

Grants
MK 12/17/07
MK 11/8/07
MK 6/23/08
MS 8/9/08

- AA 645-07
VAR

Schmidt, Alex and Jamie
0351

S829-6360

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/

August 5, 2008

Ms. Suzanne Schappert
Anne Arundel County
Board of Appeals
2664 Riva Road, MS 6301
Annapolis, Maryland 21401

**Re: Schmidt Variance
2007-0351 V**

Dear Ms. Schappert:

Thank you for sending the above-referenced variance request for review and comment. The applicant is requesting a variance to allow a dwelling addition with disturbance to slopes greater than 15%. The property is 2.11 acres in size, with .67 acres located in a Limited Development Area (LDA) and 1.44 acres located in a Resource Conservation Area (RCA). The property is currently developed with a one-story dwelling, hot tub, patio, wood deck, walkway, garage, and gravel driveway. The applicant proposes to expand the garage and construct a patio, a retaining wall, a screened porch, and a porch. The deck with patio would be located within an area of steep slopes. Current impervious surface on this site is 9,277 square feet (10.1% of the site) and will increase to 10,116 square feet (11.0%) if the variance is granted.

This variance application was originally reviewed by this office in November 2007 with the applicant proposing to expand the garage and construct a deck with patio beneath it, a retaining wall, a screened porch, and a porch; the deck with patio was located within an area of slopes greater than 15%. In December, a second site plan was submitted that reduced the size of the proposed deck, removed the patio underneath it, and constructed a patio adjacent to the proposed deck but outside of the area of steep slopes. Presently, the applicant has submitted a third site plan, proposing to remove the deck completely and proposing a patio/grassy area within the area of steep slopes. Total disturbance to steep slopes will be 528 square feet.

While I acknowledge that the applicant believes that this newly revised proposal minimizes impacts to slopes greater than 15%, it does not appear that the applicant can meet the variance standard for unwarranted hardship; that is, without the granting of this variance, the applicant would be denied reasonable and significant use of this lot. Currently, the property is

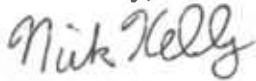
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developed with a one-story dwelling, hot tub, patio, wood deck, walkway, garage, and gravel driveway. The applicant proposes to expand the garage and construct two patios, a retaining wall, a screened porch, and a porch. One of the proposed patios is located in an area of slopes greater than 15%. Given the uses currently enjoyed by the applicant on this property, we do not believe that the County has evidence on which to base a finding that, without the patio located in an area of steep slopes, the entire parcel would lack reasonable and significant use. Therefore, no disturbance to steep slopes should be permitted. Granting of such a variance to allow an accessory structure, such as a patio, in an area of slopes greater than 15% will result in destabilization of the slope, an increase in stormwater and sediment runoff, and the loss of essential infiltration opportunities. It appears that the applicant could avoid the need for a variance to steep slopes by placing the patio on the northwestern or southwestern corners of the lot. Therefore, the comments provided in my November 13, 2007 letter and December 17, 2007 letter are still applicable to this project, and I recommend that this variance request be denied. I have attached the two aforementioned letters to be included in the record for this variance case.

Thank you for the opportunity to provide comments. Please include this letter in your file and submit it as part of the record for this variance. Also, please notify the Commission in writing of the decision made in this case. If you have any questions, please call me at (410) 260-3483.

Sincerely,



Nick Kelly
Natural Resource Planner
cc: AA 645-07

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



Margaret G. McHale
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Executive Director

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June 23, 2008

Ms. Suzanne Schappert
Anne Arundel County
Board of Appeals
2664 Riva Road, MS 6301
Annapolis, Maryland 21401

Re: Schmidt Variance
2007-0351 V

Dear Ms. Schappert:

Thank you for sending the above-referenced variance request for review and comment. The applicant is requesting a variance to allow a dwelling addition with disturbance to slopes greater than 15%. The property is 2.11 acres in size, with .67 acres located in a Limited Development Area (LDA) and 1.44 acres located in a Resource Conservation Area (RCA). The property is currently developed with a one-story dwelling, hot tub, patio, wood deck, walkway, garage, and gravel driveway. The applicant proposes to expand the garage and construct a patio, a retaining wall, a screened porch, and a porch. The deck with patio would be located within an area of steep slopes. Current impervious surface on this site is 9,277 square feet (10.1% of the site) and will increase to 10,116 square feet (11.0%) if the variance is granted.

This variance application was originally reviewed by this office in November 2007 with the applicant proposing to expand the garage and construct a deck with patio beneath it, a retaining wall, a screened porch, and a porch; the deck with patio was located within an area of slopes greater than 15%. In December, a second site plan was submitted that reduced the size of the proposed deck, removed the patio underneath it, and constructed a patio adjacent to the proposed deck but outside of the area of steep slopes. Presently, the applicant has submitted a third site plan, proposing to remove the deck completely and proposing a patio/grassy area within the an area of steep slopes. Total disturbance to steep slopes will be 528 square feet.

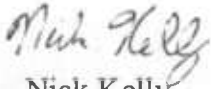
While I acknowledge that the applicant believes that this newly revised proposal minimizes impacts to slopes greater than 15%, it does not appear that that the applicant can meet the variance standard for unwarranted hardship; that is, without the granting of this variance, the applicant would be denied reasonable and significant use of this lot. Currently, the property is



developed with a one-story dwelling, hot tub, patio, wood deck, walkway, garage, and gravel driveway. The applicant proposes to expand the garage and construct two patios, a retaining wall, a screened porch, and a porch. One of the proposed patios is located in an area of slopes greater than 15%. Given the uses currently enjoyed by the applicant on this property, we do not believe that the County has evidence on which to base a finding that, without the patio located in an area of steep slopes, the entire parcel would lack reasonable and significant use. Therefore, no disturbance to steep slopes should be permitted. Granting of such a variance to allow an accessory structure, such as a patio, in an area of slopes greater than 15% will result in destabilization of the slope, an increase in stormwater and sediment runoff, and the loss of essential infiltration opportunities. It appears that the applicant could avoid the need for a variance to steep slopes by placing the patio on the northwestern or southwestern corners of the lot. Therefore, the comments provided in my November 13, 2007 letter and December 17, 2007 letter are still applicable to this project, and I recommend that this variance request be denied. I have attached the two aforementioned letters to be included in the record for this variance case.

Thank you for the opportunity to provide comments. Please include this letter in your file and submit it as part of the record for this variance. Also, please notify the Commission in writing of the decision made in this case. If you have any questions, please call me at (410) 260-3483.

Sincerely,



Nick Kelly
Natural Resource Planner
cc: AA 645-07



Martin O'Malley
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January 18, 2008

Mr. William Ethridge
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road, MS 6301
Annapolis, Maryland 21401

Re: Schmidt Variance
2007-0351 V

Dear Mr. Etheridge:

This letter is provided based on a request of the applicant, and is intended to supplement our previous letters regarding the property and requested variance. I have incorporated my observations made during our site visit today. The applicant is requesting a variance to allow a dwelling addition with disturbance to slopes greater than 15%. The property is 2.11 acres in size, with .67 acres located in a Limited Development Area (LDA) and 1.44 acres located in a Resource Conservation Area (RCA). The property is currently developed with a one-story dwelling, hot tub, patio, wood deck, walkway, garage, and gravel driveway. The applicant proposes to expand the garage and construct a patio, a retaining wall, a screened porch, and a porch. The deck with patio would be located within an area of steep slopes. Current impervious surface on this site is 9,277 square feet (10.1% of the site) and will increase to 10,116 square feet (11.0%) if the variance is granted.

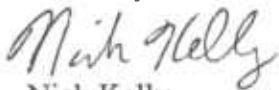
This variance application was originally reviewed in November 2007 with the applicant proposing to expand the garage and construct a deck with patio beneath it, a retaining wall, a screened porch, and a porch; the deck with patio was located within an area of slopes greater than 15%. In December, a second site plan was submitted that reduced the size of the proposed deck, removed the patio underneath it, and constructed a patio adjacent to the proposed deck but outside of the area of steep slopes. Presently, the applicant has submitted a third site plan, proposing to remove the deck completely and proposing a patio/grassy area within the an area of steep slopes. Total disturbance to steep slopes will be 528 square feet.

While I acknowledge that the applicant believes that this newly revised proposal minimizes impacts to slopes greater than 15%, it does not appear that that the applicant can meet the

variance standard for unwarranted hardship; that is, without the granting of this variance, the applicant would be denied reasonable and significant use of this lot. Currently, the property is developed with a one-story dwelling, hot tub, patio, wood deck, walkway, garage, and gravel driveway. The applicant proposes to expand the garage and construct two patios, a retaining wall, a screened porch, and a porch. One of the proposed patios is located in an area of slopes greater than 15%. Given the uses enjoyed by the applicant on this property, we do not believe that the County has evidence on which to base a finding that, without the patio located in an area of steep slopes, the entire parcel would lack reasonable and significant use. Therefore, no disturbance to steep slopes should be permitted. Granting of such a variance to allow an accessory structure, such as a patio, in an area of slopes greater than 15% will result in destabilization of the slope, an increase in stormwater and sediment runoff, and the loss of essential infiltration opportunities. It appears that the applicant could avoid the need for a variance to steep slopes by placing the patio on the northwestern or southwestern corners of the lot. Therefore, the comments provided in my November 13, 2007 letter and December 17, 2007 letter are still applicable to this project, and I recommend that this variance request be denied.

Thank you for the opportunity to provide comments. Please include this letter in your file and submit it as part of the record for this variance. Also, please notify the Commission in writing of the decision made in this case. If you have any questions, please call me at (410) 260-3483.

Sincerely,



Nick Kelly

Natural Resource Planner

cc: AA 645-07

Martin O'Malley
Governor



Margaret G. McHale
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Executive Director

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December 17, 2007

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

Re: Schmidt Variance
2007-0351 V

Dear Ms. Schappert:

Thank you for sending the above-referenced variance request for review and comment. The applicant is requesting a variance to allow a dwelling addition with disturbance to slopes greater than 15%. The property is 2.11 acres in size, with .67 acres located in a Limited Development Area (LDA) and 1.44 acres located in a Resource Conservation Area (RCA). The property is currently developed with a one-story dwelling, hot tub, patio, wood deck, walkway, garage, and gravel driveway. Current impervious surface on this site is 9,277 square feet (10.1% of the site).

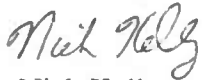
This variance application was originally submitted with the applicant proposing to expand the garage and construct a deck with patio beneath it, a retaining wall, a screened porch, and a porch; the deck with patio was located within the expanded Buffer for steep slopes. Presently, the applicant has revised the variance request, proposing to reduce the size of the deck, remove the patio underneath it, and construct a patio adjacent to the proposed deck but outside of the expanded Buffer; the proposed deck is still located in the expanded Buffer for steep slopes. Impervious surface will increase to 9,704 square feet (10.6%) if the variance is granted.

In reviewing the revised variance proposal, it still does not appear that the applicant has fully minimized impacts to the expanded Buffer for steep slopes. A granting of a variance to allow an accessory structure, such as a deck, in the expanded Buffer for steep slopes results in destabilization of the slope, an increase in stormwater and sediment runoff, and the loss of essential infiltration opportunities. It appears that the applicant could avoid the need for a variance to the expanded Buffer for steep slopes by cantilevering the proposed porch, or by moving the proposed porch to the southwestern corner of the lot, outside of the expanded Buffer, where the proposed patio is currently located. Furthermore, the applicant has not proven that

there is an unwarranted hardship; that is, without the granting of this variance, the applicant would be denied reasonable and significant use of this lot. Therefore, the comments provided in my November 13, 2007 letter (attached) are still applicable to this project, and we recommend that this variance request be denied.

Thank you for the opportunity to provide comments. Please include this letter in your file and submit it as part of the record for this variance. Also, please notify the Commission in writing of the decision made in this case. If you have any questions, please call me at (410) 260-3483.

Sincerely,



Nick Kelly
Natural Resource Planner
cc: AA 645-07

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November 13, 2007

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

Re: Schmidt Variance
2007-0351 V

Dear Ms. Schappert:

Thank you for sending the above-referenced variance request for review and comment. The applicant is requesting a variance to allow a dwelling addition with disturbance to slopes greater than 15%. The property is 2.11 acres in size, with .67 acres located in a Limited Development Area (LDA) and 1.44 acres located in a Resource Conservation Area (RCA). The property is currently developed with a one-story dwelling, hot tub, patio, wood deck, walkway, garage, and gravel driveway. The applicant proposes to expand the garage and construct a deck with patio beneath it, a retaining wall, a screened porch, and a porch. The deck with patio would be located within the expanded Buffer for steep slopes. Current impervious surface on this site is 9,277 square feet (10.1% of the site) and will increase to 9,850 square feet (10.7%) if the variance is granted.

This office opposes granting the requested variance on this site, as the applicant has the opportunity to construct the proposed deck and patio outside of the expanded Buffer for steep slopes. Based on the site plan, it appears that the proposed porch could be located on the southwestern corner of the lot, which would eliminate the need of a variance for disturbance to the expanded Buffer. The following is an analysis of the requested variance standards for this project in the context of Anne Arundel County's variance standards.

In 2002 and 2004, the General Assembly strengthened the Critical Area Law and reiterated its commitment to the Chesapeake Bay Critical Area's water quality and wildlife habitat values, particularly emphasizing the importance of the 100-foot Critical Area Buffer. In particular, the General Assembly reaffirmed the stringent standards that an applicant must meet in order for a local jurisdiction to grant a variance to the Critical Area law. The State law provides that

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variances to a local jurisdiction's Critical Area program may be granted **only** if a zoning board finds that an applicant has satisfied its burden to prove that the applicant meets each one of the county's variance standards. Furthermore, the State law establishes a presumption that a proposed activity for which a Critical Area variance is requested does not conform to the purpose and intent of the Critical Area law. The Board of Appeals must make an affirmative finding that the applicant has overcome this presumption, based on the evidence presented.

In this instance, the applicant's request for a variance to allow a proposed deck with patio beneath it is in conflict with Anne Arundel County's Zoning Code provisions regarding new structures in the expanded Buffer for steep slopes. Anne Arundel County Code §18-13-104 states that the 100-foot Buffer shall be expanded to include sensitive areas, including steep slopes of 15% or greater. Furthermore, §17-8-201 states that development in the LDA or RCA "may not occur within slopes of 15% or greater unless the development will facilitate the stabilization of the slope or the disturbance is necessary to allow connection to a public utility." The proposed deck and patio do not facilitate the stabilization of the slope or allow connection to a public utility. As a result, the proposed disturbance will create unnecessary adverse impacts to slope stabilization, water quality, and habitat. In our view, the applicant has not met each one of Anne Arundel County's variance standards and should therefore be denied a variance. I have discussed each one of the variance standards below as it pertains to this site:

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

Currently, the property is developed with a one-story dwelling, hot tub, patio, wood deck, walkway, garage, and gravel driveway. The applicant proposes to expand the garage and construct a deck with patio underneath, a retaining wall, a screened porch, and a porch; the deck with patio beneath it is located in the expanded Buffer for steep slopes. The State law standards, applicable to this variance request, define "unwarranted hardship" to mean that the applicant must prove that, without the requested variance, he would be denied reasonable and significant use of **the entire parcel or lot**. Given the uses enjoyed by the applicant on this property, we do not believe that the County has evidence on which to base a finding that, without the deck with patio beneath it, the entire parcel would lack reasonable and significant use.

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

Anne Arundel County Code §17-8-201 states that development in the LDA or RCA may not occur within slopes of 15% or greater unless the development will facilitate the stabilization of the slope or the disturbance is necessary to allow connection to a public utility. The applicant proposes to construct a deck with patio beneath it in the expanded Buffer for steep slopes. Neither structure stabilizes the slope or allows connection to a public utility. This office would not support similar requests to construct deck with patio in an expanded Buffer

on other sites within the Critical Area. Therefore, the rejection of a variance for the deck with patio in the expanded Buffer for steep slopes would not deny the applicants a right commonly enjoyed by other properties.

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

The granting of a variance to permit a deck with patio beneath it in the expanded Buffer for steep slopes, which are protected under Anne Arundel County Code §17-8-201, would constitute a special privilege upon the applicant which would be denied to others in the County as well as within other jurisdictions in the Critical Area.

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

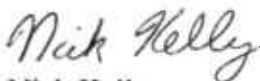
From the information provided, it does not appear that the variance request is based on conditions or circumstances that are the result of the applicant or from a neighboring property. Therefore, it appears that the applicant has met this standard.

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

Granting of this variance is not in harmony with the general spirit and intent of Critical Area law and regulations. A granting of a variance to allow an accessory structure, such as a deck with patio beneath it, in the expanded Buffer for steep slopes results in destabilization of the slope, an increase in stormwater and sediment runoff, and the loss of essential infiltration opportunities. Given that the applicant can adequately redevelop this property and locate the deck and patio outside of the expanded Buffer, approval of this variance would not be in harmony with the general intent and spirit of the Critical Area Law.

Thank you for the opportunity to provide comments. Please include this letter in your file and submit it as part of the record for this variance. Also, please notify the Commission in writing of the decision made in this case. If you have any questions, please call me at (410) 260-3483.

Sincerely,



Nick Kelly
Natural Resource Planner

cc: AA 645-07

645-07

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 2007-0351-V

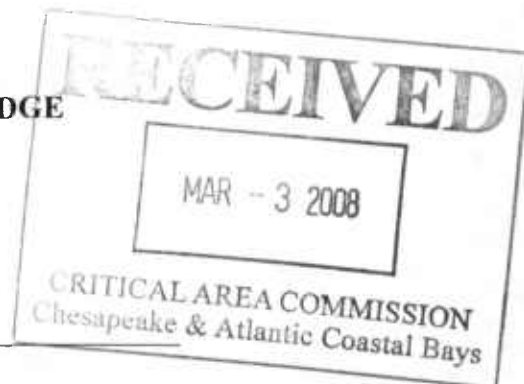
JAMIE AND ALEX SCHMIDT

THIRD ASSESSMENT DISTRICT

DATE HEARD: JANUARY 22, 2008
LAST EVIDENCE: JANUARY 30, 2008

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

PLANNER: **WILLIAM ETHRIDGE**



DATE FILED: FEBRUARY 29, 2008

PLEADINGS

Jamie and Alex Schmidt, the applicants, seek a variance (2007-0351-V) to allow dwelling additions with disturbance to slopes of 15% or greater on property located along the west side of Old County Road, south of Water Street, Severna Park.

PUBLIC NOTIFICATION¹

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. Schmidt 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 a single-family residence with a street address of 212 Old County Road, Severna Park. The property comprises 2.02 acres and is split zoned R2 residential and OS Open Space districts with Chesapeake Bay Critical

¹ The case was originally scheduled for hearing on November 29, 2007. When the case was call, Mike Drum, the applicants' engineering consultant, requested and was given a continuance to give the reviewing agencies additional time to review a new site plan. Following a meeting with the reviewing agencies on January 18, 2007, Mr. Drum made further revisions to the site plan. Given the short time before the hearing, the record was left open for further written comments by attendees. This office received correspondence dated January 24, 2008 from Frederick L Kelly, the Severn River Keeper and correspondence dated January 29, 2008 from Roy Higgs. Mr. Higgs also submitted an architectural model and photographs of the model that were included in the record. This office provided both letters to the applicants and to Mr. Drum. The applicants also visited the office to view the architectural model.

Area designations as Limited Development Area (LDA) and Resource Conservation Area (RCA).² This is a waterfront lot on the Severn River. The applicants seek to remodel and expand the dwelling. The remodeling includes raising part of the roof line to add living space in the unfinished attic. There are two additions. The north side addition is 16 feet wide and consists of living space and covered and screened porches. Based on the final site plan, the waterside addition consists of living space (26 by 14 feet) and at grade decking (12 by 28 feet).³ The deck is located on steep slopes.

Anne Arundel County Code, Article 17, Section 17-8-201 proscribes the disturbance to steep slopes in the LDA. Accordingly, the proposal requires a variance to disturb steep slopes.

William Ethridge, a planner with the Office of Planning and Zoning, testified that the property exceeds the standards for the district but is two-thirds wetlands and approximately one-fourth slopes. The top of slope is near the front façade of the dwelling. The applicants are proposing to increase impervious coverage from 9,277 square feet to 9,850 square feet; the allowance is 13,876 square feet. The witness summarized the agency comments. The County's Development Division and the Chesapeake Bay Critical Area Commission opposed the disturbance of steep slopes. Mr. Ethridge adopted their negative recommendations.

² The dwelling is located in the R2 district and in the LDA.

³ The applicants are also removing part of the existing foundation on the waterside.

Mr. Drum testified that the earlier plan called for a walkout basement with deck above on the waterside. The final plan lowers the grade by 18 inches for windows in the basement. As compare to the earlier plan, the change minimizes the slope disturbance. The slope has been disturbed previously and there is no tree removal from the slope. The existing dwelling is approximately the same distance to the slope as the expanded dwelling. He anticipated little adverse impact to water quality.

Ms. Schmidt summarized a written statement indicating that the project is considered a reasonable use, given the waterside slope. The applicants have completed other beneficial improvements, including the removal of junk and debris, the upgrading of utilities and the construction of a garage in the rear yard. She provides a series of supporting exhibits and site and neighborhood photographs.

Mr. Higgs opposed the application. Among other objections, the dwelling could be expanded vertically, without any slope disturbance; the slopes in question overlook both a pristine area of the river and a contributing drainage area to a bog; the applicants are planning to remove trees in the north side yard; the expansion towards the water impacts 14 linear feet of 25 percent slopes; the addition and decking on the waterside comprise 700 square feet and the porch is built up to the

edge of the slope; there are other opportunities to expand the dwelling towards the street; and the project may also impact the expanded buffer.⁴

Sharon Wood, a representative of the Board of Directors for the Olde Severna Park Improvement Association, opposed the application on the grounds that it would cause adverse environmental impacts. Mr. Kelly, Alison Burbage and George Walker expressed the same concern.

I visited the site and the neighborhood. The property is accessed across a graveled, circular driveway with a landscaped island near the road. A new, two-story, 3-car garage is connected via a breezeway to an older, rancher style dwelling with basement. The north side yard is covered with a brick patio that extends past the front (waterside) façade of the dwelling. The south side yard is mulched. The dwelling is perched near the top of a stable, steep slope that leads down to a level clearing. There is an extensive wetlands area beyond the clearing. A mulched pathway extends along the north side of the wetlands. The properties to the north and south are developed with two-story dwellings and there is a very large, older home further to the north. All three dwellings are located on high ground above the wetlands.

The standards for granting variances are contained in Section 18-16-305. Under subsection (b), for a property in the Critical Area, a variance to the Critical Area program requirements may be granted only after determining that (1) due to

⁴ Mr. Higgs supplies a series of exhibits in support of his testimony; these included Critical Area designation map, bog protection area guidance map, zoning map, and aerial photograph.

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 settled that the applicants must satisfy all of the Critical Area variance standards. If the proof is wanting for even one of the criteria, then the relief must be denied.

Upon review of the record evidence, I am unable to approve the request. The first part of the analysis is to consider the subsection (b) criteria. This property is already developed with a single family dwelling and attached garage addition. Furthermore, the applicants can raise the roofline of the dwelling and

can expand the footprint of the dwelling with a north side addition without any variance to the program. The need for relief only arises because they seek to expand the dwelling with additional living space and a deck addition in the direction of the steep slope as well. But, there is no right in common enjoyment by other Critical Area properties to a particular design, or to every desired amenity, or to a particular location for the desired amenities. That is, the applicants have not shown that a literal application of the program would deprive them of any right in common enjoyment by other Critical Area properties; rather, the granting of relief would be a special privilege that the program typically denies to other Critical Area lands. It follows that the variance request is a result of the actions of the applicants and its grant does not harmonize with the general spirit and intent of the program.⁵

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

In view of the decision on the subsection (b) criteria, there is no need to consider the subsection (c) criteria. Nevertheless, I would be remiss if I failed to note that the granting of relief when none is perceived to be needed would constitute a detriment to the public welfare.

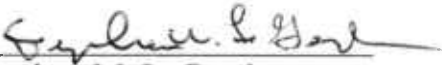
⁵ The program does not distinguish previously disturbed slopes from undisturbed slopes.

ORDER

PURSUANT to the application of Jamie and Alex Schmidt, petitioning for a variance to allow dwelling additions with disturbance to slopes of 15% or greater, and

PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is this 29th day of February, 2008,

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


Stephen M. LeGenre
Administrative Hearing Officer

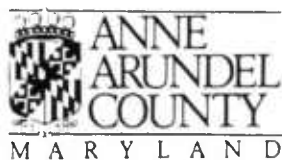
NOTICE TO APPLICANT

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.

NK

645-07



BOARD OF APPEALS
P.O. BOX 2700, 44 CALVERT ST., RM. 160
ANNAPOLIS, MARYLAND 21404
410-222-1119

July 23, 2008

NOTICE OF APPEAL HEARING

BA 20-08V
Jamie & Alex Schmidt

The Board of Appeals will conduct a public hearing on the above case on Tuesday, September 2, 2008, at 6:30 p.m., in Room 160, First Floor, Arundel Center, 44 Calvert Street, Annapolis, Maryland.

This is an appeal from a decision of the Administrative Hearing Officer. This appeal is taken from the denial of a variance to permit construction of dwelling additions with disturbance to slopes of 15% or greater, on property known as 212 Old County Rd., Severna Park.

Interested persons are advised to contact the Board of Appeals at 410-222-1119 to confirm that the hearing will proceed as advertised. The Board may choose to close a portion of the meeting to obtain legal advice or to discuss personnel matters as authorized by Section 10-508(a)(7) or Section 10-508(a)(1) of the Open Meetings Act.

A handwritten signature in cursive script that reads "Mary M. Leavell".

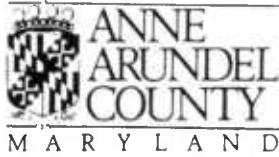
Mary M. Leavell
Clerk to the Board

cc: Property Owners
Critical Area Commission
News Media
Kathryn J. Dahl, Esq.
William Ethridge (07-351-V)
Suzanne Schappert
Michael G. Comeau, Esq.

RECEIVED

JUL 25 2008

CRITICAL AREA COMMISSION



BOARD OF APPEALS
PO. BOX 2700, 44 CALVERT ST., RM. 160
ANNAPOLIS, MARYLAND 21404
410-222-1119

May 19, 2008

NOTICE OF APPEAL HEARING

BA 20-08V
Jamie & Alex Schmidt

The Board of Appeals will conduct a public hearing on the above case on Tuesday, July 1, 2008, at 6:30 p.m., in the Council Chambers, First Floor, Arundel Center, 44 Calvert Street, Annapolis, Maryland.

This is an appeal from a decision of the Administrative Hearing Officer. This appeal is taken from the denial of a variance to permit construction of dwelling additions with disturbance to slopes of 15% or greater, on property known as 212 Old County Rd., Severna Park.

Interested persons are advised to contact the Board of Appeals at 410-222-1119 to confirm that the hearing will proceed as advertised. The Board may choose to close a portion of the meeting to obtain legal advice or to discuss personnel matters as authorized by Section 10-508(a)(7) or Section 10-508(a)(1) of the Open Meetings Act.


Mary M. Leavell
Clerk to the Board

- cc: Property Owners
- Critical Area Commission
- News Media
- Kathryn J. Dahl, Esq.
- Michael G. Comeau, Esq.
- William Ethridge (2007-0351-V)
- Suzanne Schappert
- Stephen LeGendre



W- 7:30 - trip to Worcester
Bish.

16th - 9:30 - Chastertown } ?
- ~~1:30~~ - Salisbury }
2:00 -

18th - 9:30 - Western shore town

• Ken out on 24th

W. Alex

Martin E. Gransky
618 Jumpers Hole Road
Severna Park, Maryland 21146

Monday, November 19, 2007

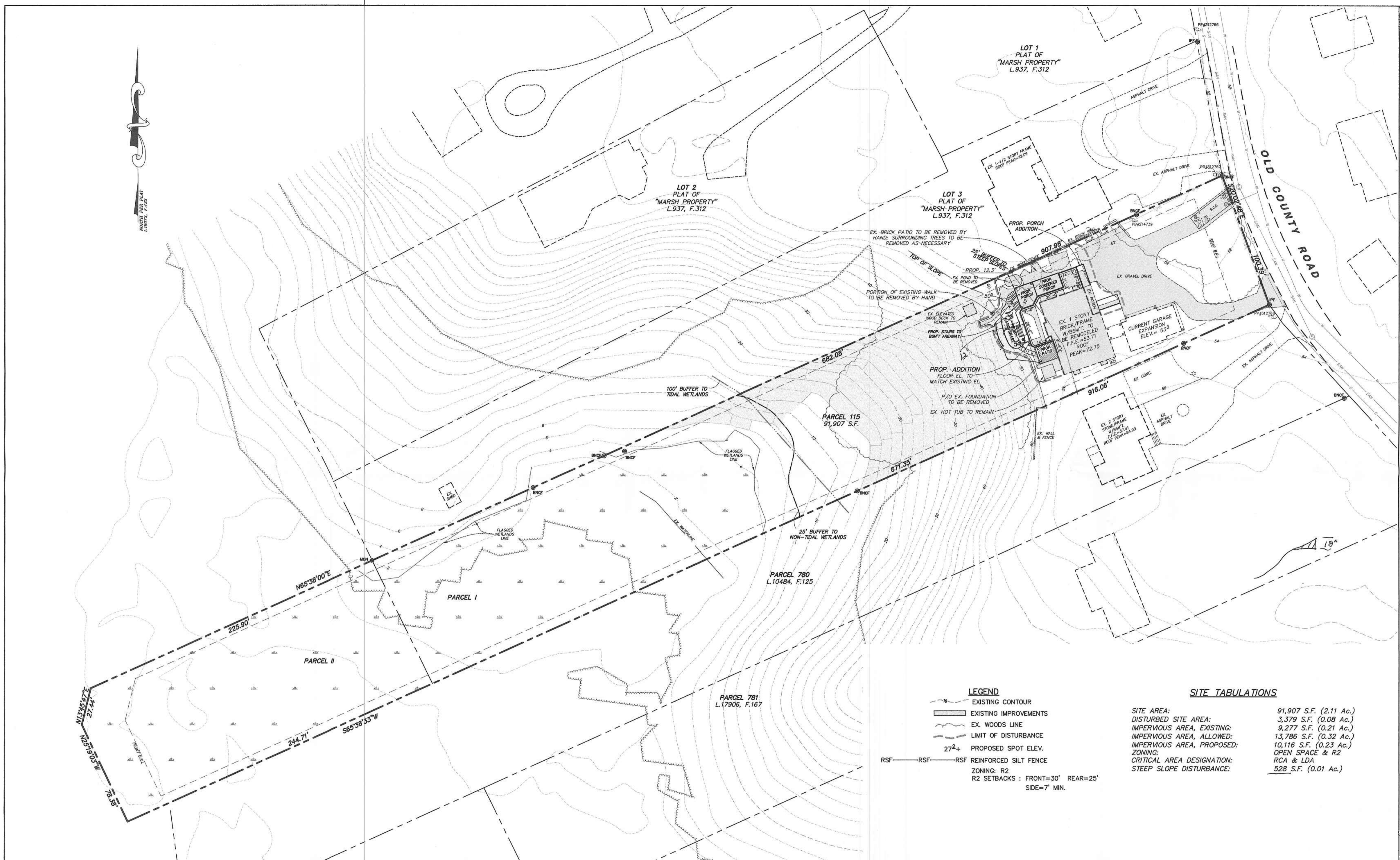
To Whom It May Concern:

I have been contracting for Mr. and Mrs. Schmidt for the past year at 212 Old County Road in Severna Park. During this duration of time the Schmidt's have made major improvements in their home and on their property. This has made a difference to its physical appearance but also a **positive impact on the environment** of the wetlands and Severn River on which it is positioned. All improvements completed so far **have been accepted and inspected by Anne Arundel County**. The improvements have involved terminating a drywell system capturing gray water from a washing machine and slop sink and installing a new sewage pump that allows all gray water, including condensate from the new, more efficient gas heating system, to be pumped into the county sewage facility. A new natural gas line with four (4) inch conduit **was installed per A.A. Co. code**. During the construction on their new garage, fence and breezeway, constant attention was given to controlling erosion of sediment into the nearby shoreline.

Sincerely,

A handwritten signature in cursive script that reads "M E Gransky".

Martin Gransky



- LEGEND**
- - - - - EXISTING CONTOUR
 - ▭ EXISTING IMPROVEMENTS
 - - - - - EX. WOODS LINE
 - - - - - LIMIT OF DISTURBANCE
 - 27⁺ PROPOSED SPOT ELEV.
 - RSF — RSF — RSF REINFORCED SILT FENCE
- ZONING: R2
R2 SETBACKS : FRONT=30' REAR=25'
SIDE=7' MIN.

SITE TABULATIONS

SITE AREA:	91,907 S.F. (2.11 Ac.)
DISTURBED SITE AREA:	3,379 S.F. (0.08 Ac.)
IMPERVIOUS AREA, EXISTING:	9,277 S.F. (0.21 Ac.)
IMPERVIOUS AREA, ALLOWED:	13,786 S.F. (0.32 Ac.)
IMPERVIOUS AREA, PROPOSED:	10,116 S.F. (0.23 Ac.)
OPEN SPACE & R2	RCA & LDA
CRITICAL AREA DESIGNATION:	528 S.F. (0.01 Ac.)
STEEP SLOPE DISTURBANCE:	

DESIGNED: MMD DRAWN: KLY
 ORIG. DATE: 10-18-06
 MODIFIED BY/DATE:
 CADD DWG #: OS07706-V
 DSA PROJECT #: OS07706

REVISIONS TO APPROVED PLANS				
No.	DATE	BY	DESCRIPTION	

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

OWNER:
MR. & MRS. ALEX SCHMIDT
 212 OLD COUNTY ROAD
 SEVERNA PARK, MARYLAND 21146

VARIANCE PLAN
212 OLD COUNTY ROAD
 PARCEL 115
 TAX ACCT. # 03-748-32029000
 TAX MAP 32 GRID 13 PARCEL 115 3RD DISTRICT
 ANNE ARUNDEL COUNTY, MARYLAND

SCALE: 1"=30' DATE: JAN. 17, 2008 PROJ. NO: OS07706V SHEET 1 OF 1

P:\0307706\Cadd\05-OS07706-V.dwg, SHEET 2, 1/17/2008 2:05:46 PM