

IN THE MATTER OF * BEFORE THE CECIL COUNTY
 THE APPLICATION OF * BOARD OF APPEALS
 LAWRENCE R. CARVER, t/a * CASE NO.: 3593
 OUTDOOR EXTREME CHESAPEAKE *
 CITY *
 (Special Exception – SAR)

* * * * *

OPINION

The Cecil County Board of Zoning Appeals (the “Board”) is now asked to consider the application of Lawrence R. Carver, t/a Outdoor Extreme Chesapeake City (the “Applicant”). Applicant currently operates a paint ball facility on property located at 2941, 2943, and 2981 Old Telegraph Road, Chesapeake City, Maryland 21915, designated as Parcels 3, 72, and 87 on Tax Maps 43 and 44, in the Second Election District of Cecil County (the “Property”), in an area zoned Southern Agricultural Residential (“SAR”) in accordance with a five (5) year Special Exception granted by the Board on December 28, 2011 pursuant to Article V, Part V, Section 108¹ of the Cecil County Zoning Ordinance (the “Ordinance”). Applicant now petitions the Board to grant a new and different Special Exception. Specifically, Applicant seeks a Special Exception pursuant to Section 100 of the Ordinance, titled “Privately Owned Outdoor Recreation Facilities,” to operate indefinitely for so long as Applicant owns the property and conducts the paint ball operation thereon.

¹ Section 108 is titled, “Rifle and Pistol Ranges, War Games, Archery Ranges, Skeet Shooting Ranges, or Other Recreational Weapons, Outdoor.” Cecil County Zoning Ordinance, Article V, Part V, Section 108.

Section 108 of the Ordinance provides that:

Outdoor rifle and pistol ranges, war games, archery ranges, skeet shooting ranges, or other recreational weapons ranges may be permitted as a Special Exception in the NAR, SAR, BG, BI and OS zones provided:

1. Such use shall not be located nearer than 1,000 feet to the boundary of any residential, commercial or industrial zone or nearer than 1,000 feet to any residence.
2. Ranges shall be designed to insure the safety of users and passers-by.
3. The Board of Appeals may determine the hours of operation as appropriate.

Cecil County Zoning Ordinance, Article V, Part V, Section 108.

Section 100 of the Ordinance provides that:

Outdoor recreation facilities such as golf and country clubs, swimming or tennis clubs, not constructed as part of a residential development project, may be permitted as a Special Exception in the NAR, SAR, RR, LDR, ST, VR, UR, MH, and RM zones provided:

1. The provision of food, refreshments, and entertainment may be allowed in connection with such use.
2. All outdoor lighting shall be located, shielded, landscaped, or otherwise buffered so that no direct light shall constitute an intrusion into any residential area.
3. A buffer yard meeting the C standard in Appendix B shall be provided along adjoining single family zoning and/or uses not part of the golf course development.
4. Off-street parking and loading areas, golf tees, and maintenance facilities shall be screened by a buffer yard meeting the B Standard in Appendix B at a minimum.
5. Driving ranges shall be located at least 300 feet from any residential or commercial property line or right-of-way line of any road.
6. If this use is to be located in the Resource Conservation Area (RCA) of the Cecil County Chesapeake Bay Critical Area the applicant must apply for, and receive, Growth Allocation (around areas developed for club houses, or other structures, roads and/or buildings) as described in Article XI, Part I of this Ordinance prior to any approvals.

Cecil County Zoning Ordinance, Article V, Part V, Section 100.

In effect, Applicant asks the Board to grant a new and different existing Special Exception by finding that a Special Exception for the operation of a paint ball facility is

more appropriate under Section 100 than under Section 108. The question before the Board, then, is whether operating a paint ball facility is a land use contemplated by Section 100 or by Section 108. Applicant argues that a paint ball operation fits more appropriately within the land uses contemplated by Section 100 rather than those contemplated by Section 108. The Board declines to adopt the Applicant's reasoning and therefore declines to grant a Special Exception to operate a paint ball facility under Section 100.

In determining whether to grant an application for a Special Exception the Board must consider Section 311 of the Ordinance, which states:

No special exception shall be approved by the Board of Appeals after considering all facts in the case unless such Board shall find:

1. Such use or any operations thereto will not be detrimental to or endanger the public health, safety, or general welfare.
2. The use will not be unduly injurious to the peaceful use and enjoyment of other property in the neighborhood, nor substantially diminish or impair property values in the neighborhood.
3. The establishment of the use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the zone.
4. The use will not, with respect to existing development in the area and development permitted under existing zoning, overburden existing public facilities, including schools, police and fire protection, water and sewer, public road, storm drainage, and other public improvements.
5. The use shall not adversely affect critical natural areas or areas of ecological importance.
6. The use shall, in all other respects, conform to the applicable regulations of the zone in which it is located.
7. That the particular use proposed at the particular location proposed, would not have any adverse effect above and beyond those inherently associated with such special exception use irrespective of its location in the zone. *Schultz v. Pritts*, 291 Md.1 (1981).

8. That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.

9. That the proposed special exception is not contrary to the objectives of the current Comprehensive Plan for the County.

Article XVII, Part II, Section 311, Cecil County Zoning Ordinance.

In support of his application to establish a new special exception under Section 100 Applicant and his attorney, William F. Riddle, Esq., presented to the Board a series of ordinances from varying jurisdictions that they argue demonstrate the propriety of granting a special exception to a paintball operation under Section 100. Applicant put into evidence a proposed ordinance from Leon County, Florida, *Applicant's 1*; a zoning ordinance from Stearns County, Minnesota, *Applicant's 2*; a proposed ordinance from Faquier County, Florida, *Applicant's 3*; a zoning ordinance from Knox County, Tennessee, *Applicant's 4*; a zoning ordinance from Calvert County, Maryland, *Applicant's 5* and; a zoning ordinance from Frederick County, Maryland, *Applicant's 8*.

In addition to the above-listed proposed and enacted ordinances, Applicant put into evidence a Memorandum Opinion and Order of the Circuit Court for Baltimore County entered August 30, 2004, *Applicant's 9*. In this Opinion, the Court held that a paintball operation did not qualify for a special exception as a "shooting range," but rather as a "commercial recreational facility." The Baltimore County Zoning Regulations defined "commercial recreational facilities" as any facility

whose principal purpose is to provide space and equipment for non-professional athletic activities. A commercial recreational facility includes, but is not limited to a health or athletic club; baseball-batting range or cage; golf-driving range; putting green; miniature golf; athletic field; swimming pool; skating rink or course; basketball, racquetball, tennis or squash court; bowling alley; archery range or similar facility or any combination of the above. For the purpose of these regulations, a commercial recreational

facility shall not include a rifle, pistol, skeet or trap range, go-cart course, amusement park or similar use.

Baltimore County Zoning Regulation 101.

Applicant further put into evidence an email from the Caroline County, Maryland Planning & Codes Administration, *Applicant's 6*, and an email from the Talbot County, Maryland Zoning Coordinator, *Applicant's 7*. Additionally, Applicant put into evidence emails from Marla Mooney of the U.S. Marine Corp Range and Training Area Management Division, *Applicant's 11, 12*; the MCCA Camp Pendleton Recreation Guide, *Applicant's 13*; and a U.S. Marine Corp Safety of Use Memorandum for Special Effects Small Arms Marking System with 9MM and 5.56MM Marking Cartridges, *Applicant's 14*. Finally, Applicant put into evidence a packet outlining the paintball facilities fundraising and community outreach endeavors, *Applicant's 15*, as well as the results of noise meter testing conducted at the property, *Applicant's 16*.

Applicant testified as to the nature of the activities that take place at the property as a result of the paintball operation, and the testimony showed that no change in the use of the property has occurred since the Board granted the existing five (5) year special exception under Section 108 on December 28, 2011. Additionally, Applicant displayed a video image of the Property that demonstrates that no material change in the layout of the property has taken place since the granting of the existing special exception. Applicant testified further that he has no plans to expand the paintball operation; rather, he simply desires to operate his business pursuant to what he and his counsel assert is the appropriate special exception classification.

Testimony was offered by both Applicant and his wife that the opposition to their application for a new special exception amounts to personal attacks by a select few

neighboring property owners. The testimony indicated a belief that the opposition was in fact an attack on Applicant's family and their livelihood. Said testimony does not enter into the Board's determination on the matter.

David Kerr, Jr., an officer with the Delaware State Police with twenty years prior experience with the Newark Police Department, testified as an expert as to the noise meter readings contained in *Applicant's 16*. Mr. Kerr testified that throughout the Fall of 2012 he performed the noise meter readings on and off the Property.

Mr. Riddle represented that in requesting a special exception under Section 100 as opposed to that currently in place under Section 108, Applicant would be open to further conditions being placed upon the operation as the Board saw fit. Mr. Riddle noted that Applicant already surpasses certain of the requirements placed upon his operation, such as using twelve (12) to twenty-five (25) foot high nets around the playing areas when only ten (10) foot high nets are required. Further, Mr. Riddle noted Applicant's request that his hours of operation be expanded to daylight hours rather than the more restrictive hours currently in place.

Several neighbors spoke in favor of Applicant's operation of the paintball facility. Additionally, multiple people who utilize Applicant's facility spoke in favor of its continued existence. Some property owners whose parcels abut the Property spoke against granting the special exception. Their dissatisfaction with the operation of a paintball facility near their property stems from their complaints regarding noise pollution and the paintball activity being contrary to the rural, agricultural character of the area.

Clifford Houston of the Cecil County Department of Planning and Zoning

testified that the Planning Commission recommended disapproval of the application based on its finding that a special exception to operate a paintball facility more appropriately falls within the ambit of Section 108.

Pursuant to Section 311 of the Ordinance, the Board finds as follows:

1. The existing special exception is not detrimental or an endangerment to the public health, safety, or general welfare. The areas where paintball activities take place are encompassed by barriers both artificial and natural including netting, hedges, trees, bushes and undergrowth sufficient to keep competitors and their projectiles within the boundaries of the Property and away from neighboring parcels and Back Creek.

2. The use will not be unduly injurious to the peaceful use and enjoyment of other property in the neighborhood, or substantially diminish or impair property values in the neighborhood. No credible testimony was offered demonstrating a reduction in the value of any neighboring parcels as a result of Applicant's paintball operation. Further, although testimony was offered by neighbors of the paintball operation that the noise of the facility disturbs their peaceful use and enjoyment of their property, the Board finds that the objective data offered by Mr. Kerr regarding the noise meter readings shows that any noise produced by the paintball operation does not rise to the level of being unduly injurious to peaceful enjoyment of neighboring parcels. The Board also notes from the testimony and evidence presented that hunting occurs in the neighborhood and the blast of a shotgun generates significantly greater noise than the discharge of a paintball gun.

3. The use will not impede the normal and orderly development and improvement of the surrounding properties for uses permitted in the zone. The Board does not find that the operation of the paintball facility is an impediment to the

preservation of the agricultural character of the area or to the reasonable and orderly residential development permissible within the zone.

4. The use will not overburden existing public facilities, including schools, police and fire protection, water and sewer, public road, storm drainage, and other public improvements. No testimony was presented indicating that law enforcement or the local fire department have been called in response to any emergencies at the Property. Ingress and egress to a County road is available from the Property. No testimony was presented suggesting that the paintball operation has any discernable effect on public water and sewer systems.

5. The continued use will not adversely affect critical natural areas or areas of ecological importance. Because the Property is located in a Resource Conservation Area, the granting of a special exception to Applicant under Section 100 would be contingent upon the issuance of a Growth Allocation by the Critical Area Commission (“CAC”). By letter dated March 19, 2012, the CAC explained that the paintball operations cannot be extended to the water line and the 100-foot Buffer from Back Creek. No evidence was presented sufficient for the Board to find that Applicant is conducting any commercial activity within the 100-foot Buffer Area.

6. The continued use will, in all other respects, conform to the applicable regulations of the zone in which it is located. The Board finds that this portion of the SAR is used largely for purposes related to the equine industry and hunting, as well as farming and residential use. Based upon the evidence presented, the Board finds that the operation of Applicant’s paintball operation is not inconsistent with these neighboring uses.

7. The particular use proposed at the particular location proposed will not have any adverse effects above those inherently associated with such special exception use irrespective of its location in the zone. *Schultz v. Pritz*, 291, Md. 1 (1981). The Board finds that, because of the residential density of the zone and the nature of the activities undertaken in the area, the impact of Applicant's paintball operation in this particular area of the SAR is no different than the impact of a paintball operation in other areas of the SAR.

8. Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion on the public streets. No evidence was presented evincing issues related to traffic and parking. Ingress and egress to the property is via a County road and the operation provides sufficient parking in the form of a designated lot and additional space by a grassy area near the front of the Property.

9. Notwithstanding the foregoing, the Board finds that the proposed special exception pursuant to Section 100 is contrary to the objectives of the Comprehensive Plan for the County. There is an existing special exception for the Property allowing Applicant to operate his paintball operation under Section 108. The Board remains convinced that Section 108 is the appropriate category under which Applicant's paintball operation should be allowed pursuant to the Ordinance and the Comprehensive Plan for the County.

The nature of the activity undertaken at the Property is more akin to a "recreational weapons range," as contemplated by Section 108 than a tennis or golf facility as contemplated by Section 100. The Board finds that the myriad ordinances put into evidence by Applicant contain sufficiently different language to be distinguishable

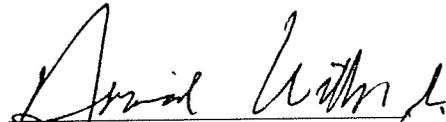
from Cecil County's ordinances. Further, an opinion of the Circuit Court for Baltimore County has no binding effect upon this Board and, as noted above, the definition offered by the Baltimore County Zoning Regulations displays a far broader contemplation of the activities comprising a "commercial recreational facility," than does its counterpart in the Cecil County Zoning Ordinance.

For instance, the Baltimore County Zoning Regulation includes "archery range or similar facility," in its definition of "commercial recreational facility," where the Cecil County Zoning Ordinance places archery ranges within Section 108 rather than Section 100. Section 100 provides as examples of uses falling within its ambit the following: "golf and country clubs, [and] swimming or tennis clubs." The firing of projectiles from compressed air rifles is more analogous to the activities provided for by Section 108 ("[o]utdoor rifle and pistol ranges, war games, archery ranges, skeet shooting ranges, or other recreational weapons ranges") than to the limited universe of examples provided by Section 100.

Accordingly, the Board finds that granting a special exception under Section 100 would amount to a more expansive reading of that section than the language of the Ordinance appears to permit. For that reason, a special exception under Section 100 to operate a paintball facility is contrary to the objectives of the Comprehensive Plan – said objectives finding their expression in the language of the Zoning Ordinance.

For the reasons stated above, by unanimous vote, the Board is satisfied that the requirements of Article XVII, Part II, Section 311, of the Ordinance have not been met and the application for a special exception under Section 100 is therefore **DENIED**.

5/30/2012
Date


David Willis, Chairperson

BOARD OF APPEALS APPLICATION
CECIL COUNTY, MARYLAND

Received

MEET. MONTH: April 2012
 FILE NO. 3593

THIS REQUEST IS FOR:

- SPECIAL EXCEPTION RENEWAL
- SPECIAL EXCEPTION
- VARIANCE
- APPEAL

FEB 28 2012

DATE FILED: 2/28/12
 AMOUNT PD: 250.00
 ACCEPTED BY: J. Senyong

CK# 008246 - Wm. F. Riddle

Mail to

A. APPLICANT INFORMATION

LAWRENCE R. CARVER JR + NANCY CARVER H/a OUTDOOR EXTREME
 APPLICANT NAME - PLEASE PRINT CLEARLY CHESAPEAKE CITY

2981 OLD TELEGRAPH ROAD, CHESAPEAKE CITY, MD 21915
 ADDRESS CITY STATE ZIP CODE

[Signature] 302-379-4501
 APPLICANT SIGNATURE PHONE NUMBER

B. PROPERTY OWNER INFORMATION

LAWRENCE R. CARVER, JR + NANCY M. CARVER
 PROPERTY OWNER NAME - PLEASE PRINT CLEARLY

2981 OLD TELEGRAPH ROAD, CHESAPEAKE CITY, MD 21915
 ADDRESS CITY STATE ZIP CODE

[Signature] 302-379-4501
 PROPERTY OWNER SIGNATURE PHONE NUMBER

C. PROPERTY INFORMATION

2941, 2943 + 2981 OLD TELEGRAPH RD. Chesapeake City Maryland 21915 2

PROPERTY ADDRESS	13	03		ELECTION DIST.	ACCT. NUMBER
<u>44</u>	<u>13</u>	<u>72</u>		<u>6.846</u>	
<u>43</u>	<u>18</u>	<u>87</u>	<u>N/A</u>	<u>50.301</u>	<u>37.567</u>
TAX MAP #	BLOCK	PARCEL	LOT #	#ACRES	ZONE
					<u>SAR</u>

D. PURPOSE OF APPLICATION - Indicate reasons why this application should be granted. (attach separate sheet if necessary)

APPLICANTS ARE PRESENTLY OPERATING AN OUTDOOR RECREATION FACILITY WHERE PARTICIPANTS PLAY PAID BIRL GAMES. A SPECIAL EXCEPTION UNDER SECTION 100 APPEARS TO BE MORE APPLICABLE THAN THE PRESENT SPECIAL EXCEPTION GRANTED UNDER SECTION 108. S.E. for privately owned outdoor recreation facility.

E. On an attached sheet, PLEASE submit a sketch of the property indicating the proposed project. Show distances from the front, side and rear property lines and the dimensions of the project.

F. LAND USE DESIGNATION

- Is property in the Critical Area? YES NO
- If yes, Pertinent provision of the Chesapeake Bay Critical Area Program: _____
- Is property in the 100 year Floodplain? YES NO
- Is property an Agricultural Preservation District? YES NO

If property is located in the Critical Area, all provisions and requirements must be met as outlined in Article XVII, Part I, II & III of the Zoning Ordinance.

G. PROVISION OF ZONING ORDINANCE: SECTIONS 100 AND 311

H. SPECIAL EXCEPTION RENEWAL - PREVIOUS FILE NO. & CONDITIONS FOR APPROVAL: #3341, #3485 + #3572

I. SPECIAL EXCEPTION FOR A MANUFACTURED HOME - Please fill out the following information:

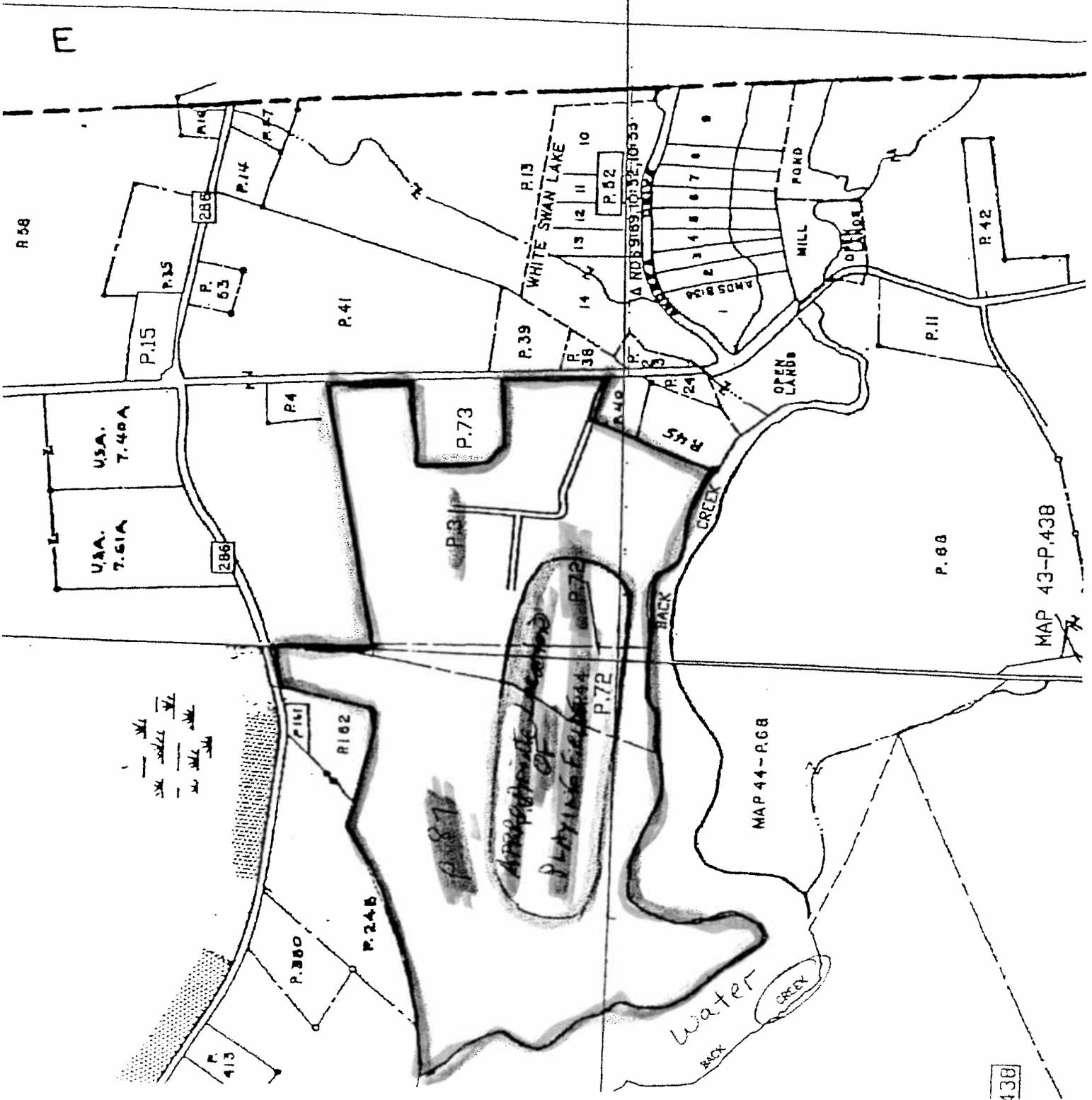
- Will unit be visible from the road? _____ If yes, distance: _____
- Will unit be visible from adjoining properties? _____ If yes, distance: _____
- Distance to nearest manufactured home: _____ Size/Model/Year of Unit: _____
- Number of units on property at present time: _____

File # 3593

~~Land & Survey~~

Maps 43-44 /

Parcels 72, 87 + 3



CRITICAL AREA COMMISSION
FOR THE CHESAPEAKE AND ATLANTIC COASTAL BAYS
1804 WEST STREET, SUITE 100
ANNAPOLIS, MD 21401

PROJECT NOTIFICATION APPLICATION

GENERAL PROJECT INFORMATION

Jurisdiction: Cecil

Date: 03/01/12

Tax Map #	Parcel #	Block #	Lot #	Section
43	87	18	N/A	
44	3 & 72	13	N/A	

Tax ID: 20-039753, 20-012057, 20-012049

FOR RESUBMITTAL ONLY

- Corrections
- Redesign
- No Change
- Non-Critical Area

*Complete Only Page 1
General Project Information

Project Name (site name, subdivision name, or other) Lawrence R. and Nancy M. Carver, Jr.

Project location/Address 2981 Old Telegraph Road

City Chesapeake City Zip 21915

Local case number 3593

Applicant: Last name Carver, Jr. First name Lawrence R.

Company N/A

Application Type (check all that apply):

- | | |
|--|---|
| Building Permit <input type="checkbox"/> | Variance <input type="checkbox"/> |
| Buffer Management Plan <input type="checkbox"/> | Rezoning <input type="checkbox"/> |
| Conditional Use <input type="checkbox"/> | Site Plan <input type="checkbox"/> |
| Consistency Report <input type="checkbox"/> | Special Exception <input checked="" type="checkbox"/> |
| Disturbance > 5,000 sq ft <input type="checkbox"/> | Subdivision <input type="checkbox"/> |
| Grading Permit <input type="checkbox"/> | Other <input type="checkbox"/> |

Local Jurisdiction Contact Information:

Last name Johnson First name Joseph

Phone # 410-996-5225 Response from Commission Required By 03/16/12

Fax # 410-996-5305 Hearing date 4/16/2012

SPECIFIC PROJECT INFORMATION

Describe Proposed use of project site:

Special Exception for privately owned outdoor recreation facility, see application attached.

- | | |
|--|--|
| Intra-Family Transfer <input type="checkbox"/> Yes
Grandfathered Lot <input type="checkbox"/> | Growth Allocation <input type="checkbox"/> Yes
Buffer Exemption Area <input type="checkbox"/> |
|--|--|

Project Type (check all that apply)

- | | |
|---|---|
| Commercial <input type="checkbox"/>
Consistency Report <input type="checkbox"/>
Industrial <input type="checkbox"/>
Institutional <input type="checkbox"/>
Mixed Use <input type="checkbox"/>
Other <input type="checkbox"/> | Recreational <input type="checkbox"/>
Redevelopment <input type="checkbox"/>
Residential <input checked="" type="checkbox"/>
Shore Erosion Control <input type="checkbox"/>
Water-Dependent Facility <input type="checkbox"/> |
|---|---|

SITE INVENTORY (Enter acres or square feet)

	Acres	Sq Ft		Acres	Sq Ft
IDA Area			Total Disturbed Area	94.734	
LDA Area	94.734				
RCA Area					
Total Area			# of Lots Created		

	Acres	Sq Ft		Acres	Sq Ft
Existing Forest/Woodland/Trees			Existing Impervious Surface		
Created Forest/Woodland/Trees			New Impervious Surface		
Removed Forest/Woodland/Trees			Removed Impervious Surface		
			Total Impervious Surface		

VARIANCE INFORMATION (Check all that apply)

	Acres	Sq Ft		Acres	Sq Ft
Buffer Disturbance			Buffer Forest Clearing		
Non-Buffer Disturbance			Mitigation		

- | | |
|--|--|
| <p><u>Variance Type</u></p> Buffer <input type="checkbox"/>
Forest Clearing <input type="checkbox"/>
HPA Impact <input type="checkbox"/>
Impervious Surface <input type="checkbox"/>
Expanded Buffer <input type="checkbox"/>
Nontidal Wetlands <input type="checkbox"/>
Setback <input type="checkbox"/>
Steep Slopes <input type="checkbox"/>
Other <input type="checkbox"/> | <p><u>Structure</u></p> Acc. Structure Addition <input type="checkbox"/>
Barn <input type="checkbox"/>
Deck <input type="checkbox"/>
Dwelling <input type="checkbox"/>
Dwelling Addition <input type="checkbox"/>
Garage <input type="checkbox"/>
Gazebo <input type="checkbox"/>
Patio <input type="checkbox"/>
Pool <input type="checkbox"/>
Shed <input type="checkbox"/>
Other <input checked="" type="checkbox"/> <u>Paint Ball Operation</u> |
|--|--|

Law Office
William F. Riddle, Esquire

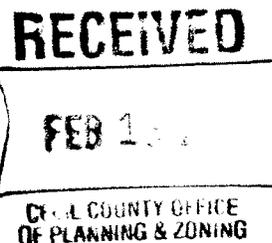
WILLIAM F. RIDDLE * ^
JAMES A. DELLMYER*

204 East Main Street
Elkton, Maryland 21921
Web Site: www.willriddlelaw.com
(410) 620-1343
Fax (410) 398-5502

ADMITTED IN:
* Maryland
^ Pennsylvania

February 13, 2012

Cecil County Commissioners
Office of Planning and Zoning
200 Chesapeake Blvd. Suite 2300
Elkton, MD 21921



**RE: Board of Appeals Application
Special Exception
My Client: Lawrence & Nancy Carver**

Dear Office of Planning and Zoning:

Enclosed herewith is an Application for Special Exceptions I am filing on behalf of my client regarding the application of a outdoor recreation facility pursuant to Section ~~403~~¹⁰⁰ and 311 of the Zoning Ordinances.

If you have any questions, please contact my office.

Very truly yours,



William F. Riddle

Received
FEB 28 2012
Cecil County Office
of Planning & Zoning

WFR:amt
Enclosures
cc: Mr. & Mrs. Carver