

DECISION
TALBOT COUNTY BOARD OF APPEALS
Appeal No 18-1677

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., June 4, 2018 on the Application of **THOMAS and MELISSA STANHOPE**, (Applicant). The Applicant is requesting a variance from the three hundred foot (300') expanded buffer to permit construction of a two thousand (2,000) sq. ft. garage with an attached one hundred foot (150') sq. ft. breezeway outside the base one hundred foot (100') Shoreline Development Buffer (the Buffer) but within the expanded buffer for steep slopes (the Expanded Buffer) and a variance of the required fifty foot (50') side yard setback to fifteen and one tenth (15.1) feet at the closest point of the proposed structure.

The request is made in accordance with Chapter 190, Zoning, Article II §190-14, Article VI, §190-139 and Article IX §190-182 of the *Talbot County Code* (the *Code*) and *COMAR* 27.01.09.01. The property address is 32707 Discovery Drive, Easton, Maryland 21601. The property is located in the Rural Residential and Rural Conservation (RR/RC) zones. The property owner is Thomas Stanhope. The property is shown on Tax Map 27, Grid 18, Parcel 50, Lot 10.

Present at the hearing for the Board of Appeals were: Paul Shortall, Chairman, Phillip Jones, Vice-Chairman, Members John Sewell, Louis Dorsey, Jr. and Frank Cavanaugh. 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:

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| Exhibit 1 | Application for Critical Area and Non-Critical Area Variance; |
| Exhibit 2 | Tax Map of subject property; |
| Exhibit 3 | Notice of Public Hearing for Star Democrat advertising; |
| Exhibit 4 | Newspaper confirmation; |
| Exhibit 5 | Notice of Public Hearing with Adjacent Property Owner list; |
| Exhibit 6 | Critical Area Variance Standards; |
| Exhibit 7 | Non-Critical Area Variance Standards; |
| Exhibit 8 | Staff Memo revised June 1, 2018; |

- Exhibit 9 Staff Memo (marked out of date);
- Exhibit 10 Sign Maintenance Agreement;
- Exhibit 11 Critical Area Commission Comment Letter dated 05/10/18;
- Exhibit 12 Independent Procedures Disclosure and Acknowledgment Form;
- Exhibit 13 Aerial photo;
- Exhibit 14 High Banks Community Association reservations and restrictions;
- Exhibit 15 Pictures from site visit by Chris Corkell on 04/04/18;
- Exhibit 16 Elevation and Floor Plans;
- Exhibit 17 Site Plan.

The Chairman recognized David R. Thompson, attorney for the Applicant. Mr. Thompson introduced his clients, Thomas and Melissa Stanhope, residing at 3207 Discovery Drive, Easton, Maryland, 21601. Before acquainting the Board with the request Mr. Thompson commented that he believed the Board should be skeptical when considering the Critical Area Commission (CAC) comments. He explained that the CAC had no first-hand knowledge concerning the property. They had not visited the property nor had they met with the Applicant or planning staff concerning the property. He stated that in order to add anything to the property the Applicant would need a variance and directed the Board's attention to Exhibit 17, the Site Plan explaining that due to the unique configuration of the lot the only permitted building area on the property was a small hourglass shaped area bifurcated by the existing driveway.¹

Mr. Jones commented that due to the steep slope calculations there was literally no place on the property for improvements. Mr. Thompson agreed that the choices were very limited. He reminded the Board that the County regulations required him to provide notice if he intended to make any constitutional argument regarding a regulatory taking and acknowledged that this case might involve that result should the Board deny the Applicant's request.

Mr. Thompson explained that the subdivision was created in 1975, well prior to the enactment of the original Critical Area law. He believed that, pursuant to existing case law, the Applicant's rights had vested when the improvements had been built, and that a later change in the law should not affect those rights. One might argue that the entire law, and specifically the Expanded Buffer, should not apply to this property.

Mr. Jones stated that if the property was completely undeveloped the Applicant would be permitted to build with a variance, and that should be true regardless of existing improvements on the site.

Mr. Thompson explained that this matter has all of the indicia of a classic variance case: (1) the property is characterized by steep slopes which impede development; (2) there is significant stormwater flow that has to be considered because the land is not level; (3) the proposed building site is on the flattest available land that is not within the sewage reserve area to minimize run off; (4) no fill will be required, just some minor grading keeping earth disturbance at a minimum; (5) the proposal will reduce the number of trees that have to be removed.

Counsel introduced Mr. Stanhope and told the Board that Mr. Stanhope collected classic cars. He had amassed a collection of seven (7) classic vehicles. The garage addition was planned to house those vehicles and would allow him someplace in which he could work on the cars to maintain them. Mr. Thompson was sure that the Board members visiting the site had observed several large enclosed trailers parked in the wooded area of the lot. Those trailers currently protect several of the vehicles as well as some of the parts the Applicant has acquired to keep the vehicles in repair.

The proposed structure will be Amish built and does not have interior pillars. Because of the open floor plan, the Applicant believes he will be able to store all seven (7) vehicles in the proposed structure, as well as to provide a small shop in which he can store tools, parts and accessories for use on his vehicles. There will also be room to work on the vehicles. That is one of the joys of ownership the Applicant has not been able to exercise for several years since most of the cars are now stored in other locations. Although one can keep a regular vehicle outside, classic cars need protection from the elements. They are not generally parked outside on streets. Given the size of the Stanhope's collection, counsel believed that the proposed garage was the smallest it could be while providing the necessary shelter for the collection and enough workspace to maintain the collection.

Mr. Thompson added that a car barn is not an uncommon use for a residential property. This particular structure would not be within the one hundred foot (100')

Buffer, but is entirely within the three hundred foot (300') Expanded Buffer. The Applicant is also requesting a side yard variance reducing the side setback from fifty (50) feet to fifteen feet and one tenth (15') along the boundary of adjoining Lot nine (9). The Stanhope's own both Lots nine (9) and ten (10), and there are currently no plans to sell lot nine (9).

Mr. Thompson then introduced Applicant's Exhibit 1, a plat showing Lots nine (9) and ten (10) of High Banks Subdivision; Applicant's Exhibit 2, a reduced copy of the original plat of "High Banks"; Applicant's Exhibit 3, a letter from a neighboring property owner supporting the Application; Applicant's Exhibit 4, a letter from Creekside Land Management supporting the location chosen for the new structure; and Applicant's Exhibit 5, a series of twelve (12) pictures documenting site conditions.

Mr. Cavanaugh wanted to know if the proposed structure would eliminate the need for the trailers scattered throughout the wooded area. Mr. Stanhope responded that they would no longer be needed for storage, but one might be retained for vehicle transport.

Mr. Jones inquired if the addition of the proposed garage would require more room for turn-arounds.

The Applicant stated that the proposed structure has been angled so that there would be no need to remove additional trees. Mr. Stanhope explained that he had become "hooked" on collecting his "toys" while living and working in New Jersey before retiring and moving to Talbot County. There are six classic corvettes now, and Mrs. Stanhope has a classic Monte Carlo. Those vehicles simply cannot be left in the woods. Given the severe building restrictions imposed by the Buffers and slopes, he tested the feasibility of project by constructing a scale model to be sure that everything would fit in the proposed location and building. The proposed structure does allow for the vehicles, a small shop and storage for parts and equipment currently housed in several twenty (20) to twenty-four (24) foot trailers that the Board members had observed on their site visit. The proposed structure will eliminate the need for all but one trailer. The property is to remain wooded and the building placement was selected so that there would be fewer trees to remove.

Mr. Thompson asked about the topography of the lot. Would there be any other place on the lot where the structure could be located? The Applicant responded that there was

not. The chosen location was the flattest area on the lot, would require the fewest trees removed, and would not disrupt the existing storm water management structures currently in place.

In answer to Mr. Thompson's question concerning hardship, Mr. Stanhope explained that not having his vehicles in one spot made it necessary to have the trailers with parts and accessories stored on the site. If he did not have a building there would be no permanent place to put those materials, and the storage trailers would remain. He added that, as a classic corvette enthusiast, he really wanted to have his cars on site so he could work on them and drive them, as he felt they should be used and enjoyed. Mr. Stanhope explained that the garage proposed was the smallest they were able to design to contain all the vehicles with a small shop and parts storage area. He noted that the garage was only to be used for the classic vehicles – the everyday vehicles were going to be kept outside.

Mr. Sewell commented that if the building were to be smaller, some of the classics would have to be left outside or kept off site.

Mr. Thompson asked if the garage would have an adverse effect on water quality or the environment. The Applicant was not aware of any possible detriment.

Counsel inquired about the side yard variance requested. Mr. Stanhope replied that the chosen location was the spot where the structure would cause the least disturbance. He owns the adjoining lot, had no plans on selling it and enjoyed the additional wooded area it provided.

Mr. Dorsey wanted to know the plans for the four (4) trailers on the property. Mr. Stanhope explained that currently all but two (2) of the classics are stored off-site in a barn. Not only was that storage costly, but dust could create problems with the vehicles' instruments. Although he acknowledged that having all the vehicles in one spot might put them all at risk in the event of a storm or fallen trees, he was cognizant that there is no scenario in which they, or some of them, would not be at risk from some unforeseen event or act of God. Mr. Dorsey commented that he appreciated Mr. Stanhope's feelings for the vehicles as he, too, is the owner of a classic vehicle.

The Applicant's next witness was Elizabeth Fink of Fink, Whitten and Associates, 113 E. Dover Street, Unit C, Easton, MD 21601. Ms. Fink stated that her firm had been

working on the project since October 2017. They had prepared the exhibits filed with the application and had completed all of the field run topography. She felt this property was a unique site given the slopes and the Critical Area restrictions. In response to a question from Mr. Thompson she opined that due to the site's Buffer and Expanded Buffer restrictions, as well as health department requirements for distances from the well and septic reserve area there was really no other place on the property where the structure could be located. In her opinion this location required the least tree removal, did not disturb current drainage structures and created the least intrusion into the Expanded Buffer that could be accomplished after taking into consideration all of the other governmental setback requirements. There is no location for any structure available outside the Expanded Buffer on this lot.

Mr. Thompson asked her about the effect of the construction on wildlife or habitat. Ms. Fink advised that Starke McLaughlin had done a field delineation and saw no evidence of Forest Interior Dwelling Species. (FIDS). A letter has been sent to the Department of Natural Resources (DNR) for verification of his field observations, but no response has yet been received. She added that if DNR advises that such species are present, any concerns could be handled at the building permit stage. She added that the Applicant would be working with the county's environmental planner to address any necessary canopy planting and all mitigation issues.

Counsel asked about drainage structures. Ms. Fink stated there was a swale to the west of the proposed building that would not be impacted. She observed that it was functioning properly and would not be impacted by the building. She had not noted erosion on the site. There were no other questions directed to Ms. Fink.

Mr. Thompson addressed the subdivision covenants noting that the side yard variance would be permitted under paragraph 2 of Exhibit 14 since the lots are in common ownership.

Mr. Cavanaugh commented that if Lot nine (9) was sold, the location of the garage and its proximity to the line would not be a surprise to Lot nine (9)'s new owner. He added that the Expanded Buffer has a huge effect on property value. He observed the area planned for the improvements to be pretty dry.

Mr. Stanhope reiterated that he does not plan to develop Lot nine (9). He had never observed erosion. He believed the planned improvements would not create erosion.

Mr. Jones asked about the lot coverage calculations that were based on the lot containing private wetlands. Ms. Fink stated her office had worked closely with the CAC in formulating the lot coverage calculations. She was therefore rather surprised by CAC's comments.

The Chairman asked for additional public comment. Hearing none, he asked the Board members for their opinions.

Mr. Cavanaugh stated that when he first looked at the application he wondered how the Applicant felt that the large garage was the minimum necessary to afford relief, but after hearing the Applicant's explanation he believed denying the application and allowing the trailers to remain would be worse. He noted that anyone purchasing Lot nine (9) in the future would know about the proximity of the garage. The neighbors had been advised of the plan, none objected and one had written in support of the project. He agreed that the garage was large and agreed with the reason for its size.

Mr. Jones commented that there have been a number of cases before the Board where the Applicant has proposed a complete tear down to try and get a project within the Buffer approved, whether by using an existing footprint or by coming closer to the side or rear lot lines to reduce the incursion into the Buffer. In deciding these cases he looks at the property as if it is a blank slate. He feels that the Board would have approved this request if there were no other improvements. In this case the house and some improvements were on site before the Expanded Buffer regulations. It is not unusual that some residences have large accessory buildings for a legally permitted activity. He felt the property could be developed as requested.

Mr. Sewell asked if the breezeway was connected to both buildings. The Applicant stated that it does connect both buildings, but that it will not be enclosed or add gross floor area.

Mr. Dorsey commented that the building was angled to make the access easier so that one could back a trailer down. The angle would obviate the necessity of adding an additional access road.

Mr. Shortall agreed with the points brought out by the other Board members and felt the request was reasonable and would allow the owner what one would consider as reasonable use of the lot were there no Expanded Buffers involved.

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 10.
3. The Applicants' property is situated in a residential subdivision created in 1975 well prior to the Critical Areas legislation. It is also unique in that a portion of the lot is private tidal wetland. Steep slopes extend upwards from the tidal wetlands to the buildable flat land. The lot other than the wetland is forested. Expanded Buffers were not a part of the original legislation but have since been imposed and encompass virtually the entire lot. None of the planned improvements are within the Shoreline Development Buffer, but all are within the Expanded Buffer. Any development on the lot will require a variance.
4. Property owners in the RR/RC zoning districts all have the right to add customary improvements. 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 add a garage or "car barn" to store classic vehicles that may not be stored outside.
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 imposition of the Expanded Buffer requirements after the lot was created.
7. Although the structure planned will be within the Expanded Buffer, there will be no discernable effect on water quality as the Applicant

and his professional consultants have chosen the most level part of the property for construction. This location requires the fewest trees to be removed, and will result in the least land disturbance. Mr. McLaughlin canvassed the property and did not see any evidence of FIDS, however, the Applicant is prepared to comply with recommendations from DNR should that agency disagree. Those accommodations can be made at the building permit stage. The increase in lot coverage should not have any substantial effect on water quality as current drainage structures will be preserved. 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 Expanded Buffer consistent with trying to maintain the forest coverage and the existing drainage. The proposed building is not an ordinary garage. The Applicant's "everyday" vehicles remain outside. The building is being created to store and service classic cars that cannot be left in the elements. Its size cannot be further reduced and still achieve its purpose. The Board finds that the improvements proposed are the minimum adjustment necessary to permit the Applicant to house his collection.
9. Although the lot is conforming, the lot topography dictates that the new structure be built in the proposed location to create the least environmental impact. The chosen location also creates the need for a side yard variance, reducing the side setback from fifty (50) to fifteen and one tenth (15.1) feet adjoining Lot nine (9). Although not determinative of this Board's action, the covenants and restrictions for High Banks Subdivision permit a waiver of the side setbacks when lots are in common ownership. The Applicant owns both Lot nine (9) and Lot ten (10), and although there are no current plans to sell Lot nine (9), any future purchaser would be able to see the proposed structure and could make an informed decision whether to purchase. The Board

therefore concludes that the adjustment requested is the minimum necessary to build a suitable structure with the least environmental impact.

10. Although the Applicant owns additional land, Lot nine (9) the hardship in this case is created by the topography of the property and the necessity to comply with Expanded Buffer requirements not in effect when the lot was created. It cannot be cured by the addition of additional land, as Lot nine (9), also lies entirely within the Expanded Buffer.

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

- a. 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;
- b. The Applicant shall commence construction of the proposed improvements within eighteen (18) months from the date of the Board of Appeals decision;
- c. The Applicant shall mitigate for the disturbance to the Shoreline Buffer with mitigation planting three (3) times the permanent disturbance to the Buffer plus an additional one to one (1:1) mitigation for the square footage of canopy removed;
- d. Buffer establishment based on the total square footage of lot coverage located outside of the Buffer shall be required.
- e. A Buffer Management Plan must be submitted in conjunction with the building permit application.
- f. A determination by the Wildlife and Heritage Division of DNR that the property contains FIDS habitat will require that the Applicant address any comments by that agency at the building permit stage.

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

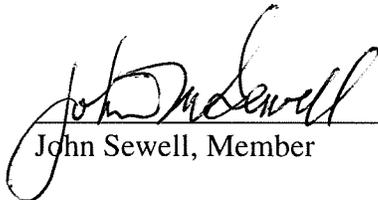
HAVING MADE THE FOREGOING FINDINGS OF FACT AND LAW, IT IS, BY THE TALBOT COUNTY BOARD OF APPEALS, RESOLVED, that the Applicants, **THOMAS AND MELISSA STANHOPE** are hereby **GRANTED** the requested variances to permit construction of a two thousand (2,000) sq. ft. garage with an attached one hundred foot (150') sq. ft. breezeway outside the base one hundred foot (100') Shoreline Development Buffer but within the Expanded Buffer for steep slopes and a variance of the required fifty foot (50') side yard setback to fifteen and one tenth (15.1) feet at the closest point of the proposed structure to the adjoining lot consistent with the evidence presented to the Board Appeals, and subject, however, to the above stated conditions.

GIVEN OVER OUR HANDS, this 6th day of July, 2018.

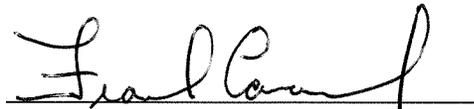
TALBOT COUNTY BOARD OF APPEALS


Paul Shortall, Chairman


Phillip Jones, Vice-Chairman


John Sewell, Member


Louis Dorsey, Jr., Member


Frank Cavanaugh, Member