

DECISION  
TALBOT COUNTY BOARD OF APPEALS  
Appeal No. 19-1702

Pursuant to due notice, a public hearing was held by the Talbot County Board of Appeals (the Board) at the Bradley Meeting Room, Court House, South Wing, 11 North Washington Street, Easton, Maryland, beginning at 6:30 p.m. on December 9, 2019, on the Application of **Anthony Smith** (the Applicant). The Applicant is seeking approval of two variances to permit the reduction of the side yard setbacks on Lot 13 fronting on Gate Street in Bellevue. The Applicant requests permission to reduce the side setback on the southwest side of the lot from ten (10) feet to six (6) feet to permit construction of a twenty-four foot (24') by forty-eight foot (48') single story dwelling on the lot.

The request is made in accordance with Chapter 190, Zoning, Article II, §190-10.2A; and Article VII, §190-58 of the Talbot County Code (the *Code*). The property is located at 5693 Gate Street, Royal Oak, Maryland 21662 in the Village Hamlet (VH) zone. The Property owners are Anthony and Valeri Smith. The property is shown on tax Map 46, Grid 12, Parcel 116, Lot 13.

Present at the hearing for the Board of Appeals were: Frank Cavanaugh, Vice Chairman; members John Sewell, Paul Shortall, Jeff Adelman alternate member and Greg Gannon alternate member. Anne C. Ogletree served as attorney for the Board of Appeals. Miguel Salinas, Assistant Planning Officer and Maria Brophy, Planner II, were in attendance.

The Vice-Chairman inquired if all members had visited the site and received affirmative responses.

The following Board exhibits were then offered and admitted into evidence as indicated:

- Exhibit 1. Application for a Non-Critical Area Variance;
- Exhibit 2. Copy of tax map with site highlighted;
- Exhibit 3. Notice of Public Hearing for Star Democrat;
- Exhibit 4. Newspaper confirmation;
- Exhibit 5. Notice of Public Hearing & Adjacent Property Owners List;
- Exhibit 6. Standards for Non-Critical Area Variance;
- Exhibit 7. Staff Report prepared by Maria Brophy, Planner II;

- Exhibit 8. Sign Maintenance Agreement /Sign Affidavit
- Exhibit 9. Independent Procedures Disclosure and Acknowledgment Form;
- Exhibit 10. Aerial Photograph;
- Exhibit 11. Professional Site Plan prepared by Robert M. Hughes & Assoc., Inc.
- Exhibit 12. Elevation and Floor Plans;
- Exhibit 13. Critical Area Lot Coverage Computation Worksheet;

Mr. Cavanaugh asked that those who might wish to testify rise and be sworn. Two (2) witnesses were then sworn. He next invited the Applicant to tell the Board about the project.

Mr. Anthony T. Smith, 5520 Leeward Lane, P.O. Box 393, Tilghman, MD 21671 explained that the history of this Lot is similar to that of Lot 11. The difference is caused by the unimproved alley on the northwest side of Lot 13. He asked that his previous testimony regarding Lot 11 be incorporated in this case. Mr. Smith added that his request was similar to the request he had made regarding Lot 11, however, he had to ask for a greater reduction on the southwest side as there is an alley adjoining Lot 13, and he understood that a greater setback was required on that side.

A member pointed out that the advertisement appeared to be incorrect as published. After reviewing the published notice and discussing the matter with counsel, Mr. Shortall made a motion that the Board table the consideration of the variances requested until a later date so the hearing could be re-advertised. Mr. Gannon seconded the motion and it passed 5-0.

Pursuant to due notice, a public hearing was held by the Talbot County Board of Appeals (the Board) at the Bradley Meeting Room, Court House, South Wing, 11 North Washington Street, Easton, Maryland, beginning at 6:30 p.m. on January 27, 2020, on the Application of **Anthony Smith** (the Applicant). The Applicant is seeking approval of two variances to permit the reduction of the side yard setbacks on Lot 13 fronting on Gate Street in Bellevue. The Applicant requests permission to reduce the side setback on the southwest side of the lot from ten (10) feet to six (6) feet. On the alley side of Lot 13 the Applicant is requesting a reduction from twelve and one-half feet (12.5') to ten (10) feet to permit construction of a twenty four foot (24') by forty eight foot (48') single story dwelling on the lot.

The request is made in accordance with Chapter 190, Zoning, Article II, §190-

10.2A; §190-12.2C and Article VII, §190-58 of the Talbot County Code (the *Code*). The property is located at 5693 Gate Street, Royal Oak, Maryland 21662 in the Village Hamlet (VH) zone. The Property owners are Anthony and Valeri Smith. The property is shown on tax Map 46, Grid 12, Parcel 116, Lot 13.

Present at the hearing for the Board of Appeals were: Frank Cavanaugh, Vice Chairman; members John Sewell, Louis Dorsey, Jr., Paul Shortall and alternate member Greg Gannon. Anne C. Ogletree served as attorney for the Board of Appeals. Miguel Salinas, Assistant Planning Officer and Maria Brophy, Planner II, were in attendance.

In addition to the original Exhibits the Board also entered the following into evidence:

- Exhibit 14. Notice of rescheduled Public Hearing for Star Democrat;
- Exhibit 15. Newspaper confirmation;
- Exhibit 16. Notice of Rescheduled Hearing & Adjacent Property Owners List;
- Exhibit 17. Supplemental Staff Report.

The Vice-Chairman inquired if all members had visited the site and received affirmative responses. Mr. Cavanaugh asked that those who might wish to testify rise and be sworn. Two witnesses were then sworn. He next invited the Applicant to tell the Board about the project.

The Applicant had purchased three (3) contiguous lots on Gate Street in Bellevue hoping to eventually downsize and retire to a home he wished to construct on one of the lots. He hoped his children might move to the area and live in close proximity. The lots are in the old section of Bellevue and are long and narrow. Lots 11 and 13 are forty feet (40') in width, while lot 12, the center lot, is fifty feet (50') wide. Both Lots 11 and 13 are valid non-conforming lots.

Mr. Smith added that his request was similar to the request he had made regarding Lot 11, however, he had to ask for a greater reduction on the southwest side as there is an alley adjoining Lot 13, and he understood that a greater setback was required on that side.

Mr. Salinas acknowledged that the Applicant was correct. He referred the members to *Code* §190-12.2C and stated he believed that the original legal advertisement had been incorrectly published, as there were two variances being requested. Both were side setback variances, but due to the fact this parcel is a corner lot the variance from on the alley side will be larger as the *Code* mandates an increase of the side yard setback on

a corner lot. He also referred the members to the staff reports Exhibits 7 and 17, commenting that the subdivision plat of the property was recorded in 1938, and the lots were created at that time. Their configuration has not changed.

Mr. Smith stated that the center lot, Lot 12, was wide enough so that the setbacks could be met. He clarified that during the Village Master Plan meetings there was considerable sentiment that the older lots in the village center remain as originally platted now that sewer is available.

Mr. Salinas agreed with that statement. He noted that there had been considerable disagreement in the planning work sessions over the future of the village. A compromise was reached in which the Village Master Plan contemplated that although there were areas where lots could be consolidated to make them larger, in the old section of town, including the area in which these lots are located, the majority of the persons attending believed that the village should retain its original character, and lot size should not be increased. Mr. Salinas also explained that the center lot, Lot 12, was conforming, and that taking land from it would make it non-conforming, and is not permissible.

Mr. Smith commented that the existing lot configuration was encouraged by the Village Master Plan. He had hoped to build small homes on each of the three lots, as shown on Exhibit 11, the site plan, and Exhibit 12, the proposed floor plans. He has four children and hoped one or more of them might want to come to the Shore and reside in the local area. He and his wife were planning to retire to Bellevue and would reside in one of the new residences.

Mr. Adelman commented that he had seen electric transformers on the alley side of Lot 13 in his site visit.

Mr. Smith stated that he had had service provided and it would serve all three lots. He added that it might be within the legal boundaries of Lot 13, but he would be sure that it did not end up in the setback area.

Mr. Sewell asked if this residence would have the small steps proposed for the residence on Lot 11. The Applicant said it would and that he understood they were acceptable for a non-conforming lot. He added that originally all three of the lots had structures. There was a block building on this lot. It had been used as a beer garden. The original structures had been removed.

Mr. Cavanaugh commented that he saw no way to re-subdivide these three (3) lots to make them conforming. He felt the variances were appropriate.

Mr. Adelman wished to know if the alley served other lots. Mr. Smith responded that it did. It was formerly an old unimproved county road that had serviced the pier.

Mr. Cavanaugh commented that the proposed variance would not be injurious to the neighbors. He noted that there had been a residence constructed on Lot 10 by Habitat, and it had required a variance due to lot configuration. He thought the proposed residence was about the smallest one could that would accommodate a three-bedroom ranch style home. Mr. Smith remarked that the proposed homes would be similar in size to that built on Lot 10.

There being no additional testimony from the Applicant, Mr. Cavanaugh asked if there were members of the public who wished to testify.

Mr. Mark Hill, 9814 Mill Point Road, Easton, MD 21601, previously sworn, testified in support of the application. Mr. Hill owns property in Bellevue and was in favor of trying to retain the character of the original village. He thought the proposed residences would be in keeping with the character of the area.

There was no additional public comment. Mr. Cavanaugh then asked the members if they had any comments.

Mr. Shortall stated that he was in favor of approval. He thought the proposed residence was a good fit for the area and was in keeping with the neighborhood. He believed the Applicant had met all of the required conditions.

Mr. Gannon felt as did Mr. Shortall. He thought the proposed variances would allow the construction of a small residence and help to retain the character of the area.

Mr. Sewell thought the Applicant had met all of the required conditions and should be granted the variances requested.

Mr. Adelman agreed with the other members.

Mr. Cavanaugh summed up his conclusions from the evidence presented:

- (1) The property is unique as it is a valid non-conforming lot "blessed" by the Village Master Plan;
- (2) The size and configuration of the lot created the hardship; it was not self-created;

- (3) The variance was not being requested to add value to the lot; but was being requested to make lawful use of the lot as a residential lot;
- (4) No public interests would be adversely affected. The proposed construction would be in keeping with the recent 2018 Village Master Plan; and
- (5) The proposed variances were the minimum necessary to allow the Applicant to make appropriate use of his property.

Having considered the Application, the Board makes the following findings of fact and conclusions of law:

1. The Applicant has submitted a written application for a Non-Critical Area Variance to reduce the alley side setback from twelve and one-half feet (12.5') to ten feet (10') and the southwest side adjoining Lot 12 from ten feet (10') six feet (6'). Exhibit 1.
2. The public hearings were properly advertised, the property was posted, and the adjacent land owners were properly notified. Exhibits 3, 4, 5, 8, 9, 14, 15 and 16.
3. The Applicant has received favorable recommendation from staff for the variance. Exhibit 7 and 17 Staff Reports. The proposed variance will assist in meeting the goals of the Village Master Plan adopted in 2018.
4. Lot 13 is long and narrow. Exhibit 11. The width will not accommodate a modern small three (3) bedroom ranch style home Exhibit 12, without obtaining side yard variances. The plat establishing these lots were recorded in 1938, long before restrictions added by zoning laws. Exhibits 7, 17 Staff Reports. The village of Bellevue has a number of other small lots that antedate zoning. These lots are non-conforming under today's regulations. The Applicant purchased three (3) lots in their original platted configuration in 2016. It is the width of this lot that makes a variance necessary to be able to construct a modest three (3) bedroom home.
5. The need for the variance is not self-imposed or self-created. The

Applicant purchased the property in 2016, as originally platted. The lots were created in 1938 at a time when zoning did not yet exist in Talbot County.

6. The variance is sought for the purpose of constructing a small three (3) bedroom home. It is not possible to construct that home shown on the floor plan submitted as Exhibit 12 without reduction of the side setbacks. The variance will enable the placement of the proposed home.
7. The requested variance will allow the Applicant to construct a residence on this small non-conforming lot created long prior to zoning restrictions. A neighboring lot, Lot 10, was granted a similar variance to enable that lot owner to build a residence. Exhibit 7, Staff Report. Neighboring properties will not be adversely affected, and the Village Master Plan contemplates the preservation of the older lot configurations in this area to retain the original village atmosphere.
8. As noted by the Applicant, placing even a very modest three (3) bedroom home on this small narrow lot constitutes a challenge, and will be impossible without a variance. The Board finds the Applicant's requested reduction of each side yard to allow the placement of a very modest residence to be the minimum adjustment necessary.

For the reasons set out in the Board's findings, Mr. Shortall made a motion that the requested variances, a reduction of the ten foot (10') side setback on the southwest side of Lot 13 to six feet (6'), and a reduction of the side setback on the alley side of Lot 13 to ten feet (10'), be approved subject to the following conditions proposed by Planning Staff:

A. The Applicant shall make an application to, and follow all rules, procedures and construction timelines outlined for new construction as required by the Office of Permits and Inspections.

B. The Applicant shall commence construction of the proposed



improvements within eighteen (18) months of the date of the approval by this Board.

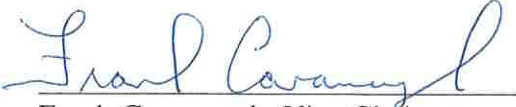
Mr. Gannon seconded the motion. As there was no further discussion on the motion. The Vice-Chairman called for a vote. The motion passed, 5-0 with all members voting to grant the variances requested.

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

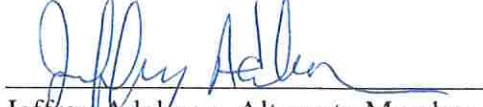
RESOLVED, that the Applicant, **Anthony T. Smith** (Appeal No. 19-1702) is **GRANTED** the requested variances for Lot 13, consistent with the evidence presented to the Board of Appeals, and subject to the aforementioned conditions, by vote as previously noted.

GIVEN OVER OUR HANDS, this 5th day of March, 2020.

**TALBOT COUNTY BOARD OF APPEALS**

  
Frank Cavanaugh, Vice Chairman

  
John Sewell, Member

  
Jeffrey Adelman, Alternate Member

  
Paul Shortall, Member

  
Greg Gannon, Alternate Member