

DECISION  
TALBOT COUNTY BOARD OF APPEALS  
Appeal No. 18-1688

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 February 11, 2019, on the Application of Daniel and Dawn Haley, (Applicant). The Applicant is seeking four (4) variances: two (2) variances of the Shoreline Development Buffer (the Buffer); a) to construct a residential addition of 364.4 sq. feet of Gross Floor Area (GFA) located 72.7' from Mean High Water (MHW); and b) to construct a 16' x 12' pervious deck located 73.6' from MHW. The closest point of the existing dwelling is 77.8' from MHW. The Applicant also seeks two Non Critical Area variances: c) to construct the residential addition of 364.4 sq. feet to be located 39.4' from the front property boundary; and d) to construct a 196 sq. foot front entryway located 12.8' from the front property line. The closest point of the existing dwelling to the front property line is 16.6'.

The request is made in accordance with Chapter 190, Zoning, Article II, §190-8.5 D, Article III §190-15 and Article VII, §190-58 of *Talbot County Code* (the *Code*). The property owners are Daniel and Dawn Haley and the property is located at 25520 Bushy Heath Road, Royal Oak, Md. 21662 in the Rural Conservation (RC) District and is shown on county tax records as Tax Map 40, Grid 5 Parcel 86.

Present at the hearing for the Board of Appeals were: Phillip Jones, Chairman; Frank Cavanaugh, Vice Chairman; members Paul Shortall, Jr., Louis Dorsey, Jr. and alternate member Jeff Adelman. Anne C. Ogletree served as attorney for the Board of Appeals. Miguel Salinas, Assistant Planning Officer and Brennan Tarleton, Planner I, were in attendance.

The Chairman inquired if all members had visited the site and received an affirmative response.

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

Exhibit 1. Application for Variances with attachment;

- Exhibit 2. Copy of tax map with subject property highlighted in yellow;
- Exhibit 3. Notice of Public Hearing to be published in the 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. Standards for Critical Area Variance;
- Exhibit 8. Staff Report prepared by Brennan Tarleton, Planner I;
- Exhibit 9. Sign Maintenance Agreement;
- Exhibit 10. Critical Areas Commission comments dated 01/16/19;
- Exhibit 11. Authorization letter;
- Exhibit 12. Independent Procedures Disclosure and Acknowledgment Form;
- Exhibit 13. Aerial Photo;
- Exhibit 14. Photos of site;
- Exhibit 15. Exhibit B, floodplain, received 10/04/18;
- Exhibit 16. Critical Area Lot Coverage Computation worksheets;
- Exhibit 17. Pervious deck agreement;
- Exhibit 18. Plans from Plan Ahead Drafting & Design, LLC, floor plans, site plans, elevations;
- Exhibit 19. Existing and proposed Gross Floor Area plans

Mr. Jones requested that those who might wish to testify rise and be sworn. All witnesses were then sworn. He invited the Applicant to tell the Board about the project.

Mr. Daniel Haley, 25516 Bushey Heath Road, Royal Oak, MD 21662, one of the property owners, responded that he thought the Board might find some of the history of the property important. He and his wife live in the adjoining home. They purchased the subject property approximately nine (9) years ago from a neighbor, but the neighbor retained a life estate in the property and continued to reside there until his death about a year ago. The residence is very outdated. The residence was built during the 1930s and has not been substantially renovated. He mentioned that Mr. Edward Heikes, trustee of the trust that owns the adjoining farm, a neighbor, was in support of the project.

The next witness was Michael Clark of Plan Ahead Drafting and Design, LLC, 9 Choptank Ave. Easton, MD 21601, the Applicant's agent. Mr. Clark told the Board that when the residence was built, in the 1930s, there were no zoning and no critical areas laws. The lot itself is small, approximately seventh tenths (.7) acre. Of that area, approximately eighty percent (80%) lies in the Shoreline Development Buffer, and about twenty (20%) is outside the Buffer. The existing residence does not align with the road frontage, but is offset so that the southeasterly corner is approximately 16.6' from the road while the northwest corner is 83.3' from MHW. Most of the existing residence (that

predates zoning) lies within the 50' front setback. Exhibit 18, sheet one illustrates the buildable area on the existing lot, only 19.24 sq. ft., most of which is already in use. There is essentially no way the residence can be renovated without variances.

Finding a configuration that would allow the renovation of the existing residence while creating as little incursion into the Buffer as could be achieved proved to be a challenge. The existing residence's closest point to MHW is a deck attached to the southwest corner of the residence. That structure is approximately 77.8 feet from MHW. One corner of the existing garage is in the flood Plain, and is located 42.7' from MHW. With all existing improvements lot coverage is more than the mandated fifteen percent (15%).

By removing some of the asphalt and concrete, including the carport connecting the garage and the residence, the proposed renovations, including the additions to the living space, will result in lot coverage being reduced by 414 sq. ft. which will reduce lot coverage to less than fifteen percent (15%). Mr. Clark directed the Board to sheet two of Exhibit 18 showing the lot coverage to be removed or replaced with a pervious surface. Sheets three (3) and four (4) of Exhibit 18 show the additions to the residence to make it more livable and update the floorplan.

Mr. Clark explained that in the existing residence one entered the living area by walking through a bedroom, certainly not what one would expect in a residence constructed today. Exhibit 18 sheet labeled EC-1 shows the existing floor plan, sheet A-1 shows the redesigned residence offering more convenience, privacy and usable space. Mr. Clark commented that the renovations can be accomplished by adding 364 sq. feet of living space. That addition exceeds the permitted twenty percent (20%) expansion of GFA within the Buffer. He pointed out that by removing asphalt surfaces as shown on Exhibit 18 sheet 2, as well as two small concrete boat ramps and the current house/garage connection, the total lot coverage could be reduced to bring the property into compliance with the lot coverage requirements, a goal he believed to be more environmentally friendly. The additions are not extravagant. He was not suggesting any changes to the garage, for to make improvements in the flood plain the elevation would have to increase and the soil disturbances for that action would adversely affect water quality.

Mr. Heikes spoke briefly. He expressed support for the project and believed it

would be an improvement.

The Chairman commented that the Applicant's agent had done an excellent job addressing both the critical area and the non-critical area variance standards. The Board would take those responses into consideration. He asked if the planning staff had additional comments. They did not. Since there were no additional comments he asked the Board members to comment on the application.

Mr. Cavanaugh believed the Applicant had met all requirements for the requested variances and that the requests were reasonable. He added that the Applicant was removing lot coverage and that made this request very reasonable.

Mr. Shortall concurred stating that the Board had granted variances on other small lots.

Mr. Dorsey agreed noting that it would be impossible to do anything to this residence on this lot without a variance.

Mr. Adelman believed the requested variances to be the minimum necessary to improve the residence

Mr. Jones commented that the Applicant had managed to reduce lot coverage to under fifteen percent (15%) on a very small lot with almost no buildable area under the current legislation. He thought the effort was a very good thing and that the project should move forward as depicted on Exhibit 18.

There being no other public comment, the Board made the following findings of fact and conclusions of law based on the Applicant's written responses, the testimony and the evidence presented:

1. The Applicant has submitted a written application for four variances.
2. The public hearing was properly advertised and posted, and the adjacent land owners were properly notified. Exhibits 3, 4, 5 and 9.
3. The Applicant has received favorable recommendation from Staff for the reasons documented in Exhibit 8, the Planning Staff Report authored by Mr. Tarleton.
4. The subject property is a small lot, seven tenths (.7) acre created prior to zoning and the enactment of the critical areas law. Its total buildable area under today's regulations would be 19.24 square feet. Any change to the existing structures on the property will require a variance. The property's unique size and the existing development

necessitate variances before the structures can be renovated and/or improved.

5. The property is currently improved with an existing residence built sometime during the 1930s. Given the unique limitations due to the size and configuration of the lot and the placement of the existing structures on the lot, the lot owner would be denied the right to renovate and improve the residence should the regulations be strictly enforced. Those rights are available to all property owners in the critical area. No special privilege is being granted to the Applicant.

6. The renovations planned by the Applicant will reduce lot coverage in the Buffer. They are very modest and will create more usable living space and privacy for the residents. The renovations have been designed to create as minimal an incursion into the Buffer as possible.

7. The Applicants own the adjoining lot, but are unable to combine the properties as that would create a non-conforming lot with two (2) residences.

8. The lot itself is oddly shaped. It is roughly trapezoidal, having a narrow depth and a long easterly road frontage (requiring a 50' building setback). The current residence was created long prior to zoning and violates that setback. There is a 100' Buffer along the westerly water frontage. There is no real buildable area. These constraints make development without variances impossible.

9. The need for the variances requested is based on the unique size and shape of this property as well as the placement of the existing 1930's era improvements.

10. The Applicant seeks to renovate an eighty-year-old residence to make the most of the small structure. The improvements are very modest and although the GFA in the Buffer will increase, the total lot coverage now exceeding fifteen percent (15%) can be decreased by the removal of concrete and some of the asphalt surfaces currently existing. The removal will result in less than fifteen percent (15%) total lot coverage and be environmentally more beneficial.

11. The application is not being made for the purpose of increasing profitability -- it was initiated to update an eighty-year-old residence and make it more livable.

12. The proposed variances will not be a detriment to the neighboring properties. The side yard setback is 25' in the zoning district, and the proposed improvements will not be

closer than 41' to the adjoining lands now owned by the Applicant. Mr. Heikes, an adjoining land owner, testified in support of the application.

13. Staff had concerns about the proposed entryway, as it is only 12' from the new sewerage reserve area. The Talbot County Health Department has reviewed the project plans and approved the location. There are no other concerns affecting public interests.

For the reasons set out in the Board's findings, Mr. Cavanaugh made a motion that the four (4) variances permitting the addition to the Applicant's property be approved, subject to the following conditions suggested by staff:

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

B. The Applicant shall commence construction of the proposed improvements within 18 months of the date of the approval by this Board.

C. The Applicant shall mitigate all disturbance in the Buffer at a 3:1 ratio.

D. The Applicant shall submit a buffer management plan in conjunction with the building permit application.

E. The new pervious deck will be required to meet the minimum standards for a pervious deck as set out in the building code.

F. The Applicant shall sign a Pervious Deck Agreement to be filed with the Office of Permits and Inspections.

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

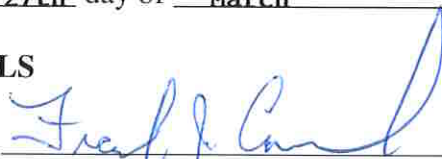
HAVING MADE THE FOREGOING FINDINGS OF FACT AND LAW, IT IS,  
BY THE TALBOT COUNTY BOARD OF APPEALS,


RESOLVED, that the Applicants, **DANIEL AND DAWN HALEY**, (Appeal No. 18-1688) are **GRANTED** the four requested Variances for the property consistent with the evidence presented to the Board of Appeals, and subject to the aforementioned conditions, by vote as previously noted.

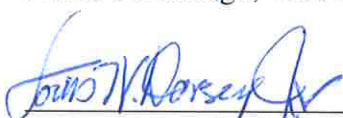
GIVEN OVER OUR HANDS, this 27th day of March, 2019.

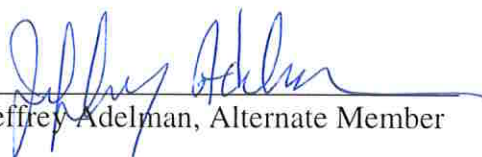
**TALBOT COUNTY BOARD OF APPEALS**

  
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Phillip Jones, Chairman

  
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Frank Cavanaugh, Vice Chairman

  
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Paul Shortall, Jr., Member

  
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Louis Dorsey, Jr., Member

  
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Jeffrey Adelman, Alternate Member