

Critical Area Buffer. Another restraint is that most of the property is within a special flood zone area.

Mr. Smith clarified that the property is in a modified buffer area so the Buffer setback is 65.3', as opposed to the standard 100' Buffer.

An in-kind replacement is not desirable because of the sensitive nature of the property. The County Planning and Zoning office encouraged a replacement outside of the existing footprint so that the replacement dwelling may be moved out of the special flood area. Applicant has worked with an architect to shift the dwelling outside of the flood area, which has the resulting effect of moving the dwelling further into the front yard setback. The Applicant intends to upgrade the property in a manner that benefits the Critical Area but also improves the aesthetics of the property.

The submitted site plan shows both the existing dwelling and proposed dwelling. The new dwelling will be approximately 14' further away from the shoreline and out of the special flood area. It further shows a net reduction of lot coverage within the Critical Area Buffer.

According to the Applicant, the proposed location is consistent with the existing streetscape and is more in character with the existing neighborhood than the existing, dated dwelling.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In general, the Board finds that there will be minimal impact to the Critical Area and that the non-conforming property is almost entirely constrained by the Critical Area and special flood area. The replacement of the primary dwelling will improve the aesthetics and functionality of the property. Encroachment into the front yard setback is necessary to reduce impact on other, more environmentally sensitive areas of 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 the requested variance would deprive the property owner of a reasonable and significant use of the property. The property is a grandfathered residence that exists within the Critical Area Buffer. Because of the small size of the parcel and its configuration, it is almost impossible to build a home outside of the Buffer.

The Board also finds it persuasive that the proposed replacement dwelling will be placed outside of the special flood area, further away from the MHW, and with net decreases of lot coverage within 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; however, an in-kind replacement is discouraged by the County Office of Planning and Zoning because the existing dwelling is in the special flood 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 VM 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 MHW.

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 MHW and outside of a special flood area. 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.

The Board addresses the standards for a non-Critical Area variances set forth in the Talbot County Code, § 190-58.3.

- A. *Unique physical characteristics exist, such as unusual size or shape of the property or extraordinary topographical conditions, such that a literal enforcement of the provisions of this chapter would result in practical difficulty or unreasonable hardship in enabling the applicant to develop or use the property;*

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 grandfathered residence that exists within the Critical Area Buffer. Because of the small size of the parcel and its configuration, it is almost impossible to build a home outside of the Buffer.

The Board also finds it persuasive that the proposed replacement dwelling will be placed outside of the special flood area, further away from the MHW, and with net decreases of lot coverage within the Critical Area.

- B. *The need for the variance is not based upon circumstances which are self-created or self-imposed;*

The Board finds that the Applicant has not created the conditions or circumstances that result in the necessity for a variance. The need for a variance is due to the size of the property in combination with its location within the Critical Area Buffer and special flood area. The Board finds that moving the dwelling further into the front yard setback is desirable because it will result in lesser impact within the Critical Area and special flood area.

C. Greater profitability or lack of knowledge of the restrictions shall not be considered as sufficient cause for a variance;

The requested variances are not based on profitability of lack of knowledge. The purpose of the variance is, primarily, to reduce impact to environmentally sensitive areas of the property.

D. The variance will not be contrary to the public interest and will not be a detriment to adjacent or neighboring properties;

The variance will not change the character of the neighborhood. The Board finds that the improvements will add to the aesthetics of the neighborhood. The variance will allow the primary dwelling to be located further away from environmentally sensitive areas while also becoming more consistent with the surrounding neighborhood and streetscape.

E. The variance shall not exceed the minimum adjustment necessary to relieve the practical difficulty or unreasonable hardship.

The variance is the minimum amount necessary to allow the replacement of the dwelling to be constructed outside of the special flood area.

Exhibits: Applicants relied on the following exhibits in the hearing, which were also part of the Application packet.


1. Site Plan.


Vice Chairman Dorsey moved that the Applicant be granted the requested variance subject to staff conditions and the motion was seconded by Mr. Shortall. Based upon the foregoing, the Board finds, by a unanimous vote that the Applicant's requests for both variances are 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 31st day of July, 2023, ORDERED that the Applicant's requests for a variance is GRANTED.


Frank Cavanaugh, Chairman


Louis Dorsey, Jr., Vice-Chairman


Patrick Forrest

Unavailable for Signature
Paul Shortall, Jr.


Jeff Adelman