

DECISION
TALBOT COUNTY BOARD OF APPEALS
Appeal No. 19-1696

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. on July 15, 2019, on the Application of **Aghili Holdings, LLP, c/o Nader Aghili** (the Applicant). The Applicant is seeking approval of six (6) variances to permit the following development activities within the Shoreline Development Buffer (the Buffer) in connection with the following expansion: (1) to expand the reconstructed dwelling to the east by ten feet more or less (10' +/-) to be located thirty-six feet (36') from mean high water (MHW); (2) to construct a first floor screened porch on the east side, to be located forty feet (40') from MHW; (3) to construct new steps on the east side, located forty-one feet (41') from MHW; (4) to create a new waterside two-story covered porch within the same building footprint, located twenty-eight feet (28') from MHW; (5) to create a new second floor within the same building footprint located thirty-six feet (36') from MHW; and (6) to construct new steps on the waterside located twenty-six feet (26') from MHW.

In addition, the Applicant is requesting two (2) non-critical area variances: (1) to reconstruct the dwelling in the same location, to be located eight feet (8') from the side property line (no closer than the existing structure), and (2) to construct an HVAC pad located within the side yard setback and located three feet (3') from the side property line. The requests are made in accordance with Chapter 190, Zoning, Article II, §190-9.; Article III, §190-15.11; Article VI, §190-50 and Article VII, §190-58 of *the Talbot County Code* (the *Code*).

The property owner is Aghili Holdings, LLP and the property is located at 24328 Oakwood Park Road, St. Michaels, MD 21663 in the Rural Residential (RR) District, and is shown on county tax records as Tax Map 32 Grid 7, Parcel 106, Lot 17. The property is located entirely within the Critical Area in a Limited Development Area (LDA) and Modified Buffer Area (MBA) with a setback of fifty feet (50') from MHW.

Present at the hearing for the Board of Appeals were: Phillip Jones, Chairman; Frank Cavanaugh, Vice Chairman; member Louis Dorsey, Jr.; and alternate members Greg Gannon and Zachary Krebeck. Anne C. Ogletree served as attorney for the Board

of Appeals. Elisa Deflaux, Environmental Planner, and Miguel Salinas, Assistant Planning Officer, were in attendance.

The Chairman inquired if all members had visited the site and received affirmative responses from everyone except Mr. Krebeck who had not had time to do a site visit as he had only been asked fill in for Mr. Sewell in the late afternoon on the date of the hearing.

The following Board exhibits were then offered and admitted into evidence as indicated:

- Exhibit 1. Application for Variances with attachment A;
- Exhibit 2. Copy of tax map with site highlighted;
- Exhibit 3. Notice of Public Hearing for Star Democrat;
- Exhibit 4. Newspaper confirmation;
- Exhibit 5. Notice of Public Hearing & Adjacent Property Owners List;
- Exhibit 6. Standards for Critical Area Variance with Attachment B;
- Exhibit 7. Standards for Non-Critical Area Variance with Attachment C;
- Exhibit 8. Staff Report prepared by Elisa Deflaux, Environmental Planner;
- Exhibit 9. Sign Maintenance Agreement;
- Exhibit 10. Letter from the Critical Area Commission dated 6/19/19;
- Exhibit 11. Independent Procedures Disclosure and Acknowledgement Form;
- Exhibit 12. Aerial Photo;
- Exhibit 13. Deed, Liber 2576 folio 376;
- Exhibit 14. Critical Area Lot Coverage Computation Worksheet;
- Exhibit 15. Site Plan Prepared by Lane Engineering, Inc.;
- Exhibit 16. Elevation and Floor Plans;
- Exhibit 17. Plat of Hossafross Subdivision.

Mr. Jones asked that those who might wish to testify to rise and be sworn. The sole witness was sworn. The Chairman next invited Mr. Brett Ewing, the Applicant's agent, to explain the proposed project.

Mr. Brett Ewing, Lane Engineering, Inc., 117 Bay Street, Easton, MD 21601 introduced himself. He explained that the Applicant was unable to attend the hearing due to a scheduling conflict, but that he was familiar with the project and could explain the proposal to the Board. Essentially the scope of the project is to demolish the existing residential structure and rebuild a replacement residence in largely the same footprint. He noted that the existing structure is in very bad condition and that the cost of repair would be substantial. The Applicant wished to build a new residence from the time he purchased the property, but the property is encumbered not only by the Buffer, but by the AE floodplain and the sewage disposal area. Mr. Ewing and the owner had been working

with an architect since early 2018 to come up with a design that would enhance the property but create as little impact as possible.

The existing residence is entirely within the Buffer, and partially located within the fifty-foot (50') MBA. Due to the various encumbrances affecting the ability to build on the site, the east side of the property adjoining the existing dwelling is the only place on the property that will permit an expansion. Other than the proposed expansion, the footprint of the new structure (excluding steps) will be identical to that of the structure to be demolished and will remain twenty-eight feet (28') from MHW. The height of the block courses of the foundation will be increased to lower the risk of flooding in storms. Additional living space will be added vertically. He added that some lot coverage was to be removed in the project and referenced the tables contained on Exhibit 15, the Site Plan. The removal of the items noted will bring the property back into compliance with the lot coverage requirements ¹ for this LDA district. The Site Plan has a comparison of the 'before and after' footprints of the old and new residential structures, as well as a depiction of the driveway relocation and a re-oriented garage.

Mr. Gannon asked if the project had or would receive health department approval. Mr. Ewing assured him that the approval had been obtained. Mr. Gannon felt that the project decreased existing lot coverage by almost twenty percent (20%) and made sense for that reason. He added that the reconstructed residence would not be any closer the MHW than many other residences in the area.

The Chairman commented that he thought the written material and the testimony had thoroughly explained the project. He inquired about the HVAC pad on the west side of the property. It is only three feet from the property line. He was aware that the main entrance and sitting areas would be on the east, and that the pad would be on the opposite side. He asked about the effect on the neighbor. He commented that HVAC equipment can generate substantial noise. These are small lots.

Mr. Ewing felt that there really was no other place for the HVAC equipment. He noted that there was already an existing privacy fence on the neighboring property that would help attenuate any noise.

¹ Lot coverage cannot exceed twenty-five percent (25%). The existing lot coverage is twenty-five and three tenths percent (25.3%). If the project is approved, lot coverage will decrease to twenty-one and one tenth percent (21.1%).

Mr. Cavanaugh commented that the closest building on the neighbor's property is not the main house. On his site visit he met the neighbor who hoped the reconstruction was not going to place the structure any closer to the property line. Mr. Ewing explained that the structure will not be closer, and that there is already HVAC equipment on that side of the property, but it is located closer to the water in the MBA.

Mr. Dorsey asked if the noise generated by an HVAC system had been considered. The witness responded that it was not a prime consideration as there is an existing system on that side of the house now. It is in the MBA. The proposal would move it almost completely out of the MBA. Mr. Cavanaugh felt that the noise generated by an HVAC system is a concern. He believed it could be shielded somewhat with fencing.

The Chairman noted that the noise generated by HVAC systems can vary. Some are very quiet, and would not be an issue for neighbors, but some can be very noisy and would be irritating. Mr. Ewing suggested that vegetative screening might also be employed to reduce noise, if necessary. Mr. Cavanaugh reiterated that he was still concerned for the neighbors. The unit is going to be three (3) feet from their property line.

Mr. Krebeck (who had been unable to visit the property due to being contacted late in the afternoon of the hearing) inquired if the existing privacy fence was of solid construction. If it was not, perhaps plantings would serve as a better noise barrier. Mr. Ewing felt that an attractive four foot to five-foot privacy fence would be more appropriate and certainly help with both the noise and the view.

Ms. Deflaux referred to the ordinance. Plantings must be at least twelve inches (12") away from the unit. Mr. Cavanaugh reflected that perhaps plantings would not be useful in this case, as the units require unobstructed air flow and the completed installation needed to offer enough room for repair personnel to service the unit.

Mr. Jones commented that it would be nice if the Applicant could check the decibel rating for the proposed unit and try to avoid the noise problem by purchasing a unit with a lower noise rating. Mr. Ewing agreed. He observed that this site was unusual, and had been hard for the designer to try and fit in all that was required. The noise rating of the unit had not been a major consideration.

Mr. Salinas pointed out that the *Code* already has a noise level requirement, and that the new unit would have to comply. Mr. Gannon agreed. It would be the Applicant's responsibility to deal with possible fallout from the choice of the unit and any issues caused by noise.

Mr. Dorsey observed that the neighbors may have noisy units as well, and noise from this unit may not be a problem as they may already be accustomed to the noise a unit creates. Mr. Cavanaugh added that based on his short conversation with the neighbor while viewing the property, he believed that the neighbors would be thrilled to see the reconstruction, and would be pleased with the changes proposed.

Mr. Ewing pointed out that a portion of the existing driveway crossed the sewage disposal area. That part of the driveway was to be removed. The plans also call for the installation of a new BAT septic tank system as requested by the health department. Mr. Krebeck approved, stating that the BAT system would improve water quality, and would be a big improvement over the existing conditions. He asked if the required three to one (3:1) mitigation could be accomplished on the property.

Mr. Ewing was certain that part of the required mitigation could be accomplished on the site. He also felt that there might have to be either some off-site mitigation or a payment in lieu to comply with any required Buffer plan. He pointed out that the project would accomplish one very important objective. There would be a net decrease in lot coverage both in the MBA and on the lot.

As there was no one else present to testify, the Chairman opened the Board's discussion by stating that he recalled a previous application regarding this property. A variance had been granted, but the proposed improvements, including a forty foot (40') tower were never constructed, so the variance lapsed. He believed this proposed plan was a good use of the property by employing the existing footprint of the residence and expanding vertically. The screened porch expansion into the Buffer on the east side was very modest. The vertical addition provides the necessary additional living space. He was pleased to see that the project proposed a net decrease in lot coverage that would bring the property into conformity with lot coverage requirements. He believed that the Applicant's proposal should be approved.

Mr. Krebeck agreed. He believed that the decrease in lot coverage coupled with the installation of the new BAT septic system made the project beneficial to the environment.

Mr. Cavanaugh asked that Mr. Ewing relay the Board's concerns about the possible noise issues that might be caused by the HVAC unit to the Applicant. It would enable the Applicant to address that concern when deciding on the make and model of the HVAC unit to be installed.

There being no other discussion, the Board made the following findings of fact and conclusions of law based on the Applicant's written responses, the testimony and the evidence presented:

1. The Applicant has submitted a written application for six (6) critical area variances and two (2) noncritical variances to allow for the demolition of an existing structure, a modest expansion to permit a two-story porch on the east side of the existing footprint, and the addition of a second full story above the existing footprint to add additional living space.

2. The public hearing was properly advertised, the property was posted, and the adjacent land owners were properly notified. Exhibits 3,4,5, 9 and 11.

3. The lot involved in this appeal was created by adding half of Lot 16 to Lot 17 in Hossafross subdivision originally platted in 1939, long prior to zoning and the Critical Areas laws. Exhibits 13 and 17. The State Department of Assessment and Taxation records show that the existing residence was built in the mid-1950s. The house has been poorly maintained over the years, and, as a result needed extensive renovation when the Applicant purchased in November, 2018. All conditions shown as existing on the Lane Site Plan, Exhibit 15, were in existence when the Applicant purchased. Both the adjoining properties are developed.

4. Mr. Ewing's testimony indicates that the lot is encumbered by the flood zone, by the sewage disposal area, and by the MBA. The existing residence is located in the MBA, and, given its condition, it cannot be retrofitted to give the Applicant additional living space. A large portion of the buildable area on the lot is encumbered by the sewage disposal area. The Applicant proposes to use the existing structure's footprint, raise the height of the foundation as a flood damage preventative, add a second full story and a very modest expansion, a two story screened porch on the east side. Part of the new

porch, as well as approximately one half of the existing footprint remains in the MBA. Two sets of new steps will be added as shown on Exhibit 15. An HVAC pad will be located three (3') feet from the western property line.

5. Given the various development restrictions on the lot, the Applicant has proposed a solution that will decrease lot coverage, and will not move the building (excluding steps) itself closer to MHW.

6. The property is unique. It has a long narrow configuration. A large portion of the building envelope is occupied by the sewage disposal area; the lot is located in a flood plain and approximately eighty percent (80%) of the lot is within the Buffer, while at least half of the existing residence is within the MBA.

7. This property owner will not receive any advantage from the grant of this application. All property owners have the right to improve and renovate their residences. In this area there are other residences within the MBA. This proposal merely allows the Property owner to expand slightly to the east and reconstruct an outmoded structure within an existing footprint.

8. The Applicant purchased this property in its current condition. The proposal will correct a decaying structure, add additional living space without increasing the nonconformity of the existing structure and provide a modest addition, free up the sewage disposal area and add an updated septic system. The entire project will decrease lot coverage.

9. The Board finds that the adjustments requested are the minimum necessary to allow the Applicant the ability to renovate and add a modest addition, rights permitted to all property owners. Additionally, the entire proposal will decrease lot coverage and provide better water quality by employing the most advanced septic tank available.

10. The Applicant has made this request to improve the existing dwelling by adding up-to-date living areas and interior amenities. Greater resale value does not appear to be a motivating factor, although the improvements will necessarily improve the marketability of the property.

11. Although the existing dwelling and the proposed footprint for the renovated structure are currently violate the building setback, the new structure itself will not be closer to the western property line. The addition of a new HVAC pad three feet from the western property line does concern the Board. The Board recognizes that there is existing

HVAC equipment on the west side of the structure, and recognizes that the noise produced by HVAC units varies. However, the proximity of the pad to the property line raises the question of noise. The Board recommends that the Applicant investigate the noise levels of any proposed HVAC equipment and choose equipment that will produce the least noise while accomplishing the purpose intended.

12. The proposed improvements will not adversely affect the public. Decreased lot coverage and a state-of-the-art septic system are good for the environment. The new structure (as shown on the illustration submitted with Exhibit 16) will be a substantial improvement over the current dwelling.

For the reasons set out in the Board's findings, Mr. Cavanaugh made a motion that six requested critical variances be approved and that the two non-critical area variances be approved subject to the following conditions proposed by the Critical Areas Commission and by Planning Staff:

- A. The Applicant shall provide 3:1 mitigation within the fifty- foot (50') MBA setback.
- B. The Applicant shall provide 2:1 mitigation for the square footage of the proposed lot coverage in the Buffer up to the MBA setback.
- C. A Buffer Management Plan showing all proposed impacts and appropriate mitigation must be submitted with the building permit application.
- D. The Applicant cannot receive a permit for the proposed improvements until the Buffer Management Plan has been approved by Talbot County;
- E. The Applicant shall make application to the Office of Permits and Inspections, and follow all rules, procedures, and construction timelines as outlined regarding new construction.
- F. The Applicant shall commence construction of the proposed improvements within eighteen (18) months from the date of the Planning Office's "Notice to Proceed".

Mr. Gannon seconded the motion. There was no further discussion on the motion. The Chairman called for a vote. The motion passed, 5-0 with all Board members voting to grant the variances requested.

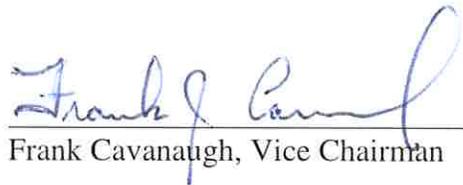
HAVING MADE THE FOREGOING FINDINGS OF FACT AND LAW, IT IS,
BY THE TALBOT COUNTY BOARD OF APPEALS,

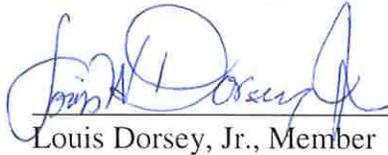
RESOLVED, that the Applicant, **Aghili Holdings, LLP**. (Appeal No. 19-1696) is **GRANTED** the requested variances for the property consistent with the evidence presented to the Board of Appeals, and subject to the aforementioned conditions, by vote as previously noted.

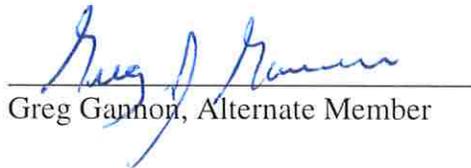
GIVEN OVER OUR HANDS, this 27TH day of AUGUST, 2019.

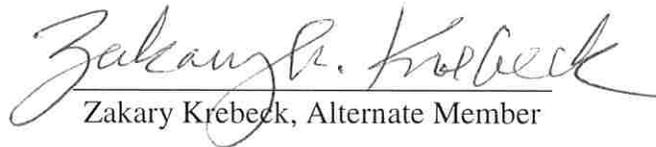
TALBOT COUNTY BOARD OF APPEALS


Phillip Jones, Chairman


Frank Cavanaugh, Vice Chairman


Louis Dorsey, Jr., Member


Greg Gannon, Alternate Member


Zakary Krebeck, Alternate Member