

News

Victory in CSA Critical Area Variance Case

March 30, 2010

Press Release

David Plott scored a victory at the Court of Special Appeals in *Critical Area Commission v. Moreland, LLC* filed on March 25. The CSA affirmed the Circuit Court's decision that found the local Board of Appeals decision to be deficient and required a remand.

The Anne Arundel County Board of Appeals denied Moreland's variance request to build two houses within the critical area buffer adjacent to a tributary of the South River near Annapolis. The Board found that Moreland failed to meet its burden of persuasion as to 6 of the 12 criteria for variance approval. Moreland appealed to the Circuit Court, relying on the recently issued opinion by the Court of Special Appeals in *Becker v. Anne Arundel County*, 174 Md. App. 114 (2007), arguing that the Board's decision was not supported by substantial evidence in the record. Notably, Charlie Schaller of the Annapolis Practice Group represented the winning side in the Becker case.

At the Circuit Court level, the State Critical Area Commission intervened in support of the South River Federation and various neighbors' opposition. The Circuit Court ruled that the Board's denial was not supported by substantial evidence and remanded the case to the Board of Appeals. The State Commission represented by the Attorney General's office and the South River Federation, represented by Jon Mueller, Director of Litigation for the Chesapeake Bay Foundation, appealed to the CSA.

In its well reasoned Opinion authored by Judge Kehoe, the CSA found that the Board made findings of fact that had no basis in the evidence presented to the Board. The Court stated that the Board failed to identify the specific evidence that supported its conclusions and made many contradictory and inconsistent findings of fact. The Board further found that a zoning appeals board is required to clearly explain the basis for its decision so that an unsuccessful applicant may either amend its proposal or explore other remedies.

Linda Schuett assisted on the brief. The decision is reported at No. 00823 (September Term, 2008).