

BEFORE THE TALBOT COUNTY BOARD OF APPEALS

IN THE MATTER OF	*	CASE NO. CAVR-24-6
SPENCER AND RACHEL NEAL	*	VARIANCE REQUEST APPLICATION (Critical Area)

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The Board of Appeals (the “Board”) held a hearing on February 10, 2025, in the Bradley Meeting Room, Court House, South Wing at 11 N. Washington Street, Easton, Maryland to consider the application of Spencer and Rachel Neal (the “Applicants”). Applicants requested a Critical Area variance for the property at 30448 Belmont Dr., Trappe, Maryland (“Property”). Chairman Frank Cavanaugh, Vice Chairman Louis Dorsey Jr., Board Members Patrick Forrest, 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 Applicants requested approval of a Critical Area Variance of the 100’ Shoreline Development Buffer and Expanded Buffer to expand an existing dwelling. The project includes construction of a 243-sf addition for a laundry room and entryway to the existing dwelling, currently located at 60’ from Mean High Water Line (“MHWL”) and includes construction of a 1,170-sf garage and covered breezeway with garage space on the first floor and a bedroom and bath on the second floor within the Expanded Buffer and measuring 100’ from MHWL. In addition, the applicant is relocating and extending the existing flagstone walkway and hardscaping to include a new paved walk, covered walkway connection and gravel drive to the new garage within the Buffer and Expanded Buffer. All improvements shall be located no closer to MHWL than the existing dwelling.

SUMMARY OF TESTIMONY

The Applicants were represented by Brett Ewing of Lane Engineering, Inc. Christopher Boyd, of Boyd Architecture, also provided testimony for the Applicants.

Mr. Ewing explained that the proposed Property improvements will be no closer to the MHWL than existing improvements and that the lot coverage for the Property is less than 7%. The zoning code permits lot coverage up to 15%.

Applicants contend that the unwarranted hardship is created by the unique configuration of the Property. There is a small tidal infusion on the Property, which pushes it further into the buffer and the buffer has been expanded because of steep slopes on the Property. The only practical development on the Property can be allowed with a variance. The only area outside of

the buffer is forested area or restricted by the septic system. The proposed location for the garage and addition will have the least impact to existing trees.

Correspondence from the Critical Area Commission encourages the Board to evaluate another option, including the placement of the garage over an existing driveway to reduce overall lot coverage and avoid clearing trees. Doing so, according to the Commission, would not deny the Applicants reasonable and significant use of the Property. Applicant's architect, Christopher Boyd, counters that it isn't a practical option from an architectural perspective. He further testified that placing the improvements in an alternate location would block waterfront views from the waterfront dwelling, as well as views to the forest from the other side of the dwelling. He provided expert testimony indicating that placing the improvements on any other location, for the purpose of developing outside the buffer, would adversely impact the aesthetic quality of the Property (and thereby the value of the Property).

The Applicants have designed the proposal to provide the least impact and have designed the proposed breezeway, specifically, different than they would desire so that it is the least impactful option. Applicants also contend that coverage will only be increased by less than 1,000 sf, which is minimal.

Elisa Deflaux, Planner, testified that considerable mitigation will be required, and that the approval requires canopy coverage for the Property. She further testified that most improvements within the development are within the buffer. Mr. Ewing demonstrated by aerials on the record that other adjacent properties are similarly situated.

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).

All Board members have visited the site. The Board finds that the Applicant will suffer unwarranted hardship if the variance is not granted because any alternate proposal would unreasonably inhibit views from the primary dwelling. The property is assessed as a buildable waterfront property. The Board finds that alternate locations for the improvements are not practical and would aesthetically be a detriment to the neighborhood. The Board finds the

testimony of architect Christopher Boyd persuasive. He testified that alternate proposals are not practical from an architectural perspective and would be a detriment to the Property.

The Property is further constrained by steep slopes on both sides and forested area is providing valuable vegetative cover and habitat that should not be infringed on.

The Board finds that denial of the requested variance would deprive the property owner of a reasonable and significant use of the property, in large part because the Board makes the factual conclusion that the proposed additions are the only reasonable location for the improvements. Additionally, the Applicant will be required to perform significant mitigation by planting within the buffer.

The property is also assessed as a buildable waterfront property. If the Applicant is not able to improve the lot as a buildable waterfront lot, they would lose a significant investment in the property.

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 proposed improvements, including a garage, are commonly enjoyed by other homes within the same neighborhood and zoning district. Other property owners would be entitled to a variance under similar circumstances.

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. The Applicant has demonstrated that no better alternatives for the placement are available.

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 Applicants have not created the conditions or circumstances that result in the necessity for a variance. The property is constrained by slopes and forest and other circumstances, which were not created by the Applicants.

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 property is below the permissible lot coverage allowed and improvements will be no closer to the MHWL. The improvements will require mitigation. The project will also have to meet stormwater management requirements.

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

The Applicant is not requesting to expand improvements closer to the MHWL and will remain well below the allowable lot coverage for the Property. The breezeway construction has been minimized. The expansion that is requested is reasonable and will be adequately mitigated.

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.
8. Sign maintenance agreement.
9. Critical Area Commission Comments dated 3/13/24.
10. Authorization letter.
11. Independent Procedures Disclosure and Acknowledgement.
12. Aerial photos.
13. Critical Area Lot Coverage Computation Worksheet.
14. Site Plan prepared by Lane Engineering, LLC.
15. Elevation and Floor plans.

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

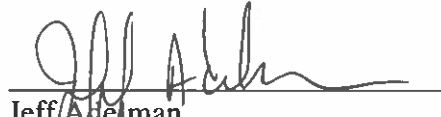
1. The Applicant shall commence construction of the proposed improvements within eighteen (18) months of the date of the Board of Appeals approval.
2. The Applicant shall comply with Critical Area law, including the completion of a Buffer Management Plan that complies with Critical Area Law. Applicants shall provide 3:1 mitigation for any permanent disturbance within the buffer and 1:1 mitigation for any temporary disturbance within the buffer.
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 25th day of February 2025, **ORDERED** that the Applicant's requests for a variance is GRANTED.


Chairman, Frank Cavanaugh

Unavailable for Signature
Vice Chairman, Louis Dorsey, Jr.


Patrick Forrest


Jeff Adelman


Zakary Krebeck