

IN THE MATTER OF	*	CASE NO. CAVR-26-12
JAMES AND LORETTA EHRLER	*	VARIANCE REQUEST APPLICATION (Critical Area)
* * * * *	*	* * * * *

STATEMENT OF THE CASE

SUMMARY OF TESTIMONY

The Property is already heavily vegetated, but the Applicants will submit a 3:1 mitigation plan that complies with required mitigation for the project. 1:1 mitigation will be required for the minimal amounts of disturbance that will be required.

County planner Andrew Nixon testified that the home was built in 1969 and that the patio has been in existence approximately 10-15 years. Aerial photographs demonstrate that structures on the Property have been in place as far back as staff are able to analyze through aerial photographs.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

All members of the Board have personally visited the site, and this decision is based upon the Board's direct visual observations, the testimony of the witnesses, submitted responses to variance criteria, and the comprehensive written record.

The Board finds, as a general matter, that this project and variance are an absolute necessity to stabilize soil and prevent loss of the home on the Property. Failure to do so would result in substantial property losses, while harming the environment, and threatening the safety of inhabitants of the Property.

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 case for unwarranted hardship is compelling. This area of Talbot County is defined by rolling hills and steep, unstable slopes leading directly to tidal waterways. The subject dwelling was constructed in 1969, well prior to the implementation of Critical Area regulations. Expert engineering and geological evaluations provided by Geolab confirm that the soils underlying the hillside lack adequate stability. Due to the proximity of the pre-existing dwelling to the steep slopes and Skipton Creek, literal enforcement of the 100-foot Shoreline Development Buffer would prohibit the installation of necessary structural stabilization. Without two sections of retaining wall (positioned no closer than 18 feet from the MHWL), ongoing slope movement and soil erosion will jeopardize the structural integrity of the primary dwelling, resulting in the eventual collapse of improvements into the creek and an unwarranted hardship to the Applicants.

- 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.*

Property owners in this zoning district, and throughout Talbot County, enjoy the fundamental right to protect pre-existing residential structures from catastrophic property loss caused by soil instability and natural erosion. Because the dwelling was built in 1969 prior to Buffer regulations, literal enforcement of the Buffer restrictions would deny the Applicants the ability to execute necessary slope stabilization measures, thereby depriving them of a right commonly exercised by waterfront property owners facing topographical threats.

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.*

Granting this variance confers no special privilege. Retaining walls and engineered slope stabilization structures are standard features throughout the district where steep slopes and unstable soils threaten pre-existing residential improvements. The proposed walls protect existing improvements and prevent sediment discharge.

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 need for a variance stems entirely from the natural slope, soil composition, and the historical location of a home constructed in 1969. The Applicants purchased the Property in 1994 in its current configuration and have initiated no unpermitted land disturbance or construction activities. The condition is entirely self-contained on the subject Property and does not arise from any activity or condition on adjacent parcels. Furthermore, stabilizing the hillside provides a net benefit to neighboring properties by preventing contiguous erosion.

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.*

Rather than causing adverse impacts, granting the variance directly advances Critical Area goals by arresting slope failure and preventing significant volumes of sediment and debris from discharging into Skipton Creek. Construction impact will be stringently controlled. Small equipment will be used to maneuver around mature trees, soils and materials will be hauled in and out on an as-needed basis without on-site stockpiling, and disturbance will be minimized over a multi-month construction timeframe. To fully compensate for new lot coverage and minimal disturbance areas, the Applicants will fulfill standard 3:1 planting mitigation and 1:1 disturbance mitigation requirements through an approved Buffer Management Plan.

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

The design represents the minimum necessary adjustment to achieve structural stabilization. The Board accepts the uncontradicted expert testimony of the Applicants' landscape architect and engineering team that the location, dimensions, and low-impact construction methodology represent the narrowest scope of relief required to stabilize the hillside effectively.

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.

Documents on Record

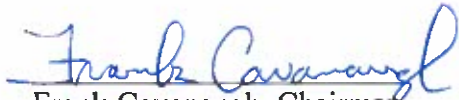
1. Application for a Critical Area variance.
2. Tax Map with subject property highlighted.
3. Notice of public hearing for advertising.
4. Newspaper confirmation.
5. Notice of public hearing with list of adjacent property owners attached.
6. Critical Area variance standards.
7. Staff Report by Andrew Nixon.
8. Sign maintenance agreement and picture of signs posted.
9. Critical Area Commission Comments.
10. Authorization letter.
11. Independent Procedures Disclosure and Acknowledgement Form.
12. Aerial photo.
13. Photos (3).
14. Site Plan.
15. Retaining Wall Plans.
16. Letter of Explanation from Chris Snyder, PLA, Landscape Architect, dated 6/26/26.
17. Lot Coverage Calculations.

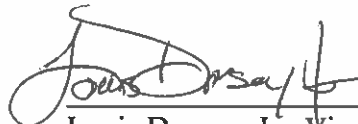
Mr. Krebeck made a motion to approve the request for variance subject to staff conditions. Mr. Adelman seconded the motion, and it was unanimously approved.

Based upon the foregoing, the Board finds, by a unanimous vote, that the Applicant's requests for variance is approved subject to the following 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 commence construction of the proposed improvements within eighteen (18) months of the date of the Board of Appeals approval.
3. The Applicants shall complete a Buffer Management Plan that complies with all requirements of the 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 25th day of August 2026, **ORDERED** that the Applicant's requests for variance is GRANTED.


Frank Cavanaugh, Chairman


Louis Dorsey, Jr., Vice-Chairman


Meredith Watters


Jeff Adelman


Zakary Krebeck