

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

**DATE:** October 19, 2021

**PLACE:** Health & Public Services Building  
403 S. 7<sup>th</sup> 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

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

Mr. Merriken stated that the issued 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.

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.

*(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

*(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.

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.*

*(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.



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