

IN THE MATTER OF	*	CASE NO. CAVR-26-7
REXFORD AND LEIGHTON WHEELER	*	VARIANCE REQUEST APPLICATION (Critical Area and Non-Critical Area)

* * * * *

STATEMENT OF THE CASE

- (1) Construct a 287 SF sunroom over an existing composite deck measuring 49.3' from Tidal Wetlands (TW)
- (2) Construct (after-the fact) a 234 SF composite deck with steps measuring 66.2' from TW
- (3) Install (after-the fact) 124 LF of front yard fencing measuring 59.9' from TW
- (4) Install (after-the fact) 95 LF of side yard fencing measuring 41' from TW
- (5) Construct (after-the-fact) a 313 SF shed with overhang measuring 44.6' from TW
- (6) Install (after-the-fact) a 280 SF paver walk measuring 69.1' from TW and
- (7) Install (after-the fact) two 9 SF HVAC pads measuring 37.7' from TW

- (1) Construct a 287 SF sunroom over an existing composite deck measuring 271.3' from the front lot line
- (2) Construct (after-the-fact) a 234 SF composite deck with steps measuring 286' from the front lot line
- (3) Install (after-the-fact) 124 LF of front yard fencing measuring 213.7' from the front lot line
- (4) Install (after-the-fact) 95 LF of side yard fencing measuring 268.7 from the front lot line
- (5) Construct (after-the-fact) a 313 SF shed with overhang measuring 145.7' from the front lot line

(6) Install (after-the-fact) two 9 SF HVAC pads measuring 230' from the front lot line. The proposed improvements will result in a net increase of 1,132 SF of lot coverage in the Buffer and will not encroach closer to TW/MHW than the existing residence measuring 30.8'.

SUMMARY OF TESTIMONY

The Applicants were represented at the hearing by legal counsel, Willard "Burry" Parker, Esq., who appeared alongside Applicant Rexford Wheeler.

Mr. Parker provided historical context for the application. He explained that the initial development of the Property predated the enactment of the Maryland Critical Area law. The parcel's residential infrastructure was established around 1981, and the primary dwelling was constructed in 1984. The Wheelers subsequently purchased the Property in 2025. Mr. Parker clarified that while several of the variance requests are technically "after-the-fact," the current Applicants did not actively install or place these structures within the setbacks, with the sole exception of an in-kind replacement of a pre-existing shed and the front fence.

Addressing the walkways, Mr. Parker pointed to historical photographs showing a legacy slate stepping-stone path leading to the front door. The Wheelers replaced these irregular stones with an even, concrete paver walk. This modification was a physical necessity to ensure safe traverse across the property and to allow the homeowners to clear snow and shovel during winter months. Mr. Wheeler testified that the walkway's path was slightly altered during installation to prevent it from crossing directly over the property's septic system.

Regarding the waterside improvements, the Wheelers seek to enclose an existing water-side deck to convert it into a finished sunroom. Mr. Wheeler walked the Board through photographs submitted with the application, testifying that the Applicants have constructed nothing new on the waterfront side of the home. He stated his belief that all decks, steps, and landings on that side were part of the original, historical construction of the residential envelope. The exception is the pair of HVAC pads, which are a functional necessity to support the home's mechanical systems. Mr. Wheeler noted that the older and smaller of the two pads is failing and needs replacement in the future. The HVAC system dates back to the late 1990s and was discontinued in the 2010s.

The Applicants also noted that they did not build the existing side-yard fence but view it as an important asset for visual privacy and neighborhood screening. Certain modifications were made by the Applicants at the front of the Property, including the front fence, the paver walk, and the shed. The property's original shed measured 12 feet by 20 feet and was rotting. When the Applicants attempted to move the shed to perform an in-kind replacement, it fell apart.

Mr. Wheeler testified that before putting up the new 4-foot fence, they consulted with their fence contractor regarding local permitting. The contractor erroneously advised them that a 4-foot-tall fence did not require a county permit, apparently unaware that Critical Area setback restrictions applied regardless of height. Upon discovering the omission, the Applicants immediately cooperated with code enforcement, received a formal violation notice, paid the civil penalty, and secured a fee-in-lieu bond for mitigation. Mr. Wheeler noted that vegetative

mitigation on the site is physically unfeasible. Mr. Wheeler stated his architectural goal is to design the sunroom with convertible screens that open up fully, ensuring that the home will not require any future exterior decks or additional outdoor seating areas.

Brett Ewing of Lane Engineering, LLC, offered expert testimony regarding the environmental and structural layout of the project. He clarified that while the calculations suggest a net increase of 1,132 SF of lot coverage, this number fails to credit the previous lot coverage that the Applicants are removing. In his professional expert opinion, the project poses no harm to local water quality or the surrounding environment because the overall, true lot coverage is not expanding. Furthermore, because the property is completely saturated with vegetation, there is no viable physical location within the Buffer to place new mitigation plantings. Consequently, paying into the County's fee-in-lieu program is appropriate.

Maddie Zaprowski, Planner on behalf of Talbot County Planning and Zoning, testified and concurred with Mr. Ewing's assessment that there is no feasible area left within the Buffer to accommodate additional mitigation plantings. She stated that the County performed an analysis to see if a standard 7:1 mitigation planting ratio could be executed on-site and concluded that it was impossible. Ms. Zaprowski added that standard aerial photographs do not fully capture the true, dense canopy cover provided by the extensive tree growth currently on the Property.

Keith Parks of Parks Enterprises, the home builder retained by the Applicants, provided testimony regarding the structural condition of the residence. He confirmed he was hired to execute the exterior improvements and build the proposed sunroom. Based on his professional inspection, he estimates that the existing waterside decks, stairs, and landings date back to the home's original 1980s construction. Given their age and exposure, these structures have deteriorated to the point of presenting legitimate safety concerns, making the structural enclosure and replacement necessary.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

All members of the Board have personally visited the site, and this decision is based upon the Board's direct visual observations, the testimony of the witnesses, submitted responses to variance criteria, and the comprehensive written record.

As an initial finding of fact, the Board notes that among the numerous variance sites members have inspected, this Property stands out as one of the most intensely vegetated parcels they have visited. It is evident to the Board that previous owners heavily planted this lot with intent, creating a stabilizing root network that ensures the steep slopes surrounding the home remain structurally sound and protected from soil erosion.

The Board further finds that the proposed 287 SF sunroom represents an ecological improvement for the Critical Area. Rather than expanding the home's footprint, it directly replaces a nonconforming, weathered deck structure. By enclosing this space, it alters the dynamic of stormwater runoff, removing a section of open decking and allowing the property to better accommodate clean water sheet-flow around the existing envelope.

Regarding the HVAC pads, the Board finds that these small utility pads are a functional necessity to maintain the existing HVAC system. Forcing their removal or relocation would void

the system's operational warranty and leave a home constructed in 1984 without viable heating and cooling systems.

The Board agrees with the expert testimony of Lane Engineering and the findings of Talbot County Planning and Zoning that on-site vegetative mitigation is not practical. Therefore, a fee-in-lieu of mitigation is the only appropriate and practical mechanism for this specific site.

Finally, the Board finds that the Property possesses unique physical characteristics. It features an irregular, highly restrictive shape that could not be replicated under modern zoning laws. Furthermore, it is burdened by severe topographical constraints, containing steep slopes in direct configuration with the Buffer. These factors collectively handicap the parcel more than a conventional, flat, or rectangular lot in the Rural Residential (RR) zoning district.

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 the unique configuration, historical development, and topography of this parcel create an unwarranted hardship. According to the calculations submitted by Lane Engineering, 84% of this entire property is consumed by overlapping environmental constraints: the 100-foot Shoreline Development Buffer, the 100-foot Stream Buffer, and the Expanded Buffer for Steep Slopes. The remaining 16% of the property that sits outside of these buffers is occupied by the property's legal Sewage Disposal Area, which cannot be built upon or disturbed. The Property was developed in 1984, prior to the enactment of these Critical Area restrictions.

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 existing single-family home is legally nonconforming. Other property owners in the RR district routinely enjoy the right to maintain basic residential amenities like secure perimeter fencing for privacy, a standard utility storage shed to house tools, safe and level walkways to access their front doors without tripping, and functional HVAC equipment supported by stable pads. A literal enforcement of the ordinance would strip these Applicants of those exact same common amenities. Because 84% of the land is encumbered by buffers and a septic field, there is no legal location anywhere on the lot to place a shed, a walkway, or an AC unit without a variance.

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.*

These variances will not grant a special privilege. The Talbot County Code provides a case-by-case mechanism to evaluate the expansion or modification of legally nonconforming

residential structures when expansion outside of the Buffer is physically unattainable. The proposed sunroom is a modest, 287 SF project constructed entirely within the footprint of an existing, pre-existing deck, meaning it does not extend the home's waterward encroachment. Storage sheds, fences, safety walkways, and HVAC pads are fundamental elements of standard residential properties throughout Talbot County. Allowing the Applicants to retain these modest structures, most of which were inherited from previous owners, is consistent with approvals granted to similarly situated properties.

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 record confirms that the majority of the variance requests are independent of the Applicants' actions. The main home was constructed in 1984, long before the Applicants purchased the property in 2025. Expert and historical testimony demonstrate that the waterside decks, steps, walkways, side fencing, and HVAC locations were likely legacy installations from prior owners. The Applicants did replace a rotting 12'x20' shed that fell apart, and they did install a front yard fence after being misinformed by a licensed professional contractor. However, the need for a variance to authorize these structures stems entirely from the fact that the property's unique geography leaves them no alternative, non-buffered space to utilize. The Applicants have acted in good faith, paid the necessary civil penalties, and secured the required fee-in-lieu bonds to rectify the technical oversight.

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 the project will have a net-neutral environmental impact. As established by the expert testimony of Lane Engineering and corroborated by County Planning staff, the true lot coverage is not experiencing an expansion when accounting for the historical surfaces being removed. The primary residence sits 30.8 feet from the Tidal Wetlands; none of the after-the-fact structures or the new sunroom encroach closer to the water than that established baseline. Furthermore, because the lot is uniquely insulated by an extraordinarily dense, established tree canopy and intentional slope-stabilizing vegetation, water quality is highly protected against runoff. Because the property cannot physically host more vegetation without harming the existing canopy, the Applicants' payment into the County's fee-in-lieu program satisfies the Critical Area mitigation objectives.

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

The scale of the requests represents the bare minimum adjustment required to allow reasonable use of the land. The sunroom addition is confined to 287 SF, relies entirely on an

existing structural footprint, and adds no new outward displacement toward the Mean High Water line. The accompanying walkway, shed, small HVAC pads, and 4-foot fencing are scaled for standard utility. There is no excess or luxury development proposed.

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 Property was subdivided as part of the "Woodland Farms" development finalized in 1978, long before the modern bulk requirements of the RR zoning district were enacted. The RR district enforces a strict 200-foot minimum lot width and a standard 50-foot front setback. Because this historical lot fails to meet the 200-foot modern width requirement, the technical front building restriction line largely affects the entirety of the parcel. A literal enforcement of the text creates a near total prohibition on development. This creates a practical difficulty.

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

The parcel was created in a subdivision called Woodland Farms which was finalized in 1978. The building permit to construct the dwelling was filed in June 1984 per Talbot County permit records, and the lot was created before the RR zoning district was established. The applicants purchased the property in 2025 with all current regulations in place and all existing improvements except the front yard fence which the owners were in the process of applying for and constructing legally.

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

The Board is satisfied that this application has nothing to do with financial gain or commercial profitability. The requests are based on a desire to retain standard domestic amenities within the geographical constraints of a unique lot layout.

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

There is no evidence that the setback variances will impact neighboring properties or adversely affect the public interest. The improvements are entirely in character with the existing, mature residential neighborhood of Woodland Circle. Fences, standard garden sheds, and sunrooms are common across adjacent parcels.

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

Because the front building restriction line blankets the entire property due to the historical width deficiency, any home improvement requires a variance. The Applicants have restricted their requests to minimal footprints: a 287 SF enclosure over an existing deck, a standard tool shed replacing a collapsed one, small utility pads, and simple property fencing. The Board finds that the Applicants have carefully minimized their plans, requesting only what is structurally required to overcome the practical difficulties imposed by the property's layout.

Documents on Record

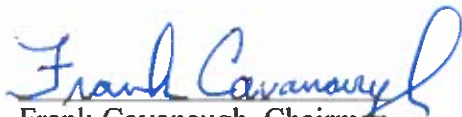
1. Application for a Critical Area variance.
2. Tax Map with subject property highlighted.
3. Notice of public hearing for advertising.
4. Newspaper confirmation.
5. Notice of public hearing with list of adjacent property owners attached.
6. Critical Area variance standards.
7. Non-Critical Area variance standards.
8. Staff Report by Maddie Zaprowski.
9. Sign maintenance agreement.
10. Critical Area Commission Comments.
11. Authorization letter.
12. Independent Procedures Disclosure and Acknowledgement Form.
13. Aerial photos.
14. Site Plan by Lane Engineering, LLC, Job No. 250530.
15. Floor Plans.
16. Photo of Elevations.
17. Photos by Maddie Zaprowski.
18. Lot Coverage Worksheets.
19. Assessment of Civil Penalty.
20. Zoning Violation/Order to Abate.
21. Receipt of payment for Zoning Violation ZV-26-5281-WHE.
22. Plat used in Building Permit 1984.
23. Receipt for Fee-in-Lieu Bond for Violation and After-the-Fact Request.
24. Additional Comments from Critical Area Commission.
25. Applicant's Exhibit Plat labeled Tree Exhibit.
26. Applicant's Exhibit submitted by Burry Parker.

Vice Chairman Dorsey made a motion to approve the requests subject to staff conditions. Mr. Prettyman seconded the motion, and it was unanimously approved.

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 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.
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.

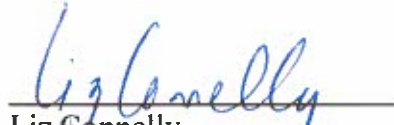
IT IS THEREFORE, this 24th day of July 2026, **ORDERED** that the Applicant's requests for variances are GRANTED.


Frank Cavanaugh, Chairman


Louis Dorsey, Jr., Vice-Chairman


Meredith Watters


Keith Prettyman


Liz Connelly