

TALBOT COUNTY BOARD OF APPEALS  
Appeal No. 17-1666

Pursuant to due notice, a public hearing was held by the Talbot County Board of Appeals at the Bradley Meeting Room, Court House, 11 North Washington Street, Easton, Maryland, beginning at 7:00 p.m., May 15, 2017, on the application of **RICHARD TANSEY** (Applicant). The Applicant is requesting three variances: (1) a variance from the 100-foot Shoreline Development Buffer to expand an existing residence, including the addition of a dining room, master bedroom, garage, two accessory porches, HVAC units, and connecting and related living spaces, all of which will be at least 33'9" from Tidal Wetlands (TWL); (2) a variance from the 100-foot Shoreline Development Buffer to construct a 144 square foot deck 28'7" from TWL; and (3) a variance from the 68.8' Buffer Management Area (BMA) to install sidewalk and driveway extensions to the addition and garage that will be no closer than 62'4" from TWL. The existing residence is 33'8" from TWL. The property is located at 9790 Mill Point Road, Easton, Maryland 21601 in the Village Center/Critical Area (VC/CA) zone. The Applicant owns the property. The request is made in accordance with Chapter 190 Zoning, Article VI, §190-139 and Article IX, §190-182 of the *Talbot County Code (Code)*.

Present at the hearing were Board of Appeals members Paul Shortall, Jr., Chairman, Phillip Jones, Vice Chairman, John Sewell, Louis Dorsey, and Greg Gannon. Ryan D. Showalter, Esquire, 100 North West Street, Easton, Maryland 21601, represented the Applicant. Mr. Tansey, 1780 Crofton Parkway, Crofton, Maryland 21114, testified in support of his application. Lars Erickson, East Bay Construction Services, LLC, P.O. Box 35, Newcomb, Maryland 21653, also testified in support of the application. Elisa Deflaux, Environmental Planner, attended the hearing on behalf of Talbot County. Glenn D. Klakring was the attorney for the Board of Appeals.

It was noted for the record that each member of the Board had individually visited the site.

The following exhibits were offered and admitted into evidence as Board's Exhibits as indicated:

1. Application for critical area variance with Attachment A.

2. Copy of a portion of the Talbot County tax map with the property highlighted.
3. Appeals Notice of Public Hearing.
4. Certificate of publication of the Notice of Public Hearing from the *Star-Democrat*.
5. Notice of hearing with a list of nearby property owners attached.
6. Copy of critical area variance requirements from the *Code* with the written responses of the Applicant to each applicable warrant attached as Attachment B.
7. Staff Report dated April 24, 2017.
8. Sign maintenance agreement.
9. Site Plan prepared by East Bay Construction Services, LLC.
10. Critical Area Commission comments dated May 12, 2017.
11. Independent Procedure Disclosure and Acknowledgement Form.
12. Aerial photograph and Floodplain Map.
13. Photographs from site visit on April 13, 2017.
14. Board of Appeals Decision 804.
15. Critical Area Lot Coverage Computation Worksheet.
16. Extension approval for Decision 804.

In his opening statement Mr. Showalter said that the Applicant's request is for three different variances for modest renovations and additions to what is currently a very small house. He described the first as a proposed expansion of the house on the side away from the shoreline. The second is a small deck outside of an existing sliding glass door that would be only large enough to provide for steps to the ground level immediately outside of the door. This would be slightly closer to the shoreline than the existing house. The third variance is for some ancillary walkways from the proposed improvements to the driveway beyond BMA.

The first witness was the Applicant, Richard Tansey. His mother previously owned the property and, in 1990, he built the existing house for her. Since she lived there alone, the small house was adequate for her needs and abilities. His mother passed away in 2014 and he inherited the property. Now, he and his girlfriend want to move there from their current home in Crofton but the house is too small for two full-time residents. Also, they want to have enough space for visiting children and grandchildren.

Mr. Tansey said that he is a contractor and he needs a reasonably sized garage to store the tools necessary for his profession. At his current home he has a three-car garage but he will downsize to the extent necessary to fit into the planned two-car garage. Without the proposed garage he would have to construct a storage shed.

He said that the when he constructed the house for his mother the foundation was required to be seven feet above flood stage. Instead, he constructed the foundation to be nine feet above flood stage. That allowed easier access to the underside of the house to service such things as the HVAC system.

The next witness was Lars Erickson. He did the design work for the renovations plan. He said he explained to the Applicant and his girlfriend that they would have to scale any renovations to be the minimum necessary. They agreed. They want the primary living space to be on the first floor with only the nonessential rooms on a second floor. This will allow them to live in the home as they age without the worry of dealing with a stairway.

He explained that the entire lot is within the 100-foot buffer. The lot has a reduced BMA of 68'8" which leaves the lot a small triangle of buildable area of about 780 square feet. However, the entire existing house is within the reduced restricted area and any improvements constructed in the developable area would require a variance to connect to the house.

He said that the proposed new room sizes are adequate but not excessive. The Applicant's primary need is for a dining room off of the kitchen, a first floor bedroom suite, a front door entry, and a garage. A corner of the proposed dining room is in the current flood zone but the Applicant is applying to the Federal Emergency Management Agency (FEMA) to relocate the flood zone boundary so that it will be outside of the zone. The property in that area is well above the flood zone elevation and they expect the application will be approved. When FEMA approves the application none of the improvements, including the existing house, will be in the flood zone. He submitted a copy of the FEMA application. It was admitted as Applicant's Exhibit No. 1.

Mr. Erickson then described the proposed renovations as shown on the plans submitted with the application. (Board's Exhibit No. 9.) He explained the reason for the location of each proposed improvement.

Mr. Erickson said the original house was permitted to be as close as 50 feet from the shoreline but it was actually built 53'7 inches from the shoreline. The Applicant submitted a 1990 site plan prepared by McCrone surveyors. It was admitted as Applicant's Exhibit No. 2. Mr. Erickson explained how they determined from that plat the actual distance of the house from the shoreline.

Mr. Erickson said that he was surprised by the opposition of the Critical Area Commission to the proposed variances. He said that the Commission's flood zone map is inaccurate as it shows that the current house is in the flood zone. It is not and none of the proposed additions will be in the flood zone once FEMA approves the proposed revision to the flood zone map. He was also not aware of any restrictions that might be imposed due to a possible rise in the sea level.

The Critical Area Commission also suggested that the buffer disturbance of the proposed improvements were 7,824 square feet. He said that that figure is not accurate. The actual finished disturbance or lot coverage area is 1,688 square feet. The rest of the disturbance area is merely temporary

for construction purposes and represents the maximum possible temporary disturbance area only during construction.

The Applicant is entitled to 25 percent lot coverage because the lot is less than one half acre. The proposed final lot coverage for the project is just over 20 percent.

In response to a question from a member of the Board Mr. Erickson and Mr. Showalter explained a discrepancy between the McCrone site plan and the one submitted by the Applicant.

Mr. Erickson then said that the property that will be covered by the additions is lawn. The project will not require the removal of any trees but an existing concrete pad will be removed. He said that the mitigation required for the proposal would improve filtration of any runoff from the property over what currently exists.

In response to a question from a Board member Mr. Erickson explained that the definition of tidal wetlands has become more exact since the original house was constructed but the limit of the wetlands as shown on the Applicant's submissions is as approved by the State of Maryland. He also explained that if the original lot were just over one half acre the allowable lot coverage would have been almost the same as it would have been if had been less than one half acre.

In response to a question from a Board member relating the warrants Mr. Showalter responded that the variance standard includes the terms reasonable and significant use which are not further defined. He said that reasonable and significant use includes the ability to make modest improvements to an existing home. The current home has two bedrooms. The second bedroom is a second floor loft and is inadequate for normal family use. He said the proposed modifications are modest and the resulting house will be only just over 2,000 square feet.

In response to a question regarding runoff from the lot Mr. Showalter said that there is no limit to the quantity of runoff. But, from a quality standpoint any runoff from the property following the proposed renovations and mitigation, will be an improvement.

Mr. Erickson said that the proposed new deck will be surrounded by plantings and will be constructed so precipitation will drain through it and be absorbed into the ground below. He described it as a “non-lot coverage” deck.

The Board then considered the application. After some discussion the Board, upon motion made and seconded, approved the requested variances, subject to certain conditions, by a vote of five to zero.

The Board made the following findings of fact and law:

1. All legal requirements pertaining to a public meeting were met.
2. Special conditions or circumstances exist that are peculiar to the land or structure such that a literal enforcement of the provisions of the ordinance result in unwarranted hardship to the property owner. The Applicant is proposing to modify a very small waterfront home and make it livable for a family of two. The proposed modifications will result in less than the 25 percent lot coverage that is normally permitted for lot of this size.
3. A literal interpretation of the ordinance will deprive the property owner of rights commonly enjoyed by other property owners in the same zone. The Applicant is unable to make even minor adjustments to their home to make it more livable without a variance.
4. The granting of the variance will not confer upon the property owner any special privilege that would be denied by the ordinance to other owners of lands or structures within the same zoning district. Although the footprint of the proposed replacement dwelling is substantially larger than the existing dwelling it is not larger than most of the

homes in the same subdivision with similar size lots. Given similar circumstances other property owners would likely have the same privilege.

5. The 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 land or building use, either permitted or nonconforming, on any neighboring property.
6. The granting of the variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat, and the granting of the variance will be in harmony with the general spirit and intent of the state Critical Area Law and the Critical Area Program. The requested variances will have little, if any, adverse environmental impact. Given the required new mitigation on the property its environmental impact may be positive.
7. The variance does not exceed the minimum adjustment necessary to relieve the unwarranted hardship.

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

RESOLVED, that the Applicant, **RICHARD TANSEY** (Appeal No. 17-1666) is **GRANTED** the requested critical area variance consistent with the evidence presented to the Board of Appeals, subject to the following conditions:

1. The Applicant shall make applications to and follow all of the rules procedures, and construction timelines as outlined by the Department of Permits and Inspections regarding new construction.

2. The Applicant shall commence construction on the proposed improvements within eighteen (18) months from the date of this Decision.
3. The Applicant shall provide a buffer establishment plan to mitigate at a ratio of three times the permanent disturbance in the buffer and appropriately mitigate for any tree removal.
4. The Applicant shall comply with Chapter 70, Floodplain Management Ordinance, to include demonstration that no alternative locations exist outside of the Special Flood Hazard Area.
5. The variances granted in this Decision are conditioned on FEMA's approval of the Applicant's request to relocate the flood zone on his property so that the entire house, including additions, will be located outside of the flood zone. He must provide a copy of that approval with his building permit application.

GIVEN OVER OUR HANDS, this 11th day of July, 2017.


**TALBOT COUNTY BOARD OF APPEALS**

  
Paul Shortall, Jr., Chairman

  
John Sewell

  
Greg Gannon

  
Phillip Jones, Vice Chairman

  
Louis Dorsey, Jr.

Board of Appeals/1666.TanseyVarianceCA