

BEFORE THE TALBOT COUNTY BOARD OF APPEALS

IN THE MATTER OF * CASE NO. CAVR-23-8
SCOTT AND KERRY * VARIANCE REQUEST APPLICATION
CAVENDER (Critical Area)

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The Board of Appeals (the "Board") held a hearing on September 18, 2023 in the Bradley Meeting Room, Court House, South Wing at 11 N. Washington Street, Easton, Maryland to consider the application of Scott and Kerry Cavender (the "Applicants"). Applicants requested a Critical Area variance for the property at 8004 Bloomfield Road, Easton, Maryland. Chairman Frank Cavanaugh, Vice Chairman Louis Dorsey, Jr., Board Members Paul Shortall, Jeff Adelman, Zakary Krebeck, and Board Attorney Lance Young were present. Board Secretary Christine Corkell, Assistant Planning Officer Bryce Yelton, and Planner Andrew Nixon appeared on behalf of the County.

STATEMENT OF THE CASE

The issue is whether the Board should grant a Critical Area variance, which is necessary for the Applicant to replace a nonconforming two-story primary dwelling on the property located at 8004 Bloomfield Road, Easton, Maryland. The primary dwelling is in the Critical Area Shoreline Development Buffer ("Buffer"). The existing dwelling is in a state of disrepair.

The proposed replacement dwelling will reduce the encroachment of the Buffer while maintaining a similar size and location. The proposed replacement dwelling, patio, and driveway configuration will result in a 27 square foot reduction of the overall footprint in the Buffer.

SUMMARY OF TESTIMONY

Zach Smith, of Armistead, Lee, Rust & Wright, P.A., appeared on behalf of the Applicant. Mr. Smith explained that the variance is required to demolish and rebuild the residence in a similar location, but not within the exact footprint. The dwelling is legally nonconforming and its existence predates the Critical Area law.

The County ordinance allows the rebuilding of the dwelling "in-kind" without a variance. The design of the new home has minor variations so it is not technically in-kind. The dwelling will be further from Shipshead Creek and will result in a reduction of lot coverage in the Buffer. A new septic system will incorporate Best Available Technology and will be placed outside of the Buffer.

The Critical Area Commission has opined that the dwelling could potentially be moved completely outside of the Buffer. According to Mr. Smith, the property is constrained so that the dwelling cannot feasibly be placed outside of the Buffer. Shipshead Creek lies on two sides of the property and there is an expanded buffer along one side of the property. The existence of mature canopy trees and slopes on the property further limit where the dwelling can be situated. Further, the proposed septic field is moved further from the creek in the area where the dwelling could alternatively be placed.

Scott Cavender, the property owner, provided testimony. The Cavenders purchased the property in 2017 with appreciation for a unique beech tree on the property and a cabin in the dwelling that dates to the 1700s. The existing conditions of the house are such that it requires a rebuild, as opposed to a remodel. The rebuild will be mostly identical to the original dwelling but will incorporate some more modern features. The only noticeable change to the property from the outside, based on preliminary architectural plans, is the rotation of the home. It will be moved back approximately 7 feet from the creek putting part of the house outside of the Buffer. The architectural plan utilizes the existing driveway. The Cavenders have made significant effort to ensure that mature trees on the property are maintained.

Mr. Cavender testified that moving the dwelling outside of the Buffer would also require removal of trees, and tearing up other accessory dwellings, which will cause disturbance to the Critical Area. The Applicants will submit a stormwater management plan in connection with obtaining required permits. Brett Ewing, of Lane Engineering, testified that the project will not require enhanced stormwater management design.

Dominic Cappella, a design engineer, testified regarding the need for the replacement of the dwelling. He provided credible testimony that there is extensive water intrusion, mold, mildew, and termite damage to the existing dwelling. The dwelling cannot be built in-kind because the ceiling areas of some areas of the home are very low. The reconfiguration moves some of the dwelling outside of the Buffer and reduces lot coverage in the Buffer.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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 certified nonconforming

residence that exists within the Critical Area Buffer. The Talbot County ordinance would permit an in-kind replacement. The proposed replacement is nearly an in-kind replacement with minor modifications. The reconfiguration will move the dwelling further away from the Buffer and reduce lot coverage in the Buffer.

It is not practical to require the Applicants to move the entire dwelling outside of the Buffer. It has accessory structures, such as the pool, garage, and driveway, which would also be required to be moved. Additionally, because of the placement of the new septic system and canopy trees on the parcel, it would be impractical to move the dwelling elsewhere on the parcel. The new septic system, using Best Available Technology, and being placed further away from the Buffer, are also beneficial to the Critical Area.

In short, while it is technically possible, on paper, to relocate the dwelling completely outside of the Buffer, the Board finds that the proposed location is the best location due to existing impediments on the Property and the benefits the reconfiguration will provide to the Critical Area.

- 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 replacement dwelling is reasonable and would be enjoyed by many others within the same zoning district.

The County zoning ordinance permits “in-kind” replacements. The Board finds that the modifications to the proposed dwelling are minimal and the reconfiguration is beneficial to the Critical Area.

- 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. Single family detached homes are permitted in the RC Zone.

- 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. The property was developed prior to the enactment of the Critical Area Law. The need for a variance is created by site constraints (size and configuration) and regulatory changes that have occurred since the property was created and developed.

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 will have minimal impact on fish, wildlife, or plant habitat within the Critical Area. There will be a net decrease in lot coverage within the Critical Area Buffer and further away from the Buffer.

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

The variance will permit the construction of the replacement dwelling further away from the Buffer and reduce lot coverage. The variance will relieve the unwarranted hardship while also reducing impacts to sensitive areas.

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 sheet.
7. Staff Report.
8. Sign maintenance agreement.
9. Critical Area Commission Comments.
10. Authorization letter.
11. Independent Procedures Disclosure and Acknowledgement Form.
12. Aerial photo.
13. Floor plans existing and proposed.

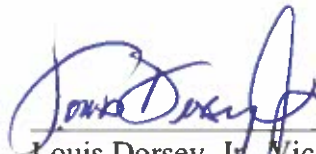
- 14. Elevations.
- 15. Critical Area lot coverage computation worksheet.
- 16. Photos (4 pages).
- 17. Site Plan prepared by Lane Engineering, LLC.

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

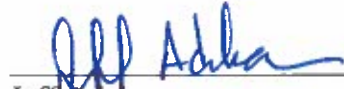
- 1. The Applicant shall make an application to the Office of Permits and Inspections, and follow all rules, procedures, and construction timelines as outlined regarding new construction.
- 2. The Applicant shall commence construction of the proposed improvements within eighteen (18) months of the date of the Board of Appeals approval.

IT IS THEREFORE, this 10th day of October, 2023, **ORDERED** that the Applicant's requests for a variance is GRANTED.


Frank Cavanaugh, Chairman


Louis Dorsey, Jr., Vice-Chairman


Paul Shortall, Jr.


Jeff Adelman


Zakary Krebeck