

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 2011-0168-V

**CAROLYN ROBBINS, AS PERSONAL REPRESENTATIVE
OF THE ESTATE OF OSCAR SAHLIN**

SECOND ASSESSMENT DISTRICT

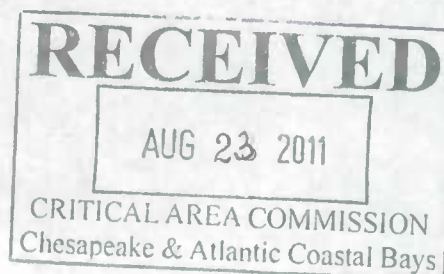
DATE HEARD: AUGUST 4, 2011

ORDERED BY:

DOUGLAS CLARK HOLLMANN
ADMINISTRATIVE HEARING OFFICER

PLANNER: LORI RHODES

DATE FILED: AUGUST 23, 2011



PLEADINGS

Carolyn Robbins, as Personal Representative of the Estate of Oscar Sahlin, the applicant, seeks a variance (2011-0168-V) to allow an extension in the time required for the implementation and completion of a previously approved variance on property located along the northwest side of Sahlin Farm Road, northeast of Sherwood Forest Road, Annapolis.

PUBLIC NOTIFICATION

The hearing notice was posted on the County's web site in accordance with the County Code. The file contains the certification of mailing to community associations and interested persons. Each person designated in the application as owning land that is located within 175 feet of the property was notified by mail, sent to the address furnished with the application. The applicant submitted the affidavit of O. Charles Dodge indicating that the property was posted on July 19, 2011 (Applicant's Exhibit 1). I find and conclude that there has been compliance with the notice requirements.

FINDINGS

A hearing was held on August 4, 2011, in which witnesses were sworn and the following evidence was presented with regard to the proposed variance requested by the applicant.

The Property

The applicant owns the subject property which has a street address of 960 Sherwood Forest Road, Annapolis, MD 21401. It is also identified as Parcel 78,

Block 18, on Tax Map 38 in the Sahlin Farms subdivision. The property comprises 297.5 acres and is split zoned RLD Residential Low Density and OS Open Space Districts with 70 acres designated in the Chesapeake Bay Critical Area as resource conservation area (RCA). This is a waterfront property on Hopkins Creek.

The Proposed Work

The applicant seeks an extension in time for the implementation and completion of a previously approved variance (Case No. 2008-0282-V) which was granted to allow accessory structures absent principal dwellings on the subject property in accordance the site plan admitted into evidence as County Exhibit 2.

The Anne Arundel County Code

Article 18, § 18-16-405(a) provided that a variance expires by operation of law unless a building permit is obtained within 18 months and construction proceeds in accordance with the permit. Senate Bill 958 created an automatic two and one-half year tolling period for any permits that would otherwise expire between January 1, 2008 and June 30, 2010. The variance granted in Case No. 2008-0282-V is set to expire June 30, 2011. The applicant timely filed for an extension.

The Variance Requested

The applicant seeks a three-year extension in time in which to implement and complete the variance granted in Case No. 2008-0282-V.

The Evidence Submitted At The Hearing

Lori Rhodes, a planner with the Office of Planning and Zoning (OPZ), testified that the variance granted in the 2008 decision allowed the applicant the right to have accessory structures on three of the lots in the 11-lot Sahlin Farms subdivision (Lots 2, 3 and 4). Two of the lots (Lots 2 and 3) have been sold; Lot 4 is still on the market. Because of the slow real estate market, the large sizes of these waterfront lots, the environmental restrictions on those lots, and the fact that the sole access to these lots, Sahlin Farm Road, has not been built, a further extension in time is necessary.

Anthony Christhlf, Esq., presented evidence and proffered the testimony of the purchasers of Lots 2 and 3 as to the reasons why the time period needs to be extended. He concurred with Ms. Rhodes' recommendation, stating that a shorter time period would require the applicant to return again for another extension. An affidavit by Daniel J. Mathias, the purchaser of Lot 1, was admitted into evidence as Applicant's Exhibit 7, which corroborated the other evidence that the nature of the property and the real estate market justified an extension.

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.

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.

The variance process for subsection (1) above is a two-step process. The first step requires a finding that special conditions or circumstances exist that are peculiar to the land or structure at issue which requires a finding that the property whereupon the structures are to be placed or use conducted is unique and unusual in a manner different from the nature of the surrounding properties. The second part of the test is whether the uniqueness and peculiarity of the property causes the

zoning provisions to have a disproportionate impact upon the subject property causing the owner a practical difficulty or unnecessary hardship. "Uniqueness" requires that the subject property have an inherent characteristic not shared by other properties in the area. *Trinity Assembly of God of Baltimore City, Inc. v. People's Counsel for Baltimore County*, 178 Md. App. 232, 941 A.2d 560 (2008); *Umerley v. People's Counsel for Baltimore County*, 108 Md. App. 497, 672 A.2d 173 (1996); *North v. St. Mary's County*, 99 Md. App. 502, 638 A.2d 1175 (1994), cert. denied, 336 Md. 224, 647 A.2d 444 (1994).

The variance process for subsection (2) - practical difficulties or unnecessary hardship - is simpler. A determination must be made that, 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.

Furthermore, whether a finding is made pursuant to subsection (1) or (2) above, a variance may not be granted unless the hearing officer also finds 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) substantially impair the appropriate use or development of adjacent property, (4) reduce forest cover in the limited development and resource conservation areas of the critical area, (5) be contrary to acceptable clearing and replanting practices required for development in the critical area, or (6) be detrimental to the public welfare.

Findings - Zoning Variance

I find, based upon the evidence, that 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 implement and complete the variance approved in 2008. The evidence is sufficient to show that the applicant has been unable to move ahead in the time period allotted.

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.

This approval incorporates the same conditions appended to the prior Order in Case No. 2008-0282-V.

ORDER

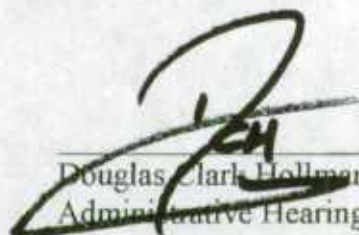
PURSUANT to the application of Carolyn Robbins, as Personal Representative of the Estate of Oscar Sahlin, petitioning for a variance to allow an extension in the time required for the implementation and completion of a previously approved variance; and

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 August, 2011**,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicant is **granted** a zoning variance to extend the time to obtain necessary approvals until August 23, 2014.

The foregoing variance is subject to the following conditions:

- A. 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, including but not limited to any direction regarding the use of nitrogen removal system technology and mitigation plantings.
- B. The accessory structures are non-habitable and may not be connected to wells or septic.
- C. This Order does not constitute a building permit. In order for the applicant to construct the structures permitted in this decision, they must apply for and obtain the necessary building permits, along with any other approvals required to perform the work described herein.


Douglas Clark Hollmann
Administrative Hearing Officer

NOTICE TO APPLICANT

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

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

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 2008-0282-V

CAROLYN ROBBINS, PERSONAL REPRESENTATIVE
FOR THE ESTATE OF OSCAR SAHLIN

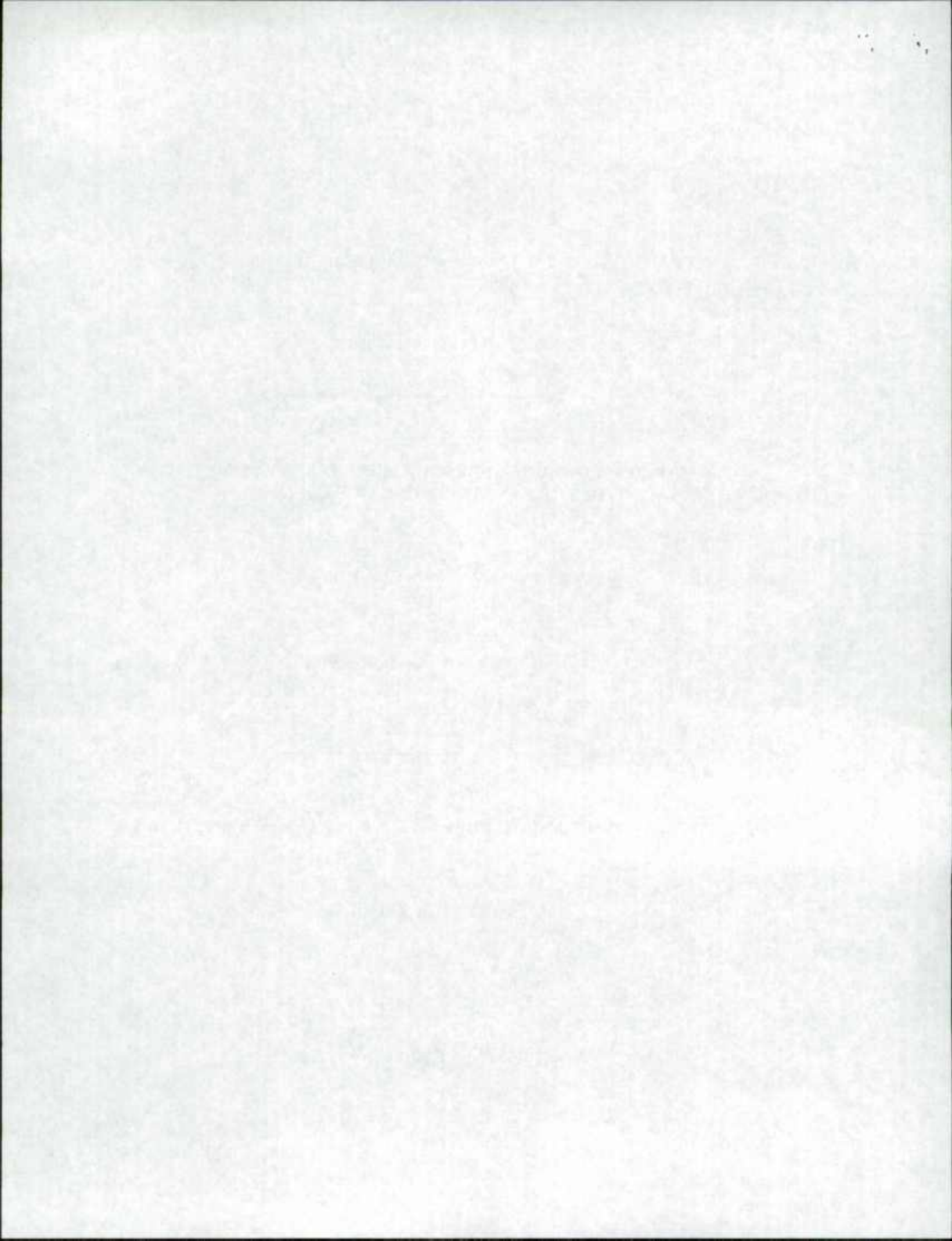
SECOND ASSESSMENT DISTRICT

DATE HEARD: NOVEMBER 18, 2008

ORDERED BY: STEPHEN M. LeGENDRE, ADMINISTRATIVE HEARING OFFICER

PLANNER: LORI RHODES

DATE FILED: NOVEMBER 21st, 2008



PLEADINGS

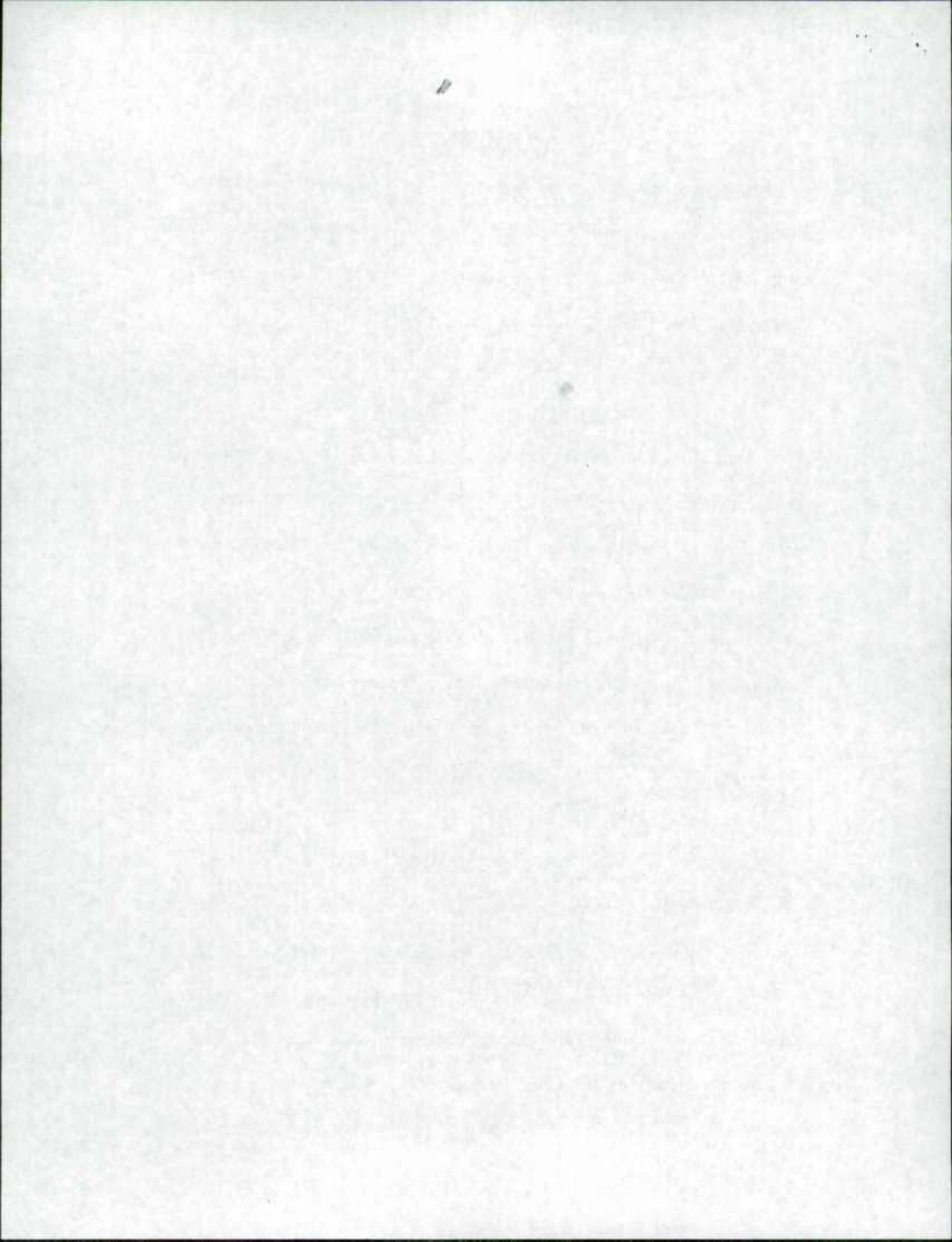
Carolyn Robbins, Personal Representative for the Estate of Oscar Sahlin, the applicant, seeks a variance (2008-0282-V) to allow accessory structures absent a principal structure on property located along the west side of Sherwood Forest Road, east of River Road, Annapolis.

PUBLIC NOTIFICATION

The hearing notice was posted on the County's web site in accordance with the County Code. The file contains the certification of mailing to community associations and interested persons. Each person designated in the application as owning land that is located within 175 feet of the property was notified by mail, sent to the address furnished with the application. The applicant submitted the affidavit of O. Charles Dodge indicating that the property was posted on November 3, 2008. I find and conclude that there has been compliance with the notice requirements.

FINDINGS AND CONCLUSIONS

This case concerns property with a street address of 960 Sherwood Forest Road, also identified as Parcel 78, Block 18, on Tax Map 38. The property comprises 297.5 acres and is split zoned RLD Residential Low Density and OS Open Space Districts with 70 acres located in the Resource Conservation Area (RCA) of the Chesapeake Bay Critical Area. This is a waterfront property on



Hopkins creek. The property enjoys nonconforming status for 10 additional houses as well as the permitted principal dwelling under Administrative Decision 2006-0235-N (October 5, 2006). The applicant has submitted an 11-lot subdivision application (Suhlin Farms, Subdivision No. 1998-091, Project No. 06-0015). The present request seeks to convert three existing dwellings to accessory structures on proposed lots (all waterfront) 2, 3 and 4. The request is preliminary to development of the three lots with new single-family dwellings.

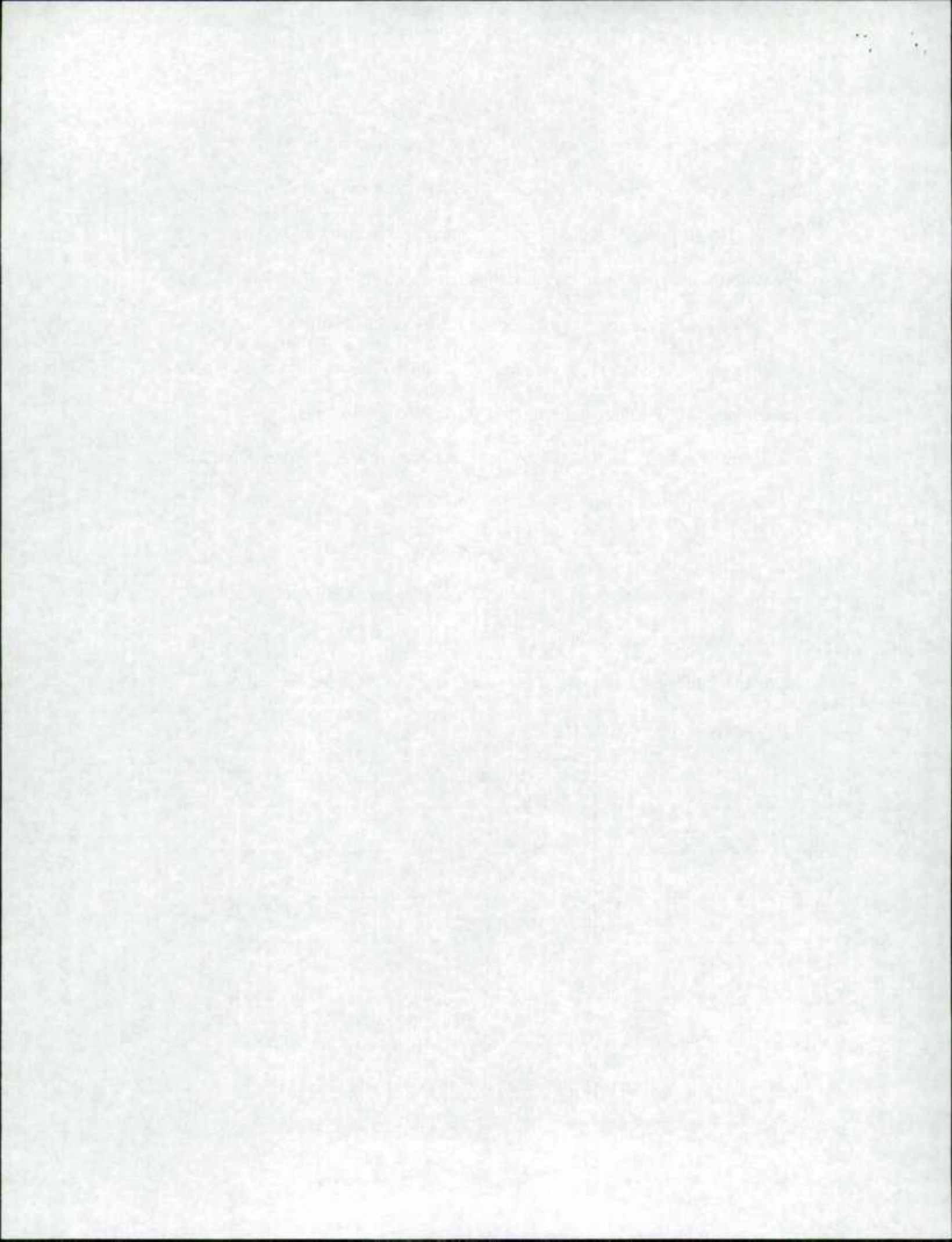
Anne Arundel County Code, Article 18, Section 18-2-204(c) does not allow an accessory structure or use absent a principal structure on the same lot.

Accordingly, the applicant requests a variance to the provision.

Lori Rhodes, a planner with the Office of Planning and Zoning, testified that the property is irregular in configuration and steeply sloped with other environmental features. The structures, which are located in the Critical Area buffer, are identified as follows:

<u>Lot No.</u>	<u>House No.</u>	<u>Floor area</u>
Lot 2	10	768 sq. ft.
Lot 3	9	458 sq. ft.
Lot 4	8	324 sq. ft.

The property is well within the allowance for impervious coverage. The request is considered the minimum relief and unlikely to alter the character of the neighborhood. In this regard, the existing dwellings would be converted to a less

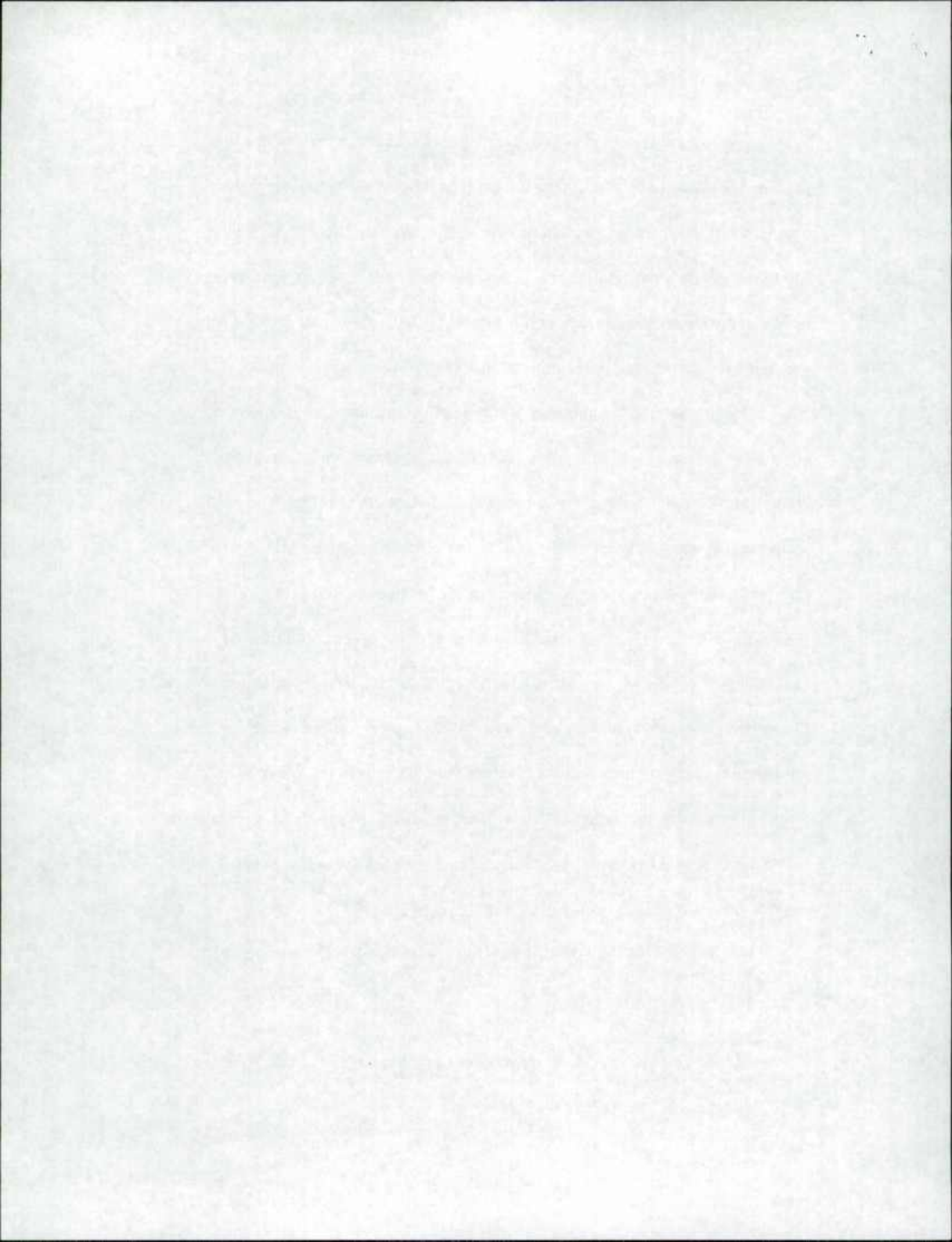


intensive use; there is no tree clearing; and the variance is temporary in nature, pending the completion of the new homes. The witness submitted the written comments of the reviewing agencies, which relate primarily to the pending subdivision.¹ By way of ultimate conclusion, Ms. Rhodes supported the request, provided the three structures are non-habitable with the wells and septic systems abandoned. She also requested mitigation and stormwater management.

Heather Swartz, the applicant's engineering consultant, confirmed the substance of the request. The property is subject to a Maryland Department of Natural Resources conservation easement, which restricts clearing. The existing wells serving the structures will be converted to irrigation, the plumbing will be removed and the septic systems – if they can be located – will be abandoned. The future house sites are located near the road. The three lots exceed the area requirements for the zoning district and the RCA. Each accessory structure will be distant from the corresponding new dwelling (at least 1,475 linear feet). Mulched paths will be the only means of access from the dwellings to the water. The witness opined that the variance standards are satisfied. In particular, the denial of the variance would deny riparian storage. Finally, the new dwellings do not require variances to the Critical Area program.

Ms. Robbins testified that the structures were constructed prior to 1950.

¹ The record was left open for the written comments by the Chesapeake Bay Critical Area Commission (Attachment A). I have also appended the response of the applicant's counsel (Attachment B).



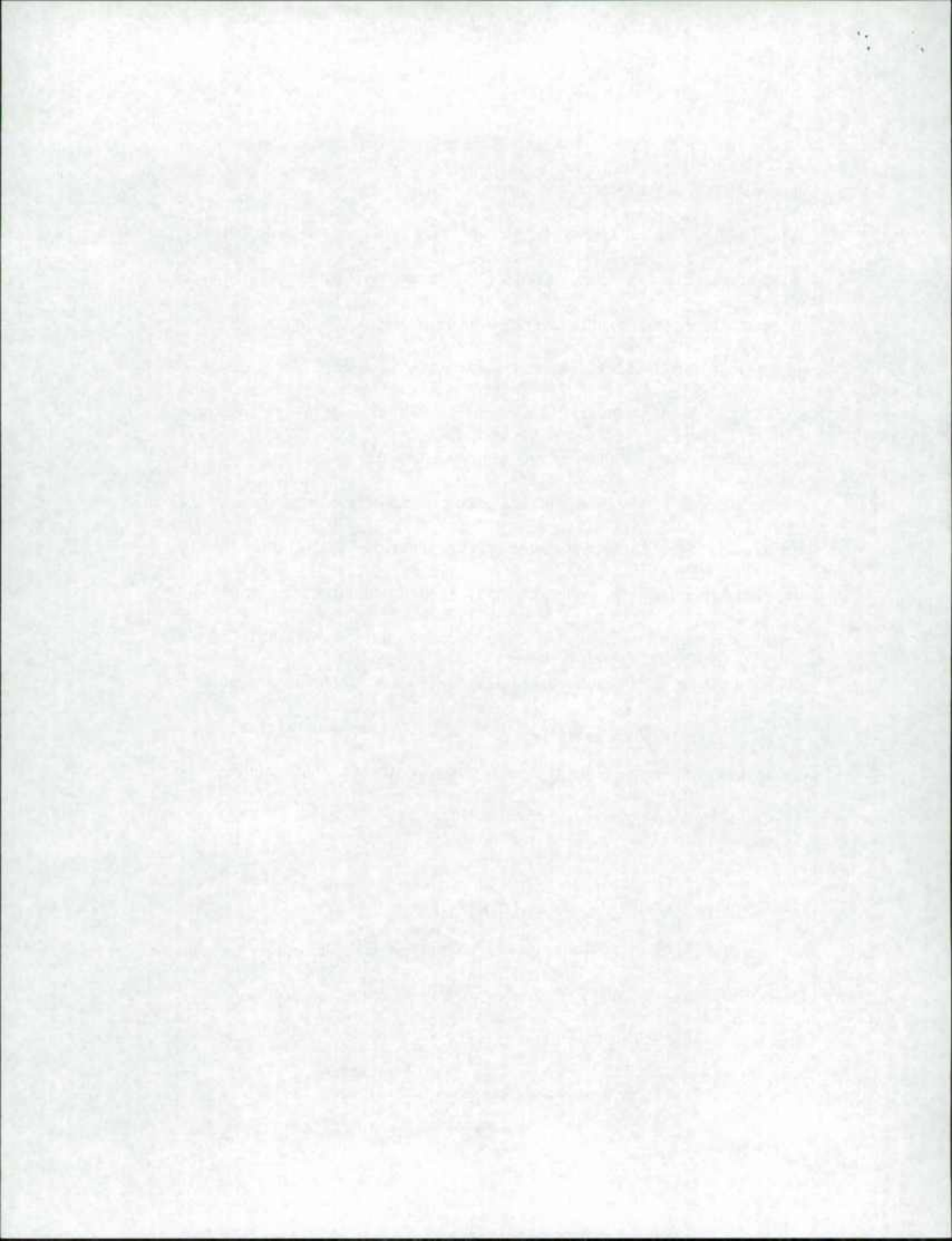
Bart Key, the general manager for the Sherwood Forest Club, submitted a letter in support of the application.²

Upon review of the facts and circumstances, I find and conclude that the applicant is entitled to conditional relief from the code. This property satisfies the test of unique physical conditions, consisting of its irregular configuration, variable topography, and environmental features such that there is no reasonable possibility of development in strict conformance with the code. Alternatively, the nonconforming status of the existing dwellings constitutes an exceptional circumstance such that the variance is needed in the avoidance of an unnecessary hardship and to enable the applicant to develop the subdivision. I further find that the variance represents the minimum relief. As indicated, this is a temporary variance pending subdivision and the construction of the new dwellings. There was 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 condition in the Order.

ORDER

PURSUANT to the application of Carolyn Robbins, personal representative for the Estate of Oscar Sahlin, petitioning for a variance to allow accessory structures without a principal structure, and

²Brian Whalen, who resides on River Road, sought and received clarification.

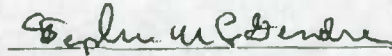


PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is this 21st day of November, 2008,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicant is **granted** a variance to allow accessory structures absent principal dwellings in accordance with the site plan.

The foregoing variance is subject to the following conditions:

1. The accessory structures are non-habitable and may not be connected to wells or septic.
2. The applicant shall provide mitigation and stormwater management as determined by the Permit Application Center.

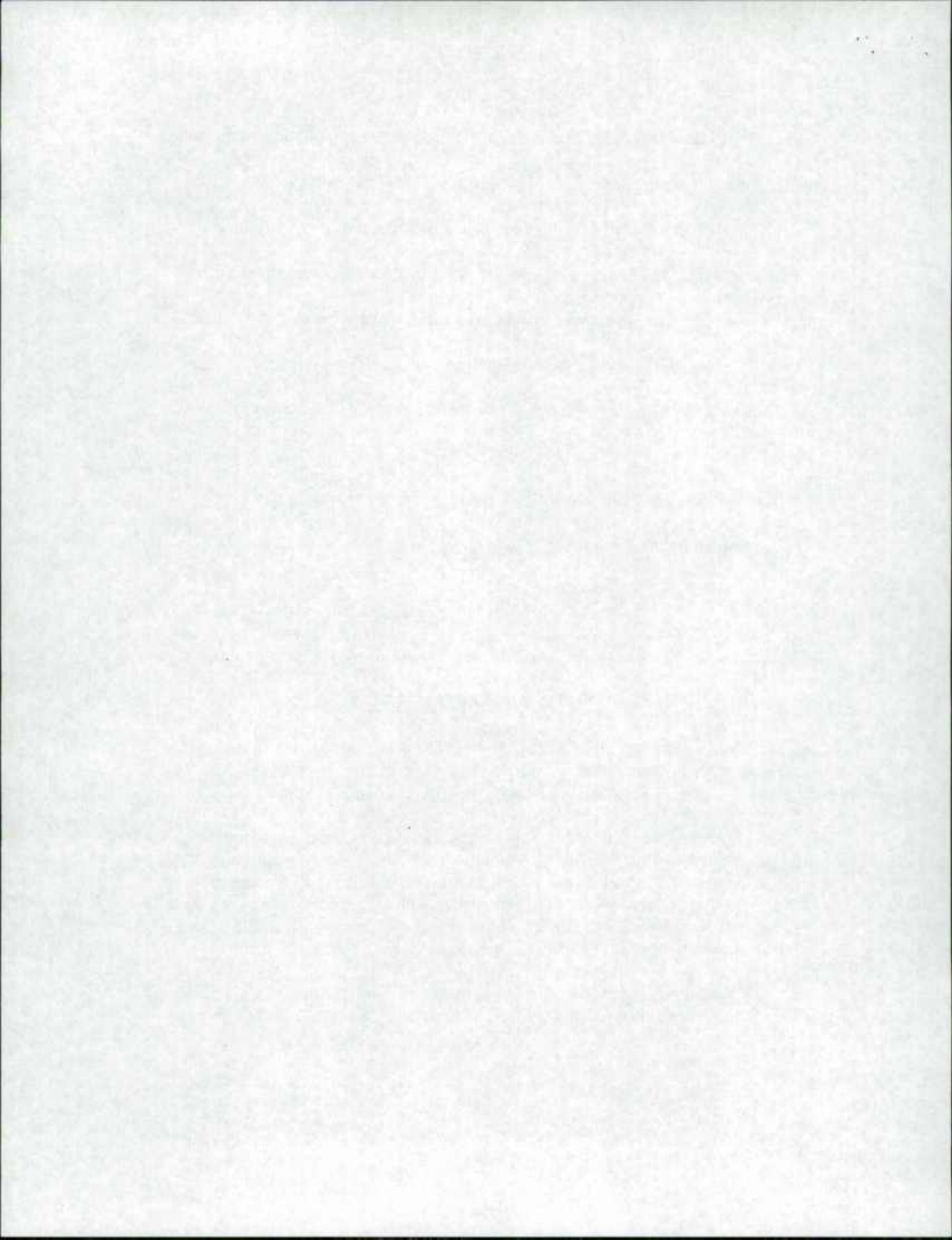

Stephen M. LeGendre
Administrative Hearing Officer

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 within 18 months (1) obtains a building permit or (2) files an application for subdivision. Thereafter, the variance shall not expire so long as (1) construction proceeds in accordance with the permit or (2) a record plat is recorded, the applicant obtains a building permit within one year of recordation and 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.



Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



Margaret G. McHale
Chair

Ren Screy
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/

Attachment A

November 19, 2008

Lori Rhodes
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road
Annapolis, Maryland 21401

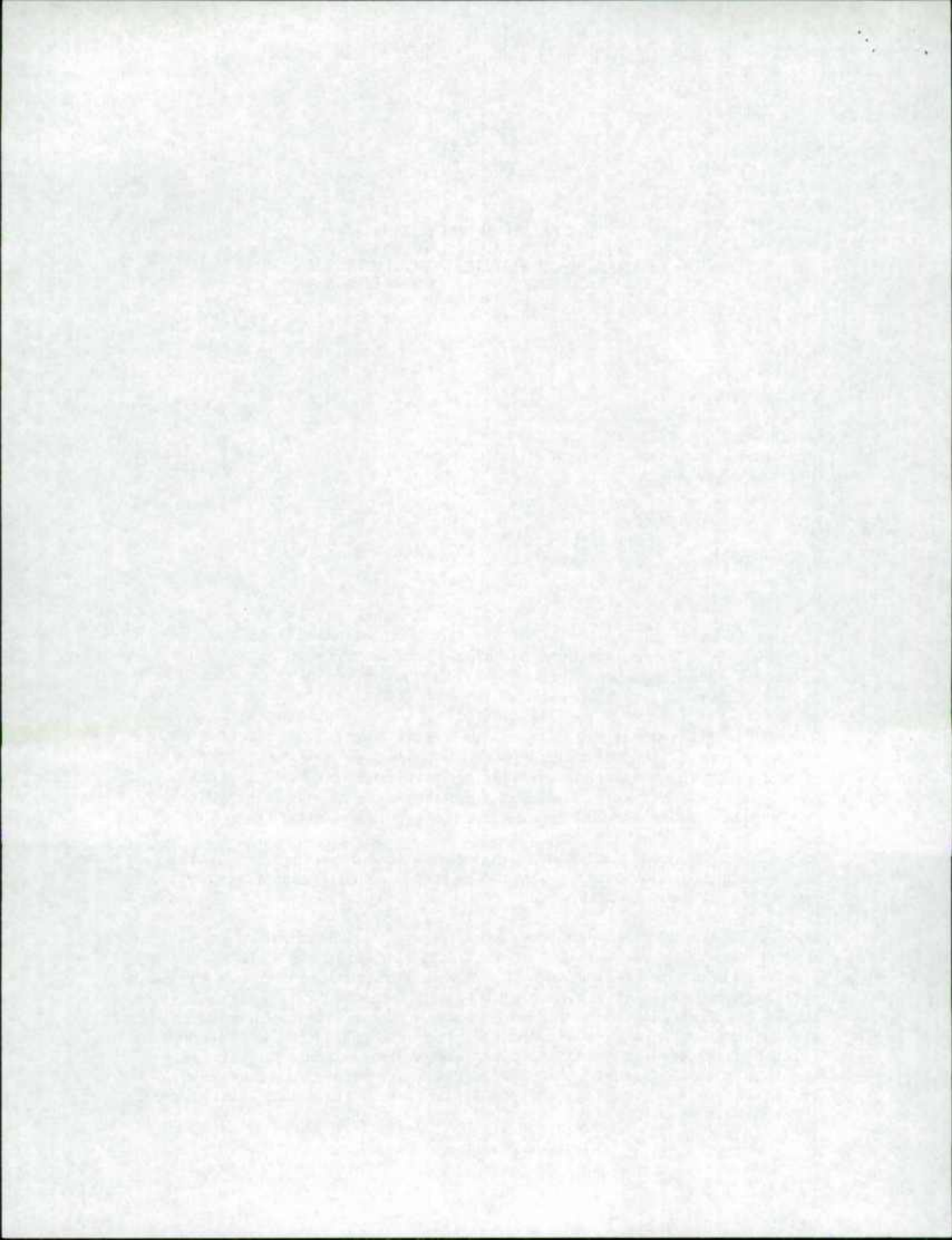
Re: 2008-0282-V

Dear Ms. Rhodes:

Thank you for providing information regarding the above referenced variance. The applicant is seeking a variance to permit three existing structures within the Critical Area to remain without the accompanying principle structures. The property for which the variance is being sought lies within the Resource Conservation Area (RCA).

Based on the information provided, it is my understanding that the applicant intends to abandon the use of the existing structures within the Critical Area as dwelling units and to convert the structures into accessory boat houses/storage units. Along with this conversion, the applicant has stated that the existing wells will be abandoned for residential purposes and remain for irrigation purposes only, the existing septic systems will be filled and abandoned, and the existing plumbing features will be removed from the structures. Provided that these restrictions are adhered to, that the conversion of the structures to accessory uses does not result in any modification to the existing footprints, and provided that these restrictions are required as conditions of approval, this office is generally not opposed to the granting of a variance as requested.

However, please note that the applicant has stated that subsequent to final subdivision approval, new single family dwelling units will be constructed on Lots 2, 3, and 4 either outside of the Critical Area, or within the Critical Area, in accordance with any necessary variances. This statement is problematic and should be clarified prior to any variances being granted. Specifically, the applicant's subdivision plats to date have not included a proposal to construct new residences within the Critical Area portions of the new lots. The property contains extensive Forest Interior Dwelling bird (FID) habitat, as well as extensive habitats for several rare, threatened, and endangered species. Variances to develop newly created lots will not be supported by this office and a subdivision plat which requires variances to develop newly created lots is not consistent with the Commission and County's reviews to date. If the



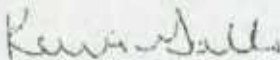
Lori Rhodes
Sahlin Farms Variance
November 19, 2008

applicant intends to develop the property in a manner different from that which has been shown on every plat submitted to date, this intent should be clear to all parties at this time and a revised subdivision plat required.

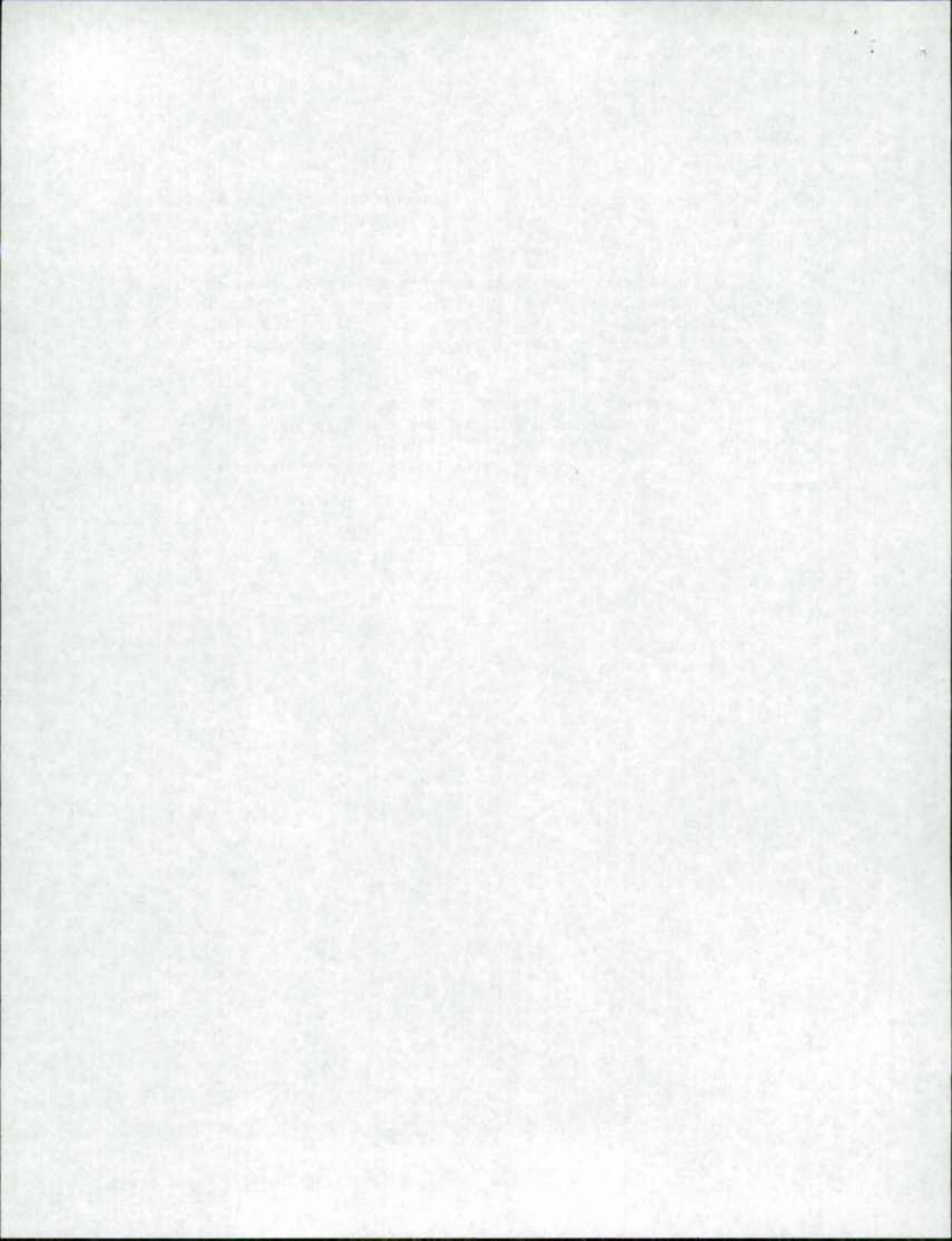
In summary, we recommend that a variance be granted only where there are certainties regarding the total and cumulative impacts to Critical Area resources. If plans for the existing structures, allowable number of development rights, and impacts to Habitat Protection Areas have not been finalized as seemingly indicated by the applicant's statement, this office would not be able to support the variance as requested.

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

Sincerely,



Kerrie Gallo
Regional Program Chief
AA434-08



LAW OFFICES
ANTHONY F. CHRISTHILF
150 SOUTH STREET
P. O. BOX 1524
ANNAPOLIS, MARYLAND 21404
(410) 263-3772
FAX (410) 263-8836

BALTIMORE AREA
(410) 269-6424

WASHINGTON AREA
(301) 261-2703

November 20, 2008

By Fax 410-222-1268

Stephen M. LeGendre, Esquire
Administrative Hearing Officer
Office of Administrative Hearings
Annapolis, MD 21401

attachment B

Re: Sahlin Farms; Case No. 2008-0282-V

Dear Mr. LeGendre:

On August 14, 2008, I drafted the letter of explanation for the above-referenced variance which was submitted to the Anne Arundel County Office of Planning & Zoning. At that time I was not familiar with the final development plan for the subdivision which indicates that new single family dwelling units on Lots 2, 3 and 4 will be constructed outside of the Critical Area. Accordingly, the language "...either outside of the Critical Area or, within the Critical Area in accordance with any necessary variances", to which Ms. Gallo objects in her letter to Ms. Rhodes of November 19, 2008, is outdated.

I have confirmed with my client that there is no intention to construct the new single family dwelling units on Lots 2, 3 and 4 within the Critical Area or to seek any variances for any such construction. The planned location for the new single family dwelling units on those lots is as indicated on Exhibits 1A and 1B, submitted at the time of the hearing.

Please feel free to give me a call if you have any questions.

Very truly yours,



Anthony F. Christhilf

AFC/vso

cc: Carolyn F. Robbins
Kerrie Gallo
Lori Rhodes
Heather Swartz

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
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www.dnr.state.md.us/criticalarea/

December 15, 2008

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

Re: Sahlin Estates
S 98-091, P 08-0098-00-NP

Dear Ms. Krinetz:

Thank you for forwarding information about the above-referenced revised subdivision application. The proposed project is the subdivision of a 126 acre property to create seven lots with portions of five lots in the 86.7 acres that are within the Critical Area and designated as a Resource Conservation Area (RCA). Because it does not appear that anything in the submitted revised materials raise any Critical Area issues and because it does not appear that the proposed subdivision plans have changed since this office confirmed that the applicant had addressed all of our comments in our December 21, 2006 letter, we have no comments on the most recently submitted materials. If future revisions are made to the subdivision plans, please forward them to this office for review.

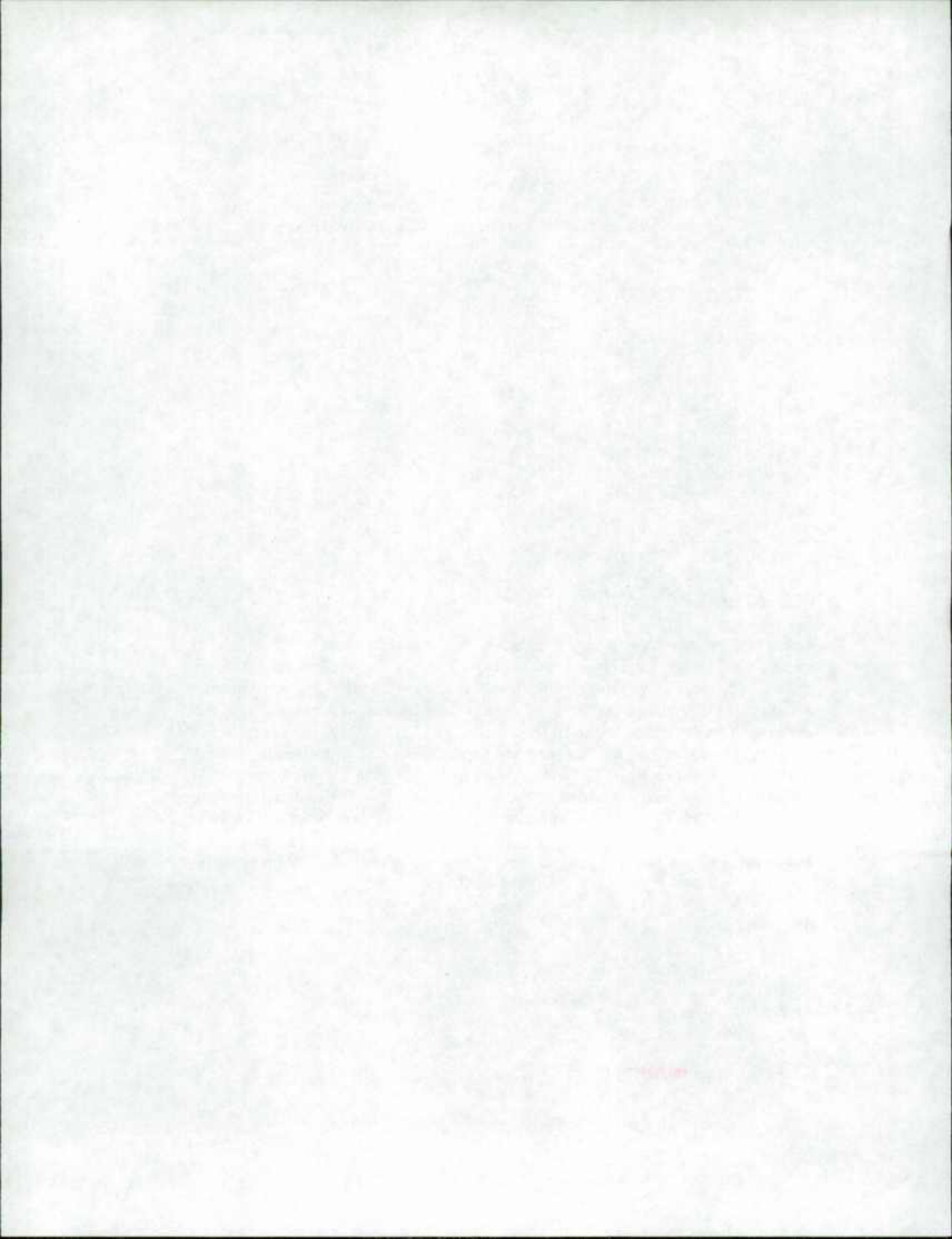
Thank you for the opportunity to comment. Please contact me at (410) 260-3481 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "AW", written over a light blue horizontal line.

Amber Widmayer
Natural Resources Planner

cc: AA 63-06, AA 434-08



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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November 19, 2008

Lori Rhodes
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road
Annapolis, Maryland 21401

Re: 2008-0282-V

Dear Ms. Rhodes:

Thank you for providing information regarding the above referenced variance. The applicant is seeking a variance to permit three existing structures within the Critical Area to remain without the accompanying principle structures. The property for which the variance is being sought lies within the Resource Conservation Area (RCA).

Based on the information provided, it is my understanding that the applicant intends to abandon the use of the existing structures within the Critical Area as dwelling units and to convert the structures into accessory boat houses/storage units. Along with this conversion, the applicant has stated that the existing wells will be abandoned for residential purposes and remain for irrigation purposes only, the existing septic systems will be filled and abandoned, and the existing plumbing features will be removed from the structures. Provided that these restrictions are adhered to, that the conversion of the structures to accessory uses does not result in any modification to the existing footprints, and provided that these restrictions are required as conditions of approval, this office is generally not opposed to the granting of a variance as requested.

However, please note that the applicant has stated that subsequent to final subdivision approval, new single family dwelling units will be constructed on Lots 2, 3, and 4 either outside of the Critical Area, or within the Critical Area, in accordance with any necessary variances. This statement is problematic and should be clarified prior to any variances being granted. Specifically, the applicant's subdivision plats to date have not included a proposal to construct new residences within the Critical Area portions of the new lots. The property contains extensive Forest Interior Dwelling bird (FID) habitat, as well as extensive habitats for several rare, threatened, and endangered species. Variances to develop newly created lots will not be supported by this office and a subdivision plat which requires variances to develop newly created lots is not consistent with the Commission and County's reviews to date. If the



Lori Rhodes
Sahlin Farms Variance
November 19, 2008

applicant intends to develop the property in a manner different from that which has been shown on every plat submitted to date, this intent should be clear to all parties at this time and a revised subdivision plat required.

In summary, we recommend that a variance be granted only where there are certainties regarding the total and cumulative impacts to Critical Area resources. If plans for the existing structures, allowable number of development rights, and impacts to Habitat Protection Areas have not been finalized as seemingly indicated by the applicant's statement, this office would not be able to support the variance as requested.

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

Sincerely,



Kerrie Gallo
Regional Program Chief
AA434-08