

DECISION
TALBOT COUNTY BOARD OF APPEALS
Appeal No 17-1672

Pursuant to due notice, a public hearing was held by the Talbot County Board of Appeals (the Board) at the Bradley Meeting Room, Courthouse, 11 S. Washington Street, Easton, Maryland, beginning at 7:00 p.m., October 30, 2017 on the Application of **LEROY BROOKS¹ c/o BILLIE JEAN MARTON**, (Applicant). The Applicant is seeking five (5) variances to permit the following development activities on a replacement structure within the Shoreline Development Buffer: (1) The replacement of a screened porch with an enclosed covered porch located fifty-six and eight tenths feet (56.8') from mean high water (MHW); (2) replacement of an open front porch with an enclosed covered front entry porch located ninety-four feet (94') from MHW; (3) the construction of roof dormers located fifty-nine feet (59') from MHW; (4) the expansion of the second floor located ninety-seven and five tenths feet (97.5') from MHW and the vertical expansion of the dwelling from nineteen feet (19') to twenty-seven and eighty-three one hundredths feet (27.83') located no closer than fifty-six and eight tenths feet (56.8') from MHW. The request is made in accordance with Chapter 190, Zoning Article IV, §190-139 and Article IX, §190-182 of the *Talbot County Code* (the *Code*). The property is located at 7004 Dun Cove Road, Sherwood, Maryland 21665 in the Rural Conservation (RC) Zone. The property owner is Leroy Brooks, Trustee, and the property is shown on Tax Map 38 Grid 11 Parcel 29.

Present at the hearing for the Board of Appeals were: Paul Shortall, Chairman, members John Sewell, Frank Cavanaugh, and alternate members Greg Gannon and Jeffrey Adelman. Anne C. Ogletree served as attorney for the Board of Appeals. Brennan Tarleton, 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 witnesses were sworn the following exhibits were admitted into evidence as Board's exhibits:

¹ Mr. Brooks passed away before this case was filed. His estate is being administered in the Orphan's Court for Talbot County Administration Number 22442. Billie Jean Marton was appointed personal representative of his estate.

Exhibit 1	Application for 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 with Attachment B.;
Exhibit 7	Staff Memo prepared by Brennan Tarleton;
Exhibit 8	Sign maintenance agreement;
Exhibit 9	Site Plan by Lane Engineering, LLC received on 9/19/17;
Exhibit 10	Elevation and Floor Plans;
Exhibit 11	Comment Letter from Jennifer Esposito dated 10/18/17;
Exhibit 12	Independent Procedures Disclosure and acknowledgment form;
Exhibit 13	Aerial Photo;
Exhibit 14	Critical Area lot coverage computation worksheet;
Exhibit 15	Photos of dwelling submitted by the Applicant

The Chairman recognized Mr. Brett Ewing, of Lane Engineering, 117 Bay Street, Easton, Maryland 21601 the agent of the Applicant. Mr. Ewing told the Board that he would have two witnesses but wanted to orient the Board to the site and project before the witnesses testified.

Mr. Ewing explained that the goal of the project was (1) to demolish the existing dwelling that was built in the 1970's prior to the critical areas legislation; (2) to use the slab and foundation as the footprint for new construction; (3) to elevate the structure to avoid flooding, and (4) to enlarge the structure to create an additional bedroom. The current residence was built slab-on-grade to accommodate Ms. Marton's mother who was confined to a wheelchair. Due to the at grade construction, the residence flooded during hurricane Isabelle and sustained moderate interior damage.

Mr. Ewing reminded the Board that the county permits replacement structures in the critical area. Although the Applicant is requesting replacement within the same footprint, the requested variances have changed the livable space and therefore the replacement is not "in kind" or on the same terms. A modest expansion is contemplated. To accomplish that goal, the expansion will have to be vertical. The Applicant is requesting permission to increase the height of the structure from nineteen feet (19') to twenty-seven and eighty three one hundredths feet (27.83'). The re-built structure will be on the same footprint and will be located no closer to MHW than the existing structure *i.e.* fifty-six and eight tenths feet (56.8'). The addition of dormers on the new second floor

will add useable space. In addition enclosing an existing screen porch and an entry way will also provide useable space. The covered porch will add one hundred eighty-two (182) square feet ; enclosing the entry will add twenty-six (26) square feet; the second floor expansion adds nineteen (19) square feet; installing the shed dormers will increase the residence by three hundred twenty-nine (329) square feet and adding an additional single dormer will increase the square footage by thirty-two (32) square feet.

Anticipating possible questions from Board members, Mr. Ewing suggested that a reasonable question would be 'why can the building not be relocated outside the critical area shoreline development buffer?' To answer that question he pointed out that the lot, although almost four (4) acres in size has some severe site limitations. The septic system is currently located in the area between the seawall and the residence. The health department will require it be relocated to the west of the residence. He noted that to the east of the residence the property is very low and situated in flood zone EL7. Moving the residence in that direction will encroach into the flood plain and increase the risk of flooding. To move the residence will also result in the addition of impervious surface. Due to its physical characteristics, with water on two sides, and an agricultural field on the northwest, there is very little 'usable' space in which one could relocate the structure. That option was considered and discarded. Elevating and reconstructing the residence in the same footprint will result in no additional impervious surface in the shoreline development buffer. He noted that only a portion of the current residence is within the shoreline development buffer, explaining that the red line shown on Exhibit 10 delineates the approximate location of the shoreline development buffer as does the dashed line on the site plan, Exhibit 9.

Mr. Ewing admitted that trying to design for this site had been challenging but opined that the proposal to replace the residence on the same footprint was the option that was the most cost effective, while not increasing the intrusion into the shoreline buffer. He asked if there were questions from the Board members, hearing none, he asked Mr. Lee Holt to come forward.

Mr. Holt is a contractor residing in Bozman and has been working in the building trades since 1999. He is the principal of Construction Management Services. He testified that he had been asked to assist with the project -- it has three goals; (1) to elevate the

residence as there had been at least two occasions when it had flooded, the most recent during Isabelle; (2) to increase the number of bedrooms from two (2) to three (3); and (3) to modernize the interior and exterior design, doing away with the small rooms of the original residence and the brick veneer over block exterior walls a "not-so-great" energy conservation design -- all while remaining within the existing footprint. He explained that the original foundations met current building code. He had investigated that by digging holes and checking to be sure the foundation could support the new structure and was pleased to find out that it could. He had also checked with a house mover to see if the structure could be used or reused. He was informed that it was possible to move the structure, but not practical, as it would be difficult, if not impossible to match the brick used and there would be 'holes' where the steel beams supporting the structure in transit rested. The cost was also prohibitive. He had met with County representatives in July to discuss the project, and discuss the possibility of moving the residence. All agreed it did not make practical sense. An administrative variance was suggested, but upon further discussion and research it was determined that the project could not meet the "in kind replacement standards in *Code* §190-169. That is why the matter is now before the Board.

Following the County meeting Ms. Marton authorized the drawings (Exhibit 10). Mr. Holt felt the proposal was a modest request. It does not increase impervious surface within the buffer; the adjustment is made by changing the roof pitch from 6/12 to 10/12 and adding dormers, which increases the total square footage, but vertically as opposed to horizontally. All structures below the slab and the slab will remain and be incorporated in the new design.

Mr. Holt added that in trying to design a project in keeping with the goals of the critical area law, the County and the client, all options had been considered. If the structure is moved east, it falls into the flood plain; if the structure is moved west or north, there will be the largest soil disturbance, possible conflict with the projected new septic fields, as well as the loss of tillable acreage. Given the alternatives, he felt the plan was the most reasonable for all concerned.

Ms. Marton was the Applicant's last witness. She is the daughter of Mr. Brooks, the Applicant. He passed away in May, and she is acting as his personal representative. She explained that her parents had purchased the farm in 1966 and built the residence

when they moved here to the Shore in 1976. At that time they sited the house one foot (1') above the 1933 benchmark. It flooded badly during Isabelle. The home has always been the site of family gatherings, and for it to continue into the future it needs to be elevated to avoid future hurricanes and rising sea levels. She plans to move to the farm and this residence and feels it does not make sense to try to improve the existing residence given the flood danger and the rising sea levels resulting from impending climate change. She believed the expansion was very modest and occurred in the second floor.

Mr. Adelman asked if the new building permit would be contingent on the relocation of the septic system to the west/northwest of the existing residence. Mr. Ewing responded that it would be. Mr. Adelman then inquired about relocating and moving towards the parking area on the east side of the residence. Mr. Ewing reiterated that there were flood plain issues on that side. Mr. Adelman wanted to know if some consideration had been given to reversing the plan. Mr. Ewing responded that it would create a much larger disturbance and add additional impervious surface within the buffer. Referring to the letter from the Critical Areas Commission. Mr. Adelman wished to know if the residence could be relocated outside the buffer. Mr. Ewing responded that there were the site conditions that had been previously discussed -- the flood plain, the new septic and septic reserve areas and the tilled acreage. He felt that created practical difficulty in moving the residence. He again stressed that had there been no requested expansion, the residence would have qualified for "in kind" replacement and no variances would have been necessary. Those that are being requested do not further impinge on the shoreline development buffer as they are the result of vertical expansion. He also noted that the property qualified for total lot coverage of fifteen percent (15%) and the requested improvements are slightly over half that permitted -- seven and six tenths percent (7.6%).

There being no further testimony, the evidentiary portion of the case was closed. Mr. Shortall inquired if the Applicant wished to also rely on its answers to the warrants. Mr. Ewing responded it did. The Chairman opened the floor for discussion.

Mr. Adelman noted that he believed there would be no mitigation required, as there would be no additional disturbance in the buffer and there would be no increase in impervious surface. He noted but for the very minor increase in gross floor area, the

Applicant would have qualified for an administrative variance, and would not have needed to have come before the Board. The Applicant is here because she wanted to increase gross floor area, although modestly.

Mr. Shortall agreed and stated he was not concerned with the expansion since it was minor and was being handled vertically.

Mr. Cavanaugh explained that he was at first concerned that the renovation was to be within the buffer, but after being advised of the constraints imposed by the unique facets of this property, the possibility of having to relocate the septic system and establish a reserve area and having heard that other options had been explored and determined to be less feasible he felt the variances were reasonable and did not create a problem.

Mr. Sewell commented that he also agreed with the comments made by Mr. Adelman and Mr. Cavanaugh. He added that moving the residence off the former footprint would increase lot coverage.

Mr. Gannon agreed the replacement plan was acceptable because there would be the same impervious surface both before and after the proposed additions and reconstruction.

Having heard all witnesses and read the Applicant's written responses to the warrants (Exhibit 6) the Board of Appeals makes the following findings of fact and conclusions of law:

1. The Applicant submitted a written application for variance. Exhibit 1. The adjoining property owners were identified and notified. Exhibit 5 Notice was published in the Star Democrat in the weeks of 10/13/17 and 10/20/17 and appropriate signage was posted on site. Exhibits 3, 4, 5 and 8.

2. The Applicant's property consists of 3.8+/- acres located in the RC zone. It is the end of a neck of land and is surrounded on the east by tidal marsh and the waters of Dun Cove; on the south, southeast and southwest by the waters of Dun Cove. Exhibit 2 the easterly, southeasterly and southerly portion of the property is in the flood plain, designated EL7. On the northwest, a portion of the property is in a tilled agricultural field. The current septic systems (2) are located on the south and southwesterly lawns of the residence between the residence and the waters of the cove. Exhibit 9, Site Plan. If the variance is to be granted both will have to be relocated to the westerly portion of the

property, and a new sewage reserve area created thus imposing an additional impediment to expansion in that direction.

3. The existing residence was constructed in the late seventies (70's) and expanded legally in 1986. Staff Memo, Exhibit 7. It is located partially within the shore development buffer created when the critical area laws became effective following the construction and expansion of the Applicant's residence.

4. The residence was built on a concrete slab foundation by Mr. Brooks at grade one foot (1') above the 1933 benchmark. It flooded during hurricane Isabelle and sustained moderate damage. The Applicant seeks to demolish the residence, and build an elevated residence using the same footprint, retaining the foundation and slab. Five (5) additional modifications amounting to increases of five hundred eighty-eight (588) square feet in gross floor area (GFA) and are derived from the enclosure of a porch and entry, the addition of dormers and the change in roof pitch from 6/12 to 10/12. The expansions are vertical, and do not increase the intrusion into the shore development buffer. The existing footprint will be maintained.

5. All other options for removal, reconstruction and expansion will result in far greater cost and significant soil disturbance. Given the constraints imposed on the property by its geography, its topography and existing or anticipated government requirements, the requested variances are the smallest necessary to achieve the project goals.

The Board concludes that:

1. The Board has found that the physical characteristics of this property, including the existence of the flood plain, the anticipated relocation of the septic system and the large amount of shore frontage combine to make the literal enforcement of the requirements of this Chapter an unwarranted hardship. The Board also notes that but for the requested increase in GFA amounting to five hundred eighty-eight (588) square feet, the property would qualify for in kind replacement under *Code* §190-169 and the Applicant would not have had to appear before this Board.

2. Property owners in the RC zone may expand residences In this case, the Applicant is proposing a very modest expansion that will not increase the non-conformity, *i.e.* it will use the same footprint as the residence to be demolished, with the

expansion occurring on the second floor of the replacement residence by changing roof pitch and the use of dormers.

3. No special privilege is conferred by allowing the expansion. As previously stated, all property owners in the RC zone may expand their residences.

4. The conditions that cause the need for a variance are those imposed by the location of the property, the flood plain and any health department requirements for replacing septic systems. None are created by the Applicant. All development activities will be vertical, and there will be no additional lot coverage created.

5. The staff report indicates there will be minimal temporal impacts during construction, but no lasting effect on water quality or habitat.

6. The variances requested are all small, the largest being created by the installation of shed dormers and the enclosure of an existing porch. Combined they allow the Applicant to achieve its goals without varying the existing footprint.

7. The Board concludes that there is no additional environmental harm created by the grant of this variance, and that the alternatives would be more harmful to the environment.

Mr. Sewell moved that the Applicant be granted the five critical area variances to permit expansion of the residence contingent on health department approvals for the sewage disposal area(s) and that the completed residence be no closer than fifty-six and eight tenths feet (56.8") from MHW. Mr. Cavanaugh seconded the motion. There was no additional discussion by the Board so the Chairman called for a vote. The motion passed 5-0

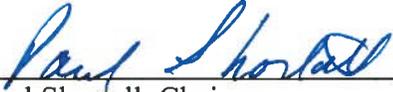
HAVING MADE THE FOREGOING FINDINGS OF FACT AND LAW, IT IS, BY THE TALBOT COUNTY BOARD OF APPEALS, RESOLVED, that the Applicant, **LEROY BROOKS c/o BILLIE JEAN MARTON** is hereby **GRANTED** the five (5) requested variances consistent with the evidence presented to the Board Appeals, subject, however, to the following conditions:

- 1 The Applicant shall comply with all health department requirements for the relocation of the septic systems serving the property;
2. The variances 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 20th day of December, 2017.

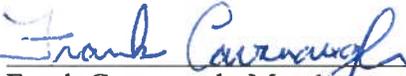
TALBOT COUNTY BOARD OF APPEALS



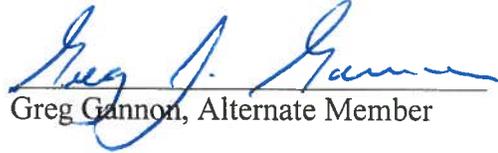
Paul Shortall, Chairman



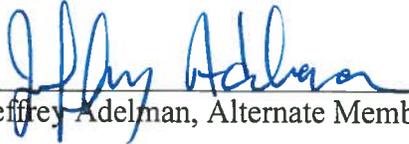
John Sewell, Member



Frank Cavanaugh, Member



Greg Gannon, Alternate Member



Jeffrey Adelman, Alternate Member