

9259-62815

CE 0478-07 Carver, Lawrence -
Spec. Ex. 3341 Nancy

3/19/12

12/7/11

11/29/11

9pm 11/1/11

Comments
8/27/07 KS

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/

March 19, 2012

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

Re: **Carver Special Exception**
3484 (TM 43, P 87, TM 44, P 3 & 72)

Dear Mr. Johnson:

It is my understanding that the previous approval for a special exception from the Board of Appeals has been appealed and that the applicant is now requesting a special exception to Section 100 of the Cecil County Zoning Ordinance, Privately Owned Outdoor Recreation Facilities, rather than the previously applied for and approved Section 108, Rifle and Pistol Ranges, War Games, Archery Ranges, Skeet Shooting Ranges, and Other Recreational Weapons. As this property is located in the Resource Conservation Area (RCA), under Section 100 of the County Code, item 6 of this subsection indicates that "an applicant must apply for, and receive, Growth Allocation" for this use to be located in the RCA. The standards and factors required to be addressed in association with a Growth Allocation in the RCA may be found under Natural Resources § 8-1808.1 and the Growth Allocation Submittal requirements may be found under COMAR 27.01.02.05-1, as well as under Article XI, Part 1 of the County Ordinance. Growth Allocation approval from the Critical Area Commission must be received prior to any final County approvals of the special exception. Please contact our office if you have further questions regarding these procedures.

Should the applicant wish to proceed with the previously approved special exception to Section 108 of the County Ordinance, the paintball operation "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." As we have outlined in previous letters, paintball playing activities must be contained to the playing field area outlined in the application. This area clearly excludes the waterline and 100-foot Buffer from Back Creek. The area shown on the plan is the only area that is under consideration for the special exception use of paintball operations. Active use of the 100-foot Buffer for paintball operations is not permitted.

Mr. Johnson
Page 2 of 2

Thank you for your cooperation. If you have any questions, please feel free to contact me at (410) 260-3476.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Julie', with a long, sweeping horizontal line extending to the right.

Julie Roberts
Natural Resources Planner

cc: Mr. Rick Carver, Outdoor Extreme
Mr. Jeff Foster
CE 478-07

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



Margaret G. McHale
Chair

Ren Serey
Executive Director

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December 7, 2011

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

Re: **Carver Special Exception-Follow up to Approval
3484 (TM 43, P 87, TM 44, P 3 & 72)**

Dear Mr. Johnson:

It is my understanding that the Board of Appeals approved the special exception for the above referenced property. As stated in my November 1, 2011 letter, if the special exception is granted, then use of these parcels must comply with all RCA provisions found in the Cecil County Code (Section 201). In addition, the applicant must adhere to the protections of the 100-foot Buffer, as found in Section 196 of the Cecil County Code.

The application for the special exception shows the approximate area of the paintball playing field (attached), which **clearly** excludes the waterline and 100-foot Buffer from Back Creek. This area shown on this plan is the **only** area that was approved for the special exception use of paintball operations. Active use of the 100-foot Buffer for paintball operations is not permitted.

Thank you for your cooperation. If you have any questions, please feel free to contact me at (410) 260-3476.

Sincerely,

A handwritten signature in dark ink, appearing to read "Julie Roberts", written over a light-colored background.

Julie Roberts
Natural Resources Planner
JR/jjd

Enclosure

cc: Mr. Rick Carver, Outdoor Extreme
Mr. Jeff Foster
CE 478-07

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



Margaret G. McHale
Chair

Ren Serey
Executive Director

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November 29, 2011

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

Re: **Carver Special Exception-ADDENDUM
3484 (TM 43, P 87, TM 44, P 3 & 72)**

Dear Mr. Johnson:

Please accept this letter to be submitted to the Board of Appeals for this special exception as an addendum to my letter of November 1, 2011. It has been brought to our attention that there may be structures, as well as debris, associated with the paintball operation that have been located in the 100-foot Buffer to Back Creek, which is not in compliance with all the provisions for the protection of the 100-foot Buffer (Cecil County Code Section 196), and the provisions for development within the Resource Conservation Area (Cecil County Code Section 201).

The application for the special exception shows the approximate area of the paintball playing field, which clearly excludes the waterline and 100-foot Buffer of Back Creek. However, the pictures we have been forwarded by an adjacent landowner show active use within the Buffer (attached). The 100-foot Buffer cannot be used as part of this operation. All structures, debris, or other obstacles used for active recreation must be removed from the Buffer.

I have contacted Mr. Cliff Houston and Mr. Steven O'Connor to outline our concerns and to investigate further about potential violations on the property. Should the County determine that violations are present, then the special exception may not be granted per Natural Resources Article, 8-1808(c)(1)(iii)15.A. The unpermitted structures must be processed as a violation and be removed.

Thank you for the opportunity to provide comments on this Board of Appeals Special Exception request. Please include this letter in your file and submit it as part of the record. In addition, please notify the Commission in writing of the decision made in this case as well as a determination as to whether a violation has occurred on the property. If you have any questions, please feel free to contact me at (410) 260-3476.

Sincerely,

A handwritten signature in cursive script, appearing to read "Julie Roberts", written in black ink.

Julie Roberts
Natural Resources Planner

cc: Attachments
CE 478-07

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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November 1, 2011

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

Re: **Carver Special Exception**
3484 (TM 43, P 87, TM 44, P 3 & 72)

Dear Mr. Johnson:

Thank you for providing information on the above referenced special exception request. The applicant requests a special exception to allow a paint ball operation. The property is 94.734 acres in size and is designated as a Resource Conservation Area (RCA). No new development activity is proposed onsite. This property has previously received a special exception to use this site for paint ball activities. These special exceptions are required to be reapplied for every two years.

Typically, the Critical Area Commission does not support the use of commercial operations within the Critical Area, other than those related to forestry or agriculture, which are resource-utilization activities. If the special exception is granted, then development of these parcels must comply with all RCA provisions.

Thank you for the opportunity to provide comments on this Board of Appeals Special Exception request. Please include this letter in your file and submit it as part of the record. In addition, please notify the Commission in writing of the decision made in this case. If you have any questions, please feel free to contact me at (410) 260-3483.

Sincerely,

A handwritten signature in black ink, appearing to read "Julie Roberts", written over a light blue horizontal line.

Julie Roberts
Natural Resources Planner

cc: CE 478-07

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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1804 West Street, Suite 100, Annapolis, Maryland 21401
(410) 260-3460 Fax: (410) 974-5338
www.dnr.state.md.us/criticalarea/

September 21, 2009

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

Re: **Carver Special Exception**
3484 (TM 43, P 87, TM 44, P 3 & 72)

Dear Ms. Corkell:

Thank you for providing information on the above referenced special exception request. The applicant requests a special exception to allow a paint ball operation. The property is 94.734 acres in size and is designated as a Resource Conservation Area (RCA). No new development activity is proposed onsite. This property has previously received a special exception to use this site for paint ball activities.

Typically, the Critical Area Commission does not support the use of commercial operations within the Critical Area, other than those related to forestry or agriculture, which are resource-utilization activities. If the special exception is granted, then development of these parcels must comply with all RCA provisions.

Thank you for the opportunity to provide comments on this Board of Appeals Special Exception request. Please include this letter in your file and submit it as part of the record. In addition, please notify the Commission in writing of the decision made in this case. If you have any questions, please feel free to contact me at (410) 260-3483.

Sincerely,

A handwritten signature in cursive script that reads "Nick Kelly".

Nick Kelly
Natural Resource Planner
cc: CE 478-078

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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www.dnr.state.md.us/criticalarea/

August 27, 2007

Mr. Joseph Johnson
Cecil County Department of Planning and Zoning
129 East Main Street
Elkton, MD 21921

Re: Special Exception Request #3341
Carver Property – Commercial Paint Ball Operation

Dear Mr. Johnson:

Thank you for submitting the above referenced special exception application for review and comment. The applicant desires a special exception to allow a commercial paint ball operation to be located on two parcels totaling approximately 94 acres and located in the Resource Conservation Area (RCA).

Based on the Cecil County Zoning Ordinance, while the proposed operation does require a special exception, it does not require the use of growth allocation if it is located in the RCA. Typically, the Critical Area Commission does not support commercial operations, other than forestry or agriculture which are resource-utilization activities, to be located in the RCA. If the special exception is granted, development of these parcels must comply with all RCA provisions.

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

Sincerely,

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

Kate Schmidt
Natural Resource Planner
CE 478-07

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 Fauquier 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 MCCS 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, Jr.
David Willis, Chairperson

TRUE COPY

Jan L. Dempsey 5/30/12

TRUE COPY

IN THE MATTER OF

BEFORE THE CECIL COUNTY

THE APPLICATION OF

BOARD OF APPEALS

LAWRENCE R. CARVER, t/a
OUTDOOR EXTREME CHESAPEAKE CITY

CASE NO.: 3572

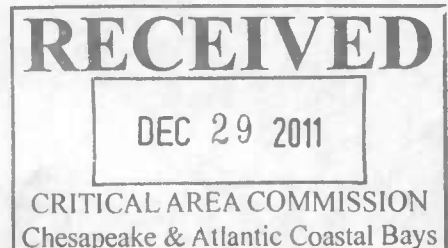
(Special Exception - SAR)

OPINION

Application of Lawrence R. Carver, t/a Outdoor Extreme Chesapeake City (the "Applicant"), for renewal of a special exception to operate a paint ball operation at property located at 2941, 2943, and 2981 Old Telegraph Road, Chesapeake City, Maryland 21915, which is 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 presently zoned Southern Agricultural Residential ("SAR"). The property is owned by Lawrence R. Carver and Nancy M. Carver.

This application is brought under the provisions of Article V, Part V, Section 108, and Article IV, Section 54.4 Table of Permissible Uses, subsection 5.13.000, of the Ordinance, which permits rifle and pistol ranges, war games, archery ranges, skeet shooting ranges, or other recreational weapons (outdoor), as a special exception in the SAR zone, subject to the following conditions:

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.



Article XVII, Part II, Section 311 of the Ordinance specifies that no special exception shall be approved by the Board of Appeals after considering all facts in the case unless the following findings are made:

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.

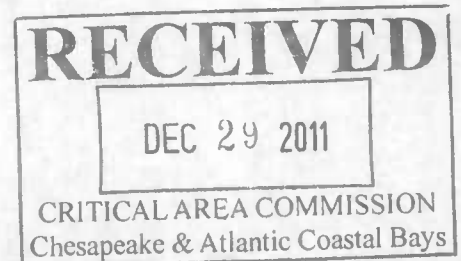
5. The use shall not adversely affect critical natural areas or areas of ecological importance.

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)

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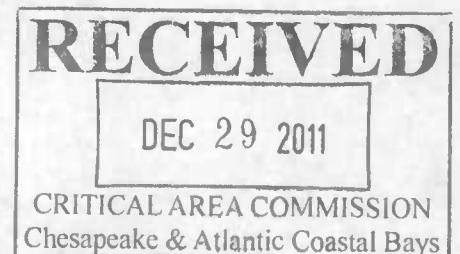


8. That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.

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

Applicant and his attorney, William F. Riddle, Esquire, testified that the Applicant desires to renew the special exception to conduct paint ball operations on the Property. The Property is 94-acres in size, and is designated as a Resource Conservation Area ("RCA"). No new development activity is proposed onsite; in 2007, the Property received a special exception for two (2) years to use this site for paint ball activities; in 2009, the special exception was renewed for an additional two (2) years. The Applicant testified that he has run the paint ball business full-time for the past five (5) years; however, he has been unable to obtain financing to capitalize the business because lenders are reluctant to lend money to an operation that exists under a two (2) year special exception. As such, the Applicant asked that the special exception be renewed, and that it be renewed for a period of five (5) years.

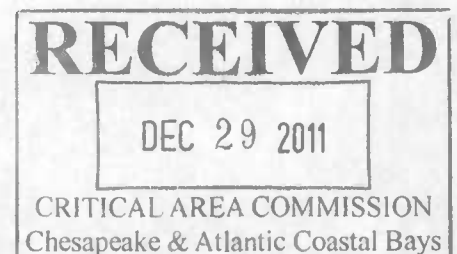
The Applicant displayed a video image of the Property in order to generally show the location where paint ball activity is conducted on the Property. The Property lines were denoted in yellow, while the paint ball zones were denoted by red lines. The Applicant testified that each paint ball field has a natural buffer, such as hedgerows, bushes, or woods, operates primarily on weekends between the hours of 8am and 6pm, and has room for parking for up to forty (40) cars. Erie Sennstrom, the Director of the Cecil County Department of Planning and Zoning, appeared before the Board and stated



on the record that, according to the tax map, the Property is not within 1,000 feet of a residential zone.

The Applicant testified that he is in compliance with the Ordinance, that there have been no complaints to the Department of Planning and Zoning or to law enforcement related to the paint ball activity being conducted, and that he will continue to comply with all applicable law. The Applicant further testified that he has had feedback from neighbors, some positive and some not. The Applicant stated that he has been responsive to his neighbors' expressed concerns; for example, he has discontinued the use of loudspeakers to communicate with his staff during set up in the morning, and now uses hand held devices to facilitate such communication, he has aimed the loudspeakers toward the ground in order to reduce the impact of such use on neighboring properties, he has banned the use of bird banger guns, and he has reduced noise from the paint ball gun test station by installing a muffler system.

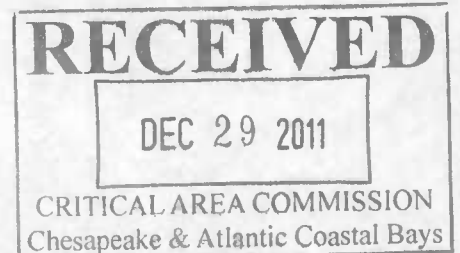
The paint ball course is comprised of rec ball and speed ball areas, as well as a staging area for players competing in rec ball games. Speed ball consists of tournament play by three person teams (3 v. 3), five player teams (5 v. 5), or seven player teams (7 v. 7). The 3-on-3 competitions are played in tournaments of up to 30 teams, while the 5-on-5 competitions are typically played in tournaments of 18 to 27 teams involving up to 150 competitors. The Applicant testified that in past years, only one speed ball field was used at a time; this year however, two fields were sometimes used simultaneously. According to the Applicant, even with two speed ball fields operating simultaneously, a 7-on-7 tournament would have 28-players playing at the same time.



The Applicant testified that, on a good day, 40 competitors participate in rec ball. Rec ball games are played in natural woods, trails, and fields located in various areas about the Property. The Applicant also stated that rec ball is not played in the 100' Critical Area Buffer. The Applicant testified that the paint ball grenades used in competition are totally silent, and that mortars are less noisy than the paint ball guns generally used in play. The paint ball operation is developing a regional presence in the Mid-Atlantic area, and teams that play at the Property are from colleges and local clubs, as well as families and friends who enjoy this recreational activity.

An issue that has arisen repeatedly over the past several years relates to noise from the Property during paint ball play. David Kerr ("Kerr"), a retired City of Newark, Delaware police officer who has training and experience with the City of Newark police department in the use of a sound meter and the taking of sound readings, testified on behalf of the Applicant. Kerr used a sound meter like that used by the Newark, Delaware police department, to measure sound emanating from the Property.

Kerr took sound readings by stationing himself at several different locations, including neighboring properties and Back Creek. According to Kerr, results of the sound readings demonstrate that a shotgun discharged on the Property registered, at most, 80 decibels, a motor vehicle horn also registered at no more than 80 decibels, a bullhorn measured at 85 decibels (+/-), and a paint ball gun measured at no more than 70 decibels (+/-). By way of comparison, Kerr further testified that normal conversation generally registers at (+/-) 50 decibels, a telephone ringing registers at 70-80 decibels, and a subway train registers at 200 decibels. Kerr testified that he could hear the shotgun blast, the motor vehicle horn, and the megaphone, but could not hear the paint ball gun.



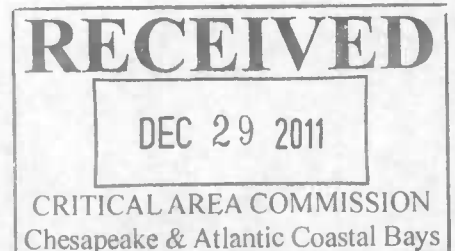
The Applicant testified that the paint ball playing areas are outside the critical area buffer, and that he keeps the buffer area covered in grass. William F. Riddle, Esquire, ("Riddle") represented that photographs showing a structure in the Buffer area actually depict the Applicant's duck-blind; according to Riddle, the Applicant obtains an annual permit in order maintain the duck-blind in its present location. The Applicant further testified that he practices environmentally healthy stewardship over the Property; the Applicant has cleaned the Back Creek and marsh area adjacent to the Property on a number of occasions and, particularly after Hurricane Isabelle, pulled car parts, debris, and trash not of his making from the Creek and the marsh.

The Applicant testified that there are no issues with traffic or parking. The Property offers ingress and egress onto Old Telegraph Road, which is a County roadway, and the Applicant stated that in addition to the more formal parking area that accommodates up to 40 motor vehicles, there is ample room for additional parking in a grassy area near the front of the Property.

In addition to the Applicant, a number of individuals spoke in favor of the application:

1. Susan Erwin Tadlock testified that she is a pony clubber and horse enthusiast, and has ridden horses on Brian Johnson's property during paint ball play. Her horse was never disturbed by the sound of the paint ball games.

2. Rome Knight testified that he is the manager of a local pizzeria located at 61 Front Street, Chesapeake City, Maryland, and that his business, as well as that of other businesses in Town, are positively affected by the patronage of paint ball participants, their friends and families.



3. Erica Svatos Powers testified that she resides at 2935 Old Telegraph Road, which is located near the Property, and that the sound of the paint ball games is no more loud or offensive than the sound of ships passing in the Chcsapeake & Delaware Canal.

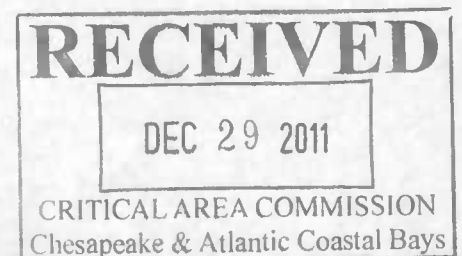
4. Robert Marro testified that he resides at 1160 Bethel Road, which is in close proximity to the Property, and that the sound of the paint ball games is very faint, and is no louder than children playing in the pond across the street from his property. According to Marro, his property was re-appraised in 2010, and there was no impact on his property value as a result of the paint ball operation.

5. Richard Carver testified that he resides at 536 Bethel Road, which is adjacent to the Property. According to Mr. Carver, the opposition represents a brooding vendetta between local hunters/property owners and the Applicant. Mr. Carver, who is a music teacher, testified that the opposition unsuccessfully raised the same issues when the special exception was up for renewal two years ago, and that the paint ball operation does not disturb the wildlife on his property or his ability to record music in his home.

6. Bill Tidabaek testified that he lives at 98 Andrea Drive, which is in close proximity to the Property. According to Mr. Tidabaek, he was originally opposed to the paint ball operation; however, he now supports the Applicant because of his hours of operation. Mr. Tidabaek testified that property on his street recently sold for over \$300,000.00 notwithstanding the paint ball operation nearby.

7. Dave Brookcns testified that he resides at 748 Bethel Road, in proximity to the Property, and that the paint ball operation does not effect him at all.

8. Michael White testified that he resides at 536 Bethel Road, and is a member of the Chesapeake City Volunteer Fire Company. According to White, the



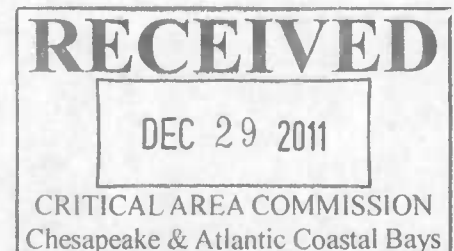
Applicant does all that he can for the community, including providing a safe place for kids to play and engage in supervised recreational activity, and helping the Fire Company.

9. Caitlyn Stair testified that she works with horses and has ridden horses at a nearby property owned by Hassler Dressage. Stair stated that she has ridden horses near the Property while paint ball games were being played, and that no one has ever complained about the paint ball operation in her presence.

10. Georgia Erwin testified that she owns property adjacent to Brian Johnson, in close proximity to the Property, and that the paint ball operation does not have an effect on anything that she wants to do on her property. According to Erwin, she can clearly hear guns from hunting, which she dislikes, and can only faintly hear the paint ball games.

11. Other individuals testified that they were generally in favor the application.

Robert Valliant Jones, Esquire appeared on behalf of Brian Johnson ("Johnson"), 2827 Old Telegraph Road, Chesapeake City, Maryland (the "Johnson Property"), Jeff Foster, Sr. ("Foster"), 38 Wilmon Street, Chesapeake City, Maryland (the "Foster Property"), and John Coehran ("Coehran"), 750 North St. Augustine Road, Chesapeake City, Maryland (the "Coehran Property"); the Johnson Property, Foster Property, and Coehran Property are adjacent to the Applicant's Property. According to Mr. Jones, the area in the general vicinity of the Property is among the most sensitive in Cecil County, and encompasses the largest number of agricultural easements and protective land in the State of Maryland.

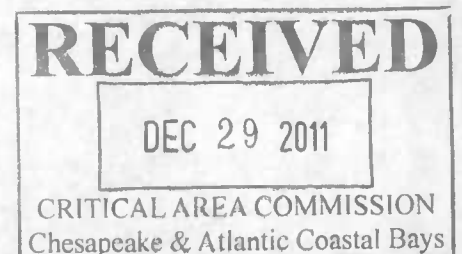


Generally, Johnson, Foster, and Cochran testified that they are opposed to renewal of the special exception because of noise, such as the use of a bullhorn and loudspeakers early in the morning, firearm repetition and discharge, weekend hours of operation, accelerated usage, depreciation in the value of their properties, trash, the scaring off of wildlife, the spooking of horses, and increased traffic on Old Telegraph Road incident to the operation.

More specifically, Johnson, Foster, and Cochran testified as follows:

1. Jeff Foster, Sr. testified that he purchased the 40-acre Foster Property 12 years ago. According to Foster, the paint ball operation has had an adverse effect on his ability to enjoy the unimproved portion of the Foster Property, which contains 3/4 mile of dressage riding trails and an area for keeping horses. Foster testified that he has concerns that horses will be spooked by the sound of gunfire emanating from the Property, which could fatally injure the horse and/or its rider. Foster had formerly kept two horses at the Foster Property; he has now sold his horses because, due to noise from the paint ball operation, he does not feel safe riding them on weekends, which due to his weekday work schedule, is the only time that he can engage in recreational activity. Foster further testified that the Applicant does not meet the provisions of Section 108 of the Ordinance because he is operating within 1,000 feet of a residential zone, and within 1,000 feet of Brian Johnson's residential property. Foster showed a video of the Critical Area Buffer, which depicted a structure in the Buffer area.¹

¹The Applicant testified in rebuttal that the structure depicted by Foster is the Applicant's duckblind, for which he has a permit, and that the duckblind is for personal use and not a part of the paint ball operation.



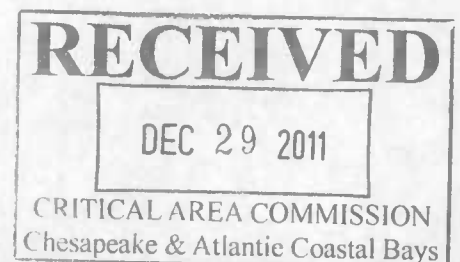
2. Brian Johnson testified that noise from the paint ball operation substantially prohibits his ability to enjoy the new home that he recently constructed on the Johnson Property. Johnson showed a video taken while standing on the Johnson Property; the audio portion of the video showed that sounds from the paint ball operation were audible while standing on the Johnson Property.

3. John Cochran testified in similar fashion to Foster and Johnson.

Mr. Jones also presented the testimony of four expert witnesses. The first of these witnesses was Will Whiteman, a registered land surveyor ("Whiteman"). Whiteman displayed two maps; according to Whiteman, the first map showed that the Property is within 1,000 feet of a residential dwelling owned by Lance Powers. Whiteman further testified that the second map showed that the Property is within 1,000 feet of the Rural Residential ("RR") zone and, further, that paint ball activity is therefore being conducted within 1,000 feet of the RR zone.

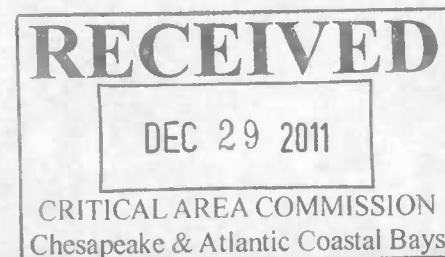
Mr. Jones' second witness was Michael Pugh, who was offered as an expert in zoning and land development ("Pugh"). Pugh further discussed the two Whiteman maps; according to Pugh, the Applicant is not in compliance with Section 108 or Section 311 of the Ordinance because paint ball is being played within 1,000 feet of a residence and, further, because portions of the paint ball operation occur within 1,000 feet of the RR zone.

Pugh further testified that there are four specific reasons why the Applicant cannot meet the standard set forth under *Schultz v. Pritts, infra*. First, the Property, which is part of the old Winfield Farms, is located in an equestrian use area, which raises an issue of compatibility between the Applicant's present use and equestrian uses.



Second, the portion of the Second District in which the Property is located is proximate to one of the largest agricultural preservation areas in the State. Third, the RR zone, which is located immediately adjacent to the Property, is a low density residential zone, and not part of the larger agricultural zone (e.g., the SAR). The Property's location is in the "edge", an area where urban Chesapeake City begins; there will be places within the SAR that don't have these impacts, and it is the intent of a special exception with conditions such as those stated in Section 108 to locate the Applicant's use where this type of impact will not occur. Fourth, is the location of the Property within the Critical Area. The Applicant's entire Property is within the Critical Area, and commercial use such as this is typically not permitted in the Critical Area. In support of his fourth contention, Pugh referred to the two letters entered by the CAC in relation to this application. According to Pugh, all four of the foregoing factors call into question whether the use here is having a higher impact than in another part of the SAR zone, and that the Applicant cannot meet his burden under *Schultz v. Pritts*. Pugh's conclusion is that the renewal should, therefore, be denied.

Mr. Jones' third witness was George Lutz, a licensed real estate appraiser. Mr. Lutz testified as to the general character of the area in the vicinity of the Property, and stated that the Chesapeake & Delaware Canal, an area of protected wildlife, is located to one side of the Property, the Town of Chesapeake City, the "crown jewel" of local tourism, is approximately one-mile from the Property, and that the equine industry and agricultural preservation areas are in close proximity to the Property. According to Lutz, adjacent property owners have developed desirable trails that are attractive to equine use. Lutz walked the area, and determined that in making an appraisal of adjacent and nearby



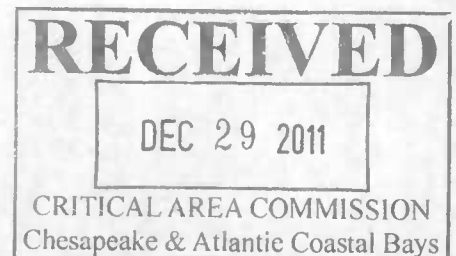
properties, he would have to disclose the paint ball operation as an "external factor" in making his appraisal. It was Lutz's opinion that other areas of the SAR are more compatible with this type of use because, in much of the other area located in the SAR, the predominant use is grain farming, and there is no proximity to residential development or the equine industry.

Mr. Jones' fourth witness was Donna Hollifield Main, a licensed realtor. Ms. Main testified that, if she were to list adjacent properties, it would be prudent (although not necessarily legally required) of the seller to disclose the paint ball operation, as well as equestrian farms. According to Ms. Main, the disclosure that paint ball operations are being conducted on the Property could have a negative impact on the sale of adjacent properties.

A number of individuals testified in opposition:

1. Deborah Dayton testified that she and her spouse purchased property in proximity to the Property several years ago in order to promote their daughter's interest and advancement in the equine riding industry. Dayton testified that the Applicant's use is incompatible with the surrounding area, and specifically testified that the use is in violation of Section 108 because it is within 1,000 feet of a residential zone and a residence, and that because the Applicant sells goods and merchandise related to the paint ball operation at a pro shop on the Property, the use is in violation of the prohibition against on-site commercial retail sales in this zone.

2. Cathy Rogers testified that she resides at 2827 Old Telegraph Road, which is adjacent to the Property, and stated that the noise is loud and the size of the

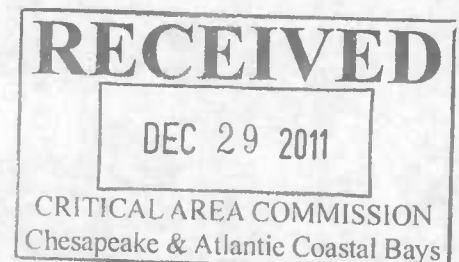


Applicant's commercial operation is growing. Ms. Rogers questioned how big the commercial operation will be permitted to get in this area before the Board takes action.

3. Gail Cochran of 750 N. Augustine Herman Hwy. testified that she has three sons who are Eagle Scouts, and that the Applicant could not have hosted Boy Scouts of American sanctioned events because paint ball is not an activity that is permitted by the Boy Scouts.

In addition, Jeff Foster, Jr., Kim Foster, and Collin Dayton offered testimony in opposition to the special exception.

Finally, the Critical Area Commission (the "CAC") offered two letters related to the application. The first letter, dated November 1, 2011, states in pertinent part that, "[t]ypically, the Critical Area Commission does not support the use of commercial operations within the Critical Area other than those related to forestry or agriculture, which are resource-utilization activities. If the special exception is granted, then development of these parcels must comply with all RCA provisions." The second letter, dated November 29, 2011, states that CAC was recently informed that there may be structures, as well as debris, associated with the paint ball operation that have been located in the 100-foot buffer to Back Creek, which is not in compliance with all provisions for the protection of the 100-foot buffer (Section 196 of the Ordinance), and the provisions for development within the Resource Conservation Area (the "RCA")(Section 201 of the Ordinance). The CAC's November 29th letter advised that the 100-foot buffer cannot be used as part of the paint ball operation, and requested that, should the County determine that violations are present, then the special exception may



not be granted, and any un-permitted structures must be processed as a violation and removed.

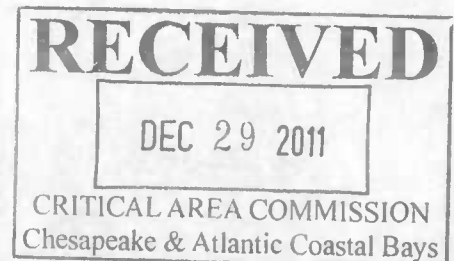
Clifford Houston, Cecil County Department of Planning and Zoning, testified that the Planning Commission recommended approval of the application for two (2) years (provided that the Applicant owns the Property and operates the business), and that the hours of operation may be seven days per week from 9:00a.m. to 4:00p.m.

From the foregoing evidence and testimony, the Board makes the following findings of fact pursuant to Section 108 and Section 311, respectively:

1. Section 108(1). That the Applicant's use is not 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. As set forth above, Eric Sennstrom, the Director of the Cecil County Department of Planning and Zoning, verified at the hearing that the Property is in compliance with this Section 108(1) of the Ordinance. There was conflicting testimony on this point; the Board accepts Mr. Sennstrom's opinion, and as such finds that the Applicant's use is in compliance with Section 108(1).

2. Section 108(2). That ranges are designed to insure the safety of users and passers-by. The Applicant testified, and the Board finds as fact, that the Applicant's speed ball fields are surrounded by netting that keeps projectiles within the fields of play and, further, that the rec ball fields are bordered by hedges, trees, bushes and undergrowth such that competitors and their projectiles are contained within the Property and play is a sufficient distance from surrounding properties and Back Creek.

3. Section 108(3). The hours of operation will be addressed below.

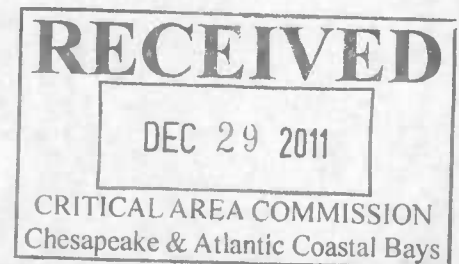


4. Section 311:

(1) That renewing the special exception will not be detrimental to or endanger the public health, safety, or general welfare. As set forth above, the Applicant's speed ball fields are surrounded by netting that keeps projectiles within the fields of play and, further, the ree ball fields are contained by hedges, trees, bushes and undergrowth such that competitors and their projectiles are kept on the Property and play is a sufficient distance from surrounding properties and Back Creek.

(2) That 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. As set forth above, there was testimony by those in favor of the application that the use is not disruptive and that property values have not been affected by the paint ball operation, and there was testimony to the contrary by those in opposition. There was no evidence of complaints to the Department of Planning and Zoning or local law enforcement related to the Applicant's use; the Applicant has had feedback from neighbors, some positive and some not, and has been responsive to his neighbors' informally expressed concerns. For example, he has discontinued the use of loudspeakers to communicate with his staff during set up in the morning, and now uses hand held devices to facilitate such communication, he has aimed the loudspeakers toward the ground in order to reduce the impact of such use on neighboring properties, he has banned the use of bird banger guns, and he has reduced noise from the paint ball gun test station by installing a muffler system. Neither Mr. Lutz or Ms. Gilley testified or presented any data demonstrating that the current use in fact diminishes or impairs property values, while there was testimony that such use has not diminished property

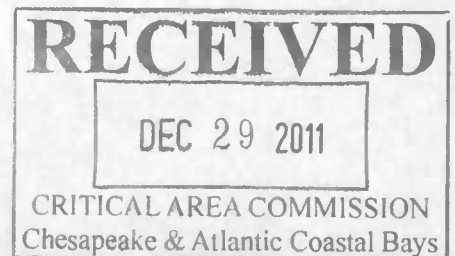
Not true



values. Sound readings by Mr. Kerr, the Applicant's expert, provided the only objective data related to noise from the paint ball operation, and that data tended to show that, while the paint ball operation registered a sound reading at some neighboring properties, the sounds are low, and do not amount to a level that can be considered "unduly injurious" to peaceful enjoyment. This is particularly the case in light of the fact that both the Applicant and some neighbors permissibly engage in hunting activity on the Property and other parcels in the vicinity that is unrelated to the paint ball operation; according to Kerr's sound readings, a shotgun blast that would typically be associated with hunting emits more noise than the discharge of a paint ball gun.

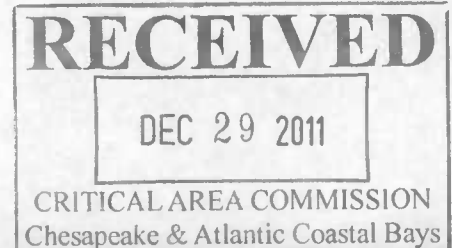
(3) That the establishment of the use will not impede the normal and orderly development and improvement of the surrounding properties for uses permitted in the zone. Testimony demonstrates that much of the property in the area is in agricultural preservation, and so is unlikely to be developed. There was no testimony or evidence that the Applicant's use has impeded residential development of surrounding properties not in agricultural preservation or residential development in the RR zone. There was conflicting testimony regarding the impact of the current use on horse riding activity; however, testimony shows that dressage riding, for example, at neighboring Hassler Dressage, is occurring or has recently occurred in proximity to the Property, without issue. Testimony also demonstrated that horses have been ridden on the Johnson Property during paint ball play with no problems.

(4) That 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. This is a commercial use that operates primarily on weekend days. Michael White testified that he is a member of the Chesapeake City Volunteer Fire Department ("CCVFD") and that the Applicant has a good relationship with the CCVFD. There is no evidence that law enforcement, fire or EMS have been called to the Property as a result of the paint ball activities, and the Applicant provides portable sanitary facilities for competitors and their guests. As set forth above, the Applicant testified that traffic is not an issue, as the parcel provides for ingress and egress to a County road, and there were no complaints with traffic presented to the Board.

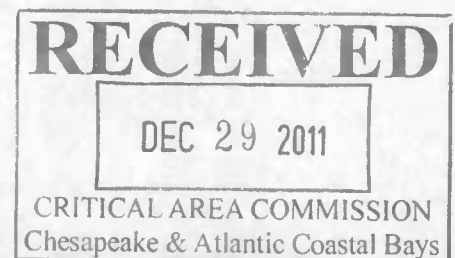
(5) That the continued use will not adversely affect critical natural areas or areas of ecological importance. The CAC identified its concerns related to the application in correspondence dated November 29, 2011; that letter is part of the record here. There is no evidence that the Applicant is engaged in commercial activity within the 100-foot buffer or that he is in violation of the RCA. Photographs showing a structure in the critical area buffer depict the Applicant's duck-blind; according to Mr. Riddle, the Applicant obtains an annual permit in order maintain the duck-blind in its present location. The Applicant further testified that he practices environmentally healthy stewardship over the Property; the Applicant has cleaned the Back Creek and marsh area adjacent to the Property on a number of occasions and, particularly after Hurricane Isabelle, pulled car parts, debris, and trash not related to the paint ball operation, from the Creek and the marsh. There is no evidence that refuse or other debris in the Creek or marshland is related to the Applicant's operation. The Applicant credibly testified that, based on the advice of his former attorney, David Parrack, he



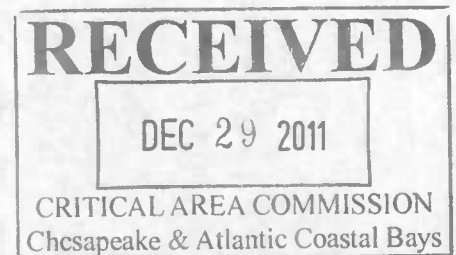
keeps the Buffer area in grass and other natural vegetation, maintains that area, and does not permit game play related to his paint ball operation to take place in the Buffer area. While the CAC generally is not in favor of commercial use in the Critical Area, it has not formally objected to the application here, except to the extent that commercial activity is being conducted in the 100' Buffer or the Applicant is not in compliance with all provisions for the protection of the 100-foot Buffer (Section 196 of the Ordinance), and the provisions for development within the RCA (Section 201 of the Ordinance).

(6) That the continued use will, in all other respects, conform to the applicable regulations of the zone in which it is located. The evidence and testimony here shows that this portion of the SAR, in particular, is used largely for recreational and business purposes related to the equine industry and, to a lesser extent, hunting. The recreational use here is not inconsistent with these other existing recreational uses in this area of the SAR and, as stated above, there have been no complaints to the Department of Planning and Zoning or to law enforcement related to the Applicant's use. The Applicant testified that he is following existing law, and will continue to do so. The Applicant does offer some items for sale at his staging area, which are related to the paint ball games; however, this is not a commercial retail establishment, as purchases from the "pro shop" are made by customers who are engaged in activity on the Property. Said sales are incidental to the use authorized under the special exception, and the items for sale are not offered to the public at large.

(7) That the particular use proposed at the particular location proposed will not have any adverse effects above and beyond those inherently associated with such special exception use irrespective of its location in the zone. (*Schultz v. Pritts*, 291 MD.



1). As set forth above, this portion of the SAR, in particular, is used largely for recreational and commercial purposes related to the equine industry and hunting for personal pleasure. The Applicant's paint ball operation offers recreational activity that is compatible with other commercial and personal recreational uses in the SAR. The SAR is an area where only low density residential development is permitted (one (1) dwelling unit per acre in minor subdivisions and one (1) dwelling unit per twenty (20) acres in major subdivisions), the purpose being to encourage the retention and maintenance of agricultural land, forestry and compatible rural uses. The Property here is comprised of almost one-hundred (100) acres of natural land, which consists of fields, woods, trails, bushes, hedges and undergrowth. The woods, bushes, hedges and undergrowth surround the Property on all four sides, and the Property is also bounded by the natural barrier formed by Back Creek and marshland. The Applicant's use permits (and in fact encourages) the retention and maintenance of the natural land, and particularly the forestry (e.g., woods, bushes, hedges and undergrowth); the Critical Area regulations mandate certain practices that further protect the natural features of the Property. There was conflicting testimony regarding the impact that noise has on nearby properties; those on good terms with the Applicant largely favored the current use, and those on poor terms with the Applicant were opposed. Notwithstanding, the Property's natural features serve as a buffer that reduces the impact of the Applicant's use on other properties, a fact verified by Mr. Kerr's noise readings. The residential parcels located in this area are largely consistent with other areas of the SAR in terms of density; adjacent properties range in size from 40-acres and up, are similar to the Applicant's Property in terms of woodland and other natural growth and are used for hunting.

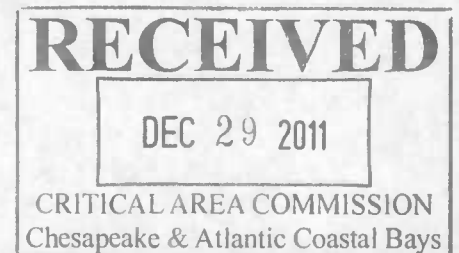


Noise from the Applicant's paint ball operation on this Property may have some impact on adjacent properties in this portion of the SAR. Notwithstanding, in light of the density requirements imposed in the SAR, the general composition and acreage of adjacent and near-by properties, and the recreational and personal uses occurring at some of those properties, the Applicant's particular use at this particular location simply does not have any adverse effect above and beyond those inherently associated with such special exception use irrespective of its location in the zone. Simply put, the impact of Applicant's operation in this area of the SAR is no different than the impact of a paint ball operation in other areas of the SAR.

(8) That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion on the public streets. As stated above, there are no issues with traffic or parking. The Property offers ingress and egress onto Old Telegraph Road, which is a County roadway; the Applicant provides formal parking that accommodates up to 40 motor vehicles, and there is ample room for additional parking in a grassy area near the front of the Property.

(9) That renewal of the special exception is not contrary to the objectives of the current Comprehensive Plan for the County. There was no evidence that the Applicant's use is contrary to the objectives of the current Comprehensive Plan; rather, the paint ball operation is consistent with the purpose of the SAR zone.

For the reasons stated, by unanimous vote, the Board is satisfied that the requirements of Article V, Part V, Section 108, and Article IV, Section 54.4 Table of Permissible Uses, subsection 5.13.000, and Article XVII, Part II, Section 311, of the Ordinance, along with *Schultz v. Pritts*, 291 Md. 1 (1981) have been met, and the



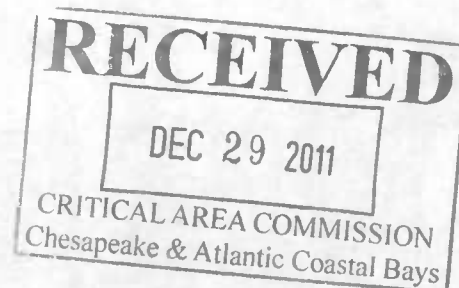
application is APPROVED FOR FIVE (5) YEARS (PROVIDED THAT LAWRENCE R. CARVER AND NANCY M. CARVER OWN THE PROPERTY AND LAWRENCE R. CARVER OPERATES THE BUSINESS), WITH HOURS OF OPERATION TO BE PERMITTED SEVEN (7) DAYS PER WEEK BETWEEN THE HOURS OF 9:00A.M. AND 4:00P.M.

12/27/2011
Date

David Willis
David Willis, Chairperson

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Gale F. Dempsey
12/28/11



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IN THE MATTER OF
THE APPLICATION OF
LAWRENCE R. CARVER, JR.
(Special Exception, SAR)

BEFORE THE CECIL COUNTY
BOARD OF APPEALS
FILE NO.: 3341

OPINION

Application of Lawrence R. Carver, Jr., for a special exception to operate a paint ball operation on property located at 2981 Old Telegraph Road, Chesapeake City, in the Second Election District of Cecil County, in an area presently zoned Southern Agricultural Residential (SAR).

This application is brought under the provisions of Article IV, Section 54.4 Table of Permitted Uses, subsection 5.13.000 and Section 108 of the Ordinance which permits this type of use as a special exception in this zone subject to the following conditions:

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.

Article XVII, Part II, Section 311 of the Ordinance specifies that no special exception shall be approved by the Board of Appeals after considering all facts in the case unless the following findings are made:

1. Such use or any operation thereto will not be detrimental to or endanger the public health, safety, or general welfare.
2. The use will not be injurious to the peaceful use and enjoyment of other property in the neighborhood, nor substantially diminish or impair property values in the neighborhood.

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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 facilities including schools, police, fire protection, water and sewer, public roads, 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*)
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 Cecil County.

Applicant and his attorney, David H. Parrack, testified that the applicant desire to establish a paint ball operation on approximately 65 acres of their property. There will not be any grading or clearing of forest. The submitted diagram shows all paint ball fields to be more than 1,000 feet away from any residents or residential zones. The paint balls are 100% biodegradable food grade material. There will be netting around the paint ball fields to further

ensure safety. Also, the paint ball fields have large hedgerows (approximately 30') for further safety.

No one appeared either in favor of or in opposition to the application.

Clifford Houston, Zoning Administrator, testified that the Planning Commission recommended approval of the application for a period of two years.


From the evidence presented the Board makes the following findings of facts pursuant to the requirements of Section 311:

1. That granting the application will not be detrimental to or endanger the public health, safety, or general welfare. Applicant has designed this use, with netting, hedge rows and sufficient distances from any property line, to ensure safety.
2. There was no evidence indicating that the use will be unduly injurious to the peaceful use and enjoyment of other property in the neighborhood, nor was there any evidence to demonstrate that such use will substantially diminish or impair property values in the neighborhood. The hours of operation will mostly be on weekends.
3. Normal and orderly development and improvement of the surrounding properties will not be impeded by the proposed use.
4. The use will not, with respect to existing development in the area and development permitted under existing zoning, overburden existing facilities including schools, police, fire protection, water and sewer, public roads, storm drainage, and other public improvements.
5. The use will not adversely affect critical natural areas or areas of ecological importance.

6. The use will, in all other respects, conform to the applicable regulations of the zone in which it is located.
7. The particular use proposed at the particular location proposed, will 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*)
8. That adequate measures have been or will be taken to provide ingress and egress 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 Cecil County.

For the reason stated, by unanimous vote, the Board is satisfied that the requirements of Sections 108 and 311, along with *Schultz v. Pritts* have been met, and the Application is **APPROVED FOR A PERIOD OF TWO YEARS.**

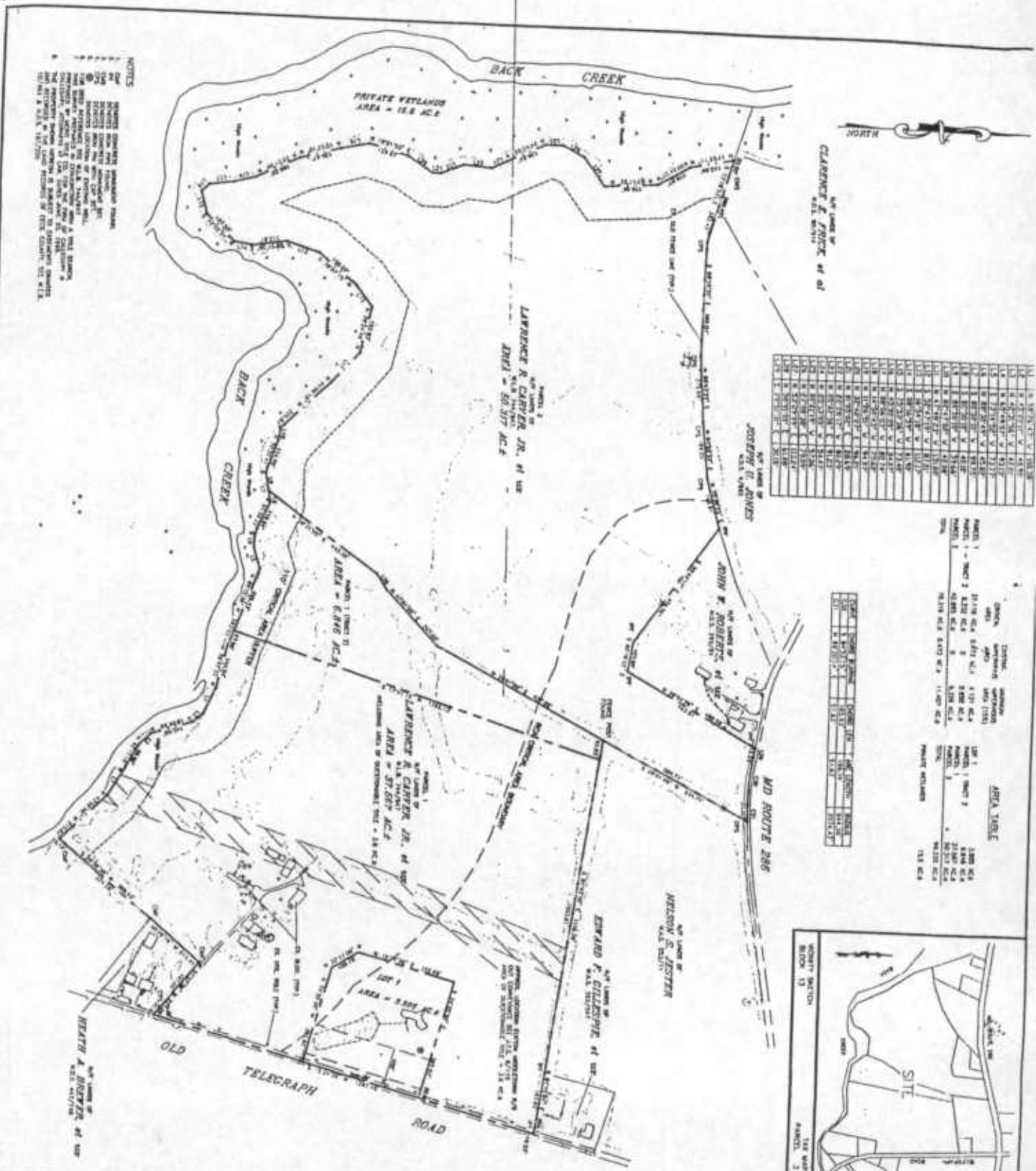
Date: 10/23/07



David Willis, Chairman

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Gale Dempsey 10-24-07



SITE PLAN
ON THE LANDS OF
LAWRENCE R. CARVER, JR., et ux
SECOND ELECTION DISTRICT, CECIL COUNTY, MARYLAND
FOR: BOB CARVER

DATE: APRIL 1999
JOB NO.: 1589 A
DESIGNED BY: D. SPEARMAN
CHECKED BY: J. JONES
DATE: 1999

SCALE: 1" = 200'
DRAWN BY: J. JONES
DESIGNED BY: D. SPEARMAN

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SHEET NO. 1 OF 1
CADD FILE - CAMPTON
FILE NO. - 1589 A

DATE: _____ SEAL: _____