

BEFORE THE TALBOT COUNTY BOARD OF APPEALS

IN THE MATTER OF * CASE NO. CAVR-24-1
LEEB REVOCABLE TRUST, et al. * VARIANCE REQUEST APPLICATION
(Critical Area)

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The Board of Appeals (the “Board”) held a hearing on March 11, 2024 in the Bradley Meeting Room, Court House, South Wing at 11 N. Washington Street, Easton, Maryland to consider the application of Leeb Revocable Trust and Jonathan M. Leeb, Trustee (the “Applicants”). Applicants requested a Critical Area variance for the property at 8533 Deep Cove Road, Easton, Maryland (“Property”). Chairman Frank Cavanaugh, Vice Chairman Louis Dorsey, Jr., Board Members Patrick Forrest, Jeff Adelman, Zakary Krebeck, and Board Attorney Lance Young were present. Board Secretary Christine Corkell, Assistant Planning Officer Bryce Yelton, and Planner Elisa Deflaux appeared on behalf of the County.

STATEMENT OF THE CASE

This case involves an existing nonconforming structure (“Schooner Structure”) on the Property. It was historically used to store and maintain a schooner. The structure is located partially within the Shoreline Development Buffer. The Applicants wish to connect that structure, with a breezeway, to their primary dwelling and request a variance in order to do so.

The Schooner Structure has a certificate of nonconformity that would otherwise allow the Applicants to replace it with another structure that is “in kind.” Instead of replacing the structure, the Applicants merely want to connect it to the primary dwelling while proposing to eliminate a portion of the structure that is within the Shoreline Development Buffer.

SUMMARY OF TESTIMONY

The Applicant Jonathan Leeb testified that the Schooner Structure was built in the 1960s prior to the Critical Area law. It was built by the previous property owner who was an accomplished sailor and used the structure to house and maintain an ocean going schooner. The Leeb family seeks to honor the historic character of the structure but the family does not use it as it was historically used. By connecting the Schooner Structure to the primary dwelling, the Leeb family, their extended family and guests, will be able to better utilize the structure without significantly altering it.

Zach Smith, of Armistead, Lee, Rust & Wright, P.A., appeared on behalf of the Applicant. Mr. Smith explained that a corner of the Schooner Structure is in the Shoreline Development Buffer. A variance is required to connect the structure to the primary dwelling but there is no plan for expansion of the structure or increased lot coverage. The Applicants propose to remove a section of the building that will actually remove lot coverage on the Property. The ability to utilize the existing Schooner Structure to meet the family's need for additional space will eliminate the need for new construction that will be disruptive to the earth and the environment.

Mr. Smith addressed the unwarranted hardship standard and emphasized that the standard, which is typically analyzed by a special condition or peculiarity of the land, also concerns special conditions or circumstances that are peculiar to a structure. The historic nature and location of the Schooner Structure is a special condition or circumstance according to Mr. Smith. It was legal when it was constructed and the location of it, within close proximity to the primary dwelling, is unique. It is contended that the inability to utilize the structure amounts to a loss of reasonable and significant use of the property.

The Applicants contend that granting the request will eliminate the need for unnecessary disturbance of the property, eliminate the need to add lot coverage on the property, and prevent the need for additional construction on the property. The Applicants considered other locations for an addition to the primary dwelling but it makes the best sense to utilize the Schooner Structure that is already in place.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

All Board members have visited the site and appreciate the historic nature of the structure. It makes good practical sense to maintain that historical structure and utilize it, as opposed to demolishing it and disrupting the land to construct a new addition to the primary dwelling. The Board finds that utilizing the Schooner Structure, instead of constructing a new addition to the primary dwelling, is the least intensive and least invasive approach to the Leeb family's need for additional space.

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 Board finds that denial of the requested variance would deprive the property owner of a reasonable and significant use of the property. The Schooner Structure is a legally nonconforming structure that would remain on the Property regardless of whether the Applicants choose another manner for extending space in their primary dwelling. The property is a residential property and its owners should be able to use all of the property for residential purposes. It is no longer viable to use the structure for the storage and maintenance of an ocean going schooner.

Additionally, connecting the Schooner Structure to the primary dwelling will not result in an increase of lot coverage. By becoming a part of the primary structure, the primary structure will be within the Buffer but the reality is that there will be no new structure within the Buffer.

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 Applicants seek to utilize an existing structure for a permitted use within the 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 keep and utilize legally nonconforming structures on their property. The unique circumstance here is that the nonconforming structure will be connected to a legal structure.

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. Other property owners within the same zoning district are able to expand their primary dwellings within lot coverage limits. This variance merely allows the property owners to utilize an existing structure on the property to accomplish their primary dwelling expansion. A portion of that structure is within the Buffer but it has been in the Buffer for decades. It is the unique circumstance of this existing structure, and the desire to fully utilize it, that creates the need for a justifiable variance.

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 Schooner Structure was in existence long before it was owned by the Leeb Family.

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. The Applicants propose to reduce the size of the structure so that there will be a net decrease in lot coverage within the Critical Area Buffer.

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

The variance will merely allow a breezeway connection between existing structures. By utilizing existing structures, instead of constructing new area to the primary dwelling, the Applicants are using the least intensive approach to their goal of expanding living space.

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 Revised.
7. Critical Area Standards stamped Out of Date.
8. Staff Report.
9. Sign maintenance agreement.
10. Critical Area Commission Comments, revised, dated February 27, 2024.
11. Critical Area Commission Comments dated February 12, 2024.
12. Authorization letter.
13. Independent Procedures Disclosure and Acknowledgement Form.
14. Aerial photo.
15. Photos (4) of the structures.
16. Elevation Plans
17. Floor Plans.
18. Critical Area lot coverage computation worksheet.
19. Certificate of Nonconformity Letter (Reference RTPO-23-16) from Brennan Tarleton, dated August 15, 2023.
20. Email from Bryce Yelton dated January 12, 2024 to Zach Smith.
21. Letter from Bruce Rogers, dated February 12, 2024.
22. Letter from Nancy Wolf, dated February 20, 2024.
23. Letter from Chris & Carter Bradshaw, dated February 6, 2024.


24. Letter from Michael E. Borner, dated February 20, 2024.
25. Site Plan prepared by Fink Whitten & Associates, LLC for Jonathan and Michelle Leeb, dated October 19, 2023.

Mr. Krebeck moved that the Applicant be granted the requested variance subject to staff conditions and the motion was seconded by Mr. Forrest. Based upon the foregoing, the Board finds, by a unanimous vote that the Applicant's requests for a variance is granted subject to the following staff 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, including mitigation for any tree removal, if any, that is associated with the project.
3. The 946 square foot nonconforming accessory structure (Schooner Structure) may not be converted to an accessory dwelling unit or a dwelling unit, as it is prohibited by COMAR and the Talbot County Code. The Applicants shall enter into a non-conversion agreement for the section of the primary dwelling that is the subject of the variance request.


IT IS THEREFORE, this 10th day of April, 2024, **ORDERED** that the Applicant's requests for a variance is GRANTED.


Frank Cavanaugh, Chairman


Louis Dorsey, Jr., Vice-Chairman


Patrick Forrest


Jeff Adelman


Zakary Krebeck