

BEFORE THE TALBOT COUNTY BOARD OF APPEALS

IN THE MATTER OF * CASE NO. CAVR-23-4
MICHAEL S. and. * VARIANCE REQUEST APPLICATION
MELISSA A. BISON (Critical Area and Non-Critical Area)
* * * * *

The Board of Appeals (the “Board”) held a hearing on June 26, 2023 in the Bradley Meeting Room, Court House, South Wing at 11 N. Washington Street, Easton, Maryland to consider the application of Michael and Melissa Bison (the “Applicants”). Applicants requested a Critical Area variance and nine State Highway setback variances for the property at 28536 Gilnock Road, Easton, Maryland. 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 and Planner Elisa Deflaux appeared on behalf of the County.

STATEMENT OF THE CASE

The issue is whether the Board should grant variances, which are necessary for the Applicants to make desired improvements on their property located at 28536 Gilnock Road, Easton, MD 21601. The property is partially in the Critical Area adjacent to Peachblossom Creek. The residence was primarily constructed around 1951 prior to the Critical Area law and State Highway setback requirements.

The requested Critical Area variance is necessary to permit a vertical expansion of a primary dwelling within the 100’ Shoreline Development Buffer. The Applicants intend to construct a second story deck located partially within the 100’ Buffer and approximately 90.8’ from the Mean High Water Line. Because the construction is vertical, it will not increase lot coverage within the Buffer.

The Applicants also desire to make additional improvements to their home. Setback variances are required for each improvement. Applicants request State Highway variances for: (1) a two and a half car garage at 39.2’; (2) a breezeway at 64.1’; (3) a front porch addition at 79.3’’ (4) a deck at 126.6’; (5) a patio at 134.1’; (6) a pool at 142’; (7) second story balcony expansion at 108.8’; (8) walkway at 85.3’; (9) and retention of an existing shed at 143.8’.

SUMMARY OF TESTIMONY

Bruce Armistead, of Armistead, Lee, Rust & Wright, P.A., appeared on behalf of the Applicants. Michael Bison and architect Pamela Gardner provided testimony on behalf of the Applicants.

The property is burdened by a 100' Critical Area Buffer and a 150' State Highway setback. The Buffer and setback cover almost the entire property. The Applicants believe that a vertical expansion of the dwelling is permitted by the zoning ordinance but are seeking a Critical Area variance out of an abundance of caution. The project will not result in additional net coverage within the Critical Area Buffer so mitigation is not necessary.

The Talbot County Zoning Administrator designated the primary structure on the property as nonconforming in 2021. The structure was built in 1951, which predates the Critical Area and State Highway setback requirements. Additionally, in 1996, the State constructed a bridge adjacent to the property and condemned some of the property for the construction of the bridge. Original access to the property was closed due to the bridge construction.

Mr. and Mrs. Bison have had the property for 12 years. It is intended to become their primary residence. The planned construction is necessary to modernize the home. The Bisons have obtained necessary approvals from the Health Department and have worked with architect Pamela Gardner so that construction will minimize impact on the Critical Area Buffer. Storm water management is addressed by the draft site plan.

Mrs. Gardner testified regarding the project design and need for renovation. The existing outside concrete block is problematic and in need of repair. The interior is very dated. Rooms are tiny and the waterfront property has a very poor view of the waterfront. The ceiling in the upstairs is very short and the Bisons are tall. The existing garage is inadequate. The improvements address these issues. There will be a minimal square footage increase in the structure but not within the Buffer.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In general, the Board finds that there will be minimal impact to the Critical Area and that the non-conforming property is almost entirely constrained by the State Highway setback. The renovation to the primary dwelling will improve the aesthetics and functionality of the property.

The Board addresses the standards for a non-Critical Area variances set forth in the Talbot County Code, § 190-58.3.

A. Unique physical characteristics exist, such as unusual size or shape of the property or extraordinary topographical conditions, such that a literal enforcement of the provisions of this chapter would result in practical difficulty or unreasonable hardship in enabling the applicant to develop or use the property;

The Board finds that denial of the requested State Highway setback variances would deprive the property owner of a reasonable and significant use of the property. The property was built in 1951, prior to the implementation of the setback requirement. Because of the size of the property, a majority of it is within the setback.

B. The need for the variance is not based upon circumstances which are self-created or self-imposed;

The Board finds that the Applicant has not created the conditions or circumstances that result in the necessity for a variance.

C. Greater profitability or lack of knowledge of the restrictions shall not be considered as sufficient cause for a variance;

The requested variances are not based on profitability or lack of knowledge. The Applicants are renovating the primary dwelling to better meet their needs.

D. The variance will not be contrary to the public interest and will not be a detriment to adjacent or neighboring properties;

The variance will not change the character of the neighborhood. The Board finds that the improvements will add to the aesthetics of the neighborhood. The proposal will meet the Rural Residential base zoning setbacks.

MDOT State Highway Administration, Henry Dierker stated that staff did not have any issues or concerns on the proposal. One neighbor submitted a letter in support of the Application.

E. The variance shall not exceed the minimum adjustment necessary to relieve the practical difficulty or unreasonable hardship.

The Board is satisfied that Applicant's architect has developed a plan for which the improvements made are the minimum necessary to renovate the property to suit the Applicant's needs. The proposed pool and detached garage are typical for the neighborhood. The design is such that there will not be any additional lot coverage within the Critical Area Buffer.

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 property is a grandfathered residence that exists within the Critical Area buffer. The Applicant's proposal strategically does not impact the Critical Area. The improvements will not add any net increase in lot coverage. The only expansion within the Buffer is a vertical expansion.

The Board also finds that the vertical improvement cannot be reasonably located elsewhere on 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.*

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. The residence was built before the Critical Area law and establishment of the Buffer. The improvements that the Applicant will make are reasonable improvements that would be enjoyed by many others within the same zoning district.

3. *The granting of a variance will not confer upon the property owner any special privilege that would be denied by this chapter 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.

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 Applicant has not created the conditions or circumstances that result in the necessity for a variance.

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 requests will have minimal impact on fish, wildlife, or plant habitat within the Critical Area. There will be no additional lot coverage within the Critical Area Buffer.

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

The vertical expansion over an existing deck will not encroach any further into the Critical Area. The improvements are made largely within the existing footprint of the primary dwelling, especially in that part of the residence within the Critical Area.

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.

Exhibits: Applicants relied on the following exhibits in the hearing, which were also part of the Application packet.


1. Photographs.
2. Architectural drawing.


Mr. Krebeck moved that the Applicant be granted the requested variance subject to staff conditions and the motion was seconded by Vice Chairman Dorsey. Based upon the foregoing, the Board finds, by a unanimous vote that the Applicant's requests for a variances are 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 comply with and address all Critical Area Commission comments and requirements, including the completion of a Buffer Management Plan that complies with Critical Area Law. Applicants shall provide 3:1 mitigation for any permanent disturbance within the buffer and 1:1 mitigation for any temporary disturbance within the Buffer. The Applicants will also need to provide mitigation for any tree removal associated with the project.

IT IS THEREFORE, this 17th day of July, 2023, ORDERED that the Applicant's requests for a variance is GRANTED.


Frank Cavanaugh, Chairman


Louis Dorsey, Jr., Vice-Chairman


Patrick Forrest

~~UNAVAILABLE FOR SIGNATURE~~
Zakary A. Krebeck


Jeff Adelman