

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 24, 2008

Ms. Yvonne Chaillet
St. Mary's County Government
Department of Land Use and Growth Management
P O Box 653
Leonardtown, Maryland 20650

**RE: Aley garage variance request
27190 Cat Creek Rd**

Dear Ms. Chaillet:

Thank you for providing information on the above referenced variance request. The site is located within the Limited Development Area (LDA) of the Chesapeake Bay Critical Area and is within an expanded Critical Area Buffer. There is an existing house on the site. The applicant is requesting a variance to build a garage and deck within the Buffer expanded for steep slopes.

In addition to finding that the applicant meets all of the required Critical Area standards, the Board must find that the variance granted is the minimum necessary to provide relief. While we do not oppose the proposed construction of a garage onsite, we cannot support the location proposed by the applicant. The County has suggested locating the garage over the existing driveway closer to the roadway. This location appears to reduce impacts to the steep slopes and highly erodible soils behind the house.

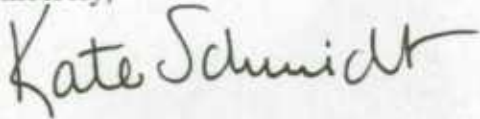
Mitigation should be required at a ratio of 3:1 for the disturbance area that is within the Buffer. Recommended mitigation plantings consist of a mix of native species of trees, shrubs and ground cover on the site within the Buffer and should consist of one tree (two-inch-caliper) and three shrubs (two-gallon-pots) per 400 square foot mitigation area required.

Thank you for the opportunity to provide comments regarding this variance request. Please include this letter within the file and submit it as a part of the record for this variance. In addition, please notify the Commission in writing of the decision made in this case. If you have any additional questions please contact me at 410-260-3475.



Ms. Yvonne Chaillet
08-0219 Aley
June 24, 2008
Page 2 of 2

Sincerely,

A handwritten signature in cursive script that reads "Kate Schmidt". The signature is written in dark ink and is positioned below the word "Sincerely,".

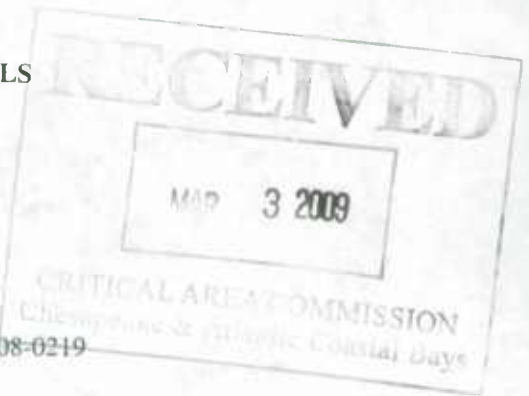
Kate Schmidt
Natural Resources Planner

cc: SM306-08

ST. MARY'S COUNTY BOARD OF APPEALS

In the Matter of the application of Richard and Theresa Aley for an after-the-fact variance from Section 71.8.3 of the St. Mary's County Comprehensive Zoning Ordinance (Z02-01) to add lot coverage in the Critical Area Buffer with a walkway, porch, driveway; variance from Section 71.8.3 to disturb the Critical Area Buffer to construct a deck and add new lot coverage for a detached garage and to expand existing appurtenances; and variance from Section 71.7 to disturb steep slopes.

Case No. VAAP #08-0219
Aley

**ORDER**

WHEREAS, Application VAAP #08-0219 – Aley was duly filed with the St. Mary's County Board of Appeals (the "Board") by Richard and Theresa Aley (the "Applicants"), on or about April 3, 2008; and

WHEREAS, the Applicants seek an After-The-Fact Variance from Section 71.8.3 of the St. Mary's County Comprehensive Zoning Ordinance (Z02-01), as amended, (the "Ordinance"), to add lot coverage in the Critical Area Buffer with a walkway, porch, driveway; variance from Section 71.8.3 to disturb the Critical Area Buffer to construct a deck and add new lot coverage for a detached garage and to expand existing appurtenances; and variance from Section 71.7 to disturb steep slopes. The property contains 4.74 acres; is zoned Residential Neighborhood Conservation District (RNC), Limited Development Area (LDA) Overlay District; and is located at 27190 Cat Creek Road, Mechanicsville, Maryland; Tax Map 14, Grid 18, Parcel 361 (the "Property"); and

WHEREAS, after due notice, a public hearing was conducted by the Board on Thursday, January 22, 2009 in Main Meeting Room, Chesapeake Building, 41770 Baldrige Street, of the Governmental Center in Leonardtown, Maryland, at 6:30 p.m., and all persons desiring to be heard were heard, documentary evidence received, and the proceedings electronically recorded.

NOW, THEREFORE, having reviewed the testimony and evidence presented at the hearing, the following facts, findings, and decision of the Board are noted:

FACTS

The subject property (Property) is located in the Riverwood Farms Subdivision. The Property is a grandfathered lot because it was recorded prior to the adoption of the Maryland Critical Area regulations in December 1985. The Property is constrained by the Critical Area Buffer (Buffer) which is expanded due to highly erodible soils that encompass the entire lot, steep slopes and the streams that pass through it. The Property contains no wetlands. The Property is not affected by the 100-year floodplain according to FIRM (Flood Insurance Rate Map) Panel #092E.

The Property contains a single family dwelling which was constructed in 2007, porch, walkway, driveway and shed. The Property is 206,474 square feet, but only 144,474 square feet lie within the 1,000 foot Critical Area boundary. The total amount of existing lot coverage is 5,377 square feet or 3.7 percent of the Property within the Critical Area, of which 521 square feet are 'after-the-fact'. The Applicants propose to construct a single car garage with a concrete apron and to attach a deck to the rear and side of the single family dwelling, as well as receive approval for the after-the-fact lot coverage in the Buffer consisting of a walkway, porch and expanded driveway. The proposed lot coverage equals 683 square feet, or .47 percent of the Property. The proposed deck does not count toward the lot coverage limit as long as spacing between planks is no less than one quarter of an inch. The Property's lot coverage limit is 21,671 square feet.

The existing vegetative cover on the Property is 126,774 square feet or 87 percent of the Property. The Applicants propose to clear one tree on the lot.

The existing soil type on the Property is Evesboro-Westphalia complex (EwE2), which is a highly erodible soil according to the 1978 United States Department of Agriculture's Soil Survey of St. Mary's County.

The site plan was approved by the Health Department on December 15, 2008 and approval by the Soil Conservation District is pending. Comments were received from the Maryland Critical Area Commission (Commission) on November 13, 2008. The Commission does not oppose granting the variance request to approve the after-the-fact lot coverage or the garage and concrete pad. It did oppose the location of the garage. The request of the Commission to move the driveway closer to the road to lessen impact on slopes and the Buffer was made during a review of the first site plan submitted to the Commission that illustrated a larger two car garage.

The mitigation should be calculated at a ratio of 3:1 per square foot of the disturbance to the Buffer, after-the-fact lot coverage and for the tree cleared which equals 7,743 square feet of native vegetation to be planted on site. Applicants must comply with Section 24.8 of the Ordinance pertaining to lapse of variance. Variances shall lapse one year from the date of the grant of the variance by the Board of Appeals.

FINDINGS

The Board addresses the Special Standards for Granting Variances, which are set forth in Section 24.4 of the Ordinance, finding as follows:

- a. *That special conditions or circumstances exist that are peculiar to the land or structure involved and that strict enforcement of the Critical Area provisions of this Ordinance would result in unwarranted hardship;*

The entire Property is located within the expanded Critical Area Buffer due to streams and highly erodible soils. The Applicants will need a variance for any development on their property accessed from the Cat Creek Road side as it is completely constrained by the Buffer. Denying the variance request to add modest improvements to a grandfathered lot would be creating an unwarranted hardship for the Applicants.

The Board finds that strict enforcement of the Critical Area provisions of this Ordinance would result in unwarranted hardship by not allowing full use of the Property as a residential lot.

- b. *That strict interpretation of the Critical Area provisions of this Ordinance will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area of St. Mary's County;*

Other landowners in the Critical Area have been granted variances to add garages, decks, walkways and porches to their properties. The Applicants are asking to add a garage to their property because they do not already have a structure to protect vehicles from inclement weather. Additionally the after-the-fact walkway and porch also serve to allow the Applicants protection from the weather and easy access to and from the vehicles to the house. The after-the-fact driveway expansion was only to the side to allow two vehicles room to park.

The Board finds if the Applicants were not granted a variance to construct a garage, deck, porch, walkway, and to be able to expand their driveway, they will be denied rights commonly enjoyed by other landowners in the Critical Area of St. Mary's County.

- c. *The granting of a variance will not confer upon an applicant any special privilege that would be denied by the Critical Area provisions of this Ordinance to other lands or structures within the Critical Area of St. Mary's County;*

The Applicants are not seeking a variance so that they may have a special privilege; they are seeking a variance so that they may enjoy rights commonly enjoyed by other property owners, such as to safely park their vehicles on their property and to be able to have comfortable access between their vehicles and their dwelling.

The Board finds that the granting of the variance will not confer any special privileges upon the Applicants that would be denied to other property owners.

- d. *The variance request is not based upon conditions or circumstances that are the result of actions by the applicant;*

The Applicants would need a variance for any development on their property accessed from the Cat Creek road side as it is completely constrained by the Buffer. The after-the-fact lot coverage would need a variance no matter the location that it was placed.

Therefore, the Board finds the variance is not based on conditions or circumstances that are a result of actions by the Applicants.

- e. *The granting of the variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area, and that the granting of a variance will be in harmony with the general spirit and intent of the Critical Area program;*

The Applicants must implement erosion and sediment control measures during construction and must mitigate for vegetation removal. The construction process associated with the proposed garage, concrete pad and deck may cause a small amount of erosion and may increase the flow of runoff down the steep slopes of the Property. The Property is almost entirely wooded and, with the proper silt fence and the required mitigation, any adverse impacts to plant and wildlife habitat will be resolved and any sediment released during the construction process will be deposited prior to reaching the streams on the Property.

The required plantings will improve plant diversity and habitat value for the site and will improve the runoff characteristics for the Property, which should contribute to improved infiltration and reduction of non-point source pollution leaving the site in the future.

For these reasons, the Board finds that if the variance is granted, and all of the required mitigation is met, construction of a single car garage, deck and appurtenances will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area, and that the granting of the variances will be in harmony with the general spirit and intent of the Critical Area program.

- f. *The variance is the minimum necessary to achieve a reasonable use of the land or structures;*

The Applicants are asking for a reasonably sized single car garage and the lot coverage proposed is well within the 15 percent limit of the Property. Additionally, the after-the-fact lot coverage is not extravagant in size. The driveway is large enough to accommodate two vehicles, the walkway is in a direct path from driveway to porch and the porch is of a modest size.

The Board does not find that the proposed improvements are an excessive use of the land, and that the variance is the minimum necessary to achieve a reasonable use of the land or structures.

DECISION

NOW, THEREFORE, BE IT ORDERED, that, having made a finding that the standards for Variance in the critical Area and the objectives of Section 71.8.3 of the St. Mary's County Comprehensive Zoning Ordinance have been met, the request to disturb and add lot coverage to the Critical Area Buffer and to approve the after-the-fact lot coverage in the Buffer is **approved**, subject to adherence to a Critical Area Planting Agreement and Planting Plan; and

IT IS FURTHER ORDERED, having made a finding that the standards for Variance in the Critical Area and the objectives of Section 71.7 of the St. Mary's County Comprehensive Zoning Ordinance have been met, the request to disturb steep slopes is **approved**, subject to adherence to a Critical Area Planting Agreement and Planting Plan and the following conditions:

1. the 21 foot x 10 foot deck has quarter inch spacing between the slats; and
2. a silt fence is placed around the rear of the house during construction to minimize runoff.

This Date: February 26, 2009



Howard Thompson
Chairman

Those voting in favor of the request:

Mr. Thompson, Mr. Miedzinski, Ms. Neale, Mr. Delahay, and Mr. Edmonds

Those voting against the requested variance:

Approved as to form and legal sufficiency:



George R. Sparling
Attorney

ST. MARY'S COUNTY GOVERNMENT
DEPARTMENT OF LAND USE
AND GROWTH MANAGEMENT

Denis D. Canavan, Director

Phillip J. Shire, Deputy Director



Francis Jack Russell, President
Kenneth R. Dement, Commissioner
Lawrence D. Jarboe, Commissioner
Thomas A. Mattingly, Sr., Commissioner
Daniel H. Raley, Commissioner

May 20, 2008

Richard & Theresa Aley
38715 Stockett Run Lane
Mechanicsville, MD 20659

COPY

RE: Permit #08-0219

Dear Mr. & Mrs. Aley,

Enclosed is a revised site plan that I am proposing to you that would be supported by our office as meeting the 'minimum necessary requirement' for approval of your variance. Please let me know what you think of the redesign and if it would be acceptable to you as it reduces your impervious surface being added to the Buffer.

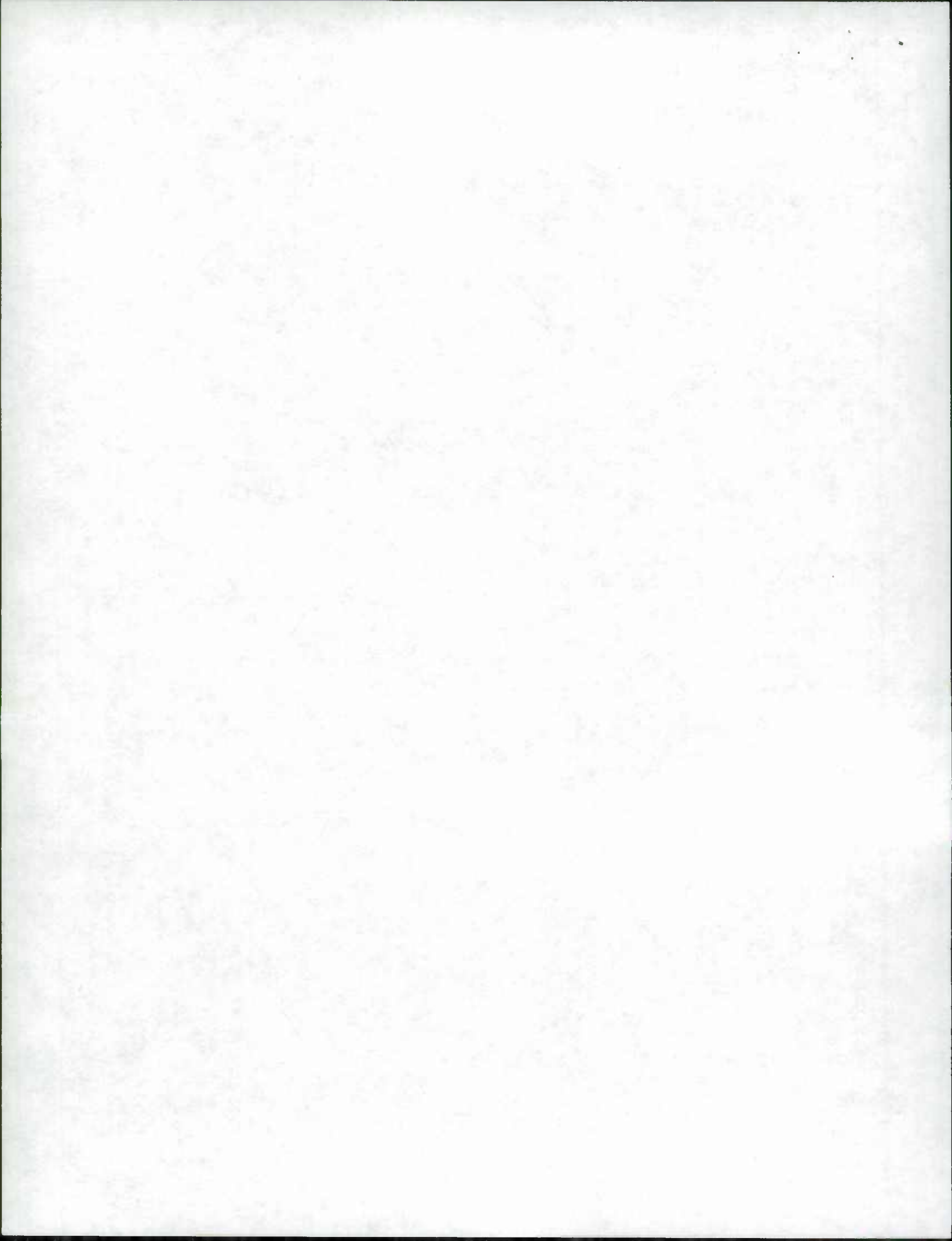
Please contact me at 301-475-4200 ext. 1525 if you have any questions.

Sincerely,

Jennifer B. Ballard

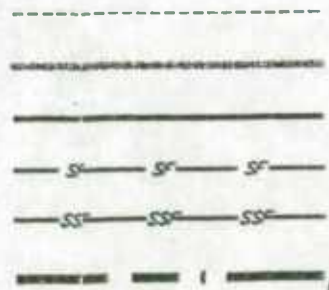
Jennifer B. Ballard
Environmental Planner II
Critical Area Review
e-mail: Jenn.Ballard@co.saint-marys.md.us
phone: 301-475-4200 x1525
fax: 301-475-4635

COPY



Alternative as
proposed by
staff

mediate)



Entrance



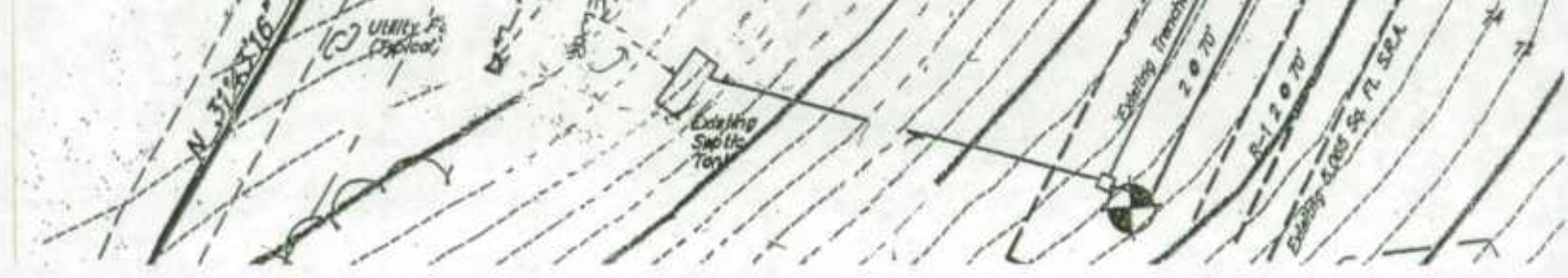
PROPOSED
AND DECK (2)
CAT

Cat Creek Road 50' R/W
160.00'
N 37° 51' 16" E



Detached
GARAGE

Lot 14
4.88 Acres



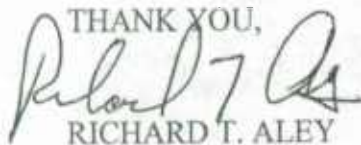
ST. MARYS COUNTY
DEPT of LAND USE AND GROWTH MANAGEMENT

APRIL 26, 2008

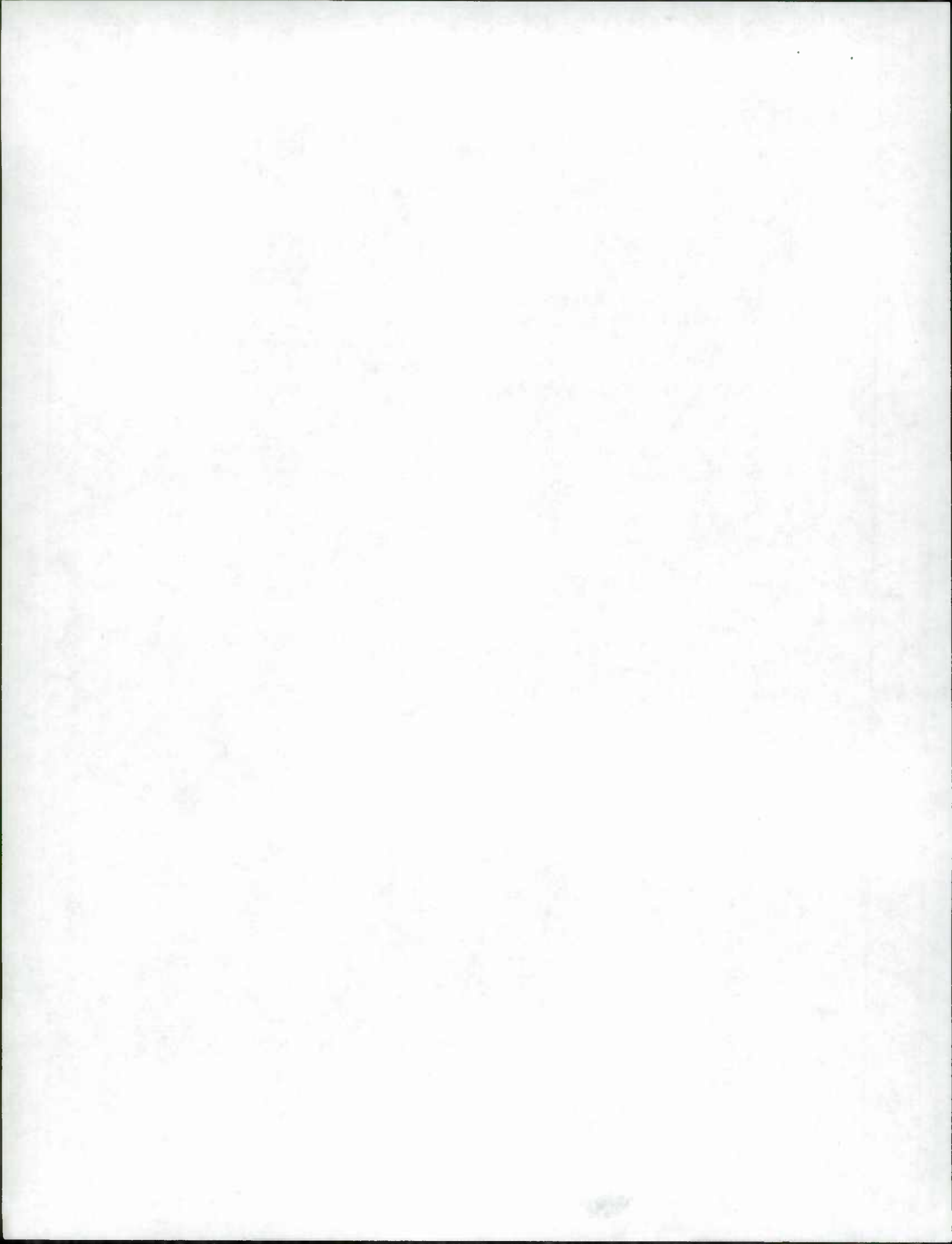
RE; PERMIT# 08-0219
REQUEST FOR CRITICAL AREA VARIANCE

ATTN, JENN BALLARD

1. THE EXISTING HOME HAS A DRIVEWAY THAT ENDS AT THE FRONT CORNER OF THE EAST END OF THE HOME. FROM THAT POINT THE GRADE SLOPES TO THE BACK AT APPROXIMATLY 20 TO 25% GRADE. BY BUILDING THE ATTACHED GARAGE AT THIS LOCATION THE IMPACT WILL BE TO A MINIMUM FOR THE SURROUNDING VEGETATION. ALL THAT WILL BE DISTURBED IS ONE MAPLE TREE AND LAWN GRASS. THE DECK THAT WILL BE TO THE REAR OF THE HOUSE WILL BE ELEVATED AT 10' ABOVE THE GROND. THERE WILL BE NO EXCAVATION, EXCEPT FOR THE 4-6 / 6 POST THAT WILL CARRY THE DECK.
2. BY NOT ALLOWING THE AREA OF THE GARAGE TO BE BUILT ON WILL DEEM THE AREA USELESS, AT THIS TIME THERE IS NO PORCH OR DECK ON THE BACK OF THE HOUSE.
3. THIS REQUEST IS ASKING NO MORE THAN WHAT HAS BEEN ALLOWED ON ALL OF THE SURROUNDING LOTS THAT ARE CLOSER INSIDE THE CRITICAL AREA.
4. THIS REQUEST IS BEING MADE BECAUSE OF THE EXISTING CIRCUMSTANCES AND BY NOTHING THATN WAS CREATED.
5. BY GRANTING THIS VARIANCE IT WILL NOT EFFECT ANY FISH, WILDLIFE, OR VEGETATION. IT WILL BE 800' +/- BACK INSIDE OF THE CRITICAL AREA.
6. THE AREA OF THE CONSTRUCTION WILL BE THE MINIMUM NEEDED TO UTILIZE THE AREA WITHOUT DISTURBING THE SURROUNDING HABITAT..


THANK YOU,

RICHARD T. ALEY





08-0219 Aley

- Property is constrained by
- 1) Highly erodible soils over entire property
 - 2) Steep slopes & Stream Buffer
 - 3) Expanded Critical Area Buffer over entire Property
 - 4) No wetlands or floodplain

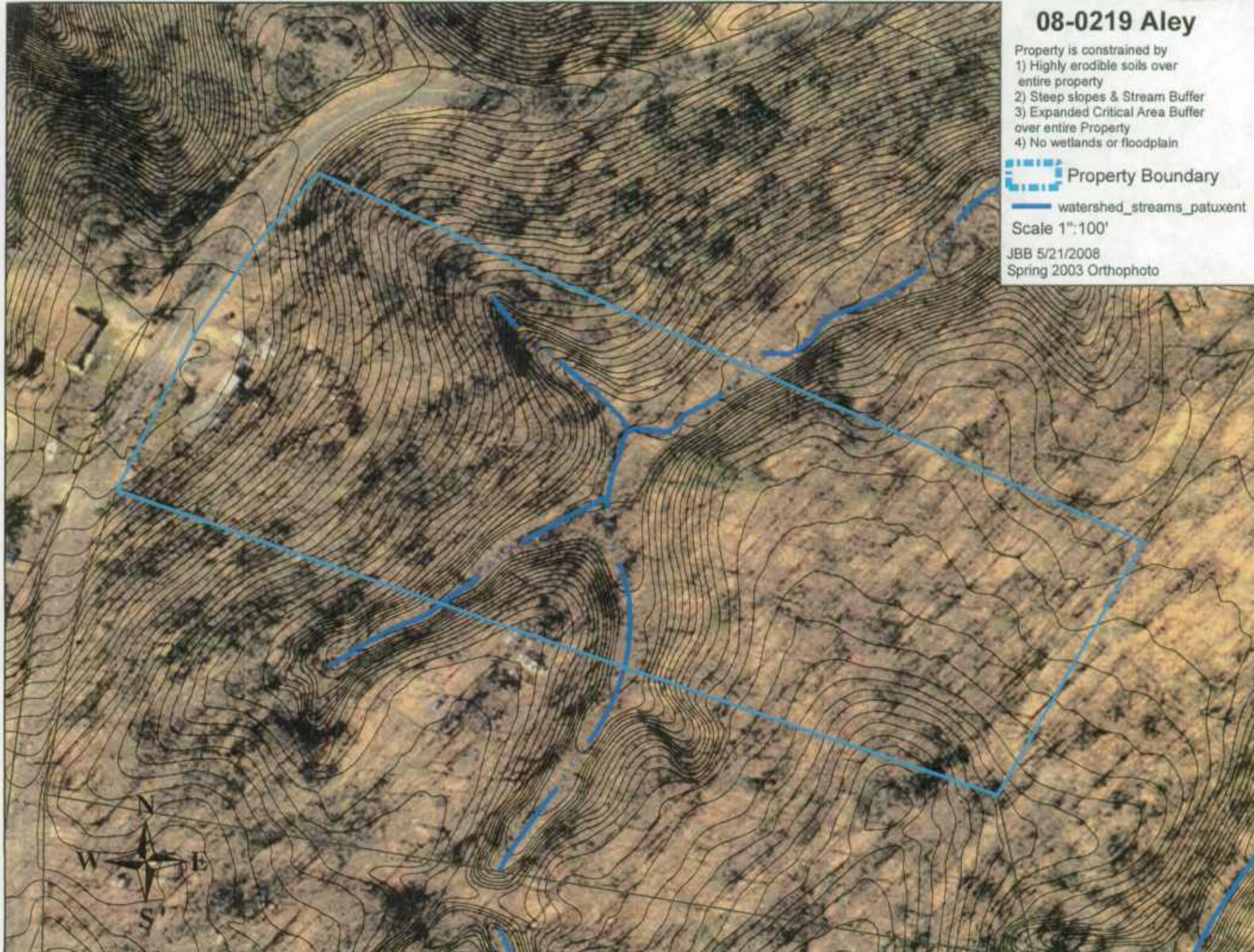
 Property Boundary

 watershed_streams_patuxent

Scale 1"=100'

JBB 5/21/2008

Spring 2003 Orthophoto



3-19-08 - Aley - 08-0219 MTA visit due to construction
in excess of approved CA variance for I/S. in
Buffer -> driveway is larger than approved. JBB







←
NOT
STABILIZED



↖
Driveway wider than ³
approved permit 05-2144 Variance

