitat were taken into consideration with the downspouts to be designed into the storm water management system.

Mr. Shep Tullier testified that he is a land use consultant and certified planner. Mr. Tullier consulted with the Petitioners and Mr. Drum. From these conversations, Mr. Tullier ascertained that the lot was irregularly shaped and that steep slopes and buffer cover almost the entire property. No special privilege will be conferred on the Petitioners by granting the variance. The variance is necessary because of the vast quantity of steep slopes. Mr. Tullier agrees with Mr. Drum that there would be no adverse impact on plant habitat or water quality. As such, the Petitioners have overcome the presumption of the Natural Resources Article. The proposed structure would have a smaller than average footprint for the neighborhood. The range of home footprints is 1,200 to 3,300 square feet. Mr. Tullier also opined that the Petitioners would suffer hardship if the variance request were denied. The essential character of the neighborhood will not be altered with the addition of the home. The subdivision is a residential community. Mr. Tullier does not believe that the variance would substantially impair the use of adjacent properties. In terms of the critical area issue, the Critical Area Commission didn't object to the building proposal and Mr. Tullier does not believe said proposal will affect the public welfare.

Mr. Earl Quandt testified that the current residence of the Petitioners has three levels. Mr. Quandt uses any and all of the three levels on any given day. Although he and Ms. Alice Quandt are not handicapped, the current residence would not accommodate their future needs.

Mr. John Fury, a planner with the Office of Planning & Zoning, testified that he revised his findings and eliminated the request for a setback variance. Mr. Fury stated that the site is 80% within steep slopes and a variance is necessary for any development on the lot. Mr. Fury believes the Petitioners met the Critical Area Commission and general standards required for

granting a variance. The Health Department, the development division of Office of Planning Zoning and the Critical Area Commission all gave minor to no objection comments.

Ms. Christina Hardy, owner and resident of 1603 Riverside Drive, testified that the development will most impact her life as a neighbor of the Petitioners. The Petitioners, in particular Ms. Quandt, are lifelong community members who care greatly for the community and will maintain the essential character of the neighborhood. She is in favor of the request.

Mr. Charles Vonderheid, owner and resident of 1601 Riverside Drive, purchased his property 19 years ago. Since he moved in, the subject property has been vacant. He would prefer the subject property remain vacant; however, if anyone could build, he would like the Petitioners to do so. Mr. Vonderheid would not like the Petitioners to leave the area.

Mr. Jeffrey Hardy, husband of Ms. Hardy and co-owner of 1603 Riverside Drive, testified that the Petitioners are fortunate to have offspring in close proximity. He supports the request.

Ms. Mary Cooper, owner and resident of 215 St. Swithins Lane, testified that she and her husband are not trying to prevent the Petitioners from improving their land. Her testimony spoke to the idea that the new home will bring more runoff onto St. Swithins Lane. She noted that a two story structure is proposed. Although she does not dispute that the Petitioners meet the minimum, she asks the Board to consider the impact to the Critical Area.

Ms. Mary Lou Baker, owner and resident of 1518 Winchester Road, is opposed to the height of the structure. Her knowledge of the structure and its place in the approval process was unclear before learning the results of the prior hearing. Although she knew preliminary approval was granted, she is shocked that the lot could be deemed "buildable".

Ms. Joan Church has been the owner and resident of 217 St. Swithins Lane since 1962. She questioned why the Petitioners would want to put their home on their particular lot when it is so steep.

Ms. Margaret Chandler is the owner and resident of 1514 Winchester Road. Her testimony added that she sees building on the lot as expensive and unnecessary.

Mr. Geoffrey Baker is an architect and son of a neighbor of the subject property. In his estimation, the house will be 35 feet tall and will eradicate a significant amount of trees. Reforestation by off site and understory plantings will not mitigate the effect of the structure on the forest. He believes that keeping land wooded is a major feature of the community. Although Mr. Baker could not provide an ideal footprint size for the proposed structure, he believes that a smaller structure is needed to keep in the spirit and intent of the Critical Area Program.

Mr. Gerard Church of 217 St. Swithins Lane testified that he supports the opinions generally held by the opposition to the variance.

Mr. Michael Drum testified on rebuttal that the requested limit of disturbance is shown on the site plan. The Development Division would like the limit of disturbance reduced; however, according to his plans such a reduction is unfeasible. The forest clearing was minimized.

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

The applicants propose to construct a new dwelling on property within the R2-Residential District and classified within the Limited Development Area (LDA) of the Chesapeake Bay Critical Area. The Anne Arundel County Code (the "Code"), Code § 16-3-302 prohibits development on slopes of 15% or greater in the LDA unless the project is the only effective way

to maintain or improve the stability of the slope. The construction plans proposed by the Petitioners would disturb slopes in excess of 15%. Therefore, the Petitioners are requesting a variance to permit the construction of a dwelling with disturbance to steep slopes. In order for this Board to grant this variance, the Petitioners must make a successful showing of all of the requirements of the Code. *See* Code § 3-1-207.

The Court of Appeals established that an applicant for a variance to the Critical Area must show that the denial of a request would result in an “unwarranted hardship” upon the applicant. *See, Belvoir Farms Homeowner’s Association, Inc. v. North*, 355 Md. 259, 734 A.2d 227 (1999). The unwarranted hardship standard is less restrictive than an unconstitutional taking standard. The key to determining whether an unwarranted hardship exists is whether an applicant would be denied a “reasonable and significant use” of the property if the permission requested was not granted. The Maryland General Assembly imposed additional criteria on variances to the Critical Area Program. Maryland law requires an applicant for variance to satisfy “each one the variance provisions”. *See* Maryland Annotated Code, Natural Resources § 8-1808(d)(1)(ii). The Board must find that an applicant would be deprived a use of land or structure permitted to others in accordance with the Critical Area Program. *See Id.* Section 8-1808(d)(1)(iii). The Board must also consider the “reasonable use of the entire parcel” for which the variance is requested. *See Id.* Section 8-1808(d)(1)(2). The burden of proof on an applicant for a variance to the Critical Area is onerous. From the testimony and evidence presented in this case, we conclude the Petitioners have met the applicable variance provisions.

This property is an irregularly shaped lot measuring approximately 13,000 square feet. The site is below the minimum lot size of 15,000 square feet for a lot within the R2 Residential District. The lot lies on the corner of Riverside Drive and St. Swithins Lane. The yard slopes at a degree greater than 15% and is presently heavily wooded. More than 80% of the property is

considered steep slopes. Due to the location of these steep slopes on the property, development of the property in conformance with Critical Area Program will be impossible. Therefore, some relief from the Critical Area regulations due to the unique topographic conditions on this site would relieve the hardship on the applicant. *See* Code § 3-1-207(b)(1); and *see also* Maryland Annotated Code, Natural Resources Article § 8-1808(d)(1)(i).

The property, therefore, meets the threshold criteria for the grant of a variance to the Critical Area Program. An application must meet, however, each and every one of the variance criteria to secure a variance. The main difficulty with this request is that the Petitioners' plan of development will upset a significant portion of forest on this site. The disturbance, however, is minimal and in light of the property's distance from the shore line, the Petitioners have met the criteria to be granted variance. We explain.

The footprint of the proposed home would be 1,186 square feet and include a plan for a one car garage. The garage and living area would take up the bottom floor while a second floor, connected by an elevator, would house a bedroom and kitchen. Overall, the structure will be built to accommodate the needs of individuals in their advancing years. The approximate size of the entire structure is 3,100 square feet. Mr. Drum testified that the structure will meet all of the requirements necessary to minimize the impact on various adjacent lots and comply with Critical Area standards. The adjustments include keeping the impervious area down to 31.25%, disturbing steep slopes by 4,669 square feet and disturbing forest area by 5,905 square feet. Mr. Drum testified that any further adjustment to the proposed structure will drastically alter the plans. Mr. Drum's opinion is shared with Office of Planning and Zoning planning official, Mr. John Fury, and Mr. Shep Tullier, a local consultant and certified planner. Mr. Tullier further testified that the footprint of the structure will be smaller than the average for the neighborhood. We find the Petitioners' request reasonable given their need for one-story living in the future due

to their ages and health and the size of other homes in the subdivision. The variance to disturb steep slopes is necessary to permit any residence to be constructed on this property. The Board finds building the structure according to current plans is the minimum necessary to allow relief by the grant of a variance. *See Id.* §3-1-207(c)(1).

The requested variance to disturb steep slopes will not confer a special benefit on the Petitioners that would be denied by COMAR, Title 27, Subtitle 01 and the County's Critical Area Program; nor would such benefits held by other similarly situated properties be precluded. *See Code* § 3-1-207(b)(2)(i) & (b)(3). We find no special benefit will be conferred on Petitioners because the lot cannot be built upon without a variance. The Critical Area Program specifically guarantees property owners the reasonable and significant use of their property. A residence is a reasonable and significant use. The property is far removed from the shoreline. We are satisfied from Mr. Drum's testimony that stormwater runoff will be adequately controlled following development of the site. While some trees will be removed, reforestation will be required off site and the property owner's right to a reasonable and significant use of the property must be balanced. The disturbance to fish, wildlife and plant habitat suggested by the opponents is speculative and unsubstantiated. As such, the Petitioners met the onerous burden codified in Code § 3-1-207(b)(5)(i) and Code § 3-1-207(c)(2)(iii) & (iv).

The variance request will not disrupt the spirit and intent of the Critical Area Program. *See Md. Code Ann., Natural Resources* §8-1808(d)(2)(i). Code § 3-1-207(b)(5)(ii) & (b)(7). Said spirit and intent follows that disturbance, if any, will be minimized to lower any impact to the sensitive area. Again, the Critical Area Program permits property owners a reasonable and significant use of this property. Mr. Drum and his plan for the structure on the steep slopes is such that the slopes will not be unreasonably disturbed by the new structure. The septic system is considered state of the art and the siltation fence along the St. Swithins Lane side of the

property is designed to minimize impact to the Critical Area. Given the above, the Petitioners' variance request maintains the spirit and intent of the Critical Area Program. *Id.* Also from the above, the Board concludes the Petitioners have overcome the presumption contained in the Natural Resources §8-1808(d)(2)(i).

Furthermore, the variance request is not based on conditions or circumstances which resulted from the actions of the applicant. § 3-1-207(b)(4)(i). Here, the Petitioners submit their application for variance before any groundbreaking and in connection with its desire to improve its property in the future. Since acquiring the property, the Petitioners have not improved the property whatsoever. As such, there are no self created conditions which resulted in the need for this variance. *Id.*

Other neighbors in the area have also not created any condition which may require the variance requested in this petition. Code § 3-1-207(b)(4)(ii). Winchester on Severn is a quiet neighborhood located within the critical area. It is characterized by steep slopes and mature trees. The need for this variance is due to the natural, physical conditions of the lot, not the actions of the neighbors.

Also, the disturbances to steeply sloped areas will not detriment the public welfare. *Id.* Code § 3-1-207(c)(2)(v). The new structure is designed to keep within the median footprint and square footage of other residential structures in the area. Retaining walls will be used to minimize impact to the slopes and reduce deforestation. Furthermore, this structure is part of a residential neighborhood with other homes built into steep slopes and which disturbed some forest cover during that development at some point. As such, there is no change to the neighborhood, much less detriment to public welfare, as a result of the addition of this structure. *Id.*

Furthermore, the granting of a “variance will not substantially impair the appropriate use or development of adjacent properties”. Code § 3-1-207(c)(2)(ii). The Petitioners’ engineer’s testimony is illustrative that the grant of variance for the new home will not affect neighbors from developing or appropriately using their property or developing their structures. With no evidence to the contrary, the Petitioners met their burden to show the grant of variance for this structure will not substantially impair appropriate use or development of adjacent properties. Code § 3-1-207(c)(2)(ii).

The concern as to whether adjacent properties will be affected by this variance is mitigated by Mr. Drum’s testimony and site plan. In the site plan, Mr. Drum proposes a retaining wall and all downspouts are designed to flow into the stormwater management system. Ultimately, the Petitioners respect the community as reflected in the site plan of Mr. Drum. As property owners, the Petitioners may improve their property within zoning and development guidelines set forth in County guidelines. As the Petitioners have made every effort to minimize their disturbance while improving their property, we find no reason to reverse the construction plans for this home.

The Petitioners are 45 year residents of Winchester on the Severn and every participant, whether for or against the Petitioners, testified as to their value to the community. As the Petitioners will move across the street to accommodate their developing needs, the Board finds no reason to believe the essential character of the neighborhood will be altered by the Petitioners’ move to a new structure. As such, the Petitioners have met the burden not to alter the essential character of the neighborhood set forth in Code § 3-1-207(c)(2)(i).

ORDER

For the reasons set forth in the foregoing Memorandum of Opinion, it is this 11TH day of JULY, 2008, by the County Board of Appeals of Anne Arundel County, ORDERED, that the

Petitioners' request for a variance to permit the construction of a dwelling within steep slopes in the LDA of the Critical Area is hereby **GRANTED**.

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



Arnold W. McKechnie, Vice Chairman



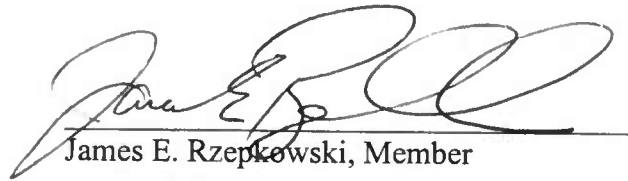
John W. Boring, Member



Carroll P. Hicks, Jr., Member



Andrew C. Pruski, Member



James E. Rzepkowski, Member

(William Moulden, Member, did not participate in this appeal.)

07-0376-Y



Drum, Loyka & Associates, LLC
Civil Engineers - Land Surveyors

October 25, 2007

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

RE: Winchester on the Severn ~ Lot 34
1604 Riverside Drive
Annapolis, Maryland 21409
Tax map 45, Grid 5, Parcel 1
Tax Account # 03-909-24369400

Sir/Madam:

Enclosed please find a variance request package for the above referenced project. The subject property is located in the community of Winchester on the Severn, zoned R-2, and is not a waterfront parcel. The Chesapeake Bay Critical Area designation is LDA. The property is approximately 0.30 acres in area and currently improved by a small gravel pad and a portion of a shed and retaining wall.

The applicants are proposing to construct a single-family dwelling, with the associated improvements. In order for the construction to continue, the applicants request a variance to **Article 17, Section 8-201** for development on slopes 15%, or greater and a variance to **Article 18, Section 4-601** for front yard setbacks.

This property is irregularly shaped and is comprised of steep slopes; therefore the space for a dwelling, septic system and stormwater management is limited. The proposed improvements are sited in an area that would require the least amount of disturbance to slopes as possible.

Thank you for your attention to this matter. Please contact us if we may be of further service during your review of this variance request.

Sincerely,

DRUM, LOYKA AND ASSOCIATES, LLC

Katie Yetman
Engineering Technician

Chesapeake Bay Critical Area Report

Winchester on the Severn, Lot 34

Tax Map 45, Grid 5, Parcel 1

Tax Account No. 03-909-24369400

Property Address: 1604 Riverside Drive, Annapolis, Maryland 21409

Property Owner & Variance Applicant: Mr. & Mrs. Earl Quandt, Jr.

Critical Area Designation: LDA

Zoning: R-2

Lot Area: 12,851 s.f.

Site Description

The subject property, Lot 34 of the Winchester on the Severn subdivision, is 12,851 s.f. (0.30 Ac.) in area, and is located at 1604 Riverside Drive, Annapolis Maryland. The property is currently improved with a small, gravel parking pad on the high flat area abutting St. Swithens Lane, and a shed and retaining walls at the toe of the slopes, straddling the property line dividing Lot 34 and Lot 35 & p/o 36. Slopes on this site range from 12% to > 25%. The property falls within the Critical Area of the Chesapeake Bay with an LDA land use designation.

Description and Purpose of Variance Request

The applicant proposes to construct a single-family dwelling with associated improvements. The proposed construction also includes stormwater management structures and a septic system. The construction will require a variance to **Article 17, Section 8-301** for development on slopes of 15%, or greater within the Critical Area and a variance to **Article 18, Section 4-601** for front yard setbacks.

Vegetative Coverage

The majority of the site is stabilized with mature woody vegetation and hardwood trees. The area to be disturbed on-site by the proposed work will be roughly 7,230 s.f. (0.17 Ac.). The forest canopy area on-site is approximately 11,100 s.f. (0.25 Ac.) The tree canopy to be removed is approximately 6,476 s.f. (0.15 Ac.), which is less than the permitted amount of forest clearing of 6,534 s.f.

Impervious Coverage

The site is currently improved with 476 s.f. (0.01 Ac.) of existing impervious coverage. The proposed impervious area for this property is 3,423 s.f. (0.08 Ac.) and will not exceed the allowable impervious area of 4,016 s.f. (0.09 Ac.). Stormwater management is also proposed with the new improvements; thereby, assisting in providing environmental benefits to the property.

Steep Slopes (slopes > 15%)

The subject property contains approximately 9,615 s.f. +/- of steep slopes. Approximately, 5,200 s.f. +/- of the steep slopes shall be disturbed during the proposed construction.

Predominant Soils

The predominant soil type in the area is Collington, Wist, and Westphalia soils, 25 to 40 percent slopes (CSF). The soil has a type B hydraulic classification, and is not considered hydric.

Drainage and Rainwater Control

Runoff from this property flows to the north, toward Winchester Road. No stormwater management structures currently exist on the property. The proposed improvements will include both stormwater management and the use of super silt fence around the proposed construction for sediment control.

Conclusions

The applicants propose to construct a single-family dwelling with associated improvements. With the implementation of current standards and environmental systems that include reforestation, sediment controls, and stormwater management, the proposed development will not cause adverse impacts to fish, wildlife, or water quality in the Critical Area.

This report is based on a Variance Plan prepared by Drum, Loyka & Associates, LLC and dated October 25, 2007 and a site survey by Drum, Loyka & Associates, LLC. A copy of which are attached to this report.

Reference:

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

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

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

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

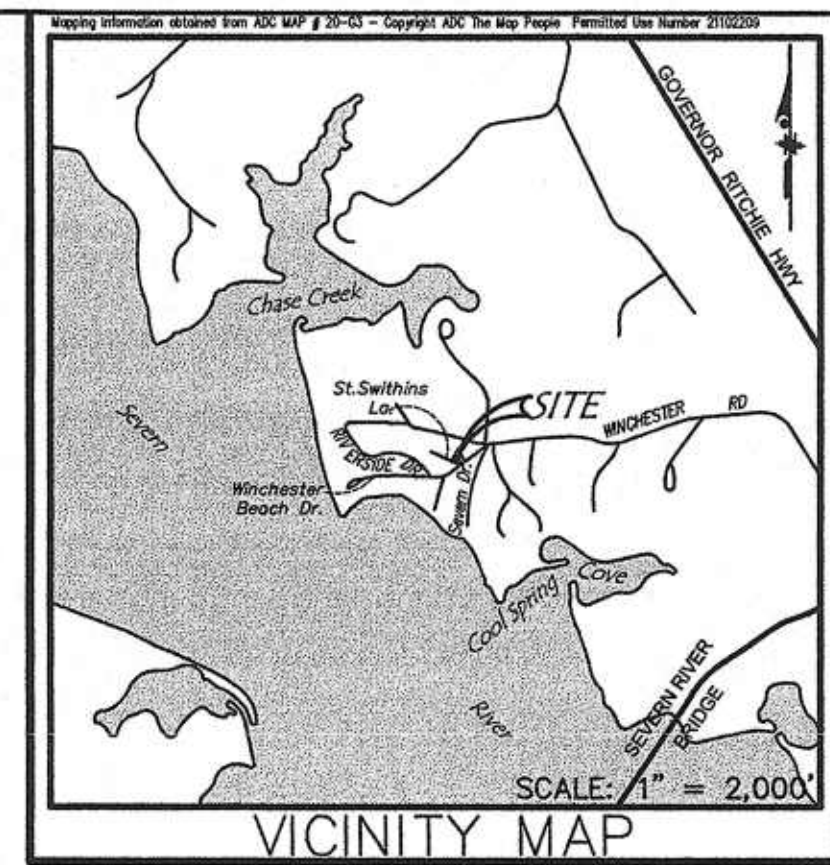
Federal Emergency Management Agency , 1985. Flood Insurance Rate Map

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

Drum Loyka and Associates. 2005 Site, Grading, and Sediment Control Plan

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

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



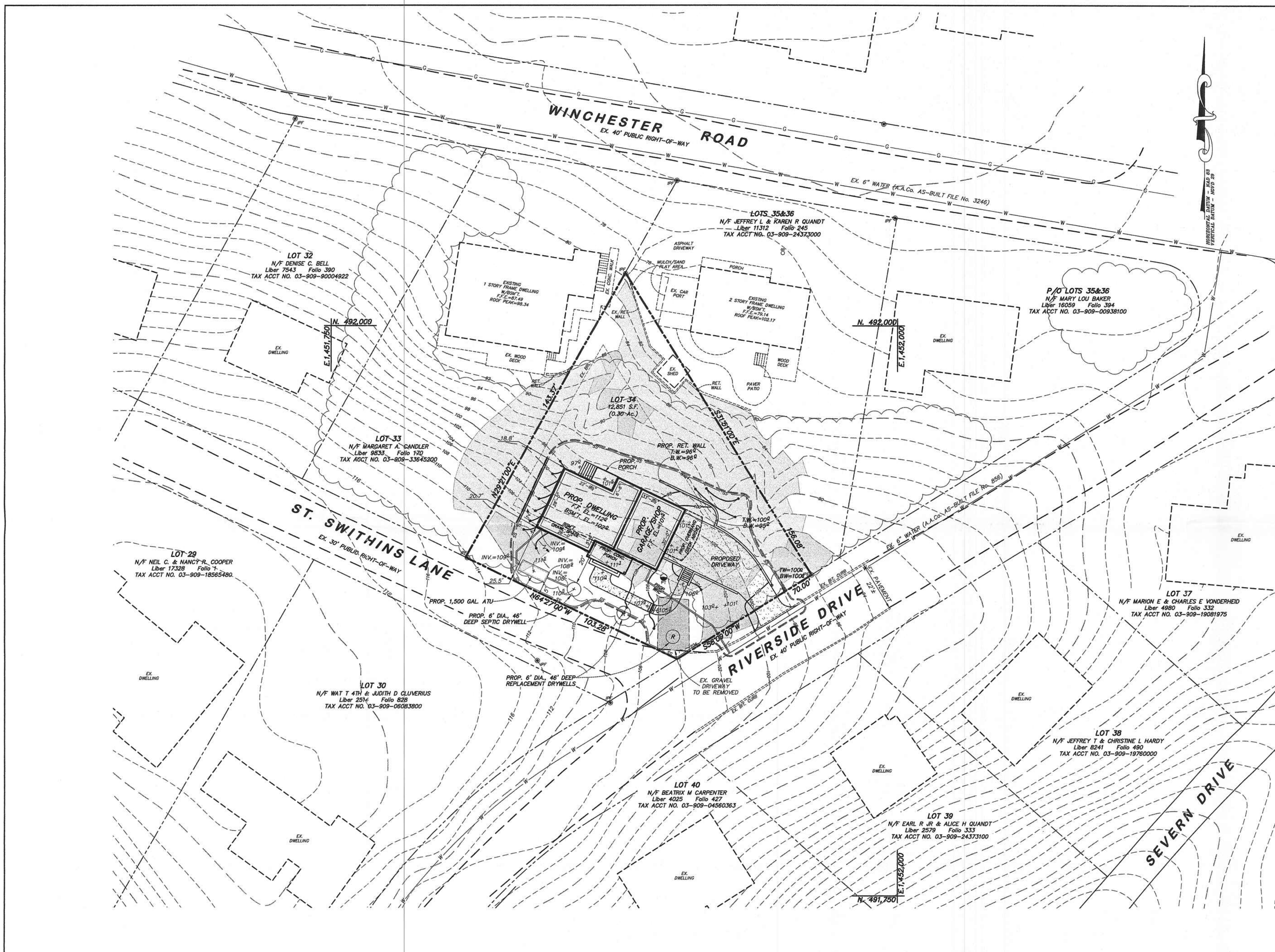
SITE TABULATIONS

SITE AREA	12,851 S.F. (0.30 Ac.)
EXISTING IMPERVIOUS SITE COVERAGE	476 S.F. (0.011 Ac.)
PROPOSED IMPERVIOUS SITE COVERAGE	3,423 S.F. (0.08 Ac.)
ALLOWABLE IMPERVIOUS SITE COVERAGE (31.25%)	4,016 S.F. (0.09 Ac.)
ZONING R-2	
SETBACKS:	FRONT 30'
	REAR 25'
	SIDE 7'
	CORNER 20'
CRITICAL AREA DESIGNATION	LDA

RECEIVED
NOV 8 2007
CRITICAL AREA COMMISSION

LEGEND

EXISTING CONTOUR	---176---
PROPOSED CONTOUR	---176---
EX. POWER POLE	⊙
PERC TEST LOCATION	⊙
LIMIT OF DISTURBANCE	---BRL---
BUILDING RESTRICTION LINE	---BRL---
SEPTIC LINE	---
FENCE	-X-X-
GAS LINE	-G-G-
OVERHEAD LINE	-OHE-OHE-
SILT FENCE	-S-S-
> 25% SLOPES	[Shaded Area]
15-25% SLOPES	[Shaded Area]



DESIGNED: RBM	DRAWN: NCT
ORIG. DATE: JULY 24, 2007	
MODIFIED BY/DATE: AUG. 2007 / KLY	
CADD DWG #: WQ00607	
DLA PROJECT #: WQ00607	
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DRUM, LOYKA & ASSOCIATES, LLC
CIVIL ENGINEERS—LAND SURVEYORS
209 WEST STREET, SUITE 203
ANNAPOLIS, MARYLAND 21401
410-280-3122

*Professional Certification. I hereby certify that these documents were prepared or approved by me, and that I am a duly licensed Professional Engineer under the laws of the State of Maryland, license no. _____, expiration date: _____.

OWNER
MR. & MRS. EARL R. QUANDT, JR.
1605 RIVERSIDE DRIVE
ANNAPOLIS, MARYLAND 21409

VARIANCE PLAN
WINCHESTER ON THE SEVERN, LOT 34
1604 RIVERSIDE DRIVE
TAX ACCOUNT NO. 03-909-24369400
TAX MAP 45 GRID 5 PARCEL 1 DISTRICT 3RD
ANNE ARUNDEL COUNTY, MARYLAND

SCALE: 1"=20' DATE: OCT. 25, 2007 PROJ. NO: WQ00607 SHEET 1 OF 1