

366-08

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS

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

June 18, 2008

Amy Moredock
Department of Planning and Zoning
Kent County Government Center
400 High Street
Chestertown, Maryland 21620

Re: Stoneton West, LLC Variance
08-64

Dear Ms. Moredock:

Thank you for providing information on the above referenced variance request. The applicant proposes construct an addition to a single-family dwelling unit that is located entirely within the 100-foot Buffer. The property is 3.29 acres in size and is designated Resource Conservation Area (RCA). Currently, the property is developed with two single-family dwelling units and three storage buildings. The applicant proposes to install a first floor bedroom, bathroom, and utility room as well as expand the kitchen and porch areas. Total existing impervious surface onsite is 2,932 square feet (2.0%); if the variance is granted, impervious surface will increase onsite by 684 square feet to 3,636 square feet (2.5%).

Based on the above information, we cannot support the variance as proposed at this time, as it appears that the proposed additions to the existing single-family dwelling unit can be further minimized. While we understand that the variance is requested to provide accommodations for an elderly family member, we question whether the proposed expansion of patio/deck and porch are necessary and meet the standard of "unwarranted hardship;" that is, without the granting of this variance, the applicant would be denied reasonable and significant use of the entire property. In particular, we note that the applicant currently has use of an existing porch. Consequently, Commission staff recommends the proposed porch and patio/deck be removed from the site plan.

In addition, we have the following comments on this variance application:

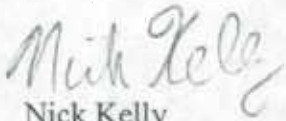
1. Please have the applicant provide a site plan which clearly delineates the 100-foot Buffer. The Buffer shall be expanded for any steep slopes, hydric or highly erodible soils, or non-tidal wetlands contiguous to the Buffer.



2. Mitigation for any disturbance shall be performed at a ratio of 3:1.

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

Sincerely,

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

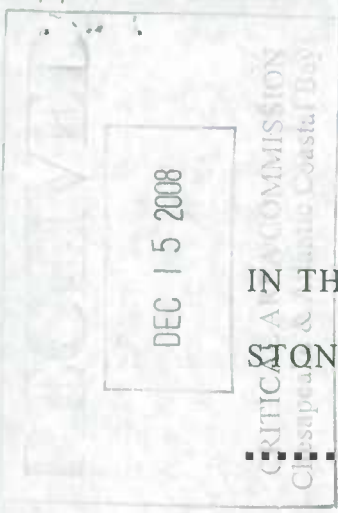
Nick Kelly

Natural Resource Planner

cc: file

NK

366-08



BEFORE THE KENT COUNTY BOARD OF APPEALS

IN THE MATTER OF
STONETON WEST LLC

KENT COUNTY, MARYLAND
APPEAL NO. 08-64

A hearing was held before the Board of Appeals on Monday, August 25, 2008, in the Commissioners' Hearing Room, Kent County Government Center, Chestertown, Maryland. Sitting for the Board were Albert Townshend, Chairman, Allen Davis, member and Franklin Dill, Alternate. Alice S. Ritchie served as attorney for the Board and Kim Dixon as Clerk.

DECISION

The Board has before it the Application of Stoneton West, LLC, 5 Cedar Lane, Canaan, CT 06018, requesting to construct an addition to an existing dwelling in the Critical Area 100 foot buffer on property located on First Avenue, adjacent to the eastern boundary of the Town of Betterton in the Third Election District, Kent County, Maryland. Public notice was given, and the property was posted in a conspicuous manner. All interested persons were given an opportunity to be heard in a public hearing held on Monday, August 25, 2008. The Board, having read and considered all matters filed in the proceedings and evidence offered, having studied the specific property and the neighborhood, and having deliberated in a public hearing, decides as follows:

FINDINGS OF FACT

The Board finds from the testimony given, exhibits entered and materials filed the following facts. The subject property is 3.29 acre property improved with two (2) two story single family residences, three (3) single story storage buildings. The property is surrounded on two sides by water and largely forested. The subject property is part of a large forested area which is identified on a Maryland Green Infrastructure map as a wildlife corridor which surrounds a large non-tidal wetland known as Gut Marsh. The surrounding area contains a cottage community, tidal and non-tidal wetlands, and agricultural land. The property is zoned Resource Conservation District. The two residences on the subject property are not related to each other; one is to the rear and land end of the property, at the top of a forested hill which slopes up from the water. This dwelling is rented and not at issue. The second house, which is the one to which an addition is proposed, sits approximately 44 feet from the Sassafras River. The entire dwelling is within 100 feet of the mean high water mark and in the Critical Area 100 foot buffer.

J. Scott Thompson, appeared on behalf of the Applicant. He explained that the original application has been greatly reduced since their appearance in front of the Planning Commission. The request before the Board is an addition of 232 feet to the west of the dwelling. The addition would be built over a foundation where in the past there had been a porch, (the porch was removed in the 1980s). The area is currently used as a vegetable garden, principally for tomatoes. The dwelling was built in 1927, on the ground floor there is a living room, dining room and kitchen with a front porch and three bedrooms on the second floor. The house, for sometime, does not have septic or water, but is utilized by family members over the summer. When they are in residence, they access facilities at the house of a relative who lives on an adjoining property. The LLC, which consists of family members, wants to fix up the property, put in a septic system, a well and have a first floor living area with bathroom for their 81 year old mother. The house would be utilized in the spring, summer, and fall. They intend to have rain barrels to catch rain water. The property over the years has suffered erosion and land loss and the owners have installed rip rap to conserve the coastline. Overtime, the erosion has diminished the distance of the house from the river. Mr. Thompson stated due to slopes, wetlands and non tidal wetlands there are no alternative sites for a house.

Ed Moffett, with Evergreen Knoll, a business that runs a cottage rental community on an adjoining property, spoke in favor of the application. They see the renovations as an improvement to the property.

The Kent County Planning Commission reviewed the Application for a 719 square feet of additional space in the 100 foot Critical Area Buffer and voted to make an unfavorable recommendation. In their letter, signed by Elizabeth H. Morris, Chairman, and dated August 11, 2008 the Commission found that the application was not a minimal request for relief, there was not an unwarranted hardship, and it is not consistent with the Ordinance or Comprehensive Plan. The Maryland Critical Area Commission also reviewed the application for a 719 square foot addition and found that the request had not been minimized.

Gail Owings, Director of Planning, Housing and Zoning, was called and testified. The issue of the foundation as existing impervious surface is not supported by the Ordinance. As the porch has been removed for at least twenty years there is no question of repair of a non conforming structure and the testimony before the Board is that the area is now previous; it is used as a garden. Therefore the foundation or preexisting porch is not relevant. A dwelling with three bedrooms is a reasonable and significant use of the property and the erosion of the coastline does not constitute an unwarranted hardship or practical difficulty unique to this property. Staff opposes the variance because there is a lack of unwarranted hardship or practical difficulty and to grant this variance request would set a precedent for development in the Critical Area buffer.

CONCLUSIONS OF LAW

Article V, Section 2.5 of the Kent County Land Use Ordinance 2002, (hereafter referred to as Ordinance) requires as a setback a minimum of 100 foot setback for the front yard on waterfront property and Article V, Section 2.7.B3a of the Ordinance does not permit development activities within the Critical Area Buffer.

Article IX, Section 2.2 of the Land Use Ordinance authorizes this Board to grant variances from the setback and buffer requirements of the Ordinance. In the case of the front yard setback only for reasons of practical difficulty and Article IX, Section 2.3 a-e apply, in the case of the buffer variance f-i apply and an unwarranted hardship must be demonstrated. Unwarranted hardship is defined as a denial of reasonable and significant use of the land. In order to grant a variance the Board must find:

- a. That the variance will not cause a substantial detriment to adjacent or neighboring property.
- b. That the variance will not change the character of the neighborhood or district.
- c. That the variance is consistent with the Comprehensive Plan and the general intent of the Ordinance.
- d. That the practical difficulty or other injustice was caused by the following:
 - i. Some unusual characteristic of size or shape of the property.
 - ii. Extraordinary topographical or other condition of the property.
 - iii. The use or development of property immediately adjacent to the property, except that this criterion shall not apply in the Critical Area.
- e. That the practical difficulty or other injustice was not caused by the applicants own actions.
- f. That within the Critical Area for variances of 15% slope, impervious surface, buffer requirements:
 - i. The granting of a variance will be in harmony with the general spirit and intent of the Critical Area Law and the regulations adopted by Kent County.
 - ii. The granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat.
 - iii. That the applications for a variance will be made in writing with a copy provided to the Critical Area Commission.
 - iv. The strict application of the Ordinance would produce unwarranted hardship.

- v. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity
- vi. The authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.
- vii. That a literal interpretation of the Ordinance deprives the applicant of rights commonly enjoyed by other properties in similar areas with the Critical Area of Kent County.
- viii. That the granting of a variance will not confer upon an applicant any special privilege that would be denied by the Ordinance to other lands or structures.
- g. In considering an application for a variance, the Board shall consider the reasonable use of the entire parcel or lot which the variance is requested.
- h. In considering an application for a variance, the Board shall presume 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 Ordinance and Critical Area Law.
- i. The Board may consider the cause of the variance request and if the variance request is the result of action by the applicant, including the commencement of development activity before an application for a variance has been filed.

Ordinance, Article IX, Section 2.2.3 f-i.

The Board finds that there is a sizable house as it exists, in the Critical Area Buffer, and with renovation the Applicant can accommodate their mother for her seasonal use of the house. A three bedroom house entirely in the Buffer, 44 feet from the high mean water mark and approximately one half that from the top of a bank, is reasonable and significant use of the buffer in this instance. A denial of a variance to have a bedroom on the first floor would not raise to the level of an unwarranted hardship to the Applicant. Further the granting of the variance would not be in harmony with general spirit and intent of the Critical Area Law and the regulations adopted by Kent County; the Applicant is not denied rights commonly enjoyed by other properties in similar areas within the Critical Area of Kent County; the granting of the variance would confer on the applicant a special privilege generally denied by the Ordinance to other structures; and erosion is not a special feature peculiar to the Applicants' land.

IT IS THEREFORE, this 15th day of September, 2008
ORDERED that the application for variances be and is **HEREBY DENIED**

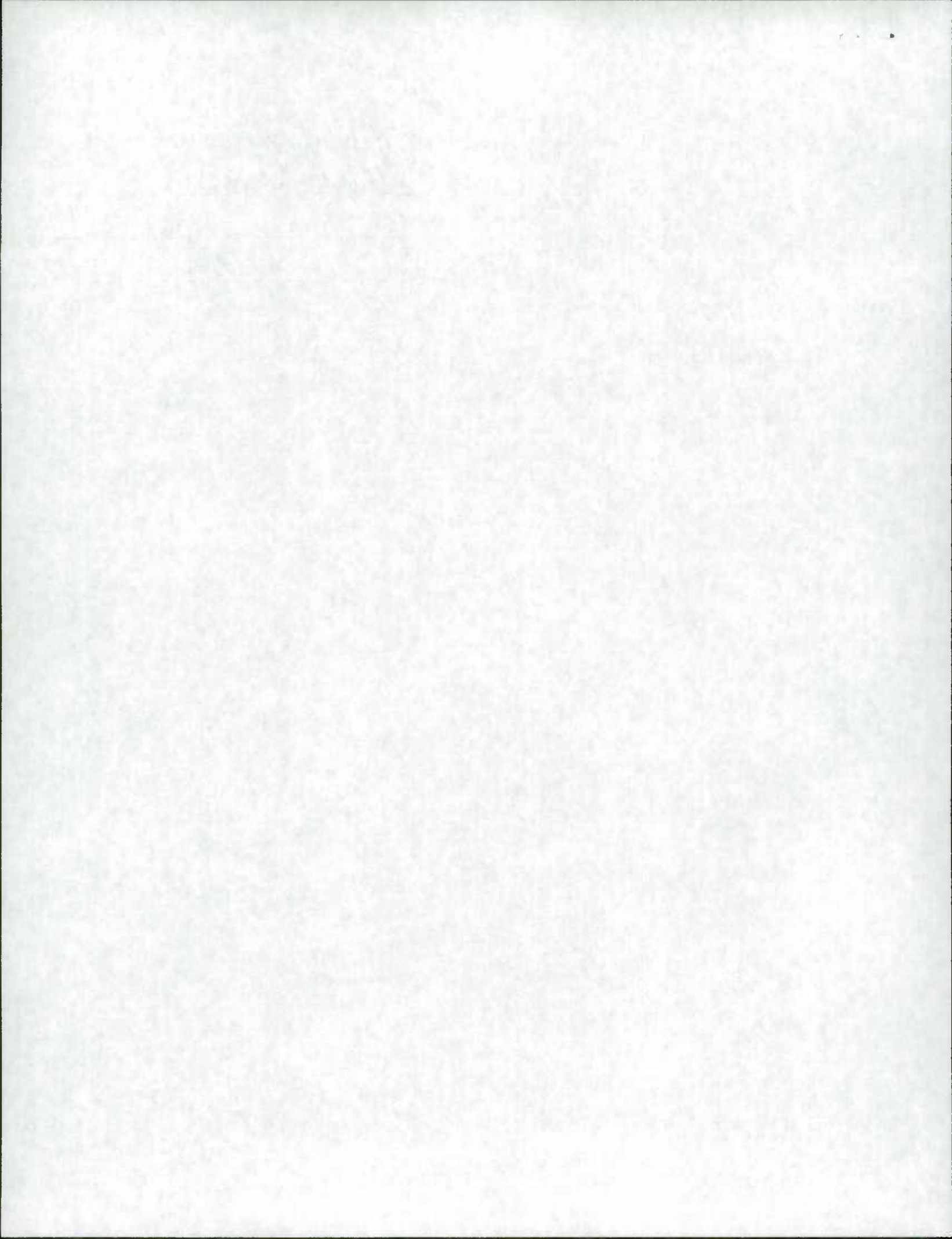
KENT COUNTY BOARD OF APPEALS

Allen Townsend

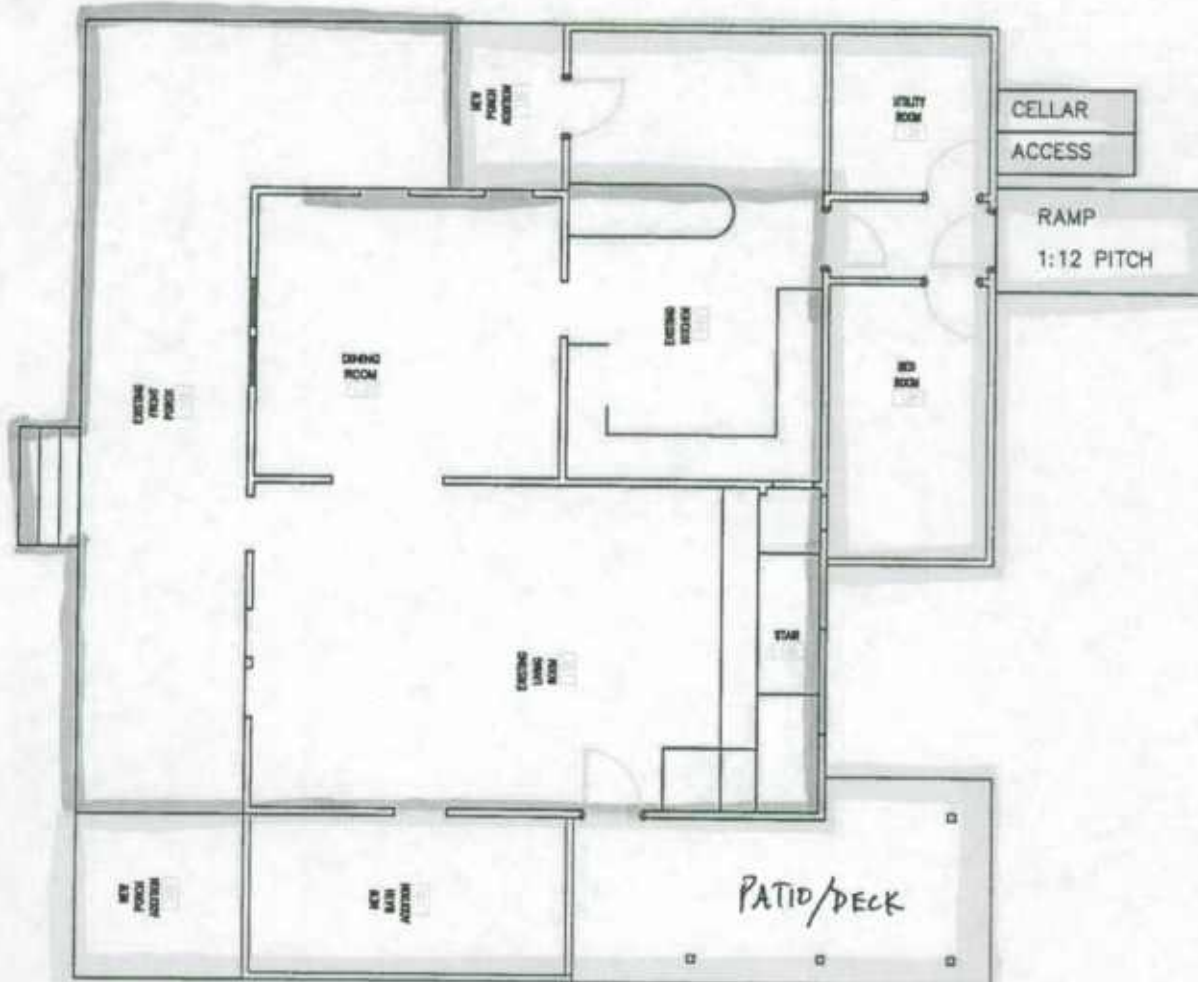
Allen Davis / KBD

Frank Die / KBD


Appeal No. 08-64

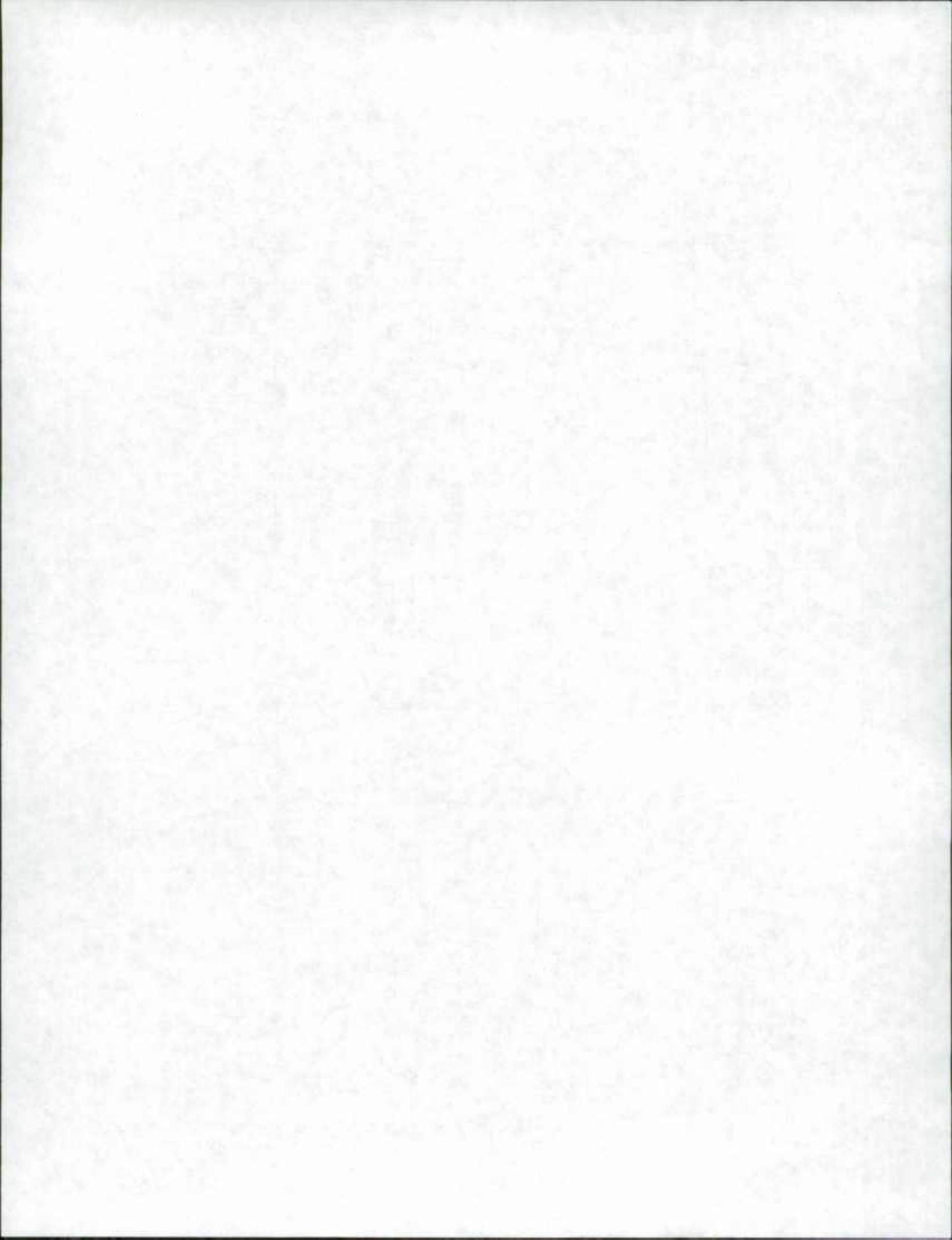


EXISTING AND PROPOSED BUILDING



EXISTING BUILDING - 

PROPOSED NEW CONSTRUCTION - 



rear of huz

Request a formal survey

Buffer more extensive

Adj to
Betherton
end of shield

Buffer will bigger

old house
old whiskey bottles
reasonable + significant use
Any - not favorable ^{recommendations} use

part of green infrastructure hub
FIDS Habitat AREA

1st Floor = 901.5000 square ft.
2nd Floor = 840.0000 square ft.
Total = 1741.5000 square ft.

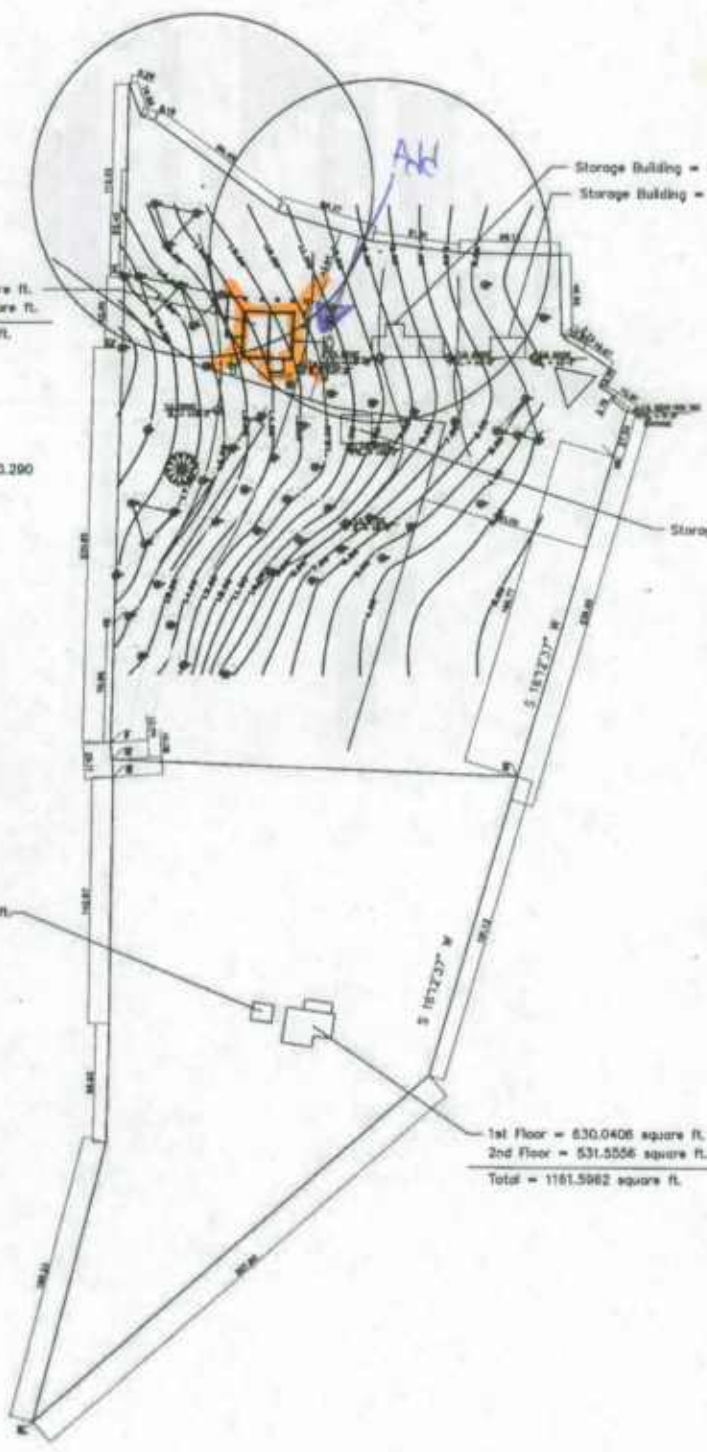
143338.8464 square ft. = 3.290 acres

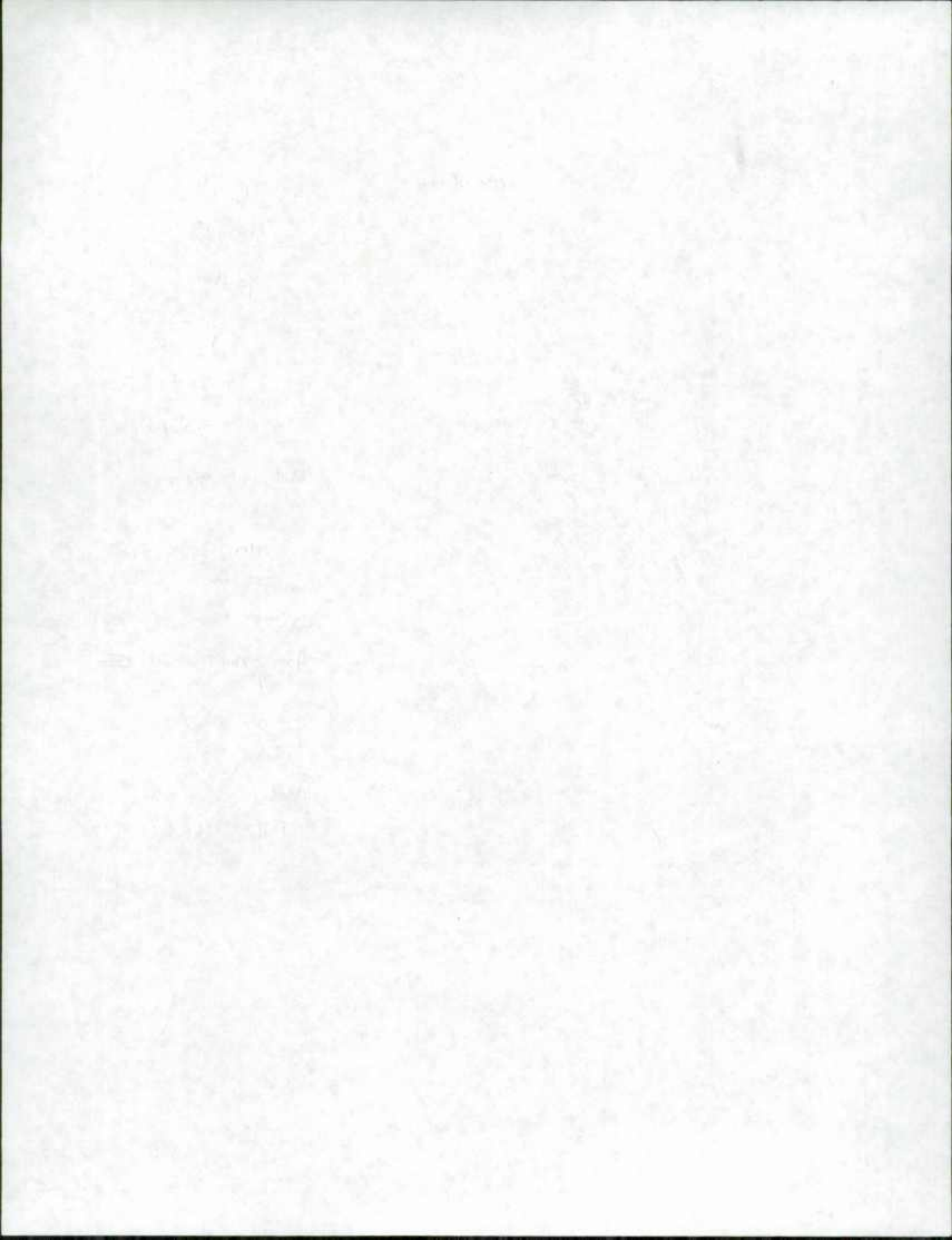
Garage = 128.2022 square ft.

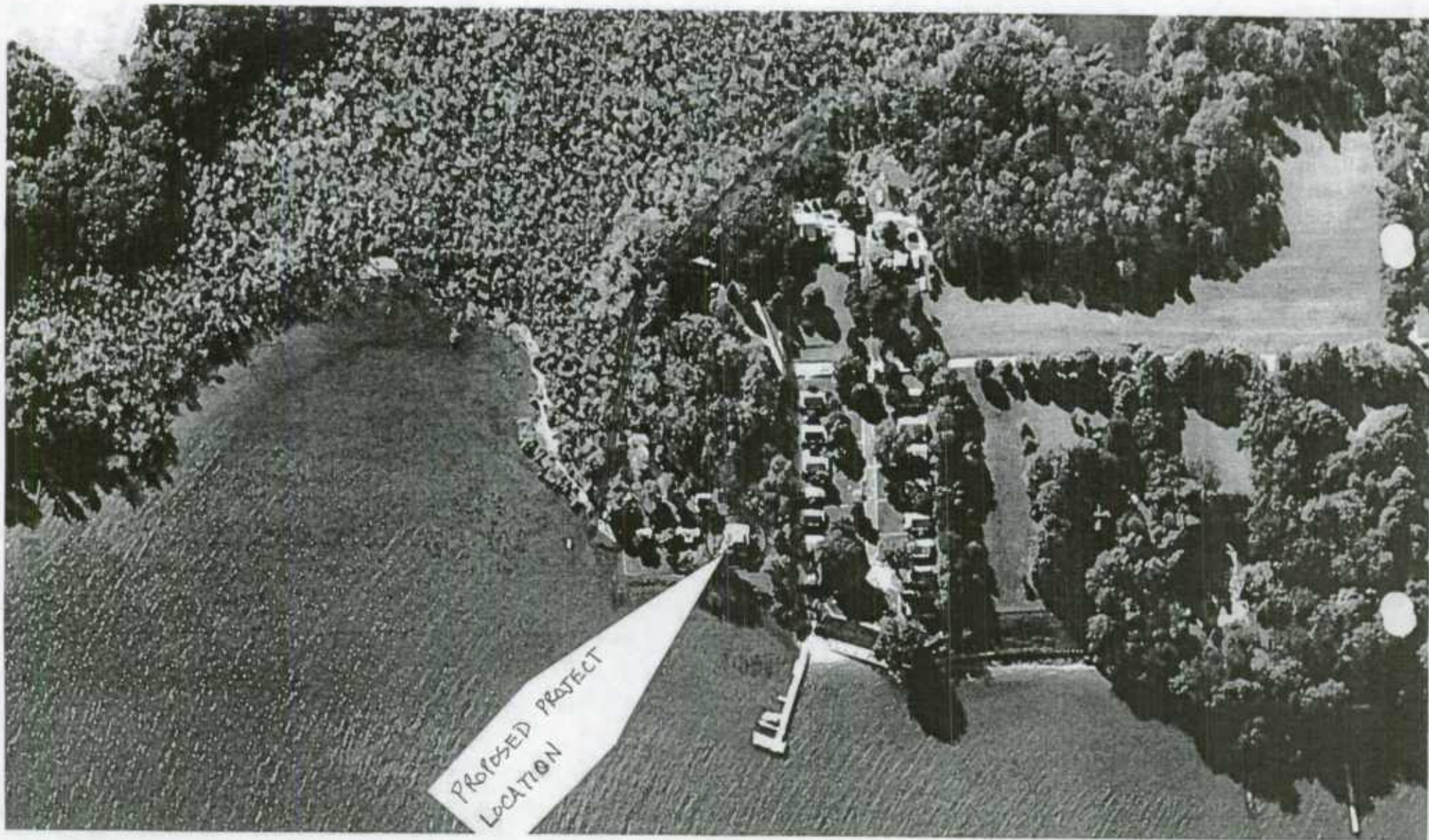
Storage Building = 590.0859 square ft.
Storage Building = 245.7357 square ft.

Storage Building = 302.1667 square ft.

1st Floor = 630.0406 square ft.
2nd Floor = 531.5556 square ft.
Total = 1161.5962 square ft.







DEPARTMENT OF
PLANNING, HOUSING & ZONING
RECEIVED _____

