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PRO. EXHIBIT# 1
CASE: 2024-0074-V
DATE: 8/22/24

July 9, 2024

Holly Colby
Office of Administrative Hearing - Arundel Center
P.O. Box 2700
Annapolis, MD 21404-2700

Re: ROBERT W. POSTEN AND ELLEN C. BUNGAY-POSTEN TRUSTEES - 2024-0074-V (AD3, CD5) -
Tax ID: 3656-0030-6280

Dear Ms. Colby;

I am writing regarding the August 22nd variance hearing to allow an extension in time for the implementation and completion of previously approved variances for Lot 240 - Spring Path in Pines on the Severn. My mother, sister and I own abutting conservation land and had opposed the variances, and later challenged the Planning & Zoning decision to the Board of Appeals (BA 37-21V (2021-0146-V)). This was based on our grave concerns over the immediate and long term affects of sediment and stormwater runoff from this development. Numerous sensitive natural features would be directly impacted including non-tidal wetland, state listed threatened plant, highly erodible soils, tributary stream and Timberneck Pond.

After reviewing the submitted application for a time extension, I am disappointed and concerned that there is no mention of **BA 37-21V (2021-0146-V)** the October 12th, 2022 Board of Appeals decision (Exhibit A) and the **conditions for which these variances were granted** ("on the condition that lots 230, 231, 235-239 shall be placed in a permanent conservation easement.")

I realize that the upcoming hearing is not about rehashing the case for /against granting those variances, but I am alarmed that the BOA decision was not even mentioned, nor was an explanation given as to why steps have not been taken to complete the easement requirement, or to address other issues that were covered during the appeal, notably site plan errors.

During the BOA Hearing one of my many concerns was that variances had been approved based on an inaccurate site plan. Of course these errors have a ripple effect altering setbacks, lot coverage, impervious surface, off site buffer disturbance, and more. Most notably, due to these errors the back up septic system is currently mapped/placed on my property.

Site plan errors include:

- Lot depth incorrect @ 109 ft - Lot 240 is platted 100ft length (see Exhibit B)
- Old Orchard width incorrect @ 20ft - Old Orchard is platted 30ft wide (see Exhibit C)
- Spring Path width incorrect @ 30 ft - Spring Path is platted 20ft wide (see Exhibit D)
- Spring Path labeled as public road - Spring Path is a private road (see Exhibit E)

I understand that plats & deeds are reviewed during permitting....but again I am disappointed to see that no steps have been taken over the last 18 months to correct the site plan, nor are we told of any plans to do so. If the applicant has started reaching out to potential buyers and builders, then one would think this is an area where progress should have been made.

Lastly, Lot 240 is within a NonTidal Wetland of Special State Concern (NTWSSC)(Exhibit F). I realize that during permitting Planning & Zoning (P&Z) in partnership with Department of Natural Resources (DNR), reviews and considers protections for the NTWSSC and potential limitations, but again it appears that no steps have not been taken to determine how this will affect or hinder the building permit process.

For the granting of a time extension variance, a determination must be made as to whether the applicant diligently pursued permits. A variance for a time extension cannot be granted if the need is caused by the applicant delaying the permitting process. In reading the application for an extension, I am perplexed as to why no action was taken to place the (7) lots into a conservation easement, to correct the site plan so it aligns with recorded plats, to move the back-up septic location, or to meet with P&Z & DNR to discuss the NTWSSC, just as I am perplexed as to why there is no mention or inclusion of the BOA decision in the application for a time extension. After all, placing the lots into a conservation easement was presented to the Board by the applicant herself as a means of mitigating the extensive environmental damage that would occur. In other words, the only reason variances were granted was based on the promise of the easement. Hence, their 'condition'.

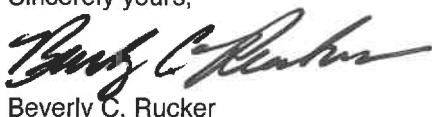
I will not go into the numerous environmental reasons for which I still adamantly disapprove of the development of Lot 240, instead I will note the BOA dissent:

"I find that the Petitioner did not meet its burden that the requested relief is the minimum necessary and will not adversely affect sensitive vegetation present in the nearby wetlands. The subject property is a substandard lot. The Critical Area Program permits reasonable development, but in this case the Petitioner is attempting to maximize the allowable development as opposed to adhere to the spirit of the law. The State recognizes that there are sensitive wetlands nearby. Any development near the protected wetlands is presumed to be adverse. I appreciate the Petitioner's proposal of putting the neighboring undeveloped lots in a permanent conservation easement, but I do not believe this is enough to eliminate the impact from the proposed development."

To grant the applicant the time extension variance, it would seem prudent that approval be contingent on the following steps being taken immediately, 1) fulfill the BOA condition that lots 230, 231, 235-239 be placed into a permanent conservation easement, 2) correct the site plan to align with recorded plats & deeds, 3) relocate the back-up septic system, 4) meet with DNR (as instructed by MDE) to discuss NTWSSC and how to proceed. **If the applicant is no longer interested in fulfilling these necessary initial first steps, then there is no need for a time extension variance to be granted and it should be denied.**

I appreciate your time and trust you will take this information into account.

Sincerely yours,


Beverly C. Rucker

Attachments:

Exhibit A - Board of Appeal Decision (BA 37-21V) Ellen Bungay-Posten Trustee et al.
<https://aacoprod-inter.aacounty.org/AACOServicePublic/rest/SharedDrive/BOA/file/1eYWixHzhHQfyTuVlJVc6eBrtlqZFHjZf>

Exhibit B - Plat (Lot 240 100ft deep)
<https://plats.msa.maryland.gov/pages/unit.aspx?cid=AA&qualifier=C&series=2323&unit=311&page=adv1&id=1099274811>

Exhibit C - Plat (Old Orchard 30ft wide)
<https://plats.msa.maryland.gov/pages/unit.aspx?cid=AA&qualifier=S&series=1235&unit=3505&page=adv1&id=1054903325>

Exhibit D - Plat (Spring Path 20ft wide)
<https://plats.msa.maryland.gov/pages/unit.aspx?cid=AA&qualifier=S&series=1235&unit=2827&page=adv1&id=1108787334>

Exhibit E - Spring Path private road (AACo Know Your Roads)
<https://gis.aacounty.org/portal/apps/webappviewer/index.html?id=f5c9f8a3dc7f46f39fcff4570a1ad7b>

Exhibit F - Maryland Dept. Environment - NTWSSC & Lot 240
(received via email from MDE)

Mailed (letter & exhibits): July 9th, 2024 to Arundel Center - Office of Admin. Hearing

**RE: An Appeal from a Decision of the
Administrative Hearing Officer**

**ELLEN C. BUNGAY-POSTEN TRUSTEE
OF THE ROBERT W. POSTEN AND
ELLEN C. BUNGAY-POSTEN TRUST**

Petitioner

* **BEFORE THE**
*
* **COUNTY BOARD OF APPEALS**
*
* **OF ANNE ARUNDEL COUNTY**

* **CASE NO.: BA 37-21V**
* **(2021-0146-V)**

* **Hearing Date: May 3, 2022 &**
* **August 4, 2022**
*

MEMORANDUM OF OPINION

Summary of Pleadings

This is an appeal of a decision from the Administrative Hearing Officer granting a variance to allow a dwelling with less setbacks and planted buffer than required and with disturbance to slopes of 15% or greater, on property with 60 feet of frontage on the northwest side of Spring Path, 160 feet northeast of Old Orchard Road, Arnold.

Summary of Evidence

Mr. Michael Drum, the Petitioner's expert in engineering, site design, and planning, explained that the property is a small, 6,530 square foot parcel. It is on the north side of Spring Path in Pines on the Severn. It is zoned Residential Low Density – RLD, in the Critical Area and designated as Resource Conservation Area – RCA. The parcel is currently unimproved. The property was platted on July 7, 1927, predating zoning and Critical Area laws. The property has been surveyed and evaluated for potential development. The Petitioner is seeking to build a single-family home with associated parking and other improvements. The property is served by public water, but requires a septic system. It is a substandard lot and reverts to the R2 District standards for setbacks. Mr. Drum's firm tried to design the improvements to fit within all the required setbacks. There is an intermittent stream about .375 feet away. Since there are steep

slopes, the buffer to the stream is an expanded 100-foot buffer. There is a 50-foot buffer on the subject property which necessitates the buffer variance. The RLD requires a 50-foot buffer from the top of steep slopes. There is a small band of greater than 15% steep slopes on the back of the lot. A small portion of that band will be disturbed. The Petitioner is proposing a modest home 28 feet wide by 42 feet long including a porch. The home would have a septic dry well and two backups. There is no other place on the property to fit the dwelling. A proposed deck was eliminated, and the front porch reduced to minimize the request. The proposed parking is only enough to meet Code requirements. The Petitioner would not receive special privileges because of the variances and has not caused the need for variances. Reforestation and stormwater management will be required. The variances are in harmony with the Critical Area Program. This is the minimum necessary to afford relief. The proposed development fits the neighborhood and is smaller than the neighboring houses. The parcel cannot be developed without a variance.

Mr. Kevin Haines, the Petitioner's expert in environmental consulting, was contracted to conduct a wetland delineation of the site and to determine if there are wetlands within 100 feet of the site. There are three criteria required within a wetland to be a non-tidal wetland. The three criteria are hydrology, vegetation, and hydric soils. His investigation found no wetlands on or within 100 feet of the site. Wetlands of special State concern typically have some type of rare, threatened or endangered natural community or species. There is a wetland near the site. There are separate permitting requirements in a wetland. The Department of Natural Resources ("DNR") and the Maryland Department of the Environment ("MDE") agreed that there are no wetlands onsite or within 100 feet of the property. The house can be constructed without damaging downstream waterways.

Ms. Ellen Bungay-Posten, the Petitioner, purchased this lot along with 10 other adjacent lots in 2007. She has a potential buyer who is interested in purchasing the subject lot, but will not

do so if it is not buildable. She plans on putting the remainder of the lots in a conservation easement. The Petitioner lives near the property. She believes that the proposed house is the right scale and style for the neighborhood.

Ms. Beverly Rucker, the Protestant, lives in the Pines on the Severn. Her family has been there since 1925. Her property is immediately down slope from this lot. Her parents purchased the property in 1972 and measures approximately 23 acres. It includes a freshwater pond called Timber Neck Pond that feeds into Chase Creek. To protect the land, she and another family placed a permanent conservation easement on the 25-acre Rucker-Murry properties, giving up all their development rights to the Scenic Rivers Land Trust. Rucker's Ravine has been an area of special concern for the State since 1988. Washout from the subject development will potentially destroy the habitat and rare species in the ravine. Ms. Rucker is concerned about sediment and stormwater runoff. The Petitioner only addressed the steep slopes. The Petitioner's site plan contains errors. There are 118 homes that make up upper and middle Pines on the Severn. The smallest house is 224 square feet and the largest is 3,860 square feet. The Protestant is not aware of any home being given relief to build on such a small lot. She believes that granting these variances would grant a special privilege. From her research, only one variance to build a dwelling on an undeveloped lot has been granted in the Pines on the Severn since the Critical Area law was enacted.

Ms. Joan Jenkins, a planner for the County, works for the Office of Planning and Zoning ("OPZ"). The County determined that setback variances were needed. There is disturbance to the expanded buffer of 2,464 square feet onsite and 309 square feet offsite. There is a variance to allow construction of a dwelling and associated improvements within the 50-foot buffer to steep slopes within the RLD District and designated as RCA and Limited Disturbance Area-LDA within the Critical Area. The proposed improvements will create 176 square feet of temporary

steep slope disturbance. The subject property is grossly undersized at 6,529 square feet. R2 Districts require at least 20,000 square feet of lot area. More than half of this lot is encumbered with steep slopes and expanded buffer. The expanded buffer line bisects the property from front to back through the middle making development difficult with a variance. The environmental constraints on the property prevent development of the site without the requested variances. Any development of this site will be subject to all applicable regulations specific to the protection of this environmental feature regardless of the approval of this application. The County recommends approval of the Critical Area variances to disturb 176 square feet of steep slopes and to disturb 2,773 square feet of the expanded buffer. OPZ recommends approval of the zoning variance to allow less planted buffer to the top of steep slopes for development of a dwelling and associated facilities shown on the site plan.

Mr. Rob Murray testified in opposition to the project. He is concerned that the septic system will fail. His father donated property, along with the Rucker's, to the conservation easement. Mr. Murray is opposed to the variances.

Ms. Noelle Chao testified regarding her concerns about this development. Development will remove tree canopy and reduce the amount of runoff the lot can absorb. The water quality, fish, and plant habitat will all suffer from erosion from this site. Flooding issues are common in the neighborhood. The Pines on the Severn would not be allowed to be built today because of the environmental concerns. The community is becoming more resilient and better equipped to withstand weather events and new development on a steep slope is a step backwards. The community participated in the 2017-18 clean water community program with the Watershed Stewards Academy. They have educated neighbors about stormwater management, steep slopes, and encouraging best practices for a healthier Chesapeake Bay. There are people in the community who have had stormwater management features fail.

Ms. Lindsay Smith testified in opposition to the variances.

Ms. Caroline Troy testified in opposition to the variances.

Mr. Kevin Haines testified on rebuttal that after the delineation plan was finalized it was submitted to MDE and a pre-application was requested. At the pre-application meeting, MDE confirmed the findings in his report that no wetlands or wetland buffers exist onsite. As part of his initial investigation, he contacted DNR and requested a review of the possible presence of rare or endangered species on the site. They noted that there was a nearby threatened species that requires wetland habitat to be present. DNR noted that any regulatory requirements for that species would be handled by the County. DNR confirmed there were no endangered or rare species on this site.

Mr. Michael Drum testified on rebuttal that the plats that created the lot were from 1927-1928. There are some distances referenced on the plats, but there are no bearings on the plats. He had discussions with his registered surveyor about how to locate the property. It has been almost 100 years since this plat was done. They checked the accuracy of the survey and site plans. The lot lines were not changed. A tree survey was conducted. The lot is overgrown, and most of the trees are very small. There are a couple of larger trees on the perimeter. If the variance is granted, many of the trees will be affected. There will be required mitigation. Revisions were made to the site plan, and the Petitioner proposes putting the additional lots to the east of the subject property into a permanent conservation easement. The site design accounts for the offsite drainage. In larger rainstorms, the site takes a lot of the rain since it is a gully. The proposed stormwater management will manage 1.6 inches of rainfall and provide 280 cubic feet of storage. There will be no detrimental impact to the downstream property owners. The topography of the site causes drainage onto the lots to the east which are owned by the Petitioner. The revised site

plan did not change the configuration of the house, it added only the conversation easement and enlarged the stormwater management volume.

All testimony was stenographically recorded and the recording is available to be used for the preparation of a written transcript of the proceedings.

Findings and Conclusion

The subject site is a non-waterfront lot with 6,529 square feet of land in the Pines on the Severn subdivision. It is zoned Residential Low Density District ("RLD")¹ and located entirely in the Chesapeake Bay Critical Area, designated primarily Resource Conservation Area ("RCA") with a small area of Limited Development Area ("LDA") in the southeast corner of the property. The site is encumbered by steep slopes, the required 25-foot buffer to the top of steep slopes, the expanded Critical Area buffer, and the 50-foot top of slopes buffer within the RLD. The lot is currently undeveloped and the Petitioner is proposing the construction of a new two-story dwelling 28-feet wide by 36-feet deep with associated features and a driveway. The site will be served by public water and a private septic system.

Anne Arundel County Code ("Code") Section 18-13-104(a) requires "a minimum 100-foot buffer landward from the mean high-water line of tidal waters, tributary streams, and tidal wetlands." Section 18-13-104(b) expands the buffer "beyond 100 feet to include slopes of 15% or greater." Section 18-13-104(b)(1) further expands the buffer "by the greater of four feet for every 1% of the slope or the top of the slope and shall include all land within 50 feet of the top of the slopes." The State Code of Maryland (COMAR) Section 27.01.01(B)(8)(ii) authorizes disturbance to the buffer for new development activity provided an applicant is granted a

¹ Code Section 18-4-401(a)(2) states that a lot in the RLD District with less than 40,000 square feet that was approved by a record plat prior to April 9, 1987 may be reviewed in accordance with the bulk regulations of Section 18-4-601 (R2 District regulations) and the lot size is subject to Section 18-4-202.

variance. COMAR Section 27.01.09 E(1)(a)(ii) authorizes disturbance to the buffer for a new development activity or redevelopment activity by variance.

Although this property is not a waterfront parcel, the steep slopes and the resulting expansion of the Critical Area buffers prevent development of the property without variances. The Petitioner's proposed development would disturb 2,464 square feet onsite and 309 square feet offsite. The improvements would result in 176 square feet of temporary steep slope disturbance within the LDA. The dwelling and associated improvements would be within the required 50-foot planted buffer to steep slopes. To construct the dwelling as planned, the Petitioner requires variances to the Critical Area Program and a variance to the 50-foot planted buffer to steep slopes. For ease of analysis, we shall divide our findings into two sections, one pertaining to the variances to the Critical Area Program and another regarding the variance to the setback requirements of the Bulk Regulations.

A. Critical Area Variance

Applicants seeking a variance to the Critical Area Program must satisfy an extensive list of requirements set out in the Code § 3-1-207 (b) and (e). An applicant must meet each of the variance criteria of the Code to obtain variance approval. Failure to meet just one of the criteria requires that the application be denied.

The Petitioner is first required to show that "because of certain unique physical conditions, such as exceptional topographical conditions peculiar to and inherent in the particular lot, or irregularity, narrowness, or shallowness of lot size and shape, strict implementation of the County's critical area program would result in an unwarranted hardship, as that term is defined in the Natural Resources Article, § 8-1808, of the State Code, to the applicant." § 3-1-207(b)(1). Natural Resources Article, Section 8-1808 states "'unwarranted hardship' means that, without a variance, an applicant would be denied reasonable and significant use of the entire parcel or lot

for which the variance is requested.” The evidence shows that this is a grossly undersized lot, but legal lot. The lot contains 6,529± square feet, drastically short of the required 20,000 square feet and is consumed by steep slopes and the expanded buffer. This lot was platted in the 1920s prior to any zoning laws and the Critical Area regulations. The lot is bounded by platted rights of way that prevent it from being added to other lands owned by the Petitioner. Given the impact of the regulations upon this property no reasonable use of the property can be made without variances. Construction of a dwelling is a lawful use in the R2 District and a reasonable use of property. We find that the Petitioner has met its burden that strict implementation will result in unwarranted hardship.

The Petitioner must also establish that a literal interpretation of COMAR, 27.01, Criteria for Local Critical Area Program Development, the County’s Critical Area Program and its related ordinances will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area of the County. § 3-1-207(b)(2). Property owners in the Critical Area are permitted a reasonable use of their property. A home is a reasonable use on a legal lot in the Critical Area. The evidence shows that there is a mix of houses in the neighborhood of varying sizes and configurations. The proposed lot coverage for the dwelling and porch is approximately 1,930 square feet, which is under the allowed 2,130 square feet of lot coverage. This is a reasonable amount of lot coverage, and the proposed dwelling is in harmony with others in the neighborhood. The Petitioner could not develop this lot without variances given the impact of the Critical Area Program upon this site. Therefore, we find that a literal interpretation of the Critical Area Program would deprive the Petitioner of rights commonly enjoyed and find it has met its burden.

The Petitioner must show that “the granting of a variance will not confer on an applicant any special privilege that would be denied by: (i) COMAR, Title 27, or the County critical area

program to other lands or structures within the County critical area....” § 3-1-207(b)(3). It is not a special privilege to construct a home on a legal lot within the Critical Area. The proposed dwelling is modest in size. There are other properties nearby of similar size and configuration. The Petitioner has requested a two-story dwelling with a small porch/entryway which is under the amount of lot coverage allowed by the Code. We find that the Petitioner has met its burden to show the variance will not confer a special privilege that would otherwise be denied.

The Petitioner needs to establish “that the variance request: (i) is not based on conditions or circumstances that are the result of actions by the applicant, including the commencement of development activity before an application for a variance was filed; and (ii) does not arise from any condition relating to land or building use on any neighboring property,” § 3-1-207(b)(4). The variances requested here are for disturbance to the expanded buffer and temporary steep slope disturbance. The Petitioner has not commenced building on the lot. The buffers and steep slopes consume the lot, and no home can be constructed without variance relief. This lot was platted in the 1920s and the conditions requiring the variance have long since existed on this lot. There are no conditions relating to land or building use on neighboring properties which compelled the instant request.

The Petitioner must “show that the granting of the variance: (i) will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the County's critical area...; and (ii) will be in harmony with the general spirit and intent of the County critical area program....” § 3-1-207(b)(5). The Petitioner's property is within the Critical Area and encumbered by buffer and steep slopes. Due to the small size of the lot, the proposed construction will require the removal of established trees and other vegetation. The proposed structure however is reasonably sized. Evidence was provided that the Petitioner will do necessary stormwater management both on and offsite. Additionally, the Petitioner owns 7

nearby lots that it proposes to create a permanent conservation easement. The stormwater management, mitigation and conservation easement will ensure that the environment will receive a net benefit.

The Petitioner's most difficult burden to meet is the requirement that it establishes "by competent and substantial evidence, [that they have] overcome the presumption contained in the Natural Resources Article, § 8-1808 of the State Code." § 3-1-207(b)(7). Under the Natural Resources Article, it is presumed "that the specific development activity in the critical area that is subject to the application and for which a variance is required does not conform with the general purpose and intent of this subtitle; regulations adopted under this subtitle, and the requirements of the local jurisdiction's program." Md. Code Ann., Natural Resources Art., § 8-1808(d)(2). The Maryland General Assembly has expressly recognized that the Critical Area is a "natural resource of great significance"; and that human activity in the buffer "can have a particularly immediate and adverse impact on water quality and natural habitats", and "the capacity of these shoreline and adjacent lands to withstand continuing demands without further degradation to water quality and natural habitats is limited." *Id.* § 8-1801(a). Particularly, the Legislature stated "...the new development of nonwater-dependent structures or an increase in lot coverage is presumed to be contrary to the purpose of this subtitle, because these activities may cause adverse impacts, of both an immediate and a long-term nature, to the Chesapeake and the Atlantic Coastal Bays and thus it is necessary wherever possible to maintain a buffer of at least 100 feet landward from the mean high water line of tidal waters, tributary streams, and tidal wetlands." *Id.* Not only do these statutory provisions require the Board to presume that the requested development activity does not conform to the general purpose and intent of the Critical Area Program, but they also place the substantial burden of proof and persuasion to overcome this presumption firmly on the shoulders of an applicant for a variance. Here, the Petitioner is

proposing 1,950 square feet of permanent lot coverage. This development will create 2,464 square feet of onsite disturbance and 309 square feet of offsite disturbance. There will be clearing of vegetation on the site to construct the house. However, the Petitioner will participate in reforestation both onsite and off, install appropriate stormwater management, and place 7 additional lots into a conservation easement. The proposal will not increase runoff from the site. We find that the Petitioner's proposal is not contrary to the general purpose and intent of the statute, which is meant to manage and not prevent reasonable development in the Critical Area.

Next, the Petitioner has the burden of proving that "the variance is the minimum variance necessary to afford relief." § 3-1-207(e)(1). The Petitioner has reduced the amount of disturbance through the elimination of a previously proposed deck and reduction of the front porch. The house is modestly sized and has been sited to minimize disturbance. Development of this property is impossible without substantial relief. The steep slope disturbance is limited to temporary disturbance of the limit of disturbance ("LOD"). Therefore, we find that the Petitioner has proved this is the minimum necessary.

An applicant for variance must show that granting the variance will not "alter the essential character of the neighborhood or district in which the lot is located." § 3-1-207(e)(2)(i). In this case, we have a residential neighborhood dominated by an eclectic mix of single-family homes. The size, shape and configuration of the house is in harmony with those nearby. The Pines on the Severn is an older community that contains a unique feature in that some owners have placed their land into a conservation easement to protect nearby wetlands. The Petitioner has proposed placing 7 additional lots it owns into a conservation easement. These factors indicate that the proposed development was made with the essential character of the neighborhood in mind. We find that the Petitioner has met this burden on this criterion.

The Petitioner is also required to show that “the granting of the variance will not substantially impair the appropriate use or development of adjacent property.” § 3-1-207(e)(2)(ii). The Petitioner’s proposal meets the setback requirements from adjacent property. The runoff and drainage from the site will be routed onto the Petitioner’s additional lots to the northeast which are being placed in a conservation easement. The Petitioner’s proposal will not substantially impair the appropriate use or development of adjacent property.

The Petitioner next must establish that the granting of the variance will neither “reduce forest cover in the limited development and resource conservations areas of the critical area” nor “be contrary to acceptable clearing and replanting practices required for development in the critical area or a bog protection area.” § 3-1-207(e)(2)(iii)-(iv). The proposed development will temporarily reduce forest cover in the Critical Area. Trees and vegetation will be removed because of this development; however, the Petitioner’s proposal includes required mitigation and reforestation. The appropriate reforestation will result in greater forest cover and therefore, the Petitioner has met their burden on these criteria.

Lastly, the Petitioner must establish that “the granting of the variance will not be detrimental to the public welfare.” §3-1-207(e)(2)(v). The Petitioner’s proposal will cause minimal disturbance to the steep slopes. It is a buildable lot, and the requested lot coverage is below the allowable amount. In addition, the Petitioner’s proposal includes reforestation, mitigation, and conversation that are of a net benefit to the public welfare.

We find, therefore, that the Petitioner has met the criteria set forth in section 3-1-207 to obtain the requested variances to Section 17-8-201(a) to disturb 176 square feet of steep slopes and Section 17-8-301 to disturb 2,773 square feet of the expanded buffer.

B. Bulk Regulations Variance

The Anne Arundel County Code Section 18-4-401(b) requires a 50-foot planted buffer area shall be located and maintained between the principal structure and the crest of steep slopes. The proposed improvements will be in the required 50-foot planted buffer from steep slopes, thereby necessitating a variance to allow construction of a dwelling and associated improvements within the required 50-foot planted buffer to steep slopes.

The Board of Appeals may grant a variance when strict compliance of the Zoning Ordinance, in this case Code Section 18-4-401(b), would result in practical difficulties or unnecessary hardship. Code, § 3-1-207(a). Provided the spirit of the law is observed, public safety is secured, and substantial justice is done, a variance may be granted upon an affirmative finding that (1) "because of certain unique physical conditions, such as irregularity, narrowness or shallowness of lot size and shape, or exceptional topographical conditions peculiar to and inherent in the particular lot, there is no reasonable possibility of developing the lot in strict conformance with" the regulation; OR (2) "because of exceptional circumstances other than financial considerations, the grant of a variance is necessary to avoid practical difficulties or unnecessary hardship, and to enable the applicant to develop the lot." *Id.* The evidence shows that this is a grossly undersized lot. The lot spans approximately 6,529 square feet, drastically short of the required 20,000 square feet. The lot is encumbered by steep slopes and the expanded buffer. This is a legal lot as it was platted in the 1920s, prior to the zoning and Critical Area regulations. Construction of a dwelling is a lawful use in R2. Strict compliance with this regulation would result in this becoming a non-buildable lot. Therefore, the Petitioner would suffer an unwarranted hardship and has met this criterion for a variance.

Even when a Petitioner meets the requirements of County Code, Section 3-1-207(a), a variance may not be granted unless the Board finds that a Petitioner for a variance also meets the

requirements of Section 3-1-207(e). The burden of proof and persuasion rests firmly with the Petitioner to meet all the criteria.

First, the Petitioner has the burden of proving that “the variance is the minimum variance necessary to afford relief.” § 3-1-207(e)(1). As previously discussed, this is a grossly undersized lot. There is not much room for a home. The footprint of the dwelling and porch are modest. The house meets all other setback requirements and is under the maximum amount of lot coverage. We find that any further reduction in the house would not avoid a variance, but would deprive the Petitioner of use of the property. Therefore, the Petitioner has met their burden that this is the minimum necessary to afford relief.

Furthermore, the Petitioner must show that granting the variance will not “alter the essential character of the neighborhood or district in which the lot is located.” § 3-1-207(e)(2)(i). In this case, we have a residential neighborhood dominated by an eclectic mix of single-family homes. The size, shape and configuration of the house is in harmony with those nearby. The variance will not change the essential character of the neighborhood.

The Petitioner is also required to show that “the granting of the variance will not substantially impair the appropriate use or development of adjacent property.” § 3-1-207(e)(2)(ii). The Petitioner’s proposal meets all other setback requirements. The neighboring undeveloped lots shall be placed in a conservation easement to enjoin further development. We find that this variance would not impair the use and development of adjacent properties.

The Petitioner next must establish that the granting of the variance will neither “reduce forest cover in the limited development and resource conservations areas of the critical area” nor “be contrary to acceptable clearing and replanting practices required for development in the critical area or a bog protection area.” § 3-1-207(e)(2)(iii)-(iv). The Petitioner provided evidence of reforestation and mitigation for any clearing that will occur on the lot. Additionally, the

Petitioner has proposed placing additional lots in a conservation easement. All this supports that the variance will not reduce forest cover and is not contrary to acceptable clearing and replanting practices. Therefore, the Petitioner has met their burden for these criteria.

Lastly, the Petitioner must establish that "the granting of the variance will not be detrimental to the public welfare." §3-1-207(e)(2)(v). The Petitioner's proposal will cause minimal disturbance to the steep slopes. It is a buildable lot, and the requested lot coverage is below the allowable amount. In addition, the Petitioner's proposal includes reforestation, mitigation, and conversation that are of a net benefit to the public welfare. The Petitioner has gone above and beyond to protect the environment above what the Code requires. For these reasons we find that the request is not detrimental to the public welfare.

ORDER

For the reasons set forth in the foregoing Memorandum of Opinion, it is this 22th day of OCTOBER, 2022, by the County Board of Appeals of Anne Arundel County, ORDERED, that the Petitioner's requests for (1) a variance to disturb 176 square feet of steep slopes, (2) a variance to disturb 2,773 square feet of the expanded buffer, and (3) a variance to allow less planted buffer to the top of steep slopes, are **GRANTED**; on the condition that lots 230, 231, 235-239 shall be placed in a permanent conservation easement.


Any appeal from this decision must be in accordance with the provisions of Section 604 of the Charter of Anne Arundel County, Maryland.

If this case is not appealed, exhibits must be claimed within 90 days of the date of this Order; otherwise, they will be discarded.


Any notice to this Board required under the Maryland Rules shall be addressed as follows: Anne Arundel County Board of Appeals, Arundel Center, P.O. Box 2700, Annapolis, Maryland 21404, ATTN: Deana L. Bussey, Clerk.

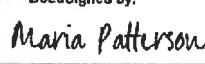
NOTICE: This Memorandum of Opinion does not constitute a building or grading permit and may be valid for a limited time period. In order for the applicant to construct or retain any structures allowed by this opinion, or to perform or retain any grading allowed by this opinion, the applicant must apply for and obtain the necessary building or grading permit and any other approval that may be required to perform the work described herein within the time allotted by law or regulation.

COUNTY BOARD OF APPEALS
OF ANNE ARUNDEL COUNTY


Anthony V. Lamartina, Chair


Scott MacMullan, Vice Chair

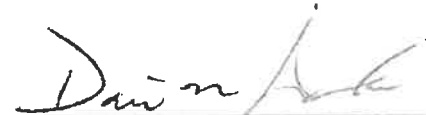

Patsy Baker Blackshear, Member

DocuSigned by:

Maria K. Patterson, Member

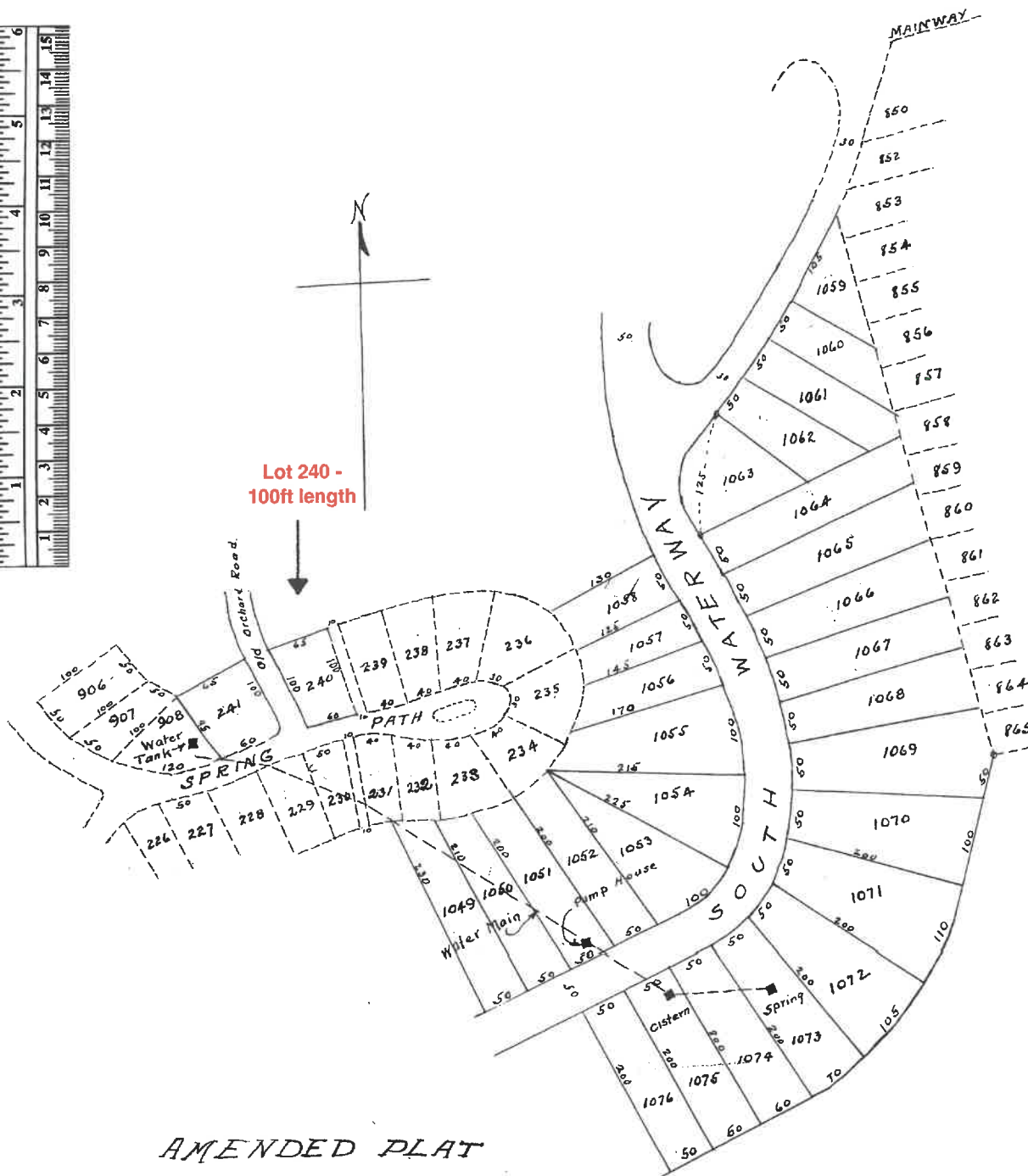
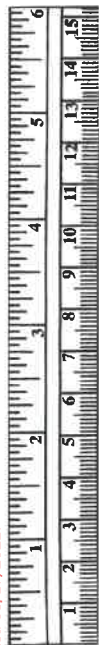
(Richard Forgo, Member, and John R. Fury, Member, did not participate in this appeal.)

DISSENT

I find that the Petitioner did not meet its burden that the requested relief is the minimum necessary and will not adversely affect sensitive vegetation present in the nearby wetlands. The subject property is a substandard lot. The Critical Area Program permits reasonable development, but in this case the Petitioner is attempting to maximize the allowable development as opposed to adhere to the spirit of the law. The State recognizes that there are sensitive wetlands nearby. Any development near the protected wetlands is presumed to be adverse. I appreciate the Petitioner's proposal of putting the neighboring undeveloped lots in a permanent conservation easement, but I do not believe this is enough to eliminate the impact from the proposed development.

A handwritten signature in dark ink, appearing to read "Darrin Jacobs", is written over a horizontal line.

Darrin Michael Jacobs, Member



AMENDED PLAT

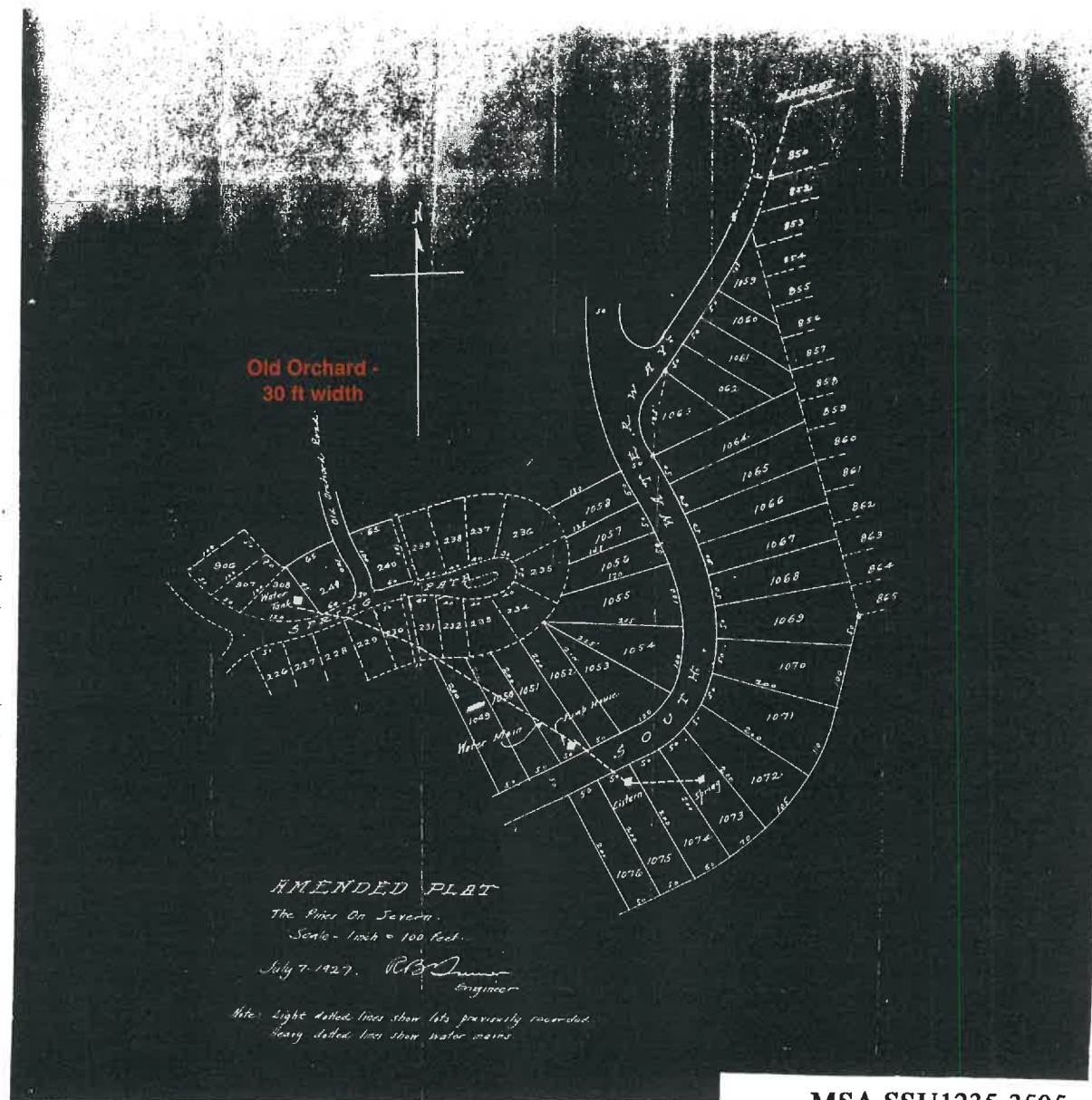
The Pines ON Severn

Scale - 1 inch = 100 feet

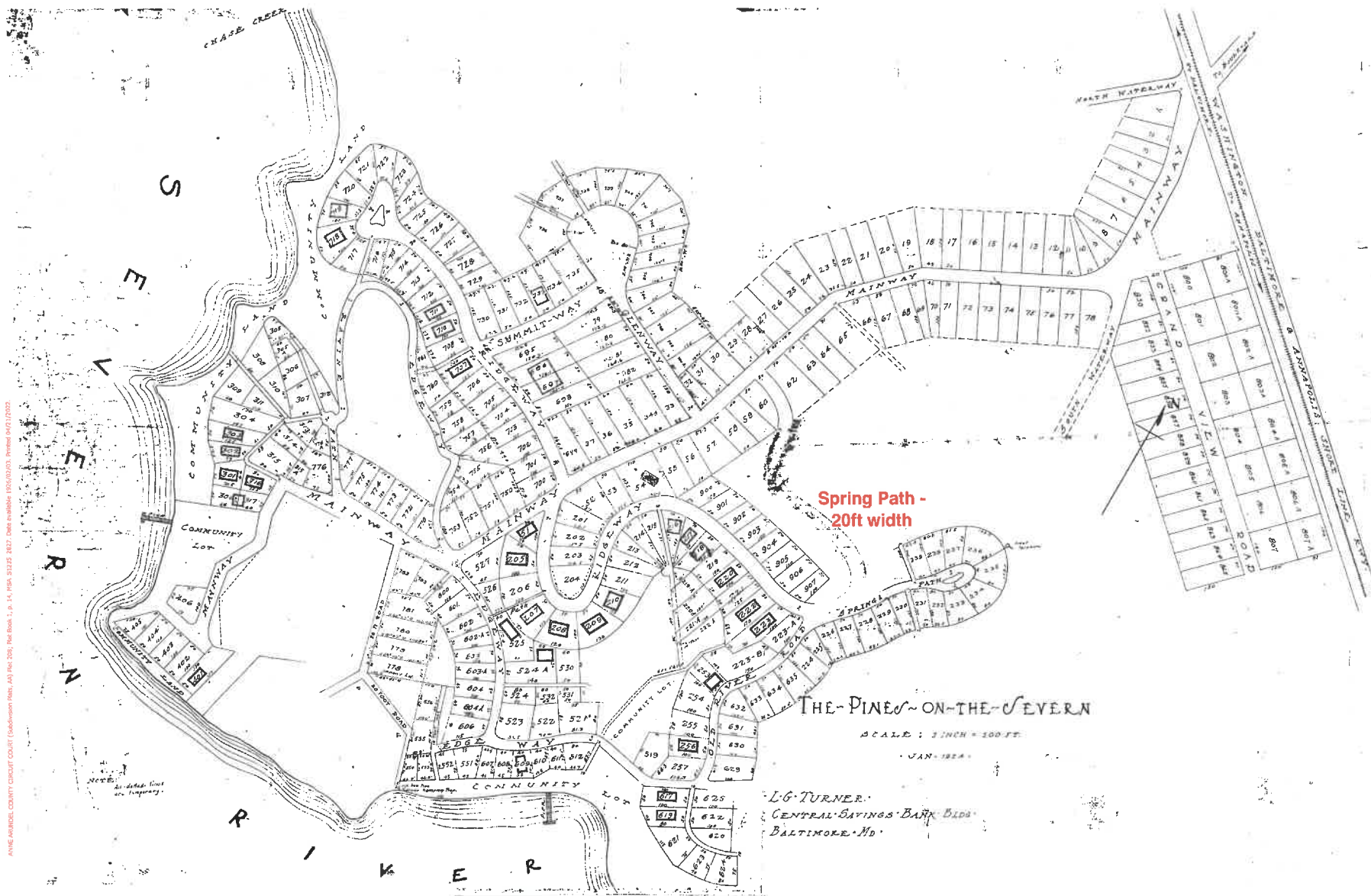
July 7-1927 *RB Turner*
Engineer

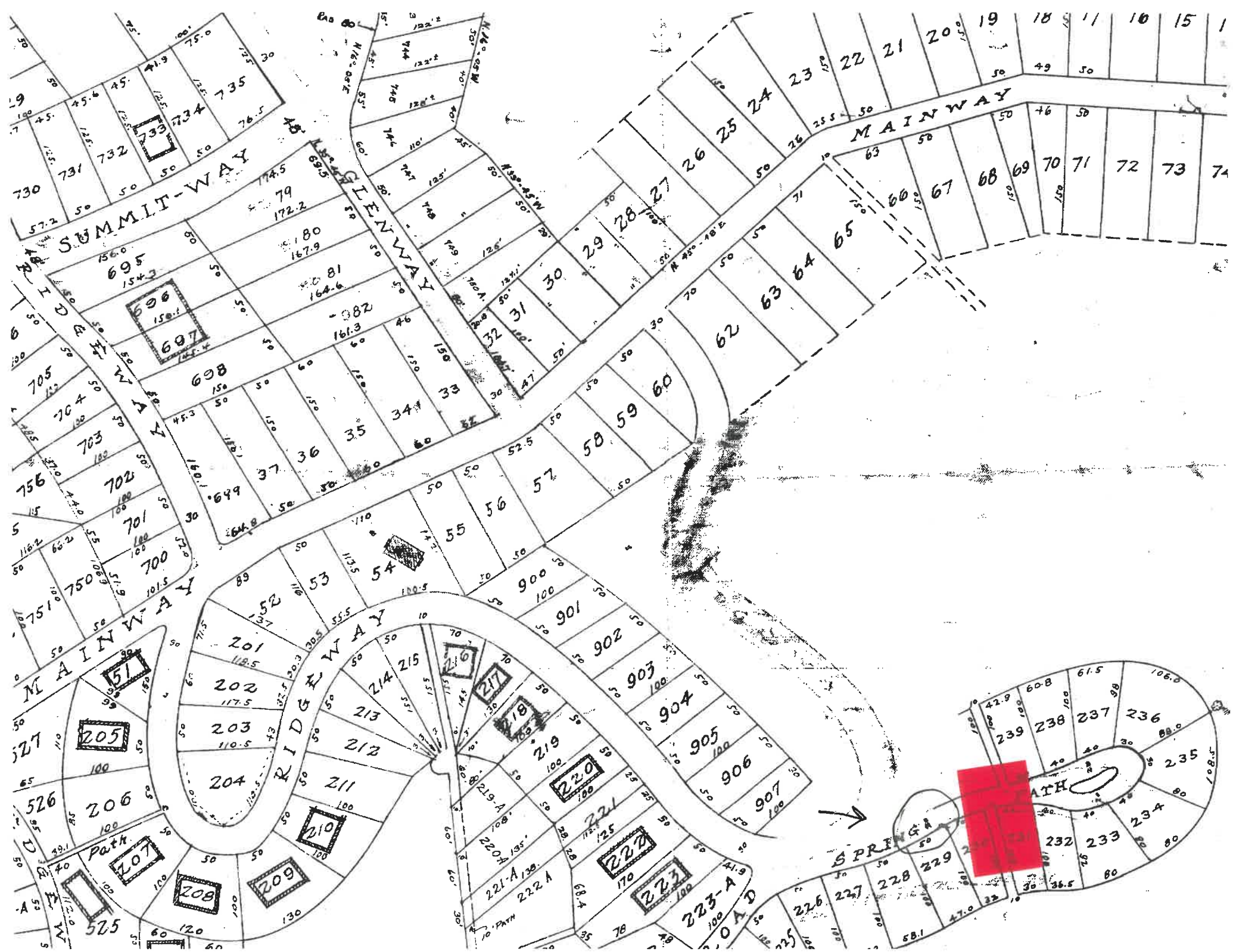
Note: Light dotted lines show lots previously recorded
Heavy dotted lines show water mains

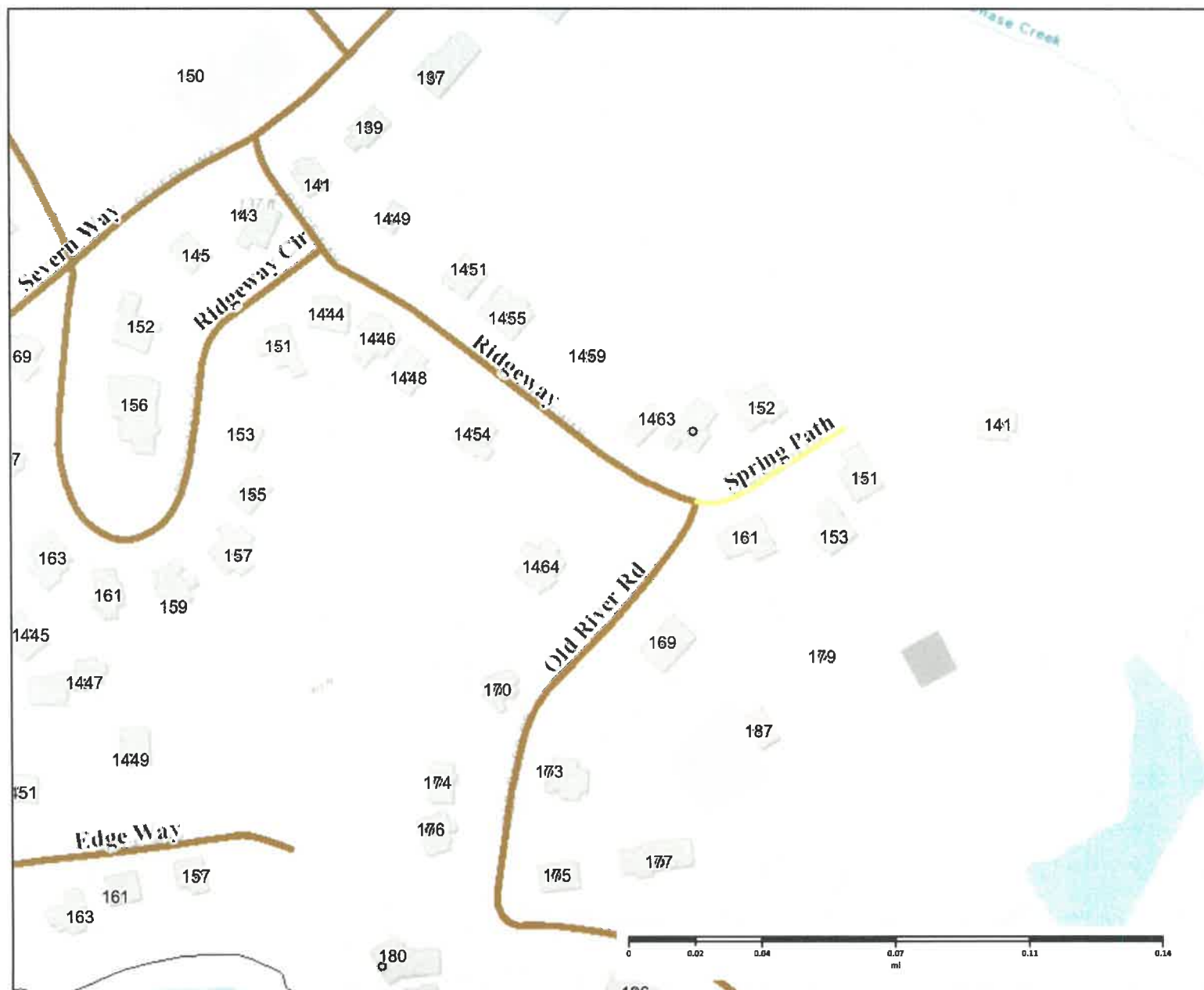
Filed Jan 28-1928
(No 303)



MSA SSU1235-3505







Features

- Address Points
- Road Maintenance Responsibility**
 - County
 - Private
 - City of Annapolis
 - State
 - State Highway Administration
 - Fort Meade
 - Active Public Works Agreement
 - To Be Determined
 - Under Warranty
 - Naval Academy
 - BWI Airport
 - County_Boundary

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Spring Path - Private Road



Maryland

Department of the Environment

Larry Hogan, Governor
Boyd K. Rutherford, Lt. Governor

Ben Grumbles, Secretary
Horacio Tablada, Deputy Secretary

Nontidal Wetlands and Waterways Pre-Application Summary

1. **AI#:** 1 7 1 1 0 0 REVISED on 8/3/2022
by CKerr/MDE
2. **Date:** 0 3 / 1 8 / 2 0 2 1 **Time:** 1 2 : 3 0 PM
3. **Summary prepared by:** Cheryl Kerr
4. **Attendees:** Kevin Haines, Holly Oak Consulting, LLC
5. **Property owner name:** Robert Posten & Ellen Bungay-Posten
6. **Address or Site Location/Description** (directions, if no physical address is available):

Lot 240 0 Spring Path, Arnold, MD 21012
7. **Project purpose:**

Construction of a single family home on an undeveloped lot
8. **Plans provided:** Yes ☒ No ☐
9. **State regulated resources found:** Yes ☐ No ☒
 NTW Type: PEM ☐ PSS ☐ PFO ☐ Landscape Mgmt Area ☐ Ag ☐
 NTW Buffer ☐ Critical Area ☒ Tidally Influenced ☐
 Waters of the State: Stream ☒ Floodplain ☐ Site is within the
Critical Area (CA)
11. **Delineation provided:** Yes ☒ No ☐
12. **Avoidance/Minimization Discussed? Recap:**

A nontidal wetland delineation was conducted on this site and a delineation report was provided to the Department prior to the site visit. There are no State regulated nontidal wetlands within the property boundaries of the site.

Upon review of additional information provided to MDE the site appears to wholly lie within the CA and partly within a Resource Conservation Area (RCA) and Wetland of Special State Concern (WSSC) designation.

13. **Project, as described, would require Authorization:** Yes ☐ No ☒

If Yes, type of State authorization required:

Permit ☐ Letter of Authorization ☐ Authorization to Proceed ☐

If Yes, project (as described or shown on plans) under the MDSPGP would be:

Category A ☐ Category B ☐ Individual Permit ☐

* U.S. ACE categorization is a preliminary determination only and may change upon receipt of application or further consultation with the U.S. ACE staff or other resource agencies

14. **Recommended Action** (check all that apply):

Consult with Corps ☐ Submit Application ☐ Schedule follow-up meeting ☐

No action required ☒ Other

Pre-App Site Visit Comments:

The site is forested and has a sloped terrain. There were no State regulated nontidal resources found on the site.

With permission, a second site visit was made as follow-up of the additional information. On 5/18/2022 MDE reviewed Lot 240 for any NTW and then Rucker's Ravine (RR) to locate the RTE species and other regulated resources. The limit of the nontidal wetland was identified, the RTE species was found & the stream was described as intermittent with subterranean and surface flow. A portion of Lot 240 is encumbered by designated RCA and WSSC and is within the CA limit as shown on GIS mapping used as indicators for regulation of these areas. Based on the findings of the second site visit the Dept confirmed there are no State regulated nontidal resources on Lot 240. DNR and/or the AA County will need to determine how to proceed.

Maryland Department of the Environment Reviewer Contact Information:

Name Email

Telephone () -

*This document is a summary of the items discussed. Please note that this information is based on MDE staff preliminary cursory review at the time of the preapplication meeting. MDE staff will perform a full review of the project and all available information at the time of the application submission. Additional information may be required.

Applicant/Consultant Signature:

