

Bryce Yelton testified on behalf of the County. He opined that the building violation is not the fault of Mr. Forney. The County has visual evidence that the infraction existed before Mr. Forney purchased the property. In accordance with COMAR 27.01.12.06, (1) the County issued an abatement order, (2) Mr. Forney paid the fine that the County issued, and (3) Mr. Forney is required to complete a Buffer mitigation plan that complies with Critical Area law. Mr. Yelton testified that Mr. Forney has been very forthcoming in his dealing with County staff and has worked dutifully with the Office of Planning and Zoning, and Health Department, to bring the property into compliance.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In general, the Board finds that there will be minimal impact to the Critical Area, in large part, because the project will not add any impervious surface on the property. A screened porch is a feature that is common for similarly situated properties in Talbot County.

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 property was developed long before the existence of the Critical Area law. Screened porches are commonly enjoyed by other similarly situated residents of Talbot County. The Board finds that the conversion will have little to no impact on the Critical Area. Balancing these facts, the Board finds that failure to grant the variance would create an unwarranted hardship on the property owner.

- 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.*

As previously stated, screened porches are a common feature for other properties in Talbot County, including properties that are within the Buffer.

- 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.*

This Board has granted variances of this kind, under similar circumstances, in the past. The property owner did not construct the unpermitted pergola on the property. The Board finds

that granting the variance will not confer this property with any special privilege not enjoyed by others similarly situated.

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 applicant is proposing to improve a pergola patio that he did not construct, to add value to the property without harming the Critical Area.

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 no increase in lot coverage within the Buffer. The proposed screen porch will be constructed within the same footprint. Additionally, the Applicant will be required to complete an approved mitigation plan as required by the Critical Area law.

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

The variance will permit the construction of a screened porch within the same footprint as the existing patio. It will not increase the footprint of the patio or impervious surface on the property. Therefore, the Board finds that the variance does not exceed the minimum adjustment necessary to complete the project.

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.

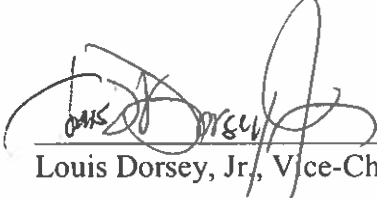
Vice Chairman Dorsey moved that the Applicant be granted the requested variance subject to staff conditions and Critical Area recommendations. The motion was seconded by Mr. Gannon. Based upon the foregoing, the Board finds, by a unanimous vote that the Applicant's requests for a variance is granted subject to the following staff conditions:

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

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.


IT IS THEREFORE, this 17th day of August, 2023, **ORDERED** that the Applicant's requests for a variance is GRANTED.


Frank Cavanaugh, Chairman


Louis Dorsey, Jr., Vice-Chairman


Patrick Forrest


Paul Shortall, Jr.


Greg Gannon