

BEFORE THE TALBOT COUNTY BOARD OF APPEALS

IN THE MATTER OF	*	CASE NO. VAR-23-4
MICHAEL VERNICK AND AUDREY CHANG	*	VARIANCE REQUEST APPLICATION

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The Board of Appeals (the “Board”) held a hearing on January 29, 2024 in the Bradley Meeting Room, Court House, South Wing at 11 N. Washington Street, Easton, Maryland to consider the application of Michael Vernick and Audrey Chang (the “Applicants”). The Applicants requested a variance for the property located at 7661 Tred Avon Circle, Easton, MD 21601 (“Property”). Chairman Frank Cavanaugh, Vice Chairman Louis Dorsey, Jr., Board Members Patrick Forrest, Jeff Adelman, Zakary Krebeck, and Board Attorney Lance M. Young were present. Board Secretary Christine Corkell, Bryce Yelton, Assistant Planning Officer, and Andrew Nixon, Planner, appeared on behalf of the County.

STATEMENT OF THE CASE

The Applicants requested a variance of the required 25’ side yard setback to 15’ to permit the construction of a 25’4” x 14’ garage addition including the concrete apron to the primary dwelling. The Applicants also requested an after-the-fact variance of the 25’ side yard setback to 4.5’ to permit an existing 147 square foot storage shed to remain in its current location. The storage shed, in its existing location, predates the Applicant’s ownership of the Property.

The Property is within the Critical Area. A Critical Area variance is not required because the Property meets the exemption set forth in the Talbot County Code § 190-15.11B, which provides:

If the Buffer is contiguous to hydric or highly erodible soils on a slope less than 15%, and the Buffer is on a lot created before January 1, 2010, development activity may be approved in the expanded Buffer if:

- a.
The development activity is in the expanded portion of the Buffer, but not in the Buffer ... ;
- b.
The Buffer occupies at least 75% of the lot or parcel; and
- c.
Mitigation occurs at a 2:1 ratio, based on the lot coverage of the proposed development activity that is in the expanded Buffer.

Total lot coverage for the Property exceeds the 15% maximum allowed under the Critical Area law. The Planning Officer determined that 7,605 square feet (17.8%) of lot coverage is legal nonconforming. The current lot coverage is 8,524 square feet. Therefore, the Applicants propose

to remove areas of the driveway and walkway to reduce lot coverage to the percentage deemed nonconforming.

SUMMARY OF TESTIMONY

The Appellants were represented by attorney Lyndsey Ryan who provided factual and legal information to the Board. The purpose of the proposed garage addition, and requested variance, is that the existing garage is inadequate for its purpose. A normal sized vehicle does not park in the existing garage without maneuvering the vehicle in a parallel fashion. A second variance is requested for an existing shed, which was on the Property when it was purchased by the Applicants. The exiting location is the only practical place to locate the shed. The Property is burdened by slopes and buffer restrictions, which limits other locations to place the shed without the necessity of a Critical Area variance.

The Property was developed in 1957, which predates the Critical Area law and existing setback requirements. It is nonconforming in that respect. The Applicants have proposed to reduce portions of the existing driveway and walkway to reduce lot coverage. The minimum lot size for lots in the relevant zoning area is 2 acres. The Property is unique because it is smaller than that required lot size.

Elizabeth Fink, a land and environmental planner with Fink, Whitten & Associates, provided credible expert testimony for the Applicants. Mrs. Fink completed the site plan for the proposed garage. It was her testimony that almost the entire buildable lot is within the Critical Area. The unique pie shape of the Property, combined with its overlay into the buffer, sloped topography and highly erodible soil, make any addition to the Property outside of the Critical Area, require a non-Critical Area variance. The primary dwelling is already nonconforming to side yard setbacks.

Mrs. Fink further opined that moving the shed to any other location in the yard would violate Critical Area buffer or setbacks.

The applicant, Michael Vernick, also provided testimony. The Applicants purchased the Property in 2020. It was built in 1957. To mitigate for lot coverage, the Applicants propose to remove lot coverage on the left hand side of the drive circle and walkway along the right side. He testified that the garage is not deep enough to park a regular sized vehicle. To his knowledge, other garages in the vicinity do not have the same problem.

The Applicants use the shed for storage of outdoor items and it was in its current location when the Property was purchased. There have been no complaints from neighbors about the shed location and the closest adjacent neighbor is supportive of the variance request. Mr. Vernick testified that other properties in the neighborhood have larger detached structures.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Board finds that the Applicants have satisfied the standards for granting of the variance and sets forth these findings:

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

The dwelling on the Property is nonconforming and the proposed garage will replace a part of the nonconforming dwelling. The small size of the Property (in relation to lot size requirements), narrowness of the Property, Critical Area buffer, slopes, and soil conditions provide a unique set of circumstances that make variances of the side yard setback a necessity.

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 and shed 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 variance for a shed is supported by the adjacent property owner.

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. The Board finds that relocating the shed to any other location on the Property is not practical.

Documents on Record

1. Application for a Non-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. Non-Critical Area variance standards sheet.
7. Staff Report.
8. Sign maintenance agreement/sign affidavit.
9. Authorization letter.
10. Independent Procedures Disclosure and Acknowledgement Form.
11. Aerial photo (2).
12. Photo front of dwelling.
13. Letter dated September 14, 2023 to Brennan Tarleton from Lyndsey Ryan.
14. Letter dated September 27, 2023 to Audrey Chang & Michael Vernick from Brennan Tarleton.
15. Critical Area lot coverage computation worksheet.

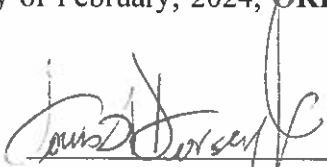
16. Copy of Waverly subdivision map.
17. Copy of the site on 8 ½ x 11.
18. Proposed and existing first floor plan.
19. Proposed and existing south and east elevations.
20. Site Plan prepared by Fink, Whitten & Associates, LLC.

Mr. Adelman moved that the Applicants be granted a variance subject to staff conditions. The motion was seconded by Mr. Krebeck. Based upon the foregoing, the Board finds, by a unanimous vote, that the variance is granted subject to staff conditions.

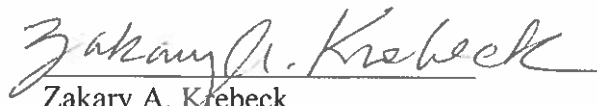
1. The Applicants shall make an application to the Office of Permits and Inspections, and follow all rules, procedures, and construction timelines as outlined regarding new construction.
2. The Applicants shall commence construction of the proposed improvements within eighteen (18) months of the date of this Decision set forth below.
3. The Applicants shall make an application to the Office of Permits and Inspections for an after-the-fact permit for the shed and follow all rules, procedures, and construction timelines as outlined regarding after-the-fact permits.
4. The Applicants shall provide a Buffer Management Plan with 2:1 mitigation for the lot coverage associated with the shed and any tree impacts associated with the project.


IT IS THEREFORE, this ~~21st~~ day of February, 2024, **ORDERED** that the Applicant's request for variances are GRANTED.


Frank Cavanaugh, Chairman


Louis Dorsey, Jr., Vice-Chairman


Patrick Forrest


Zakary A. Krebeck


Jeff Adelman