

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 18, 2009

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

Re: Schummer Property
S 09-013-00NC, P 09-31-00 NM

Dear Ms. Krinetz:

Thank you for forwarding the above mentioned site plan. Previously, this office reviewed this site in conjunction with the Schummer variance request to allow a dwelling with less Buffer than required. We submitted comment letters on the variance application dated July 1, 2008 and September 8, 2008. As recommended in our July 1, 2008 letter, the applicant submitted a revised plan showing a minimized variance request and consequently in our September 8, 2008 letter, we did not oppose the requested variance for removal and replacement of the existing house. We noted in this letter that should the Hearing Officer grant the variance, mitigation is required at a ratio of 3:1 for the area of disturbance in the 100-foot Buffer. Subsequently, the variance request was granted. The variance granted the applicant a variance to disturb the expanded Buffer to permit a dwelling in accordance with the site plan. At this time, this project has been submitted to this office for review as a new proposed lot through the subdivision process due to the fact that the property was created by deed and not by plat. In addition to proposing to create a new lot with less than the required acreage in the Resource Conservation Area (RCA), the applicant proposes to remove and replace the existing house on the 4.729 acre property. The applicant has addressed most of this office's comments from my June 18, 2009 letter and I have provided my remaining comment below:

- 1) The applicant has not addressed the following comment from my last letter. As is required by the County's Code § 17-8-303, development on a site without an existing natural Buffer within 100 feet of the shoreline shall have a fully functioning buffer reestablished. This requirement is separate from the Buffer mitigation, reforestation and stormwater planting requirements. As such, please have the applicant amend the provided planting plan to show that wide swath of unplanted Buffer at the shoreline in front of the house will be established with plantings of native trees and shrubs.



Ms. Krinetz
September 18, 2009
Page 2 of 2

Thank you for the opportunity to comment. Please telephone me if you have any questions at (410) 260-3481.

Sincerely,



Amber Widmayer
Natural Resources Planner

cc: AA 363-08

Martin O'Malley
Governor

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1804 West Street, Suite 100, Annapolis, Maryland 21401
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June 18, 2009

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

Re: Schummer Property
S 09-013-00NC, P 09-31-00 NM

Dear Ms. Krinetz:

Thank you for forwarding the above mentioned site plan. Previously, this office reviewed this site in conjunction with the Schummer variance request to allow a dwelling with less Buffer than required. We submitted comment letters on the variance application dated July 1, 2008 and September 8, 2008. As recommended in our July 1, 2008 letter, the applicant submitted a revised plan showing a minimized variance request and consequently in our September 8, 2008 letter, we did not oppose the requested variance for removal and replacement of the existing house. We noted in this letter that should the Hearing Officer grant the variance, mitigation is required at a ratio of 3:1 for the area of disturbance in the 100-foot Buffer. Subsequently, the variance request was granted. The variance granted the applicant a variance to disturb the expanded Buffer to permit a dwelling in accordance with the site plan. At this time, this project has been submitted to this office for review as a new proposed lot through the subdivision process due to the fact that the property was created by deed and not by plat. In addition to proposing to create a new lot with less than the required acreage in the Resource Conservation Area (RCA), the applicant proposes to remove and replace the existing house on the 4.729 acre property. The applicant has addressed this office's comments from my April 3, 2009 letter and I have outlined my remaining comments below:

- 1) As requested, the applicant has submitted documentation of the property's chain of title. The deeds and other documents that were submitted seem to document the existence of the larger approximately 25 acre property dating back to 1953, at which time the property consisted of three parcels, which were each approximately 21.63 acres, 0.22 acres, and 3.11 acres in size. However, the first document that references a piece of property within this 25 acres that matches a description of the applicant's property is a 1992 deed which references a 4.78 acre parcel of land. It is unclear if there is a document that was meant to be included in the applicant's resubmittal that would demonstrate the creation of the applicant's 4.78 acre property prior to 1992. If there is such a document that would demonstrate that the property is a lot of record in the RCA that existed prior to December 1, 1985, please have the applicant

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



Ms. Krinetz
June 15, 2009
Page 2 of 2

submit this document with the next submittal.

- 2) As is required by the County's Code § 17-8-303, development on a site without an existing natural Buffer within 100 feet of the shoreline shall have a fully functioning buffer reestablished. This requirement is separate from the Buffer mitigation, reforestation and stormwater planting requirements. As such, please have the applicant amend the provided planting plan to show that wide swath of unplanted Buffer at the shoreline in front of the house will be established with plantings of native trees and shrubs.

Thank you for the opportunity to comment. Please telephone me if you have any questions at (410) 260-3481.

Sincerely,



Amber Widmayer
Natural Resources Planner

cc: AA 363-08

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April 3, 2009

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

Re: Schummer Property
S 09-013-00NC, P 09-31-00 NM

Dear Ms. Krinetz:

Thank you for forwarding the above mentioned site plan. Previously, this office reviewed this site in conjunction with the Schummer variance request to allow a dwelling with less Buffer than required. We submitted comment letters on the variance application dated July 1, 2008 and September 8, 2008. As recommended in our July 1, 2008 letter, the applicant submitted a revised plan showing a minimized variance request and consequently in our September 8, 2008 letter, we did not oppose the requested variance for removal and replacement of the existing house. We noted in this letter that should the Hearing Officer grant the variance, mitigation is required at a ratio of 3:1 for the area of disturbance in the 100-foot Buffer. Subsequently, the variance request was granted. The variance granted the applicant a variance to disturb the expanded Buffer to permit a dwelling in accordance with the site plan. At this time, the site plan showing the proposed removal and replacement of the existing house on the 4.729 acre property within the Resource Conservation Area (RCA) has been submitted for review to this office in conjunction with the County's subdivision review process that is required to convert the property into a buildable lot. I have outlined this office's comments on this proposal below:

- 1) It is unclear from the information provided whether the 4.729 acre property qualifies as a parcel of record in the RCA that existed prior to December 1, 1985. Please provide information about the history of the parcel, including whether the deed that created the property was recorded in the land records, and if so on what date.
- 2) As noted in our September 8, 2008 variance comment letter, mitigation is required at a ratio of 3:1 for the total area of disturbance in the Buffer from clearing, grading and construction of lot coverage as a condition of the variance. Please have the applicant submit a planting plan showing that this 3:1 mitigation requirement associated with the variance will be addressed with native trees and shrubs planted first in the open areas of the Buffer along the shoreline in front of the house on the property. For the 0.32 acres of proposed disturbance in the Buffer, 0.96 acres of Buffer mitigation plantings are required. We note that the applicant's plans show

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Ms. Krinetz
April 3, 2009
Page 2 of 2

some plantings proposed on site. However, the plans only show four trees and 12 shrubs proposed as landscaping plantings for reforestation, which does not come close to meeting the quantity or quality of the Buffer mitigation requirement, since this office generally recognizes 100 square feet of planting credit per 2-inch caliper tree and 50 square feet of planting credit per seedling or shrub in a 3-5 gallon container. If a large tree is planted in a cluster with either two smaller trees or three shrubs, this office will recognize 400 square feet of planting credit for each cluster. We also note that there appears to be ample room on the property, both in front of the house at the shoreline, and elsewhere within the Buffer on the property, in which to locate a mix of canopy trees and understory trees and shrubs to both meet the mitigation requirement and to establish a functioning Buffer in conjunction with the proposed development, both of which are required by the County's Code.

- 3) Please have the applicant add the 3:1 Buffer mitigation requirement to the plans, and show the proposed planting area, along with information about the proposed plantings including the number, size and species that will be planted. Also, please quantify the planting area and confirm that it will be placed in a conservation easement.
- 4) The proposed plat shows only the 100-foot Buffer and not the expanded Buffer for contiguous slopes 15% or greater. Please have the applicant add the slopes and expanded Buffer to the proposed plat.

Thank you for the opportunity to comment. Please telephone me if you have any questions at (410) 260-3481.

Sincerely,



Amber Widmayer
Natural Resources Planner

cc: AA 633-08
AA 363-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



Margaret G. McHale
Chair

Ren Serey
Executive Director

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September 8, 2008

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

Re: 2008-0209-V – Schummer, Raymond and Dorothy

Dear Ms. Cotter:

I have received revised information regarding the above-referenced variance request. The applicant's original request was for a variance to allow a dwelling with less setbacks and Buffer than required. The lot is designated as a Resource Conservation Area (RCA) and the majority of the lot is encumbered by an expanded 100-foot Buffer. This lot is 4.78 acres and is currently improved with an existing dwelling unit. The applicant proposes to raze the existing dwelling and construct a new dwelling. The revised plans indicate that the new dwelling will be located entirely outside of the 100-foot Buffer. The existing impervious site coverage on this site is 12,054 square feet for the current house and the applicant proposes a reduced reconstruction of 11,316 square feet, which is within the lot coverage area limits for a lot of this size. During a meeting with the applicants on August 21, 2008, they indicated that a substantial portion of lot coverage for this site is associated with a neighbor's driveway.

Provided this lot is properly grandfathered, we do not oppose this variance request to construct a replacement dwelling in the expanded Buffer. Should the Hearing Officer determine that this request can be granted, we recommend mitigation at a ratio of 3:1 for the area of disturbance in the expanded Buffer. The applicant should provide a plantings plan to the County showing the species, size, spacing and schedule for review and comment.

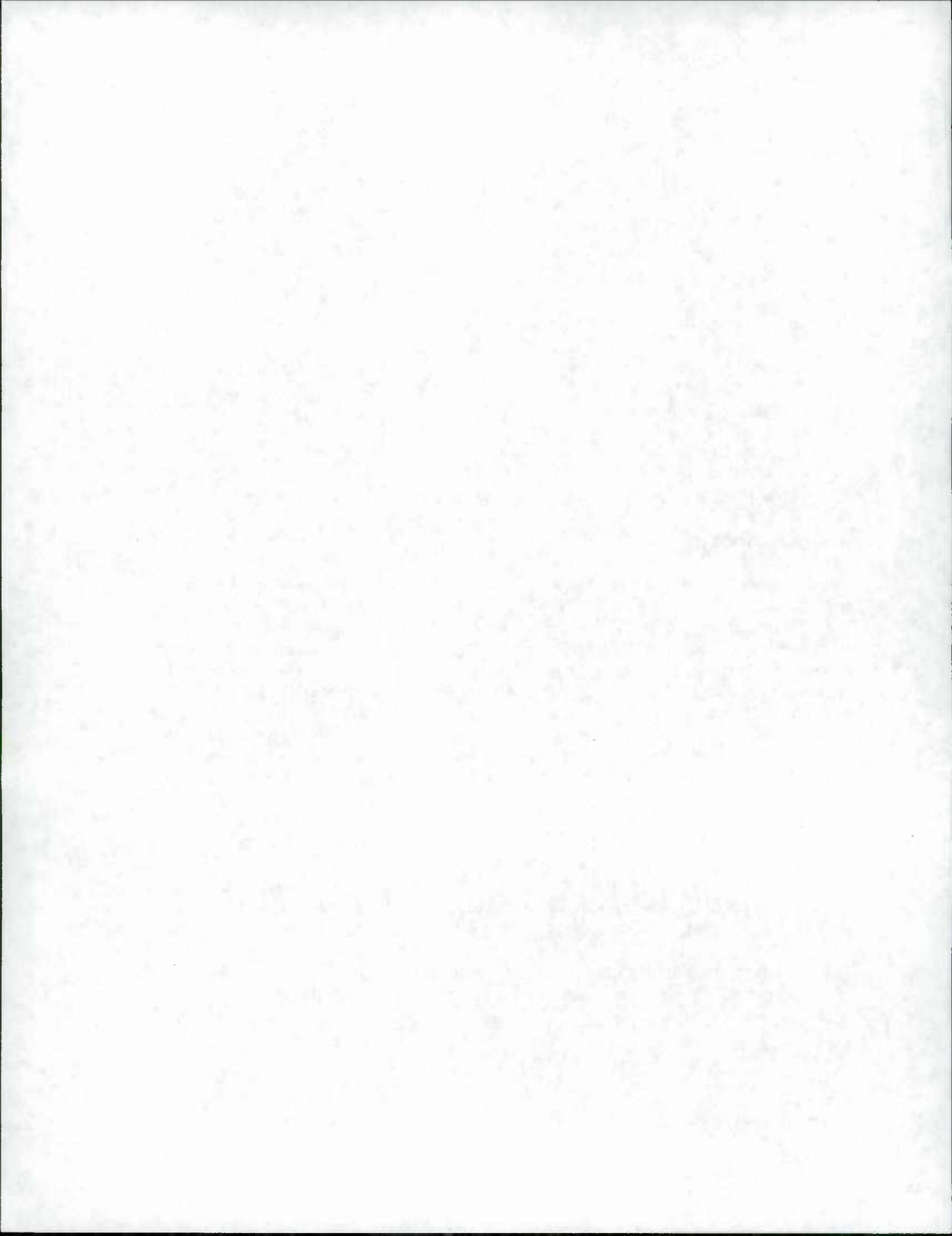
Thank you for the opportunity to comment. Please include this letter in your file and submit it as part of the record for variance. Please notify the Commission of the decision made in this case.

Sincerely,

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

Julie Roberts
Natural Resources Planner

cc: AA 363-08



Sept-18th

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



Margaret G. McHale
Chair

Ren Serey
Executive Director

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

July 1, 2008

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

Re: 2008-0209-V – Schummer, Raymond and Dorothy

Dear Ms. Cotter:

I have received the information regarding the above-referenced variance request. The applicant requests a variance to allow a dwelling with less setbacks and buffer than required. The lot is designated as a Resource Conservation Area (RCA) and the majority of the lot is encumbered by an expanded 100-foot Buffer. This lot is 4.78 acres and is currently improved with an existing dwelling unit. The applicant proposes to raze the existing dwelling and construct a new dwelling in a similar footprint slightly pushed back from the northwestern slopes. The existing impervious site coverage on this site is 12,054 square feet for the current house and the applicant proposes a reduced reconstruction of 11,561 square feet, which is within the impervious surface area limits for a lot of this size.

We cannot support this variance request as submitted. This is a large lot and it appears that there is ample opportunity to construct this new dwelling outside of the Buffer. This proposal does not minimize impacts to the extent feasible as a redevelopment project. This proposal constitutes complete redevelopment of the parcel, ample opportunity to site the new dwelling as far away from the water as possible, and at the very least, outside of the first 100 feet from the water. Where there is a reasonable alternative to further minimize disturbance to the Buffers, slopes, and other natural areas, the variance should be denied. Equally, it is the burden of the applicant to comply to the law in so far as possible and when the opportunity exists, to redevelop the property in keeping with the spirit and intent of the County's Critical Area Program. Should the Hearing Officer determine further minimization is possible, the County should send revised plans to this office for review and comment.



Ms. Cotter
7/2/2008
Page 2 of 2

Thank you for the opportunity to comment. Please include this letter in your file and submit it as part of the record for variance. Please notify the Commission of the decision made in this case.

Sincerely,

A handwritten signature in black ink, appearing to read 'Julie Roberts', with a stylized flourish at the end.

Julie Roberts
Natural Resources Planner

cc: AA 363-08

AA ~~210-09~~
393-08

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 2009-0100-V

RAYMOND SCHUMMER

FIFTH ASSESSMENT DISTRICT

DATE HEARD: JUNE 18, 2009

ORDERED BY:

DOUGLAS CLARK HOLLMANN
ADMINISTRATIVE HEARING OFFICER

PLANNER: WILLIAM ETHRIDGE

DATE FILED: JUNE 23, 2009

PLEADINGS

Raymond Schummer, the applicant, seeks a variance (2009-0100-V) to allow housing for the elderly of moderate means facility with vehicular traffic access from a collector road on property located along the west side of Hammarlee Road, east of Furnace Branch Road, Glen Burnie.

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. The applicant submitted an affidavit with photographs indicating that Tim Moore and Terry Sehuman posted the subject property on June 2, 2009 (Applicant's Exhibit 1). I find and conclude that there has been compliance with the notice requirements.

FINDINGS

A hearing was held on June 18, 2009, in which witnesses were sworn and the following evidence was presented with regard to the proposed variances requested by the applicant.

The Property

The subject property consists of 2.5 acres (108,776 square feet) and is identified as Parcel 531, in Glen Burnie. The property is shown on Tax Map 10, Grid 8 and is zoned C2-Commercial Office District. This is an unimproved, non-waterfront lot located in the Chesapeake Bay Critical Area, which is designated as intensely developed area (IDA).

The Proposed Work

The applicant is proposing a 3-story, 55-unit housing for the elderly of moderate means facility on the subject property.

The Anne Arundel County Code

§ 18-10-119.1(2) states that housing for the elderly of moderate means facility shall be located on a lot that abuts a minor arterial or higher classification road, with vehicular traffic access from that road.

The Variance Requested

Hammarlee Road is classified as a collector road, which is not a minor arterial or higher classification road. Therefore, a variance to § 18-10-119.1(2) is required to allow vehicular access to the proposed development from Hammarlee Road.

The Evidence Submitted At The Hearing

William Ethridge, a planner with the Office of Planning and Zoning (OPZ), testified that the subject property exceeds the minimum lot size (20,000 square feet) requirements for the C2 district. The property is pie-shaped and sits at the

intersection of Hammarlee Road and Furnace Branch Road. The lot is 875 feet long along Hammarlee Road, and varies in depth from as little as 21 feet on the northern end, to as much as 210 feet at the southern end. The deed shows that the applicant purchased the property in September of 1999.

There are no open zoning violation cases or previous zoning variance cases for the property. A search of county permit records indicate that a building permit (B02140925) was issued in 1999 to "Brooklyn Church of God" but that the permit was canceled.

The nearby Hammarlee Estates neighborhood is a residential community that consists of semi-detached and single-family homes dating back to 1956. Just to the northeast is the Twin Coves Apartments community, an R15 neighborhood dating back to 1972. Further south along Furnace Branch Road is a mix of C3 and C1 properties, with more R5 single-family dwelling properties behind. Of particular note is the Villages at Furnace Branch development to the southwest, consisting of an R5 cluster development and C1¹ zoning dating from 1996.

The subject property lies between Hammarlee Road (a local road), and the interchange between Furnace Branch Road (a collector) and the Arundel Expressway (a freeway), acting as buffer between the neighborhoods to the east and both roadways to the west. The roadway immediately adjacent to the subject property is the northbound transition lane from Furnace Branch Road to the Arundel Expressway. The proposal would not be allowed to connect to a freeway,

¹ See Renfro Ct.

as by definition, freeways do not allow direct access to abutting properties. In this case, as there is an existing access point to both Furnace Branch Road and the Arundel Expressway immediately adjacent to the south of the subject property, the variance request appears to make good planning sense.

The Department of Health has reviewed the variance and stated that the property is served by public water and sewer facilities; therefore the Department has no objection to the variance request.

The Anne Arundel County Soil Conservation District defers to the OPZ.

The Critical Area Team within OPZ commented in a memo dated June 4, 2009: *MapOptix indicates that a stream exists on the eastern side of the property running along the edge of Hammarlee Road. The topography supplied with this application seems to support the potential that the stream does in fact exist. This will need to be confirmed and if a stream does exist, then a variance to the required stream buffer would be required. Absent the existence of the stream there is no objection to the application.*

In conclusion, Mr. Ethridge testified that OPZ finds that the location of the lot, at the interchange between a minor arterial roadway and a freeway, prevents the applicant from developing the lot in accordance with the code, and that the granting of the variance is necessary to avoid practical difficulties or unnecessary hardships and to enable the applicant to develop the lot. Allowing the development to connect to Hammarlee Road would best preserve the essential character of the neighborhood by allowing the community to avoid significant

modifications to both Furnace Branch Road and the Arundel Expressway, thereby creating as low an impact as possible to the existing traffic pattern. With the proper stormwater management and mitigation, the granting of the variance should not become a detriment to the surrounding community, adjacent properties, or the public welfare.

Based upon the standards set forth in §18-16-305 under which a variance may be granted, Mr. Ethridge testified that OPZ has no objection to the variance request.

There were no other adverse agency comments.

The applicant, through Harry J. Blumenthal, Esquire, proffered proof that the subject property could be developed as a commercial development with no need for any variances to either zoning or critical area requirements. Such development would undoubtedly impose a greater burden on the critical area and the neighborhood than the proposed use. The proposed building will face away from the community across the street from Hammarlee Road, and serve as a buffer between the community and the highways to the northwest.

Evidence was also presented that the variance requested is the minimum needed to develop the subject property, that there was a need for the facility in question, and that it was extremely unlikely that other regulatory bodies, such as the State Highway Administration, would permit access, for safety reasons, onto either Furnace Branch Road or the ramp to Route 10. Furthermore, access onto

Hammarlee Road, which is not heavily trafficked and is a wide state road, is a better way to provide access to the site than access off Furnace Branch Road.

Finally, there was testimony from Michael J. Klebasko, McCarthy & Associates, Inc., applicant's environmental consultant, that there was no tributary stream on the subject property, thus eliminating the sole objection from the Critical Area Commission to the proposed variance.²

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 applicant is entitled to conditional relief from the code.

I am unable to find that the subject property possesses 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 subject property that the applicant has no reasonable possibility of developing the subject property in strict conformance with the code.

However, it is clear that the grant of the variance requested is necessary to avoid practical difficulties or unnecessary hardship and to enable the applicant to develop the lot. The applicant has shown that the proposed development is ideally

² The only requirement imposed on the development by its being located in this portion of the critical area is to reduce pollutant load into the waters of Furnace Creek. No other variances are required.

suitable to the subject property. Only the requirement that access be via a minor arterial or higher classification road, with vehicular traffic access from that road, stands in the way of the applicant constructing what everyone agrees is a needed facility on the subject property.

In *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md.App. 28, 322 A.2d 220 (1974), the Maryland Court of Special Appeals discussed the differences between "use" and "area" variances:

The Court of Appeals has recognized a distinction between a use variance, which changes the character of the zoned district, and an area variance, which does not. Use variances are customarily concerned with 'hardship' cases, where the land cannot yield a reasonable return if used only in accordance with the use restrictions of the ordinance and a variance must be permitted to avoid confiscatory operation of the ordinance, while area variances are customarily concerned with 'practical difficulty.' *Loyola Loan Ass'n v. Buschman*, 227 Md. 243, 248, 176 A.2d 355, 358 (1961).

Where the standard of 'practical difficulty' applies, the applicant is relieved of the burden of showing a taking in a constitutional sense, as is required under the 'undue hardship' standard. In order to justify the grant of an area variance the applicant need show only that:

'1) Whether compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

'2) Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.

'3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.' *McLean v. Soley*, 270 Md. 208, 214-215, 310 A.2d 783, 787 (1973), quoting 2 Rathkopf, *The Law of Zoning and Planning*, 45-28-29 (3d ed. 1972).

The lesser burden is permitted because the impact of an area variance is viewed as being much less drastic than that of a use variance.

Anderson v. Board of Appeals, Town of Chesapeake Beach, 22 Md.App. 38-41, 322 A.2d 226-228 (1974).

The area variance (setback) in this case is not only much less drastic than the impact a use variance may create, but will allow a better use of the subject property. Therefore, I find that compliance with the strict letter of the code would cause an unnecessary hardship to the applicant, that granting the requested variance will grant substantial justice to the applicant, and that the granting of the variance requested will be compatible with the spirit of the ordinance such that public safety and welfare will be secured.

I further find that the requested variance is the minimum variance necessary to afford relief, that the granting of the variance will not alter the essential character of the neighborhood or district in which the lot is located, 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, be contrary to acceptable clearing and replanting practices required for development in the critical area, or be detrimental to the public welfare.

ORDER

PURSUANT to the application of Raymond Schummer petitioning for a variance to allow housing for the elderly of moderate means facility with vehicular traffic access from a collector road, and

PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is this **23rd day of June, 2009**,

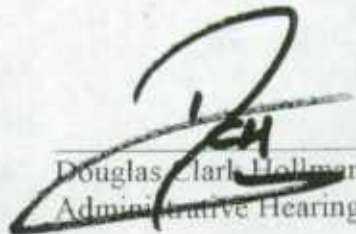
ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicant is **granted** a variance to the requirement found in § 18-10-119.1(2) to allow vehicular access to the proposed development from Hammarlee Road, and to perform the work shown on County Exhibit 2, subject to the below-listed conditions.

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

improvements shown on County Exhibit 2 shall be constructed on the subject property in the locations shown therein.

The foregoing variance is subject to the following conditions:

1. The applicant shall comply with any instructions and necessary approvals from the Permit Application Center, the Department of Health, and/or the Critical Area Commission.
2. Furthermore, this Order grants the applicant the right to make minor changes to the facilities as presently shown on the site plan admitted into evidence at the hearing on this application as County Exhibit 2 to adjust for unforeseen events or information that arise during site development review and/or construction. The scope and reasonableness of any such change shall be determined by the Office of Planning and Zoning.


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.

JR

363-08

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 2008-0209-V

RAYMOND AND DOROTHY SCHUMMER

FIRST ASSESSMENT DISTRICT

DATE HEARD: SEPTEMBER 25, 2008

ORDERED BY: STEPHEN M. LeGENDRE, ADMINISTRATIVE HEARING OFFICER

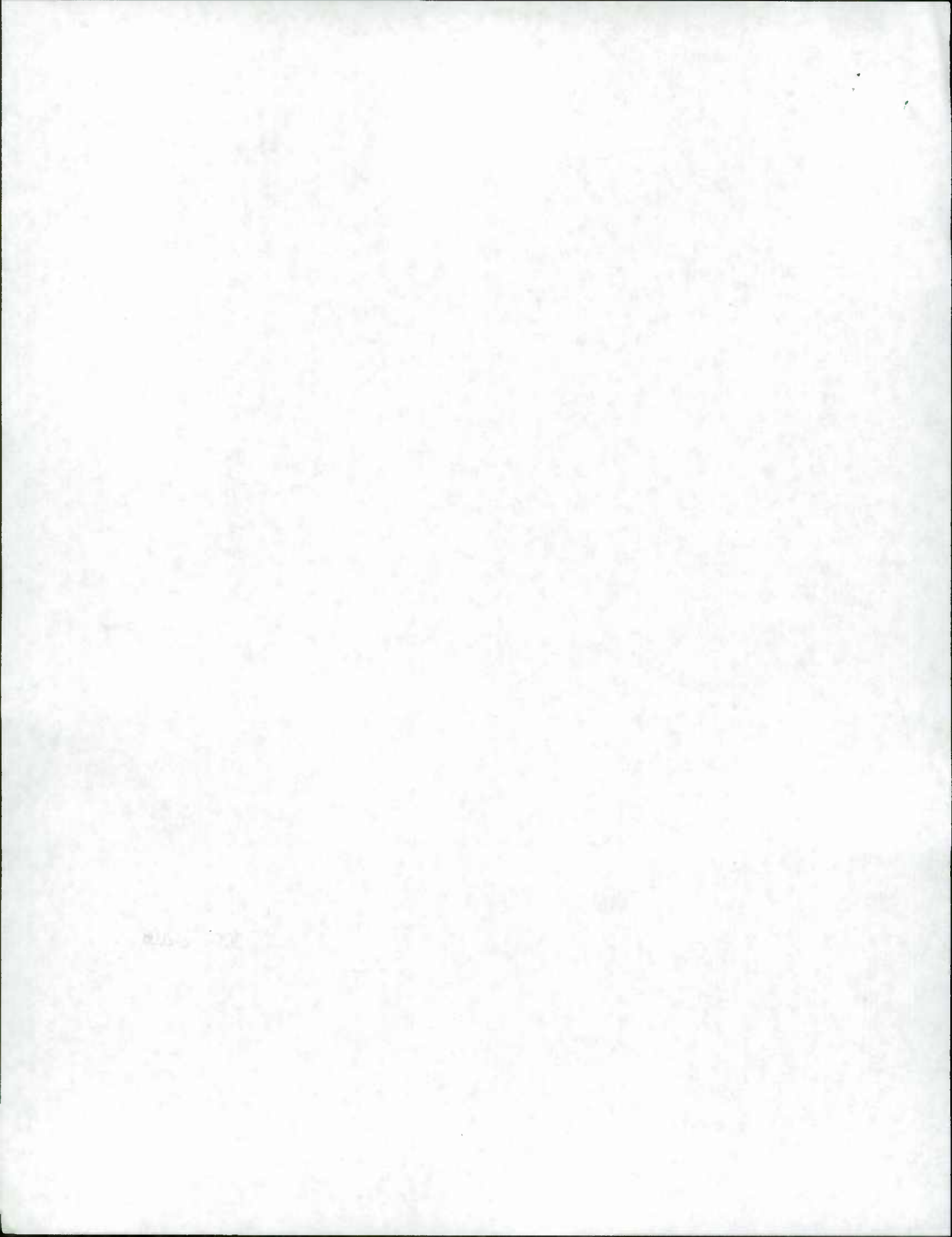
PLANNER: PATRICIA A. COTTER

RECEIVED

OCT 2 2008

CRITICAL AREA COMMISSION
Chesapeake & Atlantic Coastal Bays

DATE FILED: SEPTEMBER 30, 2008



PLEADINGS

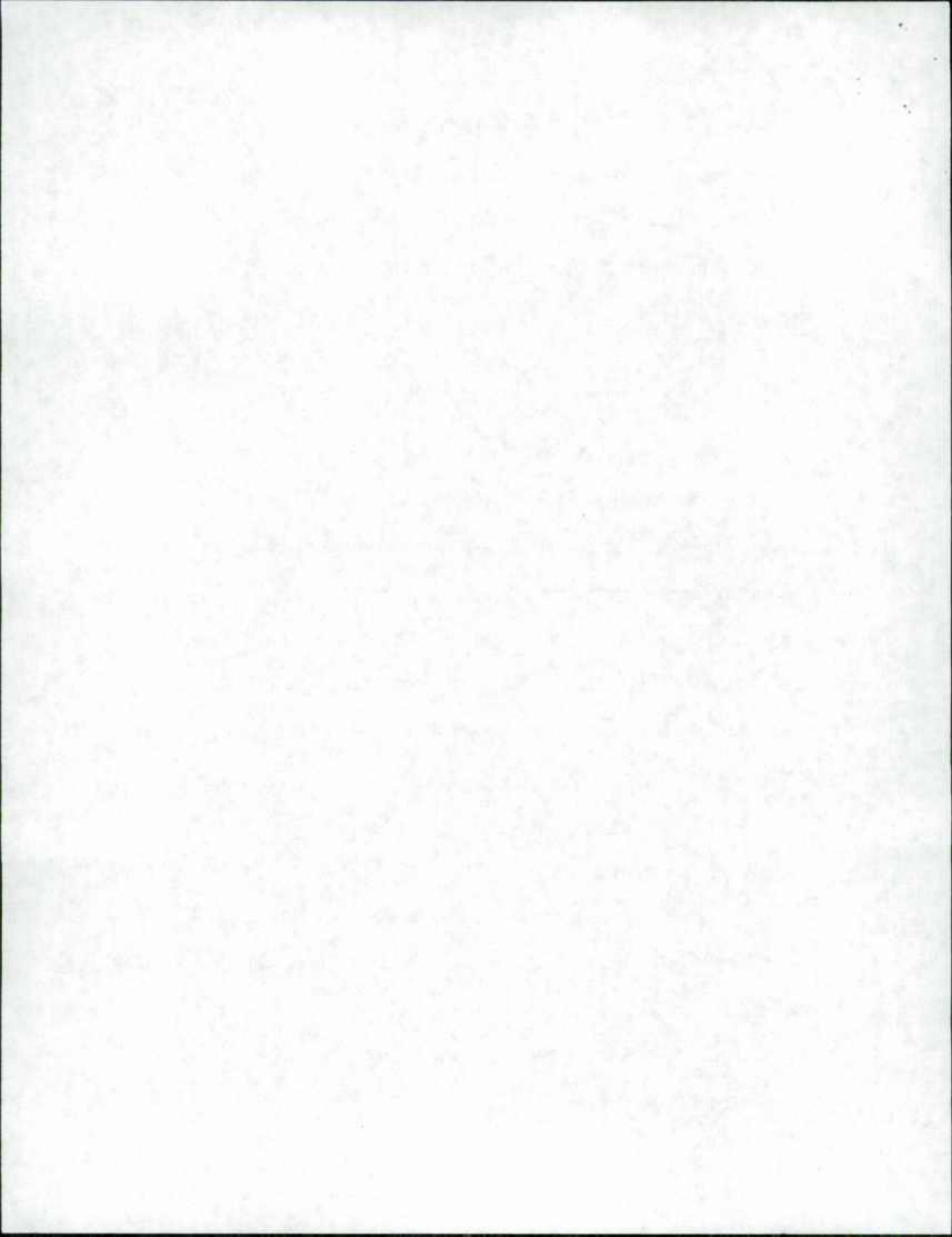
Raymond and Dorothy Schummer, the applicants, seek a variance (2008-0209-V) to allow a dwelling with less buffer than required on property located along the northwest side of Dixona Drive, north of Shoreham Beach Road, Edgewater.

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. Schummer 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

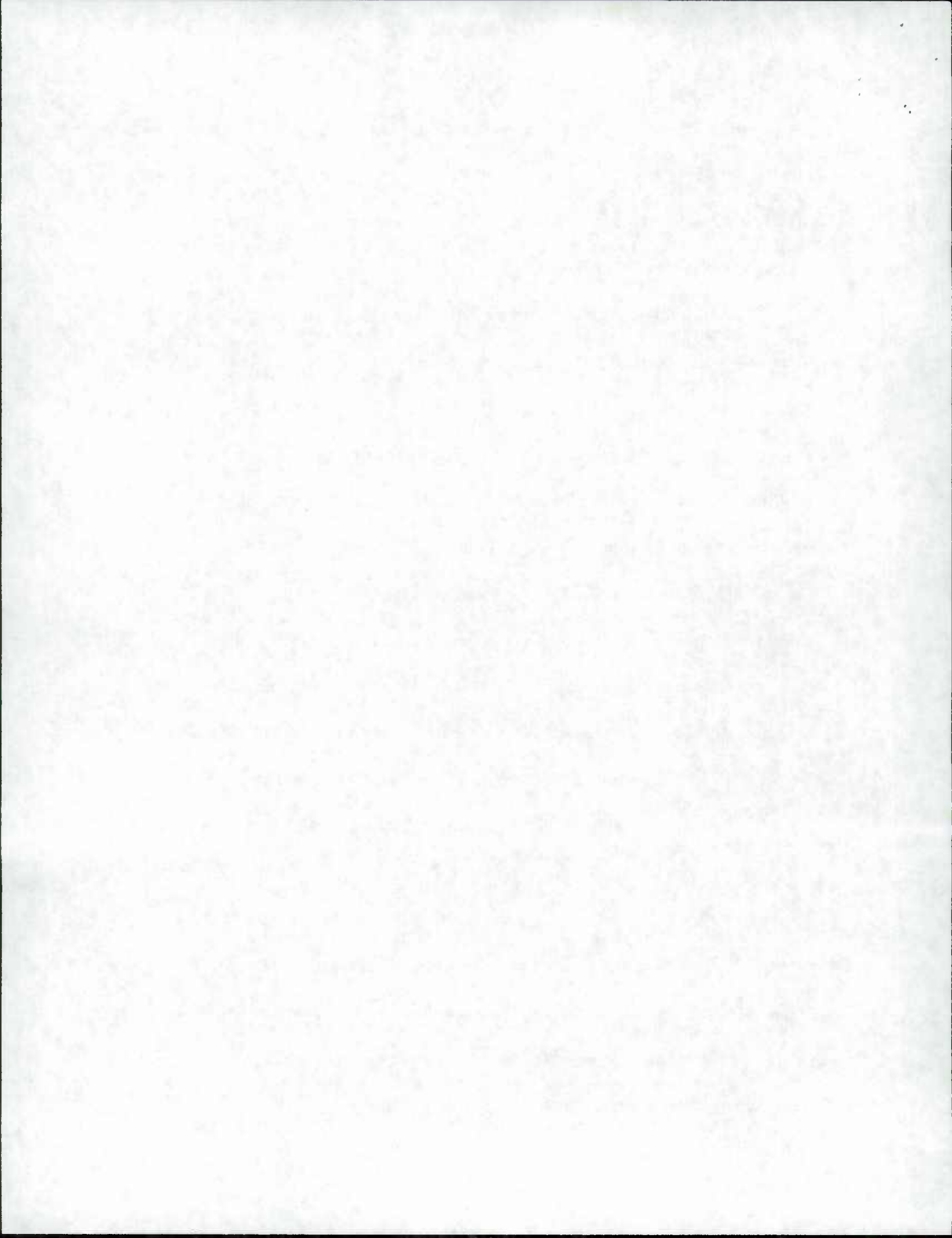
The applicants own a single-family residence with a street address of 1200 Dixona Drive, Edgewater. The property comprises 4.78 acres and is zoned R2 residential with a Chesapeake Bay Critical Area designation as Resource Conservation Area (RCA). The request is to raze the dwelling, followed by the construction of a new dwelling with disturbance to the Chesapeake Bay Critical Area buffer as expanded for steep slopes.



Anne Arundel County Code, Article 18, Section 18-13-104 (a) establishes a 100-foot buffer from tidal waters. The buffer expands to include all lands within 50 feet of contiguous steep slopes. Accordingly, the proposal requires a variance to disturb the expanded buffer.

Patricia Cotter, a planner with the Office of Planning and Zoning, described the property as a point of land with water on two sides. The shoreline is steeply sloped with the result that the expanded buffer encompasses almost the entire property. The existing dwelling was constructed in the 1950s. The replacement dwelling is further from the shoreline. The applicants are also removing retaining walls between the existing dwelling and the water and reducing the Critical Area lot coverage. The site plan has been revised in accordance with discussions among the applicants and the reviewing agencies and is therefore unobjectionable.

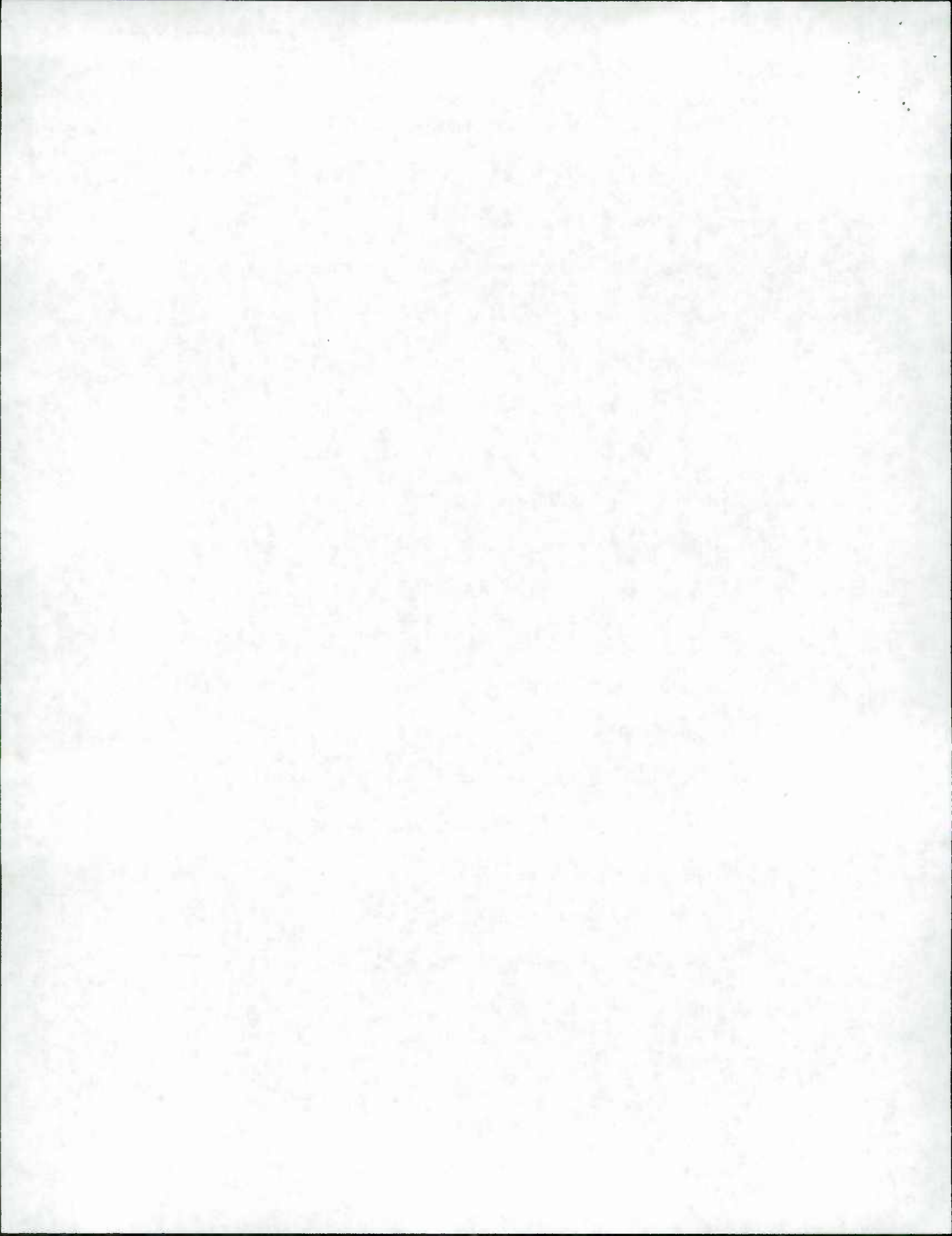
The applicants proffered the testimony of four witnesses: Searlett Breeding (architect), Eric See (environmental consultant), Jeffrey Smith (engineer) and Shepard Tullier (land planning consultant). In brief, the existing dwelling is considered outdated and unsuitable for renovation; the new dwelling has a slightly larger footprint, but is 10 to 20 feet further from water; the area of the existing retaining walls will be revegetated; there is no disturbance of the extensive woodlands; there is a net reduction in impervious coverage in the buffer; the project includes storm water management and the reuse of the existing well and sewer connection; and the applicants are making shoreline improvements to control erosion pursuant to an approved building permit.



There was no other testimony in the matter.

Upon review of the facts and circumstances, I find and conclude that the applicants are entitled to conditional relief from the code. For this Critical Area property, due to the extent of the expanded buffer, a strict implementation of the program would result in an unwarranted hardship. To literally interpret the program would deny the applicants the right to redevelop the property with a single-family dwelling, a right commonly enjoyed by other properties in similar areas 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 actions of the applicants or from land use on neighboring properties. Finally, with mitigation and other conditions, the variance will not adversely impact Critical Area assets and harmonizes with the general spirit and intent of the program.

I further find that the variance represents the minimum relief. As indicated, the replacement dwelling is further from water than the existing dwelling, and there is a net reduction in Critical Area lot coverage. There is nothing to suggest that the granting of the variance will alter the essential character of the neighborhood, substantially impair the appropriate use or development of adjacent property, or cause a detriment to the public welfare. The approval is subject to the conditions in the Order.



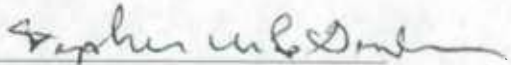
ORDER

PURSUANT to the application of Raymond and Dorothy Schummer,
petitioning for a variance to allow a dwelling with less buffer than required, 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 September, 2008,

ORDERED, by the Administrative Hearing Officer of Anne Arundel
County, that the applicants are **granted** a variance to disturb the expanded buffer
to permit a dwelling in accordance with the site plan.

The foregoing approval is subject to the following conditions:

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

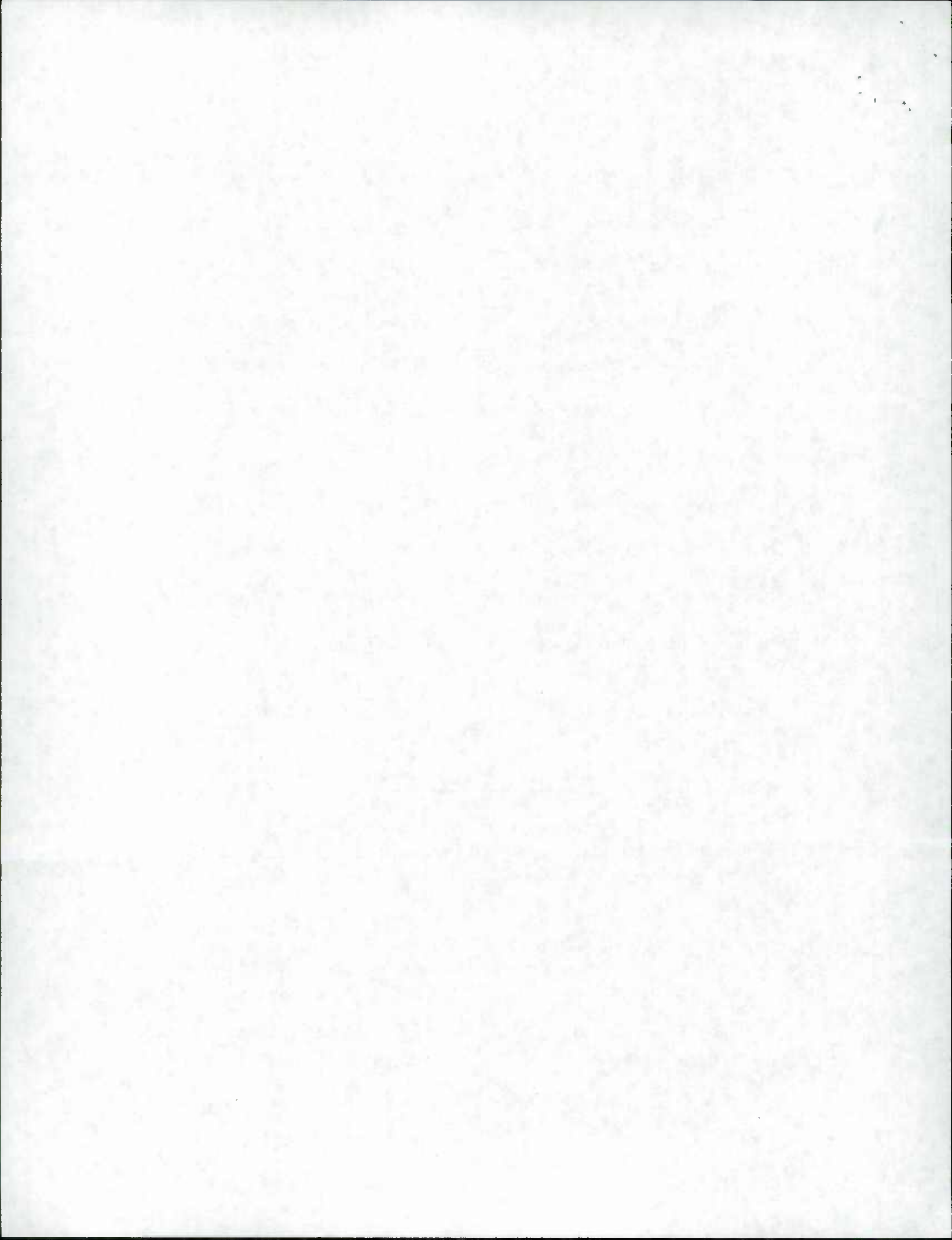

Stephen M. LeGendre
Administrative Hearing Officer

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.

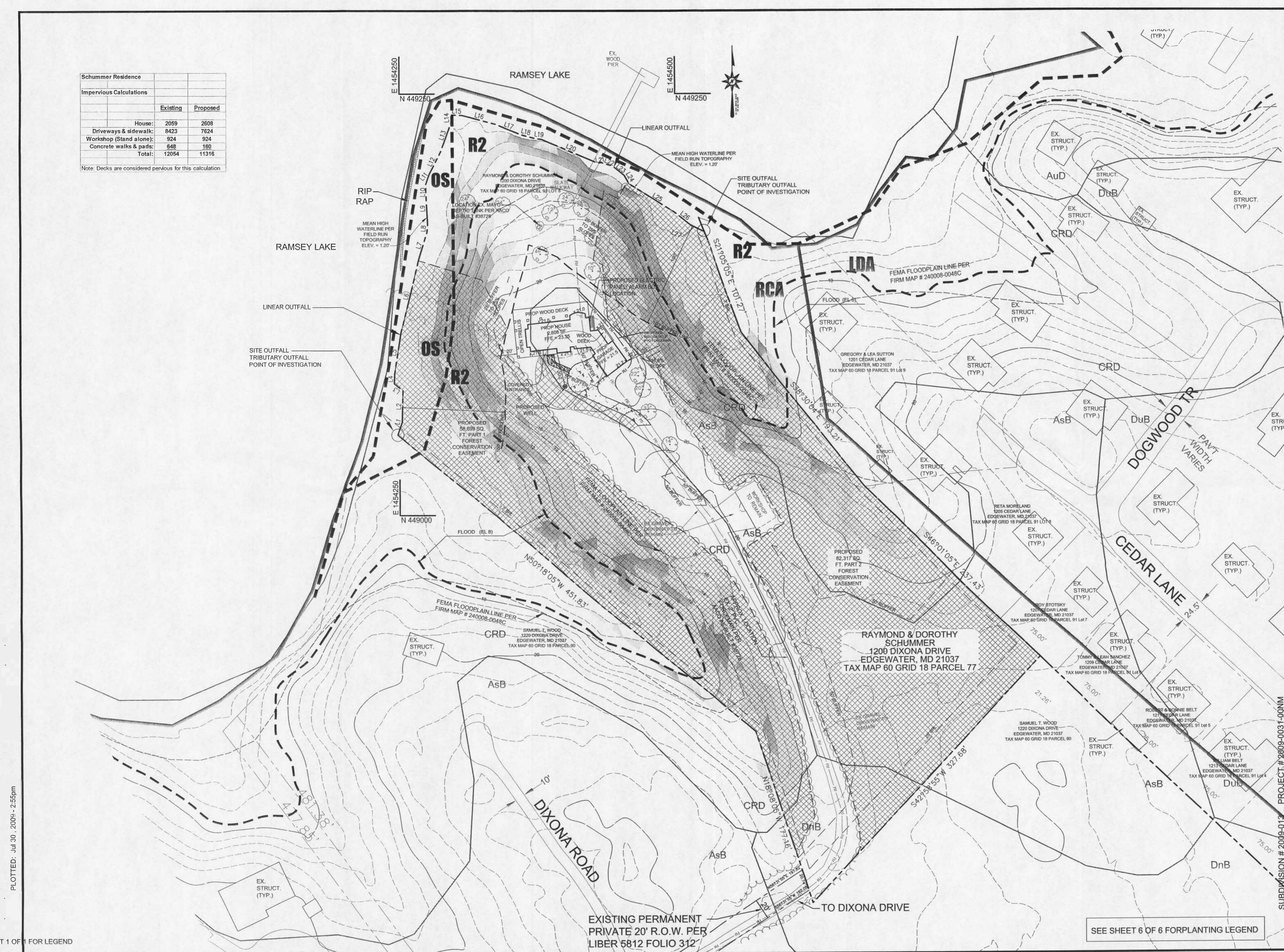
Further Section 18-16-405(a) provides that a variance expires by operation of law unless the applicant obtains a building permit within 18 months. Thereafter, the variance shall not expire so long as construction proceeds in accordance with the permit.

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



Schummer Residence		
Impervious Calculations		
	Existing	Proposed
House:	2059	2608
Driveways & sidewalk:	8423	7624
Workshop (Stand alone):	924	924
Concrete walks & pads:	648	160
Total:	12054	11316

Note: Decks are considered pervious for this calculation



PLOTTED: Jul 30, 2009 - 2:55pm

SHEET 1 OF 1 FOR LEGEND

SEE SHEET 6 OF 6 FOR PLANTING LEGEND

Rev. #	By	Date	Description



Bay Engineering Inc.
 Engineers, Planners and Surveyors
 180 Admiral Cochrane Drive, Suite 175
 Annapolis, Maryland 21401
 410.887.0255 fax
 email: info@bayengineering.com
 www.bayengineering.com

Date	JULY 2009
Job Number	07-2581
Scale	1" = 40'
Drawn By	KPO
Designed By	KPO
Approved By	JBS
Folder Reference	07-2581 RAY SCHUMMER

MINOR SUBDIVISION SITE
 OF THE MINOR SUBDIVISION PLANS FOR
SCHUMMER PROPERTY
 1200 DIXONA DRIVE EDGEWATER, MD 21037
 TAX MAP 60, GRID 18, PARCEL 77
 TAX ID #01-000-90081167; DEED 18630/294
 ZONING: RS CRITICAL AREA: RCA
 FIRST DISTRICT ANNE ARUNDEL COUNTY

Sheet No.	3 OF 7
File No.	

Cadd File : F:\07-2581\Schummer Raymond 1200 Dixona Drive\Drawing Files\MINOR SUBDIVISION.dwg