



The lot is precisely 2 acres, which means the side setbacks are 50'. If the lot dimensions were less than 2 acres, the setbacks would be reduced to 15' and variances would not be required. If the lot were just one square foot smaller, a 15' setback would apply. Other, similar lots in the area have 15' setbacks. Applicants considered adjusting lot lines so that a variance would not be required but the Health Department requires that this lot size remain a minimum 2 acres for adequate sewage reserve area. Further, the adjacent family farm is under an agricultural easement and so the lots cannot be combined.

Applicants contend that the unique shape of the property amounts to a practical difficulty. Mr. Smith described it as a "pipe stem" shape. The stem shaped portion of the property is narrow, which results in a necessary variance for any structure that is positioned on that portion of the property. In other words, the property has a large setback requirement because it is 2 acres; however, much less than 2 acres of the lot is buildable without obtaining a variance.

The Applicants also argue that the purpose of a zoning setback is to provide a separation between structures on properties. There is no need for a separation in this situation because the adjacent lot is farmland also owned by Applicants and their family. There will never be development on that adjacent land because of agricultural easements attached to the land. There is an area on the property directly behind the primary dwelling but that area is used for outdoor living space, with natural vegetation, and abuts a forested area that the Applicants do not wish to disturb.

The existing shed that requires an after-the-fact variance requires a variance for the same reasons and cannot be easily moved or placed in an alternative location.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Board finds that the Applicants have satisfied the standards for granting of the after-the fact variance required for an existing shed and variance to construct a new storage structure. The Board sets forth these additional findings:

A. Unique physical characteristics exist such that literal enforcement of the setback requirements would result in practical difficulty in enabling the Applicant to develop the property. The Board is persuaded by the fact that the lot is exactly 2 acres and would not require a variance if the lot were even one square foot smaller. The zoning ordinance only requires lots in the AC zone to be 1 acre; however, the Health Department requires 2 acres for newly created lots to provide room for a sewage reserve system. It is impractical to place a structure on the west side of the property due to its narrow shape. It is impractical to place a structure on the north side of the property because of a septic system.

The Board agrees with Applicant that the desired location is the most suitable location for the new structure. It is compelling that the adjacent properties are owned by the Applicants and/or are large agricultural lands that will not be developed due to agricultural easements. For these same reasons, the Board is satisfied that a practical difficulty also warrants granting a variance for

the existing shed on the property. The existing shed does not affect neighboring properties. It is over 800 feet off the roadway and is screened by established a forested area.

B. The need for a variance is not based upon circumstances which are self-created or self-imposed. The Applicants are not responsible for the unique shape and characteristics of the property that result in a practical difficulty.

C. The variance is not based for greater profitability or lack of knowledge of the restrictions. The Applicants will not profit from the requested improvements.

D. The variance is not contrary to the public interest and will not be a detriment to adjacent or neighboring properties. The Board finds these criteria's especially applicable. The public interest that supports setbacks in zoning simply don't apply here. The Applicants property is surrounded by land for which it is not necessary to maintain a setback for the intended improvements. Neighboring property is also owned by the Applicants and their family or will forever be farmland because of agricultural easements attached to the lands.

E. The variance will not exceed the minimum adjustment necessary to relieve the practical difficulty or unreasonable hardship. Talbot County Code requires a 10' minimum setback between structures. The proposed storage structure will be located at that distance from the rear deck of the primary dwelling and will minimize the encroachment of the 50' side yard setback. The existing shed is in an area that is naturally screened. Relocating the shed is not a practical solution.

#### Documents on Record

1. Application for Non-Critical Area Application with Purpose of Appeal.
2. Tax Map with subject property highlighted.
3. Notice of public hearing for advertising.
4. Newspaper confirmation.
5. Notice of public hearing with list of adjacent property owners attached.
6. Non-Critical Area Variance standards.
7. Staff Report.
8. Sign maintenance agreement/sign affidavit.
9. Authorization letter.
10. Independent Procedures Disclosure and Acknowledgement Form.
11. Aerial photo.
12. Site plan, prepared by Donald J. Richardson.
13. Floor plan, labeled A1.
14. Elevation Plans, labeled A2 and A3.
15. Photos by Andrew Nixon (5 photos).
16. Hearing Exhibit #1 – plat drawing of property.

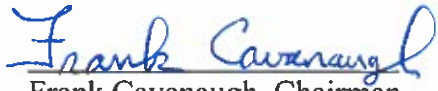
Mr. Krebeck moved that the Applicants be granted the variances subject to staff conditions. The motion was seconded by Mr. Adelman. Based upon the foregoing, the Board finds, by a unanimous vote, that the variances are granted subject to staff conditions.

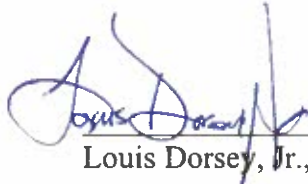
1. The applicants shall make an application to the Office of Permits and Inspections, and follow all rules, procedures, and construction timelines as outlined regarding new construction.

2. The applicants shall make an application to the Office of Permits and Inspections for an after-the-fact permit for the shed and follow all rules, procedures, and construction timelines as outlined regarding after-the-fact permits.

3. The Applicant shall commence construction of the proposed improvements within eighteen (18) months of the date of this Decision set forth below. This approval is only for the requested improvements and additions in this application and does not cover or permit any other changes or modifications. Any items not specifically addressed in this application may require additional approvals.

**IT IS THEREFORE**, this 31st day of May, 2024, **ORDERED** that the Applicant's request for variances are GRANTED.

  
Frank Cavanaugh, Chairman

  
Louis Dorsey, Jr., Vice-Chairman

  
Patrick Forrest

  
Zakary A. Krebeck

  
Jeff Adelman