

modifications to the primary dwelling, attached garage, guest house, walkways, and driveway. A proposed terrace on the rear of the house will increase encroachment further into the Buffer. In other words, Ms. Dorsett seeks to improve the Property so that she may access and use it to the same extent that those who are not confined to a wheelchair would be able to enjoy the Property.

SUMMARY OF TESTIMONY

Attorney Zach Smith appeared on behalf of the Applicant. The Applicant, Julia Dorsett, provided testimony. Brett Ewing of Lane Engineering also provided testimony.

Mr. Smith explained that the Property is legally nonconforming. The house was built in 1949 prior to enactment of the Critical Area Law and Buffer. The Applicant does not seek to create new structures on the Property. Rather, she seeks to modify existing structures so that they may be accessed and utilized by wheelchair. Mr. Smith and Ms. Dorsett jointly addressed the facts necessary for the Board to grant a reasonable modification under § 190-57 of the Code.

First, Ms. Dorsett testified that she is paralyzed and confined to a wheelchair. She has provided documentation of her disability with the County Office of Planning and Zoning. As a Paralympic sailor and tennis player, Ms. Dorsett is an active individual. She purchased the Property in 2021 and is making improvements so that she can fully utilize and access the entire Property.

Ms. Dorsett testified that literal enforcement of the Critical Area Buffer would deprive her from fully enjoying the use of her Property. The improvements are necessary to move within structures, in and out of structures, and around the entire outside of the Property. She testified that she has fallen out of her wheelchair at times when moving around the Property. It is very difficult to get to the guest house and there is no path to the existing pool. There is no easy way to get in and out of the primary dwelling. She testified that there is no quick escape on various parts of the Property and she is concerned about her safety if the improvements are not permitted. It is essential for her safety that she be able to get in and out of her vehicle in a protective garage. Garage shelter also eliminates the need to scrape ice and snow from her vehicle, which is difficult to do in a wheelchair.

The Applicant provided testimony that a reasonable accommodation would reduce or eliminate the discriminatory effect of the Critical Area limitations. Creating better pathways around the outdoor portions of the Property will allow her to access the existing accessories and waterfront. An enclosed garage will allow her to have a safe area to enter and exit her vehicle. Ramps and a deck are necessary for access throughout the Property. Ms. Dorsett also intends to host other disabled athletes/guests on the Property, who also will require reasonable accommodations.

The requested modifications will not impair the purpose, intent, or effect of the requirements of the Talbot County zoning chapter. The Property is within the RR Zone (Rural Residential). The Applicant testified that all of the requested modifications are necessary for a disabled individual to reasonably utilize the Property as a single family residence, as anticipated by its designated zoning.

Finally, because the requested reasonable modifications are within the Critical Area, § 190-57 provides that the accommodation would be environmentally neutral with no greater negative impact on the environment than the literal enforcement of the Code or allow only the minimum environmental changes necessary to address the needs resulting from the disability of the Applicant.

The Critical Area Commission (“CAC”) provided comments in response to the Application. The CAC acknowledged the need for ramps, landings, walkways, garage and modifications to the existing driveway. Because the project will include lot coverage within the Buffer, the CAC recommended that this Board request that the Applicant remove an additional 1,281 sf of lot coverage to offset the proposed 2,567 sq of lot coverage. The CAC also recommended a condition that improvements should be removed when accommodations are no longer needed.

Ms. Dorsett will provide the required mitigation under the Critical Area law. Ms. Dorsett also offered the following concessions in response to CAC comments.

The proposed deck will replace a solid stone (impermeable) surface with an open (permeable) wood surface. Ms. Dorsett also offers to reduce area within the family room of the primary dwelling so that the proposed deck increases less lot coverage and remove a therapy spa. These concessions will modify the Application as follows:

1. Converting the stone terrace to pervious wooden deck and removing a therapy spa reduces the proposed lot coverage by 1,160 sf.
2. The new net increase of lot coverage for the primary dwelling is amended to 1,224 sf, which is less than the 2,384 sf of coverage initially proposed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Our analysis of the request for a reasonable modification is guided by the case of *Mastandrea v. North*, 361 Md. 107 (2000). The Supreme Court of Maryland analyzed a decision by this Board to accommodate a disability. The applicant in that case constructed several paths around a property to accommodate a family member’s (Leah’s) disability. The court found that it was a reasonable modification to construct the paths so that the disabled person could enjoy the entire waterfront within the Buffer equally with non-disabled persons.

The court considered the proposition that not being able to access the shoreline would be a mere inconvenience because it would not prohibit the disabled family member from a reasonable and significant use of the “entire” property. The court stated that this Board “did not have to consider whether denying the variance would have denied the Mastandreas a reasonable and significant use of the ‘entire’ lot. Rather, the Board was required (and did) consider whether the property owners, in light of their daughter’s disability, would be denied a reasonable and significant use of the waterfront of their property without the access that the path provided.”

The court found that a literal application of the zoning ordinance would deprive the disabled family member of the ability “to enjoy the property on which she resides as others in the area similarly situated may enjoy theirs without the need for a similar path.” The court stated that this “Board could (and did) conclude reasonably that granting the variance would simply put Leah in a similar position as occupants of other properties in the same zone who were able to enjoy their property without such a wheelchair path” and that to deny such a modification would “reduce the otherwise discriminatory effect of the ordinance and to restore Leah’s reasonable use and enjoyment of the property.”

All members of the Board have visited the Property in the instant matter to visually consider the necessity of the proposed improvements. The Board concludes from the site visits and application materials that the requested modifications are necessary to obtain wheelchair mobility around the Property as requested. This Board considered whether it would be prudent to decrease the width of paved paths and the pool deck. After thoughtful deliberation, the consensus is that a reduction in area for these paths and deck would not be sufficient to reasonably accommodate the Applicant.

In addition, the requested accommodations are necessary for safety reasons. It is essential that individuals who rely on wheelchairs have quick emergency access around the Property in the event of fire or other emergency.

The Board is satisfied that the concessions made by Ms. Dorsett are the minimum necessary to reasonably accommodate her and guests. The Board finds that removal of additional coverage around the pool is not feasible to reasonably accommodate wheelchair access around the pool. The Board finds it additionally compelling that no trees will be removed on the Property.

The Board also considered the suggestion to require that the improvements be removed when accommodations are no longer required. Ms. Dorsett testified that she intends to live at this Property throughout her life. The improvements are also permanent in nature and removing them would create unnecessary environmental disturbance. Therefore, the Board declines imposing that restriction.

The Board addresses each of the standards set forth in § 190-57 of the Code.

A. *The alterations will benefit persons with a disability within the meaning of the Americans with Disabilities Act.*

Ms. Dorsett has provided adequate documentation to the Office of Planning and Zoning to document her disability that requires use of a wheelchair. The Property is not ADA compliant or compatible. The proposed improvements are necessary for Ms. Dorsett to fully utilize the indoor and outdoor areas of the Property.

B. *Literal enforcement of the requirements of this [zoning] chapter would result in discrimination by virtue of such disability or deprive a disabled resident or user of the reasonable use and enjoyment of the property.*

Proposed improvements to the Property would not be allowed under the Code because the Property is in the Critical Area Shoreline Development Buffer. Therefore, any improvements to the Property would require a variance. The Property is nonconforming because it was developed prior to the Critical Area Law.

Even if the Reasonable Accommodation [§ 190-57] provision of the Code were non-existent, the Board would find that the Applicant meets the unwarranted hardship standard for granting of a variance in the Critical Area. Mrs. Dorsett would suffer an unwarranted hardship on a property that is not ADA compliant for access to the entire Property and for the obvious safety reasons that would result from a lack of ramps and adequate pathways. Such a result would amount to discrimination if this Board did not provide a reasonable modification of the Critical Area law.

The proposed improvements that increase lot coverage are minimal and will be constructed for the purpose of providing access around the outside of the primary dwelling and access to the pool, guest house, and driveway. Without these improvements, Mrs. Dorsett and other guests with wheelchairs would not be able to enjoy and use the entire Property.

- C. *A reasonable accommodation would reduce or eliminate the discriminatory effect of the requirements or restore the disabled resident's or user's reasonable use or enjoyment of the property.*

The requested improvements are reasonable. Ms. Dorsett's testimony is that these improvements will allow her to adequately improve the Property so that it is ADA compliant and wheelchair accessible, which is evidence that the grant of a reasonable modification of lot coverage restrictions will eliminate the discriminatory effect of the lot coverage restrictions. At the hearing in this matter, and in response to Critical Area Commission comments, Ms. Dorsett offered additional concessions to lot coverage, which are described herein above.

- D. *The accommodation requested will not substantially impair the purpose, intent, or effect of the requirements of this chapter as applied to the property.*

The structures on the Property are legal nonconforming. The Board finds that there are no proposed improvements that are not necessary for wheelchair accessibility. The only improvement that increases encroachment into the Buffer is the terrace on the rear of the Primary dwelling, which is modest. The proposed improvements do not substantially impair the purpose and intent of zoning for the Property, which is a rural residential use with existing structures and accessories that pre-date the Critical Area law.

- E. *If the property is located in the Critical Area, the accommodation would:*
- 1. Be environmentally neutral with no greater negative impact on the environment than the literal enforcement of the statute, ordinance, regulation or other requirement; or*
 - 2. Allow only the minimum environmental changes necessary to address the needs resulting from the particular disability of the applicant.*

The Property is in the Critical Area. This provision requires a finding that the accommodation would either be (1) environmentally neutral or (2) allow only the minimum environmental changes necessary to address the needs resulting from the disability of the applicant.

As stated in depth herein, the Board finds that the proposed improvements are the minimum necessary to permit significant use of the entire Property by wheelchair. The need to accommodate ADA compliance and accessibility far outweigh the minimal environmental impact that may result from the proposed improvements. Additionally, Ms. Dorsett will be required to implement mitigation in compliance with Critical Area law. Finally, even with the improvements, the Property is still within the 15% allowable lot coverage allowed for properties within the Critical Area.

Documents on Record

1. Application for Reasonable Accommodation for the needs of disabled citizens.
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. Reasonable Accommodation for the needs of disabled citizen standards.
7. Staff Report.
8. Sign maintenance agreement.
9. Critical Area Commission comments.
10. Authorization letter.
11. Independent Procedures Disclosure and Acknowledgement Form.
12. Aerial photo.
13. Floor Plans Existing and Proposed.
14. Elevations.
15. Site Plan prepared by Lane Engineering, LLC, dated 12/4/23, Job #230169.

Mr. Adelman moved to grant the request for a reasonable accommodation subject to staff conditions with the modification that the proposed rear deck will be pervious instead of impervious. The motion was seconded by Mr. Krebeck. Based upon the foregoing, the Board finds, by a unanimous vote that the Applicant's request is granted subject to the following staff conditions:

1. The Applicants shall commence construction of the proposed improvements within eighteen (18) months of the date of this Decision set forth below.
2. 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.
3. The applicant shall complete a Buffer Management Plan that complies with Critical Area Law. The Applicant shall provide 3:1 mitigation for any permanent

disturbance within the buffer and 1:1 mitigation for any temporary disturbance within the Buffer. As part of the Buffer Management plan, the Applicant shall provide mitigation for any tree removal associated with the project.

IT IS THEREFORE, this 27th day of March, 2024, **ORDERED** that the Applicant's request for modification of the special exception is **GRANTED**.


Frank Cavanaugh, Chairman


Louis Dorsey, Jr., Vice-Chairman


Patrick Forrest


Zakary A. Krebeck


Jeff Adelman