

TALBOT COUNTY BOARD OF APPEALS

Appeal No. 17-1664

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., June 19, 2017, on the application of **WILLIAM BULMER and LYNDA J. BULMER** (Applicants). The Applicants are requesting three variances for the following proposed development activities within the Shoreline Development Buffer (SDB): (1) a vertical expansion of an existing dwelling from 15 feet to 24 feet 7 inches, adding 324.5 square feet of gross floor area in the buffer; (2) to permit an existing slate patio located 86 feet from Mean High Water (MHW) to remain and an existing gravel patio located 81 feet from MHW to be converted to flagstone on a concrete pad to remain in place; and (3) to permit the lot coverage to exceed the 15 percent limit by 1,342 square feet, for a total 8,072 square feet or 17.99 percent coverage. The existing dwelling is 89 feet from MHW. The property is located at 23000 Twin Pines Road, Bozman, Maryland 21612 in the Rural Residential (RR) zone. The Applicants own the property. The request is made in accordance with Chapter 190 Zoning, Article VI, §190-136, 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 Frank Cavanaugh. Willard C. Parker, II, Esquire, 129 North Washington Street, Easton, Maryland 21601, represented the Applicants. The Applicants attended the hearing and Mr. Bulmer offered evidence in support of the application. Pamela P. Gardner, Architect, Pamela P. Gardner, AIA, LLC, 411 North Aurora Street, Easton, Maryland 21601 and Bruce Harrington, B. Harrington Construction, 309 North Aurora Street, Easton, Maryland 21601, testified in support of the application. Brennan Tarleton, Planner I, Talbot County Office of Planning and Zoning attended the hearing on behalf of the 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 Applicants to each applicable warrant.
7. Staff Report dated June 2, 2017.
8. Sign maintenance agreement.
9. Site Plan prepared by Davis, Bowen & Friedel, Inc., dated February 9, 2017.
10. Floor Plans and Elevation Drawings, prepared by Pamela Gardner, AIA, LLC.
11. Critical Area Commission comments dated June 6, 2017.
12. Independent Procedure Disclosure and Acknowledgement Form.
13. Aerial photograph.
14. Photographs from site visit on May 8, 2017.
15. Critical Area Lot Coverage Computation Worksheet.
16. Certificate of Nonconformity from Talbot County, dated March 7, 2017.
17. Letter from neighboring residents Terry and Kim Mangan, dated June 12, 2017, expressing support for the application.

In his opening statement Mr. Parker addressed the Critical Area Commission's recommendation that the Board condition any approval with a requirement for mitigation and a Buffer Management Plan. He said that any disturbance caused by the proposed project will be temporary, only during construction,

and will not require environmental mitigation or a Buffer Management Plan. He also explained that the proposed project will actually reduce the permanent area of disturbance in the buffer by about 40 percent. He suggested that, if the Board decides to impose the suggested conditions, they be modified with the term "if applicable". The County planning staff can determine whether they are necessary when the project is completed.

The first witness was Mr. Bulmer. He testified that he retired in 2013 after thirty years working for the International Finance Corporation (IFC), a division of the World Bank. For about one half of that time he was responsible for ensuring that projects sponsored by IFC met social and environmental standards. He is familiar with a variety of environmental standards. Following his retirement he became a certified Maryland Master Naturalist with the goal of learning how he and his wife could minimize, and even improve, the environmental impacts of their property. He said they were committed to the ideals and goals of the (Critical Area) laws and regulations.

Mr. and Mrs. Bulmer purchased their property in February 2014. He said it is a small, one acre lot with a single level rambler style house. There is a gravel patio and a gravel driveway to a small boat ramp. There is also a small brick shed that was built at the same time as the house. The lot is 1.04 acres. The two shore side corners of the house are in the 100-foot buffer because the shoreline of the property curves inward on each side of the lot. Also, a porch, the gravel patio, and a portion of the gravel drive to the ramp are in the buffer.

He said that he and his wife were not aware that a prior owner of the property had installed the gravel patio and small slate stoop on the property without permits. They appeared to have been there for a long time and they assumed they had been legally constructed. They found a 1993 plat that showed those improvements were extant when the owners before them purchased the property.

Mr. Bulmer confirmed that the lot is a nonconforming lot since the minimum lot size in the RR zone is two acres. The lot was created in 1956 when the smaller size lot was permissible. Other than replacing a failing shoreline bulkhead with a stone revetment they have not made any improvements to the property. They obtained all of the necessary permits to replace the bulkhead.

Mr. Bulmer described the proposed improvements. He said that they determined that the best way for them to make necessary improvements to the existing house was to extend it in the front away from the shoreline and extend it vertically. They propose to convert a screened porch on the front of the house to interior living space. They also propose to construct a second floor which will provide space for two bedrooms and a bonus room. The County considers the bonus room as an additional bedroom for septic purposes and the property has sufficient capacity for that addition. They plan to redo the gravel patio with flagstone to be consistent with other existing flagstone areas. Finally, they will relocate the entrance to the front of the house. It is currently on the side of the house.

Mr. Bulmer said that they need at least three bedrooms to accommodate visiting children, grandchildren, and friends. He said they have relatives from the U.K. who visit and those visits tend to be longer visits. The house needs modernizing. He said that one of the existing bathrooms is in the garage and is connected to a septic system in the buffer. They have stopped using that bathroom.

Their proposed renovations will include removing the septic system in the buffer and replacing it in the newly approved Septic Reserve Area (SRA) in the front of the property away from the buffer. Their new septic will include a nitrogen reduction system. They will also remove much of the gravel areas on the water side of the house, including replacing the gravel drive to the ramp with a two ribbon gravel tire track to allow continued access to the ramp. He said they are reducing the impervious area in the buffer by just over 40 percent.

Mr. Bulmer said that they are proposing to install a new well on the property. The existing well has to be relocated so they can install their new modern septic system away from the shoreline.

The next witness was Pamela Gardner. The Applicants retained her to design renovations to their home. Ms. Gardner said that the current house, including the garage, is only about 2,500 square feet. It is a very small rancher. The Applicants wish to replace the current structure with a story and a half country cottage type house. The design will allow for two bedrooms on the second floor with a modest expansion of the living area on the first floor. The proposed new footprint is no larger than the existing footprint save for a small entrance portico on the front of the home at the new entrance. It is not in the buffer.

Ms. Gardner described the Applicants as committed environmentalists and they want to improve their property in an environmentally sensitive manner. They propose to reduce the impervious surface within the buffer significantly. Current side yard setbacks and the relocated SRA limit any area for expansion of the house outside the buffer. She said the "kindest" thing to do to the property is to expand the house vertically without expanding its existing footprint.

In response to a question from a Board member, Mr. Bulmer said that he hopes to be able to reuse some of the removed gravel for the two ribbon path to the boat ramp. The surfaces between and on either side of the ribbons will become pervious surfaces. They do not plan to store any trailers by the boat ramp.

In response to question from a Board member, Ms. Gardner said that the existing garage is a double garage but, because of the existing bathroom in the garage, it cannot be used to store two cars.

The third witness was Bruce Harrington. He testified that no portion of the existing house meets current building or energy efficiency codes. The proposed renovated structure will meet all such codes.

Mr. Parker then recalled Mr. Bulmer and asked him to address each of the specific variance warrants. He said that without the proposed improvements they would not be able to use the property as their primary residence, which is what they want to do. One of the reasons they were attracted to the

property is that it is on slightly higher ground and would likely be able to design and install a more environmentally sensitive septic disposal system. He agreed with Mr. Parker's characterization of the property as unique because it is only one acre and the available building envelope is severely limited due to the current side yard setbacks and the location of the new SRA. He said that other property owners in the same zone have enjoyed the ability to renovate their homes to make them more up-to-date. Their proposed renovations are modest and the minimum that would allow them to use the home as their primary residence. Their proposed reduction of impervious surfaces within the buffer and removal of the existing septic system from the buffer should result in an overall improvement to the environment. The Applicants did not create any of the conditions that lead to the need for the requested variances and they do not own any adjoining land which could be combined with their lot to reduce or eliminate the need for the requested variances.

A Board member questioned Mr. Tarleton of the County staff regarding the legal status of the gravel patio. He responded that the County did not have any permits on record that were issued for the patio. The Board member observed that a gravel patio may have at one time been considered a pervious surface. He also said that he is not sure that when this property was developed that the owner would have had to apply for a permit to install the patio in question. He suggested that the patio may be grandfathered and a legal structure on the property.

No one appeared in opposition to the application.

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 Applicants' property is a legal nonconforming lot that, because of its small size, has limited room for improvements. The Applicants propose to improve the environmental impact of their home by installing a modern, environmentally sound septic system in their front yard, replacing one that is currently in the sensitive shoreline buffer. This, along with the current side yard setback restrictions, leave the Applicants no choice other than expand their house vertically. The current house does not meet current building standards. They propose to meet current standards with a renovation and a modest vertical expansion of their home in a way that will make it livable for them as a permanent residence. The proposed modifications will not result in any additional lot coverage.
3. A literal interpretation of the ordinance will deprive the property owner of rights commonly enjoyed by other property owners in the same zone. Again, the Applicants are unable to make relatively 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. The footprint of the proposed renovated dwelling is the same as the existing dwelling. 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 Applicants, 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. The proposed improvements will likely improve the environment.
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 Applicants, **WILLIAM and LYNDA J. BULMER** (Appeal No. 17-1664) are **GRANTED** the requested critical area variances consistent with the evidence presented to the Board of Appeals, 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 Department of Permits and Inspections.
2. The Applicants shall remove the gravel area as shown in the existing conditions of the site plan dated February 9, 2017, save for those areas depicted as remaining.
3. If applicable, the Applicants shall provide and comply with a buffer management plan to mitigate at a ratio of three times the permanent disturbance in the buffer.
4. The Applicants shall not expand or intensify the patio structures without further review by the Department of Planning and Zoning and, if necessary, a variance from the Board of Appeals.



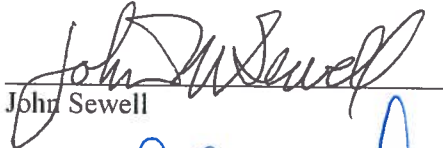
5. The Applicants shall commence construction on the proposed improvements within eighteen (18) months from the date of this Decision.

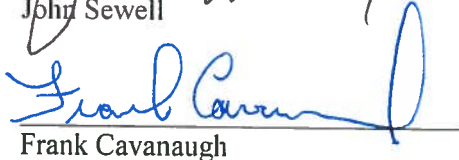
GIVEN OVER OUR HANDS, this 21st day of July, 2017.

**TALBOT COUNTY BOARD OF APPEALS**

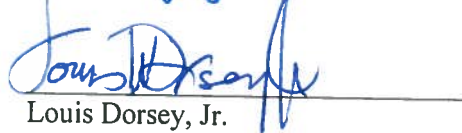
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Paul Shortall, Jr., Chairman

  
John Sewell

  
Frank Cavanaugh

  
Phillip Jones, Vice Chairman

  
Louis Dorsey, Jr.