

DECISION  
TALBOT COUNTY BOARD OF APPEALS  
Appeal No 17-1663

Pursuant to due notice, a public hearing was held by the Talbot County Board of Appeals (the Board) at the Wye Oak Room, Talbot County Community Center, 10028 Ocean Gateway, Easton, Maryland, beginning at 7:00 p.m., February 27, 2017 on the Application of **KIMBERLY L. BATTAGLIA ET AL., TRUSTEES FOR BRIAN WEISMAN**, (Applicant). The Applicant is seeking a variance of the strict application of the intrafamily transfer provisions of the *Talbot County Code* (the *Code*) due to changes in circumstances which have occurred since entering the agreement and is seeking relief from the transfer of ownership limitation associated with that provision. The request is made in accordance with Chapter 190, Zoning, Article II, §190-14 (I)(2)(f) and Article IX, §190-182 of the *Code*. . The property is located at 10185 Sherwood Manor Drive, Saint Michaels, Maryland 21663. The property owner is Kimberly L. Battaglia, et. al., Trustees. The property is shown on Tax Map 14, Grid 16, Parcel 50, Lot 1A.

Present at the hearing for the Board of Appeals were: Paul Shortall, Chairman, Phillip Jones, Vice-Chairman, members John Sewell, Margaret Young, and Louis Dorsey, Jr. Anne C. Ogletree served as attorney for the Board of Appeals. Elisa Deflaux, Planner, and Chris Corkell, Board Administrative Assistant, were in attendance.

Mr. Shortall opened the meeting, asking if all Board members had visited the site. After receiving affirmative responses, he requested that those persons who would be testifying stand and be sworn. After the witness was sworn the following exhibits were admitted into evidence as Board's exhibits:

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| Exhibit 1  | Application for Non Critical Area Variance with Attachment A |
| Exhibit 2  | Tax Map of subject property                                  |
| Exhibit 3  | Notice of Public Hearing for Star Democrat advertising;      |
| Exhibit 4  | Newspaper confirmation;                                      |
| Exhibit 5  | Notice of Public Hearing and Adjacent Property Owner list;   |
| Exhibit 6  | Critical Area Variance Standards;                            |
| Exhibit 7  | Non-Critical Area Variance Standards                         |
| Exhibit 8  | Staff Memo prepared by Elisa Deflaux dated Jan. 31, 2017;    |
| Exhibit 9  | Sign maintenance agreement;                                  |
| Exhibit 10 | Site Plan;   |
| Exhibit 11 | Critical Area Commission Comments;                           |
| Exhibit 12 | Decision No. 1523;   |

- Exhibit 13 Decision No. 1162;
- Exhibit 14 Letter dated December 11, 2012 reference extension request;
- Exhibit 15 Letter of Authorization from Kimberly Battaglia;
- Exhibit 16 Independent Procedures Disclosure and acknowledgment form;
- Exhibit 17 Tax assessment sheet
- Exhibit 18 Appointment of successor trustee;
- Exhibit 19 Order dated Dec. 14, 2014;
- Exhibit 20 The Weisman Family Real Estate Trust document;
- Exhibit 21 Letter from Dino LaFiandra dated 01/13/17;
- Exhibit 22 Aerial photo;
- Exhibit 23 Letter from George Hamilton dated 02/14/17;
- Exhibit 24 Circuit Court filing re Kim Battaglia by the Weismans;
- Exhibit 25 Circuit Court filing re Elizabeth Green from the Weismans.

The Chairman recognized Mr. Dino LaFiandra, attorney for the Applicant. Mr. LaFiandra explained that Raymond F. Weisman Sr. and Helen Weisman, his wife (hereinafter, the senior Weismans) had created the subject property via the intrafamily provisions of the *Code* in effect in 1992. They initially divided their 20 acre lot into two (2) parcels, a residual parcel and Lot 1A (Exhibit 10, site plan; Applicant's Exhibit 1)<sup>1</sup>. Note No. 7 on the recorded plat (Exhibit 10) specifies that Lot 1A was created pursuant to the provisions of the interfamily transfer section of the *Code* in effect at the time. That provision, *Code* §19.10 (c) (7) contained two restrictions:

- [1] The lot is created as a part of a bona fide intrafamily transfer and not with the intent of subdividing the original parcel of land for the purpose of ultimate sale; and
- [2] A change in circumstances has occurred since the original transfer was made that is not inconsistent with this section and warrants an exception. ....

Mr. LaFiandra advised the Board that circumstances had indeed changed, and that the trustees needed to sell the property as there were no longer the funds necessary to support it of the Brian Weisman Family.

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<sup>1</sup> Subsequently, in 1995, the senior Weismans subdivided a second parcel of 8.993 acres that they transferred to their son, Raymond F. Weisman, II, a/k/a Raymond F. Weisman, Jr., a Roman Catholic priest, (hereinafter, Rev. Weisman). They were hopeful that Rev. Weisman would be transferred to the local area and would be able to assist them in their old age. They subsequently sold their original home on the residue of the original parcel and moved into the house they had built for Rev. Weisman, first as renters, then, following the advice of their estate planning counsel, as owners. In the interim it had become clear that Rev. Weisman was not going to be transferred to the local area. The Board approved a variance to permit the transfer. (Decision No. 1162, Exhibit 13).

Ms. Elizabeth Green, an attorney for the Applicant, was called to testify. Ms. Green told the Board that the property was initially deeded to Brian Weisman, his wife Brenda, (hereinafter Brian and Brenda) and Rev. Weisman. (Applicant's Exhibit 2, deed recorded in Liber 727 folio 276). Subsequently, in 2004, the title owners, Rev. Weisman Brian and Brenda entered a Revocable Trust Agreement in which Brian's siblings agreed to hold the property in trust for the benefit of Brian, Brenda and their children<sup>2</sup>. The clear purpose of the agreement was to provide that Brian and Brenda and their family would have the right to reside in the property for their joint lives and the life of the survivor, provided that they pay taxes, maintenance and insurance. Should they fail to meet their obligations the property could be sold and "the trustees, in their discretion, shall have the right to sell the [subject property] listed in Exhibit A **and purchase a substitute property** to be held on the same terms". Excess proceeds were to be invested and used for the benefit of Brian and Brenda during their lifetimes. (Applicant's Exhibit 3, Trust Agreement 1-2.) The deed effectuating the transfer was introduced as Applicant's Exhibit 4.

From its inception the trust was marred by conflict between Brian, Brenda and Rev. Weisman. In the course of the next decade the other Weisman siblings resigned as trustees leaving Rev. Weisman and Brian and Brenda to irritate one another. The arguments culminated in a court battle, Civil Action 20-C-14-8778. The end result was that Rev. Weisman resigned, and the corpus of the trust under Helen Weisman's will was divided into three parts: the Real Estate Trust, Trust A and Trust B. The real estate trust contained the residence, (Applicant's Exhibit 7) providing life estates for Brian and Brenda and allowing for continued residence by Brian Jr. following his parents' demise. Trust A held funds for the support of the Brian Weisman family (excluding Brian Jr. who is disabled and receives government benefits) (Applicant's Exhibit 7, Terms of Trust A). Trust B provided for the college education of the other Weisman children.

Stephanie Kimbrell was appointed trustee of both Trust A and the Real Estate Trust. The Real Estate Trust required that "Upon sale, **the Trustee shall reinvest the**

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<sup>2</sup> Brian and Brenda are the parents of Brian Jr. (BJ), Thomas, Rebecca and Raymond . See also Decision No. 1523, Exhibit 12.

**proceeds in a new residence for the benefit of Brian and Brenda...** Applicant's Exhibit 6, Weisman Family Real Estate Trust, Paragraph 2 at 1)

In March 2016 the Ms. Kimbrell, the trustee resigned and appointed Kimberly Battaglia as successor trustee. (Applicant's Exhibit 8). Ms. Battaglia accepted the position and has been working with the Weisman family, as has Ms. Green.

Ms. Green reported that the funds in Trust A, originally approximately \$112,000.00, had been totally depleted by the end of 2016 (Applicant's Exhibit 9) and the trust was no longer able to support the residence or the family. Since the exhaustion of funds in Trust A was expected, the trustee informed Brian and Brenda of the necessity for sale, listed the real property for sale, and has had an offer to purchase at a price in excess of the assessment. (Applicant's Exhibit 10) The trustee believes the terms to be favorable. Brian and Brenda, however, do not want to move, and have been obstructive.

Ms. Green acknowledged that the trustee knew a variance would be required to sell, and this is the reason for the application. She acknowledged that the taxes for fiscal 16-17 were not paid, and that a tax sale might be the result. She and the trustee have tried working with Brian and Brenda, but have been unable to obtain their cooperation in preparing for sale, selecting a new residence or allowing the contract purchaser to inspect the property. As a last resort, the trustee has threatened to evict Brian, Brenda and BJ for lack of cooperation in the sale. Threats have been made in retaliation, and Ms. Green has had to obtain a peace order to prevent actual or telephonic harassment. (Applicant's Exhibit 12)

Mr. LaFiandra then summed up the Applicant's case stating that it is evident that the subdivision was not intended to create a lot for immediate sale, as the residence has been occupied continuously by the same family for twenty-five (25) years; and that the inability of the trust to continue to support the family and the residence was a change in circumstances that supported an exception. He noted that if the property is not sold, it will be sold at tax sale, and the trustee will not be able to provide the alternate residence required.

A member inquired why the trustee had not acted on the same variance approved in Decision No. 1523. Mr. LaFiandra was unable to answer that question. He did not

know why the variance had been allowed to lapse, as his firm had not represented Rev. Weisman who was trustee at that time.

Board's counsel inquired as to what would happen to the family after an eviction and in the hiatus between the sale of the residence and the selection of a replacement residence.

Ms. Green was unsure and commented that the family could always seek the assistance of the Department of Social Services in obtaining interim housing.

Board's counsel asked if that course of action was permitted by the trust, as the whole thrust of the various trust agreements created over the years was the care and protection of the Brian Weisman family. Where would they go, and what resources would they have during the hiatus?

Ms. Battaglia, the trustee stated that she has suggested that the Weismans select a similar residence with an updated kitchen, a minimum of three (3) bedrooms and two (2) baths, and the same or larger square footage, but, as of the date of the hearing there had been no cooperation from Brian and Brenda. She has suggested that Brian and Brenda look at residences listed for sale in the range of two hundred fifty thousand and three hundred thousand dollars (\$250,000.00 - \$300,000.00), so that there would be excess funds from the sale that could be used to support the family and the residence. She had not heard from Brian and Brenda and did not believe they had looked at any replacement properties.

Mr. Jones commented that he was concerned about the time frames and suggested that if the variance is granted the Board should consider a condition that, at a minimum, the Trustees must obtain a replacement residence of equal or better size for the family.

The Chairman added that perhaps the condition should state that the replacement residence must be under contract as well.

Ms. Green stated that she would be willing to consider putting a replacement residence under contract, however, the Board should understand that if a contract is obtained she will have to advance her own personal funds for the deposit, as the trust has no money.

Mr. Jones added that the condition must ensure that the replacement residence be of the same or similar square footage, and must have a minimum of three (3) bedrooms and two (2) baths.

Mr. Shortall asked if there were others present who wished to speak.

Brenda Weisman was recognized. She stated that the family had been trying to cooperate with the Trustee. Her adult children have suggested several residences, and had sent copies of the multi-list sheets to the trustee, but, to date, the family has not been advised if any of the properties selected were acceptable to the trustee.

Ms. Battaglia said that she had been out of town and was unaware that there had been a response. She would look into it immediately.

Mr. Brian Weisman testified that he was being asked to give up a waterfront home and that he wanted a similar waterfront property.

There being no additional public comment the Chairman asked if the Board members wished to make additional comments on the application.

Mr. Sewell stated that he felt the only option would be to condition the grant of the variance on the selection of a replacement residence with a listing price within the range stated by the trustee and containing the same or greater square footage with a minimum of three (3) bedrooms and two (2) baths.

Mr. Dorsey commented that he was uncomfortable granting a variance without there being a suitable residence available and under contract.

Ms. Young felt that requiring the residence to be under contract was going too far. She added that she did not see that there was anything else the trustee could do but sell the subject property and obtain similar replacement housing for the family in the price range suggested by the trustee.

A member suggested that the trustee submit a list of several multi-list sheets showing similar residences that are available in the suggested price range containing the same or greater square footage and at least three (3) bedrooms and two (2) baths as a condition of the grant of the variance.

The Board then proceeded to make the following findings of fact and conclusions of law:

1 Lot 1A was subdivided from the parent tract in 1992 in a valid intrafamily transfer for the purposes of providing a home for Brian Weisman and his family.

2 At the time of the transfer, the senior Weismans, Brian's parents, lived on the adjacent parcel. No members of the extended family now reside in Talbot County.

3 In 2014, pursuant to court order, the subject property was placed on a real estate trust, and a separate (but related) trust was established to provide for the support of the Brian Weisman family and the residence .

4 The funds necessary to maintain the residence and the family have been totally depleted, and the property needs to be sold to obtain replacement housing for the Brian Weisman family and continue to support the family.

5 The trustees have the power of sale and have listed the property for sale and obtained a contract for sale in an arms length transaction at a favorable price on acceptable terms for the property in "as is" condition.

6 Brian and Brenda are naturally concerned that they will have no place to live, and have delayed the process out of those concerns.

7 Circumstances have changed in that the trust money is totally depleted and the trustee is unable to continue to maintain the subject property, taxes have not been paid for lack of funds, and the entire purpose of the trusts could be frustrated if the property is not sold to benefit the family.

8 The Board finds that the subject property was not created for the purposes of resale, but as a residence for the Brian Weisman family and that changing circumstances make it imperative that the subject property be sold to carry out the terms of the trust and provide a new residence for the Brian Weisman family.

There being no further discussion, Mr. Shortall asked if there was a motion. Mr. Sewell moved that the Applicant be granted the requested variance, subject to the following conditions:

1 Before the variance becomes effective, the trustee shall submit copies of multi-list sheets for several suitable replacement residences to the Board. Each replacement residence shall contain the same or greater square footage and shall have a minimum of three (3) bedrooms and two (2) baths.

2. The variance shall be implemented within eighteen (18) months following the date of approval. Upon a written request before the expiration of the initial time limit, and for good cause shown, the approving authority may extend the variance approval for no more than one like period. Failure to implement the approval within the prescribed time voids the approval.

Ms. Young seconded the motion. There was no additional discussion by the Board so the Chairman called for a vote. The motion passed 5-0

HAVING MADE THE FOREGOING FINDINGS OF FACT AND LAW, IT IS, BY THE TALBOT COUNTY BOARD OF APPEALS, RESOLVED, that the Applicant, **KIMBERLY BATTAGLIA, TRUSTEE** is hereby **GRANTED** the variance to permit the transfer of ownership of the subject property consistent with the evidence presented to the Board Appeals. subject, however, to the following two conditions:

- 1 Before the variance becomes effective, the trustee shall submit copies of multi-list sheets for several suitable replacement residences to the Board. Each replacement residence shall contain the same or greater square footage and shall have a minimum of three (3) bedrooms and two (2) baths.
2. The variance shall be implemented within eighteen (18) months following the date of approval. Upon a written request before the expiration of the initial time limit, and for good cause shown, the approving authority may extend the variance approval for no more than one like period. Failure to implement the approval within the prescribed time voids the approval.

GIVEN OVER OUR HANDS, this 5th day of April, 2017.

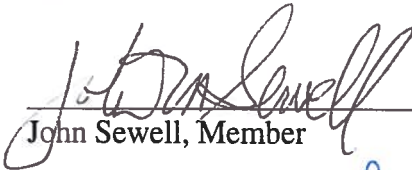
**TALBOT COUNTY BOARD OF APPEALS**



Paul Shortall, Chairman



Phillip Jones, Vice-Chairman



John Sewell, Member



Margaret Young, Member



Louis Dorsey, Jr., Member