

**Meeting Minutes
Board of Zoning Appeals
Caroline County, MD**

DATE: Tuesday, May 16, 2023

PLACE: Health & Public Services Building
403 S. 7th Street, Room 111
Denton, Maryland 21629

BOARD MEMBERS: Karen Hardy, Chair
Benjamin Butler, Vice-Chair
Michael Mann, Sr., Member
Kevin Parks, Sr., Alternate

OTHERS PRESENT: Patrick Thomas, Board Attorney
Crystal Dadds, Assistant Codes Director
Catherine McCulley, Board Administrative Assistant

Ms. Hardy opened the meeting at 6:00 pm. She read the following section of the Notice of Public Hearing:

Application No. 23-0020: A request by **Donald J. Jr. & Dawn G. Swann** for a **Variance** in accordance with Zoning Chapter 175, Article XVII, §175-153.A(3)(g) of the Code of Public Local Laws of Caroline County, Maryland and COMAR Title 27 to modify a decision, specifically Variance No. 22-0028 to permit the expansion of an existing dwelling within the 100-foot Chesapeake Bay Critical Area Buffer and to allow an increase in lot coverage limits. Said property is located at 97 Sharp Rd, Denton, Maryland and is further described as Tax Map 107, Grid 1, Parcel 246.

The public hearing notice was published in the Times Record on April 5 and April 12, 2023.

SWANN VARIANCE #23-0020

Ms. Dadds then read the following exhibits into the record:

1. Notice of Public Hearing published in the Times Record on 5.3.23 and 5.10.23
2. Staff Report
3. Application
4. Reason for Request and Response to Requirements
5. Site Plan
6. Aerial Overlay
7. Aerial of Surrounding Area
8. Record Plat 170/539 dated 5.12.1970
9. Record plat 195/175 dated 10.20.1976
10. Environmental Health Department Water-Sewer Verification Approval (Revised)
11. SDAT Real Property Data Sheet & Tax Map - Map 107-Grid 1-Parcel 246
12. Adjoining Property Owner Affidavit

13. Critical Area Commission Review Letter dated 08.25.2022
14. Sign Posting Affidavit
15. Applicant Notice

Ms. Dadds stated she had received no additional written testimony in opposition or in favor of the application. Ms. Dadds read the Staff Report (Exhibit 2) written by Matthew Kaczynski, Development Review Coordinator for the Department of Planning and Codes.

Ms. Hardy administered the oath to Elizabeth Fink (Fink Witten & Associates, 113 E. Dover Street, Easton, MD) and Ms. Dawn Swann (97 Sharp Road, Denton, MD).

Ms. Fink told the Board she would refer to the testimony already submitted [Exhibit 4]. The site was subdivided in 1970, and the house was built in 1972 and is entirely in the [Critical Area] Buffer. Between the house, the pavement and other impervious areas, the site is over the impervious limit. The house is dated, a typical 1970's style rancher with a small kitchen which isn't large enough to entertain the Swann's family and children for gatherings. They decided to add the kitchen of their dreams with an 18 x 25 foot addition on the landward side of the house further from mean high water and over an existing impervious surface and will also remove all of the parking pad in that area. This will yield a net total impervious reduction of 344 square feet and a reduction of 48 square feet in the buffer.

Ms. Fink offered to review all responses submitted as Exhibit 4 for the Board.

Ms. Hardy did not feel that was necessary since the Board heard them before at the September 2022 hearing. However, she wanted Ms. Fink to explain why her clients needed to return when they had received a variance for this project previously.

Ms. Swann asserted that the need to return to the Board was their error. The scope of the project has not changed at all. If the Board looks at the site plan, they will see that nothing about the request has changed, but until they received the 'official' drawings from the architect, they thought the addition would be 18 x 20. She felt that maybe they did the process somewhat backwards. They did not want to pay an architect to do the drawings until they had approval from the Board for the variance.

Ms. Swann presented the plans to the Board for viewing and they were entered into the record as Applicant Exhibit 1.

As the Board observed the plans, Ms. Hardy stated, but you said [in the previous hearing] it was 20 feet, and it is not 20, it is 25. Ms. Hardy found on the plans the addition of the front door and stoop which added 5 feet. She commented that she understood this caused the error, making the previous request for an 18 x 20 foot addition not the minimum necessary for their project. The problem for the Board is that she testified under oath previously that the 18' x 20' addition was the minimum necessary. Ms. Hardy asked the Board if they had any other questions about the plans. Mr. Parks emphasized that the Swanns were now reducing the impervious surface even further than they had previously.

Ms. Hardy confirmed this, but the fact they were granted a variance for what they testified was the minimum necessary makes granting more problematic. She said this was a first for her, and she asked for other Board members to express their thoughts on this.

Mr. Mann said he agreed 100% with Ms. Hardy's description of the issue. He recalled the previous hearing which also included the builder, and the testimony was that the 18' x 20' would be the

minimum necessary. He felt if the Board denied this variance, the Swanns could not retain the previous variance granted.

Ms. Hardy clarified that this was not the case in Caroline County. The Swanns would still have the previously approved variance for the 18' x 20' addition; however, in other counties this would not be the case. Ms. Hardy expressed discomfort about setting this precedent of allowing people to come back when such mistakes were made.

Mr. Thomas stated that he was not suggesting the Board go one way or the other, but he asserted that what they presented previously, while under oath, they thought to be the truth to the best of their personal knowledge. They believed what they were presenting was accurate. If they don't know that what they are presenting is based on inaccurate information, then what they told the Board was not untrue.

Ms. Hardy asked if, because the Board was given inaccurate information, the Board could now revisit the request.

Mr. Thomas said right, if they didn't tell you something knowingly false, then what they were relying on was flawed.

Ms. Hardy did not think anything was done maliciously. She firmly believes that it was an absolute mistake. She was concerned about setting a precedent that could cause problems later and is just trying to follow protocol.

Ms. Hardy invited the Board to ask anything of the applicants prior to moving into deliberations. She asked if the applicants had anything else to add.

Ms. Fink explained that when an architect develops plans, there is often a reason for that specific design. Had they had these plans initially, they would not have had to make this request. She also understood not wanting to invest in the plans before knowing they would get the variance.

Ms. Hardy remarked that now, seeing the plans and understanding how the oversight happened, she did not have a problem, but she didn't know how other Board members felt.

Mr. Mann thought the applicants did not try to do anything maliciously wrong. Having to come back to the Board has cost them money and time.

Ms. Dadds asked who prepared the floor plan they had presented in September 2022. She found that drawing (Exhibit 5) and projected it for all to see.

Ms. Swann pointed to the projected floor plan and said they really thought it was 20'. The shape of the floor plan is accurate, but the 20' dimension is wrong. Her son prepared the drawing because Department staff had advised that the drawing did not have to be professionally prepared in order to file the variance application.

Mr. Mann commented that it was not a wrong representation, but it was a wrong number.

Ms. Swann agreed, saying the sketch showed the right shape but the number 20 was in error.

DELIBERATION

Ms. Hardy closed the hearing and entered into deliberations, beginning with the variance application.

The Board began with the criteria set forth in the County Code §175-152.D for an area variance:

§175-152.D(1) A written application for a variance has been submitted in accordance with §175-162 of this chapter.

Ms. Hardy stated that a written application was submitted, Exhibit 3.

§175-152.D(2) A duly advertised public hearing has been held as prescribed by §175-179 of this chapter.

Ms. Hardy noted that the public hearing was advertised on May 3, 2023 and May 10, 2023, and a sign posting advertising the hearing was posted per Exhibit 14.

§175-152.B The strict application of setback and lot coverage requirements would pose a practical difficulty to the owner of the property.

Ms. Hardy stated that the zoning setbacks required for a structure in the [Critical Area] Buffer cannot be met since the home is entirely in the Buffer.

Mr. Mann commented that with the home entirely in the Buffer, there is no way for an addition to be out of it.

Ms. Hardy continued, so the strict application of this is clearly going to cause a problem for them. Mr. Butler stated the house was built in 1972 prior to Critical Area Regulations.

Ms. Hardy felt this condition would match the next criteria:

§175-152.B(1) Such difficulty is a result of special conditions and circumstances not generally shared by other properties in the same zoning district or in the same neighborhood and is peculiar to the property, structure or building for which the variance is requested.

Ms. Hardy stated that all the lots in the Critical Area have different shapes and sizes and are all affected differently according to the distance to the water, et cetera.

§175-152.B(2) Such difficulty is not the result of or does not arise from conduct of the applicant or the applicant's predecessor(s).

Ms. Hardy noted the home was built prior to Critical Area Regulations coming into existence.

Mr. Butler asked when applicants bought the house.

Ms. Swann replied 1990.

§175-152.D(3)(d) The variance granted is the minimum necessary to afford relief.

Ms. Hardy said as was testified previously, [the 18' x 20' disturbance] was not the minimum necessary, but that was a mistake on behalf of the applicant because they were not given the correct information. Although it appears to be a huge dining room, she understands that they are remodeling the small kitchen to flow together with the dining room making the area an open concept.

Mr. Mann agreed, saying they were under the impression that the space was 18' x 20' when actually it was 18' x 25'. And they are giving up more impervious area, which is a good thing.

§175-152.D(3)(a) The granting of the variance will be in harmony with the general purpose and intent of this chapter and will not be injurious to adjacent property, the character of the neighborhood or the public health, safety or welfare.

Mr. Mann commented that he knew this neighborhood and there were only three houses at this end of Sharp Road. He did not feel this addition will impact neighbors at all, and no one has spoken against it. Mr. Butler agreed.

§175-152.D(3)(b) Such difficulty is not the result of or does not arise from conduct of the applicant or the applicant's predecessor(s) in interest.

This was addressed when discussing §175-152.B(2).

§175-152.D(3)(c) The condition, situation or intended use of the property concerned is not of so general or recurring a nature as to make practicable a general amendment to this chapter.

Ms. Hardy noted that each waterfront property is situated differently and changing the law could not address all the differences.

§175-152.D(3)(e) Is the property within the Critical Area? The granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area, and that the granting of the variance will be compatible with the Critical Area Law and this chapter.

Ms. Hardy affirmed the property was in the Critical Area and the Board would address this next when reviewing the standards in COMAR.

§175-152.B(3) The financial hardship to the applicant as the result of the strict enforcement of the zoning regulation(s) in question may be considered by the Board only when such financial hardship is severe and only when and if the above conditions have been found to exist; the financial hardship alone cannot serve as a basis for granting an area variance.

Ms. Hardy stated that this condition was not applicable as no financial hardship was declared by the applicant.

Ms. Hardy stated that many of the Critical Area Variance Standards § 27.01.12.04 had been addressed in the Board's discussion of the County requirements for a variance.

B(1) Due to special features of the site or special conditions or circumstances peculiar to the applicant's land or structure, a literal enforcement of the local Critical Area program would result in an unwarranted hardship to the applicant.

Ms. Hardy said that the hardship of not getting the variance would cause the applicants to start again from the beginning to plan and design the addition. Mr. Butler added that the applicant is bound by the Critical Area Regulations because the entire home is in the Critical Area.

B(2) A literal interpretation of the local Critical Area program would deprive the applicant of a use of land or a structure permitted to others in accordance with the provisions of the local Critical Area program.

Ms. Hardy observed that the applicants would not be able to have a dining room without the granting of a variance.

B(3) The granting of the variance would not confer upon the applicant any special privilege that would be denied by the local Critical Area program to other lands or structures in accordance with the provisions of the local Critical Area program.

Ms. Hardy considered that anyone who came to the Board with a similar situation [entire home in the Critical Area buffer] could also be granted a variance. Every property is unique.

Mr. Parks stressed that he would feel differently if they were trying to build the addition on the side of the water.

B(4) The variance request is not based upon conditions or circumstances that are the result of actions by the applicant.

Mr. Butler stated that the property was subdivided and developed in the 1970's prior to the implementation of Critical Area regulations. The applicants did not purchase the property until 1990.

B(5) The variance request does not arise from any conforming or nonconforming condition on any neighboring property.

Ms. Hardy maintained the lots were subdivided prior to Critical Area law enactment and the house sits entirely in the Buffer.

B(6) The granting of the variance would not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the jurisdiction's local Critical Area.

Ms. Hardy observed the applicants will be doing Buffer mitigation per the County and COMAR requirements.

B(7) The granting of the variance would be in harmony with the general spirit and intent of the Critical Area law, the regulations in this subtitle, and the local Critical Area program.

Ms. Hardy considered the request to be consistent with this criteria.

Mr. Mann and Mr. Butler agreed.

Motion: Mr. Mann made a motion that the Board approve **Application No. 23-0020** submitted by the Swanns to build an 18' x 25' addition on the house with the following condition:

- A Building Permit and/or Zoning Certificate will be required prior to any proposed development and must be accompanied by all the necessary documentation and site plan requirements including a Buffer Mitigation Plan.

Second: Ms. Hardy seconded the motion.

Vote: The vote was unanimous (3:0).

MINUTES

The Board unanimously approved the 4/18/2023 minutes with members Hardy, Butler and Parks voting (3:0).

ADJOURNMENT

Motion: Ms. Hardy made a motion to adjourn.

Second: Mr. Butler seconded the motion.

Vote: The vote was unanimous (3:0).

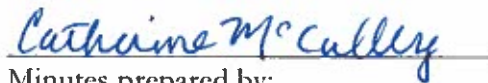
Ms. Harding adjourned the meeting at 6:40 pm.

BOARD OF ZONING APPEALS

Karen Hardy, Chair



Karen Hardy, Chair



Minutes prepared by:

Catherine McCulley, Board Administrative Assistant