

DECISION
TALBOT COUNTY BOARD OF APPEALS
Appeal No 18-1685

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., October 29, 2018 on the Application of **LYNNE VERIOTI**, (Applicant). The Applicant is requesting a variance of the required fifty foot (50') front yard setback to forty-one feet (41') to construct a one hundred fourteen (114) square foot A frame style roof over existing front porch and steps.

The request is made in accordance with Chapter 190, Zoning, Article II §190-14B, and Article IX §190-182 of the *Talbot County Code* (the *Code*). The property address is 8596 North Bend Circle, Easton, Maryland 21601. The property is located in the Rural Residential (RR) zone. The property owner is Lynne Verioti. The property is shown on Tax Map 33, Grid 6, Parcel 146, Lot 1.

Present at the hearing for the Board of Appeals were: Paul Shortall, Chairman, Phillip Jones, Vice-Chairman, Members John Sewell, Louis Dorsey, Jr. and Frank Cavanaugh. Anne C. Ogletree served as attorney for the Board of Appeals. Brennan Tarleton, Planner I and Miguel Salinas, Assistant Planning Officer, 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:

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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 with Adjacent Property Owner list; |
| Exhibit 6 | Non-Critical Area Variance Standards with attachment B; |
| Exhibit 7 | Staff Report prepared by Brent Tarleton; |
| Exhibit 8 | Sign Maintenance Agreement; |
| Exhibit 9 | Planning Commission recommendation; |
| Exhibit 10 | Authorization letter; |
| Exhibit 11 | Independent Procedures Disclosure and Acknowledgment Form; |
| Exhibit 12 | Aerial photo; |
| Exhibit 13 | Planning Officer approval letter dated May 23, 2018; |
| Exhibit 14 | Critical Area Lot Coverage Computations Worksheet; |

- Exhibit 15 Site Plan dated 0718/26. Job No. T-33-06-246-1;
- Exhibit 16 Elevations and building plans
- Exhibit 17 Photo from site visit on October 4, 2018.

The Chairman recognized Brian Harkowa, the Applicant's builder and agent for the appeal and suggested that he explain the project to the Board.

Mr. Harkowa told the Board that he had been hired by the Applicant after she purchased the property in 2015. She wanted to do some renovations. One of his tasks was to improve the front entrance which consisted of a small entry porch and steps. As Mr. Harkowa got into the project it became clear that the structure was unsafe and had started to collapse. The Applicant contacted Ms. Verdery, the Planning Officer, on May 8, 2018 and asked to be able to replace the structures in the same footprint, as the structures had failed and were unsafe. Permission was granted May 23, 2018. Exhibit 13. Mr. Harkowa completed the structures, but, given the fact the small porch and steps are open to the elements, he suggested an A frame roof to make them safer and prolong their useful life. He added that the Applicant had not done anything to cause the need for the roof, and that it was being added to prolong the life of the structure and make the entry safer for the Applicant and guests. He asked that the Board consider the written answers submitted with Exhibit 6 as additional testimony from the Applicant. The Chairman agreed that the Board would take those answers into consideration. Mr. Shortall noted that there were no other members of the public present and closed the evidentiary portion of the hearing.

Mr. Jones commented that the consideration of the first element of the variance mandated that the Board must find uniqueness of the property or structure. In this case there is nothing unique about the property. With respect to the structure, the site plan (Exhibit 15) shows the builders placed the foundation of the residence on (or marginally over) the building restriction line. He surmised that whomever had built the residence had not used the front entrance to access the structure but had most probably entered through the garage. He felt that the Comprehensive Plan was generally protective of structures built prior to the critical areas legislation as those structures were built in a time where the standards were more lenient. After the advent of the critical areas legislation the regulations have become more stringent and the variance requirements are more rigorous. He noted that this residence was built in 1986 and it would not be possible to do today

what was done in this case. He felt that if one looked at the residence “as built” it could be considered unique as the steps and porch already intrude into the required setback, and the request is to provide a roof to shelter the structures will not increase the non-conformity. He added that with respect to the critical area it is sometimes difficult to deal with situations involving land and or structures that pre existed the imposition of the legislation.

Mr. Jones added that the screening of the residence appeared to be adequate, but he thought much of it was actually in the roadbed of North Bend Circle, as the right-of-way is fifty feet (50’) wide. He felt the Board could ask for more screening if it so desired. Mr. Jones thought that the proposed improvement would have little impact on the neighbors given the size of the lot and the relatively compact residence.

Mr. Shortall pointed out that there was no requirement for screening. He felt the matter was relatively straight forward, and opined that he believed that it would be safer in inclement weather if the steps were covered.

Mr. Cavanaugh commented that he believed the Applicant was asking for the minimum necessary to make the entry usable as an all-weather entrance.

Mr. Sewell concurred, adding that lumber exposed to the weather could become slippery regardless of how well the structure was constructed. He believed that the improvement was necessary to permit safe entry.

Mr. Dorsey concurred.

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

1. The Applicant submitted a written application for a variance. Exhibit 1.
2. The hearing was properly advertised and adjoining property owners were notified. Exhibits 3, 4, 5, and 8.
3. The subject lot was created on a subdivision plat recorded in June 1981, prior to the enactment of the critical areas law. The residence was constructed during 1986 (Exhibit 7, Staff Report at 4). The Applicant purchased the property in its current configuration in 2015. The front entry steps and porch were existing at the time and were encroaching into the front setback. During renovations to the residence it was determined that the original steps and entry were failing, and the

Applicant requested and received permission to rebuild them in the same footprint.

4. Due to the location of the residence “as built” it is impossible to comply with the front setback requirements as the foundation of the residence is on or slightly over the building restriction line. The entry and steps already intrude into the restricted area. If left unprotected, the steps and entry may become a safety hazard in wet or inclement weather.
5. The Applicant purchased the residence in 2015 in its current configuration. As will appear from Exhibit 17, the photograph of the residence, the entry and steps were in place prior to purchase.¹ They were not added by the Applicant.
6. The purpose of the variance is twofold: to protect the new entry and steps from wet or inclement weather and to make the entry safer for the Applicant and her invitees. Greater profitability is not a reason for the request nor is lack of knowledge of the setback restriction. The Applicant has requested appropriate action from the county to replace the original failing structures (Exhibit 13) and is seeking this variance to preserve the new replacement structures.
7. The requested variance will permit the Applicant to cover the new entry way thus making the entry safer during wet or inclement weather as well as aiding in the preservation of the new structures. The addition of the A frame roof over the steps and entry will not affect neighbors. There is already existing screening between the residence and the road. Additional landscaping could be added if necessary.
8. The request is for a modest nine (9) foot reduction of the setback, Realistically, the one hundred fourteen (114) square foot area is already covered by the steps and front entry. Adding a covering roof over the steps and entry will not add to the already existing intrusion into the building restriction area. No new lot coverage is requested.

¹ The entry and steps were reconstructed in their original location with the permission of the Zoning Officer.

There being no further discussion, Mr. Shortall asked if there was a motion. Mr. Dorsey moved that the Applicant be granted the requested variance to reduce the front setback from fifty (50') feet to forty-one feet (41') to construct an A frame roof over the existing front steps and entry, consistent with the testimony presented to the Board and subject to the placement of additional screening and the conditions as suggested by staff: Mr. Sewell seconded the motion.

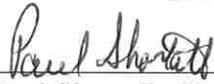
The Chairman called for a vote on the motion which was approved 5-0.

HAVING MADE THE FOREGOING FINDINGS OF FACT AND LAW, IT IS, BY THE TALBOT COUNTY BOARD OF APPEALS, RESOLVED, that the Applicant, **LYNNE VERIOTI** is hereby **GRANTED** the requested variance to permit the construction of a one hundred fourteen (114) square foot A frame roof over the existing steps and entry consistent with the evidence presented to the Board Appeals. subject, however, to following conditions:

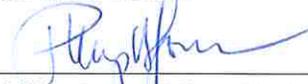
1. The Applicant add such additional screening as may be suggested by Staff;
2. The Applicant shall make an application to the Office of Permits and Inspections, and follow all rules, procedures, and construction timelines as outlined regarding new construction;
3. The Applicant shall commence construction of the proposed improvements within eighteen (18) months from receipt of the Planning Office's 'Notice to Proceed'

GIVEN OVER OUR HANDS, this 7th day of December, 2018.

TALBOT COUNTY BOARD OF APPEALS



Paul Shortall, Chairman



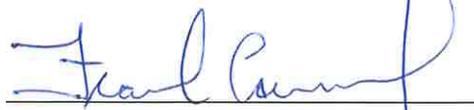
Phillip Jones, Vice-Chairman



John Sewell, Member



Louis Dorsey, Jr., Member



Frank Cavanaugh, Member