

TALBOT COUNTY BOARD OF APPEALS

Appeal No. 16-1652

Pursuant to due notice, a public hearing was held by the Talbot County Board of Appeals at the Wye Oak Room, Talbot County Community Center, Route 50, 10028 Ocean Gateway, Easton, Maryland, beginning at 7:00 p.m., September 19, 2016, on the application of **BRENT D. and KELLY H. ASPLUNDH** (Applicants). The Applicants are requesting a variance of the 100-foot Shoreline Development Buffer to permit the construction of a two story replacement dwelling and associated patio with a reconfigured footprint. The existing one story dwelling is, at its closest point, 25 feet from the shoreline at Mean High Water (MHW). The proposed dwelling will not be closer to MHW. The property is located at 4391 Holly Harbor Road, Oxford, Maryland 21654 in the Rural Residential (RR) zone. The Applicants own the property. The request is made in accordance with Chapter 190 Zoning, Article VI, §190-139, and Article IX, §190-182 of the *Talbot County Code (Code)*.

Present at the hearing were Board of Appeals members Paul Shortall, Jr., Chairman, Phillip Jones, Vice Chairman, John Sewell, Margaret Young, and Louis Dorsey, Jr. The Applicants were represented at the hearing by Zachery A. Smith, Esquire, Armistead, Lee, Rust & Wright, P.A., 130 Bay Street, Building C, Easton, Maryland 21601. Jeremy Rothwell, Planner I, attended the hearing on behalf of Talbot County. Glenn D. Klakring was the attorney for the Board of Appeals.

It was noted for the record that each member of the Board had individually visited the site.

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

1. Application for critical area variance with Attachment A.
2. Copy of a portion of the Talbot County tax map with the property highlighted.
3. Appeals Notice of Public Hearing.
4. Certificate of publication of the Notice of Public Hearing from the *Star-Democrat*.
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 Applicants to each applicable warrant attached as Exhibit B.
7. Staff Report dated September 15, 2016.
8. Sign maintenance agreement.
9. Site Plan by Lane Engineering, LLC, received September 12, 2016.
10. Floor Plan and Elevation Plans.
11. Critical Area Commission comments dated September 13, 2016.
12. Authorization letter from the Applicants.
13. Independent Procedure Disclosure and Acknowledgement Form.
14. Aerial photograph.
15. Deeds.
16. Photographs from the staff site visit taken on August 25, 2016.

Mr. Smith introduced the Applicants and their witnesses and generally described the purpose of the application. He said the Applicants are proposing a replacement dwelling on the same footprint as the existing house with some minor changes. Any additional lot coverage will be on the side of the house away from the shoreline.

Mr. Smith said that the Applicants' proposal has been amended. The original application was for a larger replacement home. However, after receiving comments from the County staff, the Applicants went back to their architect and redesigned their proposed replacement home to make it a much smaller home that uses the footprint of the existing house.

Regarding the Staff Report (Board's Exhibit No. 7) Mr. Smith noted two corrections, both on page 4. He said that both the existing and the proposed structures have three bedrooms and three

bathrooms. He also said that the proposed replacement dwelling will be 21% larger (floor space) than the existing dwelling.

A member of the Board then questioned whether the increased height of the proposed new dwelling requires a variance. Mr. Smith said that the increased height of the replacement dwelling was discussed with the County staff early in the application process and the staff concluded that the Applicants would not have to apply for a height variance. Mr. Rothwell then explained that because the Applicants' proposal would result in a more than 20% increase in the size of the home they could not apply for an administrative variance. There followed a discussion regarding replacement structures versus in-kind replacement structures.

Mr. Asplundh testified in support of the application. He said they have owned the property for about three years. They lived in the area in the 1980s raising a family of three children. His job then took him to the Philadelphia area. He said their objective is to construct a home on their property which is just large enough to accommodate visiting grandchildren in the future. By adding a second floor with bedrooms they can accommodate visiting family while maintaining some privacy for themselves.

Mr. Asplundh said they had originally considered a larger home further from the shoreline but they found that would result in the loss of some mature trees or encroach on existing septic reserve areas. They then tried their original design on top of the footprint of the existing dwelling. They had the larger house staked out on their property but when they visited the property they found it to be too big. So they asked their architect to design a smaller replacement structure that could fit within the existing dwelling's footprint. Also, by doing so they could use the existing driveway. The result was the amended plan that is before the Board.

Mrs. Asplundh also spoke in support of the application and seconded the testimony of her husband.

Bill Stagg, Lane Engineering, 117 Bay Street, Easton, Maryland 21601, testified in support of the application. He said the property is a three-acre lot on what can be described as a mini-peninsula. The existing dwelling is well into the shoreline buffer.

Mr. Stagg explained some of the details on the site plan. It includes areas colored beige representing structures or lot coverage that will be removed if the application is approved. The habitable area of the proposed dwelling is enclosed by dark lines which are almost exactly the same as the footprint boundaries of the existing structure. He said the first floor of the proposed structure is somewhat smaller than the existing footprint. The proposed small porches on the new structure are outside the footprint. He said the *Code* does not consider covered porches in floor area computations. The Applicants hope to add living space with a modest second floor. He said the Critical Area Commission and staff favor vertical expansion of structures rather than additional lot coverage within the critical areas.

Mr. Stagg said that the Applicants have minimized lot coverage and disturbances making the proposal environmentally friendly. They propose to reduce the size of the pool deck or patio. The house will be no closer to the shoreline than the existing house. All of the existing mature trees will remain. They will reduce buffer lot coverage by 259 square feet. Some mitigation will be required for the new lot coverage within the buffer which should result in environmental improvements.

In response to a question from a Board member about the gravel walk on the site plan marked as to be removed, Mr. Asplundh said that they had it removed already because heavy rain was causing some erosion problems around the walk and causing gravel to be washed into tidal waters. He also said that they have no use for the small concrete pad in the buffer that apparently was installed to protect an underground gas line. They expect to remove the pad.

Tim Kearns, TB Kearns Design Corp, P.O. Box 177, Oxford, Maryland 21654, responded to several questions from Board members regarding lot coverage and gross floor area.

In response to a question about existing trees on the property Mr. Asplundh explained that one of the trees depicted on their original plans fell over last winter and they had to have it removed.

Mr. Kearns said the existing dwelling was constructed in 1964 was not suitable for supporting the increased weight of a second floor. Rebuilding the structure would allow modern construction techniques with better HVAC systems. The new dwelling will have eight foot ceilings, the same as the existing dwelling. However, the first floor will be at a somewhat higher elevation to comply with flood plain requirements. The roof peak of the new structure will be about 28 feet, nine inches high.

Mr. Smith then summarized reasons the Board should approve the application.

Mr. Bud Wallace, 4357 Holly Harbor, Oxford, Maryland 21654, a neighboring property owner, testified regarding the application. He said his concern was only the 100-foot buffer area of the Applicants' property. He was concerned that the proposed house covered more area within the buffer. Mr. Stagg responded that the house was not closer and the Applicants were actually removing lot coverage within the 100-foot buffer. A portion of the new house will be closer to the shoreline but no closer than the 25-foot closest point of the existing house.

In response to questions regarding the two septic reserve areas on the property Mr. Stagg said that the County may have approved a split septic reserve area. Also, it may be that way because of the accessory building on the property that has a bathroom. Mr. Rothwell said that the accessory structure is not however considered as living area as it does not have a kitchen.

The Board then considered the application. After some discussion the Board, upon motion made and seconded, approved the requested variances, subject to certain conditions, 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 existing dwelling is almost entirely within the buffer area as will be the proposed replacement dwelling. The Applicants options are limited by existing septic reserve areas, driveways, and their desire to not remove existing mature trees.
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 property was developed well before the establishment of the Critical Area restrictions that have severely limited options for the Applicants. Even with the proposed new structure the Applicants development activities will only cover a small portion of their property and the coverage within the 100-foot buffer will be reduced.
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. The footprint of the proposed replacement dwelling is substantially the same as the existing dwelling. Most of the expansion will be accomplished by the adding of a modest second floor which is similar to other homes in the area and on similar properties throughout the County. Given similar circumstances other property owners would likely have the same privilege.
5. The variance request is not based on conditions or circumstances which are the result of actions by the Applicants, 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.

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 requested variances will have little, if any, adverse environmental impact. Given the mitigation that will be required, the environmental impact may be positive.
7. The variance does not exceed the minimum adjustment necessary to relieve the unwarranted hardship.

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


RESOLVED, that the Applicants, **BRENT D. and KELLY H. ASPLUNDH** (Appeal No. 16-1652) are **GRANTED** the requested critical area variance consistent with the evidence presented to the Board of Appeals, subject to the following conditions:

1. The Applicants must remove the existing portions of the concrete pool patio, brick walks. And decks as shown on the Applicants' site plan dated July 22, 2016.
2. The Applicant shall make applications to and follow all of the rules procedures, and construction timelines as outlined by the Department of Permits and Inspections regarding new construction.
3. The Applicants shall commence construction on the proposed improvements within eighteen (18) months from the date of this Decision.
4. The Applicant must submit a Buffer Management Plan to address any mitigation required throughout the construction.

5. Natural vegetation of any area three times the extent of the approved disturbance in the buffer shall be planted and maintained in the buffer or on the property if planting in the buffer cannot be reasonably accomplished. The Applicant may obtain a Buffer Management Plan application through the Talbot County Department of Planning and Zoning.
6. The maximum height of the replacement dwelling shall be no higher than 32 feet as measured in accordance with the *Code*.

GIVEN OVER OUR HANDS, this 22nd day of November, 2016.

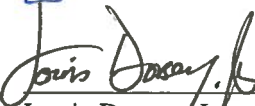
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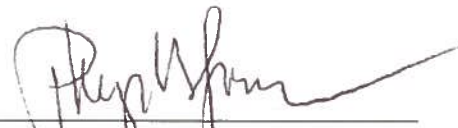
Paul Shortall, Jr., Chairman



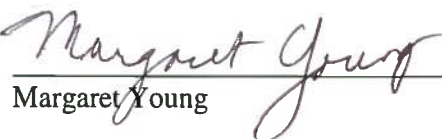
John Sewell



Louis Dorsey, Jr.



Phillip Jones, Vice Chairman



Margaret Young

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