

DECISION  
TALBOT COUNTY BOARD OF APPEALS  
Appeal No. 16-1654

Pursuant to due notice, a public hearing was held by the Talbot County Board of Appeals at the Wye Oak Room, Talbot County Community Center, 10058 Ocean Gateway, Route 50, Easton, Maryland, beginning at 7:00 p.m., October 3, 2016, on the application of **RICHARD W. and JANE I. LEONARD** (Applicants). The Applicants are requesting two variances to permit the use of an existing structure, storage area, and parking area as part of a cottage industry. Specifically the Applicants request (1) a variance from the maximum allowable gross floor area for cottage industries (3,000 square feet) to permit the use in an existing 4,000 square foot structure and (2) a variance from the required 150 foot setback from a neighboring property line to 37 feet. The property is located on 8400 Lee Haven Road, Easton, Maryland 21601 in the Western Rural Conservation/Rural Conservation (WRC/RC) zone. The First Baptist Church of Easton owns the property and the Applicants are contract purchasers. The request is made in accordance with Chapter 190 Zoning, Article III, §190-16, §190-39 B(2), §190-39 B(8)(a), 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, Margaret Young, and Frank Cavanaugh. Bruce C. Armistead, Esquire, Armistead, Lee, Rust & Wright, PA, 114 Bay Street, Building C, Easton, Maryland 21601 appeared on behalf of the Applicants. Glenn D. Klakring was the attorney for the Board of Appeals.

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

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

1. Application for Non-Critical Area Variances and 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 variance requirements from the *Code* with the Applicants' response to each applicable requirement in Attachment B.
7. Revised Staff Report dated September 12, 2016, with attachments.
8. Sign maintenance agreement.
9. Site Plan by Lane Engineering, LLC, received September 12, 2016.
10. State Highway Administration comments.
11. Authorization letter from First Baptist Church dated August 11, 2016.
12. Authorization letter from Applicants dated August 10, 2016.
13. Independent Procedures Disclosure and Acknowledgement Form.
14. Aerial photograph.
15. Photographs of property taken during staff site visit.
16. Deeds
17. Board of Appeals Decision No 1336.
18. Copy of Section 190-39, Cottage Industry.

Mr. Armistead summarized the application. He said that it is not similar to a previous use proposed for the property in an application before the Board of Appeals in 2004. That application, among other things, was for two uses and up to 25 employees. The instant request involves a cottage industry which is limited to five non-resident employees.

Mr. Armistead said that the Planning Commission approved the Applicants' cottage industry use for the property in September 2016. The purpose of the instant application is to request variances so they may conduct that cottage industry in and around an existing building on the property. He said that access to the property is also not an issue before the Board of Appeals.

He explained that his clients own and operate a “light” excavating business that primarily provides excavating and landscaping services to residential clients. They currently operate their business out of their residence on Pea Neck Road, St. Michaels on a non-conforming site. They understand that a requirement for a cottage industry is that the owner(s) reside on the property. Among other things, the Applicants wish to have a smaller home and, if approved, they will begin construction of a new home on the property that will become their residence. The Applicants understand that they cannot operate the cottage industry in the existing building until that building becomes an accessory structure and that they must own and reside on the property.

The Applicants are proposing the adaptive use of an existing building that a former owner constructed on the property. The building is a 4,000 square foot pole barn with dimensions of 40’ x 100’, or 4,000 square feet. The building is 92 feet from one of the property lines. Absent a variance the *Code* requires that a cottage industry occupy no more than 3,000 square feet of an accessory building or buildings and be no closer than 150 feet from any property line. There is a gravel area between the building and the neighboring property that ends about 37 feet from the property line. A former owner used that area for material storage for a nursery business. The Applicants propose to use the area again for storage of similar material as a part of their excavation and landscaping cottage industry. They are requesting a variance so they may use all of the existing building for their cottage industry rather than having to arbitrarily designate three quarters of the building for that use and reserve the remaining portion for some other use. The building could somehow be partitioned to exclude 1,000 square feet of the building from use by the cottage industry but that would create practical difficulties and enforcement issues. It would be difficult for County zoning enforcement authorities to determine if equipment stored in the excluded portion of the building was for business or personal use.

Mr. Leonard said that his business has a couple of backhoes and a couple of “mini” excavators. They mainly do residential excavating work and do not need the larger equipment that would be

necessary for commercial work. They do lawn maintenance and landscaping work and have mowers and related lawn maintenance equipment. They also keep small supplies of gravel, topsoil and mulch in connection with their business. They would like to store these materials outside in the area the former owner used for material storage for a wholesale nursery business. They hope to remove an existing fence and screen the entire property with a buffer of trees.

Mr. Leonard acknowledged that if the application is approved the cottage industry would have to be in conjunction with their use of the property as their residence. They intend to construct their home on the property.

In response to a question from a Board member Bill Stagg, Lane Engineering, LLC, 117 Bay Street, Easton, Maryland 21601 said that the property has one critical area development right and four noncritical area development rights, so a total of five residences could be built there on five lots served by a private road. However, the soils are not favorable for development and might limit the number of buildable lots.

In response to another question Mr. Leonard said that it was his intent to farm the remainder of the property except the area that will be occupied by their new home.

Mr. Stagg then addressed the street tree waiver granted by the Planning Commission. He said that the waiver was to enable the Applicants to plant loblolly pine trees rather than deciduous trees, not a waiver of any requirement to plant trees to screen the property from the public roads.

A Board member questioned the use of the outside storage area and whether it could be reduced to a smaller triangular area. Mr. Leonard said that they might use less of the area but the area in question is well screened from both the immediate neighbor and from St. Michaels Road. That area of the building is the back of the building without entry doors on that side.

Mr. William Brandes, 8075 Lee Haven Road, Easton, Maryland 21601, raised a question about the application. He said that all of the residences are opposed to the proposed use of the property and

have written letters to the County to that effect. He asked whether the Board of Appeals had copies of those letters. A County staff member explained that all of those letters were addressed to the Planning Commission and not the Board of Appeals so they are not a part of the Board's record.

Ms. Tammy Broll, 28933 Holly Road, Easton, Maryland 21601, testified that she is an owner of the farm property immediately next to the existing building on the property. She said that she has no objection to the application. She confirmed that the border is very well screened and the building and storage area are not readily visible from her property. She said that she did not object to whatever materials the Applicants need to store behind the building next to her property.

Mr. Armistead then summarized reasons the Board should consider the application favorably.

There being no further evidence the Board considered the application.

After some discussion and upon motion duly made and seconded, the Board made the following findings of fact and law:

1. All legal requirements pertaining to a public meeting were met.
2. Certain unique physical characteristics exist, such as unusual size or shape of the property or extraordinary topographical conditions, such that a literal enforcement of the provisions of the Code would result in practical difficulty or unreasonable hardship in enabling the Applicant to develop the property. The property has an existing building which is well suited for the cottage industry use that was approved by the Planning Commission. A previous owner of the property constructed the building and used the same outdoor storage area for a commercial wholesale nursery operation, a use that is similar to the use proposed by the Applicants. The Applicants could build another 3,000 square foot building on the property for their approved cottage industry, leaving the existing building for other uses, but that would require taking existing agricultural land out of agricultural use in conflict with the County's Comprehensive Plan.

3. The granting of the variance is not based upon circumstances which are self-created or self-imposed. The building was legally constructed in its current location by a former owner of the property. The storage area was also created and used by the same former owner.
4. Greater profitability or lack of knowledge of the restrictions was not considered as sufficient cause for the variance.
5. The granting of the variance will not be contrary to the public interest and will not be a detriment to adjacent or neighboring properties. The cottage industry use of the existing building and outside storage will be well screened from other nearby properties. Any traffic created by the approved cottage industry use will be minimal and not be impacted by the use of the existing building or storage area.
6. The variance does not exceed the minimum adjustment necessary to relieve the practical difficulty or unreasonable hardship. The Applicants' plan to use the property for a cottage industry which has been approved by the Planning Commission. The variances approved by this Decision relieve the practical difficulty that would be required to move or partition an existing building which, in all respects, is a suitable building for the limited uses proposed by the Applicants.

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

RESOLVED that the Applicants, **RICHARD W. LEONARD and JANE I. LEONARD** (Appeal No. 16-1654) are **GRANTED** the requested variances consistent with the evidence provided the Board of Appeals and subject to the following conditions:

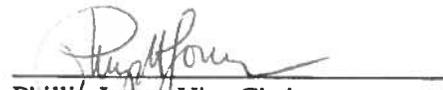
1. The Applicants shall make applications to, and follow all of the rules, procedures, and construction timelines as outlined by the Office of Permits and Inspections regarding new construction.
2. The Applicants shall remove those gravel driveway areas north of the existing metal pole building. The Applicants shall also remove the illegal entrance and gate onto Maryland Route 33 or obtain an access permit from the Maryland State Highway Administration.
3. The Applicant shall reduce the area proposed for outdoor storage of landscaping and excavating material by at least 25% on the side closest to the neighboring property.

The vote of the Board was five to zero to grant the variances.

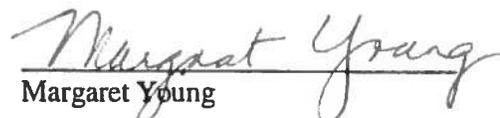
GIVEN OVER OUR HANDS, this 2nd day of December, 2016.

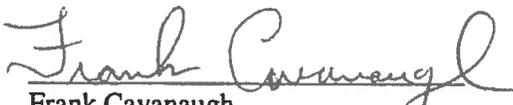
**TALBOT COUNTY BOARD OF APPEALS**

  
Paul Shortall, Jr., Chairman

  
Phillip Jones, Vice Chairman

  
John Sewell

  
Margaret Young

  
Frank Cavanaugh

Board of Appeals/1654.LeonardVarianceNCA