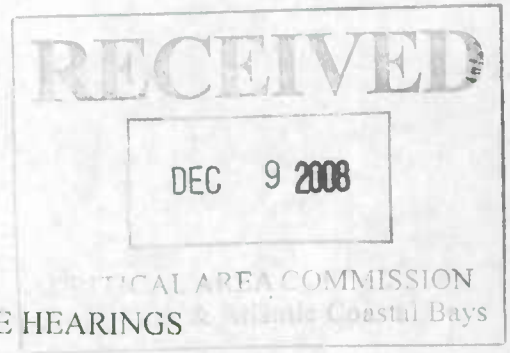


JR

588-08



IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 2008-0318-V

WILLIAM AND SHERYL OSTRYE

SECOND ASSESSMENT DISTRICT

DATE HEARD: NOVEMBER 25, 2008

ORDERED BY: STEPHEN M. LeGENDRE, ADMINISTRATIVE HEARING OFFICER

PLANNER: ROBERT KONOWAL

DATE FILED: DECEMBER 3rd, 2008

BOOKS

PLEADINGS

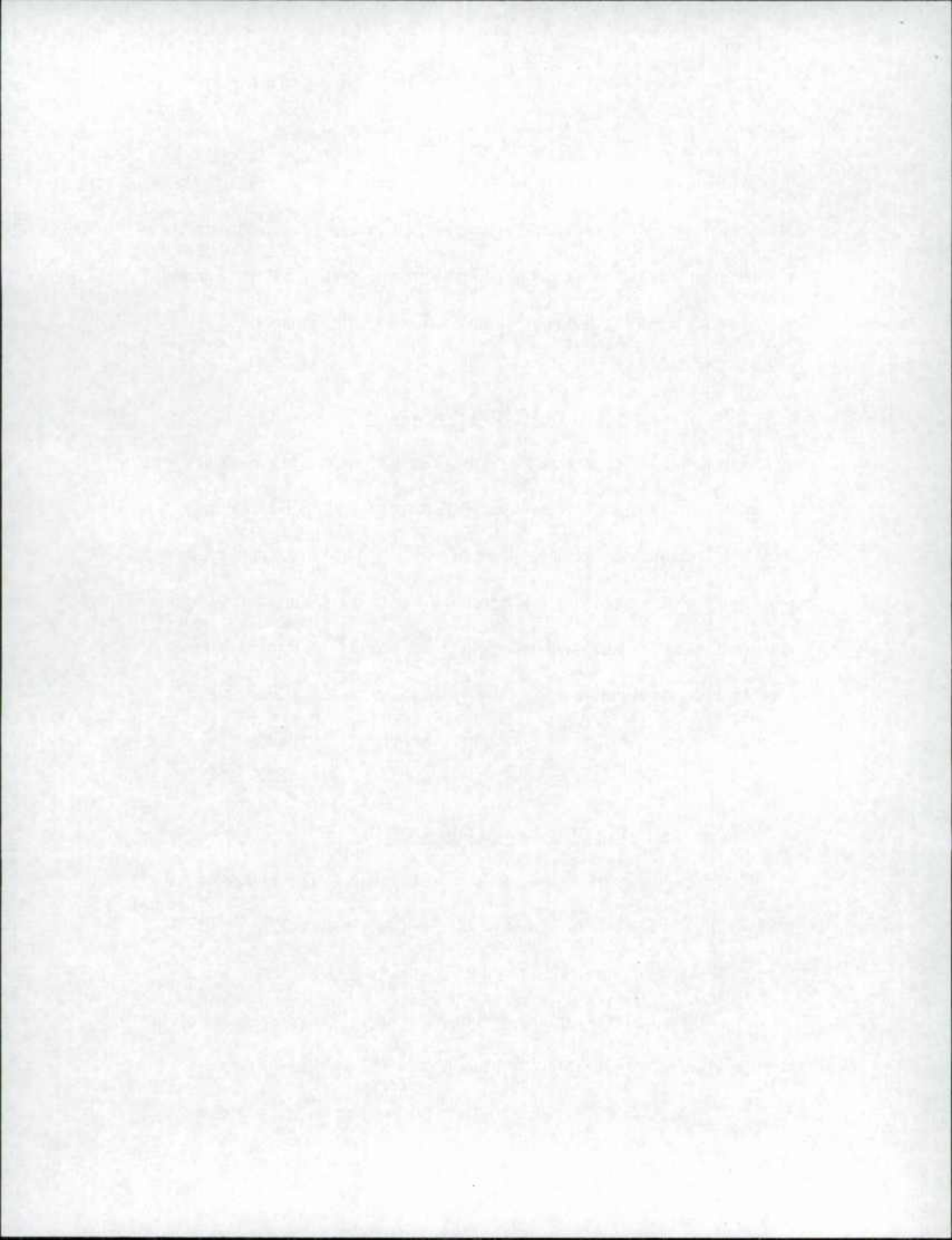
William and Sheryl Ostrye, the applicants, seek a variance (2008-0318-V) to allow a dwelling with less setbacks than required, greater coverage by structures than allowed and disturbance to slopes 15 percent or greater on property located along the west side of Clopston Hill, north of Thorsby Hill, Annapolis.

PUBLIC NOTIFICATION

The hearing notice was posted on the County's web site in accordance with the County Code. The file contains the certification of mailing to community associations and interested persons. Each person designated in the application as owning land that is located within 175 feet of the property was notified by mail, sent to the address furnished with the application. Ms. Ostrye 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 305 Clopston Hill, in the Sherwood Forest subdivision, Annapolis. The property comprises 4,600 square feet and is zoned R2 residential with a Chesapeake Bay Critical Area designation as Limited Development Area (LDA). The request is to raze the dwelling, followed by the construction of a new dwelling. The project disturbs 417 square feet of steep slopes. The new dwelling occupies 38 percent of

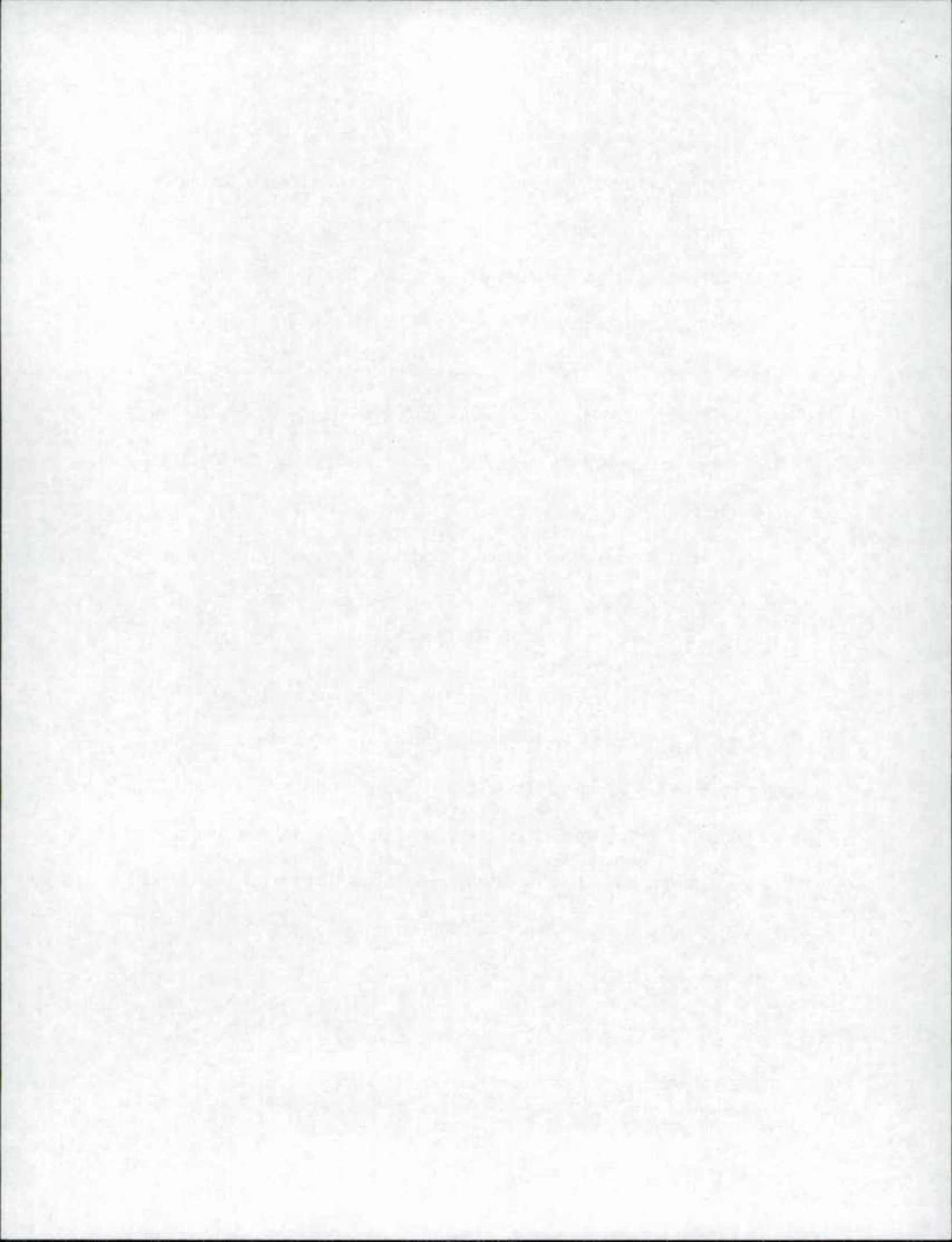


the lot area and is located seven feet from the front lot line and 1-foot from the rear lot line. The construction includes an areaway that projects seven feet into a required yard and a foot from the boundary.

Anne Arundel County Code, Article 17, Section 17-8-201 proscribes the disturbance of steep slopes in the LDA. Article 18, Section 18-4-601 limits lot coverage by structures to 30 percent and requires a front setback of 30 feet and a rear setback of 25 feet. Section 18-2-301(b) limits areaways to a 3-foot projection into the setback so long as the distance to the lot line is at least five feet. Accordingly, the proposal requires a variance to disturb steep slopes, and variances of eight percent to lot coverage, 23 feet to the front setback, 24 feet to the rear setback and four feet for the projection of the areaway into the setback and the distance to the boundary.

Robert Konowal, a planner with the Office of Planning and Zoning, testified that the property is steeply sloped, shallow and well below the minimum area for the district. The replacement dwelling is modest in size with a smaller footprint than the existing dwelling. The request is considered the minimum relief and otherwise in compliance with the variance standards. There were no adverse agency comments.¹ By way of conclusion, Mr. Konowal supported the application.

¹ The Chesapeake Bay Critical Area Commission requested mitigation, stormwater management and a nitrogen removal component for the replacement septic system.

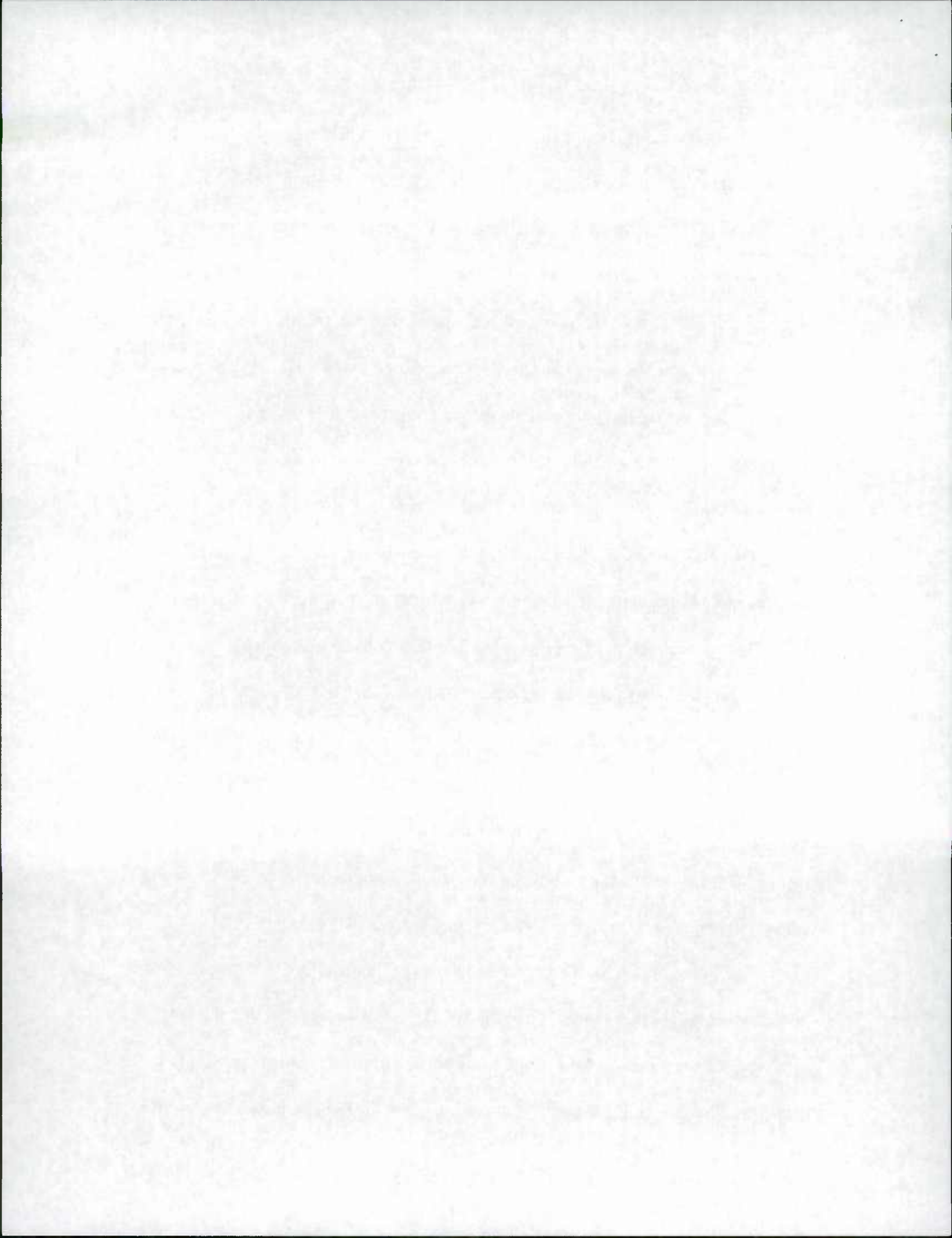


Ms. Ostryc testified that the dwelling has been in her husband's family for 40 years and needs replacement.

Michael Drum, the applicants' engineering consultant, testified that the existing dwelling occupies 52 percent of the land area, including a deck that extends across the west side boundary and a portion of the dwelling 3.9 feet from the front lot line. There is a modest reduction in impervious surfaces. The septic design utilizes the existing drywell but relocates the tank. The approval by the Department of Health is pending an off-site easement. Finally, the project includes stormwater management.

Bart Key, the general manager for the Sherwood Forest Club, testified that the project complies with the community covenants and has received the approval of the Board of Directors. 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 relief from the code. For this Critical Area property, due to the extent of the slopes, 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 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 general spirit and intent of the program.

With respect to the zoning variances, this property satisfies the test of unique physical conditions, consisting of its reduced area and shallow depth, such that there is no reasonable possibility of development in strict conformance with the code.

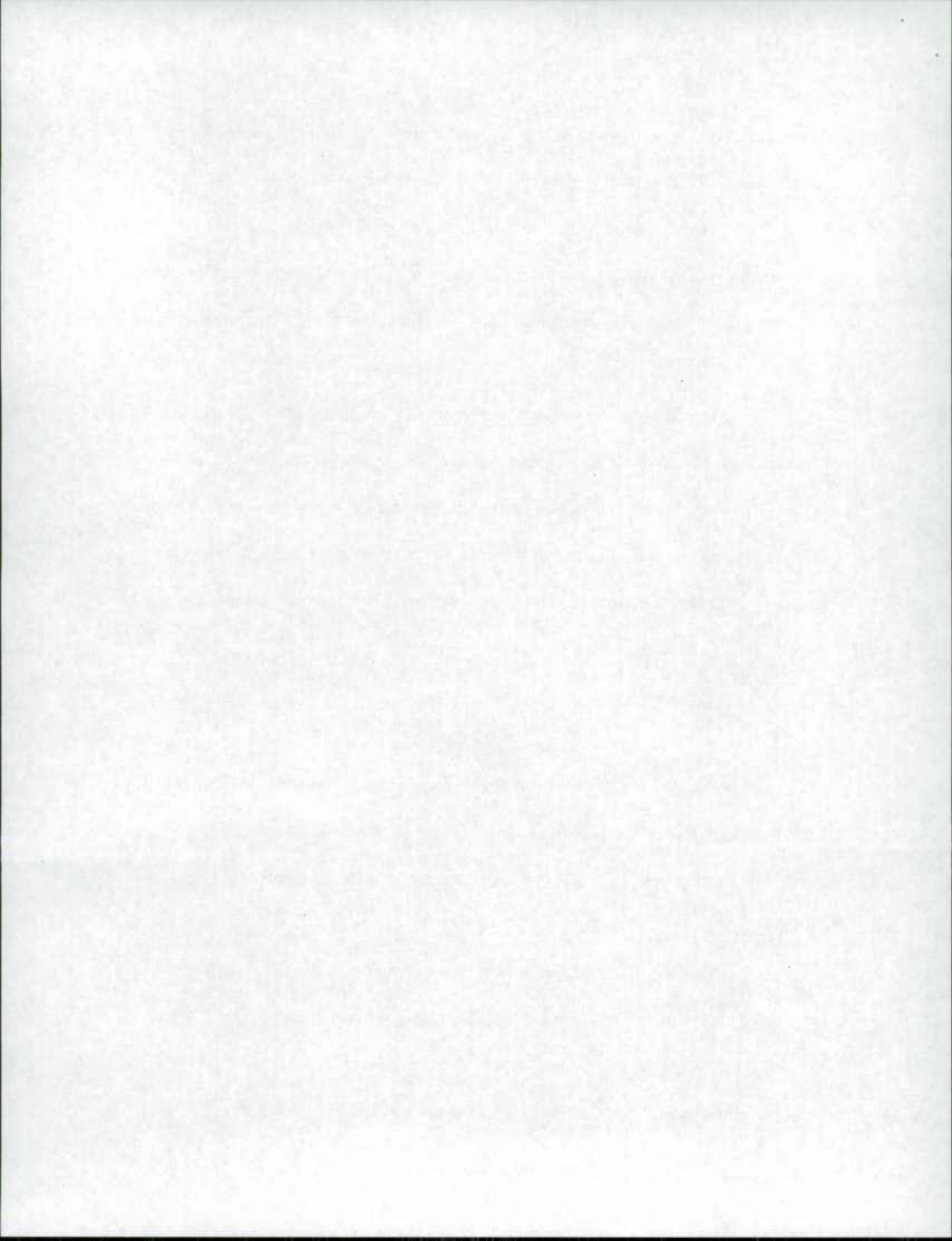
I further find that the variances represent the minimum relief. This is a modest replacement for a nonconforming dwelling. There was nothing to suggest that the granting of the variances would alter the essential character of the neighborhood, substantially impair the appropriate use or development of 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 William and Sheryl Ostrye, petitioning for a variance to allow a dwelling with less setbacks than required, greater coverage by structures than allowed and disturbance to slopes 15 percent or greater, and

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

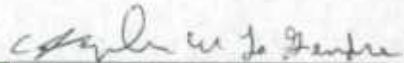
ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicants are **granted** a variance to disturb steep slopes and



variances of 8 percent to the coverage by structures, 23 feet to the front setback, 24 feet to the rear setback and four feet for the projection of an areaway into a required setback and the distance to the boundary.

The foregoing variances are subject to the following conditions:

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

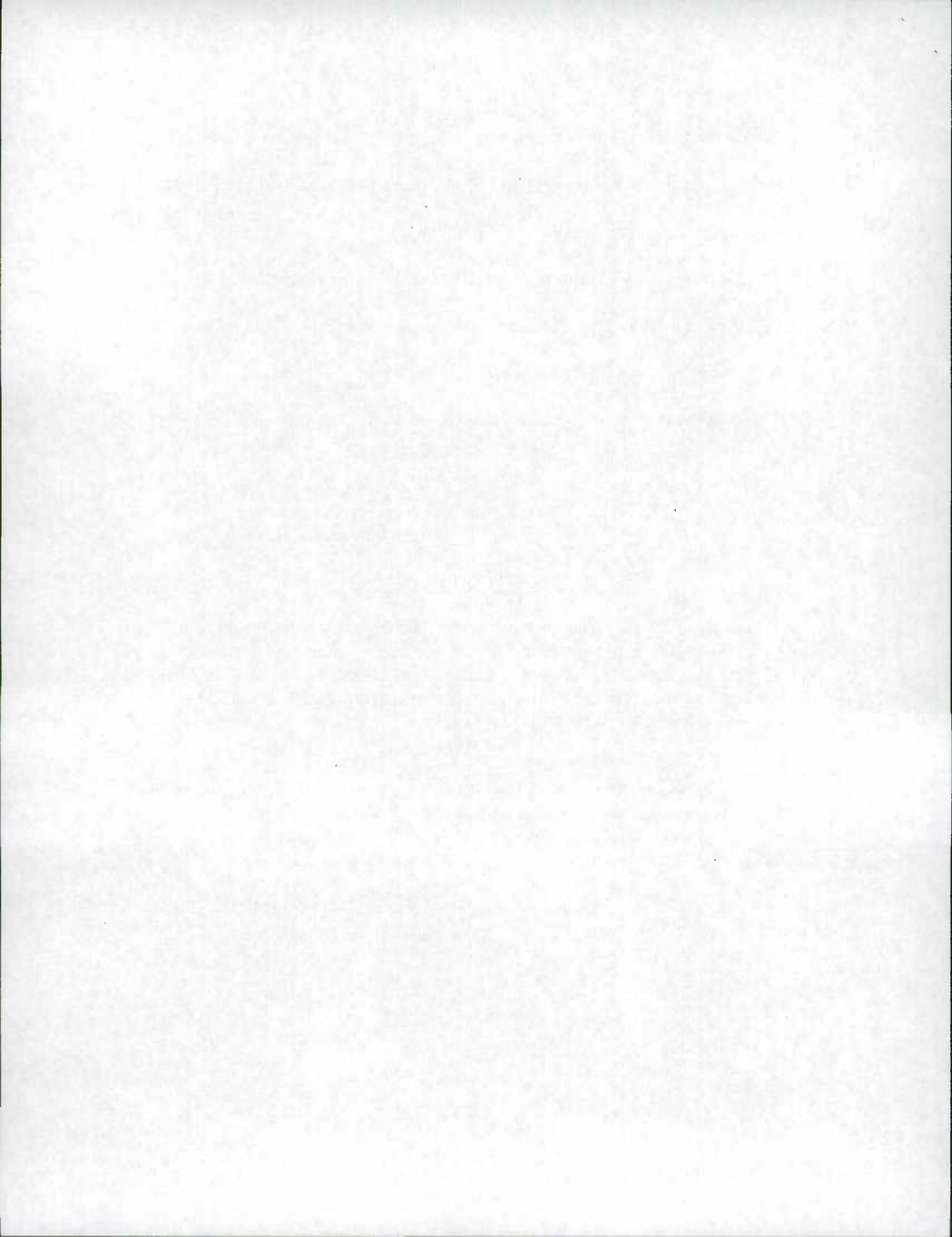

Stephen M. LeGendre
Administrative Hearing Officer

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. **A permit for the activity that was the subject of this variance application will not be issued until the appeal period has elapsed.**

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.



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/

October 28, 2008

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

Re: 2008-0318-V -- Ostrye, William and Sheryl

Dear Ms. Cotter:

Thank you for forwarding the above-referenced variance request. The applicants request a variance to allow a dwelling with less setbacks than required, greater coverage by structure than allowed and with disturbance to slopes greater than 15%. This lot is 4,600 square feet and is designated as a Limited Development Area (LDA). The applicants propose to raze the existing dwelling unit and reconstruct in a similar footprint. The proposed lot coverage for this area is 1,970 which is above the allowable limit, but below what currently exists on this property.

Based on the above information, we do not oppose the proposed reconstruction of the dwelling unit. Mitigation is required at a ratio of 3:1 for the area of disturbance associated with the dwelling reconstruction in the 100-foot Buffer. A fee-in-lieu may be provided if all plantings cannot be located on site. Additionally, we recommend that the Hearing Officer require stormwater management for the reconstructed dwelling as a condition of approval. We also recommend that as the septic system is being replaced, that a nitrogen removing septic component is required as a condition of variance approval.

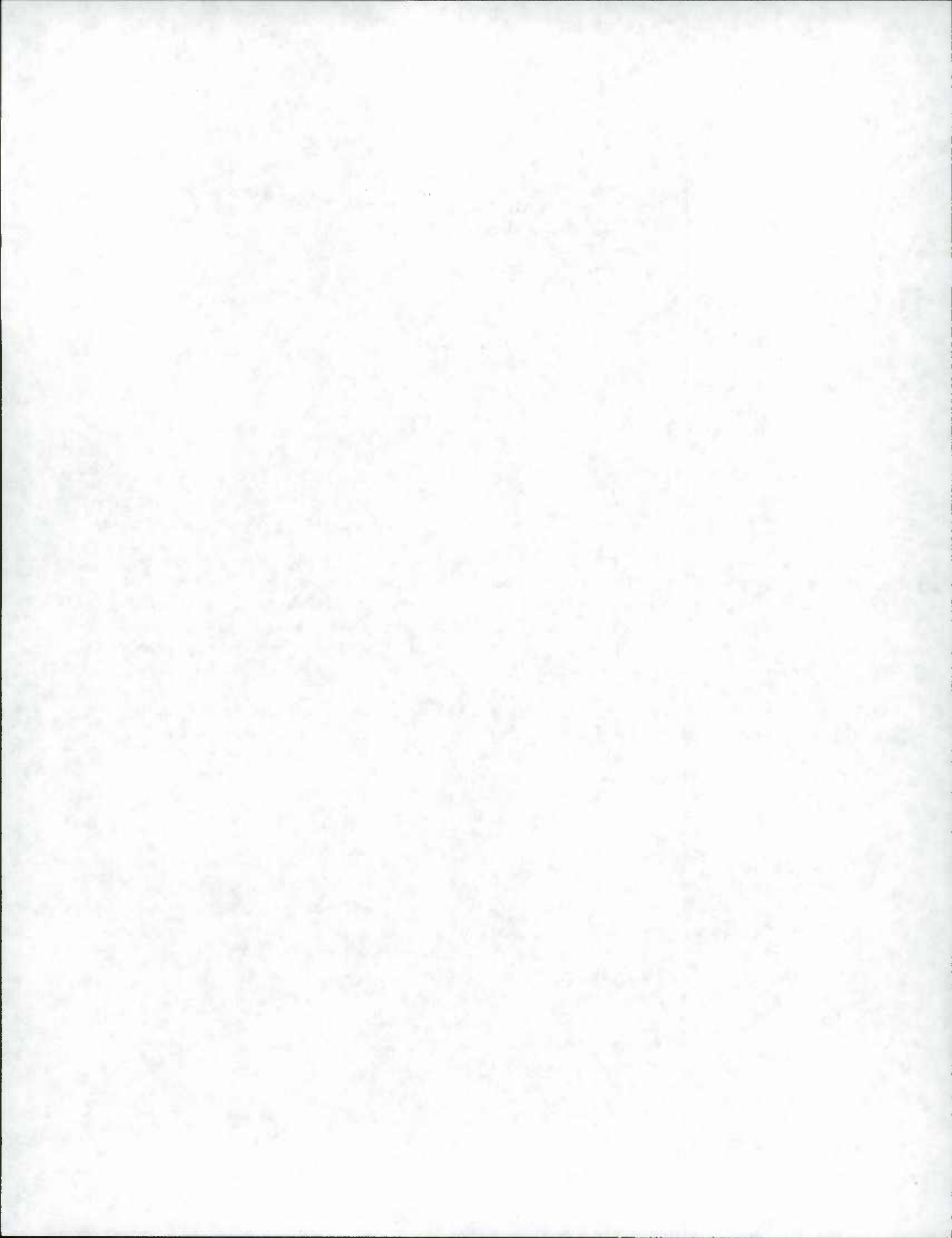
Please include this letter in your file and submit it as part of the record for variance. Please notify the Commission of the decision made in this case. I can be reached at 410-260-3476 should you have any questions.

Sincerely,

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

Julie Roberts
Natural Resources Planner

cc: AA 588-08



Chesapeake Bay Critical Area Report

Sherwood Forest ~ Lot 305

Tax Map 39, Grid 19, Parcel 295

Tax Account No. 02-720-08910330

Property Address: 305 Clopston Hill
Annapolis, Maryland 21405

Property Owner & Variance Applicant: Mr. & Mrs. William Ostrye

Critical Area Designation: LDA **Zoning:** R-2 **Lot Area:** 0.11 Ac.

Site Description

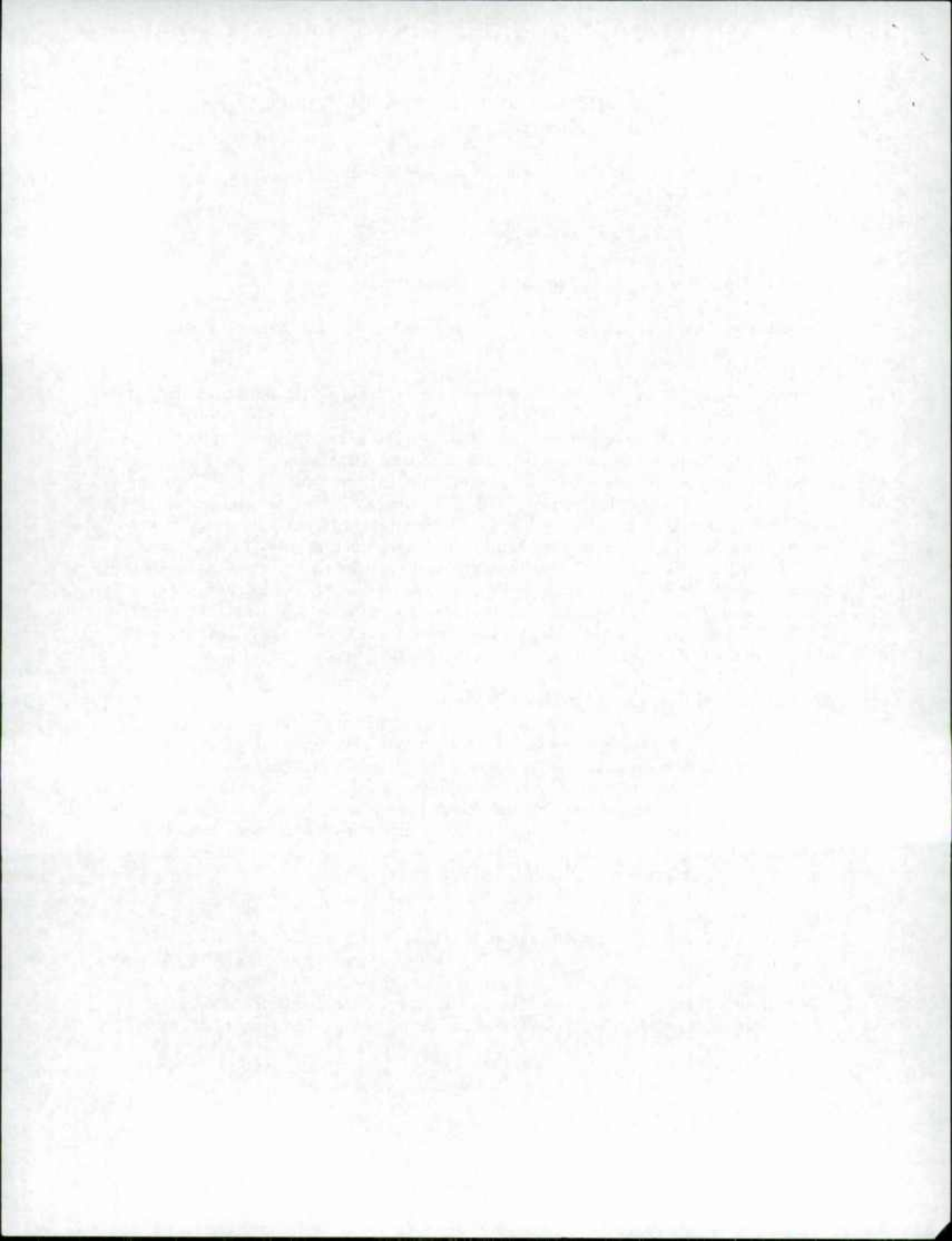
The subject property is an irregularly shaped legal building parcel located in the community of Sherwood Forest on the west side of Clopston Hill, a variable width, private Right-of-Way. The property contains an area of approximately 4,600 s.f. (0.11 Ac.), and is currently improved with a single-family dwelling and other associated improvements. The existing dwelling is located in the northwestern portion of the lot, and is non-conforming to current Anne Arundel County front, rear, and side yard zoning setbacks, and to coverage by structure limits. Furthermore, the rear deck traverses the rear property line, and is partially constructed on Sherwood Forest Company property. A short gravel driveway services the lot from Clopston Hill. Sewage service for the existing dwelling consists of a 1,500 gal. septic tank and a 6' diameter drywell. The tank is to be relocated, and the drywell shall be reused. Replacement drywells shall be placed off-site in accordance with current Anne Arundel County Department of Health regulations. The subject property lies within the Chesapeake Bay Critical Area with an LDA land use designation, and unimproved portions of the site are composed entirely of steep slopes.

Description and Purpose of Variance Request

The applicant is proposing to raze and remove the existing single-family dwelling and construct a new single-family dwelling with associated improvements. The proposed dwelling is sited in approximately the same location as the existing dwelling, but lies within the confines of the property lines; however, due to the diminutive size of the lot and the pervasive presence of steep slopes, variances to zoning setbacks and slope disturbance are unavoidable. Variances to **Article 17, Section 8-201** for development on slopes of 15% or greater in the LDA; to **Article 18, Section 4-601** of 23' to the 30' front yard setback, 24' to the 25' rear yard setback, and 8% to the required 30% maximum coverage by structures are therefore requested.

Vegetative Coverage and Clearing

This property is forested with a variety of hardwood trees. The existing wooded area is roughly 1,050 s.f. (0.02 Ac.), or 23% of the site area. There will be approximately 400 s.f. (0.01 Ac.) of vegetative disturbance. The on-site disturbed area will be approximately 3,965 s.f. (0.09 Ac.); off-site disturbed area is approximately 780 s.f. (0.02 Ac.). Reforestation and afforestation requirements for this property will be addressed during the grading permit phase of this project.



Impervious Coverage

The site currently has 1,980 s.f. (0.05 Ac.) of impervious coverage. The proposed impervious area for this property is 1,970 s.f. (0.05 Ac.) and will not exceed the allowable impervious coverage of 1,980 s.f. (0.05 Ac.).

Steep Slopes (slopes > 15%)

The subject property contains approximately 688 s.f. (0.02 Ac.) of steep slopes, or 15% of the site area. Approximately 417 s.f. (0.01 Ac.) of steep slopes shall be disturbed during the proposed construction. On-site slope disturbance is approximately 256 s.f. (0.01 Ac.); 220 s.f. (0.01 Ac.) of on-site slope disturbance is required to demolish the existing dwelling; 36 s.f. (0.001 Ac.) of on-site slope disturbance is required to construct the proposed septic system. No slope disturbance will accrue for construction of the new dwelling, as it is contained within the footprint of the existing structure. Approximately, 161 s.f. (0.004 Ac.) of off-site slope disturbance is required to demolish the existing dwelling.

Predominant Soils

The predominant soil type is Collington-Wist complex, 5 to 10 percent slopes (CoC) and 2 to 5 percent slopes (CoB). This soil has a type "B" hydrologic classification and is not a hydric soil (soils characteristic of wetlands).

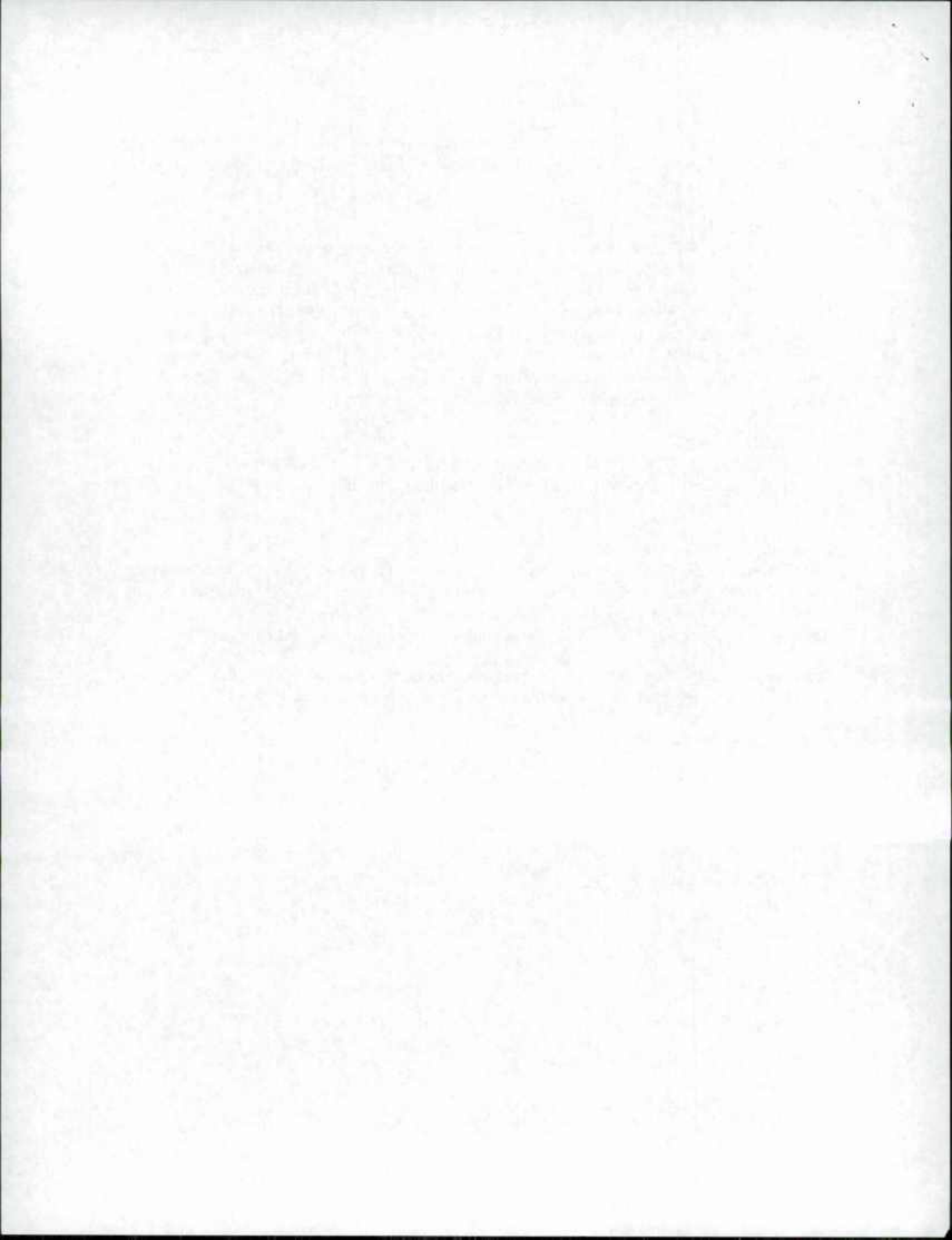
Drainage and Rainwater Control

Runoff from the existing site improvements flows to the drainage ravine owned and maintained by the Sherwood Forest Company; the ravine ultimately drains to the Severn River via the storm drainage system located in the Beach Road Right-of-Way. Runoff appears to be unmanaged, as there are no apparent stormwater management practices being utilized at the time.

Stormwater management and sediment and erosion control will be addressed during the grading permit phase of the project in order to meet Anne Arundel County design criteria.

Conclusions – Variance Standards

The applicant proposes to raze and remove the existing single-family dwelling, and construct a new single-family dwelling with associated improvements. Stormwater Management will be addressed during the permit phase of the project. Reforestation will be provided on-site to the extent practicable. With the proposed implementation of reforestation, sediment controls, and stormwater management, the proposed development will not cause adverse impacts to fish, wildlife, or water quality in the Critical Area.



Reference:

ADC: The Map People, 2002 Anne Arundel County, Maryland, Street Map Book

Anne Arundel County Office of Planning & Zoning , 1988 Critical Area Map

Anne Arundel County Office of Planning & Zoning, 1995 Buffer Exemption Map

Anne Arundel County, Maryland; Chesapeake Bay Critical Area Mapping Program, 1988, Critical Area Map

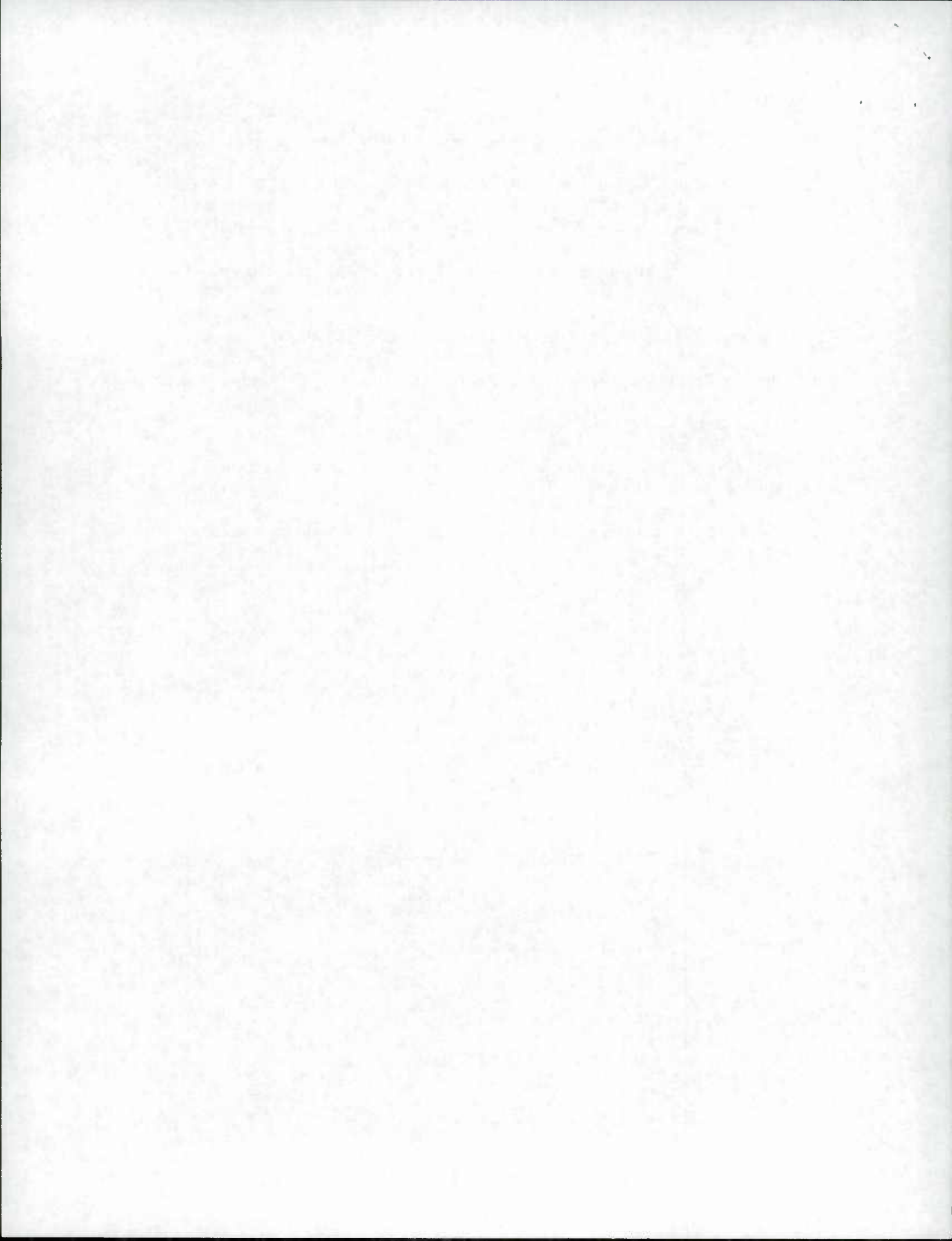
Federal Emergency Management Agency , 1985. Flood Insurance Rate Map

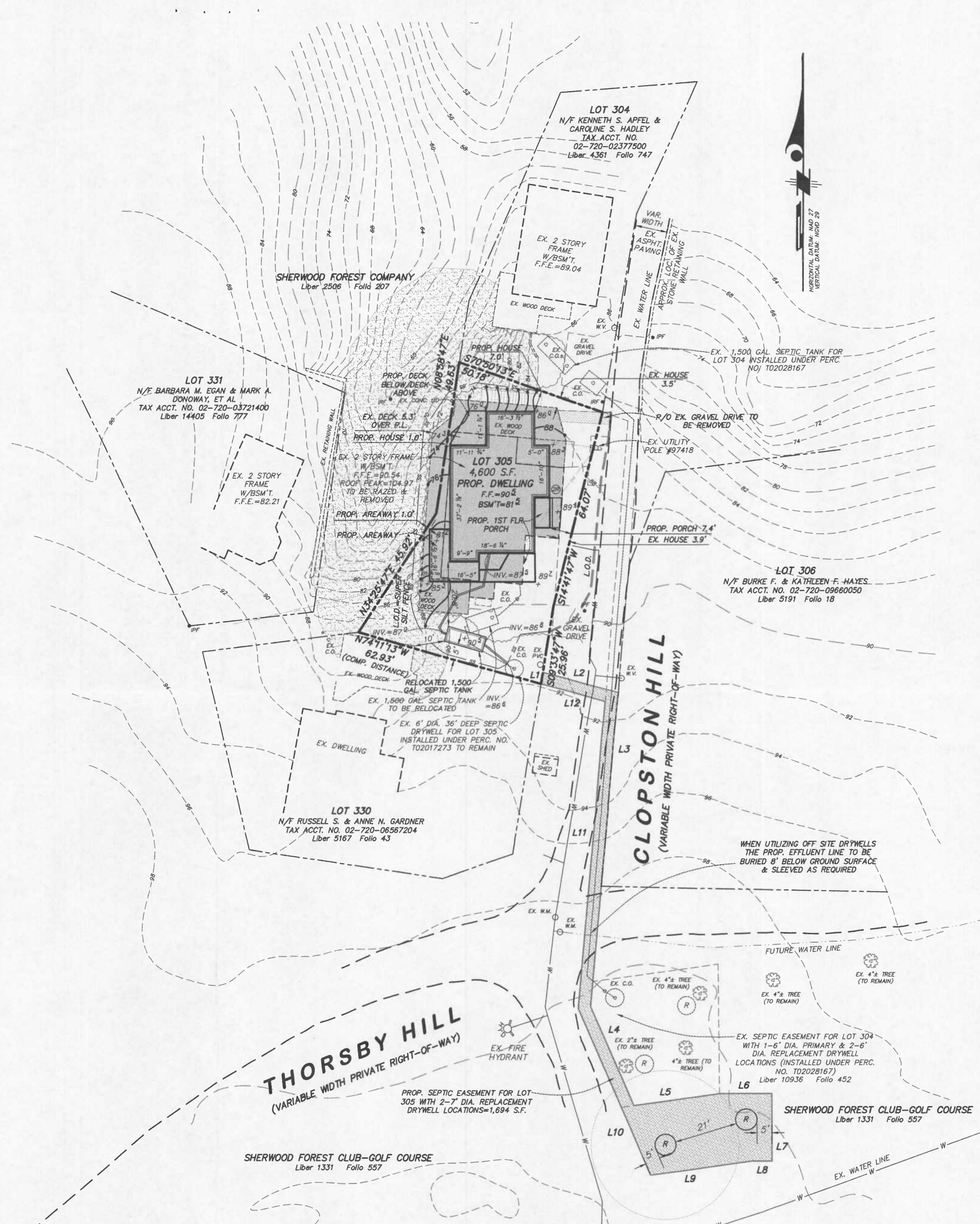
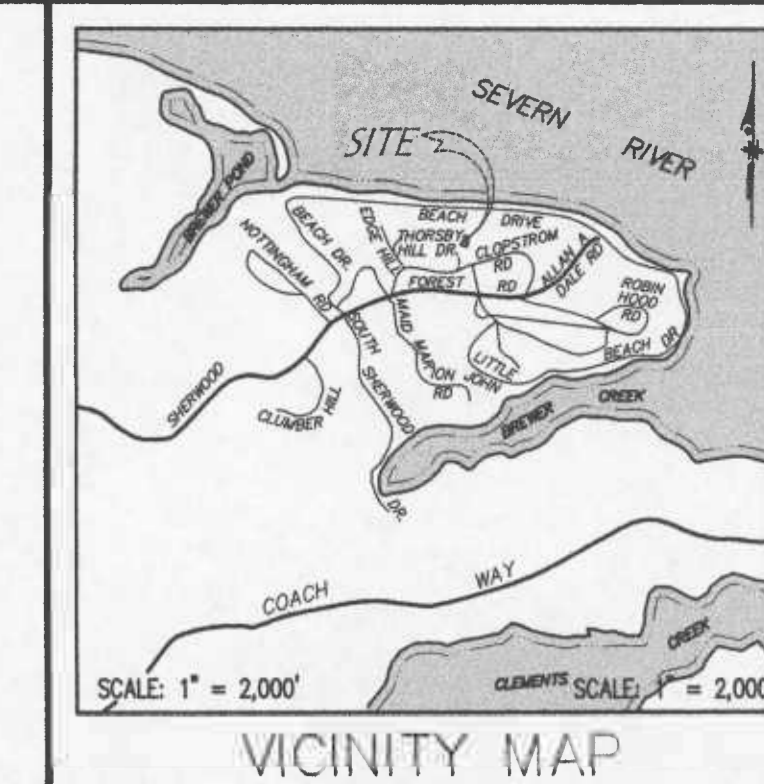
First American Real Estate Solutions, 2002, Realty Atlas: Anne Arundel County Maryland

Drum, Loyka and Associates LLC, 2008 Variance Plan

U.S. Department of Agriculture, Natural Resource Conservation Service –2003 Soil Survey of Anne Arundel County Maryland.

State Highway Administration of Maryland, 1989. Generalized Comprehensive Zoning Map: Third Assessment District





NOTES:
 1. PRIOR TO SEPTEMBER 2007, SEPTIC EASEMENTS FOR SHERWOOD FOREST WERE BASED ON PLAT DATUM. THE PLAN SHOWN HEREON WAS PREPARED IN MARYLAND STATE GRID NAD 27 THEREFORE BEARINGS MAY NOT MATCH PRIOR WORK.
 2. WATERLINE AS SHOWN HEREON WAS FIELD LOCATED BASED ON FIELD MARKINGS BY OTHERS.

LINE	BEARING	LENGTH
L1	N09°33'47"E	4.02'
L2	S74°11'13"E	25.84'
L3	S05°02'24"W	103.79'
L4	S27°22'40"E	35.69'
L5	N82°15'03"E	28.77'
L6	N90°00'00"E	12.22'
L7	S00°00'00"E	22.13'
L8	N90°00'00"W	6.66'
L9	S82°15'03"W	33.87'
L10	N23°22'40"W	59.84'
L11	N05°02'24"E	101.49'
L12	N74°11'13"W	22.09'

LEGEND

- - - - - EXISTING CONTOUR
- ===== 15%-25% STEEP SLOPES
- ~~~~~ EX. WOODS LINE
- LIMIT OF DISTURBANCE
- PROPOSED GRADE
- 27'± PROPOSED SPOT ELEV.
- SS ----- SS SUPER SILT FENCE

SITE TABULATIONS

- TOTAL SITE AREA (LOT 305): 4,600 S.F. (0.11 Ac.)
- IMPERVIOUS AREA:
 - EXISTING IMPERVIOUS SITE COVERAGE: 1,980 S.F. (0.05 Ac.)
 - ALLOWABLE IMPERVIOUS SITE COVERAGE: 1,980 S.F. (0.05 Ac.)
 - PROPOSED IMPERVIOUS SITE COVERAGE: 1,970 S.F. (0.05 Ac.)
- COVERAGE BY STRUCTURES:
 - EXISTING COVERAGE BY STRUCTURES: 2,388 S.F. (+/- 52%)
 - PROPOSED COVERAGE BY STRUCTURES: 1,754 S.F. (+/- 38%)
- SLOPE DISTURBANCE TABULATIONS:
 - TOTAL SLOPE DISTURBANCE: 417 S.F. (0.01 Ac.)
 - ON SITE SLOPE DISTURBANCE: 256 S.F. (0.01 Ac.)
 - EX. HOUSE DEMOLITION: 220 S.F. (0.01 Ac.)
 - PROPOSED HOUSE CONSTRUCTION: 0 S.F. (0.00 Ac.)
 - PROPOSED SEPTIC: 36 S.F. (0.001 Ac.)
 - OFF SITE SLOPE DISTURBANCE: 161 S.F. (0.004 Ac.)
 - EX. HOUSE DEMOLITION: 161 S.F. (0.004 Ac.)
- ZONING R-2

diff between coverage by structures allowed in imp.

DESIGNED: MMD
 ORIG. DATE: JULY 14, 2008
 MODIFIED BY/DATE: AUG. 27, 2008
 CADD DWG #: S012806-V
 DLA PROJECT #: S012806
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 These drawings are the property of Drum, Loyka & Associates, LLC. Unauthorized reproduction for any purpose is not permitted and is an infringement upon copyright laws. Violators will be subject to prosecution to the fullest extent of the law.

REVISIONS TO APPROVED PLANS			
No.	DATE	BY	DESCRIPTION
1	OCT 9 2008		

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

OWNER:
MR. & MRS. WILLIAM OSTRYE
 305 CLOPSTON HILL
 ANNAPOLIS, MARYLAND 21405
 410-849-8764

PERC. NO. T02038626
VARIANCE PLAN
SHERWOOD FOREST ~ LOT 305
 305 CLOPSTON HILL
 TAX ACCT. NO. 02-720-08910330
 TAX MAP 39 GRID 19 PARCEL 295 DISTRICT 2ND
 ANNE ARUNDEL COUNTY, MARYLAND
 SCALE: 1" = 20' DATE: SEPT. 17, 2008 PROJ. NO: S012806-V SHEET 1 OF 1

P:\S012806\2008\08-27-08\DWG\S012806-V.dwg, VARIANCE PLAN, 8/18/2008 11:46:18 AM