



**County Commissioners Hearing Room**

**400 High Street**  
**Chestertown, Maryland**

**AGENDA**

Monday, April 17, 2023

**5:00 p.m.**

Members of the public are welcome to attend meetings in person or listen to the meeting via the audio-only phone number and conference identification number listed below.

1. Dial **1-872-239-8359**
2. Enter Conference ID: **672 141 210#**

Members of the public are asked to mute their phones/devices, until the Commission Chair opens the floor for comment.

**MINUTES**

March 13, 2023

**APPLICATIONS FOR REVIEW:**

23-15 Thomas and Susan Schwarzwalder – Buffer Variance  
9827 Breezecroft Lane – Sixth Election District – Critical Area Residential (CAR)

**GENERAL DISCUSSION**

**ADJOURN**

**APPLICANT OR REPRESENTATIVE MUST BE PRESENT**

**APPLICANTS ARRIVING MORE THAN 10 MINUTES AFTER THE SCHEDULED HEARING WILL NOT BE HEARD  
AND WILL BE RESCHEDULED AT THE APPLICANT’S EXPENSE.**

Meetings are conducted in Open Session unless otherwise indicated. All or part of the Board of Appeals meetings can be held in closed session under the authority of the MD Open Meetings Law by vote of the members. Breaks are at the call of the Chairman. Meetings are subject to audio and video recordings.

All applications will be given the time necessary to assure full public participation and a fair and complete review of all projects. Agenda items are subject to change due to cancellations. Other business without assigned times may be discussed during the meeting.





**Board of Zoning Appeals**  
**Department of Planning, Housing, and Zoning**

**MINUTES**

Meeting: Kent County Board of Zoning Appeals  
 Date: March 13, 2023  
 Time: 5:00 P.M.  
 Location: County Commissioners Hearing Room, 400 High Street, Chestertown, Maryland

Agenda Item	Sitting for the Board	Action Taken	Vote
<p><b>23-07 Darrell and Carla Morgan – Variance – Critical Area Clearing</b></p> <p>The applicants are requesting a variance to clear in excess of the 30% maximum allowance for clearing in the Critical Area. The applicants propose to clear 12,845 square feet (69%) of an 18,691 square foot, fully wooded parcel to accommodate the installation of a detached single-family home, a driveway, and a septic system. The property is identified as Map 27, Parcel 481 on Clarissa Road.</p> <p>The Kent County Planning Commission forwarded a favorable recommendation to the Board of Appeals in regard to this application.</p> <p><u>Applicant/Representative</u>        Buck Nickerson, LS, Extreme Measures, LLC, was sworn in and presented a summary of the case.</p> <p><u>Public Comment</u>        Correspondence was received on February 14, 2023, from Tay Harris, Natural Resources Planner, of the Maryland Critical Area Commission. The CAC concurred with Staff’s recommendation.</p> <p><u>Planning Staff</u>        Mark Carper, LEED Green Associate, Associate Planner, was sworn in and recommends approval with conditions.</p>	<p>Dr. Albert Townshend,          Chairman</p> <p>David Hill, Member</p> <p>John Massey, Member</p> <p>Mr. Christopher Drummond,          Attorney for the Board</p> <p>Beth Grieb, Clerk</p>	<p>Mr. Massey made a motion to grant a critical area clearing variance to Darrell and Carla Morgan located on Clarissa Road in the Chesapeake Landing Subdivision to allow up to 69% of the parcel to be cleared. The approval is contingent upon the following conditions: An approved Critical Area Forest Clearing plan to mitigate at a ratio of 3:1 for the area cleared. Fee in lieu of planting is acceptable. The variance will lapse after the expiration of one year if no substantial construction in accordance with the plans herein presented occurs. The motion is made on the findings of facts both oral and written.</p> <p>The motion was seconded by Mr. Hill; the motion passed with all in favor.</p>	<p>Unanimous Approval</p>

**DRAFT**

Agenda Item	Sitting for the Board	Action Taken	Vote
<p><b>23-09 Scott and Shari Smith – Variance – Side Yard Setback</b></p> <p>The applicants are requesting a side yard setback variance to construct a residential addition. The addition would connect the existing detached garage to the dwelling, placing the entire primary structure three feet from the side lot line. The property is located at 26933 Mallard Road, Chestertown.</p> <p>The Kent County Planning Commission forwarded a favorable recommendation to the Board of Appeals for the side yard setback variance of twelve feet with the condition that no further encroachment shall occur within the side yard setback beyond the proposed addition over the existing concrete pad.</p> <p><u>Applicant/Representative</u> William Crowding, LS, William Crowding Surveys, LLC, was sworn in and presented a summary of the case.</p> <p><u>Public Comment</u> No correspondence was received on this application.</p> <p><u>Planning Staff</u> Carla Gerber, AICP, Deputy Director, was sworn in and recommends approval with conditions.</p>	<p>Dr. Albert Townshend, Chairman</p> <p>John Massey, Member</p> <p>David Hill, Member</p> <p>Mr. Christopher Drummond, Attorney for the Board</p> <p>Beth Grieb, Clerk</p>	<p>Mr. Hill made a motion to approve the variance for the side yard setback to connect the detached garage to the existing dwelling provided that no further encroachment shall occur within the side yard setback beyond the proposed addition over the existing concrete slab. The variance for Scott and Shari Smith located at 26933 Mallard Road will lapse after the expiration of one year if no substantial construction in accordance with the plans herein presented occurs.</p> <p>The motion was seconded by Mr. Massey; the motion passed with all in favor.</p>	<p>Unanimous Approval</p>
<p><b>MINUTES: February 27, 2023</b></p>		<p>Mr. Massey moved to approve the minutes. Mr. Hill seconded the motion; the motion passed with all in favor.</p>	<p>Approved</p>
<p><b>Adjourn</b></p>	<p><b>DRAFT</b></p>	<p>Mr. Massey made a motion to adjourn the meeting, and Mr. Hill seconded the motion; the motion passed with all in favor. The meeting adjourned at 5:40 p.m.</p>	<p>Unanimous Approval</p>

Dr. Al Townshend, Chairman

/s/ Beth Grieb

Beth Grieb, Clerk



April 11, 2023

Dr. Al Townshend  
Kent County Board of Appeals  
400 High Street  
Chestertown, MD 21620

RE: 23-15 Thomas and Susan Schwarzwaldler – Variance (Development in Buffer)

Dear Dr. Townshend,

At its meeting on April 6, 2023, the Kent County Planning Commission reviewed the application of Thomas and Susan Schwarzwaldler, requesting a buffer variance to replace 88 feet of existing 4-foot-high fence in the buffer. The in-kind replacement fence will follow the same configuration as the existing fence, will be 4 feet high, will include two gates, and will be set in concrete. A 2" x 4" wire fence is to be added and attached to the wooden structure. The Public Landing on Fairlee Creek abuts this fence line, and the replacement fence is to keep people at the Public Landing and their pets from trespassing on the applicant's property. The location is 9827 Breezecroft Lane in the Sixth Election District and is zoned Critical Area Residential (CAR).

Following discussion, the Planning Commission voted to make a favorable recommendation for the buffer variance to replace 88 feet of the existing fence in-kind. The Planning Commission recommends the following conditions should the Board of Appeals grant approval:

- The boundary line be located prior to installation of the proposed fencing.
- A Buffer Management Plan for mitigating the impacts of installation be submitted to the Planning Department for review and approval.
- The variance will lapse after the expiration of one year if no substantial construction in accordance with the plans herein presented occurs.

The decision was based on the following findings of fact:

- That the variance will not cause a substantial detriment to adjacent or neighboring property.
- That the variance is consistent with the Comprehensive Plan and the general intent of this Ordinance.
- The practical difficulty or injustice is caused by the abutment of this property to the public landing, which was not caused by the applicants or their actions.
- The proposed fence will deter trespassing from visitors to the public landing. The proposed 2" by 4" wire fencing will keep out errant pets while allowing small wildlife to pass through or climb over.
- The granting of the variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat.

- Cement footers are to be installed for stabilization of the posts. The Critical Area Commission reviewed the application and does not oppose the granting of the variance but notes that mitigation at a ratio of 3:1 is required for buffer disturbance.

Sincerely,  
Kent County Planning Commission

A handwritten signature in cursive script, reading "Joe Hickman".

Joe Hickman  
Chair

FJH/mc

cc: Thomas and Susan Schwarzwald

**To:** Kent County Board of Appeals  
**From:** Mark Carper, Associate Planner  
**Meeting:** April 17, 2023  
**Subject:** Thomas and Susan Schwarzwalders  
Buffer Variance

## Executive Summary

### REQUEST BY THE APPLICANT

Thomas and Susan Schwarzwalders are requesting a variance to replace 88 feet of an existing 4-foot-high fence in the buffer.

### PUBLIC PROCESS

Per Article IX, Section 2.2 of the Kent County *Land Use Ordinance*, the Planning Commission shall review and make a recommendation to the Board of Appeals for variances. The Board of Appeals may authorize variances from ... buffer requirements so as to relieve practical difficulties or other injustices arising out of the strict application of the provisions of this Ordinance.

### SUMMARY OF THE STAFF REPORT

The in-kind replacement fence will follow the same configuration as the existing fence in the front yard of a waterfront property, will be 4 feet high, will include two gates, and will be set in concrete. A 2" x 4" wire fence is to be added and attached to the wooden structure. The Public Landing on Fairlee Creek abuts this fence line, and the replacement fence is to keep people at the Public Landing and their pets from trespassing on the applicant's property. A variance will not negatively impact the character of the neighborhood or adjacent properties, nor will it adversely impact water quality, vegetation, or wildlife. The location is 9827 Breezecroft Lane in the Sixth Election District and is zoned Critical Area Residential (CAR).

### STAFF RECOMMENDATION

Staff recommends approval of the variance to install 88 feet of replacement fencing within the buffer with the following conditions:

- The boundary line be located prior to installation of the proposed fencing.
- A Buffer Management Plan for mitigating the impacts of installation be submitted to the Planning Department for review and approval.
- The variance will lapse after the expiration of one year if no substantial construction in accordance with the plans herein presented occurs.

PRELIMINARY STAFF REPORT

TO: Kent County Board of Appeals  
SUBJECT: #23-15 – Thomas and Susan Schwarzwalders  
Buffer Variance  
DATE: April 12, 2023

**DESCRIPTION OF PROPOSAL**

Thomas and Susan Schwarzwalders are requesting a variance to replace 88 feet of an existing 4-foot-high fence in the buffer. The in-kind replacement fence will follow the same configuration as the existing fence, will be 4 feet high, will include two gates, and will be set in concrete. A 2" x 4" wire fence is to be added and attached to the wooden structure. The Public Landing on Fairlee Creek abuts this fence line, and the replacement fence is to keep people at the Public Landing and their pets from trespassing on the applicant's property. The location is 9827 Breezecroft Lane in the Sixth Election District and is zoned Critical Area Residential (CAR).

**RELEVANT ISSUES**

I. Area, Height, Width and Yard Requirements

A. *Applicable Law:* Article V, Section 5.5 of the Kent County Land Use Ordinance requires the minimum yard:

Front	50 ft
Side	15 ft
Rear	30 ft
Waterfront	Minimum 100 ft buffer*

B. *Staff and TAC Comments:* A variance is required to place 88 feet of fence within the buffer.

II. Buffer Requirements

A. *Comprehensive Plan:* "Maintain, enforce, and if necessary, strengthen regulations for floodplains and buffers." (Page 86)

B. *Applicable Law:* Article V, Section 5.7.B.3.a of the Kent County Land Use Ordinance addresses development in the buffer:

i. Development activities, including structures, roads, parking areas, and other impervious surfaces, mining, and related activities, or septic systems shall not be permitted within the minimum 100-foot buffer. This restriction does not apply to water-dependent facilities that meet the criteria set forth below.

ii. New or expanded development activities may be permitted in the minimum 100-foot buffer, provided:

- a) The use is water dependent.
- b) The project meets a recognized private right or public need.
- c) Adverse effects on water quality and fish, plant, or wildlife habitats are minimized.
- d) In so far as possible, non-water dependent structures or operations

associated with water dependent projects or activities are located outside the minimum 100-foot buffer.

- C. *Staff and Comments:* The applicants have applied for a variance to replace 88 feet of existing 4-foot-high fence in the buffer. The fence will be along the property line and will provide the applicants with security from trespassing by users of the adjacent public landing and their pets. The Land Use Ordinance specifies that fences are structures within the definition of “structure,” and structures are not permitted in the buffer. The Critical Area Commission (CAC) has reviewed this application and does not oppose the buffer variance. The CAC recommends that the required 3:1 mitigation be located between the improvements and the shoreline to maximize water quality benefits. Furthermore, the CAC recommends that a Buffer Management Plan for mitigating the impacts of installation be submitted to the Planning Department for review and approval.

### III. Variance

- A. *Applicable Law:* Article IX Section 2.2 of the Kent County Land Use Ordinance authorizes the Board of Appeals to grant variances from the yard (front, side, or rear), height, bulk, parking, loading, shoreline cliff, 15% slope, pier length, impervious surface, stream protection corridor, and buffer requirements so as to relieve practical difficulties or other injustices arising out of the strict application of the provisions of this Ordinance.

Such granting of a variance shall comply, as nearly as possible, in every respect to the spirit, intent, and purpose of this Ordinance.

In the Critical Area, for a variance of 15% slope, impervious surface, or buffer requirements, it being the purpose of this provision to authorize the granting of variation only for reasons of demonstrable and exceptional unwarranted hardship as distinguished from variations sought by applicants for purposes or reasons of convenience, profit, or caprice.

In order to grant a variance, the Board of Appeals must find all of the following:

- a. That the variance will not cause a substantial detriment to adjacent or neighboring property.
- b. That the variance will not change the character of the neighborhood or district.
- c. That the variance is consistent with the Comprehensive Plan and the general intent of this Ordinance.
- d. That the practical difficulty or other injustice was caused by the following:
  - i. Some unusual characteristic of size or shape of the property.
  - ii. Extraordinary topographical or other condition of the property.
  - iii. The use or development of property immediately adjacent to the property, except that this criterion shall not apply in the Critical Area.
- e. That the practical difficulty or other injustice was not caused by the applicant’s own actions.
- f. That within the Critical Area for variances of 15% slope, impervious surface, or buffer requirements:
  - i. The granting of a variance will be in harmony with the general spirit and intent of the Critical Area Law and the regulations adopted by Kent County.
  - ii. That the granting of a variance will not adversely affect water quality or

- adversely impact fish, wildlife, or plant habitat.
- iii. That the application for a variance will be made in writing with a copy provided to the Critical Area Commission.
  - iv. That the strict application of the Ordinance would produce an unwarranted hardship.
  - v. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity.
  - vi. The authorization of such variance will not be a substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.
  - vii. That a literal interpretation of this Ordinance deprives the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area of Kent County.
  - viii. That the granting of a variance will not confer upon an applicant any special privilege that would be denied by this Ordinance to other lands or structures.
  - ix. Due to special features of a site, or special conditions or circumstances peculiar to the applicant's land or structure, a literal enforcement of this Ordinance would result in unwarranted hardship to the applicant.
  - x. The Board of Appeals finds that the applicant has satisfied each one of the variance provisions.
  - xi. Without the variance, the applicant would be deprived of a use of land or a structure permitted to others in accordance with the provisions of the critical area program.
- g. In considering an application for a variance, the Board shall consider the reasonable use of the entire parcel or lot for which the variance is requested.
  - h. In considering an application for a variance, the Board of Appeals shall presume that the specific development activity in the Critical Area that is subject to the application and for which a variance is required does not conform with the general purpose and intent of this Ordinance and the Critical Area Law.
  - i. The Board may consider the cause of the variance request and if the variance request is the result of actions by the applicant, including the commencement of development activity before an application for a variance has been filed.

- B. *Staff and TAC Comments:* It is staff's opinion that granting a variance will not cause a substantial detriment to neighboring properties or change the character of the neighborhood or district. The practical difficulty is due to the abutment of this property to the public landing. The existing fence has become dilapidated and does not adequately prevent trespassing from the public landing onto the applicants' property. The proposed in-kind fence replacement will not extend below the mean high-water line and will not negatively impact water quality, wildlife, or vegetation. The proposed 2" by 4" wire fencing will keep out errant pets while allowing small wildlife to pass through or climb over. Cement footers are to be included. The Critical Area Commission reviewed the application and does not oppose the granting of the variance but notes that mitigation at a ratio of 3:1 is required for buffer disturbance.

## **STAFF RECOMENDATION**

Staff recommends granting approval of the variance to install 88 feet of replacement fencing within the buffer with the following conditions:

- The boundary line be located prior to installation of the proposed fencing.
- A Buffer Management Plan for mitigating the impacts of installation be submitted to the Planning Department for review and approval.
- The variance will lapse after the expiration of one year if no substantial construction in accordance with the plans herein presented occurs.

Wes Moore  
Governor

Aruna Miller  
Lt. Governor



Charles C. Deegan  
Chairman

Katherine Charbonneau  
Executive Director

STATE OF MARYLAND  
CRITICAL AREA COMMISSION  
CHESAPEAKE AND ATLANTIC COASTAL BAYS

April 5, 2023

Mr. Mark Carper  
Department of Planning, Housing and Zoning  
Kent County  
400 High Street  
Chestertown, Maryland 21620

**Re: Schwartzwalder  
Buffer Variance Request (23-15)  
9827 Breezecroft Lane  
(TM 26, P 9)**

Dear Mr. Carper:

Thank you for submitting information regarding the above-referenced Buffer variance request. The applicant requests a Buffer variance to replace a section of a wooden fence located on a 2.15-acre parcel that is designated Limited Development Area (LDA) and zoned Critical Area Residential (CAR). The applicant proposes to replace, in-kind, 88 linear feet of fence secured with nine 4' by 4' newly constructed concrete footers and two 6' by 6' newly constructed footers. Neither clearing nor new lot coverage is proposed.

We do not oppose this Buffer variance request. Mitigation at a 3:1 ratio is required for Buffer disturbance as per COMAR 27.01.09.01-2. If feasible, locating the plantings between the improvements and the shoreline is recommended to maximize water quality benefits. The applicant shall provide a Buffer Management Plan as per COMAR 27.01.09.01-3 to the County for review and approval that includes species, size, spacing and schedule of plantings, and maintenance activities and survivability assurance.

Please include this letter in your file and submit it as part of the record for the variance and notify the Commission of the decision made in this case. Again, thank you for the opportunity to review and provide comments. If you have any questions, please feel free to contact me at 410-260-2481 or [tay.harris@maryland.gov](mailto:tay.harris@maryland.gov).

Sincerely,

Tay E. Harris

A handwritten signature in blue ink that reads "Tay E. Harris".

Natural Resources Planner  
File: KC 102-23

BOARD OF APPEALS APPLICATION

Kent County Department of Planning, Housing and Zoning

Kent County Government Center
400 High Street • Chestertown, MD 21620
410-778-7423 (phone) • 410-810-2932 (fax)

IN THE MATTER OF THE APPLICATION OF:

(Name, Address and Telephone Number of Applicant)

Thomas P. Schwarzwaldner

Susan E. Schwarzwaldner

106 S. Princeton Avenue

Wenonah, NJ 08090

Email: tom@onsitemarketing.com

For Office Use Only:

Case Number/Date Filed:

Filed by:

Applicant:

Planning Commission:

Date of Hearing:

Parties Notified:

Notice in Paper:

Property Posted:

Please provide the email of the one person who will be responsible for responding to comments. Only this person will be contacted by staff and will be the person responsible for forwarding the comments or requests for additional information to any other interested parties. EMAIL: tom@onsitemarketing.com

TO THE KENT COUNTY BOARD OF APPEALS: In accordance with Article 8 Section 2

of the Kent County Zoning Ordinance, as amended, request is hereby made for:

\_\_\_\_\_ Appealing Decision of Kent County Zoning Administrator X Variance

\_\_\_\_\_ Special Exception \_\_\_\_\_ Nonconforming Use

DESCRIPTION OF PROPERTY INVOLVED:

Located on: (Name of Road, etc.) 9827 Breezecroft Lane, Chestertown, MD 21620

In the 6 Election District of Kent County.

Size of lot or parcel of Land: 2.15 AC

Map: 0026 Parcel: 0009 Lot #: N/A Deed Ref: /01254/00056

List buildings already on property: Main house, Cottage, Detached Garage

If subdivision, indicate lot and block number: N/A

If there is a homeowner's association, give name and address of association: N/A

PRESENT ZONING OF PROPERTY: Residential

DESCRIPTION OF RELIEF REQUESTED: (List here in detail what you wish to do with property that requires the Appeal Hearing.) Seeking a variance to replace 88 feet of existing 4-foot-high, 3 rail paddock style fence between our property 9827 Breezecroft Lane and the Public Landing on Fairlee Creek. The fence will conform with the 4-foot-high requirement for front yard fences as the we understand the water side is our front yard. The current fence is old and beyond repair. The fence to be installed will be the same as what is currently in place with the exception that we would like to add 2" x 4" wire to the fence. The fence will consist of 9 eight foot sections of fence (72 feet) and two 8 foot gates (16 feet), which is the current configuration. Line posts to be by 4"x4" set in concrete and the gate posts are to be 6"x 6" set in concrete. Please reference the attached estimate from local fence contractor TL

Fence for pictures and exact description. The fence is necessary to keep people and pets from trespassing on our property while using the public landing.

If appealing decision of Zoning Administrator, list date of their decision: \_\_\_\_\_

**Present owner(s) of property:** Thomas & Susan Schwarzwald Telephone: (610) 574-5222 – Tom Cell

If Applicant is not owner, please indicate your interest in this property: N/A

Has property involved ever been subject to a previous application? Unknown

If so, please give Application Number and Date: \_\_\_\_\_

**PLEASE FILL IN BELOW, OR ATTACH HERETO, A SKETCH OF THIS PROPERTY.**

List all property measurements and dimensions of any buildings already on the property.

**Put distances between present buildings or proposed buildings and property lines.**

**NAMES OF ADJOINING PROPERTY OWNERS:**

Owner(s) on the North: N/A – Fairlee Creek

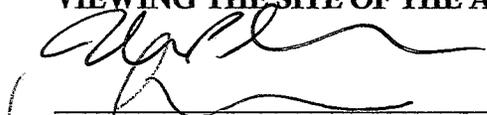
Owner(s) on the South: Frederick T Lohr & Mary DeSales Lohr

Owner(s) to the East: N/A – Kent County Public Landing Fairlee Creek

Owner(s) to the West: Autism Village Foundation - 9831 Breezecroft Lane, Chestertown, MD 21620

Homeowners Association, name, and address, if applicable: N/A

**BY SIGNING THIS APPLICATION, I GRANT MEMBERS AND ALTERNATE OF THE BOARD OF ZONING APPEALS THE RIGHT TO ENTER ONTO THE PROPERTY FOR THE PURPOSE OF VIEWING THE SITE OF THE APPLICATION OR APPEAL.**

  
\_\_\_\_\_  
Signature of Owner/Applicant/Agent or Attorney

02/16/2023  
Date

Please file this form at 400 High Street, Chestertown, MD 21620 accompanied by **\$350.00** filing fee made payable to the **County Commissioners of Kent County**. The filing fee for appeals of a Zoning Administrator's decision is \$250.00. If you have any questions, please contact the Clerk at 410-778-7467.

**NOTICE: Neither the Board of Appeals nor the Planning Department is required to make out this Application. If the Planning Department assists you, it cannot be held responsible for its contents.**

**Applicants arriving more than 10 minutes after the scheduled hearing will not be heard and will be re-scheduled at the applicant's expense.**



District: **06** Account Number: **005748**



The information shown on this map has been compiled from deed descriptions and plats and is not a property survey. The map should not be used for legal descriptions. Users noting errors are urged to notify the Maryland Department of Planning Mapping, 301 W. Preston Street, Baltimore MD 21201.

If a plat for a property is needed, contact the local Land Records office where the property is located. Plats are also available online through the Maryland State Archives at [www.plats.net](http://www.plats.net) (<http://www.plats.net>).

Property maps provided courtesy of the Maryland Department of Planning.

For more information on electronic mapping applications, visit the Maryland Department of Planning web site at <http://planning.maryland.gov/Pages/OurProducts/OurProducts.aspx> (<http://planning.maryland.gov/Pages/OurProducts/OurProducts.aspx>).



Source: Kent County Department of Planning, Housing, and Zoning.  
Aerial taken Spring 2019. Map prepared March 2023.

1 inch = 75 feet



**Fence Style:**

