

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/

November 23, 2009

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

**RE: SM 316-08 Roy Hart Variance
St. Mary's County Project VAR 02-0969**

Dear Ms. Chaillet:

Thank you for providing information on the referenced variance request. It is my understanding that the applicant is requesting a variance to expand an existing sewage disposal area within the 100-foot Buffer and to obtain after-the-fact approval of a variance for portions of a deck, sidewalk, and porch within the 100-foot Buffer. The property is a grandfathered lot. It consists of 2.383 acres and approximately 40 percent of the property is constrained by the 100-foot Buffer protecting Nat's Creek. It is my understanding that the pursuant to the Memorandum and Order of the Circuit Court issued May 20, 2009, the Hart's have a vested right to build their home pursuant to their original building permit. The variance for the expansion of the sewage disposal area, deck, sidewalk, and porch were not part of the original building permit.

I have reviewed the application and plans, and I have the following comments:

1. It is not clear why the sewage reserve area is being expanded within the 100-foot Buffer when there appears to be ample area, and an acceptable perc test, outside the 100-foot Buffer. The applicant has not provided sufficient evidence to make a finding that the inability to locate additional trenches within the 100-foot Buffer would result in an unwarranted hardship. The applicant's letter states that, "... the location of trenches anywhere else would be a practical difficulty or impossibility," however, the plans show a sewage reserve area outside the 100-foot Buffer.
2. It is not clear whether the additional trenches are necessary to serve the primary dwelling or to serve two-bedroom apartment over the garage or both. It is not clear that the Hart's "vested right" included both a two-bedroom garage apartment and a four-bedroom house. If the additional sewage disposal area is needed because there are actually two dwellings (the



garage apartment may be considered a dwelling for sewage disposal purposes), then it is not clear how the unwarranted hardship standard can be met.

3. The applicant's proposal includes a "Lot Coverage Swapping Table." Section 41.5.3.i(3) of the St. Mary's County Comprehensive Zoning Ordinance includes provisions that allow areas of lot coverage within the Buffer to be removed and replaced with other lot coverage; however, this proposal does not meet these standards. The proposed lot coverage is closer to tidal waters than the areas being removed. The areas of lot coverage being removed are not being restored to a functioning forested Buffer, but will be part of a sewage disposal area. In general, impacts to the Buffer associated with sewage disposal systems are considered more detrimental to water quality than those associated with lot coverage that has been properly mitigated with planting. In addition, the submittal does not include a sealed survey or photograph indicating that the surfaces to be removed existed as of March 27, 1990. Based on this analysis, it does not appear that the applicant's variance request and letter addressing the variance standards is complete because it does not address the portions of the deck, sidewalk, and porch.
4. The applicant's plan indicates that rooftop runoff and non-rooftop runoff will sheetflow to tidal waters. This proposal is not appropriate for this site because the runoff cannot be adequately treated or infiltrated before reaching tidal waters. This is because the Buffer is not adequately vegetated, disconnection lengths are too short, disconnections are located on slopes that exceed 5 percent, soils in the area proposed for disconnections are already eroding, and there are no calculations indicating that the drainage area to each disconnected downspout is 500 square feet or less. Stormwater management to address water quality impacts is necessary for variance requests that impact the 100-foot Buffer because an undisturbed naturally vegetated Buffer functions to enhance and protect water quality.
5. The applicant has provided a letter to address the variance standards; however, the letter submitted does not provide clear evidence documenting how the variance standards have been met with specific regard to the expansion of the sewage disposal area and disturbance associated with the deck, sidewalk, and front porch which were not part of the vested permit application.
6. Applicants for variances must provide evidence that the granting of the variance will not adversely affect water quality or impact fish, wildlife, or plant habitat and that the granting of the variance will be in harmony with the general spirit and intent of the Critical Area Program. Typically, this standard is addressed through a mitigation plan that would include planting in the Buffer, stormwater management and treatment, and the installation of an enhanced nutrient removal septic system. The applicant has not provided a mitigation plan; however, there appear to be many opportunities on this site to provide the necessary mitigation.

Thank you for the opportunity to provide comments on this variance request. I have not provided specific comments relative to each variance standard, as additional information is needed in order to do so. I have contacted Heather Moritz at the St. Mary's County Health Department for

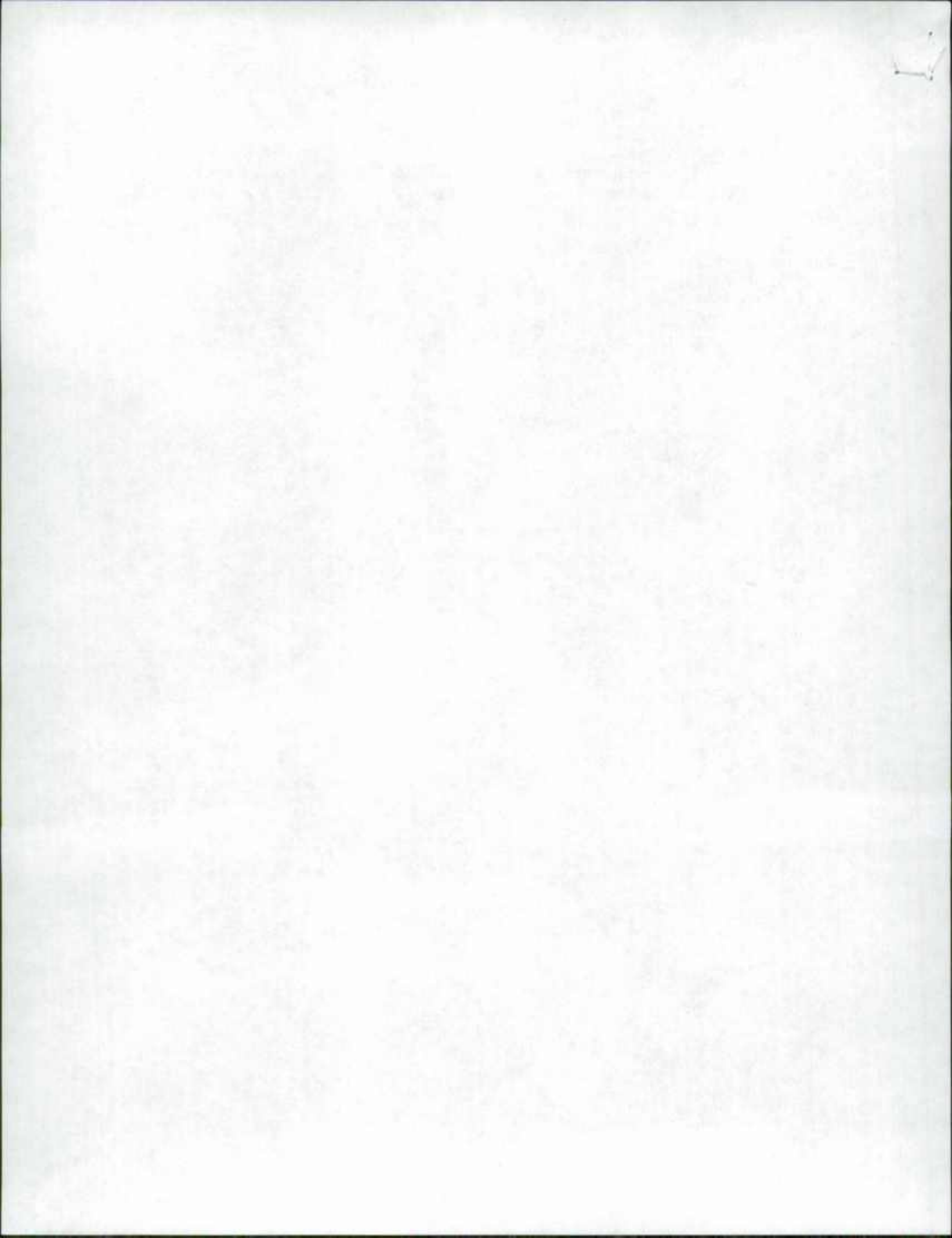
Ms. Chaillet
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additional information regarding the sewage disposal system. If no additional information is submitted, and this case is scheduled for review by the Board of Appeals, please notify me so that I can provide additional comments. If you have any questions, please call me at (410) 260-3480.

Sincerely yours,

A handwritten signature in cursive script that reads "Mary R. Owens".

Mary R. Owens
Education and Conservation Coordinator



Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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June 9, 2008

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

Re: Variance File #02-0969; Hart
45216 Clarke's Landing Road, Hollywood

Dear Ms. Chaillet:

Thank you for providing information on the above-referenced variance. The applicant is requesting a variance after-the-fact to allow a single-family dwelling built without permits to remain in the 100-foot Buffer. The parcel is 2.383 acres in size and located within the Limited Development Area (LDA). The property is also currently developed with a four-car garage with an apartment above.

This office is opposed to granting the variance as proposed because the applicant has not met all the standards, including the standard of unwarranted hardship. Further, the applicant has room available to locate the dwelling outside the 100-foot Buffer. It is not appropriate for the Board of Appeals to grant the variance simply because the dwelling already exists within the Buffer. The dwelling could be relocated and the site could be restored which would allow the Buffer to fully provide its intended functions. The following is an analysis of the requested variance for this project in the context the St. Mary's County variance standards.

In 2002 and 2004, the General Assembly strengthened the Critical Area Law, and reiterated its commitment to the Chesapeake Bay Critical Area's water quality and wildlife habitat values, especially emphasizing the importance of the 100-foot Critical Area Buffer. In particular, the General Assembly reaffirmed the stringent standards, which an applicant must meet in order for a local jurisdiction to grant a variance to the Critical Area law. The State law provides that variances to a local jurisdiction's Critical Area program may be granted **only** if a zoning board finds that an applicant has satisfied its burden to prove that the applicant meets each one of the County's variance standards. Furthermore, the State law establishes a presumption that a proposed activity for which a Critical Area variance is requested does not conform to the purpose



and intent of the Critical Area law. The Board of Appeals must make an affirmative finding that the applicant has overcome this presumption, based on the evidence presented.

In this instance, the applicant's request to allow a dwelling that was constructed without approval in the 100-foot Buffer is in conflict with Section 71.8.3.b of the St. Mary's County Comprehensive Zoning Ordinance (CZO). The applicant has a property that is 2.383 acres in size of which a majority is located outside the 100-foot Buffer. While the area outside the Buffer may be forested, the Zoning Ordinance allows clearing of up to 20% of the site provided there is 1:1 mitigation, which could be planted within 100-foot Buffer. The intent of the 100-foot Buffer as described in the CZO and in the Critical Area law and Criteria is to improve water quality of runoff entering the Bay and its tributaries and to provide for wildlife habitat. A dwelling in the 100-foot Buffer prevents these functions. Finally, it is the position of this office that the applicant cannot meet each one of St. Mary's County's variance standards, and in particular, the applicant does not meet the standards included and discussed below.

Relevant Variance Standards

24.4.1.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 an unwarranted hardship

There are no conditions that are peculiar to this property that would require the applicant to seek a variance to allow a dwelling in the 100-foot Buffer given that there is room outside the Buffer to locate the dwelling. As stated above, the General Assembly defined "unwarranted hardship" to mean that the applicant must prove that, without the requested variance, he would be denied reasonable and significant use of **the entire parcel or lot**. Based on this information, we do not believe that the County has evidence on which to base a favorable finding on this factor for a dwelling in the Buffer as the applicant may locate the dwelling outside the 100-foot Buffer.

24.4.1.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

A literal interpretation of St. Mary's County's regulation of the Buffer will not deprive the applicant of a right commonly enjoyed by other properties in similar areas. The applicant has not shown that construction of a dwelling in the Buffer is a right commonly enjoyed by any property in the Critical Area when there is opportunity to construct the dwelling outside the Buffer. This office does not support variances for development in which the applicant has the opportunity to comply with the regulations.

24.4.1.c – The granting of a variance will not confer upon the 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.

If the variance is granted, it would confer upon the applicant a special privilege that would be denied to others in this area, as well as in similar situations in the County's Critical Area. This office would not support a similar variance request to construct a dwelling in the Buffer where

evidence has not been provided to show a house could not be accommodated otherwise. The applicant has the burden of proof and the burden of persuasion to overcome the presumption that the requested variance does not conform to the County Critical Area Program, or Critical Area law and Criteria. We do not believe the applicant has overcome this burden.

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

The variance request is based upon the actions of the applicant. The applicant constructed the dwelling without an approved permit from St. Mary's County in the 100-foot Buffer. Consequently the applicant has created the need for the variance. Further, the applicant has not shown any reason that the house could not be located outside of the 100-foot Buffer.

24.4.1.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 the variance will not be in harmony with the general spirit and intent of the Critical Area program
In contrast with the above standard, granting the requested variances is not in harmony with the general spirit and intent of the St. Mary's County Critical Area Program, or the Critical Area law and Criteria. Maintaining the house in its current location will permanently prevent the 100-foot Buffer from fulfilling its intended functions. These functions include, among other things, improving water quality by removing harmful pollutants, minimizing the adverse effect of human activities on the shoreline, and protecting riparian wildlife habitat. The County law recognizes that a naturally vegetated fully functioning 100-foot Buffer is vital to the water quality of the Chesapeake Bay and its Criteria are intended to assure that the integrity of the Buffer is not compromised by the individual and cumulative impacts of development within the County. This proposal not only further reduces the functions provided by the Buffer on this site, but would contribute to the individual and cumulative impacts of development on the Bay.

24.4.1.f – The variance is the minimum necessary to achieve a reasonable use of land or structures

The applicant has a four-car garage and apartment in which the applicant and his family currently reside. The single-family dwelling can be accommodated outside the 100-foot Buffer on this site which would provide the applicant with reasonable use of this property. Therefore, the requested variance is not the minimum adjustment necessary to afford relief from the regulations because the regulations do not prevent the applicant from achieving reasonable use of the property.

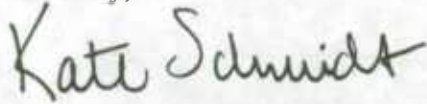
This letter has addressed six of the relevant variance standards. Based on the information provided, none of the variance standards are met. The County and State law provide that in order to grant a variance, the applicant must meet and satisfy each and every variance standard. This applicant has failed to meet all of the County standards. Because the applicant has failed to meet all of the County and State variance standards, this office recommends that the Board deny the applicant's request for this variance and require the applicant to remove the dwelling from the 100-foot Buffer.

Mr. Langston
cited
Lewis
v. DNR

Ms. Yvonne Chaillet
02-0969 Hart
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June 6, 2008

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 questions, please call me at 410-260-3475.

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 Resource Planner

ST. MARY'S COUNTY BOARD OF APPEALS

In the Matter of the application of Roy and Jane Hart an after-the-fact variance from Section 71.8.3 of the St. Mary's County Comprehensive Zoning Ordinance (Z02-01) to add impervious surface in the Critical Area Buffer to construct a single-family dwelling and appurtenances.

Case No. VAAP #02-0969
Hart

ORDER

WHEREAS, Application VAAP #02-0969 – Hart was duly filed with the St. Mary's County Board of Appeals (the "Board") by Roy and Jane Hart (the "Applicants"), on or about March 31, 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 impervious surface in the Critical Area Buffer to construct a single family dwelling and appurtenances. The property contains 2.383 acres; is zoned Rural Preservation District (RPD), Limited Development Area (LDA) Overlay District; and is located at 45216 Clarkes Landing Road, Hollywood, Maryland; Tax Map 27, Block 17, Parcel 154 (the "Property"); and

WHEREAS, after due notice, a public hearing was conducted by the Board on Thursday, June 12, 2008 and Thursday, June 19, 2008 in Room 14 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), located on Nat's Creek in Hollywood, is a grandfathered lot because it was recorded prior to the adoption of the Maryland Critical Area Regulations in December 1985. The Property is heavily wooded and the AE floodplain is within 16 feet of the single-family dwelling according to Flood Insurance Rate Map (FIRM) panel #184. In addition to the 4-bedroom single-family dwelling, which is still under construction, the Property contains porches, decks, a detached two-story garage, sheds, and walkways for a total of 14,225 square feet of impervious surface. The second story of the detached four-bay garage contains a 2-bedroom dwelling with an attached deck. The dwelling is more than 1,500 square feet in size.

The Applicants purchased the Property on October 16, 1985. At this time, the Property was 4.572 acres in size and contained an old house, well, and septic tank. On March 14, 1986 the Applicants obtained a building permit to demolish the old house and replace it with a new one. The Building Permit also noted that a possible minor subdivision was to be addressed.

The St. Mary's County Health Department issued a permit to Roy Hart on March 13, 1986 to place an individual sewage disposal system on the Property to accommodate a three-bedroom house. This permit was valid for 12 months from the date of issue.

According to the Applicants, they began construction of the single-family dwelling during the summer and early fall of 1986. Footers were poured and the foundation walls were built, but nothing else.

On November 12, 1986 the Applicants applied for subdivision approval to subdivide their 4.572-acre parcel into two lots. The subdivision was approved and recorded in the Land Records of St. Mary's County on January 30, 1987.

On July 21, 1987 the Applicants obtained a building permit to construct a two-story garage. Each floor of the garage measured 32 feet by 48 feet. The second floor would be used as a temporary dwelling until the single-family dwelling was constructed. The Applicants moved into this dwelling in late 1987 or early 1988 and live there today.

The County Health Department also issued a permit on July 21, 1987 to place an individual sewage disposal system on the Property to accommodate the garage as a temporary use until the house was constructed. The system that was designed to accommodate three bedrooms.

On April 16, 2002 the Applicants applied for a building permit to construct the single-family dwelling that they started constructing in the summer of 1986. Roy Hart signed an Affirmation of Landowner indicating that he would be the builder of the house on his property. The proposed footprint of the house, 32 feet by 74 feet, was the same footprint approved in 1986. Additionally, the 2002 permit proposed a 680 square-foot deck and a six-foot by 55-foot breezeway. These were not shown on the 1986 building permit.

On April 19, 2002 the Applicants obtained a footing approval from the Middle Department Inspection Agency (MDIA) for the footings that had been presumably poured in 1986. On May 2, 2002 the Applicants obtained a slab approval (pre-pour) from MDIA, and on July 8, 2002 the Applicants obtained MDIA approval of the foundation.

By April 16, 2002 the County had adopted its Critical Area regulations and Zoning Ordinance #90-11 was in effect. The current Zoning Ordinance (ZO #02-01) was adopted May 13, 2002. Both the 90-11 and 02-01 Ordinances required environmental review and approval of all development activities in the Critical Area. Additionally, all new development activities in the Critical Area Buffer were prohibited without first obtaining a variance.

In a letter dated July 8, 2002 to Mr. and Mrs. Roy Hart, Jr., Theresa Dent, the Environmental Planner at that time, wrote to the Applicants that the Critical Area regulations prohibited development in the Critical Area Buffer (within 100 feet of mean high water). Ms. Dent denied the building permit and instructed the Applicants to call her so that they could discuss alternatives to their proposed application.

On July 18, 2002 Ms. Dent called Mr. Hart twice. She reached him at work (C 21) on the second call and scheduled a pre-conference for July 22, 2008 at 10:00 a.m.

On July 22, 2002 Ms. Dent met with Mr. Hart in the Planning and Zoning Office. Mr. Hart disclosed that the deck was not drawn on the site plan as proposed and he intended to have Day [his surveyor] redraw it with the accurate square footage. He would then call to schedule a pre-application meeting.

On September 19, 2002 the file was returned to the Permits and Inspections Department pending a revised site plan. The Board did not hear again from the Applicants.

In September 2007 Roy Hart came into the Department of Land Use and Growth Management.

Between October 2003 and September 2007, the Applicants constructed the single-family dwelling to the point where they needed to have plumbing and electric installed. Aerial photos between 1998 and 2003 indicate that the foundation was the only structure on the Property during this period. There is now a Stop Work Order on the Property.

Pursuant to The Article 6, Section 60.11 of the 1984 St. Mary's County Zoning Ordinance pertaining to time limits for zoning and building permits:

Any zoning permit issued shall become invalid if the authorized use or construction for which the permit was issued is not commenced within 12 months of the date of issuance, or is suspended or abandoned for a period of 12 months.

Any building permit issued shall become invalid if the authorized use or construction for which the permit was issued is not commenced within 12 months of the date of

issuance, or is suspended or abandoned for a period of 12 months.

This same limitation was in effect in 1986 when the Applicants obtained their building permit and is still in effect today.

On March 27, 1990 the County adopted its Critical Area program which made all structures in the Critical Area Buffer nonconforming. Pursuant to Section 41.2.1 of the Ordinance (ZO #02-01) pertaining to nonconforming uses and structures in the Critical Area, "Any use or structure within the St. Mary's County Critical Area existing or established before March 27, 1990, that has not been abandoned for more than one year, regardless of any intention to abandon or not, but which does not conform with the provisions of this chapter may continue. Such use or structure however, may not be reconstructed, intensified or expanded except in accordance with this Ordinance."

Chapter 52 of the Ordinance (Nonconforming Uses, Structures, and Signs) is intended to limit the extent of nonconforming structures by prohibiting their movement or alteration in a manner that would increase the discrepancy between existing conditions and the standards of the Ordinance. Pursuant to Section 52.4 (Abandonment of the Nonconforming Use), "A nonconforming use, structure or any part thereof, that is discontinued or changed to a conforming use for a continuous period of one year or more shall not be reestablished, and the use of the structure or site thereafter shall be in conformity with the regulations of the district in which it is located. Abandonment or discontinuance shall include cessation of a use regardless of intent to abandon or resume the use of the nonconforming use, structure or any part thereof."

The Board finds that the Applicants did not have a valid building permit to build the single-family dwelling. The 1986 permit had expired. The Board finds that the Applicants failed to complete construction after the foundation was built in 1986. In order to obtain a new building permit to construct the single-family dwelling, the Applicants would have had to first remove the nonconforming foundation and then move the proposed house out of the Critical Area Buffer.

The Applicants desire to obtain after-the-fact variance approval so that they can obtain after-the-fact permit approval for what has already been constructed on the Property without authorization and so that they can continue constructing the single-family dwelling.

The Health Department has authorized the Applicants to add to the existing septic system to accommodate the house. The initial system that was installed in 1987 was designed for a 3-bedroom equivalent.

FINDINGS

The Board addresses the Special Standards for Granting Variances, which are set forth in Section 71.8.3 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 Board finds that there are no special conditions or circumstances that are peculiar to the land. The Property is more than two acres in size and there is ample room outside the 100-Foot Critical Area Buffer to place a single-family dwelling and accommodate the existing garage and dwelling along with the existing septic system and proposed septic drain fields. The Applicants cannot claim an unwarranted hardship because they have not been denied full use of their land. They had an existing two-story garage with a deck and appurtenances before building the house and adding a shed. The Applicants can still locate a single-family dwelling outside the Buffer and keep their garage and dwelling as an accessory dwelling.

For these reasons the Board finds that the Applicants have not demonstrated an unwarranted hardship and have not met this standard.

- 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;*

A strict interpretation of the Critical Area provisions of the Ordinance will not deprive the Applicants of rights commonly enjoyed by other properties in the LDA. On the contrary, granting of this variance request will give the Applicants a right that is not commonly enjoyed by other properties in the Critical Area. Other property owners are required to locate their proposed development activity outside the 100-Foot Critical Area Buffer when there is ample room outside the Buffer, as there is on the subject property.

For these reasons, the Board finds that the Applicants have not demonstrated that they meet this standard.

- 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 granting of a variance, whether or not it is after-the-fact, to construct a single-family dwelling and appurtenances in the Critical Area Buffer would confer a special privilege upon the Applicants that would otherwise be denied. A variance may not be granted for new development activities in the Buffer when property owners can build outside the Buffer. Variances should be granted only in rare circumstances. In this case, the Applicants have ample room on the Property to build outside the Buffer.

For these reasons, the Board finds that the Applicants have not demonstrated that they have met this standard.

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

The variance request is based on actions by the Applicants. The Applicants failed to complete construction of their house after the foundation was built in 1986. In 2002 Mr. Hart met with the Environmental Planner at that time to discuss options for building on the Property. The Applicants did not follow up with staff after this meeting and subsequently built the house and appurtenances without any approvals.

For these reasons, the Board finds that the Applicants have not demonstrated that they have met this standard.

- 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 Critical Area Buffer serves to prevent loss of land and topsoil to erosion and to filter pollution, nutrient and sediment runoff. Additionally, the Critical Area regulations are designed to minimize the impacts of surface land use on water resources and conserve fish, wildlife, and plant habitats while accommodating continued growth. Many wildlife species are dependent on plant habitats for nesting, breeding, and for the rich sources of food that can be found here. These regulations require property owners to establish vegetated Buffers where none currently exist.

Impervious surfaces increase the volume of runoff by preventing rainwater from infiltrating the ground. Impervious surfaces also increase pollutants in runoff with materials that

come off vehicles, particulates blown by the wind, and deicing substances used to prevent ice from building on surfaces such as sidewalks and driveways.

For these reasons, the Board finds that the granting of a variance to disturb the Critical Area Buffer by adding impervious surface in the Buffer will adversely affect water quality and fish, wildlife, and plant habitat within the Critical Area. The granting of the requested variance would be in conflict with the general spirit and intent of the Critical Area program.

For these reasons, the Board finds that the Applicants have not demonstrated that they have met this standard.

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

The Applicants have a reasonable use of the Property for residential purposes with the existing 4-bay garage and 1,500 square foot plus dwelling above it. The dwelling has an attached deck and the Applicants have a shed, pier and bulkhead.

The foundation became nonconforming in March 1990 when the County adopted its Critical Area program prohibiting new development activities in the Critical Area Buffer. The variance to add a second dwelling on the Property in the 100-Foot Buffer is not the minimum necessary to achieve a reasonable use of the land.

For these reasons, the Board finds that the Applicants have not demonstrated that they have met this standard.

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 not been met, the request to add impervious surface in the Critical Area Buffer to construct a single-family dwelling and appurtenances is **denied**.

This Date: July 24, 2008


George Alan Hayden
Chairman

Those voting in favor of the request:

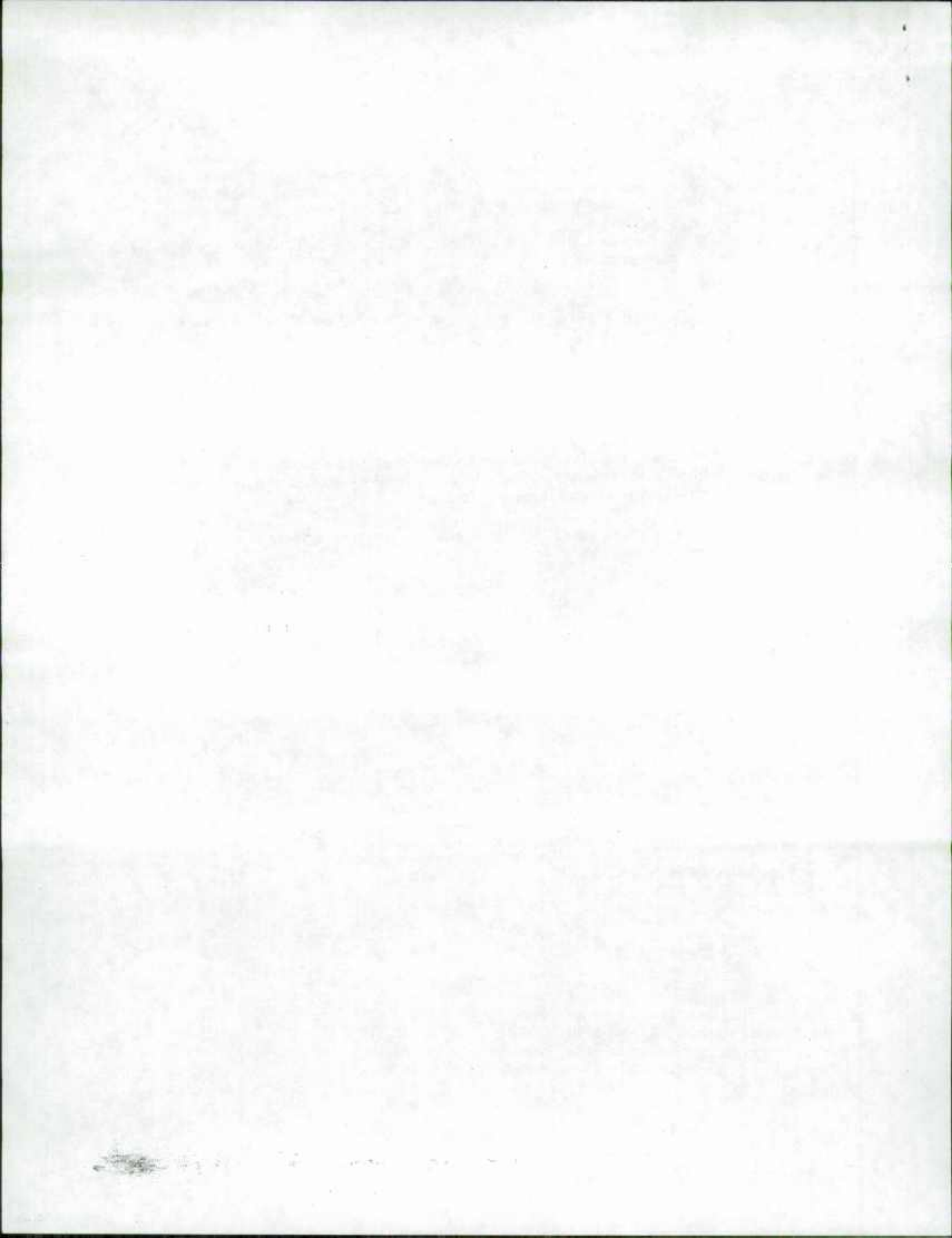
Mr. Edmonds and Ms. Neale

Those voting against the requested variance:

Mr. Delahay, Mr. Miedzinski, and Mr. Hayden

Approved as to form and legal sufficiency:


George R Sparling
Attorney



Sm316-08 ?

ST. MARY'S COUNTY BOARD OF APPEALS

In the Matter of the Appeal of the Planning Director's determination that the property owners did not have a vested right to construct the single-family dwelling on the subject property and appeal of the Planning Director's determination that the single-family dwelling was built without a valid building permit

Case No. ZAAP #02-0969
Hart

DECISION AND ORDER

I. Introduction

Roy and Jane Hart (hereinafter "Appellants"), are the owners of property located at 45216 Clarkes Landing Road, Hollywood, Maryland, and designated as Tax Map 27, Block 17, Parcel 154. This matter was remanded by Circuit Court to the Board of Appeals for further proceedings consistent with the Circuit Court's opinion reversing the Board of Appeals decision on July 24, 2008 to uphold the Planning Director's determination that the property owners did not have a vested right to construct the single-family dwelling on the subject property and that the single-family dwelling was built without a valid building permit.

After due notice, a public hearing was conducted by the Board on Thursday, July 23, 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.

II. Legal Standard

The legal standard is set forth in the Memorandum and Order of the Circuit Court for St. Mary's County filed on May 20, 2009, in Civil Action No. 08-980.

III. Summary of Testimony

No testimony was presented.

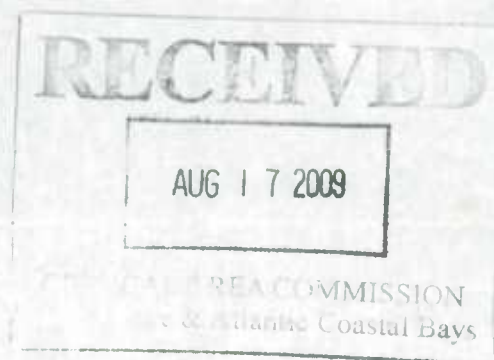
IV. Summary of Documentary Evidence

The Board accepted into evidence the following exhibits:

- Exhibit No. 1 – Affidavit of mailing notices and mailing receipts
- Exhibit No. 2 – Affidavit of posting notices
- Exhibit No. 3 – Staff Report

V. Findings of Fact

The Board finds that the Appellants obtained vested rights to complete the structure described in the site plan used to obtain their building permit on March, 1986, and that there is insufficient evidence that the Appellants abandoned their vested right; provided, however, that Appellant's vested right is limited to the construction outlined in the original permit and Appellants must obtain a building permit to build anything beyond that.



DECISION AND ORDER

NOW, THEREFORE, BE IT ORDERED, that the Planning Director's determination that the property owners did not have a vested right to construct the single-family dwelling on the subject property and the Planning Director's determination that the single-family dwelling was built without a valid building permit is **REVERSED**.

This Date: August 13, 2009



Wayne Miedzinski
Vice-Chair

Those voting to uphold the Director's decision:

Mr. Hayden, Mr. Miedzinski, Ms. Neale, Ms. Edmonds, and Mr. Guy

Those dissenting:

Approved as to form and legal sufficiency:


George R. Sparling
Attorney

005 11 00

ST. MARY'S COUNTY BOARD OF APPEALS

In the Matter of the Appeal of the Planning Director's determination that the property owners did not have a vested right to construct the single-family dwelling on the subject property and appeal of the Planning Director's determination that the single-family dwelling was built without a valid building permit.

Case No. ZAAP #02-0969
Hart Appeal

**DECISION AND ORDER****I. Introduction**

Roy and Jane Hart (hereinafter "Property Owners"), are owners of property located at 45216 Clarkes Landing Road, Hollywood, Maryland. The St. Mary's County Zoning Board of Appeals conducted a public hearing on the appeal of the administrative decision in this matter at 6:30 p.m. on June 12, 2008, and continued the hearing, after announcement of the time and place at which the hearing would be resumed, to June 19, 2008, and reached a decision at its June 19, 2008 meeting.

II. Legal Standard

The hearing of an appeal from the decision of an agency or official shall be de novo. The burden of proof is on the Appellant to show that the action taken by the administrative agency is clearly erroneous, illegal, unconstitutional, or arbitrary and capricious.

III. Findings of Fact

The Board of Appeals makes the following findings of fact:

1. The subject property, located on Nat's Creek in Hollywood, is a grandfathered lot because it was recorded prior to the adoption of the Maryland Critical Area Regulations in December 1985. The Property is heavily wooded and the AE floodplain is within 16 feet of the single-family dwelling according to Flood Insurance Rate Map (FIRM) panel #184. In addition to the 4-bedroom single-family dwelling, which is still under construction, the Property contains porches, decks, a detached two-story garage, sheds, and walkways for a total of 14,225 square feet of impervious surface. The second story of the detached four-bay garage contains a 2-bedroom dwelling with an attached deck. The dwelling is more than 1,200 square feet in size.
2. The Appellant purchased the property on October 16, 1985. At this time, the property was 4.572 acres in size and contained an old house, well, and septic tank. On March 14, 1986 the Appellant obtained a building permit to demolish the old house and replace it with a new one. The building permit also noted that a possible minor subdivision was to be addressed.
3. The St. Mary's County Health Department issued a permit to Roy Hart on March 13, 1986 to place an individual sewage disposal system on the Property to accommodate a three-bedroom house. This permit was valid for 12 months from the date of issue.
4. According to the Appellant, they began construction of the single-family dwelling during the summer and early fall of 1986. Footers were poured and the foundation walls were built, but nothing else.
5. On November 12, 1986 the Appellants applied for subdivision approval to subdivide their 4.572 acre parcel into two lots. The subdivision was approved and recorded in the Land Records of St. Mary's County on January 30, 1987.

6. On July 21, 1987 the Applicants obtained a building permit to construct a two-story garage. Each floor of the garage measured 32 feet by 48 feet. The second floor would be used as a temporary dwelling until the single-family dwelling was constructed. The Applicants moved into this dwelling in late 1987 or early 1988 and live there today.
7. The County Health Department also issued a permit on July 21, 1987 to place an individual sewage disposal system on the Property to accommodate the garage as a temporary use until the house was constructed. The system that was designed to accommodate three bedrooms.
8. On April 16, 2002 the Appellants applied for a building permit to construct the single-family dwelling that they started constructing in the summer of 1986. Roy Hart signed an Affirmation of Landowner indicating that he would be the builder of the house on his property. The proposed footprint of the house, 32 feet by 74 feet, was the same footprint approved in 1986. Additionally, the 2002 permit proposed a 680 square-foot deck and a six-foot by 55-foot breezeway. These were not shown on the 1986 building permit.
9. On April 19, 2002 the Applicants obtained a footing approval from the Middle Department Inspection Agency (MDIA) for the footings that had been presumably poured in 1986. On May 2, 2002 the Applicants obtained a slab approval (pre-pour) from MDIA, and on July 8, 2002 the Appellants obtained MDIA approval of the foundation.
10. By April 16, 2002 the County had adopted its Critical Area regulations and Zoning Ordinance #90-11 was in effect. The current Zoning Ordinance (ZO #02-01) was adopted May 13, 2002. Both the 90-11 and 02-01 Ordinances required environmental review and approval of all development activities in the Critical Area. Additionally, all new development activities in the Critical Area Buffer were prohibited without first obtaining a variance.
11. In a letter dated July 8, 2002 to Mr. and Mrs. Roy Hart, Jr., Theresa Dent, the Environmental Planner at that time, wrote to the Appellants that the Critical Area regulations prohibited development in the Critical Area Buffer 9within 100 feet of mean high water). Ms. Dent denied the building permit and instructed the Applicants to call her so they could discuss alternatives to their proposed application.
12. On July 18, 2002 Ms. Dent called Mr. Hart twice. She reached him at work on the second call and scheduled a pre-conference for July 22, 2002 at 10:00 a.m. On July 22, 2002 Ms. Dent met with Mr. Hart in the Planning and Zoning Office. Mr. Hart disclosed that the deck was not drawn on the site plan as proposed and he intended to have Day [his surveyor] redraw it with the accurate square footage. He would then call to schedule a pre-application meeting.
13. On September 19, 2002 the file was returned to the Permits and Inspection Department pending a revised site plan. Staff did not hear again from the Appellants.
14. In September 2007 Roy Hart came to the Department of Land Use and Growth Management. Between October 2003 and September 2007, the Appellants constructed the single-family dwelling to the point where they needed to have plumbing and electric installed. Aerial photos between 1988 and 2003 indicate that the foundation was the only structure on the Property during this period. There is now a Stop Work Order on the Property.
15. Pursuant to Article 6, Section 60.11 of the 1984 St. Mary's County Zoning Ordinance pertaining to time limits for zoning and building permits:

Any zoning permit issued shall become invalid if the authorized use or construction for which the permit was issued is not commenced within 12 months of the date of issuance, or is suspended or abandoned for a period of 12 months.

Any building permit issued shall become invalid if the authorized use or construction for which the permit was issued is not commenced within 12 months of the date of issuance, or is suspended or abandoned for a period of 12 months.

This same limitation was in effect in 1986 when the Appellants obtained their building permit and is still in effect today.

16. On March 27, 1990 the County adopted its Critical Area program which made all structures in the Critical Area Buffer nonconforming. Pursuant to Section 41.2.1 of the Ordinance (ZO #02-01) pertaining to nonconforming uses and structures in the Critical Area, "Any use or structure within the St. Mary's County Critical Area existing or established before March 27, 1990, that has not been abandoned for more than one year, regardless of any intention to abandon or not, but which does not conform with the provisions of this chapter may continue. Such use or structure however, may not be reconstructed, intensified or expanded except in accordance with this Ordinance.

17. The Board finds that the Appellants did not have a valid building permit in 2002 to build the single-family dwelling. The 1986 permit had expired. The Board finds that construction was abandoned after the foundation was built in 1986. In order to obtain a new building permit to construct the single-family dwelling, the Appellants would have had to first remove the nonconforming foundation and then move the house out of the Critical Area Buffer.

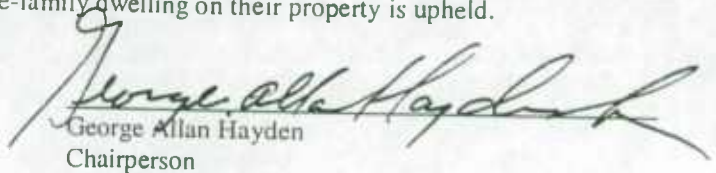
IV. Conclusions of Law

When a property owner (1) obtains a lawful building permit; (2) commences to build in good faith; and (3) completes substantial construction on the property, his right to complete and use that structure cannot be affected by any subsequent change of the applicable building or zoning regulations. However, once construction has so commenced and the property owner has acquired such a vested right, the property owner may be divested of that vested right by abandonment of the construction so commenced.

The Appellants obtained a building permit to construct a single-family dwelling on March 14, 1986, and commenced construction, creating a vested right in Appellants prior to adoption of the Critical area regulations on March 27, 1990, to continue and complete construction of the dwelling. However, the Appellants subsequently abandoned construction and thereby lost that vested right.

NOW, THEREFORE, BE IT ORDERED, that the decision of the Planning Director that the property owners did not have a vested right to build the single-family dwelling on their property is upheld.

This Date: July 24, 2008


George Allan Hayden
Chairperson

Those voting to reverse the Director's decision:

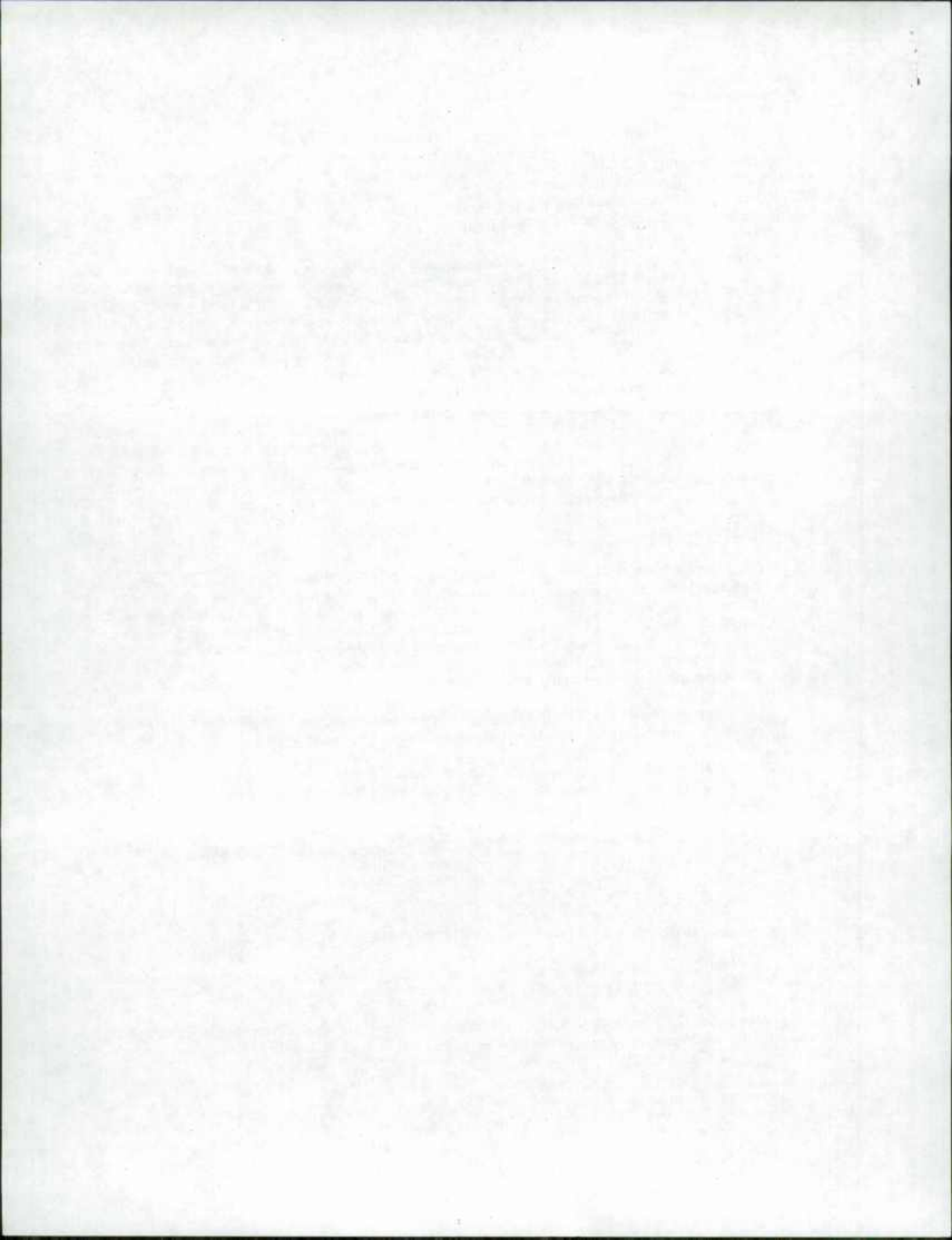
Mr. Hayden and Mr. Edmonds

Those voting to uphold the Director's decision

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

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

MEMORANDUM

Date: June 5, 2008
To: Board of Appeals
From: Yvonne Chaillet, Zoning Administrator
Subject: VAAP # 02-0969, Hart
Board of Appeals Hearing of June 12, 2008

I. DEVELOPMENT DATA

REQUEST: After-the-fact variance from Section 71.8.3 of the Comprehensive Zoning Ordinance to add impervious surface in the Critical Area Buffer to construct a single-family dwelling and appurtenances

OWNER: Roy and Jane Hart ("the Appellants")

LOCATION: 45216 Clarkes Landing Road

TAX MAP: 27 **ELECTION DISTRICT:** 6th

BLOCK: 17 **ACREAGE:** 2.383 acres

PARCEL: 154 **USE:** Residential

ZONING: Rural Preservation District (RPD), Limited Development Area (LDA) Overlay

II. NOTIFICATION: The property and variance were advertised in *The Enterprise* on May 28, 2008 and June 4, 2008.

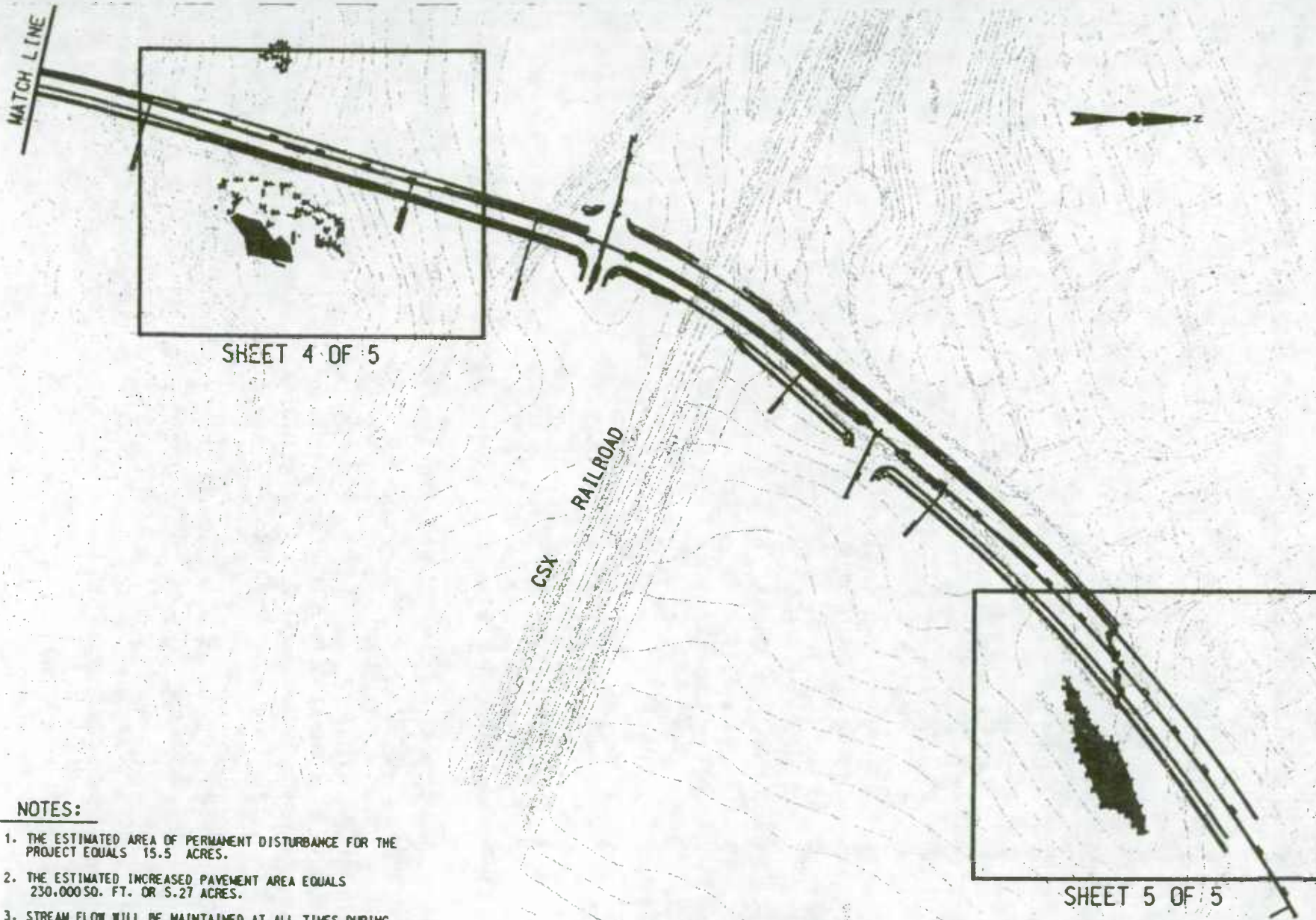
III. APPLICABLE REGULATIONS

St. Mary's County Comprehensive Zoning Ordinance (Ordinance)

1. Section 24.4 Specific standards for Granting Variances in the Critical Area
2. Section 71.8.3 The 100-Foot Critical Area Buffer.

IV. RECOMMENDED MOTION: Staff recommends the following motion (with modifications and additions following discussion):

"In the matter of VAAP #02-0969, Hart, having found that the objectives of Section 71.8.3 of the Comprehensive Zoning Ordinance have not been met and that the standards for granting a



NOTES:

1. THE ESTIMATED AREA OF PERMANENT DISTURBANCE FOR THE PROJECT EQUALS 15.5 ACRES.
2. THE ESTIMATED INCREASED PAVEMENT AREA EQUALS 230,000 SQ. FT. OR 5.27 ACRES.
3. STREAM FLOW WILL BE MAINTAINED AT ALL TIMES DURING CONSTRUCTION.
4. ALL DISTURBED AREAS WILL BE STABILIZED WHEN WORK IS COMPLETED. LIMIT OF PERMANENT DISTURBANCE IS TOP OF CUT OR TOE OF FILL.
5. TOTAL PERMANENT NON-TIDAL WETLAND IMPACTS EQUALS 1440 SQ. FT.
6. TOTAL PERMANENT BUFFER IMPACTS EQUALS 9380 SQ. FT.
7. TOTAL PERMANENT STREAM IMPACTS EQUALS 370 SQ. FT./ 70 L.F.
8. TOTAL TEMPORARY NON-TIDAL WETLAND IMPACTS EQUALS 50 SQ. FT.
9. TOTAL TEMPORARY BUFFER IMPACTS EQUALS 390 SQ. FT.
10. TOTAL TEMPORARY STREAM IMPACTS EQUALS 0 SQ. FT./ 0 L.F.

P L A N
 SCALE: 1" = 300'

WALLACE, MONTGOMERY & ASSOCIATES, LLP
 CIVIL AND STRUCTURAL ENGINEERS
 110 WEST ROAD
 TOWSON, MARYLAND 21284

**FATHER HURLEY BOULEVARD
 KEYSHEET FOR IMPACT PLATES**

COUNTY: MONTGOMERY
 STATE: MARYLAND
 APPLICATION BY: MONTGOMERY COUNTY
 SHT 2 OF 5 DATE: FEBRUARY, 2008

variance in the Critical Area have not been met, I move to deny the variance request to add impervious surface in the Critical Area Buffer to construct a single-family dwelling and appurtenances.”

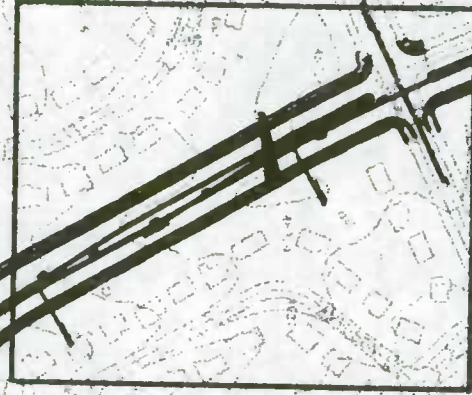
V. STAFF COMMENTS:

1. The subject property (Property), located on Nat's Creek in Hollywood, is a grandfathered lot because it was recorded prior to the adoption of the Maryland Critical Area Regulations in December 1985. The Property is heavily wooded and the AE floodplain is within 16 feet of the single-family dwelling according to Flood Insurance Rate Map (FIRM) panel #184. In addition to the 4-bedroom single-family dwelling, which is still under construction, the Property contains porches, decks, a detached two-story garage, sheds, and walkways for a total of 14,225 square feet of impervious surface. The second story of the detached four-bay garage contains a 2-bedroom dwelling with an attached deck. The dwelling is more than 1,500 square feet in size.
2. The Applicants purchased the Property on October 16, 1985. At this time, the Property was 4.572 acres in size and contained an old house, well, and septic tank. On March 14, 1986 the Applicants obtained a building permit to demolish the old house and replace it with a new one. The Building Permit also noted that a possible minor subdivision was to be addressed.
3. The St. Mary's County Health Department issued a permit to Roy Hart on March 13, 1986 to place an individual sewage disposal system on the Property to accommodate a three-bedroom house. This permit was valid for 12 months from the date of issue.
4. According to the Applicants, they began construction of the single-family dwelling during the summer and early fall of 1986. Footers were poured and the foundation walls were built, but nothing else.
5. On November 12, 1986 the Applicants applied for subdivision approval to subdivide their 4.572-acre parcel into two lots. The subdivision was approved and recorded in the Land Records of St. Mary's County on January 30, 1987.
6. On July 21, 1987 the Applicants obtained a building permit to construct a two-story garage. Each floor of the garage measured 32 feet by 48 feet. The second floor would be used as a temporary dwelling until the single-family dwelling was constructed. The Applicants moved into this dwelling in late 1987 or early 1988 and live there today.
7. The County Health Department also issued a permit on July 21, 1987 to place an individual sewage disposal system on the Property to accommodate the garage as a temporary use until the house was constructed. The system that was designed to accommodate three bedrooms.
8. On April 16, 2002 the Applicants applied for a building permit to construct the single-family dwelling that they started constructing in the summer of 1986. Roy Hart signed an



HOPKINS
LANE

MATCH LINE



SHEET 3 OF 5

DAWSON
FARM
ROAD

MD
118

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SCALE: 1" = 300'

**FATHER HURLEY BOULEVARD
KEYSHEET FOR IMPACT PLATES**

COUNTY: MONTGOMERY
STATE: MARYLAND
APPLICATION BY: MONTGOMERY COUNTY
SHT 1 OF 5 DATE: FEBRUARY, 2008



**WALLACE,
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Affirmation of Landowner indicating that he would be the builder of the house on his property. The proposed footprint of the house, 32 feet by 74 feet, was the same footprint approved in 1986. Additionally, the 2002 permit proposed a 680 square-foot deck and a six-foot by 55-foot breezeway. These were not shown on the 1986 building permit.

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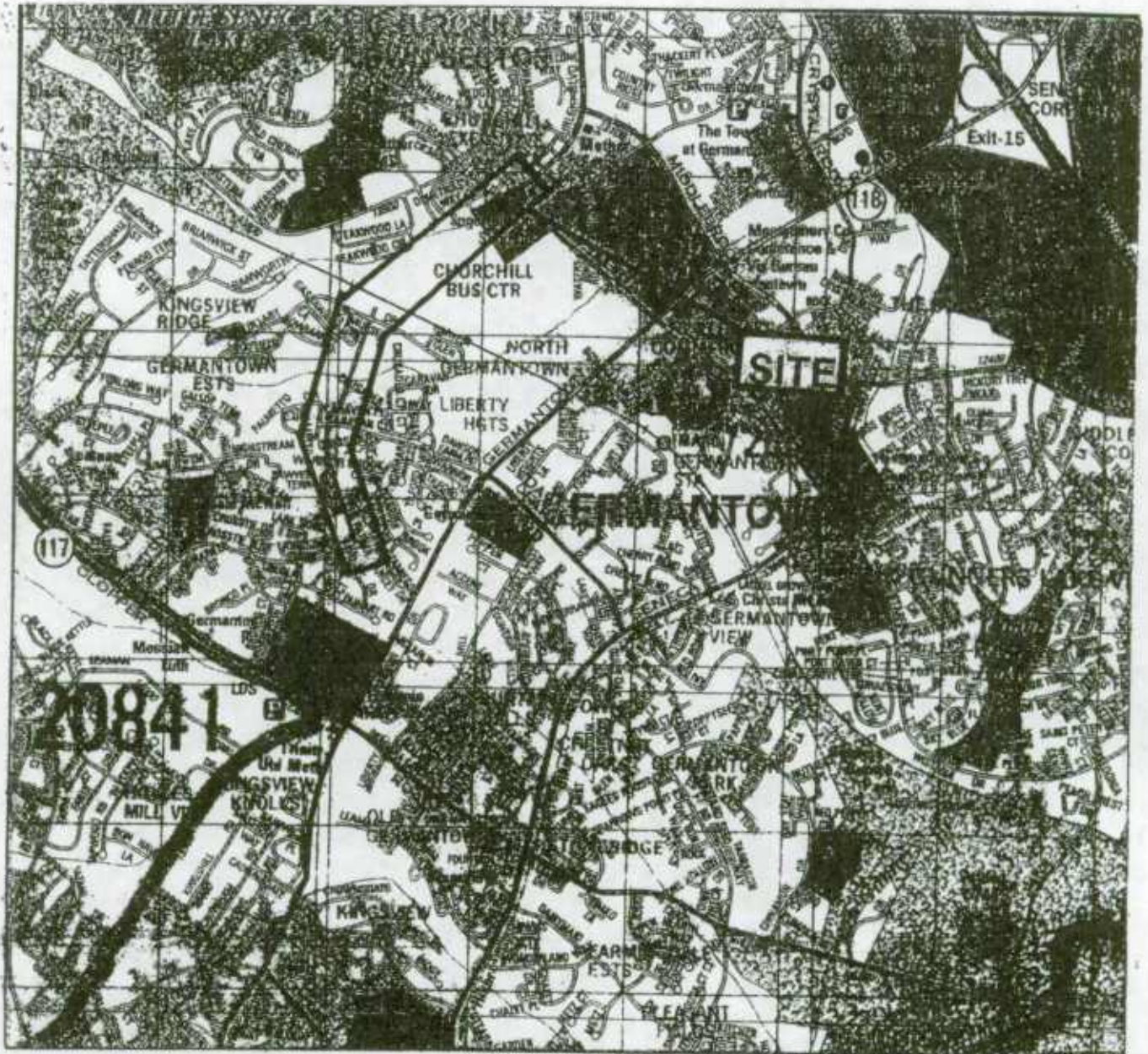
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13. On September 19, 2002 the file was returned to the Permits and Inspections Department pending a revised site plan. Staff did not hear again from the Applicants.
14. In September 2007 Roy Hart came into the Department of Land Use and Growth Management to apply for a permit to build his house.

After piecing together the chronology of events, staff believes that somewhere between October 2003 and September 2007, the Applicants constructed the single-family dwelling to the point where they needed to have plumbing and electric installed. Aerial photos between 1998 and 2003 indicate that the foundation was the only structure on the Property during this period. There is now a Stop Work Order on the Property.

15. Pursuant to Article 6, Section 60.11 of the 1984 St. Mary's County Zoning Ordinance pertaining to time limits for zoning and building permits:

07-NT-00471 200760593



Copyright ADC The Map People - Permitted Use Number 20502110

LOCATION MAP
Father Hurley Boulevard Project

Scale: 1" = 2000'
WM&A 204004.03

Any zoning permit issued shall become invalid if the authorized use or construction for which the permit was issued is not commenced within 12 months of the date of issuance, or is suspended or abandoned for a period of 12 months.

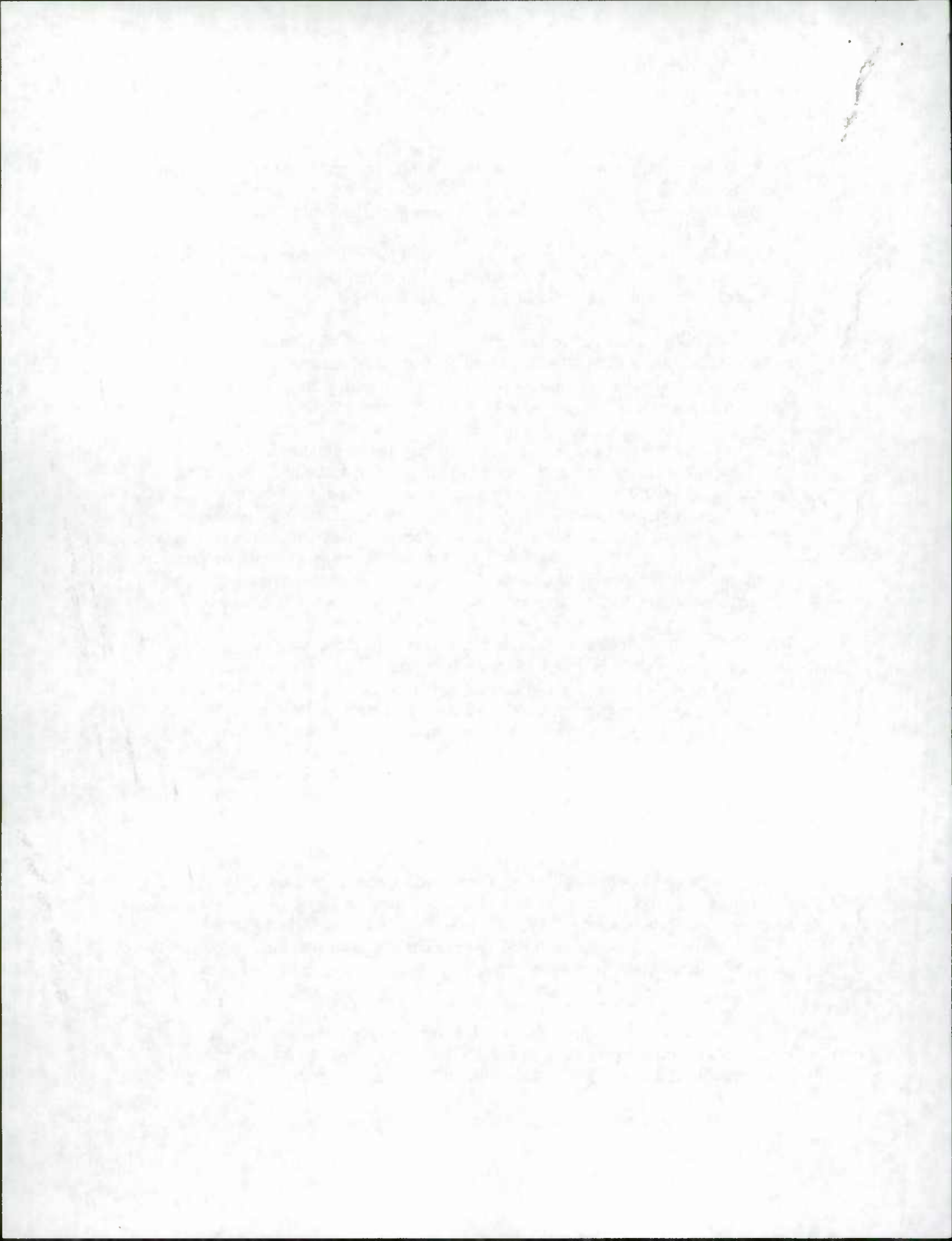
Any building permit issued shall become invalid if the authorized use or construction for which the permit was issued is not commenced within 12 months of the date of issuance, or is suspended or abandoned for a period of 12 months.

This same limitation was in effect in 1986 when the Applicants obtained their building permit and is still in effect today. Staff believes that the Applicants realized that they could not continue construction on their house under the 1986 permit and subsequently applied for a building permit in 2002 when they were ready to build the single-family dwelling.

16. On March 27, 1990 the County adopted its Critical Area program which made all structures in the Critical Area Buffer nonconforming. Pursuant to Section 41.2.1 of the Ordinance (ZO #02-01) pertaining to nonconforming uses and structures in the Critical Area, "Any use or structure within the St. Mary's County Critical Area existing or established before March 27, 1990, that has not been abandoned for more than one year, regardless of any intention to abandon or not, but which does not conform with the provisions of this chapter may continue. Such use or structure however, may not be reconstructed, intensified or expanded except in accordance with this Ordinance."

Chapter 52 of the Ordinance (Nonconforming Uses, Structures, and Signs) is intended to limit the extent of nonconforming structures by prohibiting their movement or alteration in a manner that would increase the discrepancy between existing conditions and the standards of the Ordinance. Pursuant to Section 52.4 (Abandonment of the Nonconforming Use), "A nonconforming use, structure or any part thereof, that is discontinued or changed to a conforming use for a continuous period of one year or more shall not be reestablished, and the use of the structure or site thereafter shall be in conformity with the regulations of the district in which it is located. Abandonment or discontinuance shall include cessation of a use regardless of intent to abandon or resume the use of the nonconforming use, structure or any part thereof."

17. Staff finds that the Applicants did not have a valid building permit to build the single-family dwelling. The 1986 permit had long since expired and construction was abandoned after the foundation was built in 1986. In order to obtain a new building permit to construct the single-family dwelling, the Applicants would have had to first remove the nonconforming foundation and then move the proposed house out of the Critical Area Buffer.
18. The Applicants desire to obtain after-the-fact variance approval so that they can obtain after-the-fact permit approval for what has already been constructed on the Property without authorization and so that they can continue constructing the single-family dwelling.



19. The Health Department has authorized the Applicants to add to the existing septic system to accommodate the house. The initial system that was installed in 1987 was designed for a 3-bedroom equivalent.

The Soil Conservation District (SCD) requested in December 2007 that the Applicants' surveyor provide an engineered erosion and sediment control plan. The surveyor has not yet provided this information to the Health Department.

20. Attached is a letter from Christopher Longmore of Dugan, McKissick, Wood and Longmore, which addresses the standards for granting a variance in the Critical Area. Staff's analysis of each standard 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.*

Staff Analysis: Staff finds that there are no special conditions or circumstances that are peculiar to the land. The Property is more than two acres in size and there is ample room outside the 100-Foot Critical Area Buffer to place a single-family dwelling and accommodate the existing garage and dwelling along with the existing septic system and proposed septic drain fields. The Applicants cannot claim an unwarranted hardship because they have not been denied full use of their land. They had an existing two-story garage with a deck and appurtenances before building the house and adding a shed. The Applicants can still locate a single-family dwelling outside the Buffer and keep their garage and dwelling as an accessory dwelling.

For these reasons staff finds that the Applicants have not demonstrated an unwarranted hardship and have not met this standard.

- 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.*

Staff Analysis: A strict interpretation of the Critical Area provisions of the Ordinance will not deprive the Applicants of rights commonly enjoyed by other properties in the LDA. On the contrary, granting of this variance request will give the Applicants a right that is not commonly enjoyed by other properties in the Critical Area. Other property owners are required to locate their proposed development activity outside the 100-Foot Critical Area Buffer when there is amply room outside the Buffer, as there is on the subject property.

For these reasons, staff finds that the Applicants have not demonstrated that they meet this standard.

- 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.*

PCL XL error

Subsystem: KERNEL

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Staff Analysis: The granting of a variance, whether or not it is after-the-fact, to construct a single-family dwelling and appurtenances in the Critical Area Buffer would confer a special privilege upon the Applicants that would otherwise be denied. A variance may not be granted for new development activities in the Buffer when property owners can build outside the Buffer. Variances should be granted only in rare circumstances. In this case, the Applicants have ample room on the Property to build outside the Buffer.

For these reasons, staff finds that the Applicants have not demonstrated that they have met this standard.

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

Staff Analysis: The variance request is based on actions by the Applicants. The Applicants abandoned construction of their house after the foundation was built in 1986. The Applicants were told in 2002 that their building permit was denied. Mr. Hart met with the Environmental Planner at that time to discuss options for building on the Property. The Applicants did not follow up with staff after this meeting and subsequently built the house and appurtenances without any approvals.

For these reasons, staff finds that the Applicants have not demonstrated that they have met this standard.

- e. *The granting of a 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.*

Staff Analysis: The Critical Area Buffer serves to prevent loss of land and topsoil to erosion and to filter pollution, nutrient and sediment runoff. Additionally, the Critical Area regulations are designed to minimize the impacts of surface land use on water resources and conserve fish, wildlife, and plant habitats while accommodating continued growth. Many wildlife species are dependent on plant habitats for nesting, breeding, and for the rich sources of food that can be found here. These regulations require property owners to establish vegetated Buffers where none currently exist.

Impervious surfaces increase the volume of runoff by preventing rainwater from infiltrating the ground. Impervious surfaces also increase pollutants in runoff with materials that come off vehicles, particulates blown by the wind, and deicing substances used to prevent ice from building on surfaces such as sidewalks and driveways.

For these reasons, staff finds that the granting of a variance to disturb the Critical Area Buffer by adding impervious surface in the Buffer will adversely affect water quality and fish, wildlife, and plant habitat within the Critical Area. The granting of the requested variance would be in conflict with the general spirit and intent of the Critical Area program.

HB973/HB1253

- Anticipated regulations will not aim to be a design manual
- Fee Waiver
 - Living Shorelines are exempt from new MDE fee structure

Links to Living Shoreline Resources

- <http://shorelines.dnr.state.md.us/>
- http://www.habitat.noaa.gov/restorationtechniques/public/shoreline_tab1.cfm
- <http://www.mde.state.md.us/assets/document/wetlandswaterways/Shoreerosion.pdf>
- <http://www.deq.state.va.us/coastal/livingshore.html>
- http://ccrm.vims.edu/coastal_zone/living_shorelines/index.html

For these reasons, staff finds that the Applicants have not demonstrated that they have met this standard.

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

Staff Analysis: The Applicants have a reasonable use of the Property for residential purposes with the existing 4-bay garage and 1,500 square foot plus dwelling above it. The dwelling has an attached deck and the Applicants have a shed, pier and bulkhead.

The foundation was abandoned for 15 years before the Applicants sought a building permit to continue construction. The foundation became nonconforming in March 1990 when the County adopted its Critical Area program prohibiting new development activities in the Critical Area Buffer. Staff believes that the nonconforming, abandoned foundation has ceased to exist for purposes of reestablishing its use. The Applicants had no right to build on the foundation. The variance to add a second dwelling on the Property in the 100-Foot Buffer is not the minimum necessary to achieve a reasonable use of the land.

For these reasons, staff finds that the Applicants have not demonstrated that they have met this standard.

- VI. STAFF RECOMMENDATION:** Staff recommends acceptance of the findings of this staff report and **denial** of the request, after-the-fact to construct a single-family dwelling and appurtenances in the Critical Area Buffer.

VII. ATTACHMENTS

Attachment #1- Letter of Intent

Variance Application Date: March 31, 2008

Sand Containment Structure Benefits

- Provides energy dissipation in moderate to high energy environments
- Allows project to fit into existing footprints
- Increases habitat
- Improves water quality
- Flood Control
- Durable

Biolog Structure Benefits

- Short – medium term protection in low to moderate energy environments
- Flexible implementation
 - Toe of slope protection
 - Integration with other design options
- Increases habitat
- Improves of water quality
- Flood Control

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

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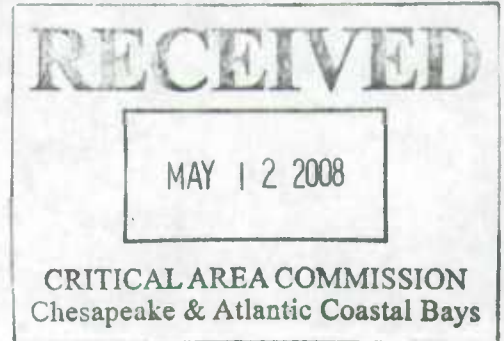


Francis Jack Russell, President
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Lawrence D. Jarboe, Commissioner
Thomas A. Mattingly, Sr., Commissioner
Daniel H. Raley, Commissioner

May 9, 2008

Christopher T. Longmore
Dugan, McKissick, Wood and Longmore
22738 Maple Road, Suite 101
Lexington Park, Maryland 20653

Subject: Property of Roy Hart, Jr. and Jane Caroline Hart
45216 Clarkes Landing Road, Hollywood



Dear Mr. Longmore:

Staff with the Department of Land Use and Growth Management ("the Department") has conducted site visits of the subject property ("the Property") and reviewed all documents we have on file pertaining to the Property. Additionally, staff has consulted with County Attorney Christy Chesser, and we have reached the following conclusions.

Our records indicate that Mr. Hart was granted a building permit in 1987 to construct a single-family dwelling on the subject property. Additionally, he was granted a building permit to construct a garage with a dwelling above the garage. As indicated on the latter permit, Mr. Hart planned to live here until the second dwelling on the waterfront was built.

In 2002 Mr. Hart applied for a building permit to complete the second dwelling. He had only constructed a foundation for this dwelling and then abandoned construction. An environmental review was conducted and the building permit was denied. Mr. Hart was informed in a letter from Theresa Dent, Environmental Plan Reviewer at that time, that he needed a Board of Appeals variance before he could pursue construction in the Critical Area Buffer. Our records show that Mr. Hart met with Ms. Dent in the Department of Planning and Zoning (now Land Use and Growth Management) to review the variance process.

Our aerial photos, including the most recent aerial photos from October 2003, show that a foundation for the second dwelling was constructed on the waterfront. Sometime between October 2003 and 2007 when Mr. Hart applied to MDIA for inspections, Mr. Hart built a house over that foundation.

We have no records indicating that a building permit was issued by this Department following Mr. Hart's application for such permit in 2002. It is our opinion that Mr. Hart has an illegal house in the 100-Foot Critical Area Buffer. Therefore, he must seek after-the-fact variance approval from the Board of Appeals for all unauthorized impervious surface in the Critical Area Buffer.

Christopher Longmore
May 9, 2008
Page two

Mr. Hart is scheduled for a Board of Appeals hearing on Thursday, June 12, 2008, at 6:30 p.m. You may wish to submit documentation in Mr. Hart's defense prior to this hearing for our review. However, the hearing must be advertised a minimum of 15 days prior to June 12, 2008, and the Critical Area Commission must be afforded time to review any documentation you submit and your letter addressing the standards for granting a variance in the Critical Area. Please submit the required information as soon as possible.

Please be advised that new Critical Area legislation becomes effective July 1, 2008, and there are no grandfathering provisions included in this legislation for outstanding permits and projects. It is in your client's best interest to obtain a decision from the Board of Appeals prior to July 1, 2008.

If you have any questions, please call me at 301-475-4200, extension 1523. I look forward to receiving your letter addressing the standards for granting a variance in the Critical Area and any documentation you wish to submit prior to the hearing.

Sincerely,

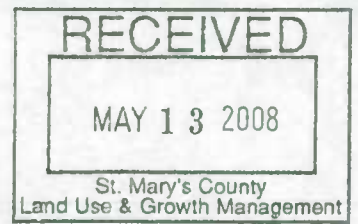


Yvonne Chaillet
Zoning Administrator

Cc: Denis Canavan, Director
Phil Shire, Deputy Director
Christy Chesser, County Attorney
Adam Knight, Building Code Official
Mary Russell, Zoning Inspector

Maryland Critical Area Commission Staff ✓

no case law for vested
rights in single family
dwelling



Supplement to Variance Application of Roy and Jane Hart

The Applicants Roy and Jane Hart are filing this variance request in direct consultation with the Staff of the Department of Land Use and Growth Management. The Applicants filed their original request on or about March 31, 2008, pending the Department's determination regarding the Applicants' vested rights to the home that is at issue in this variance request. The Department issued this determination on May 9, 2008 by way of that letter of the same date which is attached hereto. The Applicants strongly disagree with the decisions and determinations contained within that letter and are appealing those decisions at the time they are filing this supplement to their variance request.

As set forth in that appeal and as discussed with members of the Department staff, including Director Denis Canavan and Zoning Administrator Yvonne Chaillet, the Applicants are essentially submitting two separate variance requests, each of which is an after-the-fact request. The first is based on the Applicant's position that they have a vested right to the construction of the house according to the originally issued building permit. If the Board of Appeal agrees with the Applicants in this regard, then the only variance needed and requested would be for **any impervious surfaces on the property that exceed the original impervious surfaces that were approved in the building permit** and for which construction was commenced before the Critical Areas laws went into effect. If the Board of Appeals disagrees with Applicants and denies the appeal, the Applicants, in the alternative and again based on the advice of Staff, are requesting variance to locate the entire house in its current location.

Variance Request #1: For Allowing Impervious Surfaces Beyond Those Allowed by the Original Building Permit

A. General Standards for Granting Variances:

(1) Because of particular physical surroundings such as exceptional narrowness, shallowness, size, shape, or topographical conditions of the property involved, strict enforcement of the Ordinance would result in practical difficulty; and

The conditions of the property would make the relocation or removal of the impervious surfaces that exist that are in addition to the original plans a practical difficulty. The topography of the property where the house is located, as well as the elevation of the house, require that the deck be its current height and that a front porch be included with the house to allow for access to the house at the front door.

(2) The conditions creating the difficulty are not applicable, generally, to other properties within the same zoning classification; and

The conditions are unique to this property and the history of the development of this property as set forth in the appeal being filed concurrently herewith this supplement.

(3) The purpose of the variance is not based exclusively upon reasons of convenience, profit, or caprice. It is understood that any development necessarily increases property value, and that alone shall not constitute an exclusive finding; and

The purpose of this variance is to allow the Applicants to achieve an appropriate use of the house being constructed on the property pursuant to their vested right to construct the premises in its current location.

(4) The alleged difficulty has not been created by the property owner or the owner's predecessors in title; and

The difficulty was not created by the Applicants – it was created by a change in law that occurred after the Applicants obtained their vested right to construct the house and the variance requested will allow them to appropriately exercise their constitutionally protected vested right.

(5) The granting of the variance will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood and the character of the district will not be changed by the variance; and

The variance will not change the character of the district or be detrimental to the public welfare. The property is located directly on Nat's Creek and there are many other residences with similar decks, porches and other areas such as those included in this variance request.

(6) The proposed variance will not substantially increase the congestion of the public streets, or increase the danger of fire, or endanger the public safety, or substantially diminish or impair property values within the neighborhood; and

The variance will not increase any congestion or cause any other such adverse consequences as it is simply to add certain impervious surfaces beyond the original approvals through which the Applicants have obtained a vested right to construct their residence on the property.

(7) The variance complies, as nearly as possible, with the spirit, intent, and purpose of the Comprehensive Plan.

The variance complies with the Comprehensive Plan and does not run afoul of any of the provisions of the Plan.

B. Specific Standards for Critical Area Variances

(1) 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; and

The conditions of the property would make the relocation or removal of the impervious surfaces that exist that are in addition to the original plans. The topography of the property where the house is located, as well as the elevation of the house, require that the deck be its current height and that a front porch be included with the house to allow for reasonable access to the house at the front door as well as an alternative exit for safety purposes.

(2) 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; and

The areas at issue primarily related to surfaces relating to the porches and/or decks on the property, and these are items that commonly enjoyed by other properties within the Critical Area of St. Mary's County, particularly those along Nat's Creek.

(3) 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; and

The granting of this variance will not confer special privileges upon the applicant as many other residences and structures have similar impervious surfaces located on their properties.

(4) The variance request is not based upon conditions or circumstances that are the result of actions by the applicant; and

The difficulty was not created by the Applicants – it was created by a change in law that occurred after the Applicants obtained their vested right to construct the house and the variance requested will allow them to appropriately exercise their constitutionally protected vested right. The applicants have proceeded with construction on the structures in good faith with the belief that they had a valid building permit.

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

The granting of the variance will not adversely affect water quality or impact fish, wildlife or plant habitat. In fact, if the variance is denied, there will be a much greater harm to the habitat and wildlife, as any denial may result in far more disturbance and runoff if the structure at issue is forced to be altered or removed.

(6) The variance is the minimum necessary to achieve a reasonable use of land or

structures.

The variance being sought is to allow the existing structure and building to remain in its as built location. This is the minimum necessary given the current status of the project.

Alternative Variance Request #2: For Allowing the Entire House and Related Impervious Surfaces

A. General Standards for Granting Variances:

(1) Because of particular physical surroundings such as exceptional narrowness, shallowness, size, shape, or topographical conditions of the property involved, strict enforcement of the Ordinance would result in practical difficulty; and

The denial of this variance would cause an extreme practical difficulty if the Applicants are required to remove or move the house that exists on the property at this time. The topography and width of the lot where the house is located would cause great expense and damage to the property if the variance is not granted and the house has to be moved or removed.

(2) The conditions creating the difficulty are not applicable, generally, to other properties within the same zoning classification; and

The conditions are unique to this property and the history of the development of this property as set forth in the appeal being filed concurrently herewith this supplement.

(3) The purpose of the variance is not based exclusively upon reasons of convenience, profit, or caprice. It is understood that any development necessarily increases property value, and that alone shall not constitute an exclusive finding; and

The purpose of this variance is to allow the Applicants to achieve an appropriate use of the house being constructed on the property pursuant to what the Applicants' believed was their right to construct the premises in its current location pursuant to the previously issued building permit. Conversely, the denial of this variance would cause an insurmountable financial hardship on the Applicants, as this property is their primary residence and they have invested substantial personal sums into the construction of the new residence on the property.

(4) The alleged difficulty has not been created by the property owner or the owner's predecessors in title; and

The difficulty was not created by the Applicants - it was created by a change in law

that occurred after the Applicants obtained their original building permit to construct the house. The Applicants proceeded in good faith and without the understanding that the County believed the permit was no longer valid based, among other things, on the fact that County's inspection agency inspected portions of the property during the time period that the County claims the permit had expired and that the Applicants received inspection approvals as a result of those inspections.

(5) The granting of the variance will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood and the character of the district will not be changed by the variance; and

The variance will not change the character of the district or be detrimental to the public welfare. The property is located directly on Nat's Creek and there are many other residences of similar size and location to that of the Applicants. In addition, the denial of this variance would be more detrimental to the public welfare and neighborhood as the removal or moving of the structure would undoubtedly cause more disruption and adverse environmental effects on the area than would the granting of this variance to complete the house that is already substantially constructed.

(6) The proposed variance will not substantially increase the congestion of the public streets, or increase the danger of fire, or endanger the public safety, or substantially diminish or impair property values within the neighborhood; and

The variance will not increase any congestion or cause any other such adverse consequences as it is simply allow the Applicants to complete the single family residence that is already under construction and, if any, it will assist in increasing the neighboring property values.

(7) The variance complies, as nearly as possible, with the spirit, intent, and purpose of the Comprehensive Plan.

The variance complies with the Comprehensive Plan and does not run afoul of any of the provisions of the Plan.

B. Specific Standards for Critical Area Variances

(1) 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; and

There are special conditions and circumstances peculiar to this land and structure in that there was originally another single family residence on the same site where the new structure has been constructed and the new structure was built by the Applicants on their good faith belief that they had the right to construct the structure under the previously issued County building permit. There would be an extreme unwarranted

hardship if the variance was not granted as it would be financially devastating to the Applicants.

(2) 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; and

This is a single family residence along Nat's Creek. There are many other single family residences of similar or larger design that are also similarly situated on other properties within the Critical Area of St. Mary's County, particularly those along Nat's Creek.

(3) 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; and

The granting of this variance will not confer special privileges upon the applicant as many other residences and structures have similar impervious surfaces located on their properties.

(4) The variance request is not based upon conditions or circumstances that are the result of actions by the applicant; and

The applicants have proceeded with construction on the structure in good faith with the belief that they had a valid building permit. This belief was based in part, upon the fact that the County's inspection agency had inspected and provided approvals during the time period that the County now claims the building permit was no longer valid.

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

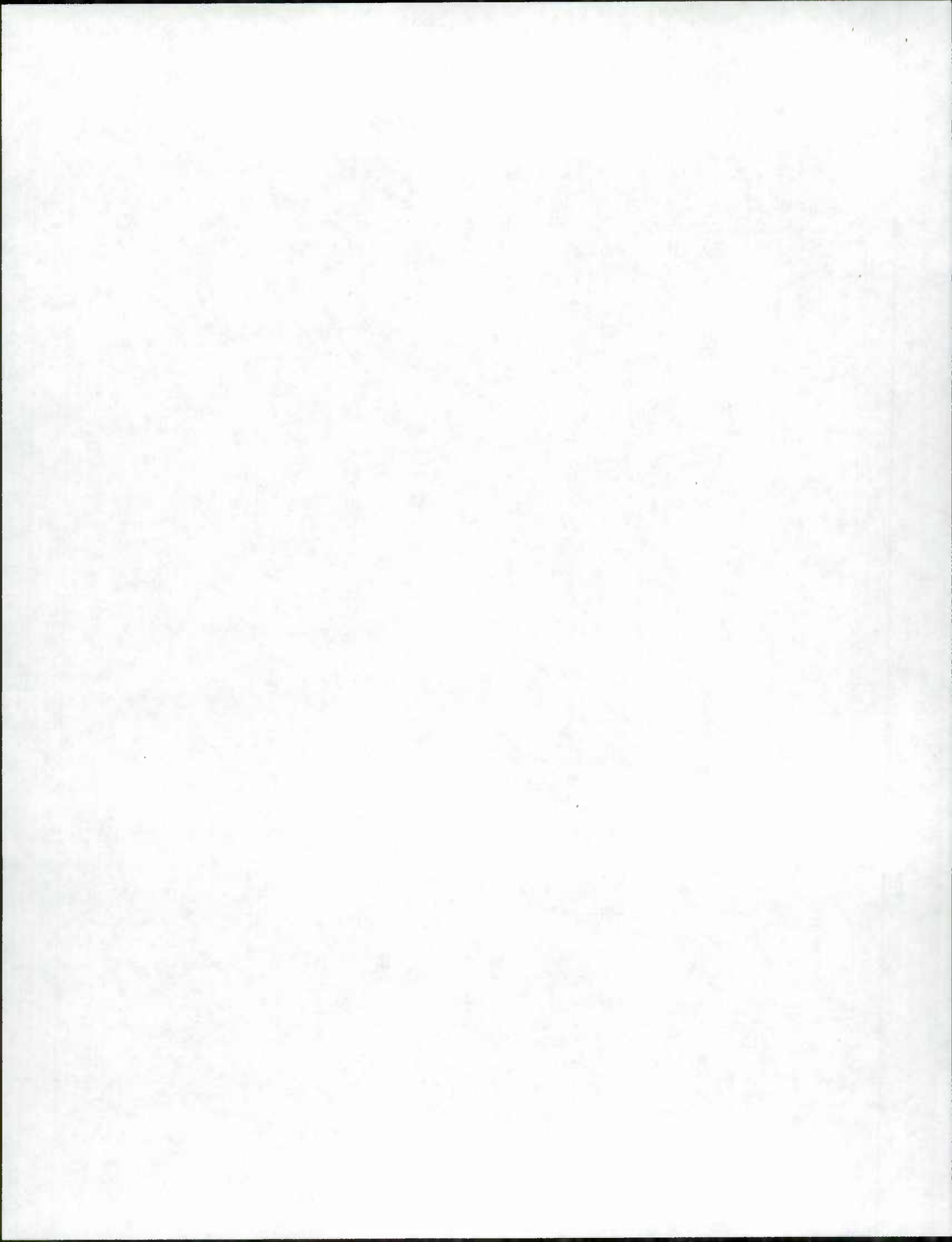
The granting of the variance will not adversely affect water quality or impact fish, wildlife or plant habitat. In fact, if the variance is denied, there will be a much greater harm to the habitat and wildlife, as any denial may result in far more disturbance and runoff if the structure at issue is forced to be altered or removed.

(6) The variance is the minimum necessary to achieve a reasonable use of land or structures.

The variance being sought is to allow the existing structure and building to remain in its as built location. This is the minimum necessary given the current status of the project.

The Applicants respectfully reserve the right to supplement and provide additional evidence and information in support of their variance applications at the Board of Appeals hearing in this matter, which is currently scheduled for June 12, 2008.

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MAY 13 2008

St. Mary's County
Land Use & Growth Management

Supplement to Appeal of Administrator's Decision

This narrative is being provided in support of this appeal of the decisions and determinations contained in the attached letter dated May 9, 2008, which is attached hereto as Exhibit A. The appeal is being filed by Applicants Roy and Jane Hart, by and through their attorneys, Christopher Longmore and the law firm of Dugan, McKissick, Wood & Longmore, LLC. The attached letter was provided to Applicants after they had worked with the Department of Land Use and Growth Management, the County Attorney's Office, and the St. Mary's County Health Department, among others, for more than six months in an attempt to resolve the outstanding issues relating to a home they are currently constructing. The letter was provided at the request of the Applicants that the Department find and determine that the Applicants have a vested right to construct the home at issue in the location where it is currently located. As is clear from the attached letter, the Department determined that the Applicants have no vested right to build the home in its current location. The Applicants believe that this determination was reached in error.

This narrative is divided into a brief statement of the relevant facts relating to this appeal and followed by a discussion of the law that applies to this matter. The Applicants reserve the right to submit all appropriate evidence, testimonial or otherwise, as well as additional legal authority, at the hearing of this matter which is currently scheduled for June 12, 2008.

Summary of Relevant Facts

The Applicants in this case are Roy and Jane Hart (hereinafter the "Applicants") and the property that they own which is located at 45216 Clarkes Landing Road in Hollywood, Maryland. The Applicants first purchased the property on or about October 16, 1985. The property is located directly on Nat's Creek. At the time, there was an existing cottage on the property that was in a somewhat run-down state. The Applicants purchased the property with the intent to tear down that cottage and to build a new residence on the property where they would live. To that end, the Applicants developed plans for the house they wished to build on the property. The Applicants applied for a building permit on or about August 16, 1985 prior to the settlement of their property to demolish the old cottage and build their new house. The building permit was approved on March 14, 1986.

The Applicants began building their home shortly after the permit was issued. This initial construction included the construction of the footings of the home as well as the foundation walls of the home. This construction took place during the summer and early fall of 1986. The foundation walls were built up to approximately six courses of block and were clearly visible to anyone who visited the property and went by the property by water along Nat's Creek.

The Applicants also applied for a second building permit to build a garage on the property on or about July 21, 1987. The applicants had decided to build the

garage and an apartment above the garage and to live in the garage apartment while they were building the main house on the property. This permit was approved in 1987. The garage, including the apartment, was built and the Applicants moved into the garage apartment in or about late 1987 or early 1988. They have lived on the property ever since that time.

During the same timeframe that they began living at the property, it became apparent to the Applicants that the bulkheading on the property needed to be repaired and restored in order to protect the property. The Applicants had not anticipated or planned for this expense. The Applicants applied for and were granted the appropriate permits to perform this work in or about the spring of 1988. The Applicants had this work done in order to preserve their property. The expense of these improvements, together with other financial factors, including but not limited to the fact that the cost of building the home was more than the Applicants' original estimates, caused the Applicants to change their plans of immediately finishing the construction of the house.

The Applicants did, however, continue to maintain the property and periodically continued to the construct the home. These actions included maintaining the construction site and block walls to ensure that they did not fall into disrepair. Also, periodically the Applicants would cause construction to occur on the site, including added additional courses of block to the walls, as they were able to do so , and adding gravel and a drainage system to the property.

In or about 2002, the Applicants initiated more concentrated efforts to complete the house, including the hiring of additional tradesmen and contractors to work on the house. During that time, the Applicants also were informed they needed to renew their building permit. Applicants came to the Department of Planning and Zoning and filed an application to "extend present building permit." The Applicants worked with staff and employed various individuals to assist them during this time. The Applicants, unfamiliar with the details of the permitting process, relied on the advice and instructions of the staff of the Department of Planning and Zoning and ultimately their permit application was classified as a new permit application. While there is correspondence and notes within the Department of Land Use and Growth Management's (hereinafter the "Department") file indicating that the permit was denied, it was the Applicants understanding that they had appropriately renewed their permit and were allowed to continue with the construction of the house. The Applicants' belief was based, in large part, on the fact that they applied for inspections through the Middle Department Inspection Agency ("MDIA") during this time period and their property passed all such inspections. The Applicants relied on the fact that the County's inspection agency had granted them inspection approvals to form their belief that their permit had been renewed.

The Applicants continued to construct their residence. In late 2007, when the Applicants were again seeking to have their property inspected as they had previously, a contractor they were working with informed them that there may be a problem with their permit because a current permit could not be located by MDIA

and/or the contractor for purposes of completing the inspections. The Applicants communicated with MDIA and were advised that they should go to the Department of Land Use and Growth Management to determine the status of the permit and to extend the permit. The Applicants promptly went to the Department and discovered for the first time that they did not have a current building permit. They immediately began working with the staff at the Department, primarily working with Harry Knight initially. The primary concerns expressed at that time were that any additions to the house that were not part of the original plans and permit may need a critical area variance. The Applicants have continually been working with the staff since that time to resolve all outstanding issues relating to the permits.

The Applicants worked with the health department and obtained their approval to continue with the construction. The Applicants also participated, by way of their counsel, in a "pre-application meeting" with Yvonne Chaillet and other staff members on or about February 26, 2008 to discuss additional issues relating to this matter. Both before and during this meeting, the Applicants have consistently raised the issue that they have a vested right to construct their home in the location where it is currently located. Applicants, through their counsel, also met with the County Attorney, Christy Chesser, in this regard to provide any information that would assist the Department in relation to the legal standards to be applied in this matter. The Department and County Attorney agreed to consider the Applicant's vested rights in the property. By way of the attached May 9, 2008 letter, the Department reached the determination that the Applicants have no vested rights to the house that is being constructed on the property. As set forth below, this decision was made in error and contrary to Maryland and constitutional law.

Summary of Law Applicable to this Appeal

The Applicants constitutionally protected property rights are directly at issue in this case. It is well settled that the government cannot take someone's property without providing fair and just compensation for that taking. Sometimes, this takes the form of an outright taking, i.e., the state or county comes in and takes someone's property for some governmental use. We are seeing this along Chancellor's Run Road where the state has come in and taken some properties and easements along that road as it widens and improves the road. In such cases, the State is required and has paid the owners of the properties for either the full value of the properties or the values of the easements that the state is taking.

In other instances, a law passed by the state or county could also constitute a taking of someone's property. This occurs when a state or local law essentially attempts to take away someone's property rights by placing restrictions on the uses or structures that will be allowed on someone's property. This situation often arises in the zoning context. Over the course of time, zoning laws have become more and more restrictive and specific.

Maryland Courts have developed the law of "vested rights" to insure that citizens' property rights are not taken away in violation of the Takings Clause.

Essentially, the law of vested rights states that when a citizen has an existing building or structure, or has begun constructing one under a validly issued building permit, that the citizens can keep that building or structure or finish building it even if a law is later passed that would prevent the building or structure in that location. The law of vested rights essentially strikes a balance and let's citizens keep their lawful buildings or structures. Otherwise, if the government requires the destruction of such structures, they would be required to pay the citizens money to compensate them for the full value of the building or structure.

In this case, the County is attempting to ignore the law of vested of rights and is essentially stating that if the Applicants do not obtain a variance, they will be required to destroy or somehow move the house as it exists in its current state, causing hundreds of thousands of dollars in damage to the Applicants. The County has reached this conclusion despite that the fact that the Applicants obtained a valid building permit and began construction pursuant to that permit in good faith. As set forth below, the Department is essentially attempting to wipe out the constitutional rights of the Applicants under the current zoning ordinance provisions relating to non-conforming uses.

The Applicants have a vested right to construct the house in the location where it is currently located, albeit only partially constructed at this time. Under Maryland law,

[g]enerally, in order to obtain a **vested** right in an existing zoning use that will be protected against a subsequent change in a zoning ordinance prohibiting that use, the owner must initially obtain a valid permit. Additionally, in reliance upon the valid permit, the owner must make a substantial beginning in construction and in committing the land to the permitted use before the change in the zoning ordinance has occurred.

Powell v. Calvert County, 137 Md.App. 425, 436 (2001), citing *Steuart Petroleum Co. v. Board of County Comm'rs of St. Mary's County*, 276 Md. 435, 442-44, 347 A.2d 854, 859-60 (1975), *County Council for Montgomery County v. District Land Corp.*, 274 Md. 691, 707, 337 A.2d 712, 721 (1975). In reviewing this law, Maryland State Courts have set forth a three part test that must be met to obtain a vested right in the construction context. The three requirements are as follows:

- (1) actual, physical commencement of significant and visible construction;
- (2) the commencement must be in good faith; and
- (3) the commencement must be pursuant to a validly issued building permit.

Town of Sykesville v. West Shore Communications, 110 Md.App. 300, 305. (1996). The Applicants meet all three of these requirements in this case.

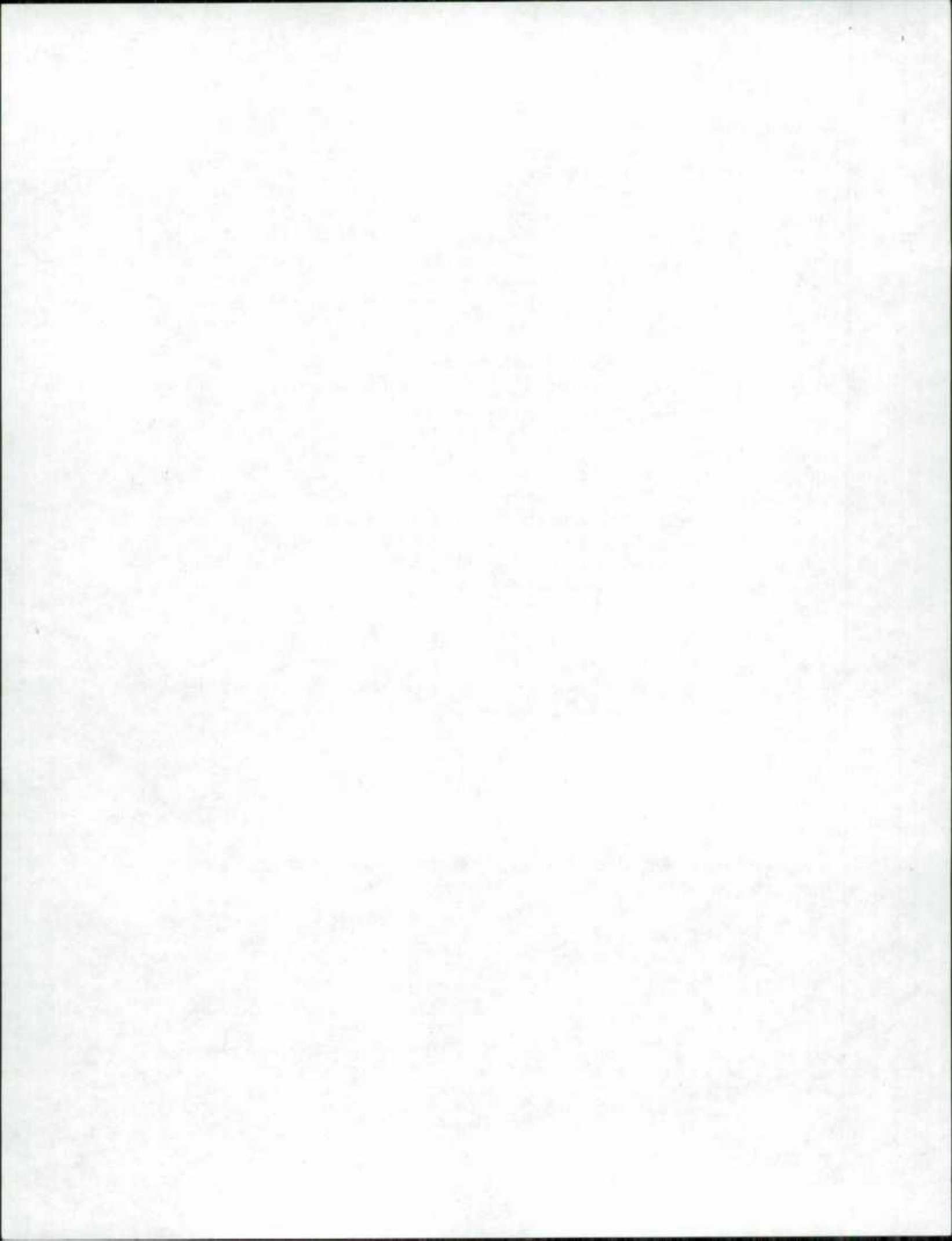
The Department acknowledges that the Applicants obtained their original building permit in 1986 and the Department does not challenge the validity of this original permit. The testimony and evidence at the hearing in this matter will show that the Applicants commenced construction on the residence shortly after obtaining the original permit. This construction included the pouring of footers and construction of approximately six (6) courses of block on the foundation walls of the property. This work was done well within one year of the initial issuance of the building permit. The foundation walls were clearly visible to anyone, including any of their neighbors or anyone boating along Nat's Creek.¹ They commenced this construction in good faith for the purpose of building their dream retirement home.

Despite the fact that the Applicants have met all the requirements of establishing a vested right to their home, the Department is attempting to trump the Applicants' constitutionally protected vested right in the structure in this case by applying the Zoning Ordinance's non-conforming use provisions, that were passed well after the Applicants obtained their vested right to the house. This simply runs afoul of well-settled Maryland constitutional law. The law of vested rights is in place for one simple reason - sometimes Maryland citizens will begin construction on a structure that is completely lawful at the time they begin the construction and then, after they do so, either the state or local government will pass a zoning related law that makes that structure no longer allowable under the new law. In this case, it is the Maryland Critical Areas law and county ordinances created in furtherance of that law.

The Applicants understand through discussions their counsel has had with staff that the Department believes that the Applicants have "abandoned" their vested right in the property. However, the Department offers no legal basis in their letter to the Applicant to support their argument that such a right can be abandoned other than the nonconforming uses and structures provisions of the Zoning Ordinance. However, a County law cannot destroy a constitutionally protected right. If the Department is relying on legal authority to support this claim, the Applicants will be happy to consider such authority. However, absent any other such valid authority, the Department's decision runs afoul of clearly established constitutional law and the Board of Appeals should therefore find that the decision was in error and determine that the Applicants have a vested right to construct the home pursuant to their originally and validly issued building permit.

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¹ The Maryland Courts have found that "significant and visible construction" requirement is met if the development has progressed to a point "so that the neighborhood may be advised that land is being devoted to that use." The block walls in this case clearly meet this test. *Richmond Corp. v. Board of County Commissioners*, 254 Md. 244, 255-56 (1969).



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 9, 2008

Christopher T. Longmore
Dugan, McKissick, Wood and Longmore
22738 Maple Road, Suite 101
Lexington Park, Maryland 20653

Subject: Property of Roy Hart, Jr. and Jane Caroline Hart
45216 Clarkes Landing Road, Hollywood

Dear Mr. Longmore:

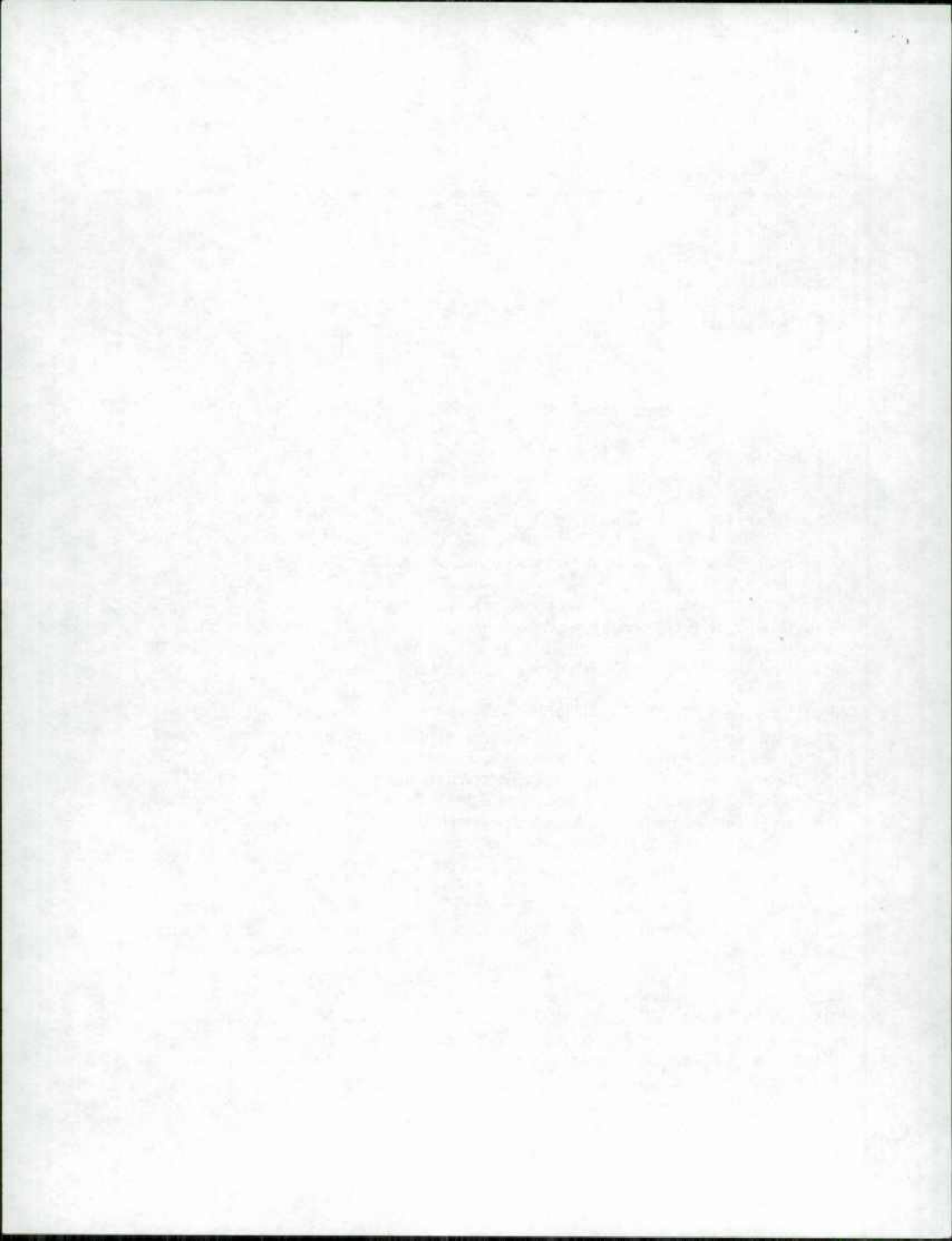
Staff with the Department of Land Use and Growth Management ("the Department") has conducted site visits of the subject property ("the Property") and reviewed all documents we have on file pertaining to the Property. Additionally, staff has consulted with County Attorney Christy Chesser, and we have reached the following conclusions.

Our records indicate that Mr. Hart was granted a building permit in 1987 to construct a single-family dwelling on the subject property. Additionally, he was granted a building permit to construct a garage with a dwelling above the garage. As indicated on the latter permit, Mr. Hart planned to live here until the second dwelling on the waterfront was built.

In 2002 Mr. Hart applied for a building permit to complete the second dwelling. He had only constructed a foundation for this dwelling and then abandoned construction. An environmental review was conducted and the building permit was denied. Mr. Hart was informed in a letter from Theresa Dent, Environmental Plan Reviewer at that time, that he needed a Board of Appeals variance before he could pursue construction in the Critical Area Buffer. Our records show that Mr. Hart met with Ms. Dent in the Department of Planning and Zoning (now Land Use and Growth Management) to review the variance process.

Our aerial photos, including the most recent aerial photos from October 2003, show that a foundation for the second dwelling was constructed on the waterfront. Sometime between October 2003 and 2007 when Mr. Hart applied to MDIA for inspections, Mr. Hart built a house over that foundation.

We have no records indicating that a building permit was issued by this Department following Mr. Hart's application for such permit in 2002. It is our opinion that Mr. Hart has an illegal house in the 100-Foot Critical Area Buffer. Therefore, he must seek after-the-fact variance approval from the Board of Appeals for all unauthorized impervious surface in the Critical Area Buffer.



Christopher Longmore

May 9, 2008

Page two

Mr. Hart is scheduled for a Board of Appeals hearing on Thursday, June 12, 2008, at 6:30 p.m. You may wish to submit documentation in Mr. Hart's defense prior to this hearing for our review. However, the hearing must be advertised a minimum of 15 days prior to June 12, 2008, and the Critical Area Commission must be afforded time to review any documentation you submit and your letter addressing the standards for granting a variance in the Critical Area. Please submit the required information as soon as possible.

Please be advised that new Critical Area legislation becomes effective July 1, 2008, and there are no grandfathering provisions included in this legislation for outstanding permits and projects. It is in your client's best interest to obtain a decision from the Board of Appeals prior to July 1, 2008.

If you have any questions, please call me at 301-475-4200, extension 1523. I look forward to receiving your letter addressing the standards for granting a variance in the Critical Area and any documentation you wish to submit prior to the hearing.

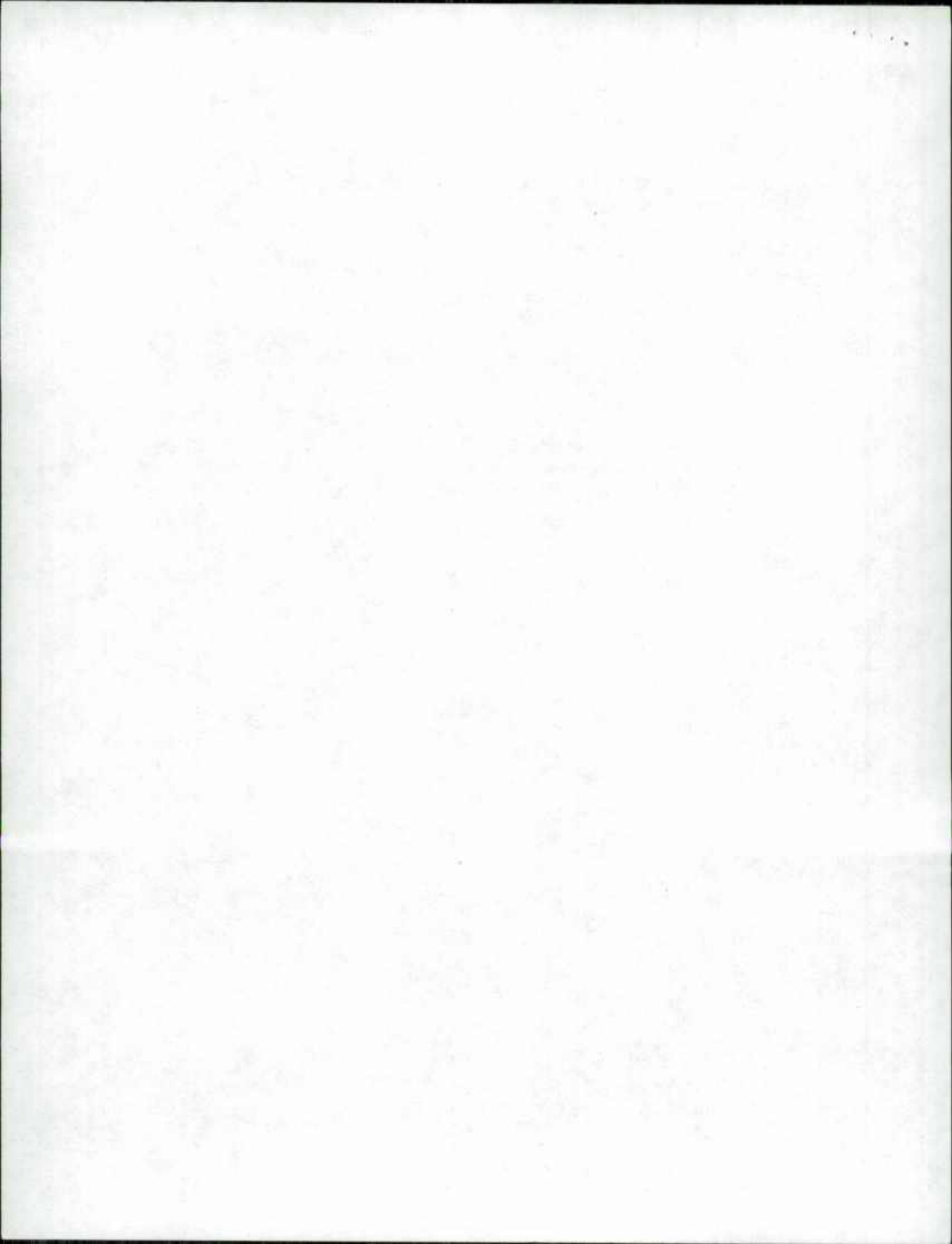
Sincerely,



Yvonne Chaillet
Zoning Administrator

Cc: Denis Canavan, Director
Phil Shire, Deputy Director
Christy Chesser, County Attorney
Adam Knight, Building Code Official
Mary Russell, Zoning Inspector

Maryland Critical Area Commission Staff



BRYAN T. DUGAN
BILL D. MCKISSICK, JR.
JOANN M. WOOD
CHRISTOPHER T. LONGMORE

ELEANOR A. HUNT
DANIEL FEVRIN
BARBARA C. GILMORE



ATTORNEYS-AT-LAW

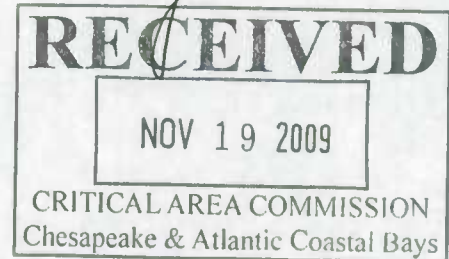
November 3, 2009

22738 MAPLE ROAD
SUITE 101
LEXINGTON PARK, MD 20653
PHONE: (301) 862-3764
FACSIMILE (301) 862-3789
WEB: www.duganmckissickwood.com

Received 11-3-09

BY HAND DELIVERY

Yvonne Chaillet
Department of Land Use and Growth Management
P.O. Box 653
Leonardtown, Maryland 20650



Re: Supplement to Variance Application for VAAP # 02-969, Hart

Dear Ms. Chaillet:

In follow-up to our many conversations and meeting regarding Roy and Jane Hart, please accept the enclosed as a supplement to my client's previous variance request that was submitted to your office on or about May 13, 2008. As you are well aware, this matter has been the subject of many hearings and levels of review. The following is a brief summary of my understanding of where this matter stands.

This letter is meant to supplement our prior variance request. Initially, my clients appealed the decision of Director Canavan that they had a vested right to build their home located at 45216 Clarks Landing Road, Hollywood, Maryland 20636. In addition to that appeal, my clients concurrently filed two alternative variance requests. One was a request for a variance for the entire house my clients are building, which was submitted to be considered by the Board of Appeals in the event that my clients were unsuccessful in their appeal. The second variance request was for any development on the property which would need a variance to commence or continue and which was not deemed to be vested under Maryland law.

On June 12, 2008 and June 19, 2008, the Board of Appeals heard my client's appeal. The Board denied the appeal and upheld Director Canavan's original determination. Upon the conclusion of the appeal hearing, in light of that ruling, the Board of Appeals considered and denied my client's request for a variance to build the entire house in the location where it sits. The Board of Appeals never considered our second variance request because the Board found that my clients did not have a vested right to the house. Subsequent to the Board of Appeals hearings, my clients sought judicial review of both decisions of the Board of Appeals. The Circuit Court first considered the issue of whether my clients had a vested right to the home they were constructing. On or about May 20, 2009, the Circuit Court issued its Memorandum and Order of Court and found that my client did indeed have a vested right to build their home pursuant to their original building permit.

RECEIVED

MAY 13 1904

LIBRARY OF THE UNIVERSITY OF MICHIGAN
ANN ARBOR, MICHIGAN

November 3, 2009

Page -2-

Since that ruling, my clients, their engineer, and I have worked with you and other staff to determine what the staff's position was on the scope of the original permit, and whether any additional variances would be needed or suggested in completing the home. After several meetings, a site visit, and variance communications between this office, our engineers and your office, your office has indicated that the house, as proposed and depicted on the site plan submitted to your office last week by Nokleby's Engineering, is ready to be approved, with the exception of one portion that would require a variance. The portion of the plan that requires a variance is the proposed installation of additional septic drain fields/lines. I know that your staff and my office has discussed this matter with the Health Department, and that they are in agreement that the lines as proposed are the best and only appropriate location for the lines. As such, please accept the enclosed as my clients' supplement to their prior variance request.

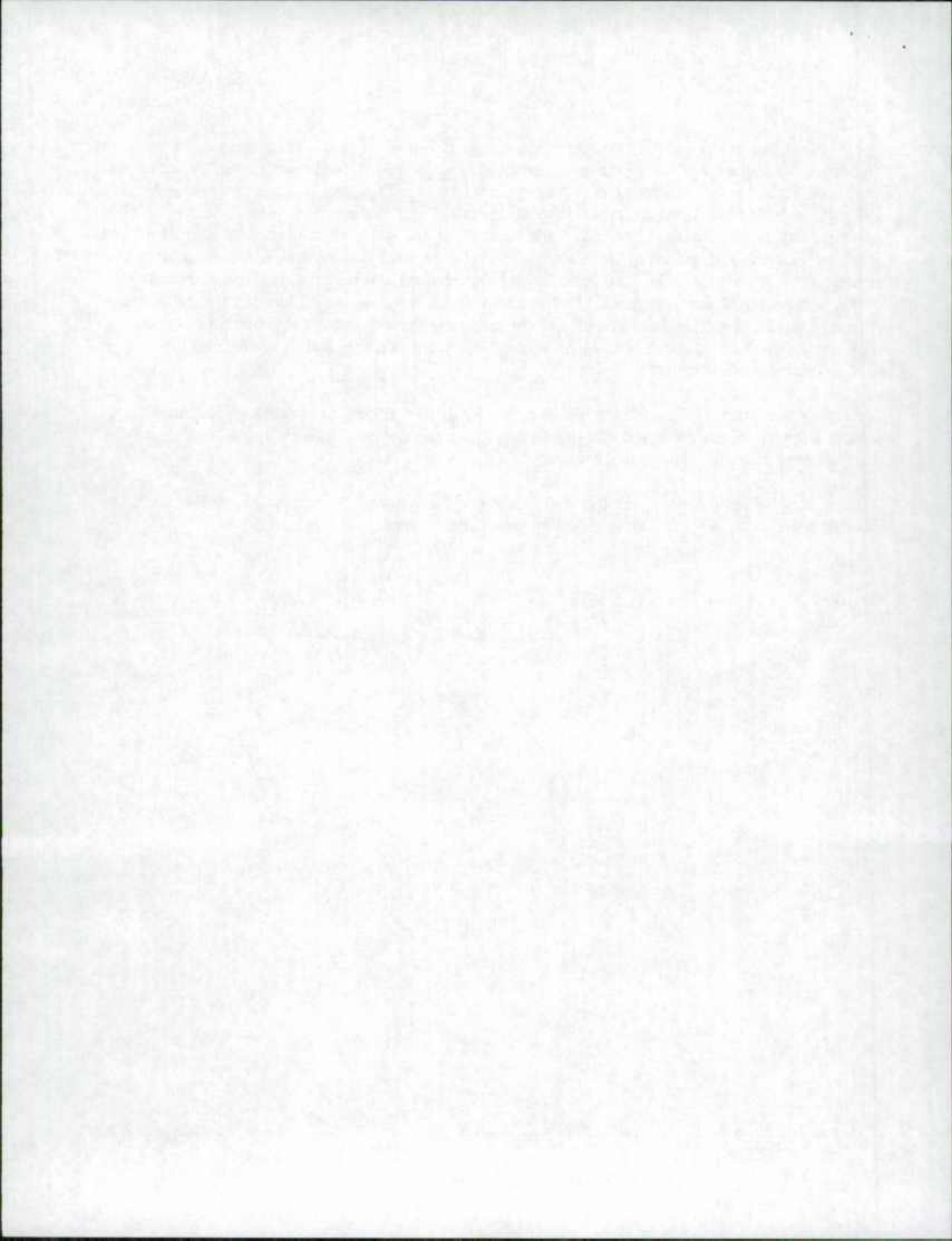
My understanding is that you and your staff will now review the variance application. We request that you schedule a Board of Appeals hearing on the earliest possible date, so that my clients can finalize the construction of their home.

Please do not hesitate to contact me if I can be of any further assistance. My clients and I are more than willing to assist in any way to allow this matter to come to a conclusion.

Sincerely,



Christopher T. Longmore



November 3, 2009 Supplement to Variance Application of Roy and Jane Hart

Variance Request: For Allowing Disturbance in the Critical Area to Install Proposed Septic Trenches

The Applicants, Roy and Jane Hart, are submitting this request to obtain a variance for disturbance in the critical area for the installation of the proposed septic trenches, as depicted in the site plan previously submitted to the Department of Land Use and Growth Management by the Harts' engineers, Nokleby Surveying. The following is a brief description of the standards for such a variance. The Applicants reserve the right to submit additional evidence and argument in this regard when the Board of Appeals conducts its hearing on this request.

A. General Standards for Granting Variances:

(1) Because of the particular physical surroundings such as exceptional narrowness, shallowness, size, shape, or topographical conditions of the property involved, strict enforcement of the Ordinance would result in practical difficulty; and

The conditions of the property would make the location of the trenches anywhere else a practical difficulty. The topography of the property where the house is located, as well as the elevation of the house, requires that the proposed trenches be installed in the location depicted on the site plan. The Applicants have consulted with the Health Department and that Department agrees that they are in their best and only reasonable location.

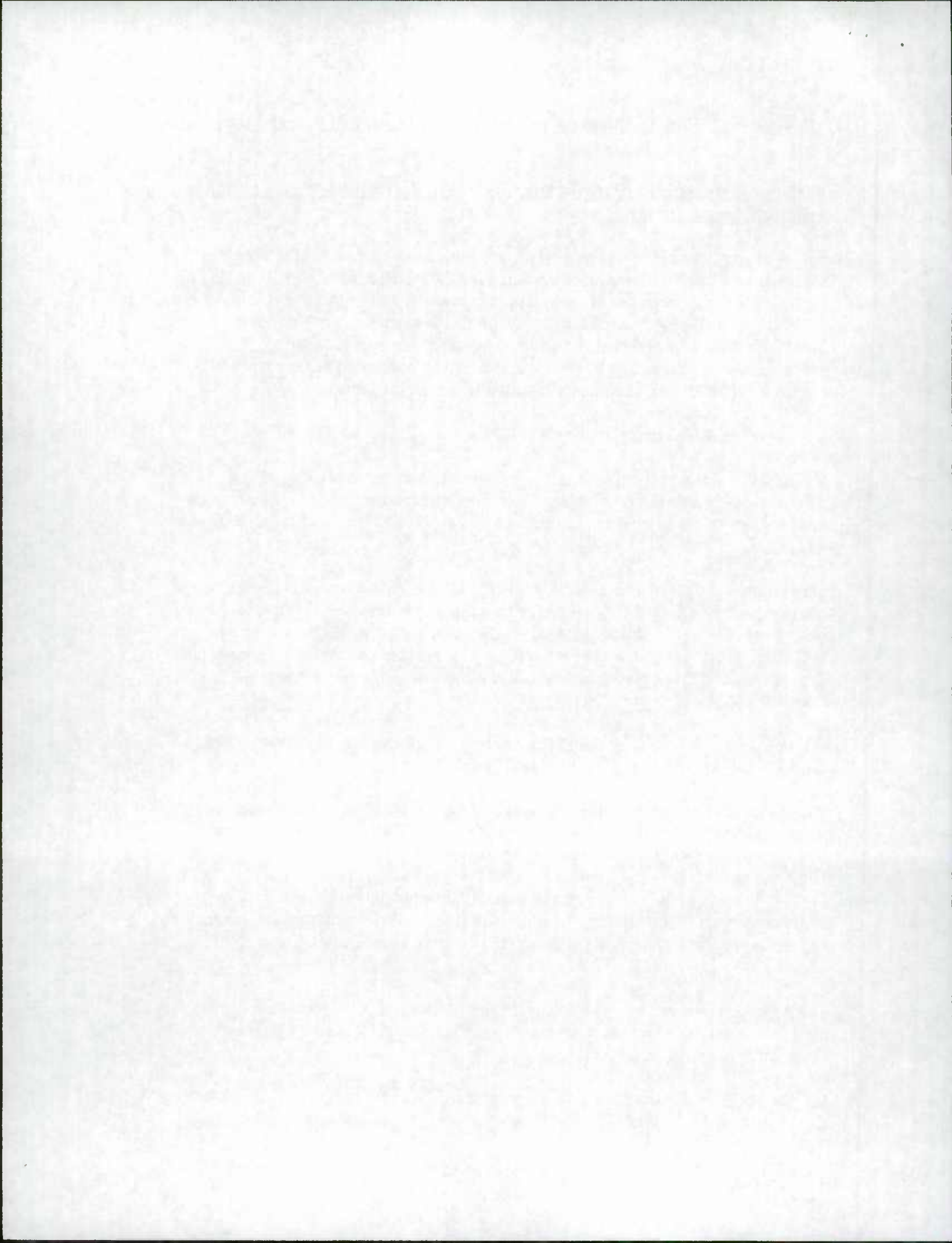
(2) The conditions creating the difficulty are not applicable, generally, to other properties within the same zoning classification; and

The conditions are unique to this property and the history of the development of this property as set forth in the Memorandum and Order of Court issued by the Circuit Court of Maryland, Judge C. Clarke Raley on or about May 20, 2009.

(3) The purpose of the variance is not based exclusively upon reasons of convenience, profit, or caprice. It is understood that any development necessarily increases property value, and that alone shall not constitute an exclusive finding; and

The purpose of this variance is to allow the Applicants to achieve an appropriate use of the house being constructed on the property pursuant to their vested right to construct the premises in its current location.

(4) The alleged difficulty has not been created by the property owner or the owner's predecessors in title; and



The difficulty was not created by the Applicants – it was created by a change in law that occurred after the Applicants obtained their vested right to construct the house and the variance requested will allow them to appropriately exercise their constitutionally protected vested right.

(5) The granting of the variance will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood and the character of the district will not be changed by the variance; and

The variance will not change the character of the district or be detrimental to the public welfare. This request relates to the single family residence for which the Applicants have the right to construct, and the other properties in this area are likewise primarily single family residences.

(6) The proposed variance will not substantially increase the congestion of the public streets, or increase the danger of fire, or endanger the public safety, or substantially diminish or impair property values within the neighborhood; and

The variance will not increase any congestion or cause any other such adverse consequences as it simply allows the installation of septic trenches beyond the original approvals through which the Applicants have obtained a vested right to construct their residence on the property.

(7) The variance complies, as nearly as possible, with the spirit, intent, and purpose of the Comprehensive Plan.

The variance complies with the Comprehensive Plan and does not run afoul of any of the provisions of the Plan.

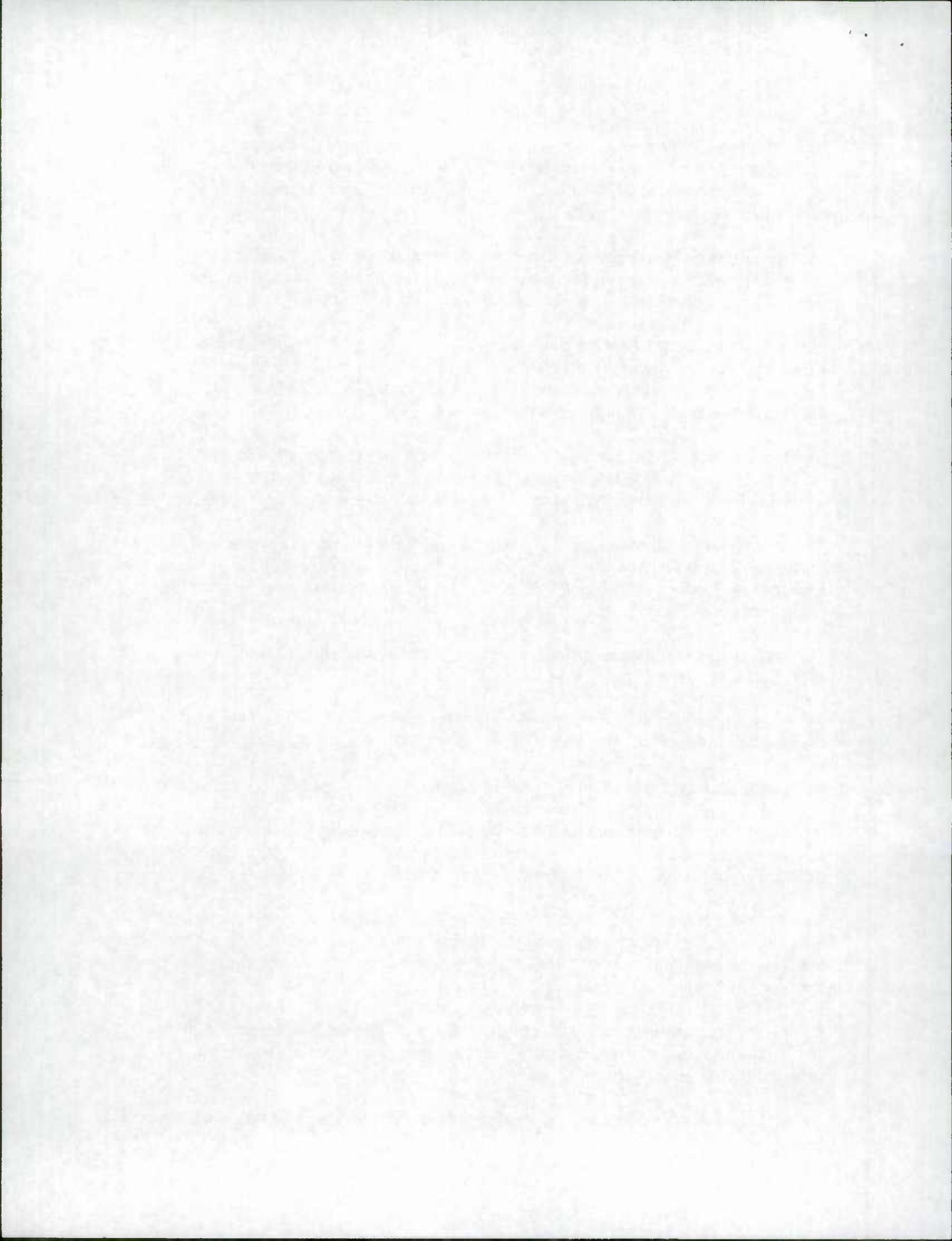
B. Specific Standards for Critical Area Variances

(1) 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; and

The conditions of the property would make the location of the trenches anywhere else to be a practical difficulty or impossibility. The Applicants also have a vested right to construct the home, and this variance request will allow them to complete the construction of that home.

(2) 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; and

The Applicants would be deprived rights commonly enjoyed by others, as the request is



simply to install trenches, in the location as required by the Health Department.

(3) 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; and

The granting of this variance will not confer special privileges upon the applicant as many other residences exist in the neighborhood where the home is being constructed.

(4) The variance request is not based upon conditions or circumstances that are the result of actions by the applicant; and

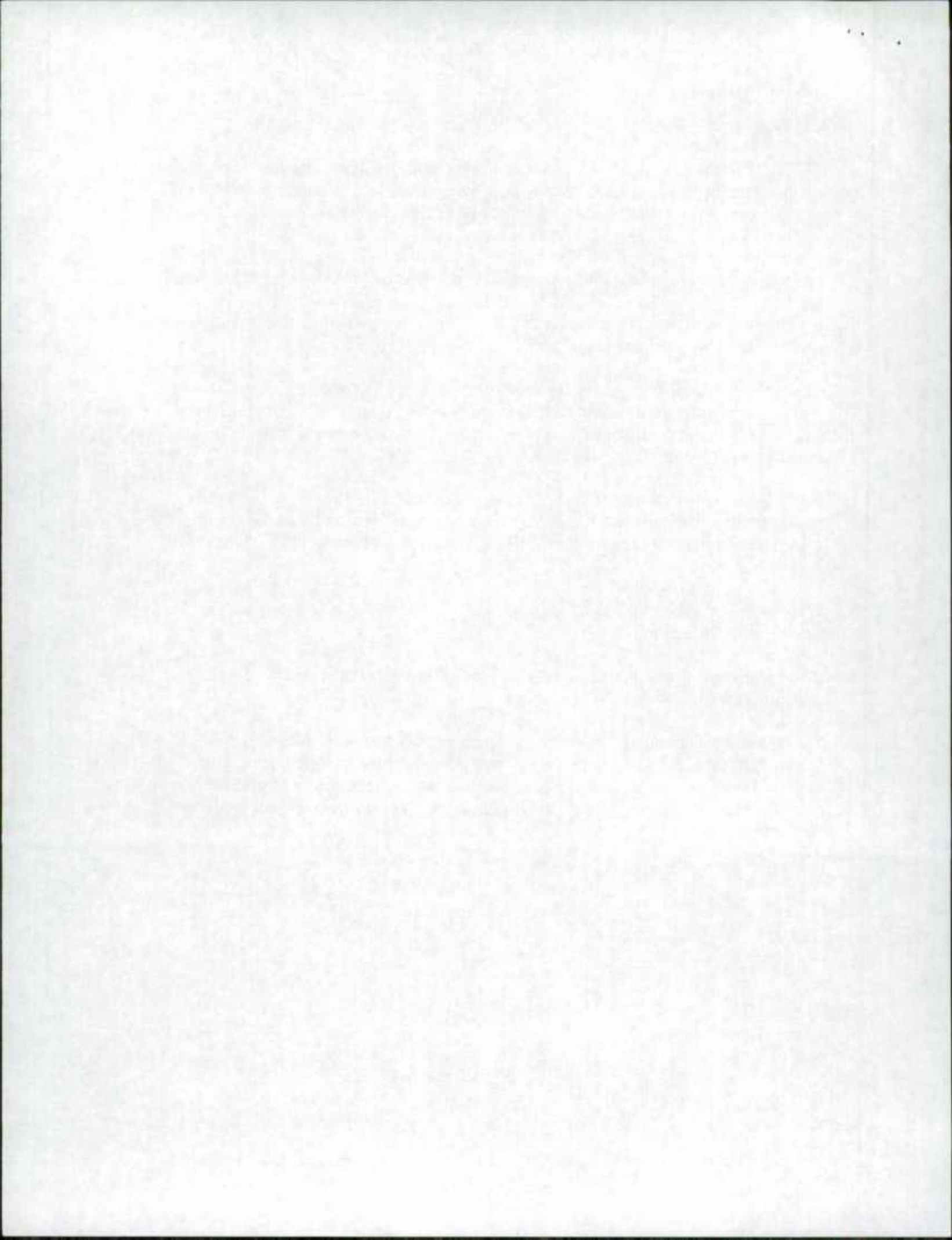
The difficulty was not created by the Applicants – it was created by a change in law that occurred after the Applicants obtained their vested right to construct the house and the variance requested will allow them to appropriately exercise their constitutionally protected vested right.

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

The granting of the variance will not adversely affect water quality or impact fish, wildlife or plant habitat.

(6) The variance is the minimum necessary to achieve a reasonable use of land or structures.

The variance being sought is to allow the existing structure and building to remain in its as built location. This is the minimum necessary given the current status of the project. The Applicants have also placed the proposed trenches in the location recommended and approved by the Health Department as the only suitable location for the trenches.



Owens, Mary

From: Jenn Ballard [Jenn.Ballard@co.saint-marys.md.us]
Sent: Thursday, June 24, 2010 2:13 PM
To: Owens, Mary
Subject: Re: Planting for Roy Hart

The 9 trees and 10 shrubs were the entire mitigation given that the court ruled that the house was vested (1980-whatever site plan the health department had on record that shows the house and the deck) Broken down into violation, reforestation and is trade:
601 square feet of lot coverage put down without a permit: 3 to 1 = 1,803 2,400 square feet cleared with a permit: 1 to 1 = 2,400
621 square feet of lot coverage trade: 1,242=
total: 5,445 square feet of mitigation. which is 9 t and 10 s (rounded) I know that the trading mitigation (2:1) also required for the I.S. he put down w/o a permit that he already mitigated for at 3:1 may be considered double dipping, but I did it anyway.
Let me know if you need any more info

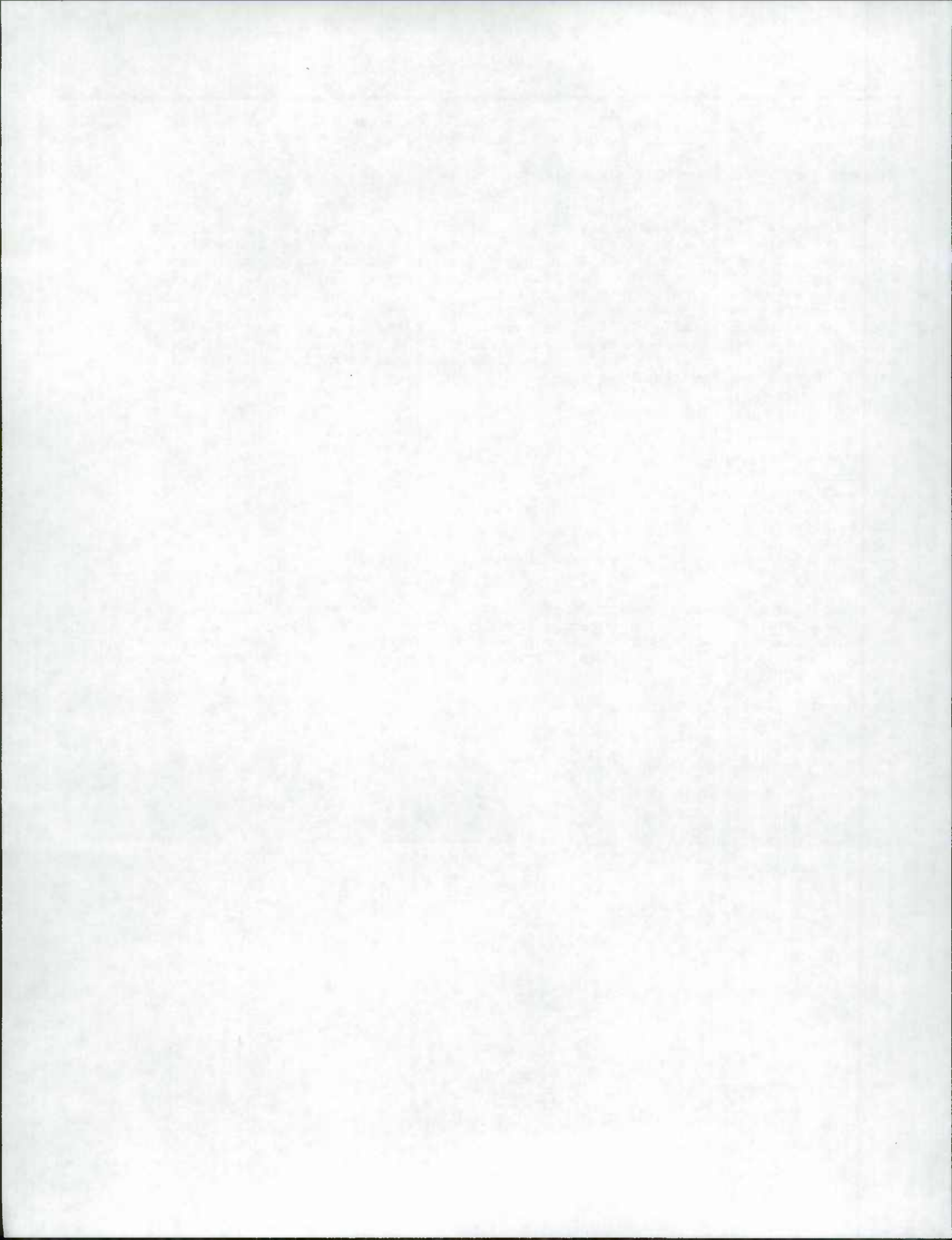
Jennifer B. Ballard, CFM
Environmental Planner II
Critical Area Review
St. Mary's County Land Use and Growth Management
phone: 301.475.4200 x1525
fax: 301.475.4635
>>> "Owens, Mary" <MOWENS@dnr.state.md.us> 6/24/2010 1:49 PM >>>
Hi Jenn,

I'm following up on the Roy Hart project (VAR 02-0969) that started out as a variance and then was modified to be a lot coverage trading project. Do you know what he ended up doing for mitigation? It looks like he was supposed to plant 9 trees and 10 shrubs for the Buffer impacts, but there was also clearing for the new septic system and no reforestation shown for that.

Can you let me know, so I can document the file and close it out.

Thanks,

Mary



Schmidt, Katherine

From: Yvonne Chaillet [Yvonne.Chaillet@co.saint-marys.md.us]
Sent: Tuesday, June 03, 2008 4:07 PM
To: Schmidt, Katherine
Cc: Amber Guy; Denis Canavan
Subject: Re: Friday Phone Call

Thank you, Kate. Please call Amber Guy at 301-475-4200, ext. 1503 and Amber can transfer the call into Denis directly.

Jada x1505

Yvonne

>>> "Schmidt, Katherine" <KSchmidt@dnr.state.md.us> 6/3/2008 3:57 PM >>>
Yvonne:

Ren and I will call you and Denis at 9:00 on Friday morning regarding the Hart variance.

Thanks,

Kate Schmidt

Natural Resource Planner

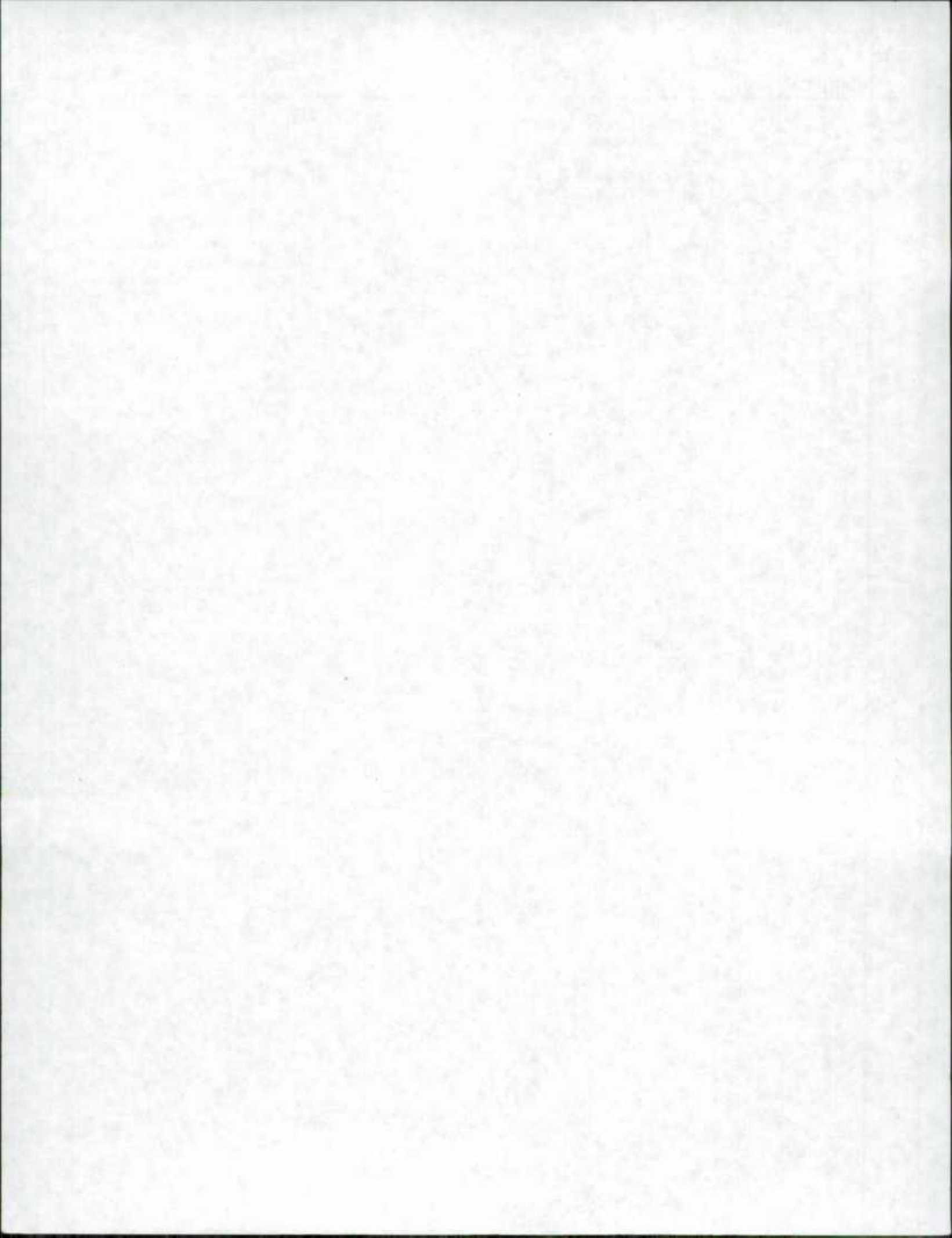
Critical Area Commission for the

Chesapeake and Atlantic Coastal Bays

1804 West Street, Suite 100

Annapolis, MD 21401

410-260-3475



Schmidt, Katherine

From: Yvonne Chaillet [Yvonne.Chaillet@co.saint-marys.md.us]
Sent: Tuesday, May 13, 2008 4:31 PM
To: Schmidt, Katherine
Cc: Jenn Ballard; Kelly Seebold; Susan Regel
Subject: comments on variances

Kate:

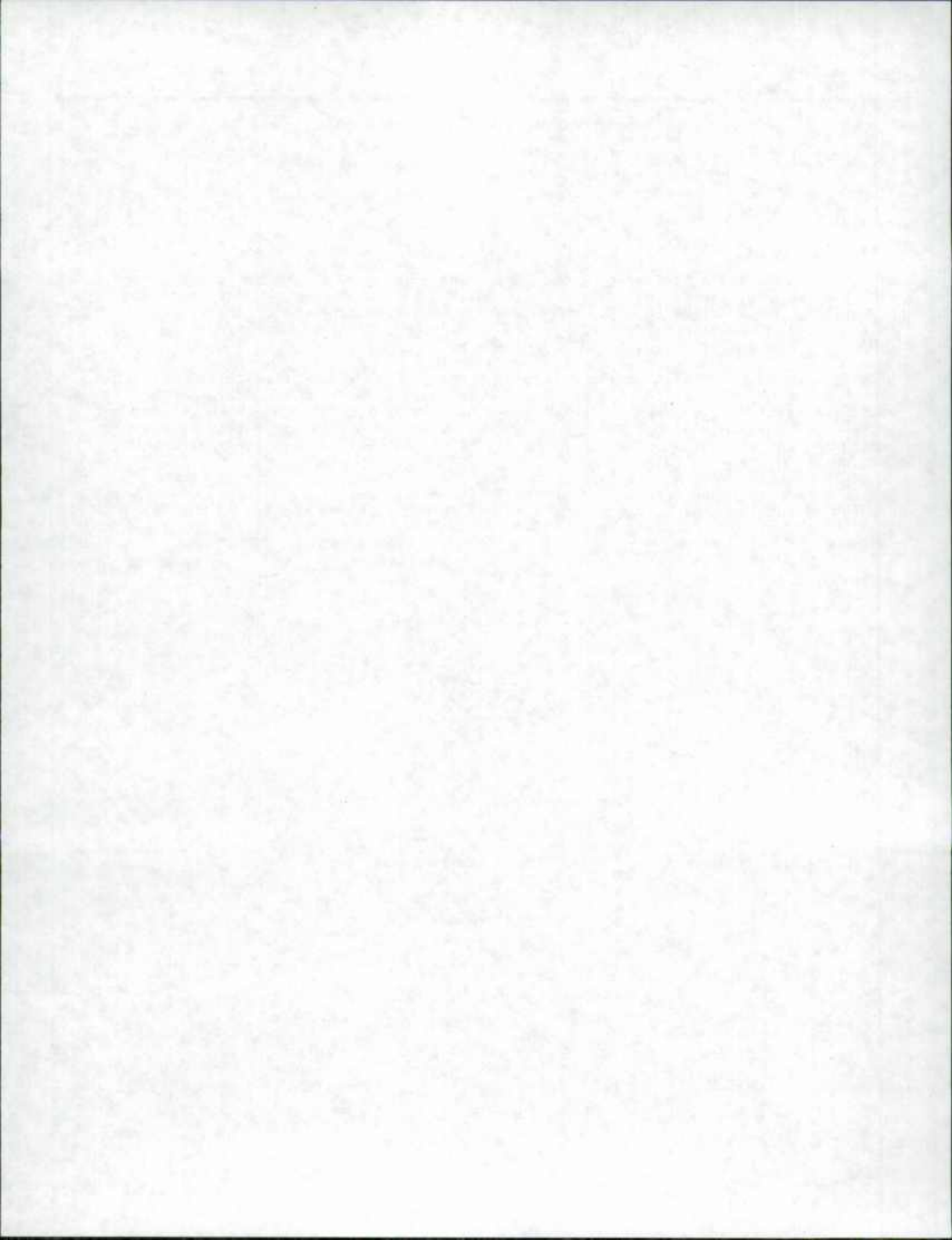
We finally received a Notice of Appeal and variance request from Chris Longmore, who is the attorney representing Roy Hart. Denis Canavan told Mr. Longmore that we do not recognize a vested right to build the house 20 years after the permit expired, so this is what Chris is appealing. The variance request is for all the unauthorized impervious surface in the Buffer, as directed by this Dept.

I believe we sent you an As-Built site plan already. Can you confirm this? I think we still need to send a project application form because we were waiting for a determination as to what relief Mr. Hart was seeking through the variance process. We will send this information this week along with a copy of the Notice of Appeal and a copy of the letter addressing the standards for variance in the Critical Area and any other pertinent information we have on file.

We still need comments on permit 07-0245, Whittaker and permit 04-1159, Aud. Whittaker is a Board of Appeals case on May 22 and Aud is an administrative hearing on May 22.

Thank you.

Yvonne



Schmidt, Katherine

From: Yvonne Chaillet [Yvonne.Chaillet@co.saint-marys.md.us]
Sent: Wednesday, May 07, 2008 12:16 PM
To: Schmidt, Katherine
Subject: permit #02-0962, Hart

Kate,

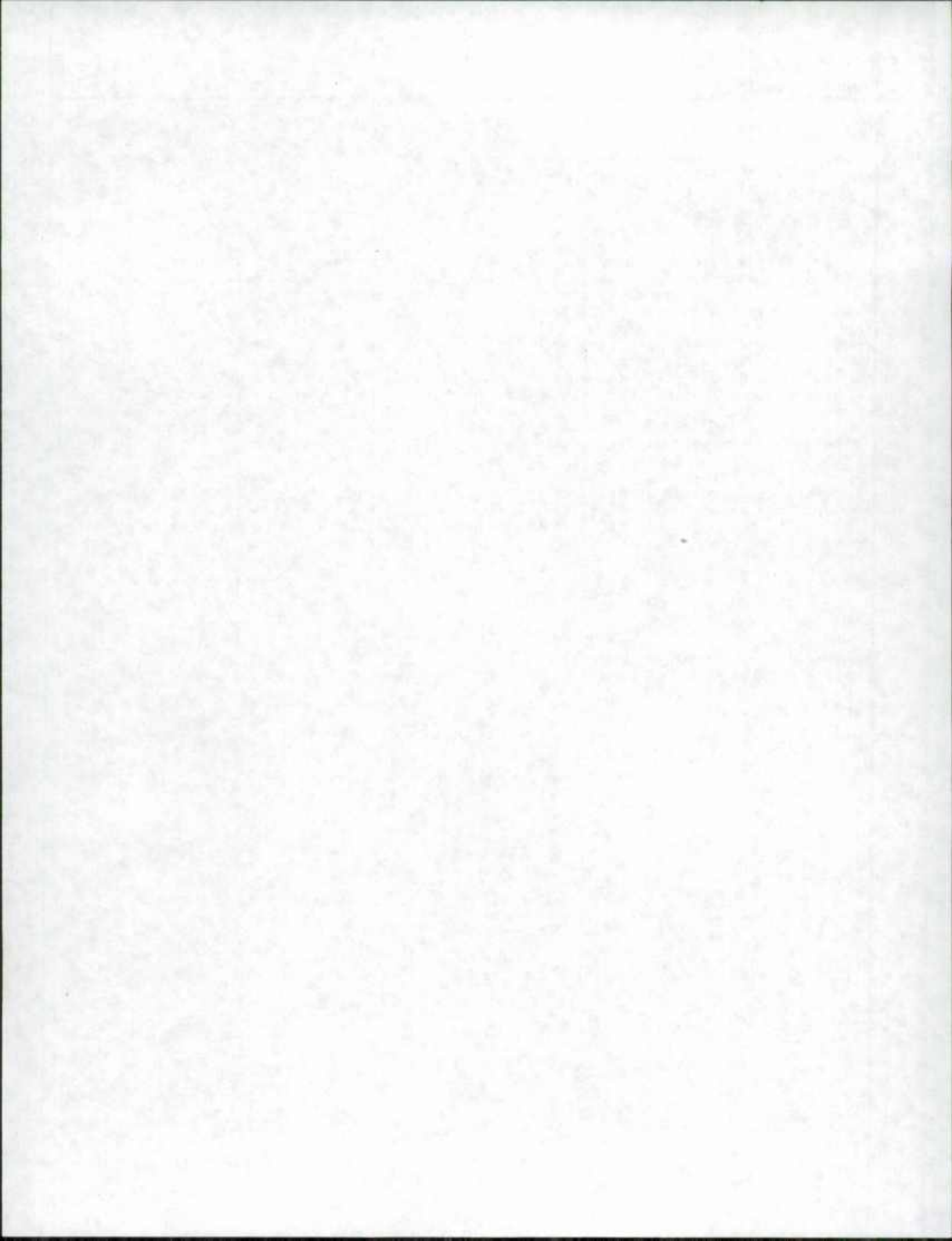
I will be writing a letter today to send to Christopher Longmore of Dugan, McKissick, Wood and Longmore, regarding our position on the Hart violation. I'll e-mail it to you once it's finalized. Mr. Longmore is representing Mr. Hart and will be representing him before the Board of Appeals on June 12, 2008.

Our position is that Mr. Hart must seek after-the-fact variance approval for all the new impervious surface in the Critical Area Buffer; that is, everything that was constructed after 1987 when he was first issued a building permit. We may accept that the foundation had a vested right, but Mr. Hart abandoned construction so the foundation became a nonconforming structure and should have been removed. Everything built after abandonment was built without any approvals and is, therefore, illegal. Mr. Hart did not have a valid building permit for the house, wrap around deck, or shed, all of which is within the 100-Foot Critical Area Buffer.

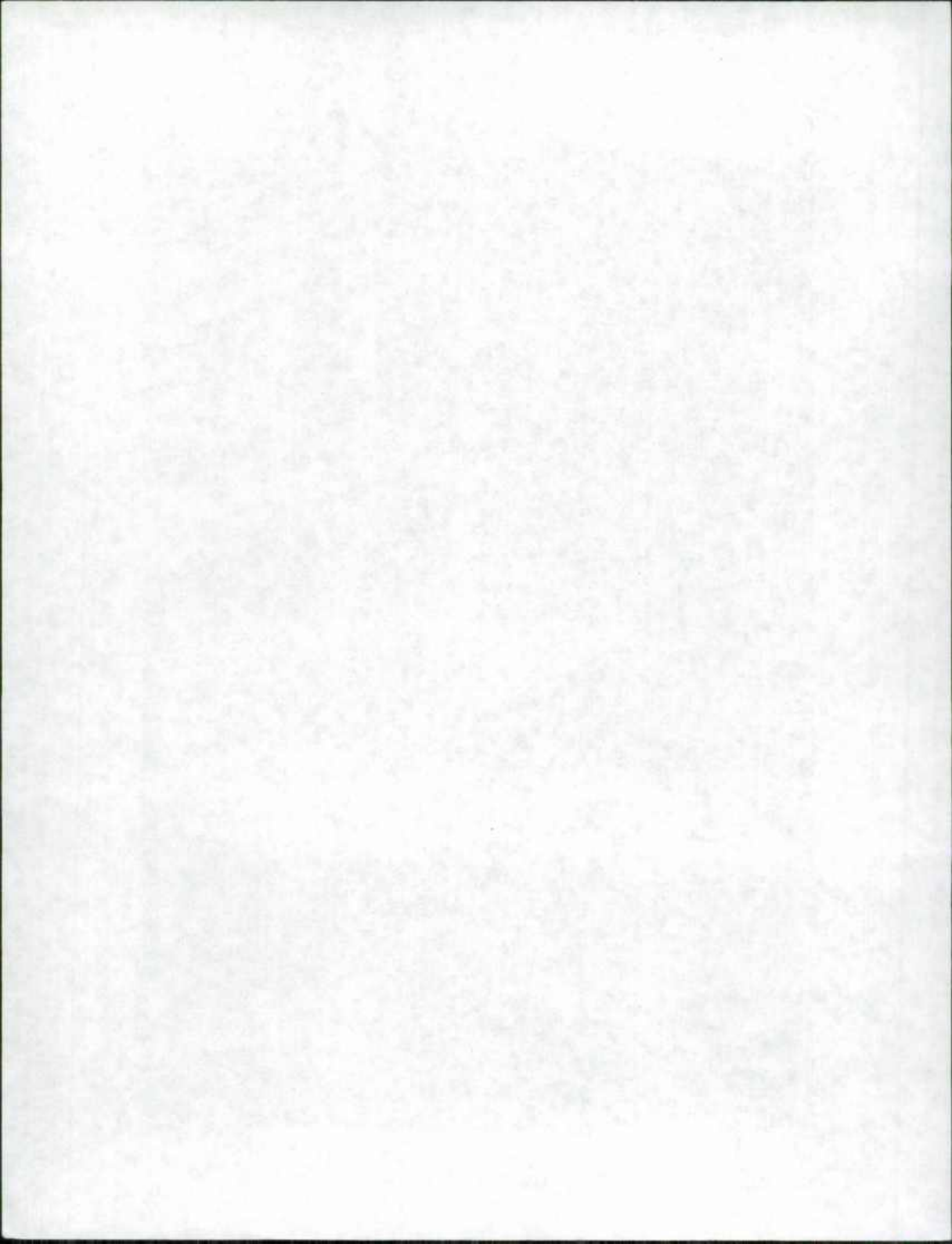
Mr. Longmore will provide us his letter addressing the standards for granting a variance in the Critical Area once he receives my letter telling him that he needs to ask for full relief. We'll send you this letter as soon as we receive it. I will also e-mail my Board of Appeals staff report the week before the June 12 hearing, or sooner, if possible.

Yvonne

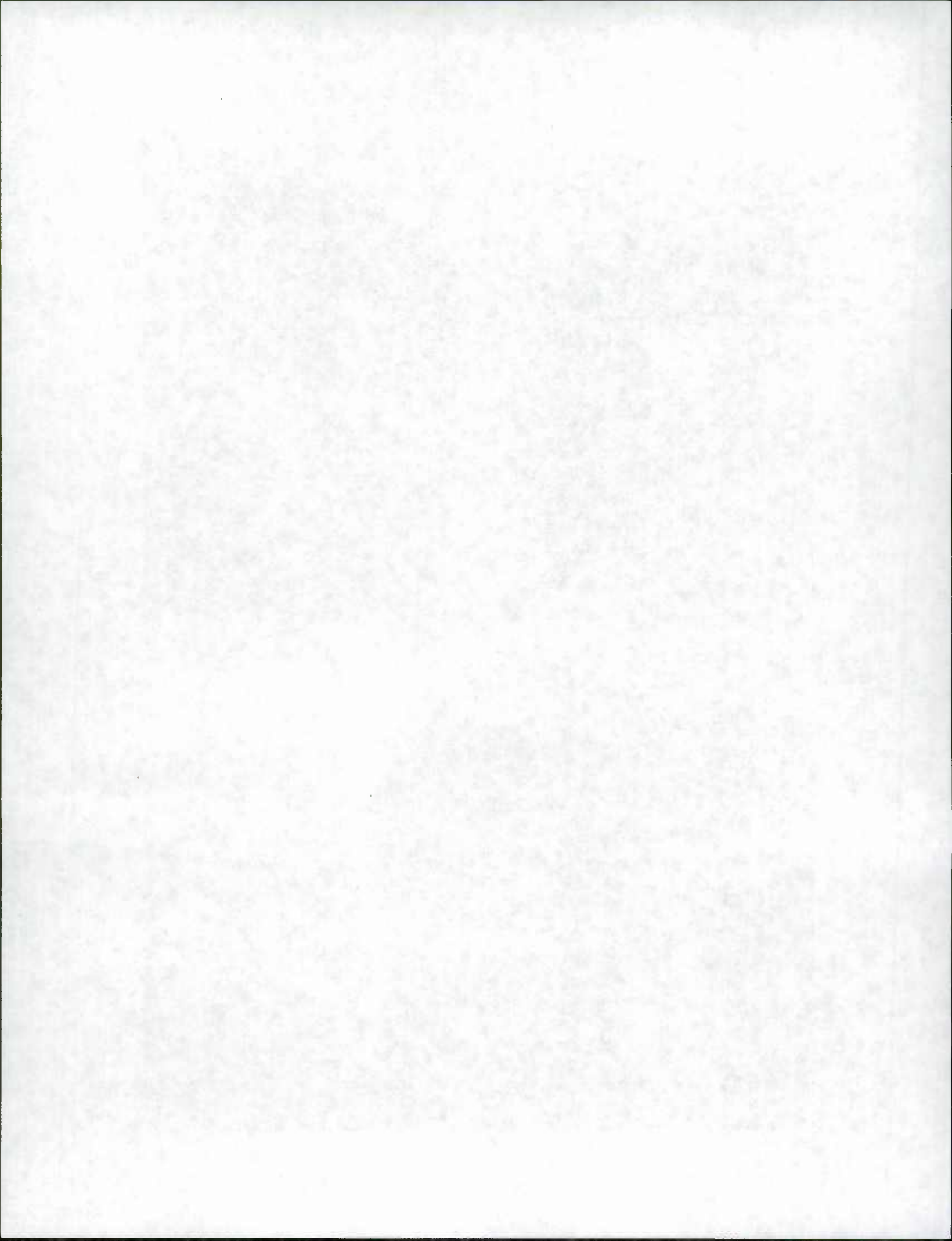
Yvonne Chaillet
Planner IV / Zoning Administrator
St. Mary's County Dept. of Land Use & Growth Management.
P.O. Box 653
Leonardtown, MD 20650
301-475-4200, ext. 1523
Fax: 301-475-4635











1-28-08 KMS + JBB Site Visit 02-0969
Construction/disturbance to Buffer w/out valid
permit













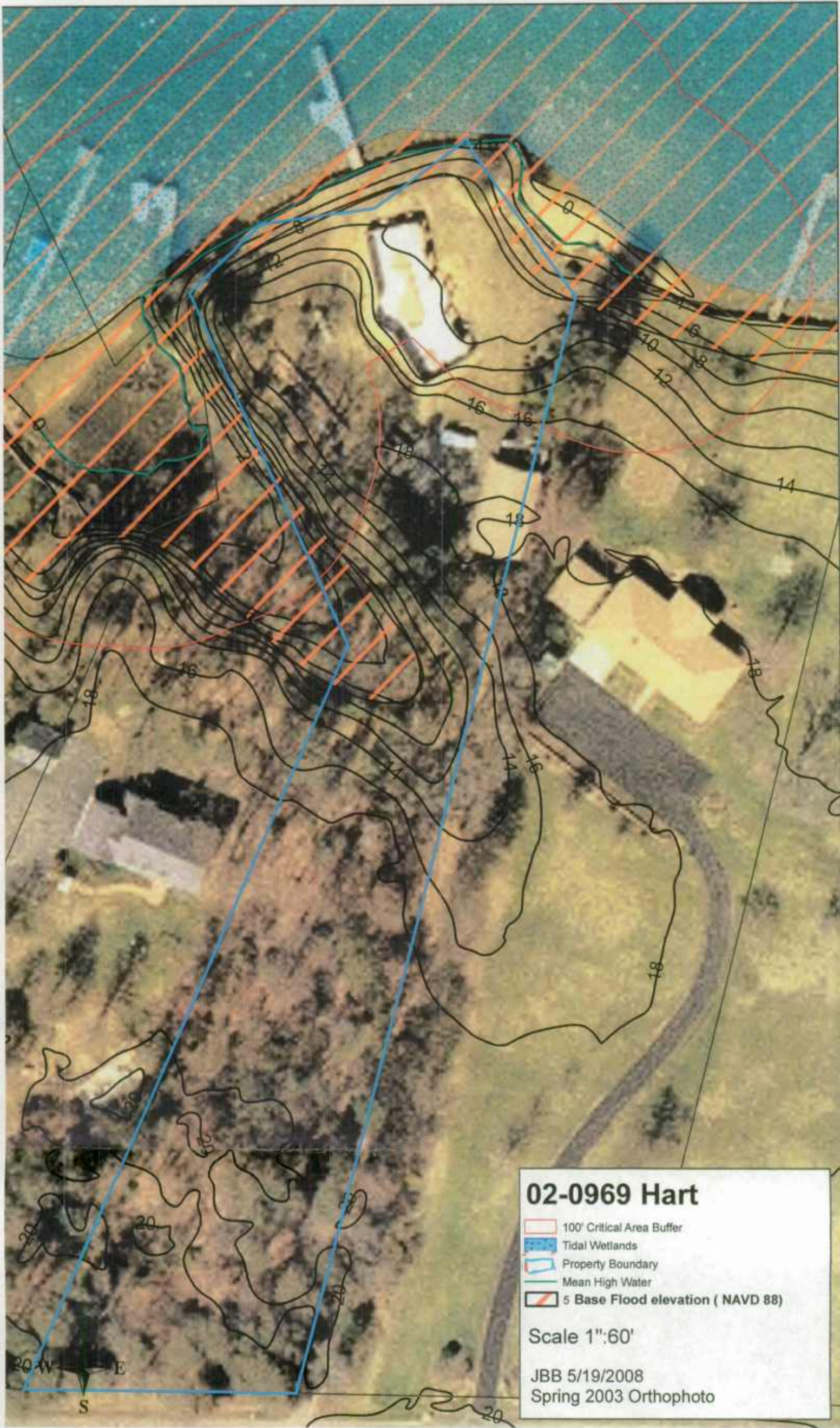












02-0969 Hart

- 100' Critical Area Buffer
- Tidal Wetlands
- Property Boundary
- Mean High Water
- 5 Base Flood elevation (NAVD 88)

Scale 1":60'

JBB 5/19/2008
Spring 2003 Orthophoto

8-3-2009 Permit # 02-0969. Site visit by JBB w/ Mr. Hart, Donnie F. from Nokleby's, Chris Longmore.

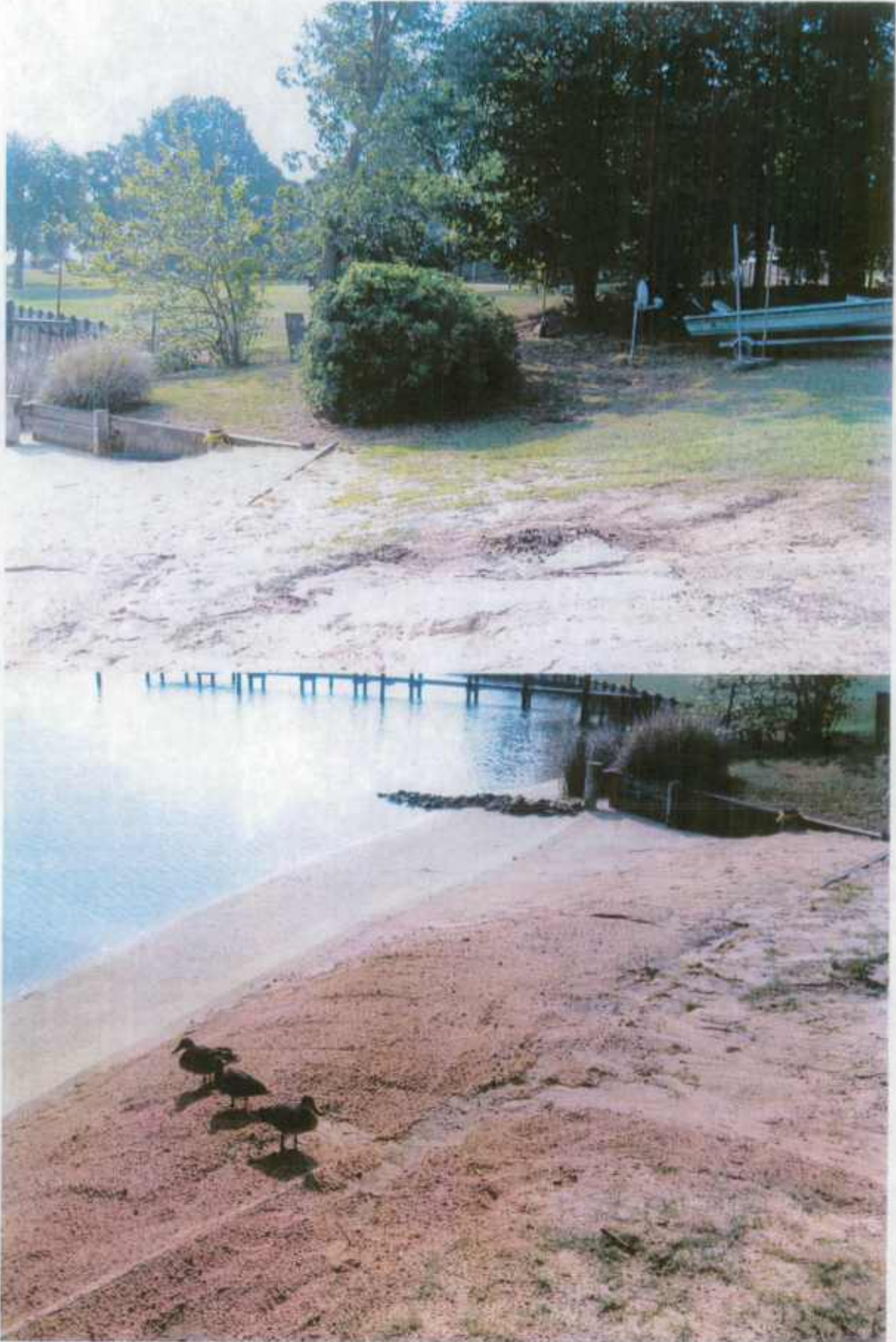










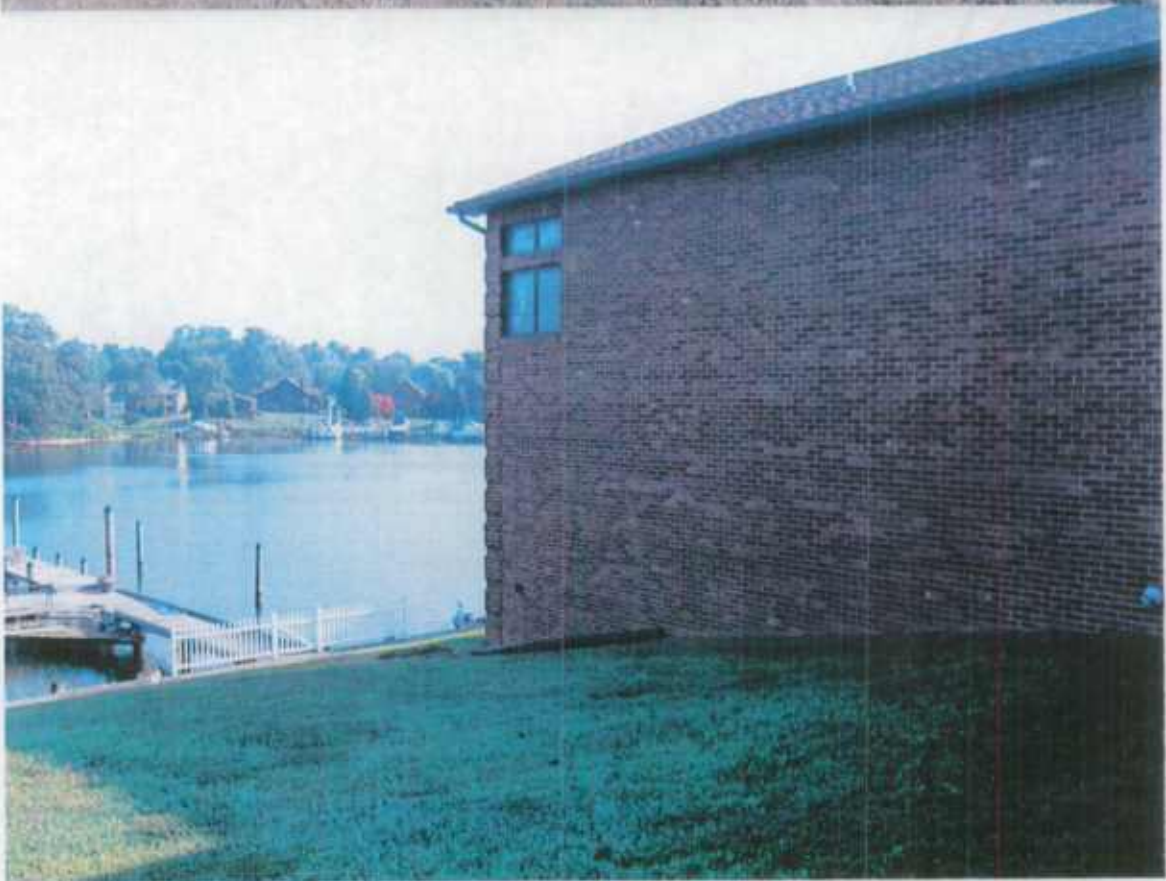








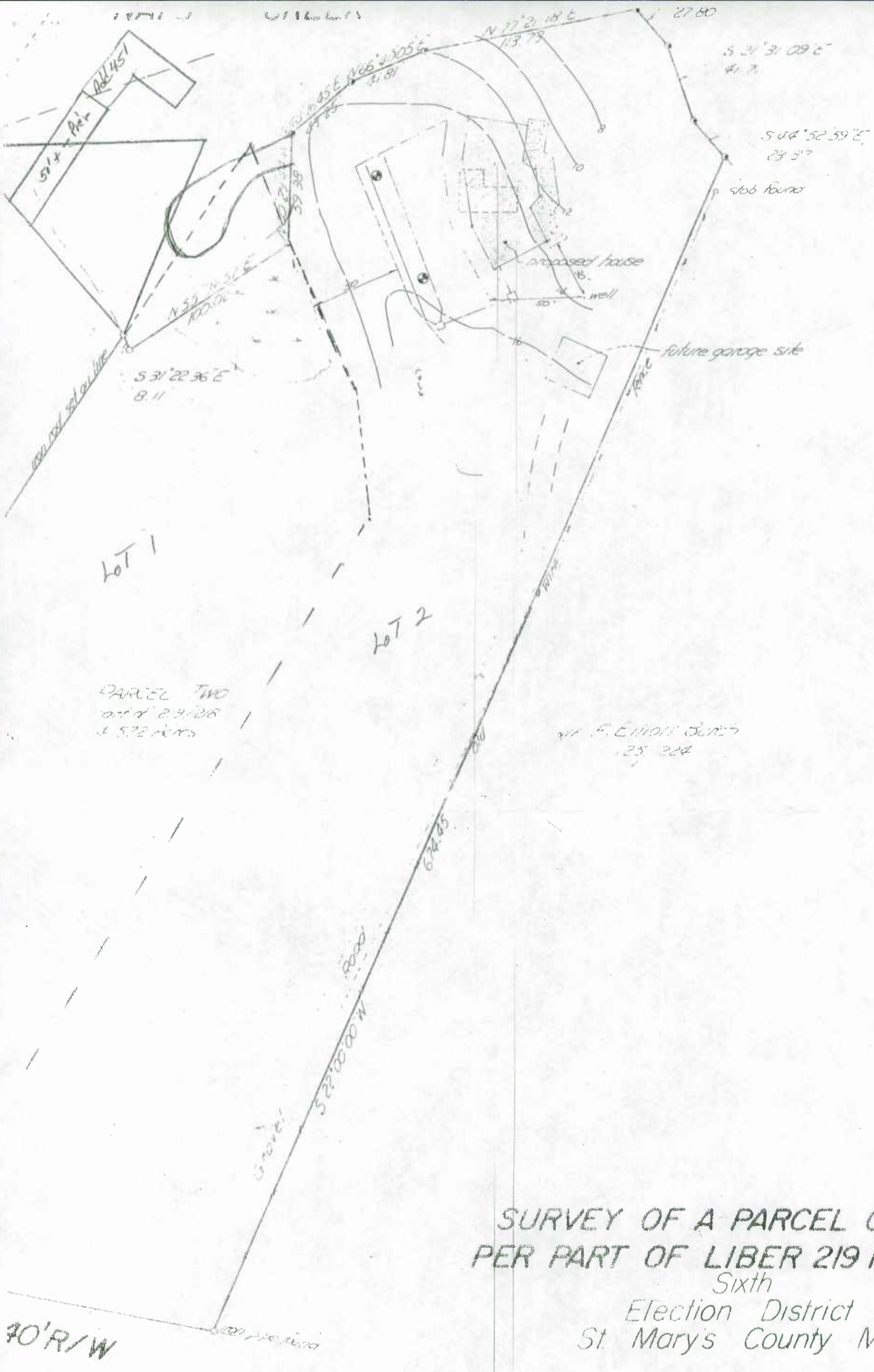












PARCEL TWO
 2/29/28
 4.572 acres

W. F. ELLIOTT SURV.
 125-224

**SURVEY OF A PARCEL OF LAND
 PER PART OF LIBER 219 FOLIO 218**
 Sixth
 Election District
 St. Mary's County Md.

LARRY O. DAY
 Registered

Professional Land Surveyor
 Hollywood, Md. 20636
 Phone 301-373-5861





DAY
 Land Planning

Scale 1" = 50'

Contract No. 85-123

EXHIBIT
 6-19
 3A
 YAAP #02-0969
 Date 10-10-85

"THIS HEALTH DEPARTMENT APPROVAL CERTIFIES THAT THE ABOVE LOT IS IN CONSONANCE WITH PERTINENT HEALTH DEPARTMENT LAWS AND REGULATIONS AS OF THE APPROVAL DATE; HOWEVER, THIS APPROVAL IS SUBJECT TO CHANGES IN SUCH LAWS AND REGULATIONS. CHANGES IN TOPOGRAPHY OR SITE DESIGNATIONS MAY VOID THIS APPROVAL."

"THE DESIGNATED PERC AREA IS THE ONLY PERC AREA APPROVED BY THE ST. MARY'S COUNTY HEALTH DEPARTMENT FOR SEWAGE DISPOSAL PURPOSES. THE APPROVED LOT INCLUDES AN APPROVED AREA OF 3,000 SQUARE FEET FOR SEWAGE DISPOSAL PURPOSES AS REQUIRED BY CURRENT MARYLAND STATE HEALTH DEPARTMENT LAW. IMPROVEMENTS OF ANY NATURE, INCLUDING BUT NOT LIMITED TO THE INSTALLATION OF OTHER UTILITY LINES IN THIS AREA MAY RENDER THE LOT UNDEVELOPABLE. TO DETERMINE THE EXACT AREA OF THE LOT APPROVED FOR SEWAGE DISPOSAL PURPOSES OR TO ESTABLISH A DIFFERENT AREA FOR SUCH PURPOSES, YOU SHOULD CONTACT THE ST. MARY'S COUNTY HEALTH DEPARTMENT, OFFICE OF ENVIRONMENTAL HEALTH."



*W. F. Wilson & Beavers
8-24*

*PARCEL ONE
2011 or 219/218*

6195

6195

CLARKS

1000 20 50'

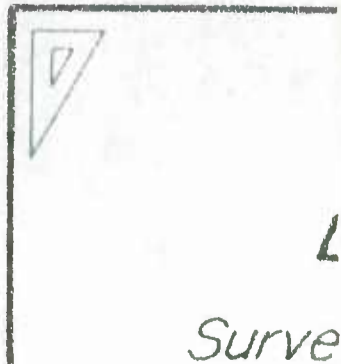
LANDING

1000 20 50'
ROAD

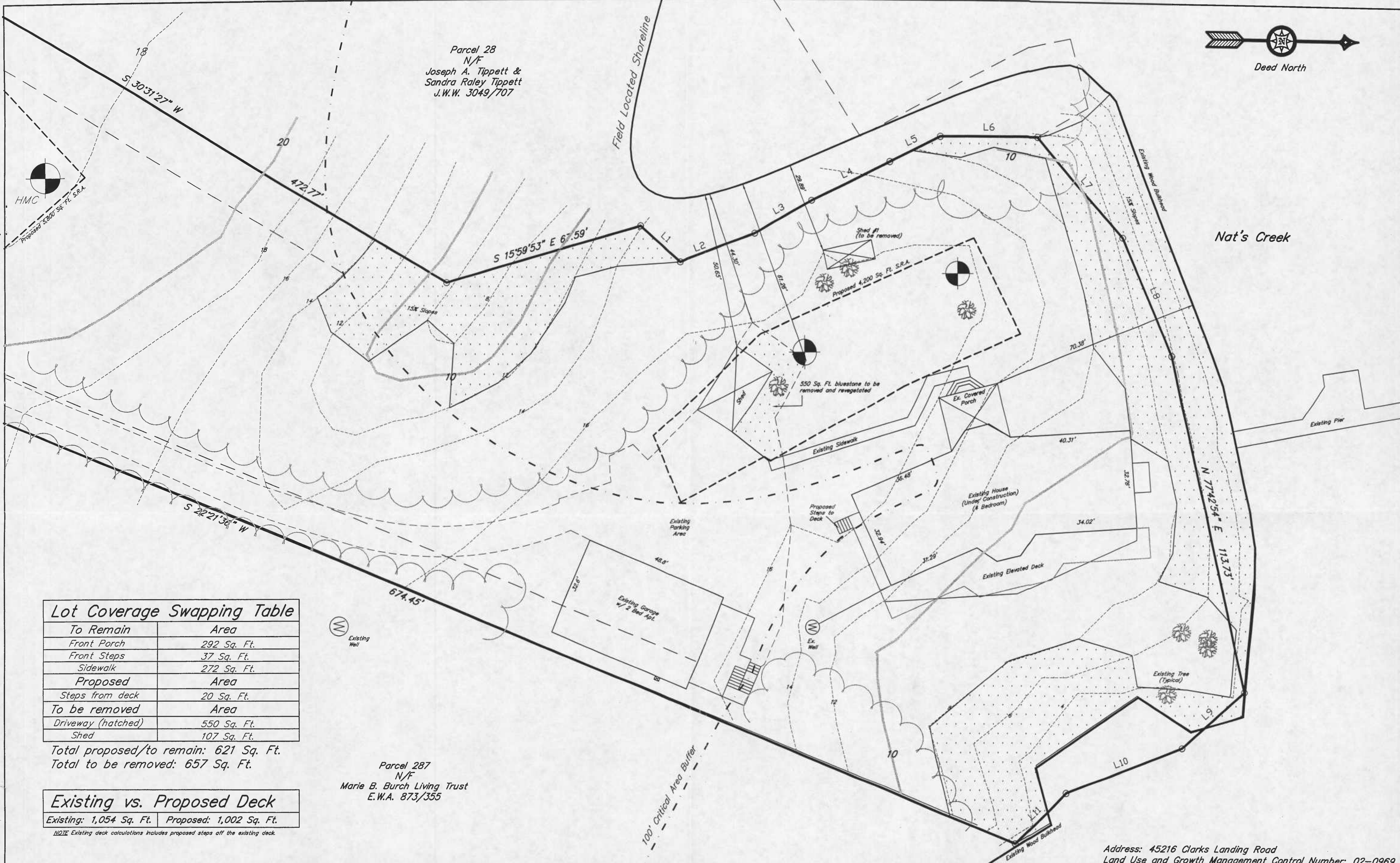
*N 32° 00'
55'*

GENERAL NOTES:

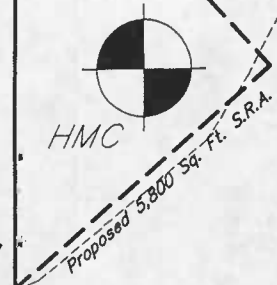
1. THIS SUBDIVISION IS IN COMPLIANCE WITH THE ST. MARY'S COUNTY COMPREHENSIVE WATER AND SEWERAGE PLAN.
2. THERE SHALL BE A 10 FOOT EASEMENT ALONG EACH LOT LINE FOR PUBLIC UTILITIES AND DRAINAGE.
3. PRESENT ZONING: R-1
4. WATER SUPPLY SHALL BE FROM A DEEP DRILLED WELL TO AN APPROVED CONFINED AQUIFER.
5. SUBJECT PROPERTY DOES NOT APPEAR TO BE IN THE FLOOD HAZARD ZONE AS DELINEATED ON FLOOD HAZARD BOUNDARY MAP FOR ST. MARY'S COUNTY, MARYLAND AND DISTRIBUTED BY THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.



Survey



Parcel 28
N/F
Joseph A. Tippett &
Sandra Raley Tippett
J.W.W. 3049/707



Lot Coverage Swapping Table	
<i>To Remain</i>	<i>Area</i>
Front Porch	292 Sq. Ft.
Front Steps	37 Sq. Ft.
Sidewalk	272 Sq. Ft.
<i>Proposed</i>	<i>Area</i>
Steps from deck	20 Sq. Ft.
<i>To be removed</i>	<i>Area</i>
Driveway (hatched)	550 Sq. Ft.
Shed	107 Sq. Ft.

Total proposed/to remain: 621 Sq. Ft.
Total to be removed: 657 Sq. Ft.

Existing vs. Proposed Deck	
Existing: 1,054 Sq. Ft.	Proposed: 1,002 Sq. Ft.

NOTE: Existing deck calculations includes proposed steps off the existing deck.

Parcel 287
N/F
Marie B. Burch Living Trust
E.W.A. 873/355

Address: 45216 Clarks Landing Road
Land Use and Growth Management Control Number: 02-0969

Health Department

Date

Director

Sanitarian

Department of Land Use
and Growth Management

RECEIVED
JUN 14 2010

Director
CRITICAL AREA COMMISSION
Chesapeake & Atlantic Coastal Bays
P.C. Chairman

No.	Date	Description	By
1	10/21/09	Steps to Deck moved per C.A. Review	DSF
REVISION			

NOKLEBY SURVEYING INCORPORATED

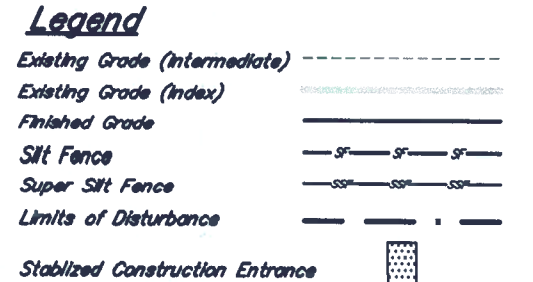
46925-B Shangri-La Drive, S.
Lexington Park, Maryland 20653
Phone: (301) 862-3135 * FAX: (301) 862-4360

**As-Built Critical Area Site Plan/
Impervious Area Swap Detail/Planting Plan**

Tax Map 27, Grid 17, Parcel 154
per Liber M.R.B. 235, Folio 306
Sixth Election District
St. Mary's County, Maryland

Contract #: 27-17-154	Drawing: 27154m	Chkd by: JDN	Dwn. by: DSF
Date: 08/05/09	Scale: 1" = 20'	Page: 2	of 2

AREA	w/ in 100'	w/ in 1,000'
House	2,946 Sq. Ft.	280 Sq. Ft.
Driveway	1,910 Sq. Ft.	6,284 Sq. Ft.
Detached Gar.	0.00 Sq. Ft.	1,560 Sq. Ft.
Garage Deck	43 Sq. Ft.	409 Sq. Ft.
Sheds	467 Sq. Ft.	0 Sq. Ft.
Total	5,366 Sq. Ft.	8,533 Sq. Ft.



SEDIMENT AND EROSION CONTROL NOTES

- Prior to any excavation or placement of embankment, all control devices shall be in place.
- All construction shall be in accordance with the "1994 Maryland Standards and Specifications for Soil Erosion and Sediment Control", as prepared by Maryland Dept. of the Environment in association with Soil Conservation Service.
- Silt fence shall be installed per S.C.S. Std. Detail #22.
- Stabilized construction entrance shall be constructed per S.C.S. Std. Detail #24.
- Upon completion of all excavation the area shall be sloped and graded as shown. All disturbed areas not otherwise paved, gravelled or sodded shall be topsoiled, limed, fertilized, seeded and mulched in accordance with S.C.S. Standard Section III. This includes both temporary and permanent stabilization seeding.
 - A. Lime: Two Ton Dolomitic Limestone per acre
 - B. Fertilizer: 800lbs 0-20-20 per acre
 - C. Seed: 100lbs Kentucky 31 Fescue per acre. See Seed Table per acre. 400lbs 10-20-20 per acre.
 - D. Mulch: One and one-half (1 1/2) to two (2) tons of straw per acre.
- No slope shall be greater than 2:1 unless otherwise approved.
- Following initial soil disturbance or re-disturbance, permanent or temporary stabilization shall be completed within:
 - A. Seven days as to the surface of all perimeter controls, swales, ditches, perimeter slopes and all slopes greater than 3:1.
 - B. Fourteen days as to all other disturbed or graded areas on the project site.
- All access dirt to be removed to an approved dump site with an approved sediment and erosion control plan.

INSPECTION PROCEDURES

The developer shall request that the inspection agency for sediment and erosion control approve work completed at the slopes of construction specified below in accordance with the approved sediment and erosion control plan, and the grading or building permit:

- On all sites, approval of the inspection agency shall be requested upon completion of the installation of perimeter sediment and erosion controls, but before proceeding with any other earth disturbance or grading. Other building or grading inspection approvals may not be authorized until this initial approval by the inspection agency is made, and.
- Approval shall be requested upon final stabilization of all sites before removal of sediment and erosion controls.
- Contractor shall notify M.D.E., Enforcement Division, at least 48 hours prior to commencing clearing or grading of (410) 537-3510 or M.D.E., Sediment and Stormwater Administration, 1800 Washington Boulevard, Baltimore, MD 21201-1708

SEQUENCE OF CONSTRUCTION

- Contractor to notify St. Mary's County Soil Conservation District of 301-475-8402 at least 5 days in advance of the beginning of construction to schedule a pre-construction meeting.
- Clear and grub areas necessary for the installation of perimeter controls and final perimeter controls.
- Remaining clearing and grubbing, remove existing structures, rough grading of site for building construction and septic installation. Install septic system and construct buildings.
- Final grading and permanent stabilization of all disturbed areas.
- Remove all sediment controls upon approval by inspecting authority and stabilize the sediment control areas with a minimum of 2" topsoil, seed, and mulch.

CONSTRUCTION TIMING

- Phase I: One (1) to Two (2) weeks
- Phase II: One (1) to Two (2) weeks
- Phase III: One (1) to Two (2) weeks
- Phase IV: Two (2) to Three (3) months
- Phase V: One (1) to Two (2) weeks
- Phase VI: Two (2) to Four (4) days

SCD INFORMATION

Developer: Roy Hart
45216 Clarks Landing Road
Hollywood, MD 20638
(301) 373-8234

Engineering Firm: Nokleby Surveying, Inc.
49225 Shangri-La Drive, S.
Lexington Park, MD 20653
(301) 862-3135

Topography: Field located on datum from NGVD 88

Total Disturbed Area = 0.386 Ac.
Total Area to be Vegetatively Stabilized = 0.271 Ac.
Earth Cut = 100 cy
Earth Fill = 100 cy

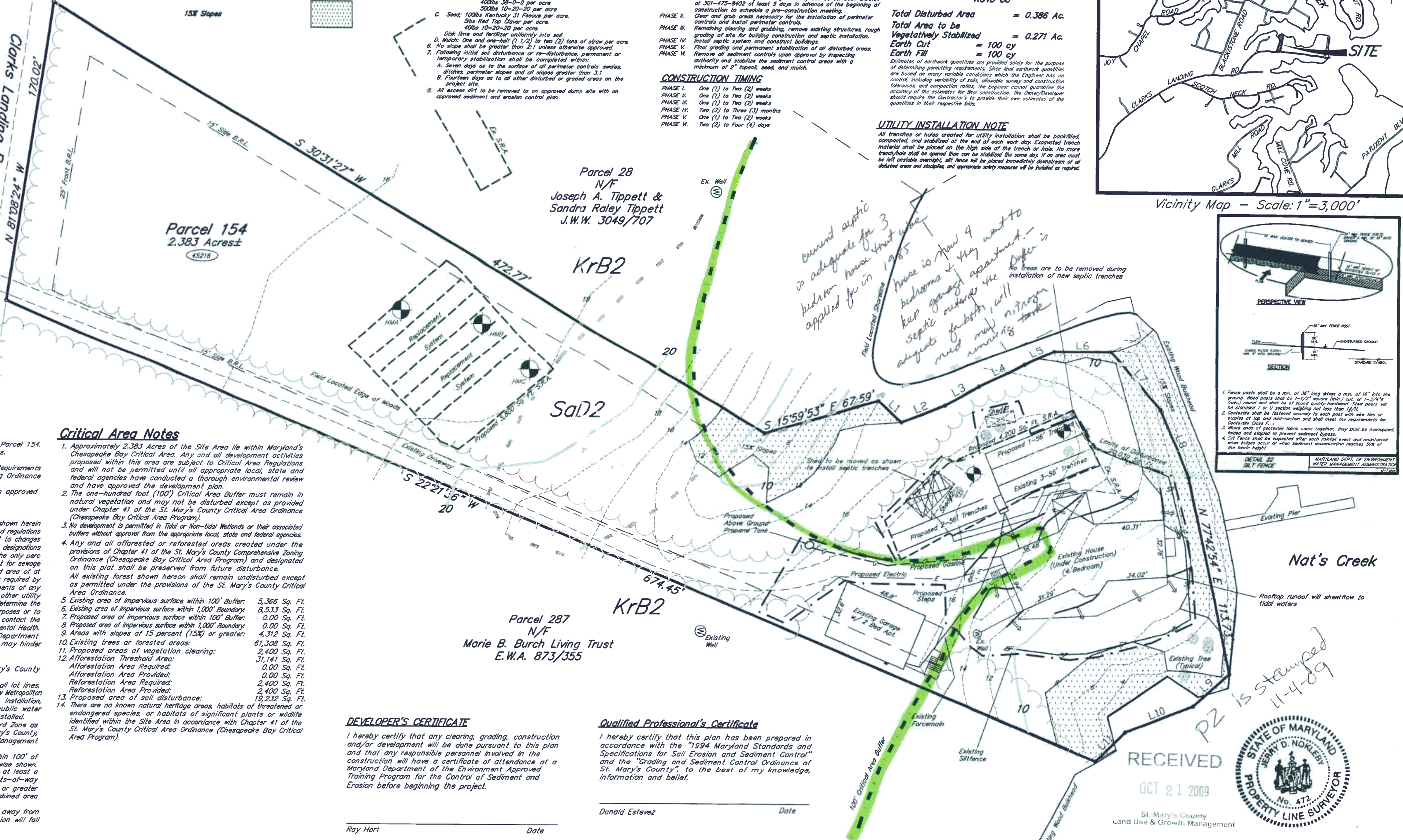
Estimates of earthwork quantities are provided solely for the purpose of determining permitting requirements. Since final earthwork quantities are based on many variable conditions which the Engineer has no control, including variability of soils, allowable survey and construction tolerances, and construction delays, the Engineer cannot guarantee the accuracy of the estimates for final construction. The Owner/Developer should require the Contractor to provide their own estimates of the quantities in their respective bids.

UTILITY INSTALLATION NOTE

All trenches or holes created for utility installation shall be backfilled, compacted, and stabilized at the end of each work day. Excavated trench material shall be placed on the high side of the trench or hole. No more trench/hole shall be opened than can be stabilized the same day. If an area must be left unstable overnight, silt fence will be placed immediately downstream of all disturbed areas and slopes, and appropriate safety measures will be installed as required.



LINE	BEARING	DISTANCE
L1	S41°45'06"W	18.60'
L2	S20°43'19"E	36.89'
L3	S29°27'40"E	27.82'
L4	S25°53'51"E	29.00'
L5	S25°19'20"E	18.67'
L6	N00°08'08"W	32.55'
L7	N48°38'21"E	43.25'
L8	N67°01'41"E	41.81'
L9	S41°29'10"E	27.80'
L10	S21°09'33"E	41.71'
L11	S44°31'23"E	23.87'



General Notes

- This site is located on Tax Map 27 at Grid 17 as Parcel 154.
 - This site contains 2.383 Acres of land, more or less.
 - Present zoning: RPD/LDA Overlay
 - Building Restriction Lines (BRL's) and Minimum Yard Requirements are established as per the St. Mary's County Zoning Ordinance as follows: 25' Front, 15' Side and 20' Rear.
 - Water supply shall be from a deep drilled well to an approved confined aquifer.
 - Sewage flow shall be to an individual split S.R.A.
- This Health Department approval certifies that the lots shown herein are in consonance with pertinent Health Department laws and regulations as of the approval date; however, this approval is subject to changes in such laws and regulations. Changes in topography or site designations may void this approval. The designated parcel areas are the only parcel areas approved by the St. Mary's County Health Department for sewage disposal purposes. The approved lots include an approved area of at least 10,000 square feet for sewage disposal purposes as required by current Maryland State Health Department law. Improvements of any nature in this area may render the lots undevlegable. To determine the exact areas of the lots approved for sewage disposal purposes or to establish a different area for such purposes, you should contact the St. Mary's County Health Department, Office of Environmental Health. All utility lines shall be located outside the Health Department approved sewage easement and no other easement may hinder access to it.
- This subdivision is in compliance with the St. Mary's County Comprehensive Water and Sewer Plan.
 - There shall be a ten (10) foot utility easement along all lot lines. These easements are to include use by the St. Mary's County Metropolitan Commission, its successors and assigns, for construction, installation, maintenance, repair, inspection, and operation of public water and sewer facilities, should such facilities ever be installed.
 - Subject Property does appear to be in the Flood Hazard Zone as delineated on Flood Hazard Boundary Maps for St. Mary's County, Maryland, and distributed by the Federal Emergency Management Area per F.I.R.M. Community Panel #24037C0184 E.
 - There are no existing wells or sewage easements within 100' of the proposed wells or sewage easements, unless otherwise shown.
 - "Minimum Ownership Statement" - These lots contain at least a 20,000 square foot area which does not include rights-of-way (existing or proposed), 50 year flood plains and 25% or greater grades. The 20,000 square foot area includes the combined area of the sewage reserve area plus the building site.
 - This lot will be graded so as to drain surface water away from foundation walls. The grade away from the foundation will fall a minimum of 6 inches within the first 10 feet.
 - Present Sewer Category: NPS (No Planned Service)
 - Present Water Category: NPS (No Planned Service)
 - Septic System shown herein is designed for a 4 Bedroom House.
 - This site is an existing parcel of record and is exempt from Stormwater Management and Overtop grading pursuant to Ordinance 02-01.

Critical Area Notes

- Approximately 2.383 Acres of the Site Area lie within Maryland's Chesapeake Bay Critical Area. Any and all development activities proposed within this area are subject to Critical Area Regulations and will not be permitted until all appropriate local, state and federal agencies have conducted a thorough environmental review and have approved the development plan.
- The one-hundred foot (100') Critical Area Buffer must remain in natural vegetation and may not be disturbed except as provided under Chapter 41 of the St. Mary's County Critical Area Ordinance (Chesapeake Bay Critical Area Program).
- No development is permitted in Tidal or Non-Tidal Wetlands or their associated buffers without approval from the appropriate local, state and federal agencies.
- Any and all afforested or reforested areas created under the provisions of Chapter 41 of the St. Mary's County Comprehensive Zoning Ordinance (Chesapeake Bay Critical Area Program) and designated on this plot shall be preserved from future disturbance. All existing forest shown hereon shall remain undisturbed except as permitted under the provisions of the St. Mary's County Critical Area Ordinance.
- Existing area of impervious surface within 100' Buffer: 5,366 Sq. Ft.
- Existing area of impervious surface within 1,000' Boundary: 8,533 Sq. Ft.
- Proposed area of impervious surface within 100' Buffer: 0.00 Sq. Ft.
- Proposed area of impervious surface within 1,000' Boundary: 0.00 Sq. Ft.
- Areas with slopes of 15 percent (15%) or greater: 4,312 Sq. Ft.
- Existing trees or forested areas: 61,308 Sq. Ft.
- Proposed areas of vegetation clearing: 2,400 Sq. Ft.
- Afforestation Threshold Area: 31,141 Sq. Ft.
- Afforestation Area Required: 0.00 Sq. Ft.
- Afforestation Area Provided: 0.00 Sq. Ft.
- Reforestation Area Required: 2,400 Sq. Ft.
- Reforestation Area Provided: 2,400 Sq. Ft.
- Proposed area of soil disturbance: 19,232 Sq. Ft.
- There are no known natural heritage areas, habitats of threatened or endangered species, or habitats of significant plants or wildlife identified within the Site Area in accordance with Chapter 41 of the St. Mary's County Critical Area Ordinance (Chesapeake Bay Critical Area Program).

DEVELOPER'S CERTIFICATE

I hereby certify that any clearing, grading, construction and/or development will be done pursuant to this plan and that any responsible personnel involved in the construction will have a certificate of attendance at a Maryland Department of the Environment Approved Training Program for the Control of Sediment and Erosion before beginning the project.

Roy Hart Date

Qualified Professional's Certificate

I hereby certify that this plan has been prepared in accordance with the "1994 Maryland Standards and Specifications for Soil Erosion and Sediment Control" and the "Grading and Sediment Control Ordinance of St. Mary's County", to the best of my knowledge, information and belief.

Donald Estevez Date

No.	Date	Description	By
7	6/29/09	Removed decks/sidewalk per client	DSF
6	1/29/09	Revised 100' Buffer per meeting in field w/ client	DSF
5	1/28/09	Clarified imperv. table for client	DSF
4	5/22/08	Comments per C.A. Review	DSF
3	3/26/08	Comments per HD	DSF
2	12/19/07	Added Engineered SCS Plan per SCS	DSF
1	12/12/07	Comments per HD	DSF
No.	Date	Description	By
REVISION			

Health Department	Department of Land Use and Growth Management
Date	Date
Director	Director
Sanitary	P.C. Chairman

NOKLEBY SURVEYING INCORPORATED

46925-B Shangri-La Drive, S.
Lexington Park, Maryland 20653
Phone: (301) 862-3135 * FAX: (301) 862-4360

As-Built Critical Area Site Plan, Sewage Easement Plat. & Sediment/Erosion Control Plan

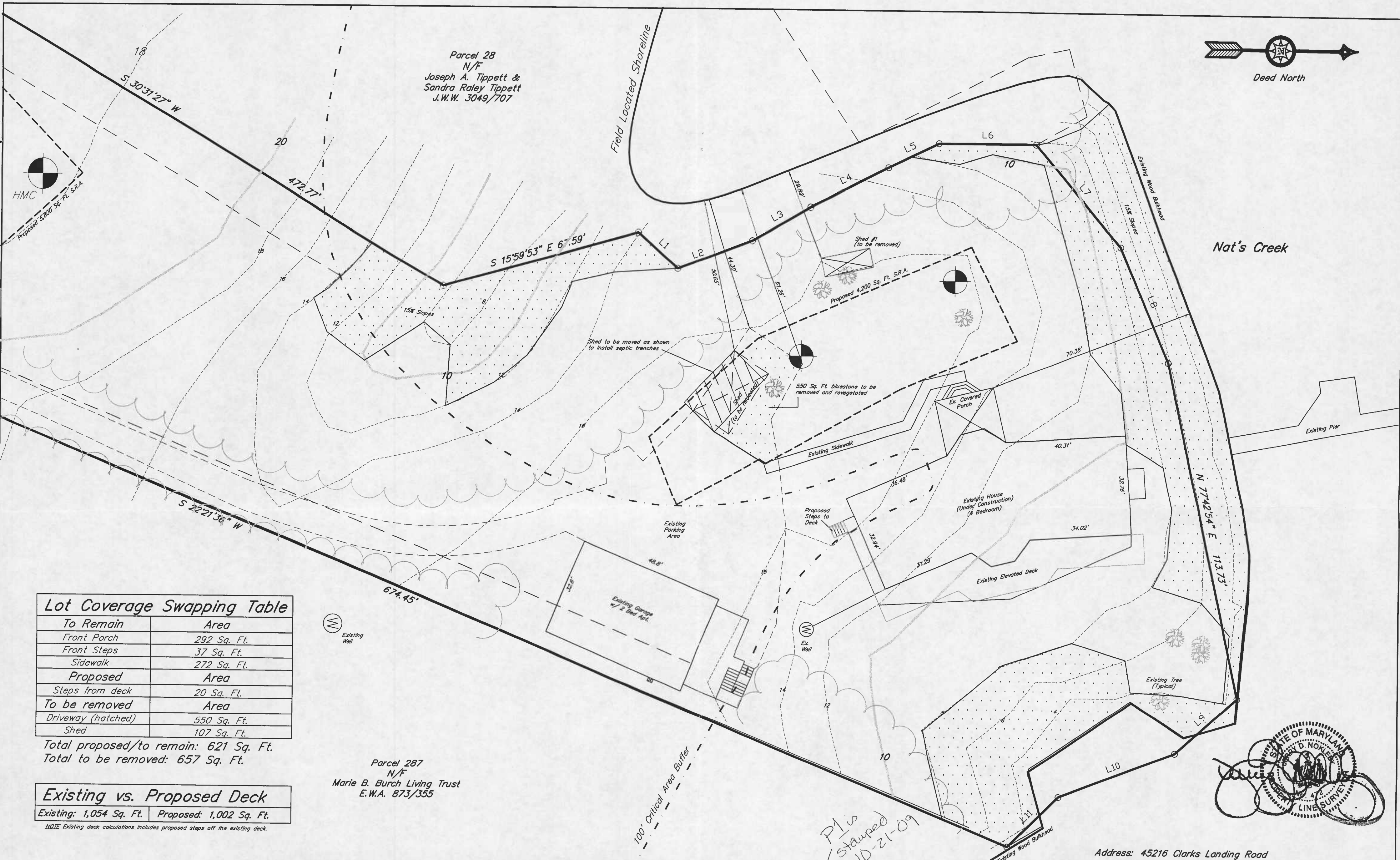
Tax Map 27, Grid 17, Parcel 154 per Liber M.R.B. 235, Folio 306
Sixth Election District
St. Mary's County, Maryland

Address: 45216 Clarks Landing Road
Land Use and Growth Management Control Number: 02-0969

RECEIVED
OCT 21 2009
St. Mary's County Land Use & Growth Management

Contract #:	27-17-154	Drawing:	27154sp	Chkd by:	JDN	Dwn. by:	DSF
Date:	10/16/07	Scale:	1" = 40'	Page	1	of	2

RECEIVED
NOV 19 2009
CRITICAL AREA COMMISSION
Chesapeake & Atlantic Coastal Bays



Parcel 28
N/F
Joseph A. Tippett &
Sandra Raley Tippett
J.W.W. 3049/707

Parcel 287
N/F
Marie B. Burch Living Trust
E.W.A. 873/355



Lot Coverage Swapping Table

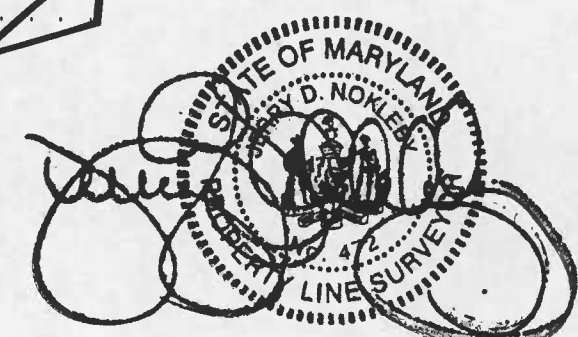
To Remain	Area
Front Porch	292 Sq. Ft.
Front Steps	37 Sq. Ft.
Sidewalk	272 Sq. Ft.
Proposed	Area
Steps from deck	20 Sq. Ft.
To be removed	Area
Driveway (hatched)	550 Sq. Ft.
Shed	107 Sq. Ft.

Total proposed/to remain: 621 Sq. Ft.
Total to be removed: 657 Sq. Ft.

Existing vs. Proposed Deck

Existing: 1,054 Sq. Ft. Proposed: 1,002 Sq. Ft.

NOTE: Existing deck calculations includes proposed steps off the existing deck.



Address: 45216 Clarks Landing Road
Land Use and Growth Management Control Number: 02-0969

Health Department	Department of Land Use and Growth Management
Date	Date
Director	Director
Sanitarian	P.C. Chairman

RECEIVED			
NOV 19 2009			
CRITICAL AREA COMMISSION Chesapeake & Atlantic Coastal Bays			
1	10/21/09	Steps to Deck moved per C.A. Review	DSF
No.	Date	Description	By
REVISION			

P1 is stamped 10-21-09

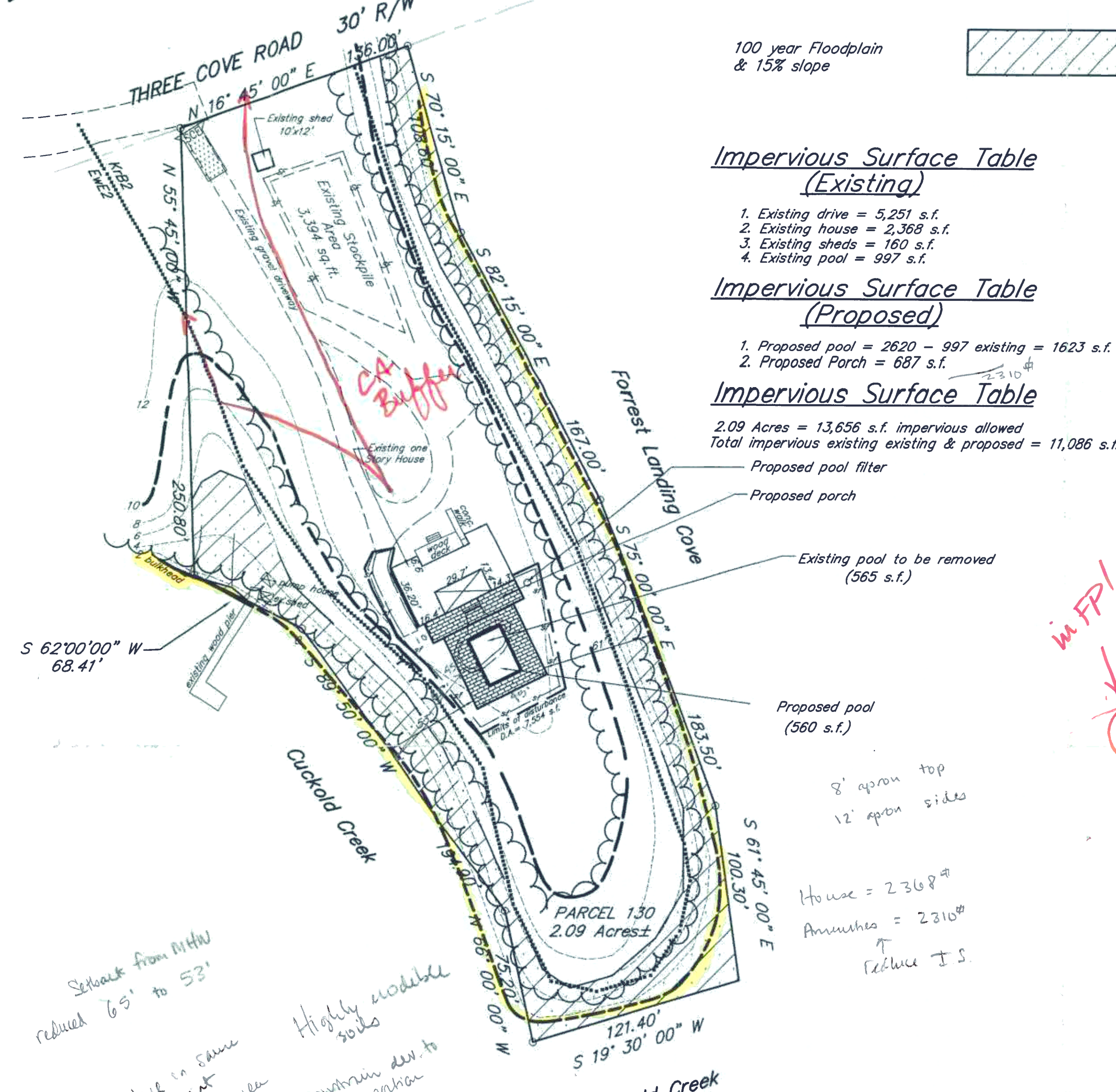
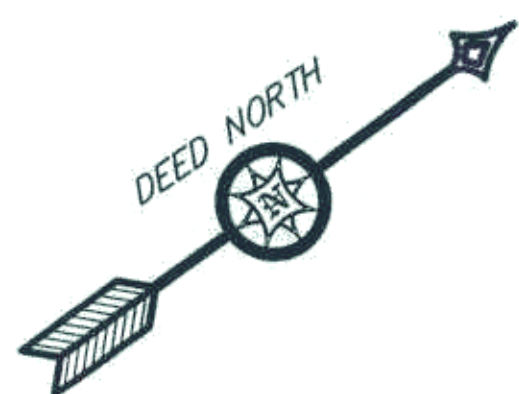
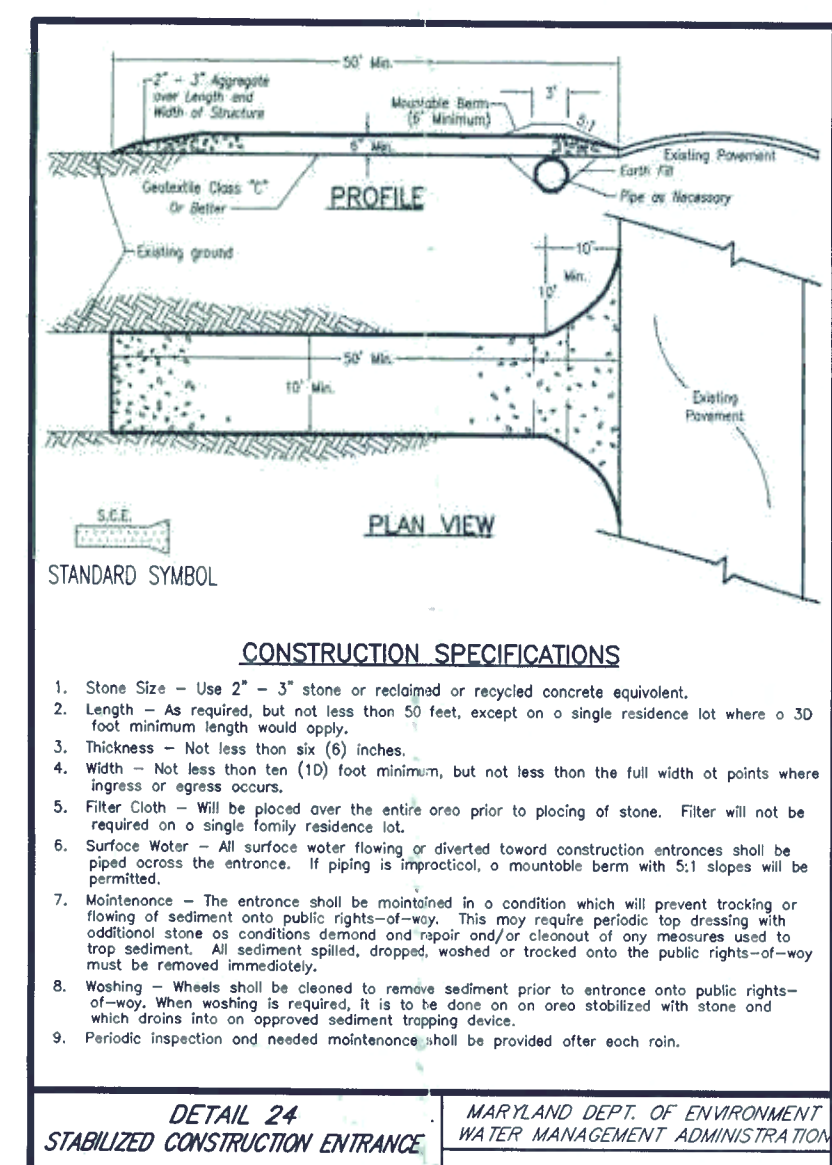
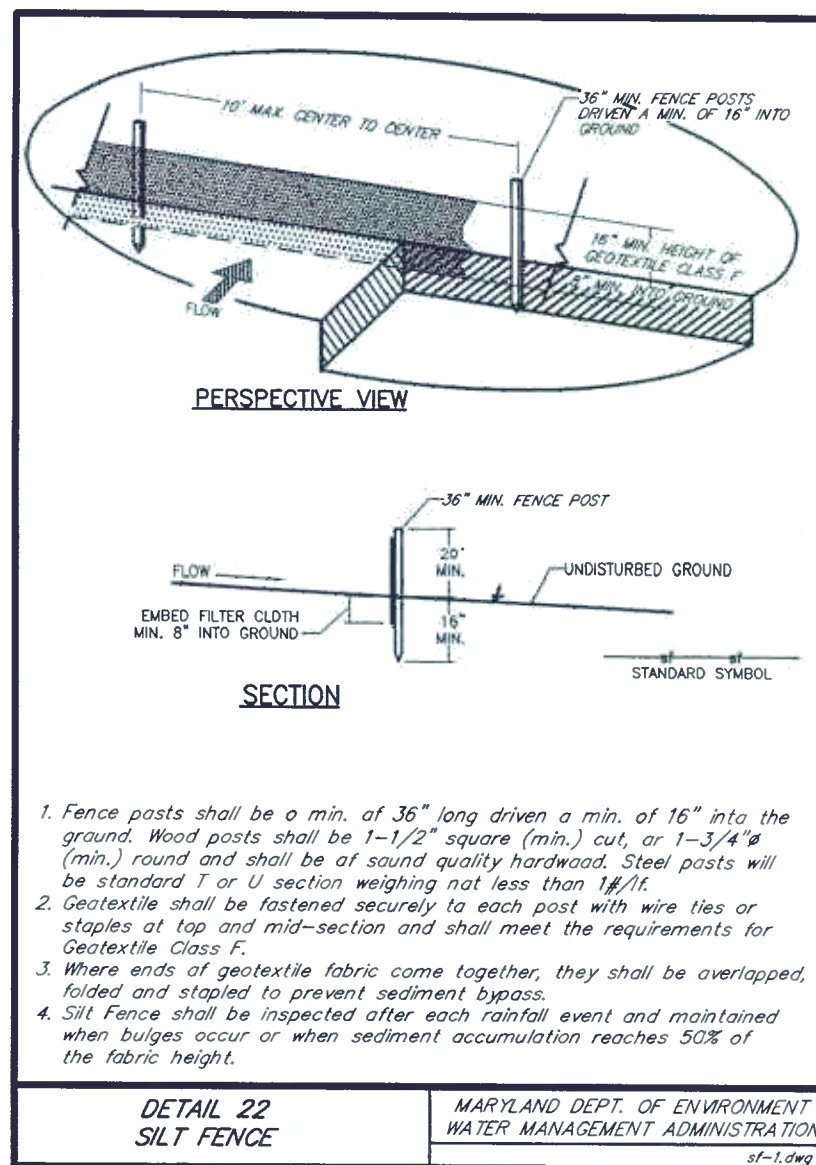
NOKLEBY SURVEYING INCORPORATED

NOV 04 2009
46925-B Shangri-La Drive, S.
St. Mary's County, Lexington Park, Maryland 20653
Phone: (301) 862-3135 * FAX: (301) 862-4360

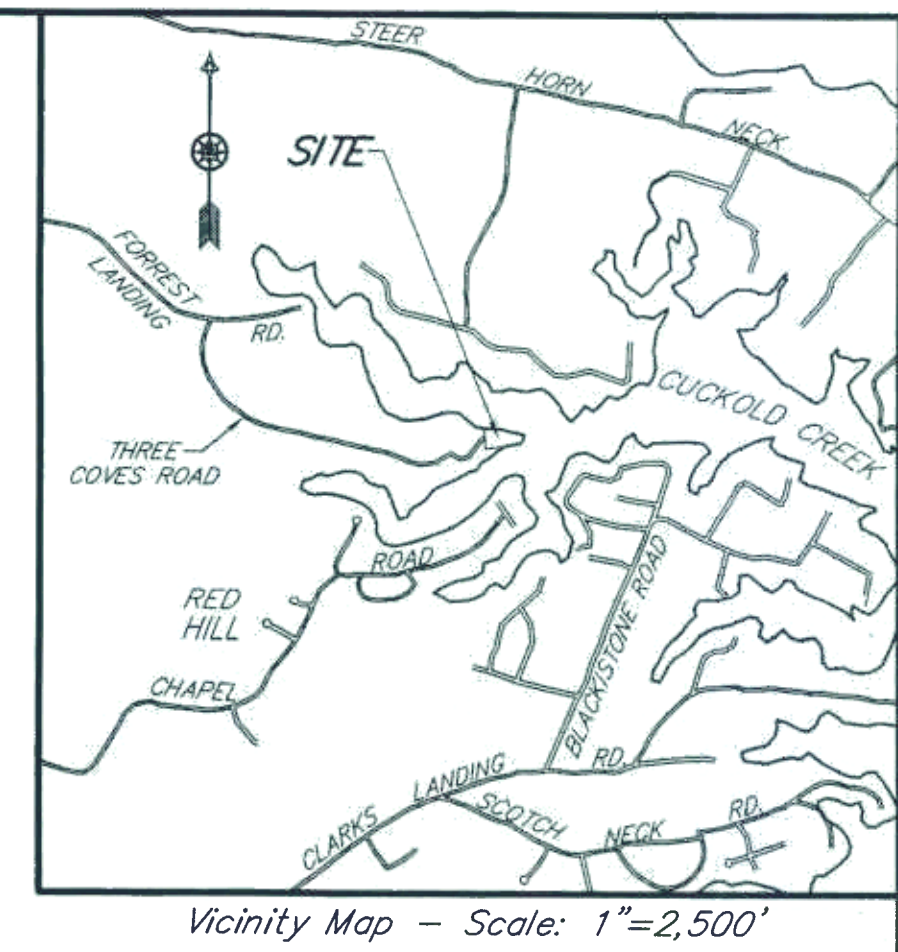
**As-Built Critical Area Site Plan/
Impervious Area Swap Detail/Planting Plan**

Tax Map 27, Grid 17, Parcel 154
per Liber M.R.B. 235, Folio 306
Sixth Election District
St. Mary's County, Maryland

Contract #:	27-17-154	Drawing:	27154m	Chkd by:	JDN	Dwn. by:	DSF
Date:	08/05/09	Scale:	1" = 20'	Page:	2 of 2		



- Legend**
- Existing Grade (intermediate)
 - Existing Grade (Index)
 - Finished Grade
 - Silt Fence
 - Super Silt Fence
 - Limits of Disturbance
 - Stabilized Construction Entrance
 - 100 year Floodplain & 15% slope



Impervious Surface Table (Existing)

- Existing drive = 5,251 s.f.
- Existing house = 2,368 s.f.
- Existing sheds = 160 s.f.
- Existing pool = 997 s.f.

Impervious Surface Table (Proposed)

- Proposed pool = 2620 - 997 existing = 1623 s.f.
- Proposed porch = 687 s.f.

Impervious Surface Table

2.09 Acres = 13,656 s.f. impervious allowed
 Total impervious existing & proposed = 11,086 s.f.

General Notes

- This site is located on Tax Map 27 at Grid 10 as Parcel 130.
- This site contains 2.09 Acres of land, more or less.
- Present zoning: RPD
- Building Restriction Lines (BRL's) and Minimum Yard Requirements are established as per the St. Mary's County Zoning Ordinance as follows: 25' Front, 15' Side and 20' Rear.
- Water supply shall be from an existing deep drilled well to an approved confined aquifer.
- Sewage flow shall be to an existing individual septic system.
- This Health Department approval certifies that the lots shown herein are in conformance with pertinent Health Department laws and regulations as of the approval date; however, this approval is subject to changes in such laws and regulations. Changes in topography or site designations may void this approval. The designated perc areas are the only perc areas approved by the St. Mary's County Health Department for sewage disposal purposes. The approved lots include an approved area of at least 10,000 square feet for sewage disposal purposes as required by current Maryland State Health Department law. Improvements of any nature including, but not limited to, the installation of other utility lines in this area may render the lots undevelopable. To determine the exact areas of the lots approved for sewage disposal purposes or to establish a different area for such purposes, you should contact the St. Mary's County Health Department, Office of Environmental Health. All utility lines shall be located outside the Health Department approved sewage easement and no other easement may hinder access to it.
- Subject Property does appear to be in the Flood Hazard Zone as delineated on Flood Hazard Boundary Maps for St. Mary's County, Maryland, and distributed by the Federal Emergency Management Agency per FEMA Community Panel #2403700182E.
- There are no existing wells or sewage easements within 100' of the proposed wells or sewage easements, unless otherwise shown.
- "Minimum Ownership Statement" - These lots contain at least a 20,000 square foot area which does not include rights-of-way (existing or proposed), 50 year flood plains and 25% or greater grades. The 20,000 square foot area includes the combined area of the sewer reserve area plus the building site.
- Present Sewer Category: N.P.S. (No Planned Service)
- Present Water Category: N.P.S. (No Planned Service)

INSPECTION PROCEDURES

The developer shall request that the inspection agency for sediment and erosion control approve work completed at the stages of construction specified below in accordance with the approved sediment and erosion control plan, and the grading or building permit.

(i) On all sites, approval of the inspection agency shall be requested upon completion of the installation of perimeter sediment and erosion controls, but before proceeding with any other earth disturbance or grading. Other building or grading inspection approvals may not be authorized until this initial approval by the inspection agency is made, and.

(ii) Approval shall be requested upon final stabilization of all sites before removal of sediment and erosion controls.

(iii) Contractor shall notify M.D.E., Enforcement Division, at least 48 hours prior to commencing clearing or grading at (410) 537-3510 or M.D.E., Sediment and Stormwater Administration, 1800 Washington Boulevard, Baltimore, MD 21230-1708

SEDIMENT AND EROSION CONTROL NOTES

- Prior to any excavation or placement of embankment, all control devices shall be in place.
- All construction shall be in accordance with the "1994 Maryland Standards and Specifications for Soil Erosion and Sediment Control", as prepared by Maryland Dept. of the Environment in association with Soil Conservation Service.
- Silt fence shall be installed per S.C.S. Std. Detail #22.
- Stabilized construction entrance shall be constructed per S.C.S. Std. Detail #24.
- Upon completion of all excavation the area shall be sloped and graded as shown. All disturbed areas not otherwise paved, grooved or sodded shall be topsoiled, limed, fertilized, seeded and mulched in accordance with S.C.S. Standard Section III. This includes both temporary and permanent stabilization seeding.
 - A. Lime: Two ton Dolomitic Limestone per acre
 - B. Fertilizer: 600lbs 0-20-20 per acre
400lbs 36-0-0 per acre
500lbs 10-20-20 per acre
 - C. Seed: 100lbs Kentucky 31 Fescue per acre.
5lbs Red Top Clover per acre.
40lbs 10-20-20 per acre.
 - D. Mulch: One and one-half (1 1/2) to two (2) tons of straw per acre.
- No slope shall be greater than 2:1 unless otherwise approved.
- Following initial soil disturbance or re-disturbance, permanent or temporary stabilization shall be completed within:
 - A. Seven days as to the surface of all perimeter controls, swales, ditches, perimeter slopes and all slopes greater than 3:1
 - B. Fourteen days as to all other disturbed or graded areas on the project site.
- All excess dirt to be removed to an approved dump site with an approved sediment and erosion control plan.

SEQUENCE OF CONSTRUCTION

- PHASE I. Contractor is to notify St. Mary's County Soil Conservation District at 301-475-8402 at least 5 days in advance of the beginning of construction to schedule a pre-construction meeting.
- PHASE II. Clear and grub areas necessary for the installation of perimeter controls and silt fence controls.
- PHASE III. Remaining clearing and grubbing.
- PHASE IV. Remove existing pool, install new pool.
- PHASE V. Final grading and permanent stabilization of all disturbed areas.
- PHASE VI. Remove all sediment controls upon approval by inspecting authority and stabilize the sediment control areas with a minimum of 2" topsoil, seed, and mulch.

CONSTRUCTION TIMING

- PHASE I. One (1) to Two (2) weeks
- PHASE II. One (1) to Two (2) days
- PHASE III. One (1) to Two (2) days
- PHASE IV. Three (3) to Four (4) weeks
- PHASE V. Three (3) to Seven (7) days
- PHASE VI. Two (2) to Four (4) days

SCD INFORMATION

Developer : Joseph M. Lynch
 44826 Three Coves Road
 Hollywood, MD 20636-2734
 (240) 298-2097

Engineering Firm : Nokleby Surveying, Inc.
 46925B Shangri-La Drive, S.
 Lexington Park, MD 20653
 (301) 862-3135

Topography : Field located on datum from NGVD 88

Total Disturbed Area = 7,554 s.f.
 Total Area to be Vegetatively Stabilized = 4,038 s.f.
 Earth Cut = 110 cy
 Earth Fill = 110 cy

Estimates of earthwork quantities are provided solely for the purpose of determining permitting requirements. Since final earthwork quantities are based on many variable conditions which the Engineer has no control, including variability of soils, allowable survey and construction tolerances, and compaction ratios, the Engineer cannot guarantee the accuracy of the estimates for final construction. The Owner/Developer should require the Contractor to provide their own estimates of the quantities in their respective bids.

Critical Area Notes

- Approximately 2.09 Acres of the Site Area lie within Maryland's Chesapeake Bay Critical Area. Any and all development activities proposed within this area are subject to Critical Area Regulations and will not be permitted until all appropriate local, state and federal agencies have conducted a thorough environmental review and have approved the development plan.
- The one-hundred foot (100') Critical Area Buffer must remain in natural vegetation and may not be disturbed except as provided under Chapter 41 of the St. Mary's County Critical Area Ordinance (Chesapeake Bay Critical Area Program).
- No development is permitted in Tidal or Non-Tidal Wetlands or their associated buffers without approval from the appropriate local, state and federal agencies.
- Any and all afforested or reforested areas created under the provisions of Chapter 41 of the St. Mary's County Comprehensive Zoning Ordinance (Chesapeake Bay Critical Area Program) and designated on this plat shall be preserved from future disturbance. All existing forest shown hereon shall remain undisturbed except as permitted under the provisions of the St. Mary's County Critical Area Ordinance.
- Existing area of impervious surface within 100' Buffer: 8,536 Sq. Ft.
- Existing area of impervious surface within 1,000' Buffer: 8,536 Sq. Ft.
- Proposed area of impervious surface within 100' Buffer: 2,620 Sq. Ft.
- Proposed area of impervious surface within 1,000' Buffer: 2,620 Sq. Ft.
- Areas with slopes of 15 percent (15%) or greater: 19,456 Sq. Ft.
- Existing trees or forested areas: 36,088 Sq. Ft.
- Proposed areas of vegetation clearing: 0.00 Sq. Ft.
- Afforestation Threshold Area: 0.00 Sq. Ft.
- Afforestation Area Required: 0.00 Sq. Ft.
- Afforestation Area Provided: 0.00 Sq. Ft.
- Reforestation Area Required: 0.00 Sq. Ft.
- Reforestation Area Provided: 0.00 Sq. Ft.
- Proposed area of soil disturbance: 7,554 Sq. Ft.
- There are no known natural heritage areas, habitats of threatened or endangered species, or habitats of significant plants or wildlife identified within the Site Area in accordance with Chapter 41 of the St. Mary's County Critical Area Ordinance (Chesapeake Bay Critical Area Program).

Setback from MHW reduced to 5' to 53'

Highly erodible soils
 - continue dev. to that portion - use SFF - stabilize w/ plantings after construction

DEVELOPER'S CERTIFICATE

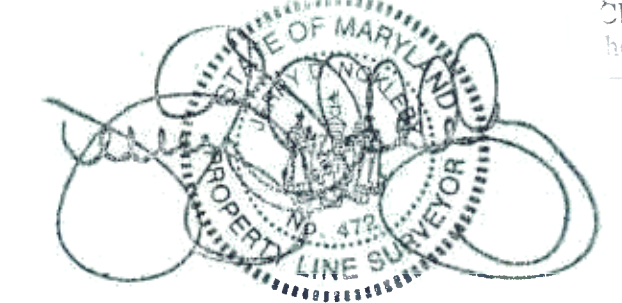
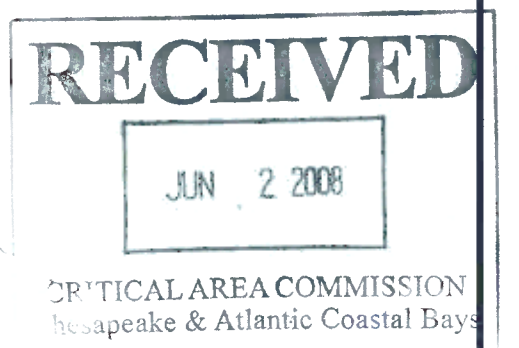
I hereby certify that any clearing, grading, construction and/or development will be done pursuant to this plan and that any responsible personnel involved in the construction will have a certificate of attendance at a Maryland Department of the Environment Approved Training Program for the Control of Sediment and Erosion before beginning the project.

Joseph M. Lynch
 Date: 5-09-08

Qualified Professional's Certificate

I hereby certify that this plan has been prepared in accordance with the "1994 Maryland Standards and Specifications for Soil Erosion and Sediment Control" and the "Grading and Sediment Control Ordinance of St. Mary's County", to the best of my knowledge, information and belief.

Donald Estevez
 Date: 5/9/08



ADDRESS: 44826 Three Coves Road
 Land Use and Growth Management Control Number: 08-0879

Health Department	Department of Land Use and Growth Management		
Date	Date		
Director	Director	1. 5-5-08	Per Soil Conservation
Sanitarian	P.C. Chairman	No.	Date
		Description	By
		REVISION	

NOKLEBY SURVEYING INCORPORATED

46925-B Shangri-La Drive, S.
 Lexington Park, Maryland 20653
 Phone: (301) 862-3135 * FAX: (301) 862-4360

Critical Area Site Plan
 Tax Map 27 Parcel 130
 For Joe Lynch
 Per Deed JWW 2981 Folio 355
 Sixth Election District
 St. Mary's County, Maryland

Contract #: 27-10-130
 Drawings: 27130 SCS
 Date: 9/03/07
 Scale: 1" = 50'
 Checked by: JDN
 Drawn by: FAB
 Page 1 of 1