

DECISION
TALBOT COUNTY BOARD OF APPEALS
Appeal No. 19-1701

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. on December 9, 2019, on the Application of **Anthony Smith** (the Applicant). The Applicant is seeking approval of a variance to permit reduction of the side yard setback from ten (10) feet to eight (8) feet on each side of Lot 11 fronting on Gate Street in Bellevue to permit construction of a twenty four foot (24') by forty eight foot (48') single story dwelling on the lot.

The request is made in accordance with Chapter 190, Zoning, Article II, §190-10.2A; Article VII, §190-31.2 and Article VII, §190-38 of the Talbot County Code (the *Code*). The property is located at 5691 Gate Street, Royal Oak, Maryland 21662 in the Village Hamlet (VH) zone. The Property owners are Anthony and Valeri Smith. The property is shown on tax Map 46, Grid 12 Parcel 116 Lot 11.

Present at the hearing for the Board of Appeals were: Frank Cavanaugh, Vice Chairman; members John Sewell, Louis Dorsey, Jr., Paul Shortall and alternate member Greg Gannon. Anne C. Ogletree served as attorney for the Board of Appeals. Miguel Salinas, Assistant Planning Officer and Maria Brophy, Planner II, were in attendance.

The Vice-Chairman inquired if all members had visited the site and received affirmative responses.

The following Board exhibits were then offered and admitted into evidence as indicated:

- Exhibit 1. Application for a Non-Critical Area Variance;
- Exhibit 2. Copy of tax map with site highlighted;
- Exhibit 3. Notice of Public Hearing for Star Democrat;
- Exhibit 4. Newspaper confirmation;
- Exhibit 5. Notice of Public Hearing & Adjacent Property Owners List;
- Exhibit 6. Standards for Non-Critical Area Variance;
- Exhibit 7. Staff Report prepared by Maria Brophy, Planner II;
- Exhibit 8. Sign Maintenance Agreement /Sign Affidavit

- Exhibit 9. Independent Procedures Disclosure and Acknowledgment Form;
- Exhibit 10. Aerial Photograph;
- Exhibit 11. Professional Site Plan prepared by Robert M. Hughes & Assoc., Inc.
- Exhibit 12. Elevation and Floor Plans;
- Exhibit 13. Critical Area Lot Coverage Computation Worksheet.

Mr. Cavanaugh asked that those who might wish to testify rise and be sworn. Three witnesses were then sworn. He next invited the Applicant to tell the Board about the project.

Mr. Anthony T. Smith, 5520 Leeward Lane, P.O. Box 393, Tilghman, MD 21671 explained that several years ago he purchased three (3) contiguous lots on Gate Street in Bellevue with a general plan of eventually downsizing, retiring to one of the lots and having his children come to the area and live in close proximity. The lots are in the old section of Bellevue and are long and narrow. Lots 11 and 13 are forty feet (40') in width, while lot 12, the center lot, is fifty feet (50') wide. Fitting a three bedroom ranch style home on a lot only forty (40') wide is a challenge. He has investigated available structures, and discovered that the smallest structure that will accommodate a modest three (3) bedroom ranch style home would be twenty-four feet (24') in width. The lot configuration of Lot 11 would necessitate a reduction of each side yard from ten feet (10') to eight feet (8') to permit him to build the modest residence as shown on Exhibit 11, the proposed residential floor plans.

Mr. Smith added that all three of the lots had existing small structures at one time. One of the homes was twenty feet (20') by thirty feet (30') and included two small bedrooms. All of the previous residential structures have been demolished.

Mr. Salinas referred the members to the staff report, Exhibit 7, commenting that the subdivision plat of the property was recorded in 1938, and the lots were created at that time. Their configuration has not changed.

Mr. Cavanaugh asked if the lots could be reconfigured by adding land from Lot 12, the center lot to each of the two side lots.

Mr. Smith replied that the center lot, Lot 12, was wide enough so that the setbacks could be met. He clarified that during the Village Master Plan meetings there was considerable sentiment that the older lots in the village center remain as originally platted now that sewer is available.

Mr. Salinas agreed with that statement. He noted that there had been considerable disagreement in the planning work sessions over the future of the village. A compromise was reached in which the Village Master Plan contemplated that although there were areas where lots could be consolidated to make them larger, in the old section of town, including the area in which these lots are located, the majority of the persons attending believed that the village should retain its original character, and lot size should not be increased.

Mr. Cavanaugh suggested eliminating the middle lot and making Lots 11 and 13 larger.

Mr. Salinas advised that the center lot, Lot 12, was conforming, and that taking land from it would make it non-conforming, and is not permissible.

Mr. Smith stated that the existing lot configuration was encouraged by the Village Master Plan. He had hoped to build small homes on each of the three lots, as shown on Exhibit 11, the site plan. He has four children and hoped one or more of them might want to come to the Shore and reside in the local area. He and his wife were planning to retire to Bellevue and would reside in one of the new residences.

A member inquired about creating a two story residence.

Mr. Smith responded that he and his wife were looking at downsizing and retiring to a home built on one of the lots. He felt that adding a second story would not be as “user friendly” to a retired couple.

Mr. Dorsey inquired about the small steps located on the front of the residence and wished to know if the lot coverage data shown on Exhibit 13 had been revised to account for them. Mr. Smith responded that it had not, but that the revision was being undertaken. The proposed steps (or small porch) adds thirty-five (35) square feet of lot coverage. The steps do not affect the side setbacks. The residence will still be more than thirty feet (30') from Gate Street, and with the addition of the thirty-five (35) square feet for the entry steps the proposed structure will still comply with the lot coverage requirements.

Mr. Smith added that the request was being made not to increase the value of the lot, but to enable him to build 3 homes, one for his future retirement, (Lot 12) and the other two, Lots 11 and Lot 13 to entice his children to move to the Shore.

Mr. Gannon remarked that the Gate Street cul-de-sac was used as a school bus stop. He asked if there were plans to improve the alley adjoining Lot 13.

Mr. Smith stated that the neighbors used the alley, but he was not aware of any plans to improve it.

Mr. Cavanaugh commented that the proposed variance would not be injurious to the neighbors. He noted that there had been a residence constructed on Lot 10 by Habitat, and it had required a variance due to lot configuration. Mr. Smith remarked that the proposed homes would be similar in size to that built on Lot 10.

Mr. Cavanaugh commented that the size home proposed was about as small as a three bedroom residence could be.

There being no additional testimony from the Applicant, Mr. Cavanaugh asked if there were members of the public who wished to testify.

Mr. Mark Hill, 9814 Mill Point Road, Easton, MD 21601, previously sworn, testified in support of the application. Mr. Hill owns property in Bellevue and was in favor of trying to retain the character of the original village. He thought the proposed residences would be in keeping with the character of the area.

There was no additional public comment. Mr. Cavanaugh then asked the members if they had any comments.

Mr. Shortall stated that he was in favor of approval. He thought the proposed residence was a good fit for the area and was in keeping with the neighborhood. He believed the Applicant had met all of the required conditions.

Mr. Gannon felt as did Mr. Shortall. He thought the proposed variances would allow the construction of a residence and help to retain the character of the area.

Mr. Dorsey agreed with the other two members. He noted that on his site visit he had seen some larger homes but thought the construction proposed by Mr. Smith was a better fit for the area.

The Applicant commented that those homes had been built prior to the adoption of the Village Master Plan, and did not reflect the decisions made during the planning process.

Mr. Salinas added that those larger homes had been permitted prior to the adoption of the Village Master Plan, but during the planning process, and their existence

caused the concern that creating larger lots and homes in this area of the village would do violence to the look and “flavor” of the existing historic village district.

Mr. Sewell agreed with the other members adding that the home on Lot 12 could not be much larger than the residence proposed for Lot 11. He thought it would be in keeping with the area and would vote to approve the variance.

Mr. Cavanaugh also agreed that the variance should be granted. It would enable the construction of a very modest home on Lot 11. Keeping the original lot layout encouraged smaller homes. Allowing the variance would be consistent with the Village Master Plan for Bellevue adopted in 2018.

Having considered the Application, 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 to reduce each side yard setback from ten feet (10') to eight feet (8'). Exhibit 1.
2. The public hearing was properly advertised, the property was posted, and the adjacent land owners were properly notified. Exhibits 3, 4, 5, 8 and 9.
3. The Applicant has received favorable recommendation from staff for the variance. Exhibit 7, Staff Report. The proposed variance will assist in meeting the goals of the Village Master Plan adopted in 2018.
4. Lot 11 is long and narrow. Exhibit 11. While it may have accommodated a two (2) bedroom very narrow residence in years gone by, the width will not accommodate a modern small three (3) bedroom ranch style home. The plat establishing these lots were recorded in 1938, long before restrictions added by zoning laws. Exhibit 7, Staff Report. The village of Bellevue has a number of other small lots that antedate zoning. These lots are non-conforming under today's regulations. The Applicant purchased three (3) lots in their original platted configuration in 2016. The width of this lot that makes a variance necessary to be able to

- construct a modest three (3) bedroom home.
5. The need for the variance is not self-imposed or self-created. The Applicant purchased the property in 2016, as originally platted. The lots were created in 1938 at a time when zoning did not yet exist in Talbot County.
 6. The variance is sought for the purpose of constructing a small three (3) bedroom home. It is not possible to construct that home without additional width. The variance will enable the placement of the proposed home.
 7. The requested variance will allow the Applicant to construct a residence on this small non-conforming lot created long prior to zoning restrictions. An adjoining lot, Lot 10, was granted a similar variance to enable that lot owner to build a residence. Exhibit 7, Staff Report. Neighboring properties will not be adversely affected, and the Village Master Plan contemplates the preservation of the older lot configurations in this area to retain the original village atmosphere.
 8. As noted by the Applicant, placing even a very modest three (3) bedroom home on this small narrow lot constitutes a challenge, and will be impossible without a variance. The Board finds the Applicant's request for the two (2) foot reduction in each side yard to allow the placement of a very modest residence to be the minimum adjustment necessary.

For the reasons set out in the Board's findings, Mr. Shortall made a motion that the requested variances, a reduction of the ten foot (10') side setback on each side of Lot 11, be approved subject to the following conditions proposed by Planning Staff:

A. The Applicant shall make an application to, and follow all rules, procedures and construction timelines outlined for new construction as required by the Office of Permits and Inspections.

B. The Applicant shall commence construction of the proposed improvements within eighteen (18) months of the date of the approval by this Board.


Mr. Gannon seconded the motion. There was no further discussion on the motion. The Vice-Chairman called for a vote. The motion passed, 5-0 with all members voting to grant the variances requested.

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


RESOLVED, that the Applicant, **Anthony T. Smith** (Appeal No. 19-1701) is **GRANTED** the requested variances for Lot 11, consistent with the evidence presented to the Board of Appeals, and subject to the aforementioned conditions, by vote as previously noted.

GIVEN OVER OUR HANDS, this 21st day of February, 2020.

TALBOT COUNTY BOARD OF APPEALS


Frank Cavanaugh, Vice Chairman


John Sewell, Member


Louis Dorsey, Jr., Member


Paul Shortall, Member


Greg Gannon, Alternate Member