

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/

May 20, 2010

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

Re: 2010-0081-V – Fraser Jr., Robert C.

Dear Ms. Cotter:

Thank you for forwarding information on the above-referenced project. This lot is 7,500 square feet and is located in the Limited Development Area (LDA). The applicant requests a variance to allow a dwelling with disturbance to slopes greater than 15%. This applicant applied for an after-the-fact variance to replace this dwelling in 2008 (2008-0017-V) and was granted this request with the following pertinent condition: that "No further expansion of the dwelling is allowed and accessory structures are not allowed." The applicant is now proposing a slightly different configuration of a replacement dwelling with a porch on this site.

In regard to determining whether this applicant's request can be heard or granted based on the conditions set forth on March 4, 2008, we defer to the Hearing Officer's judgment. In regard to the current request, the applicant is responsible for meeting each and every strict variance standard in association with proposed work on this property. The disturbance on site should be the minimum to afford relief. Should the Hearing Officer determine that this request, or some variation of this requested may be granted, mitigation is necessary for the disturbance to the steep slopes. A fee-in-lieu may be substituted if there is not adequate room to plant on site.

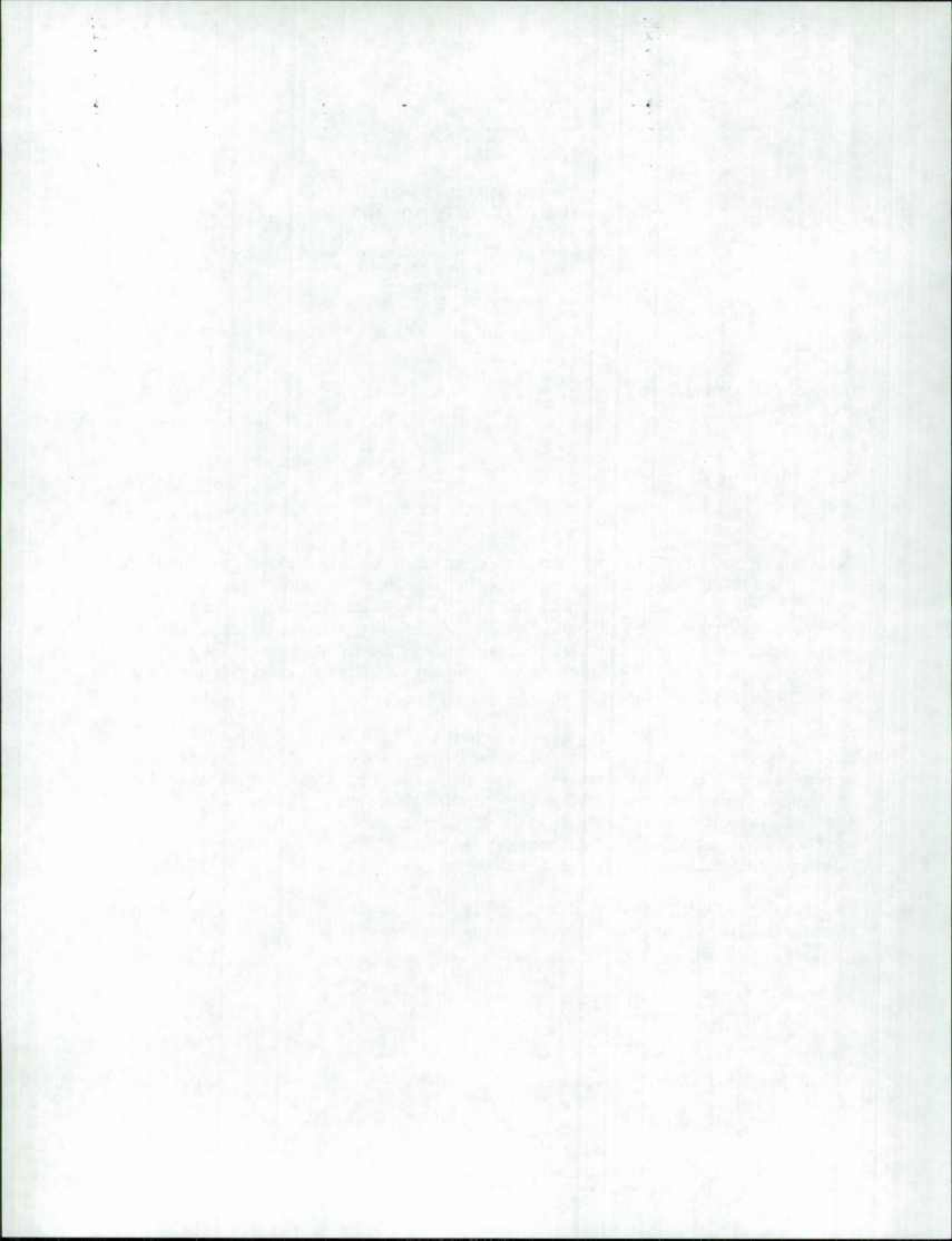
Please include this letter in your file and submit it as part of the record for variance. Please notify the Commission of the decision made in this case. I can be reached at 410-260-3476 should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Julie Roberts", written over a horizontal line.

Julie Roberts
Natural Resources Planner

cc: AA 59-10



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February 5, 2008

Ms. Pam Cotter
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road, MS 6401
Annapolis, Maryland 21401

Re: Local Case 2008-0017-V
William Emrich & Robert Fraser

Dear Ms. Cotter:

Thank you for submitting the above referenced variance. The applicant is requesting a variance after-the-fact to disturb steep slopes in order to replace an existing dwelling. The property is classified as a Limited Development Area. It is currently developed with a single family home, garage, and driveway which will be replaced. The application does not specify the amount of disturbance to steep slopes.

Provided this lot is properly grandfathered, and provided the applicant addresses the violation in addition to any required mitigation for the variance, this office does not oppose this request. Based on the information provided I have the following comments:

1. The proposed replacement dwelling should be the same size and in the same location as the existing dwelling. As indicated on the site plan, most of the lot contains steep slopes. We recognize that a variance is necessary to permit redevelopment of the property; however impacts should be minimized to the extent possible.

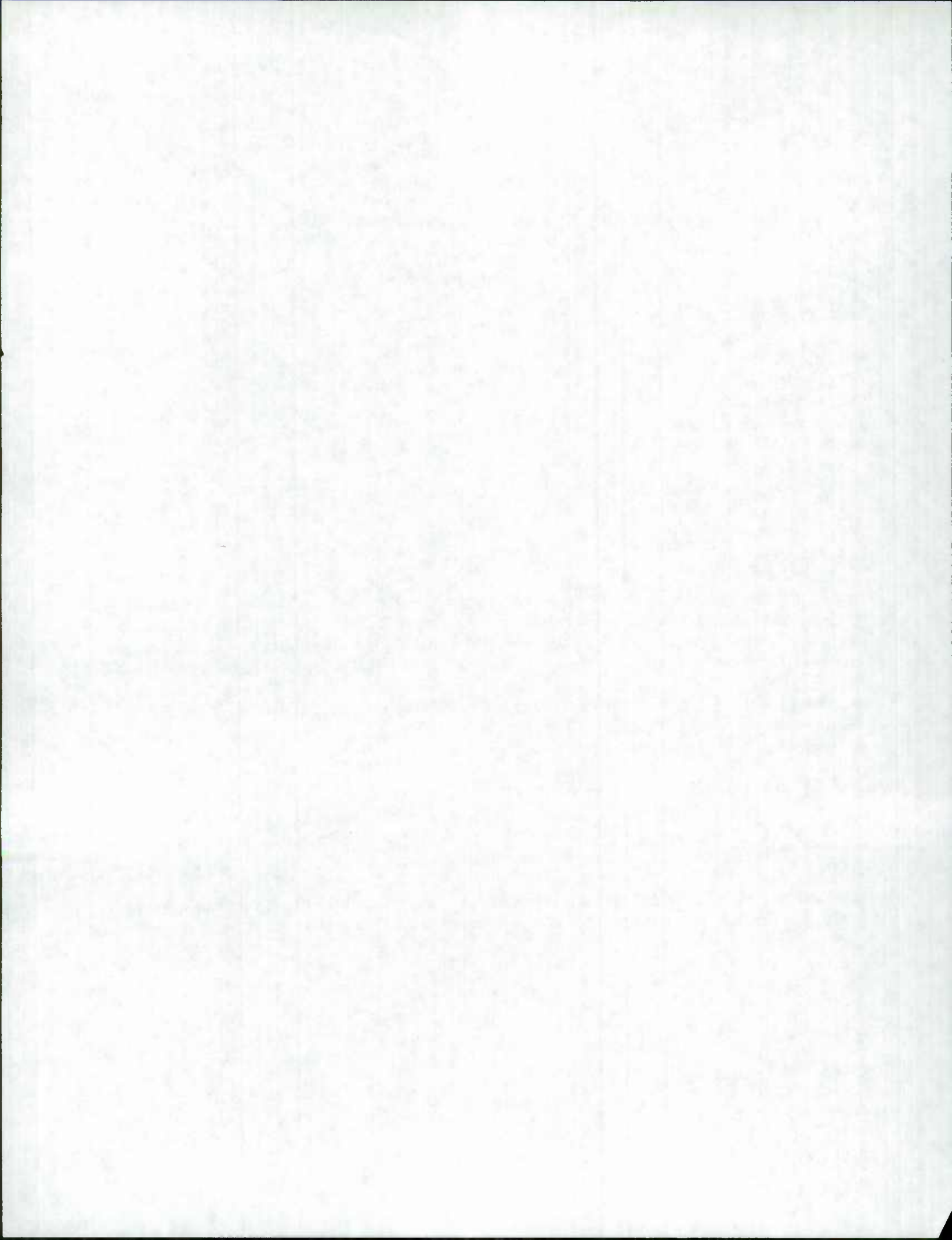
Thank you for the opportunity to provide comments. Please include this letter in your file and submit it as part of the record for this variance. Also, please notify the Commission in writing of the decision made in this case.

Sincerely,

A handwritten signature in cursive script that reads "Kate Schmidt".

Kate Schmidt
Natural Resources Planner
AA59-08





IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 2010-0081-V

WILLIAM EMRICH, JR. AND ROBERT FRASER, JR.

THIRD ASSESSMENT DISTRICT

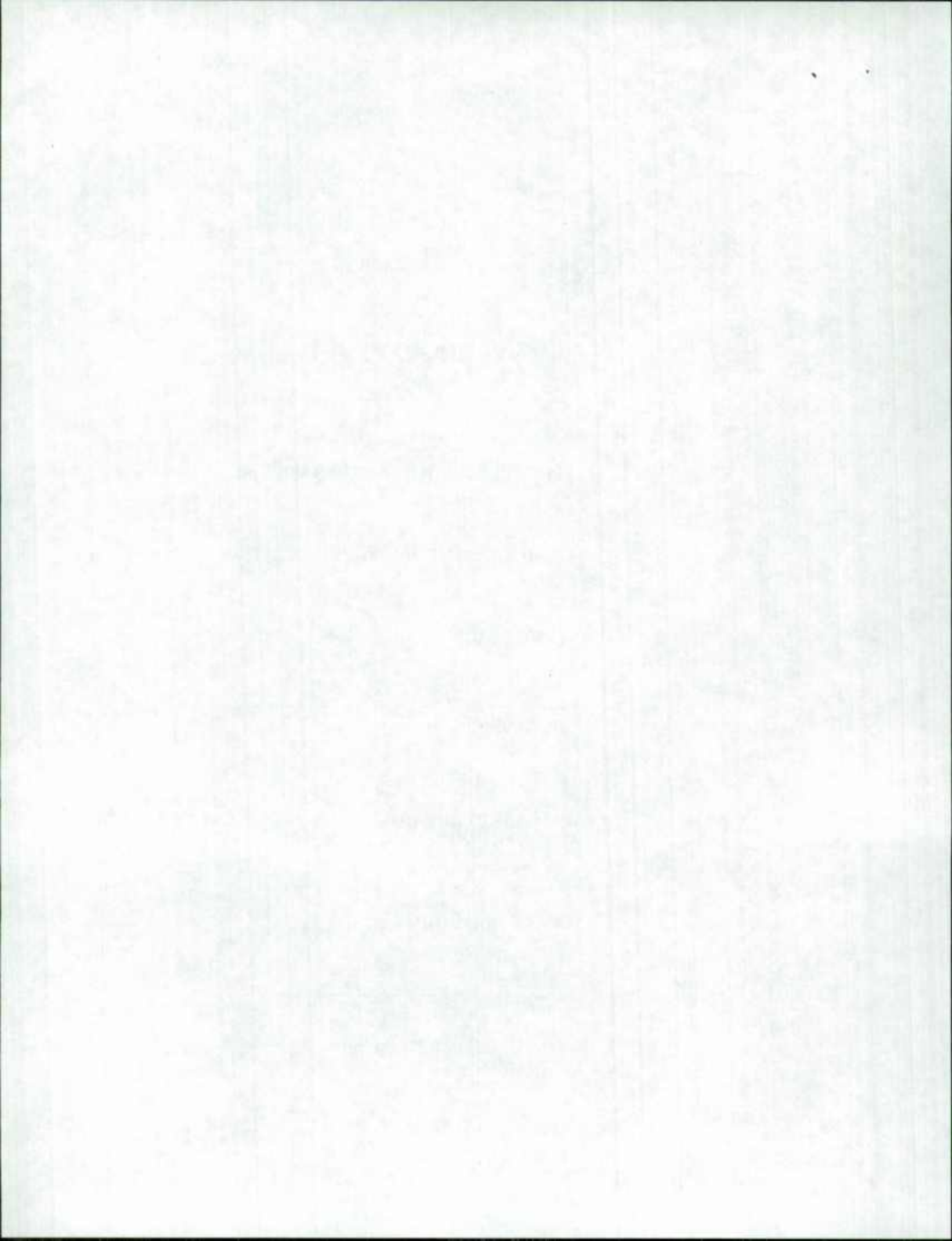
DATE HEARD: JUNE 10, 2010

ORDERED BY:

DOUGLAS CLARK HOLLMANN
ADMINISTRATIVE HEARING OFFICER

PLANNER: JOHN R. FURY

DATE FILED: JUNE 30, 2010



PLEADINGS

William Emrich, Jr. and Robert Fraser, Jr., the applicants,¹ seek a variance (2010-0081-V) to allow a dwelling with disturbance to slopes 15% or greater on property located along the southeast side of Round Bay Road, southwest of Severn River Road, Severna Park.

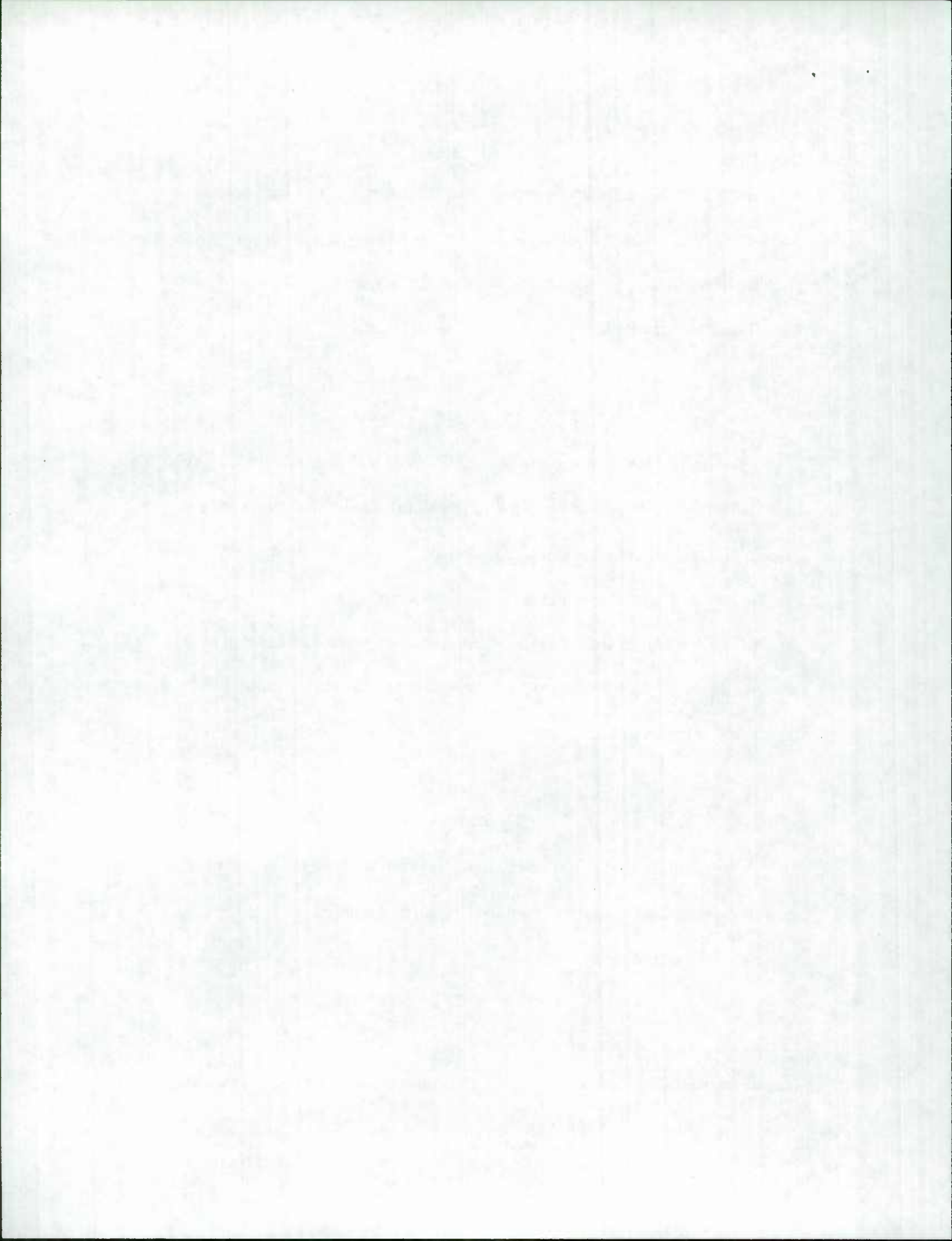
PUBLIC NOTIFICATION

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. Fraser 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

A hearing was held on June 10, 2010, in which witnesses were sworn and the following evidence was presented with regard to the proposed variance requested by the applicants.

¹ The application listed Mr. Fraser as the owner of the property. However, the deed to the property admitted into evidence as County Exhibit 5 shows that Mr. Emrich also owns the property. Consequently, both are listed as applicants.



The Property

The applicants own the subject property which has a street address of 123 Round Bay Road, Severna Park, Maryland 21146. The property is identified as Lot 63 of Parcel 184 in Block 14 on Tax Map 32 in the Round Bay subdivision. The property is zoned R2-Residential District and is located in the Chesapeake Bay Critical Area with a designation as limited development area (LDA).

The Proposed Work

A preexisting dwelling located on steep slopes has been razed. The applicants seek to redevelop the property with a new dwelling in the same location.

The Anne Arundel County Code

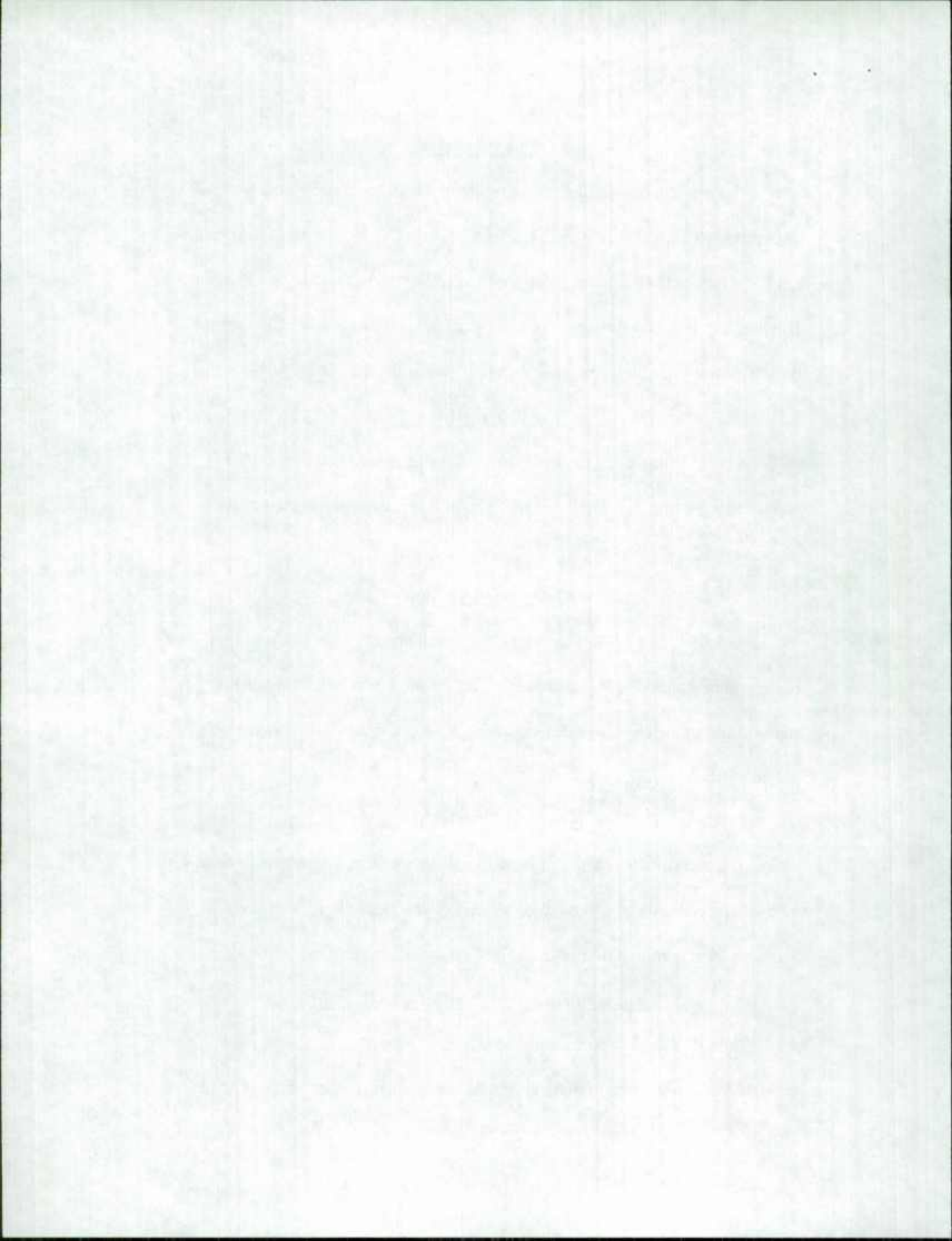
Article 17, § 17-8-201 provides that development in the LDA may not occur within slopes of 15% or greater unless development will facilitate the stabilization of the slope or the disturbance is necessary to allow connection of a public utility.

The Variance Requested

The work proposed, therefore, will require a critical area variance from § 17-8-201 because there will be disturbance to steep slopes as indicated on the Variance Plan admitted into evidence as County Exhibit 2.

The Evidence Submitted At The Hearing

John R. Fury, a planner with the Office of Planning and Zoning (OPZ), testified that the subject property is rectangular in shape and consists of 7,500

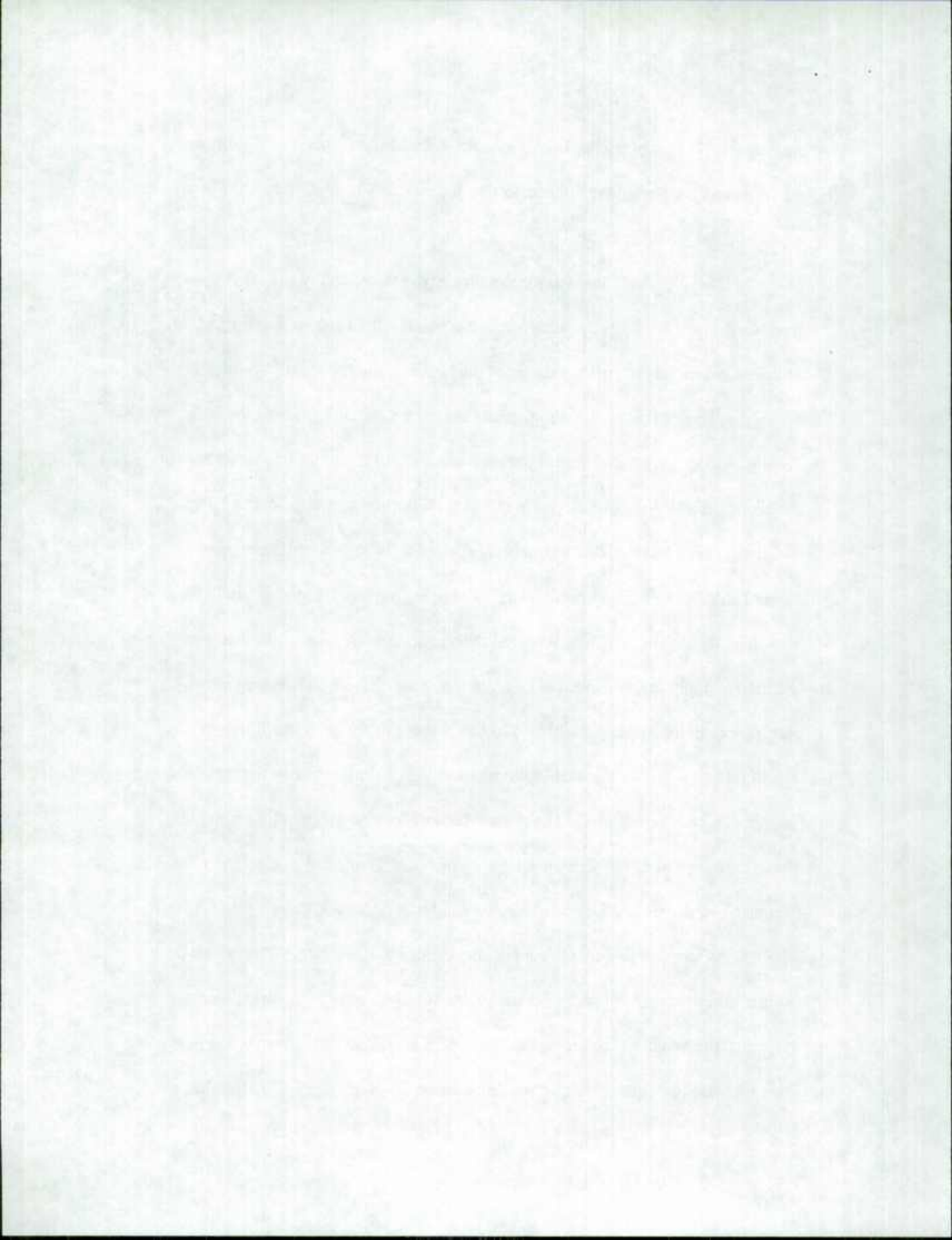


square feet. The property has been zoned R2 – Residential since the adoption of the Severna Park Small Area Plan effective June 24, 2002. The subject site is a grandfathered lot in the critical area.

Mr. Fury testified that the subject property is significantly sloped in the front yard, and a level, graded area that corresponds with a former dwelling footprint is located towards the center of the lot. The site is partially wooded in the side and rear yards and retaining walls are present on either side of the lot. Existing topography indicates a significant rise from the front lot line to the area of the proposed dwelling with slopes in this area measuring between 15 and 25%.

Mr. Fury testified that a permit was issued in 2006 to reconfigure and expand an existing nonconforming single-family dwelling on the property. However, the dwelling was demolished without approvals. The applicants were directed to apply for a retroactive grading permit and variance for steep slope disturbance in the Spring of 2007. A variance was granted with conditions in Case No. 2008-0017-V to allow a replacement dwelling of similar size as the proposed dwelling, which has expired. The present request for a replacement dwelling in the same footprint as the prior dwelling but includes an integral garage and a reconfigured driveway, both of which were not part of the 2008 application.

Mr. Fury testified that the applicants believe that the 2008 variance can be further minimized. In the prior variance, the Administrative Hearing Officer restricted the height of the replacement dwelling to 25 feet, and the new Variance Plan likewise limits the height of the replacement dwelling to 25 feet. Retaining



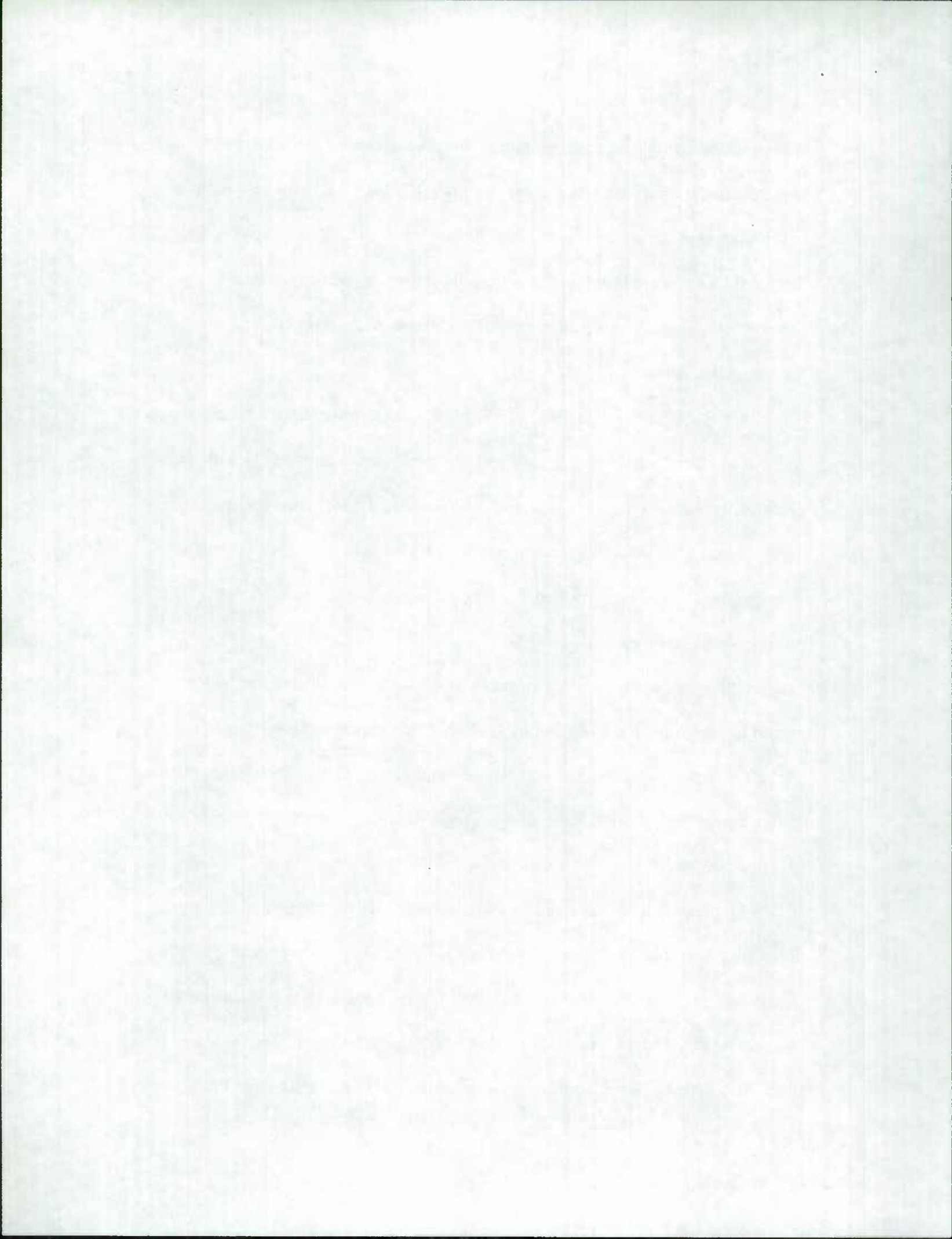
walls have been proposed to accommodate the proposed driveway and garage. Nevertheless, the proposed steep slope disturbance is identical to the amount that was proposed in the 2008 variance. No clearing is proposed for the project. The proposed lot coverage is within the limitation for the site. Mitigation and stormwater management would be provided at permit stage in accordance with Code requirements.

Mr. Fury testified that the Critical Area Commission deferred their review to the Administrative Hearing Officer and that the Department of Health and the Development Division of OPZ offered no objection to the requested variance.

Based upon the standards set forth in § 18-16-305 under which a variance may be granted, Mr. Fury testified that OPZ recommends that the applicants' variance request be granted.

The applicants presented evidence that the house they intended to build would be located on the same footprint and that the clearing and impervious surface approved in the last variance would be the same. The difference is to put a garage inside the footprint of the house. This will require a reconfigured driveway and retaining walls.

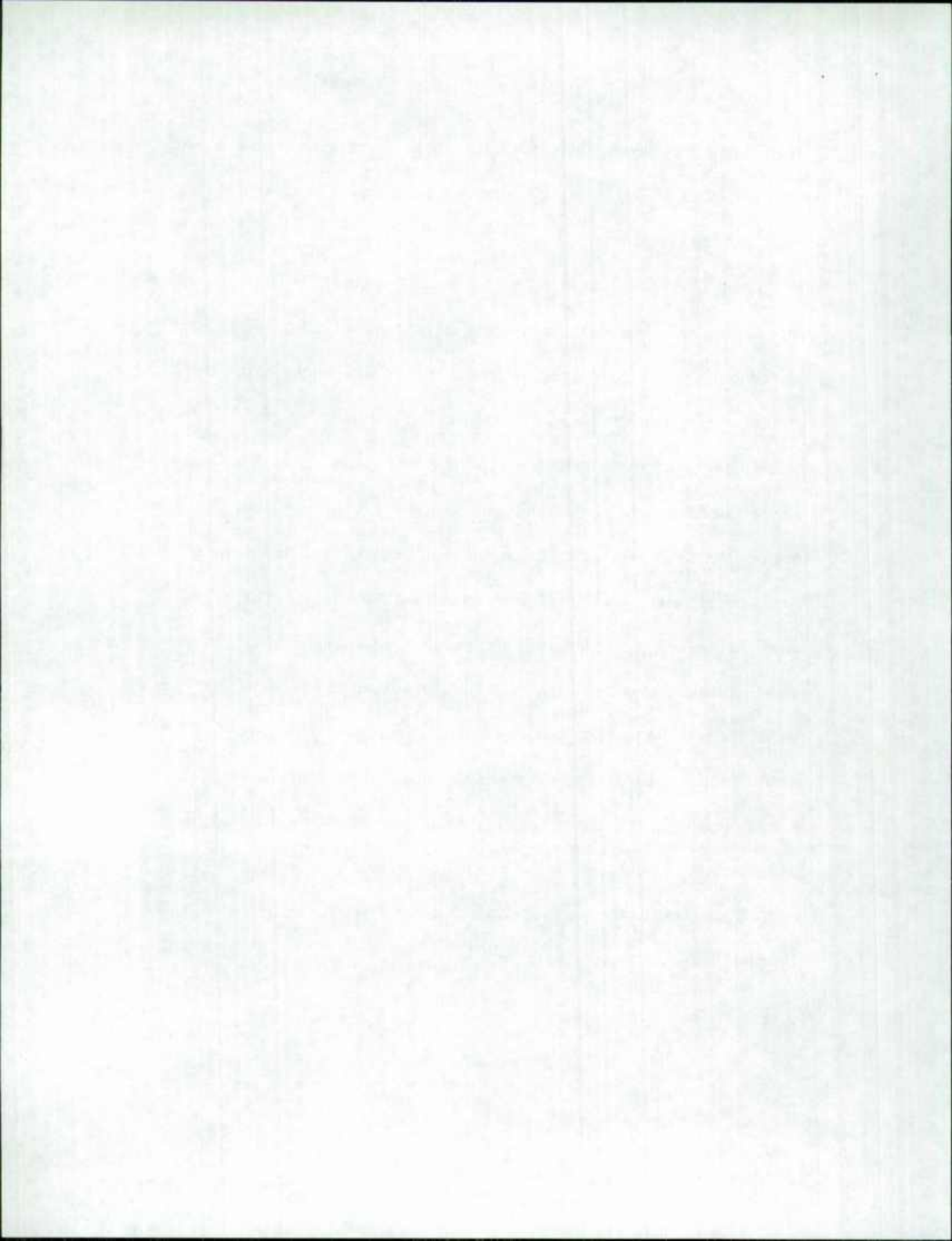
Matthew Forgen, the applicants' engineering consultant, testified that about the work that would be carried out. The site is unusual in that the ground slopes significantly up from the street to the footprint of the house. The prior plan called for parking at the street level and the removal of a garage along the east side lot line. Access to the home would be up stairs along the west side lot line. Because



of objections from the neighbors on that side, the applicants agreed to move the stairs to the east side of the lot and have shown this change in a modified Variance Plan identified as Applicant's Exhibit 2-A.

A number of neighbors testified against granting the requested variance. *Jean LeClare*, who lives on the west side of the property at 125 Round Bay Road, was concerned about the retaining wall and stairs proposed on the side of the property next to her. She was worried about runoff and the fact that the stairs would put people walking up them within a few feet of private areas of her house. *Lee Lougée* lives on the east side of the property at 121 Round Bay Road. She also objected to the variance requested, and expressed doubt that the developer would comply with restrictions. She was concerned about the height of the proposed dwelling. Objections were also voiced by *Tom Lloyd* and *Dan Flagler*, who live in the neighborhood, that the fact the prior dwelling was demolished without permits did not bode well for the developer complying with any restrictions put on what they were going to build. All of the Protestants objected to a garage being added to the property as it was unnecessary and increased the disturbance that would take place when construction began.

There was no other testimony taken or exhibits received in the matter. The Hearing Officer did not visit the property.



DECISION

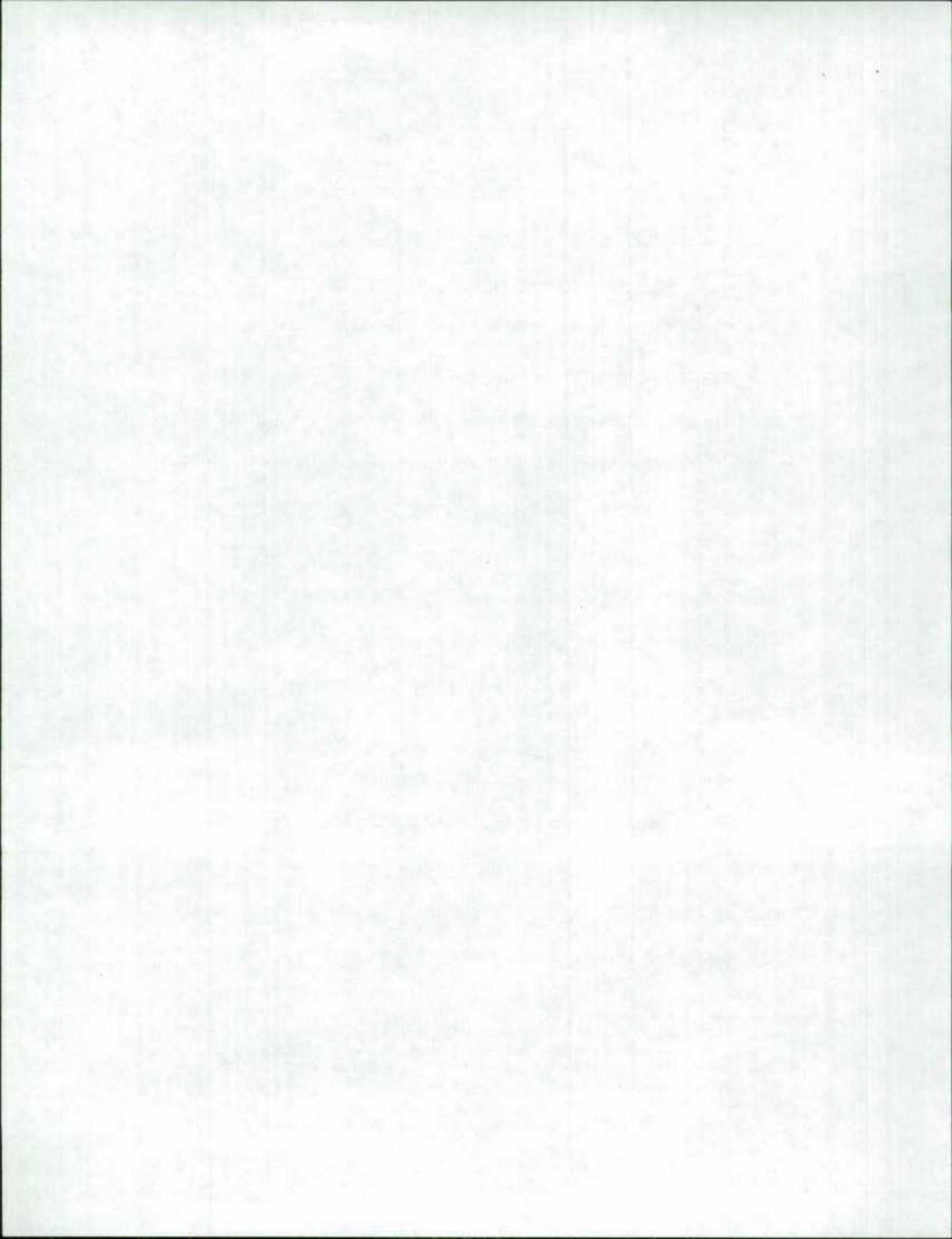
Upon review of the facts and circumstances, I find and conclude that the applicants are entitled to conditional relief from the Code.

State Requirements for Critical Area Variance

§ 8-1808(d)(2) of the Natural Resources Article, Annotated Code of Maryland, provides in subsection (ii), that “[i]n considering an application for a variance [to the critical area requirements], a local jurisdiction shall presume that the specific development in the critical area that is subject to the application and for which a variance is required does not conform to the general purpose and intent of this subtitle, regulations adopted under this subtitle, and the requirements of the jurisdiction’s program.” (Emphasis added.) “Given these provisions of the State criteria for the grant of a variance, the burden on the applicant is very high.” *Becker v. Anne Arundel County*, 174 Md. App. 114, 124; 920 A.2d 1118, 1124 (2007).

The question of whether the applicants are entitled to the variance requested begins, therefore, with the understanding that, in addition to the other specific factors that must be considered, the applicants must overcome the presumption, “that the specific development in the critical area that is subject to the application ... does not conform to the general purpose and intent of [the critical area law].”²

² § 8-1808(d)(2)(ii) of the Natural Resources Article. References to State law do not imply that the provisions of the County Code are being ignored or are not being enforced. If any difference exists between County law and State law, or if some State criteria were omitted from County law, State law would prevail. See, discussion on this subject in *Becker v. Anne Arundel County*, *supra*, 174 Md. App. at 135; 920 A.2d at 1131.



Furthermore, the applicants carry the burden of convincing the Hearing Officer “that the applicant[s have] satisfied each one of the variance provisions.”³

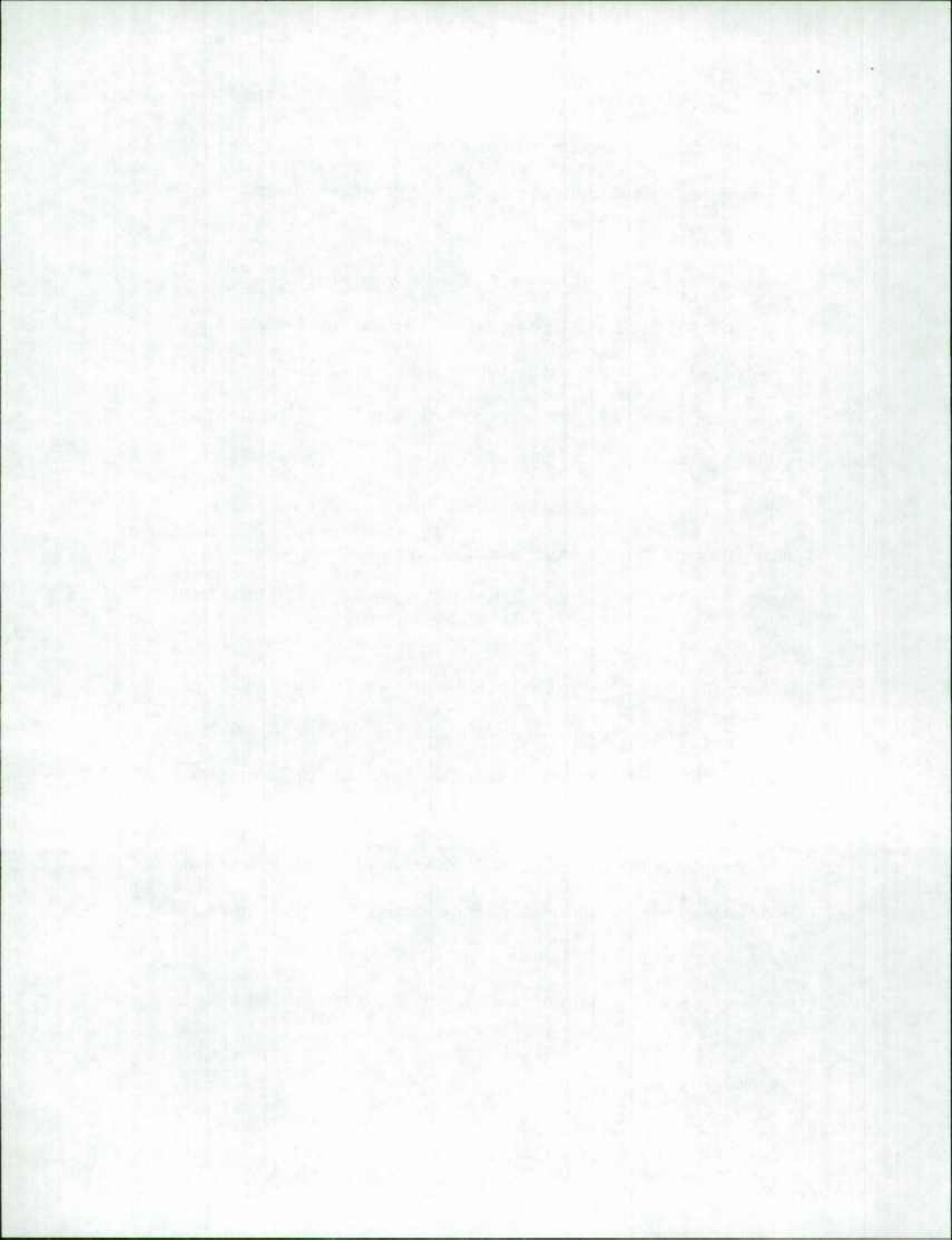
(Emphasis added.)

County Requirements for Critical Area Variance

§ 18-16-305(b) sets forth six separate requirements (in this case) that must be met for a variance to be issued for property in the critical area. They are (1) whether a denial of the requested variance would constitute an unwarranted hardship, (2) whether a denial of the requested variance would deprive the applicants of rights commonly enjoyed by other property owners, (3) whether granting the variance would confer a special privilege on the applicants, (4) whether the application arises from actions of the applicants, or from conditions or use on neighboring properties, (5) whether granting the application would not adversely affect the environment and be in harmony with the critical area program, and (6) whether the applicants have overcome the presumption in Natural Resources Article, § 8-1808(d)(2)(ii), of the State law that the variance request should be denied.

Provided that an applicants meet the above requirements, a variance may not be granted unless six additional factors are found: (1) the variance is the minimum variance necessary to afford relief; (2) the granting of the variance will not alter the essential character of the neighborhood or district in which the lot is

³ § 8-1808(d)(4)(ii).

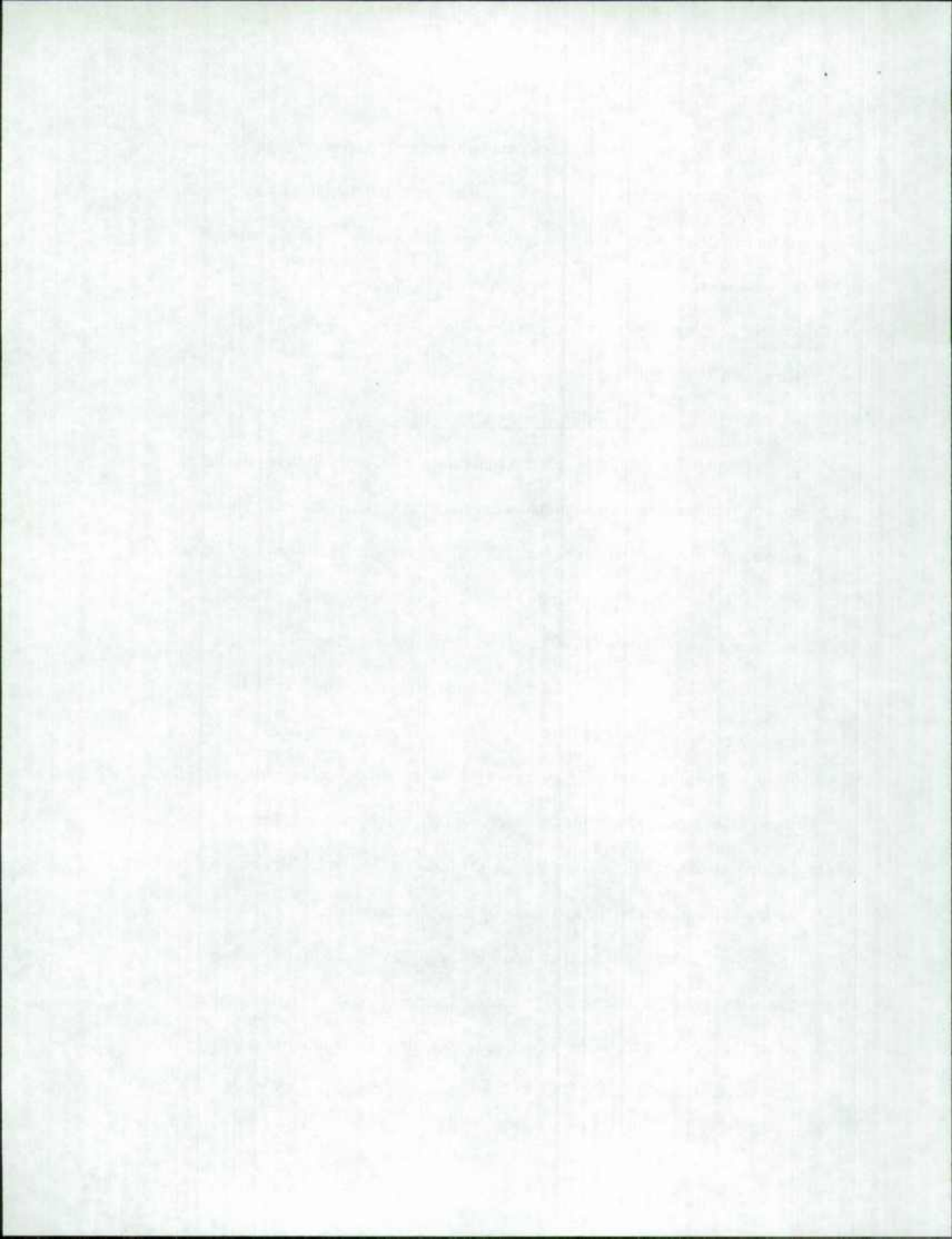


located; (3) the variance will not substantially impair the appropriate use or development of adjacent property; (4) the variance will not reduce forest cover in the limited development and resource conservation areas of the critical area; (5) the variance will not be contrary to acceptable clearing and replanting practices required for development in the critical area; or (6) the variance will not be detrimental to the public welfare.

Findings - Critical Area Variance

I find based upon the evidence, that for the reasons set forth below, the applicants are entitled to conditional relief from the Code. First, the applicants have a right to rebuild a grandfathered dwelling no matter how it was taken down. Second, this Office issued a variance allowing a new house to be built on the footprint of the old house in 2008. For whatever reasons, the applicants did not obtain a building permit in the 18 months and the prior variance expired. Third, the applicants have the right to reapply. Fourth, the current proposal, except for the location of the stairs and moving the garage into the basement of the planned house, is the same as the prior application. There will be no increase in disturbance to steep slopes or clearing. The house will be no higher than 25 feet, the limitation placed on the applicants by the 2008 variance.

The current application differs from the 2008 variance in that the applicants now wish to use the basement as a garage. There was a garage on this property which the applicants could have obtained permission to rebuild. Instead, they removed it. In addition, the 2008 decision prohibited accessory structures, such as

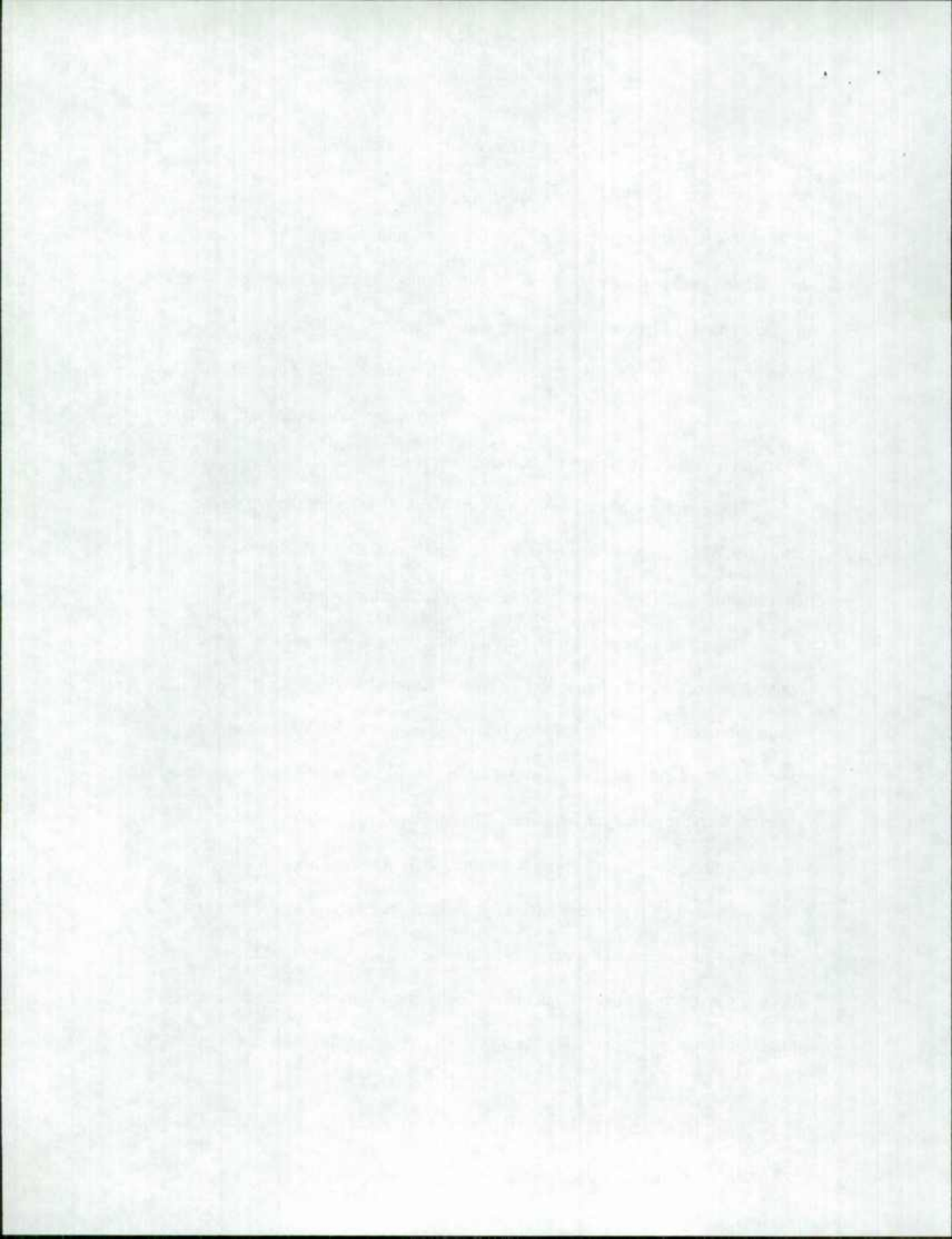


garages. The basement was going to be there in any case. Whether cars are parked in it is irrelevant.

However, moving the garage into the basement means that the ground between the road in front of the property and the basement must be excavated, and the excavation is supported by retaining walls on either side. Removing the hill in front of the house may not be a bad thing since it is very steep and subject to erosion. Excavating down to allow automobiles to drive up into the basement may be an improvement for stormwater control and erosion.

The retaining walls serve to stabilize the site. The rest of the site on the street side of the property will be regraded, improving the runoff and erosion control situation. The walls will not be visible from other properties.

The applicants cannot access the dwelling without stairs because of the steep slopes between the house and the road. The original design for this application had the stairs on the west side of the property. Ms. LeClare properly pointed out that the stairs, which would be on ground higher than her house, would interfere with the privacy in her home. The applicants agreed to move the stairs to the east side, as shown on Applicant's Exhibit 2-A. At first glance, this might seem like moving the problem caused by the stairs (really caused by the narrow lots in this grandfathered community) to the side of the property next to Ms. Lougée's property. However, her home is not alongside the driveway area at the front of the subject property like Ms. LeClare's house and, thus, relocating the



stairs on the east side will not impact Ms. Lougée the way they would have impacted Ms. LeClare's property.

For these reasons, I will grant the modified proposal to build the new dwelling with the stairs on the east side as shown on Applicant's Exhibit 2-A.

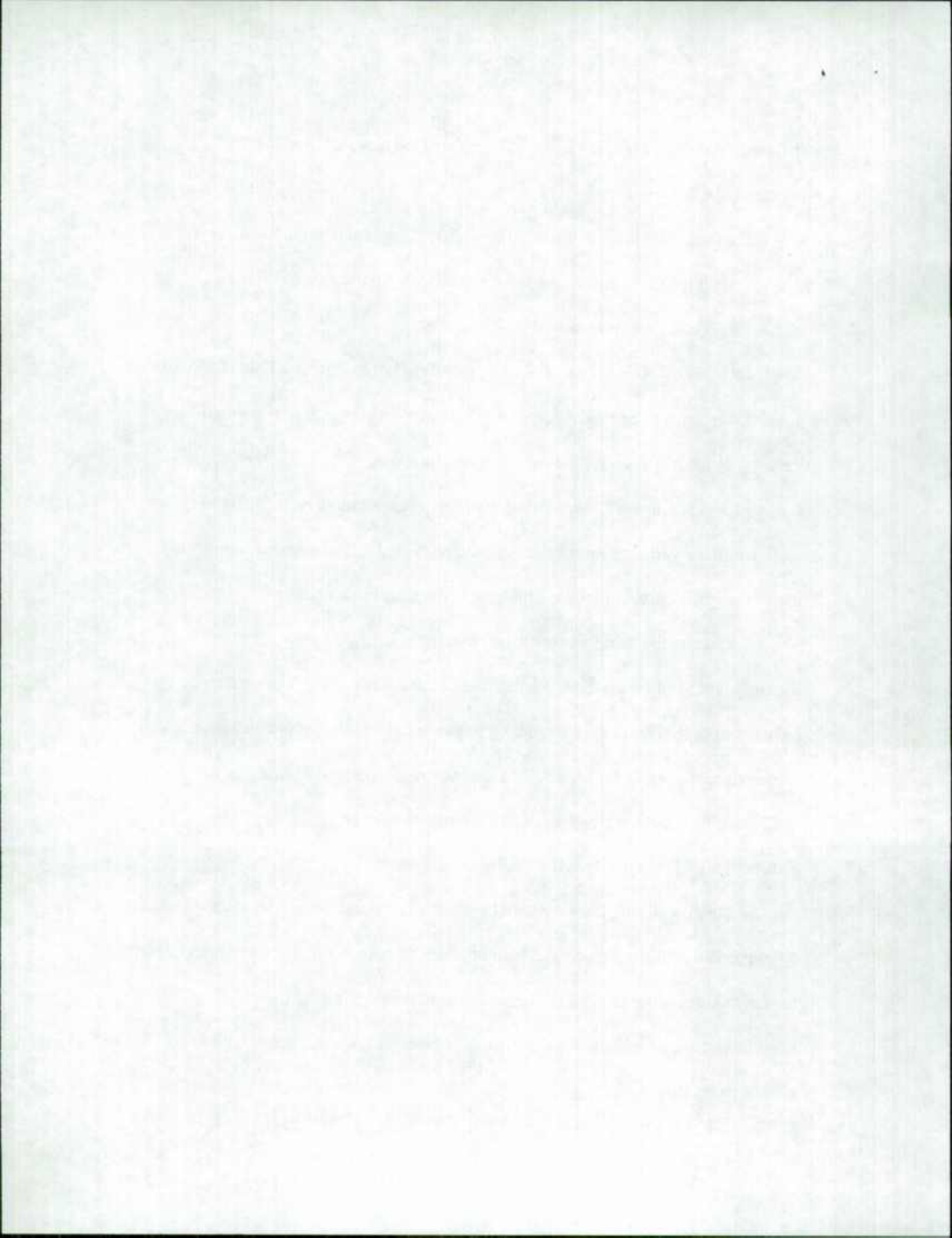
Subsection (b)(1) - Unwarranted Hardship.

In *Becker v. Anne Arundel County, supra*, 174 Md. App. at 132-3; 920 A.2d at 1129, the Court of Special Appeals discussed the definition of unwarranted hardship found in § 8-1808(d)(1) of the Natural Resources Article in the State Code: "The amendment changed the definition of unwarranted hardship to mean that, 'without a variance, an applicant would be denied reasonable and significant use of the entire parcel or lot for which the variance is requested.'" "

I find that the denial of the variance would constitute an unwarranted hardship that would deny the applicants use of the entire parcel. The applicants have the right to rebuild the structure on this grandfathered lot in order to have "reasonable and significant use of the entire ... lot." Therefore, I find that the applicants have met the requirements of subsection (b)(1).

Subsection (b)(2) - Deprive Applicants Of Rights

I find that the applicants would be deprived of rights commonly enjoyed by other properties in similar areas as permitted in accordance with the provisions of the critical area program, i.e., the right to rebuild the dwelling on this grandfathered lot. Therefore, I find that the applicants have met the requirements of subsection (b)(2).



Subsection (b)(3) - Special Privilege

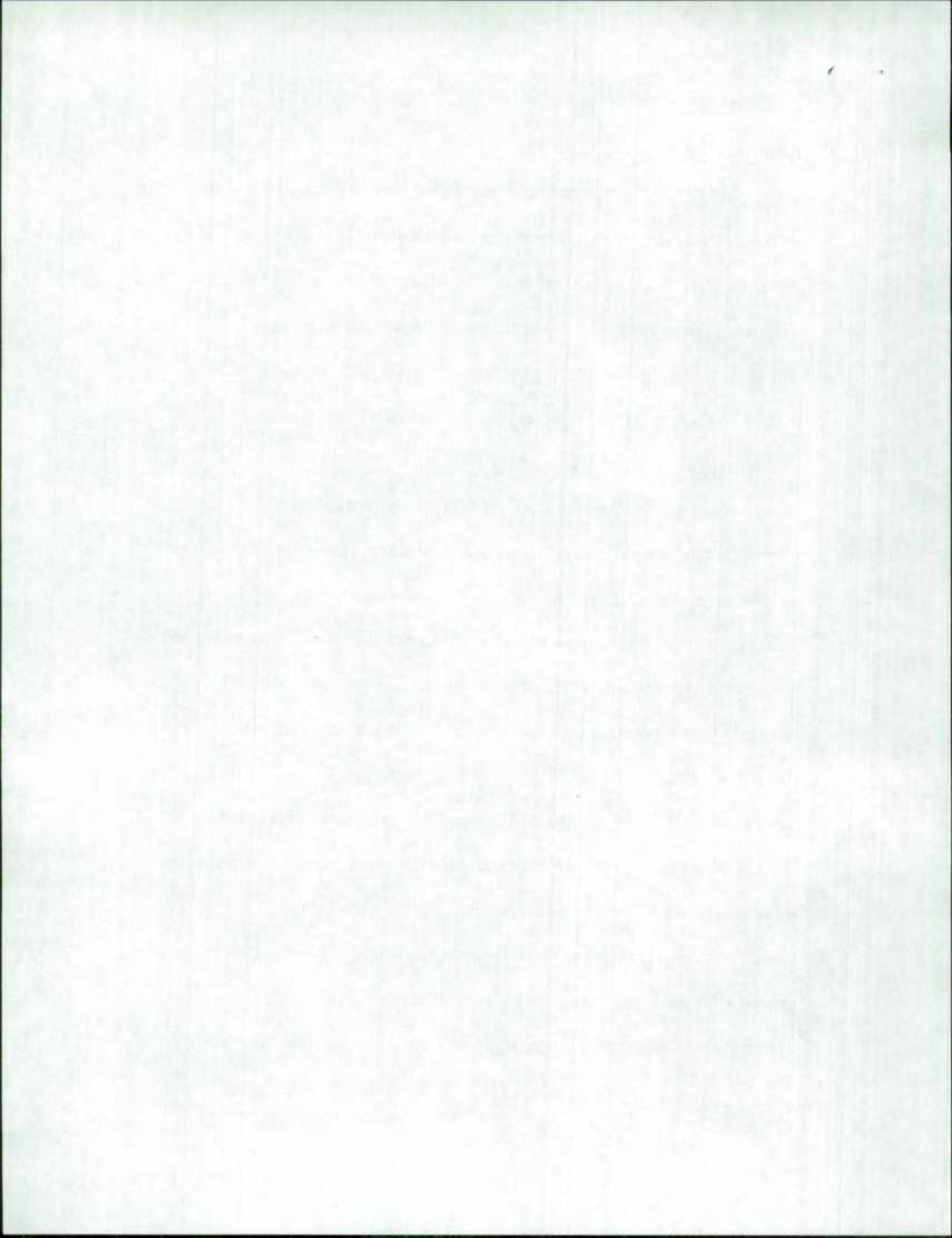
I further find that the granting of the critical area variance requested will not confer on the applicants any special privilege that would be denied by COMAR, 27.01, the County's critical area program, to other lands or structures within the County's critical area. There was testimony that the proposed improvements are comparable to other houses in the neighborhood. *See*, County Exhibit 2. Therefore, I find that the applicants have met the requirements of subsection (b)(3).

Subsection (b)(4) - Actions By Applicants Or Neighboring Property

I find that the critical area variance requested is not based on conditions or circumstances that are the result of actions by the applicants, including the commencement of development before an application for a variance was filed, and do not arise from any condition relating to land or building use on any neighboring property. Therefore, I find that the applicants have met the requirements of subsection (b)(4).

Subsection (b)(5) - Water Quality, Intent Of Critical Area Program

The granting of the critical area variance requested will not adversely affect water quality or adversely impact fish, wildlife or plant habitat within the County's critical area or a bog protection area and will be in harmony with the general spirit and intent of the County's critical area program. The proposed work will be offset by mitigation that the applicants will undertake. Mr. Fury and Mr.



Forgen testified that the proposed work supports this conclusion. Therefore, I find that the applicants have met the requirements of subsection (b)(5).

Subsection (b)(7) - § 8-1808(d)(2)(ii) Presumption

In *Becker v. Anne Arundel County, supra*, 174 Md. App. at 133; 920 A.2d at 1129, the Court of Special Appeals discussed the presumption found in § 8-1808(d)(2)(ii) of the Natural Resources Article: “The amendment also created a presumption that the use for which the variance was being requested was not in conformity with the purpose and intent of the critical area program.”

I find that the applicants, by competent and substantial evidence, have overcome the presumption contained in the Natural Resources Article, § 8-1808(d)(2), of the State law (which is incorporated into § 18-16-305 subsection (b)(2)) for the reasons set forth above. Therefore, I find that the applicants have met the requirements of subsection (b)(7).

I further find that the critical area variance represents the minimum relief. There was nothing to suggest that the granting of the critical area variance would alter the essential character of the neighborhood, substantially impair the appropriate use or development of adjacent property, reduce forest cover in the limited development and resource conservation areas of the critical area, or cause a detriment to the public welfare.

ORDER

PURSUANT to the application of William Emrich, Jr. and Robert Fraser, Jr., petitioning for a variance to allow a dwelling with disturbance to slopes 15% or greater, and

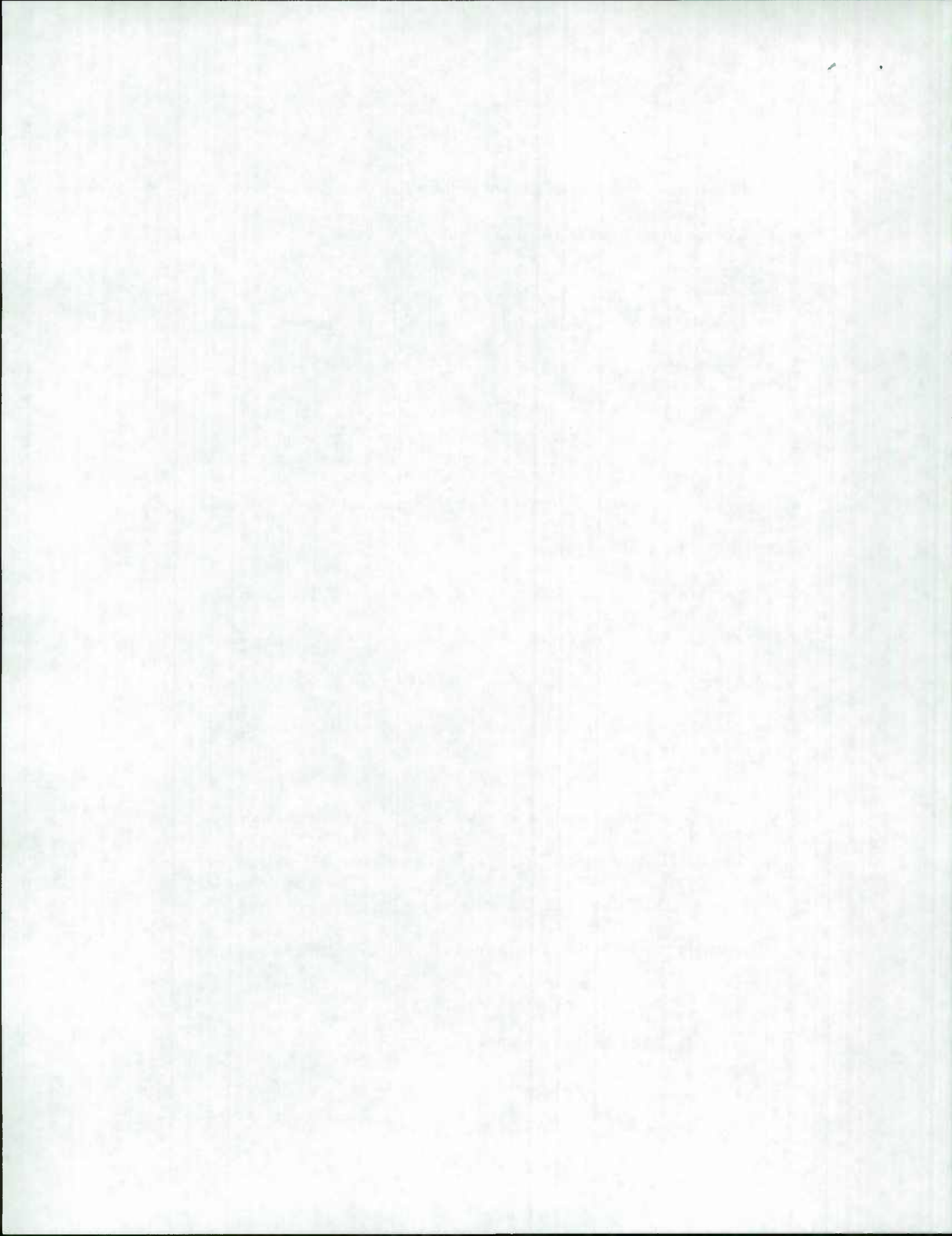
PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is this **30th day of June, 2010**,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicants are **granted** a critical area variance from § 17-8-201 to allow disturbance to steep slopes as shown on the modified Variance Plan admitted into evidence as Applicant's Exhibit 2-A.

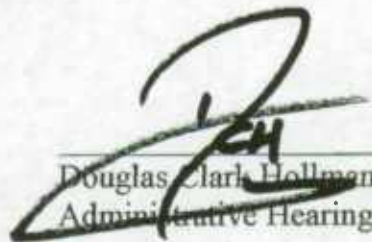
Furthermore, Applicant's Exhibit 2-A, referenced in this decision, is incorporated herein as if fully set forth and made a part of this Order. The proposed improvements shown on Applicant's Exhibit 2-A shall be constructed on the subject property in the locations shown therein as modified by this Order.

The foregoing variance is subject to the following conditions:

- A. The applicants shall comply with any instructions and necessary approvals from the Permit Application Center, the Department of Health, and/or the Critical Area Commission, including but not limited to any direction regarding the use of nitrogen removal system technology and mitigation plantings.
- B. The dwelling height may not exceed 25 feet.



- C. No further expansion of the dwelling is allowed and accessory structures are not allowed.
- D. The conditions of the approval run with the land and shall be included in any contract of sale.
- E. This Order does not constitute a building permit. In order for the applicants to construct the structures permitted in this decision, they must apply for and obtain the necessary building permits, along with any other approvals required to perform the work described herein.



Douglas Clark Hollmann
Administrative Hearing Officer

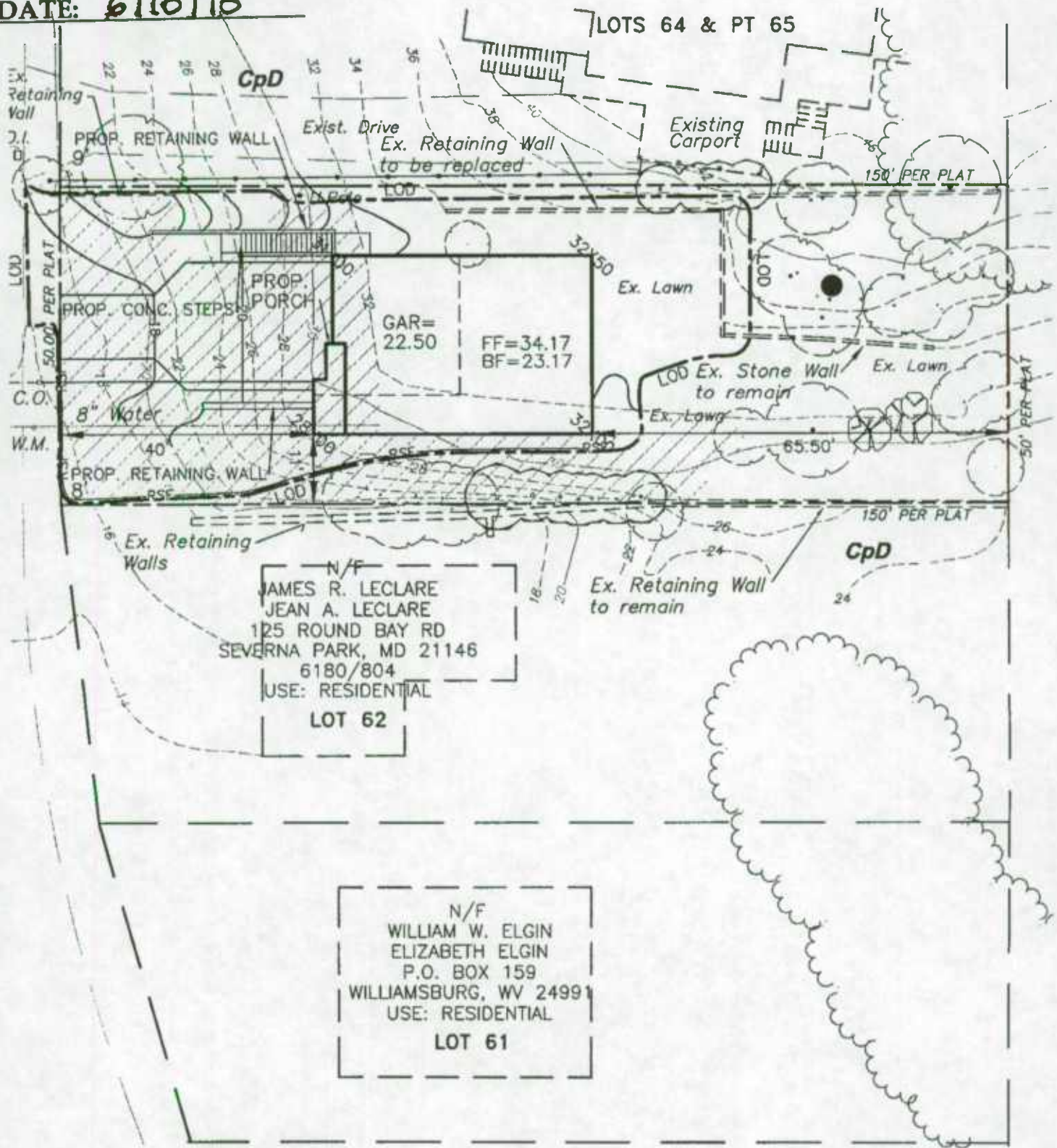
NOTICE TO APPLICANTS

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 § 18-16-405(a) provides that a variance expires by operation of law unless the applicants obtain 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.

APP. EXHIBIT# 2-A
CASE: 2010-0081-V
DATE: 6/10/10



PROPOSED CONDITIONS
SCALE: 1"=20'

59-08

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 2008-0017-V

WILLIAM EMRICH, JR. AND ROBERT FRASER, JR.

THIRD ASSESSMENT DISTRICT

DATE HEARD: MARCH 4, 2008

ORDERED BY: STEPHEN M. LeGENDRE, ADMINISTRATIVE HEARING OFFICER

PLANNER: WILLIAM ETHRIDGE

RECEIVED

APR 4 2008

CRITICAL AREA COMMISSION
Chesapeake & Atlantic Coastal Bays

DATE FILED: APRIL 3rd, 2008

1955

THE NATIONAL ARCHIVES
COLLECTIONS DIVISION

PLEADINGS

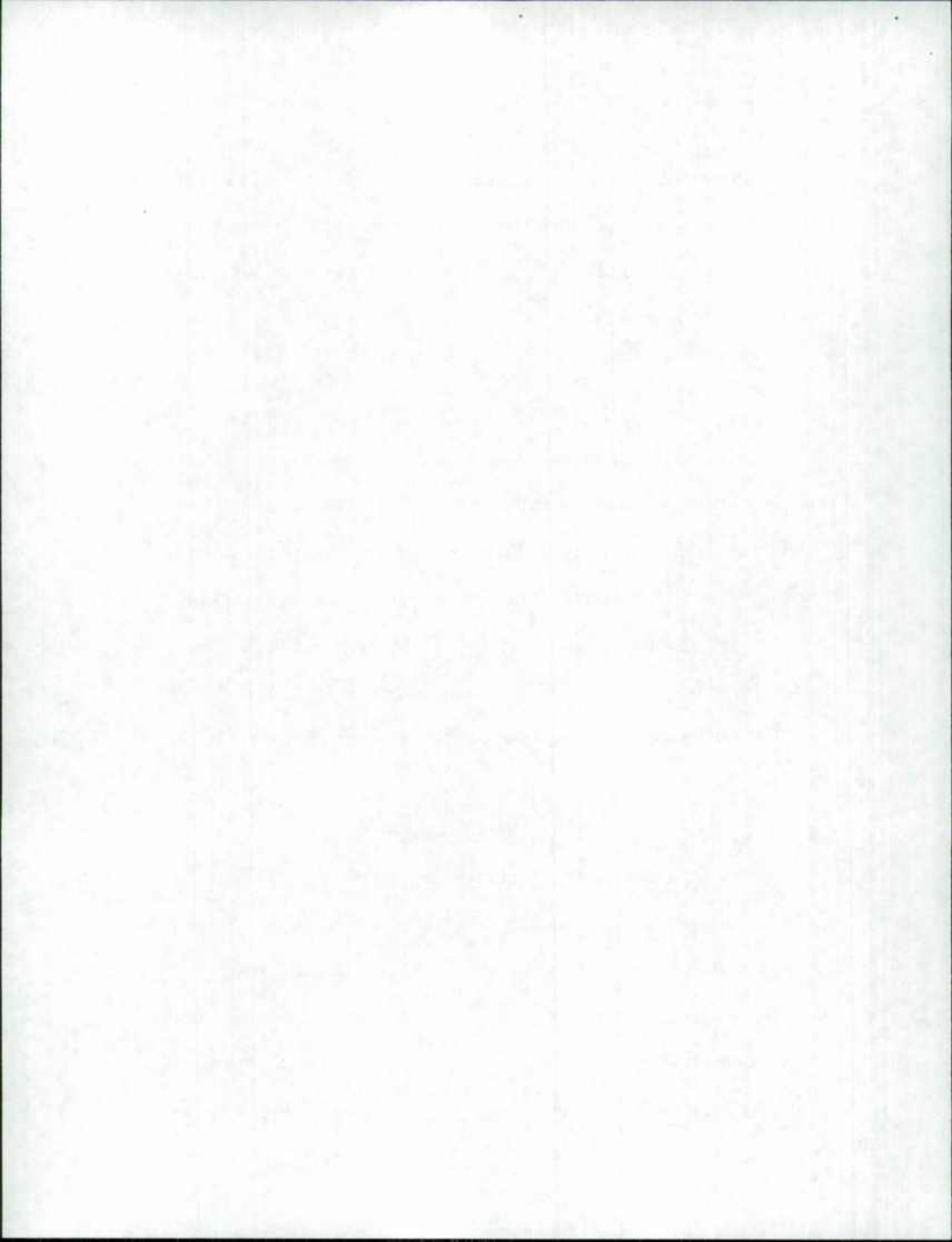
William Emrich, Jr. and Robert Fraser, Jr., the applicants, seek a variance (2008-0017-V) to allow a dwelling with disturbance to slopes of 15 percent or greater on property located along the southeast side of Round Bay Road, northeast of Ridout Road, Severna Park.

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. Fraser 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 property with a street address of 123 Round Bay Road, in the Round Bay subdivision, Severna Park. The property comprises 7,500 square feet and is zoned R2 residential with a Chesapeake Bay Critical Area designation as Limited Development Area (LDA). A preexisting dwelling located on steep slopes has been razed. The applicants seek to redevelop the property with a new dwelling in the same location.



Anne Arundel County Code, Article 17 Section 17-8-201 proscribes the disturbance of steep slopes in the LDA. Accordingly, the applicants seek a variance to perfect and complete the redevelopment of the property.

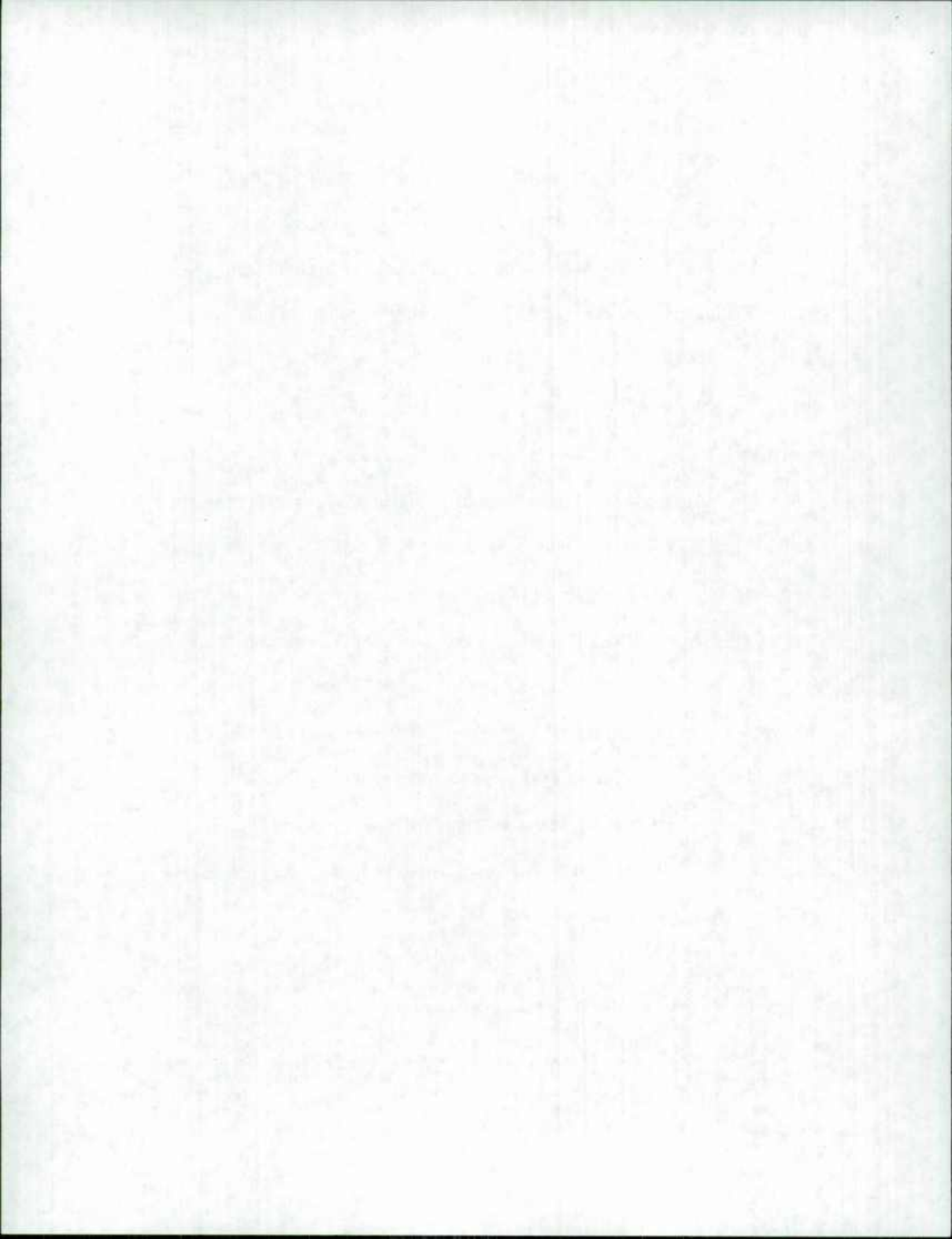
William Ethridge, a planner, with the Office of Planning and Zoning, testified that the property is below the minimum area and width for the district with an area of slopes rising from +16 to +32 feet through the first 50 feet of distance from the road. The preexisting dwelling was constructed in 1933. The demolition resulted in a series of building and grading complaints, including the failure to stabilize the slope. The applicants have applied for a grading permit to resolve the matter. They are proposing a dwelling with a height of 35-feet in the same footprint as the preexisting dwelling. The slope disturbance measures 1,750 square feet. The applicants will stabilize 1,420 square feet; and the impervious coverage will be reduced from 2,077 square feet to 1,907 square feet.¹ There were no adverse agency comments.² By way of ultimate conclusion, Mr. Ethridge supported the application, subject to stormwater management.

Mr. Fraser testified that the County approved plans to renovate the pre-existing dwelling but the original contractor drove equipment up the slope and

¹ The maximum coverage allowed is 2,375 square feet.

² The Chesapeake Bay Critical Area Commission wrote, in pertinent part:
Provided this lot is properly grandfathered, and provided the applicant addresses the violation in addition to any required mitigation for the variance, this office does not oppose the request. Based on the information provided, I have the following comments:

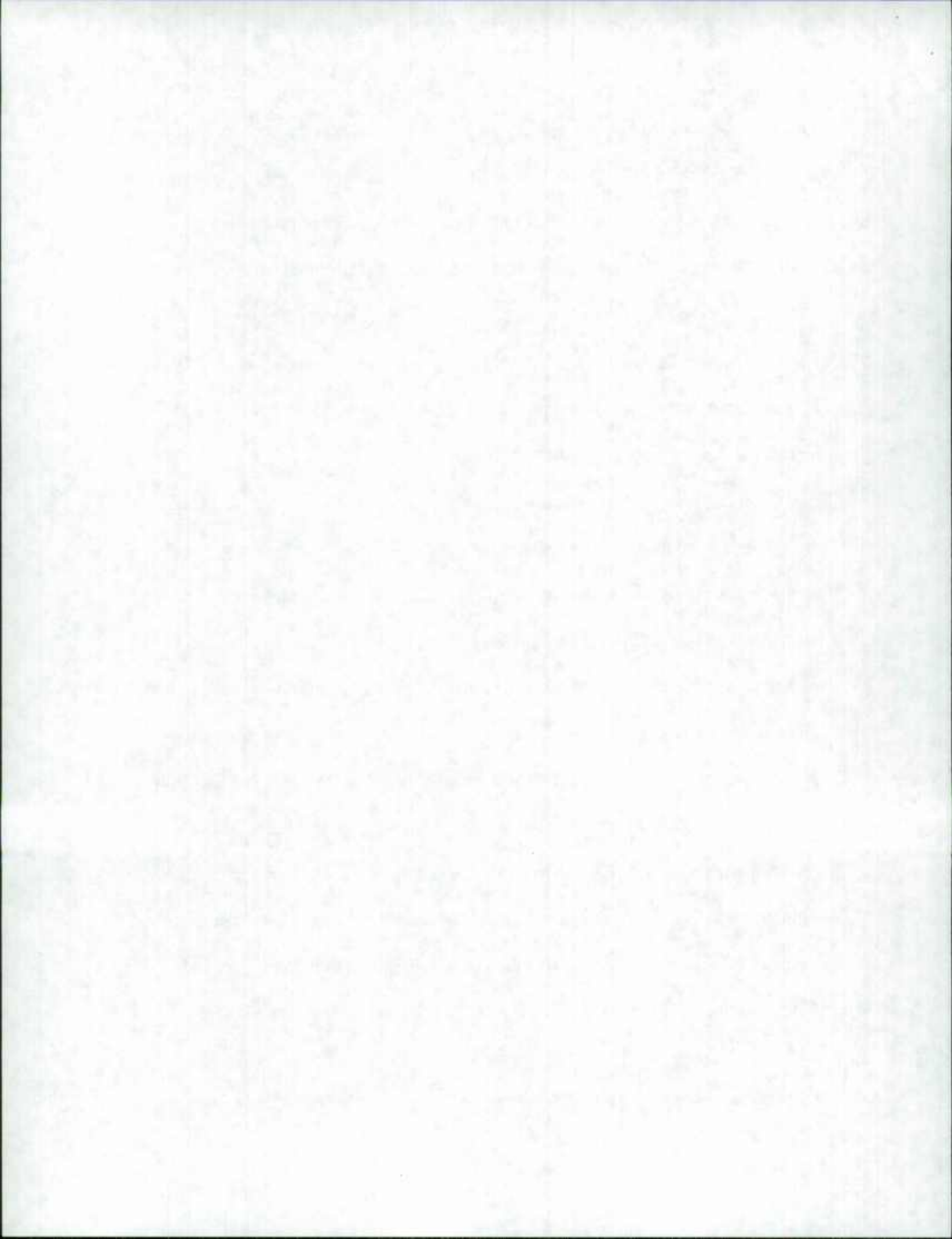
1. The proposed replacement dwelling should be the same size and in the same location as the existing dwelling. As indicated on the site plan, most of the lot contains steep slopes. We recognize that a variance is necessary to permit redevelopment of the property; however, impacts should be minimized to the extent possible.



razed the dwelling without the applicants' permission.³ These events occurred in 2006. In the Spring of 2007, the Permit Application Center directed the applicants to apply for a grading permit. After further discussion, the applicants were advised that they would need a variance to rectify the unpermitted slope disturbance. The new dwelling is in the same footprint as the preexisting dwelling with no additional slope disturbance. Walter Palmer, the applicants' contractor, reiterated that the redevelopment proposal reduces the impervious coverage and includes stormwater management.

Several area residents opposed the application. Tom Lloyd disputed that the variance standards are satisfied. In this regard, the applicants have not minimized the relief; the request is out of character with the adjacent one and one-half story cottages; and any hardship is self-created. Jim LeClare, who resides on the adjacent property to the west, testified that the silt fencing has not been maintained; the height of the new dwelling is excessive; the impervious coverage should include off-street parking; the disturbance should be limited to the footprint of the preexisting dwelling; the site plan erroneously depicts a retaining wall extending the full length of his shared lot line; and the integrity of the section of wall that exists is questionable. Lee Lougee, who resides on the adjacent property to the east, testified that the height of the new dwelling will impair her light and air and devalue her property. Daniel Flagler testified that the site poses a safety

³ Following the demolition, the original contractor repaired the slope and installed silt fencing.

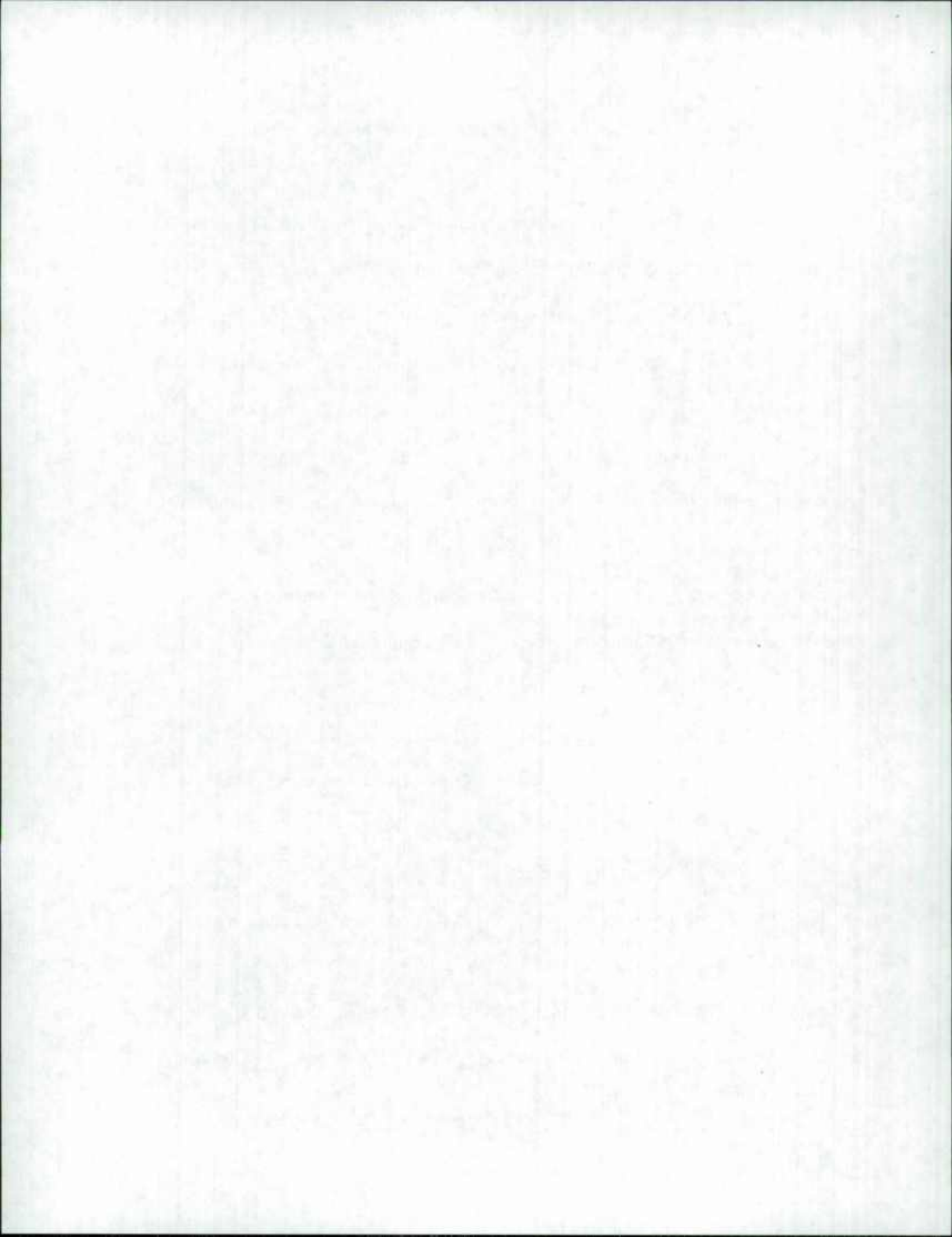


hazard; there is runoff to Sullivan Cove; and the lot is too small for the new dwelling.

By way of further explanation, Christina Palmer, a licensed realtor, testified that the new dwelling reflects change in the community in recent years. Mr. Frazier disputed that there would be an adverse impact on neighboring properties. In this regard, the new dwelling would be 15 feet higher than the preexisting dwelling; the new dwelling would be below the peak and offset from Ms. Lougee's dwelling, leaving her a clear view; there are other large, new homes under construction in the community; the proposal includes a parking pad for two vehicles; and a structural engineer has indicated that the retaining wall along the west side boundary is sound. The witness supplied elevation drawings and a plan sheet showing an unfinished basement⁴. Finally, he indicated that the applicants have abandoned an earlier plan for three floors of finished living space. Mr. Palmer testified that the new dwelling comprises 2,400 to 2,500 square feet of living space on two floors above a basement that would be out of the ground. There is a small entry deck, but no other decks are planned.

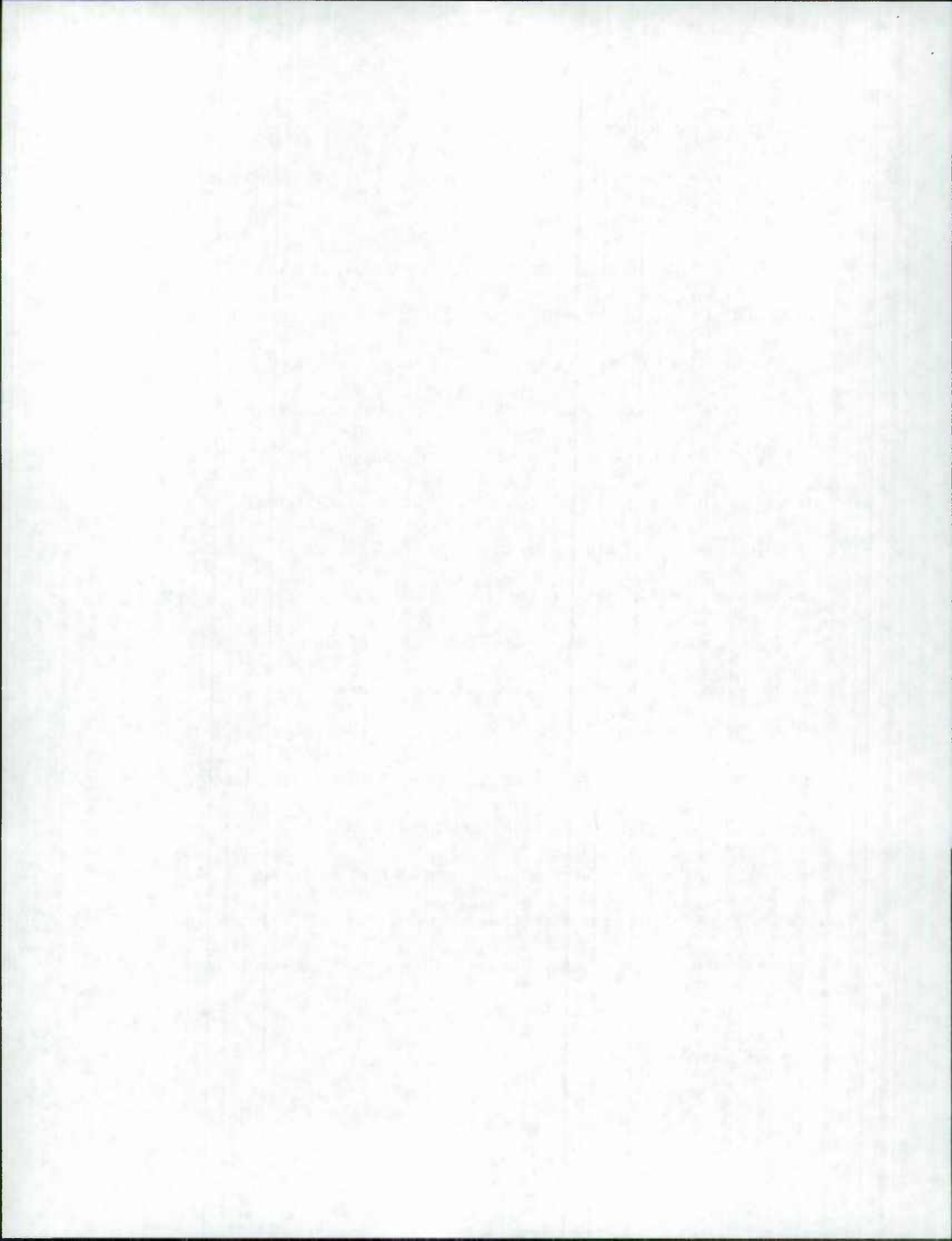
I visited the site and the neighborhood. The grade rises steeply from the road and the west side boundary to a level clearing cut out of the center of the lot. The rear yard is vegetated. Super silt fencing extends across the front and along the west side yard. Mr. LeClare's dwelling is located close to the road in a level area below a block retaining wall at the base of the west side slope. Ms. Lougee's

⁴ The plan sheet for the basement shows a full bath but includes a handwritten note: "rough in only."



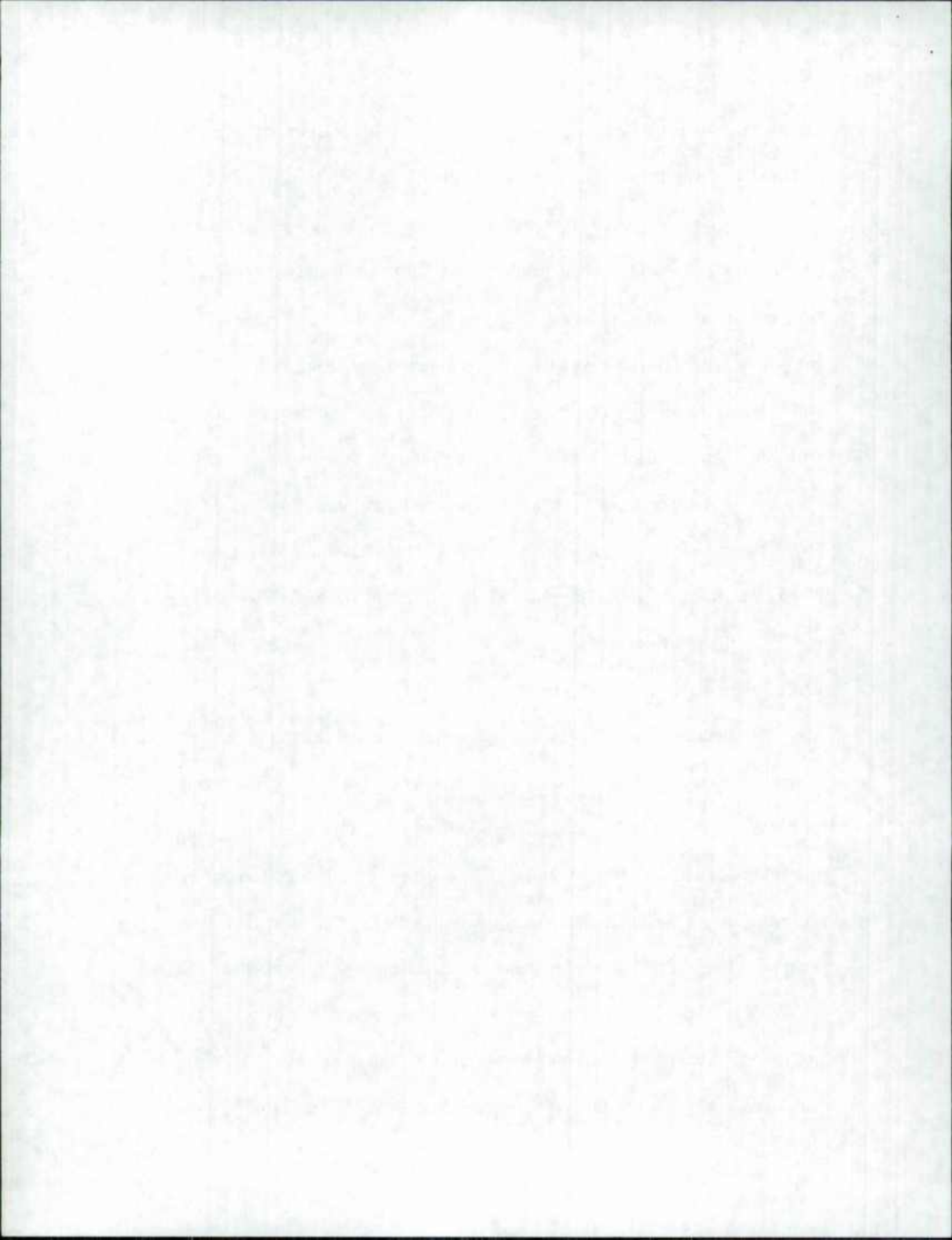
dwelling is located further from the road and slightly uphill. The neighborhood is characterized by modest to larger homes, with areas of steep topography. At the time of my visit, the site was stable.

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 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.



Upon review of the facts and circumstances, I find and conclude that the applicants are entitled to conditional relief from the code. Considering first the subsection (b) criteria, due to the extent of the slopes, which occupy the frontage and the west side yard and continue to the rear, a strict implementation of the program would result in an unwarranted hardship. Under a literal application of the program, the applicants would be unable to redevelop the property with a single family dwelling, which is a right commonly enjoyed elsewhere in the Critical Area; conversely, the granting of a conditional variance to redevelop the property is not a special privilege that the program typically denies to other Critical Area lands. While the applicants are not blameless in this matter, the program does not proscribe after-the-fact relief. And finally, with conditions, the variance will not adversely impact Critical area assets and harmonizes with the general spirit and intent of the program.

The application of the subsection (c) criteria is more subjective. Notwithstanding Ms. Palmer's assertion of recent change in the community, when the applicants submit to the variance procedure, they are obligated to satisfy all of the standards. And, the vertical profile of the proposed dwelling is a component of satisfying the minimization standard as well as the other subsection (c) standards. From the totality of the record, I find and conclude that the subsection (c) criteria can only be satisfied by imposing a condition limiting the dwelling height to 25 feet, as well as the more usual conditions (mitigation and stormwater management) requested by the reviewing agencies. Simply stated, a dwelling that



attains the maximum height allowed in the R-2 zone is too tall at this location, given the prominent location on a steep slope. Additionally, the height limitation is necessary to insure that the granting of the variance will not alter the character of the neighborhood, adversely impact the use or development of adjacent property, or cause a detriment to the public welfare. These findings consider the surrounding development, including the one and one-half story dwellings on both sides.

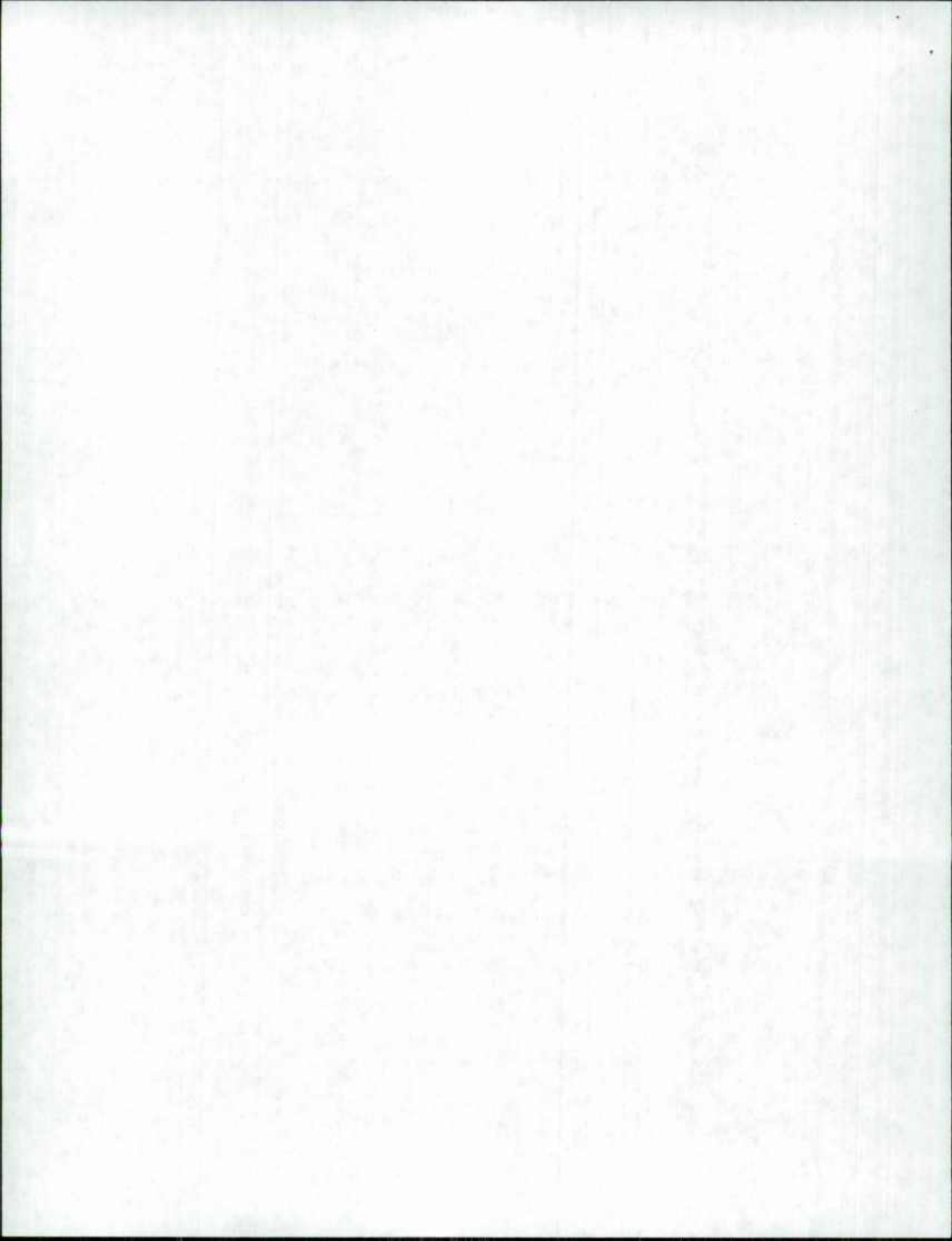
ORDER

PURSUANT to the application of William Emrich, Jr. and Robert Fraser, Jr., petitioning for a variance to allow a dwelling with disturbance to slopes of 15 percent or greater, and

PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is this 3rd day of April, 2008,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicants are **granted** a variance to disturb steep slopes as depicted on the site plan. The approval is subject to the following conditions:

1. The dwelling height may not exceed 25 feet.
2. No further expansion of the dwelling is allowed and accessory structures are not allowed.
3. The applicants shall provide mitigation and stormwater management as determined by the Permit Application Center.



4. The conditions of the approval run with the land and shall be included in any contract of sale.

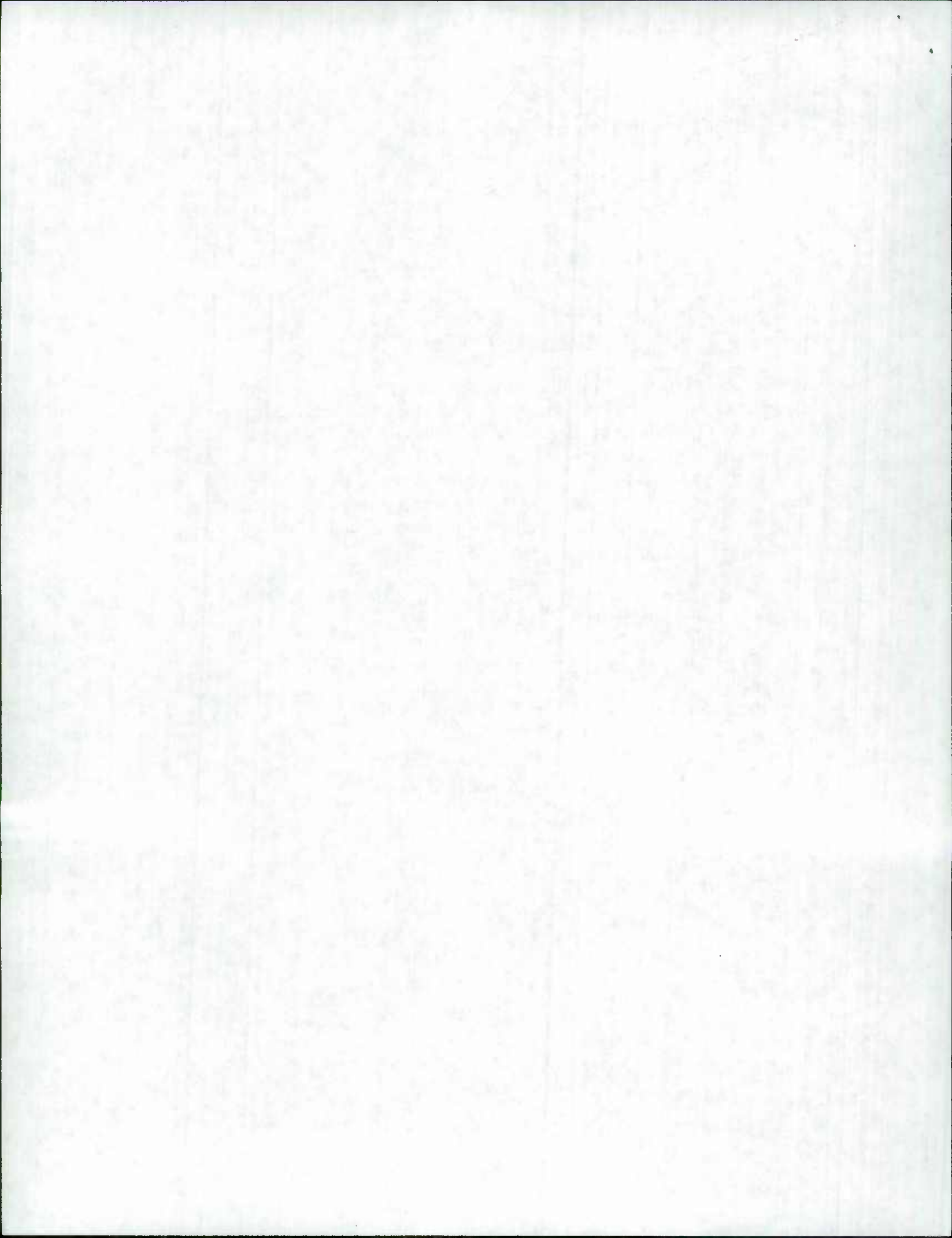

Stephen M. LeGendre
Administrative Hearing Officer

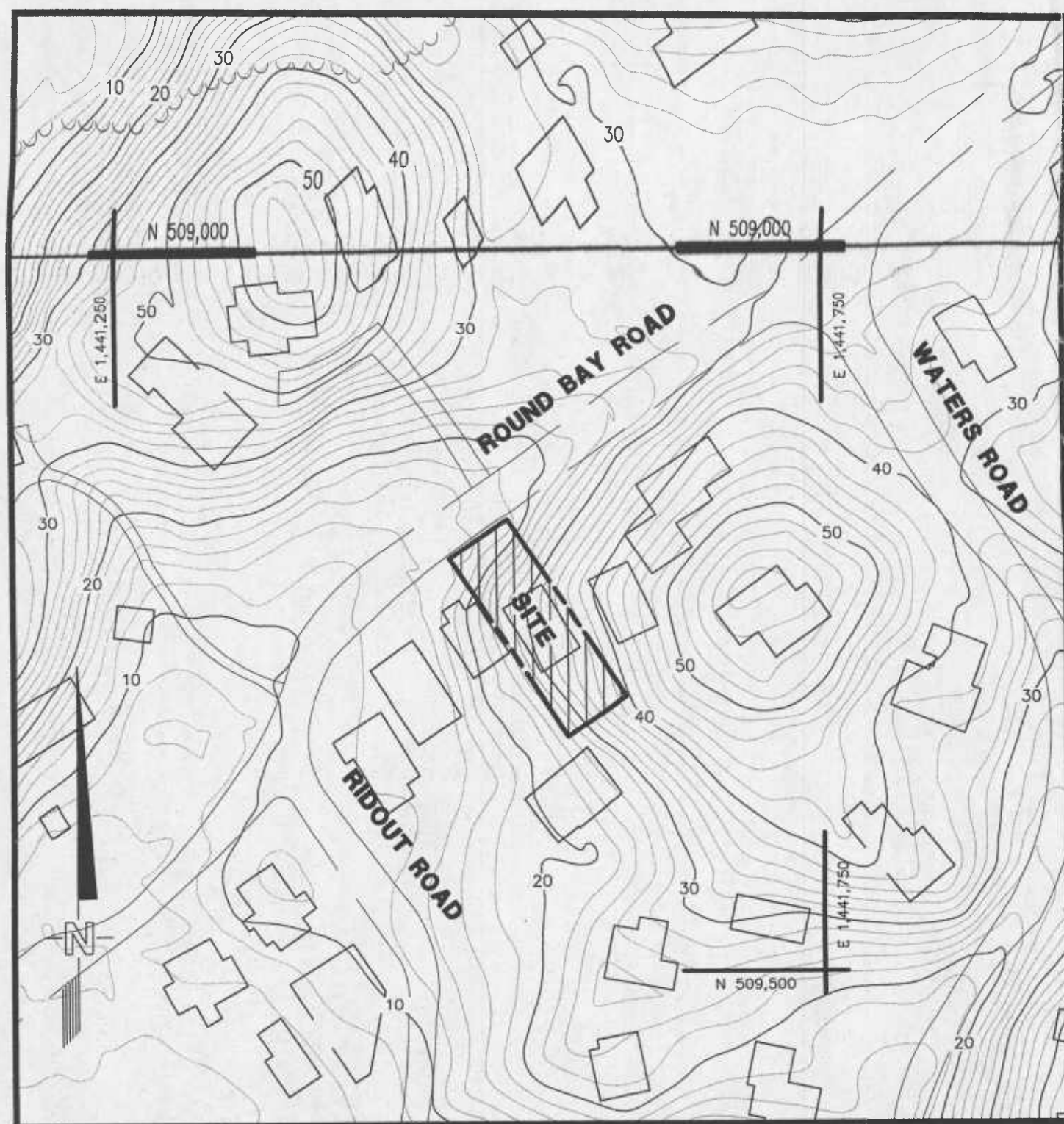
NOTICE TO APPLICANT

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

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

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

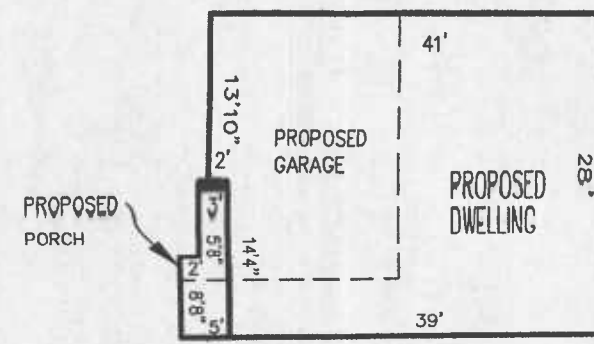




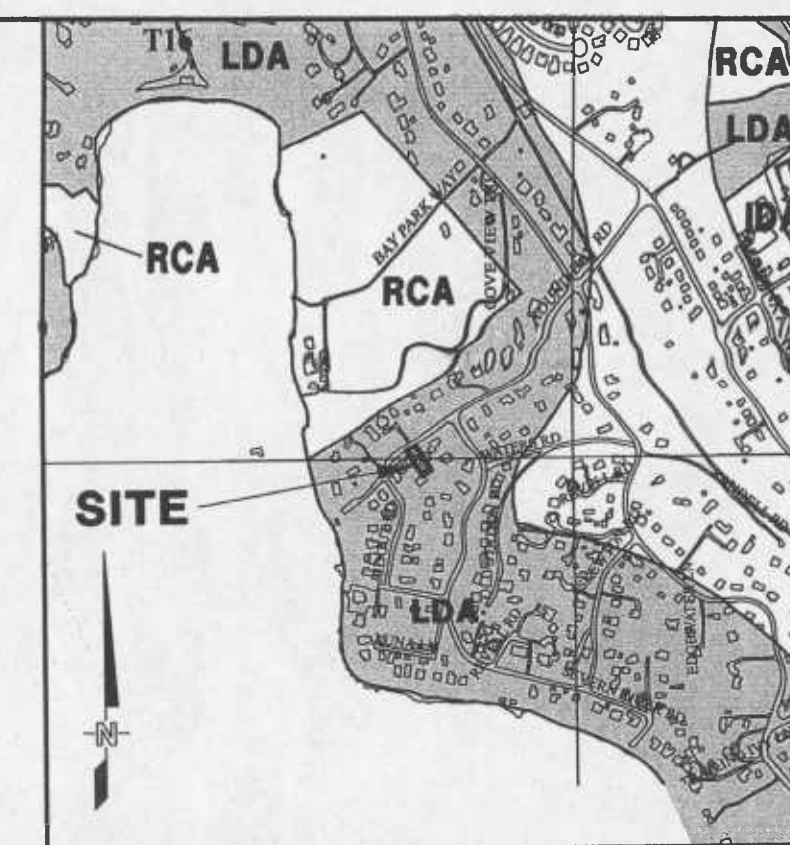
DRAINAGE AREA MAP
SCALE: 1" = 100'
ANNE ARUNDEL CO. TOPOGRAPHY MAP 014

CRITICAL AREA CALCULATIONS (LDA)

- Total site area: 7,500 s.f. or 0.17 ac.
- Total impervious area allowed: 25% + 500 S.F. = 2,375 S.F.
- Existing impervious: House: 1,278 S.F. or 17.04% site coverage.
Garage: 144 S.F. or 1.92% site coverage.
Drive: 222 S.F. or 2.96% site coverage.
Walks: 433 S.F. or 5.77% site coverage.
Total: 2,077 S.F. = 27.69% site coverage
- Proposed impervious: House: 1,179 S.F. or 15.72% site coverage.
Drive: 675 S.F. or 9.0% site coverage.
Walks: 52 S.F. or 0.69% site coverage.
Total: 1,906 S.F. = 25.41% site coverage
- Total woods on site: 1,752 square feet to remain.
- Total steep slope disturbance: 1,750 square feet



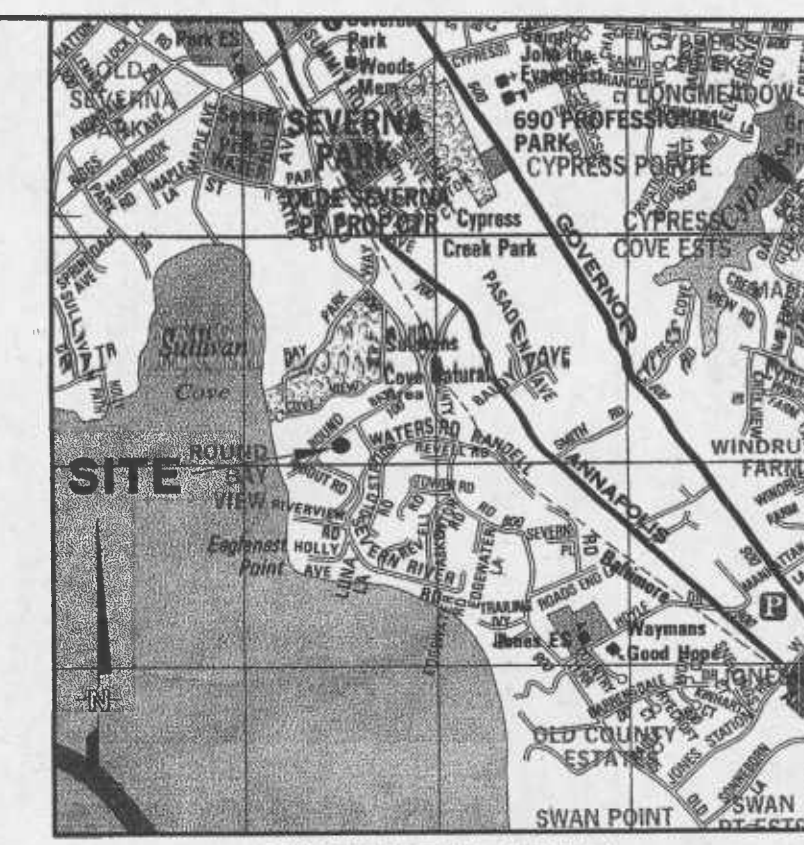
HOUSE DETAIL SCALE: 1"=20'



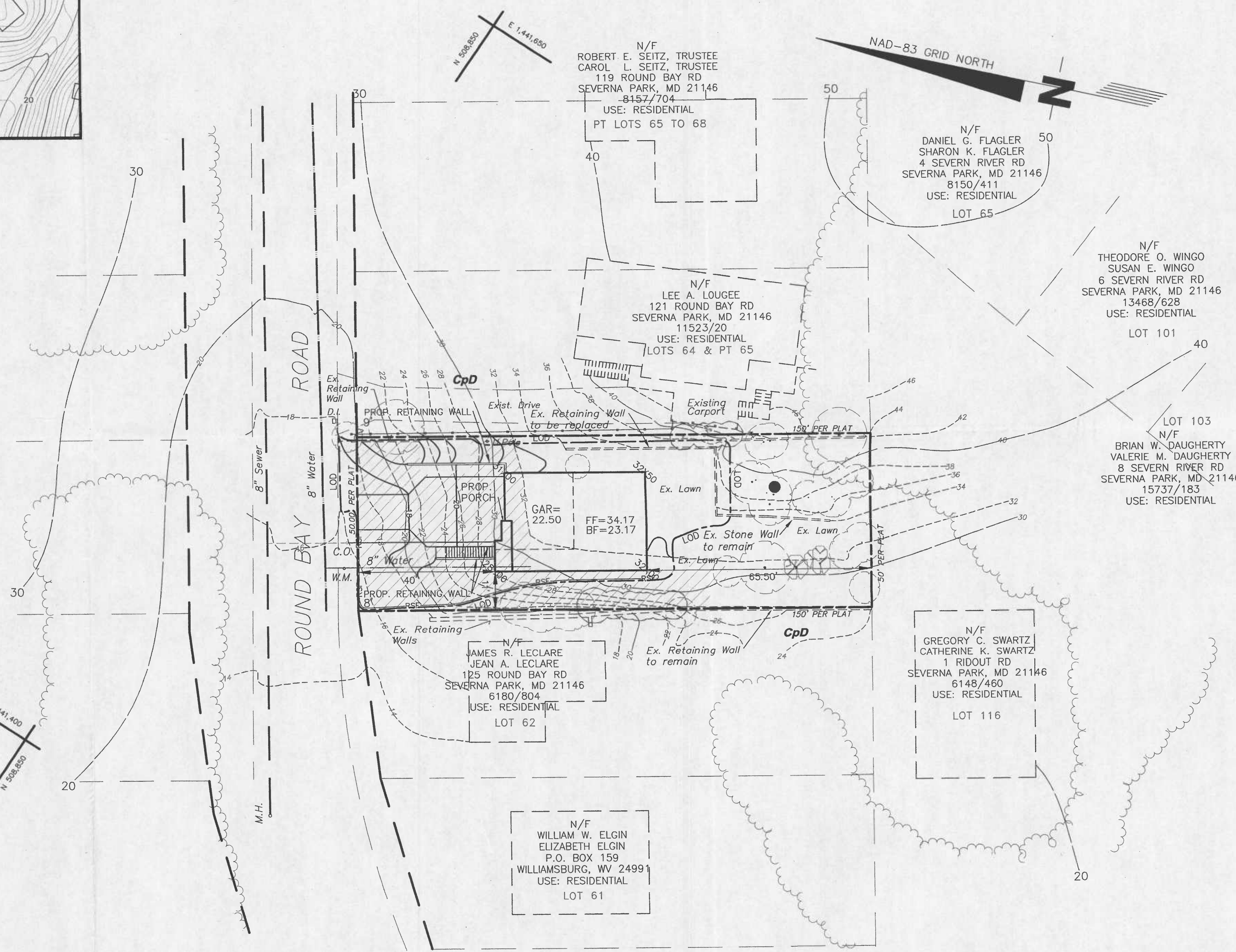
CRITICAL AREA MAP
SCALE: 1" = 1,000'



TAX MAP
SCALE: 1" = 600'



VICINITY MAP
SCALE: 1" = 2,000'
ADC MAP: 15, GRID: B7
Copyright ADC The Map People
Permitted Use Number 20811204



PROPOSED CONDITIONS SCALE: 1"=20'

SITE DATA	
PROPERTY ADDRESS:	123 ROUND BAY RD SEVERNA PARK, MD 21144
OWNER:	WILLIAM W. FRASER JR ROBERT C. FRASER JR 709 WHITNEY LANDING DR CROSVILLE, MD 21032
DEVELOPER:	WILLIAM W. FRASER JR ROBERT C. FRASER JR 709 WHITNEY LANDING DR CROSVILLE, MD 21032
EXISTING USE:	SINGLE FAMILY DWELLING
PROPOSED USE:	SINGLE FAMILY DWELLING
EXISTING ZONING:	R2
SETBACKS:	FRONT: 30', SIDE: 7', REAR: 25'
TAX MAP:	32
BLOCK:	14
PARCEL:	184
LOT:	63
ASSESSMENT DISTRICT:	THIRD
TAX ACCOUNT NUMBER:	3697-0263-7600
CRITICAL AREA:	LDA
PREDOMINANT SOIL TYPE:	CpD "B" SOILS
TOTAL SITE AREA:	0.1721 ACRES 7,500 SQUARE FEET
EXISTING IMPERVIOUS:	0.0476 ACRES 2,077 SQUARE FEET
PROPOSED IMPERVIOUS:	0.0472 ACRES 2,059 SQUARE FEET
EXISTING WOODS:	0.0402 ACRES 1,752 SQUARE FEET
PROPOSED CLEARING:	0 ACRES 0 SQUARE FEET
TOTAL DISTURBED AREA:	0.1039 ACRES 4,526 SQUARE FEET
CUT:	34 CUBIC YARDS
FILL:	32 CUBIC YARDS
AREA VEGETATIVELY STABILIZED:	0.0601 ACRES 290 SQUARE YARDS
AREA OF MECHANICAL STABILIZATION:	0.0438 ACRES 212 SQUARE YARDS

OWNERS WITHIN 175'

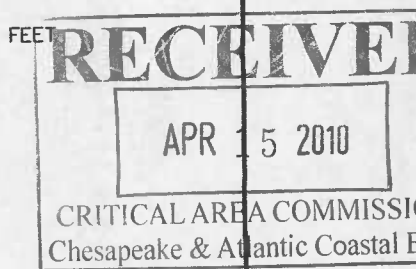
DAVIS, MICHAEL E. 134 ROUND BAY RD SEVERNA PARK, MD 21146 DEED REF.: 10803/20 ACCOUNT: 3697-0497-6570 TM: 32 BLK: 14 P: 184 PT LOTS 64 AND PT LOT 65	LOUGEE, LEE A. 121 ROUND BAY RD SEVERNA PARK, MD 21146 DEED REF.: 11523/20 ACCOUNT: 3697-0497-6570 TM: 32 BLK: 14 P: 184 PT LOTS 101 & 102	WINGO, THEODORE O. 6 SEVERN RIVER RD SEVERNA PARK, MD 21146 DEED REF.: 13468/028 ACCOUNT: 3697-2296-3500 TM: 32 BLK: 14 P: 184
KENEALY JR, JOHN R. KENEALY, OWEN D. 130 ROUND BAY RD SEVERNA PARK, MD 21146 DEED REF.: 10384/256 ACCOUNT: 3697-3029-3499 TM: 32 BLK: 14 P: 184 LOTS 39 & 40	LECLARE, JEAN A. 125 ROUND BAY RD SEVERNA PARK, MD 21146 DEED REF.: 6180/804 ACCOUNT: 3697-0633-2200 TM: 32 BLK: 14 P: 184 PT LOTS 103 & 104	REYNOLDS, H. NEAL REYNOLDS, CYNTHIA G. 12 SEVERN RIVER RD SEVERNA PARK, MD 21146 DEED REF.: 4456/335 ACCOUNT: 3697-9002-8090 TM: 32 BLK: 14 P: 184 LOT 105R
ROSSON, JOHN M. ROSSON, DENISE T. 128 ROUND BAY RD SEVERNA PARK, MD 21146 DEED REF.: 9703/557 ACCOUNT: 3697-3158-1200 TM: 32 BLK: 14 P: 184 LOTS 37 & 38	GILIGAN, BRIAN J. GILIGAN, LINDA J. 129 ROUND BAY RD SEVERNA PARK, MD 21146 DEED REF.: 9776/188 ACCOUNT: 3697-1356-3420 TM: 32 BLK: 14 P: 184 LOT 60	HICKMAN-SABATINO, ANN T. SABATINO, ENRICO C. 14 SEVERN RIVER RD SEVERNA PARK, MD 21146 DEED REF.: 19631/683 ACCOUNT: 3697-9009-3899 LOT 107RA
WNN, ELEANOR W. 122 ROUND BAY RD SEVERNA PARK, MD 21146 DEED REF.: 19/323 ACCOUNT: 3697-3364-5000 TM: 32 BLK: 14 P: 184 LOTS 33 & 34	SWARTZ, GREGORY C. SWARTZ, CATHERINE K. 1 RIDOUT RD SEVERNA PARK, MD 21146 DEED REF.: 9776/188 ACCOUNT: 3697-0907-4800 TM: 32 BLK: 14 P: 184 PT LOT 116	
SEITZ TRUSTEE, CAROL L. 119 ROUND BAY RD SEVERNA PARK, MD 21146 DEED REF.: 20448/165 ACCOUNT: 3697-2739-6608 TM: 32 BLK: 14 P: 184 PT LOTS 65 TO 68	JEKA, JOHN J. SPRINGFELS, CHERYL A. 3 RIDOUT RD SEVERNA PARK, MD 21146 DEED REF.: 18152/411 ACCOUNT: 3697-9002-8091 TM: 32 BLK: 14 P: 184 LOT 117R	
FLAGLER, DANIEL G. FLAGLER, SHARON K. 4 SEVERN RIVER RD SEVERNA PARK, MD 21146 DEED REF.: 8150/411 ACCOUNT: 3697-1912-9200 TM: 32 BLK: 14 P: 184 LOTS 101 TO 103 AND PT LOTS 65 TO 68	MAUGHAN, WILLIAM L. MAUGHAN, LINDA 5 RIDOUT RD SEVERNA PARK, MD 21146 DEED REF.: 19431/246 ACCOUNT: 3697-1399-3405 TM: 32 BLK: 14 P: 184 LOT 118R	

FOR EXISTING CONDITIONS SEE SHEET 2

SHEET 1 of 2

VARIANCE NOTE

1. WE REQUEST A VARIANCE TO ARTICLE 17-8-201 OF THE ANNE ARUNDEL COUNTY CODE THAT PROHIBITS DEVELOPMENT WITHIN THE LDA OR RCA CRITICAL AREAS IF IT OCCURS WITHIN SLOPES OF 15% OR GREATER, UNLESS SUCH DEVELOPMENT IS NECESSARY TO ALLOW CONNECTION TO A PUBLIC UTILITY. WE REQUEST A VARIANCE TO DISTURB 1,750 SQUARE FEET OF STEEP SLOPES.



VARIANCE PLAN

EMRICH-FRASER PROPERTY
123 ROUND BAY ROAD
SINGLE FAMILY DWELLING

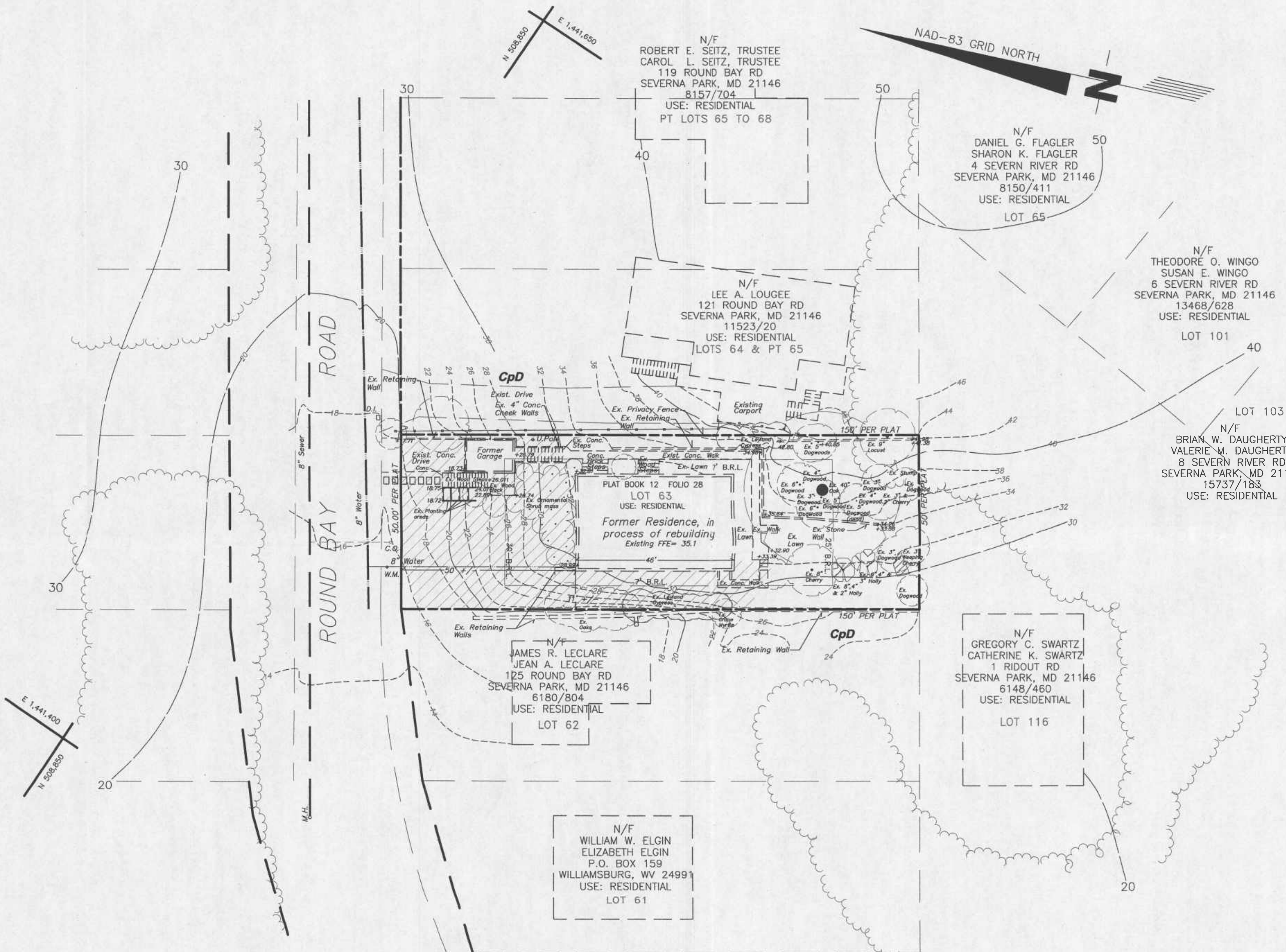
3rd DISTRICT ANNE ARUNDEL COUNTY, MARYLAND
SCALE: AS SHOWN MARCH, 2010
TAX MAP 32 BLOCK 14 PARCEL 184
G.P. NO.: G02012486
ZONING: R2 ZIP CODE: 21146

M.A.F. & ASSOCIATES, LLC

526 HOODS MILL ROAD
WOODBINE MD. 21797
PHONE: 410-552-5541
FAX: 410-552-5546

LEGEND

— 20 —	Existing Grade
— 20 —	Proposed Grade
LOD	Limit of Disturbance
RSF	Reinforced Silt Fence
— — —	Existing Fence
— — —	Existing Impervious
— — —	Proposed Impervious
— — —	15%+ STEEP SLOPES



EXISTING CONDITIONS
SCALE: 1"=20'

M.A.F. & ASSOCIATES, LLC
526 HOODS MILL ROAD
WOODBINE MD. 21797
PHONE: 410-552-5541
FAX: 410-552-5546

- LEGEND**
- Existing Grade
 - - - Existing Fence
 - - - Existing Impervious
 - +33.59 Existing Spot Elevation

RECEIVED
APR 15 2010

3rd DISTRICT ANNE ARUNDEL COUNTY, MARYLAND
SCALE: AS SHOWN MARCH, 2010
X MAP 32 BLOCK 14 PARCEL 184
G.P. NO.: G02012486
ZONING: R2 ZIPCODE: 21146

SHEET 2 of 2

VARIANCE PLAN

EMRICH-FRASER PROPERTY
123 ROUND BAY ROAD
SINGLE FAMILY DWELLING