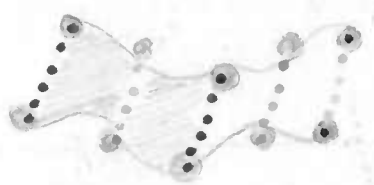


CA 162-06
VAR

Scientist Cliffs Assoc.
06-3293

MSA-S-1829-5625

Comments 3/31/06
KJ



Decision 5/11/06

• 8 variance standards to be met - all have to be met

1+2 → have not been met

→ good chance the variance would weaken the intent of CA reqs.

3 → minimum is questionable

4 → ~~unwarranted~~ no unwarranted hardship:
hardship is not equivalent to convenience

5 → right commonly enjoyed:

- parking area, alternatives, access to H₂O exists

→ No inherent rt. to construct access. structures in buffer

6 → Special privilege: granting variance would be ~~granted~~ a special privilege -

7 → circumstances / actions by applicant → OK

8 - habitat / harmony + spirit of law:

- Tiger beetle concerns

um

• Total variance not to be granted

• Approve the # of racks documented prior to 1989

- burden of proof rests w/ applicant

- based on grandfathering

- Beach Lockers existing - How many?
- Permitted
- Last page

- every property owner has 16' of beach lockers
- fair number built w/out permits
- some are sitting over MHW - do they have permits
- never got variances from the board
- Always existed - after Isabel they started popping up
- are they grandfathering

76520

 **Pendaflex**
 **Esselte**

40%



P4

Robert L. Ehrlich, Jr.
Governor

Michael S. Steele
Lt. Governor



Martin G. Madden
Chairman

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/

March 30, 2006

Ms. Roxana Whitt
Calvert County Department of Planning and Zoning
150 Main Street
Prince Frederick, Maryland 20678

Re: Variance 06-3293 Scientist Cliffs Association

Dear Ms. Whitt:

Thank you for providing information on the above referenced variance. The applicant is requesting a variance to permit the construction of multiple beach locker structures within the 100-foot Buffer. The property is designated a Limited Development Area (LDA) and is currently developed.

Based on the information provided, it appears that the applicant is proposing to construct an undisclosed number, possibly up to 50, 30 square foot beach storage units along the entire linear extent of the shoreline. While it is my understanding that a number of similar structures currently exist and have been in place for a number of years, it is not clear whether these structures were ever legally permitted. In addition, any existing lockers would be considered non-conforming in regard to the County's current zoning and Buffer regulations. While we recognize that the Scientist Cliffs Association has included the right of one 16-foot wide beach locker site within the Home Owners Association documents, there is no inherent right to construct an accessory structure within the Buffer.

In evaluating the applicant's variance request, we note that beach lockers are not considered a water-dependent use within the Critical Area. Therefore, the Board must determine that each and every one of the County's variance standards has been met in order to grant a variance. As you are aware, both the County's zoning ordinance and State law contain strict standards and provisions for management of the Buffer. In consideration of these standards, as well as the sensitive nature of the Buffer, it is our view that the construction of lockers as proposed will create an adverse impact to the Buffer and is not in keeping with the general spirit and intent of the Critical Area Law. In addition, it is our view that the standard of unwarranted hardship has not been met. Therefore, this office strongly opposes the granting of a variance. I have outlined each of the County's variance standards below.

1. *That special conditions or circumstances exist that are peculiar to the land or structure within the jurisdiction's Critical Area program that would result in an unwarranted hardship to the applicant.* As indicated, there is no inherent right to construct accessory structures within the 100-foot Buffer. Reasonable enjoyment of the community beach area could continue to be enjoyed, as it has for many years, without the construction of additional lockers within the Buffer. In addition, the lockers appear to serve mainly for

② CAC has seen & opposed these types of structures in other counties on both ind. lots & community areas. Note pictures showing location below. →

- Strongly opposed to variance
- No inherent R. to construct accessory structure in Buffer
- Not water dependent
- Note strict standards + management provisions for Buffer
- Beach lockers not consistent w/ those standards
- Do not believe unwarranted hardship exists nor that the proposal meets the intent of law
- We recommend the Board deny request

① not that different from any other grandfathers structure which would not be permitted to.

convenience. Convenience should not be a factor considered when evaluating unwarranted hardship. Therefore, this standard has not been met.

2. *That a literal interpretation of this subtitle or the local Critical Area Program and related ordinances will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical area of the local jurisdiction.* This office would not support similar variance requests to construct accessory locker structures within the Buffer.
3. *The granting of a variance will not confer upon an applicant any special privilege that would be denied by this subtitle or the local Critical Area program to other lands or structures within the jurisdiction's 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.
4. *The variance request is not based upon conditions or circumstances which are the result of the actions by the applicant, nor does the request arise from any condition conforming, on any neighboring property.* It appears that this standard has been met.
5. *The granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the jurisdiction's Critical Area, and that the granting of the variance will be in harmony with the general spirit and intent of the Critical Area law and the regulations.* In contrast, the granting of a variance to construct storage lockers within the Buffer is not in harmony with the general spirit and intent of the law. The Buffer is expressly managed to provide water quality, plant and wildlife habitat benefits. These benefits would be adversely affected by the proliferation of 30 square foot structures as proposed along the entirety of the shoreline.

While the exact location of the proposed lockers it is not clear based on the information submitted, this office has additional concerns that some of the existing lockers, as well as those proposed, would be located below the mean high water (MHW) line on the beach. Any development activity taking place waterward of MHW requires a wetland permit from the Department of the Environment (MDE). In addition, it is not clear whether the County has the authority to issue permits for accessory structures below MHW. This information should be taken into consideration when evaluating the variance request.

In conclusion, it is our position that, unless the Board finds, by competent and substantial evidence, that the applicant has met the burden of proof to overcome the presumption of non-conformance, and the burden to prove that the applicant has met each one of the County's variance standards, the Board must deny the applicant's request for a variance.

Thank you for the opportunity to provide comments. Please include this letter as a part of the record for this variance. Also, please notify the Commission in writing of the decision made in this case.

Sincerely,



Kerrie L. Gallo
Natural Resource Planner

5/11/06 - Revised Hearing

- SCA requests approval for 30 structures existing/built/re-built, post 1987
 - SCA requests approval of 20 additional structures currently assigned
- Total of 58 lockers/tracks

Gallo, Kerrie

From: Byrne, Lori
Sent: Thursday, April 20, 2006 3:39 PM
To: Gallo, Kerrie
Cc: McCarthy, Katharine; 'andy_moser@fws.gov'; Golden, Greg; 'rtabisz@mde.state.md.us'
Subject: RE: Beach Lockers-Calvert County

Hi Kerrie,

Thanks for the information you provided yesterday by phone, on this project. Our concerns for RT&E species would include those for both federally and state listed species of Puritan and Northeastern Beach Tiger Beetles (*Cicindela puritana* & *C. dorsalis*, respectively) that are known to inhabit this stretch of shoreline along Scientists Cliffs. The beach provides larval habitat and adult foraging and mating habitat for *C. dorsalis* and provides adult foraging and mating habitat for *C. puritana*. We are concerned in general over the cumulative impacts which cause loss of habitat for these species.

Without knowing what exactly is proposed, and whether there is any regulatory authority for us to comment, we can offer the following as recommendations for conserving the habitat of these species:

A time-of-year restriction would reduce the disturbance to foraging and mating beetles; construction therefore should not occur during the period of June through September [time] of any given year. Structures placed on stilts are thought to lessen the impact to tiger beetle habitat because they reduce the footprint of the structure on the beach, and minimization of the size of structures also would presumably lessen the impact to beetle habitat. These three measures, the time of year restriction, the placement of structures on stilts and the minimization of the size of the structures, would reduce the impacts of structures to endangered tiger beetle habitat but would not eliminate impacts.

Let me know how this proceeds. Thanks!

Lori

-----Original Message-----

From: Gallo, Kerrie
Sent: Friday, April 07, 2006 3:44 PM
To: Golden, Greg; 'Robert Tabisz'; Byrne, Lori
Subject: RE: Beach Lockers-Calvert County

Please keep in mind that this case will be decided before the Calvert County Board of Appeals on May 4th. I would need any concerns identified prior to that date to be considered. Thanks,

Kerrie

-----Original Message-----

From: Golden, Greg
Sent: Friday, April 07, 2006 3:26 PM
To: 'Robert Tabisz'; Byrne, Lori
Cc: Gallo, Kerrie
Subject: RE: Beach Lockers-Calvert County

In a sensitive habitat, I would have to imagine that a large number of those structures, or even a moderate number, would have to be considered a significant impact. I am deferring to Lori's initial response, since RTE habitat here is the priority concern (see Bob's original email to you for the photos). Lori, please let me know when you have determined a comment on these structures. If you end up not having a concern for your species, then I will at that time talk to John Nichols to see how much cumulative concern his agency and ours would have for aquatic species and non-RTE intertidal species. It's the large number and the likelihood of a number of derelict structures in the future that concerns me most. thanks greg

-----Original Message-----

From: Robert Tabisz [mailto:rtabisz@mde.state.md.us]
Sent: Friday, April 07, 2006 3:06 PM
To: Golden, Greg; Byrne, Lori
Subject: Fwd: Beach Lockers-Calvert County

Lori & Greg

What are your thoughts on this? Please let Kerrie know.

Bob

The information contained in this communication may be confidential, is intended only for the use of the recipient named above, and may be legally privileged. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication, or any of its contents, is strictly prohibited. If you have received this communication in error, please re-send this communication to the sender and delete the original message and any copy of it from your computer system. Thank you.

<<<<GWIASIG 0.07>>>>

CA162-06

N/F

Case No. 06-3293

Public Hearing
April 6, 2006
May 11, 2006

Walter Price has applied on behalf of the Scientists Cliffs Association for a variance in the 100' waterfront buffer requirements for construction of beach lockers within the buffer. The property is located along the Chesapeake Bay within the Scientists Cliffs Community Open Space, Port Republic and is zoned R-1/LDA Residential with a Limited Development Area (LDA) Critical Area overlay.

AUTHORITY OF THE BOARD OF APPEALS

Section 11-1.01.A of the Calvert County Zoning Ordinance provides that the Board of Appeals shall have the authority to grant variances from the strict application of the area, yard, and height requirements of the Ordinance.

Section 11-1.01.B of the Calvert County Zoning Ordinance provides that the Board of Appeals shall have the authority to grant variances from the Critical Area requirements.

TESTIMONY & EVIDENCE PRESENTED

1. The case was presented April 6, 2006 before Board of Appeals members Mr. Mike Reber, Chairman, Mr. Walter Boynton, Vice Chairman, and Mr. Dan Baker (the Board). Mr. Walter Price was present at the hearing and was represented by Mr. John Hollowell from the Scientists Cliffs community. A Staff Report, along with photographs taken on site, was entered into the record at the hearing.
2. The following Exhibits were marked, dated and entered into the record at the April hearing:
 - Applicant's Exhibit No. 1 - The Beach at Scientists Cliffs
 - Applicant's Exhibit No. 2 - April 5, 2006 Locker Information from John J. Hollowell, SCA Beach Committee
 - Applicant's Exhibit No. 3 - Beach Lockers & Former Locker Sites as of April 5, 2006
 - Applicant's Exhibit No. 4 - John Hollowell Scientists Cliffs Association Beach Committee Information, 2 pages, dated

RECEIVED

JUN 05 2006

CRITICAL AREA COMMISSION

April 5, 2006

3. The following persons testified at the April hearing:

- Norman Prince, Beach Committee, Scientists Cliffs
2488 Apple Road, Port Republic, MD 20676
- Joan Thorpe, President, Board of Directors, Scientists Cliffs
2559 Aster Road, Port Republic, MD 20676
- Mark Switzer, 2430 Acacia Road, Port Republic, MD 20676
- John Jones, 2635 Aster Road, Port Republic, MD 20676
- Steve Stracka, 4005 Dahlia Road, Port Republic, MD 20676
- Robert Safer, P. O. Box 603, Acacia Road, Port Republic, MD
20676
- Kerrie Gallo, Chesapeake Bay Critical Area Commission

4. The following correspondence was entered into the record at the April hearing:

- Letter dated March 30, 2006 from Kerrie Gallo, Chesapeake Bay Critical Area Commission
- Memo dated March 21, 2006 from Ron Babcock, Calvert Soil Conservation District
- Memo dated March 27, 2006 from Stephanie Taylor, Calvert County Engineering Bureau
- E-Mail Letter dated April 3, 2006 from Luisa Freeman-Farvardin
- E-Mail Letter dated April 4, 2006 from Susan Scholl
- E-Mail Letter dated April 3, 2006 from Tina Bryan
- Letter dated April 3, 2006 from Mary Ann LaCouture, 3820 Balsam Road, Port Republic, MD 20676 (w/photos)
- E-Mail Letter dated April 6, 2006 from Roberta Safer & Klaus Zwilsky, 2348 Acacia Road, Port Republic, MD 20676
- E-Mail Letter dated April 5, 2006 from Loretta Schaeffer Guarda, 2445 Althea Road, Port Republic, MD 20676
- E-Mail letter dated April 5, 2006 from Bob Cole, Angelica Road, Port Republic, MD 20676

5. The Board deferred action at the April hearing pending receipt of documentation indicating which beach lockers were in place prior to 1989.

6. The case was again presented May 11, 2006 before Board of Appeals members Mr. Mike Reber, Chairman, Mr. Walter Boynton, Vice Chairman, and Mr. Dan Baker (the Board). Mr. Walter Price was present at the hearing and was represented by Mr. John Hollowell from Scientists Cliffs.

7. The following Exhibits were marked, dated and entered into the record at the May hearing:
 - Applicant's Exhibit No. 1 - Plat Scientists' Cliffs
 - Applicant's Exhibit No. 2 - Beach Lockers, May 1987
 - Applicant's Exhibit No. 3 - Joyce McDonald Letter dated February 7, 1987
 - Applicant's Exhibit No. 4 - John Hollowell Beach Locker Information dated May 11, 2006
8. The following persons testified at the May hearing:
 - Kerrie Gallo, Chesapeake Bay Critical Area Commission
 - Glynn Frank, Ames Iowa
9. The following correspondence was entered into the record at the May hearing.
 - E-Mail Memo from Kerrie Gallo, CBCAC to Roxana Whitt dated May 9, 2006, Subject: Comments for BOA Case #06-3293

FINDINGS OF FACT

Based on the application, the site visit, testimony and evidence presented at the hearings, the Board found the following facts to be true:

1. The property is located along the Chesapeake Bay shoreline between Parker's Creek and Governor's Run, and is otherwise known as the Open Space for the Scientists Cliffs community.
2. The subject property is zoned R-1 with a Limited Development Area (LDA) Critical Area overlay.
3. Section 2-of the Zoning Ordinance states, with respect to R-1 zoning:

This district is intended to provide for single-family residential development of medium density.

4. Section 8-1.03of the Zoning Ordinance states, with respect to LDA zoning overlay:

"Limited Development Areas are those areas within the Critical Area District which are currently developed in low or moderate intensity uses.

They also contain areas of natural plant and animal habitats, and the quality of runoff from these areas has not been substantially altered or impaired."

5. A variance is requested to place and/or replace beach lockers within the Critical Area buffer along the shoreline.
6. Numerous beach lockers were constructed within the buffer and along the shoreline throughout the history of the community.
7. It is unclear how many of the structures are grandfathered and how many were built without permit or variance since Calvert County's adoption of Critical Area regulations in 1989.
8. The lockers are built on piers above ground level. The tide comes in underneath a number of the structures.
9. Most of the lockers are pushed back from the water and against the cliff.
10. Section 8-1.01 of the Zoning Ordinance states, with respect to the Critical Area Buffer:

*The purpose of the Buffer is to:
Provide for the removal or reduction of sediments, nutrients, and potentially harmful or toxic substances in runoff entering the Bay and its tributaries;
Minimize the adverse effects of human activities on wetlands, shorelines, stream banks, tidal waters, and aquatic resources;
Maintain an area of transitional habitat between aquatic and upland communities;
Maintain the natural environment of streams; and
Protect riparian wildlife habitat.*

11. Section 8-1.01.C.4.a states:

New development activities, including structures, roads, parking areas and other impervious surfaces, mining and related facilities, or septic systems, may not be permitted in the buffer, except for those necessarily associated with water-dependent facilities.

12. In order to grant a variance, the Board must find that denial of the variance request would result in unwarranted hardship; however, the Board also has the authority to find that the structures are associated with a water-dependent use.
13. The property and those beach lockers in place prior to 1989 are properly grandfathered.

14. Construction of any beach lockers within the buffer would take place during the time of year that would reduce disturbance to foraging and mating Puritan and North Eastern Beach Tiger Beetles.
15. The variance requested is not the minimum adjustment necessary to afford relief from regulations. There is no inherent right to construct accessory structures within the 100-foot buffer.
16. There are alternative locations at Scientists Cliffs, outside of the 100-foot buffer, for the placement of beach lockers.
- ✓ 17. The applicant has not met all the criteria required for the Board to grant a variance for a number of beach lockers greater than those grandfathered and for those in place prior to 1989. Hardship is not equivalent to convenience.
- ✓ 18. Granting a variance for beach lockers greater than those grandfathered and for those in place prior to 1989 would weaken the intent and the application of the Critical Area legislation implemented in the State of Maryland and in Calvert County.
- ✓ 19. Granting the variance for beach lockers greater than those grandfathered and for those in place prior to 1989 would confer upon the applicant a special privilege that would be denied to others in this area as well as in other locations in the County's Critical Area.

CONCLUSIONS

Based on the above findings of fact, the Board came to the following conclusions (in accordance with Section 11-1.01.A and Section 11-1.01.B of the Calvert County Zoning Ordinance) and based upon testimony and evidence presented:

1. Strict application of the 100' waterfront buffer requirements for maintenance and replacement of the number of beach lockers within the buffer that were in place prior to January 1, 1989 would impose peculiar and unusual practical difficulties upon the applicant.

Strict application of the 100' waterfront buffer requirements for construction of a number of beach lockers within the buffer greater than those in place prior to January 1, 1989 would not impose peculiar and unusual difficulties upon the applicant.

2. Granting the variance for maintenance and replacement of the number of beach lockers within the buffer that were in place prior to January 1, 1989 would not cause injury to the public interest or substantially impair the intent of the Comprehensive Plan.

Granting the variance for construction of a number of beach lockers within the buffer greater than those that were in place prior to January 1, 1989 would cause injury to the public interest or substantially impair the intent of the Comprehensive Plan.

3. Findings were not made which demonstrate that special conditions or circumstances exist that are peculiar to the land and that a literal enforcement of provisions within the County's Critical Area Program would result in unwarranted hardship insofar as it relates to construction of new beach lockers not in existence prior to January 1, 1989.
4. A literal interpretation of the Critical Area Legislation and the Calvert County Critical Area Program and related ordinances for construction of a number of beach lockers greater than those that were in existence prior to January 1, 1989 would not deprive the Applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area of the County.
5. The granting of the variance for the number of beach lockers in existence prior to January 1, 1989 will not confer upon the Applicant special privileges that would be denied by the Calvert County Critical Area Program to other lands or structures within the County's Critical Area.

The granting of the variance for a number of beach lockers greater than those in existence prior to January 1, 1989 would confer upon the Applicant special privileges that would be denied by the Calvert County Critical Area Program to other lands or structures within the County's Critical Area.

6. The variance request is not based upon conditions or circumstances, which are the result of actions by the Applicant, nor does the request arise from any condition relating to land or building use, either permitted or non-conforming, on any neighboring property.
7. The granting of the variance for the number of beach lockers that were in existence prior to January 1, 1989 will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the County's Critical Area, and the granting of the variance will be in harmony with the general spirit and intent of the Critical

Area law. Replacement construction of those approved beach lockers would be performed during the time of year that would reduce disturbance to foraging and mating beetles.

8. The application for the variance was made in writing to the Board of Appeals with a copy provided to the Critical Area Commission.

ORDER

It is hereby ordered, by a unanimous decision, that the variance in the 100' waterfront buffer requirements for construction within the buffer of the number of beach lockers in existence prior to 1989, as requested by Walter Price on behalf of the Scientists Cliffs Association be **GRANTED** based on the above findings of fact and conclusions subject to the following conditions:

1. The Applicant shall bear the burden of proof for establishing with the Department of Planning and Zoning the number of lockers that were in existence prior to January 1, 1989.
2. The lockers shall be constructed in accordance with specifications noted above.
3. All permits and approvals required by the Calvert County Zoning Ordinance the Department of Planning and Zoning and those required by any other departments, agencies, commissions, boards or entities, in accordance with County, State and Federal law, must be obtained before commencing the development activity approved by this Order.

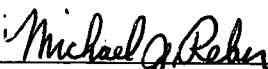
It is hereby ordered, by a unanimous decision, that the variance in the 100' waterfront buffer requirements for construction within the buffer of a number of beach lockers greater than those in existence prior to January 1, 1989, as requested by Walter

Price on behalf of the Scientists Cliffs Association be **DENIED** based on the above findings of fact and conclusions.

In accordance with Section 6 of the Calvert County Board of Appeals Rules of Procedure, "any party to a case may apply for a reconsideration of the Board's decision no later than 15 days from the date of the Board's Order."

In accordance with Section 11-1.02 of the Calvert County Zoning Ordinance, "any person or persons, jointly or severally, aggrieved by any decision of the Board of Appeals...may appeal the same to the Circuit Court of Calvert County. Such appeal shall be taken according to the Maryland Rules as set forth in Maryland Rules, Title 7, Chapter 200 within 30 days. If any application for a variance is denied by a final order of the Board, or if appealed, by a final order of the Court, a second application involving substantially the same subject matter shall not be filed within one year from the date of the final order."

Entered: June 2 2006
Pamela P. Helie, Clerk



Michael J. Reber, Chairman

~~38~~ 38 + 20 additional = 58

We believe that the lockers and boat racks at Scientists Cliffs are water dependent facilities, which are permitted under section 8-1.08.D.3.c, and as defined in Article 12- page 58

The Board of Appeals has granted similar requests in the past. See case No. 04-3081

Scientists Cliffs Association has had a practice of permitting its members to build lockers and racks on the beach since 1935 which sets us apart from many newer communities. The lockers and racks are built on bare sand; no vegetation is removed to build them. There is no apparent adverse affect on the buffer as a result of these structures. The lockers and racks are ephemeral structures, and are frequently swept away by storms and hurricanes.

Scientists Cliffs has 1 2/3 miles of beach. Only at the southern end of Gate A is the beach accessible by motor vehicle, with parking available. To reach the beach near their homes, most members walk down from the top of the cliff, following steep paths and long sets of steps.

Lockers are used to store, fishing rods, oars, paddles, outboard motors, anchors, fuel cans, life jackets, children's beach toys, and beach chairs. It would be a great hardship, particularly for the elderly and those with small children to carry this gear up and down the steps.

The boat racks allow small boats and canoes to be kept on the beach, with out being disturbed by high tides.

Approximately 60 lockers were present in 1977.
44 lockers and racks are documented in 1987.

38 lockers and racks are now present.

Of those 38:

8 are grandfathered originals (present in 1987), having only minor maintenance, or rebuilt with a permit (2)

20 were built or rebuilt between 1989 and 2003 with out permit

10 were rebuilt 2003/2004 with out permit

An additional 60 sites are documented as assigned or previously assigned, many of them had lockers or racks swept away in the 1996-2003 period and currently 12 members have requests pending to rebuild.

We are requesting a variance for the approval of the 30 structures that were built or rebuilt post 1989.

We are requesting a variance for approval of 20 of the additional sites that are either currently assigned, or were previously assigned. We need the flexibility that locker sites may be moved to allow placement where the beach is wide enough to support such use.

This would be 58 lockers or racks on 1 2/3 mile of beach.

Scientists Cliffs Association would apply for permits under this variance on behalf of members, before any further building takes place.

John J Hollowell
SCA Beach Committee
May 11, 2006

Robert L. Ehrlich, Jr.
Governor

Michael S. Steele
Lt. Governor



Martin G. Madden
Chairman

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/

March 30, 2006

Ms. Roxana Whitt
Calvert County Department of Planning and Zoning
150 Main Street
Prince Frederick, Maryland 20678

Re: Variance 06-3293 Scientist Cliffs Association

Dear Ms. Whitt:

Thank you for providing information on the above referenced variance. The applicant is requesting a variance to permit the construction of multiple beach locker structures within the 100-foot Buffer. The property is designated a Limited Development Area (LDA) and is currently developed.

Based on the information provided, it appears that the applicant is proposing to construct an undisclosed number, possibly up to 50, 30 square foot beach storage units along the entire linear extent of the shoreline. While it is my understanding that a number of similar structures currently exist and have been in place for a number of years, it is not clear whether these structures were ever legally permitted. In addition, any existing lockers would be considered non-conforming in regard to the County's current zoning and Buffer regulations. While we recognize that the Scientist Cliffs Association has included the right of one 16-foot wide beach locker site within the Home Owners Association documents, there is no inherent right to construct an accessory structure within the Buffer.

In evaluating the applicant's variance request, we note that beach lockers are not considered a water-dependent use within the Critical Area. Therefore, the Board must determine that each and every one of the County's variance standards has been met in order to grant a variance. As you are aware, both the County's zoning ordinance and State law contain strict standards and provisions for management of the Buffer. In consideration of these standards, as well as the sensitive nature of the Buffer, it is our view that the construction of lockers as proposed will create an adverse impact to the Buffer and is not in keeping with the general spirit and intent of the Critical Area Law. In addition, it is our view that the standard of unwarranted hardship has not been met. Therefore, this office strongly opposes the granting of a variance. I have outlined each of the County's variance standards below.

1. *That special conditions or circumstances exist that are peculiar to the land or structure within the jurisdiction's Critical Area program that would result in an unwarranted hardship to the applicant.* As indicated, there is no inherent right to construct accessory structures within the 100-foot Buffer. Reasonable enjoyment of the community beach area could continue to be enjoyed, as it has for many years, without the construction of additional lockers within the Buffer. In addition, the lockers appear to serve mainly for

convenience. Convenience should not be a factor considered when evaluating unwarranted hardship. Therefore, this standard has not been met.

2. *That a literal interpretation of this subtitle or the local Critical Area Program and related ordinances will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical area of the local jurisdiction.* This office would not support similar variance requests to construct accessory locker structures within the Buffer.
3. *The granting of a variance will not confer upon an applicant any special privilege that would be denied by this subtitle or the local Critical Area program to other lands or structures within the jurisdiction's 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.
4. *The variance request is not based upon conditions or circumstances which are the result of the actions by the applicant, nor does the request arise from any condition conforming, on any neighboring property.* It appears that this standard has been met.
5. *The granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the jurisdiction's Critical Area, and that the granting of the variance will be in harmony with the general spirit and intent of the Critical Area law and the regulations.* In contrast, the granting of a variance to construct storage lockers within the Buffer is not in harmony with the general spirit and intent of the law. The Buffer is expressly managed to provide water quality, plant and wildlife habitat benefits. These benefits would be adversely affected by the proliferation of 30 square foot structures as proposed along the entirety of the shoreline.

While the exact location of the proposed lockers it is not clear based on the information submitted, this office has additional concerns that some of the existing lockers, as well as those proposed, would be located below the mean high water (MHW) line on the beach. Any development activity taking place waterward of MHW requires a wetland permit from the Department of the Environment (MDE). In addition, it is not clear whether the County has the authority to issue permits for accessory structures below MHW. This information should be taken into consideration when evaluating the variance request.

In conclusion, it is our position that, unless the Board finds, by competent and substantial evidence, that the applicant has met the burden of proof to overcome the presumption of non-conformance, and the burden to prove that the applicant has met each one of the County's variance standards, the Board must deny the applicant's request for a variance.

Thank you for the opportunity to provide comments. Please include this letter as a part of the record for this variance. Also, please notify the Commission in writing of the decision made in this case.

Sincerely,



Kerrie L. Gallo
Natural Resource Planner