

Regarding the after-the-fact requests, Mr. Ewing testified that the Applicant did not realize the 40-square-foot retaining wall, located 6.9 feet from the Mean High Water Line (MHWL), required a Critical Area variance. He explained that the wall was constructed out of necessity to stabilize the shoreline and protect the existing onsite vegetation and mature trees. Similarly, the Applicant did not understand that laying loose slate tiles for a pedestrian walkway constituted a Critical Area violation without prior variance approval.

With respect to the 19-linear-foot fence screening the HVAC units, Mr. Ewing noted that this was installed by a prior owner of the Property without a variance. He stated that the screening is practical and necessary for aesthetics and noise reduction.

Regarding the 10.25' x 24.5' shed and wooden ramp, Mr. Ewing stated that historical aerial photographs indicate a shed has existed on that footprint since at least 1999. The structure is built upon concrete piers and is hooked up to electric utilities.

The Board received and considered correspondence from the Critical Area Commission, which opposed the shed variance. The Commission has opined that the accessory shed is not in harmony with the purpose and intent of the Critical Area program. It further stated that the Property maintains reasonable and significant utility without the shed, and that the structure fails to meet the unwarranted hardship standard because there are feasible alternative locations on the parcel where a shed could be placed entirely outside of the 100-foot Buffer. Finally, the Commission asserted that granting a variance for the shed would bestow a special privilege upon the Property owner denied to others and would generate negative environmental impacts affecting water quality and local wildlife habitat.

Mr. Ewing countered the Commission's position, testifying that forcing the Applicant to relocate the shed would impose an undue hardship due to the significant financial cost and physical labor required to move the structure. He noted that a shed structure has been in place on the Property for roughly 30 years. Furthermore, Mr. Ewing testified that the beach area directly adjacent to the shed is actively eroding and expressed concern that the physical removal of the shed would disturb the soil and generate water runoff that would compound the shoreline erosion. Mr. Ewing, noting his professional background as a former employee of Talbot County Planning and Zoning, added that he believes accessory sheds did not require county permits until the 1990s.

County Planner Maddie Zaprowski confirmed that county aerial photography corroborates the presence of a shed on the property for decades. However, she noted that the aerial records also reveal the shed was structurally enlarged at some point between 1999 and 2007. Ms. Zaprowski testified that the electrical hookup serving the shed would have required a county permit, but an inspection of county records revealed no such permit was ever issued. Additionally, Ms. Zaprowski advised the Board that the after-the-fact Critical Area violations would require a 7:1 vegetative mitigation ratio under local regulations.

Mr. Metz testified that he could move the shed at a high financial expense and prefers its current location.

Regarding the sole prospective (non-after-the-fact) request, Mr. Ewing testified that the proposed two-story addition to the front of the home is intended to accommodate a home office, a guest room, and a larger internal bathroom.

Mr. Ewing addressed the Critical Area variance criteria. He argued that denying the variances would amount to an unwarranted hardship because the primary house was built in the 1980s, well before the enactment of Critical Area buffer regulations. Because the house is surrounded by Buffer on two sides, open water, a driveway, and two separate onsite sewage disposal areas, there is no viable building envelope available to make minor property enhancements without variance relief.

Mr. Ewing further argued that a failure to grant these variances would deprive the Applicant of rights commonly enjoyed by neighbors. He pointed out that while properties within this zoning district are legally permitted up to 15% lot coverage, the subject Property remains at only 11% coverage even with the improvements. For this reason, he asserted that granting the variances would not bestow a special privilege. Mr. Ewing concluded that water quality would not be adversely affected because the total footprint remains below the 15% threshold and emphasized that none of the requested improvements encroach any closer to the MHWL than the pre-existing, legally nonconforming residential structure.

Finally, Mr. Ewing noted that with the exception of the retaining wall and the slate stepping stones, the variances requested were not caused by the actions of the current Applicant. He argued that the wall and stones are environmentally and practically justified after the fact and requested that the Board evaluate them under the same standard as if they were prospective applications.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

All Board members have visited the site, and this decision is based upon the Board's observations, as well as the testimony and written responses submitted by the Applicant.

As a threshold matter, the Board makes a clear distinction between the accessory shed and the remaining four variance requests. The Board agrees with the findings of the Critical Area Commission regarding the 10.25' x 24.5' shed and ramp. The evidence and site plans clearly demonstrate that the shed could be relocated outside of the 100-foot Buffer onto unconstrained portions of the Property. The Applicant's testimony that he likes it at its current location is a matter of personal preference, not a legal hardship. Because a viable building envelope exists outside the Buffer for accessory storage, the Board does not agree that denying this specific variance constitutes an unwarranted hardship.

Conversely, the Board finds that the remaining four variances are intricately tied to the unique constraints of the primary house and the geometry of the lot. These improvements are minimal in impact and necessary for the reasonable enjoyment of the Property:

- The slate stepping stones are less problematic than solid concrete or asphalt walkway and provide a necessary, low-impact pedestrian path to outdoor living areas.

- The 40-square-foot retaining wall, while installed without prior authorization, functions directly to protect the shoreline from active erosion and stabilizes the root systems of mature trees, thereby advancing the core environmental stabilization goals of the Critical Area program.
- The HVAC fence screening is a standard, minimal accessory designed to mitigate noise and visual blight.
- The proposed dwelling addition expands a home that was lawfully constructed prior to the establishment of the Buffer, does not alter or exceed the closest waterward encroachment of the existing footprint, and represents a minor, reasonable modernization of a primary residence.

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.*

Regarding the additions, walkways, wall, and fencing: The unique geography of this lot presents significant constraints. The shoreline wraps around the property on multiple sides, resulting in the 100-foot Buffer engulfing nearly the entire usable, developed area of the lot. The building envelope is further restricted by two designated Sewage Disposal Areas, an existing pool/patio complex, and protected mature trees. Because the primary dwelling was erected in the 1980s entirely within what is now the modern Buffer, literal enforcement would prevent even minor, routine structural updates. The proposed front addition has been oriented so that it does not encroach closer to the MHWL.

Regarding the shed: No peculiar circumstances of the land require a storage shed to sit 34.9 feet from the MHWL. Space exists elsewhere on the upland portion of the parcel, clear of the Buffer, to support an accessory storage structure. Denying the shed variance does not impair the primary residential use of the property.

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.*

Regarding the additions, walkways, wall, and fencing: The primary dwelling is a legally nonconforming structure due to its age. Property owners throughout this zoning district commonly enjoy the right to make modest updates to their homes, including adding single-room office/guest spaces, laying simple footpaths, protecting their shorelines with small retaining walls, and screening mechanical equipment. Denying these minimal requests would strip this property owner of basic residential enjoyments standard in the district.

Regarding the shed: While accessory sheds are common, property owners in this district are not commonly permitted to maintain large, unpermitted accessory storage buildings within the sensitive 34.9-foot near-shore Buffer when alternative upland locations are available.

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.*

Regarding the residential modifications: Granting relief for the front addition, fence, walkway, and retaining wall does not constitute a special privilege. The house is a historical, nonconforming structure. Any property owner facing identical spatial constraints, where the Buffer blankets the pre-existing home, has the right to request case-by-case variance relief for minor improvements.

Regarding the shed: Allowing a 261-square-foot unpermitted accessory shed and ramp to permanently remain deep within the protected 100-foot Buffer solely because it is inconvenient or expensive to move would confer a distinct special privilege upon this Applicant. Other property owners are routinely required to place new or relocated accessory structures outside the Buffer when space permits.

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.*

Regarding the addition and fence (Requests 1 and 5): The Applicant did not create these conditions. The primary house was built prior to Critical Area regulations, and the HVAC screening fence was installed by a previous owner.

Regarding the retaining wall and slate walks (Requests 3 and 4): Although these improvements were constructed by the current Applicant prior to seeking a permit, the Board has reviewed these requests objectively as if they were prospective applications. The Board finds their installation was driven by immediate structural and environmental needs (shoreline erosion and safe foot ingress) rather than an intentional circumvention of the law.

Regarding the shed (Request 2): While a shed footprint existed historically, county records and aerial photographs demonstrate that the structure was substantially enlarged between 1999 and 2007, and electricity was run to it without obtaining the required county building or electrical permits. An after-the-fact variance cannot be used to legitimize unpermitted expansions of nonconformities within the Buffer when the expansion itself represents a self-created intensity of use.

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.

Regarding the additions, walkways, wall, and fencing: These minor projects result in a net increase of only 127 square feet of new lot coverage inside the Buffer, keeping the overall property lot coverage at 11%, below the 15% cap. Because the slate walks are non-contiguous stones and the retaining wall directly mitigates sediment sloughing into Porters Creek, these elements protect water quality and align with the spirit of the Critical Area Program. Furthermore, any minimal impacts will be thoroughly offset by the mandatory 7:1 vegetative mitigation required by the County.

Regarding the shed: The shed's substantial footprint (261 square feet) sits a mere 34.9 feet from the water. Its concentrated rooftop runoff directly impacts the immediate shoreline area. Because this environmental footprint is entirely avoidable by relocating the structure to an upland zone, keeping it in the Buffer violates the core habitat and water quality preservation principles of the Critical Area Law.

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

The proposed 11.2' x 15.5' residential addition is positioned immediately adjacent to the existing home's front facade. The majority of the expansion sits outside the Buffer, and it does not push the home any closer to the MHWL than its current 52-foot nonconforming limit. While an expansion of this minimal nature would typically qualify as a Minor Critical Area Variance, § 190-50.3.C.2 forced a Major Variance application. The Board finds the addition, the 40-square-foot erosion wall, the 39-square-foot stepping stones, and the 19-linear-foot HVAC fence represent the minimum adjustments required to afford the Applicant reasonable use of the property. The shed, having grown unpermitted over time, exceeds the minimum adjustment necessary.

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.

8. Sign maintenance agreement/sign affidavit.
9. Critical Area Commission Comments.
10. Authorization letter.
11. Independent Procedures Disclosure and Acknowledgement Form.
12. Aerial photo, 2 pages.
13. Site Plan, Existing Conditions and Demolition Plan and Variance exhibit from Lane Engineering, LLC.
14. Minor Buffer Management Plan by Lane Engineering, LLC.
15. Elevation Floor Plans.
16. 2000 Plat.
17. 2017 Site Plan & Minor Buffer Management Plan.
18. Critical Area Violation/Building Code Violation/Order to Abate.
19. Assessment of Civil Penalty with paid receipt attached.
20. Photos of Site visit, submitted by Maddie Zaprowski, 6 pages.
21. Photos of after the fact improvements submitted by Maddie Zaprowski, 5 pages.
22. Letter of support from Lester and Josie Clippinger, dated 4/20/26.

Mr. Krebeck moved to approve the variance requests, except for the 10.25'x 24.5' shed and wooden ramp, subject to staff conditions, and with the additional condition that the slate walkways may not be expanded beyond the existing stones without approval by the Board of Appeals. The applicant shall also submit an amended Buffer Management Plan in consideration of the shed that shall be removed. Mrs. Watters 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 a variance is granted subject to the following conditions:

1. The Applicant 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 Applicant shall commence construction of the proposed improvements within eighteen (18) months of the date of the Board of Appeals approval.
3. The Applicant shall complete an amended 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 2nd day of June 2026, **ORDERED** that the Applicant's requests for a variance are GRANTED in part and DENIED in part as stated herein.

Frank Cavanaugh
Frank Cavanaugh, Chairman

Louis Dorsey, Jr.
Louis Dorsey, Jr., Vice-Chairman

Meredith Watters
Meredith Watters

unavailable for signature
Jeff Adelman

M.C.E.

Zakary Krebeck
Zakary Krebeck