

**BEFORE THE TALBOT COUNTY BOARD OF APPEALS**

IN THE MATTER OF \* CASE NO. CAVR-23-3  
25876 ROYAL OAK, LLC \* APPLICATION FOR CRITICAL  
\* AREA VARIANCE  
\*

\* \* \* \* \*

The Board of Appeals (the “Board”) held a hearing on May 15, 2023 in the Bradley Meeting Room, Court House, South Wing at 11 N. Washington Street, Easton, Maryland to consider the application of 25876 Royal Oak, LLC (the “Applicant”). The Applicant requested a Critical Area variance on the property located at 25925 Acorn Road, Royal Oak, Maryland. Chairman Frank Cavanaugh, Board Members Paul Shortall, Greg Gannon, Patrick Forrest, Zakary Krebeck, and Board Attorney Lance M. Young were present. Board Secretary Christine Corkell and Planner Bryce Yelton appeared on behalf of the County.

**STATEMENT OF THE CASE**

The Applicant requested a Major Variance of the 100’ Shoreline Development Buffer and Expanded Buffer for Hydric Soils (Buffer), to permit the replacement of an existing non-conforming one-story dwelling located entirely within the Buffer. The property is further identified as Tax Map 41, Grid 1, Parcel 145.

The replacement dwelling will be a two-story dwelling. If the replacement dwelling were “in kind,” meaning identical to or smaller than the original structure in dimensions, the ordinance would not require a variance. Because the proposed replacement dwelling does not follow the same footprint, this Board must grant a variance. The two-story dwelling is proposed to be located no closer than 22’ from the Mean High Water Line and the overall site improvements will result in a net reduction of approximately 995 square feet of lot coverage within the Buffer.

**SUMMARY OF TESTIMONY**

The Applicant was represented by attorney Willard C. Parker, II, of the law firm Parker Counts, LLC. Brett Ewing, of Lane Engineering, and Andy Warner, project Manager for the Applicant, provided testimony for the Applicant.

Mr. Parker explained that the existing dwelling was built in 1969. The one-story dwelling will be replaced with a two-story dwelling but it will not be bigger in square footage. The benefits of the replacement are that it will be modern and building code compliant. The new dwelling will be pushed back further from the Mean High Water Line, reducing cover in the Buffer by 995 square feet. The Critical Area Commission supports the application, in large part, because it reduces coverage within the Buffer.

The property is related to, and has common ownership with The Oaks Waterfront Inn. The existing building is currently used as an employee residence. It will continue to be used for that purpose. The goal is to convert the structure into a more modern and safer (code compliant) structure.

Mr. Ewing testified that the existing conditions of the structure are derelict and within a flood zone. The property is 31,747 square feet and the structure is located completely within the Buffer. The existing structure is 14' from the Mean High Water Line. After the improvements are completed, it will change the footprint vertically but not horizontally. The new structure will be 22' from the Mean High Water Line. The new structure will push the structure outside of the special flood hazard area. According to Mr. Ewing, the structure could not be replaced entirely outside of the Buffer. The Critical Area Commission recommends a Buffer Management Plan.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Board finds generally that the proposal is modest, in character with the neighborhood, and will further maintain the beauty of the neighborhood. It will improve the aesthetics of the property and improve stormwater runoff conditions on the property.

The Board addresses the standards for a Critical Area variance set forth in the Talbot County Code, § 190-58.

- 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.*

A Critical Area variance is considered on the basis of whether the applicant has shown that there will be an “unwarranted hardship” without a variance. An unwarranted hardship means “without a variance, an applicant would be denied reasonable and significant use of the entire parcel or a lot for which the variance is requested.” Md. Code Ann., *Nat. Res.*, § 8-1808 (d). In addition, the applicant has the burden of showing that such a use cannot be accomplished elsewhere on the property without a variance.

The Board finds, based on testimony and exhibits presented, that the Applicant has shown there will be an unwarranted hardship and that the use cannot reasonably be accomplished elsewhere on the property. The parcel is almost entirely within the Buffer and Expanded Buffer for Hydric soils. Development outside of the Buffer is impossible. The property is unique in that it is within the Buffer and expanded Buffer for Hydric soils, to the extent that any construction, other than in-kind, would require a variance.

The Board bases its decision, in part, on the letter of support received by the Critical Area Commission. The Critical Area Commission and this Board are persuaded by the fact that the improvement will reduce coverage within the Critical Area Buffer.

- 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.*

Without a variance, the Applicant cannot construct the replacement dwelling, which is an improvement of the existing dwelling. Other property owners are permitted to have a single family residence on their property. The request is consistent with other waterfront properties in the VH 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 granting of a variance will not give special rights to the Applicant as similarly situated property owners are allowed to have a single family residence and there is already a legal nonconforming residence on the property that is being replaced.

- 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 request will benefit impact on fish, wildlife, or plant habitat within the Critical Area. The new dwelling will reduce encroachment into the Buffer.

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

The Applicant does not intend to encroach further into the Buffer than what currently exists and there will be an overall reduction of lot coverage. The replacement will also remove the dwelling from the regulatory floodplain.

- 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 residence is a nonconforming structure.


Mr. Krebeck moved that the Applicant be granted the requested variance subject to staff conditions and the motion was seconded by Mr. Gannon. Based upon the foregoing, the Board finds, by a unanimous vote that the Applicant's request 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 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.
3. 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 5<sup>th</sup> day of June, 2023, **ORDERED** that the Applicant's requests for a variance is GRANTED.

  
Frank Cavanaugh, Chairman

  
Patrick Forrest

  
Paul Shortall, Jr.

  
Zakary A. Krebeck

  
Greg Gannon