

TALBOT COUNTY BOARD OF APPEALS
Appeal No. 18-1683

Pursuant to due notice, a public hearing was held by the Talbot County Board of Appeals at the Bradley Meeting Room, Court House, South Wing, 11 North Washington Street, Easton, Maryland, beginning at 6:30 p.m. on September 10, 2018, on the application of **ANDREW DANIEL WILSON** (“Applicant”). The Applicant is requesting eight (8) variances in the Critical Area of the 100-foot Shoreline Development Buffer (the “Buffer”). These variance requests include relocating an existing non-conforming two-story dwelling built in 1900 (the “House”) further back from tidal wetlands to protect against potential flood damage; to perform reasonable expansions and structural upgrades; and to expand an existing driveway in an area that Applicant says has been utilized as a driveway for over 100 years. The subject property (the “Property”) is a 1.896 acre parcel of land located within the Buffer Management Area (“BMA”) at 4849 Black Walnut Point Road, Tilghman, MD 21671, bound to the south and east by Black Walnut Cove, to the west by Black Walnut Point Road, and to the north by residential lots ranging from 0.2 acres to 1.6 acres in size. The Property is accessed by Black Walnut Point Road, which is accessed by Maryland Route 33. The Property is shown on tax map 53, grid 3 as parcel 10. The zoning classification is Village Center (“VC”). Applicant is the owner of the Property.

The variance requests are as follows:

1. Relocate the House, currently situated 8 feet from Tidal Wetlands (“TW”), to a location 24 feet from TW.
2. Enlarge an existing screened porch by 111 square feet, located 22 feet from TW.
3. Enclose an existing hallway, creating 80 square feet of new Gross Floor Area (“GFA”), located 26 feet from TW.
4. A front dwelling addition of 47 square feet of GFA, located 45 feet from TW.
5. A front covered porch addition of 43 square feet, located 38 feet from TW.
6. A rear steps addition of 120 square feet, located 21 feet from TW.
7. A front steps addition of 27 square feet located 38 feet from TW.
8. Improvement of the existing grass driveway with 2,245 square feet of gravel to be located no closer than 20 feet from TW.

The requests are made in accordance with Chapter 190 Zoning, Article VI, §190-139 and Article VIII §190-169 of the *Talbot County Code* (the “Code”).

Present at the hearing were Board of Appeals members Paul Shortall, Jr., Chairman, Phillip Jones, Vice-Chairman, Louis Dorsey, Frank Cavanaugh and alternate member Greg Gannon. Brett Ewing of Lane Engineering, LLC, 117 Bay Street, Easton, Maryland 21601, appeared and testified on behalf of the Applicant. Miguel Salinas, Assistant Planning Officer and Brennan Tarleton, Planner I, attended the hearing on behalf of Talbot County. William C. Chapman was the attorney for the Board of Appeals (the "Board"). It was noted for the record that each member of the Board, except for Mr. Gannon, had individually visited the Property.

The following exhibits were offered and admitted into evidence as Board's Exhibits as indicated:

1. Application for Critical Area variances with Attachment A.
2. Copy of a portion of the Talbot County tax map with the property highlighted.
3. Notice of Public Hearing for advertising in *The Star Democrat* newspaper.
4. Newspaper Confirmation.
5. Notice of hearing with a list of nearby property owners attached.
6. Copy of critical area variance requirements from the *Code* with the written responses of the Applicant to each applicable warrant attached as Exhibit B, Response Narrative.
7. Staff Report dated September 10, 2018 by Brennan Tarleton, Planner I.
8. Sign maintenance agreement.
9. Comments from Critical Area by Nick Kelly, dated August 23, 2018.
10. Independent Procedures Disclosure and Acknowledgment Form.
11. Photographs from site visit taken on August 22, 2018.
12. Critical Area Lot Coverage Computation Worksheet.
13. Affidavit for shed on property, dated June 25, 2018.
14. Email from Douglass Reedy, dated July 24, 2018.
15. Aerial plat from Lane Engineering, LLC.
16. Email from Brett Ewing of Lane Engineering, LLC, dated July 30, 2018, referencing removal of pergola
17. Copy of request to the Planning Officer for a certificate of nonconformity, dated July 27, 2018.
18. Site Plan by Lane Engineering, LLC.

19. Floor Plan by Torchio Architects, Inc.
20. Elevations drawings by Torchio Architects, Inc.

Mr. Ewing testified in support of the application. Mr. Ewing noted at the outset that he views the eight variance requests as three main improvements to the Property, with other smaller adjustments. Mr. Ewing said Applicant's family has owned the Property for nearly 100 years and that the variance requests seek to help preserve the property for future generations. Mr. Ewing said the House is currently eight feet from Mean High Water ("MHW") and that recent weekend rains, even without a storm surge, submerged the dock at the Property. Mr. Ewing said that the proposed renovations will upgrade the aging House to modern building code and flood zone standards as well as benefiting the environment, as moving the House further back would potentially necessitate the removal of mature forest areas and still be within the Buffer.

Mr. Wilson testified next in support of the application, beginning with a history of the Property dating back to his grandfather. In 2003, Hurricane Isabel destroyed all first-story doors and windows in the House, submerging the entire first story under 3-4 feet of water, Mr. Wilson said. He wanted to raise the House in place, but did not know the applicable flood zone standards in order to comply with the Code. Mr. Wilson said that, in consultation with Lane Engineering, LLC, he learned that the House needed to be moved back from MHW. The only place not requiring a variance, he said, would be in a grove of mature forest in close proximity to a neighboring home. Mr. Wilson instead chose not to disturb the trees and to locate the House approximately 25 feet from MHW.

The House is currently used in warmer months and has no heating capabilities, nor interior access to a bathroom. As part of his goal to convert the House into one suitable for year-round living, Mr. Wilson said he plans to convert the screened sides of a hallway to windowed walls, enclosing approximately 80 square feet. In all, Applicant's proposed modifications would add 348 square feet; with the reduction of 59 square feet for removal of steps and open porches, Applicant's proposed renovations will create a total of 289 square feet of net lot coverage.

Mr. Wilson said the current driveway runs along the water's edge and is frequently underwater. Additionally, he said, its current configuration features a sharp curve, upon which trucks cannot make a turn. Mr. Wilson proposes big loop to ameliorate these issues.

Mr. Ewing testified that, had Applicant desired to raise the House in its current footprint, he could have applied for an administrative variance. Instead, Applicant's proposal is to move just

enough inland to situate the House outside the Limits of Moderate Wave Action (“LiMWA”) line.¹ Mr. Ewing said that, although the County and Critical Area have expressed concerns about driveway modifications, photos and visits to the site show that the grassy area in which Applicant seeks to add a gravel path has always been used as a vehicular path since the original construction of the House.

In response to a question from Vice-Chairman Jones about whether a grassy area used for parking is considered impervious, Mr. Tarleton said the Department of Public Works considers such an area to constitute lot coverage. Vice-Chairman Jones said it is not considered to be lot coverage by Critical Area; however, Mr. Ewing said that County departments, including Public Works, already require that such an area be counted as an impervious surface for stormwater management purposes. Mr. Cavanaugh said it is evident that the grassy portion of the current path used for vehicular access has been used as a driveway for a significant amount of time. Vice-Chairman Jones noted the presence of heavy stone, not rutted, in portions of the current vehicular path, likening such areas to a railroad bed.

The Board then considered the application. Based on the testimony, application and exhibits, upon motion and seconded, the Board approved variance requests 1-7, by a vote of five to zero. The Board then, based on the testimony, application and exhibits, upon motion and seconded, approved variance request No. 8, by a vote of five to zero.

The Board made the following findings of fact and law:

1. All legal requirements pertaining to a public meeting were met.
2. Special conditions or circumstances exist that are peculiar to the land or structure such that a literal enforcement of the provisions of the ordinance result in unwarranted hardship to the property owner. The House is a nonconforming structure built in 1900, prior to Code building requirements and Critical Area legislation. The Property is within the BMA, established with a buffer width of 58.08 feet. The House in its current location is less than 10 feet from MHW. The

¹ The LiMWA is the inland limit of the area affected by waves greater than or equal to 1.5 feet but less than 3 feet during the 1% annual chance base flood. Waves of 1.5 feet or higher have been shown to cause significant damage to structures due to floating debris and high-velocity flow. Structures in the LiMWA are subject to specific construction standards, including support of the structures with pilings or columns, the lowest floor located above the flood protection elevation, and enclosures below the lowest floor to be free of obstructions with limited exceptions. (Source: *Talbot County Code*, Chapter 70, Floodplain Management.)

presence of LiMWA has dictated the extent of the relocation of the House – the subject of the first variance request – which Applicant proposes to relocate just enough to place it outside the LiMWA line. The Property is within the AE(5) flood zone, which requires the House to be elevated with flood vents, as depicted in the architectural drawing provided by Applicant. Applicant has proposed as slight of a shift in the location of the House as possible to limit overall site disturbance and to retain an established forested area on the Property. Variance requests 2-7 will allow for modest additions to the relocated House, including *inter alia* slightly increasing the living area and allowing indoor access to a bathroom that is currently nonexistent, for a total of 289 square feet of lot coverage. The last variance request proposes a 2,245 square foot gravel driveway expansion on the Property, to complete a vehicular access “loop” path that Applicant testified, and site visits show, has been used since the House was constructed. Without completing the “loop”, it is difficult for certain vehicles to turn around once accessing the Property from Black Walnut Point Road, and in its current state, portions of the “loop” are frequently underwater and difficult to traverse.

3. A literal interpretation of the ordinance will deprive the property owner of rights commonly enjoyed by other property owners in the same zone. The Proposed relocation and request for expansion and modifications to the House, the subjects of variance requests 1-7, will allow the Applicant to make reasonable and modest upgrades that will bring the House into compliance with modern building code and flood zone standards and allow Applicant to better utilize the House and Property. Applicant’s requested modifications include creating indoor access to a bathroom that the House has lacked, and have the overall intent of being able to utilize the House and Property year-round instead of solely warmer months. Without the ability to relocate the House outside of the LiMWA, the Applicant could replace the structure in the same footprint it occupies today. However, adherence to stricter flood zone limitations are required to ensure the reconstruction met minimum standards of the Code. Applicant testified that moving the House just outside of the LiMWA would allow relief from additional flood zone requirements. In regard

to variance request No. 8, Applicant has testified, and evidence shows, that the existing driveway “loop”, in which Applicant seeks to expand with a 2,245 square foot gravel driveway, is currently considered to be impervious surface by Talbot County for stormwater management purposes and has been used for vehicular access for a significant period of time, possibly as far back as the construction of the House. Applicant testified that the current driveway is frequently underwater, and that certain vehicles cannot turn around without using the portion of the “loop” that traverses grassy areas, and that in its current state, such areas are frequently underwater. Reasonable vehicular access to property is commonly enjoyed by other property owners in the same zone.

4. The granting of the variances will not confer upon the property owner any special privilege that would be denied by the ordinance to other owners of lands or structures within the same zoning district. As indicated by the Applicant, the original House has existed since 1900, a construction date that predates Critical Area legislation and Talbot County building code requirements. The current owner, Mr. Wilson, did not erect the Home in its current location on the Property. Allowing for a reasonable relocation and modest renovations to improve functionality and livability, the subjects of variance requests 1-7, would not confer any special privileges to the Applicant. Allowing the Applicant to expand the existing vehicular access “loop” into a 2,245 square foot driveway, the subject of variance request No. 8, would similarly not confer any special privileges to the Applicant, as it is effectively bolstering a path that is already considered to be impervious surface by Talbot County for stormwater management purposes, has been used as a driveway for a significant period of time, possibly as far back as 1900, and will continue to be used as such without the granting of a variance, albeit while providing less functional and reasonable vehicular access than Applicant desires.
5. The variance request is not based on conditions or circumstances which are the result of actions by the Applicant, including the commencement of development

activity before an application for variance has been filed, nor does the request arise from any condition relating to land or building use, either permitted or nonconforming, on any neighboring property. As stated previously herein, Applicant is requesting to relocate and expand the existing House, which was built in 1900, according to State Department of Assessment and Taxation records. Although the Applicant's family has held title to the Property for multiple generations, Applicant played no role in constructing the House in its existing location, or under its current configuration, which was done prior to Critical Area legislation and Talbot County building code requirements. Nor did Applicant create the vehicular access "loop" that has been in use possibly as far back as 1900. No development activity has occurred prior to the variance application. The Applicant has complied with all necessary processes as set forth in the Code.

6. The granting of the variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat, and the granting of the variance will be in harmony with the general spirit and intent of the state Critical Area Law and the Critical Area Program. The proposed relocation and modifications to the House, the subjects of variance requests 1-7, will add 289 square feet of lot coverage on the Property. An impact to wildlife and plant habitat could occur if Applicant was required to relocate the House further back from TW, which would require further site disturbance and likely clearing of mature forested areas, and the House would still not fully comply with the 100-foot Buffer in that scenario. Variance request No. 8 would add 2,245 square feet of lot coverage in the gravel driveway expansion; however, as stated previously herein, the grassy areas sought to be covered by gravel are already considered to be impervious surface by Talbot County for stormwater management purposes, and have already been utilized as a driveway for a significant period of time, possibly as far back as 1900. Pursuant to comments from the Maryland Critical Area Commission staff in opposition to variance request No. 8 in a letter dated August 23, 2018, Applicant will be required to mitigate for the disturbance within the BMA setback at a 3:1 ratio, and at a 2:1 ration for any

disturbance outside the BMA setback but within the 100-foot Buffer, in order to offset any potential impacts caused by the expanded lot coverage.

7. The variance does not exceed the minimum adjustment necessary to relieve the unwarranted hardship. Although room on the Property exists outside the limits of the 58.08-foot BMA to relocate the House, the majority of this area is covered with mature forest, and Applicant's request to relocate the House pursuant to variance request No. 1 is part of a plan to limit overall site disturbance and retain existing forested land. Under such plan, Applicant has chosen a site that is as close as possible to the existing location while being just outside of the LiMWA. Applicant's proposed modifications to the House, the subjects of variance requests 2-7, are modest renovations necessary for livability and function, and to bring the House within contemporary building code and flood zone standards. In regard to variance request No. 8, Applicant is utilizing a long-existing vehicular path and will be required to mitigate for the disturbance within the BMA setback at a 3:1 ratio, and at a 2:1 ration for any disturbance outside the BMA setback but within the 100-foot Buffer, in order to offset any potential impacts caused by the expanded lot coverage.

HAVING MADE THE FOREGOING FINDINGS OF FACT AND LAW, IT IS, BY THE TALBOT COUNTY BOARD OF APPEALS,

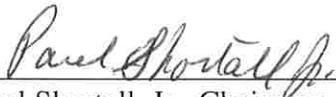
RESOLVED, that the Applicant, **ANDREW DANIEL WILSON** (Appeal No. 18-1683) is **GRANTED** the requested Critical Area variances consistent with the evidence presented to the Board of Appeals, subject to the following conditions:

1. The Applicant shall make an application to the Office of Permits and Inspections, and follow all rules, procedures, and construction timelines as outlined regarding new construction.
2. The Applicant shall commence construction of the proposed improvements within eighteen (18) months from the date of this Decision.
3. 3:1 mitigation for all disturbance within the BMA setback is required and 2:1 mitigation is required for any disturbance located outside the BMA setback but within the 100-foot Buffer.

4. A Buffer Management Plan is required to be submitted and approved by Talbot County showing all proposed impacts and appropriate mitigation.
5. The Applicant cannot receive a permit for the proposed improvements until the Buffer Management Plan has been approved by Talbot County.

GIVEN OVER OUR HANDS, this 5th day of December, 2018.

TALBOT COUNTY BOARD OF APPEALS



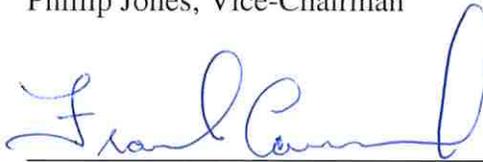
Paul Shortall, Jr., Chairman



Phillip Jones, Vice-Chairman



Louis Dorsey, Member



Frank Cavanaugh, Member



Greg Gannon, Alternate Member