

IN THE MATTER OF	*	CASE NO. CAVR-25-4
MARY AND ARCHIBALD HOXTON	*	VARIANCE REQUEST APPLICATION (Critical Area)

The Board of Appeals (the “Board”) held a hearing on June 16, 2025, in the Bradley Meeting Room, Court House, South Wing at 11 N. Washington Street, Easton, Maryland to consider the application of Mary and Archibald Hoxton (the “Applicants”). Applicants requested a Critical Area variance for the property at 9345 Teal Court., St. Michaels, Maryland (“Property”). Chairman Frank Cavanaugh, Vice Chairman Louis Dorsey, Jr., Board Members Greg Gannon, Jeff Adelman, Zakary Krebeck, and Board Attorney Lance Young were present. Board Secretary Christine Corkell and Planner Andrew Nixon appeared on behalf of the County.

STATEMENT OF THE CASE

The Applicants requested a Critical Area variance of the 100-foot Shoreline Development Buffer (“Buffer”) to remove an area of patio and driveway within the Buffer to construct a swimming pool patio in the same location.

SUMMARY OF TESTIMONY

The Applicants were represented by Attorney Zach Smith, who presented facts and legal arguments for their requested variance. The variance seeks to remove a paver patio and a portion of a legal nonconforming driveway within the Buffer to construct a new patio in the same area. This new patio will adjoin a swimming pool, which does not require a variance.

Talbot County code enforcement determined the existing paver patio was not legal because the Applicants constructed it after purchasing the property in 2016. The patio replaced a legal nonconforming driveway. However, because the patio was deemed a different use, County staff have opined that the different use for impervious surface requires a variance.

The Applicants have paid a fine for the coverage and now seek a variance for the patio. They also request to extend the patio over portions of the existing driveway to connect to a new swimming pool located outside the Buffer. While the Applicants would prefer the patio between the house and the Miles River, they propose the current location because the surface is already covered. They will also need to reconfigure the garage to accommodate the proposed patio. The Applicant's proposal seeks to replace one impervious surface with another and remove some existing driveway. A plat submitted at the hearing depicted the proposed project, showing a net decrease in lot coverage.

County Planner Andrew Nixon testified that the driveway is legal nonconforming as it was built in 1988, prior to the Critical Area law. The primary dwelling's foundation is also a legal nonconforming distance from the Mean High-Water Line ("MHWL"). Mr. Nixon further testified that lot coverage is not an issue for the Property; the variance is needed due to a change in use for the covered area.

Mr. Smith submitted written responses to the standards for Critical Area variances set forth in the Talbot County Code, which the Board has reviewed and considered in its decision. Mr. Smith offered the following additional testimony at the hearing:

He argued an unwarranted hardship exists due to the legal nonconforming nature of the Property, with the house and outdoor living spaces located within the Buffer. He testified that the proposed patio location is optimal, considering setbacks and existing lot coverage. Granting the variance will not provide the Applicants a special privilege, as most other homes in the neighborhood have similarly situated pools and patios. The need for a variance was not self-created, except for the change in use from a driveway to a patio. The variance will not adversely affect water quality because it will reduce lot coverage and avoid new coverage closer to the MHWL. The Applicants are requesting the minimum relief necessary by staying within existing nonconforming hardscapes and not placing the swimming pool within the Buffer. They are also removing a portion of the driveway to complete the project.

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. The requested variance is for existing lot coverage that the Board considers an intensification of a legal nonconforming use. The requested variance will not materially impact the Buffer because there will be a net decrease in coverage. The Applicants are constructing the swimming pool outside of the Buffer and using existing coverage to complete the patio is a benefit to the environment. The Board finds that efforts to reduce lot coverage and further encroachment into the Buffer is commendable.

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 existing impervious surface was legally nonconforming, and it is only being used differently. The grant of a variance will permit the Applicants to use existing legal nonconforming lot coverage while reducing total impervious cover in the Buffer. Without a variance, the Applicants would be deprived of a patio adjacent to the pool that the Applicants have placed outside of the 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.*

Pools, patios, and other outdoor use areas are common features for homes in the Rural Residential zoning district and other waterfront homes. It is common in Talbot County for homes built within or near the Buffer to seek Critical Area variances when features on the Property are in need of improvement. Further, the variance reduces overall Buffer impact and does not encroach further toward the MHWL.

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 Property is the only waterfront property along Swan Road without a pool. Allowing the pool to include a patio over existing coverage will not grant the Applicants a 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 Applicants have not created the need for the variance as the impervious surface was legally nonconforming and is merely being used as a patio instead of a driveway. This request will not have any effect on neighboring properties.

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 intent of the Critical Area program is to protect resources and foster more sensitive development. The Board finds that the variance will not adversely impact water quality or any of the existing habitat. The overall coverage in the Buffer will be reduced because of this project as the applicant proposes to remove impervious surface.

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

The Applicants have proposed a location for the pool that meets all setbacks and minimizes the amount of renovation and site disturbance that accompany the construction of a pool. The patio is modest in size and reduces the amount of nonconforming lot coverage.

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

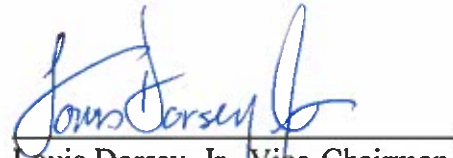
1. Application for a Critical Area variance.
2. Tax Map with subject property highlighted.
3. Notice of public hearing for advertising.
4. Newspaper confirmation.
5. Notice of public hearing with list of adjacent property owners attached.
6. Critical Area variance standards.
7. Staff Report by Andrew Nixon.
8. Sign maintenance agreement.
9. Critical Area Commission Comments dated 5/6/25.
10. Authorization letter from Archibald and Mary Logan Hoxton, dated 3/17/25.
11. Independent Procedures Disclosure and Acknowledgement Form.
12. Aerial photo.
13. Amended and Restated Covenants, effective 1/1/89.
14. Critical Area Lot coverage Computation Worksheet.
15. Assessment of Civil Penalty by James Mullikin, dated 4/2/25.
16. Letter from James Mullikin, dated 4/2/25.
17. Photos (6 pages).
18. Site Plan by Fink, Whitten & Associates, LLC, dated 3/13/25.
19. Letter from Carolyn Aldige, received June 8, 2025.
20. Email from Andrew Nixon, dated 6/11/25 and a Revised Site Plan.
21. Applicant's Hearing Ex. 1 (Plat).

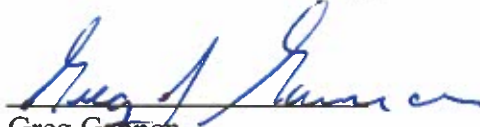
Vice Chairman Dorsey moved that the Applicants be granted the requested variance subject to staff conditions and the motion was seconded by Mr. Adelman. Based upon the foregoing, the Board finds, by a unanimous vote, that the Applicant's requests for variances are granted subject to the following conditions:

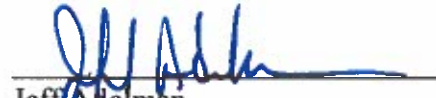
1. The Applicants shall commence construction of the proposed improvements within eighteen (18) months of the date of the Board of Appeals approval.
2. The Applicants shall make an application to the Office of Permits and Inspections, and follow all rules, procedures, and construction timelines as outlined regarding new construction.
3. 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 10th day of July 2025, **ORDERED** that the Applicant's requests for variances are GRANTED.


Frank Cavanaugh, Chairman


Louis Dorsey, Jr., Vice-Chairman


Greg Gannon


Jeff Adelman


Zakary Krebeck