

**MEETING MINUTES
BOARD OF ZONING APPEALS
FOR CAROLINE COUNTY, MARYLAND**

DATE: October 19, 2021

PLACE: Health & Public Services Building
403 S. 7th Street, Room 111
Denton, Maryland 21629-1335

**BOARD MEMBERS
(PRESENT):** Michael Mann, Chairman
Karen Hardy, Vice-Chair
Benjamin Butler, Member

ALSO, PRESENT: Crystal Dadds, Assistant Director of Codes
Robert Merriken, Board Attorney
Kendra Blake, Board's Administrative Assistant

Chairman Mann called the Caroline County Board of Zoning Appeals meeting to order at 6:00 PM. He introduced the Board members and staff then explained the duties that the Board is charged with and how the meeting will proceed.

NEWBOLD VARIANCE NO. 21-0035

Mr. Mann read a portion of the Notice of Public Hearing into the record as follows:

Application No. 21-0035: A request by **Paul & Tracy Jane Newbold** for a **Variance** in accordance with Zoning Chapter 175, Article XVII and §175-15 of the Code of Public Local Laws of Caroline County, Maryland to construct a 24' x 24' detached garage which would be located within the 100-foot Chesapeake Bay Critical Area Buffer. Said property is located at 23330 Holly Park Dr, Preston, Maryland and is further described as Tax Map 0041, Grid 0003, Parcel 0152, Lot 0041.

Mr. Mann swore in:

Paul Newbold, 23330 Holly Park Drive, Preston, MD
Tracy Newbold, 23330 Holly Park Drive, Preston, MD

Ms. Dadds read the exhibits into the record:

- 1 - Notice of Public Hearing published in the Times Record on 10.6.21 and 10.13.21
- 2 - Staff Report
- 3 - Application
- 4 - SDAT Real Property Data Sheet & Tax Map for Map-41 Grid-3 Parcel-152
- 5 - Aerial Photograph

- 6 - Professional Site Plan Prepared by Davis, Bowen & Friedel
- 7 - Environmental Health Dept Water-Sewage Verification
- 8 - Critical Area Commission Review Letter dated 09.29.21
- 9 - Adjoining Property Owner Affidavit
- 10 - Notice of Hearing to Applicant
- 11 - 04-013V Variance Decision dated 07.07.04
- 12 - 04-013V Variance Decision dated 07.20.04
- 13 - 201100003 Variance Decision dated 06.21.11
- 14 - 01-37V Variance Decision dated 10.02.01
- 15 - Sign Posting Affidavit & Photographs of Property

Ms. Dadds stated that no written responses were received.

Mr. Newbold stated that he was applying for a variance for a 24x24 detached garage in the critical area buffer. They are proposing to construct on an existing driveway as shown on the site plan, exhibit 6. He stated that when he bought the property in June of 2020 there was no garage present. He went on to say that they do not have a place to park their vehicles to protect them from bad weather. They would also like to use it for storage of additional property that would be too large to store inside of their house. Mr. Newbold stated that their property did not have a garage; however, all other properties on the street do have garages, they are the only property that does not have one.

Mr. Mann asked Mr. Newbold if he had a copy of the variance application.

Ms. Dadds clarified, asking Mr. Newbold if he had the questionnaire that was sent to him with a copy of the notice.

Mr. Newbold began to read the questions from the questionnaire: (1) What are you asking the Board to approve and why? Mr. Newbold replied that he had just mentioned what he was asking the board to approve. (2) Is there another option? If there are other options, what are they and why are they not the best option? He stated that they weren't aware of any other garage option to protect their vehicles. (3) What special conditions or circumstances are peculiar to the property, structure, or building involved? He stated as mentioned, that there was no garage or means to cover their vehicles. (4) Are these special conditions or circumstances the result of your own actions? He stated that they were not. When they bought the house, there was no garage. (5) Will your project affect the adjacent property, the character of the neighborhood or the public welfare? Mr. Newbold stated that they did not believe it's going to affect the adjacent property in any bad way, they would be building the garage in the same character of the house and of the neighborhood. (6) What do you intend to use the land, structure or building for? He stated as mentioned that it would be used primarily for the parking of their vehicles. (7) Is what you are asking the minimum necessary? Mr. Newbold stated that his wife has an SUV, he has a truck, and they believe that they are asking for the minimum to be able to store their vehicles in the space.

Ms. Dadds clarified with Mr. Newbold that the gray dashed line as shown on exhibit 6, site plan is the existing gravel driveway, and the bold line is where the proposed garage would be placed in that area.

Mr. Newbold responded stating that it was drawn to show that it would be in line with the house, for a nice vision to look at.

Ms. Dadds displayed exhibit 5, aerial view of the property for the Board to see that the angle of the garage is in line with the angle of the house.

Mr. Newbold stated that they are trying to build the garage as far away from the 100-foot buffer to try to minimize the invasion of the space.

Ms. Dadds clarified the proposed location of the garage while still referencing exhibit 5, aerial view of the property.

Mr. Newbold confirmed the proposed location. He went on to say that on the site plan, exhibit 6, the area is 3.78 acres, however, they tried to be more conservative on their site plan and use only the land section, which is 2.46 acres in determining the percentage of lot coverage allowed.

Mr. Mann asked Mr. Newbold if there was anywhere on the property that would get the garage out of the 100-foot buffer.

Mr. Newbold responded stating that the problem that they face was that the further from the water line towards the road, it starts to encroach on the drainage field for the septic.

Ms. Hardy stated that she would like to approach the issue of hardship. She stated that although it may be a hardship to the Newbold's as it wasn't necessarily created by them however, they purchased the property with the critical area and wetland restrictions already in existence knowing it did not have a garage. The hardship was either self-created or created by the Newbolds' predecessors. Ms. Hardy concluded that she was not seeing where the hardship was being met. She asked the Newbold's if there was a hardship that was being met that was not being shared.

Mr. Newbold stated that he had explained that their hardship was that the property had no place to park their vehicles or store things to prevent potential damage that could come with weather conditions.

Ms. Hardy stated that those conditions aren't exclusive to the Newbold's or to anyone who has a house with no garage. The elements are going to affect them, it's all a part of maintenance, it's not a hardship that is unique.

Ms. Newbold stated that it's not a hardship that is unique. She also stated that she would like to purchase an electric vehicle, but she cannot because she does not have anywhere to charge it. She went on to say that they are trying to minimize the impact on the environment, which is why they were asking for the 24x24 garage, it is the minimum size that they could fit their vehicles in.

Mr. Newbold stated that they are not trying to build on additional land.

Ms. Hardy stated that she understood what Ms. Newbold was saying, however, from the law standpoint and the critical area standpoint, there is no hardship. It is the nature of the property, that

is the way that it was bought, and she understood that it is a problem for the Newbolds. The issue is that it is not a hardship per se the way that the variance laws are written. Variances are not to be given out randomly, they're not to be given out for any reason; they're to be granted for a real specific and hardship situation. Ms. Hardy did emphasize her sympathy for the Newbold's issue. She stated that she was not discounting what they were saying, but the Board looks at the Code, the Law, and COMAR, which is about the critical area, that is very specific and must reflect a hardship. She continued saying that the hardship was created by the Newbolds' predecessors in that there was a garage on the property previously that was transformed into residential living area. The Newbold's bought the property less than a year ago in those conditions, knowingly. She stated that she understood the need and the desire for a garage, but the law says what it says.

Mr. Mann stated that as a Board, they struggle with the fact that they have empathy towards everything that is going on, but they have rules that they must follow. He went on to say that there had been nothing presented that showed a true hardship. He stated that just wanting a place to keep their vehicles nice and out of the weather or away from the elements will not qualify as a hardship.

Mr. Butler questioned that the house had a garage before, what was it now.

Mr. Newbold responded that what was the garage is now the kitchen and furnace room.

Ms. Dadds stated that there was a violation reported on the property when it was listed for sale in 2019 that there was renovation work completed without proper permits. That violation was investigated, and the previous owner did remedy the violation and applied for an after the fact permit to convert a 2-car attached garage into a kitchen, hallway, furnace room and small storage area. The permit was issued on October 30, 2019 with the certificate of occupancy being granted on January 8, 2020 and it is now compliant.

Ms. Hardy stated she did notice that on the site plan, there are sheds on the property that should not be in the 100-foot buffer.

Mr. Newbold stated that one of the sheds was already on the property and that one of them would be removed if the variance was granted as it is not in great shape.

Ms. Dadds showed the site plan, exhibit 6 to clarify the locations of both sheds for the Board. She stated that without them being measured, they appear to be under 200 square feet and the Code does not require a building permit for structures under 200 square feet. However, they are still required to comply with any zoning and critical area regulations, which state that no structure can be within the 100-foot buffer unless a variance is granted. She went on to say that for the sheds to be allowed in the buffer, a building permit would not have been required, but a variance approval would have had to be given by the Board.

Ms. Hardy stated that the sheds should not be on the property and needed to be addressed. She did state that she understood that the sheds were existing, and that the Newbold's did not put them there.

Mr. Mann asked Mr. Merriken if the sheds needed to be addressed at that time.

Mr. Merriken stated that the issue did not need to be addressed by this Board; although, if the Board was inclined to grant the variance, they could make the removal of the sheds a condition for approval. He went on to state that The Court of Appeals has defined a hardship as “the denial of reasonable and significant use of the property.” Mr. Merriken then referenced COMAR Title 27, Subtitle 01, Chapter 12.04(B)(1) Variance Standards and asked the Newbolds if they had received that information from Ms. Dadds.

Ms. Hardy stated that if the Newbolds are getting limited use of their property, based on the number of acres, it may present a hardship if they are only using less than 6.9% of their total allowable lot coverage for their property based on the 2.46 acres, not the 3.78 acres.

Mr. Mann stated that the application stated, “the existing structures on the property are at 6.9% of the allowable 15%,” and he assumed the two sheds were being taken into consideration.

Mr. Butler stated that he felt that the bare minimum was being asked for.

Ms. Hardy stated that she didn’t feel that it was the bare minimum.

Ms. Newbold stated that it was considered the bare minimum being asked for a double garage.

Ms. Hardy disagreed stating that it was not the bare minimum of what could have been asked for if the Board were to deny the 24x24 building. If the Board denied a larger building, what would be the bare minimum that would be accepted.

Ms. Newbold responded that to make it worthwhile, they asked for the minimum of 24x24, but 20x20 would not be enough space for two vehicles.

Mr. Butler stated that the existing sheds would have to be removed.

Mr. Mann stated that although the sheds are there, the 24x24 would eliminate the sheds.

Mr. Newbold stated that if the variance was approved, they would remove the sheds.

Mr. Mann clarified that one of the sheds that would be in proximity of the garage would need to be removed because it is not in good shape.

Mr. Mann asked the Board if they had any other questions.

Ms. Hardy stated that the issue of reasonable and significant use of the property based on the size made her reconsider in terms of hardship. She stated that the Board wasn’t trying to make things tricky, they were just following the laws.

Mr. Merriken stated that the Board can take into consideration that other properties have garages as part of the case.

Ms. Hardy stated the proposed location is the best area which brings it as far away from the water as possible. She asked what the minimum size would be because the size was her biggest concern.

Mr. Merriken told the Board they must take into consideration if the applicants had taken the necessary mitigation measures for the variance to be granted. They have testified that the building would be constructed on impervious surface.

Mr. Mann stated that if it were already planned to put the building on the existing impervious surface, the impact would be minimal.

Ms. Newbold stated that there was a slight adjustment in the impervious area. She believed that the existing impervious area was larger than 24x24, she believed that it was 26x26.

Mr. Newbold stated that a small portion of the area of the driveway will decrease as a result of the placement of the proposed garage so that it will be in line with the existing house.

Mr. Merriken asked if the total allowed lot coverage was calculated on the 2.46 acres.

Mr. and Ms. Newbold responded yes.

Ms. Hardy stated that they were decreasing the amount of lot coverage.

Mr. Merriken stated that the Newbolds were being taxed on 3.78 acres, according to the surveyor. He also stated that he believed the surveyor calculations were correct if he used the smaller number.

Ms. Hardy stated that the property was a decent sized parcel to only have a house without a garage.

Mr. Butler asked Mr. Merriken if the two sheds on the property would classify as a hardship if the Newbolds had asked for a variance.

Mr. Merriken clarified that Mr. Butler was asking if the Newbolds wanted to keep the two sheds, would it be a hardship. He went on to say that he did not know how long they had been there, therefore, they could be a nonconforming use. If the Board decided to grant the variance, a condition could be made to remove the two sheds.

Mr. Mann asked about the condition of the shed that was located near the dock area.

Ms. Newbold stated that it was an 8x10 shed and it was in good condition.

Mr. Merriken stated that another condition that the Board could impose was that the two sheds be removed and that no additional sheds be placed on the property. Although, they would be in violation of the critical areas law if they did, but it could be a condition for the variance.

Mr. Mann opened the floor for testimony in favor by the audience.

Mr. Mann swore in:

Gary Dathe, 23264 Holly Park Drive, Preston, MD
Marilyn Evey, 23331 Holly Park Drive, Preston MD
Scott Evey, 23331 Holly Park Drive, Preston, MD

Mr. Dathe stated that he had been before the Board 2-3 years ago, a neighbor testified on his behalf, and he was there to support the Newbolds. He went on to say that the Newbolds had been there for a little over a year and had done nothing but improve the property. The proposed garage will be on existing gravel drive and they wouldn't be utilizing any more land. He stated that he didn't know if it was a hardship, but he had all his vehicles in a garage. A garage would add to the value of the Newbold's property and the neighborhood.

Mr. Mann asked Mr. Dathe if his garage was attached or detached.

Mr. Dathe stated that he has both attached and detached garages.

Ms. Hardy asked how old Mr. Dathe's home was.

Mr. Dathe stated that it was built in 1988.

Ms. Hardy asked if he recalled if it was built before the critical area laws.

Mr. Dathe stated that his variance hearing was for a rear deck to allow a small corner to be within the critical area buffer. He purchased the lot next to his and eliminated the lot line, where he now has a pole barn on that lot. The pole barn is not in the 100-foot buffer.

Mr. Mann asked if the majority of the properties in the neighborhood had detached garages.

Mr. Dathe stated that there were only two houses that did not have detached garages.

Mr. Merriken stated that the original version of the critical area law was enacted in 1984, it was enacted in Caroline County in 1989.

Ms. Hardy thanked Mr. Dathe for his testimony.

Ms. Marilyn Evey thanked the Board for noticing that if the Newbolds got rid of the sheds, that they would need some place for their garden equipment to be stored. She went on to say that she also has an attached garage and a pole building which can be turned into a garage and her home was built in 1999. She stated that there are many mature trees in the neighborhood which makes her happy to have the attached garage for her vehicles due to limbs that fall from the trees. She stated that the Newbolds are nice people and they take care of their property.

Mr. Mann stated that a lot of the homes do have attached garages, but a lot also have detached buildings. This building would be conforming with the rest of the neighborhood in that it is not something that the rest of the neighborhood doesn't have or is going to stand out.

Ms. Evey stated that the way that the pole building would be situated on the property, it would be aligned perfectly. They would also have a place to store the contents of their sheds.

Mr. Evey stated that the garage that the Newbolds are proposing is about the same size as most others in the neighborhood although there are a few that are bigger. The Newbolds were not building anything that will be different in the neighborhood.

Ms. Newbold stated that they are trying to keep the building in proportion with the house.

Mr. Mann gave Mr. and Ms. Newbold the opportunity to give a summary statement before deliberation began.

Mr. Newbold stated that he did not have anything else to clarify.

Mr. Mann asked Mr. Newbold if they would be willing to remove both sheds that are on the property.

Mr. Newbold responded yes.

Mr. Mann asked if there was anyone present who was in opposition. There was no one present.

DELIBERATION

Mr. Mann began the review of the conditions of approval of an Area Variance as written in §175-152B of the County Zoning Ordinance.

B. Area Variance. The Board of Zoning Appeals may grant an area variance only upon a finding that the strict application of such requirements would pose a practical difficulty to the owner of the property and upon a showing that:

- (1) Such difficulty is the 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 identified that the issue is not often recurring in Caroline County because not all lands are in the Critical Area. She stated that not every property has an issue with being able to build a garage. For those two reasons, this is not a recurring condition.

Mr. Mann stated that the Board had already heard testimony that the neighborhood has existing attached garages and detached garages. The applicant is not asking for something that everyone else in the community does not already have. He went on to say that the neighborhood is not a large community; however, every home in the neighborhood is taken care of.

Mr. Butler added that the applicant does not currently have a garage on the property.

(2) Such difficulty is not the result of or does not arise from conduct of the applicant or the applicant's predecessor(s) in interest.

Mr. Mann stated that there was no predecessor that had an interest in the case.

Mr. Merriken stated that the prior owners do not have an interest at the present time however, the predecessors in interest did create the problem.

Ms. Hardy stated that this was her original concern at the beginning of the meeting in that COMAR and the County Zoning states that there must be a hardship. If being denied reasonable and significant use of the property, based on hardship (definition) that Mr. Merriken presented, that would be something to consider. Whereas everything else existed because of the predecessor when the Newbolds bought the property. However, because it is keeping them from using and enjoying the property the way that they choose to and may benefit them more, she is conflicted with determining whether the applicant "has met" or "not met" the hardship standard. After hearing what Mr. Merriken presented, she did not feel it was a definite "no" and is something that should be considered.

Mr. Butler agreed with Ms. Hardy.

Mr. Mann stated that the Newbolds have testified that they have thought the process through. They felt that 24x24 was the minimum (size) to afford the relief that they were asking. The two sheds that are existing, would be removed and they would be building on existing impervious surface. Although the sheds should not be there at all, this would be an additional reduction in impervious surface. Of the total lot coverage allowed, they would only be using 6.9%. The Newbolds did not have anything to do with the previous garage being converted into living space, but the predecessor did.

Ms. Hardy stated that if the Board denied the Newbolds reasonable and significant use of the property changed how the hardship was derived. She also stated that the Newbolds didn't create the hardship, but it was a hardship based on them not being able to use the property in its entirety or the capacity that they may have been able to.

Ms. Dadds advised that the Board to consider discussing what determines reasonable and significant use of the property.

Ms. Hardy stated that previous testimonies stated that all other properties in the community had garages, the Newbold property was the only property that did not. She asked for clarification of the sizes of the other properties in the community.

Mr. Evey stated that his property was 1.1 acres.

Mr. Dathe stated that his property was 2 acres after combining two lots.

Ms. Hardy stated that the Newbolds have almost 2.5 acres, which is larger than the others. If everyone has approximately an acre of property and the Newbolds have more than double that

size, yet they are only allowed to have a house, then they should be given the same rights as everyone else in the neighborhood. On that basis she feels they are being deprived.

Mr. Mann asked for clarification that the average size of lots were between 1 to 2 acres in the community.

Mr. Evey responded stating that all of the properties were approximately one acre in size with the exception of three that were 3.5 acres, 2.5 acres and 4 acres in size.

Ms. Evey stated that the riverside properties are larger.

Ms. Hardy stated that the Newbold property was 3.87 acres; however, that was not clear as the surveyor recorded the property being 2.46 acres due to wetlands on the property. They have a significantly larger property than most of the others and they are asking to place this in an area that is already impervious. She went on to say that if the variance was granted that the Newbolds will be required to go through the steps to mitigate as demonstrated in the response letter received from the Critical Area Commission.

Mr. Mann read a line from the Critical Area Review letter, exhibit 8 that stated that the Newbolds will be required to submit a Buffer Management Plan if the variance was granted.

(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.

Mr. Mann stated that the Board did not hear testimony of financial hardship. The Board agreed.

Mr. Mann continued with § 175-152D.

D. General requirements. The Board of Zoning Appeals shall not grant a variance unless and until:

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

Mr. Mann stated that a written application was filed and admitted as Exhibits 3, pages 1 through 4.

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

Mr. Mann noted that a public hearing was published in the Times Record the weeks of October 6 and October 13, 2021 as shown in Exhibit 10.

(3) The Board has considered the application and rendered a decision in accordance with the following principles and requirements:

(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. Butler referenced Exhibit 3, Page 2 Section III(b) stating that “All other properties on the street have a double garage with additional storage/workshop buildings. The existing lot coverage is below the 15% threshold.”

Ms. Hardy added that the granting of the variance was in harmony with everything, but she still questions the hardship requirement listed in the Zoning Chapter and COMAR. Regardless of that she believes because everyone else has the relief of the use that way and the Newbolds do not, it would be in harmony with the neighborhood.

Mr. Mann stated that it would follow the character of the neighborhood. There was no factor stating that it would be harmful to the public, safety or welfare of the neighborhood.

Ms. Hardy stated that it wouldn't degrade the property or decrease the value.

(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.

Mr. Mann stated that the condition was covered in §175-152B(2).

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

Both Mr. Mann and Ms. Hardy indicated that they did not see this as a recurring event since most homes have garages and not every property in Caroline County is located in the Critical Area nor do they have the same situation.

Mr. Mann stated that this is not a type of application that they see presented to the Board month to month.

(d) The variance granted is the minimum necessary to afford relief.

Mr. Mann and Mr. Butler both stated that the Newbolds stated that a 24x24 garage was the minimum necessary to afford relief.

Ms. Hardy added that although they could get a building of lesser size, they would like to accommodate their vehicles as well as storage of the contents of the two existing sheds that they will need to remove.

(e) That 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 Program for Caroline County, the Critical Area Law and this chapter.

Ms. Hardy stated the no trees would need to be removed; therefore, there would be less impact. She referred to exhibit 6, site plan stating that it indicated that there would be a reduction in impervious surface. In accordance with the Zoning Chapter and Critical Area laws, any mitigation would amend any issues of stormwater runoff.

Mr. Mann continued with § 175-152E.

E. Additional Requirements

(1) In granting any variance, the Board of Zoning Appeals may also prescribe additional appropriate conditions and safeguards in conformity with this chapter.

Mr. Merriken stated that the Board could discuss the conditions that they may have been inclined to impose and the reasons if the variance is granted or discuss them once a motion is made.

Mr. Butler stated that if the Board granted the variance, the Newbolds would be required to remove the two existing sheds from the property.

Ms. Hardy stated that the sheds should not have been there to begin with as they did not receive a variance approval to place them in the buffer as would have been required.

Mr. Mann asked if the Board had the power to require that both sheds be removed.

Mr. Merriken responded that the Board could make the requirement a condition of granting the variance.

Mr. Mann asked if there was any argument from the Newbolds to keep the shed that is closer to the dock.

Ms. Newbold responded stating that the shed that Mr. Mann was referring to was in good condition, whereas the other shed was not. It is their gardening and fishing shed and there are some things stored in there that they potentially would not want to store in the new garage such as her patio chair cushions.

Ms. Dadds stated that according to the survey (exhibit 6) there was a potential violation dependent upon on when the sheds were placed on the property. There would have to be an investigation, regardless of the Board's decision to confirm whether the placement of the sheds was in the buffer after the effective date of the Critical Area Law. The violation would have to be remedied before any permits could be issued. The only way that the sheds would be allowed was by variance approval.

Ms. Hardy asked if there was any place on the property, not in the critical area buffer that the sheds could be moved to. She also questioned if the sheds could be placed in the sewage reserve area.

Ms. Dadds responded that the Department of Environmental Health requirements would not allow the sheds to be placed in the sewage reserve area. There was an area outside of the buffer, but it would sit within the front setback, in which accessory structures are not permitted. She concluded stating that there probably wasn't an area that the sheds could be moved to.

Mr. Mann stated that if the Board granted the variance, both sheds would need to be removed.

(2) The application for a variance within the Critical Area shall also be submitted for review to the Atlantic and Chesapeake Bay Critical Area Commission at least 14 days prior to the scheduled hearing. A copy of the findings shall also be submitted to the Commission. If the application for a variance involves a nonconforming lot of record, the Board must also find that, due to the pattern of lot ownership, it is not possible to reconfigure or consolidate lots so as to permit compliance with the Critical Area Regulations.

Mr. Mann stated that exhibit 8, Critical Area Commission Review Letter dated 9/29/2021 addressed that section. The application had been submitted 14 days prior and a response was received.

Mr. Mann began review of COMAR 27.01.12.04. 04 Variance Standards:

A local jurisdiction may not grant a variance unless the local jurisdiction makes written findings based on competent and substantial evidence that:

A. In accordance with Natural Resources Article, §8-1808(d)(3)(ii), Annotated Code of Maryland, an applicant has overcome the presumption that the specific development activity for which the variance is required does not conform with the general intent of the local jurisdiction's program; and

B. The applicant has satisfied each of the following variance provisions:

(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.

Mr. Mann stated that the Board had previously discussed the section, including the definition of hardship that was provided by Mr. Merriken. The majority of the property is in critical area buffer; therefore, there was not any area that the Newbolds could utilize outside of the critical area buffer that would not be within the sewage reserve area.

(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 stated that the interpretation of the law would prevent the Newbolds from having the garage; however, others in the area do have that right. The critical area is preventing that right and is restrictive to what can be done.

Mr. Butler referenced the application for a variance, exhibit 3 stating that the Newbolds are staying below the 15% threshold of the maximum total lot coverage permitted.

Ms. Dadds stated that the 15% lot coverage is a separate regulation from the 100-foot buffer requirement that the variance is being requested for.

(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.

Mr. Mann stated that by the Board granting the variance, the Newbolds would not be granted anything special that other properties would not be granted.

Mr. Butler stated that the Board would be attempting to remedy the potential violation situation by requiring that the sheds be removed if the variance was granted for the 24x24 structure.

Mr. Mann stated that if the Board granted the variance for the 24x24 structure, it would eliminate the unpermitted buildings.

Ms. Hardy stated that the Board must decide if the Newbolds were being granted a special privilege that would not be granted to another applicant. The same logic would be applied to another applicant in the same situation if they had the same proof of hardship.

Mr. Mann stated that it would be the same process for another applicant. The Board wasn't just blowing through the process to allow the usage.

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

Mr. Mann stated that the predecessor converted the previous garage into additional living space. It was a permitted conversion, not from any actions by the Newbolds.

Ms. Hardy stated that the concern was with the denial of reasonable and significant use of the property. The hardship was really about the reasonable use of the property, whether the Newbolds created it or someone else did.

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

Mr. Mann stated that the application did not concern any of the neighboring properties.

Ms. Hardy stated that it was not a conforming or nonconforming condition.

(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.

Mr. Mann referenced exhibit 8, stating that the Newbolds would not be increasing the lot coverage.

Ms. Hardy stated that they would not be increasing the lot coverage; but would still be in the 100-foot buffer. The Board could grant the variance; however, the Newbolds would still have to mitigate to ensure that the critical area would not be damaged.

Mr. Mann stated that the driveway was an existing impervious surface; therefore, there would not be an effect on the water quality or any extra impact upon fisheries. There were no trees or vegetative area being removed that could have been a habitat to wildlife.

Mr. Butler stated that the structure would not be tied into the septic system.

Ms. Hardy stated that it would be the least amount of issues. She did not foresee any issues; however, the Department and/or Critical Area Commission would determine the mitigation required.

Mr. Mann stated that as far as plant habitat within the jurisdiction and of the local critical area, that would be determined by other departments if approved through the mitigation process.

Ms. Dadds stated that the Board needs to determine if there is an impact. There are requirements for any impact made.

Mr. Butler stated that he did not feel that there was an impact.

Ms. Hardy disagreed, stating that she felt that the impact was minimum based on the size and location of the proposed structure.

Mr. Butler agreed with Ms. Hardy's statement.

(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.

Mr. Butler referenced exhibit 8, stating that the property is in the critical area.

Ms. Dadds clarified that exhibit 8 did not state that the variance would be in harmony with the general spirit and intent of the Critical Area law. The Critical Area Commission stated that if the Board granted the area variance, the Board must find that the Newbolds have met all of the variance standards in COMAR. If the Board determined that the standards were met and granted the variance, they're stating what mitigation would be required. The Critical Area Commission was not providing comments of support or denial of the request.

Mr. Mann stated that the Critical Area Commission Letter, exhibit 8 is a letter from the State helping to make this determination. He asked for clarification on the statement in the letter that the building permit associated with the variance could not be issued until a buffer management plan outlining the location of the required mitigation had been approved.

Ms. Dadds stated that if there was disturbance in the buffer, whether it required variance approval from Board of Zoning Appeals or not, mitigation was always required. There were different ratios of mitigation that they would be required to do dependent upon the activity. The letter was restating the law as a reminder to the County that in accordance with the law, a buffer management plan is required before a permit can be issued.

Mr. Butler stated that if the variance was granted, it would be in harmony with the general spirit of the critical area law since the 24x24 building would be constructed over an existing driveway resulting in no increase in lot coverage in the buffer.

Mr. Mann stated that there were still guidelines for the disturbance of the land. He went on to say that granting the variance would be in harmony with the general spirit and intent of the critical area law.

Mr. Butler felt that the condition to remove the existing sheds would help improve some of the critical area buffer if the variance was granted.

Mr. Mann stated that the proposed total of disturbance was 1850 square feet, all in the critical area buffer.

Mr. Merriken referenced a power point presentation by the Critical Area Commission that was presented to The Bay Program that stated that being in harmony with the spirit and intent of the critical area program was that the Board must consider if the request was the minimum necessary, which the Board had already discussed. Reduction in size, related to impervious surface, he assumed, which was also discussed. Mitigation required was also included. Those were the bullet points discussed as far as things for the Board to discuss when determining the spirit and intent of the critical area program. Mr. Merriken stated that the Board had addressed all of the issues.

Mr. Mann stated that he wanted to ascertain that the Board is covering everything and clearly stating that this section is covered and why it is covered.

The Board discussed the conditions of the variance approval before making a motion.

Motion: Ms. Hardy made a motion to approve the variance application 21-0035 subject to the following conditions:

1. A Building Permit and/or Zoning Certificate will be required prior to any proposed development and must be accompanied by all necessary documentation and site plan requirements.

2. A Buffer Management Plan outlining the location of the required mitigation must be submitted as part of the Zoning Certificate and/or Building Permit process and approved by the County (COMAR 27.01.09.01-3) prior to the issuance of a Building Permit and/or Zoning Certificate.

3. Any conditions set forth by the Board will be enforced during the Building Permit and/or Zoning Certificate application process and any subsequent follow-up.

4. The Applicants shall remove the two storage sheds, with no further buildings being added in the future, within 90 days following the Final Completion Inspection on their garage.

Second: Mr. Butler seconded the motion

In Favor: The motion was unanimously approved (3-0).

The Board recessed at 7:43 p.m. and reconvened at 7:47 p.m.

MINUTES AND DECISIONS

Having read the August 17, 2021 minutes, the Board voted.

Motion: Ms. Hardy made a motion to approve the August 17, 2021 minutes as written.

Second: Mr. Butler seconded the motion.

In Favor: The motion was approved unanimously (3-0).

ADJOURNMENT

Motion: Mr. Butler made a motion to adjourn the meeting at 7:49 p.m.

Second: Ms. Hardy seconded the motion.

In Favor: The motion was approved unanimously (3-0).

Minutes Prepared by: Kendra Blake



Michael Mann, Sr., Chair