

IN THE MATTER OF	*	BEFORE THE CECIL COUNTY
THE APPLICATION OF	*	BOARD OF APPEALS
JOHN R. HARRISON	*	CASE NO.: 4200 (Variance – SAR)
* * * * *	*	* * * * *

OPINION

The Cecil County Board of Zoning Appeals (the “Board”) is now asked to consider the application of John R. Harrison (“Applicant”), for a variance to the Critical Area Buffer for construction purposes. The subject property is located at 239 Oriole Farm Lane, Earleville, Maryland 21919, being designated as Parcel 12 on Tax Map 51 in the First Election District of Cecil County (the “Property”), in an area presently zoned Southern Agricultural Residential (SAR). The Property is a peninsula in Cabin John Creek, within the Critical Area, and comprised of 191 acres of land.

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 provisions relating to the Critical Area District would result in unwarranted hardship to property owner, the Board of Appeals may grant a variance in the Critical Area District based on the following criteria:

A. The variance requested is based upon a situation where, because of special circumstances, 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 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 any 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 and COMAR 20.01.
- 6) Greater profitability or lack of knowledge of the restrictions shall not be considered as sufficient cause for a variance.

On April 24, 2023, Applicant appeared and testified in support of the Application (File No. 4200) seeking up to a 126-foot reduction to the Critical Area Buffer to construct a cabin. Applicant stated he would like to move an existing cabin and use its footprint to build a shed for storage of boats and lawn furniture closer to the water. Applicant stated the shed would be 40' by 40' in size.

No witnesses spoke in favor of the Application.

Charlotte Shearin, Regional Program Chief for the Critical Area Commission spoke in opposition to the Application on the grounds that the proposed structure is three times the size of the existing structure, and the parcel is large enough at 191 acres to build elsewhere. Therefore, it is the Critical Area Commission's position that the Application fails to meet the "unwarranted hardship" standard required to be granted a variance because the Applicant has reasonable use of the entire parcel for such proposed purpose(s). The Critical Area Commission also submitted a letter dated April 19, 2023 and signed by

Michel Grassman, Natural Resource Planner, in opposition to the Application. The letter made similar claims as the above described testimony of Shearin, and added, “granting a variance to triple the amount of lot coverage within the Buffer when ample opportunities exist for development elsewhere on the property is absolutely not in harmony with the spirit and intent of the Critical Area law; and would be contrary to the goals of the Critical Area law, including minimizing impacts to water quality and conserving habit.”

The County Department of Land Use and Development Division of Planning and Zoning Chief, Aaron Harding, testified that the Department received one additional letter in opposition to the Application from Susan Makhlouf who is also a Natural Resource Planner for the State of Maryland Critical Area Commission. Makhlouf’s letter presents the fact that the applicant did not submit information regarding how the proposed use meets the variance standards, and “based on the concept sketch, it appears that the majority of the proposed storage addition/boat shed is located within the treeline, despite the fact that the application states no tree clearing will occur.”

The Board considered the testimony provided by the Applicant and witnesses, the standards set forth in Section 306, and concluded the following findings of facts:

1. The Applicant failed to provide any testimony that the variance request is based upon a situation where special conditions or circumstances exist unique to the subject property or proposed structure, and therefore a strict enforcement of the provisions within the Critical Area District would not result in unwarranted hardship. The Applicant’s intent to utilize an existing footprint to construct a shed to minimize further development in the Critical area, while commendable, is not enough to mitigate negative impact to the habitats and ecosystems the Buffer protects. Without evidence to the contrary, this Board must

conclude that subject parcel is large enough to accommodate the desired cabin and shed without any impact to the Buffer, and that no variance is needed to do so.

2. Strict enforcement of the provisions within the Critical Area District would not deprive the property owner of rights commonly shared by other owners of property in similar management areas within the Critical Area District. For the reasons stated in the previous paragraph, this Board finds that this standard has not been met.

3. The granting of the variance would confer upon the Applicant special privileges that are denied by this Ordinance to other properties within the Critical Area District. For reasons stated in the previous two paragraphs, the Board is not satisfied that there would be no special right or privilege afforded this property owner by virtue of the granting of the variance. The owner has 191 acres on which to build structures for storage of water equipment, boats, etc. which would still be close enough to the water to make the storage unit practical and convenient without impacting the Buffer.

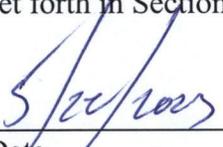
4. There is no evidence that the variance request arises from any condition to land or building use, either permitted or non-conforming, on any neighborhood property. This standard is not applicable to the Application.

5. The Board finds that the granting of the variance may adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area District, and that the granting of the variance would not be consistent with the spirit and intent of the County's Critical Area Program and associated ordinances or state law and regulations adopted under Subtitle 18 of the Natural Resources Article and COMAR 20.01. Although the Applicant stated he intended to utilize the existing footprint of the cabin on which to build the shed to minimize disturbance to the shoreline, he did not discuss ways to prevent

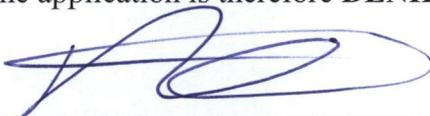
negative impact to habitats and did not explain whether tree clearing would be necessary. The proposed shed would be larger than the existing cabin, however, the Applicant did not mention any efforts to mitigate disturbance. The Board, therefore, finds that the proposed use may adversely affect water quality and habitats.

6. The proposed variance is not the minimum variance that will make possible the reasonable use of the land. The parcel is 191 acres in size and has more than ample space to build accessory structures outside of the Buffer.

For the reasons stated, by unanimous vote, the Board is not satisfied that the criteria set forth in Section 306 have been met, and the application is therefore **DENIED**.



Date



Mark Saunders, Chairman

**BOARD OF APPEALS APPLICATION
CECIL COUNTY, MARYLAND**

RECEIVED

MEET. MONTH: April, 2023
FILE NO. 4200

THIS REQUEST IS FOR:

- SPECIAL EXCEPTION RENEWAL ()
- SPECIAL EXCEPTION ()
- VARIANCE (X)
- APPEAL (X)

MAR 16 2023
Cecil County LUDS
Division of Planning & Zoning

DATE FILED: 3/16/23
AMOUNT PD: \$200
ACCEPTED BY: _____

A. APPLICANT INFORMATION - ALL APPLICANTS MUST SIGN

John R. Harrison
APPLICANT NAME - PLEASE PRINT CLEARLY
239 Oriole Farm Lane Earlvile Md.
ADDRESS CITY STATE ZIP CODE
John R. Harrison 410 392 2822 443 309 1035
APPLICANT SIGNATURE PHONE NUMBER

B. PROPERTY OWNER INFORMATION - ALL PROPERTY OWNERS MUST SIGN

John Harrison / Oriole Farm L.L.C.
PROPERTY OWNER NAME - PLEASE PRINT CLEARLY
239 Oriole Farm Lane Earlvile Md.
ADDRESS CITY STATE ZIP CODE
John R. Harrison same
PROPERTY OWNER SIGNATURE PHONE NUMBER

C. PROPERTY INFORMATION

239 Oriole Farm Lane Earlvile 01 01-027069
PROPERTY ADDRESS ELECTION DIST. ACCT. NUMBER
0051 0016 0012 191 SAR
TAX MAP BLOCK PARCEL LOT # #ACRES ZONE

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

Would like to improve the location of the Cabin by centering in the peninsula & moving it back. With this request I'd like to increase the footprint to 40' x 40' * 40' x 40' Boat Shed

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

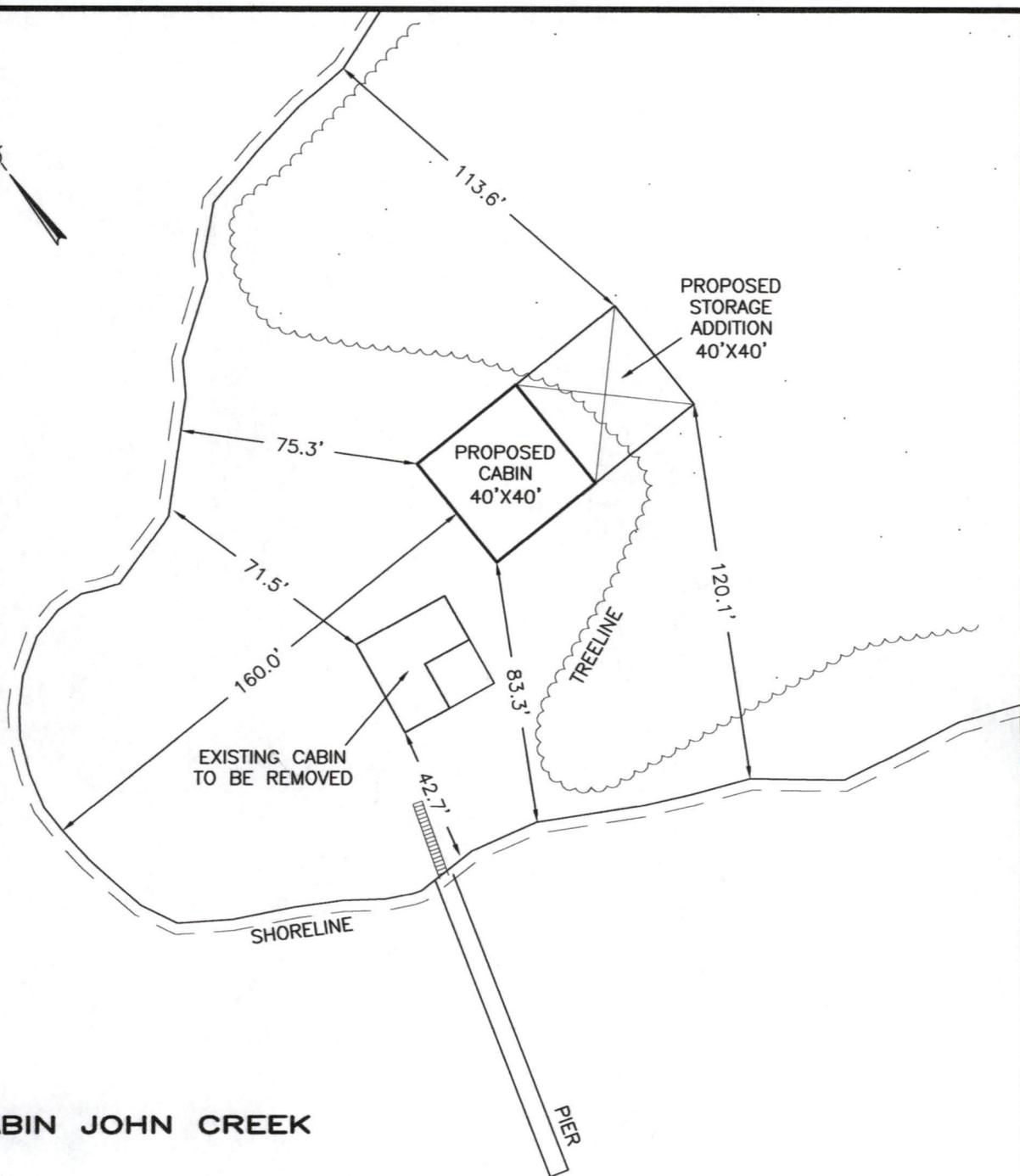
If property is located in the Critical Area, all provisions and requirements must be met as outlined in Article XVII, Part I, II & III of the Zoning Ordinance.

G. PROVISION OF ZONING ORDINANCE: Art. XI Part I Section 196.1(a) and 3(a)(1); Art XVII Part I Section 306

H. SPECIAL EXCEPTION RENEWAL - PREVIOUS FILE NO. & CONDITIONS FOR APPROVAL: _____

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: _____



CABIN JOHN CREEK



dbf DAVIS,
BOWEN &
FRIEDEL, INC. ARCHITECTS ENGINEERS SURVEYORS

EASTON, MARYLAND (410) 770-4744
SALISBURY, MARYLAND (410) 543-9091
MILFORD, DELAWARE (302) 424-1441

CONCEPT SKETCH
ON THE LANDS OF
ORIOLE FARM LLC.

TAX MAP: 51, GRID: 16, PARCEL: 12
IN THE FIRST ELECTION DISTRICT, CECIL COUNTY, MARYLAND

Date: 03/14/23 | Scale: 1" = 50' | Proj.No.: 3367

