

DECISION  
TALBOT COUNTY BOARD OF APPEALS  
Appeal No 18-1674

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., April 23, 2018 on the Application of **RAYMOND GLAESER**, (Applicant). The Applicant is requesting four (4) variances to permit the following development activities in the Shoreline Development Buffer: (1) the expansion of the existing non-conforming dwelling to add a first and second floor addition adding fifteen hundred twenty six (1,526) sq. ft. of living space to be located seventy-six (76) feet from mean high water (MHW); (2) the replacement of an existing one hundred five (105) sq. ft. front walkway and steps with a two hundred fifty three (253) sq. ft. impervious front walkway including a covered porch and steps, to be located seventy-one (71) feet from tidal wetlands; (3) the addition of a two hundred eighty-nine (289) sq. ft. impervious patio with attached steps to be located sixty-four (64) feet from MHW; and (4) a variance for an existing nonconforming two hundred sixty-eight (268) sq. ft. screened porch with an additional twenty-two (22) sq. ft. of attached steps (constructed by a prior owner). The screened porch is to be converted into a proposed two hundred sixty-eight (268) sq. ft. enclosed sunroom/porch retaining twenty-two (22) sq. ft. of attached steps thus adding gross floor area (GFA). The existing porch to be enclosed is located eighty-three (83) feet from MHW. The closest point of the existing dwelling is located eighty-three (83) feet from MHW.

The request is made in accordance with Chapter 190, Zoning, Article VI §190-139, Article VIII, §190-169 and Article IX §190-182 of the *Talbot County Code* (the *Code*). The property address is 6328 Tilghman Island Road, Sherwood, Maryland 21665. The property is located in the Rural Conservation (RC) zone. The property owner is Raymond Glaeser. The property is shown on Tax Map 38, Grid 22, Parcel 21, Lot 4.

Present at the hearing for the Board of Appeals were: Paul Shortall, Chairman, Phillip Jones, Vice-Chairman, Members John Sewell, Frank Cavanaugh and Alternate Member Greg Gannon. 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:

- Exhibit 1 Application for Critical Area Variance with attachment A, both revised copy and outdated copy;
- Exhibit 2 Tax Map of subject property
- Exhibit 3 Notice of Public Hearing (revised) for Star Democrat advertising and prior outdated notice;
- Exhibit 4 Newspaper confirmation, for both revised and outdated notices;
- Exhibit 5 Notice of Public Hearing (both revised and outdated) with Adjacent Property Owner list;
- Exhibit 6 Non-Critical Area Variance Standards with attachment B, both revised and outdated;
- Exhibit 7 Standards for Modification of a Special Exception with attachment C, both revised and outdated;
- Exhibit 8 Staff Report prepared by Brent Tarleton dated 04/03/18;
- Exhibit 9 Sign maintenance agreement;
- Exhibit 10 Critical Area Commission Comment Letter dated 03/30/18;
- Exhibit 11 Independent Procedures Disclosure and Acknowledgment Form;
- Exhibit 12 Aerial photo;
- Exhibit 13 Critical Area Lot Coverage Computation Worksheet, both revised and outdated;
- Exhibit 14 Pictures from site visit by Chris Corkell on 02/09/18;
- Exhibit 15 Revised Site Plan dated 03/07/18;
- Exhibit 16 Revised Aerial Exhibit submitted 03/07/18;
- Exhibit 17 Revised Existing First Floor Plan, submitted 03/07/18;
- Exhibit 18 Original submissions – site plan and floor plan -- received 01/23/18.

The Chairman recognized Willard C Parker, attorney for the Applicant. Mr. Parker introduced his associate, Peter Cotter, Esq. who would be presenting the Applicant's case.

Mr. Cotter explained that he would like to give the Board a little background. The structure that is the subject of the hearing is an old brick residence dating from the 1800s. It was not originally constructed on the property. It was built somewhere on the lower Shore and was moved to the site by barge. The residence is small, only eleven hundred (1,100) sq. ft. and sadly outdated.

Mr. Glaeser purchased the property in June 2016. It is currently improved by the residence, a pool, a patio, a screened porch, two (2) sheds and a barn. All of the structures currently located in the Shoreline Development Buffers, (the Buffer or Buffers) were present when he purchased the property. The screened porch and one of the sheds were built without permits for construction. The Applicant is seeking a variance for the porch, He will relocate the shed so that it is not in the Buffer. See, Exhibit 12, Aerial Photograph, showing the proposed relocation site outside the Buffer.

Mr. Cotter pointed out that the Applicant's lot is somewhat peculiar. It is very large, so required mitigation can be easily accomplished. However, the location of the residence creates the need for the requested variances. The residence is located on a point between two branches of Back Creek. The entrance drive and entrance walkway face east towards a small branch of the creek and tidal wetlands, while the proposed two story addition and the requested patio face the main branch of the creek and the Chesapeake Bay. Because the property comes to a point at the confluence of the creek's branches, the Buffers cut through the residence, on both the east and west, and all structures to the north of the residence are within the Buffers. Due to the unique property configuration any expansion of the residence will require a variance. See, Site Plan, Exhibit 15.

The Applicant wishes to enlarge the residence. The expansion will include adding fifteen hundred twenty-six (1,526) sq. ft. of GFA in a first and second story addition within the Buffer; replacing the current easterly entrance way, including the "stepping stones" used to access the residence from the driveway with a level impervious surface walkway and covered entrance way that will be located seventy-one (71) feet from MHW; adding a two hundred eighty nine (289) sq. ft. patio that will be located sixty-four (64) feet from MHW, four (4) feet closer to MHW than the closest point of the existing residence; and enclosing the existing screened porch to add GFA.

Mr. Cotter stressed that the screened porch was existing when Mr. Glaeser purchased the property, and the Applicant was unaware the porch had not been permitted at the time he initially filed this application. The revised application was necessary when it became apparent that there had been no permits issued for the porch as planning staff discovered the problem while researching the property.

The Applicant's counsel commented that the inability to expand the residence due to the restrictions imposed by the Buffer constituted what he believed to be an unwarranted hardship for the Applicant and was the reason that the Applicant is seeking the variances.

Mr. Cotter then called the Applicant, Raymond Glaeser residing at 6328 Tilghman Island Road, Sherwood, Maryland as a witness in his own behalf. In response to questions from counsel Mr. Glaeser explained that he is engaged and his new family will consist of his fiancée, and two teenagers. His fiancée's mother is elderly and will spend substantial time with the family. He bought the property in June of 2016. When he purchased, all of the existing improvements in the Buffer were already there. His property consists of 72 acres.

He built the shed row barns and obtained proper permits for their construction. He had nothing to do with the construction or placement of the sheds currently shown within the Buffer on Exhibit 12 – they were there when he purchased. He will relocate one of them so that it is outside the Buffer, as shown on Exhibit 12, the other will be removed. When he purchased the property he was informed that the residence was built on the Eastern Shore of Virginia and barged up to the property and placed in its current location about forty (40) years ago. He added that he would like to keep the screened porch, but recognizes it needs a variance, as it was put in by a previous owner who did not obtain a permit. He plans to convert it to an enclosed sunroom, which will add GFA to the existing residence.

Mr. Cotter asked what other improvements were planned. The Applicant responded that he wished to replace the existing entrance and walkway now comprised of "stepping stones" with a better sidewalk. The existing walkway is a trip hazard. The proposed walkway will be straight, flat, and will be suitable for an elderly person using a walker for mobility. He added that this improvement was to enhance the safety of visitors as well as residents.

The Applicant stated he was also asking the Board to approve a new patio. He felt that the proposed new patio would provide an outdoor enjoyment area and that there would be no other place where the family could gather to enjoy the outdoors.

Mr. Glaeser explained that the main purpose of the total renovation was to add living space. He pointed out that he was not getting younger, and currently the bedrooms were on the second floor, as was the bathroom. The proposed addition would allow for a first-floor bedroom and bathroom. He was aware that any expansion would require a variance and had hired Pam Gardner, a local architect, told her what he wanted and she had come up with the plan before the Board. He had reviewed the plans and believed they accomplished his goals with the least intrusion into the Buffer. The current residence does not meet the expanded family's needs. Counsel inquired if the Applicant was aware that there would be a mitigation requirement and that a buffer management plan would be required. The Applicant stated he was aware that both were necessary and had hired Lane Engineering to assist with addressing those requirements.

Mr. Cotter then drew the Board's attention to Exhibit 6 and asked Mr. Glaeser to further address the variance warrants.

In response Mr. Glaeser testified that:

(1) There are existing special conditions and circumstances peculiar to both the land and structure that would make literal enforcement of the terms of the ordinance an undue hardship. The residence is located on a point where several Buffers converge, making it impossible to expand the existing residence without having a variance. He did not have any control over the construction or placement of the currently existing screened porch but he wished to have that structure permitted by the Board's grant of a variance and would incorporate the porch it into the overall expansion plans by enclosing it to add GFA.

(2) A literal enforcement of the Buffer restrictions would deny him the right that other residents in the RC Zoning District enjoy – the right to renovate and expand his residence.

(3) All owners of property within the RC District have the right to request a variance to expand their homes. He added that no special privilege would be conferred as that right was universal within the district.

(4) The circumstances necessitating the variance are not self-created. The residence, walkway and screened porch were existing when he purchased the property. The requested additions are for the purpose of enhancing safety for residents and visitors,

modernizing the residence and adding living space. They have been designed by Ms. Gardner to be the minimum intrusion into the Buffers. On the east, the walkway will end five (5) feet closer to the tidal marsh, on the west the proposed patio will be four (4) feet closer to Back Creek than the currently existing structure.

(4) Water quality and wildlife will not be affected. The Applicant is willing to create a Buffer Management Plan and do any required mitigation. The property is large enough to accommodate any such requirements.

Mr. Jones commented that the Critical Area Regulations require that the Board must presume that there will be an impact on water quality and that there may be an impact on wildlife. He wished the Applicant to expand on his conclusions regarding those potential impacts. In answer, Mr. Parker stated that there would be an expert witness who would give the Board the appropriate explanations.

Mr. Cotter then inquired if the Applicant owned adjoining lands. The Applicant stated that he did, but that the additional land would not help with the Buffer issue. It is the location of the residence and the configuration of the 'point' that create the Buffer issues. He added that there was enough land for any required mitigation,

Mr. Cavanaugh observed that he did not see any possible way those lots could be used to lessen the impact to the Buffers.

In answer to a question from Mr. Jones the Applicant explained that the water from the east side of the 'point' drained to the tidal marsh and that to the north and west drained northward to Back Creek and the tidal marsh.

Pamela Gardner, principal of Pamela P. Gardner, AIA, LLC, 311 N. Aurora Street Easton, Maryland 21601 was the second witness called for the Applicant. She testified that she had been hired by the Applicant to do plans for the proposed renovation and expansion. When hired she was advised that the plans should suit the needs of a multigenerational family. That included a first-floor bedroom that could be open or closed off and should be semi-handicapped accessible. That goal required a first-floor expansion as the footprint of the existing dwelling is very small. The stairs from the first to second floor are hazardous and the second floor itself is barely usable – the rooms are approximately twelve by twelve (12 x 12) feet and the only place in the rooms where the ceilings are six (6) feet in height is the center. The knee walls are about three feet six

inches (3'6") in height where they meet the existing roof. As the architect, her job was to come up with a design that would add functional living space while eliminating as much intrusion into the buffer as possible. She was made aware that there were septic limitations on the southeast front of the residence so that it was almost impossible to come up with a design that would accommodate the additional living space without intrusion into the Buffer. The proposed addition expands the first and second floors.

Mr. Cavanaugh asked how much of the existing house was to remain. Ms. Gardner replied that one hundred (100) percent would remain adding that the current foundation was not nearly as old as the house. She continued her presentation directing the Board to Exhibit 17. Sheet 1 (designated R-1) showing how much of the existing first floor GFA is in the Buffer. Sheet 2 illustrates the second floor GFA in the Buffer, taking into account the slope of the roof to the knee walls. Sheets 3 and 4 (designated A-1 and A-2) depict the proposed additions in the Buffer by the proposed first and second floor bedrooms, bathrooms and enlarged kitchen.

Mr. Jones asked about the elevation of the second floor noting that it would be unfortunate if the addition overpowers the current visual impact of the residence. He asked if the entry had been set back for that purpose. Ms. Gardner agreed noting that she had set the proposed entry back to compliment the gambrell and preserve the existing visual impact to the extent possible. Mr. Jones commented that the question the Board needed to answer was -- would the proposed intrusion of the entrance way and walkway into the Buffer be the minimum necessary.

Mr. Gannon inquired if the entire walkway was to be impervious surface.

Ms. Gardner responded that it was. As the site plan, Exhibit 15 illustrates, it would extend from the front door to the drive. She believed it would be the minimum necessary to make the entrance safe.

Mr. Cotter then called Brett Ewing of Lane Engineering, Inc. (Lane), 117 Bay Street, Easton, Maryland 21601 as the Applicant's next witness. Mr. Ewing explained that he was a project manager and planner with Lane and that in his position he was in charge of a number of Talbot County and Easton area projects, including this project. He had received a degree in Planning from Salisbury University, and then worked for the Town of Easton as a planner for three (3) years; for Talbot County as a planner for ten

(10) years and for Georgetown in the Planning Department for two (2) years. Mr. Cotter then asked if he was familiar with the Talbot County laws regarding construction in the Critical Area. Receiving an affirmative response from the witness, Mr. Cotter asked that the Board find Mr. Ewing to be qualified as an expert and that he be permitted to express an opinion regarding permitted construction in the Critical Area. The Chairman found the witness qualified to testify as an expert for that purpose.

Mr. Cotter asked Mr. Ewing if he was able to answer Mr. Jones' question concerning water quality. The witness replied that for any new disturbance over five thousand (5,000) sq. ft. the Applicant would have to address storm water management. The considerations to be addressed in storm water management concern both the quantity of the discharge and the quality of the runoff. He added that in this case there would have to be a minimum of thirty (30') feet of grassy surface to handle the sheet flow before discharge to tidal waters. From the proposed patio, the closest point on the south end of the residence, there was ample distance to enable a clean discharge. He added that the same analysis would be employed regarding the front entrance and walkway, and that there was sufficient distance between the impervious surface and the discharge points so that water quality would not be affected.

When queried about the site plan, the witness answered that it was produced under his supervision and illustrated the unique site conditions that made a variance necessary. This residence site is encumbered by the Buffer on three sides, west, north and east, and virtually any activity at the residence will impact the Buffer. Mr. Ewing opined that the imposition of the Buffers with the enactment of the Critical Areas law in 1985 make it impossible for the Applicant to expand the residence without a variance. The existing residence is very small. He believed the variances requested would allow a modest expansion.

Mr. Cotter then asked Mr. Ewing to summarize the questions before the Board, and what he believed to be the relevant factors to be considered. Mr. Ewing pointed out that overall the county's Planning Staff did not oppose the variances requested. Staff had two (2) points of concern – the walkway and the patio. Mr. Ewing believed that the walkway improvements are required for the safety of both residents and guests accessing the residence. The patio is a different question. The statute and ordinance require that the

variance granted for the intrusion into the Buffer must cure an unwarranted hardship. Mr. Ewing felt that the Applicant was experiencing an unwarranted hardship as the Buffers do not allow him to do that which other property owners in the RC district are permitted to do – create a patio for outdoor enjoyment of his property. The proposed patio will only be four (4) feet closer to MHW than the closest point of the existing residence, and the additional encroachment will not create water quality issues. As both Exhibit 15 and Exhibit 17 show, there is no way to build an addition without impacting either the existing septic system or the Buffers.

Mr. Ewing felt that the literal enforcement of the Critical Area provisions of the ordinance would deprive Mr. Glaeser of the rights enjoyed by other property owners in the same zoning district. All property owners within the district can enlarge their homes. This unique property is almost entirely encumbered by the Buffers at the site of the existing improvements and therefore requires the requested variances to do what others are permitted to do as of right. He believed that the testimony supported the Applicant's position that the requested variances were the minimum necessary to afford relief. He added that, due to the large size of the property, the lot coverage after additions will be less than two (2) percent. That is consistent with the Critical Area law's requirements. He reminded the Board that there were more than twenty (20) acres of Buffer in which mitigation could be accomplished, noting that Lane had been hired to assist with those facets of the project.

Mr. Cavanaugh asked if the existing septic system was going to be adequate for the project. Mr. Glaeser replied that he had plans to upgrade the system, and that the Health Department would prefer that it be located outside the Buffer. Those discussions are ongoing.

Mr. Gannon inquired about the remaining subdivision potential of the Applicant's property. Although he was not entirely certain, Mr. Ewing was aware that a previous owner, Pascal, had subdivided the entire tract, and thought that there were probably no more building rights available for the property.

Mr. Cotter summarized the Applicant's position stating that:

1. This property is a unique site given the location of the existing improvements and the encumbrances created by the Buffers on three sides.
2. The requested variances are the minimum necessary to alleviate the hardships created by the location;
3. The property is a large lot. Lot coverage following the improvements requested result in less than two (2) percent lot coverage.
4. When viewed as an entire project, as a whole it is in harmony with the Critical Area law.

Mr. Shortall asked if the Planning Staff members wished to comment on any additional matters not contained in the Staff Report, Exhibit 8. Staff had no additional comments. He then asked if there were members of the public who wished to testify. There was no response. He asked if the Board members had any comments.

Mr. Jones remarked that the Critical Areas Commission sometimes reminds the Board that it must look at each requested variance individually. He does not agree with that approach. He believes that the Board must consider the project as a whole. With waterfront property it is not just the GFA that the Board should be looking at, it requires that the Board consider a plan that may involve the property around the house as well. In this case the Applicant has gone “up” rather than out with the major addition, something the Board has asked of all Critical Area variance applicants. The design makes sense and is a good approach.

Mr. Cavanaugh originally had concerns about the project but he felt the Applicant had answered them in the testimony presented. He was initially unsure about the proposal being the minimum necessary to afford relief, and whether the historic residence would be preserved. He felt that the plans to upgrade the septic were a plus. He had been concerned about future development. He was satisfied with the answers given in testimony.

Mr. Sewell stated that in his view, the requested variances were allowable under the regulations given the severe constraints imposed by the Buffers.

Mr. Gannon felt the variance requests were reasonable and had no problem with permitting the walkway.

The Chairman added that both the walkway and the patio were reasonable in his opinion. They would not impact water quality.

Mr. Jones said that in looking at an unpermitted structure, in this case, the screened porch, he asks himself how he would view the matter if it was a new request. Here it was not caused by the actions of the current Applicant. If this were a new request, he would approve that addition.

Mr. Sewell added that the new walkway would be wide enough for a wheelchair, and that was something the current arrangement could not offer.

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 9.
3. The Applicant's property is situated on a point between the two branches of Back Creek. On the west, north and east the Buffers converge, resulting in very little usable buildable area outside the Buffers. On the southeast, the only land not within the Buffers is occupied by the existing septic system. Exhibit 15, site plan; Exhibit 12, aerial photograph. If the strict terms of the ordinance were to be enforced, the Applicant would not be able to renovate his residence to provide additional living space to accommodate his family, and improve the function and safety of the residence for family and guests.
4. Property owners in the RC zoning district all have the right to renovate a home and/or to expand their living space. They may do so as of right, if there are no encumbrances, or they may do so by a variance where the Critical Areas law imposes restrictions on the use of the owner's land. The Applicant is requesting this variance to expand his residence to accommodate a larger family.
5. The grant of a variance in this case will not give the Applicant any special privilege.
6. The variance request is not the result of actions by the Applicant, but is caused by the unique characteristics of the property and the location of the existing

residence. The residence has been in place for some forty (40) years and was placed in its current location prior to the enactment of the Critical Areas law in 1985.

7. Although the structures planned will be four (4) feet closer to MHW on the west, and five (5) feet closer to MHW on the east, there will be no discernable effect on water quality as the closest points to MHW are still far enough from the water to permit adequate opportunity for discharge to be 'neutral'. The projected improvements result in a minor increase in lot coverage, which will result in less than two (2) percent total lot coverage after construction. The increase should not have any substantial effect on water quality. The Board believes that the proposed improvements are in harmony with the general spirit and intent of the Critical Areas Law.
8. The Applicant has submitted plans that produce the least incursion by development into the Buffer. To the extent possible the Applicant has added living space vertically to improve the 'livability' of the original structure. The Board finds that the improvements proposed are the minimum adjustment necessary to permit the Applicant to have functional living space.
9. Although the lot is conforming, the location of the residential structure is on a point of land that causes the three Buffers (west, north and east) to converge just north of the existing residence. Although the Applicant owns additional land, the hardship in this case is created by the location of the residence and cannot be cured by the addition of additional land.

There being no further discussion, Mr. Shortall asked if there was a motion. Mr. Jones moved that the Applicant be granted the four requested variances, consistent with the testimony presented to the Board and subject to the following conditions suggested by staff:

1. The Applicant shall make application to the Office of Permits and Inspections, and follow all rules, procedures, and construction timelines as outlined for new construction;
2. The Applicant shall commence construction of the proposed improvements within eighteen (18) months from the Planning Office's "Notice to Proceed";

3. The Applicant shall mitigate for the disturbance to the Shoreline Buffer with mitigation plantings three (3) times the permanent disturbance to the Buffer plus and additional one to one (1:1) mitigation for the square footage of canopy removed;
4. Buffer establishment based on the total square footage of lot coverage located outside of the Buffer shall be required.
5. A Buffer Management Plan must be submitted in conjunction with the building permit application.
6. The Applicant shall remove the following structures from the Buffer before applying for any building permits associated with the grant of the variances requested in this Appeal:
  - (a) On the west side of the property, a fourteen foot (14') ramp extending from the existing screened porch;
  - (b) On the north end of the property, a twelve foot by twenty-six foot (12' x 26') shed that is to be relocated outside the Buffer. The Applicant shall apply for an after-the-fact building permit for the relocated shed.

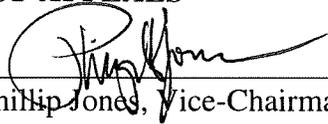
Mr. Gannon seconded the motion. There was no additional discussion by the Board. The Chairman then called for a vote. The motion passed 5-0

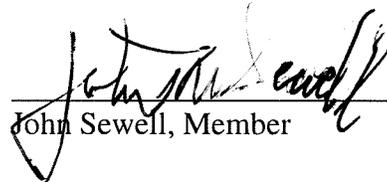
HAVING MADE THE FOREGOING FINDINGS OF FACT AND LAW, IT IS, BY THE TALBOT COUNTY BOARD OF APPEALS, RESOLVED, that the Applicant, **RAYMOND GLAESER** is hereby **GRANTED** the four requested variances to permit (1) the expansion of the existing non-conforming dwelling to add a first and second floor addition of fifteen hundred twenty six (1,526) sq. ft. of living space to be located seventy-six (76) feet from (MHW); (2) the replacement of an existing one hundred five (105) sq. ft. front walkway and steps with a two hundred fifty three (253) sq. ft. impervious front walkway including a covered porch and steps, to be located seventy-one (71) feet from tidal wetlands; (3) the addition of a two hundred eighty-nine (289) sq. ft. impervious patio with attached steps to be located sixty-four (64) feet from MHW; and (4) a variance to permit an existing nonconforming two hundred sixty-eight (268) sq. ft. screened porch with an additional twenty-two (22) sq. ft. of attached steps consistent with the evidence presented to the Board Appeals. subject, however, to the above stated conditions:

GIVEN OVER OUR HANDS, this 29th day of June, 2018.

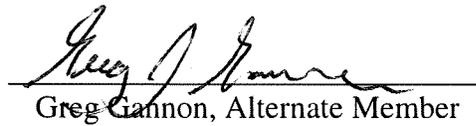
**TALBOT COUNTY BOARD OF APPEALS**

Unavailable for Signature  
Paul Shortall, Chairman

  
Philip Jones, Vice-Chairman

  
John Sewell, Member

  
Frank Cavanaugh, Member

  
Greg Gannon, Alternate Member