

BEFORE THE TALBOT COUNTY BOARD OF APPEALS

IN THE MATTER OF	*	CASE NO. CAVR-26-11
SMS DEVELOPERS, LLC	*	VARIANCE REQUEST APPLICATION
c/o MARY ANN SHORTALL	*	(Critical Area and Non-Critical Area)
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The Board of Appeals (the “Board”) held a hearing on August 10, 2026, in the Bradley Meeting Room, Court House, South Wing at 11 N. Washington Street, Easton, Maryland to consider the application of SMS Developers, LLC (the “Applicant”). Applicant requested Critical Area and Non-Critical Area variances for the property at 6347 Bozman Neavitt Rd., Neavitt, 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.

STATEMENT OF THE CASE

The Applicant requested two (2) Critical Area Variances of the 100' Shoreline Development Buffer and two (2) Non-Critical Area Variances to permit a 153 SF deck and a 22 SF extension of a legal non-conforming walkway. At no point does this lot meet the 100' minimum lot width requirement for the Village Residential (VR) zoning district. This property is in a Modified Buffer Area which reduces the 100' Shoreline Development Buffer to 60'.

SUMMARY OF TESTIMONY

The Applicant was represented at the hearing by Land Planner Elizabeth Fink who appeared with the Applicant representative Mary Ann Shortall.

Mrs. Fink explained that the Applicant was replacing the subject landing and steps, which were rotting, when the County issued a stop work order. The repair and replacement decking was in-kind, so Applicant wrongfully assumed that further approval was not necessary for the boardwalk that was originally approved by Board of Appeals decision Appeal No. 1446.

The Applicant seeks four variances. The landing and steps were longer than is previously requested and so the request reduces lot coverage. They are also setback further from the Mean High Water Line. The steps are now ascending up the side of the structure instead of the side closer to the water. The primary difference in the design of the boardwalk is that it now runs all the way around the structure, so it encroaches the side setback of the Property.

Mrs. Fink explained that the lot itself does not meet any setback. It is a nonconforming property where no development could occur without a variance, including the Buffer. The improvements were not previously compliant with all building code requirements, and the

replacement improvements will be compliant. The improvements are also subject to a planting plan/mitigation, which will be beneficial to the Critical Area.

County Planner Andrew Nixon testified that there is no increase in lot coverage, so mitigation is only necessary for the violations.

Applicant testified that the walkway sits 7" above the ground with dirt underneath it.

Mrs. Fink summarized Applicant's position regarding the Critical Area criteria. The unwarranted hardship is derived from the necessity to replace the steps and walkway replacement, which were rotting and unsafe. There is no available building envelope on the Property because of its nonconforming size and shape, which do not allow for any improvement on the Property.

Other property owners are allowed to repair and replace necessary attachments to their properties within the zoning district. It does not confer special privilege. It will be a minor modification to an existing walkway and steps. Mr. Nixon confirmed that the replacement is considered in-kind because it is smaller in size.

The circumstances creating the need for variances have existed prior to the Critical Area laws. The original improvements were approved by Board of Appeals approval in 2007. The required plantings will enhance the environment. Finally, Applicant contends that the relief is the minimum necessary in order to repair and replace the walkway and stairs safely and in compliance with the building code.

The Board accepted Applicant's written answers to the Non-Critical Area criteria, has reviewed them, and considered them in its decision hereto.

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 finds, generally, that the requests are minimal, reasonable, and necessary for a safe ingress and egress from the primary dwelling structure.

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 physical layout of the Village of Neavitt is characterized by exceptionally small, historical lots that are vulnerable to coastal flooding. The Property fronts on Bozman Neavitt Road, a state highway that imposes a heightened 50-foot front building restriction line. Because this lot has a width of only 49 feet, failing to meet the 100-foot

minimum lot width mandated for the Village Residential (VR) zoning district, the applicable front and side setbacks overlap to eliminate any buildable envelope. Although the site benefits from a Modified Buffer Area designation that reduces the standard 100-foot Shoreline Development Buffer to 60 feet, this reduced buffer still completely encumbers the residential area, rendering the existing dwelling nonconforming to front, side, and shoreline setbacks simultaneously. As established in testimony by Land Planner Elizabeth Fink, the existing landing and steps were rotting, structurally unsafe, and non-compliant with building codes. Strict literal enforcement of the Critical Area provisions would completely bar the Applicant from repairing or replacing basic, safe entry stairs and walkways, creating 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.*

Decks, steps, and access walkways are standard residential features enjoyed by property owners throughout the VR zoning district and across Talbot County. While the reconfigured walkway includes a minor 22 SF extension to wrap around the dwelling, the overall surface area of the main deck is being reduced. As corroborated by County Planner Andrew Nixon, this redesign reduces waterward encroachment into the 60-foot Buffer and yields an overall net reduction in total lot coverage across both the Buffer and the entire parcel. Denying the Applicant the ability to maintain a basic, code-compliant access structure while simultaneously achieving a net reduction in lot coverage would deprive the owner of basic rights commonly enjoyed by neighboring residential properties.

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 no special privilege is being granted. Had the Applicant secured a building permit prior to initiating construction, the County could have processed the project as a minor modification of an existing nonconforming structure. This administrative process would have allowed the deck replacement under a standard "Pervious Deck Agreement," which excludes qualified deck surfaces from calculated lot coverage. Although the after-the-fact procedural posture prevents administrative pervious treatment, the Applicant has voluntarily committed to satisfying all criteria of the Pervious Deck Agreement, specifically maintaining ¼-inch gaps between deck boards, leaving raw soil beneath the elevated surface, and installing native mitigation plantings around the perimeter. Because Mary Ann Shortall testified that the walkway sits 7 inches off the ground directly over dirt, and because overall coverage is shrinking, authorizing this reconfigured structure grants no privilege beyond what is routinely available to compliant properties.

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 spatial constraints of the Property existed decades before current Critical Area requirements. The Applicant acquired the Property in 1989 and replaced the primary residence in 1996 pursuant to legal approvals. The stop work order was issued when the Applicant began replacing the rotted stairs and boardwalk under the mistaken assumption that in-kind repairs pulling development away from the water were covered by Board of Appeals Decision Appeal No. 1446. The basis of the variance request is the Property's buffer encumbrances rather than self-created conditions.

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 the project will produce a net ecological benefit for the Critical Area. Replacing decayed structural timber with code-compliant materials ensures structural stability without disturbing surrounding soils. The reconfigured layout pulls the stairs back from the MHW Line, ascending along the side of the house rather than extending toward the water. Furthermore, because the overall lot coverage within the Buffer is reduced, water quality will be protected. The formal planting plan prepared by Fink, Whitten & Associates will introduce native plantings into the Buffer, satisfying violation mitigation goals and advancing the environmental intent of the Critical Area Program.

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

The deck is being reduced to 153 SF, and the 22 SF walkway extension serves only to square off the walkway with the reconfigured side stairs. Because the total square footage of structural development within the Buffer decreases, the Board finds that the request represents the minimum spatial 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.

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 lot is 49 feet wide. There is a 100-foot minimum lot width requirement of the VR zone. Standard 20-foot side yard setbacks would consume 40 feet of the total 49-foot width, leaving a hypothetically buildable strip of only 9 feet. Compounding this, the front setback from State-maintained Bozman Neavitt Road is expanded from the standard 25 feet to 50 feet. When overlaid with the 60-foot Modified Critical Area Buffer, literal enforcement of the setback text makes any unvaried use or maintenance of the residence impossible, creating practical difficulty.

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

The practical difficulty in utilizing this parcel stems from historical subdivision boundaries and state highway setback mandates established long prior to the Applicant's acquisition or current repairs. The physical dimensions of the 49-foot-wide lot were established decades ago.

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

This application is driven by structural necessity and home safety rather than financial gain.

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

The proposed improvements will have no adverse impact on surrounding properties or the public. The reconfigured deck and walkway maintain existing setback lines relative to property borders.

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

The Applicant has restricted the scope of the project. The replacement walkway is in-kind, with the addition of a 22 SF section closest to the water designed to connect the walkway cleanly to the reconfigured side stairs. Because this minor adjustment yields a net reduction in overall deck footprint and lot coverage, the Board finds it to be the minimum variance required to relieve the practical difficulties of the site.

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. Non-Critical Area variance standards.
8. Staff Report by Andrew Nixon.
9. Sign maintenance agreement / Sign Affidavit.
10. Critical Area Commission Comments.
11. Authorization letter.
12. Independent Procedures Disclosure and Acknowledgement Form.
13. Aerial photo.
14. Photos 1 through 14.
15. Plat prepared by Fink, Whitten & Associates, dated 12/17/25.
16. Mitigation Plan, 2 pages, prepared by Fink, Whitten & Associates.
17. Deck detail Plans.
18. Elevations and Deck Plans.
19. Plat of Lot A and Lot B.
20. BOA Decision Appeal No. 1446.
21. Petition of Judicial Review, Case No. 20-C-07-005957.
22. Zoning Violation Letter/Order to Abate from Todd Powers, dated 7/10/26.
23. Assessment of Civil Penalty with Receipt for \$200, paid on 7/21/26.

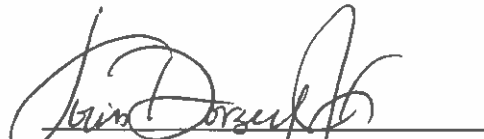
Vice Chairman Dorsey made a motion to approve the requests subject to staff conditions. Mrs. Watters seconded the motion, and it was unanimously approved.

Based upon the foregoing, the Board finds, by a unanimous vote, that the Applicant's requests for variances are 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 comply with and address all Critical Area Commission comments.
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.

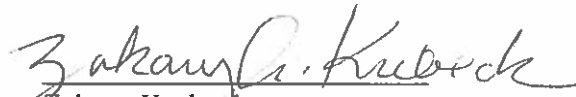
IT IS THEREFORE, this 25th day of August 2026, **ORDERED** that the Applicant's requests for variances are GRANTED.


Frank Cavanaugh, Chairman


Louis Dorsey, Jr., Vice-Chairman


Meredith Watters


Jeff Adelman


Zakary Krebeck