

AA 702-07
VAR

Arscott, John
0395

51829-6374

JPR 12/10/07
red 2/20/08
8/26/08 ✓

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/

December 10, 2007

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

Re: 2007-0395-V Arcscott, John and Cherie

Dear Ms. Schappert:

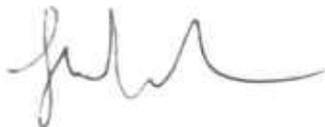
I have received the information regarding the above-referenced variance request. The applicant requests a variance to allow a dwelling with less setbacks than required and with disturbance to slopes greater than 15%. The lot is designated as a Limited Development Area (LDA) and is entirely within the 100-foot Buffer. This lot is 0.39 acres and is currently improved with an existing dwelling unit. The existing impervious site coverage on this site is 3,361 square feet for the current house and driveway and the proposed impervious surface for the house, garage, screened porch, and driveway is 5,165 square feet which is within the allowable limits. The proposed dwelling unit is located further landward than the existing dwelling unit but proposes impacts to steep slopes.

We cannot support this variance request as proposed. Based on our review of the site plan, there appears to be adequate area on this parcel to build a reasonably sized dwelling without the need to disturb the steep slopes. In this case, the applicant should be required to construct a replacement dwelling in the already disturbed, level area north of the existing retaining wall. Alternatively, a smaller house and/or a house with a different configuration could avoid the need for a variance altogether. Considering these possibilities, it appears that the need for a variance is entirely self-created by the applicant's desire for a larger dwelling, and not the result of an unwarranted hardship. Further, it does not appear that the applicant has minimized their impacts to the extent possible nor overcome the burden to meet each and every one of the variance standards. Therefore, the variance should be denied.

Ms. Schappert
12/10/2007
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 read 'Julie Roberts', with a long horizontal flourish extending to the right.

Julie Roberts
Natural Resources Planner

cc: AA 702-07

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



Margaret G. McHale
Chair

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Executive Director

**STATE OF MARYLAND
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August 22, 2007

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

Re: 2008-0257-V Arscott, John and Cherie

Dear Ms. Schappert:

I have received the information regarding the above-referenced variance request. The applicant requests a variance to allow a dwelling with less setbacks than required and with disturbance to slopes greater than 15%. The lot is designated as a Limited Development Area (LDA) and is entirely within the 100-foot Buffer. This lot is 0.37 acres and is currently improved with an existing dwelling unit. The existing impervious site coverage on this site is 3,361 square feet for the current house and driveway and the proposed lot coverage is 4,550.

Provided the lot is properly grandfathered, we do not oppose this variance request to raze the existing dwelling and construct a modestly sized dwelling in a similar footprint. It appears that the applicant has minimized disturbance to the steep slopes to the extent feasible. If the Hearing Officer determines that this request can be granted, we recommend that the applicant provide mitigation at a ratio of 2:1 for the area of disturbance to the steep slopes. Mitigation should be in the form of native plantings and located on site, preferably in the Buffer Modification Area, if possible. The applicant shall provide a plantings plan including species, size, spacing and schedule for review and approval by the County. In addition, we recommend that the Hearing Officer require stormwater management for all areas of lot coverage as a condition of approval. Finally, it appears that the septic system is being replaced as part of the redevelopment. If not already provided, we recommend the Hearing Officer require the use of nitrogen removing technology in association with the new septic system

We have no comments on setbacks.

As a reminder, in 2008, the General Assembly passed House Bill 1253 which included a change within the Critical Area from the term impervious surface area to the term lot coverage. It is appears from the variance application that the property is being developed in the context of

Ms. Schappert

8/26/2008

Page 2 of 2

impervious surface area. As such, Section 8, Ch. 119, 2008 Laws of Maryland at 765, contains provisions in regard to the lot coverage requirements of Natural Resources Article §8-1808.3 which may be applicable to this variance application. Under these provisions, a development project whose initial application for development that satisfies all local requirements is filed by October 1, 2008 and whose development plan is approved (recorded) by July 1, 2010 may utilize Anne Arundel County's approved impervious surface area limitations in effect prior to July 1, 2008 provided that;

- a) The approved development plan remains valid in accordance with Anne Arundel County's procedures and requirements; and
- b) By July 1, 2010, the applicant prepares a detailed lot coverage plan drawn to scale and showing the amounts of impervious surface area, partially pervious area, and developed pervious surface area in the development project.

In addition to (a) and (b) above, Section 8, Ch. 119, 2008 Laws of Maryland at 765 requires the lot coverage plan to be approved by Anne Arundel County and implemented in accordance with the approved lot coverage plan. Should the applicant intend to develop this property in accordance with the County's impervious surface area limitations, please indicate that intent and ensure that the applicant is aware of the requirements of Chapter 119 of the 2008 Laws of Maryland for proceeding as such.

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,



Julie Roberts
Natural Resources Planner
cc: AA 702-07

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 2008-0257-V



JOHN AND CHERIE ARSCOTT

SECOND ASSESSMENT DISTRICT

DATE HEARD: SEPTEMBER 23, 2008

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

PLANNER: **WILLIAM ETHRIDGE**

DATE FILED: SEPTEMBER 25, 2008

PLEADINGS

John and Cherie Arscott, the applicants, seek a variance (2008-0257-V) to allow a dwelling and associated facilities with less setbacks than required and with disturbance to slopes of 15% or greater on property located along the south side of Beach Drive, west of Alan-A-Dale Hill, 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. Mike 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

This case concerns the same property the subject of a decision by this office in Case No. 2007-0395-V (February 19, 2008). The prior Order denied variances to allow the redevelopment of the property. There was no appeal. The present request is for the same relief based on a revised site plan. Specifically, the new dwelling (irregular, 82 by 46 feet) disturbs steep slopes in the Limited

Development Area (LDA) of the Chesapeake Bay Critical Area and is located 12 feet from the front lot line.

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 a front setback of 30 feet. Accordingly, the proposal requires a variance to disturb steep slopes and a variance of 18 feet to the front setback.

William Ethridge, a planner with the Office of Planning and Zoning, testified that the property is below the minimum area for the district, irregularly configured, steeply sloped in the front, rear and west side yard and approximately two-thirds modified buffer. As compared to the request that was denied, the present application relocates the dwelling away from steep slopes, reduces the footprint by 1,130 square feet, and reduces the onsite slope disturbance from 2,690 square feet to 514 square feet.¹ The project is within the allowance for impervious coverage. The witness summarized the agency comments. The Department of Health requested plan approval. The County's Development Division and the Chesapeake Bay Critical Area Commission did not oppose the request.² By way of conclusion, Mr. Ethridge supported the application.

Mr. Arscott testified that the new design attempts to meet the objections of the prior denial.

¹ 421 square feet of the slope disturbance relates to the removal of the existing dwelling and retaining wall.

² The Commission requested mitigation, stormwater management and nitrogen removal for the replacement septic system.

Mr. Drum testified that the replacement dwelling approximates the footprint of the existing dwelling. The design incorporates a retaining wall as part of the foundation to minimize the slope impacts. The Department of Health has approved the septic design, which includes an onsite tank and pump pit and an off-site drywell. The project also includes stormwater management.

Bart Key, the general manager of the Sherwood Forest Club, testified that the request complies with the community process and guidelines and has been approved by the Board of Directors. There was no other testimony in the matter.

On the basis of my familiarity with the property, I will approve the request as consistent with the Critical Area and zoning variance requirements under Section 18-16-305. As compared to the prior application, the present request - which reduced the long dimension of the dwelling by as much as 48 feet - represents the minimum relief. The approval is subject to the conditions in the Order.

ORDER

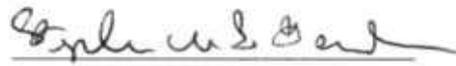
PURSUANT to the application of John and Cherie Arscott, petitioning for a variance to allow a dwelling and associated facilities with less setbacks than required and with disturbance to slopes of 15% or greater, and

PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is this 25th day of September, 2008.

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicants are **granted** a variance to disturb steep slopes and a variance of 18 feet to the front setback to allow a dwelling and associated facilities in accordance with the site plan.

The foregoing variances are subject to the following conditions:

1. The applicants shall provide mitigation and stormwater management as determined as determined by the Permit Application Center.
2. The building permit is subject to the approval of the Department of Health.


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. **A permit for the activity that was the subject of this variance application will not be issued until the appeal period has elapsed.**

Further Section 18-16-405(a) provides that a variance expires by operation of law unless the applicant obtains a building permit within 18 months. Thereafter, the variance shall not expire so long as construction proceeds in accordance with the permit.

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

702-07

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 2007-0395-V

JOHN AND CHERIE ARSCOTT

SECOND ASSESSMENT DISTRICT

DATE HEARD: JANUARY 17, 2008

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

PLANNER: **ROBERT KONOWAL**

DATE FILED: FEBRUARY 19, 2008

RECEIVED

FEB 20 2008

CRITICAL AREA COMMISSION
Chesapeake & Atlantic Coastal Bays

PLEADINGS

John and Cherie Arscott, the applicants, seek a variance (2007-0395-V) to allow a dwelling with less setbacks than required and with disturbance of slopes of 15% or greater on property located along the south side of Beach Drive, west of Alan-A-Dale Road, Annapolis.

PUBLIC NOTIFICATION

The hearing notice was posted on the County's web site in accordance with the County Code. The file contains the certification of mailing to community associations and interested persons. Each person designated in the application as owning land that is located within 175 feet of the property was notified by mail, sent to the address furnished with the application. Mike 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 a single-family residence with a street address of 2 Beach Drive, in the Sherwood Forest subdivision, Annapolis. The property comprises 16,811 square feet and is zoned R2 residential with a Chesapeake Bay Critical Area designation as Limited Development Area (LDA). The property is separated from the Severn River by Beach Drive and is mapped as a buffer

modification area. The request is to raze the dwelling, followed by the construction of an irregularly configured dwelling (18 to 46 feet by 118 to 130 feet). The dwelling disturbs steep slopes and is located 25 feet from the front lot line.

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 a front setback of 30 feet. Accordingly, the proposal requires variances to disturb steep slopes and a variance of five feet to the front setback.

Robert Konowal, a planner with the Office of Planning and Zoning, testified that the property is below the minimum area for the district. The existing dwelling is 15 feet from the front lot line. Because the new dwelling is further from mean high water, the proposal does not require a variance to the modified buffer.¹ However, the increase in the modified buffer is at the expense of a substantial encroachment into steep slopes. The project is within the allowance for impervious coverage (5,165 square feet versus 5,253 square feet). The witness summarized the agency comments. The County's Development Division opposed the application on the alternate grounds that the property could be redeveloped without disturbing the slope; the new dwelling is too big; and the proposal to excavate the entire front yard disturbs the modified buffer and the existing

¹ See, Article 17, Section 17-8-702(c).

vegetation. The Chesapeake Bay Critical Area Commission also opposed the application.² By way of conclusion, Mr. Konowal opposed the application.

Mr. Drum described the history of the project. There were several meetings with the County. County representatives voiced no objection (but not support) to an earlier design. A second proposal was unacceptable. There was no feedback on the present request, which is similar to the initial design. The sprawling footprint is a result of preserving the view corridor for the uphill neighbor. Mr. Drum also indicated that existing retaining walls behind the existing dwelling need to be removed and upgraded. A replacement retaining wall is incorporated into the new dwelling.³ The proposal also includes stormwater management and mitigation and is considered consistent with the character of the neighborhood. Finally, the slope disturbance includes approximately 750 square feet of previously disturbed slopes in the front yard.

Marta Hansen, the applicants' architect, submitted a series of exhibits: cross section diagram showing the view line and flood line, photographs of

² The Commission wrote:

Based on our review of the site plan, there appears to be an adequate area on this parcel to build a reasonably sized dwelling without the need to disturb the steep slopes. In this case, the applicant should be required to construct a replacement dwelling in the already disturbed, level area north of the existing retaining wall. Alternatively, a smaller house and/or a house with a different configuration could avoid the need for a variance altogether. Considering these possibilities, it appears that the need for a variance is entirely self-created by the applicant's desire for a larger dwelling, and not the result of an unwarranted hardship. Further, it does not appear that the applicant has minimized their impacts to the extent possible nor overcome the burden to meet each and every one of the variance standards. Therefore, the variance should be denied.

³ The existing dwelling (maximum dimensions 41 by 76 feet) is one-story over a basement; there is no garage. The replacement dwelling is two levels of living space (no basement) and includes a garage addition and a screened porch addition. The garage addition provides part of the slope stabilization. The screen porch is not located on steep slopes.

neighboring homes, aerial photographs of the community and photographs of other homes in the community. The view line and the flood line are at odds with each other and in combination with the steep slope, create a long, thin building envelope. The replacement dwelling has an average height of 20 feet. It offers 4,452 square feet of living area (first floor, 2,539 square feet; second floor, 1,913 square feet).⁴ (The figures do not include the screened porch and garage.) The dwelling is smaller than the neighboring home. The witness indicated that the property could be developed with a smaller home. However, the existing retaining wall would still need replacing with the resultant disturbance to steep slopes. Conversely, many Sherwood Forest homes are larger. The home is comparable in square footage to several homes designed by the witness in Sherwood Forest over the last five years. The home is longer than but not as tall as the other homes. At least two homes designed by the witness received slope variances. See, Case Nos. 2003-0351-V, In Re: Paul and Sandra Coppinger (October 6, 2003); 2004-0234-V, In Re: Robert Britain (August 5, 2004). Finally, the Sherwood Forest Board of Directors has approved the project.

Ms. Arscott testified that the preliminary site plan presented to the County showed the same dwelling length and the same variances as the present proposal. One of the neighbors found the plan unacceptable. The plan was revised 15 times over two years and is finally acceptable to the neighbor. The revisions lowered

⁴ The existing dwelling offers 1,653 square feet of living area (first floor). (The basement, which is located in the floodplain, was damaged by Hurricane Isabel.)

the house, eliminated the basement and storage and reduced the number of windows and the lighting. With the loss of the basement, rooms have been added at the rear. The garage is in lieu of storage. (Community covenants do not allow either outside storage or accessory storage sheds.) The dwelling has been relocated into the slope with the expenses of the retaining wall, landscaping and screening. The witness believes that the combined factors of the view line, the flood line and the slope justify the requested relief.

Bart Key, the club manager for the Sherwood Forest Club, confirmed that the project satisfies the applicable covenants.

There was no other testimony in the matter. However, in response to my request, the applicants, through counsel, provided a post-hearing memorandum (Attachment A).

I visited the site and the neighborhood. The lot slopes up from the road to a level area occupied by an obsolete dwelling. A stone retaining wall extends the length of the dwelling 4- 8 feet to the rear. The wall is at the base of a very steep, vegetated slope. Water is seeping from both ends of the wall. There is a home on the property to the rear at the top of the slope. There are several properties along Beach Drive with similar topography and with up slope neighbors. Some of the homes along Beach Drive are sizeable, others are fairly modest. The larger homes along Beach Drive have more vertical massing and less horizontal spread than the applicants' proposal.

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 applicants; (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 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 the entire variance standard; if their proof is wanting for even one of the numerous factors, then the relief must be denied.

Although there is no doubt that the redevelopment of this property is a substantial challenge, I am constrained to deny the application in its present form.

A few preliminary comments are in order. Nothing in the program suggests that a view line covenant controls size and massing. Nor does the program draw a distinction between the disturbance of a slope outside the buffer and the disturbance of a slope in the buffer. And finally, the program does not discount the importance of a steep slope on the basis that the disturbance is at the base of the slope rather than at the top of the slope.

Considering the subsection (b) criteria, there has been no showing of any right in common enjoyment for the redevelopment of a property on the scale of this project. Conversely, the request represents a special privilege that the program typically denies to other Critical Area lands. And, given the significant deference afforded to the view line, the request arises from land use on neighboring property. Finally, despite the incorporation of the replacement retaining wall into the new dwelling, stormwater management and mitigation, the variance does not harmonize with the general spirit and intent of the program.

I am sympathetic to the applicants' frustration in attempting to balance the view line concerns with their design goals. But their obligations under subsection (c) include the minimization of the slope disturbance. While it appears that some slope disturbance is unavoidable in the redevelopment of this property, there are opportunities to minimize the disturbance by moving the dwelling forward and reducing its footprint, especially the length.⁵ Even conceding that the granting of

⁵ The application of the variance standards is, of course, different for every property. Nor is there any question that there have been a number of substantial redevelopment projects that required variances to the program. Nevertheless, the two projects identified by Ms. Hansen that received slope variances are

the variance will not alter the essential character of the neighborhood or impair the use or development of adjacent property, the granting of the requested relief is nonetheless a detriment to the public welfare.

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

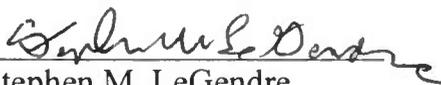
Given the decision on the slope variance, the zoning variance is moot and is also denied.

ORDER

PURSUANT to the application of John and Cherie Arscott, petitioning for a variance to allow a dwelling with less setbacks than required and with disturbance of 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 19th day of February, 2008,

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


Stephen M. LeGendre
Administrative Hearing Officer

instructive. In Case No. 2003-0351-V, Mr. Konowal testified that the slope variance was minimized by "rebuilding in the same location as the existing dwelling." Opinion at 2. Mr. Drum testified that "the replacement dwelling is comparatively modest in size (footprint 1,500 square feet, living area 3,000 square feet)." Similarly, in Case No. 2004-0234-V, Mr. Drum testified that "the reconfigured footprint approximates the existing dwelling with little additional slope disturbance." Opinion at 3.

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.

attachment A

HILLMAN, BROWN & DARROW, P.A.

ATTORNEYS AT LAW

NOAH A. HILLMAN (1904-1977)
SAMUEL J. BROWN
MICHAEL P. DARROW
DANIEL J. MELLIN
M. EVELYN SPURGIN
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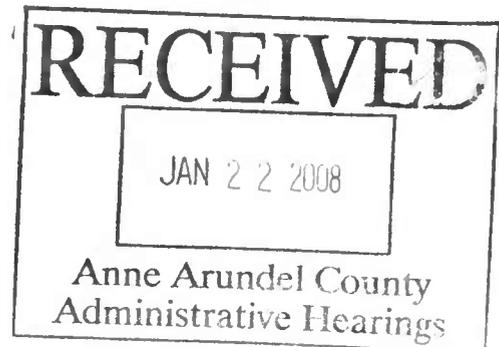
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301-858-5500
410-269-5555
FAX 410-269-7912

H. WINSHIP WHEATLEY, III
(of counsel)

File No. 15548/280029

January 18, 2008

Stephen M. LeGendre, Esquire
Administrative Hearing Officer
Arundel Center
Annapolis MD 21401



Re: 2007-0395V (front yard & steep slope)
Arscott #2 Beach Road Sherwood Forest MD 21405
02-720-03648403

Dear Mr. LeGendre:

I am submitting this post hearing memorandum on behalf of the Applicants Cherie & John Arscott. The operative code provision is:

§ 17-8-201. Development on slopes of 15% or greater in the LDA and RCA.

Development in the limited development area (LDA) or in the resource conservation area (RCA) may not occur within slopes of 15% or greater unless development will facilitate stabilization of the slope or the disturbance is necessary to allow connection to a public utility.

(Bill No. 3-05)

The operative words are: **“unless development will facilitate stabilization of the slope”**

As you know Sherwood Forest has strict building covenants. One of the most stringent covenants is that no house construction may block the water view of any other house. Further, all construction must receive architectural approval from the Sherwood Forest Club Inc. and the Sherwood Forest Company. Attached is a letter from Sherwood Forest discussing these requirements and approvals. Accordingly, a good argument can be made that size and mass considerations can be deferred to the governing board making those determinations in the neighborhood.

We previously provided a map and plat and photos highlighting neighboring properties in Sherwood Forest to compare size and mass and layout of neighboring houses that have been built at the bottom of steep slopes.

Please consider that this steep slope variance request is very different from most other applications you have considered. Usually more often than not when you are reviewing a steep slope variance it is coupled with a buffer or extended buffer variance because the house footprint you are reviewing is located in the extended buffer at the top of a slope that slopes down through the buffer to the shoreline. Disturbance at the top of a slope causing runoff and erosion down to the buffer and shoreline is completely different from disturbance at the bottom of the slope where the house footprint is on flat ground and not in the buffer and separates the slope disturbance from the shoreline. Further, stabilizing the bottom of the slope improves the entire slope above the retaining wall.

Please remember that Engineer Michael Drum stated very specifically that the disturbance to the bottom of the slope from the wall would not harm the slope. This is because when the bottom of the slope is disturbed to install a retaining wall the slope is stabilized and retained. There is no slope below the disturbance to be adversely effected by the disturbance. Where the retaining wall installed and the slope is stabilized there is now flat area occupied by the impervious new house footprint. There is zero runoff from the slope disturbance and therefore there is zero impact below the slope disturbance.

As you visit the site on Beach Drive and view the slope above this lot please consider how all the houses along Beach Drive have been built into the base of the slope and provide slope stabilization. Notice that the steep slope to the right or west of this Lot below Lot 300 collapsed dramatically in or about 2000 and had to be rebuilt from the bottom up by Keith Underwood using large boulders, because there was no house and no retaining wall providing stabilization at the bottom of the slope. There was also a slope failure below Lot 335 back in the mid 1960's where there is no house at the bottom of the slope.

As you travel around Beach Drive on the map you will observe many large houses which function as retaining walls holding up steep slopes. #3 and #4 immediately next door to this Lot are each three stories tall and over 80 feet long (with internal garages) and clearly provide stabilization to the steep slope behind them. #4 has the additional length of deck which makes it longer than 80 feet. #405 and #720 are both three stories tall and are built well into the steep slope. #770 is built on top of the slope but you can see that it is quite large.

#745 is three stories tall and about 80 feet long. Note that this house also provides substantial stabilization to the slope behind it. If you wish to see an example of the construction of the proposed retaining wall look at the construction site below #503 which you can access from Beach Road between and behind #535 and #534. At the top of Robin Hood Hill note the large size of #703 and #704 built on steep slopes, as well as the large houses on steep slopes at #718, #716 and #711.

Finally, look at the length and size of #124 behind the Store. This house is quite long and narrow with a garage on the end, and is built on a similarly long and narrow lot.

The ultimate question becomes: "If stabilization of the steep slope is to be facilitated then should maximization of stabilization be the factor that controls analysis of the variance factors?" Or put a different way, "When the house is the retaining wall facilitating the stabilization of the slope, does the house size have to be minimized where it is stabilizing the slope?"

In light of the foregoing considerations the Applicants suggest that favorable consideration may be given to the factors you must consider in order to grant this variance.

§ 18-16-305. VARIANCES

GENERALLY:

Are there practical difficulties or unnecessary hardships which prevent conformance with the strict letter of this article? Yes. The old covenants on this lot protecting water views limit the height of the house in its current location. The lot is narrow front to back and moving the house back in to the slope creates more buffer between the house and the shore line.

Will the spirit of law be observed, public safety secured, and substantial justice done? Yes. The spirit of the law recognizes the value of stabilizing steep slopes and this project will provide substantial stabilization to the steep slope, thereby improving public safety.

Are there certain unique physical conditions, such as irregularity, narrowness or shallowness of lot size and shape or exceptional topographical conditions peculiar to and inherent in the particular lot, so that here is no reasonable possibility of developing the lot in strict conformance with this article? Yes. Creating more flat buildable area at the back of the lot at the base of the slope allows for a better house in a better location.

Are there exceptional circumstances other than financial considerations? Yes. The applicant does not save any money by moving the house footprint back in to the base of the slope. The cost to install the large retaining wall is substantial. Even so the Applicant can still only build a two story house with no basement because of the proximity to the mean high water line and the water view limitations.

Is the grant of a variance necessary to avoid practical difficulties or unnecessary hardship and to enable the applicant to develop the lot? Yes. The Applicant will be able to develop the Lot far more safely and provide substantial stabilization to the slope that will clearly benefit the houses built in to the top of the steep slope. The proposed house is about 41 feet front to back consistent with the existing house on the lot.

IN THE CRITICAL AREA:

Are there certain unique physical conditions, such as exceptional topographical conditions peculiar to and inherent in the particular lot or irregularity, narrowness, or shallowness of lot size and shape, making strict implementation of the County's critical area program or bog protection program result in an unwarranted hardship (as defined in NR 8-1808: "without a variance, an applicant would be denied reasonable and significant use of the

entire parcel or lot for which the variance is requested”). Yes. The proximity of the bottom of the steep slope to the front setback makes the lot quite narrow front to back. 100 feet of retaining wall at the base of the slope will stabilize the slope and allow a reasonable and significant use of the lot. The garage will provide additional stabilization and is a reasonable and significant use of the Lot which will be denied if the variance is not granted.

Will a literal interpretation of COMAR 27.01 or the County's critical area program and related ordinances deprive the applicant of rights commonly enjoyed by other properties in similar areas as permitted in accordance with the provisions of the critical area program within the critical area of the County? Yes. The Applicant will be denied the ability to install the retaining wall to stabilize the steep slope above the Lot in the same way that most of the other houses along Beach Drive have been built in to the base of the slope.

Will the variance confer on the applicant any special privilege that would be denied by the County's critical area program to other lands or structures within the County critical area? No. Most of the other houses along Beach Drive have been built in to the base of the steep slope.

Are there conditions or circumstances that are the result of actions by the applicant? No. The water view covenants apply to all of Sherwood Forest and date back to the 1930's. A two story house with two car garage is a reasonable and significant use of the lot and smaller than three of the four houses immediately to the east (#3 and #4 and #405).

Does the variance arise from any condition relating to land or building use on any neighboring property? No.

Will there be an adverse affect on water quality or adverse impact on fish, wildlife, or plant habitat within the County's critical area? No. Stabilization of a slope improves water quality and has no impact on wildlife or plant habitat.

Will there be harmony with the general spirit and intent of the County's critical area program? Yes. Slope stabilization in the critical area is a good thing, not a bad thing.

Has the applicant overcome the presumption contained in NR 8-1808(d)(2) “the specific development activity in the critical area that is subject to the application and for which a variance is required does not conform with the general purpose and intent of” the critical area program. Yes. Slope stabilization is a good thing to be encouraged in the critical area.

GENERALLY AND CRITICAL AREA:

Is the variance the minimum variance necessary to afford relief? Yes. The disturbance to the slope maximizes stabilization of the slope. The slope will not be damaged by the work, and because the stabilization is at the bottom of the slope the disturbance is minimized to virtually zero.

Will it alter the essential character of the neighborhood? No. The neighborhood has numerous large houses built in to the steep slope (large in width or depth or height or length depending upon location).

Will it substantially impair the appropriate use or development of adjacent property? No. This will improve the stabilization of the slope above the site thereby benefiting the three houses above.

Will it reduce forest cover in the LDA and RCA areas of the critical area? No. The trees on the slope will be stabilized by the retaining wall. The Applicant will be planting more trees than required by the construction.

Will it be contrary to acceptable clearing and replanting practices in the critical area? No.

Will it be detrimental to the public welfare? No. The stabilization of the slope is being maximized by the length of the proposed house and retaining wall.

Thank you for your favorable consideration. This house is not in the buffer so normal considerations of footprint size and buffer disturbance may not apply. This house is at the bottom of the slope so there will be no slope below the disturbance to be adversely impacted. Accordingly minimizing the size of the footprint is not required where reduction in size would reduce slope stabilization. Maximization of slope stabilization by length of house trumps minimization of footprint size in this circumstance.

Sincerely,

HILLMAN, BROWN & DARROW, P.A.



Daniel Mellin (djm@hbdlaw.com)

LOT 322
N/F PHYLLIS WATSON
Liber 4259 Folia 754
TAX ACCT. NO. 02-720-02056500

LOT 321
N/F PHILIP & CONNIE
MACKOWIAK
Liber 3702 Folia 539
TAX ACCT. NO.
02-720-07791050

LOT 320
N/F ROBERT & JOAN
VARNEY
Liber 5846 Folia 54
TAX ACCT. NO.
02-720-11906550
EX. DWELLING

PROPOSED SEPTIC EASEMENT FOR 2 BEACH
DRIVE=4,084 S.F.

EX. WATERLINE TO BE
ABANDONED (BY OTHERS)

PROP. WATERLINE
LOCATION (WORK TO BE
DONE BY OTHERS)

178.79'

EX. RETAINING WALL
TO BE REMOVED

RELOCATED
POLE

EX. UTILITY POLE
NO. 220550 TO
BE RELOCATED

PROPOSED DWELLING
F.F. ELEV.=10'
ROOF PEAK=41'

PROPOSED SCREENED
PORCH
EX. H.V.

GARAGE
ELEV.=9'
PROPOSED
1,500 GAL.
SEPTIC TANK

EX. SPLIT LEVEL TO BE
RAISED AND REMOVED
UPPER F.F.E.=16.42
LOWER F.F.E.=12.40
PEAK=28.00

PROPOSED PORCH=9'

LOT 2
16,811 S.F.
(0.39 Ac.)

BEACH DRIVE

PROP. WATERLINE
LOCATION (WORK TO BE
DONE BY OTHERS)

SHERWOOD FOREST
ANSCOTT

SEVERN RIVER

#3 BEACH DRIVE

