

**TALBOT COUNTY BOARD OF APPEALS**  
**Appeal No. 18-1676**

Pursuant to due notice, a public hearing was held by the Talbot County Board of Appeals at the Bradley Meeting Room, Court House, South Wing, 11 North Washington Street, Easton, Maryland, beginning at 6:30 p.m. on May 7, 2018, on the application of **WYE RIVER FARMS, LLC** (“Applicant”). The Applicant is requesting three (3) variances in the Critical Area to permit the renovation of, and reasonable vertical expansion to, an existing three-story home (the “House”) situated within the 100-foot Shoreline Development Buffer (the “Buffer”), and built in 1979. The subject property (the “Property”) is a 155.61-acre parcel of land that is located on the east shoreline of the Wye East River, located at 12720 Wye Landing Lane, Wye Mills, MD 21679. The Property is shown on tax map 4, grid 8 as parcel 49. Applicant is the owner of the Property.

The first variance request is for a 9-square foot expansion to the current residence to allow for construction of a chimney located no closer than 87.5 feet from Mean High Water (“MHW”). The second variance request is for a second-story expansion of 571 square feet of Gross Floor Area (“GFA”) located no closer than 71 feet from MHW. The third variance request is for a third-story expansion of 245 square feet of GFA located no closer than 80 feet to MHW. The requests are made in accordance with Chapter 190 Zoning, Article VI, §190-139 and Article VIII §190-169 of the *Talbot County Code* (the “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. Applicant was represented at the hearing by Ryan Showalter, Esquire, McAllister, DeTar, Showalter & Walker LLC, 100 North West Street, Easton, Maryland 21601. Michael Gowl, 12720 Wye Landing Road, Wye Mills, Maryland 21679, appeared on behalf of Applicant as a member of the LLC. Sean Callahan of Lane Engineering, LLC, 117 Bay Street, Easton, Maryland 21601, appeared and testified on behalf of the Applicant. Brennan Tarleton, Planner I, attended the hearing on behalf of Talbot County. William C. Chapman was the attorney for the Board of Appeals (the “Board”). It was noted for the record that each member of the Board had individually visited the Property.

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

1. Application for Critical Area variances 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. Notice of hearing with a list of nearby property owners attached.
5. Copy of critical area variance requirements from the *Code* with the written responses of the Applicant to each applicable warrant attached as Exhibit B, "Variance Application Narrative."
6. Staff Report dated May 7, 2018
7. Sign maintenance agreement.
8. Independent Procedures Disclosure and Acknowledgment Form.
9. Aerial photographs.
10. Photograph from site visit taken on March 15, 2018.
11. Direction to the property.
12. Site plan of the property prepared by Lane Engineering, LLC.
13. Critical Area Lot Coverage Computation worksheets.
14. Talbot County Board of Appeals decision No. 275.
15. Critical Area Commission comments dated April 24, 2018.
16. Authorization letter from the Applicants.
17. Certificate of publication of the Notice of Public Hearing from *The Star Democrat*.

Mr. Showalter introduced Mr. Gowl, appearing on behalf of the Applicant and said that the variance requests were the smallest requests Mr. Showalter had ever presented to the Board. Specifically, the proposed modifications to the House would add an encroachment of 9 square feet into the Buffer with the construction of a chimney atop an existing concrete apron on which a garage is currently situated. Mr. Showalter said the proposed construction would project 1.3 feet into the Buffer and add no additional impervious surface area, and he noted that neither the Staff Report nor Critical Area Commission had objected to the proposed construction. The second- story expansion and third-story addition, Mr. Showalter said, would all be contained atop the existing footprint of the House.

Mr. Showalter said the House was built in the 1970s, with the floorplan approved at that time pursuant to the minimum setback requirements then in effect, thus it is in legal

nonconforming status within the Buffer. The Planning and Zoning Staff Report also provides extensive reasoning as to the legal nonconforming status of the Home. The Applicant purchased the Property in 2017. Applicant's proposed construction, designed to accommodate the needs of Mr. Gowl's growing family, Mr. Showalter said, is a modest addition relative to similar waterfront homes in Talbot County. Mr. Showalter emphasized that the use of vertical construction, by expanding the second floor living area and adding living area to the third floor, limits the scope of the variance requests to the greatest degree possible, and noted that in other local jurisdictions, variances are not required for similar vertical expansion. Mr. Showalter said the proposed construction will not require clearing any trees, and the only land disturbance the project would involve would be the removal of a modest amount of concrete from an existing driveway.

A member of the Board questioned whether the existing concrete apron was thick enough to support the proposed chimney. Mr. Gowl responded that the existing concrete is approximately four inches thick.

Mr. Callahan testified about his background as a former Zoning Administrator for Talbot County and planner with Lane Engineering, LLC for over 20 years with extensive knowledge of Critical Area laws, regulations and design compliance. Mr. Callahan said he is familiar with, and has inspected, the Property, that the proposed construction will have no adverse effect on water quality or wildlife, and that the proposed construction is in harmony with the general spirit and intent of Critical Area laws and regulations as well as Talbot County's Critical Area program.

A member of the Board asked about an existing pier, never approved by Talbot County, located on the Property to the west of the House. Mr. Showalter said the Applicant will abide by the recommendation of Planning and Zoning staff that said unapproved pier be removed prior to the issuance of any permits associated with the application for these variances.

The Board then considered the application. Based on the testimony, application and exhibits, upon motion and seconded, the Board approved the requested variances, 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 existing dwelling was constructed in the Buffer in 1979, prior to Critical Area law, and is situated 45 feet from tidal wetlands, with the closest point of lot coverage being 36 feet due to steps attached to the porch. The closest footprint expansion is proposed to be located 87.5 feet from tidal wetlands and will total 9 square feet for the purpose of a chimney addition. Overall lot coverage as a result of the proposed construction will increase by 9 square feet to 48,832 square feet, which is approximately 0.7 percent of the maximum 15 percent allowed in the Critical Area and Buffer. The vertical expansions proposed for second-story expansion and third-story addition, combined, will increase the GFA of the House from 3,140 square feet to 3,935 square feet, an increase of 25.32 percent, but will exist atop the structure's existing footprint.
3. A literal interpretation of the ordinance will deprive the property owner of rights commonly enjoyed by other property owners in the same zone. Mr. Showalter testified on behalf of the Applicant that Mr. Gowl, a member of the LLC, seeks additional space to accommodate his growing family's needs. The proposed construction was designed to minimize disturbance associated with proposed expansion. Because of the House's relative location to the Buffer, any horizontal or vertical expansion would require a variance. Applicant's proposed construction is a modest project relative to similar waterfront homes in Talbot County, and the vertical nature of the proposed construction limits the amount of ground disturbance.
4. The granting of the variances 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 House is situated on a relatively large agricultural tract of land with the majority of the Property being actively farmed and the dwelling located almost entirely within the Buffer. Applicant requests the expansion of the existing dwelling to accommodate Mr. Gowl's family's needs and update a home built in the 1970s. The request is

modest in size and scope, and similar to or small than construction projects for similar homes in the area and on similar properties throughout the County. 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. No development activity has occurred prior to the application for variances. The Applicant has complied with all necessary process and standards as set forth in the *Talbot County Code*.
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 proposed expansion and addition will generate a net increase of 9 square feet of lot coverage on the property. The requested variances will have little, if any, adverse environmental impact if approved.
7. The variance does not exceed the minimum adjustment necessary to relieve the unwarranted hardship. Mr. Showalter has testified on behalf of the Applicant that the improvements were carefully designed to minimize impacts within the Buffer, primarily by utilizing vertical construction atop the Home's existing footprint. The only footprint expansion is the chimney, expanding 9 square feet atop an existing concrete apron.

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

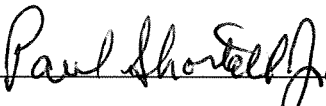
RESOLVED, that the Applicant, **WYE RIVER FARMS, LLC** (Appeal No. 18-1676) is **GRANTED** the requested Critical Area variances consistent with the evidence presented to the Board of Appeals, subject to the following conditions:

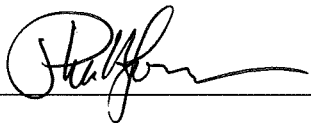
1. The Applicant must remove the unapproved 41-foot pier located directly to the west of the Home prior to the issuance of any permits associated with the application for these variances.

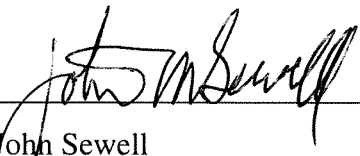
2. The Applicant shall make applications to and follow all of the rules procedures, and construction timelines as outlined by the Department of Permits and Inspections regarding new construction.
3. The Applicant shall commence construction on the proposed improvements within eighteen (18) months from the date of this Decision.
4. Natural vegetation of any area three times the extent of the approved disturbance in the Buffer shall be planted and maintained in the buffer or on the property if planting in the buffer cannot be reasonably accomplished. Applicant may obtain a Buffer Management Plan application through the Talbot County Department of Planning and Zoning.
5. A Buffer Management Plan will need to submit a Buffer Management Plan in conjunction with the building permit application.

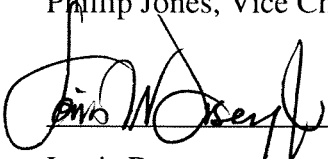
GIVEN OVER OUR HANDS, this 11th day of June, 2018.

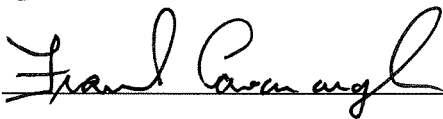
**TALBOT COUNTY BOARD OF APPEALS**

  
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Paul Shortall, Jr. Chairman

  
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Phillip Jones, Vice Chairman

  
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John Sewell

  
\_\_\_\_\_  
Louis Dorsey

  
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Frank Cavanaugh