

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS

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

August 13, 2008

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

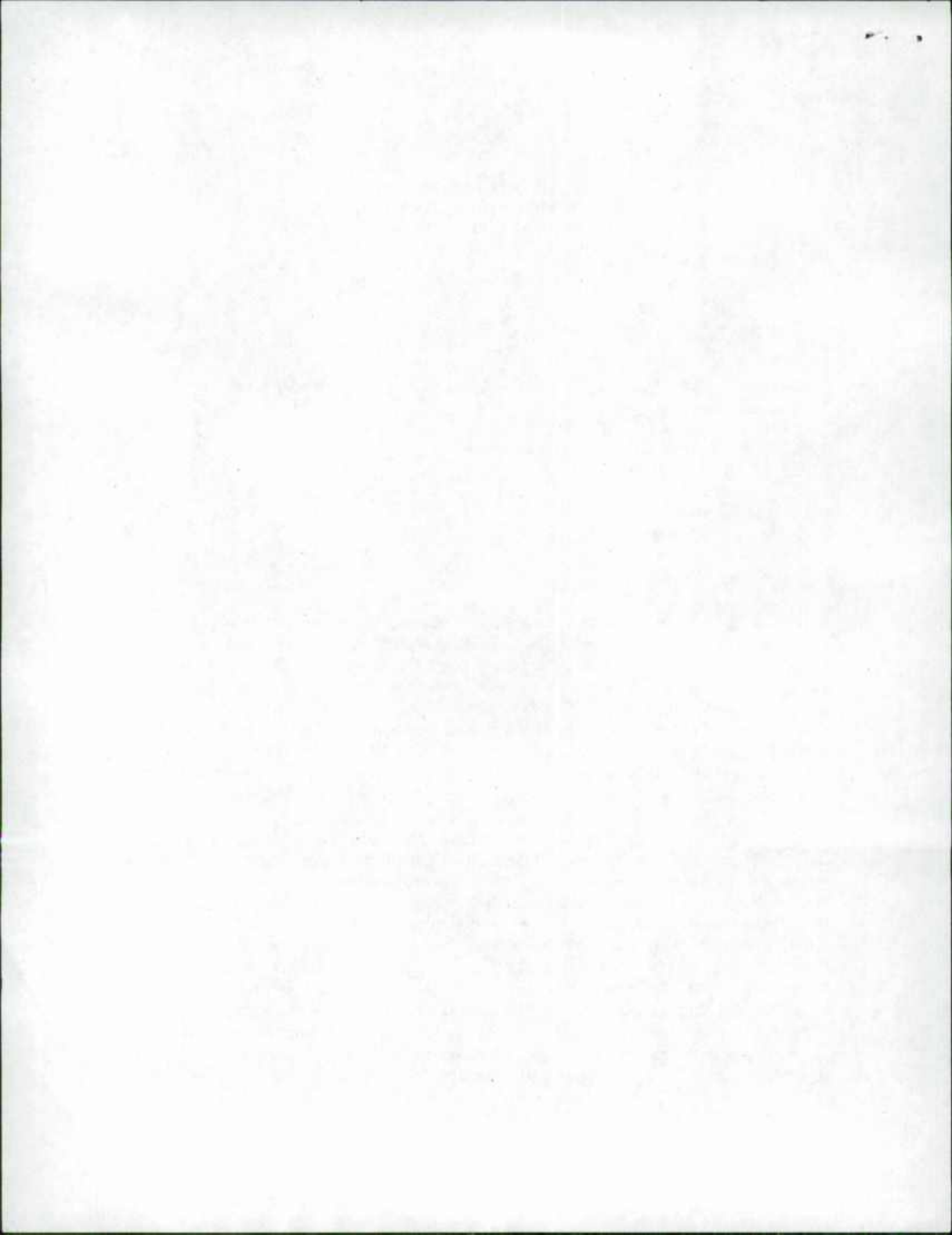
**Re: 2008-0097-V
Wood Variance**

Dear Ms. Schappert:

Thank you for providing information on the above-referenced variance application. The applicant is requesting a variance to allow a dwelling with disturbance to slopes greater than 15%. The lot is 23,185 square feet in size and is designated as a Limited Developed Area (LDA). The applicant proposes to raze and remove an existing shed and construct a parking area and an attached addition to the existing single-family home. Total impervious surface onsite is currently 4,240 square feet (18.2%); if the variance is granted, impervious surface will increase by 991 square feet to 5,231 square feet (22.6%). Total forest cover onsite is 15,481 square feet (66.7%); the applicant proposes to remove 948 square feet of forest cover. Total area disturbed onsite will be 2,316 square feet; approximately 736 square feet of steep slope disturbance is proposed.


While we do not oppose the proposed construction of a new addition and driveway onsite, we cannot support the proposed location of the addition and driveway within an area of slopes greater than 15% as currently proposed. Anne Arundel County Zoning Code §17-8-201 states that "development within the Limited Development Area (LDA) or Resource Conservation Area (RCA) may not occur within slopes of 15% or greater unless development will facilitate stabilization of the slope or the disturbance is necessary to allow connection to a public utility." Based on aerial photography, it appears that there are opportunities onsite to further minimize disturbance to steep slopes. In particular, it appears from the site plan that the applicant could reduce the size of the proposed addition and parking area to further minimize steep slope impacts, or the applicant could relocate the addition so that the northernmost side is located in the same footprint as the northernmost side of the existing shed. This office may be able to support a variance that further minimized such steep slope impacts.





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

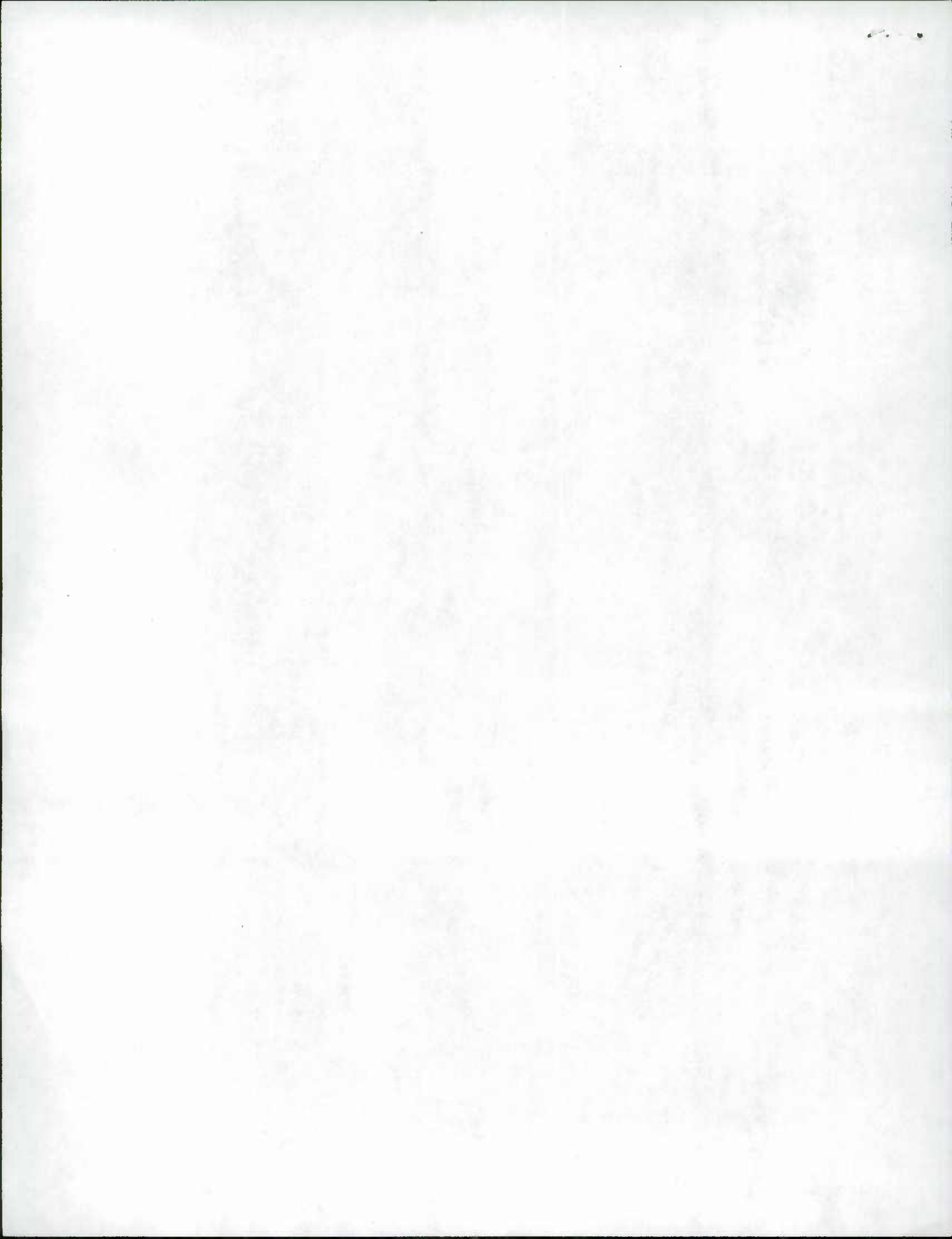
Sincerely,

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

Nick Kelly

Natural Resource Planner

cc: AA 194-08



Martin O'Malley
Governor

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Lt. Governor



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1804 West Street, Suite 100, Annapolis, Maryland 21401
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April 11, 2008

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

Re: 2008-0097-V
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Sincerely,

Nick Kelly

Nick Kelly

Natural Resource Planner

cc: AA 194-08

NK

194-08

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CRITICAL AREA COMMISSION
Chesapeake & Atlantic Coastal Bay

**RE: An Appeal from a Decision of the
Administrative Hearing Officer**

WILLIAM & MARIANNE WOOD

Petitioners

* **BEFORE THE**
*
* **COUNTY BOARD OF APPEALS**
*
* **OF ANNE ARUNDEL COUNTY**
*
* **CASE NO.: BA 39-08V**
* **(2008-0097-V)**
*
* **Hearing Date: September 11, 2008**
*

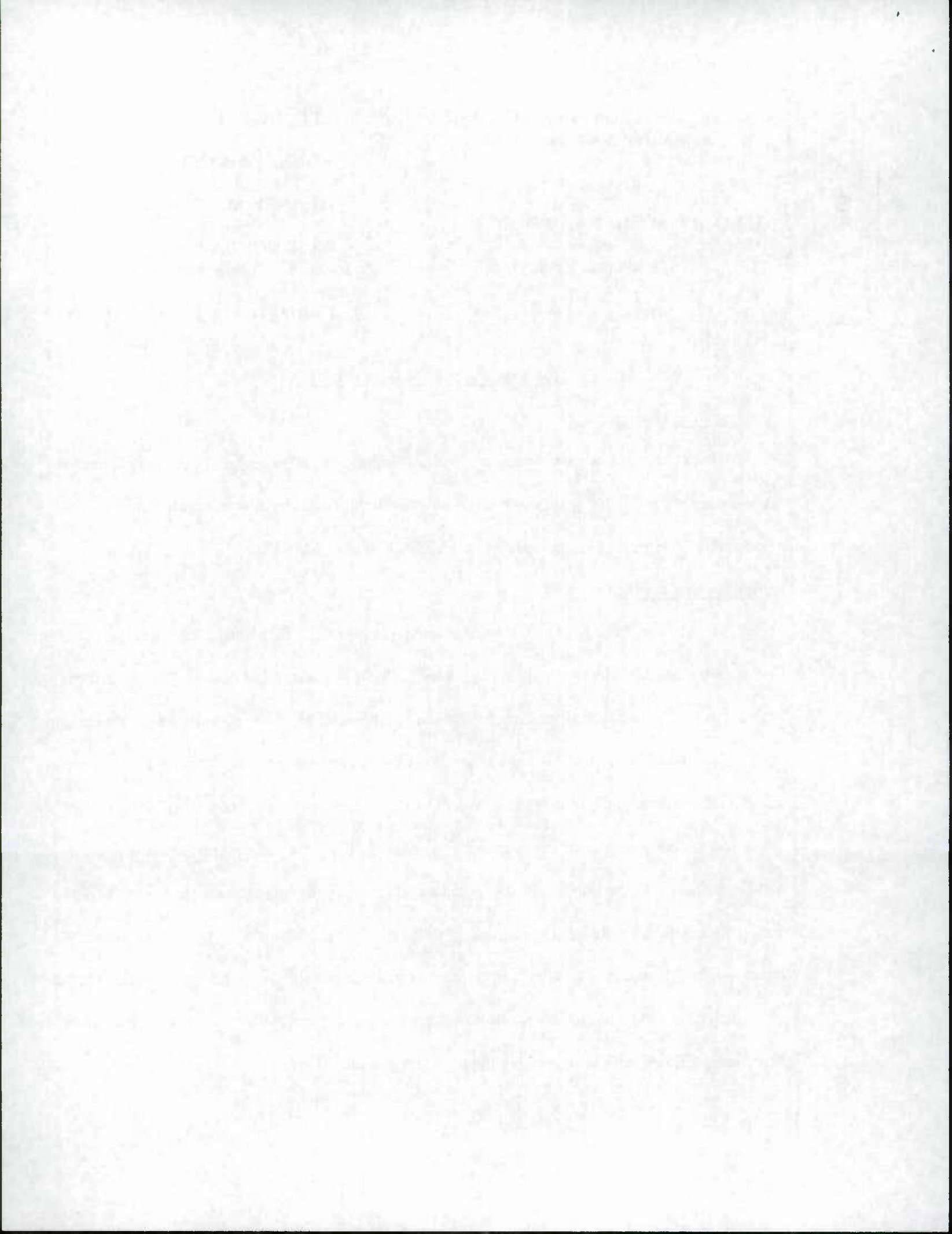
MEMORANDUM OF OPINION

Summary of Pleadings

This is an appeal from a decision of the Administrative Hearing Officer. This appeal is taken from the conditional granting of a variance to allow a dwelling addition with disturbance to slopes of 15% or greater, on property known as 220 Kirkley Road, Annapolis.

Summary of Evidence

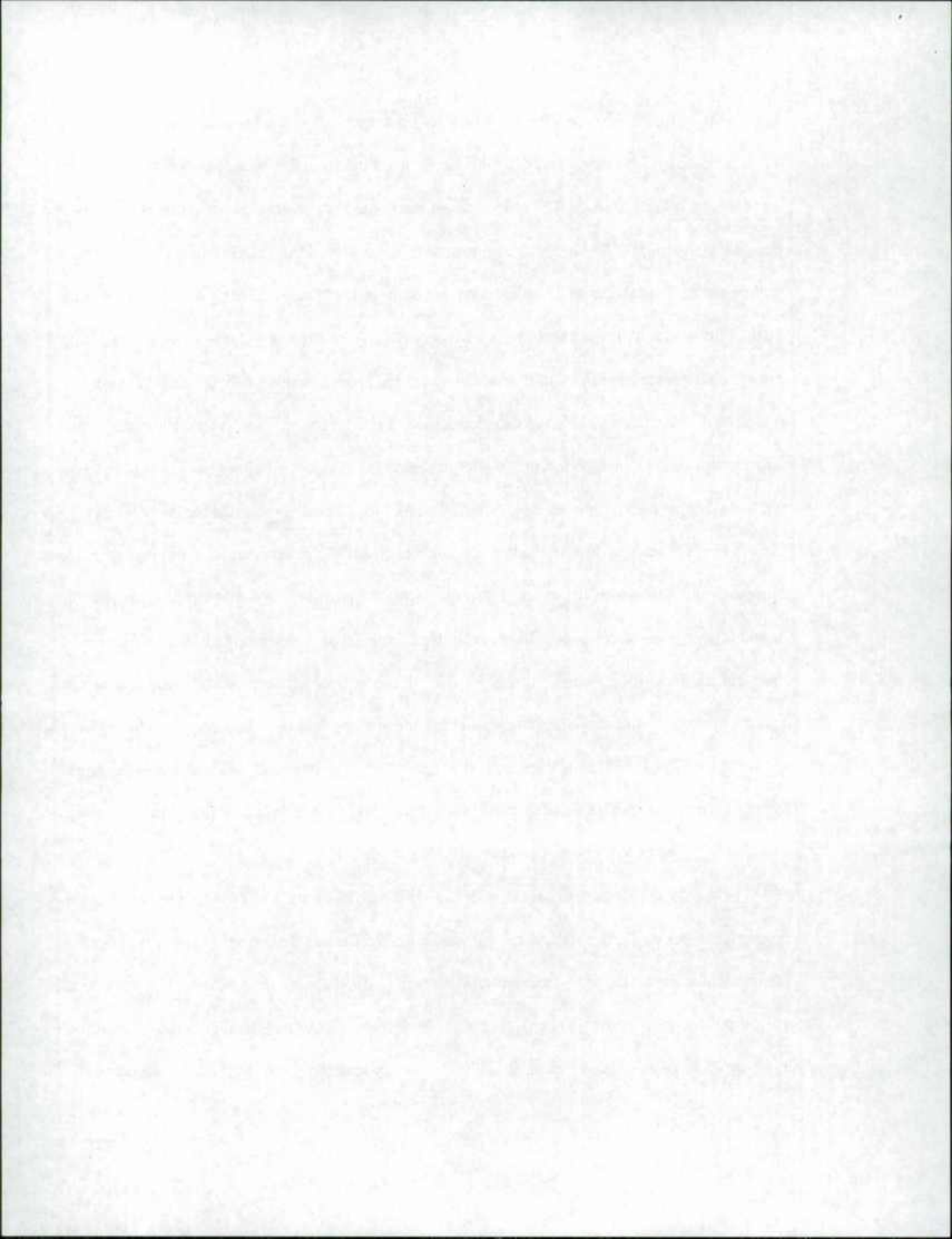
Mr. Michael Drum, a registered professional engineer, testified that he became involved in the proposed redevelopment of this site very early in the addition's design. The property is within the R1-Residential district and is located on the waterfront. A majority of the existing house is located within the 100 foot buffer. The west side of the property is impacted by steep slopes. There are no signs of erosion on the property. Stormwater management will be provided as part of the construction of the addition. Nine hundred forty-eight square feet of vegetation will be removed. Mitigation for the disturbance will be required. Any stormwater run off will be managed on site. The Health Department has approved a new septic system for the property. There will be 720 square feet of new impervious surface following the construction of the home addition. The existing house has no stormwater management for the downspouts. The witness presented the Board with several photographs of the site and driveway.



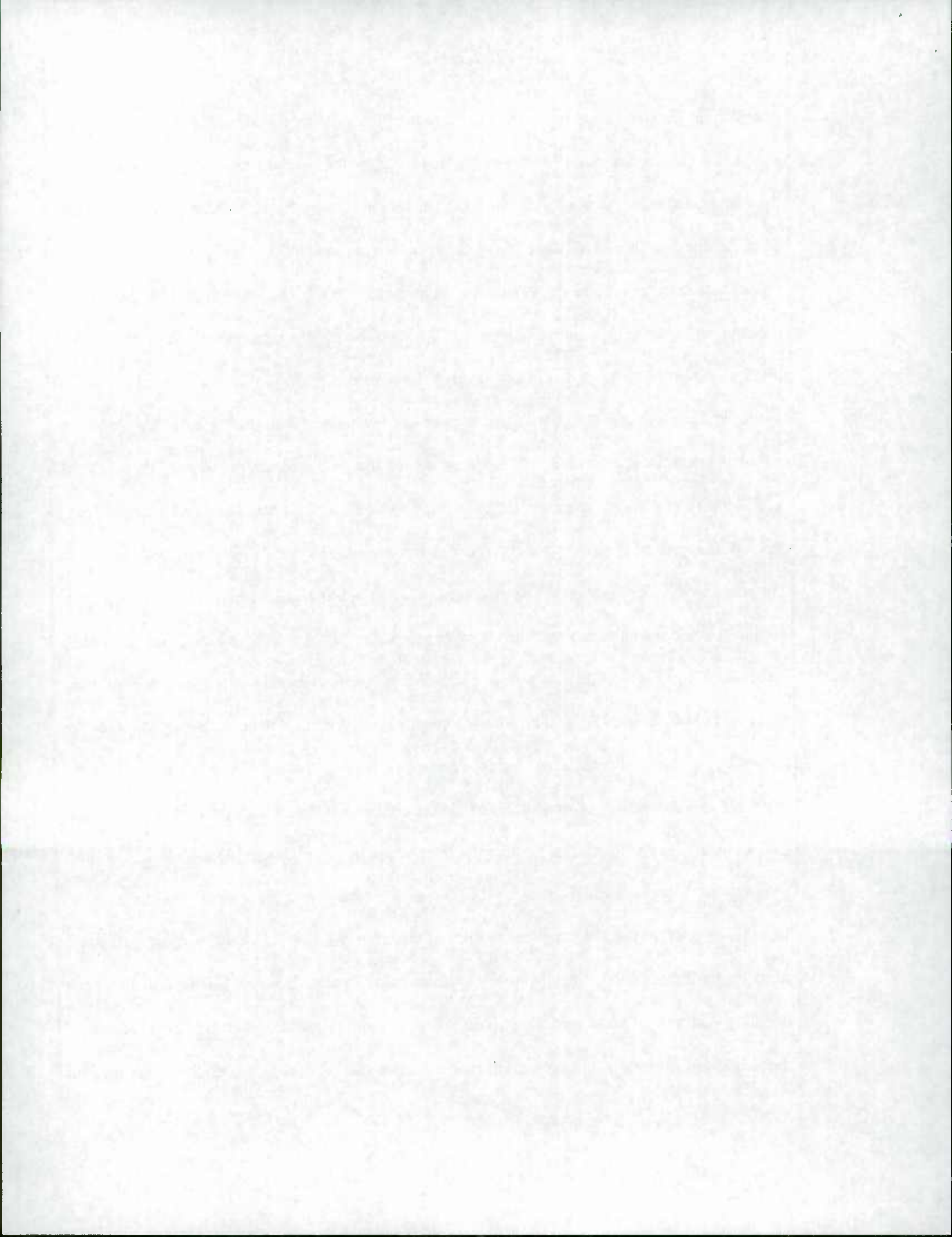
Mr. William Wood testified that he lives on the property with his son, daughter, and wife. The house has no basement. The family needs additional living space, as well as storage for bicycles and other materials. The attic space in their house is constructed with trusses and cannot be used for storage. The family does not plan to have any additional children; therefore, there will be no additional use of the septic system. He described the long, narrow driveway and the difficulties he has with guests parking on his property. There are many trees on the site and some of them have limbs that fall and damage the cars. He and his neighbors had a dispute regarding the pitch of the driveway. Mr. Woods corrected the driveway pitch so that no additional water will flow toward his neighbor's house. He presented the Board with photographs of the area, as well as other garages within the neighborhood similar to the one he proposes for his property.

Mr. Walter Charlton, the adjacent neighbor, testified that his greatest concern with the proposed addition is the drainage of sewage towards his drinking well. The drainage in this neighborhood goes directly towards his well. He is concerned with the age of Mr. Wood's septic tank and the lack of on-going inspections of it. He is not objecting to the new construction as long as the septic tank is appropriately handling the sewage, and there are adequate inspections. On questioning, Mr. Charlton explained that his well is approximately 80 feet from the septic system at issue. His well is a drilled well. The original well was installed in 1962 and stormwater infiltrated it. The pipe was changed approximately 2 years ago.

Ms. Patricia Cotter, a planner with the Office of Planning and Zoning testified that the property comprises 23,086 square feet within the R1-Residential district. This is a waterfront lot that is located in the Critical Area and classified as Limited Development Area. The applicants are proposing to remove a 12x15 foot shed and construct a two-story addition, measuring approximately 24x27 feet, in the area of the previously existing shed. Both the addition and the



driveway to the garage are proposed for the rear of the existing dwelling and will disturb steep slopes. The Code, Section 17-8-203 states that development in the Limited Development Area may not occur within slopes of 15% or greater unless the development will facilitate stabilization of the slopes or the disturbance is necessary to allow connection to a public utility. These variances are requested to construct the addition and install the driveway. The property is nonconforming as to minimum lot size (40,000 square feet) and is a somewhat irregularly shaped lot. It is improved with a two story dwelling, waterfront deck, a pier and a shed, which is proposed for removal. The rear of the property is wooded and impacted by steep slopes. A minimal amount of vegetation will be removed for the proposed development. The two story addition will contain a garage on the first floor and a children's bedroom area on the second floor. The applicant is also proposing a small entry area on the rear of the dwelling, which does not require variance approval. The site currently has 4,240 square feet of lot coverage. The applicant is proposing to increase the lot coverage to 5,120 square feet. The maximum allowable impervious coverage on this lot is 5,445 square feet. Approximately 736 square feet of steep slopes would be disturbed by the proposed construction. Ms. Cotter believes that the variance requested represents the minimum variance necessary to afford relief. The location proposed for the driveway and the two story addition would create the least disturbance to steep slopes on site. The Critical Area Commission reviewed the application and did not support it. The subject property is a legal, buildable lot. Ms. Cotter believes that the physical constraints and topography prevent the strict implementation of the County's Critical Area Program and would result in an unwarranted hardship to the applicant if the variance requested were denied. The dwelling with the proposed addition would be comparable in size to other dwellings located in the neighborhood and would provide for a reasonable and significant use of the property. The

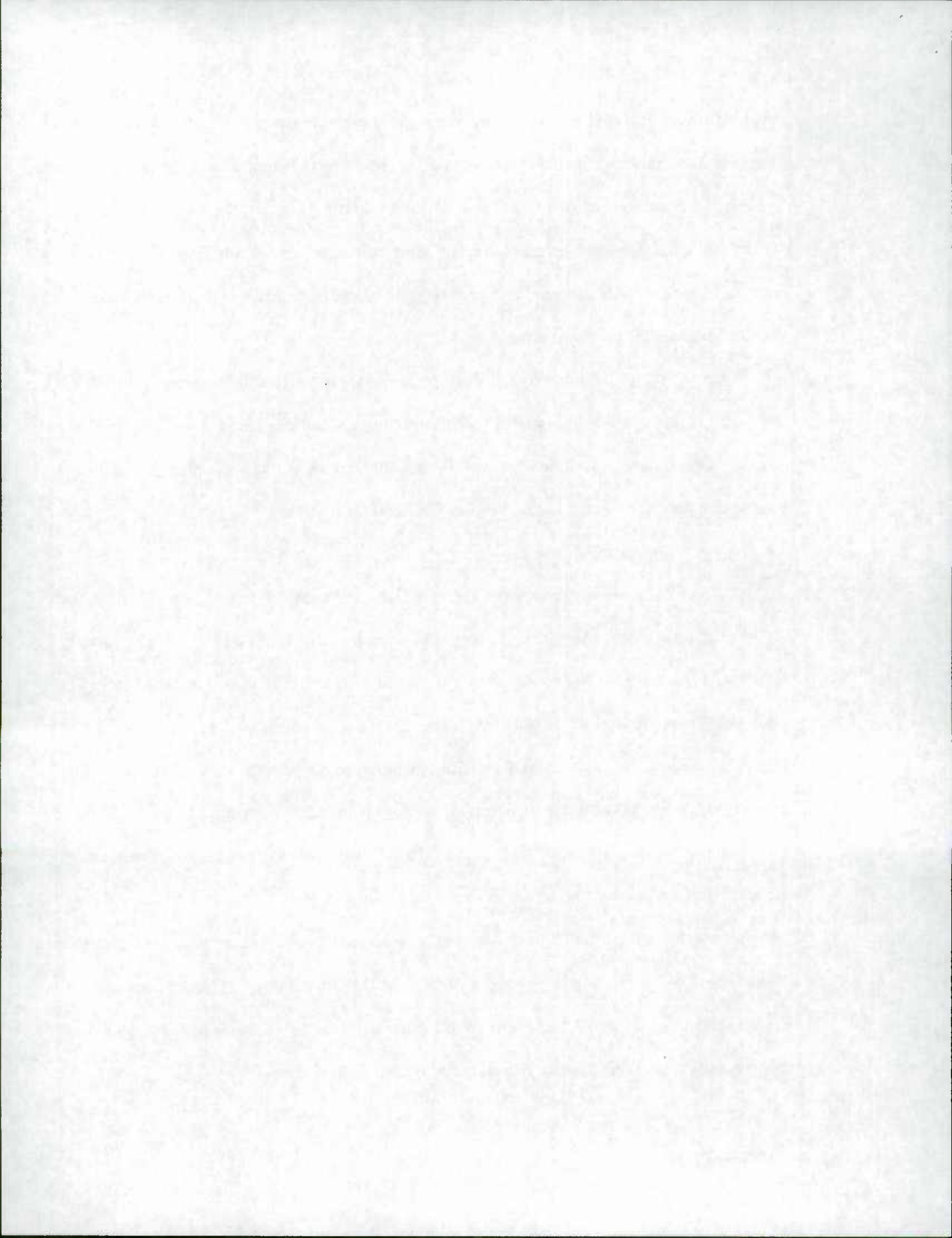


dwelling was constructed in 1964, many years prior to the implementation of the Critical Area Program. The applicant's ability to further improve the property is limited and constricted by the pre-existing conditions of this site. There are other dwellings within the community that are within the buffer and have been constructed on or near steep slopes. Stormwater management will be provided and sediment and erosion control measurements will be undertaken, as required, through the building permit process.

Mr. Wood testified on rebuttal that Mr. Peters from the Health Department visited the site. He lifted the lid on the sand filter of the septic system and found that the system was working appropriately. Mr. Peters was instrumental in working out an agreement that limits the total square footage of the house to no more than 2,850 square feet.

Findings and Conclusions

The subject property comprises approximately 23,086 square feet of property within the R1-Residential district. As such it is nonconforming because the minimum lot size for R1-Residential District is 40,000 square feet. The lot itself is irregularly shaped and the Petitioners already enjoy improvements of waterfront deck, shed and principal dwelling. It is within the Chesapeake Bay Critical Area and classified as Limited Development Area (LDA). The property is a non-waterfront lot. The rear portion of the property is consumed by steep slopes. The applicant wishes to remove a 12 foot by 15 foot shed to construct a two story addition measuring approximately 24 feet by 27 feet. The proposed addition would be located in the steep slopes, but out of the Critical Area buffer area. The Anne Arundel County Code (the "Code"), §17-8-201 states that development in the LDA on slopes of 15% or greater is not permitted, unless the development will facilitate the stabilization of the slope. The applicant requests variances to construct the two story addition on steep slopes.

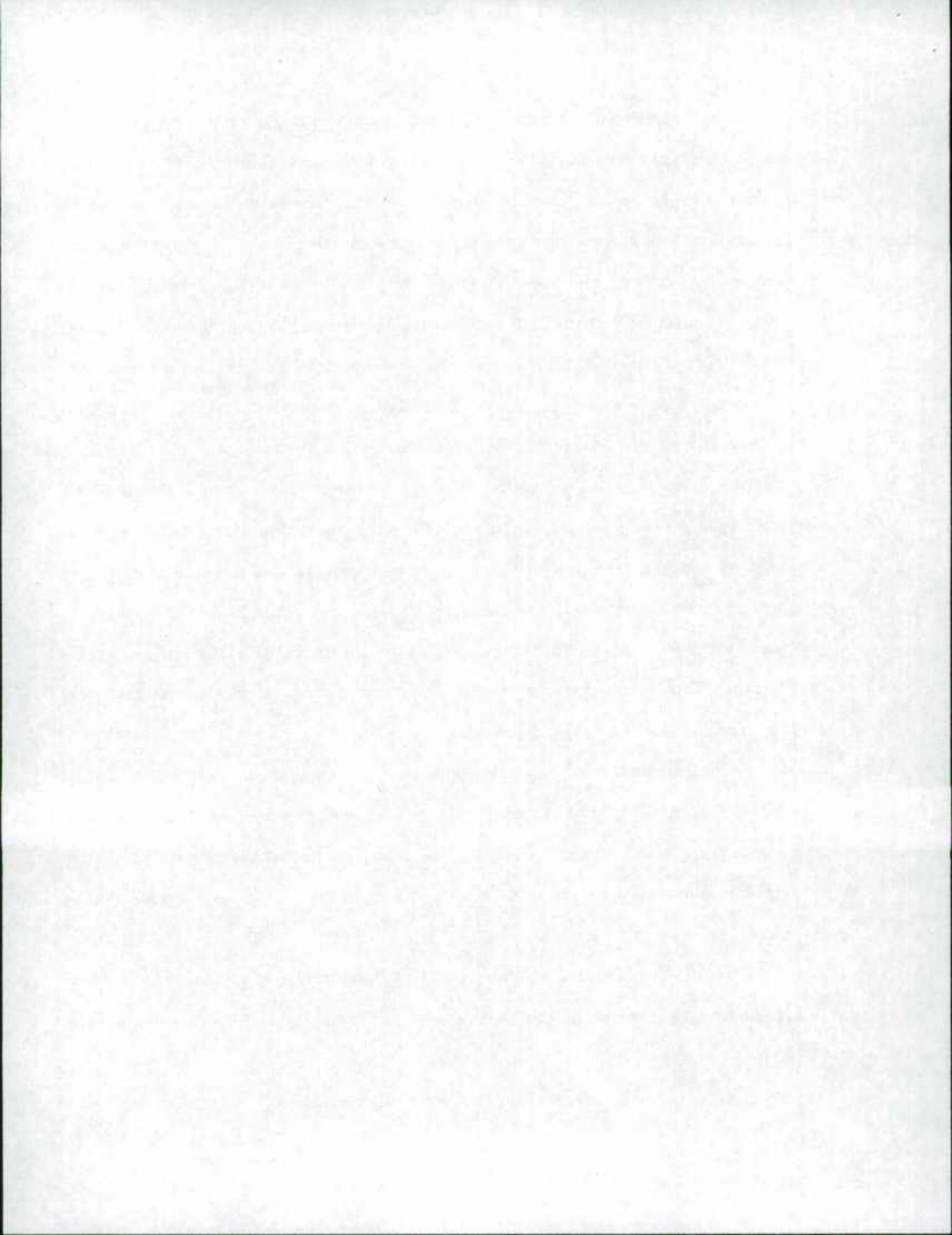


Development within the Chesapeake Bay Critical Area¹, being that area within 1,000 feet of the Chesapeake Bay and its tributaries, has been the subject of much legislative effort and protection by the General Assembly. Despite several court decisions that sought to lessen the power of the Critical Area Regulations, the General Assembly responded directly to these court decisions and in each case has subsequently strengthened them. The current Critical Area variance criteria are very strict. The statute requires the Board to presume that the requested development activity does not conform to the general purpose and intent of the Critical Area Program. See, Maryland Annotated Code, Natural Resources Article, §8-1808(d)(2)(i). Additionally, “unwarranted hardship” is defined as “without a variance, an applicant would be denied a reasonable and significant use of the entire parcel or lot for which the variance is requested”. Emphasis added. To qualify for a variance to the Critical Area criteria, an applicant must meet each and every one of the variance provisions. *See, id.*, §8-1808(d)(4)(ii). An applicant must also prove that if the variance were denied, the applicant would be deprived of a use or structure permitted to others in accordance with the Critical Area Program. *See, id.*, §8-1808(d)(4)(iii). Given these provisions of the State criteria for the grant of a variance, the burden on an applicant seeking a variance is very high.

The State statute requires that local jurisdictions adopt a program to protect the Critical Area. Anne Arundel County’s local Critical Area variance program contains many separate criteria. (See, Code, Article 3-1-207). Each of these individual criteria must be met. If the applicant fails to meet just one of these criteria (as applicable), the variance is required to be denied.

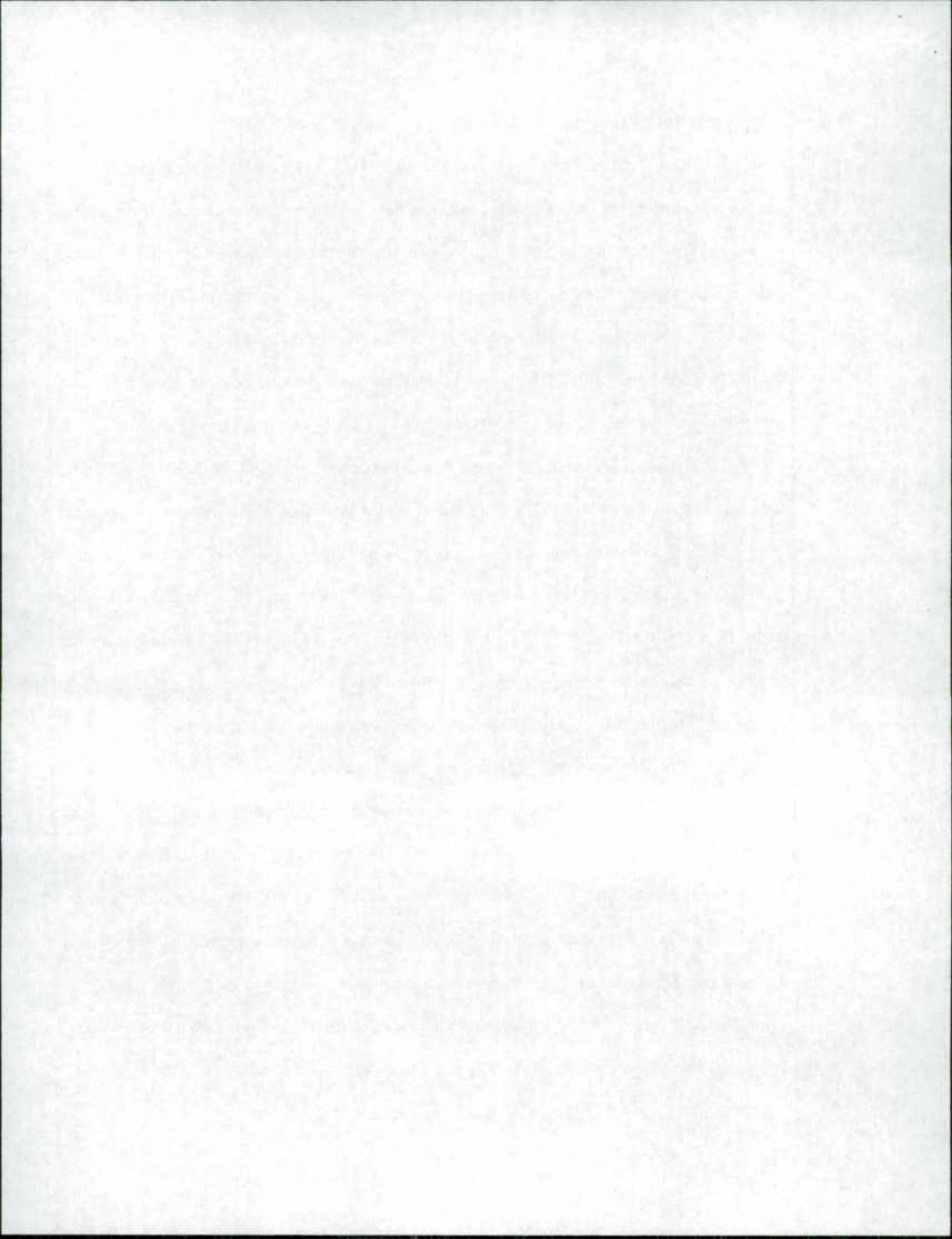
The first requires that the Petitioners show that “because of certain unique physical conditions, such as exceptional topographical conditions peculiar to and inherent in the particular

¹ See, Maryland Annotated Code, Natural Resources Article, Section 8-1808.



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." *Id.*, §3-1-207(b)(1). The lot is not as large as its designation, however, the steep slopes consume a good portion of the property. There are also non-tidal wetlands on site and the required buffers thereto further impact the available area for development. These physical characteristics eliminate the development potential of the site without some variance to the Code criteria. *See, id.*, §3-1-207(b)(1). Therefore, we find that the property has unique physical conditions that would cause the Petitioners to suffer an unwarranted hardship if the Code is strictly applied.

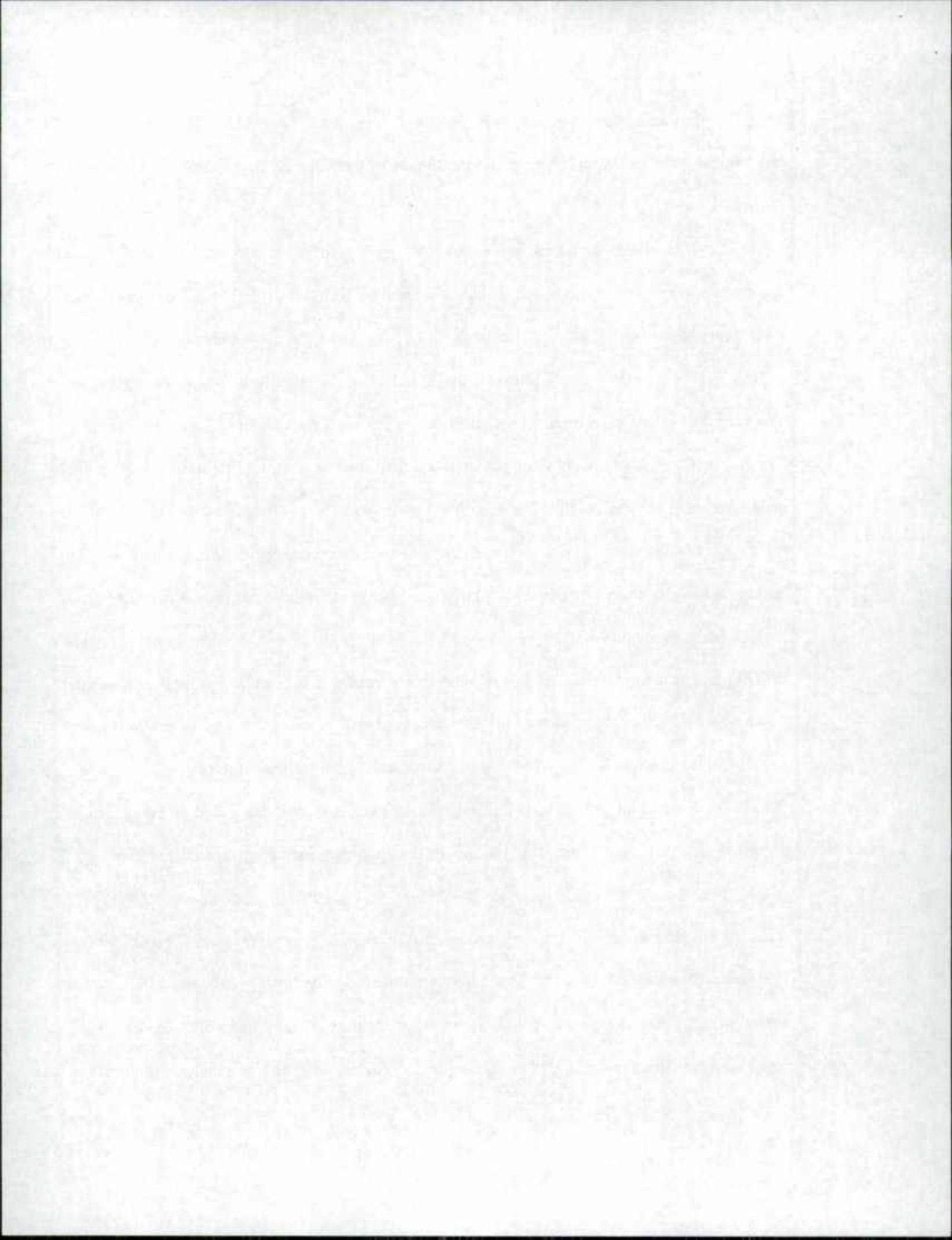
The Petitioners next must show that "[a] literal interpretation of COMAR, 27.01, Criteria for Local Critical Area Program Development or the County's Critical Area program and related ordinances will deprive the applicant of rights commonly enjoyed by other properties in similar areas as permitted in accordance with the provisions of the Critical Area program within the Critical Area of the County." *Id.*, 3-1-207(b)(2)(i). The community is developed; there are homes of various sizes throughout the community. The Petitioners' proposed addition will be two stories, the first floor a garage while the second story will be a children's room. Ultimately, the addition will also serve as a retaining wall for the steep slopes. The addition will add lot coverage, but will not exceed the permissible amount for a lot of this size. The addition, as planned, will resemble other additions and structures within the neighborhood. If the addition cannot be constructed on a parcel because the lot is impacted by the restrictions of the Critical Area Program (as is the case here), then the denial of a variance to permit the same would deprive these Petitioners of rights enjoyed by other property owners in the Critical Area. The Critical Area Program permits variances to allow a reasonable and significant use of property. The denial by us of the ability of this Petitioner to construct the proposed, reasonable addition



would result in an unwarranted hardship upon the Woods. Thus, we find that strict application of the Critical Area law would deprive the Petitioners of the same rights enjoyed by others in the Critical Area.

Next, the Petitioners must prove that “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 . . .” *Id.*, § 3-1-207(b)(3). As we previously addressed, the surrounding community is completely developed. The variances would permit the lot owner to remove its shed and construct a two story addition. The requested variances would not confer any special privilege on the Petitioners beyond that enjoyed throughout this neighborhood and throughout waterfront parcels in the LDA. Since the lot is entirely comprised of steep slopes, there is no special privilege granted in the permission to build a minimally sized residence. The failure to grant a variance to permit the construction of such an addition would result in an unwarranted hardship. The property owner needs a variance to build any structure. They are not requesting a variance to request an addition to a palatial “dream house.” The house with addition as proposed will be comparable to others in the area and the 736 square foot intrusion to steep slopes minimizes the permanent intrusion on this site.

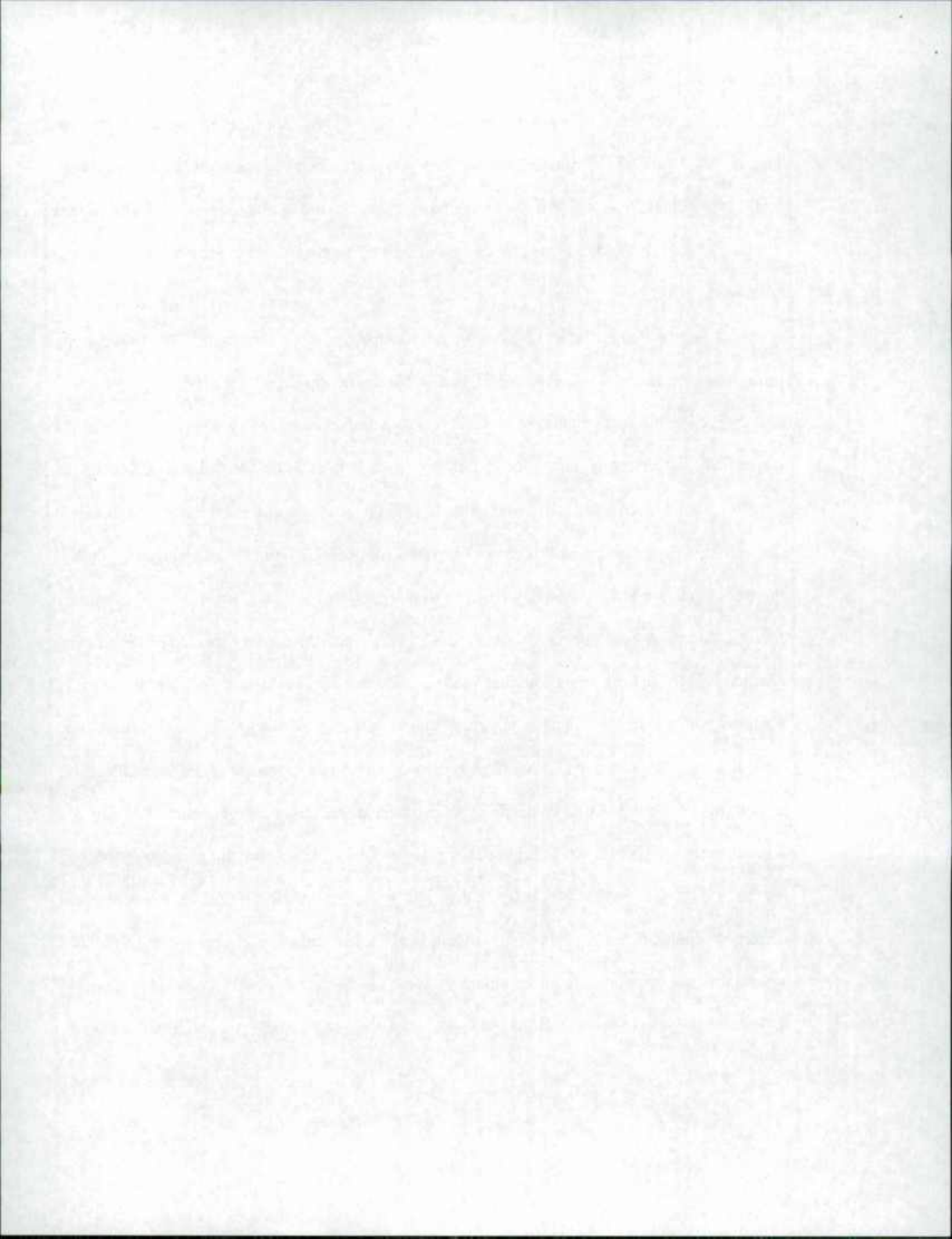
The Petitioners must establish that “[t]he variance request is not based on conditions or circumstances that are the result of actions by the applicant, including the commencement of development before an application for a variance was filed, and does not arise from any condition relating to land or building use on any neighboring property.” *Id.*, §3-1-207(b)(4). The variance request is based on the conditions on the property (steep slopes and location near water) that made development of the lot in accordance with the Code impossible. The Protestant raised concerns that the Petitioner’s proposed improvements will affect his aging septic system.



This fear is accentuated by his opinion that stormwater within the neighborhood drains through his lot. The County has inspected this property and determined that the septic system functions well. Accordingly, his concerns are mitigated and we find that the Petitioners' variance request did not arise from conditions or circumstances on neighboring property or on the Petitioners' land itself.

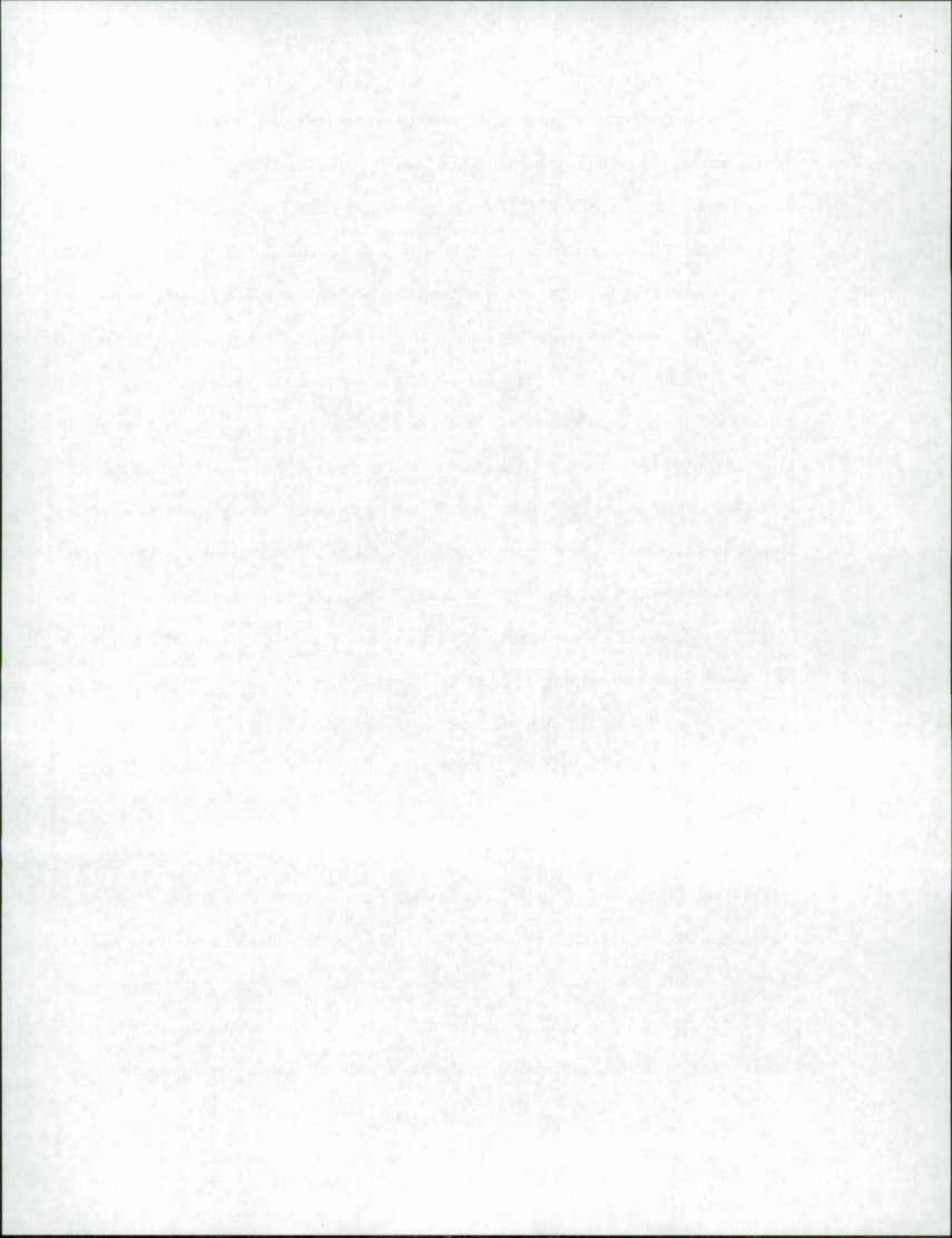
Since the Petitioners and County do not identify the subject location as in or near a bog protection area, Sections 3-1-207(b)(2)(ii) and (b)(6) do not apply.

The Petitioners must also show that "[t]he granting of a variance 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 or Bog Protection Program." *Id.*, § 3-1-207(b)(5). As stated previously, the Bog Protection Program is not applicable to this site. Our review of the County's testimony revealed that there would be no adverse impact on the Critical Area ecosystems. The Petitioners' addition will impact the lot an additional 880± square feet. This proposed addition, however, is well placed on the site plan to minimize the disturbance to steep slopes. In turn, this consideration will minimize the chance of any impact during development of the site. Of course, Anne Arundel County has a comprehensive program of construction regulations that provide protection for the Critical Area during development. The Critical Area Program does not act to bar all use of the Critical Area, but rather limits uses within the buffer to those that are reasonable and significant. This addition would have a 736 square foot footprint and would be comparable to other homes in the community. We find that the Petitioners' reasonable proposal is "in harmony with the general spirit and intent of the County's Critical Area program".



Next, the Petitioner must establish that “by competent and substantial evidence has overcome the presumption contained in the Natural Resources Article, §8-1808(d)(2), of the State Code.” *Id.*, §3-1-207(b)(7). Under Section 8-1808(d)(2) of the Natural Resources Art., it is presumed “that the specific development activity in the Critical Area that is subject to the application and for which a variance is required does not conform with the general purpose and intent of this subtitle, regulations adopted under this subtitle, and the requirements of the local jurisdiction's program.” Md. Code Ann., Natural Resources Art., §8-1808(d)(2)(i). As we previously addressed, there would not be any adverse impact on the Critical Area ecosystems from the grant of the requested variances. An addition to a home is a permitted use on a grandfathered lot within the Critical Area. Without a variance, this property owner would be denied reasonable use of the property. The site plan was revised to ensure that the development would impact the Critical Area as little as possible. The structure has been located as far to the west and away from the water as possible. The structure would meet the setback requirements and avoid impacts to existing, adjacent land uses. A denial of a variance to permit the construction of this modest structure would result in an unwarranted hardship upon them. Therefore, we find that the Petitioners have overcome the presumption of the Natural Resources Article.

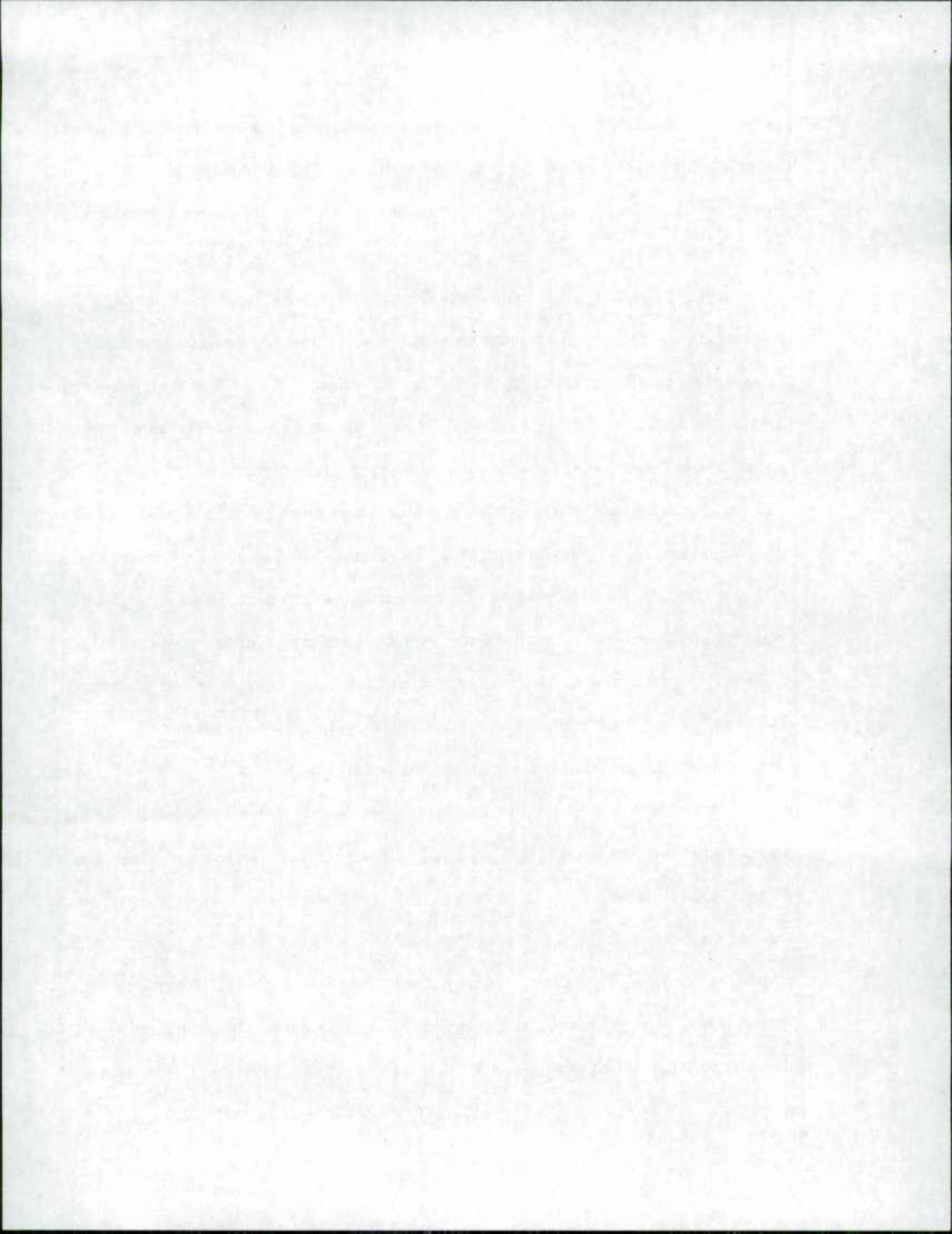
The Petitioners also must show that “the variance is the minimum variance necessary to afford relief.” Code, §3-1-207(c)(1). The Petitioners are requesting a variance to disturb steep slopes. Unlike setback variances, a variance to disturb steep slopes is an all or nothing proposition. Either the applicant obtains permission to disturb them or not. Since the rear of this parcel is consumed by steep slopes, the property cannot be put to reasonable use without a variance to disturb the slopes. However, the Board will limit the scale of the variance to as



shown on the Petitioners' site plan. The footprint is reasonable and the driveway length has been reduced to minimize the disturbance to the Critical Area and eliminate parking issues on adjacent properties. Accordingly, we find that the requested variances are the minimum necessary, as limited by the site plan.

The Petitioners next must show that "the granting of the variance will not alter the essential character of the neighborhood or district in which the lot is located [or] substantially impair the appropriate use or development of adjacent property." *Id.*, §3-1-207(c)(2)(i) and (ii). The proposed addition and resulting home will be consistent with other homes in the area in regard to size. As such, the new home will not alter the essential character of the neighborhood. The character of the community is a typical, attractive, water privileged neighborhood within the scenic riverside. While neighbors don't want this property to be developed, the grant of the requested variance would not impair the appropriate use or development of neighboring property. We understand the concern of the community members, but the house will be set back adequately from the property lines and the retaining wall, will minimize site disturbance. Therefore, we find that granting the requested variances will not have any adverse effect on the character of the neighborhood or impair the use of adjacent property.

Next, we consider whether the Petitioners adequately showed that "the granting of the variance will not reduce forest cover in the limited development and resource conservation areas of the Critical Area" and "will not be contrary to acceptable clearing and replanting practices required for development in the Critical Area." *Id.*, §3-1-207(c)(2)(iii) and (c)(2)(iv). This property is composed of woodlands and steep slopes. Such woodlands will be impacted when the site is developed. The impact to the vegetation during construction cannot be avoided, but the implementation of best management practices, as required by our Code, will not be contrary



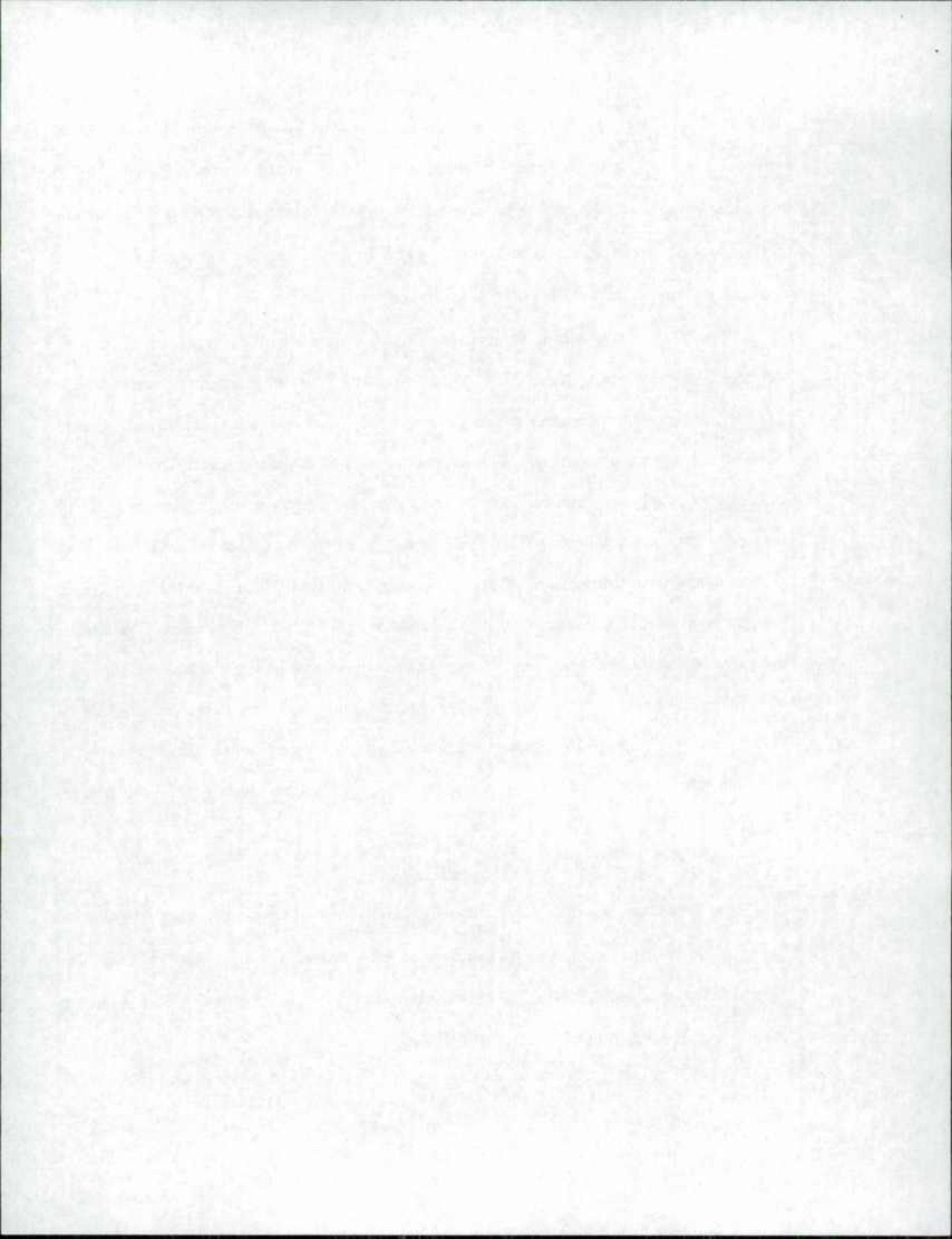
to acceptable clearing practices. Without mitigation, however, the variances would reduce forest cover and not provide for sufficient replanting in the Critical Area. The reforestation (through mitigation) would increase the forest cover in the Critical Area. Mitigation is an acceptable practice for development within the Critical Area. Thus, we find that granting the requested variance (as conditioned) would not reduce forest cover.

Lastly, the Petitioners must also show that “the granting of the variance will not be detrimental to the public welfare.” *Id.*, § 3-1-207(c)(2)(v). The Petitioners simply would like to add to their property to accommodate a growing family. They have taken numerous steps to ensure that the development would have the least impact on the Critical Area. The footprint of the addition complies with lot coverage requirements and modern stormwater management will be used to minimize any likely effect on neighboring property. We do not believe that allowing the Petitioners to construct a house will be detrimental to the public. This Board has heard other requests for variances on this property, but has refused to grant relief in those cases. However, in this case, we find that the Petitioners have proven compliance with each of the variance criteria.

The Petitioners in the subject appeal have satisfied this Board that all the variance criteria have been met. Although the property is impacted significantly by environmental constraints, the applicants propose a reasonable use here and meet the spirit and intent of the Critical Area Program.

ORDER

For the reasons set forth in the foregoing Memorandum of Opinion, it is this 8th day of JAN., 2009, by the County Board of Appeals of Anne Arundel County, ORDERED, that the Petitioners’ request for a variance to disturb steep slopes for the construction of a dwelling addition and related facilities is hereby **GRANTED**.



Any appeal from this decision must be in accordance with the provisions of Section 604 of the Charter of Anne Arundel County, Maryland.

If this case is not appealed, exhibits must be claimed within 90 days of the date of this Order; otherwise, they will be discarded.

Any notice to this Board required under the Maryland Rules shall be addressed as follows: Anne Arundel County Board of Appeals, Arundel Center, P.O. Box 2700, Annapolis, Maryland 21404, ATTN: Mary M. Leavell, Clerk.

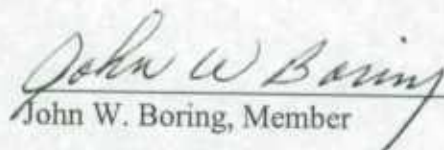
COUNTY BOARD OF APPEALS
OF ANNE ARUNDEL COUNTY




William C. Knight, III, Chairman



Arnold W. McKechnie, Vice Chairman



John W. Boring, Member

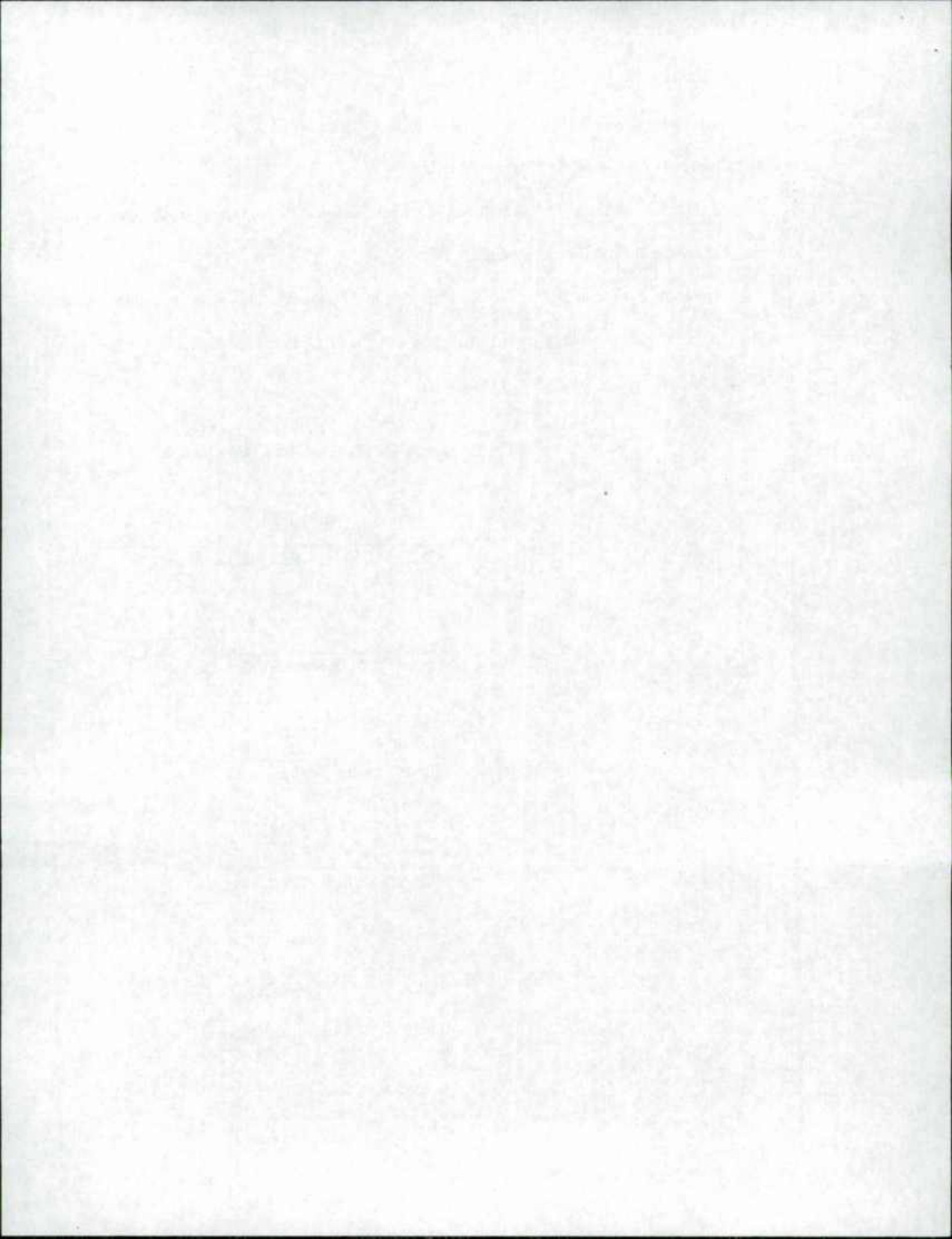


William Moulden, Member



Andrew C. Pruski, Member

(Carroll P. Hicks, Jr., Member, and James E. Rzepkowski, Member, did not participate in this appeal.)



NK

194-08

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 2008-0097-V

WILLIAM AND MARIANNE WOOD

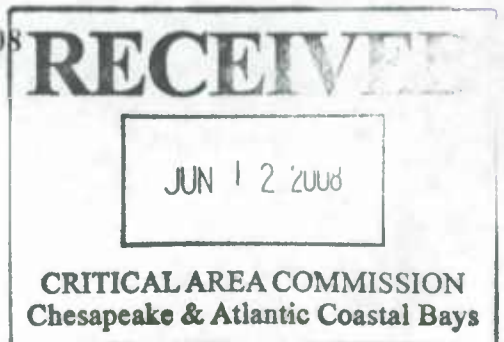
SECOND ASSESSMENT DISTRICT

DATE HEARD: MAY 13, 2008

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

PLANNER: **PATRICIA A. COTTER**

DATE FILED: JUNE 11th, 2008



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CRITTOGARA S. P. A. - MILANO
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PLEADINGS

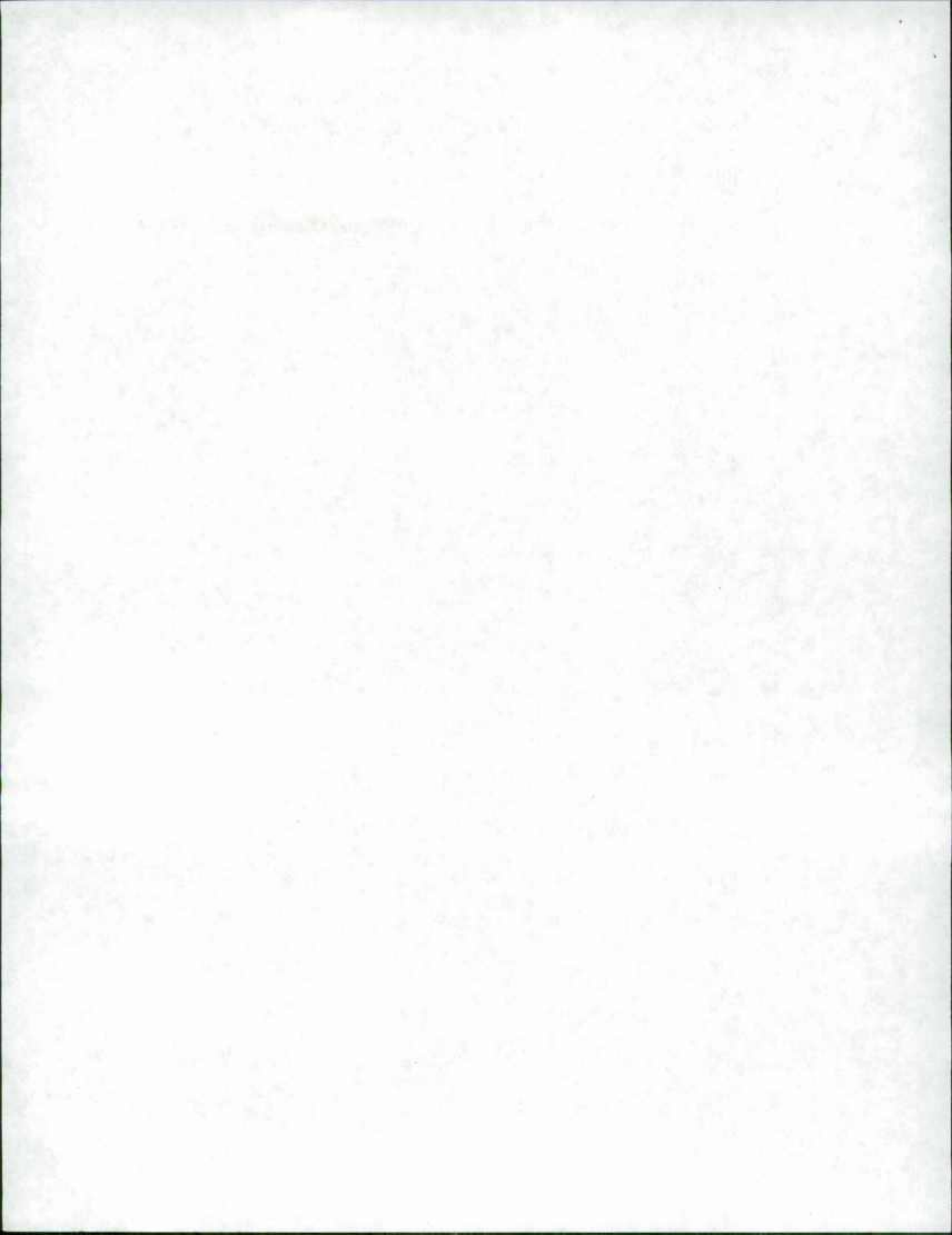
William and Marianne Wood, the applicants, seek a variance (2008-0097-V) to allow a dwelling addition with disturbance to slopes of 15 percent or greater on property located along the southwest side of Kirkley Road, southeast of Fitzgerald Drive, Annapolis.

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. Mr. Wood testified that the property was posted for more than 14 days prior to the hearing. I find and conclude that there has been compliance with the notice requirements.

FINDINGS AND CONCLUSIONS

The applicants own a single-family residence with a street address of 220 Kirkley Road, Annapolis. The property comprises 23,086 square feet and is zoned R1 residential with a Chesapeake Bay Critical Area designation as Limited Development Area (LDA). This waterfront lot on Weems Creek is mapped as a buffer modification area. The request is to remove a detached shed in the rear yard (street side), followed by the construction of a two-story dwelling addition

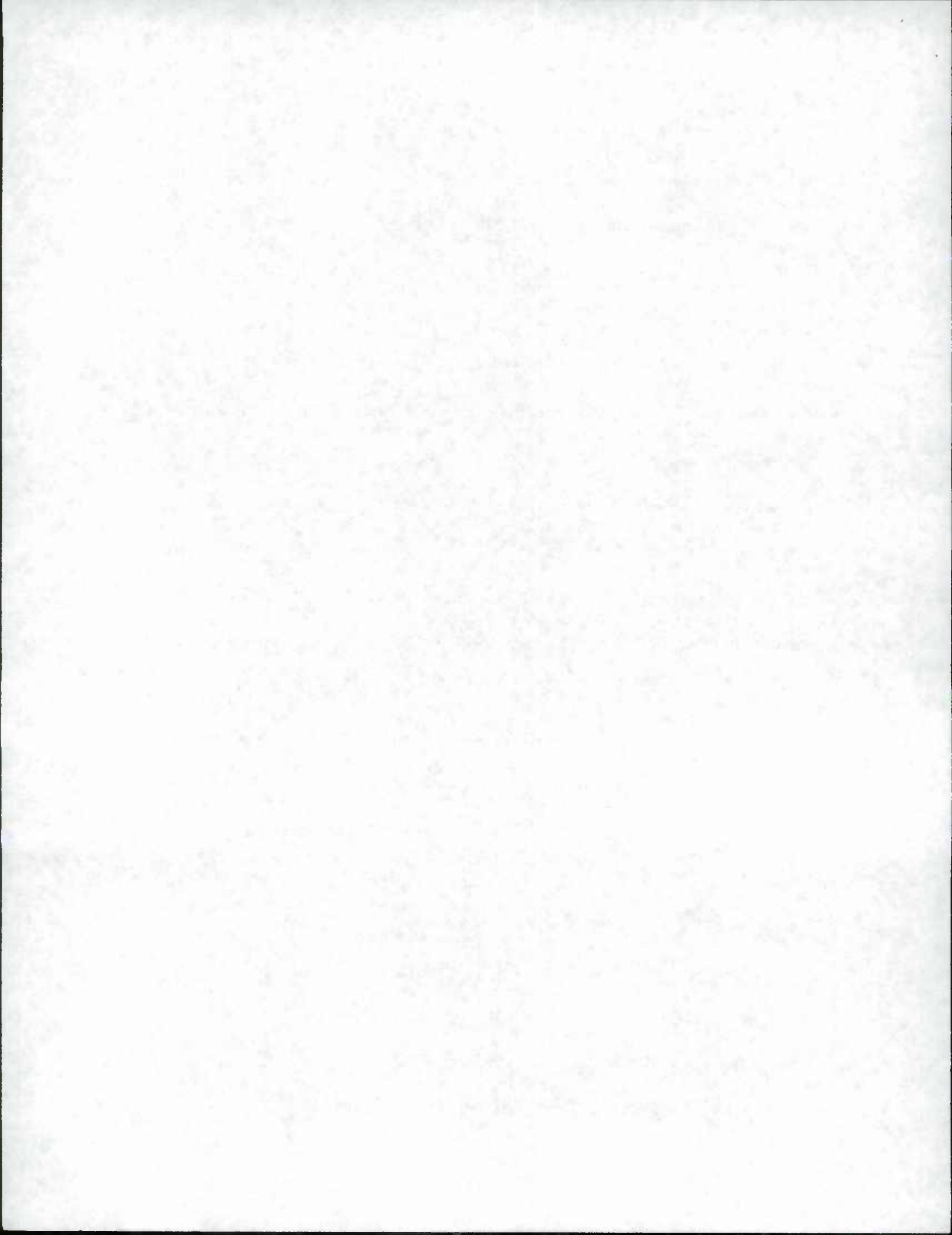


(24 by 27 feet). The addition is a garage with bedrooms above. The project disturbs steep slopes.

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

Patricia A. Cotter, a planner with the Office of Planning and Zoning, testified that the property is irregularly configured and below the minimum area for the district. The rear portion of the lot is wooded and steeply sloped. A limited amount of vegetation would be removed for the construction, including the extension of a driveway from a shared private right-of-way serving the dwelling. The addition continues the building line of the existing dwelling. There is a net increase in impervious coverage, from 4,240 square feet to 5,231 square feet; the allowance is 5,445 square feet. The slope disturbance comprises 736 square feet. The witness summarized the agency comments. The County's Critical Area Review Team did not oppose the request; however, the Chesapeake Bay Critical Area Commission suggested opportunities to minimize the slope disturbance by reducing or relocating the improvements. By way of ultimate conclusion, Ms. Cotter supported the request.

Michael Drum, the applicants' engineering consultant, testified that the property was platted in 1964. Access is across a driveway 400 feet long terminating in a turnaround. The dwelling is wholly in the 100-foot buffer to tidal waters. The older dwelling does not have a basement. The slope disturbance and



Septic
pre-treatment
is not sum

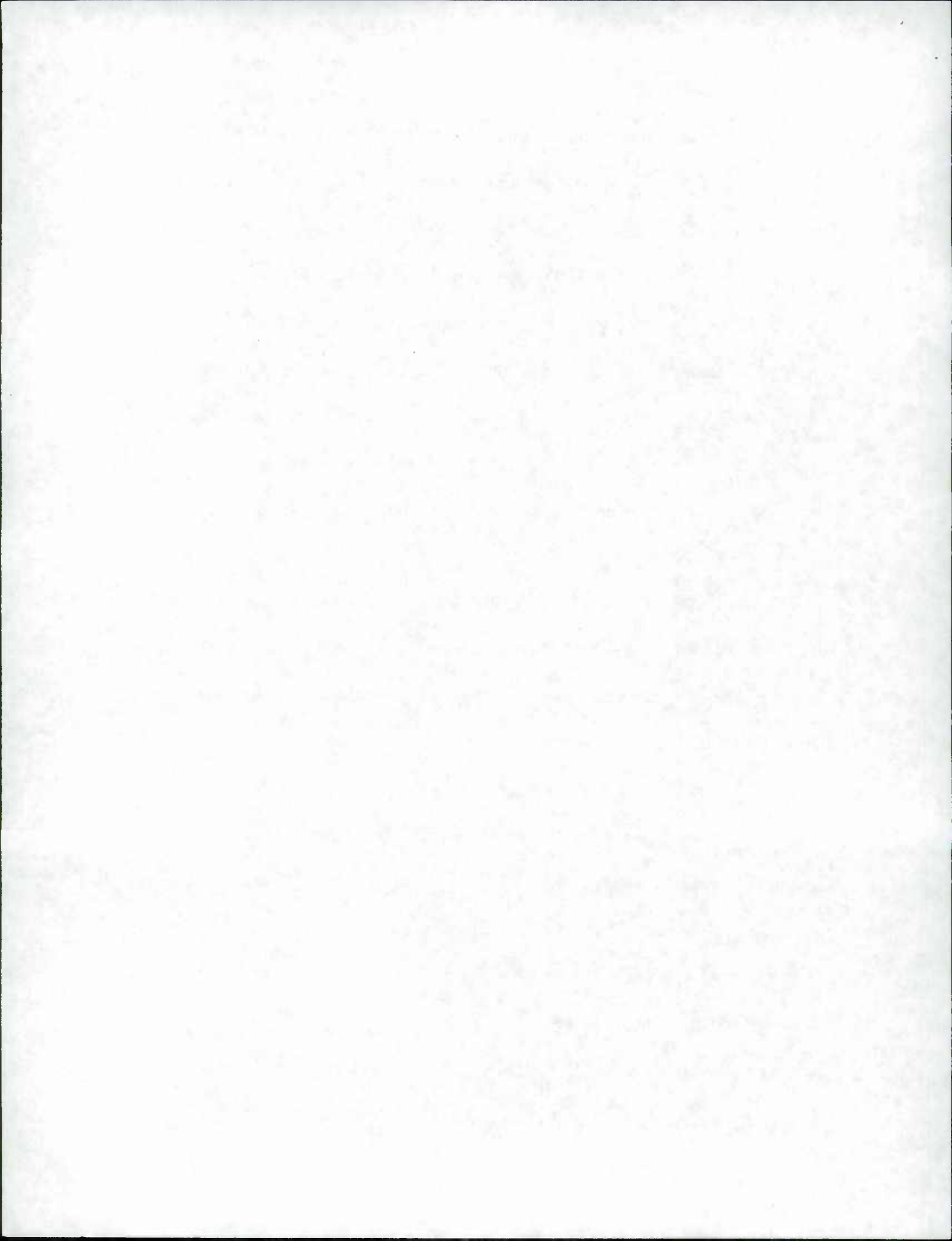
site impacts have been minimized. In this regard, the garage would be cut into the hill and the project includes stormwater management.¹ The witness disagreed with the suggestion by the Commission. In this regard, the right-of-way and the "T" turnaround cannot be blocked. The applicants are proposing a logical and reasonable expansion to the dwelling in combination with covered and at-grade parking. In sum, Mr. Drum believes that the variance standards are satisfied.

Mr. Wood testified that the applicants purchased the property in 1998 and require additional living space for their two children as well as storage space. The location of the construction is dictated by the location of the two-story portion of the dwelling. The dwelling would remain one of the smallest in the neighborhood.

Walter Charlton, who resides on the adjacent property to the south, which shares the right-of-way, opposed the application. Among other objections, the septic system is up slope from the right-of-way, the stormwater management is inadequate and the applicants already enjoy sufficient parking.

I visited the site and the neighborhood. The steep, shared driveway terminates in an extensive graveled area between and overlapping the applicants' property and Mr. Charleston's property. The parking is not well defined. After I parked along the edge of the gravel closest to the applicants' lot, a UPS truck had difficulty accessing the property for a delivery. Similarly, my departure after the truck left required a series of turning movements. The applicants' dwelling is a comparatively compact split-level. The existing shed is set on a stable, vegetated

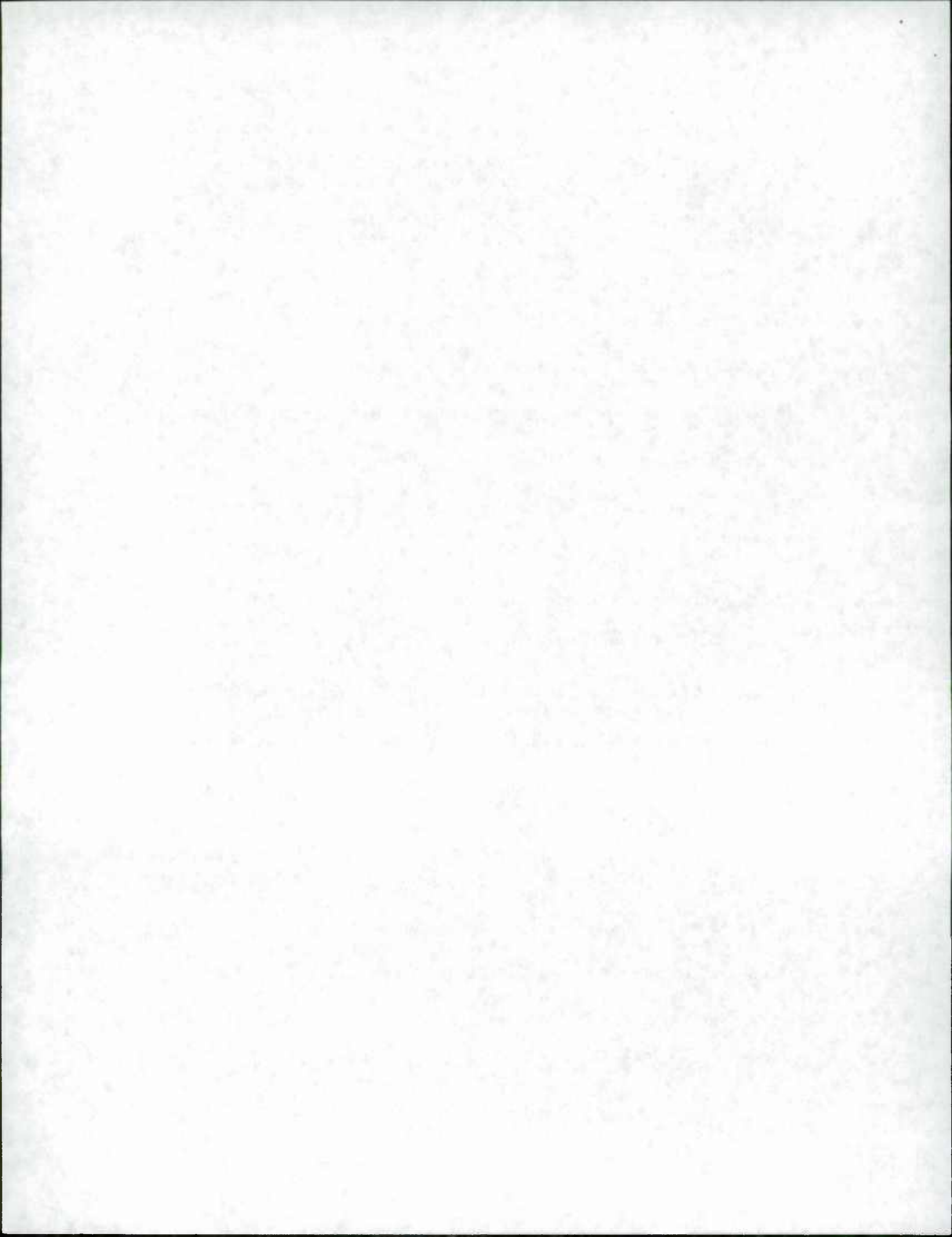
¹ The applicants have recently added pretreatment to the septic system.



slope. The waterside of the dwelling is planted in a level lawn with no obvious runoff. The neighborhood is a mixture of house styles and sizes.

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 relief from the code. For this Critical Area property, due

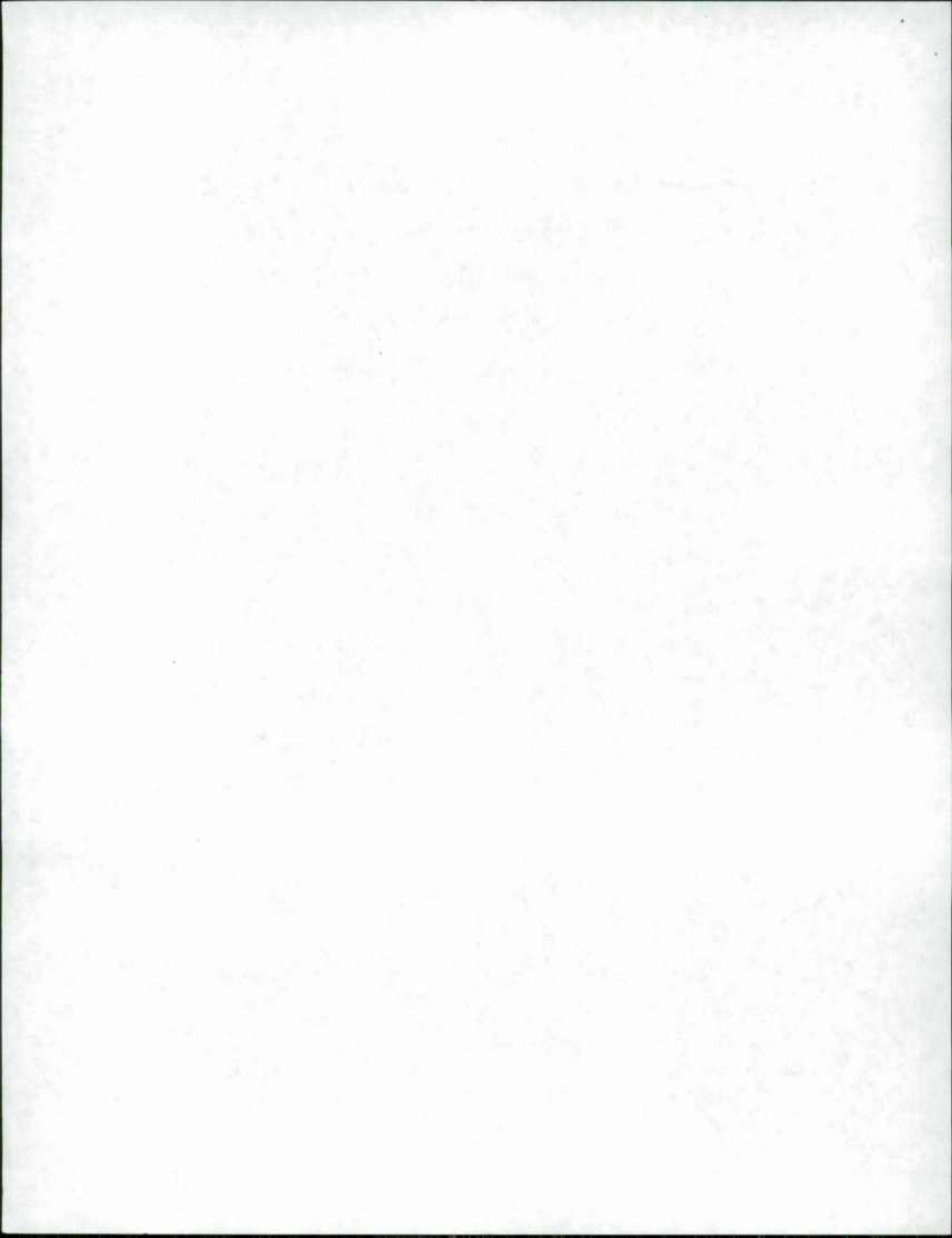


to the extent of the buffer and the slopes, a strict application of the program would be an unwarranted hardship. Under a literal interpretation of the program, the applicants would be unable to expand the dwelling and the parking, rights commonly enjoyed elsewhere in the Critical Area. Conversely, the granting of the variance is not a special privilege that the program typically denies to other Critical Area lands. There is no indication that the request results from the actions of the applicants or from land use on neighboring property. Finally, with mitigation and stormwater management, the variance will not adversely impact Critical Area assets and harmonizes with the spirit and intent of the program.

I further find that the relief has been minimized. The addition is appropriately sized and in the only logical location, given the split-level dwelling and the shared access. The slope disturbance is not excessive. Finally, I am satisfied that the granting of the variance will not alter the essential character of the neighborhood, substantially impair the use or development of adjacent property, or cause a detriment to the public welfare. The approval is subject to the conditions in the Order.

ORDER

PURSUANT to the application of William and Marianne Wood, petitioning for a variance to allow a dwelling addition 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 11th day of June, 2008,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicants are **granted** a variance to disturb steep slopes to permit a dwelling addition in accordance with the site plan. The approval is subject to the following conditions:

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

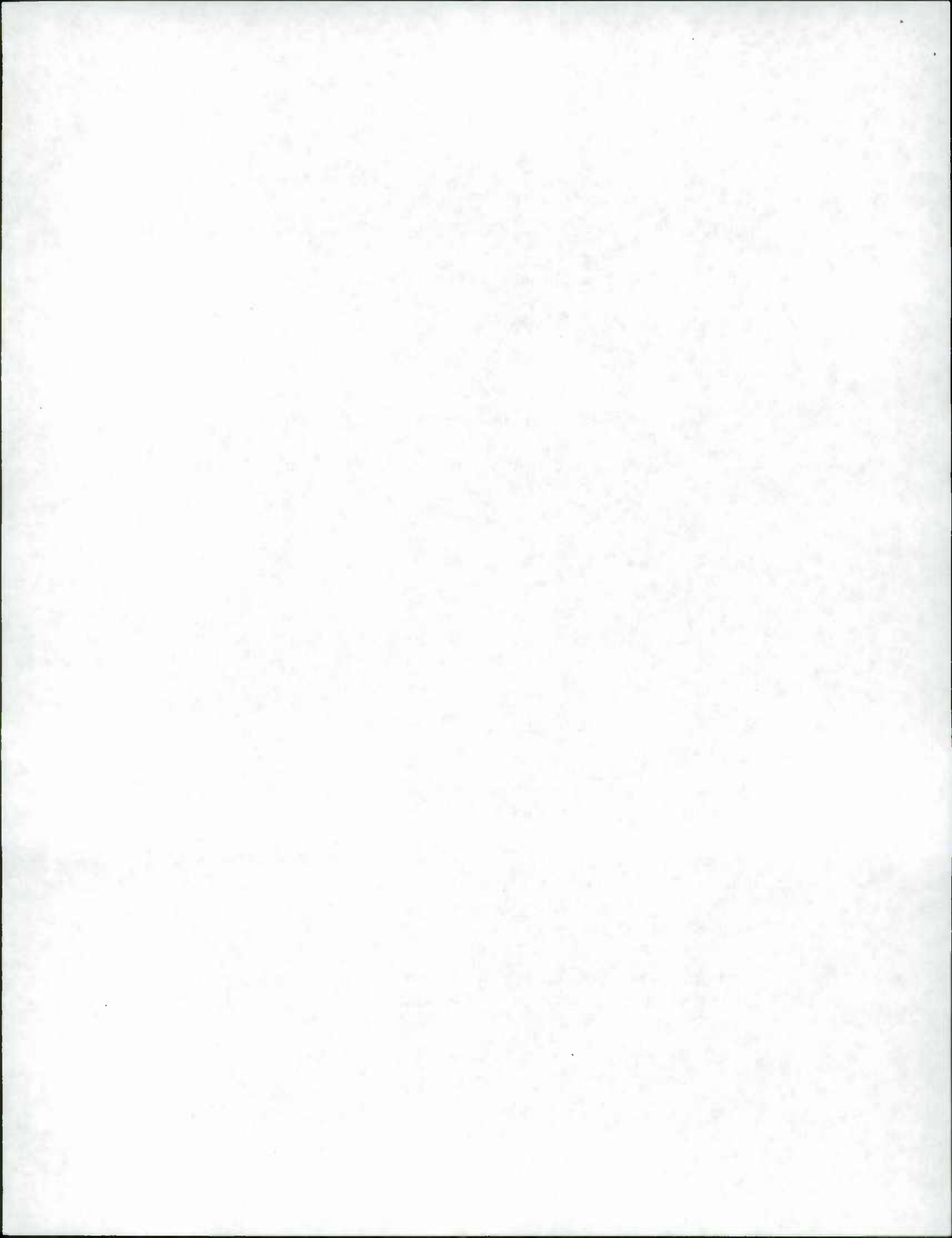

Stephen M. LeGendre
Administrative Hearing Officer

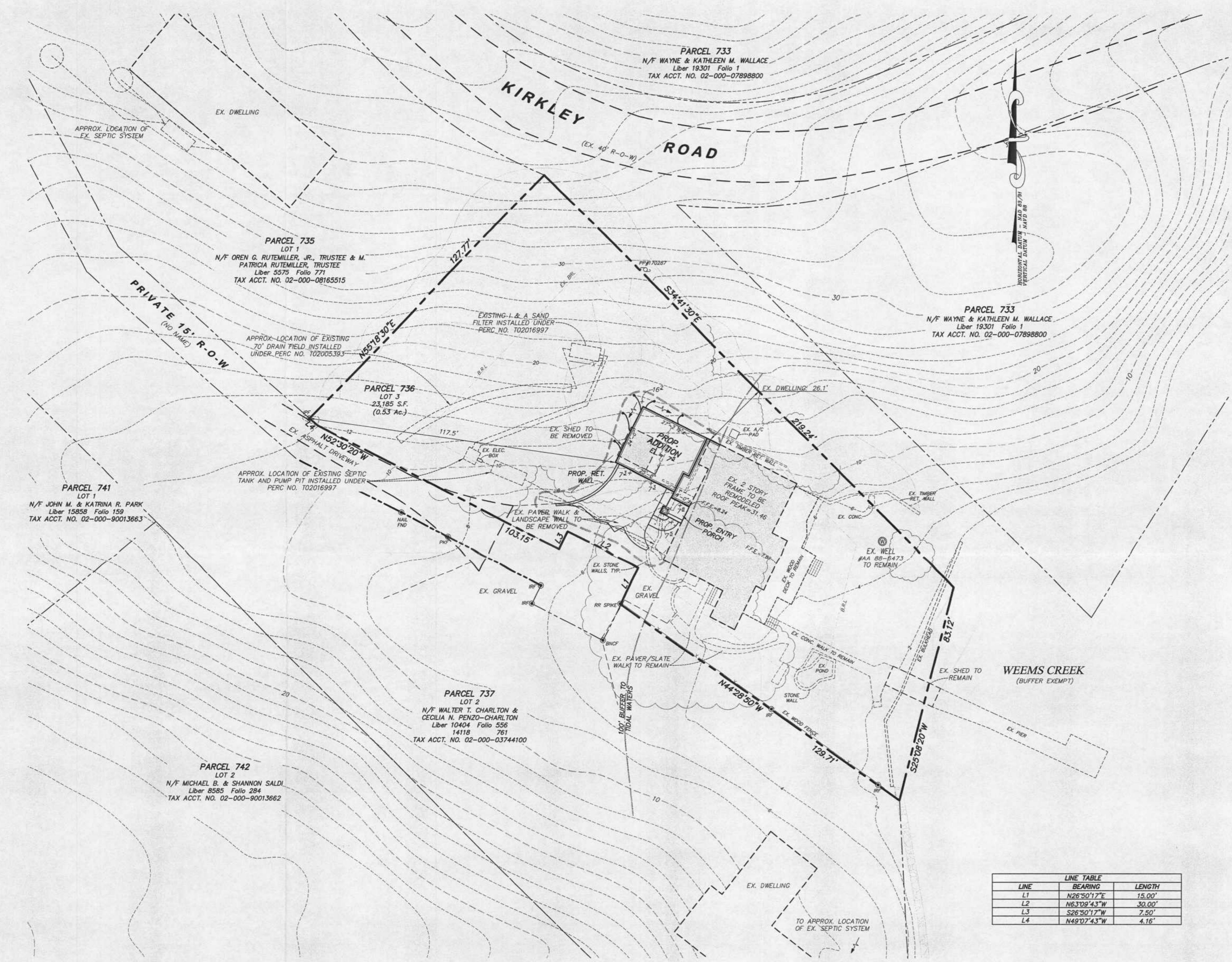
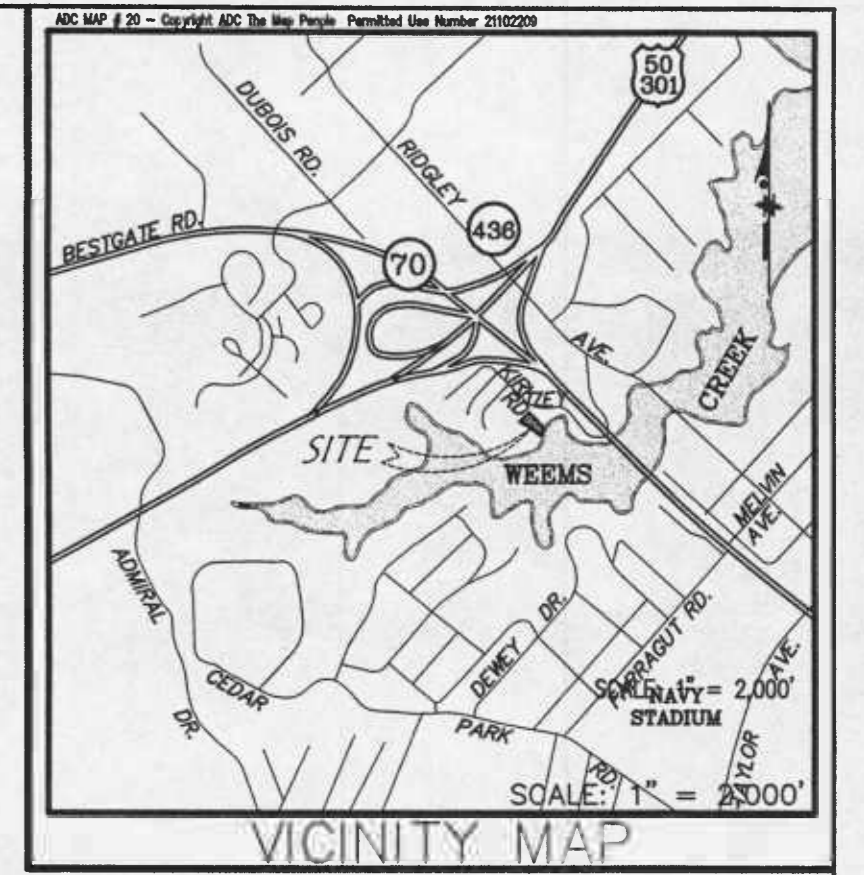
NOTICE TO APPLICANT

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.





RECEIVED
APR 03 2008
CRITICAL AREA COMMISSION

- SITE TABULATIONS**
- *SITE AREA: 23,185 S.F. (0.53 Ac.)
 - *EXISTING IMPERVIOUS COVERAGE: 4,240 S.F. (0.10 Ac.)
 - *PROPOSED IMPERVIOUS COVERAGE: 5,231 S.F. (0.12 Ac.)
 - *ALLOWABLE IMPERVIOUS COVERAGE: 5,445 S.F. (0.13 Ac.)
 - *TOTAL STEEP SLOPE AREA: 11,463 S.F. (0.26 Ac.)
 - *STEEP SLOPE DISTURBANCE: 736 S.F. (0.02 Ac.)
 - *CRITICAL AREA DESIGNATION: LDA
 - *ZONING: R-1

LINE TABLE		
LINE	BEARING	LENGTH
L1	N26°50'17"E	15.00'
L2	N63°08'43"W	30.00'
L3	S26°50'17"W	7.50'
L4	N49°07'43"W	4.16'

- LEGEND**
- 16 — EXISTING CONTOUR
 - 15%-25% — 15%-25% STEEP SLOPES
 - EX. WOODS LINE
 - LIMIT OF DISTURBANCE
 - PROPOSED GRADE
 - 27.2+ — PROPOSED SPOT ELEV.
 - RSF — RSF — RSF REINFORCED SILT FENCE

DESIGNED: MMD	DRAWN: KLY
ORIG. DATE:	
MODIFIED BY/DATE:	
CADD DWG #: WW1007-V	
DLA PROJECT #: WW1007	
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DRUM, LOYKA & ASSOCIATES, LLC
 CIVIL ENGINEERS—LAND SURVEYORS
 209 WEST STREET, SUITE 203
 ANNAPOLIS, MARYLAND 21401
 410-280-3122

OWNER:
MR. & MRS. WILLIAM WOOD, III
 220 KIRKLEY ROAD
 ANNAPOLIS, MARYLAND 21401

VARIANCE PLAN
220 KIRKLEY ROAD
 LOT 3 ~ C.E. ELLINGER PROPERTY
 TAX ACCT. NO. 02-000-02353500
 TAX MAP 45I GRID 7 PARCEL 736 DISTRICT 2ND
 ANNE ARUNDEL COUNTY, MARYLAND

SCALE: 1"=20' DATE: MAR. 19, 2008 PROJ. NO: WW1007-V SHEET 1 OF 1

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