

TALBOT COUNTY BOARD OF APPEALS
Appeal No. 16-1658 R (Remand)

Pursuant to an Order of the Circuit Court for Talbot County, Maryland, a public hearing was held by the Talbot County Board of Appeals at the Bradley Meeting Room, Court House, South Wing, 11 North Washington Street, Easton, Maryland, beginning at 6:30 p.m., October 15, 2018, concerning the application of **RDC HARBOURTOWNE, LLC and RDC MELANIE DRIVE, LLC** (Applicant). The Applicant is requesting a special exception to permit the expansion of the Harbourtowne Golf Course onto a portion of the adjacent parcel of land shown as Lot 6 of Parcel 90 on Tax Map 23, to create a golf course driving range. The portion of Lot 6 of Parcel 90 where the golf course expansion is proposed will be consolidated into the adjacent golf course parcel shown as Parcel 1 on Tax Map 23. The Applicant is also requesting two variances to permit encroachments into the Shoreline Development Buffer (Buffer) expanded along a linear nontidal wetland. The requested variances are: (1) A variance to allow a 230 square foot encroachment into the Buffer for a golf cart path that is necessary to access the proposed driving range. At its closest point the encroachment will be 324 feet from MHW. (2) A variance to allow a 25 square foot encroachment into the Buffer for a required stormwater management outfall feature which at its closest point will be 700 feet from MHW. The property is located on 9789 Martingham Circle and 9599 Malanie Drive, St. Michaels, Maryland 21663 in the Rural Conservation/Western Rural Conservation (RC/WRC) zone. The property owner is RDC Harbourtowne, LLC. The request is made in accordance with Chapter 190 Zoning, Article VI, §190-139 C 2; Article VIII, §190-167 D; and Article IX, §190-180 and §190-182 of the Talbot County Code (Code).

The Board of Appeals originally held hearings on the matter on August 7, 2017 and August 21, 2017. On the second date the Board voted 4 to 1 to approve the Applicant's request for a special and 5 to 0 to approve the Applicant's request for two variances. The Board's decisions were finalized in a written decision dated November 17, 2017. Mark Eppard, Patricia Eppard, and Medelaine Homes appealed the Board's decision to the Circuit Court. By Order dated July 12, 2018, that Court remanded the matter to the Board of Appeals for further consideration in accordance with the Court's Memorandum Opinion and

Order. Specifically, the Circuit Court remanded “the case to the Board of Appeals to provide a factual basis to support its findings numbers 7, 11, 15 and 17.” Memorandum Opinion and Order, Circuit Court for Talbot County, Case No. C20-CV-17-000210, p. 12.

Present at the October 15, 2018 hearing were Board of Appeals members Paul Shortall, Jr., Chairman, John Sewell, Frank Cavanaugh, Jeffrey Adelman, and Greg Gannon. Zachary A. Smith, Esquire and Bruce C. Armistead, Esquire, Armistead, Lee, Rust & Wright, P.A., 114 Bay Street, Building C, Easton, Maryland 21601, represented the Applicant. David R. Thompson, Esquire, P.O. Box 1747, Easton, Maryland 21601 represented Mark and Patti Eppard and Madeleine Homes. Glenn D. Klakring was the attorney for the Board of Appeals.

The Board did not take additional evidence at the October 15, 2018 hearing. After opening the session, the Board first voted to meet in executive session with counsel to review the Order of the Circuit Court. Following the brief executive session, the Board met in public session and the members discussed the factual bases for findings numbers 7, 11, 15 and 17 of the November 17, 2017 decision. The Board considered each of its findings individually and provides the following in compliance with the Order of the Circuit Court for Talbot County:

Finding number 7—The Board’s original decision found that “(t)he use will not have a significant impact upon marine, pedestrian or vehicular traffic.” The Board supplements that finding as follows. Nothing in the evidence suggested that the proposal would have any impact on marine traffic. The proposed modifications to and use of the property will be on land only. They will not increase stormwater runoff into tidal waters and not impact marine traffic. The plans provide for a stormwater filtration and storage system that may improve filtration of runoff from the subject property and reduce runoff to surrounding properties. Any pesticides or fertilizers are to be applied by licensed and trained personnel to minimize waste and runoff and are designed to have a short half life and be absorbed quickly by the grass.

Regarding pedestrian or vehicular traffic, the record indicates, as the Board found in finding number 9 of its November 17, 2017 decision, that other than a golf cart parking area there are no vehicle

parking areas or drive in facilities proposed for the site. Access to the range will be by golf carts and golf cart pathway from adjacent property owned by the Applicant. Maintenance vehicles will use a separate and screened access pathway also from adjacent property owned by the Applicant. The proposal will not result in an increase in commercial and truck traffic using residential streets and will not create a hazard to developed residential areas. There should be no commercial truck traffic associated with the range. All access to the property will be by way of the privately maintained pathways. There will be no pedestrian or vehicle entry points from Melanie Drive. Thus, except possibly some minor inconveniences during the construction period, the proposed use will not impact pedestrian or vehicular traffic.

Finding number 11—The Board’s original decision found that “(t)he proposed use will not adversely affect any adjacent existing agricultural uses.” The record indicates that most of the adjacent properties are either residential or used as part of an existing golf course. There are no current agricultural uses to the North, East and South sides of the property. The West side is bordered by Melanie Drive. There are no agricultural uses close to the site. To the extent that there may be some agricultural uses on any nearby properties the proposal should have no impact.

The evidence suggested that the driving range would provide for its own drainage and not impact adjacent properties. Other evidence was that any maintenance chemicals used on the driving range would be absorbed on the range and not run off onto adjacent properties. The proposed stormwater management plans will control and filter any such runoff. There was no evidence presented to the Board that any adjacent agricultural uses would be impacted by the proposal.

The property itself is vacant and was previously used as a spray field for treated sewage from the Martingham subdivision before the County made off-site sewage disposal available to the area. Since that use was discontinued the property has been in agricultural use only sporadically. None of the changes proposed by the Applicant will prevent the reuse of the property for agricultural purposes.

Finding number 15—The Board’s original decision found that “(t)he variance request is not based on conditions or circumstances which are the result of actions by the Applicant, including the

commencement of development activity before an application for variance has been filed, nor does the request arise from any condition relating to the land or building use, either permitted or nonconforming, on any neighboring property.” The record indicates that the Applicant owns the land in question and has certainly had the ability to survey or otherwise explore the land for its potential for the proposed use. The Applicant did some minor work on the property to provide for access from the Applicant’s adjacent property. However, nothing in the record indicated that the Applicant commenced any development activity for the proposed driving range before the instant application was filed. Any activity that did occur did not create the circumstances necessitating the request for the variances.

The record also shows that the two requested variances are based on the conditions of the property itself. The buffer variance for golf cart access is designed to minimize impacts on the buffer and allow such access directly from the Applicant’s adjacent property without impacting any of the neighboring properties. The stormwater related variance is also based on conditions of the subject property itself. The proposed drainage system, including the outfall, is designed to provide adequate stormwater management for the property and not impact neighboring properties.

The request for the variances is certainly based upon the Applicant’s desire to utilize the property in a certain manner, in this case as a driving range. That is the case in every variance request. But, there was no evidence before the Board that would indicate that any actions by the Applicant, such as relocating boundaries or building structures, created the need for the variances.

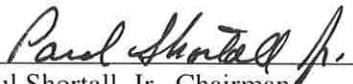
Finding number 17—The Board’s original decision found that “(t)he variance does not exceed the minimum adjustment necessary to relieve the unwarranted hardship.” The Applicant requested two variances. The first was to allow a 230 square foot encroachment into the Buffer for a golf cart path necessary to access the driving range. Mr. Stagg testified that the golf cart access to the driving range will allow access to the range without crossing any property other than that owned by the Applicant. He explained how the existing shoreline buffer precluded the use of certain areas for access. Other potential access areas would result in carts passing over public roadways or in the potential path of flying golf balls.

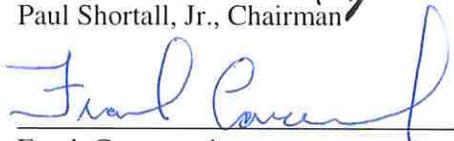
Given the size of the subject property and the various buffer restricted areas thereon, it the Board finds that the 230 square foot nontidal buffer variance does not exceed the minimum adjustment necessary to relieve the unwarranted hardship created by the buffer.

The second variance was to allow a 25 square foot buffer encroachment for a stormwater outfall feature. Stormwater management is required by State and County regulations for the proposed development activity. Mr. Stagg testified regarding the need for and the benefits from the stormwater management for the property. Besides generally benefitting the property as well as neighboring properties the Board finds from Mr. Stagg's testimony that the proposed outfall feature will improve drainage from the property, divert any drainage from adjacent properties, and will potentially improve the filtering of any subsequent runoff into tidal waters of the Chesapeake Bay. It further finds that given the size of the subject property and the various buffer restricted areas thereon that the requested 25-foot variance does not exceed the minimum adjustment necessary to relieve the unwarranted hardship created by the buffer.

GIVEN OVER OUR HANDS, this 19th day of November, 2018.

TALBOT COUNTY BOARD OF APPEALS


Paul Shortall, Jr., Chairman


Frank Cavanaugh


John Sewell


Greg Gannon

Unavailable for Signature
Jeffrey Adelman