

DECISION
TALBOT COUNTY BOARD OF APPEALS
Appeal No. 18-1679

Pursuant to due notice, a public hearing was held by the Talbot County Board of Appeals (the Board) in the Bradley Meeting Room, Court House, South Wing, 11 N. Washington Street, Easton Maryland, beginning at 6:30 p.m., July 23, 2018 on the Application of **THOMAS COHEE**, (the Applicant). The Applicant is requesting a variance of the required fifty foot (50') front yard setback to thirty-nine and seven tenths (39.7) feet to construct a eight hundred forty five (845) square foot addition to the existing residence. The request is made in accordance with Chapter 190 Zoning, Article II § 190-14B and Article IX, § 190-182 of the *Talbot County Code* (the *Code*).

The property is located at 27558 Ferrybridge Road, Easton, MD 21601 in the Rural Conservation (RC) Zone. The property owner is Thomas Cohee. The property is shown on Tax Map 24, Grid 18, Parcel 69.

Present at the hearing for the Board of Appeals were: Paul Shortall, Jr., Chairman, Phillip Jones, Vice-Chairman, and members John Sewell, Louis Dorsey Jr. and Frank Cavanaugh. Anne C. Ogletree served as attorney for the Board of Appeals. Brent Tarleton, Planner I, and Miguel Salinas, Assistant Planning Director, were in attendance.

The following exhibits were entered into evidence:

1. Application for Non-Critical Area Variance;
2. Portion of Talbot County Tax Map 24;
3. Notice of Public Hearing;
4. Certificate of Publication in the Star Democrat;
5. List of Adjoining Property Owners with Public Notice Attached;
6. Non-Critical Area Variance Standards with Attachment B;
7. Staff Report by Brennan Tarleton, Planner I;
8. Sign Maintenance Agreement;
9. Independent Procedures Disclosure and Acknowledgment Form;
10. Aerial Photograph;
11. Decision No. 1293;
12. Photograph taken on site visit 6/29/18;

- 13 Site Plan prepared by Fink, Whitten & Associates, Job No. T-24-18-69;
14. Floor & Elevation Plans.

Mr. Shortall asked the members if all had visited the site. After receiving affirmative responses, he requested all those who were to testify to stand and be sworn. Ryan Showalter, Esq. and Thomas Cohee, the applicant, took the oath.

The Chairman invited Mr. Showalter to explain the Applicant's request to the Board.

Mr. Showalter introduced two composite exhibits. Applicant's exhibit 1 consisted of the State Department of Assessment and Taxation (SDAT) property data sheet for the property, the current deed and an historic deed evidencing the creation of the existing lot in 1951, well prior to the critical areas law, and zoning regulations for Talbot County. Applicant's exhibit 2 consisted of a color aerial photograph with lot boundaries superimposed; a sewage disposal area plat highlighting the sewage reserve area (SRA) in yellow; a site plan with the variance area highlighted in yellow; and an enlargement of that area.

He pointed out that the color photograph in Applicant's exhibit 2 shows some of the characteristics that make this lot unique. The property is roughly triangular in shape, with the two 'short' sides of the triangle being the shoreline of the Miles River. The improvements face the river and look out over the apex of the triangle. Due to the orientation of the improvements, the rear of the residence faces the front lot line. The road access comes in on the right rear of the residence. The residence itself sits just outside the fifty-foot (50') front yard setback, with the existing garage encroaching into the setback. He explained that a seven (7) year old septic system constructed in 2011 (shown on page 2 of Applicant's exhibit 2) is located just inside the one hundred foot (100') Shoreline Development Buffer. The SRA (located directly adjacent to the existing system, but outside the buffer) limits expansion to the north of the existing residence. Given the various setback restrictions encumbering the lot, the addition has been planned to connect the garage and the existing home. As the site plans submitted in Applicant's exhibit 2 indicate, the new addition will result in the need for a two hundred three (203) square foot variance. Counsel pointed out that one hundred ten (110) square feet of the

requested variance was already occupied by the roof overhang on the existing garage, and that only ninety-three (93) square feet would be created from the existing lawn area.

Mr. Showalter commented that the Health Department has approved the SRA with slightly less than twenty feet (20') between it and the corner of the existing house. The Health Department does not want any portion of addition to be closer to the SRA. That request necessitated the 'jog' on the northwest side of the addition.

Although Mr. Showalter believed that the Applicant has addressed all of the warrants in Attachment B to the Non-Critical Area Variance Standards form, he pointed out that the historical deed in Applicant's Exhibit 1 shows that the lot antedated both zoning and all critical area regulations. The SDAT property data sheet places the construction of the residence in 1949, well prior to the advent of county and state land use regulations. *See*, Applicant's Exhibit 1 page 1. The second item in the compendium, the current deed, illustrates that the Applicant and his wife purchased the property in 1997, in its current configuration. The Applicant did not create the necessity for the variance.

The Chairman commented that he felt the Applicants had fully answered the Non-Critical Variance Standards form, and the Board would consider those responses as well as the testimony presented at the hearing. There being no further public comment, the Chairman asked if the Board members had comments or questions.

Mr. Jones observed that the way this property is configured, the 'front yard' is actually a 'side yard', and if treated that way there would be no need for a variance. It is the unusual designation of the property at the north side of the access road as a 'front yard' that causes the problem. He also believed that although the Applicant had replaced the septic system, it was not the system itself that created the hardship, but the Health Department requirement that there be an SRA established and the location of that area within the building envelope impinged on the buildable area. In his opinion, the variance was being requested not for any monetary gain, but to improve the functionality of a dated residence and appeared to be the minimum necessary to accomplish that goal.

Mr. Cavanaugh agreed noting that he believed the proposed addition would not impact neighbors as it would be screened by the existing buildings. He added that he thought the Applicant had done everything he could to minimize the variance, and felt the variance was proper. The other Board members concurred.

Based on the testimony, the record, and the written responses submitted by the Applicant, the Board makes the following findings of fact and conclusions of law:

1. The Applicant has submitted a written Application for a Non-Critical Area variance (Exhibit 1),
2. Notice of the public hearing has been mailed to adjoining landowners and the public hearing has been properly advertised. (Exhibits 3,4,5, 8 and 9).
3. The property subject to the application is roughly triangular in shape, with the two shorter sides fronting on the Miles River. It is substantially impacted by the Shoreline Development Buffer. The residence is oriented so that it faces the water. Its landward side is just outside the fifty (50 foot 'front' yard setback. The existing garage encroaches into the front yard setback. The proposed improvements will not be closer to the front property line than the existing improvements.
4. The subject property is unique, as the Shoreline Development Buffer, the SRA and the front yard setbacks combine to prevent the Applicant from building completely within unrestricted area on the property. Virtually any structure placed on the property will require a variance.
5. The Applicants did not cause the need for a variance. The size and configuration of the property and the later application of the zoning ordinance, critical area laws and health department requirements for an SRA to a pre-existing oddly configured lot cause the need for a variance.
6. The Applicant is not seeking the variance to enjoy greater profitability or because he lacks knowledge of the restrictions imposed by the ordinance; rather he seeks to add functional living space and to update a seventy year old residence.

7. The variance, if granted, will not be contrary to the public interest. The parcel is unique as the site plan, Exhibit 13, shows. There is no other location on the property where the proposed addition can be placed without being more visible or impinging on either the Shoreline Development Buffer or the SRA. The Board notes the absence of opposition or concerns raised by neighbors who might possibly be affected.
8. The size of the proposed addition resulting in the need for a two hundred three (203) square foot variance is reasonable and the minimum necessary to allow the property owner the opportunity to update his residence.

Mr. Shortall called for a vote on the application. Mr. Cavanaugh made a motion that the variance be approved. The motion was seconded by Mr. Jones. The vote on the motion was unanimous, 5-0.

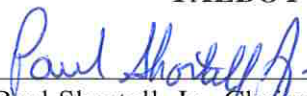
HAVING MADE THE FOREGOING FINDINGS OF FACT AND LAW, IT IS,
BY THE TALBOT COUNTY BOARD OF APPEALS,

RESOLVED, that **THOMAS COHEE** be **GRANTED** the requested variance consistent with the evidence presented to the Board of Appeals, and subject to the following conditions contained in the staff report, Exhibit 7:

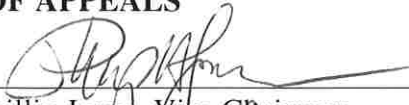
1. The Applicant shall make an application to the Office of Permits and Inspections, and shall follow all rules, procedures and construction timelines as outlined regarding new construction.
2. The applicant shall commence construction of the proposed improvements within eighteen (18) months from the date of the Board's written decision. GIVEN

OVER OUR HANDS, this 27TH day of AUGUST, 2018.

TALBOT COUNTY BOARD OF APPEALS



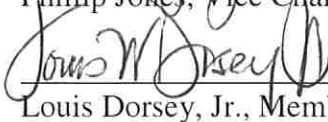
Paul Shortall, Jr., Chairman



Phillip Jones, Vice Chairman



John Sewell, Member



Louis Dorsey, Jr., Member



Frank Cavanaugh, Member