

IN THE MATTER OF	*	CASE NO. CAVR-26-6
RICHARD AND KATHY SWANN	*	VARIANCE REQUEST APPLICATION (Critical Area)

The Board of Appeals (the “Board”) held a hearing on July 13, 2026, in the Bradley Meeting Room, Court House, South Wing at 11 N. Washington Street, Easton, Maryland to consider the application of Richard and Kathy Swann (the “Applicants”). Applicants requested Critical Area variances for the property at 1720 Ferry Point Court, Trappe, Maryland (“Property”). Chairman Frank Cavanaugh, Vice Chairman Louis Dorsey, Jr., Board Members Meredith Watters, Jeff Adelman, Zakary Krebeck, and Board Attorney Lance M. Young were present. Board Secretary Christine Corkell and Planner Andrew Nixon appeared on behalf of the County.

The Property is in a Modified Buffer Area that reduces the required setback from Mean High Water to 77'. The Applicants requested six (6) Critical Area Variances of the Shoreline Development Buffer to include the following:

- The Applicants also requested a Critical Area Variance of the total allowable lot coverage to increase the permissible lot coverage on the property from the previously approved 7,177 square feet (18.1%) to 7,806 square feet (19.7%) to accommodate the additional patio, landscape stone, and fence currently located on the property.

SUMMARY OF TESTIMONY

The Applicants were represented at the hearing by legal counsel, Lyndsey Ryan, Esq., who appeared alongside Applicant Kathy Swann. Land Planner Elizabeth Fink also appeared and testified on behalf of the Applicants as an expert witness.

Ms. Ryan provided an overview of the variance requests, explaining that the need to relocate the existing northern boundary fence arose because it currently encroaches beyond the Applicants' property line. She stated that the requested variances are necessary to prevent unwarranted hardship stemming largely from the unique size, shape, and configuration of the Property. Ms. Ryan emphasized that the fences are necessary for safety, both to prevent unauthorized entry into the Applicants' pool area and to keep guests and pets away from neighboring pool facilities and water hazards.

Ms. Fink testified that, in her professional opinion, the Property possesses an unusually constrained shape. The buildable envelope is minimal due to the 200-foot minimum lot width requirement, mandatory setbacks, and the Critical Area Buffer. She noted that the principal residence pre-dates the enactment of Critical Area regulations and that the location of the existing septic system further restricts potential site improvements. In her expert opinion, the current pool location is the only viable site on the Property, and both the pool and surrounding patio are relatively modest in size compared to similar installations in the surrounding area.

Mrs. Swann testified that she purchased the Property four years ago and that perimeter fencing, including a gate across the driveway, was already in place at the time of purchase. Ms. Ryan introduced an aerial photograph demonstrating that several neighboring properties possess perimeter fencing extending to the water line in a manner similar to the fence on the Property.

Ms. Ryan explained that the pool patio plans were drawn and permitted to remain within the Buffer; however, the contractor installed a rigid, squared-off edge rather than the soft edge designed, inadvertently extending the concrete 3 feet into the Buffer. She noted that reducing the patio to match the permitted boundary would leave a very small, hazardous lip, creating tripping hazards and rendering the patio functionally unusable.

With respect to the pool safety fence, Ms. Ryan explained that the fence crossed into the Buffer because the installer failed to realize that the Buffer line angled across the yard rather than running parallel to the pool.

Ms. Ryan further testified that landscape stones were added around the pool perimeter to minimize blowing debris in the water. She noted that the Applicants, like many homeowners in Talbot County, were unaware that decorative stone is classified as an impervious surface under Critical Area regulations. Additional stones were installed near the house to mitigate splash from roof runoff.

County Planner Andrew Nixon testified that, in his opinion, and based on aerial photographs, the perimeter fencing on the Property was likely constructed in the early 1980s when the Property was originally developed. He noted that building permits were not required for fences prior to the adoption of the Critical Area law in the late 1980s.

Ms. Ryan addressed the Critical Area variance criteria:

1. **Unwarranted Hardship:** Special conditions peculiar to the site create an unwarranted hardship if the requested variances are denied. The Property is nonconforming, pre-dating Critical Area regulations. Given the existing dwelling, driveway, and septic area, no alternative location exists for the modest pool. The surrounding patio and pool fence are essential safety features, and the perimeter fences existed long before the Applicants acquired the Property.
2. **Neighboring Properties:** As shown on Applicant's Exhibit 1, nearby waterfront properties feature pools, patios, and perimeter fences within the Buffer, many of which are larger than those on the subject Property.
3. **Commonly Enjoyed Rights:** Denial of the variances would deprive the Applicants of modest residential amenities commonly enjoyed by neighboring property owners.
4. **Not Resulting from Applicant Actions:** The circumstances requiring the variances (excluding the stone landscaping placement) were not self-created. The Applicants previously obtained a Certificate of Nonconformity for lot coverage that pre-existed their ownership. The pool and patio were designed to be conforming; the minor construction deviations were contractor errors that are now necessary to maintain the utility and safety of the pool. Ms. Fink added that the patio as constructed is necessary to properly anchor and operate the pool cover.
5. **Environmental Impact:** The fencing does not impair natural water flow. Removing the existing improvements would cause greater environmental disturbance than leaving them intact.
6. **Minimum Adjustment:** The site plan demonstrates that the requested relief represents the minimum adjustment necessary. The perimeter fences pre-dated current ownership, and the pool safety fence and patio are the minimum necessary to ensure compliance with applicable Building Codes and safety requirements.

The Critical Area Commission submitted a comment letter stating that the Applicants had not satisfied the unwarranted hardship standard, asserting that denial would not deprive them of reasonable and significant use of the Property, nor deny a structure permitted to others. The Commission contended that granting the variances would confer a special privilege and that the hardship was self-created because the constraints were known prior to placing structures in an environmentally sensitive area. The Commission's comments focused primarily on the proposed increase in lot coverage.

In response, Ms. Ryan reiterated that the pool fence and patio are vital safety measures, the pool is a customary amenity shared by nearby properties, and the perimeter fencing was pre-existing.

During deliberations, Board members expressed concern regarding the landscape stone and questioned whether its denial would constitute an unwarranted hardship. Following discussions with the Board, the Applicants agreed to make significant concessions:

- The Applicants voluntarily withdrew Request No. 2 (87 sq. ft. of stone) and Request No. 4 (1 sq. ft. of stone).
- The Applicants agreed to remove all landscape stone in the rear of the Property, including areas 2, 4, and C, as well as the 60 sf of stone adjacent to the path designated as Walkway B on the site plan (totaling 345 sq. ft. of stone within the variance requests).
- The Applicants agreed to relocate the existing 300 sq. ft. accessory shed onto the existing impervious driveway.
- Combined, removing 405 sq. ft. of stone and shifting the 300 sq. ft. shed onto existing impervious surface reduces total lot coverage by 705 sq. ft. (effectively reducing lot coverage below the previously approved baseline), completely eliminating the need for a lot coverage variance.
- The Applicants further agreed to modify the northern boundary fence so that no portion extends beyond the Mean High Water (MHW) line into the water.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

All members of the Board have personally visited the site, and this decision is based upon the Board's direct visual observations, the testimony of the witnesses, submitted responses to variance criteria, and the comprehensive written record.

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 the Property is uniquely constrained by its shape, its nonconforming status pre-dating Critical Area regulations, a mandatory 200-foot lot width requirement, setback lines, and the designated Modified Buffer line. Furthermore, the physical locations of the pre-existing dwelling, driveway, and septic drain field leave no other feasible or practical location on the lot for a pool and related amenities.

Regarding the perimeter fencing (Requests #5 and #6), the Board accepts the testimony of County Staff and the Applicants that these fences were constructed in the early 1980s prior to the enactment of the Critical Area law. Regarding the pool patio (Request #1) and pool safety fence (Request #3), the Board finds that these structures were designed to be conforming and that minor contractor deviations during installation caused the encroachment. The Board is persuaded by expert testimony that reducing the patio edge by 3 feet would create a dangerous tripping ledge, render the patio functionally unsafe, and prevent the proper installation and operation of a necessary safety pool cover. The safety fence is likewise required under the Building Code to

secure the pool area. Denying these minimal encroachments would result in an unwarranted hardship.

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.*

It is common for owners of waterfront residential properties in the Limited Development Area (LDA) that are less than one acre in size to maintain modest outdoor recreational amenities, including pools, safety fencing, and patio areas. Under Talbot County Code § 190-15.6(C.4.a) Table III-3, qualified lots under one acre may receive additional lot coverage allowances via administrative approval. The subject Property was previously granted an additional lot coverage baseline under Request for Planning Officer Determination RTPO-25-4 (Certificate of Nonconformity). Denying the Applicants the ability to retain a functional pool patio and safety fence—which are standard features throughout the immediate waterfront neighborhood—would deprive them of rights commonly enjoyed by neighboring property owners.

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.*

Swimming pools, protective pool fencing, and boundary fences are typical accessory features throughout the surrounding LDA zoning district. Evidence and aerial photography introduced into the record (Applicant's Ex. 1) confirm that multiple nearby waterfront properties maintain similar perimeter fencing extending to the shoreline, as well as pool facilities within the Buffer area. Because the Applicants are seeking only customary residential safety and utility structures, and have eliminated all non-essential landscaping stone, granting the remaining variances confers no 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 primary physical constraints on the Property pre-date the Applicants' ownership, including the location of the residence, septic field, and original perimeter fencing constructed in the early 1980s. The Applicants followed proper administrative channels by obtaining building permit SWM-25-13 prior to constructing the pool. The minor 30 sq. ft. patio encroachment and 40.5 linear ft. pool fence encroachment resulted from good-faith contractor construction errors regarding the angled Buffer line, rather than intentional disregard of Critical Area regulations by the Applicants. While the Board considers contractor error to be the responsibility of the home owner, these requests are requests that should be granted even if no error had occurred.

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 physical encroachments associated with Requests #1, #3, #5, and #6 are minor in scale (e.g., a 30 sq. ft. patio overhang and narrow fence lines). The Board finds that requiring the physical removal or demolition of the concrete patio edge and fence posts would cause greater ground disturbance and potential runoff into the waterway than allowing them to remain. Furthermore, the Applicants have agreed to remove the section of boundary fence extending past the Mean High Water Line into the water body, restoring natural shoreline water flow. To further protect water quality and habitat, the Applicants paid an assessed civil penalty, resolved zoning violation notices, and agreed to execute a Buffer Management Plan providing 4:1 mitigation plantings for all square footage associated with the violation.

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

Through substantial concessions made during the hearing, the Applicants demonstrated that the requested relief is the minimum adjustment necessary. By voluntarily withdrawing Requests #2 and #4, removing 405 sq. ft. of stone, relocating a 300 sq. ft. shed onto the existing driveway, and shortening the waterward fence to the Mean High Water line, the Applicants reduced overall lot coverage by over 700 sq. ft. This complete elimination of the lot coverage variance request leaves only the bare minimum structural variance requests (#1, #3, #5, and #6) essential to satisfy Building Code safety requirements and ensure the operational utility of the pool.

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 by Andrew Nixon.
8. Sign maintenance agreement and picture of signs posted.
9. Critical Area Commission Comments.
10. Authorization letter.
11. Independent Procedures Disclosure and Acknowledgement Form.
12. Aerial photo.

13. Photos.
14. Site Plan.
15. Mitigation Plan.
16. Copy of Request for Planning Officer Determination RTPO-25-4.
17. Copy of Violation/Zoning Violation/Order to Abate, 5/7/26.
18. Copy of Assessment of Civil Penalty and Receipt, 5/7/26.
19. Applicant Ex. 1 (Aerial photo).

The Applicants voluntarily withdrew request 2 and 4. Vice Chairman Dorsey made a motion to approve the requests 1,3,5, and 6 subject to staff conditions. The motion also includes the following conditions:

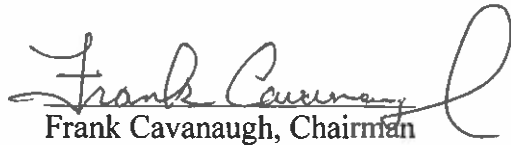
- A. Within 6 months, the Applicants shall remove all landscape stone in the rear of the Property, including areas 2, 4, and C, as well as the 60 sf of stone adjacent to the path designated as Walkway B on the site plan (totaling 345 sq. ft. of stone within the variance requests).
- B. Within 6 months, the Applicants shall move the existing shed to be placed on the existing impervious driveway.
- C. Within 6 months, the Applicants shall remove existing fence that extends beyond the Mean High Water Line.

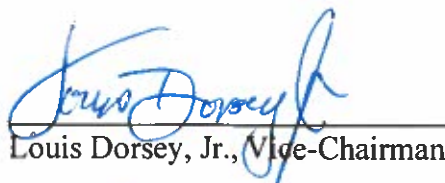
Mr. Adelman seconded the motion, and it was unanimously approved.

Based upon the foregoing, the Board finds, by a unanimous vote, that the Applicant's requests for variances 1, 3, 5, and 6 are granted subject to the forementioned conditions and the following staff conditions:

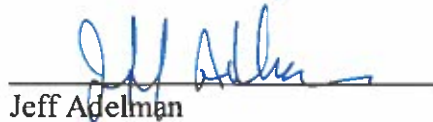
1. The Applicants shall make an application to the Office of Permits and Inspections, and follow all rules, procedures, and construction timelines as outlined regarding new construction and the after the fact amendment to the existing permit SWM-25-13.
2. The Applicants shall commence construction of the proposed improvements within eighteen (18) months of the date of the Board of Appeals approval.
3. The Applicants shall complete a 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 4th day of August 2026, **ORDERED** that the Applicant's requests for variances are GRANTED.


Frank Cavanaugh, Chairman


Louis Dorsey, Jr., Vice-Chairman


Meredith Watters


Jeff Adelman


Zakary Krebeck