

CS 499-99
VAR

Rison, Wayne

USA S-1829-397

Letter RC
10/13/99

BOARD OF APPEALS FOR CHARLES COUNTY, MARYLAND

IN THE MATTER OF THE PETITION OF : **Docket #991**
WAYNE RISON FOR AN AFTER THE FACT :
VARIANCE FROM THE CRITICAL AREA :
BUFFER REQUIREMENTS :

.....

DECISION AND ORDER

This matter came before the Board of Appeals for hearing on November 9, 1999, at 7:00 p.m., in the Commissioners' Meeting Room of the County Government Building, La Plata, Charles County, Maryland, as a request for variance from the Critical Area Buffer Requirements, in accordance with Article VII, Section 128 of the Charles County *Zoning Ordinance*.

A quorum of Board Members was present for, and participated in, the hearing. The notice of the hearing was properly advertised, adjacent property owners notified, and the property was posted in accordance with the applicable regulations.

Testimony in favor of the petition was presented by the following: the Applicant, Mr. Wayne Rison and Mr. David Black. Mr. Thomas F. Mudd, Esquire, represented two adjacent property owners; Richard and Margaret Kolm and Charles R. Aldred who were in opposition. Incorporated into the record were the following:

1. The appropriate provisions of the Code of Charles County;
2. The Charles County *Zoning Ordinance*;
3. The Zoning Map of Charles County;
4. The Petition and plat submitted;
5. The Zoning Officer's Staff Report and
6. Applicant's Exhibit #1 - Photographs of above referenced property.

Based upon the testimony and exhibit presented at the hearing, the site plan and materials submitted by the Applicant along with the Petition, and the standards set forth by the *Zoning Ordinance*, and considering the proposed use on the health, safety, welfare, and interest of the general public, the Board of Appeals makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Applicant, Wayne Rison, is the owner of property located at 4635 Friendship Acres Drive, Nanjemoy, Charles County, Maryland. The site in question is a 3.2 Acre waterfront lot, approximately 160 feet wide at the line of mean high water, expanding to 220 feet at the public ROW, approximately 800 feet deep.

Docket #991

2. The subject property is zoned AC (Agricultural Conservation) Chesapeake Bay Critical Area, 100-foot Buffer. The Applicant is seeking an after-the-fact variance from the Critical Area Buffer requirements, pursuant to the Consent Order by the District Court of Maryland for Charles County dated April 21, 1999. The Consent Order requires that the Applicant either demolish what is referred to as the "fishing shack structure" at the shoreline, move the structure outside of the 100-foot Buffer, or obtain a variance for the structure as is currently located. The Applicant has chosen the variance option.

3. The property in question is located within area that is designated the Critical Area Buffer. The *Zoning Ordinance* defines Buffer, in Article VIII, Section 128, as:

A naturally vegetated area or area established in native vegetation which is managed to protect aquatic, wetland shoreline, and terrestrial environments from man-made disturbances. In the Critical Area Zone, the minimum Buffer is a continuous area located immediately landward of tidal waters (measured from the Mean High Water Line), tributary streams in the Critical Area, and tidal wetlands, and has a minimum width of 100 feet. The Buffer shall be expanded beyond the minimum depth to include certain sensitive areas as per requirements established in this Ordinance.

According to Section 131: Buffer Requirements in the Critical Area Zone:

Except as provided for in Section 132 (e), new development activities, including clearing of existing natural vegetation, erection of structures, construction of new roads, parking areas, or other impervious surfaces, and the placement of private sewage disposal systems, are not permitted in the Buffer.

Section 132 (e), *General Buffer Regulations*, states the following with findings in italics:

i. New buildings, structures, activities, and facilities permitted in the underlying base zones shall be prohibited within the Buffer except the following: Boat houses, community piers, individual private piers, docks, launching ramps, and mooring facilities.

FINDING: The development activity and resulting structure in question is not a boat house, community pier, individual private pier, dock, launching ramp, or mooring facility. Therefore, the subject development activity and resulting structure is prohibited in the Buffer, where it currently exists.

In addition, a second non-permitted dwelling unit exists outside of the Buffer, on the same AC-zoned lot, approximately 200 feet landward. In the AC Zone, no more than one dwelling unit is allowed per three acres. Therefore, only one of the two non-permitted dwelling units could be potentially permitted on the property in question. Any structure supporting a non-water-dependent use, such as a dwelling unit, would

be required to be located exterior to the Buffer.

4. The Board is authorized to grant variances under Article XIX, Section 416, of the Zoning Ordinance. The following is an excerpt from Section 416, describing the criteria, followed by the applicable findings, to facilitate the decision on the requested variance.

Subsection (b) reads as follows:

The Board is authorized to grant variances from the strict application of these regulations when, by reason of exceptional narrowness, shallowness, or shape of specific parcels of property or by reason of exceptional topographical conditions or other extraordinary situations or conditions of specific parcels of property, the strict application of the regulations of this Ordinance would result in peculiar and unusual practical difficulties to, or exceptional or undue hardship upon, the owner of said property. However, the Board of Appeals shall not grant variances that will substantially impair the intent, purpose, and integrity of this Ordinance. This provision shall not be construed to permit the Board, under the guise of a variance, to change the permitted use of land.

FINDING: The property in question is not characterized as having exceptional narrowness, shallowness, irregular shape, or exceptional topographical conditions or other extraordinary situations or conditions. Significant opportunity is available to the applicant and owner of the property to locate a dwelling on the property, exterior to the Buffer, thereby satisfying the owner's right to reasonable use of the property for the intended development of a residence. Therefore, the strict application of the regulations of the Zoning Ordinance would not result in peculiar and unusual practical difficulties to, or exceptional or undue hardship upon, the owner of said property.

Subsection (c) reads as follows:

In addition to those general findings required in Subsection (b) above, variance requests shall not be granted unless the following criteria are met:

i. That special conditions or circumstances exist that are unique to the subject property or structure and that a strict enforcement of the provisions of this Ordinance would result in unwarranted hardship which is not generally shared by owners of property in the same land use classification.

FINDING: The Applicant did not address this Subsection. The subject property is not unique in comparison to typical properties in the surrounding area. There are

no special circumstances peculiar to this property such that denial of the requested variance would remove all reasonable use of the land. Therefore, the Staff finds that strict enforcement of the Critical Area provisions of the Zoning Ordinance would not result in unwarranted hardship generally not shared by owners of property in the same land use classification.

ii. That strict enforcement of the provisions of this Ordinance would deprive the property owner of rights commonly shared by other owners of property in the area.

FINDING: The Applicant did not address this Subsection. The Critical Area Regulations, as discussed above, do not deprive the Applicant of rights enjoyed by other property owners in the Critical Area, with the exception of owners who may have developed their properties before the implementation of the Critical Area Program in 1985. All properties within the Critical Area are currently subject to Critical Area Law and the County's Program, and new development activities may only be permitted in the Buffer if they are water-dependent. Dwellings and/or storage structures are not classified among water-dependent facilities, those structures that functionally require location at or near the shoreline, such as piers and bulkheads.

iii. That 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 same zone/land use classification.

FINDING: The Applicant did not address this Subsection. The granting of the requested variance would confer special privilege to the Applicant because all similar properties are restricted from locating new non-water-dependent structures within the Buffer.

iv. That the variance request is not based upon conditions or circumstances which are self-created or self-imposed.

FINDING: The Applicant did not address this Subsection, and the variance request is based upon conditions and circumstances created and imposed by the Applicant.

v. That greater profitability or lack of knowledge of the restrictions shall not be considered as sufficient justification for a variance.

FINDING: The Applicant has not attempted to justify the variance based on greater profitability, though his testimony included statements of lack of knowledge by assuming the structure was "grandfathered".

vi. That the proposed variance is consistent with the Charles County Comprehensive Plan.

FINDING: The Applicant did not address this Subsection. Requirements of the Zoning Ordinance, with respect to the Critical Area regulations and the criteria for variances are clearly not satisfied. The Zoning Ordinance is the chief means for implementation of the Comprehensive Plan. Further, the Chapter of the Comprehensive Plan entitled 'Natural Resource Protection' states the objective: "Cooperate in efforts to improve and protect the water quality of the Chesapeake Bay and its tributaries through adoption and enforcement of the County's Critical Area Program".

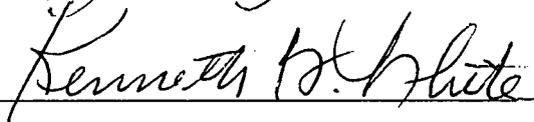
ORDER

Based upon the above Findings of Fact and Conclusions of Law, it is, this 14 day of December, 1999, by the Board of Appeals for Charles County, Maryland.

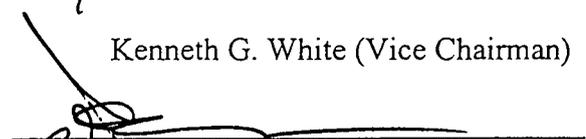
ORDERED, that the Variance is hereby DENIED

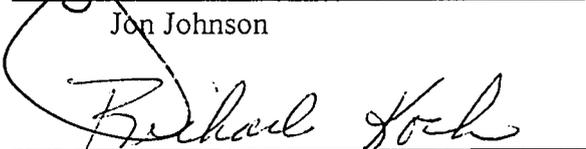
**BOARD OF APPEALS FOR
CHARLES COUNTY, MARYLAND**

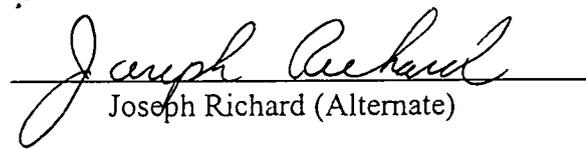

A. J. Perk, Jr., Chairman

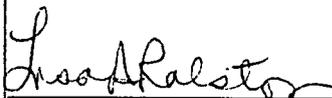

Kenneth G. White (Vice Chairman)

Kenneth G. White (Vice Chairman)


Jon Johnson


Richard Koch


Joseph Richard (Alternate)



Lisa A. Ralston, Clerk

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Judge John C. North, II
Chairman



Ren Serey
Executive Director

STATE OF MARYLAND
CHESAPEAKE BAY CRITICAL AREA COMMISSION

45 Calvert Street, 2nd Floor, Annapolis, Maryland 21401
(410) 260-7516 Fax: (410) 974-5338

October 13, 1999

Mr. Kevin Vienneau
Charles County Planning & Growth Management
P.O. Box B
La Plata, Maryland 20646

RE: Variance #991, Mr. Wayne Rison

Dear Mr. Vienneau:

Thank you for providing information on the above referenced variance application. The applicant is requesting a variance to permit a dwelling to remain within the Critical Area Buffer. The property is designated LDA and is currently developed with two structures (one of which is the subject of this variance request) that are considered dwellings.

This office received notice of this violation over a year ago. The property owner has improved a boat house/fishing shack such that it is considered a dwelling. It is located partially within the Buffer and partially over tidal wetlands. Another structure has been constructed on the property as well, though its location was not shown. A consent order from the court indicated that the violations on this property (Critical Area as well as other zoning requirements) must be corrected. The subject variance would permit the dwelling to remain within the Buffer and tidal wetlands.

A site plan with an appropriate scale showing all property lines, wetlands, Buffers, and all development is necessary in order for this office to provide final comments. However, based on the available information, this office opposes the variance requested. The Charles County Zoning Ordinance prohibits new non-water dependent structures within the Buffer and the applicants can not meet the standards for the granting of a Critical Area Variance.

The applicant's proposal does not meet the standards set forth in Section 27.01.11.01 of COMAR nor does it meet the criteria set forth in Section 416 of the County's Zoning Ordinance. COMAR 27.01.11.01(1) addresses the standard of unwarranted hardship. Under recent Maryland appellate court decisions, unwarranted hardship exists only where, due to special circumstances or unique physical conditions peculiar to the land, the restriction would deprive the property owner of reasonable and significant use of the property. There are no special circumstances peculiar to this property such that denial of this variance would remove all reasonable use of the land. The property is already developed with another structure that is considered a dwelling. Also, the subject property is 3.2 acres so the property could be developed without a variance. The standard of unwarranted hardship can not be met.

Branch Office: 31 Creamery Lane, Easton, MD 21601
(410) 822-9047 Fax: (410) 820-5093

TTY FOR DEAF ANNAPOLIS-974-2609 D.C. METRO-586-0450



Mr. Kevin Vienneau

Page 2

COMAR 27.01.11.01(2) addresses the rights of the variance applicant with respect to the rights commonly shared by other owners of property within the Critical Area. Denial of this variance will not deprive the property owner of rights enjoyed by other property owners in the Critical Area. All property owners within the Critical Area are similarly limited by the Critical Area Law and the County's program. New development activities may only be permitted in the Buffer if they are water-dependent. Water-dependent facilities are those structures that require location at or near the shoreline. A dwelling is not a water-dependent facility.

COMAR 27.01.11.01(3) addresses special privileges that may be conferred upon an applicant with the granting of a variance when such privileges would be denied to other lands within the County's Critical Area. The granting of this variance clearly would confer a special privilege to this property owner because all similar properties are restricted from locating new non-water-dependent structures within the Buffer.

COMAR 27.01.11.01(4) addresses conditions or circumstances which are the result of actions by the applicant and conditions or circumstances related to adjacent properties. The need for this variance is self-imposed, as the applicant has constructed the dwelling without all necessary County approvals and now needs an after-the-fact variance.

COMAR 27.01.11.01(5) addresses adverse impacts to water quality and fish, wildlife or plant habitat that may result from the granting of the variance and the consistency of the variance approval with the spirit and intent of the Critical Area Program. The Buffer is a habitat protection area established by state and local regulation for the purpose of protection of water quality and habitat. These functions are compromised when new development occurs within the Buffer. Although it is literally impossible to measure impacts to water quality and habitat from this structure, it is not necessary to do so. The General Assembly instituted the requirements for protection of the Buffer because of the cumulative impact of construction in the Buffer. Approval of the proposed variance will contribute to these cumulative impacts and therefore is not consistent with the general spirit and intent of the Critical Area Program.

In summary, the applicant has failed to meet the variance standards. Variances are not granted lightly. The justification for a variance must be substantial and not merely for convenience, inasmuch as the aim of the law is to prevent exceptions as much as possible. Again, the Commission recommends denial of this variance. The structure should be removed and the area restored with native Buffer plantings at a 3:1 ratio.

Thank you for the opportunity to review this variance request. 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,



LeeAnne Chandler
Natural Resources Planner

SAMUEL C. LINTON

28TH LEGISLATIVE DISTRICT
CHARLES COUNTY

CHAIRMAN
CHARLES COUNTY DELEGATION

WAYS AND MEANS COMMITTEE



HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401-1991

DISTRICT OFFICE:
BOX 110 HOLLY SPRINGS ROAD
NANJEMOY, MARYLAND 20662

ANNAPOLIS ADDRESS:
216 LOWE HOUSE OFFICE BUILDING
ANNAPOLIS, MARYLAND 21401-1991
410-841-3247
301-858-3247

April 18, 1999

Honorable Judge of the District Court
Charles County
La Plata, Md. 20646

Dear Sir:

Mr. Wayne Rison of 23 Greenwood Place, Indian Head, Md., contacted me on August 1997, about a stop-work order on a building he was erecting on a lot on Nanjemoy Creek in Charles county. I advised him that he would need permits and to contact the Department of Planning and Growth Management.

Today, Mr. Rison came to me with a Summons to be in Court on the 20th of April.

I had never seen the building in question nor the fishing shack near the water, so I went to the lot and looked over the property with Mr. Rison on this date, April 18, 1999. The large structure was originally a 10x12 storage shed into which electrical service was obtained. A deep well was drilled and the fishing shanty rebuilt.

There is no planning evident other than for use as a recreation site. His friends come in on weekends and enjoy fishing, camping and have brought used and new building materials, boat trailers, flat trailers, and storage vans (small). The large building is full of furniture stored for his family and friends. It would not pass building code for a residence with a 2x6 floor joist and no footings, just cement blocks placed on top of the ground.

The water's edge shanty is like many that were found along the shores in this area for storage of haul seines and other fishing gear where a bunk and stove were present to keep warm and rest while waiting for the wind or tide to be suitable for fishing nets.

Mr. Rison indicated that his mother helped financially to purchase the materials for his project but after her death, he is on welfare with food stamps.

This is a prime example of the need for better information and laws governing the use of residential property.

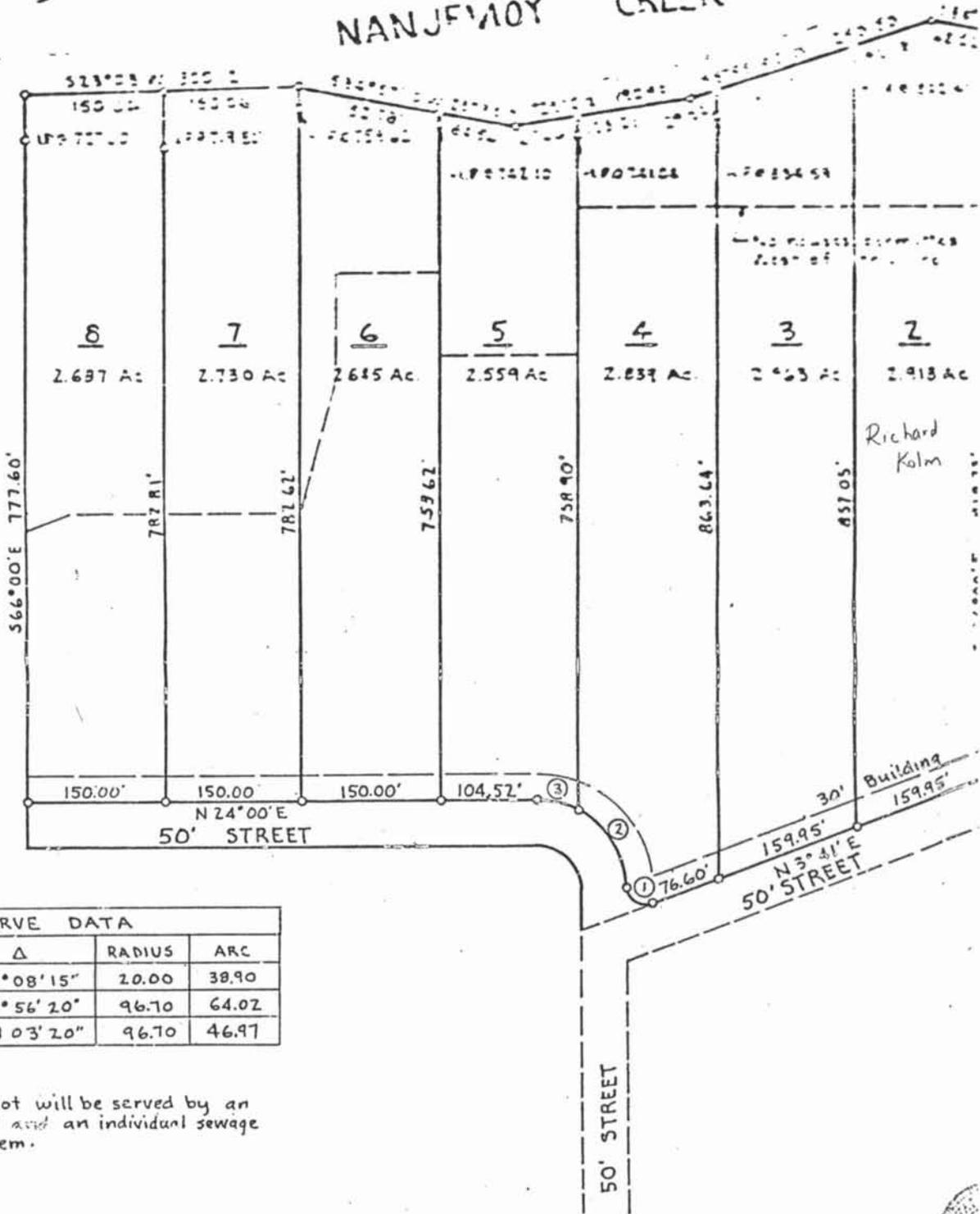
Thank you for your help.

Sincerely,

A handwritten signature in cursive script that reads "Samuel C. Linton".

Samuel C. Linton
Delegate, District 28

NANJEMOY CREEK



CURVE DATA			
No.	Δ	RADIUS	ARC
1	110° 08' 15"	20.00	38.90
2	37° 56' 20"	96.70	64.02
3	28° 03' 20"	96.70	46.97

Note ~ Each lot will be served by an individual well and an individual sewage disposal system.

CHARLES COUNTY PLANNING COMMISSION APPROVAL RECOMMENDED <u>12/18/88</u> DATE <u>William E. ...</u>	BOARD OF COUNTY COMMISSIONERS APPROVED _____ DATE _____
FILE NO. _____	

APPROVED
12/18/88

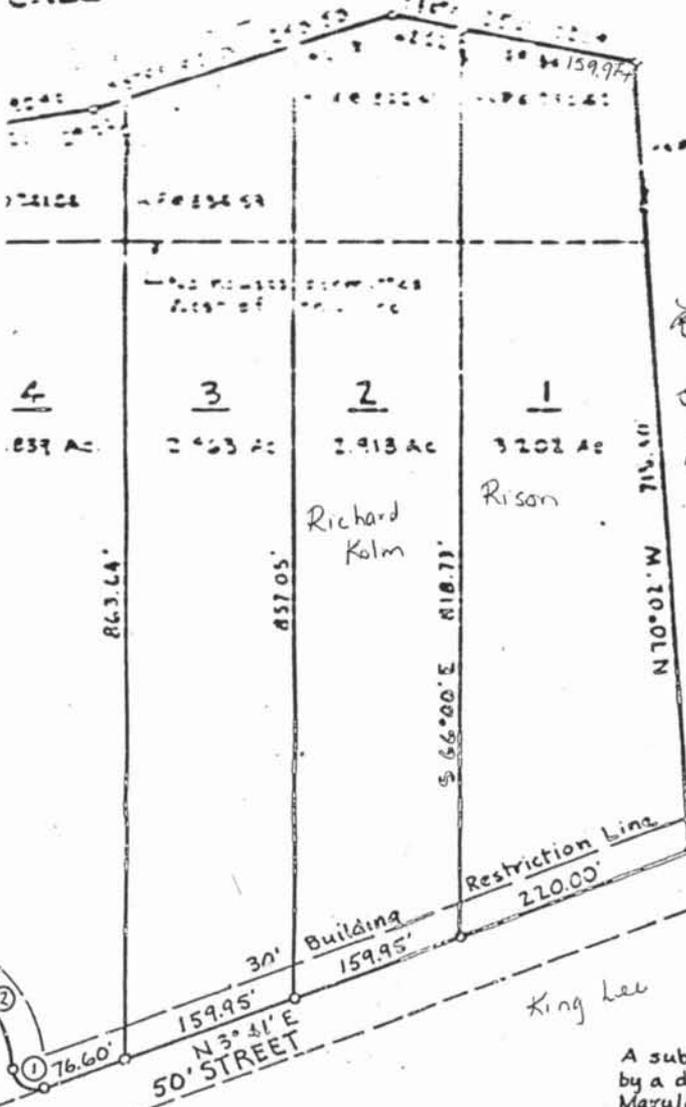


CRITICAL AREA COMMISSION
CHESAPEAKE BAY

SEP 21 1999

RECEIVED

CREEK



FRIENDSHIP ACRES SECTION 2

FRIENDSHIP ACRES
SECTION 3
 THIRD ELECTION DISTRICT
 CHARLES CO. MARYLAND

A subdivision of part of the land conveyed to Ethel M. Walter by a deed recorded in the land records of Charles County, Maryland in Liber WMA 59, Folio 637, containing 22.593 Acres. The undersigned Ethel M. Walter hereby adopts this plan of subdivision, establishes minimum building restriction lines, and dedicates the streets to public use.

ETHEL M. WALTER
 July 15 1966

SURVEYOR'S CERTIFICATE

I hereby certify that the plat shown hereon is correct, and that the requirements of Sec. 71-75 of the Annotated Code of Maryland have been complied with in making said plat; Iron pins have been placed at all lot corners; All bearings are referenced to Magnetic North.

July 15 1966

Leslie R. Skerick

0 100 200
 Scale ~ 1" = 100'



APPROVED
 [Signature]

RISON, WAYNE, B.

SOS. SEC. No. 239-56-8356
BIRTH DATE 12/26/39

I WAS BORN AND REARED - 79 MATTINGLY AVE.,
INDIAN HEAD, Md. I AM A LIFELONG RESIDENT
OF CHARLES COUNTY EXCEPT FOR FOUR
YEARS OF HIGH SCHOOL IN UNION MILLS, N.C.
AND SEVEN YEARS - THREE MONTHS AS A
MEMBER OF THE U.S. SUBMARINE NAVY.

I HAVE LIVED CONTINUOUSLY (AND STILL DO)
AT 30 DELTA PLACE (POTOMAC HEIGHTS)
INDIAN HEAD, Md. 301/743-7423. I HAVE
BEEN A MEMBER THERE SINCE 1964.

MY ANCESTORS (MOTHER'S SIDE) MOTHER -
PEARL LORRAINE WRIGHT - MURDOCK, RISON,
SMITH - BORN JUNE 1, 1907 - DIED MARCH
26, 1999. MY GRANDFATHER JAMES JAMES WRIGHT
AND GRANDMOTHER FLORA BOWIE, WRIGHT OWNED
A LARGE FARM ON BOWIE ROAD WHERE MY
MOTHER WAS BORN AND REARED (NOW →

KNOWN AS HANCOCK'S FARM),

MY GRAND-DAD FARMED, ~~HE~~ COMMERCIALY
FISHED, CUT ~~THE~~ PULP WOOD, ETC.

MY FIRST RECOLLECTION OF THE
PROPERTY AND "FISHING SHACK" / SHANTY IN
QUESTION ^{IS} WHEN I WAS 8-11 YRS OLD ~~AT~~ ^{MY}
GRANDDAD TOOK ME, AND MY DAD (GEORGE
E. RISON - BORN APRIL 17, 1887 - DIED

AUGUST 10, 1951) ^{THERE} THIS WAS 50 ODD YEARS
AGO. IN THOSE DAYS BOWIE RD, TAYLORS

NECK RD. ALL ^{ROADS} FROM LA PLATA EAST WERE
GRAVEL. WALTER'S ~~ROAD~~ LANDING RD. AND
FRIENDSHIP ACRES DRIVE (MY PROPERTY'S

LOCATION) WERE BARELY LOGGING ROADS.

MY CURRENT DRIVEWAY WAS ALSO A LOGGING
ROAD WHICH AT THE END WAS A "FISHING

SHACK" / SHANTY (WHICH MY GRANDDAD PROBABLY
BUILT?). HE STORED FISHING EQUIPMENT, ETC.
IN. I REMEMBER IT HAD A COUPLE BUNKS AND



Chairs ~~and~~ AS WELL AS A SMALL
WOOD STOVE. I HAVE SINCE (I HAPPENED
TO BE FORTUNATE ENOUGH TO HAVE "LUCKED UP"
ON THAT VERY PROPERTY) PUT MY GRAND
MOTHER'S OLD "HOME COMFORT" COOK STOVE IN
THERE, AND IT WORKS FINE.

THIS WAS ALL A VERY LONG TIME BEFORE
FRIENDSHIP ACRES WAS DEVELOPED, I THINK
IT WAS 1966 WHEN THE FIRST LOTS WERE
SOLD. I BELIEVE MS. ETHEL WATERS HAD
IT DEVELOPED (SUBDIVIDED AND PERKED).

BY THIS TIME ~~WE~~ GOT IT (MY MOTHER AND
I) THE "FISHING SHACK" SHANTY HAD ALL BUT
DISAPPEARED EXCEPT FOR PILING AND SOME
WALLS ~~AND FLOOR~~ FLOOR, IT WAS ALL OVERGROWN AND QUITE
UNSAFE AND AN EYESORE ON NAUJEMOY CREEK
(QUINCY SIDE). I STARTED BY REBUILDING/REMODEL-
ING THE FLOOR AND REMOVING OVERGROWTH ROTTED
WALLS, ROOF, ETC. THE ~~WALLS~~ MOSTLY ROTTED
WOOD WAS ROUGH-CUT (SAWMILL) OAK; THERE

IS STILL SOME REMINANTS I CAN SHOW YOU.

THE ORIGINAL HAD ROLLED ROOFING AND
TAR PAPER FOR THE OUTSIDE AND ROOF. WE
USED 2" X 10" X 12' TREATED GROUND CONTACT
WOOD FOR THE FLOOR JOISTS AND DOUBLE
BANDING WITH LAG BOLTS AND GALVANIZED
16 PENNY TWIST NAILS AND 1" X 4' X 8' TREATED
MARINE PLYWOOD. WE USED 2" X 4" FOR WALLS
AND ROOF ALL ON 16" CENTERS ~~INCLUDING FLOOR~~
~~JOISTS~~ WITH GALVANIZED HANGERS & 16 PENNY
GALVANIZED TWIST NAILS ALL SIDING IS 1/2"
X 4' X 8' WALL GRADE WITH TAR PAPER AND
GREEN ROLLED ROOFING WITH CEDAR SHAKE
SHINGLES ON TOP OF THAT (ONE WALL) IF
ALLOWED TO STAY INTENDED TO DO THE OTHER
THREE WALLS WITH THE SAME. THE ROOFING
IS REGULAR FIBERGLASS ROOFING SHINGLES OVER
TAR PAPER. THE INSIDE FLOOR HAS 1/2" FLOORING
PLYWOOD OVER HALF IS COVERED WITH 3" TO 4"
OF CONCRETE (UNDER WOOD STOVE, METAL FIRE-
PLACE

ELECTRIC STOVE REFRIGERATOR, ETC
THE INSIDE WALLS ARE COVERED WITH
 $\frac{1}{4}$ " THERMO-PLY (INSULATING BOARD) $\frac{1}{2}$ " WALL PLY -
WOOD THEN BRICKED $\frac{1}{2}$ WAY - UP WITH THE
REST COVERED WITH CEDAR SHAKE SHINGLES
(SEALED). THE FLOOR ALSO HAS FLOOR DRAINS
TO ALLOW THE WATER IN - NOT OUT, SHOULD
THAT PROBLEM EVER PRESENT ITSELF. - SO
FAR IT HASN'T. THIS STRUCTURE HAS WITH-
STOOD TWO NOR' EASTERES (BACK TO BACK)
AND AMERICAN'S FEAR WITH NO PROBLEM
WHAT-SO-EVER.

THIS ~~IS~~ STRUCTURE IS HOLDING THE
BANK BEHIND IT FROM WASHING INTO THE
CREEK. I'M NOT NOW ^{OR EVER HAVE} LOSING BANK OR
TREES AS MY NEIGHBORS UP THE CREEK
HAVE BEEN AND STILL ARE. TO MOVE OR TEAR
DOWN WOULD CAUSE SEVERE ENVIRONMENTAL, →

SCENIC AND WET LAND DAMAGE THROUGH
EROSION, ETC.

TO MOVE UP THE HILL WOULD REQUIRE
EXTENSIVE AND EXPENSIVE TREE AND STUMP
REMOVAL, AS WELL AS EXISTING GRADING
RESULTING ^{IN} MORE BANK EROSION, AND MOUNT-
IAN LAUREL AND OTHER VEGETATION LOSS.