

BEFORE THE TALBOT COUNTY BOARD OF APPEALS

IN THE MATTER OF * CASE NO. CAVR-24-4
DAVID AND MARGARET * VARIANCE REQUEST APPLICATION
RYDER (Critical Area and Non-Critical Area)

* * * * *

The Board of Appeals (the “Board”) held a hearing on July 29, 2024 in the Bradley Meeting Room, Court House, South Wing at 11 N. Washington Street, Easton, Maryland to consider the application of David and Margaret Ryder (the “Applicants”). Applicants requested Critical Area and Non-Critical Area variances for the property at 28051 Le Gates Cove Road, Easton, Maryland (“Property”). Chairman Frank Cavanaugh, Vice Chairman Louis Dorsey, Jr., Board Members Ed Heikes, Greg Gannon, Zakary Krebeck, and Board Attorney Lance Young were present. Board Secretary Christine Corkell and Planner Elisa Deflaux appeared on behalf of the County.

STATEMENT OF THE CASE

The applicants requested two variances: (1) Critical Area Variance of the 100’ Shoreline Development Buffer (“Buffer”) and (2) Non-Critical Area variance of the 50’ front setback. The variances are necessary to construct a replacement residence with attached garage, workshop, covered porches and breezeway totaling 4,440 square feet in the footprint of the existing dwelling with a 556 square foot rear deck. The residence would be no closer than 74.3 feet from the Mean High-Water Line (“MHWL”) and the deck no closer than 68.3 feet from the MHWL. The proposed garage and workshop will be no closer than 22.7 feet from the front property line.

SUMMARY OF TESTIMONY

David Ryder provided factual testimony on behalf of the Applicants. Applicants purchased the Property as their retirement home. The Property requires significant renovation. In addition to replacing the existing home on the Property, Applicants also plan to stabilize the shoreline of the Property, which is currently eroding.

Lars Erickson, of East Bay Plans LLC, provided expert testimony. He discussed the multiple challenges that necessitate the need for variances. First, the lot configuration is narrow and rectangular. The County has issued a certificate of nonconformity for the existing structures. The house was built in the 1960s. Building a replacement home exactly in-kind is not feasible because the existing foundation was not built to standards. However, the Applicants desire to build on a similar footprint and connect the garage to the home.

Constructing a replacement home on other parts of the Property is not practical. This is largely because the property is bisected by a drainage basin, which affects several properties.

This limits where any new construction could take place. In Mr. Erickson's opinion, the replacement structures could not be built outside of the Buffer because of the existing swales, soils, and septic areas.

Applicants have designed the project so that it minimally affects the Critical Area. The replacement home will be modest in size and is considered an average size home in comparison to similarly situated properties in the vicinity.

Attorney Ryan Showalter also represented Applicants at the hearing. Mr. Showalter referenced the Site Plan to demonstrate the difficulty in moving the structures to any other part of the Property outside of the Buffer. The left side of the Site Plan shows an existing septic system. The Health Department requires a buffer from that system. There is already an approved encroachment into that setback. The current plans allow use of the existing septic lines and a new Best Available Technology septic system will be required.

A small 40' deep area in front of the house is buildable but a drainage swale runs through it that services the larger area. To place a structure in that area would require substantial grading and installation of a new drainage/swale system elsewhere that would cause significant disruption to the topography than building on the same footprint. In other words, it would be a major undertaking.

Beyond the drainage swale area is a reserve septic disposal area with 20' setbacks surrounding it. Beyond that, the property starts regressing significantly and runs into another drainage swale. Therefore, there is no reasonable place to build outside of the Buffer.

The project plans pull the house back further from the MHWL and pull the garage back further from the side setback and septic setback. These two structures are being placed closer together with a breezeway. The house replacement, alone, would only require a minor variance that could be approved by the Planning and Zoning Office. The garage could be replaced in-kind. It is only because of the connection of these two structures that a Critical Area variance is required by the Board of Appeals.

The Property will remain compliant with the 15% lot coverage. The project, when completed, will result in 559 sf less structure within the Buffer.

Mr. Showalter addressed the Non-Critical Area variance criteria. He contends that moving the garage further from the property line is beneficial to drainage that affects other neighboring properties and the road. There has been no opposition from the surrounding community. The narrow configuration of the Property presents a practical difficulty in meeting the required setbacks to the road and water. The current setbacks were different when the lot was configured. The garage is the minimum necessary to meet the practical difficulty standard. It is smaller than a typical two car garage, which would be considered the minimum standard for a similarly situated property.

Mr. Showalter next addressed the Critical Area variance criteria. If the Applicants proceeded with any other alternative to their current proposal, it would have more adverse

impact on water quality and the environment. Placing the house on any other part of the Property, outside of the Buffer, would impact drainage swales. Further, the current proposal will require that the Applicants perform additional mitigation within the Buffer. Building in other areas would require wholesale clearing and removal of swales that would itself, require a variance. The grant of this variance would not confer on the Applicants a special privilege. Without the breezeway connection, the project would merely require an administrative variance and other applicants, in similar situations, could also obtain a variance.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The fact that the structures on the Property are legally nonconforming is important to this Board's analysis. The Applicant's Property, like others that this Board has considered in recent years, is a property within the Critical Area that was configured in a manner that is not consistent with the Critical Area regulations and zoning setbacks that were enacted years after the lot was configured. This Board is faced again with balancing these realities.

The Board concurs with Mr. Showalter and Mr. Erickson's assessments that there is no other reasonable place to build on the Property. This conclusion is based largely on the Board member visits to the site and review of the Site Plan. The Board finds that other areas of the Property, outside of the Buffer, are constrained by septic systems, septic reserve areas, drainage swales, and setbacks. If this lot were a newly configured lot, it would practically be unbuildable. That occurs frequently in Talbot County because of the way certain waterfront lots were configured prior to the enactment of the Critical Area law.

The Board addresses the standards for a Critical Area variance set forth in the Talbot County Code, § 190-58.4.

- 1. Special conditions or circumstances exist that are peculiar to the land or structure such that a literal enforcement of the provisions of this chapter would result in unwarranted hardship.*

The unwarranted hardship is derived from the nonconforming status of the structures on the property and its narrow configuration that existed decades before the Critical Area and setback laws that now burden the Property. The width of the lot is approximately 250' leaving only a portion of the buildable area outside of the Buffer.

The Board finds that denial of the requested variance would deprive the property owner of a reasonable and significant use of the property. As stated by the Supreme Court of Maryland:

In summary, in order to establish an unwarranted hardship, an applicant has the burden of demonstrating that, without a variance, the applicant would be denied a use of the property that is both significant and reasonable. In addition, the applicant has the burden of showing that such a use cannot be accomplished elsewhere on the property without a variance.

Assateague Coastal Trust, Inc. v. Schwalbach, 448 Md. 112, 136 A.3d 866 (2016). The Board received correspondence from the Critical Area Commission indicating that the standard cannot be met because the replacement structures could be located elsewhere outside of the Buffer. The Board, after hearing testimony and visiting the site, unanimously concludes that the structures could not be located elsewhere due to existing topography and drainage systems. These drainage swells not only impact the Applicant's Property but the surrounding area as well. This Board considers the larger impact to the neighborhood in determining that such an alternative is not a more beneficial alternative.

2. *A literal interpretation of the Critical Area requirements will deprive the property owner of rights commonly enjoyed by other property owners in the same zoning district.*

The Board finds that a literal interpretation of the Critical Area requirements would deprive the property owner of rights commonly enjoyed by other property owners in the same zoning district. Other properties within the same zoning district would be able to replace legally nonconforming structures on their property. The replacements of a home in this instance would ordinarily be granted by administrative variance. It is only because the replacement home will be connected to the garage (bringing the garage and home closer to compliance) that a variance is necessary.

It should be noted that most lots in the same subdivision would require a variance to replace the houses on them. If the same or similar circumstances were present, those property owners could also seek and obtain a variance.

3. *The granting of a variance will not confer upon the property owner any special privilege that would be denied to other owners of lands or structures within the same zoning district.*

The Board finds that granting the requested variances will not confer any special privilege. Property owners are entitled to replace legally nonconforming structures, even within the Buffer, so long as they demonstrate that the unwarranted hardship standard has been met.

4. *The variance request is not based on conditions or circumstances which are the result of actions by the applicant, including the commencement of development activity before an application for a variance has been filed, nor does the request arise from any condition relating to land or building use, either permitted or nonconforming, on any neighboring property.*

The Board finds that the Applicants have not created the conditions or circumstances that result in the necessity for a variance. The structures are legally nonconforming.

5. *The granting of the variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat, and the granting of the variance will be in harmony with the general spirit and intent of the state Critical Area Law and the Critical Area Program.*

The Board finds that granting the variance will have positive impact on fish, wildlife, or plant habitat within the Critical Area. Relocating the house outside of the Buffer could only be done after substantial clearing and regrading of the Property. The Board does not find that this is reasonable or beneficial to the Critical Area that the Critical Area Regulations are designed to protect. The Board finds that the Applicants have made sufficient plans to minimize their impact and also to restabilize the shoreline for the benefit of environment. New stormwater management will also be utilized on the site that improves on the existing stormwater management. Applicants will also mitigate for disturbances by planting new vegetation within the Buffer.

Additionally, the result of the proposed project will result in a net reduction of lot coverage within the Buffer by 559 sf and placing much of the new lot coverage outside of the Buffer.

6. *The variance shall not exceed the minimum adjustment necessary to relieve the unwarranted hardship.*

The Applicants could replace the home in-kind but the structure is not built to modern standards. The variance will merely allow a breezeway connection between two replacement structures. The Board finds that the replacement home is modest and meets the minimum necessary to replace the home that currently exists on the Property.

7. *If the need for a variance to a Critical Area provision is due partially or entirely because the lot is a legal nonconforming lot that does not meet current area, width or location standards, the variance should not be granted if the nonconformity could be reduced or eliminated by combining the lot, in whole or in part, with an adjoining lot in common ownership.*

The Board finds that this criteria is not applicable.

The Board addresses the standards for a Non-Critical Area variance set forth in the Talbot County Code, § 190-58.3.

A. Unique physical characteristics exist such that literal enforcement of the setback requirements would result in practical difficulty or unreasonable hardship in enabling the Applicant to develop the Property.

The garage is nonconforming. The practical difficulty in meeting the setbacks is due to the narrow configuration of the lot. Only a small portion of the lot is not within a setback or the Buffer. Placement of the garage is further burdened by setback requirements from the septic system. The

setback requirements were different when the lot was configured. The garage will be placed further from the setback by moving it closer to and connecting it with the house.

B. The need for a variance is not based upon circumstances which are self-created or self-imposed.

The Property is legally nonconforming. The property owner has not made changes to the configuration.

C. The variance is not requested for greater profitability or lack of knowledge of the restrictions.

The garage will be used for private purposes.

D. The variance is not contrary to the public interest and will not be a detriment to adjacent or neighboring properties.

The garage will be situated similar to its current location but will be attached to the house. It will have a similar visual impact from the road and have little visual impact on the neighborhood.

E. The variance will not exceed the minimum adjustment necessary to relieve the practical difficulty or unreasonable hardship.

The proposed garage is the minimum necessary to allow for normal garage use. It is smaller than the typical two car garage that is customary for properties in the area.

Documents on Record

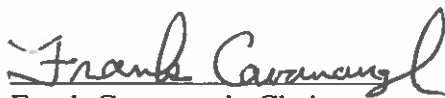
1. Application for a Critical Area variance with Purpose of Appeal attachment.
2. Tax Map with subject property highlighted.
3. Notice of public hearing for advertising.
4. Newspaper confirmation.
5. Notice of public hearing with list of adjacent property owners attached.
6. Critical Area variance standards.
7. Non-Critical Area variance standards.
8. Staff Report.
9. Sign maintenance agreement with pictures.
10. Critical Area Commission Comments dated March 13, 2024.
11. Authorization letter.
12. Independent Procedures Disclosure and Acknowledgement Form.
13. Aerial photos.
14. Map of Gates Cove Lots, dated May 1, 1963.
15. Floor Plans
16. Elevation Plans.
17. Critical Area lot coverage computation worksheet.
18. Site Plan by East Bay Plan, LLC, pages 1 ep, led. Lepd, dated April 24, 2024.
19. Hearing Exhibit #1 – Property Deed 296/408.


- 20. Hearing Exhibit #2 – Subdivision Plat.
- 21. Hearing Exhibit #3 – Drawing showing drainage swale.

Mr. Krebeck moved that the Applicant be granted the requested variances subject to staff conditions and the motion was seconded by Mr. Gannon. Based upon the foregoing, the Board finds, by a unanimous vote that the Applicant’s requests for variances are granted subject to the following conditions:

- 1. The Applicants shall commence construction of the proposed improvements within eighteen (18) months of the date of the Board of Appeals approval.
- 2. The Applicants shall complete a Buffer Management Plan that complies with Critical Area Law. The Applicants shall provide 3:1 mitigation for any permanent disturbance within the Buffer and 1:1 mitigation for any temporary disturbance within the Buffer.
- 3. The Applicants shall comply with Critical Area law, including the completion of a Buffer Management Plan that complies with Critical Area Law.
- 4. This approval is only for the requested improvements and additions in this application and does not cover or permit any other changes or modifications. Items not specifically addressed in this application may require additional approvals.

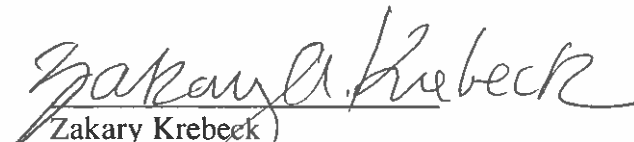
IT IS THEREFORE, this 26th day of August, 2024, **ORDERED** that the Applicant’s requests for a variance is GRANTED.


Frank Cavanaugh, Chairman


Louis Dorsey, Jr., Vice-Chairman


Ed Heikes


Greg Gannon


Zakary Krebeck