TALBOT COUNTY BOARD OF APPEALS
Appeal No. 15-1639

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 7:00 p.m., December 21, 2015, on the application of **DONNA L. ALPI** ("Applicant"). The Applicant is requesting a variance of the required 100-foot Shoreline Development Buffer to permit an approximately 330 square foot expansion of an existing accessory dwelling for 2nd story shed dormers and porch. The structure is located 63 feet from Mean High Water. The property is located at 4462 World Farm Road, Oxford, Maryland 21654 in the Rural Residential (RR) zone. The Applicant owns 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, Margaret Young, Louis Dorsey, and Frank Cavanaugh. The Applicant's husband, James Alpi, testified in support of the application as did Michael Butler, Choptank Builders, Inc., 9431 Turkey Creek Road, Easton, Maryland 21601. Jeremy Rothwell, Planner I, Talbot County Planning and Zoning, attended the hearing. 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.
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 Applicant to each applicable warrant.

7. Staff Report dated December 1, 2015.

8. Sign maintenance agreement.

9. Site Plan/Floor Plans/Elevation Plans prepared by Lane Engineering, LLC.

10. Letter from Critical Area Commission dated November 25, 2015.

11. Independent Procedure Disclosure and Acknowledgement Form.

12. Aerial photograph.

13. Critical Area Lot Coverage Computation Worksheets.

14. Photographs from the staff site visit on November 12, 2015,

15. Copy of email from Jane Murphy and Christopher Kearney dated December 21, 2015.

Mr. Alpi testified first. He said that the structure is their guest cottage. It has two second floor bedrooms and the only egress from those bedrooms is by way of a narrow staircase to the front. There are two thin windows on either side of the cottage not suitable for emergency exits. They want to make an additional rear exit from the bedrooms by converting what is currently storage area under a sloped roof into a small second floor deck with a dormer from each bedroom leading to the deck. The dormers will actually be doors providing access to the porch. The project will not increase the lot coverage but, since the dormers convert storage space into living space, the project requires a variance.

In response to a question from a Board member Mr. Rothwell explained that because the structure is an accessory structure the project requires a variance. Had it been the primary structure it could have been considered by way of the administrative variance process.

Mr. Butler explained that the proposed upstairs deck will not be covered. The deck is over an existing first floor screened porch.

Mr. Rothwell explained that because the proposed deck and dormers are considered new gross floor area for the cottage they also exceed the 20% increase in gross floor area limit for an administrative variance.

Mr. Alpi commented on the email from their neighbors (Board's Exhibit No. 15). He said their lot is a six acre parcel and the neighbors who made the comment live in a home that faces 180 degrees from their property and their view of the guest cottage is screened by trees and other vegetation. In addition, the proposed modification to the cottage is on the side opposite from those neighbors and the changes will not be visible from their property.

No one appeared at the hearing in opposition to the application.

The Board then considered the application. After some discussion the Board, upon motion made by Mrs. Young and seconded by Mr. Cavanaugh, approved the requested variance 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 proposed development activity will not increase impervious surface within the Shoreline Development Buffer. The modification of the accessory structure will simply change the roofline to allow for a small deck on the second floor water side of the cottage. The proposed new doors from the second floor bedrooms will provide access to the small deck and, in an emergency, egress from the second floor bedrooms. The project will not increase the size or height of the cottage in any way.
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 prior to the establishment of the Critical Area restrictions. The Applicant is not proposing to increase lot coverage in or outside the shoreline buffer.

4. The granting of the variance 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. 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 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.

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 variance has been designed to have little, if any, adverse environmental impact. The Applicant does not propose to expand any lot coverage, remove any vegetation, or permanently alter any of the existing site conditions in the buffer.

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 Applicant, **DONNA L. ALPI** (Appeal No. 15-1639) is **GRANTED** the requested critical area variance consistent with the evidence presented to the Board of Appeals, subject to the following conditions:

1. The Applicants shall make applications to and follow all of the rules procedures, and construction timelines as outlined by the Department of Permits and Inspections.

2. The Applicants shall commence construction on the proposed improvements within eighteen (18) months from the date of this Decision.
3. The Applicants shall be required to submit a Buffer Management Plan to address any mitigation required throughout the construction.
4. Natural vegetation of any area three times the extent of the approved disturbance in the buffer (if any) shall be planted in the buffer or on the property if planting in the buffer cannot be reasonably accomplished. A Buffer Management Plan application may be obtained through the Department of Planning and Zoning.

GIVEN OVER OUR HANDS, this 27th day of January, 2016.

TALBOT COUNTY BOARD OF APPEALS

Paul Shortall, Jr., Chairman

Phillip Jones, Vice Chairman

John Sewell

Margaret Young

Frank Cavanaugh

Board of Appeals/1639.AlpiVarianceCA