

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/

October 17, 2008

Mr. Eric Sennstrom, Director
Cecil County Office of Planning and Zoning
County Administration Building
200 Chesapeake Boulevard, Suite 2300
Elkton, MD 21921

Re: Local Variance Case #3409; Mita
Susquehannock Boulevard, North East

Dear Mr. Sennstrom:

I am writing to provide comment on the above referenced variance request. The applicant is seeking to develop a 0.51 acre parcel located in the Limited Development Area (LDA) and a designated Buffer Modification Area (BMA). The proposed dwelling would be located 35-feet from Mean High Water (MHW), which is less than the minimum 50-foot setback required by Section 195.6 of the Cecil County Zoning Ordinance.

Provided this lot is properly grandfathered, this office does not oppose a variance to establish a dwelling, however the impacts must be minimized and the variance granted the minimum necessary. Based on the information provided I have the following comments:

1. The site plan shows that the dwelling will be located 40-feet from the front-yard line, presumably to meet the front-yard setback. The Board should consider whether a variance to the front-yard setback would be more appropriate given the importance of maintaining the minimum impact necessary to the Buffer. If the house were located 15-feet further from the edge of MHW a variance to the requirements of Section 195.6 would not be necessary.
2. The lot coverage limit for this lot is 5,445 square feet. As a result of House Bill 1253, one major modification to the Critical Area Law was the change from impervious surface limits to lot coverage limits. Lot coverage is defined as the percentage of a total lot or parcel that is:
 - a. Occupied by a structure, accessory structure, parking area, driveway, walkway, or roadway; or

Mr. Eric Sennstrom

October 17, 2008

Page 2 of 2

- b. Covered with a paver, walkway gravel, stone shell, impermeable decking, a paver, permeable pavement, or any other manmade material

Lot coverage includes the total ground area covered or occupied, including elements protruding from a building such as a stairway, cantilevered deck, chimney, or overhanging deck or balcony by a stairway or impermeable deck. Lot coverage does not include:

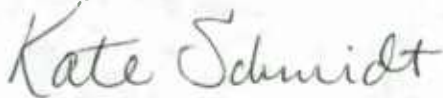
- a. A fence or wall that is less than one foot in width that has not been constructed with a footer;
- b. A walkway in the Buffer or expanded Buffer, including a stairway, that provides direct access to a community or private pier; or
- c. A wood mulch pathway; or
- d. A deck with gaps to allow water to pass freely.

Please advise the applicant of this change to the Critical Area law.

- 3. Per Section 195.6(g), mitigation of 2:1 for the footprint of the development activity is required. It would appear that this mitigation can be entirely accommodated on site and should consist of a mix of native trees and shrubs. We recommend a mix of one 2" caliper overstory tree and three shrubs or one 2" caliper overstory tree and two understory trees for 400 square feet of credit. The plantings should be protected per the standards of Section 195.6(g)3.

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

Sincerely,



Kate Schmidt
Natural Resources Planner
CE303-08

Martin O'Malley
Governor

Anthony G. Brown
Lieutenant Governor



Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS

1304 West Street, Suite 100, Annapolis, Maryland 21401
410-260-3460 Fax: 410-974-5538
www.dnr.state.md.us/criticalarea

June 9, 2008

Mr. Joseph Johnson
Cecil County Office of Planning and Zoning
County Administration Building
200 Chesapeake Boulevard, Suite 2300
Elkton, MD 21921

Re: Local Variance Case #3409; Mita
Susquehannock Boulevard, North East

Dear Mr. Johnson:

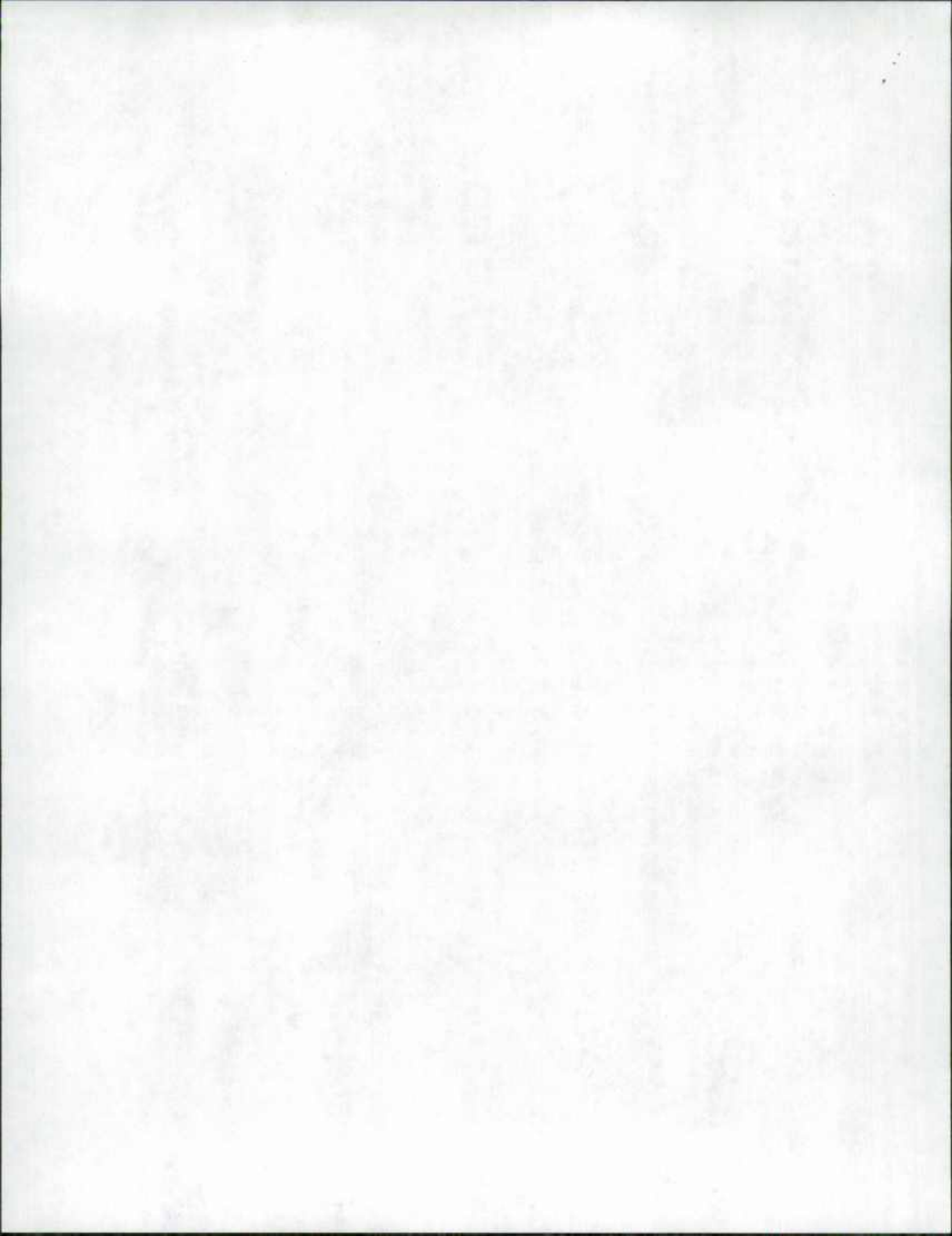
Thank you for submitting the above referenced variance request for review and comment. As you are aware, the action taken by the Critical Area Commission on October 11, 2007 applies to the Buffer Exemption Area provisions of the Cecil County Zoning Ordinance. Specifically, the Board of Appeals may not approve any variance request for this project because the decision will be null and void per Natural Resources Article Section 8-1809(1)(3). Accordingly, I would recommend that the Board postpone any hearing of this matter until the County has successfully resolved the sanction.

Therefore, I will not be providing comments at this time. Please notify this office when the County intends to reschedule this variance request. Thank you for your attention. If you have any questions, please contact me at (410) 260-3475.

Sincerely,

A handwritten signature in cursive script that reads "Kate Schmidt".

Kate Schmidt
Natural Resources Planner
CE303-08



IN THE MATTER OF
THE APPLICATION OF
EUSTACE W. MITA

BEFORE THE CECIL COUNTY
BOARD OF APPEALS
FILE NO.: 3409

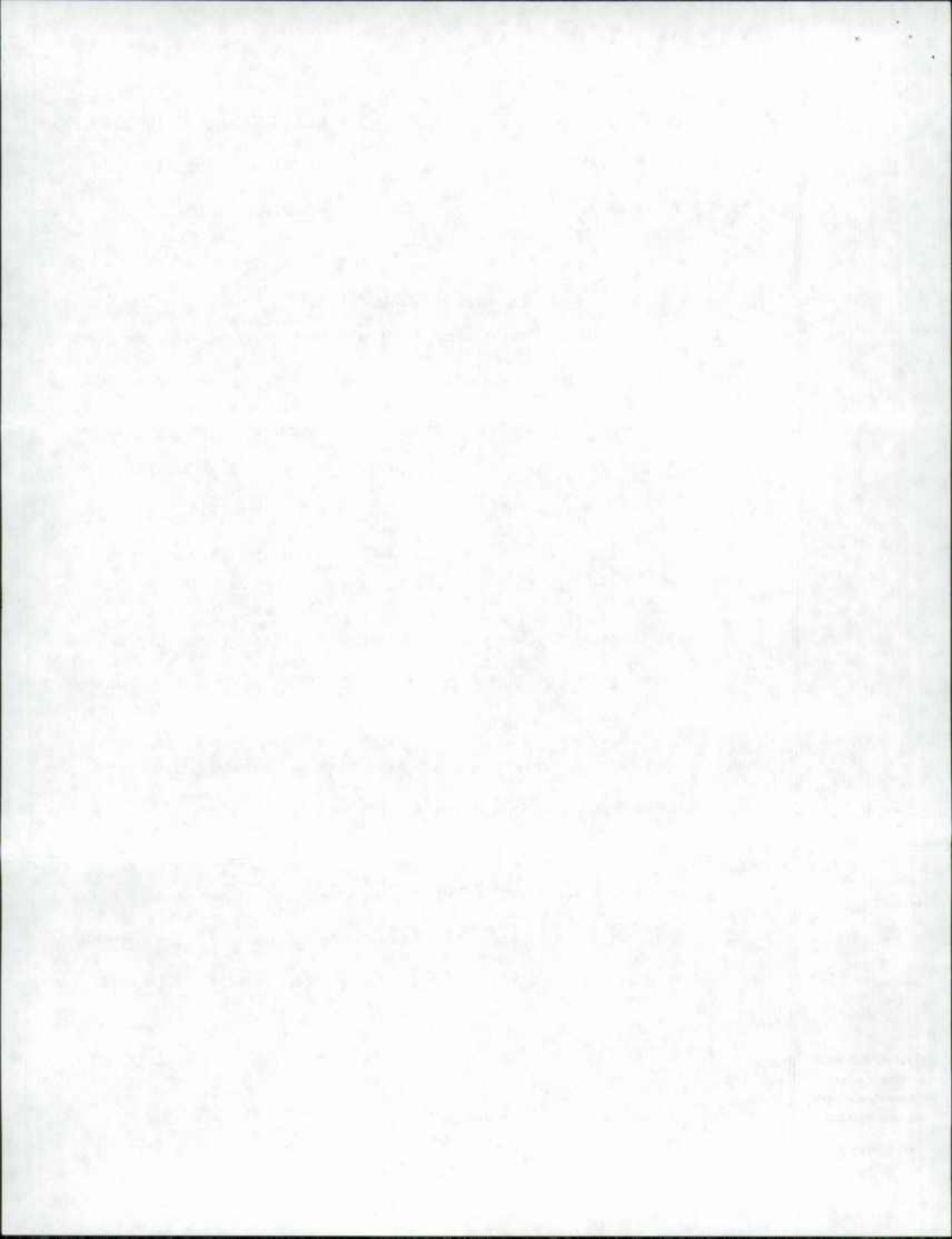
(Variance)

SUPPLEMENTAL OPINION

On July 28, 2008 the Cecil County Board of Appeals heard testimony and received evidence in support of an application filed on behalf of Eustace W. Mita for a variance from the Zoning Ordinance pertaining to the critical area buffer requirements within the 110' buffer zone. This application was for construction purposes on lot 9, on parcel 1117 on tax map 31, in the Fifth Election District, in an area presently zoned Suburban Residential (SR). For the reasons cited in its original Opinion dated August 27, 2008 the Board of Appeals granted the requested variance.

The Critical Area Commission for the Chesapeake and Atlantic Coastal Bays previously voted on October 11, 2007 to notify Cecil County that certain provisions of its Critical Area Program were deficient under Maryland law. Under Maryland law from the date of the above action on the part of the Critical Area Commission "local project approvals granted under a part of a program that the Commission has determined to be deficient shall be null and void after notice of the deficiency." Natural Resources Article, Section 8-1809 (1)(3).

As a result of such action by the Critical Area Commission the Board hereby finds that its earlier action in granting the above variance application is null and void as the Board did not have authority to grant the application pending Ordinance amendments consistent with Maryland law.



Upon such finding the application for variance is hereby rescinded and declared to be null and void.

Date: 10/28/08

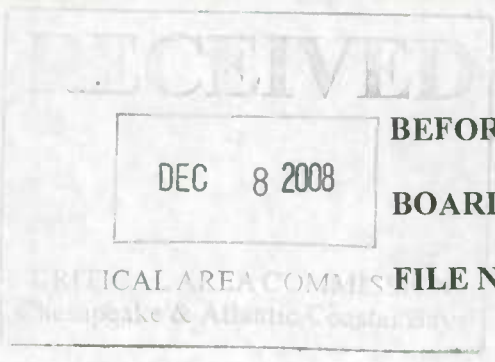
David Willis
David Willis, Chairman

TRUE COPY

Jan Dempsey 10-29-08

TRUE COPY

**IN THE MATTER OF
THE APPLICATION OF
EUSTACE W. MITA
(Variance)**



**BEFORE THE CECIL COUNTY
BOARD OF APPEALS
FILE NO.: 3409**

SECOND SUPPLEMENTAL OPINION

On July 28, 2008 the Cecil County Board of Appeals heard testimony and received evidence in support of an application filed on behalf of Eustace W. Mita for a variance from the Zoning Ordinance pertaining to the critical area buffer requirements within the 110' buffer zone. This application was for construction purposes on lot 9, on parcel 1117 on tax map 31, in the Fifth Election District, in an area presently zoned Suburban Residential (SR). For the reasons cited in its original Opinion dated August 27, 2008 the Board of Appeals granted the requested variance.

On October 28, 2008 the Board issued a Supplemental Opinion rescinding the above granted variance and finding same to be null and void. This action by the Board was the result of the action taken by the Board the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays on October 11, 2007 notifying Cecil County that certain provisions of its Critical Area Program were deficient under Maryland law. Under Maryland law from the date of notice of such deficiencies by the Critical Area Commission "local project approvals granted under a part of a program that the Commission has determined to be deficient shall be null and void." Natural Resources Article, Section 8-1809 (1)(3).

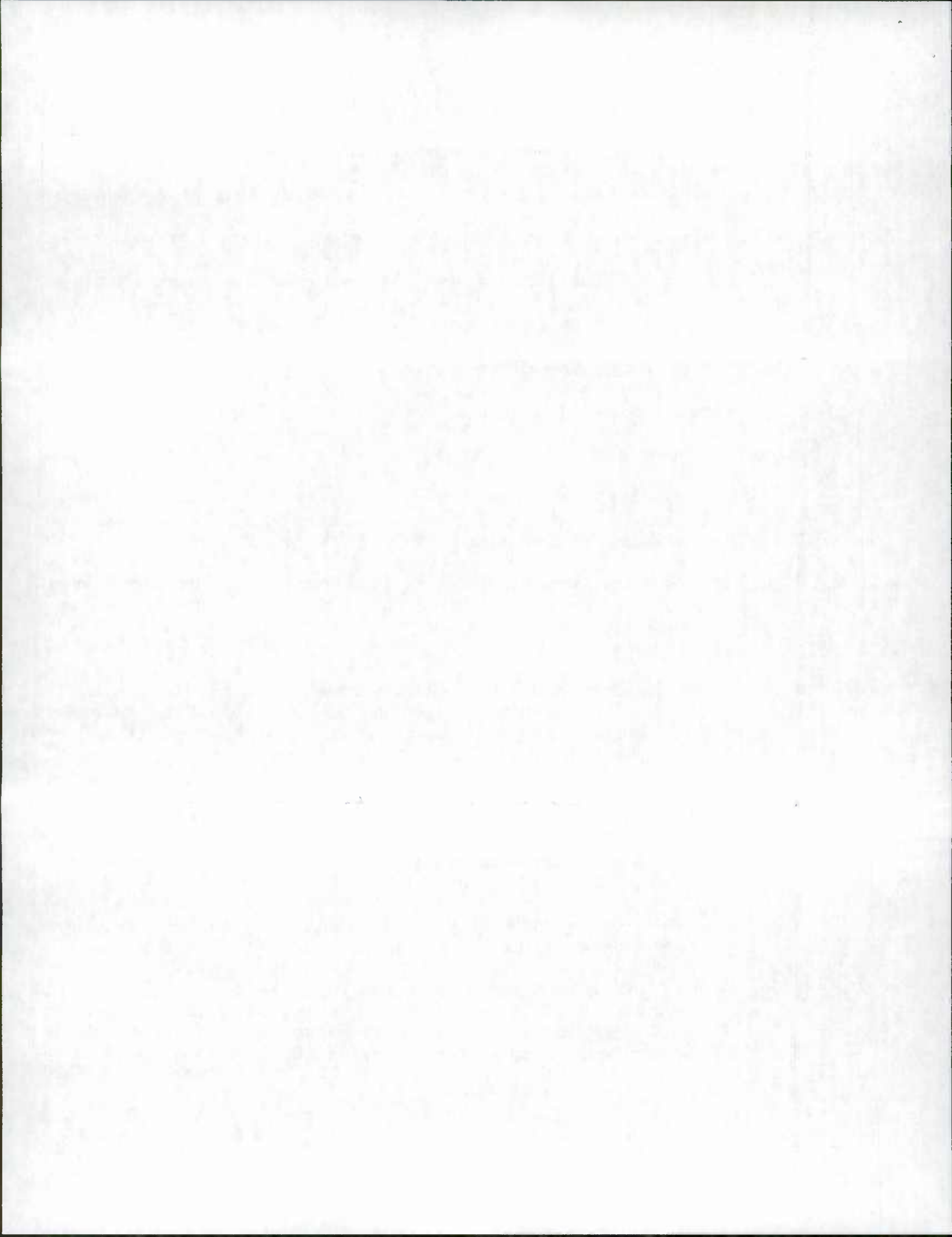
Subsequent to the initial hearing before the Board the Board of Cecil County Commissioners have amended the necessary portions of its Critical Area Plan, including provisions to the Buffer Exemption Provision. Upon review the Critical Area Commission for the Chesapeake and Atlantic Area Program have found such amendments consistent with

Maryland law. As a result the Board once again has authority to consider projects within the Critical Area, including applications for variances such as the Applicant.

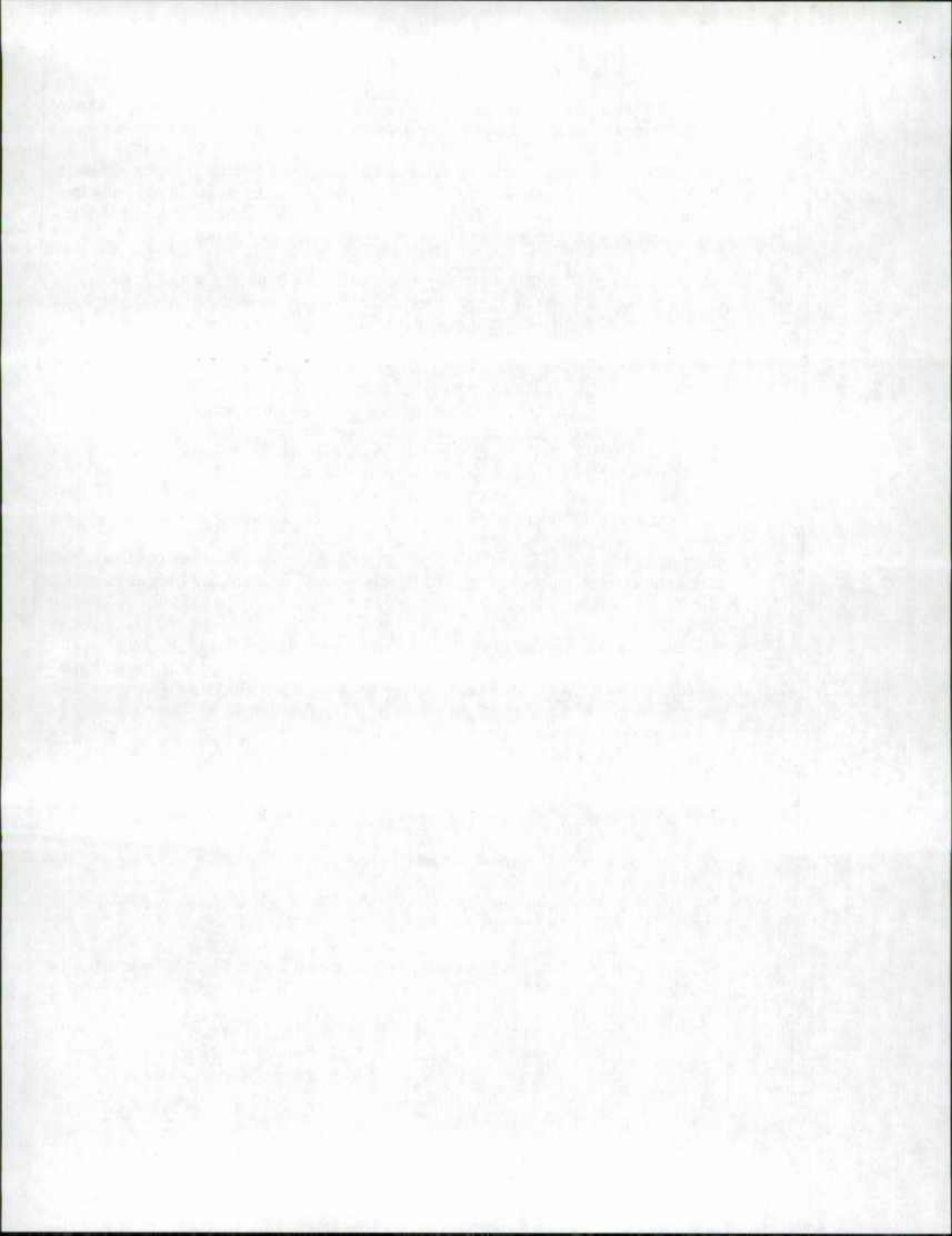
Under the provisions of Article XVII, Part I, Section 306, Paragraph 1, variances, as defined in Article II, may be granted by the Board of Appeals. In addition, due to special features of a site or other circumstances where a literal enforcement of the provisions relating to the Critical Area District would result in unwarranted hardship to the property owner, the Board of Appeals may grant a variance of the Critical Area District. An 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.

Paragraph 2 of Section 306 requires the Board to examine all facts of the case and render a decision based upon the following criteria:

- a. The variance request is based upon a situation where, because of special conditions, a literal enforcement of the provisions of the Ordinance would deprive the applicant of a right commonly enjoyed by other parties in the same zone under the terms of this Ordinance.
- b. Special conditions and circumstances exist that are peculiar to the land, buildings or structures involved, and that are not applicable to other lands, buildings, or structures in the same zone, such conditions and circumstances not being the result of actions by the applicant.
- c. The granting of the variance will not confer upon the applicant any special privileges that are denied by this Ordinance to other properties in the same zone.
- d. The variance request does not arise from any condition related to land or building use, either permitted or non-conforming, on any neighborhood property.
- e. Variance requests in the Critical Area District shall not be granted unless the decision is based on the following additional criteria:
 - (1) Special conditions or circumstances exist that are unique to the subject property or structure and a strict enforcement of the provisions within the Critical Area District would result in unwarranted hardship that is not generally shared by owners of property in similar management areas (i.e., IDA, LDA, RCA) of the Critical Area.

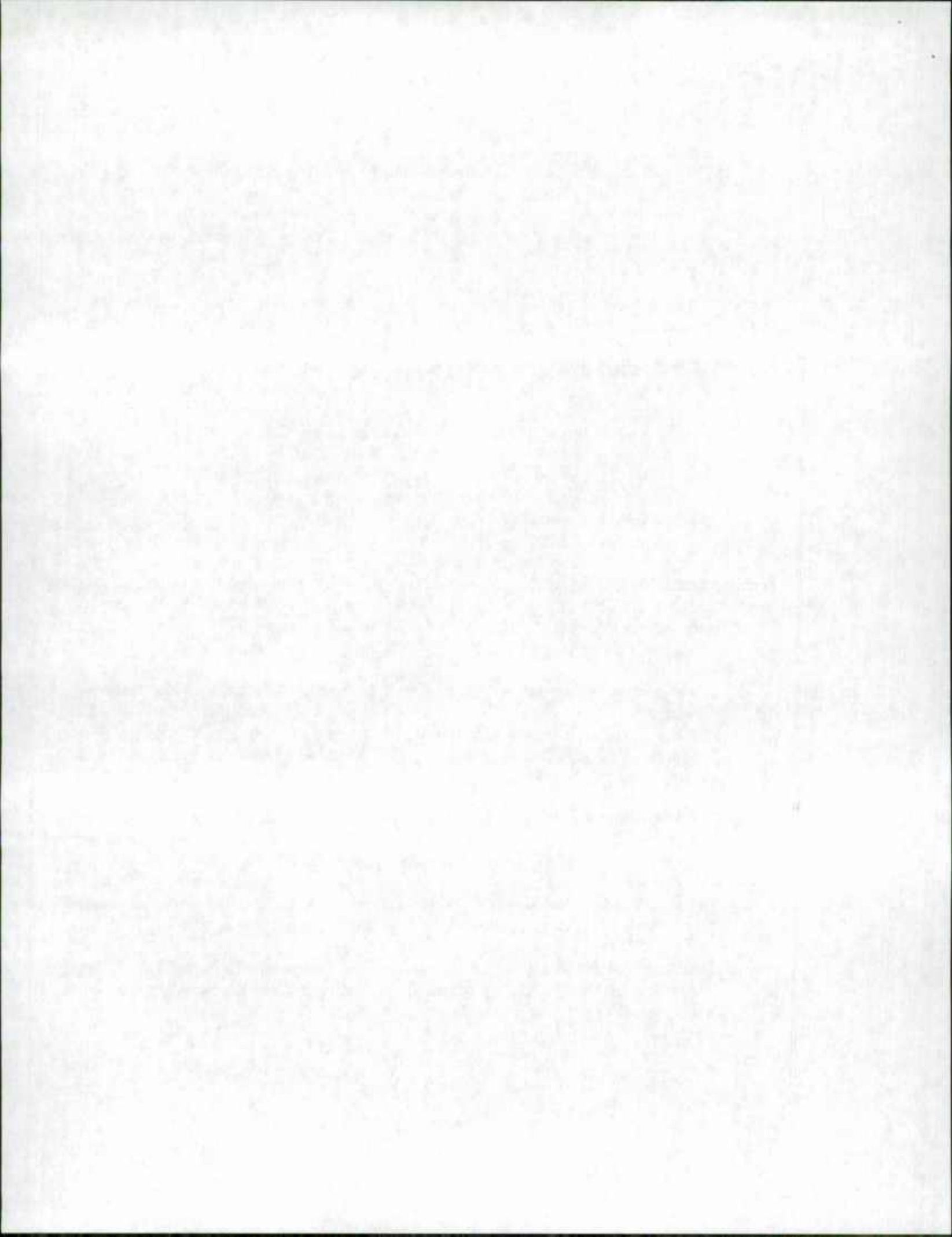


- (2) Strict enforcement of the provisions within the Critical Area District would deprive the property owner of rights commonly shared by other owners of property in similar management areas within the Critical Area District.
 - (3) The granting of a variance will not confer upon an applicant any special privilege that would be denied to other owners of like property and/or structures within the Critical Area District.
 - (4) The variance request is not based upon conditions or circumstances that are self-created or self-imposed, nor does the request arise from conditions or circumstances either permitted or non-conforming that are related to adjacent parcels.
 - (5) The granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area District, and that the granting of the variance will be consistent with the spirit and intent of the County's Critical Area Program and associated ordinances as well as state law and regulations adopted under Subtitle 18 of the Natural Resources Article of the Annotated Code of Maryland and COMAR 20.01.
 - (6) Greater profitability or lack of knowledge of the restrictions shall not be considered as sufficient cause for a variance.
3. A variance in the Critical Area District will not be granted by the Board of Appeals unless and until:
- b. The Board of Appeals shall find that the reason set forth in the application justifies the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of land, building, or structures. In making this determination for variance requests in the Critical Area District, the Board of Appeals shall consider the following as tantamount to a minimum variance:
 - (1) The granting of a variance to the yard and/or Buffer requirements results in new structures or impervious surfaces being located as far back from Mean High Water Line, tidal wetlands, or tributary streams in Critical Area as is feasible; and,
 - (2) The applicant takes steps to mitigate impacts, insofar as possible, including:
 - i. Reforestation on the sit to offset disturbed forested or developed woodlands on at least an equal area basis;
 - ii. Afforestation of areas of the site to that at least fifteen (15) percent of the gross site is forested; and,
 - iii. Implementation of any mitigation measures that relate to Habitat Protection Areas, Threatened or Endangered Species, or Species in Need of Conservation, and Plant and Wildlife Habitats, as delineated in the Cecil



County Critical Area Program, recommended by state and/or County agencies, are included as conditions of approval.

- (3) The Board of Appeals shall further find that the granting of the variance will be in harmony with the general purpose and intent of this Ordinance, shall not result in a use not permitted in the zone in which the property subject to variance is located, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
 - (4) For variances in the Critical Area District, the Board of Appeals shall find that the granting of the variance will be in harmony with the general purpose and intent of this Ordinance and the Cecil County Critical Area Program and shall not result in a use not permitted in the management area (i.e., IDA, LDA, RCA) or an increase in the number of permitted dwelling units (i.e., density limits) in which the property subject to the variance is located, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
 - (5) In addition and to the extent possible based on best available information, all property owners immediately contiguous to the application shall be notified by Certified Mail and be furnished a copy of the said application.
- c. In granting the variance, the Board of Appeals may prescribe such conditions and safeguards as it deems appropriate that comply with the intent of this Ordinance and the Cecil County Critical Area Program. Violations of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this Ordinance and punishable under Section 340 of this Ordinance.
 - d. In considering an application for a variance, the County shall presume that 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 Natural Resources Article, Title 8, Subtitle 18, COMAR Title 27, and the requirements of the County's Critical Area Program.
 - e. If the variance request is 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 has been filed, the County may consider that fact.
 - f. An applicant has the burden of proof and the burden of persuasion to overcome the presumption of nonconformance established in paragraph d above.
 - g. Based on competent and substantial evidence, the County shall make written findings as to whether the applicant has overcome the presumption of nonconformance as established above.



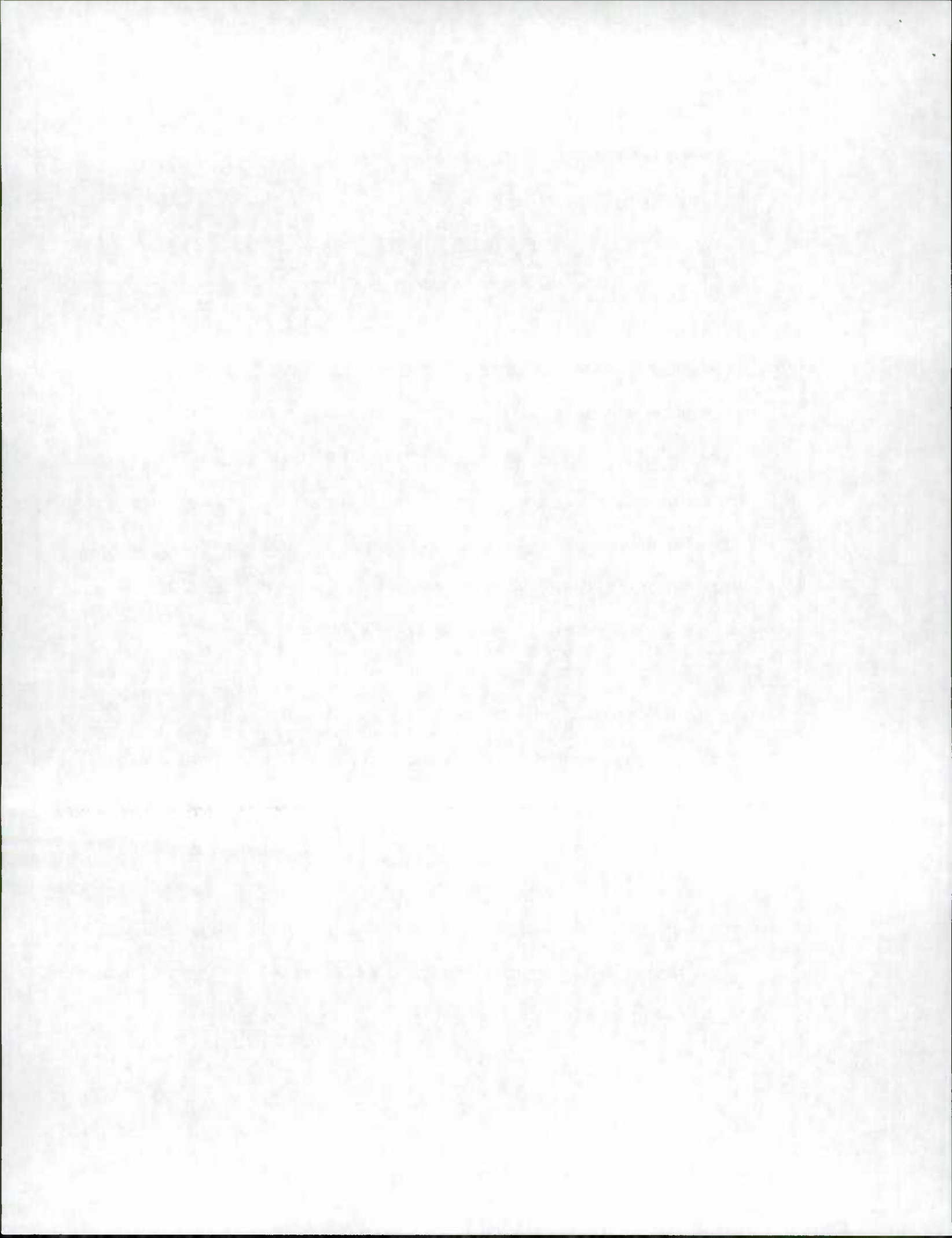
h. With due regard for the person's experience, technical competence, and specialized knowledge, the written findings may be based on evidence introduced and testimony presented by:

- (1) The Applicant;
- (2) The County or any other government agency; or
- (3) Any other person deemed appropriate by the County.

As noted in the Board's original Opinion, Applicant seeks to develop lot 9 which is a 0.51 acre lot located within the Limited Development Area and a designated Buffer Modification Area. The proposed dwelling will be located 35 feet from mean high water which is less than the minimum 50 foot setback required by section 195.6 of the Cecil County Zoning Ordinance. Because the subdivision was approved prior to the adoption of the Critical Area requirements, setbacks are established by using the adjacent properties. Applicant suggested that lot 9 is most consistent with lot 5 in the subdivision which also has a 35' foot setback. If the adjoining pie shaped lot were used the setback would place the house outside of the lot.

Upon reconsideration of the evidence presented at the initial hearing the Board is satisfied that the criteria set forth in Section 306 has been met and makes the following findings:

1. That because of the irregular shape of the lot the variance requested and herein granted is the minimum necessary.
2. That the proposed lot coverage is less than 5,445 square feet.
3. The variance request is based upon a situation where because of special conditions (irregular lot shape) a literal enforcement of the provisions of the Ordinance would deprive the Applicant of a right commonly enjoyed by other properties in the same zone under the terms of this Ordinance.



4. The Board further finds unwarranted hardship that would deny Applicant reasonable and significant use of the entire parcel (the proposed structure cannot be located anywhere else on the property).
5. The Board finds that Applicant met his burden of proof of demonstrating that the proposed house can not be located anywhere else on the property.
6. That the granting of the variance will not confer upon the Applicant special privileges that are denied by this Ordinance to other properties in the same zone.
7. That strict enforcement of the provisions within the Critical Area District will deprive the property owner of rights commonly shared by other owners of property in similar management areas within the Critical Area District.
8. That the variance request is not based upon conditions or circumstances that are self-created or self-imposed.

For the reasons stated, by unanimous vote, the application for a critical area buffer variance is hereby **GRANTED CONSISTENT WITH THE APPLICATION AND CONDITIONED UPON APPLICANT PROVIDING MITIGATION OF 2:1 FOR THE FOOTPRINT OF THE DEVELOPMENT ACTIVITY CONSISTING OF NATIVE TREES AND SHRUBS (EITHER ONE 2" CALIPER OVERSTORY TREE AND THREE SHRUBS OR ONE 2" CAPLIPER OVERSTORY TREE AND TWO UNDERSTORY TREES FOR 400 SQUARE FEET OF CREDIT).** All plantings shall be protected in accordance with section 195.6(g)3 of the Cecil County Zoning Ordinance.

Date: 11/25/08

David Willis, Jr.
David Willis, Chairman

TRUE COPY

Jan Dempsey 11-26-08

TRUE COPY

IN THE MATTER OF
THE APPLICATION OF
EUSTACE W. MITA

BEFORE THE CECIL COUNTY
BOARD OF APPEALS

FILE NO.: 3409

(Variance)

OPINION

Application of Eustace W. Mita for a variance from the Zoning Ordinance pertaining to the critical area buffer requirements within the 110' buffer zone for construction purposes on lot 9, on parcel 1117 on tax map 31, in the Fifth Election District, in an area presently zoned Suburban Residential (SR).

Under the provisions of Article XVII, Part I, Section 306, Paragraph 1, variances, as defined in Article II, may be granted by the Board of Appeals. In addition, due to special features of a site or other circumstances where a literal enforcement of the provisions relating to the Critical Area District would result in unwarranted hardship to the property owner, the Board of Appeals may grant a variance of the Critical Area District. An 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.

Paragraph 2 of Section 306 requires the Board to examine all facts of the case and render a decision based upon the following criteria:

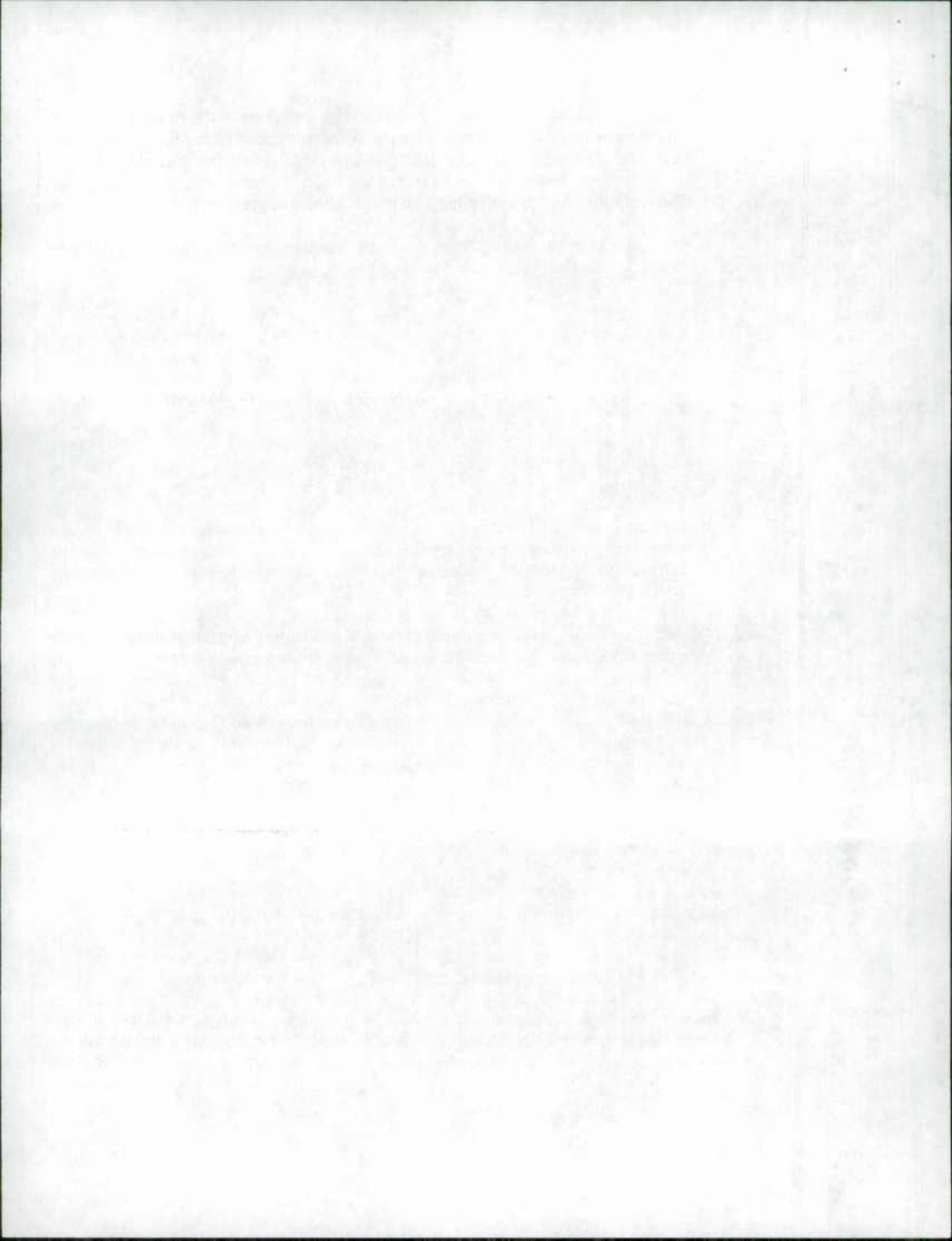
- a. The variance request is based upon a situation where, because of special conditions, a literal enforcement of the provisions of the Ordinance would deprive the applicant of a right commonly enjoyed by other parties in the same zone under the terms of this Ordinance.
- b. Special conditions and circumstances exist that are peculiar to the land, buildings or structures involved, and that are not applicable to other lands, buildings, or structures in the same zone, such conditions and circumstances not being the result of actions by the applicant.

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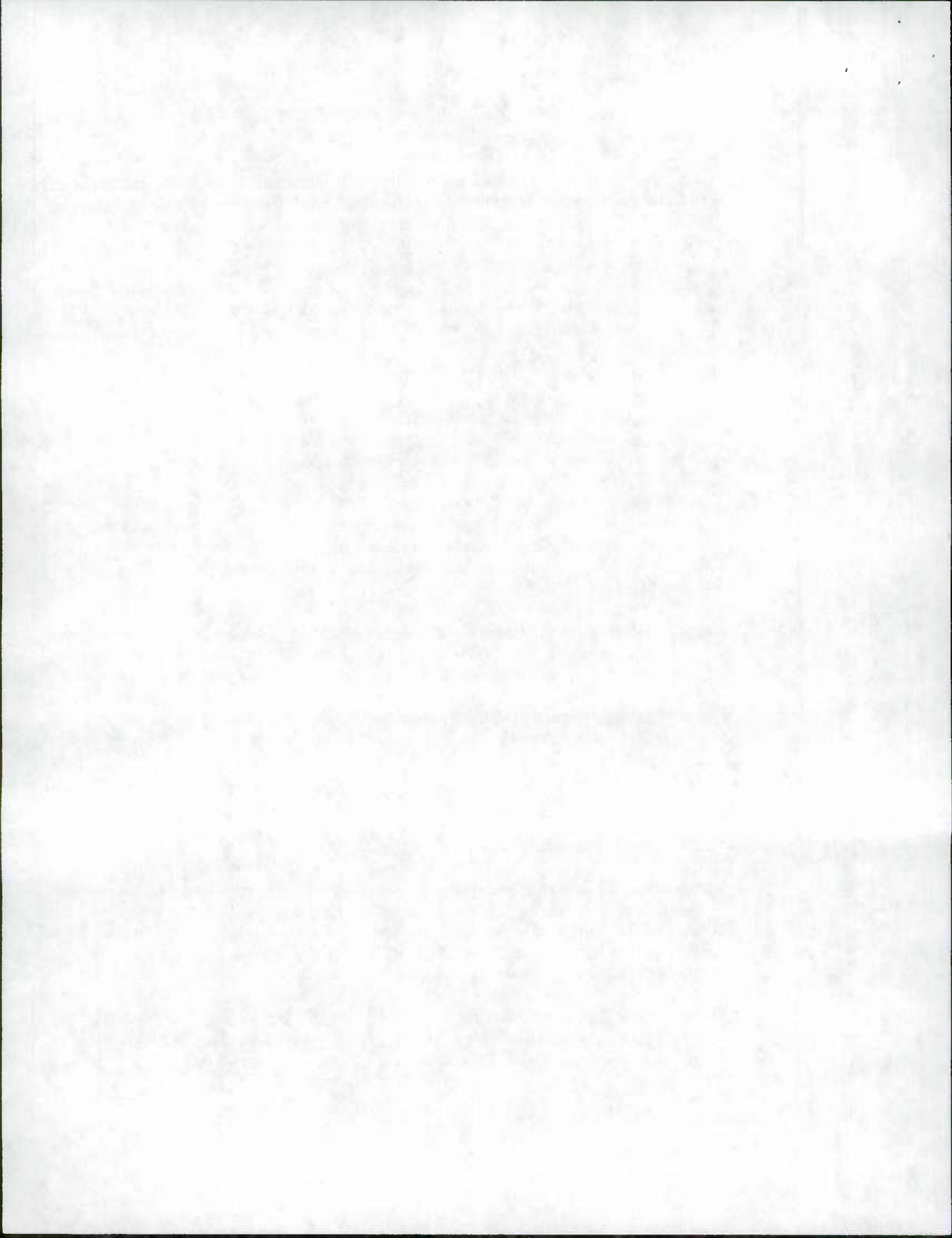
AUG 2nd 2008

CRITICAL AREA COMMISSION
Chesapeake & Atlantic Coastal Bays

- c. The granting of the variance will not confer upon the applicant any special privileges that are denied by this Ordinance to other properties in the same zone.
 - d. The variance request does not arise from any condition related to land or building use, either permitted or non-conforming, on any neighborhood property.
 - e. Variance requests in the Critical Area District shall not be granted unless the decision is based on the following additional criteria:
 - (1) Special conditions or circumstances exist that are unique to the subject property or structure and a strict enforcement of the provisions within the Critical Area District would result in unwarranted hardship that is not generally shared by owners of property in similar management areas (i.e., IDA, LDA, RCA) of the Critical Area.
 - (2) Strict enforcement of the provisions within the Critical Area District would deprive the property owner of rights commonly shared by other owners of property in similar management areas within the Critical Area District.
 - (3) The granting of a variance will not confer upon an applicant any special privilege that would be denied to other owners of like property and/or structures within the Critical Area District.
 - (4) The variance request is not based upon conditions or circumstances that are self-created or self-imposed, nor does the request arise from conditions or circumstances either permitted or non-conforming that are related to adjacent parcels.
 - (5) The granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area District, and that the granting of the variance will be consistent with the spirit and intent of the County's Critical Area Program and associated ordinances as well as state law and regulations adopted under Subtitle 18 of the Natural Resources Article of the Annotated Code of Maryland and COMAR 20.01.
 - (6) Greater profitability or lack of knowledge of the restrictions shall not be considered as sufficient cause for a variance.
3. A variance in the Critical Area District will not be granted by the Board of Appeals unless and until:
- b. The Board of Appeals shall find that the reason set forth in the application justifies the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of land, building, or structures. In making this determination for variance requests in the Critical Area District, the Board of Appeals shall consider the following as tantamount to a minimum variance:



- (1) The granting of a variance to the yard and/or Buffer requirements results in new structures or impervious surfaces being located as far back from Mean High Water Line, tidal wetlands, or tributary streams in Critical Area as is feasible; and,
- (2) The applicant takes steps to mitigate impacts, insofar as possible, including:
 - i. Reforestation on the site to offset disturbed forested or developed woodlands on at least an equal area basis;
 - ii. Afforestation of areas of the site to that at least fifteen (15) percent of the gross site is forested; and,
 - iii. Implementation of any mitigation measures that relate to Habitat Protection Areas, Threatened or Endangered Species, or Species in Need of Conservation, and Plant and Wildlife Habitats, as delineated in the Cecil County Critical Area Program, recommended by state and/or County agencies, are included as conditions of approval.
- (3) The Board of Appeals shall further find that the granting of the variance will be in harmony with the general purpose and intent of this Ordinance, shall not result in a use not permitted in the zone in which the property subject to variance is located, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
- (4) For variances in the Critical Area District, the Board of Appeals shall find that the granting of the variance will be in harmony with the general purpose and intent of this Ordinance and the Cecil County Critical Area Program and shall not result in a use not permitted in the management area (i.e., IDA, LDA, RCA) or an increase in the number of permitted dwelling units (i.e., density limits) in which the property subject to the variance is located, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
- (5) In addition and to the extent possible based on best available information, all property owners immediately contiguous to the application shall be notified by Certified Mail and be furnished a copy of the said application.
- c. In granting the variance, the Board of Appeals may prescribe such conditions and safeguards as it deems appropriate that comply with the intent of this Ordinance and the Cecil County Critical Area Program. Violations of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this Ordinance and punishable under Section 340 of this Ordinance.
- d. In considering an application for a variance, the County shall presume that 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 Natural



Resources Article, Title 8, Subtitle 18, COMAR Title 27, and the requirements of the County's Critical Area Program.

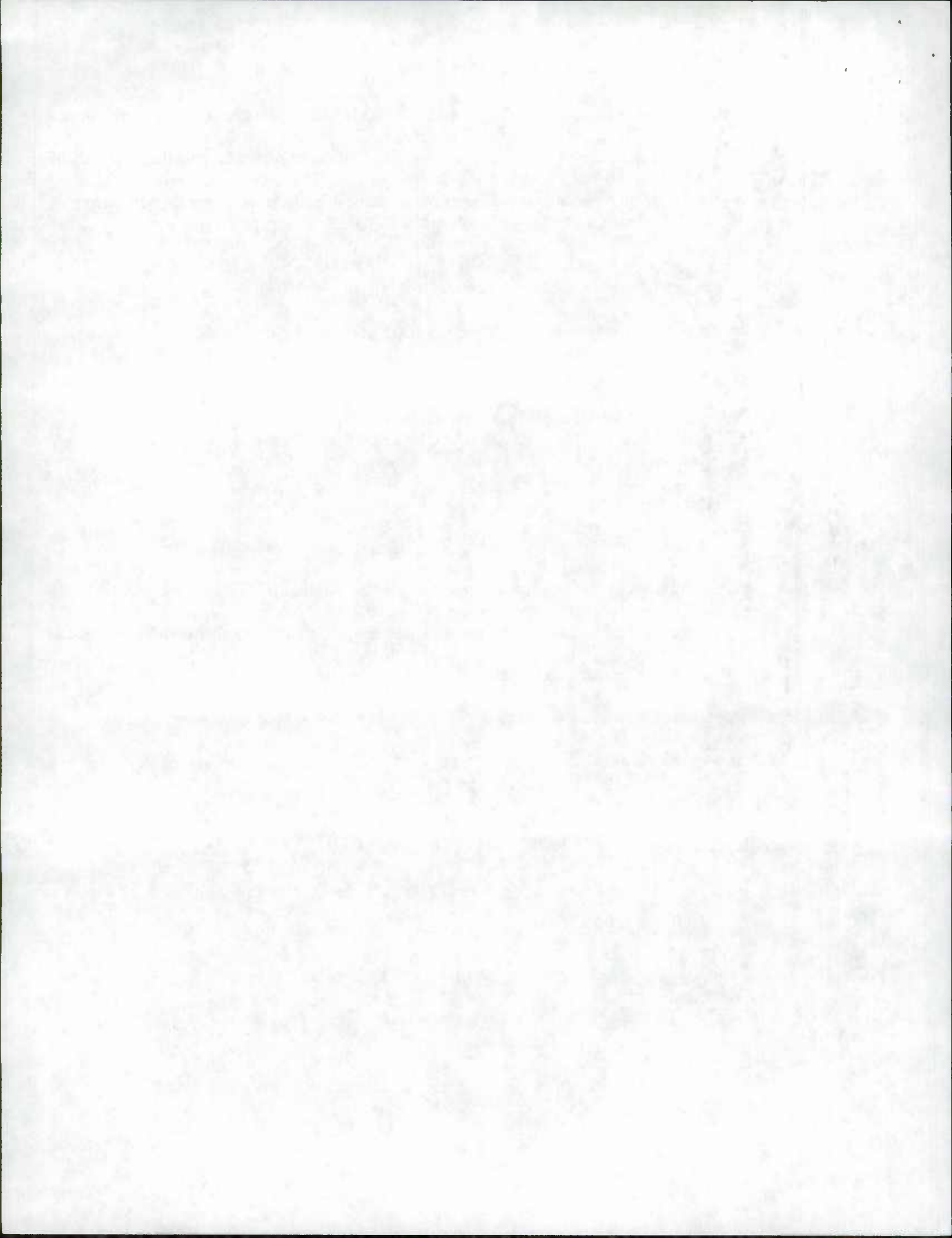
- e. If the variance request is based on conditions or circumstances that are the result of actions by the applicant, including the commencement of development activity before an application for a variance has been filed, the County may consider that fact.
- f. An applicant has the burden of proof and the burden of persuasion to overcome the presumption of nonconformance established in paragraph d above.
- g. Based on competent and substantial evidence, the County shall make written findings as to whether the applicant has overcome the presumption of nonconformance as established above.
- h. With due regard for the person's experience, technical competence, and specialized knowledge, the written findings may be based on evidence introduced and testimony presented by:
 - (1) The Applicant;
 - (2) The County or any other government agency; or
 - (3) Any other person deemed appropriate by the County.

Applicant desires to construct a residence upon lot 9. Because the subdivision was approved prior to the adoption of the Critical Area requirements, setbacks are established by using the adjacent properties. Applicant suggested that lot 9 is most consistent with lot 5 in the subdivision which also has a 35' foot setback. If the adjoining pie shaped lot were used the setback would place the house outside of the lot.

Three individuals appeared in favor of the application.

Two individuals spoke in opposition to the application citing concerns with the wetlands on the property.

From the evidence presented the Board is satisfied that the criteria set forth in Section 306 has been met and makes the following findings:



1. The variance request is based upon a situation where because of special conditions a literal enforcement of the provisions of the Ordinance would deprive the Applicant of a right commonly enjoyed by other properties in the same zone under the terms of this Ordinance.
2. The Board further finds unwarranted hardship that would deny Applicant reasonable and significant use of the entire parcel (the proposed structure cannot be located anywhere else on the property).
3. The Board finds that Applicant met his burden of proof of demonstrating that the proposed house can not be located anywhere else on the property.
4. That the granting of the variance will not confer upon the Applicant special privileges that are denied by this Ordinance to other properties in the same zone.
5. That strict enforcement of the provisions within the Critical Area District will deprive the property owner of rights commonly shared by other owners of property in similar management areas within the Critical Area District.
6. That the variance request is not based upon conditions or circumstances that are self-created or self-imposed.

For the reasons stated, by unanimous vote, the application for a critical area buffer variance is hereby **GRANTED CONSISTENT WITH THE APPLICATION.**

Date: 8/26/08

David Willis, Chairman
David Willis, Chairman

TRUE COPY

Gale Dempsey 8-27-08

TRUE COPY

DOUGLAS F. GANSLER
Attorney General

KATHERINE WINFREE
Chief Deputy Attorney General

JOHN B. HOWARD, JR.
Deputy Attorney General



MARIANNE E. DISE
Assistant Attorney General
Principal Counsel

SAUNDRA K. CANEDO
Assistant Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
CRITICAL AREA COMMISSION FOR THE
CHESAPEAKE AND ATLANTIC COASTAL BAYS

FAX NO. (410) 974-5338

WRITER'S DIRECT DIAL NO. (410) 260-3466
mdise@oag.state.md.us

October 1, 2008

Mr. Eustace W. Mita
2224 East Deerfield Drive
Media, PA 19063

RE: Cecil County Board of Appeals Case No. 3409

Dear Mr. Mita:

I am taking the unusual step of writing directly to you to inform you that, in the opinion of this Office, the variance granted by the Cecil County Board of Appeals in the above-referenced case is null and void. I am enclosing correspondence from the Critical Area Commission to the County (dated June 9, 2008), which advised the County that any variance granted in this case would be null and void under State law, Annotated Code of Maryland, Natural Resources Article Section 8-1809 (1)(3). Apparently, the County proceeded with a hearing, and purported to grant the variance. You, as the property owner, may not have had knowledge of the events preceding the Board of Appeals' hearing, and the Board's Decision does not reflect that the Board was informed of the State law sanction imposed on the County.

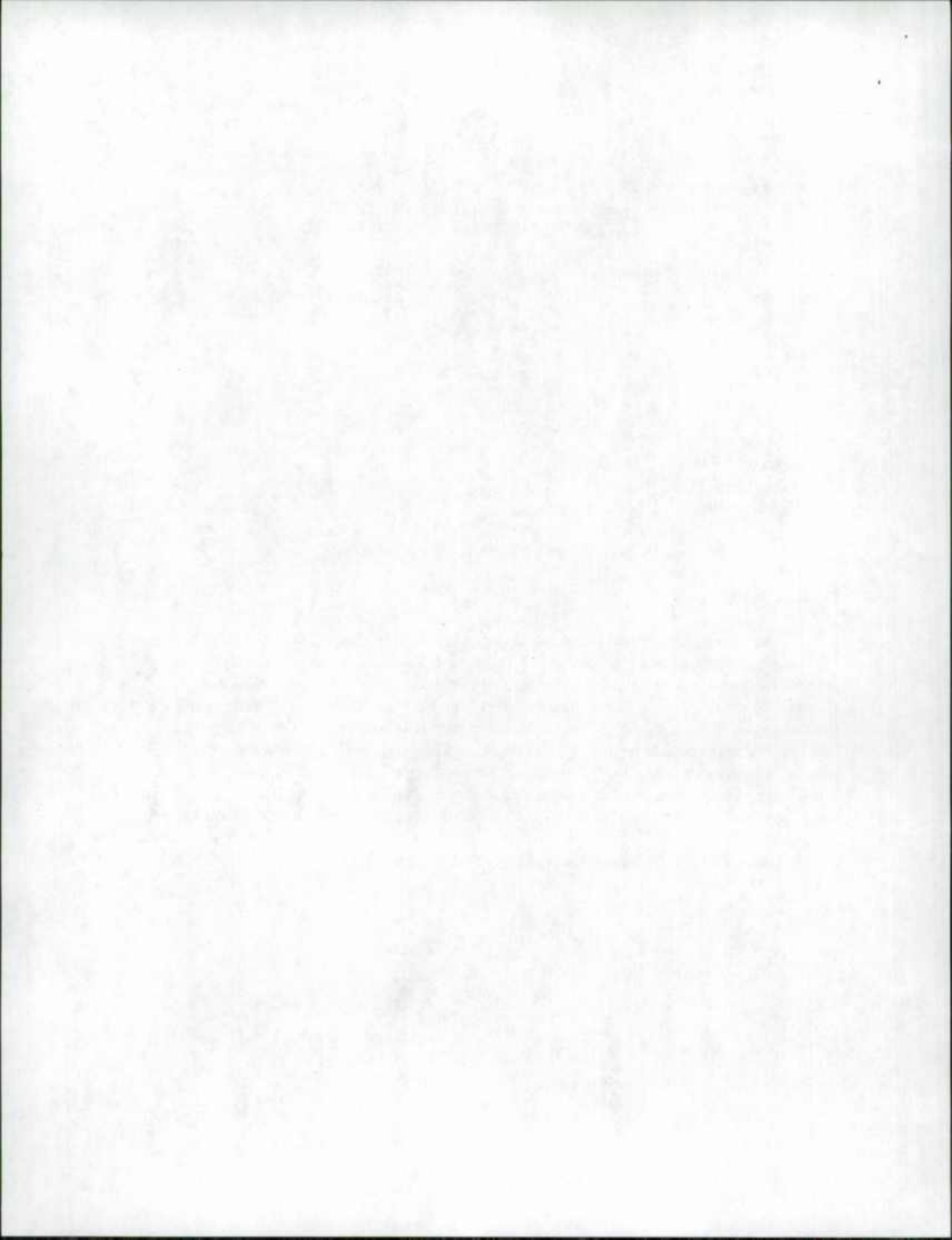
Please feel free to contact me with any questions about this letter or the attachments.

Sincerely,

A handwritten signature in cursive script that reads "Marianne E. Dise".

Marianne E. Dise
Principal Counsel

Enclosures



DOUGLAS F. GANSLER
Attorney General

KATHERINE WINFREE
Chief Deputy Attorney General

JOHN B. HOWARD, JR.
Deputy Attorney General



MARIANNE E. DISE
Assistant Attorney General
Principal Counsel

SAUNDRA K. CANEDO
Assistant Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
CRITICAL AREA COMMISSION FOR THE
CHESAPEAKE AND ATLANTIC COASTAL BAYS

FAX NO. (410) 974-5338

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September 29, 2008

BY FACSIMILE AND U.S. MAIL

President William C. Manlove
Cecil County Board of Commissioners
County Administration Building
200 Chesapeake Blvd. Suite 2100
Elkton, Maryland 21921

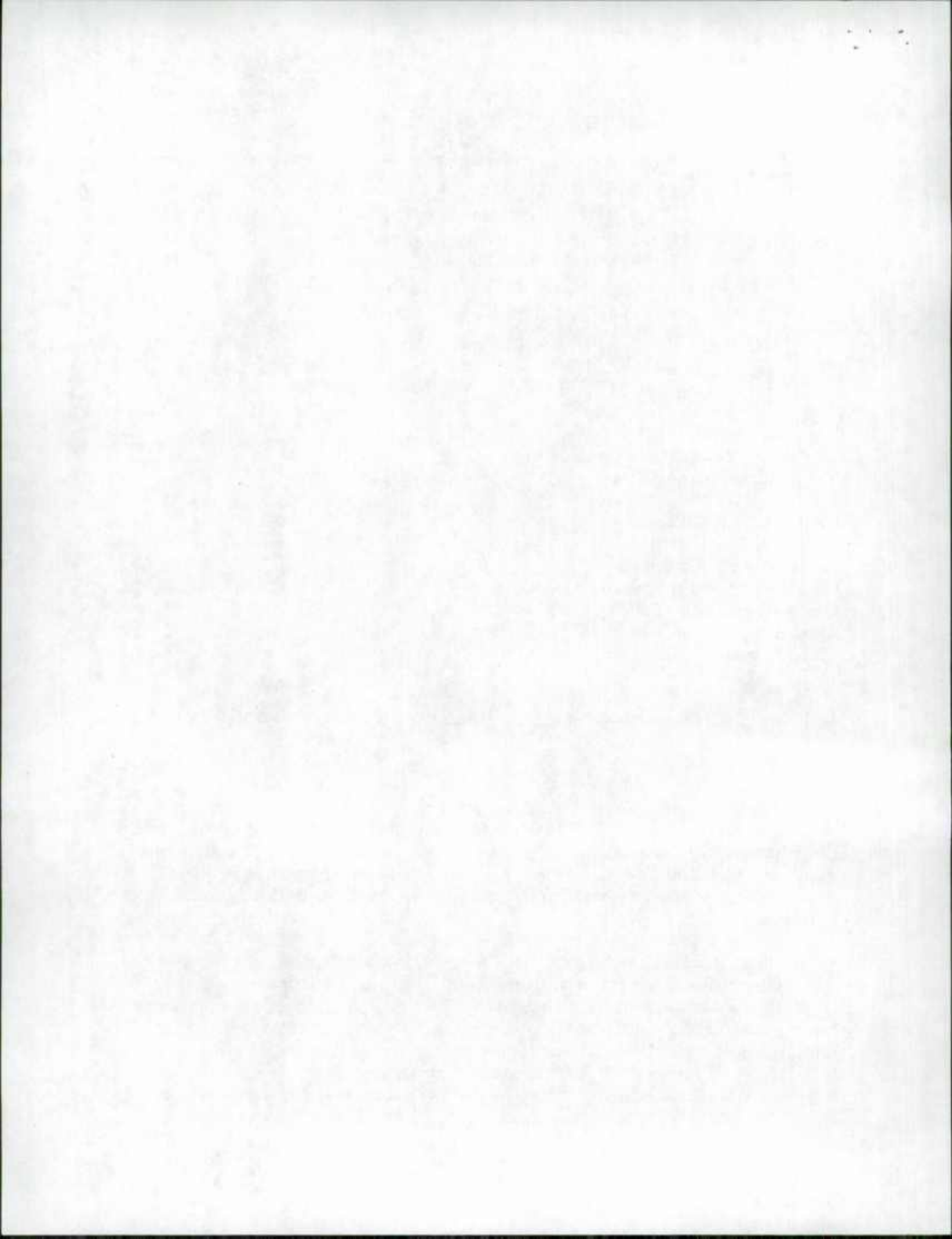
Mr. David Willis, Chairman
Cecil County Board of Appeals
County Administration Building
200 Chesapeake Blvd. Suite 2300
Elkton, Maryland 21921

RE: Cecil County Board of Appeals Critical Area Variance Case # 3409 - Mita

Dear Gentlemen:

This letter notifies you that the Cecil County Board of Appeals Decision, issued in the above-referenced case on August 27, 2008, is Null and Void. As you know, the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays voted on October 11, 2007 to notify the County that certain provisions of the Cecil County Critical Area Program are deficient. Among those provisions was the Buffer Exemption Provision of the Cecil County Zoning Ordinance.

Under State law, from the date of the Critical Area Commission's action, "[l]ocal project approvals granted under a part of a program that the Commission has determined to be deficient shall be null and void after notice of the deficiency." A variance is a "project approval" and hence is subject to the quoted provision of State law. Although the staff of the Critical Area Commission informed Mr. Joe Johnson of the County's Office of Planning and Zoning on June 9, 2007 (copy of letter attached) that "the Board of Appeals may not approve any variance request for the Mita project because the decision will be null and void per Natural Resources



Article Section 8-1809 (1)(3),” the Board apparently proceeded in spite of that notice.

When this Office received a copy of the Board’s written decision, I immediately called the Board’s attorney, Mr. Keith Baynes, and reminded Mr. Baynes that the Critical Area Commission’s action had divested the Board of authority to issue variances under the Buffer Exemption provisions of the County ordinance. Mr. Baynes promised to check into the matter. When I had not heard back from him after three weeks, I again contacted him. He related that he had spoken with Mr. Sennstrom, who was of the view that the Board’s action was (in Mr. Baynes’ words) “not a big deal.”

The State law which authorizes Cecil County, and its Board of Appeals, to consider land use and development projects within the Critical Area is the Natural Resources Article of the Annotated Code of Maryland. Under that law, the Board of Appeals’ action in the Mita case is unquestionably null and void. The County and its Board must take immediate action to rescind this illegal variance.

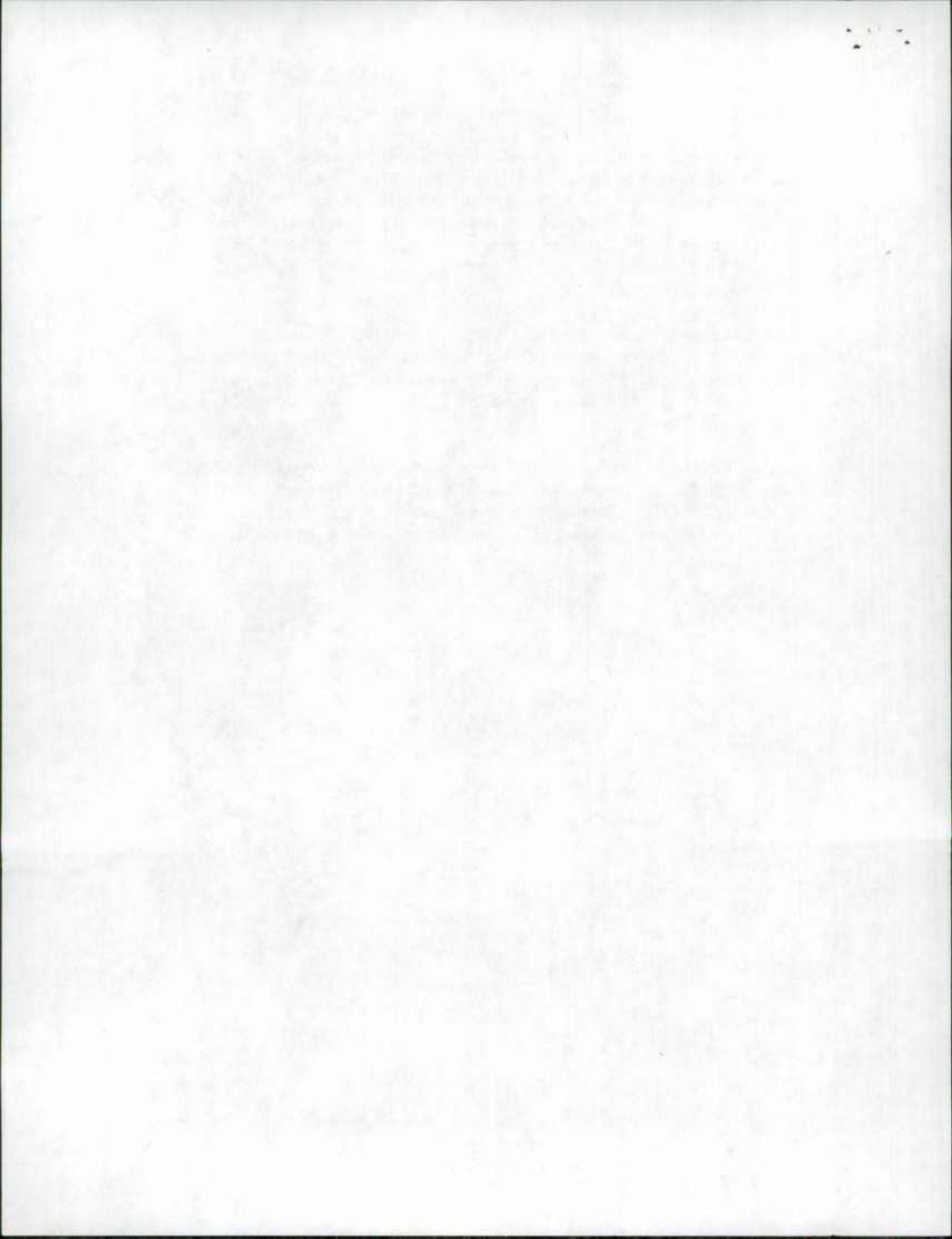
The Critical Area Commission takes very seriously the matter of a County Board of Appeals purporting to act on a matter over which the Board has no jurisdiction. The Commission and the Office of the Attorney General remain willing to work with the County to resolve the issue discussed in this letter. We look forward to your prompt and favorable response.

Sincerely,



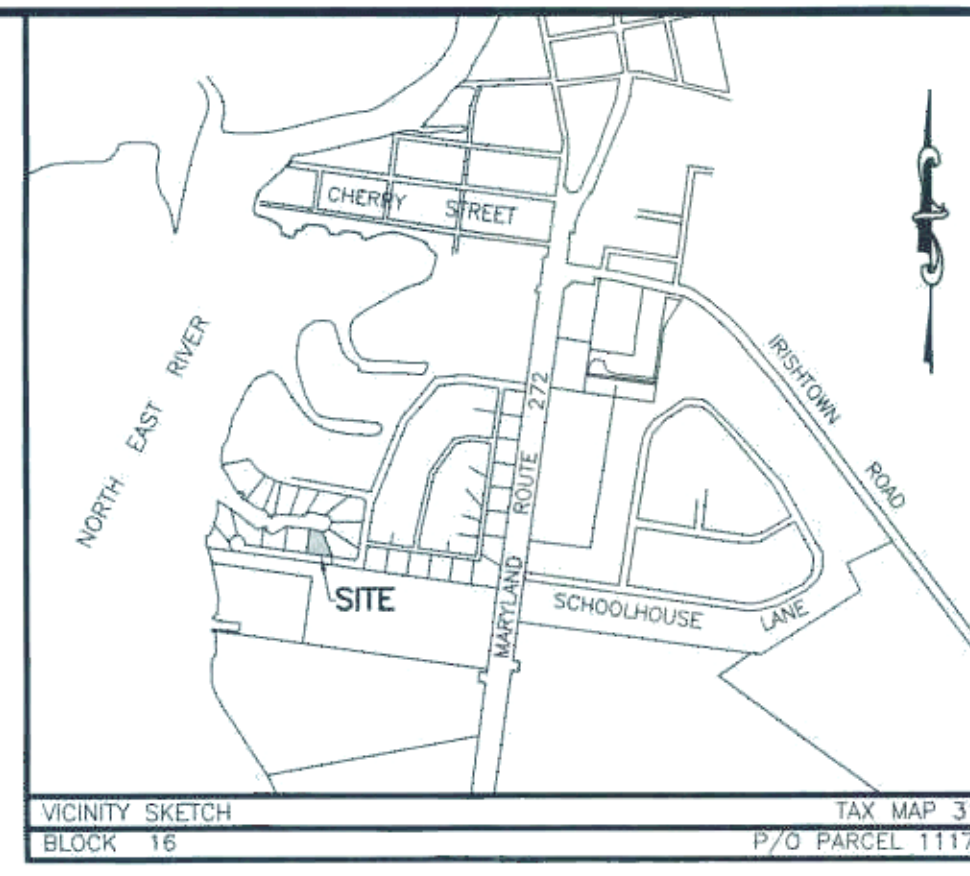
Marianne E. Dise
Principal Counsel

cc: Hon. Margaret G. McHale, Chair
Keith Baynes
Eric Sennstrom
Norman Wilson, County Attorney
Kate Schmidt





NOTES
 1. FOR DEED REFERENCE SEE W.L.B. 1383/422.
 2. FOR PLAT REFERENCE SEE PLAT BOOK W.A.S. 3/21.



PRELIMINARY
 SEAL
 DATE

REV. #	DATE	DESCRIPTION

RECEIVED
 MAY 22 2008
 CRITICAL AREA COMMISSION
 (The Department of Planning & Zoning)

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 Environmental Sciences
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 www.mccrone-inc.com
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DATE: MAY 2008
 JOB NUMBER: D030043
 SCALE: 1"=50'
 DRAWN BY: B. SMITH
 DESIGNED BY:
 APPROVED BY:
 FOLDER REFERENCE: 2023

Received
 MAY 14 2008
 Cecil County Office
 of Planning & Zoning

BOARD OF APPEALS EXHIBIT
 LOT 9, PLAT NUMBER 6
NORTHEAST HARBORS
 FIFTH ELECTION DISTRICT, CECIL COUNTY, MARYLAND

SHEET NO.: 1 OF 1
 FILE NO.: 1393

Plans lots 9, 10, 11, 12 & 13 Platted

1879' + deck + driveway

5,445 sq ft

0.91 ac
25% = 5953.8 sq ft
15% = 3322.24 sq ft