

IN THE MATTER OF	*	CASE NO. CAVR-25-7
TWO NINETEEN FEDERAL LLC	*	VARIANCE REQUEST APPLICATION (Critical Area)

The Board of Appeals (the “Board”) held a hearing on August 18, 2025, in the Bradley Meeting Room, Court House, South Wing at 11 N. Washington Street, Easton, Maryland to consider the application of Two Nineteen Federal LLC (the “Applicant”). Applicant requested a Critical Area variance for the property at 25815 Avonia Lane, Royal Oak, 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 a Critical Area variance of the 100-foot Shoreline Development Buffer (“Buffer”) to construct a 4-foot tall open fence within the 64’ modified Buffer area starting at the Mean High-Water Line and extending a total of 342 feet along the southern and eastern property line. The fence will be placed 2 feet inside the southern property line and will include a 4’H x 20’L double swing gate at the entrance.

SUMMARY OF TESTIMONY

The Applicants were represented by Attorney Mark Gabler. The Applicant seeks to construct a fence partially within the Buffer. The proposal is for a 4' high chain link fence with a gate. The need for a fence arises from the unique use of the property. It is within a mixed use area where the Applicant conducts a marine construction business and is adjacent to residential uses. Applicant's insurance company has requested the fence for safety concerns. Individuals walk and drive on to the Property who should not be there as there are safety risks on the Property.

Sean Callahan of Lane Engineering prepared the site plan and testified. He described the site plan details and described the Property for the Board members.

Applicant's principal, Mark Hill, testified. Applicant and the Pullen family, who own the adjacent residential property, have been in litigation over the property boundary. The fence was agreed upon as a result of that litigation. A consent order was submitted as Applicant's Exhibit 2 at the hearing.

Applicant presented Applicant's Exhibit 1, which is an exhibit from its insurance broker requesting the fence. Mr. Hill contends that insurance for a marine business is hard to procure. There is over a million dollars in equipment on the Property, including barges, bulkheads, an excavator, backhoe, and a 6 wheel flatbed.

Mr. Hill testified that there is a significant amount of unwanted traffic onto the Property. He fears a car could drive right off of a bulkhead into the water. Applicant received a special exception for the use and has spent approximately \$25,000 in landscaping to satisfy the conditions of that special exception; however, the landscaping does not prevent foot traffic on to the Property.

Attorney Anne Ogletree represented the Pullen family who own adjacent property. She described the history of a right of way between the two properties, which was created in 1943 for the purpose of partitioning properties owned by a Turner family in Bellelvue. She provided a deed that shows the right of way and its intended purpose of ingress/egress for four properties. Each of those properties are now in separate ownership. Mrs. Ogletree testified that the fence is useful for her clients as well and will help resolve trespass issues for both parties. She explained that the Applicant and her clients have agreed that the Pullens can choose a fence that is more aesthetic and the Pullens will pay the difference in cost for the portion of fence that goes along the Pullen property.

County Planner Andrew Nixon testified that chain link fences are included as a "closed fence" under the Talbot County Code § 190-12.3.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

All Board members have visited the site, and this decision is based upon the Board's observations, as well as the testimony and written responses submitted by the Applicants and interested parties.

This is an exceptional case, and the Board approves the requested variance with due consideration of the specific facts set forth in this decision. This approval is granted, primarily, because of the unique nature of a marine construction business neighboring residential uses and the safety risks that this situation presents. The Board's decision is granted, in part, because of the potential loss of insurance, which benefits not only the Applicant but any guest or trespasser on the Property.

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 a variance would result in an unwarranted hardship. The Property use is marine/construction and is adjacent to residential use property. The Applicant provided credible testimony of the dangers that the Property has to trespassers. The Pullen family has agreed, by consent order, to a fence between their property. Further, the Applicant risks losing insurance because of the safety concerns. The Board further finds that there is no better location for the fence for its intended purpose.

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 Property is used for marine construction purposes. The denial of a variance could result in denial of insurance and the Applicant would not be able to use the Property for its intended purposes as a result.

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 considers this circumstance to be unique. Most residential properties in Talbot County do not adjoin Properties such as the Property at issue. The safety concerns are unique. The granting of a variance does not confer a special privilege, largely because the purpose of the variance is for the protection of the general public.

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 Property has been used for marine purposes for decades, prior to the enactment of the Critical Area law. Improvements on the site are legally nonconforming and permitted.

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 proposed fence will be placed in the Modified Buffer over existing impervious coverage (gravel driveway). The construction of a fence will not have additional adverse impact on water quality or wildlife habitat.

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

The proposed fence will be open fence with posts that are not secured with concrete. Any other proposal would require removal of a portion of the gravel driveway in an area susceptible to flooding and saltwater intrusion. Open style fencing four feet in height or less are exempt from setbacks and do not require a permit. The Board is satisfied that the proposed fence is the minimum necessary to create a safety barrier for the commercial maritime uses.

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 dated 3/13/24.
10. Authorization letter.
11. Independent Procedures Disclosure and Acknowledgement Form.
12. Aerial photos.
13. Photos (4) of the property.
14. Board of Appeals Decision No. 17-1665.
15. Authorization letter from Mike Pullen for his Attorney Anne Ogletree.
16. Plat by Lane Engineering, LLC, Job No. 200080.
17. Photos (2) of fences.
18. Applicant Exhibit 1 – Email from insurance broker.
19. Applicant Exhibit 2 – Consent order.
20. Interested Party Exhibit 1 – deed.

Mr. Adelman moved that the Applicant be granted a variance with the condition that the approved fence will be a 4' high open fence such as the fence proposed by the interested party Michael Pullen, through his attorney Anne Ogletree, or any fence agreed upon by the same parties, on the side of the property that abuts the Pullen property. The fence on all other sides of the Property may be a chain link fence as proposed by the Applicant. The Applicant must also meet Critical Area guidelines and staff conditions. 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 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 Applicants shall comply with and address all Critical Area Commission requirements.

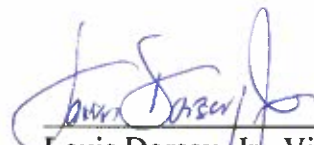
3. The Applicant shall commence construction of the proposed improvements within eighteen (18) months of the date of the Board of Appeals approval.

4. The approved fence will be a 4' high open fence such as the fence proposed by the interested party Michael Pullen, through his attorney Anne Ogletree, or any fence agreed upon by the same parties, on the side of the property that abuts the Pullen property. The fence on all other sides of the Property may be a chain link fence as proposed by the Applicant.


5. 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 9th day of September 2025, **ORDERED** that the Applicant's requests for a variances are GRANTED.


Frank Cavanaugh, Chairman


Louis Dorsey, Jr., Vice-Chairman


Meredith Watters


Jeff Adelman


Zakary Krebeck