

- AA 646-07
VAR

Steinlein, Mark
0352

51829-6361

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/

June 5, 2008

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

Re: Steinlein Variance
2007-0352-V

Dear Ms. Schappert:

Thank you for sending the above-referenced variance request for review and comment. The applicant is requesting an after-the-face variance for an accessory structure with less setbacks and Buffer than allowed. The property is 16,030 square feet in size and is located in a Limited Development Area (LDA). The property is currently developed with a two-story dwelling, driveway, garage, deck, and screened porch. The applicant requests to keep a 10 foot by 12 foot shed (120 square feet) that is approximately 70 feet from the shoreline. Current impervious surface on this site, including the shed, is 2,760 square feet (17.2%).

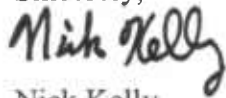
Based on the information provided, we oppose a variance to perfect a shed in its current location. As stated in Anne Arundel County Code 1816-305 (b) (1), a variance may be granted in the Critical Area if, "because of unique physical conditions, such as exceptional topographical conditions peculiar to and inherent in the particular lot or irregularity, narrowness, or shallowness of lot size and shape," strict implementation of Critical Area rules, regulations, and policies would create an unwarranted hardship." In this instance, the applicant has constructed a two-story dwelling, driveway, garage, deck, and screened porch on the site. In addition, there appears to be ample room outside of the 100-foot Buffer to place the shed. Therefore, denial of this variance will not create an unwarranted hardship for this applicant. Additionally, Anne Arundel County Code 1816-305 (b) (3) states that the variance cannot be based on "Conditions or circumstances that are the result of actions by the applicant." The applicant is requesting this variance due to the fact that the shed was constructed within the 100-foot Buffer without prior approval.

Thus, it is the result of circumstances that are based upon actions by the applicant that has created a need for this variance.

Based on the above purposes, policies, goals, and provisions of the Critical Area Law and Criteria, we recommend moving the shed outside of the 100-foot Buffer and replanting the current location of the shed with native plants and shrubs.

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

Sincerely,

A handwritten signature in black ink that reads "Nick Kelly". The signature is written in a cursive, slightly slanted style.

Nick Kelly

Natural Resource Planner

cc: AA 646-07

Martin O'Malley
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1804 West Street, Suite 100, Annapolis, Maryland 21401
(410) 260-3460 Fax: (410) 974-5338
www.dnr.state.md.us/criticalarea/

October 31, 2007

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

Re: Steinlein Variance
2007-0352-V

Dear Ms. Schappert:

Thank you for sending the above-referenced variance request for review and comment. The applicant is requesting an after-the-face variance for an accessory structure with less setbacks and Buffer than allowed. The property is 16,030 square feet in size and is located in a Limited Development Area (LDA). The property is currently developed with a two-story dwelling, driveway, garage, deck, and screened porch. The applicant requests to keep a 10 foot by 12 foot shed (120 square feet) that is approximately 70 feet from the shoreline. Current impervious surface on this site, including the shed, is 2,760 square feet (17.2%).

Based on the information provided, we oppose a variance to perfect a shed in its current location. As stated in Anne Arundel County Code 1816-305 (b) (1), a variance may be granted in the Critical Area if, "because of 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 Critical Area rules, regulations, and policies would create an unwarranted hardship." In 2004, the General Assembly defined unwarranted hardship as follows: "without the variance, the applicant would be denied reasonable and significant use of the entire parcel or lot." In this instance, the applicant has constructed a two-story dwelling, driveway, garage, deck, and screened porch on the site. In addition, there appears to be ample room outside of the 100-foot Buffer to place the shed. Therefore, denial of this variance will not create an unwarranted hardship for this applicant. Additionally, Anne Arundel County Code 1816-305 (b) (3) states that the variance cannot be based on "conditions or circumstances that are the result of actions by the applicant." The applicant is requesting

this variance due to the fact that the shed was constructed within the 100-foot Buffer without prior approval. Thus, it is the result of circumstances that are based upon actions by the applicant that has created a need for this variance.

Based on the above purposes, policies, goals, and provisions of the Critical Area Law and Criteria, we recommend moving the shed outside of the 100-foot Buffer and replanting the current location of the shed with native plants and shrubs.

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

Sincerely,

A handwritten signature in cursive script that reads "Nick Kelly".

Nick Kelly

Natural Resource Planner

cc: AA 646-07

646-07

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 2007-0352-V

MARK STEINLEIN

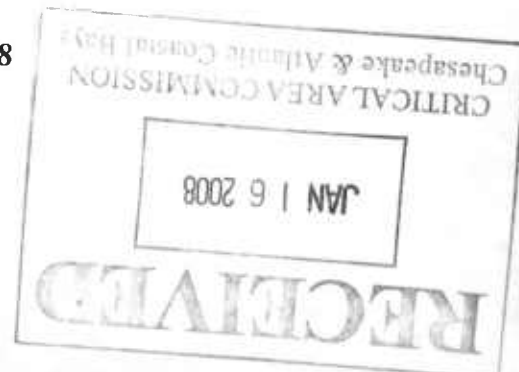
THIRD ASSESSMENT DISTRICT

DATE HEARD: DECEMBER 18, 2007
LAST EVIDENCE: JANUARY 3, 2008

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

PLANNER: **PATRICIA A. COTTER**

DATE FILED: JANUARY 15th, 2008



PLEADINGS

Mark Steinlein, the applicant, seeks a variance (2007-0352-V) to allow sheds with less buffer than required on property located along the south side of Galesville Road, south of East Benning Road, Galesville.¹

PUBLIC NOTIFICATION

The hearing notice was posted on the County's web site in accordance with the County Code. The file contains the certification of mailing to community associations and interested persons. Each person designated in the application as owning land that is located within 175 feet of the property was notified by mail, sent to the address furnished with the application. Mr. Steinlein 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 applicant owns a single-family residence with a street address of 999 Galesville Road, Galesville. The property comprises 16,030 square feet and is zoned R2 residential with a Chesapeake Bay Critical Area designation as Limited Development Area (LDA). This waterfront lot on School Creek is mapped as a buffer modification area. The request is to perfect the storage sheds. The larger

¹ The application identified only one storage shed (10 by 12 by 12 feet). Although it is not shown on the site plan, Mr. Steinlein testified that the property is also improved with a smaller shed (4 by 12 feet). As a matter of efficiency, I have amended the application to include both sheds.

shed is 69 feet from mean high water. The record does not include the precise location of the smaller shed, other than it is closer to the water than the dwelling. Based on the site plan, the leading edge of the deck addition to the dwelling is 77 feet from mean high water.

Anne Arundel County Code, Article 18, Section 18-13-104(a) establishes a 100-foot buffer from tidal waters. However, Section 18-13-104(b) creates a buffer modification area on lots platted prior to December 1, 1985 on which the existing pattern of development prevents the buffer from performing its protective functions. Under Article 17, Section 17-8-702(b), new impervious surface added during the placement of a new accessory structure in a buffer modification area shall be no closer to water than the principal structure. Accordingly, both sheds require buffer variances.²

Patricia A. Cotter, a planner with the Office of Planning and Zoning, questioned the hardship of the request. She also asserted that there has been no showing of unique physical conditions and the applicant has not been denied reasonable use of the property. By way of conclusion, Ms. Cotter opposed the application.³

² Mr. Steinlein stated that a County inspector told him that the zoning code allowed the smaller shed by right. However, the law is clear that a variance is needed to the modified Critical Area buffer for any new accessory structure – without regard to size – that is closer to the shoreline than the dwelling.

³ The record was left open for the submission of the written comments of the Chesapeake Bay Critical Area Commission. The Commission's letter is appended as Attachment A. This office supplied a copy of the Commission's letter to the applicant for review and comment. Mr. Steinlein's response is appended as Attachment B.

Mr. Steinlein testified that he was unaware of the need for a permit when he installed the larger shed one and one half years ago. The impervious surface associated with the larger shed has been mitigated by plantings.

Robin Allison, the applicant's wife, testified that the larger shed could not be relocated outside the buffer without the removal of trees. The witness provided site photographs as well as pictures of other sheds in the buffer on neighboring properties. However, she was not able to provide the details of the construction of the other sheds in the buffer.

Norman Hazard, who resides across the Creek, testified in support of the application. Mr. Hazard stated he received a permit for the expansion of a preexisting shed approximately 30 feet from water. He was not required to obtain a variance.

Judy Neighoff, who resides on the adjacent property to the east, opposed the application. The applicant's shed is considered an eyesore, blocks her view to the water and encroaches on her deeded access.

Barbara Rieger, another neighbor, testified that the smaller shed blocks her view to water and encroaches on her access.⁴

I visited the site and the neighborhood. This is a flag lot with a graveled driveway and parking area. The lot is located on a cove in the Creek with an irregular shoreline. A drainage channel extends along the west side of the property. The two-story dwelling includes an integral two-car garage (street side)

⁴ At this juncture, Ms. Allison indicated that the smaller shed could be relocated.

and an integral two-level deck addition as well as an attached deck addition (waterside). This is an older neighborhood.

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

The law is well settled that the applicant's burden of proof is to satisfy each and every of the variance criteria. If the proof 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 application. In this case, the proof is lacking as to several of the subsection (b) criteria. Thus, there has been no showing that a literal application of the program deprives the applicant of any right in common enjoyment by other properties in similar areas in the Critical Area; conversely, the granting of the variances would confer a special privilege that the program typically denies. See, in this regard, Case No. BA 23-07V, In Re: Virginia Gutierrez (October 31, 2007) (variances to perfect retaining wall, garden wall and step with less buffer and greater impervious coverage denied):

As stated above, there is no evidence that other homes in the Petitioner's community enjoy the variances that Ms. Gutierrez seeks. ... Absent this evidence, a variance given to Ms. Gutierrez would confer on her a special privilege not enjoyed by her neighbors.

Opinion at 5. In this case, just as in Case No. BA 23-07V, there is no evidence that other homes in Mr. Steinlein's community (or in any other community) enjoy variances for sheds in the buffer. Nor does the permitted expansion of Mr. Hazard's preexisting shed - which did not require a variance - change the result.⁵ I

⁵ The Hazard property is the subject of two applications filed in this office. Case No. 2001-0474-V (March 12, 2002) conditionally approved a pier with greater length. Case No. 2002-180-V requested a dwelling and associated facilities with less buffer. By letter dated June 19, 2002, the Hazards' counsel postponed Case No. 2002-0180-V in favor of applying for an amendment to a recorded administrative subdivision plat. The variance application has been inactive since the postponement and is considered denied for lack of

also find that the request is the direct result of the actions of the applicant. And finally, the installation of the sheds closer to water than the principal dwelling has an adverse impact to water quality and does not harmonize with the general spirit and intent of the program.

Considering the subsection (c) criteria, the variances for two sheds in the buffer do not represent the minimum relief. This is especially the case when the property is already substantially developed with the two-story dwelling, including integral two-car garage and waterside decking. Even conceding that the granting of the variances would not alter the essential character of the neighborhood or substantially impair the use or development of adjacent property, their grant would cause a detriment to the public welfare.

Because the applicant has not met his burden of proof, the denial of the application does not deny reasonable use and is not an unwarranted hardship.

The decision in this case is consistent with the decision by this office in Case No. 2004-0420-V, In Re: Sharyn Vogel (December 16, 2004).⁶

ORDER

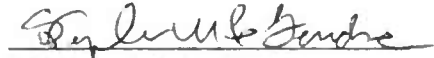
PURSUANT to the application of Mark Steinlein, petitioning for a variance to allow sheds with less buffer than required, and

prosecution. See, Section 18-16-201(e). The only preexisting sheds shown in the accompanying site plans are behind the preexisting dwelling and more than 60 feet from water.

⁶ Case No. 2004-0420-V was appealed to the County Board of Appeals of Anne Arundel County. The Board denied the appeal because neither Ms. Vogel nor any representative appeared at the hearing. See, Case No. BA 3-05V (June 17, 2005).

PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is this 15th day of January, 2008,

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


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.

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

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



Margaret G. McHale
Chair

Ren Srey
Executive Director

STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS

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October 31, 2007

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

Attachment A

Re: Steinlein Variance
2007-0352-V

Dear Ms. Schappert:

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Based on the information provided, we oppose a variance to perfect a shed in its current location. As stated in Anne Arundel County Code 1816-305 (b) (1), a variance may be granted in the Critical Area if, "because of 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 Critical Area rules, regulations, and policies would create an unwarranted hardship." In 2004, the General Assembly defined unwarranted hardship as follows: "without the variance, the applicant would be denied reasonable and significant use of the entire parcel or lot." In this instance, the applicant has constructed a two-story dwelling, driveway, garage, deck, and screened porch on the site. In addition, there appears to be ample room outside of the 100-foot Buffer to place the shed. Therefore, denial of this variance will not create an unwarranted hardship for this applicant. Additionally, Anne Arundel County Code 1816-305 (b) (3) states that the variance cannot be based on "conditions or circumstances that are the result of actions by the applicant." The applicant is requesting

TTY for the Deaf

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

this variance due to the fact that the shed was constructed within the 100-foot Buffer without prior approval. Thus, it is the result of circumstances that are based upon actions by the applicant that has created a need for this variance.

Based on the above purposes, policies, goals, and provisions of the Critical Area Law and Criteria, we recommend moving the shed outside of the 100-foot Buffer and replanting the current location of the shed with native plants and shrubs.

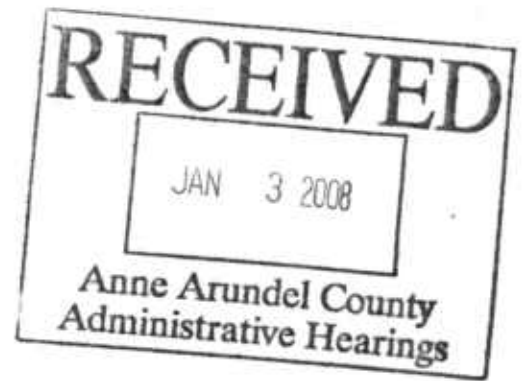
Thank you for the opportunity to provide comments. Please include this letter in your file and submit it as part of the record for this variance. Also, please notify the Commission in writing of the decision made in this case.

Sincerely,



Nick Kelly
Natural Resource Planner
cc: AA 646-07

Mark Frederic Steinlein
999 Galesville Rd
Galesville, MD 20765
410-867-1999
chorseint@aol.com



December 28, 2008

Mr. Stephen LeGendre
Office of Administrative Hearings
Arundel Center P.O. Box 2700
Annapolis, MD 21404-2700

A Attachment B

Re: Steinlein variance
2007-0352-V

Dear Mr. LeGendre,

I have received your letter and the one from Mr. Nick Kelly that you forwarded to us. In response to Mr. Kelly's letter my wife Robin phoned him and discussed his suggestion that it should be no problem to move the shed. Mr. Kelly never visited the property his opinion was formulated on the ariel photos that were taken in 2005 prior to the required reforestation (as you will recall we were required to plant 21 trees and 63 bushes see enclosed drawings.) He also stated AACO code 1816-305 (b) (1) a variance may be granted if "because of 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 irregularity of critical areas rules, regulations, and policies would create and unwarranted hardship as follows: "without the variance the applicant would be denied reasonable and significant use of the entire parcel or lot" he also states that there appears to be ample space outside the buffer zone although he has not seen the lot.

Robin requested that Mr. Kelly visit the sight and select a location that would be least detrimental to the environment, existing vegetation and hopefully not offend any neighbors. Mr. Kelly stated that he might be able to do that but that he should be accompanied by the person from Planning and Zoning responsible for the location in Galesville. Robin has left two messages for Ms. Schappert but has not received word back as to who is the correct person to speak to so she could request a joint visit with Planning and Zoning and the Critical Area Commission.

It is our contention that moving the shed anywhere else on the property would indeed create a hardship because of the fact that we were required to build our house as far back on the property as possible all useable space is within the 100 ft. buffer. We will be encroaching on the property lines and destroying our reforestation plantings to move the shed to any other location on the property. We placed the shed on the only spot of ground that did not destroy existing vegetation as it was the catch basin filled with gravel from the original construction. In addition if we are required to move the shed to any other location it will block any or all views the neighbor who complained originally about the shed has of the water and encroach on her property line. I would like to avoid the confrontation if possible.

We have exceeded all reforestation requirements and built our existing home creating less impervious surface than allowed by code. When much of Anne Arundel County construction seems to have no green space allocation or concern for runoff into our tributaries we have tried to be good custodians and made a serious effort to house or secure anything that could wash into the Bay.

I will continue to try to set up a meeting with Mr. Kelly and the correct person from Planning and Zoning to do a site inspection. Hopefully at that time we will have either a different opinion from Mr. Kelly or a suggestion as to where planning and zoning would like us to move the shed. Barring that I suppose it is time to hire an attorney and plan for an appeal. As we were not provided with any information by Anne Arundel County Planning and Zoning as to what was required in a variance hearing and as this is not something we do for a living or have ever done before it has been a painful lesson. We will be prepared the next time should we not be able to work this out.

Is it possible for you to hold on our decision until we have an opportunity to meet with the Mr. Kelly and the person responsible for this area from Anne Arundel County Planning and Zoning. We truly do not wish to irritate our neighbors by placing this shed near their property line and destroying any views they may have.

Sincerely,

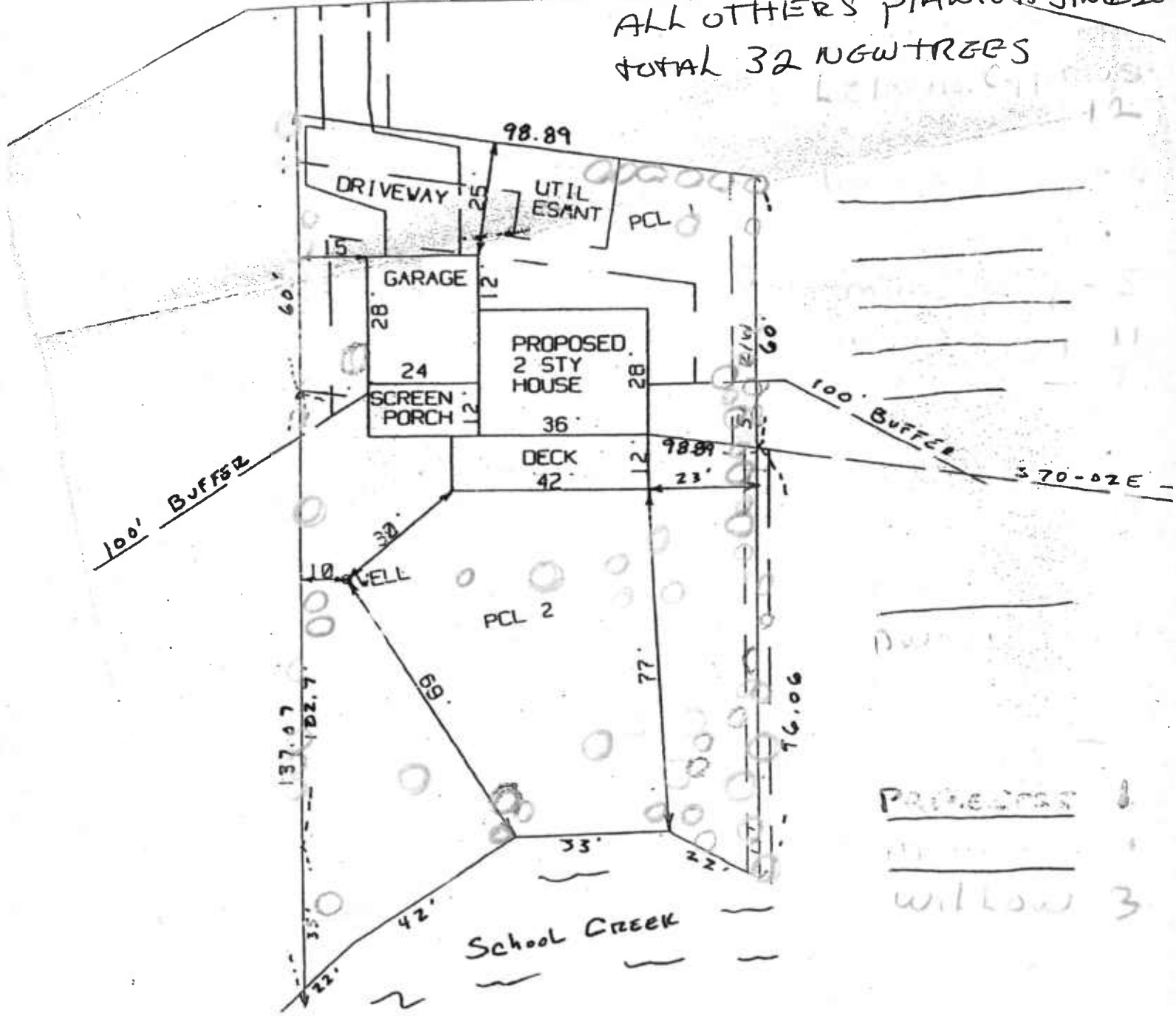
A handwritten signature in black ink, appearing to read 'Mark F. Steinlein', with a long horizontal flourish extending to the right.

Mark F. Steinlein

Cc:

Mr. Nick Kelly-Critical Areas Commission
Ms. Suzanne Schappert -AACO Planning and Zoning
Delegate Virginia Claggett
Ms Judy Neighoff
Mr. and Mrs. Reiger
Mr. Norman Hazard
Mr. and Mrs. Winchester
Mrs. Helen Orme
Erin Cox-Aaron Gray- Capital Gazette Newspaper

TREES - UNDERLING INDICATES OLDER TREE
 ALL OTHERS PLANTED SINCE 2000
 TOTAL 32 NGW TREES



GALESVILLE

PCL 515. GRID 08. MAP 69
 999 GALESVILLE ROAD
 GALESVILLE. MD 20765

1" = 30'

WAY DRIVEWAY

NEW Plantings

LOT 2

UTILITY
ESMNT.

As of
SEPT 2007

RIEGER
magnolia
magnolia

OREM

DRIVEWAY

24'
GARAGE

2 STORY
HOUSE

12'
PORCH
24'

DECK
12'

Azaleas

A + MT. WINCHESTER

Letter

○ Apple

○ Peach

rose of Sharon

○ smoke Bush tree

○ smoke Bush tree

○ Azalea

○ Azalea

○ Azalea

Letter

- 2 magnolia
- 2 fruit trees
- 2 smoke tree (Bud)
- 11 Azaleas
- 2 rose of Sharon

DITCH

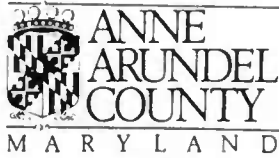
SCHOOL GREEK

GALESVILLE
 PEL 515 GRID 08 MAP 69
 999 GALESVILLE ROAD
 GALESVILLE MO. 20265

SCALE 1" = 20'

NIC

646-07



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

November 25, 2008

NOTICE OF APPEAL HEARING

BA 8-08V
 Mark F. Steinlein

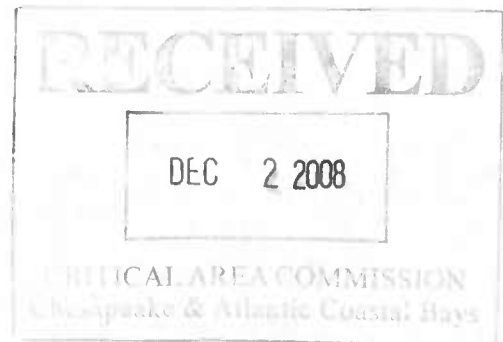
The Board of Appeals will conduct a public hearing on the above case on Tuesday, January 6, 2009, at 6:30 p.m., in the Council Chambers, First Floor, Arundel Center, 44 Calvert Street, Annapolis, Maryland.

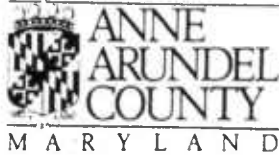
This is an appeal from a decision of the Administrative Hearing Officer. This appeal is taken from the denial of a variance to perfect construction of a shed with less buffer than required, on property known as 999 Galesville Rd., Galesville.

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
 Robert J. Sager, Esq.
 Patricia Cotter (2007-0352-V)
 Suzanne Schappert
 Stephen LeGendre
 Mark F. Steinlein
 Robin Allison
 Norman Hazard





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



May 27, 2008

NOTICE OF APPEAL HEARING

BA 8-08V
Mark F. Steinlein

The Board of Appeals will conduct a public hearing on the above case on Thursday, July 10, 2008, at 5:30 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 a shed with less buffer than required, on property known as 999 Galesville Rd., Galesville.

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

Mary M. Leavell
Clerk to the Board

- cc: Property Owners
- Critical Area Commission
- News Media
- Charles F. Delavan, Esq.
- Robert J. Sager, Esq.
- Pam Cotter (2007-0352-V)
- Suzanne Schappert
- Mark F. Steinlein/Robin Allison
- Stephen LeGendre

