

IN THE MATTER OF	*	CASE NO. CAVR-25-3
ROBERT AND DANA McGUCKIN	*	VARIANCE REQUEST APPLICATION (Critical Area)

The Board of Appeals (the “Board”) held a hearing on May 19, 2025, in the Bradley Meeting Room, Court House, South Wing at 11 N. Washington Street, Easton, Maryland to consider the application of Robert and Dana McGuckin (the “Applicants”). Applicants requested a Critical Area variance for the property at 23377 Sans Souci Dr., McDaniel, Maryland (“Property”). Chairman Frank Cavanaugh, Vice Chairman Louis Dorsey, Jr., Board Members Patrick Forrest, Keith Prettyman, Zakary Krebeck, and Board Attorney Lance Young were present. Board Secretary Christine Corkell and Planner Andrew Nixon appeared on behalf of the County.

The Applicants requested a Critical Area variance of the 100-foot Shoreline Development Buffer (“Buffer”) to demolish an existing swimming pool with deck and patio and construct a new swimming pool entirely within the Buffer along with a new patio that will be partially within the Buffer.

The Applicants were represented by Attorney Zach Smith, who provided facts and legal arguments. Mr. Smith explained that the Applicants seek to remove an existing pool with a new pool that is larger in size but will result in a net decrease of surface in the Buffer and further from the shoreline.

The Applicant seeks to use the same area because, among other reasons, it will minimize site disturbance on the Property. Two cypress trees will be removed but no mature canopy trees will be removed. The Applicants will be required to mitigate with new plantings within the Buffer.

The reductions in coverage, within the Buffer, are achieved by the planned reduction in the patio/deck, as well as removal of a game court on the Property. Removing the pool and patio further from the Buffer would require removal of mature trees, including a mature oak tree.

Peter Hanlon, who is a contractor for the Applicants, confirmed the accuracy of Mr. Smith's factual statements by his testimony under oath.

County Planner Andrew Nixon testified that pervious surface that is removed will be returned to vegetative cover. Although the project will reduce coverage within the Buffer, mitigation is required because of the overall increase of coverage on the Property that is outside the Buffer.

Mr. Smith testified regarding the criteria for obtaining a Critical Area variance. He explained that the unwarranted hardship standard is met because the property and structures are nonconforming. The structures at issue were legally constructed long before the Critical Area laws were enacted. The need for replacement is driven by safety and insurance requirements. Applicants will reduce coverage in the Buffer despite the different configurations of the replaced structures. He represented that there are no other logical locations for the structures due to trees, septic areas, and agricultural land.

Additionally, swimming pools and decks are a common feature of homes in the same neighborhood, including within the Buffer. Requiring movement of the structures to other areas of the Property would increase disturbance and cause erosion.

The Applicants will not be given any privilege not allowed to others within the same zoning district. Many other homes in the area are similarly situated and could obtain a variance if they met the unwarranted hardship standard.

The new and larger configuration are justified, according to Mr. Smith, because the reductions in the Buffer benefit the Critical Area environment and provide a safer pool that is insured, which benefits the community. Additionally, even though the pool will be covered much of the time, it will still have the ability to retain runoff water by its design.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

All Board members have visited the site, and this decision is based upon the Board's observations, as well as the testimony and written responses submitted by the Applicants. The natural shoreline of the Property is well maintained, and the Board finds that the replacement pool will not contribute to additional runoff.

The Board finds that the Applicant's efforts to reduce coverage in the Buffer are beneficial and that significant efforts have been made to minimize impacts. Foremost, the Board is in support of this Application because the replacement pool is necessary for the safety of the Property and it is desirable to be able to maintain adequate insurance coverage for the benefit of the general public.

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 result in an unwarranted hardship. The pool and patio/deck are legally nonconforming. An in-kind replacement of the existing improvements would be approved without the need for a variance. The Board finds that replacement is necessary for safety and insurance reasons. Because the shape of the pool must be rectangular to install an automatic cover (for safety reasons) in-kind replacement is not possible. The Applicants have made efforts to minimize impacts by reducing 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.*

Pools, patios, and other outdoor use areas are common features for homes in the Rural Conservation zoning district and other waterfront homes. While a new pool would not be permitted within the Buffer, this request is for a modest expansion of an existing, legal nonconforming pool. The result of the proposed project will result in an overall decrease in lot coverage in the Buffer area of 224 SF.

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 replacement pool and patio would be permitted to be replaced in-kind in the same location. The proposed reconfiguration includes the enlargement of the pool which requires this variance approval. Other similarly situated property owners could seek and obtain a variance under similar conditions upon satisfying the Board that the unwarranted hardship standard has been met.

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 Applicants have not created the need for the variance as the improvements that require replacement are legally nonconforming. This request is for a modest expansion of an existing, legal nonconforming pool that will not have any effect on neighboring properties.

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 intent of the Critical Area program is to protect resources and foster more sensitive development. The Board finds that the variance will not adversely impact water quality or any of the existing habitat. The overall coverage in the Buffer will be reduced because of this project as the applicant proposes to remove impervious surface that is adjacent to the pool within the Buffer.

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

The project will not only reduce the lot coverage in the Buffer and the distance between shoreline and the pool patio, but the need for tree removal is also minimized by rebuilding in the same general location.

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.

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. Staff Report by Andrew Nixon.
8. Sign maintenance agreement.
9. Critical Area Commission Comments dated 4/21/25.
10. Authorization letter from Robert and Dana McGuckin.
11. Independent Procedures Disclosure and Acknowledgement Form.
12. Aerial photo.
13. Photos of existing pool (7 photos).
14. Critical Area Lot coverage Computation Worksheet.
15. Site Plan by Davis, Bowen, Friedel, Inc.

Mr. Krebeck moved that the Applicant be granted the requested variances subject to staff conditions and the motion was seconded by Vice-Chairman Dorsey. Based upon the foregoing, the Board finds, by unanimous vote, that the Applicant's requests for variances are granted subject to the following conditions:

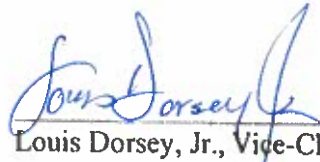
1. The Applicants shall commence construction of the proposed improvements within eighteen (18) months of the date of the Board of Appeals approval.

2. 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.

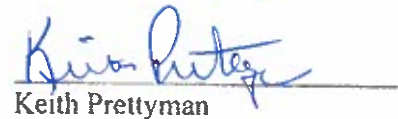
3. This approval is only for the requested improvements and additions in this application and does not cover or permit any other changes or modifications. Items not specifically addressed in this application may require additional approvals.

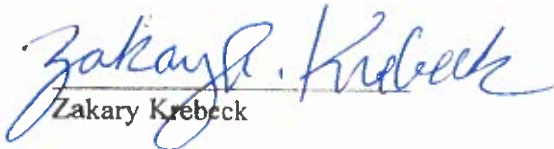
IT IS THEREFORE, this 10th day of June 2025, **ORDERED** that the Applicant's requests for variances are GRANTED.


Frank Cavanaugh, Chairman


Louis Dorsey, Jr., Vice-Chairman


Patrick Forrest


Keith Prettyman


Zakary Krebeck