

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/

September 15, 2009

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

Re: 2009-0130-V Picard, A. &N. Prendergast

Dear Ms. Cotter:

On September 10, 2009, the applicants' engineer submitted a further revised site plan for the above referenced project. The information in this package describes how the applicants worked to stabilize the slopes on this property through the use of timbers, matting, and through plantings. The memo by the applicant indicated that the stabilization of the slopes ran the expense of the property and, as such, there are no natural slopes or "previously unimpacted slopes."

The Hearing Officer must find that applicant has made all feasible attempts to minimize impacts and that each and every one of the variance standards has been met. Should the Hearing Officer find that disturbance has been minimized and that the variance standards have been met, the applicant is responsible for providing mitigation at a ratio of 3:1 for the area of disturbance on steep slopes. The applicant must provide a plantings plan for review by the County which includes species, size, spacing, and schedule. To the extent possible, these plantings should be located in areas that will further stabilize these slopes.

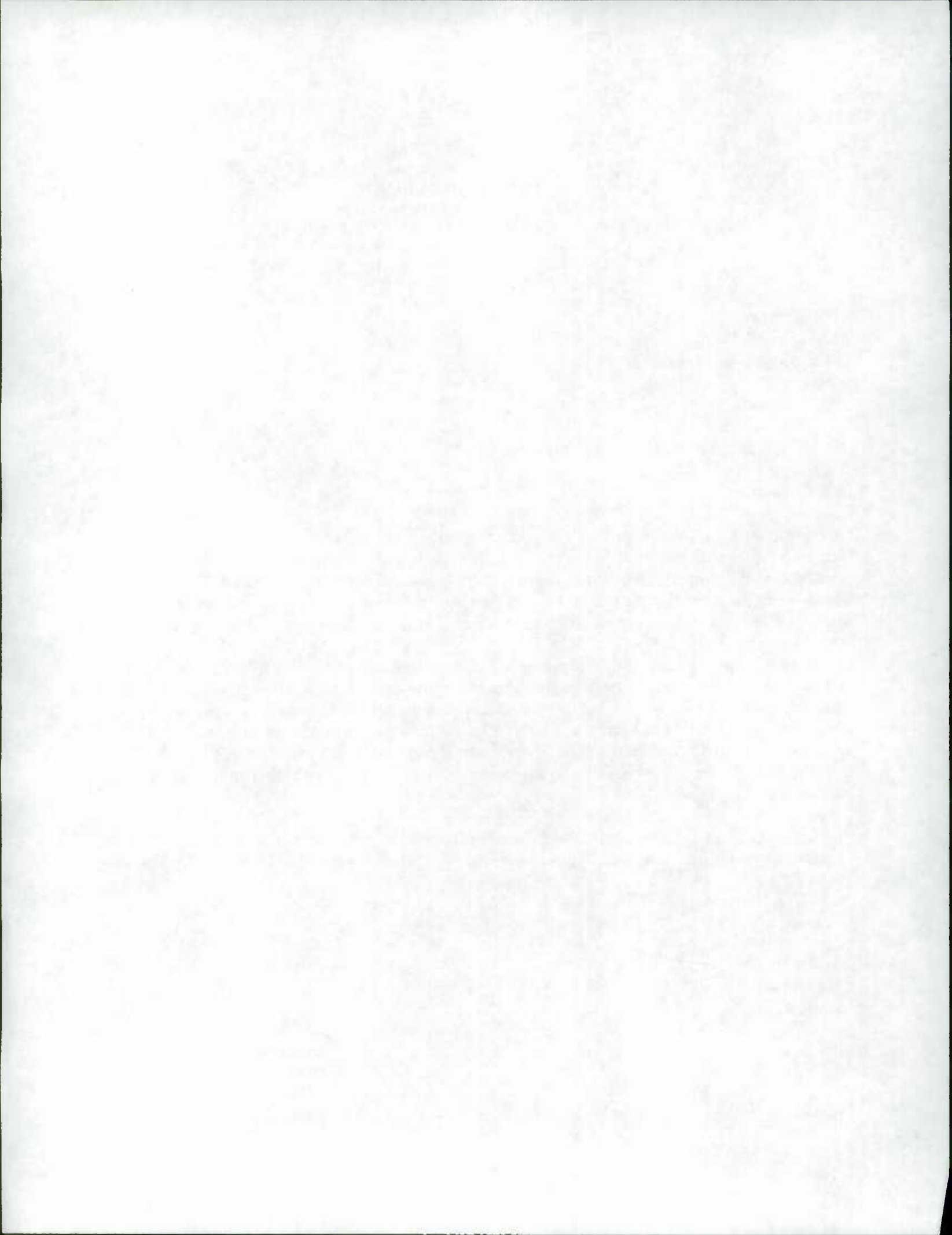
Please include this letter in your file and submit it as part of the record for variance. Please notify the Commission of the decision made in this case. I can be reached at 410-260-3476 should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Julie Roberts", with a long horizontal flourish extending to the right.

Julie Roberts
Natural Resources Planner

cc: AA 181-08



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/

July 22, 2009

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

Re: 2009-0130-V Picard, A. &N. Prendergast

Dear Ms. Cotter:

On July 17, 2009, the applicants' engineer submitted a revised site plan for the above referenced project. The information received from the engineer indicates that the rear deck has been eliminated from the proposal and replaced with an elevated walkway, which has been reduced to four feet in width. In addition, the engineer has reduced the size of the screen porch by 2 feet in width and 1 foot in depth. It is my understanding that the applicant believes that the elimination of the screen porch from the area of undisturbed slopes and replacing the deck/porch in the area in which it currently occupies will not work with the layout of the proposed dwelling. However, the reasons for this belief are not clear and not stated.

The site plan indicates that there is still permanent disturbance proposed to previously unimpacted fragile slopes. The Hearing Officer must find that applicant has made all feasible attempts to minimize impacts to the slopes and that each and every one of the variance standards has been met. Should the Hearing Officer find that disturbance has been minimized and that the variance standards have been met, the applicant is responsible for providing mitigation at a ratio of 3:1 for the area of disturbance on steep slopes. The applicant must provide a plantings plan for review by the County which includes species, size, spacing, and schedule. To the extent possible, these plantings should be located in areas that will stabilize these slopes.

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.

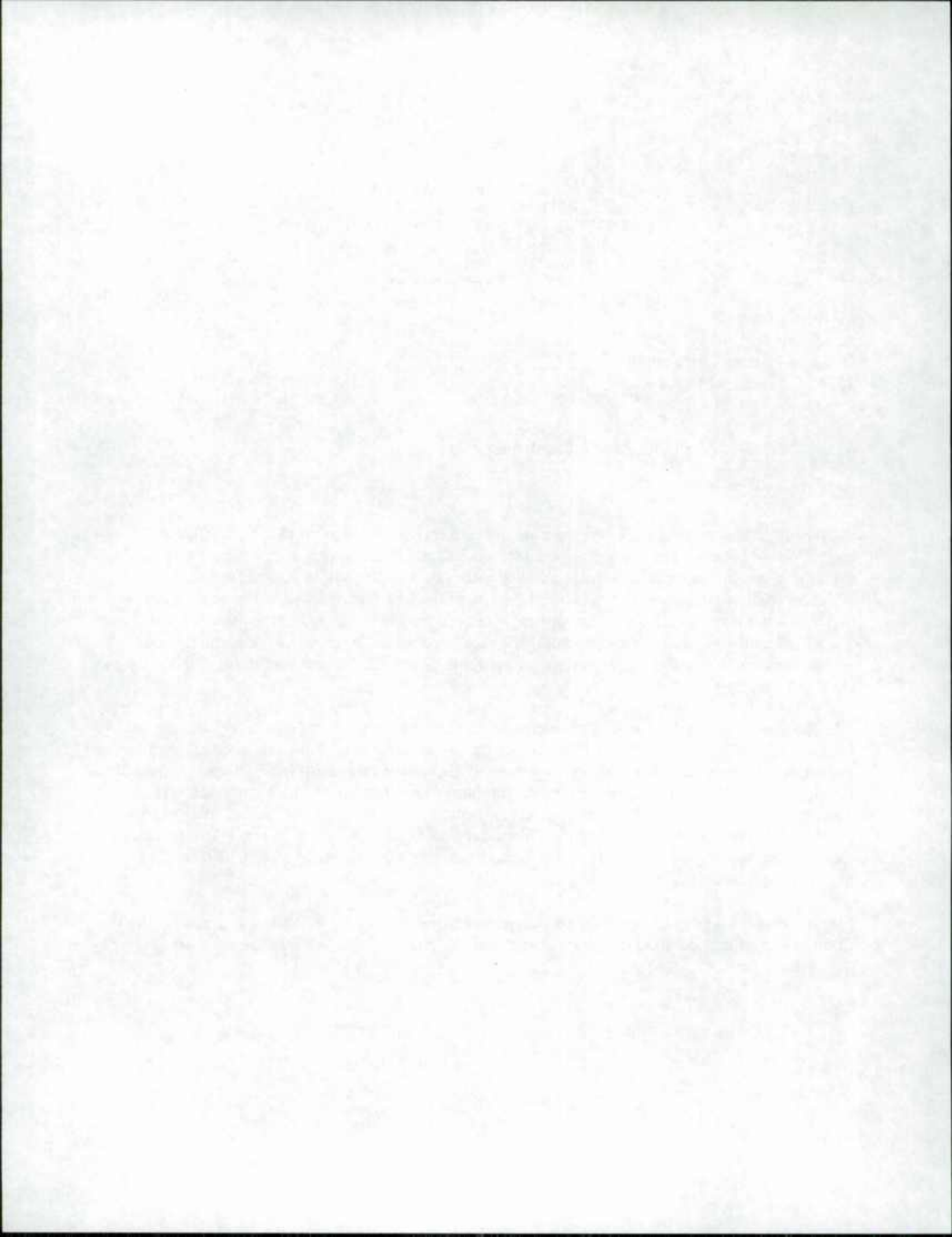
Sincerely,

A handwritten signature in black ink, appearing to read "Julie Roberts".

Julie Roberts
Natural Resources Planner

cc: AA 181-08





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/

June 25, 2009

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

Re: 2009-0130-V Picard, A. &N. Prendergast

Dear Ms. Cotter:

We reviewed a very similar variance request from this applicant over a year ago (2008-0116-V). The applicant seeks a variance to allow a dwelling with less setbacks and buffer than required and to disturb slopes greater than 15%. The applicant proposes to raze the existing dwelling and construct a new dwelling in largely the same footprint. Although similar to the previous proposal, it appears that the applicant slightly shifted the layout of the house and has slightly reduced the permanent impacts of the new deck/porch into the slopes by approximately five feet.

Although the permanent disturbance to the steep slopes has been reduced somewhat, it appears that the temporary Limit of Disturbance (LOD) associated with the silt fence (SS) remains the same between the previous submittal and this one. As indicated previously, we may be able to support a variance should the applicant provide a site plan that shows that there will be no new disturbance to steep slopes. However, this plan, as with the last submittal, shows that fragile and currently undisturbed slopes are proposed to be impacted by the extended new deck/porch. It appears that a deck/porch could be constructed so as to occupy an identical footprint as the existing porch, thus avoiding all new disturbance to steep slopes. Therefore, we cannot support this variance.

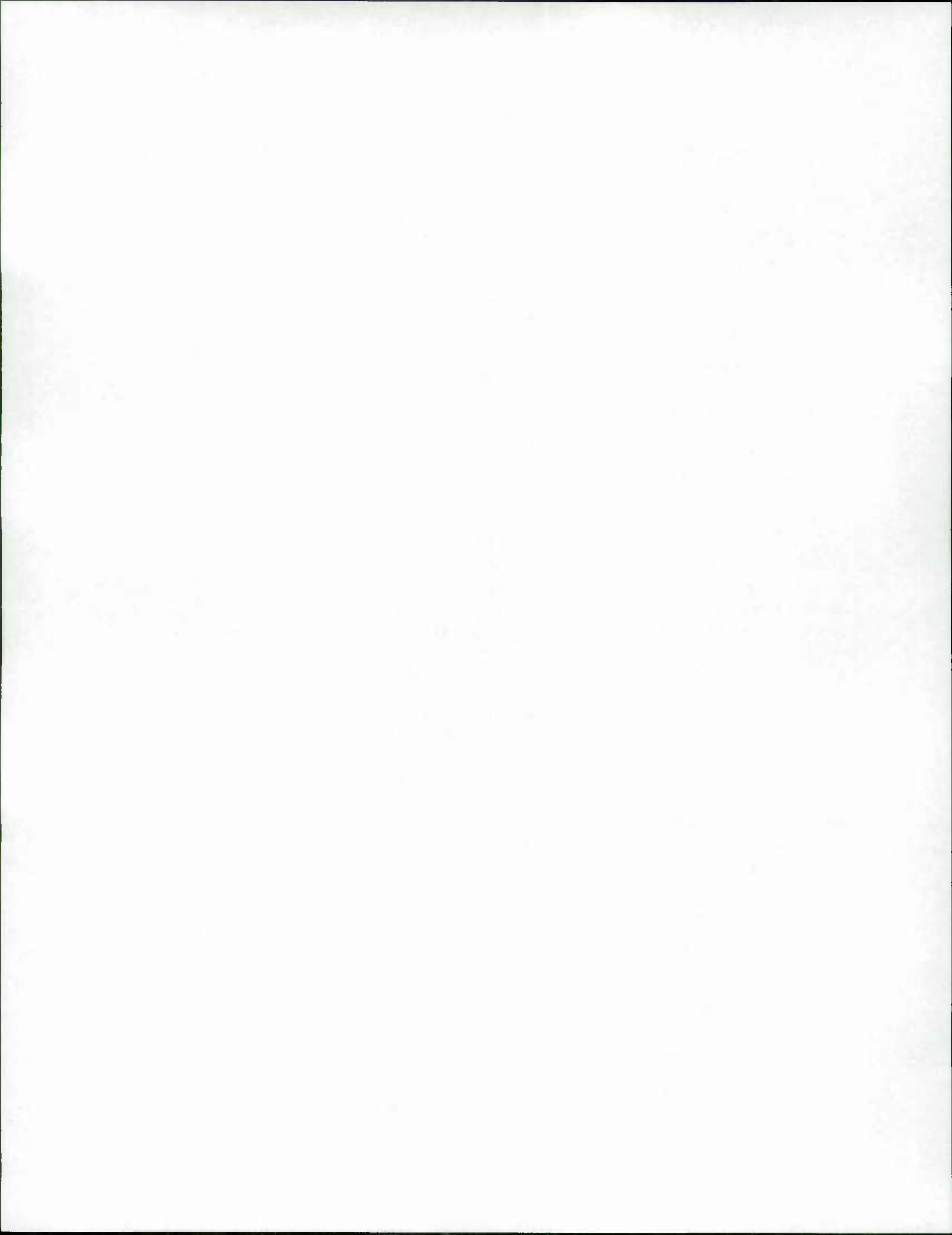
Please include this letter in your file and submit it as part of the record for variance. Please notify the Commission of the decision made in this case. I can be reached at 410-260-3476 should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Julie Roberts'.

Julie Roberts
Natural Resources Planner

cc: AA 181-08





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/

April 22, 2008

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

Re: 2008-0116-V Prendergast, Augusto

Dear Ms. Schappert:

Thank you for forwarding information on the above-referenced project. The applicant requests a variance to allow a dwelling addition (porch) with less setbacks and buffer than required and to disturb slopes greater than 15%. This porch is proposed to be built as part of a demolition of the existing dwelling and the construction of a new dwelling in largely the same footprint. This lot is 8,502 square feet, or 0.18 acres, and is located in the Limited Developed Area (LDA).

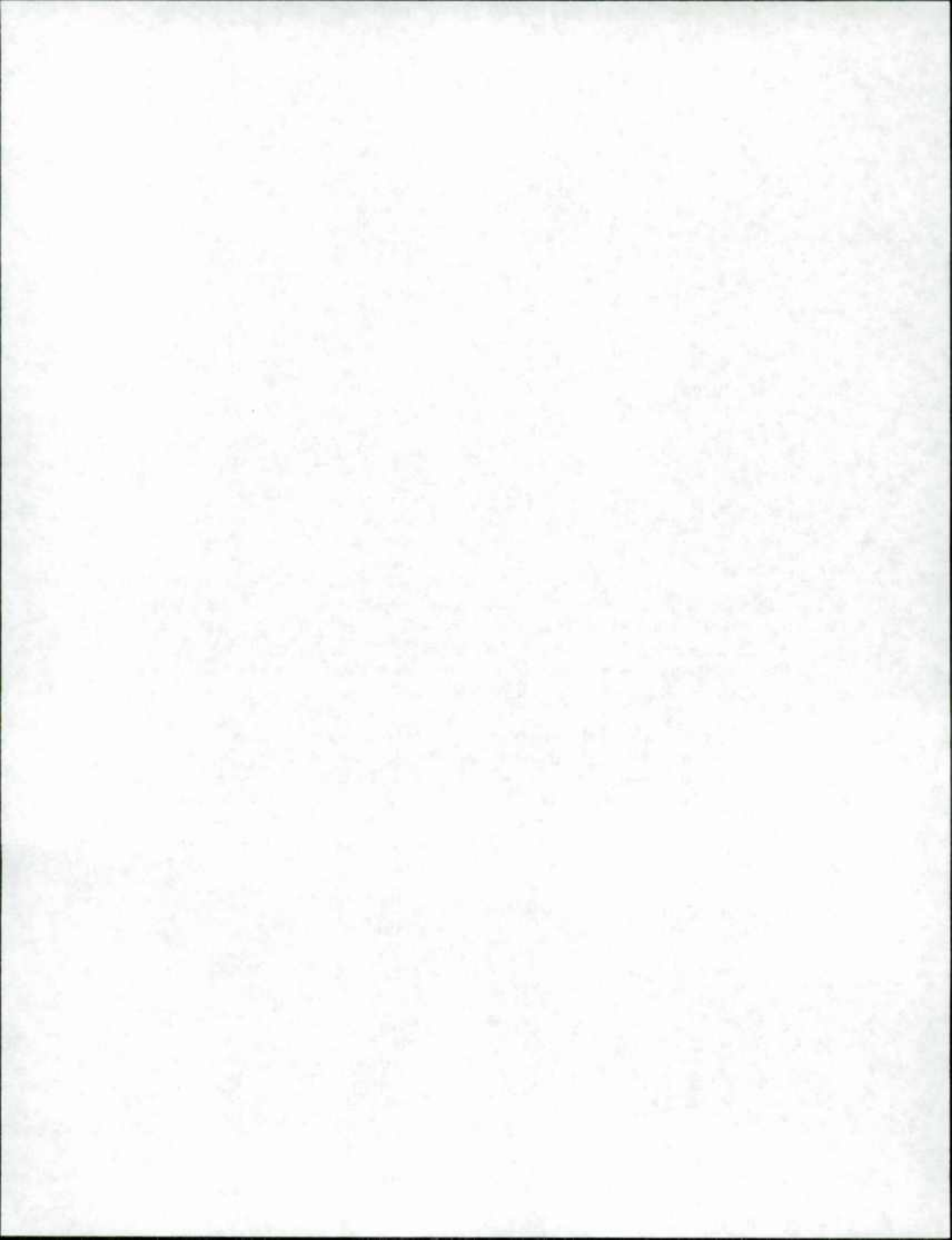
We cannot support this variance as currently proposed. Although we would generally not oppose a variance request for the construction of a modest dwelling with a porch, it appears from the site plan that the proposed porch will impact previously undisturbed areas of steep slopes. It also appears that a reasonably sized porch could be constructed so as to occupy a similar footprint as the existing porch, thus avoiding all new disturbance to steep slopes. We may be able to support a revised variance should the applicant provide a site plan that shows that there will be no new disturbance to steep slopes.

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,

Julie Roberts
Natural Resources Planner

cc: AA 181-08



IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 2009-0130-V

AUGUSTO PICHARD AND NANCY PRENDERGAST

SECOND ASSESSMENT DISTRICT

DATE HEARD: SEPTEMBER 17, 2009

ORDERED BY:

DOUGLAS CLARK HOLLMANN
ADMINISTRATIVE HEARING OFFICER

PLANNER: JOHN R. FURY

DATE FILED: SEPTEMBER 29, 2009



7 1954
NORTH
DIVISION
CBLD
LECHARD

PLEADINGS

Augusto Pichard and Nancy Prendergast, the applicants,¹ seek a variance (2009-0130-V) to allow a dwelling and associated facilities with less setbacks than required and with disturbance to slopes 15% or greater on property located on the south side of Robin Hood Hill, east of Little John Hill, Annapolis.

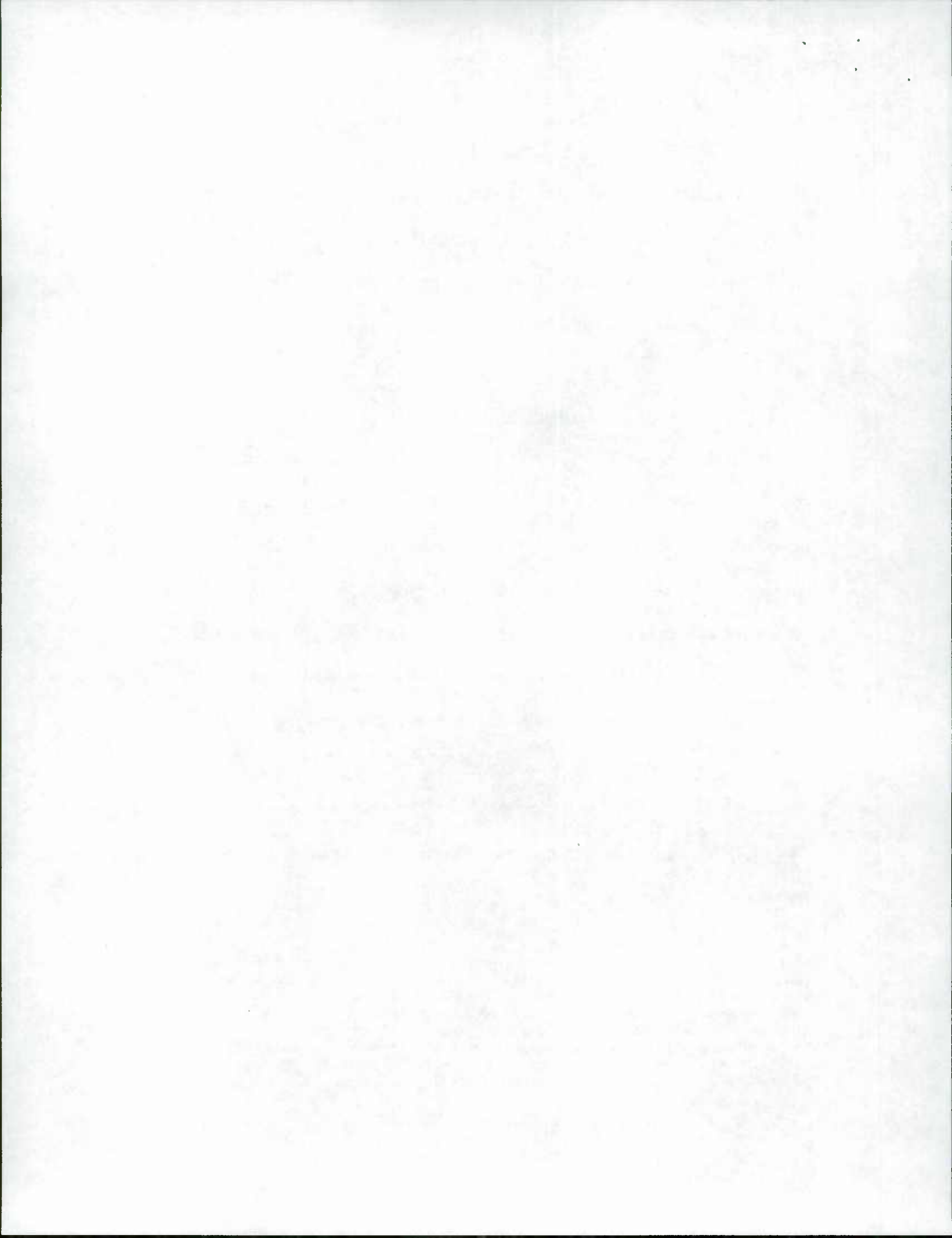
PUBLIC NOTIFICATION

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. Ms. Prendergast 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 September 17, 2009, in which witnesses were sworn and the following evidence was presented with regard to the proposed variances requested by the applicants.

¹ The Sherwood Forest Club, Inc., is technically also an applicant, and signed the application. This is because the Club is the owner of land adjacent to the subject property, which will be affected by the variances granted in this decision. The applicants have entered into easements and agreements with the Club to allow the applicants to place certain portions of their septic system on Club property. Therefore, since this decision will affect land not owned by the applicants, the Club is properly a party because its land will be allowed to host the septic system described in the evidence submitted at the hearing. The Club was represented at the hearing and testified in support of the application. Its participation in the application stage and at the hearing is appreciated by the Office of Administrative Hearings.



The Property

The subject property is owned by the applicants, which has a street address of 707 Robin Hood Hill, Sherwood Forest, Annapolis, Maryland 21405. The site is known as Lot 707 of Parcel 295 in Block 19 on Tax Map 39 in the Sherwood Forest subdivision. The subject property is zoned R2-Residential District with a Chesapeake Bay Critical Area designation as limited development area (LDA).

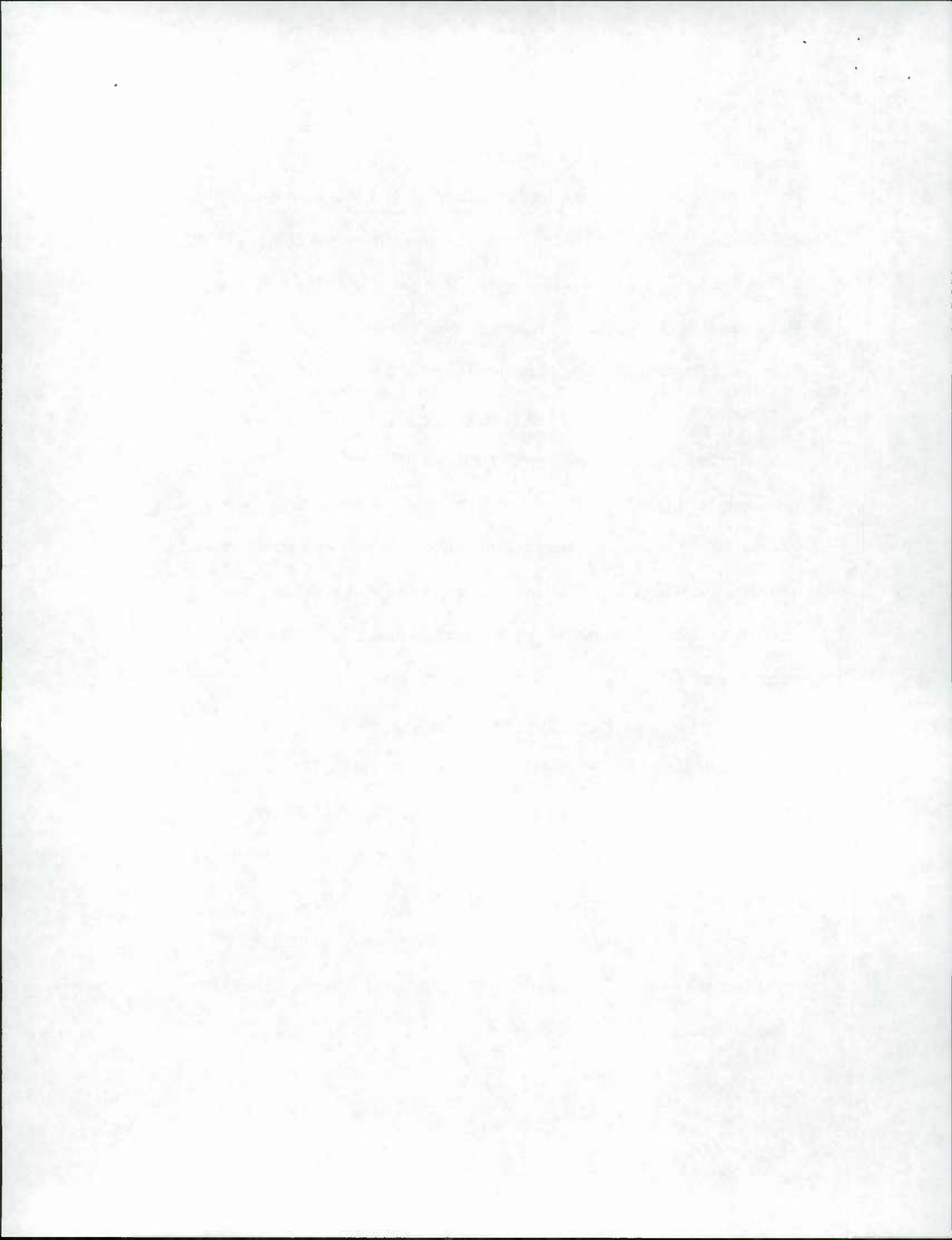
The Proposed Work

The applicants are proposing to raze the existing dwelling and construct a new single-family detached dwelling and associated improvements (septic systems). Some of these associated improvements will be located off-site on land owned by Sherwood Forest Club, Inc. The proposed dwelling will be located 8 feet from the front lot line; the work will cause 862 square feet of disturbance to steep slopes.

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.

Article 18, § 18-4-601 requires principal structures in the R2 district to maintain a setback of 30 feet from the front lot line, and a setback of 25 feet from a rear lot line.



The Variances Requested

The evidence shows that the area to be disturbed by the proposed work lies on steep slopes. There is no evidence that the work proposed is for the purpose of facilitating the stabilization of slopes or necessary to allow connection of a public utility. Therefore, the proposed work requires a variance to § 17-8-201.

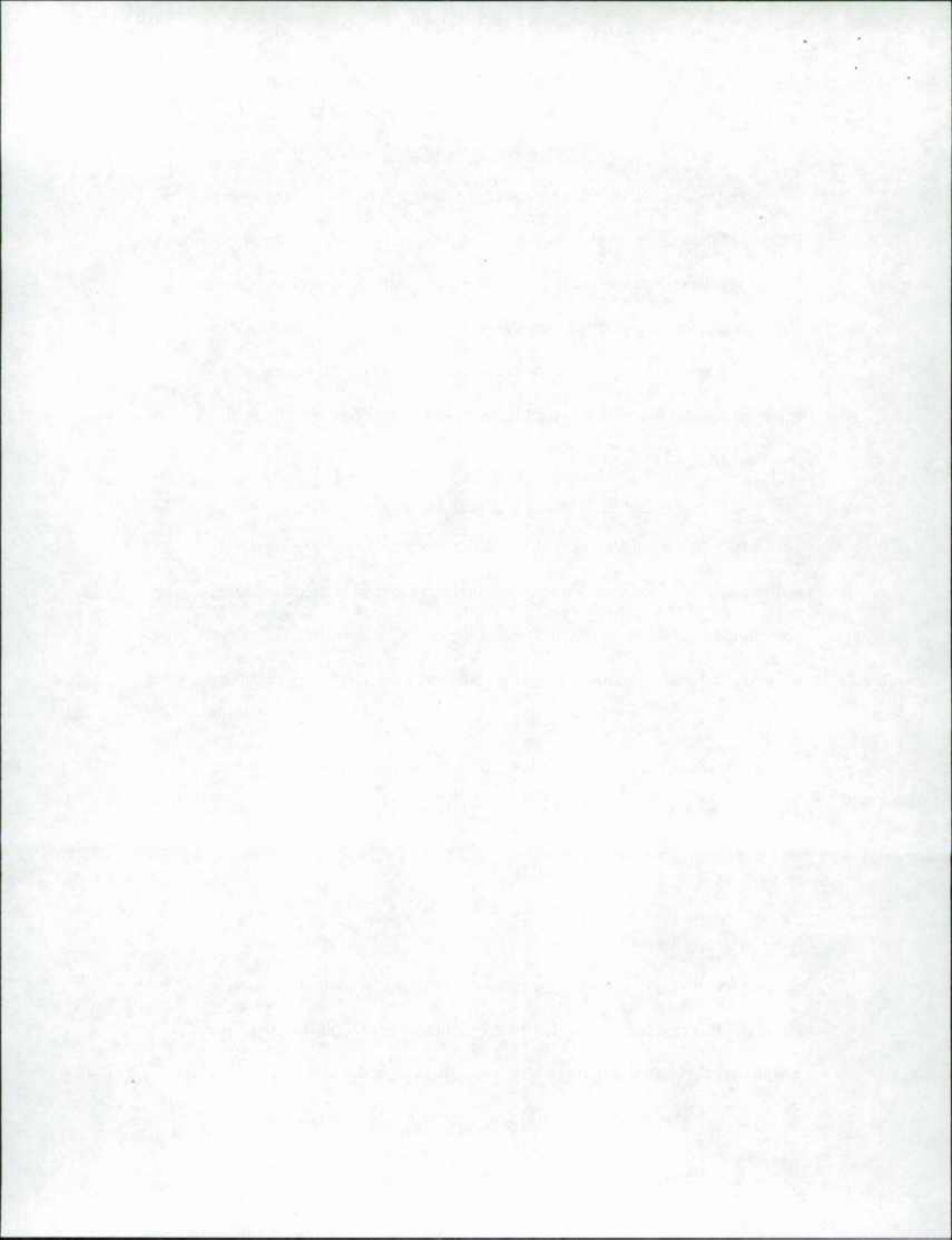
The evidence also shows that the proposed dwelling will be setback 8 feet from the front lot line requiring a variance of 22 feet to the front lot line setback requirement of § 18-4-601.

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 a grandfathered lot that is irregular in shape, consisting of 8,052 square feet and has been zoned R2 – Residential since the adoption of the Crownsville Small Area Plan zoning maps effective October 20, 2000.

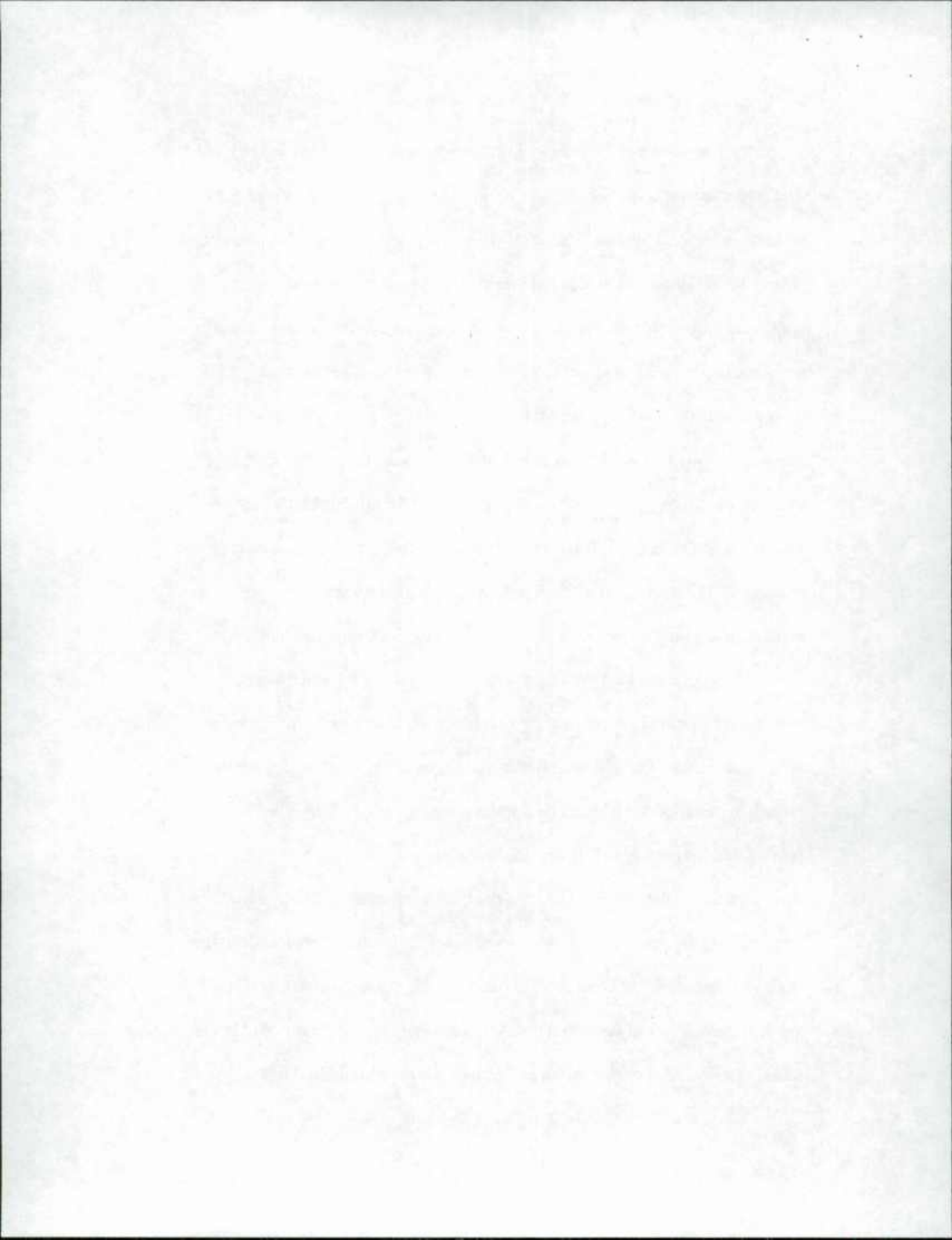
The site is improved with a single-family dwelling and associated facilities. Steep slopes are present in the rear yard, and mature trees are located along the side and rear lot lines. A gravel and concrete parking area is located in the front yard.

The applicants sought a variance in Case No. 2008-0116-V for a replacement dwelling similar to the one proposed in the present application. However, that case was withdrawn by the applicants prior to the hearing. The layout of the proposed dwelling has been modified from the former request so that



the permanent impact of the principal structure to steep slopes has been reduced. The subject property is nonconforming with respect to the minimum area and width requirements for a lot in an R2 district. The site is accessed from the north side by Robin Hood Hill, which is an improved, private right-of-way. The applicants propose to raze the existing nonconforming dwelling and to construct a new dwelling in substantially the same footprint that would require the aforementioned variances to the front setback and steep slopes. A septic tank is proposed on-site that would also disturb steep slopes, and the applicants have obtained an easement for two replacement drywells for Lot 707 that would be located on Club property. The existing nonconforming lot coverage would be reduced by 373 square feet as a result of the proposal. Mitigation and stormwater management would be provided in accordance with Code requirements.

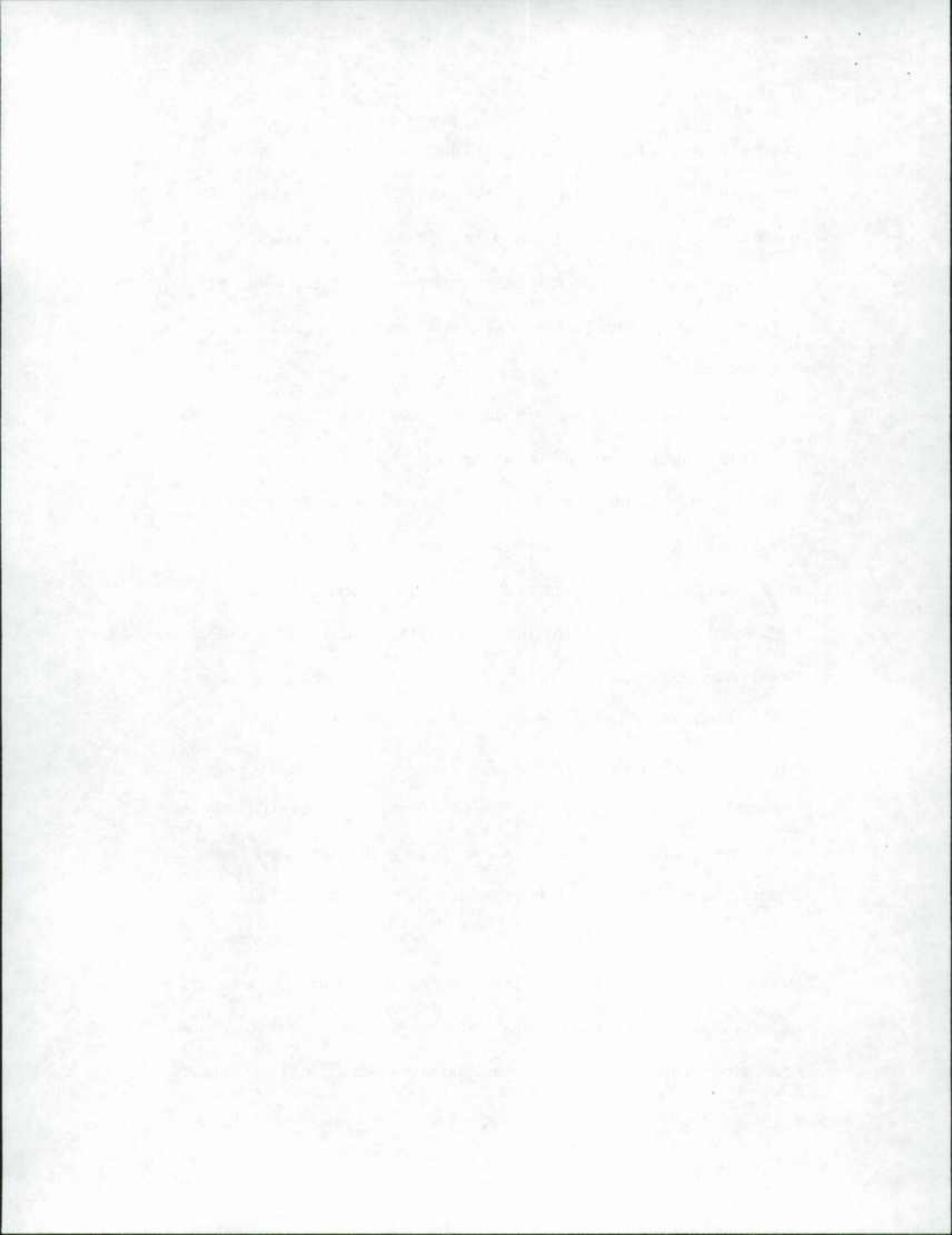
Mr. Fury testified that, with regard to the standards by which a zoning variance may be granted, and with respect to the requirements for all variances, OPZ would submit the following findings: (1) unique physical conditions are present in this application that would warrant the requested relief. The lot is substandard in size for the R2 zone and the presence of steep slopes in the rear yard necessitates the requested relief to the front yard setback; (2) the variances requested are the minimum necessary to afford relief because the variance to the front yard setback is not considered excessive as the proposed dwelling would maintain the setback of the extant dwelling and would remain largely within the same footprint, and because the slope variance has been minimized to the best



extent possible, and the proposed rear porch dimensions have been reduced, which further minimizes overall disturbance to steep slopes; (3) the variances request would not alter the essential character of the neighborhood, nor would it substantially impair the appropriate use or development of adjacent properties. Nonconforming dwellings that disturb steep slopes are typical in the neighborhood.

Concerning the critical area variance standards, Mr. Fury testified that OPZ would submit the following findings: (1) by virtue of site characteristics and the location of extant dwelling, a strict implementation of the critical area program would result in an unwarranted hardship to the applicants as well as the extent of steep slopes present on-site which would require a slope variance for any replacement dwelling; (2) a literal interpretation of the critical area program would deprive the applicants of rights commonly enjoyed by other properties in similar areas of the critical area, namely, to allow the applicants to construct a replacement dwelling on a residentially zoned lot. (3) the granting of the requested variances would confer a special privilege that the program typically denies because a replacement dwelling in substantially the same footprint as an extant dwelling would not amount to a special privilege in the critical area.

The Critical Area Commission has informed OPZ that it cannot support the variances requested and commented in pertinent part that although the permanent disturbance to steep slopes has been reduced somewhat from the prior application because it appears that the temporary limit of disturbance associated with the silt



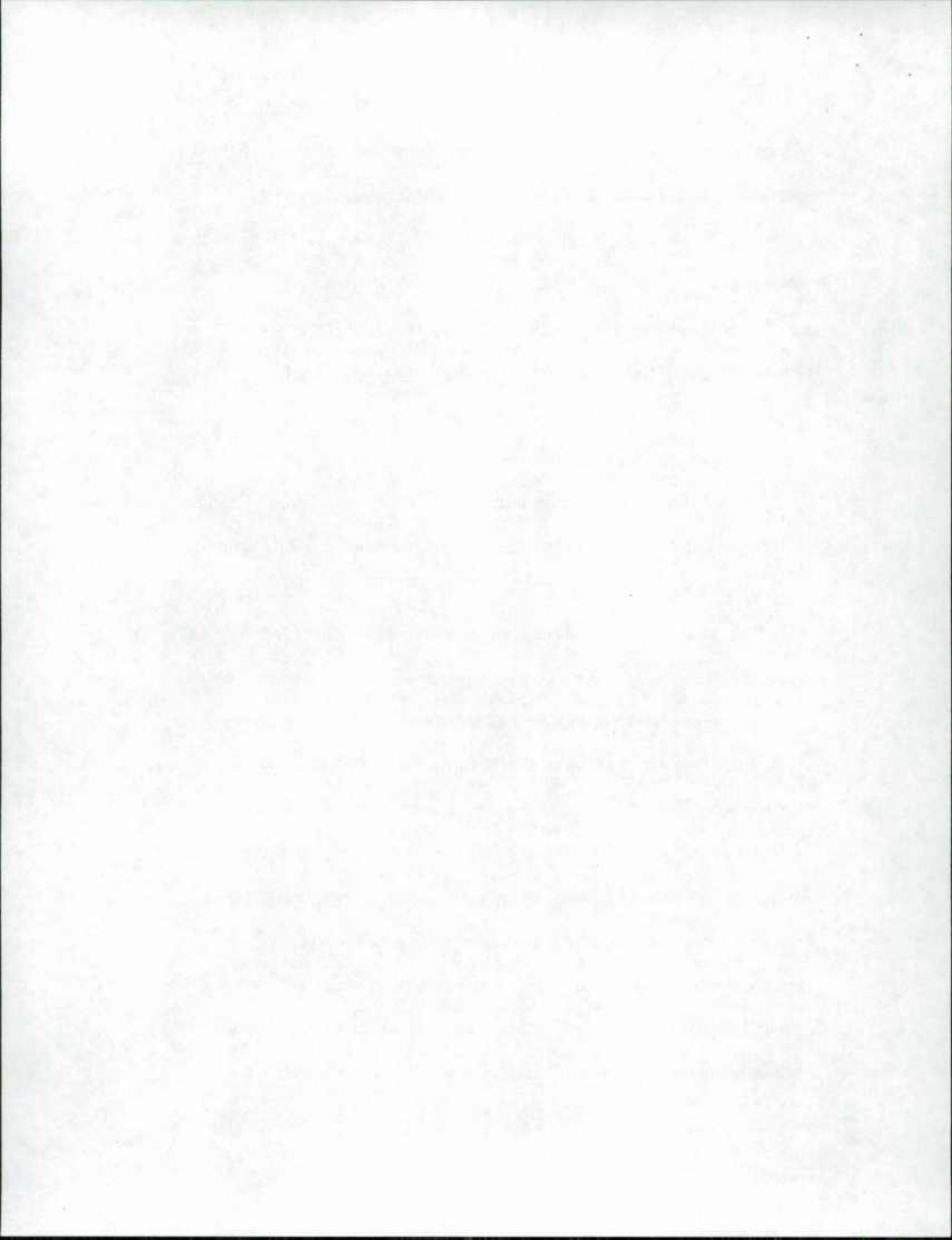
fence remains the same between the previous submittal and this one. As indicated previously, the Commission may be able to support a variance should the applicants provide a site plan that shows that there will be no new disturbance to steep slopes.

The Development Division of OPZ commented that the redevelopment of this site should not result in any more slope disturbance that is absolutely necessary. Reforestation issues will be addressed at permit.

The Department of Health requested plan approval.

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

Mr. Michael Drum, applicants' engineer from Drum, Loyka and Associates, LLC, testified that the property is undersized and the dwelling, built in 1926, is in need of rehabilitation. The lot is so small that special arrangements had to be worked out with the Club to allow the applicants to use community property for their septic system. Easements have been granted for this purpose, as shown on County Exhibit 2 and 2A. The proposed dwelling will be substantially located overtop of the existing footprint. Any rebuilding of the existing structure would require variances, no matter what the design. There is no need for any other setback variances. The removal of existing impervious surfaces will result in a reduction of impervious surfaces by 373 square feet, which will leave the property below the minimum impervious surface allowed. The reconstruction of the



dwelling and the replacement of the septic system will result in 862 square feet of steep slope disturbance. However, very little of that disturbance will be outside the footprint of the existing dwelling and the existing footers described below.

Ms. Prendergast testified that the applicants have owned the subject property since 1985. They have, over the years, engaged in extensive slope stabilization projects to remove invasive species from the property and plant native species. This was done according to a plan in 1985 and thereafter and has resulted in stabilized slopes which run throughout this under-sized lot in Sherwood Forest. Plans approved by the County in the late 1980s to build a porch were not carried out, although the porch footers were installed and are in existence.

The applicants need to rebuild the home because of its size, age, and inadequate septic system. The applicants have 4 children and intend to make the dwelling their permanent home. The community has entered into an agreement to allow the backup septic system to be installed on community property adjacent to the subject property.

Mr. P. Barton Key, General Manager for Sherwood Forest Club, Inc., introduced a letter from the Board of Directors authorizing him to speak for the community. He testified that the applicants have complied with all of the concerns expressed by the Club and have cooperated fully. He said that the community recommended that the proposed improvements be allowed and the variances requested by the applicants be granted.

No one testified in opposition to the requested relief.

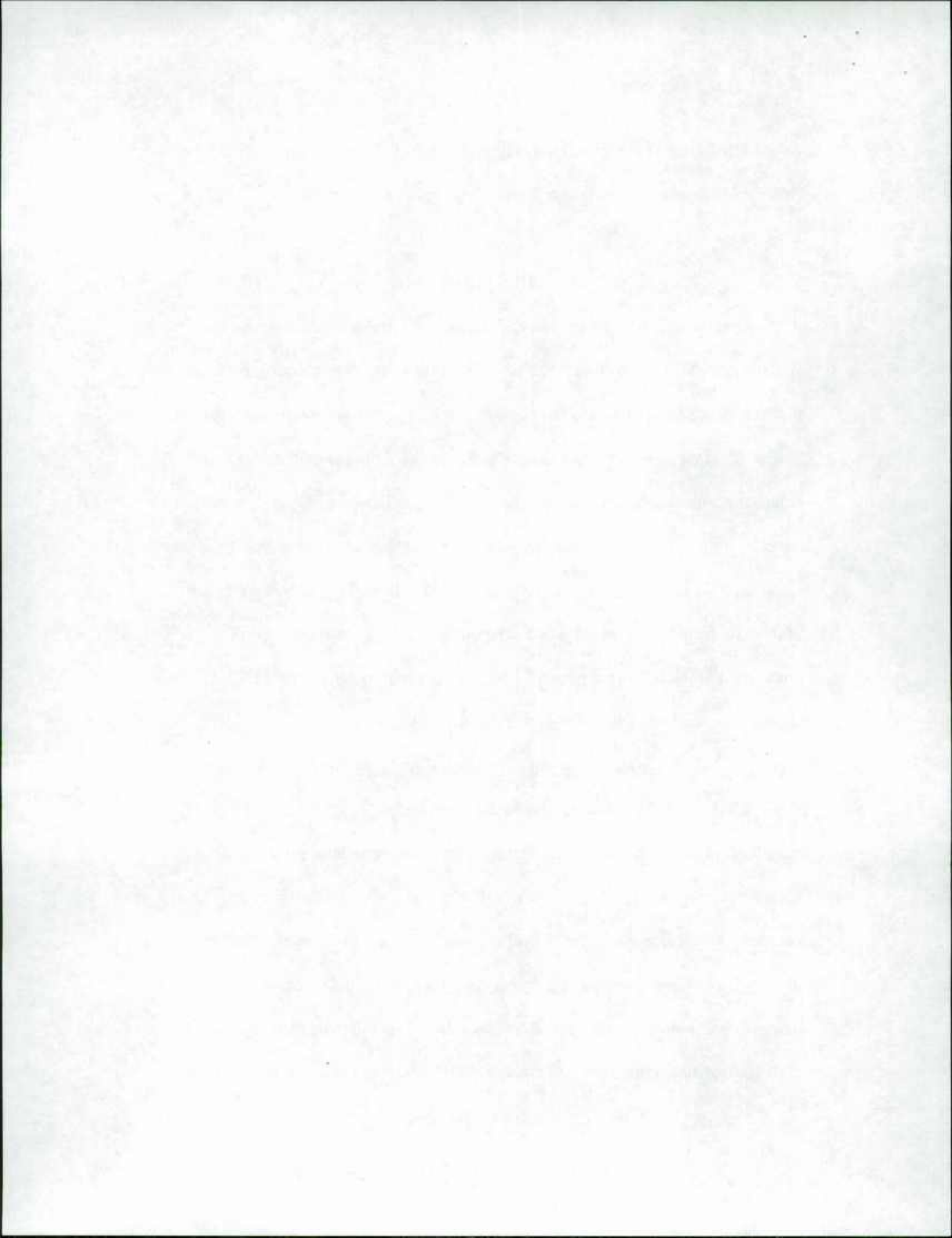
There was no other testimony taken or exhibits received in the matter. The Hearing Officer visited the property but did not speak with anyone.

DECISION

Upon review of the facts and circumstances, I find and conclude that the applicants are entitled to conditional relief from the Code. The property is unique, in that it is substandard in size and depth for an R2 lot, and has steep slopes that burden it. The evidence is clear that a dwelling existed on this grandfathered lot before the critical area came into existence in 1985. Therefore, the applicants have the right to rebuild the dwelling on the pre-existing footprint, subject to existing laws. However, variances can be granted to those laws if the application of them to the property would prevent the owner from the reasonable use of the property. For the following reasons, I find that the criteria for granting critical area and zoning variances have been met in this case.

State Requirements for Critical Area Variances

§ 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



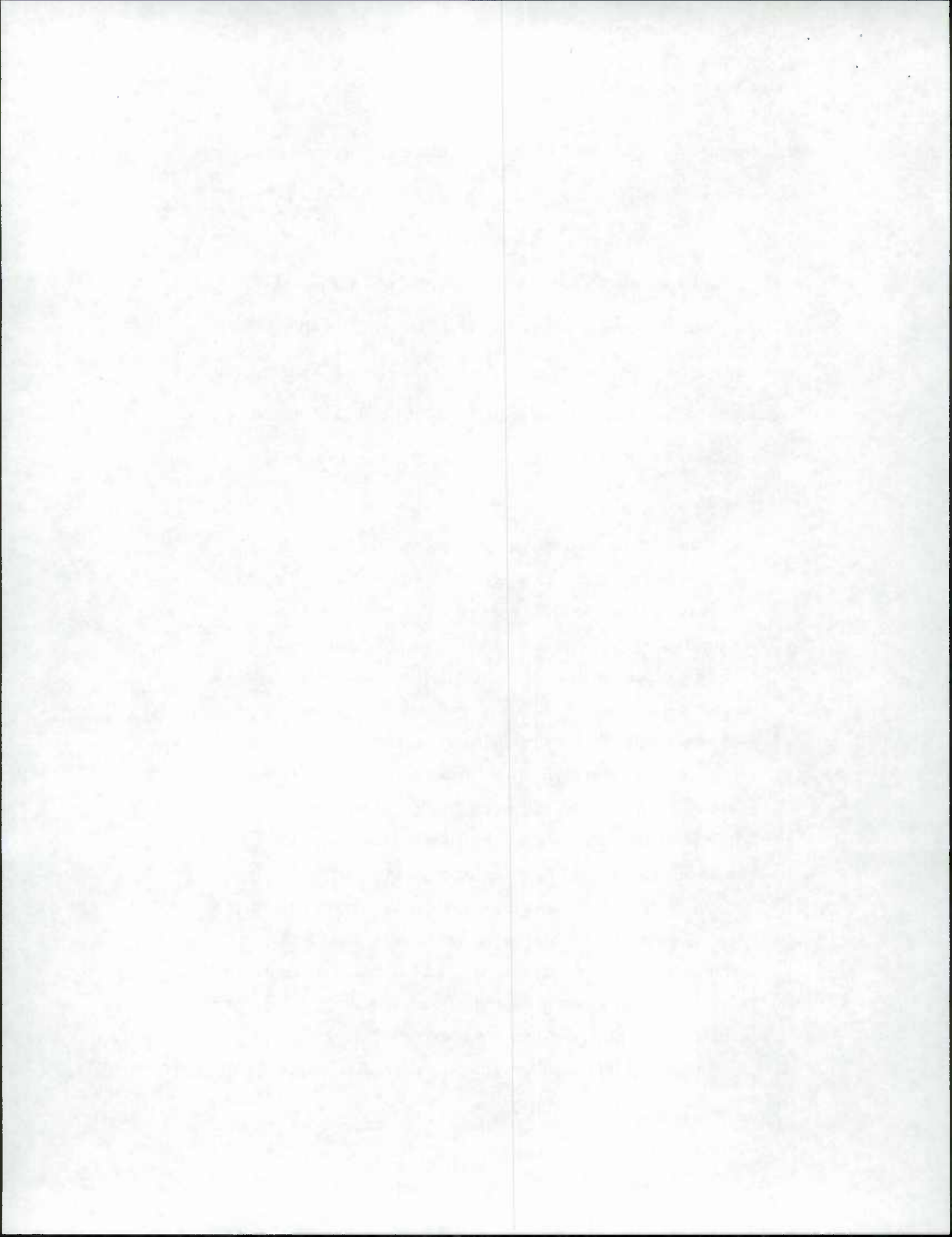
State criteria for the grant of a variance, the burden on the applicant is very high.”

Becker v. Anne Arundel County, 174 Md.App. 114, 124; 920 A.2d 1118, 1124

(2007).

In *Becker v. Anne Arundel County*, *supra*, 174 Md.App. at 131; 920 A.2d at 1128, the Court of Special Appeals discussed the history of the critical area law in reviewing a decision from this County. The court’s discussion of the recent amendments to the critical area law in 2002 and 2004, and the elements that must be satisfied in order for the applicants to be granted a variance to the critical area, is worth quoting at length:

In 2002, the General Assembly amended the [critical area] law. ... The amendments to subsection (d) provided that, (1) in order to grant a variance, the Board had to find that the applicant had satisfied each one of the variance provisions, and (2) in order to grant a variance, the Board had to find that, without a variance, the applicant would be deprived of a use permitted to others in accordance with the provisions in the critical area program. ... The preambles to the bills expressly stated that it was the intent of the General Assembly to overrule recent decisions of the Court of Appeals, in which the Court had ruled that, (1) when determining if the denial of a variance would deny an applicant rights commonly enjoyed by others in the critical area, a board may compare it to uses or development that predated the critical area program; (2) an applicant for a variance may generally satisfy variance standards rather than satisfy all standards; and, (3) a board could grant a variance if the critical area program would deny development on a specific portion of the applicant's property rather than considering

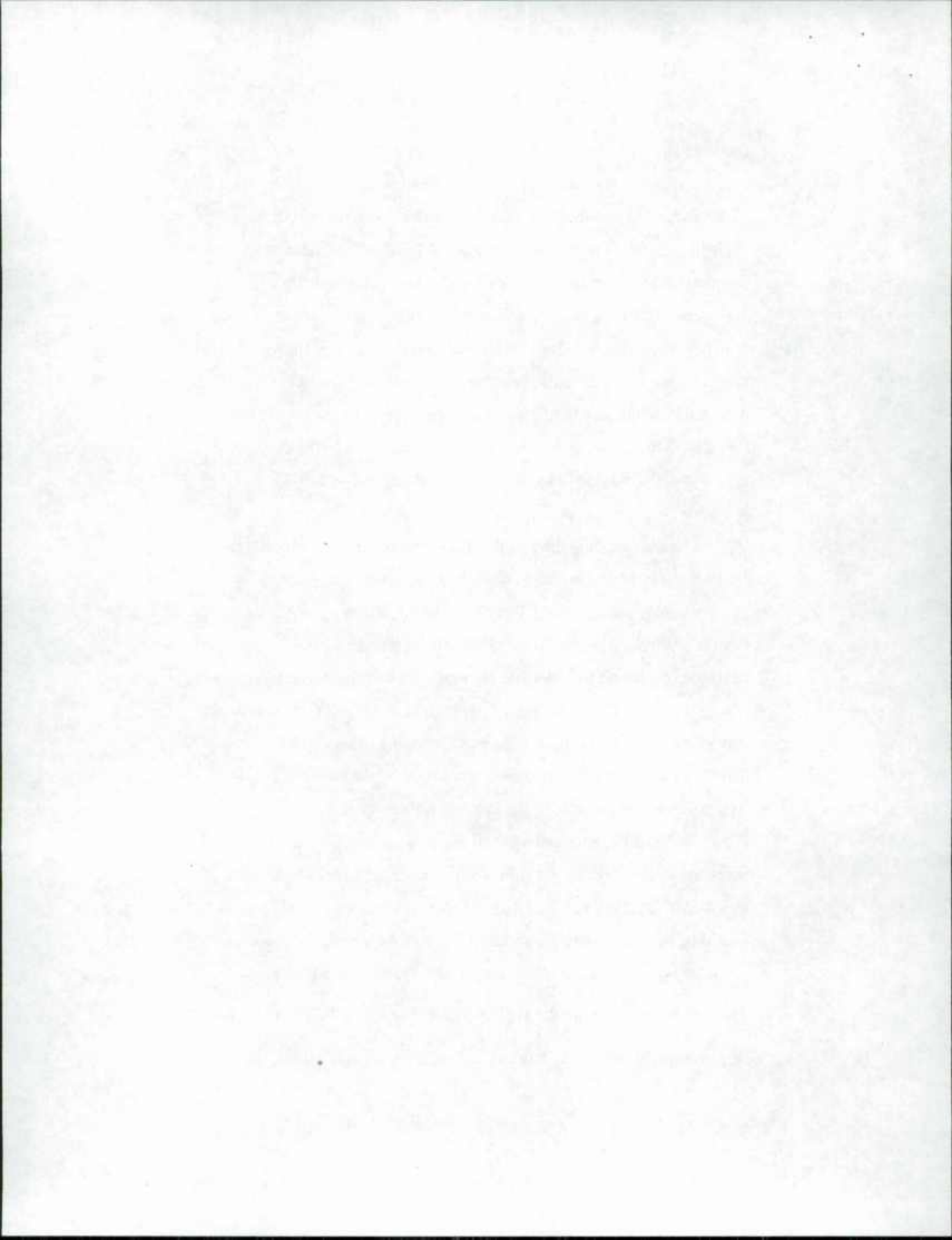


the parcel as a whole.

In 2003, the Court of Appeals decided *Lewis v. Dep't of Natural Res.*, 377 Md. 382, 833 A.2d 563 (2003). *Lewis* was decided under the law as it existed prior to the 2002 amendments (citation omitted), and held, *inter alia*, that (1) with respect to variances in buffer areas, the correct standard was not whether the property owner retained reasonable and significant use of the property outside of the buffer, but whether he or she was being denied reasonable use within the buffer, and (2) that the unwarranted hardship factor was the determinative consideration and the other factors merely provided the board with guidance. *Id.* at 419-23, 833 A.2d 563.

Notwithstanding the fact that the Court of Appeals expressly stated that *Lewis* was decided under the law as it existed prior to the 2002 amendments, in 2004 Laws of Maryland, chapter 526, the General Assembly again amended State law by enacting the substance of Senate Bill 694 and House Bill 1009. The General Assembly expressly stated that its intent in amending the law was to overrule *Lewis* and reestablish the understanding of unwarranted hardship that existed before being “weakened by the Court of Appeals.” In the preambles, the General Assembly recited the history of the 2002 amendments and the *Lewis* decision. The amendment changed the definition of unwarranted hardship [found in § 8-1808(d)(2)(i)] 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.” (Emphasis added.)

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

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

(Emphasis added.)

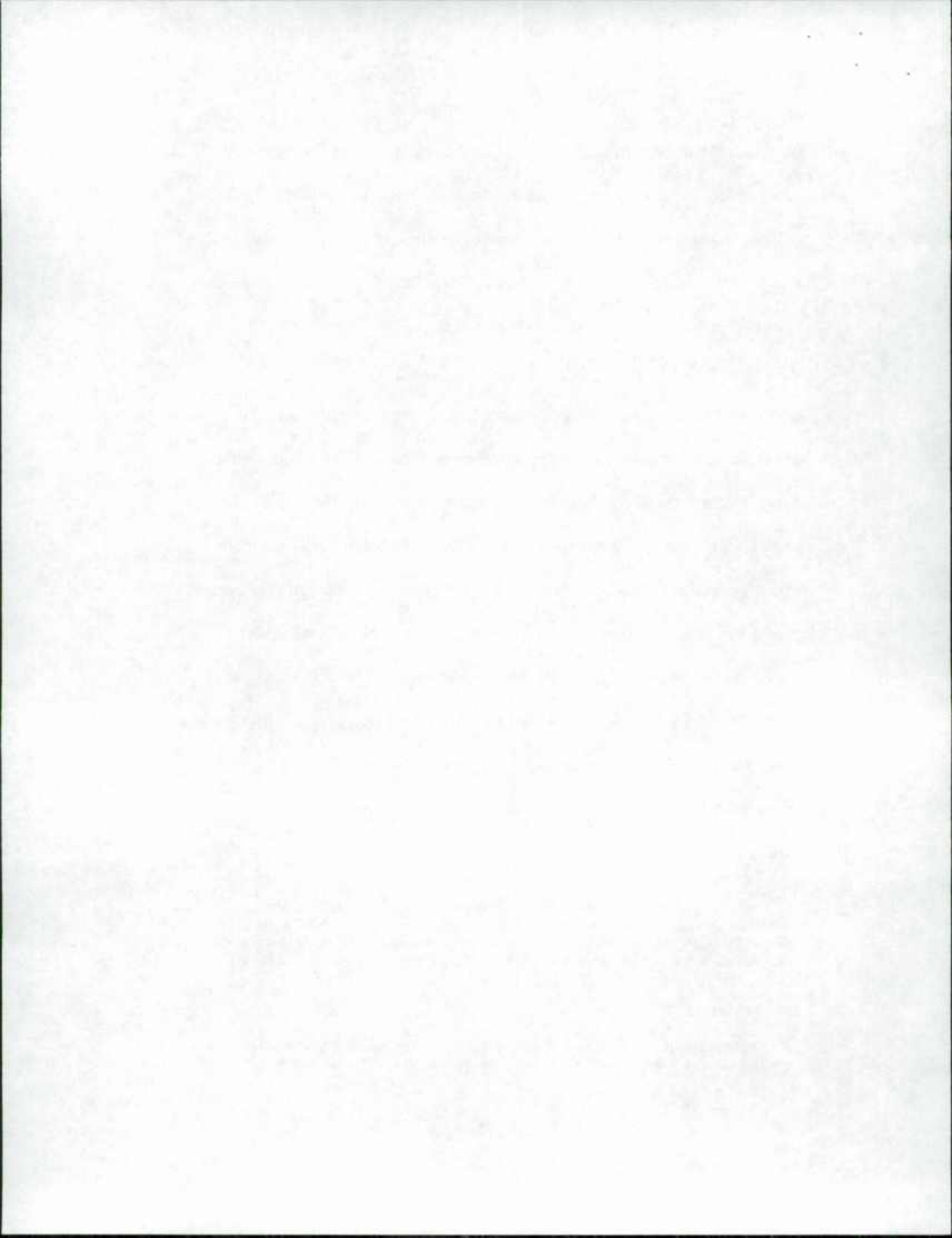
The variances sought are variances from the critical area law (steep slopes) and from the zoning law (setback requirements). “[A number of requests in the *Becker* decision] were for variances from the stringent critical area law. The request for a variance from the setback, however, is a request under the more lenient general zoning requirements. As indicated above, the criteria for a general zoning variance and the criteria for a critical area variance are not the same.” *Becker v. Anne Arundel County, supra*, 174 Md.App. at 141; 920 A.2d at 1134.

Therefore, the critical area variance must be considered separately from the general zoning or setback variance.⁴ I will first analyze the facts in light of the critical area variance requested, and then analyze the facts in light of the zoning variance requested.

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.

³ § 8-1808(d)(4)(ii).

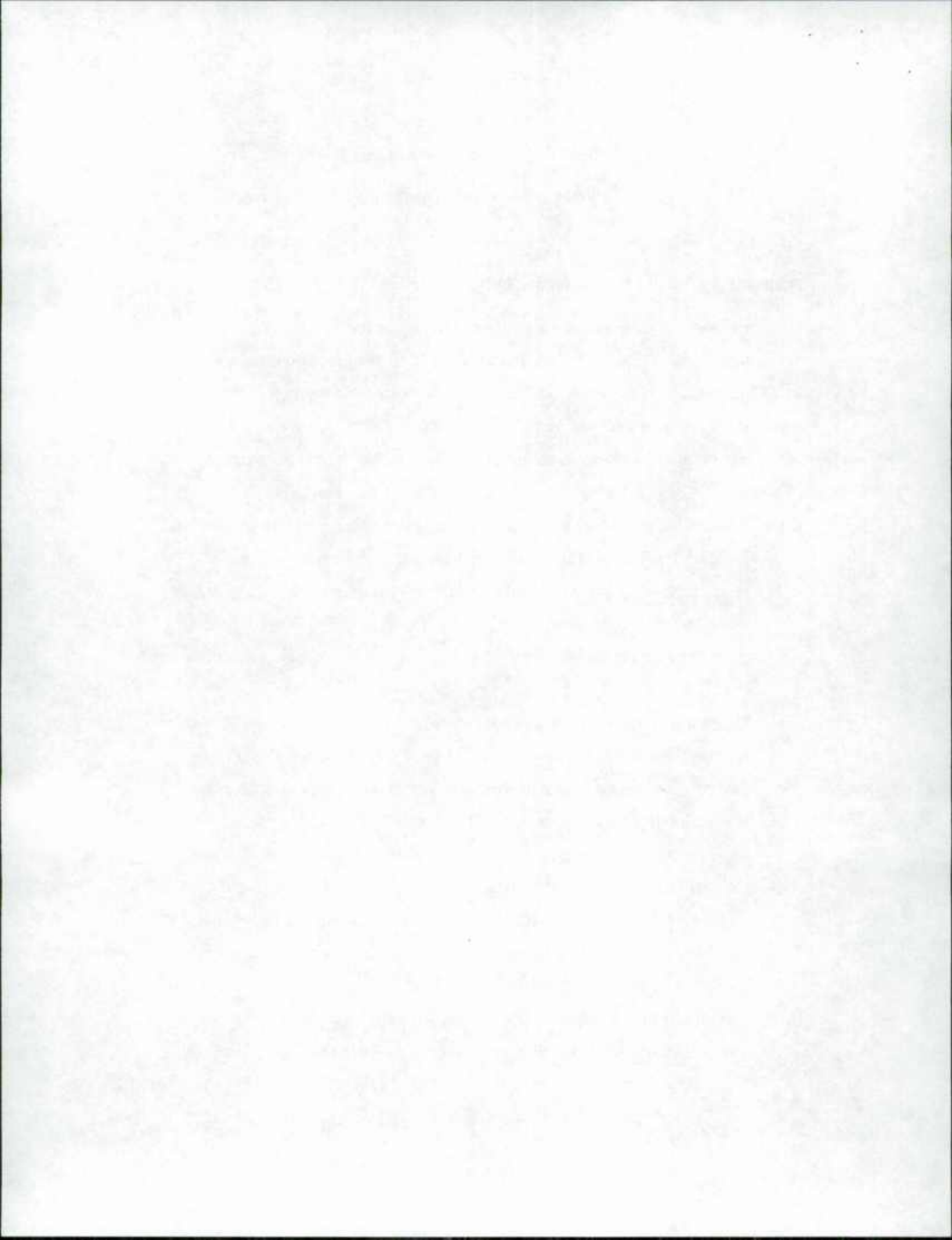
⁴ “We agree that the Board should have distinguished between the critical area variance and the setback variance.” *Becker v. Anne Arundel County, supra*, page 174 Md.App. at 141; 920 A.2d at 1134.



County Requirements for Critical Area Variance

§ 18-16-305 sets forth the requirements for granting a variance for property in the Critical Area. Subsection (b) reads, in part, as follows: a variance may be granted if the Administrative Hearing Officer finds that:

- (1) Because of 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, strict implementation of the County's critical area program would result in an unwarranted hardship, as that term is defined in the Natural Resources Article, § 8-1808 of the State Code, to the applicant. Subsection (b)(1).
- (2) A literal interpretation of COMAR, 27.01 Criteria for Local Critical Area Program Development or the County's critical area program and related ordinances will deprive the applicant of rights commonly enjoyed by other properties in similar areas as permitted in accordance with the provision of the critical area program within the critical area of the County. Subsection (b)(2).
- (3) The granting of a variance will not confer on an applicant 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 critical area. Subsection (b)(3).
- (4) The variance request is not based on conditions or circumstances that are the result of actions by the applicant, including the commencement of development before an application for a variance was filed, and does not rise from any condition relating to land or building use on any neighboring property. Subsection (b)(4).
- (5) The granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the County's critical



area and will be in harmony with the general spirit and intent of the County's critical area program. Subsection (b)(5).

- (6) The applicant, by competent and substantial evidence, has overcome the presumption contained in the Natural Resources Article, § 8-1808(d)(2), of the State Code. Subsection (b)(7).⁵

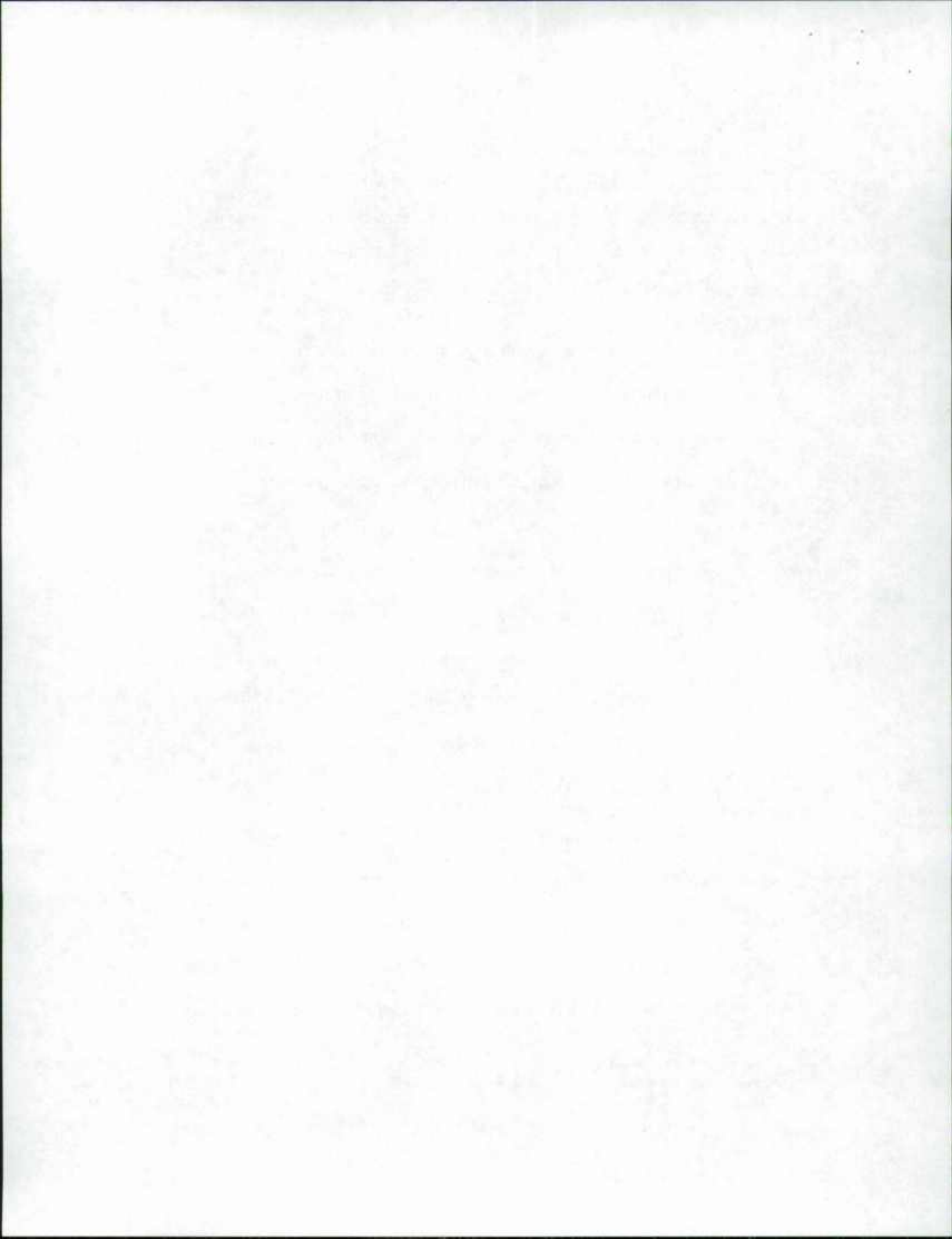
Furthermore, a variance may not be granted unless it is found that: (1) the variance is the minimum variance necessary to afford relief; (2) the granting of the variance will not alter the essential character of the neighborhood or district in which the lot is located; (3) the variance will not substantially 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:

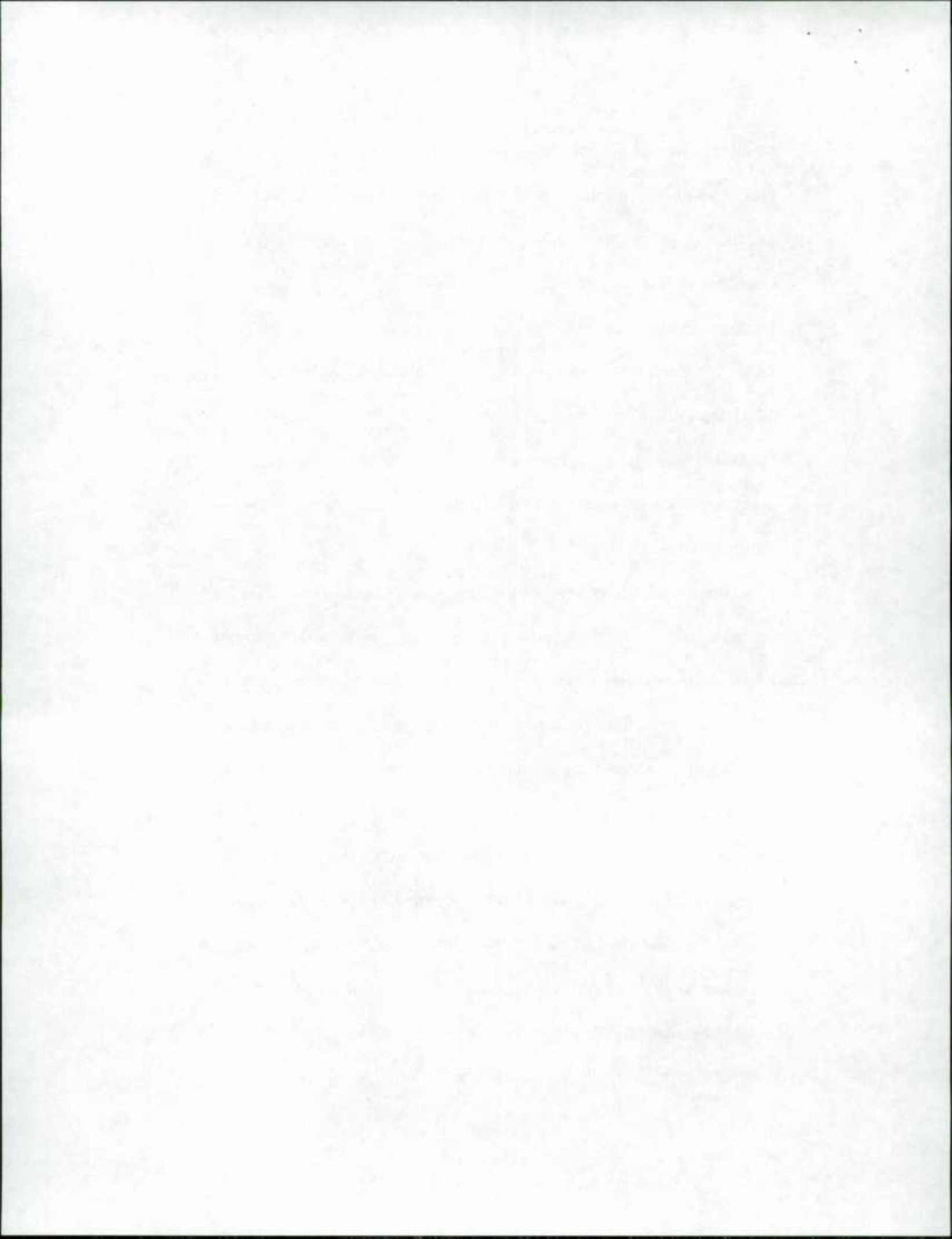
- Because of the unique physical conditions, such as exceptional topographical conditions peculiar to and inherent in the subject property, i.e., the irregularity of the property and the existing improvements on it, strict implementation of the County's critical area program would result in an unwarranted hardship to the applicants that would deprive the applicants of rights commonly enjoyed

⁵ Subsection (b)(6) refers to bogs, which are not present on the property.



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, i.e., the right to raze and rebuild a pre-existing dwelling where steep slopes exist. Subsection (b)(1) and (2).

- Furthermore, 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 similar dwellings in the neighborhood. Subsection (b)(3).
- 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 does not arise from any condition relating to land or building use on any neighboring property. Subsection (b)(4).
- 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. Drum testified that the proposed work would not adversely affect water quality or adversely impact fish, wildlife or plant habitat within the

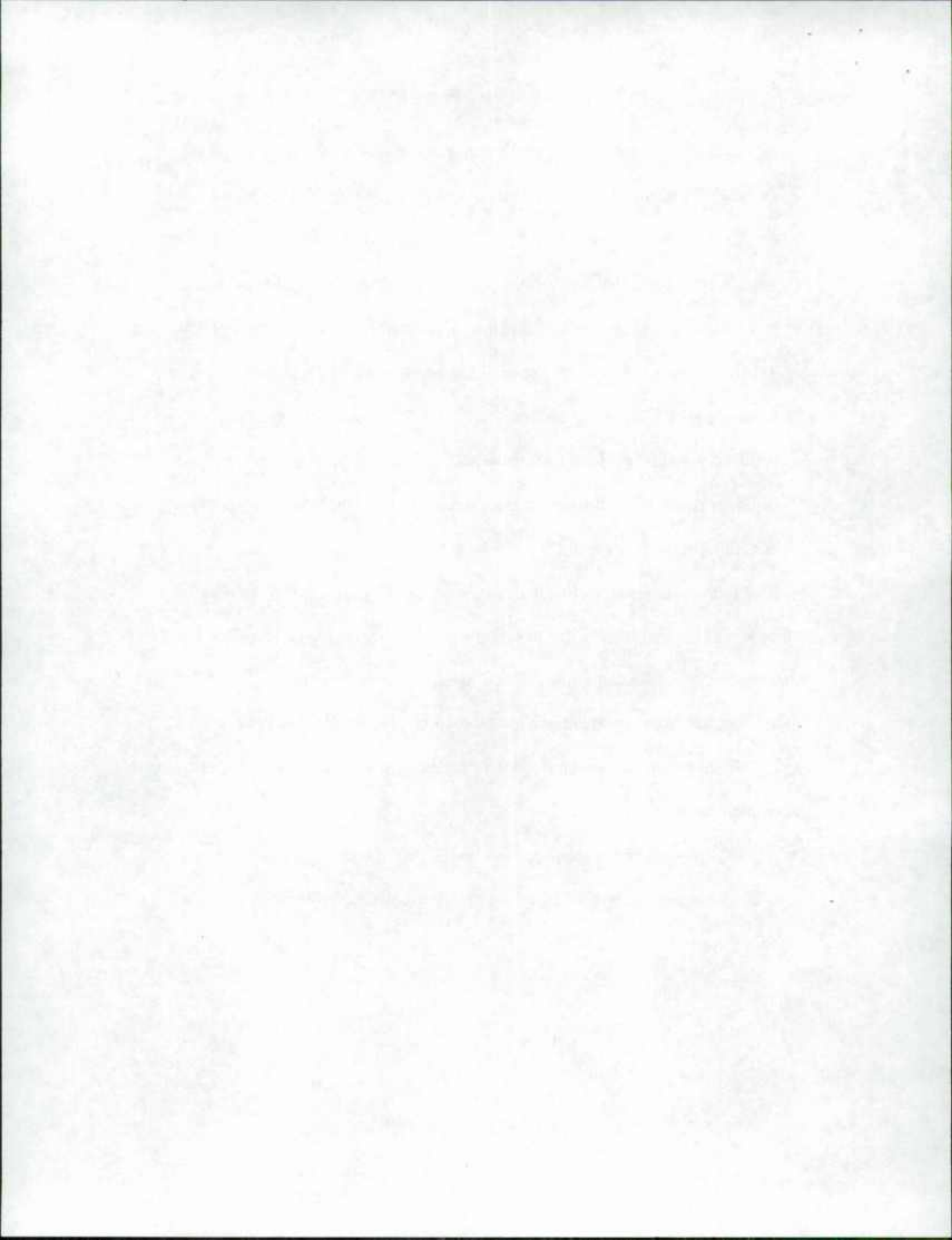


County's critical area or a bog protection area and will be in harmony with the general spirit and intent of the County's critical area program. Subsection (b)(5).

- Furthermore, I find that the applicants, by competent and substantial evidence, has overcome the presumption contained in the Natural Resources Article, § 8-1808(d)(2), of the State Code [which is incorporated into § 18-16-305 subsection (b)(2)] for the reasons set forth above, and because I find that the applicants would be denied reasonable and significant use of the entire parcel or lot for which the critical area variance is requested if the proposed work was not allowed. 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.

Accordingly, for the above reasons, I will grant a critical area variance to § 17-8-201 because there will be disturbance to steep slopes as indicated on the site plan for the property.



Zoning Variance

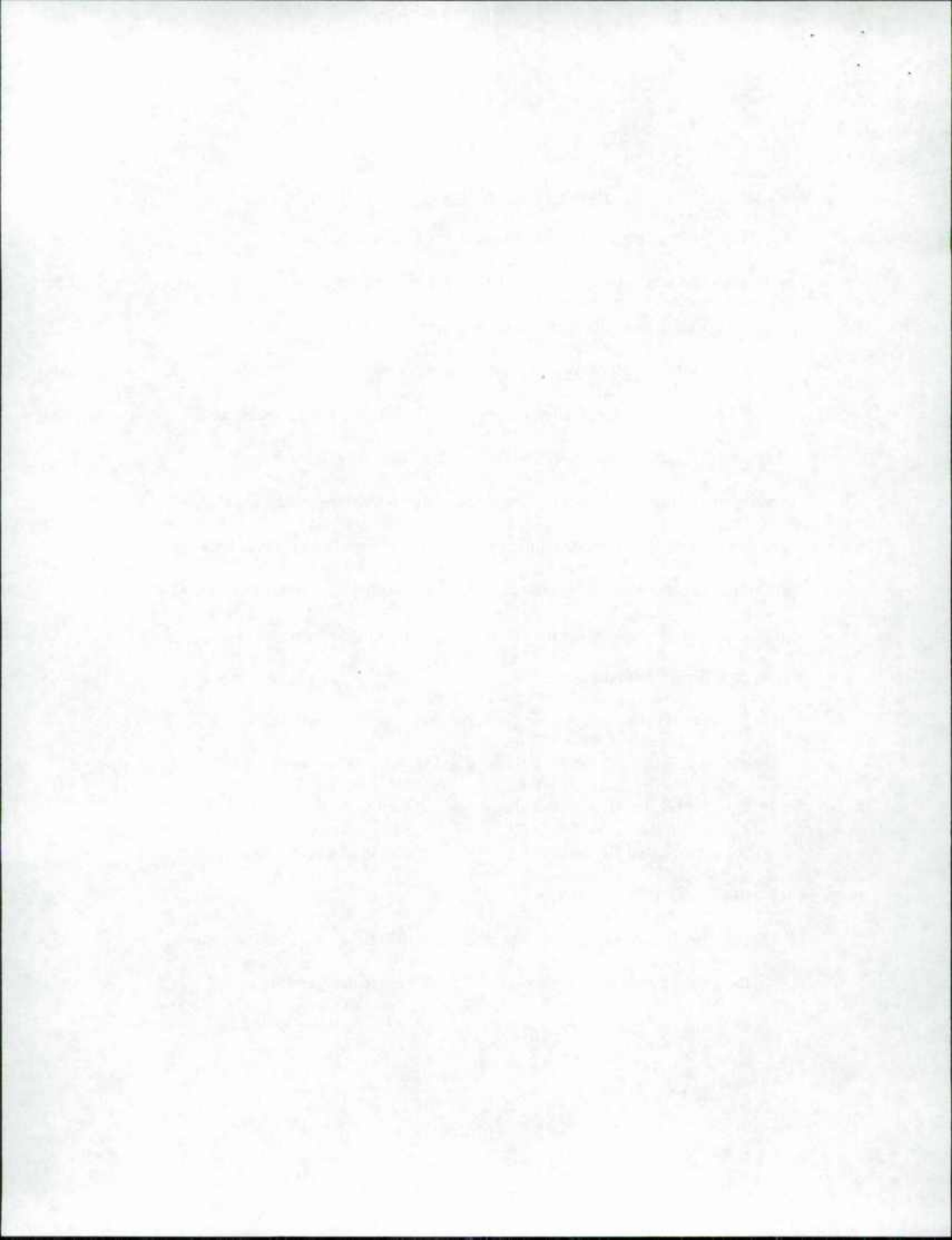
Variance To The Setbacks Required

The evidence shows that the proposed dwelling will be placed approximately 8 feet from the front lot line. This will require a variance of 22 feet from the 30-foot front lot line setback requirement of § 18-4-601.

Requirements for Zoning Variance

§ 18-16-305 sets forth the requirements for granting a zoning variance. Subsection (a) reads, in part, as follows: a variance may be granted if the Administrative Hearing Officer finds that practical difficulties or unnecessary hardships prevent conformance with the strict letter of this article, provided the spirit of law is observed, public safety secured, and substantial justice done. A variance may be granted only if the Administrative Hearing Officer makes the following affirmative findings:

- (1) Because of 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, there is no reasonable possibility of developing the lot in strict conformance with this article; or
- (2) Because of exceptional circumstances other than financial considerations, the grant of a variance is necessary to avoid practical difficulties or unnecessary hardship and to enable the applicant to develop the lot.



Findings - Zoning Variance

I find, based upon the evidence, that because of the unique physical conditions, peculiar to and inherent in the subject property, i.e., steep slopes in close proximity to the dwelling on the property, and the pre-existing location of the existing dwelling, the grant of the requested variance is necessary to avoid practical difficulties or unnecessary hardship and to enable the applicants to develop the lot.

ORDER

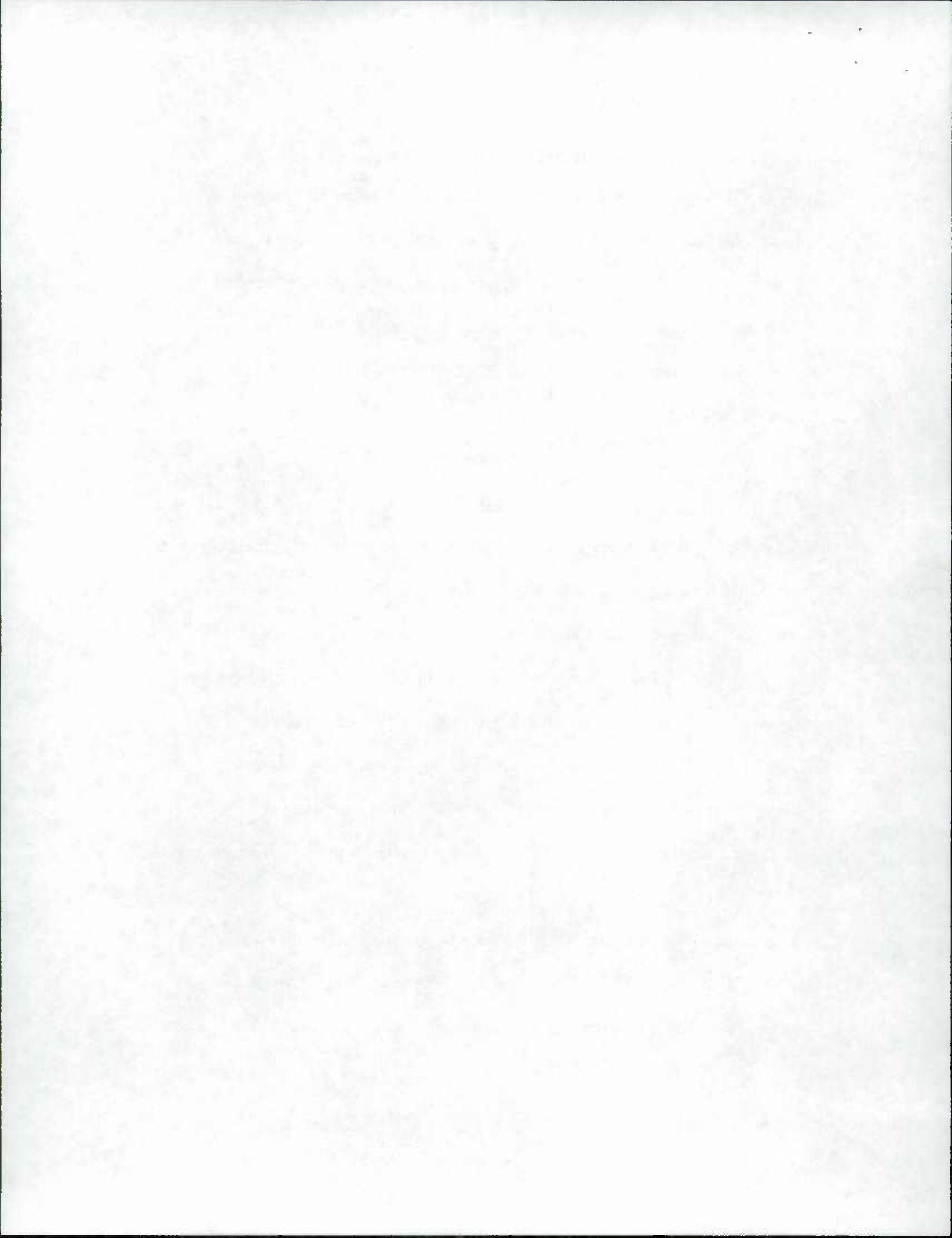
PURSUANT to the application of Augusto Pichard and Nancy Prendergast, petitioning for a variance to allow a dwelling and associated facilities with less setbacks than required and with disturbance to slopes 15% or greater, and

PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is this **29th day of September, 2009**,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicants are hereby **granted** the following variances:

1. A variance of twenty-two (22) feet to the front lot line setback requirement of § 18-4-601; and
2. A variance of 862 square feet to the steep slope requirements of §17-8-201.

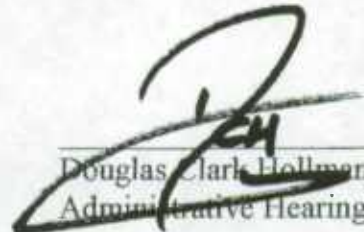
Furthermore, County Exhibit 2 and 2A referenced in this decision, are incorporated herein as if fully set forth and made a part of this Order. The



proposed improvements shown on County Exhibit 2 and 2A shall be constructed in the locations shown therein.

The foregoing variances are 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 applicants shall provide mitigation as required by the Critical Area Commission and/or the Permit Application Center.



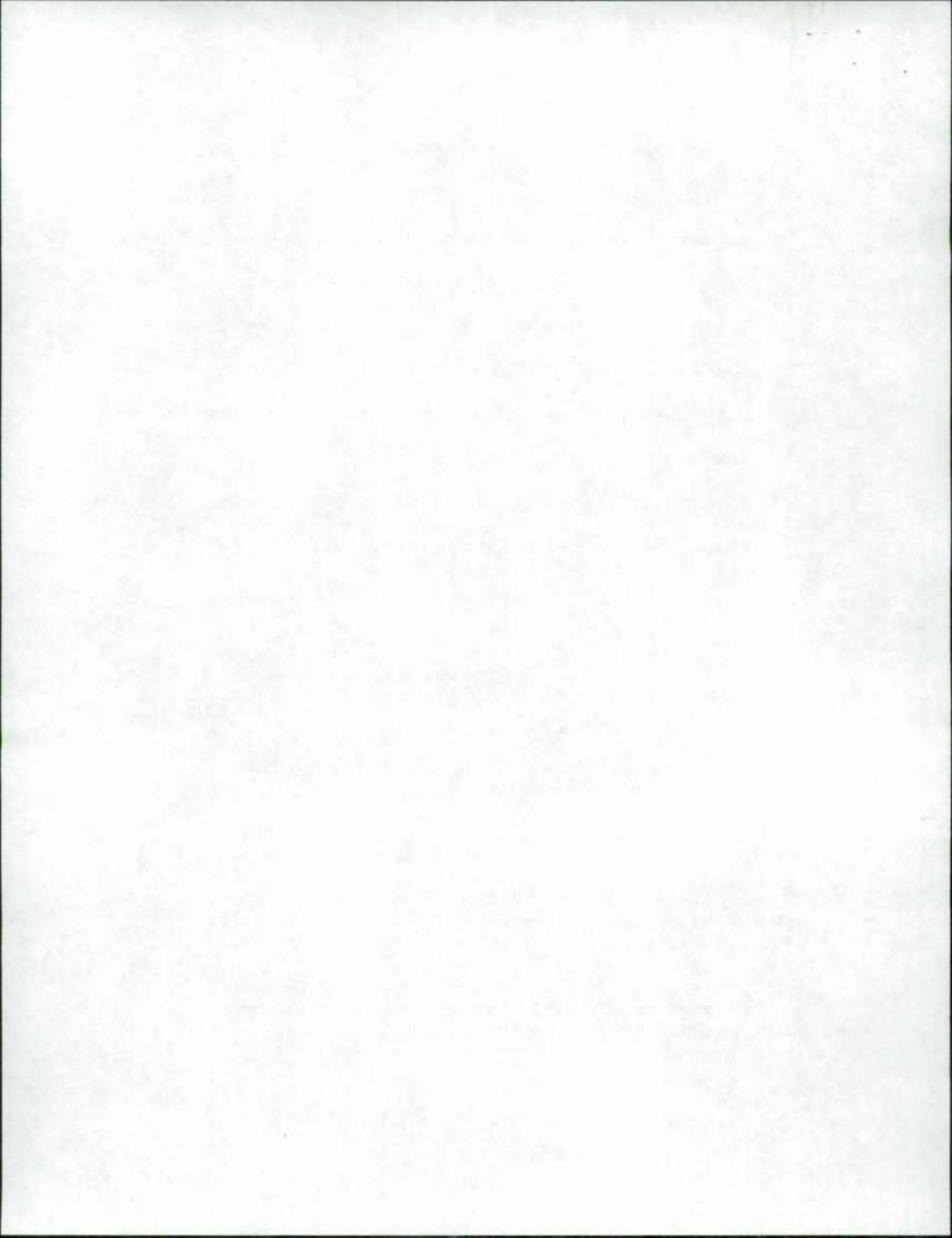
Douglas Clark Hollmann
Administrative Hearing Officer

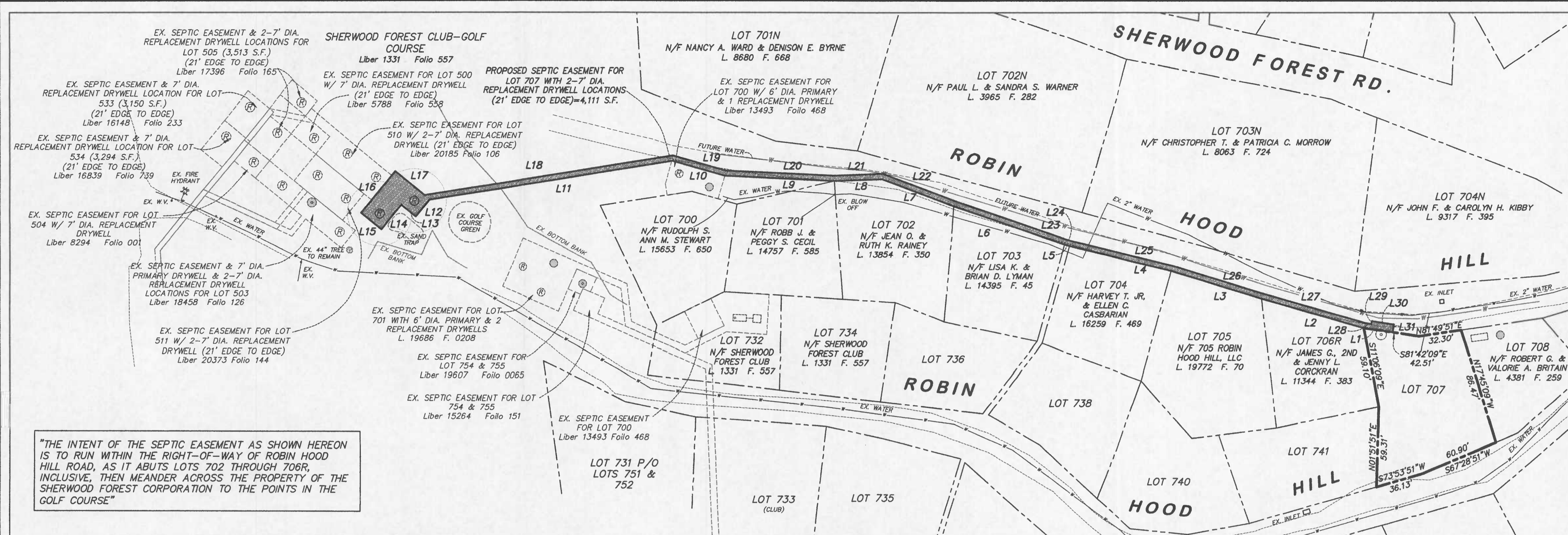
NOTICE TO APPLICANT

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 § 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.

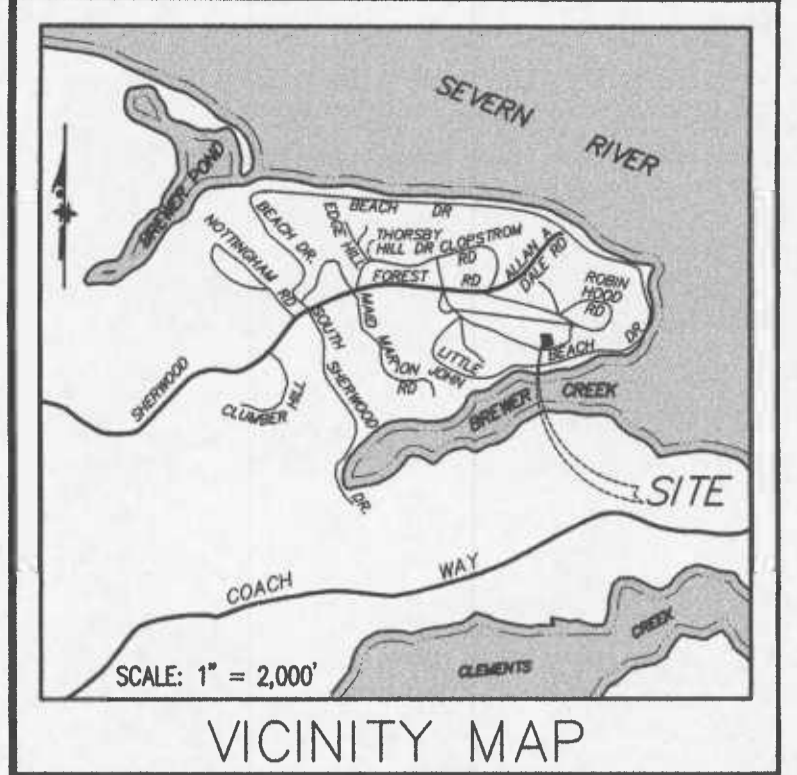
If this case is not appealed, exhibits must be claimed within 60 days of the date of this Order, otherwise they will be discarded.





NOTE: PRIOR TO SEPTEMBER 2007, SEPTIC EASEMENTS FOR SHERWOOD FOREST WERE BASED ON PLAT DATUM. THE PLAN SHOWN HEREON WAS PREPARED IN MARYLAND STATE GRID NAD 83 THEREFORE BEARINGS MAY NOT MATCH PRIOR WORK.

LINE	BEARING	LENGTH
L1	N81°42'09"W	22.27'
L2	N73°58'31"W	80.89'
L3	N72°32'31"W	71.61'
L4	N78°17'31"W	80.02'
L5	N74°18'31"W	4.00'
L6	N70°38'31"W	88.35'
L7	N69°12'31"W	58.18'
L8	S87°51'27"W	36.00'
L9	N87°23'20"W	83.20'
L10	N73°53'31"W	41.08'
L11	S80°47'51"W	188.12'
L12	S39°07'30"W	71.89'
L13	N50°52'30"W	14.17'
L14	S39°07'30"W	24.15'
L15	N50°52'30"W	19.73'
L16	N39°07'30"E	41.15'
L17	S50°52'30"E	28.88'
L18	N80°47'51"E	188.12'
L19	S23°33'31"E	41.89'
L20	S87°51'27"E	82.56'
L21	N87°51'27"E	36.65'
L22	N89°12'31"E	58.84'
L23	S70°38'31"E	88.17'
L24	S74°15'31"E	3.80'
L25	S78°17'31"E	80.07'
L26	N74°18'31"E	71.89'
L27	S73°58'31"E	80.68'
L28	S81°42'09"E	4.99'
L29	N081°7'51"E	2.05'
L30	S81°42'09"E	17.01'
L31	S081°7'51"W	6.05'

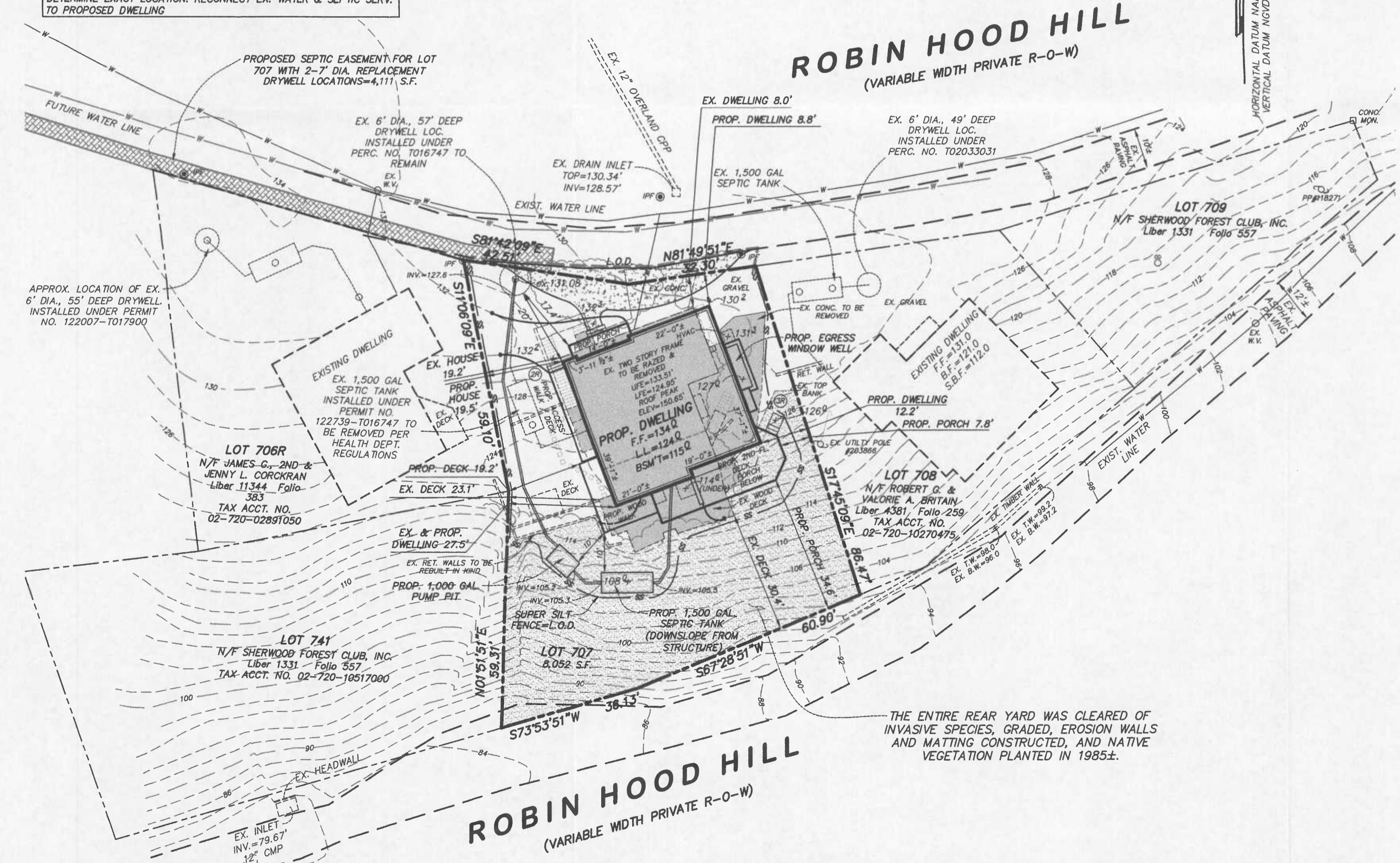


RECEIVED
SEP 10 2009
CRITICAL AREA COMMISSION
Chesapeake & Atlantic Coastal Bays

"THE INTENT OF THE SEPTIC EASEMENT AS SHOWN HEREON IS TO RUN WITHIN THE RIGHT-OF-WAY OF ROBIN HOOD HILL ROAD, AS IT ADJUTS LOTS 702 THROUGH 706R, INCLUSIVE, THEN MEANDER ACROSS THE PROPERTY OF THE SHERWOOD FOREST CORPORATION TO THE POINTS IN THE GOLF COURSE"

SEPTIC EASEMENT ON SHERWOOD FOREST CLUB PROPERTY FOR LOT 707

UTILITY NOTE: CONTRACTOR TO FIELD LOCATE EX. UTILITIES TO DETERMINE EXACT LOCATION, RECONNECT EX. WATER & SEPTIC SERV. TO PROPOSED DWELLING



LEGEND

- - - - - EXISTING CONTOUR
- ▬▬▬▬▬ 15%-25% STEEP SLOPES
- - - - - EX. WOODS LINE
- - - - - LIMIT OF DISTURBANCE
- - - - - PROPOSED GRADE
- 272+ PROPOSED SPOT ELEV.
- SS - SS - SS SUPER SILT FENCE

SITE TABULATIONS

• TOTAL SITE AREA (LOT 707):	8,052 S.F. (0.18 Ac.)
• IMPERVIOUS AREA:	
-EXISTING IMPERVIOUS LOT COVERAGE:	2,798 S.F. (0.06 Ac.)
-ALLOWABLE IMPERVIOUS LOT COVERAGE:	2,798 S.F. (0.06 Ac.)
-PROPOSED IMPERVIOUS LOT COVERAGE:	2,425 S.F. (0.06 Ac.)
• COVERAGE BY STRUCTURES:	
-EXISTING COVERAGE BY STRUCTURES:	1,803 S.F. (+/- 22%)
-PROPOSED COVERAGE BY STRUCTURES:	2,338 S.F. (+/- 28%)
• SLOPE DISTURBANCE TABULATIONS:	
-TOTAL SLOPE DISTURBANCE:	862 S.F. (0.02 Ac.)
-ON SITE SLOPE DISTURBANCE:	862 S.F. (0.02 Ac.)
-EX. HOUSE DEMOLITION:	493 S.F. (0.01 Ac.)
-PROPOSED HOUSE CONSTRUCTION:	237 S.F. (0.01 Ac.)
-PROPOSED SEPTIC:	132 S.F. (0.003 Ac.)
-OFF SITE SLOPE DISTURBANCE:	0 S.F. (0.00 Ac.)
• ZONING R-2	

DESIGNED: MMD
ORIG. DATE: JAN. 1, 2008
MODIFIED BY: DATE:
CADD DWG #: SP13403V
DLA PROJECT #: SP13403

REVISIONS TO APPROVED PLANS				
No.	DATE	BY	DESCRIPTION	

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

OWNER:
MR. AUGUSTO PICHARD
& **MS. NANCY PRENDERGAST**
6401 KENNEDY DRIVE
CHEVY CHASE, MARYLAND 20815-6505

PERC. NO. T02037991
VARIANCE PLAN
SHERWOOD FOREST ~ LOT 707
707 ROBIN HOOD HILL
TAX ACCT. NO. 02-720-06256927
TAX MAP 39 GRID 19 PARCEL 295 DISTRICT 2ND
ANNE ARUNDEL COUNTY, MARYLAND
SCALE: 1" = 20'
DATE: 3 SEPT. 2009
PROJ. NO: SP13403V
SHEET 1 OF 1

P:\SP13403\CADD\05-SP13403V.dwg (SP13403V.dwg) - VARIANCE PLAN, 9/10/2009 3:47:44 PM