

**BEFORE THE TALBOT COUNTY BOARD OF APPEALS**

IN THE MATTER OF \* CASE NO. CAVR-23-2  
RARDIN FARM, LLC \* VARIANCE REQUEST APPLICATION  
\* \* \* \* \*

The Board of Appeals (the "Board") held a hearing on May 1, 2023 in the Bradley Meeting Room, Court House, South Wing at 11 N. Washington Street, Easton, Maryland, to consider the application of Rardin Farm, LLC (the "Applicant"). The Applicant requested a Critical Area variance at 27852 Wye Cottage Lane, Wye Mills, MD. Chairman Frank Cavanaugh, Vice Chairman Louis Dorsey, Jr., Board Members Paul Shortall, Jeff Adelman, Zakary Krebeck, and Board Attorney Lance Young were present. Board Secretary Christine Corkell and Planner Elisa Deflaux appeared on behalf of the County.

**STATEMENT OF THE CASE**

The Applicant requested a Critical Area variance from the Critical Area Buffer to replace a nonconforming one-story primary dwelling with a two-story primary dwelling. The nonconforming dwelling is within the Shoreline Development Buffer and will be replaced with a dwelling that, to a lesser extent, will encroach within the Shoreline Development Buffer. The property is further identified as Tax Map 4, Grid 2, Parcel 1, Lot 1. 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.

**SUMMARY OF TESTIMONY**

Attorney Zach Smith appeared on behalf of the Applicant. Brett Ewing, of Lane Engineering, Architect Christine Dayton, and builder Bob Gerhardt, provided testimony for the Applicant.

The existing home was built in 1962, predating the existing Critical Area Law and Buffer. The Applicant represents that the home is currently uninhabitable because of mold. The Applicant, therefore, desires to demolish the home and testifies that the only practical place to erect a replacement dwelling is within the same location.

The newly designed home will be situated so that the design will remove encroachment into the buffer on the West side of the dwelling, reduce the Buffer encroachment to the South, and significantly reduce overall lot coverage within the Buffer.

As a practical matter, building within the same location allows the Applicant to utilize the existing infrastructure, including septic system, well, driveway, and electricity. The existing driveway is lined with mature trees.

Applicant's witnesses provided credible testimony regarding whether the dwelling could be placed elsewhere on the property that is not within the Shoreline Development Buffer. According to testimony, the current dwelling is situated on the highest elevation of the property. While it would be technically feasible to construct the dwelling on another location of the property, it would require a significant amount of dirt fill and/or require construction to interfere with existing flood areas/zones. According to testimony, building anywhere else on the property would have a greater adverse impact on the environment.

The Board received a letter from the Critical Area Commission ("CAC") supporting the Application. The CAC stated, for its reasons, that the proposal will reduce existing lot coverage in the Buffer, that no shoreward development is proposed, that the proposal will significantly reduce coverage within the Buffer, that the Applicant is within their lot coverage limitations, and that the proposed mitigation is satisfactory.

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

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.*

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. Placing the structure elsewhere on the property would impact existing flood area/zones. Erecting the replacement dwelling in its proposed location will be the best location for minimal disturbance to the Critical Area and without encroaching on sensitive flood areas that will adversely affect the Critical Area.

The Board bases its decision, in part, on the letter of support received by the Critical Area Commission. As stated in the CAC letter: "The existing lot coverage in the Buffer will be reduced from 4,589 sf to 2,541 sf for a net reduction of 2,048 sf of lot coverage in 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.*

Without a variance, the Applicant cannot construct the replacement dwelling. Other property owners are permitted to have a single family residence on their property.

- 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. The Board finds that there is not a reasonable area outside of the proposed footprint to construct the residence without additional adverse impact to the Critical Area and flood zones.

- 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 Applicants are implementing stormwater management measures and have proposed satisfactory mitigation, in addition to the fact that the construction 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 Applicant has satisfied the Board that moving the residence elsewhere on the Property is not practical or a better option for purposes of protecting the Critical Area.

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.

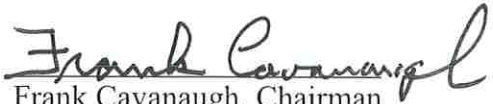
Exhibits:

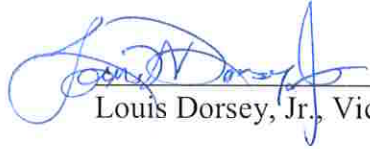
1. Lane Engineering site drawing.
2. Copy of Chapter 70, Article II, §70-17 of Talbot County Code.

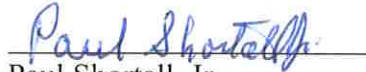
Mr. Krebeck moved that the Applicant be granted the requested variance subject to staff conditions and the motion was seconded by Mr. Adelman. Based upon the foregoing, the Board finds, by a unanimous vote that the Applicant's request for a variance is granted subject to the following staff conditions:

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. If necessary, the Applicant shall provide a Buffer Management Plan to mitigate for the variance and any tree impacts associated with the Project.
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 18th day of May, 2023, **ORDERED** that the Applicant's requests for a variance is GRANTED.

  
Frank Cavanaugh, Chairman

  
Louis Dorsey, Jr., Vice-Chairman

  
Paul Shortall, Jr.

  
Zakary A. Krebeck

  
Jeff Adelman