

**FINDINGS AND RECOMMENDATION  
OFFICE OF PLANNING AND ZONING  
ANNE ARUNDEL COUNTY, MARYLAND**

**APPLICANT:** Christina & Lawrence Zwirlein, Jr.

**ASSESSMENT DISTRICT:** 3<sup>rd</sup>

**CASE NUMBER:** 2023-0165-V

**COUNCILMANIC DISTRICT:** 5<sup>th</sup>

**HEARING DATE:** December 5, 2023

**PREPARED BY:** Sara Anzelmo  
Planner



**REQUEST**

The applicants are requesting a variance to perfect an accessory structure (shed) with new lot coverage nearer to the shoreline than the closest façade of the existing principal structure on property located at 808 Joe Deb Lane in Arnold.

**LOCATION AND DESCRIPTION OF SITE**

The subject site consists of 20,146 square feet +/- of land and is located on the west side of Joe Deb Lane, immediately south of Mason Lane. It is identified as Part of Lots 56 & 58 of Parcel 832 in Block 18 on Tax Map 32 in the Magothy Manor subdivision.

The property is zoned R5 – Residential District, as adopted by the comprehensive zoning for Council District 5, effective January 29, 2012.

This waterfront site lies entirely within the Chesapeake Bay Critical Area overlay, is designated as IDA – Intensely Developed Area, and is mapped as a BMA – Buffer Modification Area. It is currently improved with a one-story single-family detached dwelling with a basement, a shed, a pier, and other associated facilities.

**PROPOSAL**

The applicants seek after-the-fact approval for a 14' by 24' (336 sf) storage shed which was constructed in the same general location as a previously existing 8' by 18' (144 sf) shed on the waterfront side of the house.

**REQUESTED VARIANCES**

§ 17-8-702(b)(1) of the Subdivision and Development Code provides that in a BMA – Buffer Modification Area no new lot coverage shall be placed nearer to the shoreline than the closest façade of the existing principal structure. The larger shed is not an in-kind replacement nor is it located in the exact same footprint, necessitating a variance to allow 336 square feet of new lot coverage nearer to the shoreline.

## **FINDINGS**

The property is irregular in shape and far exceeds the minimum 7,000 square foot area and 60-foot width required for lots in the R5 District. The pre-existing critical area lot coverage was 2,596 square feet, and the post-construction coverage increased to 2,742 square feet.

A review of the 2023 County aerial photograph shows an eclectic mix of dwellings in this older waterfront community. The neighborhood consists of a variety of lot shapes and sizes. The subject property is a corner lot that narrows to approximately 15 feet at the shoreline. According to State tax assessment records, the original dwelling was constructed in 1954, well before the enactment of Critical Area regulations.

The applicants' letter explains that the replacement shed was constructed five feet further from the shoreline than the previously existing shed. The shed is used for water activity supplies (life jackets, fishing/crabbing supplies, etc.) and yard work supplies. The applicants conclude that, due to the unique lot configuration, it fits best in the same location as the previous shed.

The **Health Department** commented that the property is served by public water and sewer facilities. The Department has no objection to the request.

The **Critical Area Commission** commented that, while the unpermitted replacement shed is in the same location as the original shed, the Commission opposes the variance request as this proposal does not meet each and every one of the Critical Area variance standards such as unwarranted hardship and that this proposal minimizes impacts to water quality and habitats. On the contrary, the unpermitted shed is more than double the size of the original shed. The applicant currently has reasonable and significant use of the lot with the existing improvements which include a dwelling, porch, patio, an accessory structure, riparian access, driveway, and walkways. If the unpermitted and larger shed were to be denied, the applicant would still have reasonable and significant use of the entire lot. Moreover, the applicant had the ability to replace the shed in-kind without the need for a variance. Replacing the existing shed with a new shed of similar size would show minimization to water quality and habitat impact. However, if the Administrative Hearing Officer finds that the applicant satisfied the burden of proof and persuasion that each and every one of the Critical Area variance standards are met, then appropriate mitigation is required. This includes mitigation at a 4:1 ratio for the unpermitted Buffer impacts and at a 3:1 ratio for the square footage of Buffer impacts approved under this variance request. Additional mitigation is required at 1:1 ratio if canopy coverage was removed as a result of the shed replacement. Moreover, given that the property is located in the IDA, the Critical Area 10% pollutant removal requirements apply to this site.

The **Development Division (Critical Area Team)** commented that the Buffer Modification Regulations are intended to provide relief that allows certain development to occur within the 100 foot buffer without the need for a variance. Those regulations allow for new coverage, provided it is not located nearer to the shoreline than the front facade of the existing structure, and for the in-kind replacement of existing structures. This site had two existing structures within the 100 foot buffer forward of the principal structure. The need for this request is based on the fact that the shed is too large for the area, not the conditions of the site itself. This request does not meet the standards required for approval.

For the granting of a Critical Area variance, a determination must be made as to whether, because of certain unique physical conditions peculiar to and inherent in the lot, strict implementation of the County's Critical Area Program would result in an unwarranted hardship and would prevent the applicant from developing the lot. The need sufficient to justify a variance must be substantial and urgent and not merely for the convenience of the applicant. In this particular case, the Critical Area regulations provide the opportunity to replace in-kind the existing shed, which has sufficiently served the property for an extended period of time, without any variances.

A literal interpretation of the County's Critical Area Program would not deprive the applicants of rights that are commonly enjoyed by other properties in similar areas. The property already enjoyed the benefit of two accessory structures within the BMA on the waterfront side, and the Code allows for in-kind replacement of existing structures. The granting of the variance would confer on the applicants a special privilege that would be denied by COMAR, Title 27. The request is based on conditions or circumstances that are the result of actions by the applicants, who constructed the larger shed without the required permit and variance approvals. The request does not arise from any condition relating to land or building use on any neighboring property. The granting of the variance may adversely affect water quality or impact fish, wildlife, or plant habitat and would not be in harmony with the general spirit and intent of the County's Critical Area Program. The applicants have not overcome the presumption that the specific development does not conform to the general purpose and intent of the Critical Area Law and have not evaluated or implemented site planning alternatives. There appears to be other locations that could have accommodated a shed without a critical area variance, like the area between the house and Joe Deb Lane, for example.

With regard to the requirements for all variances, approval would not alter the essential character of the neighborhood nor would it substantially impair the appropriate use or development of the adjacent properties, as the structure meets the minimum setback requirement from all property lines. The variances would not be contrary to acceptable clearing and replanting practices and would not be detrimental to the public welfare.

However, the BMA - Buffer Modification Area provisions aim to "hold the line" of the existing development in areas that already contain improvements within 100 feet of the shoreline, and they are specifically intended to prohibit expansion of lot coverage in those areas. There were already two accessory structures on the waterfront side of the house. The Critical Area variance could have been avoided with an in-kind replacement. The applicants have not demonstrated that, without the proposed Critical Area variance, they would be denied reasonable and significant use of the property. Because the proposed variance is not warranted, it cannot be deemed the minimum necessary to afford relief in this case.

### **RECOMMENDATION**

Based upon the standards set forth in § 18-16-305 of the Code under which a variance may be granted, this Office recommends *denial* of the proposed Critical Area variance. Should the Administrative Hearing Officer determine that a variance is warranted, any approval must be conditioned on the additional conditions provided in §18-16-305(c) and (d) as follows:

(c) **Conditions for granting a variance in the critical area.**

(1) For a property with an outstanding violation the granting of a variance in the critical area under subsection (b) shall be conditioned on the applicant completing the following within 90 days of the date of decision, as applicable:

- (i) obtaining an approved mitigation or restoration plan;
- (ii) completing the abatement measures in accordance with the County critical area program; and
- (iii) paying any civil fines assessed and finally adjudicated.

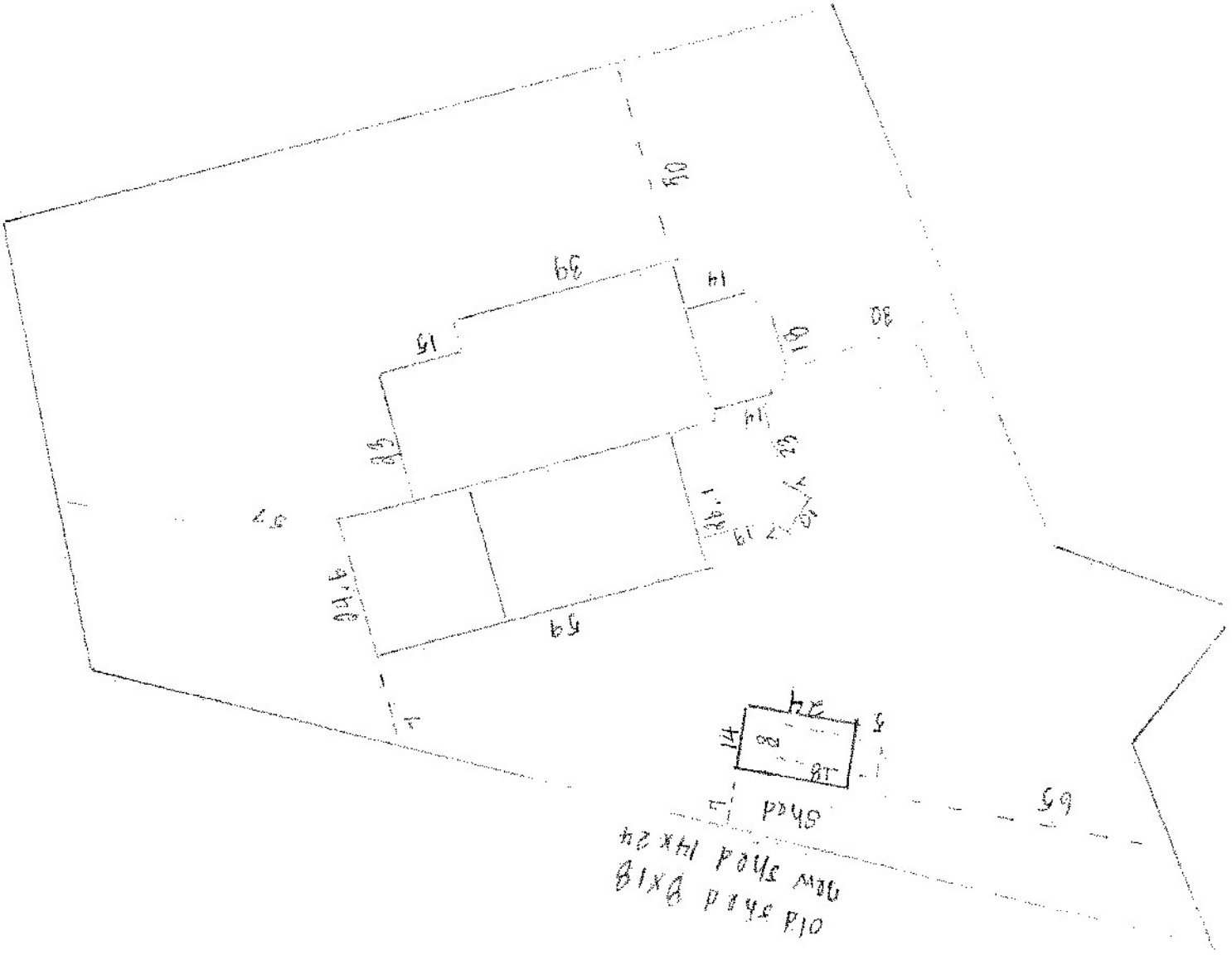
(2) Notwithstanding the requirements of subsection (c)(1), the Office of Planning and Zoning may extend the time for abatement to the next planting season because of adverse planting conditions. An applicant may also be granted a 180 day extension to satisfy the conditions of a variance upon timely application to the Planning and Zoning Officer and good cause shown.

(d) **Lapse.** Any critical area variance granted for a property with an outstanding violation shall lapse by operation of law if the conditions of subsection (c)(1) are not satisfied within 90 days or as extended.

DISCLAIMER: This recommendation does not constitute a building permit. In order for the applicant(s) to construct the structure(s) as proposed, the applicant(s) shall apply for and obtain the necessary building permits and obtain any other approvals required to perform the work described herein. This includes but is not limited to verifying the legal status of the lot, resolving adequacy of public facilities, and demonstrating compliance with environmental site design criteria.

Zwirlein  
808 Jo Deb Lane  
Arnold MD 21012

1008-011 21035



H2 X H1 P04S M00  
B1 X B P04S P10

## Code for Granting a Critical Area Variance

To Whom It May Concern,

We recently placed a new shed in our yard, in the same location of where the old shed was. We were able to move the new shed 5 feet further away from the water. Our property does narrow in relation to the end of the house and our property line, as you go further away from the water. This made us unable to move it even further away from the water.

The other side of our property line (side of yard), would have caused the shed to be even closer to the water, if we would of placed it there.

The replacement shed, being in the same location as the old shed, does not affect any new land (shrubs/trees/slope).

The new shed, also, does not affect any neighbors or current structures.

The replacement shed does not affect water quality, wildlife, or plant habitat, being 5 feet further away from the water, then the old one.

The previous shed was 8X18 feet and the new shed is 14X24 feet.

Thank you for your time,

Tina Zwirlein

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

PROJECT NOTIFICATION APPLICATION

**GENERAL PROJECT INFORMATION**

Jurisdiction: Anne Arundel

Date: 9/15/23

Tax Map #	Parcel #	Block #	Lot #	Section
<u>21</u>	<u>832</u>	<u>18</u>	<u>Pt lots 5b 5c</u>	<u>NA</u>

FOR RESUBMITTAL ONLY	
Corrections	<input type="checkbox"/>
Redesign	<input type="checkbox"/>
No Change	<input type="checkbox"/>
Non-Critical Area	<input type="checkbox"/>
*Complete Only Page 1 General Project Information	

Tax ID: 352290006812

Project Name (site name, subdivision name, or other) B-2023-247 (Shed)

Project location/Address 808 Joe Deb Lane

City Annapolis Zip 21012

Local case number

Applicant: Last name Zwirlein First name Christina

Company

**Application Type (check all that apply):**

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

**Local Jurisdiction Contact Information:**

Last name \_\_\_\_\_ First name \_\_\_\_\_

Phone # \_\_\_\_\_ Response from Commission Required By \_\_\_\_\_

Fax # \_\_\_\_\_ Hearing date \_\_\_\_\_

**SPECIFIC PROJECT INFORMATION**

Describe Proposed use of project site:

replacement shed

Intra-Family Transfer   
 Grandfathered Lot

Growth Allocation   
 Buffer Exemption Area

**Project Type (check all that apply)**

Commercial   
 Consistency Report   
 Industrial   
 Institutional   
 Mixed Use   
 Other

Recreational   
 Redevelopment   
 Residential   
 Shore Erosion Control   
 Water-Dependent Facility

**SITE INVENTORY (Enter acres or square feet)**

	Acres	Sq Ft
IDA Area		
LDA Area		
RCA Area		
Total Area		

Total Disturbed Area 

Acres	Sq Ft

# of Lots Created

	Acres	Sq Ft		Acres	Sq Ft
Existing Forest/Woodland/Trees			Existing Lot Coverage		2596
Created Forest/Woodland/Trees			New Lot Coverage		2148
Removed Forest/Woodland/Trees			Removed Lot Coverage		
			Total Lot Coverage		146 d) 11400

**VARIANCE INFORMATION (Check all that apply)**

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

Variance Type  
 Buffer   
 Forest Clearing   
 HPA Impact   
 Lot Coverage   
 Expanded Buffer   
 Nontidal Wetlands   
 Setback   
 Steep Slopes   
 Other

Structure  
 Acc. Structure Addition   
 Barn   
 Deck   
 Dwelling   
 Dwelling Addition   
 Garage   
 Gazebo   
 Patio   
 Pool   
 Shed   
 Other



To Whom It May Concern,

My husband and I replaced our current shed with a new shed. The new shed is a little larger than the previous one due to the need for more storage. As our family has grown, so has the amount of items we have, in relation to the yard and water activities. The old shed was also aging, so it is nice to have a more reliable structure.

We placed the new shed in the same location as the old shed, except it is 5 feet further away from the water. The old shed was 8X18 feet and the new shed is 14x24 feet. We did not disturb any trees or shrubs. The current slope of the property did not change.

If we would have moved the shed any further away from the water line on that side of the house, it would been too close to the property line, as the property narrows in relation to the house. On the other side of our property line, the shed would have been closer to the water.

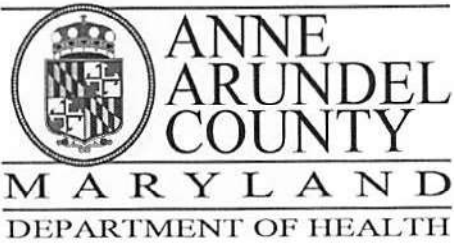
The shed is used for water activity supplies (life jackets, fishing/crabbing supplies, etc) and yard work supplies, therefore fits best in the same location as the previous shed.

Thank you for your time,

Christina Zwirlein

808 Jo Deb Lane

Arnold, MD 21012



J. Howard Beard Health Services Building  
3 Harry S. Truman Parkway  
Annapolis, Maryland 21401  
Phone: 410-222-7095 Fax: 410-222-7294  
Maryland Relay (TTY): 711  
www.aahealth.org

**Tonii Gedin, RN, DNP**  
Health Officer

**MEMORANDUM**

TO: Sumner Handy, Zoning Applications  
Planning and Zoning Department, MS-6301

FROM: Brian Chew, Program Manager  
Bureau of Environmental Health *BC*

DATE: 10/20/2023

RE: Lawrence J. & Christina Zwirlein  
808 Joe Deb Lane  
Arnold, MD 21012

CASE  
NUMBER: 2023-0165-V

SUBJECT: Variance/Special Exception/Rezoning

The Health Department has received the above referenced variance request to allow a new lot coverage nearer to the shoreline than the principal structure. The Health Department offers the following comments:

The Health Department has reviewed the above referenced request. The property is served by public water and sewer facilities. The Health Department has no objection to the above referenced request.

If you have further questions or comments, please contact Jasmine Baldwin at 410-222-1348.

cc: Sterling Seay



Jennifer Esposito -DNR- &lt;jennifer.esposito@maryland.gov&gt;

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**CAC Comments: Zwirlein 2023-0165-V, Grande 2023-0181-V, Frandson 2023-0159-V, Galloway 2023-0177-V, Mazer 2023-0182-V**

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Jennifer Esposito &lt;jennifer.esposito@maryland.gov&gt;

Mon, Oct 23, 2023 at 4:18 PM

To: Sadé Medina &lt;pzmedi22@aacounty.org&gt;

Good afternoon,

The Critical Area Commission has reviewed the following variances and we provide the following comments :

- 2023-165-V; Zwirlein (AA 339-23): The applicant is requesting an after-the-fact variance to disturb the Critical Area Buffer to perfect a 336-square foot shed approximately 63-feet from the mean high water line. The property is located within the Intensely Developed Area (IDA) and is mapped as Buffer Modified. While the unpermitted replacement shed is in the same location as the original shed, this office opposes the variance request as this proposal does not meet each and every one of the Critical Area variance standards such as unwarranted hardship and that this proposal minimizes impacts to water quality and habitats. On the contrary, the unpermitted shed is more than double the size of the original shed. The applicant currently has reasonable and significant use of the lot with the existing improvements which include a dwelling, porch, patio, an accessory structure, riparian access, driveway, and walkways. If the unpermitted and larger shed were to be denied, the applicant would still have reasonable and significant use of the entire lot. Moreover, the applicant had the ability to replace the shed in-kind without the need for a variance. Replacing the existing shed with a new shed of similar size would show minimization to water quality and habitat impact. However, if the Administrative Hearing Officer finds that the applicant satisfied the burden of proof and persuasion that each and every one of the Critical Area variance standards are met, then appropriate mitigation is required. This includes mitigation at a 4:1 ratio for the unpermitted Buffer impacts and at a 3:1 ratio for the square footage of Buffer impacts approved under this variance request. Additional mitigation is required at 1:1 ratio if canopy coverage was removed as a result of the shed replacement. Moreover, given that the property is located in the IDA, the Critical Area 10% pollutant removal requirements apply to this site.
- 2023-0181-V; Grande (AA 335-23): Appropriate mitigation is required. This includes mitigation at a 4:1 ratio for the unpermitted improvements, and at a 3:1 ratio should the variance request be approved. Additional mitigation is required at a 1:1 ratio for the square footage of tree canopy coverage removed. Further, we note that if the areas noted for gravel/pavement removal on the plan are located within the Critical Area Buffer or expanded

Buffer, then those areas should be stabilized and planted in natural vegetation.

Additionally, appropriate mitigation is required for the following variances:

- 2023-0159-V; Frandson (AA 338-23)
- 2023-0177-V; Galloway (AA 034-23)
- 2023-0182-V; Mazer (AA 336-23)

Thank you for the opportunity to provide comments. The above-comments have also been submitted through the County's online portal. Please feel free to contact me should you have any questions.



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twitter\_logo.jpg

[dnr.maryland.gov/criticalarea](https://dnr.maryland.gov/criticalarea)

### *Jennifer Esposito*

Critical Area Commission for the  
Chesapeake & Atlantic Coastal Bays

1804 West Street, Suite 100

Annapolis, MD 21401

Office: 410-260-3468

(In office: Mon., Wed., Friday)

Cell: 443-569-1361

(Teleworking: Tues., Thurs.)

[jennifer.esposito@maryland.gov](mailto:jennifer.esposito@maryland.gov)

# 2023-0165-V - ZWIRLEIN

Menu Cancel Help

<b>Task</b> OPZ Critical Area Team	<b>Due Date</b> 10/24/2023	<b>Assigned Date</b> 10/03/2023
<b>Assigned to Department</b> OPZ Critical Area	<b>Assigned to</b> Kelly Krinetz	<b>Status</b> Complete w/ Comments
<b>Action by Department</b> OPZ Critical Area	<b>Action By</b> Kelly Krinetz	<b>Status Date</b> 10/03/2023
<b>Start Time</b>	<b>End Time</b>	<b>Hours Spent</b> 0.0

<b>Billable</b> No	<b>Overtime</b> No
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**Comments**  
The Buffer Modification Regulations are intended to provide relief that allows certain development to occur within the 100 foot buffer without the need for a variance. Those regulations allow for new coverage provided it is not located nearer to the shoreline than the front facade of the existing structure and for the in kind replacement of existing structures. This site had two existing structures within the 100 foot buffer forward of the principal structure. The need for this request is based on the fact that the shed is too large for the area not the conditions of the site itself. This request does not meet the standards required for approval.

<b>Time Tracking Start Date</b>	<b>Est. Completion Date</b>	<b>In Possession Time (hrs)</b>
<b>Display E-mail Address in ACA</b> <input type="checkbox"/>	<b>Display Comment in ACA</b> <input type="checkbox"/>	<b>Comment Display in ACA</b>

No

- All ACA Users
- Record Creator
- Licensed Professional
- Contact
- Owner

<b>Estimated Hours</b> 0.0	<b>Action</b> Updated	<b>Workflow Calendar</b>
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Task Specific Information

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Review Notes

Reviewer Phone Number

