

TALBOT COUNTY BOARD OF APPEALS
Appeal No. 16-1659

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., January 23, 2017, on the application of **KEVIN T. and ELISABETH W. CONNORS** (Applicants). The Applicants are requesting a variance of the 100-foot Shoreline Development Buffer to permit the construction of a one story screen porch addition to be built over an existing raised landscape bed and retaining wall. The proposed porch will be located no closer than the existing retaining wall at 90.4 feet at its closest point to Mean High Water. The property is located at 6056 Hedges Lane, Easton, Maryland 21601 in the Rural Conservation (RC) zone. The Applicants own the property. The request is made in accordance with Chapter 190 Zoning, Article VI, §190-139 C (2) 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 by Zachary A. Smith, Esquire, Armistead, Lee, Rust & Wright, 114 Bay Street, Building C, Easton, Maryland 21601. Elisa Deflaux, Environmental Planner, 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 January 23, 2017.
8. Sign maintenance agreement.
9. Site Plan by Fink, Whitten & Associates, LLC, received October 14, 2016.
10. Lot coverage sheet.
11. Elevation plans
12. Critical Area Commission comments dated January 17, 2017.
13. Authorization letter from the Applicants.
14. Independent Procedure Disclosure and Acknowledgement Form.
15. Aerial photograph.
16. Letter from Planning and Zoning, dated December 15, 2016.
17. Photographs from the staff site visit taken on December 2, 2016.

Mr. Smith said that the Applicants wish to construct a single story, screened porch addition to the water side of their home. The home was constructed before the Applicants acquired it and before the enactment of the County's Critical Area regulations. The existing improvements on the lot exceed the current lot coverage limits by about five percent and some of the improvements extend into the critical area buffer. However, those improvements are legally non-conforming.

The proposed porch will encroach on the 100-foot shoreline buffer by about 9½ feet and cover about 140 square feet of the buffer. The proposed porch will be constructed over an existing, raised landscaping bed enclosed by a brick retaining wall.

The Applicants propose to offset the impact to the buffer by removing a significant amount of the existing lot coverage, both within and outside the 100-foot shoreline buffer. They propose to remove a

total of about 1,700 square feet of coverage on the entire lot, including about 600 square feet of coverage within the buffer. Thus, they will remove an area of coverage in the buffer of about four times that of the area of the proposed porch. Combined with the required mitigation their proposal should more than offset any impact of the proposed development.

Mr. Connors testified in support of the application. They have owned the property for about eight years. He said the location of the proposed porch is ideal because it is shaded and receives the prevailing breeze. It is also the best place for the porch based upon the interior layout of the house. It is adjacent to the existing living room and study.

He said they take the Critical Area laws and regulations seriously. That is a reason their proposal includes such a large reduction of lot coverage.

The next witness was Christine M. Dayton, Architect, 413 B Needwood Avenue, Easton, Maryland 21601. She said that the house is constructed on a concrete slab and the adjacent pool is on the same slab. As a result the house is being damaged by storm and rain water sheeting from the pool deck to the house. By removing the existing raised landscaping bed they can construct a stepped down porch on that same area. They propose to remove sections of the pool deck between the pool and house and replace it with grass and other vegetation to resolve the water damage issue. Placing a porch in that area near the pool would limit their ability to resolve the water damage problem.

In response to questions from the Board Ms. Dayton said that the proposed porch will not make the house darker because of the angle of the sun in the winter. She also said that existing trees in the area will not be removed.

Members of the Board then commented that it would have been useful to have a diagram of the layout of the interior of the home since the Applicants are relying upon that layout as part of the justification for the proposed variance. (As a condition of approval the Applicants agreed to provide the

Board with a diagram of the interior layout of the home that is consistent with Mr. Connors' description. They also agreed to provide a more detailed or enlarged diagram of the lot coverage confirming the coverage calculations submitted with the application.)

The next witness was Vernon Nily, 6060 Hedges Lane, Easton, Maryland 21601. He is a neighboring property owner and has known the subject property since 1967. He said that the retaining wall surrounding the landscaping bed was there in 1967. The Applicants' home was originally the pool house for the neighboring home where he now lives. The concrete slab under the house and surrounding the pool is the same as it existed in 1967. He said the south side of the house is the only reasonable place to put a porch addition.

Ms. Deflaux confirmed that the proposed porch would not be considered part of the gross floor area of the house. Therefore, if in the future an owner of the house proposes to enclose the area of the porch and make it interior space, that owner would have to obtain a separate variance.

Ms. Dayton confirmed that the slab between the pool and the house will be removed and replaced with grass and other vegetation which should resolve the water damage mentioned earlier in her testimony.

No one appeared in opposition to the application.

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 four to one.

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 interior layout of the existing home is such that the

porch will be adjacent to the living room and study, a normal access area to a porch. An existing pool is located on the west side of the house. The pool decking is the same concrete slab upon which the house is constructed. Storm water sheeting on the deck and slab has resulted in continuing damage to the floor of the house. As a part of their application the Applicants propose to remove a large portion of that slab decking and replace it with vegetation to absorb and otherwise divert runoff from the remaining small deck area around the pool. While some of that area could conceivably be used for an attached screened porch it would not allow the Applicants to use that area to help divert the runoff causing the water damage. They are proposing to remove a significant amount of existing lot coverage.

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 Applicants purchased their home in its current configuration. Their proposal is an effort to significantly reduce the overall lot coverage in exchange for a small, screened porch, an amenity enjoyed by many homes in the County.
4. The granting of the variance will not confer upon the property owners 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 porch is directly over an existing raised landscaping bed has been in place since the 1960s. 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 reduction in lot coverage proposed by the Applicants 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, **KEVIN T. and ELISABETH W. CONNORS** (Appeal No. 16-1659) 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 lot coverage shown on the site plan to be removed.
2. 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 regarding new construction.
3. The Applicants shall mitigate for the disturbance to the shoreline buffer with three times the disturbance to the shoreline buffer. They shall submit a buffer management plan with their building permit application and maintain their property consistent with that plan.

4. The Applicants shall commence construction on the proposed improvements within eighteen (18) months from the date of this Decision.
5. The granting of this variance is not an approval of any increase in gross floor area of the home.

GIVEN OVER OUR HANDS, this 9th day of February, 2017.

TALBOT COUNTY BOARD OF APPEALS



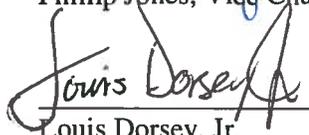
Paul Shortall, Jr., Chairman



Phillip Jones, Vice Chairman

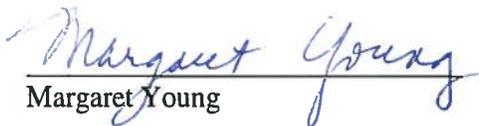


John Sewell



Louis Dorsey, Jr.

The following member of the Board of Appeals voted against the motion to approve the requested variance. She found that the Applicants failed to meet their burden of proof with respect to the requirement that there are special conditions or circumstances peculiar to the land or structure that would result in unwarranted hardship should the application be denied.



Margaret Young

Board of Appeals/1659.ConnorVarianceCA