

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/](http://www.dnr.state.md.us/criticalarea/)

December 30, 2008

Ms. Pam Cotter  
Anne Arundel County  
Office of Planning and Zoning  
2664 Riva Road, MS 6301  
Annapolis, Maryland 21401

Re: Benjamin. 2008-0375-V

Dear Ms. Cotter:

Thank you for forwarding the above-referenced variance application. The applicant proposes to construct a driveway (for accessing a new residential dwelling outside of the Critical Area). The Critical Area of the lot is .87 acre with 5,150 square feet of disturbance to nontidal wetlands in the Limited Development Area (LDA). The variance request is due to proposed disturbance to nontidal wetlands for constructing the driveway.

This office does not oppose the granting of this variance request, provided the applicant obtains the proper Maryland Department of the Environment (MDE) and U.S. Army Corp of Engineers permits and completes the required wetland creation mitigation as determined by (MDE). We recommend that a permit and mitigation plan be required as a condition of the variance approval. In addition, there are no details provided on lot coverage or forest clearing in the LDA. Please note that mitigation is required by the Anne Arundel County Code for all clearing within the LDA. Therefore, lot coverage square footage and percentages as well as forest clearing square footage, percentage and mitigation should be a condition of the variance approval.

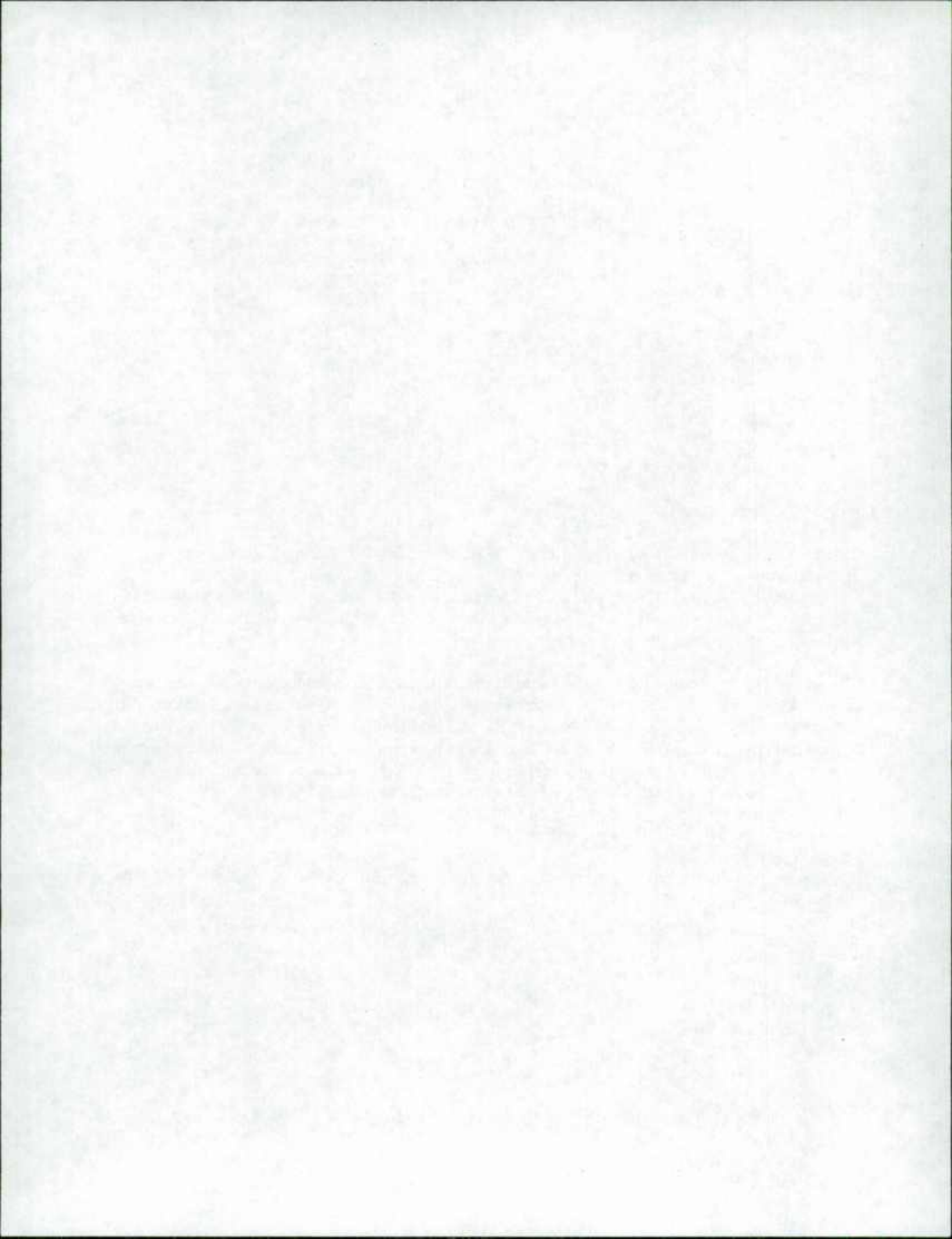
Thank you for the opportunity to comment. Please telephone me if you have any questions at (410) 260-3468.

Sincerely,

A handwritten signature in cursive script, appearing to read "Roby Hurley".

Roby Hurley  
Natural Resources Planner  
cc: AA 695-08





IN RE:	*	ANNE ARUNDEL COUNTY
DENISE S. BENJAMIN	*	OFFICE OF
	*	ADMINISTRATIVE HEARINGS
SEVENTH ASSESSMENT DISTRICT	*	CASE NO. 2008-0375-V
* * * * *		

**AMENDED ORDER**

This case having been heard on February 3, 2009; an Opinion and Order having issued on February 23, 2009; it having been brought to the attention of the Administrative Hearing Officer that the first condition of the said Order contained an error;

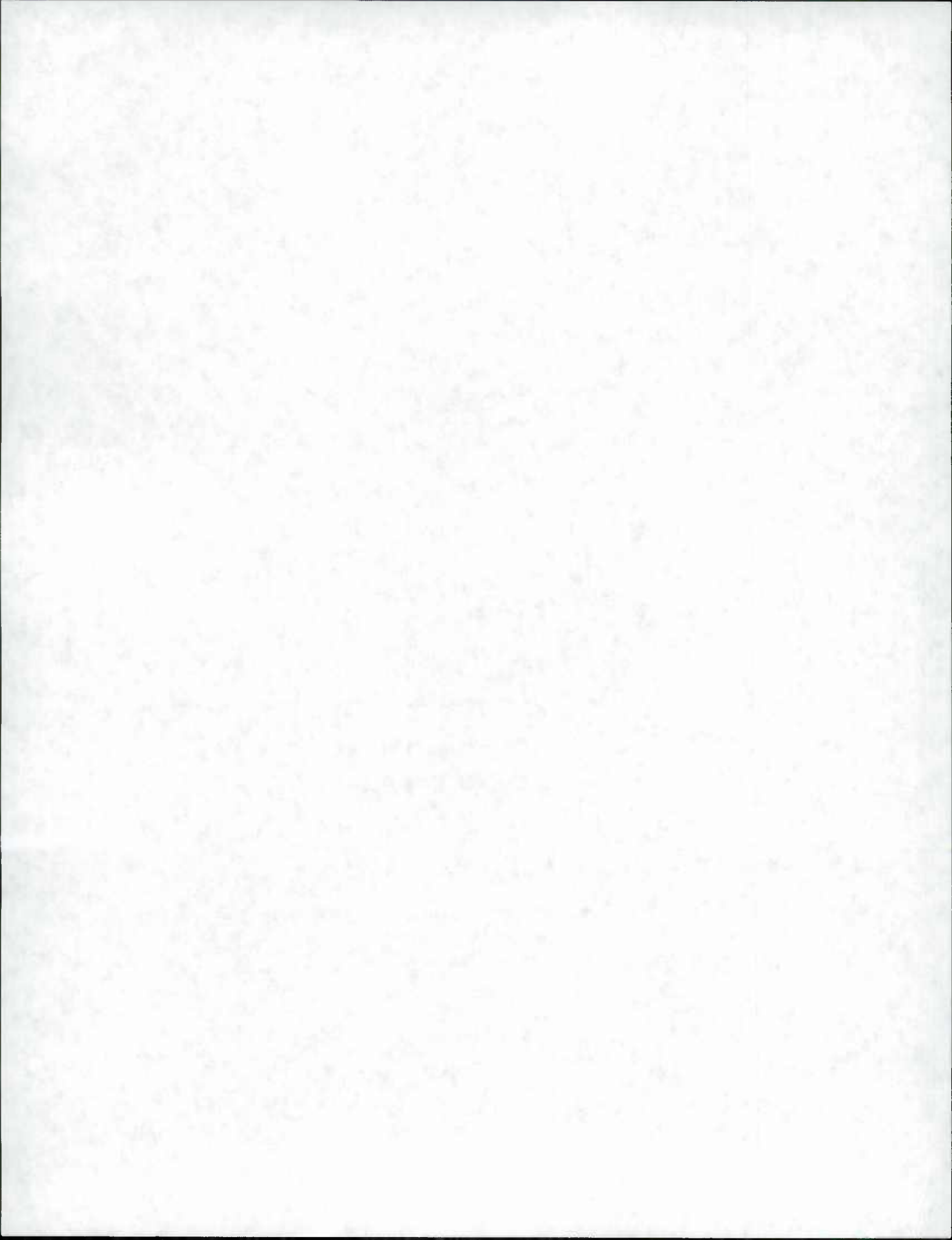
IT IS THIS 9<sup>th</sup> day of March, 2009,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County that the Opinion and Order issued in these proceedings dated February 26, 2009, be and the same is hereby AMENDED to DELETE the paragraph numbered "1" on Page 18 (which required the removal of the crawl-space under the proposed new dwelling) in its entirety. This Amended Order is based upon Section R323 of the International Building Code as amended and adopted by Anne Arundel County Building Code.

In all other respects the Opinion and Order of February 23, 2009 shall remain the same.



*[Handwritten Signature]*  
 \_\_\_\_\_  
 Douglas Clark Hollmann  
 Administrative Hearing Officer



695-08  
RBK 3/3/9

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

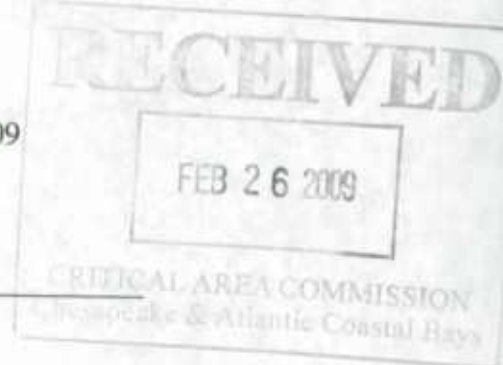
CASE NUMBER 2008-0375-V

---

DENISE S. BENJAMIN

SEVENTH ASSESSMENT DISTRICT

DATE HEARD: FEBRUARY 3, 2009



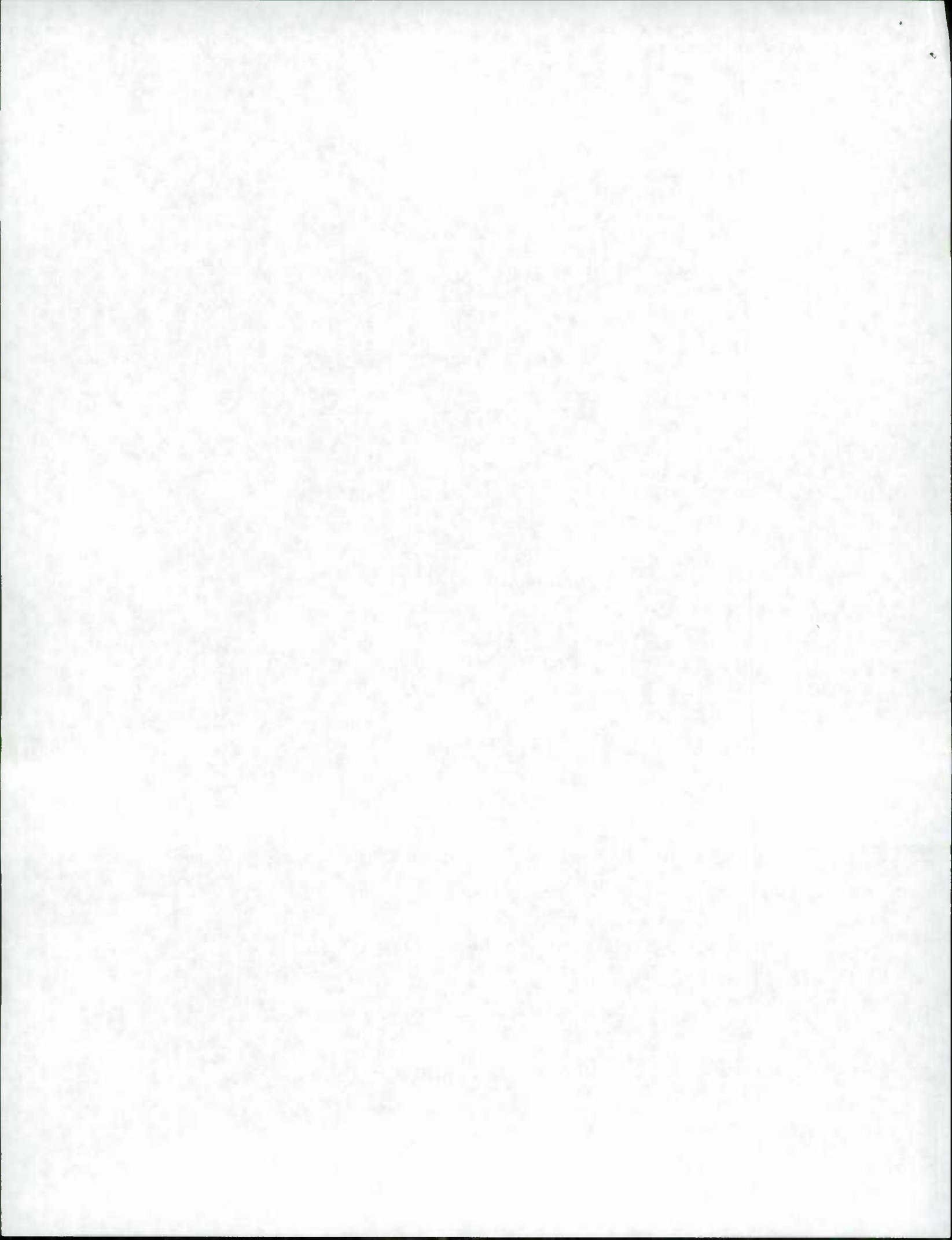
---

ORDERED BY:  
DOUGLAS CLARK HOLLMANN, ADMINISTRATIVE HEARING OFFICER

PLANNER: LORI RHODES

---

DATE FILED: FEBRUARY 23<sup>rd</sup>, 2009



## **PLEADINGS**

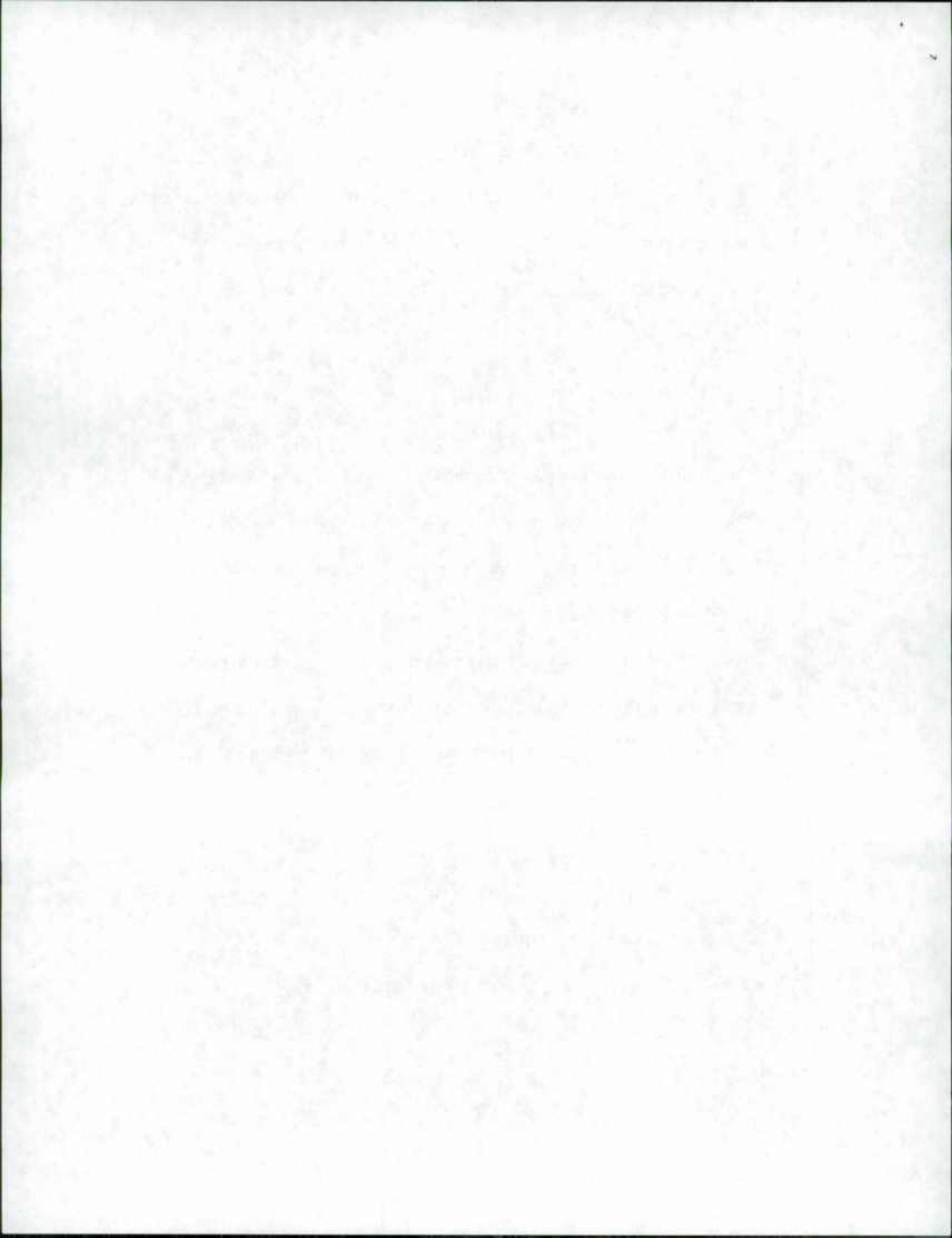
Denise S. Benjamin, the applicant, seeks a variance (2008-0375-V) to allow an access drive and associated facilities with less buffer than required on property located along the east side of Chalk Point Road, north of MD Route 468 (Muddy Creek Road) in West River.

## **PUBLIC NOTIFICATION**

The hearing notice was posted on the County's web site in accordance with the County Code. The file contains the certification of mailing to community associations and interested persons. Each person designated in the application as owning land that is located within 175 feet of the property was notified by mail, sent to the address furnished with the application. Denise S. Benjamin testified that the property was posted with the required signs for more than 14 days prior to the hearing. I find and conclude that there has been compliance with the notice requirements.

## **FINDINGS**

A hearing was held on February 3, 2009, in which witnesses were sworn and the following evidence was presented with regard to the proposed variance requested by the applicant.





## The Applicant And The Property

The subject site is located on the east side of Chalk Point Road and 4,500 feet north of MD Route 468 (Muddy Creek Road), with a street address of 5129 Chalk Point Road, West River, Maryland, 20778 (the Property).<sup>1</sup> The Property is located within the Chesapeake Bay critical area. The portion of the Property adjoining Chalk Point Road is designated limited development area (LDA); a small portion of the rear of the Property is designated resource conservation area (RCA). The Property is split-zoned R1 and R2 Residential Districts. The Property is currently undeveloped.

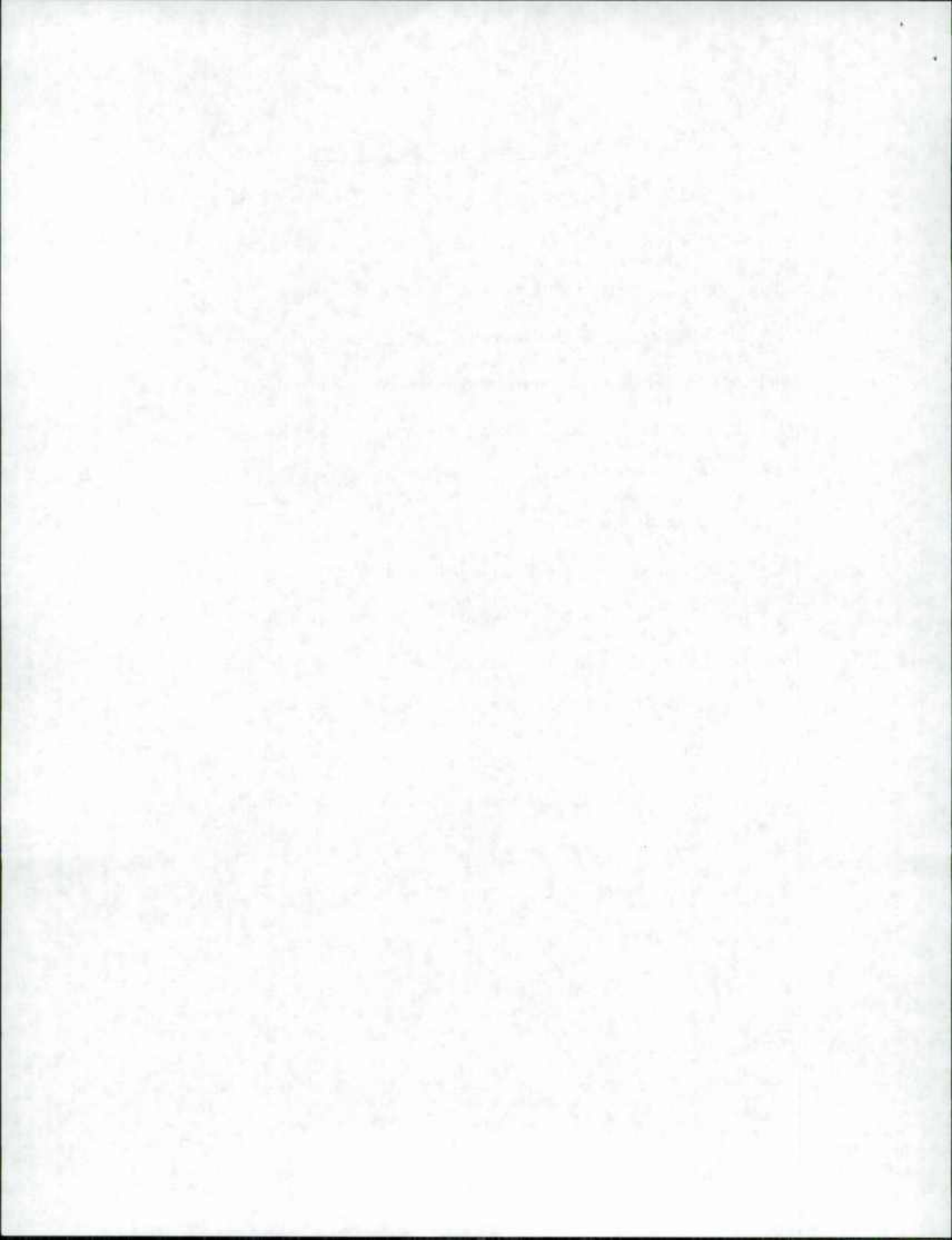
The Property, or parts of it, has been the subject of two previous variance applications. In 2004, Case No. 2004-0209-V, a prior owner of the Property applied for permission to construct a dwelling and well with disturbance to nontidal wetlands. The application, which was modified, was granted with conditions. The prior owner was unable to successfully obtain building permits within the required timeframe and filed Case No. 2005-0445-V for an extension of time, which was granted. Apparently, that variance was allowed to expire.<sup>2</sup>

The applicant acquire the Property on November 30, 2006 and seeks to construct a dwelling and a private well outside of the critical area on the Property,

---

<sup>1</sup> The Property was originally illegally subdivided. Subsequent to the earlier variance requests, an application to legalize the lot was submitted. However, for reasons not stated, the application has not been completed. This process was ongoing when the original variance was granted in 2004 for a smaller house in the critical area.

<sup>2</sup> The first variance granted approval for a dwelling that was to be smaller than the dwelling the new owner now wants to build. Because the first variance was never carried into effect, and because the facts are different in this application, I am not bound by any determination in the first case. The new dwelling is to be sited outside the LDA. However, it still impacts nontidal wetlands.



and a long driveway for access that parallels the northern property line. A little more than half the driveway is inside the LDA critical area.

### **The Proposed Work**

The applicant is seeking a variance to allow the construction of a dwelling and associated facilities with less setbacks and buffer than required.

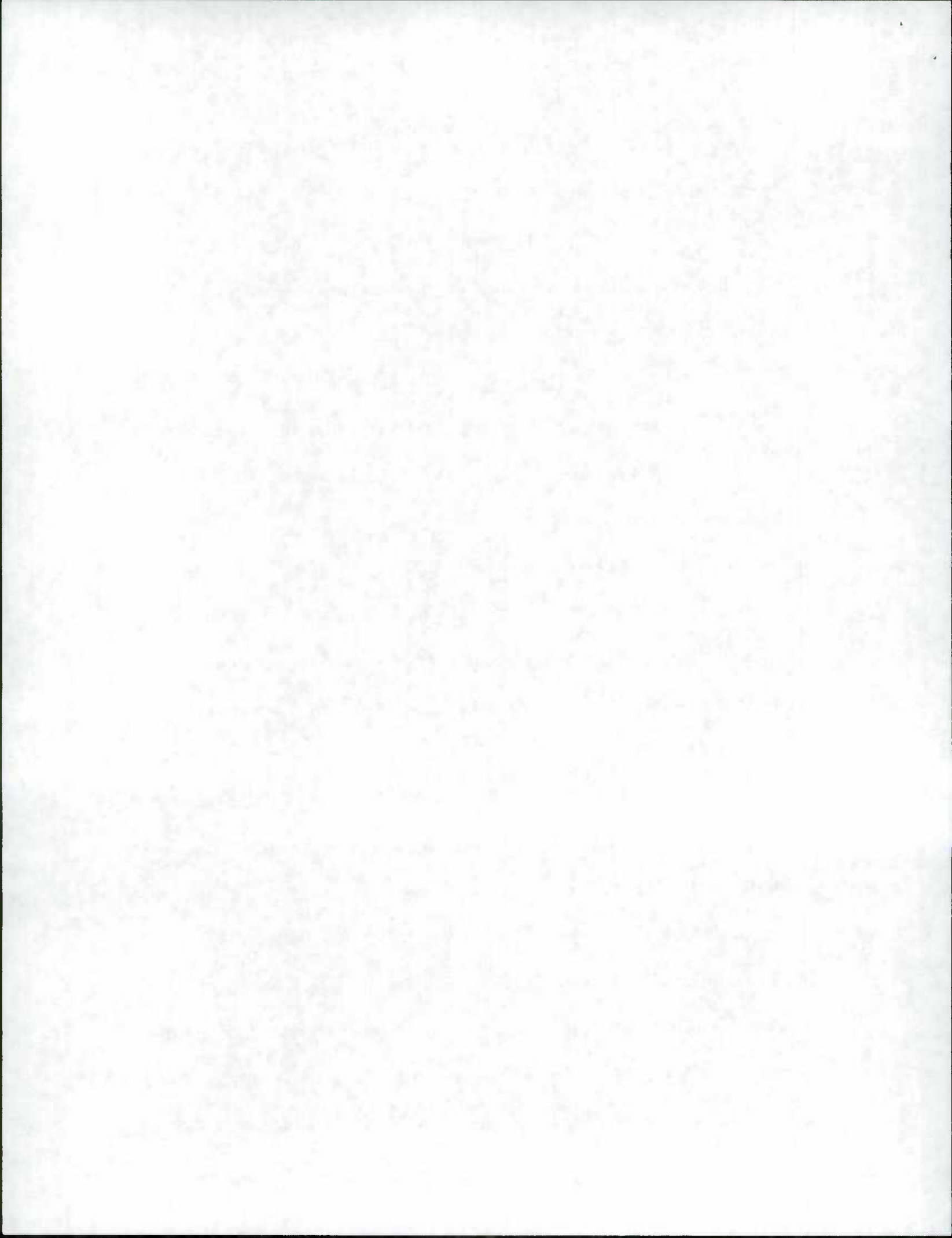
### **The Variance Requested**

The work proposed by the applicant, therefore, will require a variance to Anne Arundel County Code, Article 17, § 17-8-502 because the work will impact a habitat protection area.

### **The Evidence Submitted At The Hearing**

Lori Rhodes, a planner with the Office of Planning and Zoning (OPZ), testified that the Property is a long rectangular parcel that exceeds the minimum 20,000 square feet of lot area and 80 feet minimum of lot width required for a lot in the R2 zone. Approximately one-third of the western portion of the site is located inside the LDA critical area and the remaining area is located outside the critical area except for the small RCA designated triangular piece on the north side of the Property at the rear.

In the former application, the then-owner wanted to site a new dwelling in the LDA portion of the Property. In the present case, the applicant seeks to construct a dwelling outside the critical area. However, the benefit of moving the structure outside the LDA is not without some cost. The driveway to access the dwelling from Chalk Point Road, by necessity, has to cross the LDA. In addition,

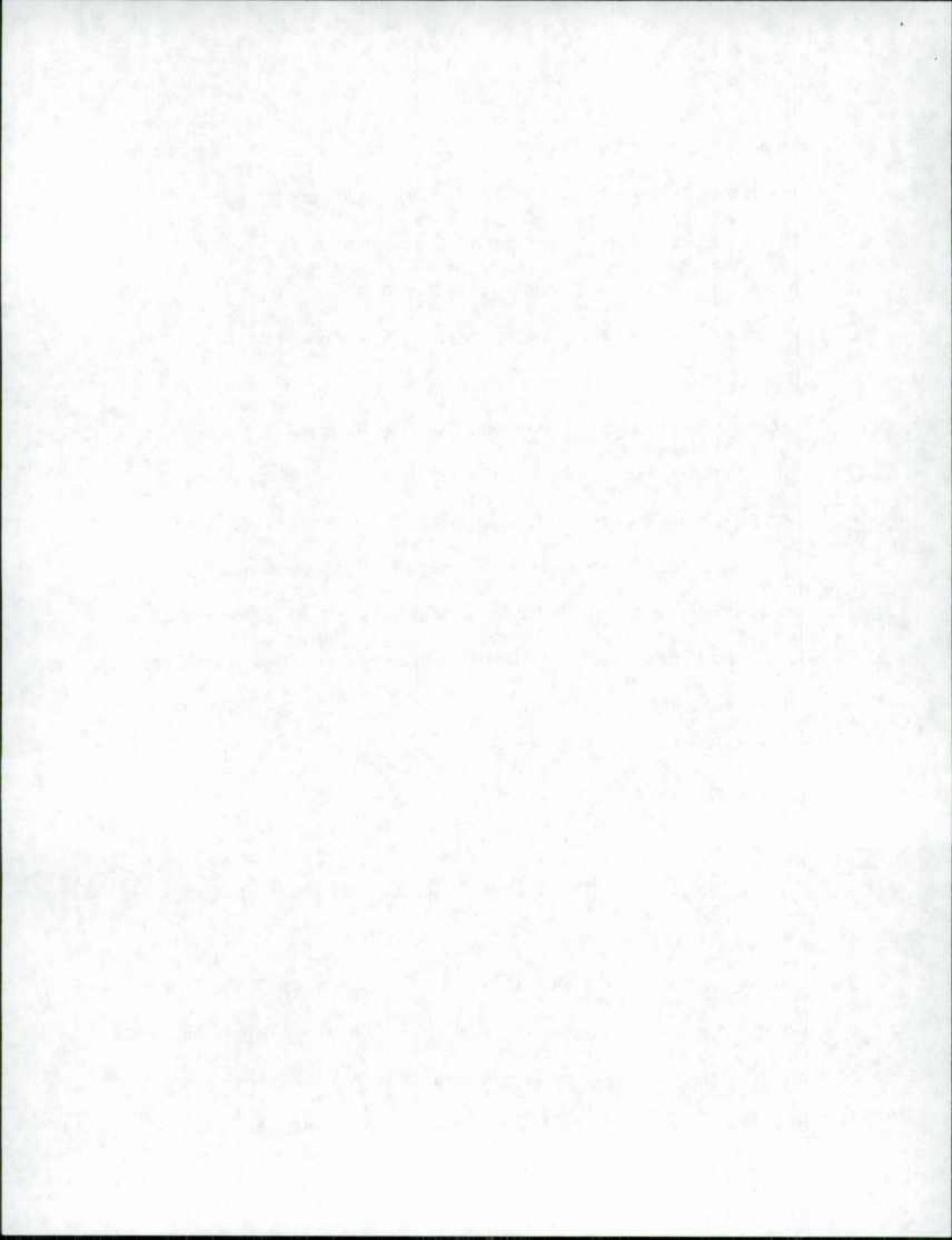


the construction will impact nontidal wetlands on the site, thereby requiring the variance sought in this application. The calculations show that the proposed lot coverage limits for this site under the critical area will not be exceeded, nor will the zoning lot coverage for the proposed improvements to the Property be exceeded. It is apparent that the Property cannot be developed without impacting the LDA (because access is needed) and without impacting nontidal wetlands and buffer because of the prevalence of wetlands on the Property.

The amount of square feet in coverage that the applicant is proposing for both the LDA and the non-LDA portions of the Property was not clear. The first variance granted in 2004 allowed a disturbance of 4,570 square feet to the LDA portion of the Property to allow the construction of the dwelling proposed in that application. Here however, the disturbance will be both within the LDA and the non-LDA portions of the property.

Review of the County's 2007 aerial photograph shows the neighborhood consists of mostly modest dwellings with some larger dwellings, and that some nonconforming structures and uses exist.

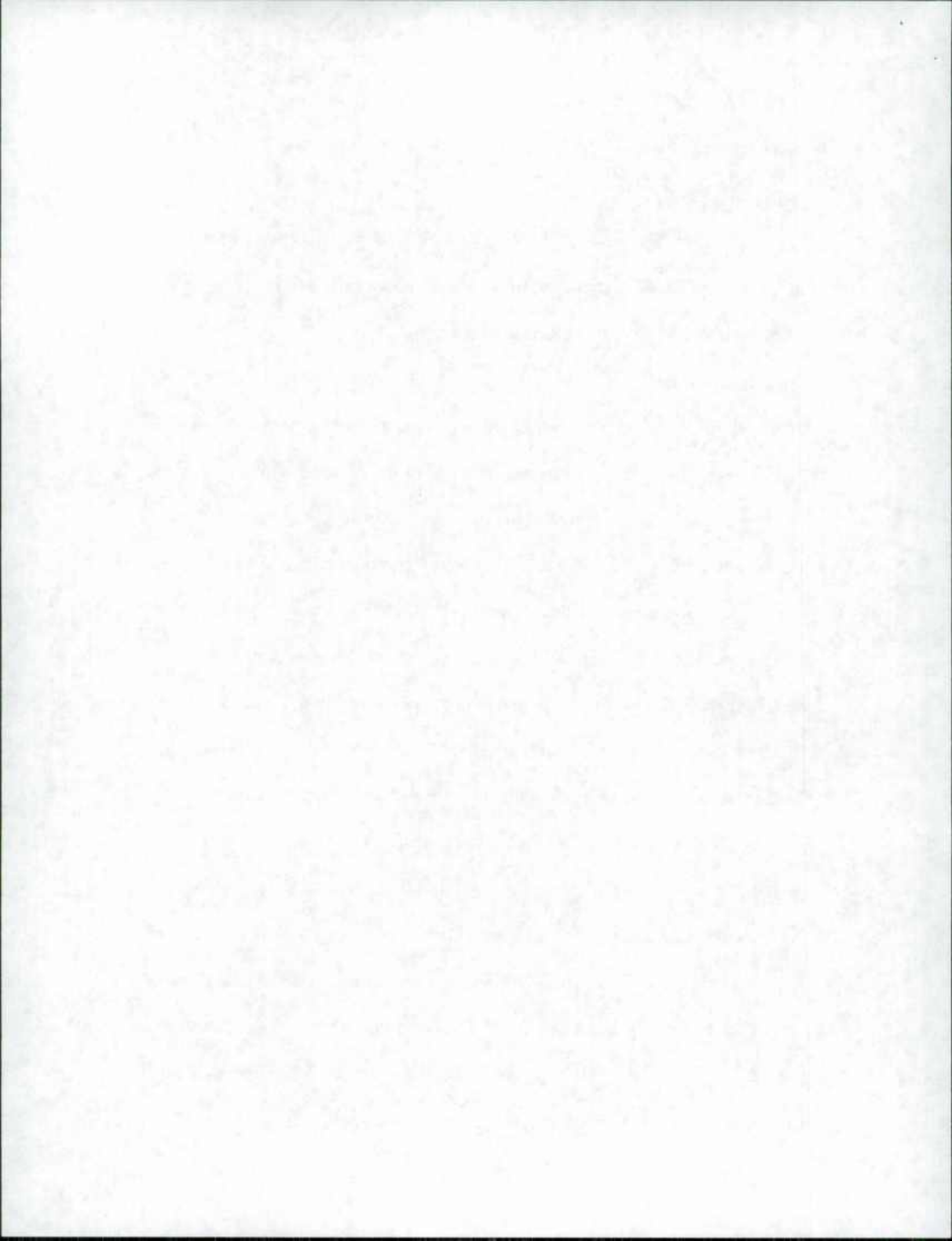
The Department of Health offered no object to the variance requested so long as the plan was submitted and approved by the Department. The Department of Recreation and Parks did not object to the variance, nor did the Critical Area Commission, provided the applicant obtains the proper Maryland Department of the Environment and US Army Corps of Engineers permits and completes the required wetlands creation and mitigation as determined by MDE. Finally the



Commission recommended a permit and mitigation plan as a condition of the variance approval.

Based on these findings, OPZ concluded that unique physical conditions are inherent to the property due to the extent of the nontidal wetland such that a strict implementation of the critical area program would result in an unwarranted hardship. To literally interpret the program would deprive the applicant of a right to provide an access drive, which is a use commonly enjoyed by similar properties in the critical area of the County. The granting of the variance would not confer any special privilege that is denied to other property owners in the critical area. The proposed mitigation and a possible Forest Conservation Easement and stormwater management on the site would have a positive impact upon critical area assets. The variance would not alter the essential character of the neighborhood nor impair the appropriate use or development of adjacent property. However, OPZ felt that the requested variance was not the minimum needed to provide relief from the code and thought that the applicant could reduce the amount of fill and limits of disturbance by reducing the driveway and changing the position of the dwelling to reduce the amount of impervious surface. OPZ felt that the amount of disturbance inside the buffer should be limited to 4,570 square feet.

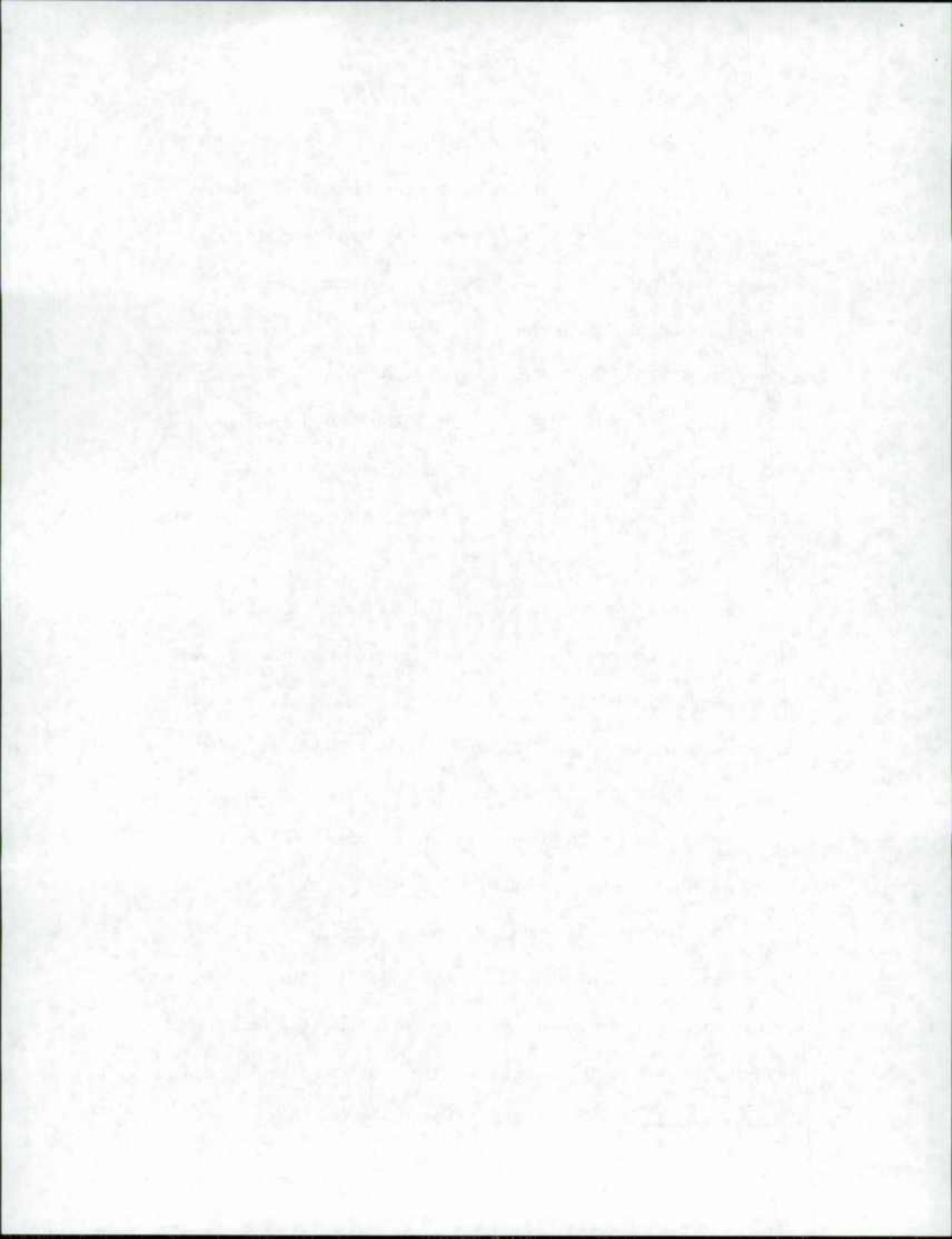
Exhibits submitted by OPZ relating to the application consisted of (County Exhibit 1) the Finding and Recommendation dated January 30, 2009; (County Exhibit 2) the variance application and attached documents received by OPZ on December 8, 2008; (County Exhibit 3) letter from the applicant dated December 3,





2008; (County Exhibit 4) Critical Area Commission letter dated December 30, 2008; (County Exhibit 5) Critical Area Report - Benjamin Property dated December 3, 2008; (County Exhibit 6) Wetland Delineation Report for the Benjamin Property dated November 2007; (County Exhibit 7) Specific Project Information Sheet; (County Exhibit 8) Major Subdivision Comment Screen; (County Exhibit 9) Decision in Case No. 2004-0209-V; (County Exhibit 10) Decision in Case No. 2005-0445-V; (County Exhibit 11) critical area map of area; (County Exhibit 12) aerial photo of Property and surrounding area; (County Exhibit 13) deed to Property; (County Exhibit 14) Grading and Site Development Plan for the Property dated September, 2008.

Mr. Kenneth Cooper, for Joyce Engineering Corporation, and Ms. Benjamin, testified, among other things, that the proposed construction on the Property was the minimal needed to develop it. They testified that the driveway was configured the way it was in order to reserve the possibility that the rear of the property can be developed with one or two more homes, in which case the driveway would be extended along the north property line to reach those properties. Therefore, they argued that the dwelling should stay orientated the way it is shown on the grading and site development plan. They testified further as to the need to raise the dwelling further above ground because the property is very flat and full of wetlands and flooded frequently. This resulted in a greater disturbance area, but they acknowledged that the crawl space underneath could be eliminated and therefore the amount of disturbance could be reduced.



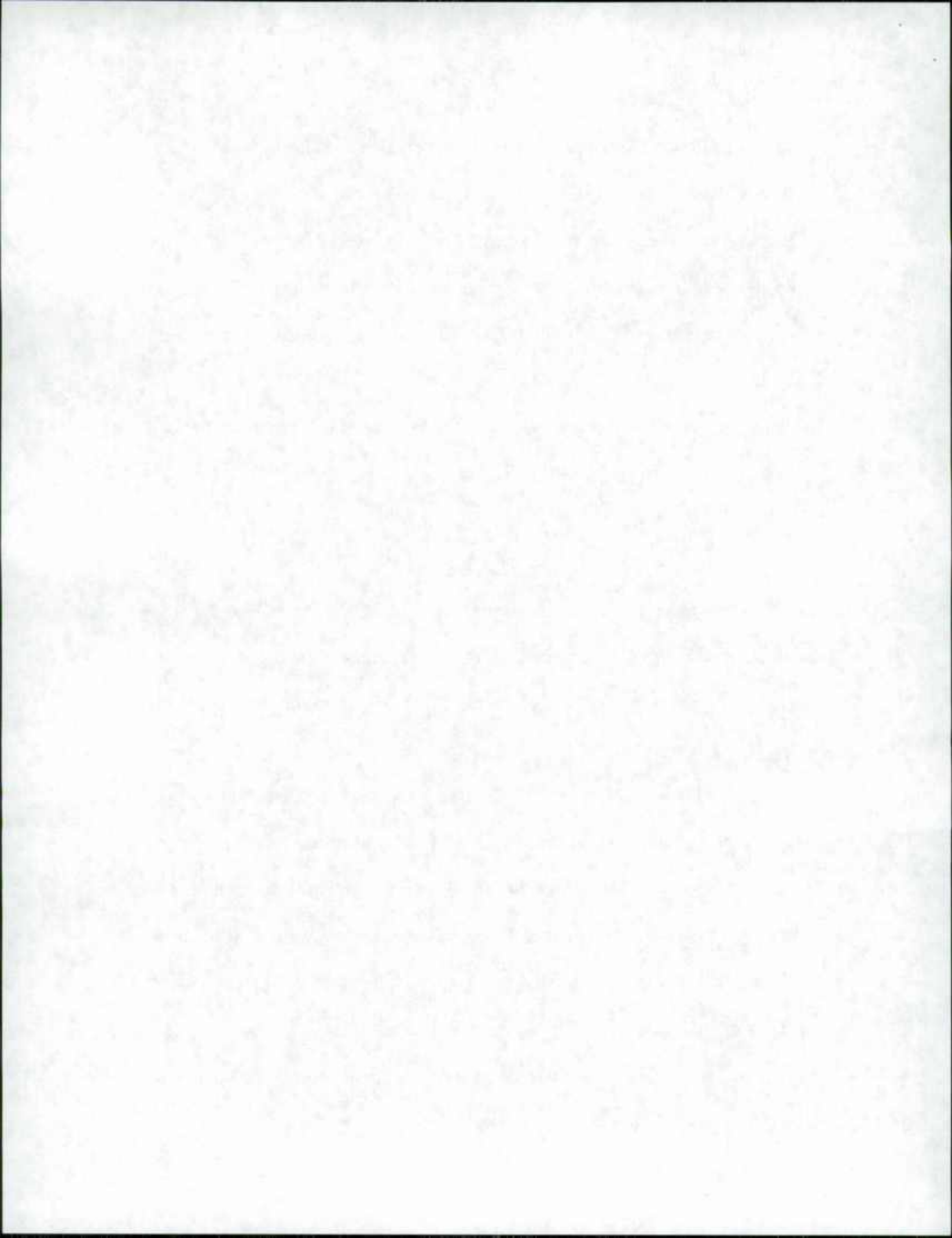
Mr. Roberto Rondini, the owner of the existing dwelling to the immediate south of the Property, opposed the granting of the requested variance because of flooding problems that he has experienced on his property. His house is 100 years old and lies almost level with the proposed property. He is concerned that the proposed improvements will cause water that now stays on the Property to migrate onto his.

There was no other testimony taken or exhibits received in the matter. The Hearing Officer did not visit the property.

### **DECISION**

Upon review of the facts and circumstances, I find and conclude, for the reasons stated below, that the applicant is entitled to relief from the code as to the variance she has requested but with the conditions and limitations imposed by the Order entered in this case.

§ 8-1808(d)(2) of the Natural Resources Article, Annotated Code of Maryland, provides in subsection (ii), that “[i]n considering an application for a variance [to the critical area requirements], a local jurisdiction shall presume that the specific development in the critical area that is subject to the application and for which a variance is required does not conform to the general purpose and intent of this subtitle, regulations adopted under this subtitle, and the requirements of the jurisdiction’s program.” (Emphasis added.) “Given these provisions of the State criteria for the grant of a variance, the burden on the

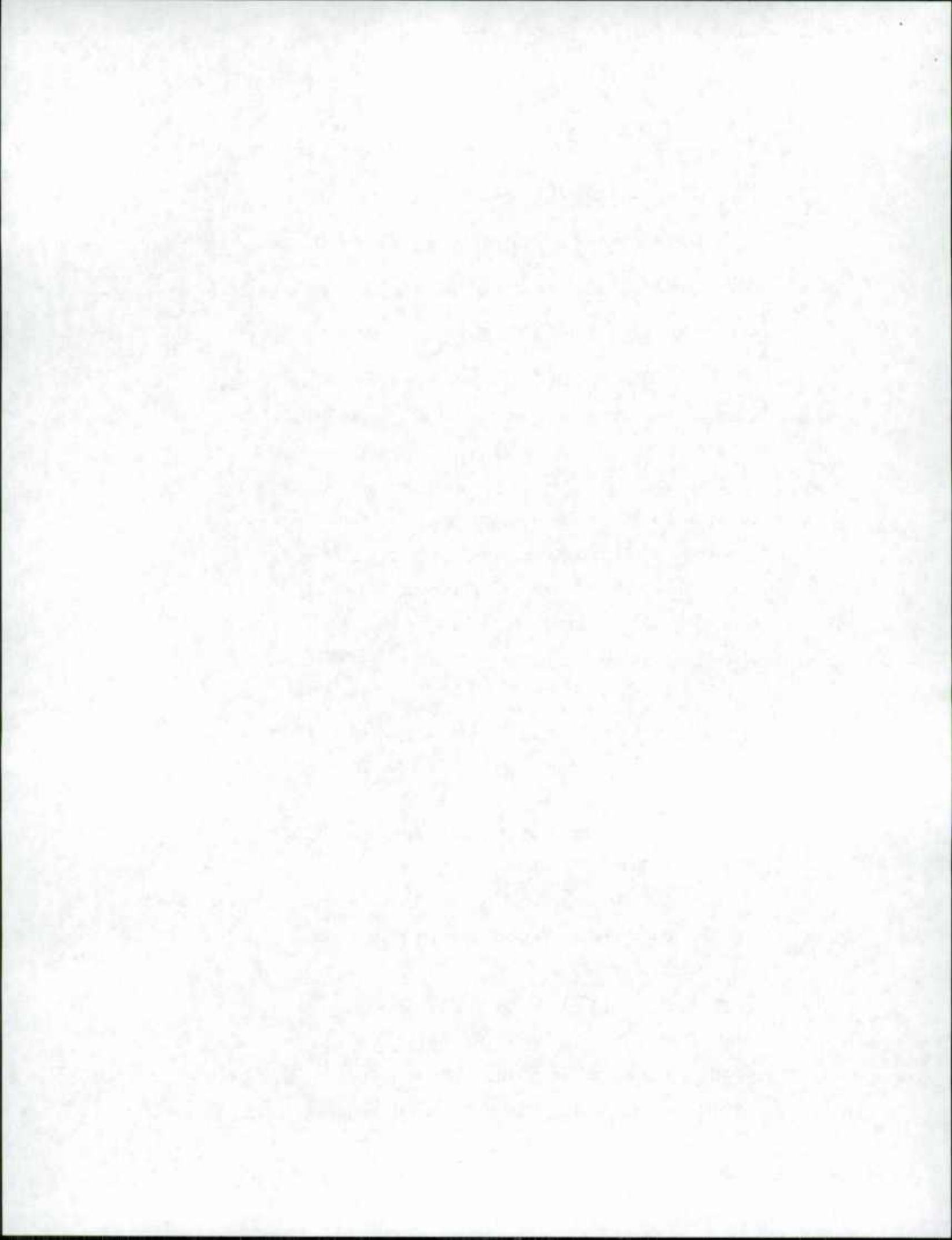


applicant is very high.” *Becker v. Anne Arundel County*, 174 Md.App. 114, 124; 920 A.2d 1118, 1124 (2007).

The laws and regulations governing variances, and the changes made by the Legislature in 2002 and 2004 to the critical area law, were discussed in *Becker v. Anne Arundel County*, *supra*, 174 Md.App. at 131; 920 A.2d at 1128:

In 2002, the General Assembly amended the [critical area] law. ... The amendments to subsection (d) provided that, (1) in order to grant a variance, the Board had to find that the applicant had satisfied each one of the variance provisions, and (2) in order to grant a variance, the Board had to find that, without a variance, the applicant would be deprived of a use permitted to others in accordance with the provisions in the critical area program. ... The preambles to the bills expressly stated that it was the intent of the General Assembly to overrule recent decisions of the Court of Appeals, in which the Court had ruled that, (1) when determining if the denial of a variance would deny an applicant rights commonly enjoyed by others in the critical area, a board may compare it to uses or development that predated the critical area program; (2) an applicant for a variance may generally satisfy variance standards rather than satisfy all standards; and, (3) a board could grant a variance if the critical area program would deny development on a specific portion of the applicant's property rather than considering the parcel as a whole.

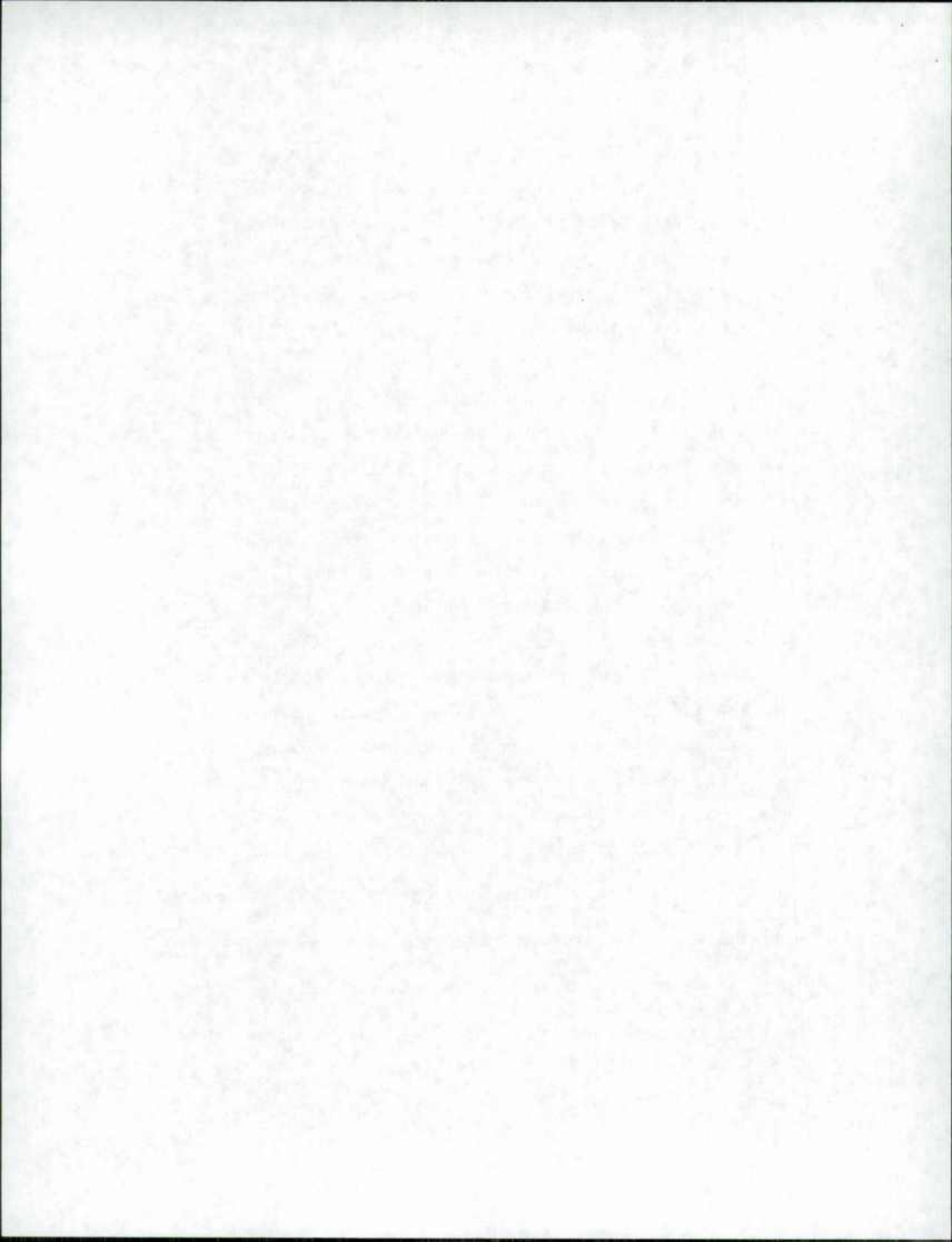
In 2003, the Court of Appeals decided *Lewis v. Dep't of Natural Res.*, 377 Md. 382, 833 A.2d 563 (2003). *Lewis* was decided under the law as it existed prior to the 2002 amendments (citation omitted), and held, *inter alia*, that (1) with respect to



variances in buffer areas, the correct standard was not whether the property owner retained reasonable and significant use of the property outside of the buffer, but whether he or she was being denied reasonable use within the buffer, and (2) that the unwarranted hardship factor was the determinative consideration and the other factors merely provided the board with guidance. *Id.* at 419-23, 833 A.2d 563.

Notwithstanding the fact that the Court of Appeals expressly stated that *Lewis* was decided under the law as it existed prior to the 2002 amendments, in 2004 Laws of Maryland, chapter 526, the General Assembly again amended State law by enacting the substance of Senate Bill 694 and House Bill 1009. The General Assembly expressly stated that its intent in amending the law was to overrule *Lewis* and reestablish the understanding of unwarranted hardship that existed before being “weakened by the Court of Appeals.” In the preambles, the General Assembly recited the history of the 2002 amendments and the *Lewis* decision. The amendment changed the definition of unwarranted hardship [found in § 8-1808(d)(2)(i)] to mean 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.” (Emphasis added.)

The question of whether the applicant is entitled to the variance requested begins, therefore, with the understanding that, in addition to the other specific factors that must be considered, the applicant must overcome the presumption, “that the specific development in the critical area that is subject to the application





... does not conform to the general purpose and intent of [the critical area law].”<sup>3</sup>

Furthermore, the applicant carries the burden of convincing the Hearing Officer “that the applicant has satisfied each one of the variance provisions.”<sup>4</sup> (Emphasis added.)

*Anne Arundel County's local Critical Area variance program contains 12 separate criteria. ...Each of these individual criteria must be met. If the applicant fails to meet just one of these 12 criteria, the variance is required to be denied.*<sup>5</sup> *Becker v. Anne Arundel County, supra*, 174 Md.App. at 124; 920 A.2d at 1124. (Emphasis in original.)

The variance sought is a variance from the critical area law.

### Critical Area Variance

#### Variance To § 17-8-502 - Habitat Protection Area

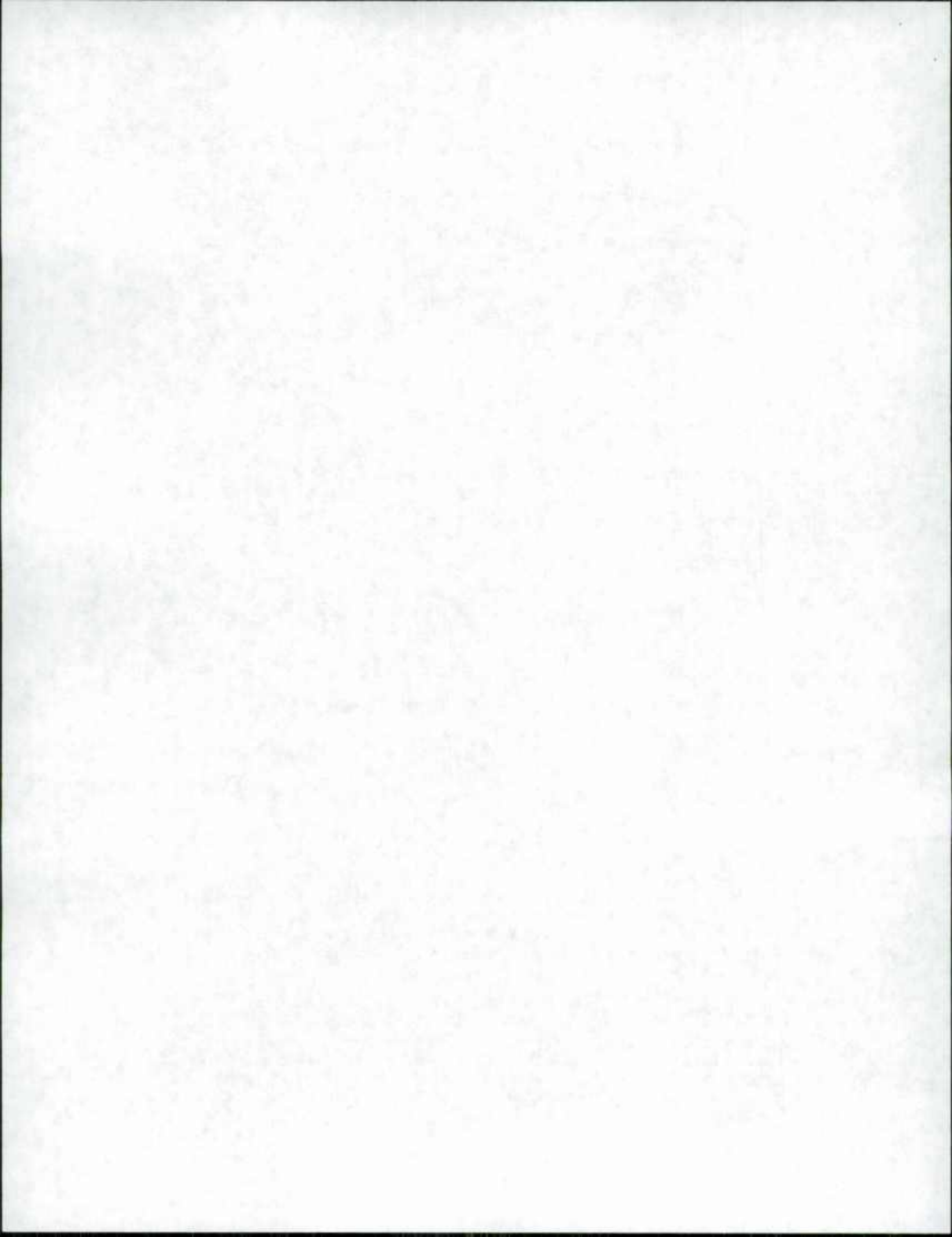
§ 17-8-502 requires that “a habitat protection area” shall be preserved and protected in connection with all development as set forth in this subtitle and as required by the OPZ in accordance with the recommendations of the Department

---

<sup>3</sup> § 8-1808(d)(2)(ii) of the Natural Resources Article. References to State law do not imply that the provisions of the County Code are being ignored or are not being enforced. If any difference exists between County law and State law, or if some State criteria were omitted from County law, State law would prevail. *See*, discussion on this subject in *Becker v. Anne Arundel County, supra*, 174 Md.App. at 135; 920 A.2d at 1131.

<sup>4</sup> § 8-1808(d)(4)(ii).

<sup>5</sup> As explained below, the requirements for a variance from a general zoning requirement are fewer than for a variance from the critical area requirements. More importantly, the two subsections of the criteria for obtaining a variance from the zoning law, found in § 18-16-305 of the Anne Arundel County Code, are expressed in the alternative, i.e., if either ground is found to exist, the variance from the zoning law must be granted.



of Natural Resources and other reviewing agencies. The evidence shows that the areas to be disturbed by the proposed work lie entirely within a habitat protection area. Therefore, the proposed work requires a variance to § 17-8-502.

### **Requirements For Critical Area Variances**

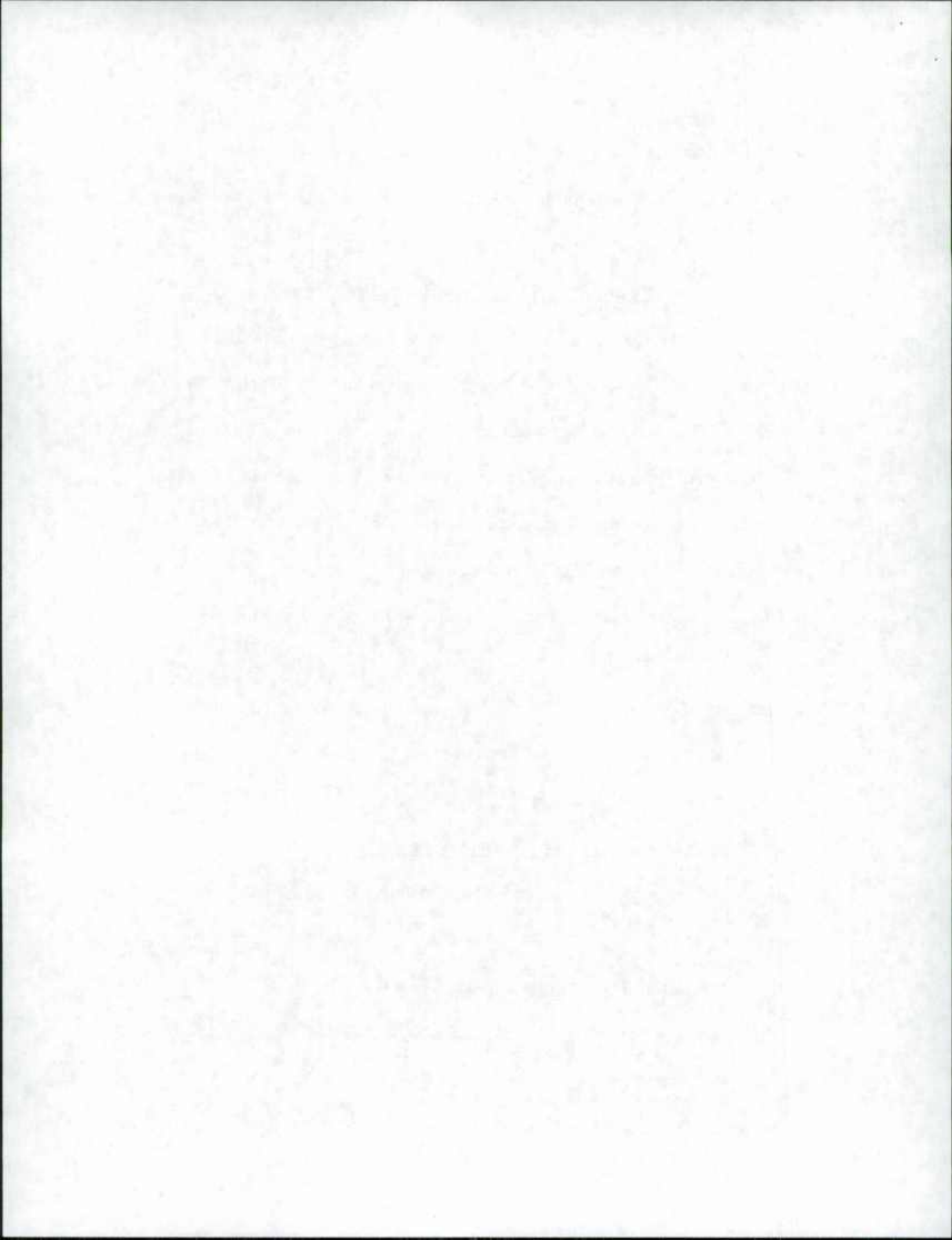
§ 18-16-305 sets forth the requirements for granting a variance for property in the critical area. A variance may be granted only if the Administrative Hearing Officer finds that all the elements of the six separate subsections of § 18-16-305(b) have been met. Furthermore, a variance may not be granted unless it is found that: (1) the variance is the minimum variance necessary to afford relief; (2) the granting of the variance will not alter the essential character of the neighborhood or district in which the lot is located, substantially impair the appropriate use or development of adjacent property, reduce forest cover in the limited development and resource conservation areas of the critical area, be contrary to acceptable clearing and replanting practices required for development in the critical area, or be detrimental to the public welfare.

### **Findings - Critical Area Variances**

I find, based upon the evidence, the following with regard to the provisions set forth above:

#### **Subsection (b)(1) - Unique Physical Conditions**

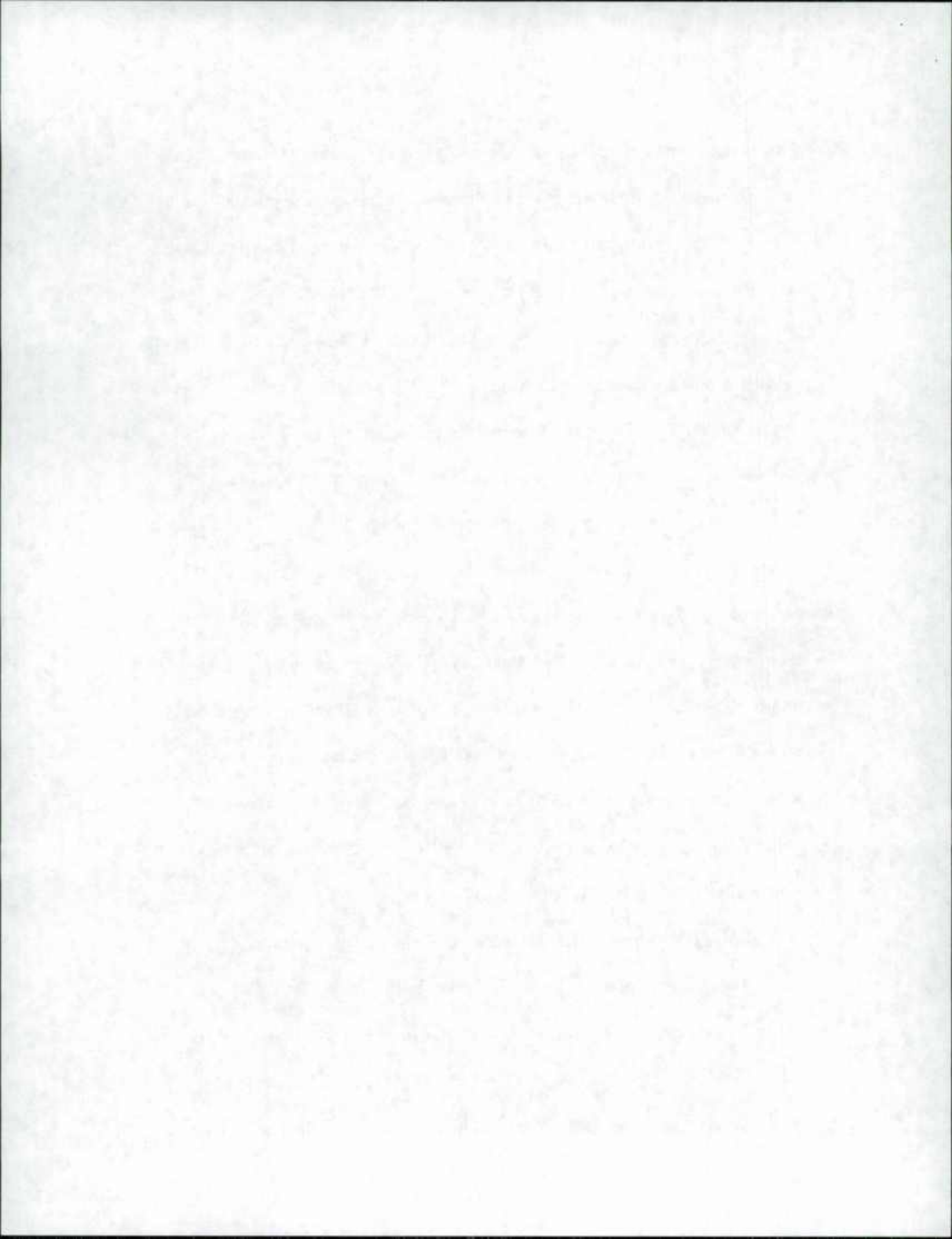
I find that the Property contains unique physical conditions, such as exceptional topographical conditions peculiar to and inherent in the subject Property, i.e., nontidal wetlands and buffers to nontidal wetlands on the Property.



Strict implementation of the County's critical area program would result in an unwarranted hardship to the applicant that would deprive the applicant of rights commonly enjoyed by other properties in similar areas as permitted in accordance with the provisions of the critical area program within the critical area of the County. Denying the applicant the right to cross the LDA portion of the Property to reach the non-LDA area to construct a dwelling would be denying all right to develop and use the Property. Also, denying the right to disturb the nontidal wetlands to construct the dwelling would deny the applicant the right to develop and use her property. Therefore, I find that a denial of the requested variance would prevent the applicant from the "reasonable and significant use of the entire parcel or lot" she owns. The evidence shows earlier unsuccessful efforts to develop the Property in the LDA while this proposal appears to significantly improve on that plan, although by moving the proposed dwelling further into the Property and out of the LDA the amount of lot coverage has been increased. However, that increase appears to be worth the cost. The amount of coverage may need to be reduced (see below), but I conclude that the applicant has carried her burden as to subsection (b)(1) of § 18-16-305.

**Subsection (b)(2) - Denial Of Rights Enjoyed By Others**

The lands surrounding the Property are flat and have nontidal wetlands and buffers but are nevertheless improved with dwellings that are similar in size. The evidence shows that the subdivision in which the Property is located predates the critical area. I conclude that the denial of the requested critical area variance



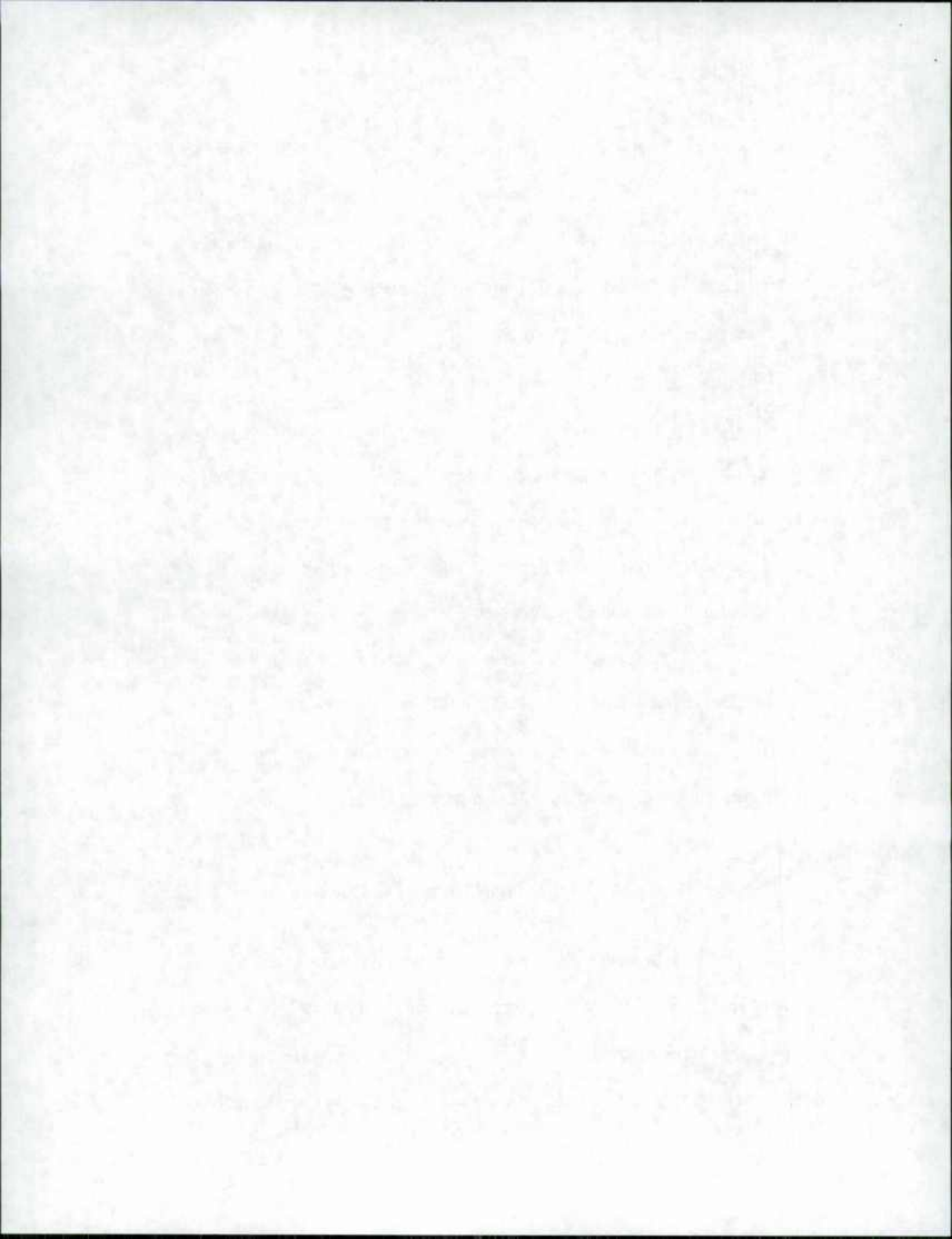
would deprive the applicant of rights commonly enjoyed by other properties in similar areas as permitted in accordance with the provisions of the critical area program within the critical area of the County and, in particular, in the area in which the Property is located. Therefore, the applicant has carried her burden as to subsection (b)(2) of § 18-16-305.

**Subsection (b)(3) - Special Privilege**

I find that the granting of the critical area variance would not confer a special privilege on the applicant that would be denied by COMAR, 27.01, the County's critical area program, to other lands or structures within the County's critical area. There was testimony that the proposed dwelling is comparable to dwellings in the area where the Property is located. Given the circumstances that are peculiar to the Property that is the subject of this application, it is likely that variances would be granted to develop a similarly situated property. Therefore, the granting of the requested variance would not confer a special privilege on the applicant. Therefore, the applicant has carried her burden as to subsection (b)(3) of § 18-16-305.

**Subsection (b)(4) - Actions By The Applicant Or Conditions  
On Neighboring Properties**

I find that the critical area variance requested is not based on the commencement of development before an application for a variance was filed, and do not arise from any condition relating to land or building use on any neighboring property. I also find that the variance requested is not based on conditions or





circumstances that are the result of actions by the applicant. Therefore, the applicant has carried her burden as to subsection (b)(4) of § 18-16-305.

**Subsection (b)(5) - Environmental Impacts**

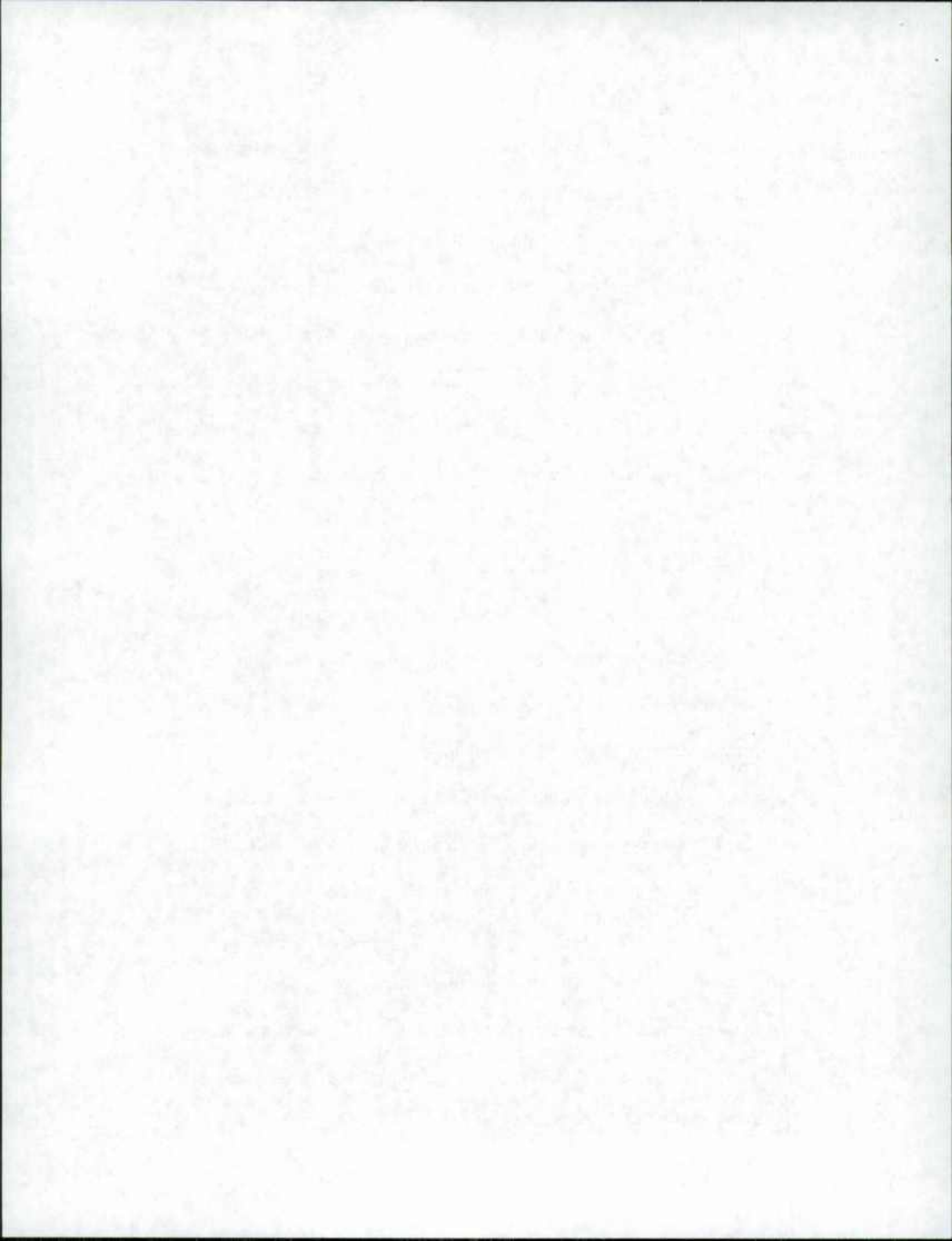
Mr. Rhodes testified that there was no evidence that the proposed work would adversely affect water quality or adversely impact fish, wildlife or plant habitat within the County's critical area or a bog protection area and would be in harmony with the general spirit and intent of the County's critical area program. Therefore, the applicant has carried her burden as to subsection (b)(5) of § 18-16-305.

**Subsection (b)(7) - Presumption**

I find that the applicant has overcome the presumption contained in the Natural Resources Article, § 8-1808(d)(2), of the State Code [which is incorporated into § 18-16-305 subsection (b)(2)] "that the specific development in the critical area that is subject to the application ... does not conform to the general purpose and intent of [the critical area law]." <sup>6</sup> This is because I have determined that the applicant would be denied reasonable and significant use of the entire parcel or lot for which the critical area variance is requested if the proposed work is not allowed [subsection (b)(1)], because the denial of the requested critical area variance would deprive the applicant of rights commonly enjoyed by other lands or properties in similar areas that are permitted in the critical area [subsection (b)(2)], because the granting of the requested critical area

---

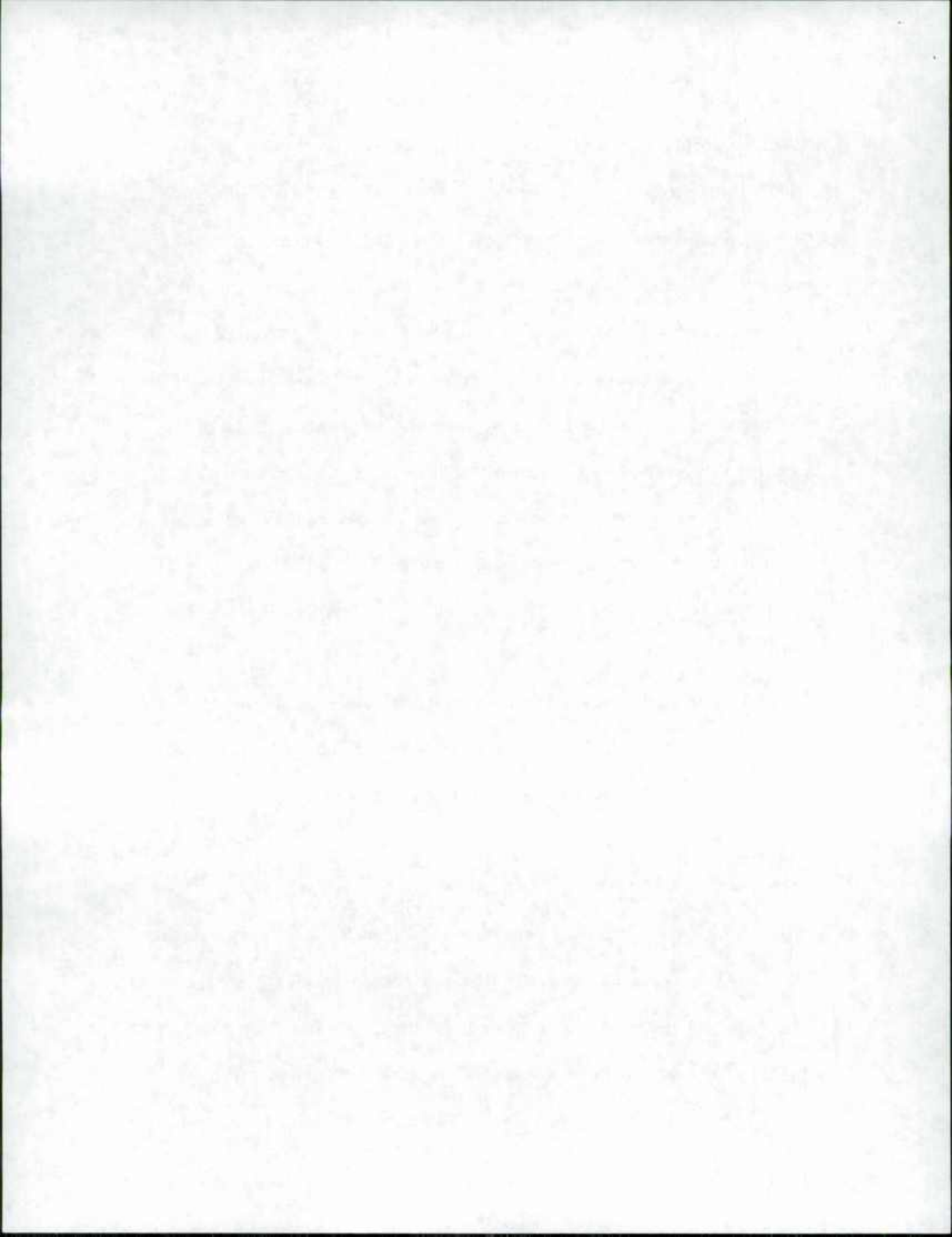
<sup>6</sup> § 8-1808(d)(2)(ii) of the Natural Resources Article.



variance would not confer a special benefit upon the applicant that is denied to other lands or properties in similar areas under the critical area law [subsection (b)(3)], because the variance requested is not based on the commencement of development before an application for a variance was filed, do not arise from any condition relating to land or building use on any neighboring property, nor are based on conditions or circumstances that are the result of actions by the applicant [subsection (b)(4)], and because the proposed work would not adversely affect water quality or adversely impact fish, wildlife or plant habitat within the County's critical area or a bog protection area and would be in harmony with the general spirit and intent of the County's critical area program [subsection (b)(5)]. Therefore, the applicant has carried her burden as to subsection (b)(7) of § 18-16-305.

I further find that there is nothing to suggest that the granting of the critical area variance would alter the essential character of the neighborhood, substantially impair the appropriate use or development of adjacent property, reduce forest cover in the limited development and resource conservation areas of the critical area, or cause a detriment to the public welfare.

However, I cannot find that the variance requested is the minimum variance necessary to afford relief. It was admitted at the hearing that the applicant could remove the crawl space under the proposed dwelling and/or reduce the disturbance to the nontidal wetlands or buffer. There was testimony about turning the dwelling so that the driveway and associated impacts on the habitat to the rear of



the dwelling would be lessened. The question, then, is what reduction in the disturbance is required to make this variance comply with the requirement that it be the minimum necessary. Coupled with that question is the need to provide a bright-line answer to the question of how much the applicant will be allowed to do in developing the Property such that there are no problems in the field.<sup>7</sup>

First, the earlier decision that granted a variance of 4,570 square feet does not supply the number needed here because the earlier application was for a dwelling in the LDA portion of the Property.

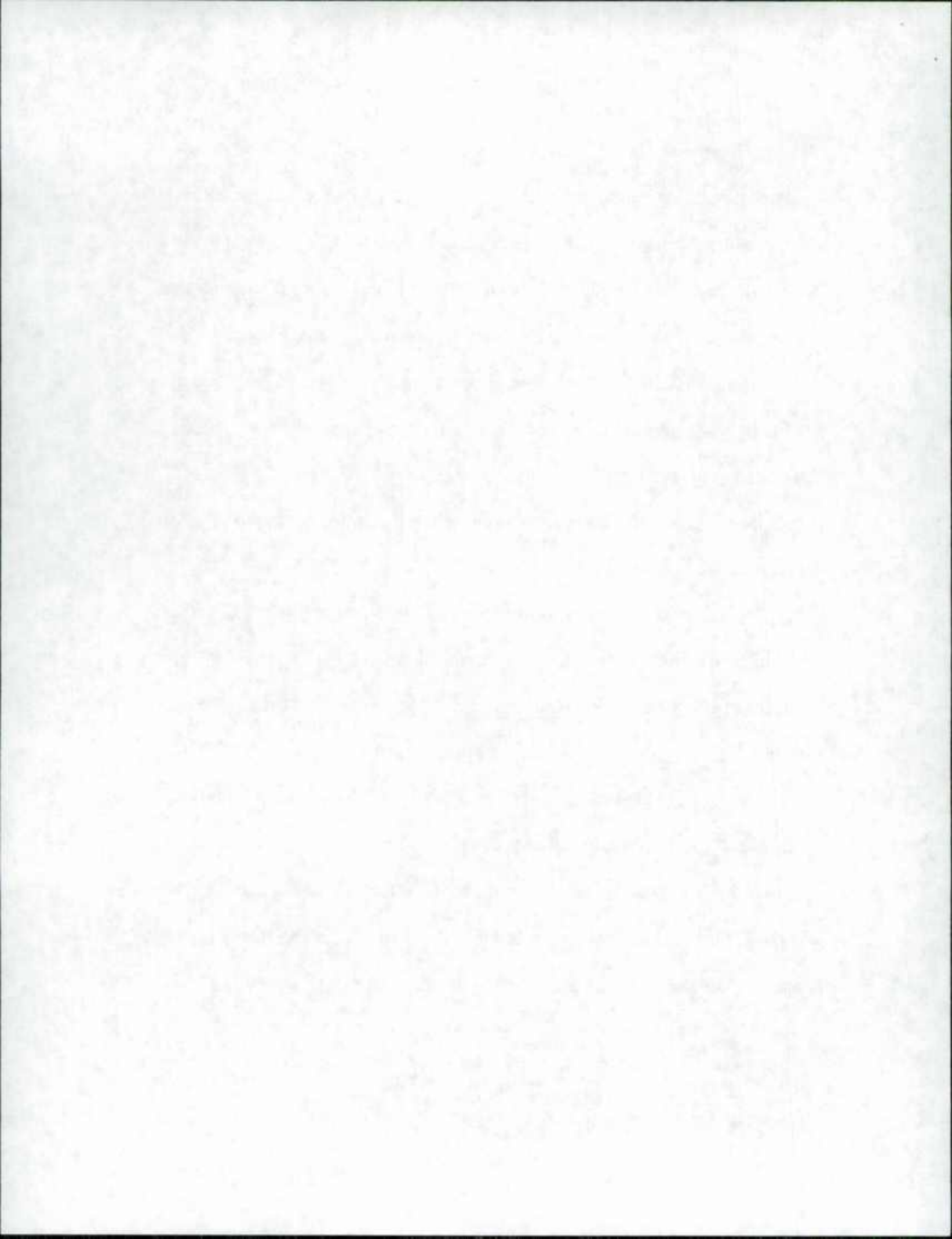
Second, the disturbance shown on the site plan is to both the LDA and the non-LDA area of the Property.

Third, field inspection may be better able to determine the extent of the disturbance to be allowed. For example, the removal of a grass swale may reduce the disturbance numbers but remove a needed stormwater management tool that would contribute to protecting these sensitive areas.

Fourth, the LDA area being crossed by the driveway should be considered separately from the impacts on the portion of the Property that does not lie in the LDA. This is because denial of the variance to disturb the habitat protection area in the LDA would bar the applicant from access to developing the entire parcel. I find that the driveway, as proposed on County Exhibit 14 - Grading and Site

---

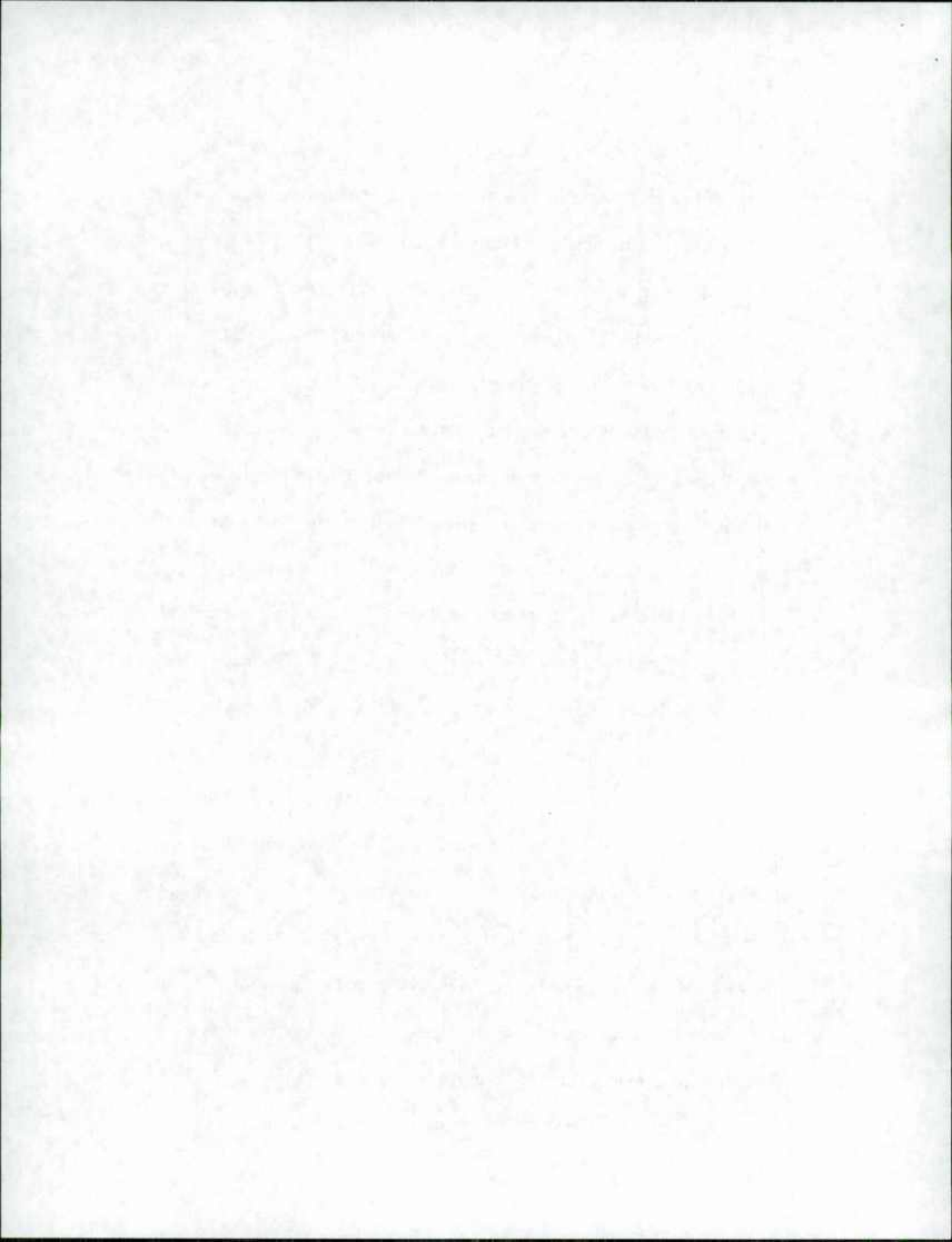
<sup>7</sup> It would be much easier to simply deny the application rather than attempt to set conditions that may conflict with engineering and critical area needs. However, because the decision has been reached that the applicant is entitled to relief, denial of the application to allow the applicant to reapply with the changes that would make the application acceptable, would only result in the return of the applicant to this office and a delay in financial cost to her. Therefore, I will set out the conditions under which this variance will be granted with the expectation that inspection in the field will arrive at the best result as far as impact on the habitat protection areas that will be affected.



Development Plan, is the minimum needed to cross the LDA portion of the Property. However, I cannot find that the proposed development of the remainder of the Property is the minimum necessary to obtain relief.

The dwelling, as planned, is considerably larger than the modest dwelling granted a variance in 2004. The need to raise the dwelling to overcome the low elevation of the Property causes greater disturbance to the habitat protection area because of the need to bring in fill. Finally, the decision to place the garage on the rear of the dwelling causes greater disturbance to the habitat protection area because of the need to bring pavement to more area than is needed to reach the proposed dwelling with an automobile.

Therefore, I am going to grant the variance as requested by the applicant and as shown on the Grading and Site Development Plan dated September 2008 (County Exhibit 14), with three provisos: first, the proposed crawl space underneath the proposed dwelling will be eliminated; second, the dwelling shall be rotated 90 degrees counterclockwise (or the entrance to the garage portion of the dwelling will be placed on the north side of the proposed dwelling) so that the driveway goes no further into the Property than the rear-most side of the proposed dwelling; and third, the actual extent of the disturbance to habitat protection areas on the Property will be determined by representatives of the County and/or Critical Area Commission in the field prior to disturbance to the habitat protection areas. Any modifications to the areas to be disturbed as shown on County Exhibit 14 shall be reductions only; in no case shall areas of disturbance be increased.





Accordingly, for the above reasons, the requested critical area variance is granted as modified and conditioned herein.

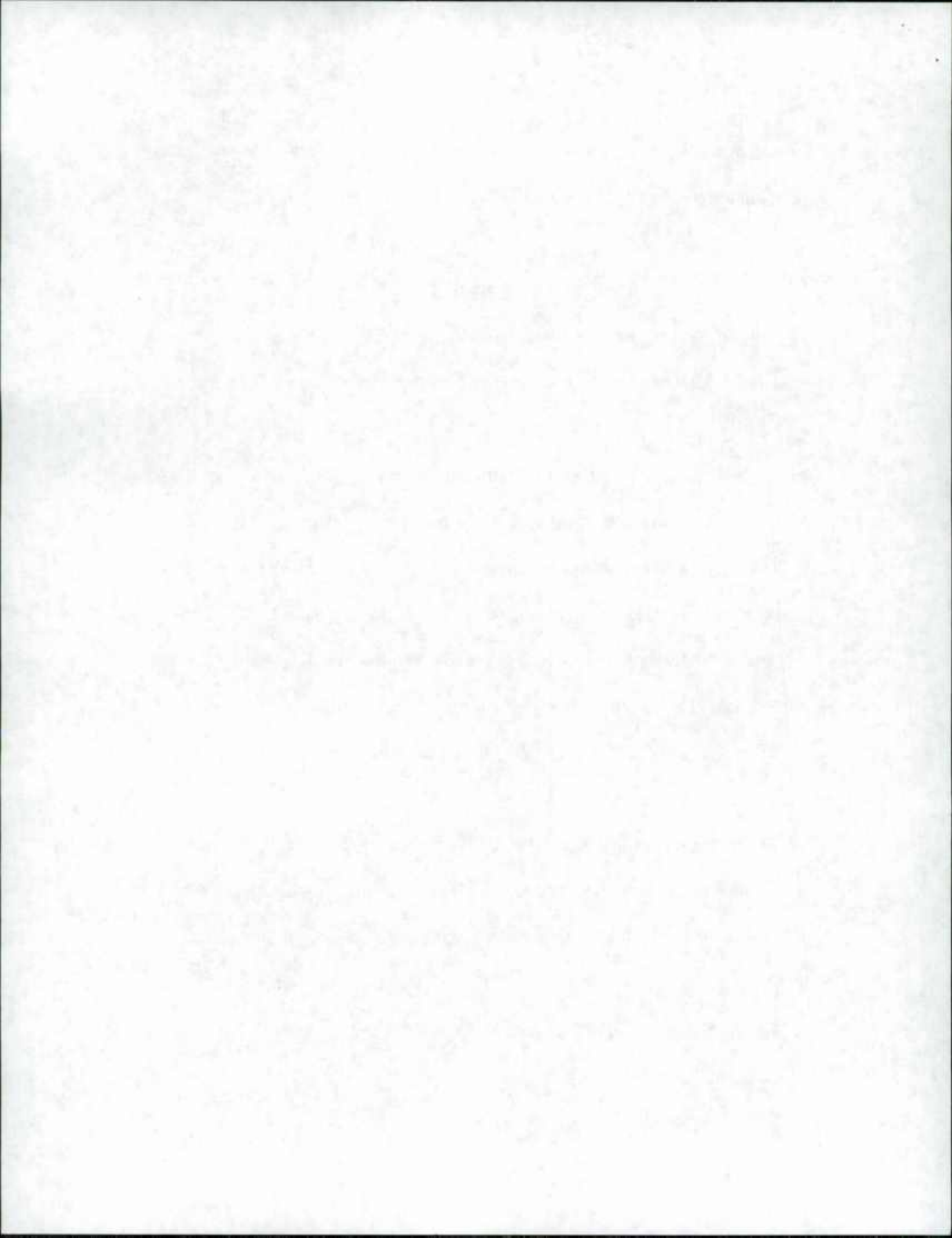
**ORDER**

PURSUANT to the application of Denise S. Benjamin, petitioning for a variance to allow an access drive and associated facilities with less buffer than required, and

PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is this 23<sup>rd</sup> day of February, 2009,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicant is **granted** a variance to § 17-8-502, subject to:

1. The elimination of the proposed crawl space underneath the dwelling, thereby lowering the dwelling and reducing the extent of the fill to be placed on the Property (the extent of which will be determined as set forth in paragraph 3 below);
2. The reduction of the driveway, either by reorienting the dwelling 90 degrees counterclockwise or placing the garage portion of the dwelling on the north side of the proposed dwelling so that the driveway goes no further into the Property than the rear-most side of the proposed dwelling as indicated on County Exhibit 14 - Grading and Site Development Plan dated September 2008; and

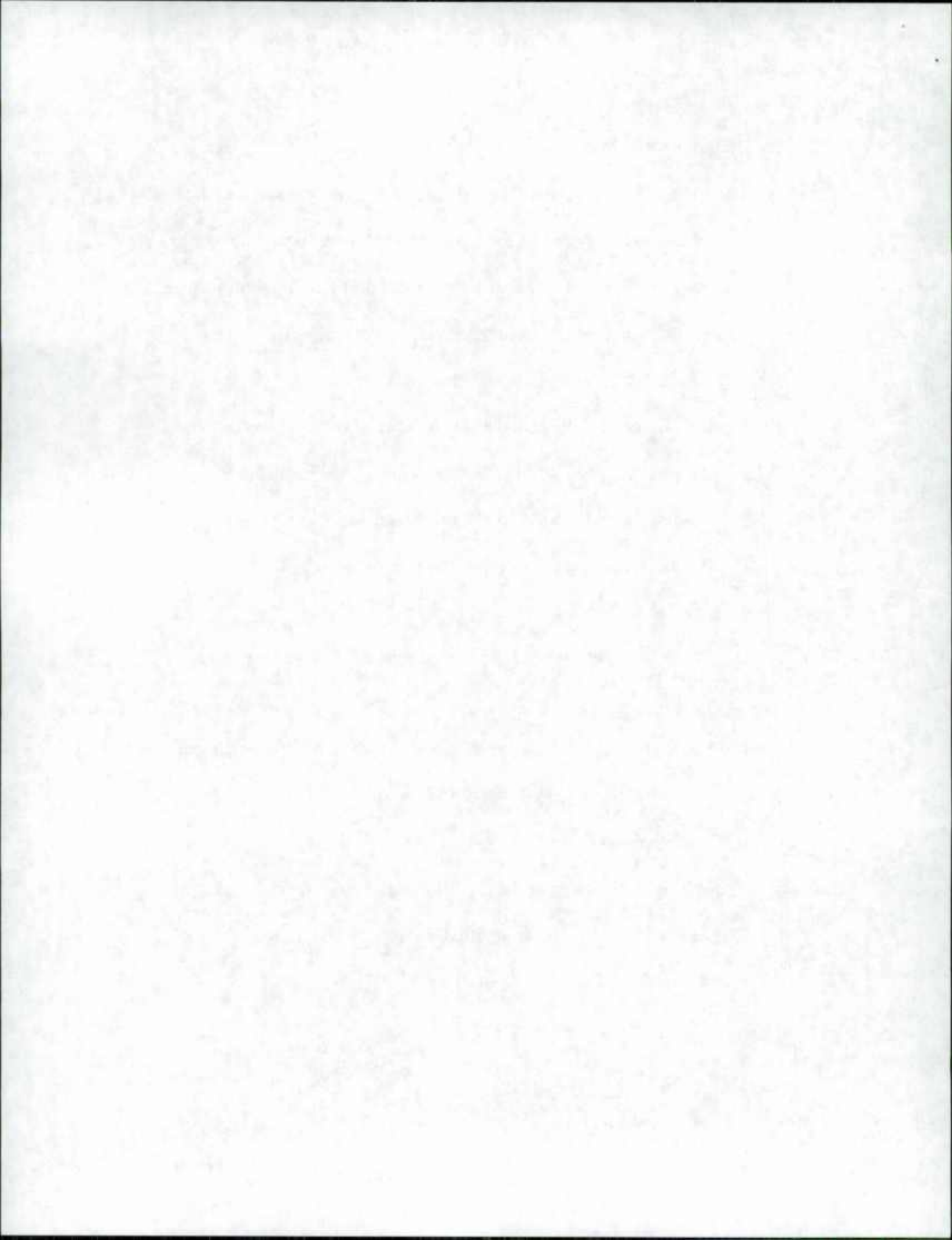


3. A determination by representatives of the County and/or Critical Area Commission in the field prior to disturbance to the habitat protection areas shown on County Exhibit 14 - Grading and Site Development Plan dated September 2008, as to the actual disturbance to take place, limiting such determination to whether or not any part of the disturbance should be reduced, as shown on Exhibit 14, but in no case increased.

The foregoing variance is subject to the following conditions:

- A. The applicant shall provide stormwater management and mitigation as required by the Permit Application Center.
- B. The applicant shall provide mitigation as required by the Critical Area Commission.
- C. The building permit is subject to the approval of the Department of Health.
- D. The determination by the Development Division of what portion of the non-critical area of the Property shall be subject to the Forest Conservation Act.
- E. No further expansion of the dwelling or accessory structures is allowed.
- F. The applicant shall obtain subdivision approval for the parcel in its entirety.

  
\_\_\_\_\_  
Douglas Clark Hollmann  
Administrative Hearing Officer

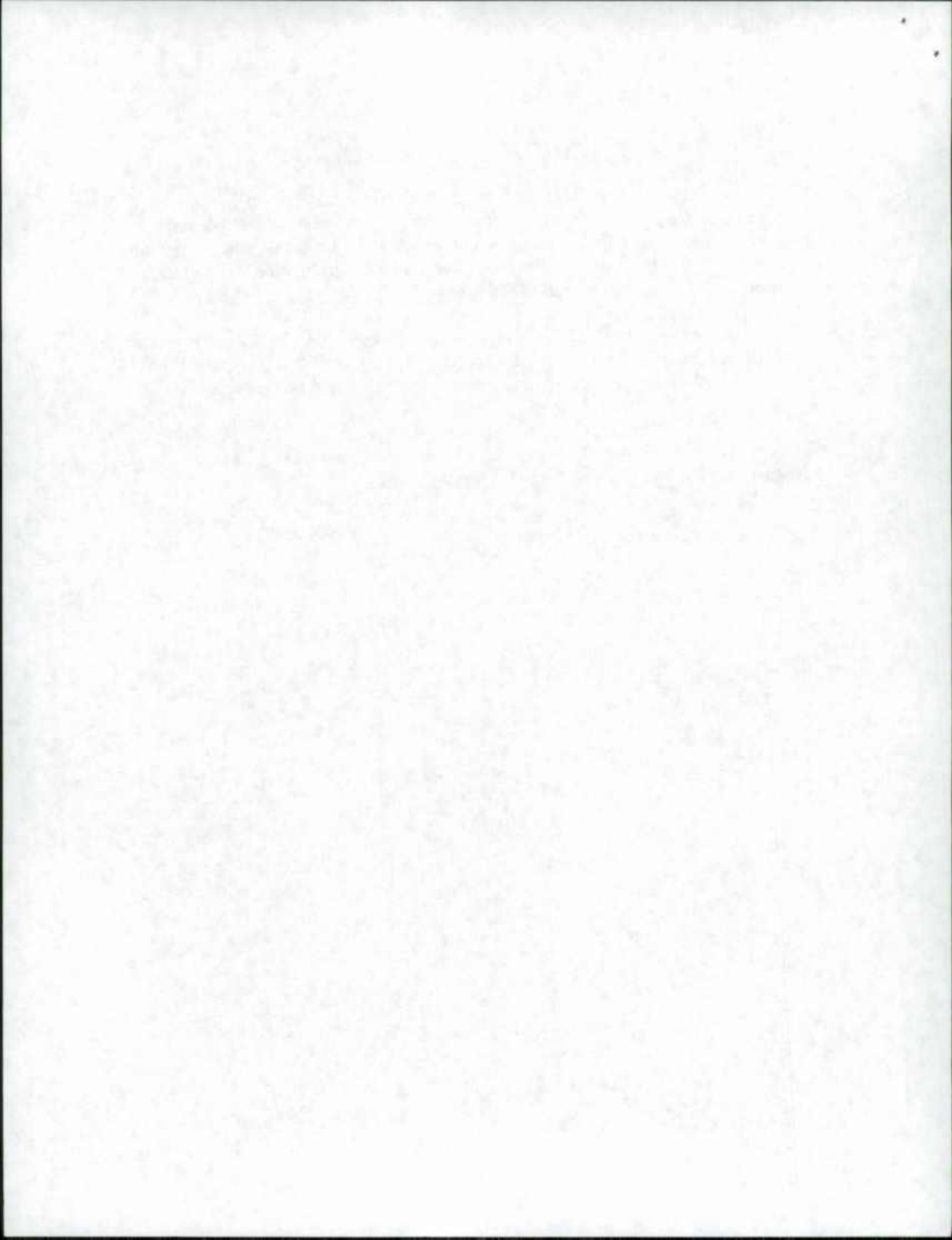


### NOTICE TO APPLICANT

Within thirty days from the date of this Decision, any person, firm, corporation, or governmental agency having an interest therein and aggrieved thereby may file a Notice of Appeal with the County Board of Appeals. **A permit for the activity that was the subject of this variance application will not be issued until the appeal period has elapsed.**

Further § 18-16-405(a) provides that a variance expires by operation of law unless the applicant obtains a building permit within 18 months. Thereafter, the variance shall not expire so long as construction proceeds in accordance with the permit.

If this case is not appealed, exhibits must be claimed within 60 days of the date of this Order, otherwise they will be discarded.



N/F LOT 3  
BAHAMIA VIEW PLAT  
BOOK: 23 PLAT: 27  
JOYCE PAKOLELA  
DANA D. FRANK & SHARON M.  
PLYMOUTH LIBER: 17330 AT  
FOLIO: 527  
5128 CHALK POINT ROAD  
WEST RIVER, MD. 20778-2205  
ZONED: R-2 (LDA)  
USE: SINGLE FAMILY

N/F LOT 4  
BAHAMIA VIEW  
PLAT BOOK: 23 PLAT: 27  
JOYCE PAKOLELA  
LIBER: 18771 AT FOLIO: 188  
834 SHADY OAK ROAD  
WEST RIVER, MD. 20778-2205  
ZONED: R-2 (LDA)  
USE: SINGLE FAMILY

N/F LOT 5  
BAHAMIA VIEW  
PLAT BOOK: 23 PLAT: 27  
JOHN T. & LAINA L. FLOID  
LIBER: 6885 AT FOLIO: 20  
5128 CHALK POINT ROAD  
WEST RIVER, MD. 20778-2205  
ZONED: R-2 (LDA)  
USE: SINGLE FAMILY

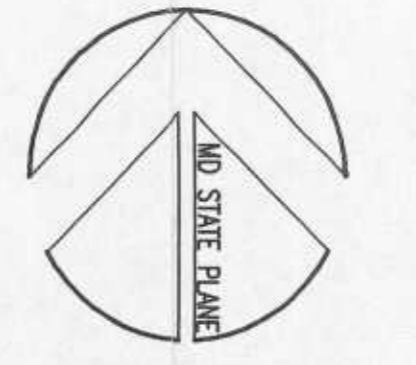
N/F LOT 6  
BAHAMIA VIEW  
PLAT BOOK: 23 PLAT: 27  
CHARLES A. BENEDICT  
LIBER: 5859 AT FOLIO: 301  
5130 CHALK POINT ROAD  
WEST RIVER, MD. 20778-2205  
ZONED: R-2 (LDA)  
USE: SINGLE FAMILY

N/F LOT 6A  
BAHAMIA VIEW  
PROPOSED BUILDING  
LIBER: 655 AT FOLIO: 218  
SEVERAL LIBER: 2146-2821  
ZONED: R-2 (RCA)  
USE: SINGLE FAMILY

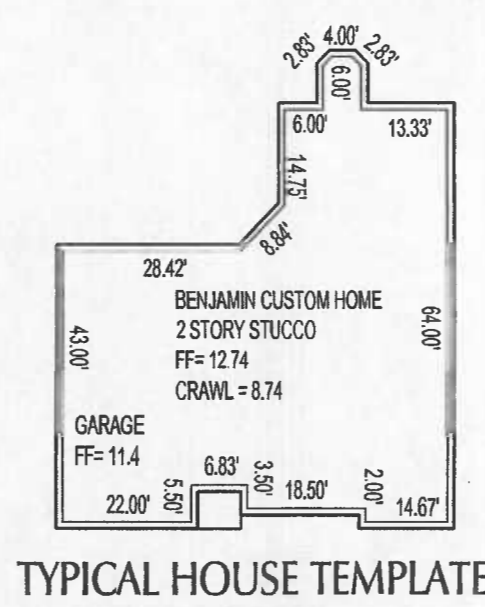
N/F LOT 7  
BAHAMIA VIEW  
PLAT BOOK: 23 PLAT: 27  
TOWNSEND E. & EVELYN L. AVERY  
LIBER: 2857 AT FOLIO: 170  
5134 CHALK POINT ROAD  
WEST RIVER, MD. 20778-2205  
ZONED: R-2 (LDA)  
USE: SINGLE FAMILY

N/F LOT 8  
BAHAMIA VIEW  
PLAT BOOK: 23 PLAT: 27  
LOUIS H. JR. & MICHELLE CLOW  
LIBER: 13923 AT FOLIO: 896  
5136 CHALK POINT ROAD  
WEST RIVER, MD. 20778-2205  
ZONED: R-2 (LDA)  
USE: SINGLE FAMILY

N/F LOT 9  
BAHAMIA VIEW  
PLAT BOOK: 23 PLAT: 27  
KARLEEN & JAMES F. MONDAY  
LIBER: 1857 AT FOLIO: 129  
5138 CHALK POINT ROAD  
WEST RIVER, MD. 20778-2205  
ZONED: R-2 (LDA)  
USE: SINGLE FAMILY



NORTH  
PLAN SCALE: 1" = 30'  
GRAPHIC SCALE 1" = 30'



TYPICAL HOUSE TEMPLATE

NOTE: THE LOCATIONS OF ALL EXISTING UTILITIES SHOWN HEREON ARE FROM FIELD INVESTIGATION AND AVAILABLE RECORDS, AND CANNOT BE GUARANTEED. CONTRACTOR SHALL DIG TEST PITS BY HAND AT ALL UTILITY CROSSINGS TO VERIFY EXACT LOCATIONS.

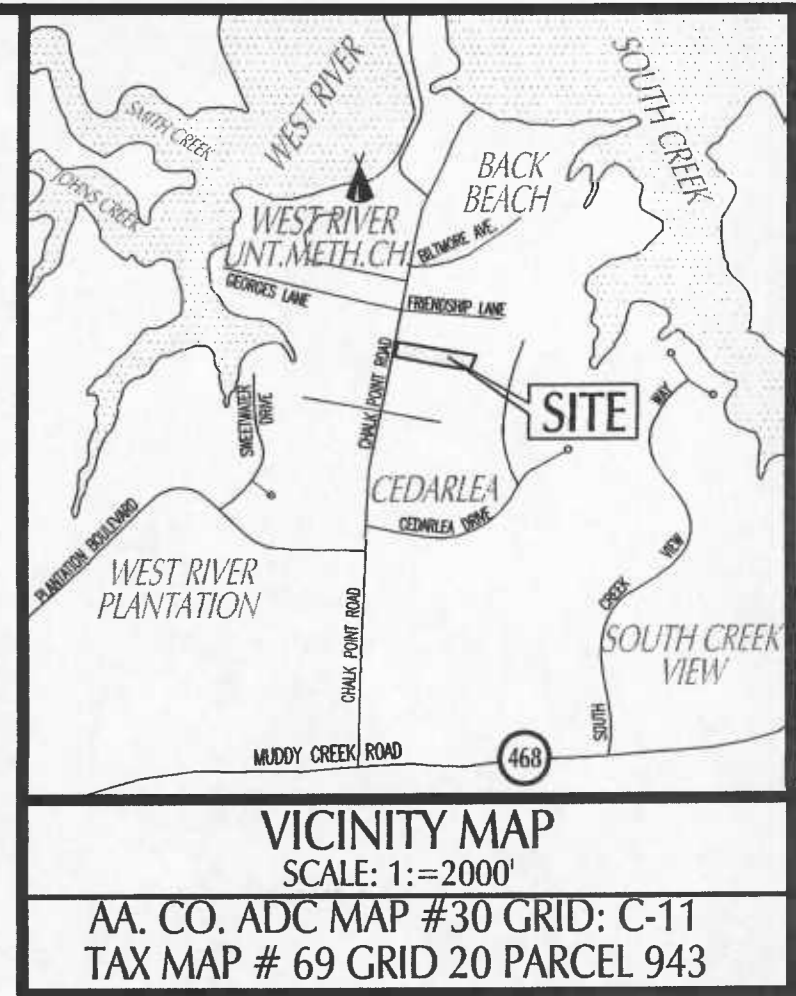
NOTE: IT IS THE APPLICANT'S RESPONSIBILITY TO OBTAIN ANY STATE PERMITS, IF REQUIRED, FOR ANY CONSTRUCTION ACTIVITY COVERED BY THIS PLAN WHICH IMPACTS A STATE REGULATED WETLAND. ANY CHANGES TO PLANS FOR THIS DEVELOPMENT WHETHER REQUIRED BY THE STATE OR INITIATED BY THE APPLICANT TO MEET STATE REQUIREMENTS, MUST BE APPROVED BY ANNE ARUNDEL COUNTY SOIL CONSERVATION DISTRICT.

NOTE: THIS PLAN WAS PREPARED WITHOUT THE BENEFIT OF A COMPLETE AND ACCURATE TITLE REPORT. PLAT SUBJECT TO RESTRICTIONS AND EASEMENTS OF RECORD OR OTHERWISE.

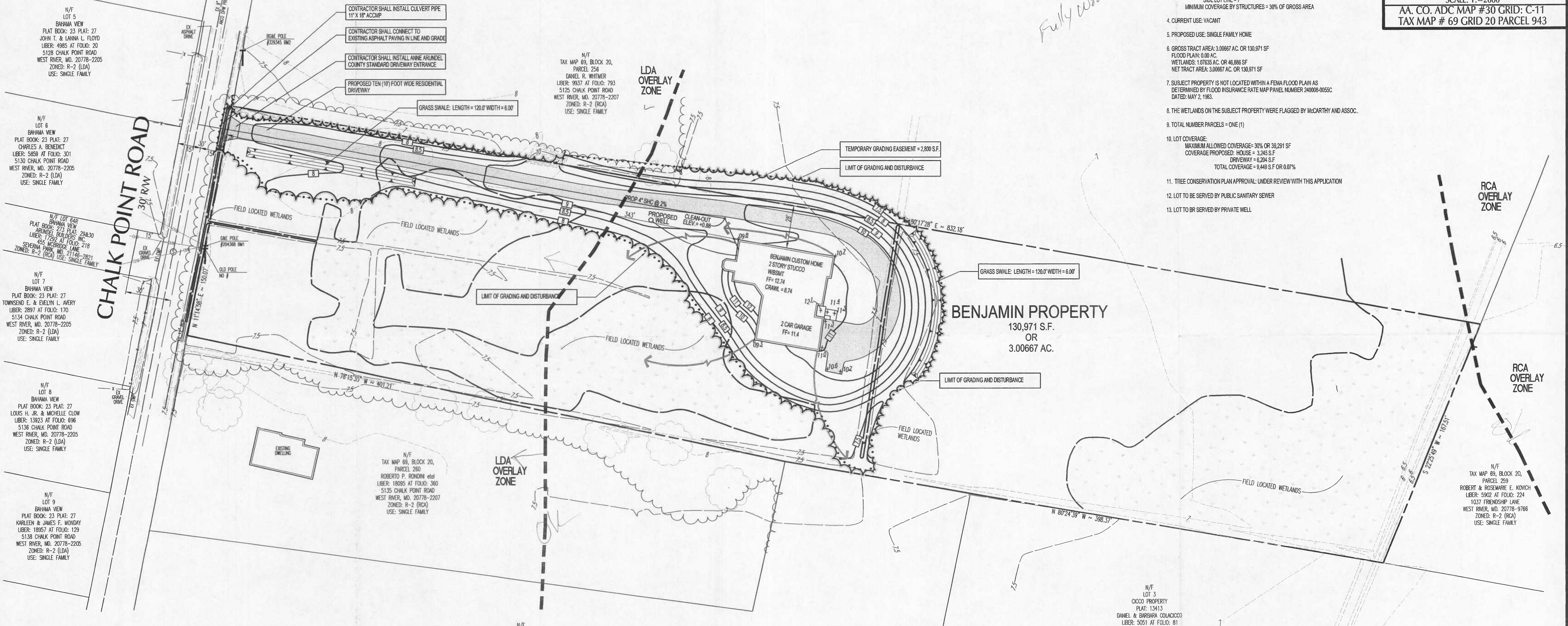
S.W.M. LEGEND  
← TYPICAL ROOF DRAIN DISCONNECT (75' LENGTH TYP.)

GENERAL NOTES:

1. DEVELOPER/APPLICANT:  
DENISE BENJAMIN  
8403 LAZY CREEK COURT  
SPRINGFIELD VA. 22153-3840  
CELL: (202) 708-0614  
E-MAIL: denise\_s\_benjamin@twd.gov
2. PROPERTY DESCRIPTION:  
TAX MAP 69 BLK 20  
PARCEL 259  
LIBER: 18579 AT FOLIO: 667  
TAX ACCOUNT NUMBERS: 15550206 (PARCEL 943)  
ELECTION DISTRICT 7  
SUBDIVISION: NOT APPLICABLE  
CHALK POINT ROAD  
SHADYSIDE, MARYLAND 20
3. ZONING: R-2  
MINIMUM LOT SIZE FOR SINGLE FAMILY HOMES:  
IF SERVED BY PUBLIC SEWER = 15,000 S.F.  
NUMBER OF LOTS ONE (1)  
LOT WIDTH AT THE FRONT BUILDING RESTRICTION LINE = 15'  
LOT WIDTH AT THE FRONT BUILDING RESTRICTION LINE = 80'  
MINIMUM SETBACK FOR PRINCIPAL STRUCTURES:  
FRONT LOT LINE = 30'  
REAR LOT LINE = 25'  
SIDE LOT LINE = 7'  
MINIMUM COVERAGE BY STRUCTURES = 30% OF GROSS AREA
4. CURRENT USE: VACANT
5. PROPOSED USE: SINGLE FAMILY HOME
6. GROSS TRACT AREA: 3.00667 AC. OR 130,971 SF  
FLOOD PLAIN: 0.0 AC.  
WETLANDS: 1.0765 AC. OR 46,886 SF  
NET TRACT AREA: 3.00667 AC. OR 130,971 SF
7. SUBJECT PROPERTY IS NOT LOCATED WITHIN A FEMA FLOOD PLAIN AS DETERMINED BY FLOOD INSURANCE RATE MAP PANEL NUMBER 240006-0055C DATED: MAY 2, 1983.
8. THE WETLANDS ON THE SUBJECT PROPERTY WERE FLAGGED BY MCCARTHY AND ASSOC.
9. TOTAL NUMBER PARCELS = ONE (1)
10. LOT COVERAGE:  
MAXIMUM ALLOWED COVERAGE = 30% OR 39,291 SF  
COVERAGE PROPOSED: HOUSE = 3,265 S.F.  
DRIVEWAY = 6,204 S.F.  
TOTAL COVERAGE = 9,469 S.F. OR 0.07%
11. TREE CONSERVATION PLAN APPROVAL UNDER REVIEW WITH THIS APPLICATION
12. LOT TO BE SERVED BY PUBLIC SANITARY SEWER
13. LOT TO BE SERVED BY PRIVATE WELL



VICINITY MAP  
SCALE: 1" = 2000'  
AA, CO. ADC MAP # 30 GRID: C-11  
TAX MAP # 69 GRID 20 PARCEL 943



ATTENTION:  
THIS PLAN SHALL BE USED ONLY FOR ITS INTENDED PURPOSE AS NOTED IN THE TITLE BLOCK.

48 Hours Before You Dig Call MISS UTILITY Service Protection Center

NOTE: EXISTING UTILITY INFORMATION SHOWN HEREON IS BASED UPON INFORMATION WHICH WAS AVAILABLE AT TIME OF THE BASE PLAN PREPARATION. DUE TO CONFIDENTIAL INFORMATION DISCLOSURE RESTRICTIONS, JOYCE ENGINEERING CORP. SHALL NOT BE LIABLE OR RESPONSIBLE FOR THE COMPLETENESS OR ACCURACY OF THE INFORMATION SHOWN. IT SHALL BE THE CONTRACTOR'S SOLE RESPONSIBILITY TO DETERMINE THE EXACT LOCATION AND ELEVATION OF ALL EXISTING UTILITY MAINS, LINES AND/OR SERVICES THAT MAY OR COULD BE AFFECTED BY THE ANTICIPATED CONSTRUCTION SHOWN HEREON. THE CONTRACTOR SHALL CONTACT MISS UTILITY PRIOR TO THE START OF ANY CONSTRUCTION ACTIVITY TO DETERMINE THE LOCATION OF ANY RECORD UTILITY MAINS, LINES, AND/OR SERVICES AND PERFORM TEST PIT EXCAVATIONS BY HAND AS REQUIRED.

ELECTRONIC FILE DISCLAIMER: THE INFORMATION CONTAINED HEREON WAS PREPARED AS AN ELECTRONIC "CAD" FILE BY JOYCE ENGINEERING CORPORATION (JEC). JEC HAS TAKEN REASONABLE STEPS TO ASSURE THE ACCURACY OF THE INFORMATION CONTAINED IN THE ELECTRONIC FILE, HOWEVER, JEC CANNOT GUARANTEE THAT CHANGES AND/OR ALTERATIONS HAVE NOT BEEN MADE TO THE FILE. NO RELIANCE ON THE INFORMATION CONTAINED HEREON SHALL BE MADE UNLESS THE INFORMATION IS FIRST COMPARED TO THE SOURCE ORIGINATING DOCUMENT. JEC SHALL ASSUME NO LIABILITY OR RESPONSIBILITY AND DOES NOT GRANT ANY WARRANTY, EXPRESSED OR IMPLIED, CONCERNING THE ACCURACY OF ANY INFORMATION THAT HAS BEEN TRANSMITTED OR RECEIVED VIA COMPUTER OR OTHER ELECTRONIC MEANS. IF REPRODUCTION OF THE INFORMATION CONTAINED HEREON, OR IF THE ELECTRONIC FILE USED TO CREATE THIS DOCUMENT IS REQUIRED, PLEASE CONTACT JEC DIRECTLY. THIS DOCUMENT CONTAINS PROPRIETARY INFORMATION AND SHALL NOT BE REPRODUCED, STORED IN A RETRIEVAL SYSTEM, OR TRANSMITTED IN ANY FORM INCLUDING ELECTRONIC OR PHOTO REPRODUCTION WITHOUT THE EXPRESS WRITTEN PERMISSION OF JEC. BY ACCEPTANCE OF THIS DOCUMENT, THE RECIPIENT ACKNOWLEDGES ACCEPTANCE OF THE ABOVE TERMS AND CONDITIONS.

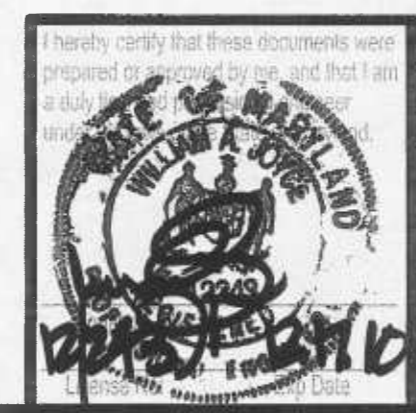
CALL TOLL FREE 1-800-257-7777 www.missutility.net/lites

N/F TAX MAP 69, BLOCK 20, PARCEL 261  
RICHARD R. & DONNA K. DAY  
LIBER: 10681 AT FOLIO: 193  
5138 CHALK POINT ROAD  
WEST RIVER, MD. 20778-2207  
ZONED: R-2 (RCA)  
USE: SINGLE FAMILY

N/F TAX MAP 69, BLOCK 20, PARCEL 744  
BERNARD J. & NORMA L. HOCHENS  
LIBER: 5600 AT FOLIO: 766  
5143 CHALK POINT ROAD  
WEST RIVER, MD. 20778-2207  
ZONED: R-2 (RCA)  
USE: SINGLE FAMILY

AREA STATEMENT  
NET LOT AREA: 130,971 S.F. OR 3.00667 ACRES  
TOTAL DISTURBED AREA: 34,333 S.F. OR 0.79 ACRES  
TOTAL WET LAND DISTURBED: 2,865 S.F. OR 0.06 ACRES  
LIMIT OF CLEARING: 34,333 S.F. OR 0.79 ACRES  
TOTAL WORKING TIME: 207 DAYS

OWNER/DEVELOPER/APPLICANT:  
DENISE BENJAMIN  
8403 LAZY CREEK COURT  
SPRINGFIELD VA. 22153-3840  
CELL: (202) 708-0614  
E-MAIL: denise\_s\_benjamin@twd.gov



REVISIONS:	

DESIGN: WAJ	DATE: SEPTEMBER, 2008	JOB No.: 007057
DRAFT: HAL	COMP: CW	SCALE: 1" = 30'
CHECK: JEC	SURVEY: JEC	SHEET: 1 OF 1

RECEIVED  
DEC 11 2008  
CRITICAL AREA COMMISSION  
Chesapeake & Atlantic Coastal Bays

GRADING AND SITE DEVELOPMENT PLAN  
LIBER: 18579 AT FOLIO: 667  
CHALK POINT ROAD  
BENJAMIN PROPERTY  
ELECTION DISTRICT NUMBER 7  
ANNE ARUNDEL COUNTY, MARYLAND

JOYCE ENGINEERING CORPORATION  
CIVIL ENGINEERING LAND SURVEYING LAND PLANNING CONSTRUCTION MANAGEMENT  
1100 BATHURST AVENUE SUITE 100, ANNAPOLIS, MARYLAND 20705  
TEL: (410) 426-7400 FAX: (410) 426-7401 WWW.JOYCECORP.COM  
© 2003 JOYCE ENGINEERING CORPORATION

SP-1