

BEFORE THE TALBOT COUNTY BOARD OF APPEALS

IN THE MATTER OF * CASE NO. CAVR-24-5
MARTINS POINT FARM, LLC * VARIANCE REQUEST APPLICATION
(Critical Area)

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The Board of Appeals (the “Board”) held a hearing on December 2, 2024, in the Bradley Meeting Room, Court House, South Wing at 11 N. Washington Street, Easton, Maryland to consider the application of Martins Point Farm, LLC (the “Applicant”). Applicant requested a Critical Area variance for the property at 27391 Southside Island Creek Road, Trappe, Maryland (“Property”). Chairman Frank Cavanaugh, Board Members Patrick Forrest, 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 Applicant requested approval of a Critical Variance to allow for a replacement dwelling in the location of the existing dwelling within the Shoreline Development Buffer (“Buffer”). The replacement dwelling will be no closer to the Mean High Water Line than the existing dwelling at a distance of 38.4’. The replacement dwelling is proposed to be expanded outside the Buffer.

SUMMARY OF TESTIMONY

The Applicant was represented by attorney Zach Smith. Sean Callahan, of Lane Engineering, also provided testimony.

Mr. Smith described the basis for the appeal. The Applicant purchased the 130-acre farm Property in 2021. Most of the Property is used for farming/agricultural purposes. The residential part of the property is unique because a basin separates a creek and land where the current dwelling sits. It creates a harbor. The existing dwelling overlooks the harbor and is at least as old as 1800 or possibly older (because the best information available is from a tax map). An architect determined that the dwelling is not susceptible to renovation. It requires demolition in its current state.

The dwelling is almost entirely within the Buffer. The Applicant’s goal is to stay within the same footprint of the dwelling, within the Buffer, but intends to expand the footprint of the dwelling outside of the Buffer. The Talbot County zoning ordinance permits an “in-kind”

replacement within the Buffer. A variance is only required here because the dwelling will be expanded, although the only expansion will be outside of the Buffer.

Moving the dwelling to another section of the Property is not a better option for a number of reasons. First, it would require moving it onto tillable agricultural land. The Talbot County Comprehensive Plan values the retention of agricultural land in the County. Second, the dwelling has existing accessory structures and facilities that surround it, such as a sidewalk, swimming pool, septic, and more. Moving the dwelling would require moving its accessories and doing so would require disturbing more land to move the dwelling and its accessories.

Shifting the design of the structure, within its footprint, to remove portions of the dwelling from the Buffer, would require the removal of mature trees, which is detrimental to the environment and wildlife. Mr. Smith indicated that there is a significant mitigation and planting plan for the project. The dwelling cannot be moved on top of the existing septic system and the Health Department requires an additional septic reserve, which further inhibits the ability to move the dwelling.

Finally, the location of the dwelling, overlooking the harbor, is the ideal location for a waterfront home. Requiring the Applicant to move it from that location would greatly diminish the economic value of the home site.

The County Planner, Elisa Deflaux, testified that the County would prefer that mitigation occur as close to the building possible as possible and the 3:1 required mitigation must be within the Buffer.

Mr. Smith also summarized the Applicant's written responses to the Critical Area variance standards, which echoed his testimony, and the Board accepted the written response for their consideration of the variance request.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

All Board members have visited the site and generally find that the proposed location for the project is the only reasonable location for the project. The Board finds that the Applicant will suffer unwarranted hardship if the variance is not granted.

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.*

A Critical Area variance is considered on the basis of whether the applicant has shown that there will be an "unwarranted hardship" without a variance. An unwarranted hardship means "without a variance, an applicant would be denied reasonable and significant use of the

entire parcel or a lot for which the variance is requested.” Md. Code Ann., *Nat. Res.*, § 8-1808(d).

It is important to this Board’s analysis that an in-kind replacement is allowed by right and no additional lot coverage will occur within the Buffer. A waterfront home has been in this footprint for over 200 years.

The Board finds that denial of the requested variance would deprive the property owner of a reasonable and significant use of the property. Foremost, most of the property is tillable, agricultural property. Talbot County, by its Comprehensive Plan, has prioritized agricultural land and its preservation. The dwelling could be replaced in-kind, and the Board finds that the replacement is near in-kind, with the exception of modest expansion that will occur outside of the Buffer. It is not advantageous to eliminate agricultural land when this project will not increase expansion of the structure within the Buffer. Additionally, the Applicant will be required to perform 3:1 mitigation and this Board will ensure, through the County Planning and Zoning Office, that the mitigation occurs near the dwelling and within the Buffer.

The property is also assessed as a buildable waterfront property. If the Applicant is not able to improve the lot as a buildable waterfront lot, they would lose a significant investment in the property.

Moving the dwelling away from accessory structures and features is not beneficial to the property or to the environment as creating a new home site will disturb new land. The existence of the existing septic system and required septic reserve area further prohibit moving the dwelling. The peninsula, where the dwelling sits, is also eroding. It will benefit the living shoreline to have an active homeowner occupying the homesite to ensure the shoreline is protected.

- 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.*

Other property owners would be permitted to replace their dwelling structure with an in-kind home within the existing footprint within the Buffer. The Applicant is not requesting to expand the footprint within the Buffer. The expansion that is requested is reasonable and will be mitigated with plantings near the dwelling.

- 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. The Applicant has demonstrated that no better alternatives for the placement are available.

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 property and the dwelling sitting on it are well established.

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 replacement dwelling will not increase coverage within the Buffer. In fact, it will reduce coverage within the Buffer by 37 square feet. The Applicant also intends to remove walkways and a driveway to reduce lot coverage by 1,051 square feet. The improvements will require mitigation and Buffer establishment in accordance with the building permit. The project will also have to meet stormwater management requirements.

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

The project will not expand coverage in the Buffer and has demonstrated that moving the dwelling is not feasible.

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 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. Staff Report.
8. Sign maintenance agreement/Sign Affidavit.
9. Critical Area Commission Comments dated 10/10/24.
10. Authorization letter.

11. Independent Procedures Disclosure and Acknowledgement.
12. Aerial photo.
13. Photos (4).
14. Floor Plans – Existing 1st Floor and Existing Cottage.
15. Proposed 1st and 2nd Floor Plans.
16. Elevation Plans (4 pages).
17. Lot coverage forms.
18. Site Plan.

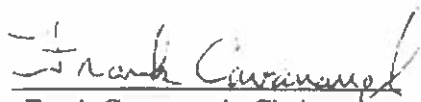
Mr. Krebeck moved that the Applicant be granted the requested variance subject to staff conditions and the motion was seconded by Mr. Forrest. Based upon the foregoing, the Board finds, by unanimous vote, that the Applicant's request for a variance is granted subject to the following conditions:

1. The Applicant shall commence construction of the proposed improvements within eighteen (18) months of the date of the Board of Appeals approval.

2. The Applicant shall comply with Critical Area law, including the completion of a Buffer Management Plan that complies with Critical Area Law. The Applicant shall provide 3:1 mitigation for any permanent disturbance within the Buffer and 1:1 mitigation for any temporary disturbance within the Buffer. The Buffer Management Plan must be within close proximity to the disturbed area, as approved by Talbot County Planning and Zoning staff.

3. 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 January 2025, **ORDERED** that the Applicant's requests for a variance is **GRANTED**.


Frank Cavanaugh, Chairman


Patrick Forrest


Ed Heikes


Greg Cannon


Zakary Krebeck