

**BEFORE THE TALBOT COUNTY BOARD OF APPEALS**

IN THE MATTER OF \* CASE NO. CAVR-22-3  
THEODORE LAYTON, JR., et. al. \* VARIANCE REQUEST APPLICATION  
\* \* \* \* \*

The Board of Appeals (the “Board”) held a hearing on October 3, 2022 in the Bradley Meeting Room, Court House, South Wing at 11 N. Washington Street, Easton, Maryland to consider the application of Theodore Layton, Jr. and Janelle Layton (the “Applicants”). The Applicants requested a variance at 1346 Chancellor Point Rd., Trappe, MD 21673. Chairman Frank Cavanaugh, Vice Chairman Louis Dorsey, Jr., Board Members Paul Shortall, Jeff Adelman, Zakary Krebeck, and Board Attorney Lance Young were present. Brennan Tarleton, Acting Planning Officer for the Talbot County Planning and Zoning Division, Board Secretary Christine Corkell and Planner Elisa Deflaux appeared on behalf of the County.

**STATEMENT OF THE CASE**

The Applicants requested a Critical Area variance from the Critical Area Buffer for construction of a 12’ wide residential driveway. The driveway will serve the existing parcel (Tax Map 64, Grid 3, Parcel 1) for the purpose of ingress and egress. The parcel is currently unimproved. The variance will result in approximately 687 square feet of permanent disturbance within the Critical Area Buffer to be located 27.2’ from tidal wetlands.

**SUMMARY OF TESTIMONY**

Elizabeth Fink, a Land Planner at Fink, Whitten & Associates, appeared on behalf of the Applicant. The purpose of the variance request is that ingress and egress is necessary for Mr. and Mrs. Layton to access their developable property. The driveway will be made of gravel and will be the shortest path to open up and access the developable property.

The property is on a peninsula with water on three sides. It is surrounded by Critical Area Buffer and so any driveway must go through the Buffer. It will be constructed 12’ wide to match existing driveway. The width is the minimum amount necessary to accommodate emergency vehicles.

Construction will include planting for stormwater runoff, which will include non-rooftop disconnect for the house and a combination of swales and rooftop disconnect elsewhere on the property. Mrs. Fink will coordinate with staff to coordinate required 3:1 mitigation.

Mr. Krebeck inquired about whether the construction will affect bald eagle nesting. Mr. Layton testified that he will be dealing directly with Fish and Wildlife Service to protect eagle nesting if it is confirmed that there is an active nest.

## 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.*

The property is on a peninsula with water on three sides. The unique character of this property is such that a driveway must go through the Critical Area Buffer. Without the variance, the Applicants would not have ingress and egress to the developable 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.*

Without a variance, there can be no driveway and no access to build the developable property. Other property owners are allowed ingress and egress to their properties.

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 Applicants as everyone has a right to access their property.

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.*

This is a pre-existing lot. 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 have minimal impact on fish, wildlife, or plant habitat within the Critical Area. The Applicants are implementing stormwater management measures and are planting to mitigate for the disturbed area.

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

A 12' wide gravel driveway is the minimum adjustment necessary to relieve the Applicants of an unwarranted hardship. The width matches the width of existing driveway and is the minimum amount necessary to accommodate emergency vehicles.

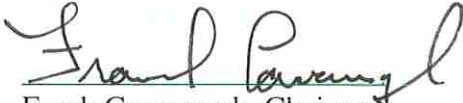
7. *If the need for a variance to a Critical Area provision is due partially or entirely because the lot is a legal nonconforming lot that does not meet current area, width or location standards, the variance should not be granted if the nonconformity could be reduced or eliminated by combining the lot, in whole or in part, with an adjoining lot in common ownership.*

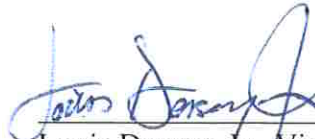
The Board finds that this criterion is not applicable.

Vice Chairman Dorsey moved that the Applicant be granted the requested variance subject to staff conditions and Critical Area Commission reports and the motion was seconded by Mr. Krebeck. 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 Applicants shall complete a Buffer Management Plan that complies with all requirements of the Critical Area Law. The Applicants will provide 3:1 mitigation for any permanent disturbance within the buffer and 1:1 mitigation for any temporary disturbance within the buffer.
2. The Applicants shall commence construction of the proposed improvements within eighteen (18) months of the date of this Decision set forth below.
3. The Applicants shall comply with and address all Critical Area Commission comments and requirements, including the completion of a Buffer Management Plan that complies with Critical Area Law.

IT IS THEREFORE, this 24<sup>th</sup> day of October, 2022, **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