

DECISION

TALBOT COUNTY BOARD OF APPEALS

Appeal No. 21 -1734

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 January 24, 2022 on the Application of **Brennan and Jillian Ellis**, collectively, (the Applicant).

The Applicant is requesting a Critical Area variance to construct a three hundred thirty-one square foot 331 sq. ft. pervious deck to be located at its closest point 83.04' from Mean High Water (MHW) within the Shoreline Development Buffer (the Buffer). The existing residence is located 63.22' from MHW. The request is made in accordance with Chapter 190, Article III § 190-15.1 and Article VII § 190-58 of the *Talbot County Code* (the *Code*). The property is located at 5853 Irish Creek Road, Royal Oak, Maryland 21662 in the Rural Conservation (RC) Zone. The property owners are Brennan and Jillian Ellis. The property is shown on Tax Map 46 Grid 10 as Parcel 111.

Board of Appeals members Frank Cavanaugh, Chairman, Louis Dorsey, Jr., Vice Chairman; Paul Shortall, Zakary A. Krebeck and Phillip Jones were present for the hearing. Anne C. Ogletree, acted as attorney for the Board of Appeals. Staff members present were Miguel Salinas, Planning Officer, Brennan Tarleton Assistant Planning Officer, Elisa Deflaux, Planner II and Christine Corkell, Board Secretary. The Applicant was not present but was represented by Paul M. Rodgers, of Rauch, Inc. an authorized representative. No other members of the public attended.

The Chairman inquired if all Board members had visited the site individually. He received affirmative responses from each member. Mr. Cavanaugh then requested that those planning to give testimony be identified and sworn. Mr. Rogers was sworn in. The following Board exhibits were then offered and admitted into evidence as indicated:

- Exhibit 1. Application for a Critical Area Variance;
- Exhibit 2. Tax Map with subject property highlighted (2 pages);
- Exhibit 3. Notice of Public Hearing for Star Democrat;
- Exhibit 4. Newspaper Confirmation;

- Exhibit 5. Notice of Public Hearing with List of Adjacent Property Owners attached;
- Exhibit 6. Critical Area Variance Standards with Attachment A;
- Exhibit 7. Staff Report prepared by Elisa Deflaux, Planner II;
- Exhibit 8. Sign Maintenance Agreement/ Sign Affidavit;
- Exhibit 9. Critical Area Commission Comments dated 01/06/2022;
- Exhibit 10. Authorization Letter;
- Exhibit 11. Independent Procedures Disclosure and Acknowledgement Form;
- Exhibit 12. Aerial Photograph;
- Exhibit 13. RC Lot Coverage Computation Worksheet;
- Exhibit 14. Site Plan.

The Chairman then recognized Mr. Paul M. Rogers, AIA, of Rauch, Inc. 106 N. Harrison Street, Easton, Maryland 21601, agent for the Applicant. Mr. Rogers began his presentation by explaining that ordinarily a request such as the one before the Board would be handled administratively, as a minor variance, but that the ordinance provides that where a structure has been demolished and reconstructed, the Applicant cannot use the minor variance procedure. The variance case must be heard by the Board. *Code*, § 190-50.4. The original structure on this property was built in the floodplain and was reconstructed in 2007 on approximately the same footprint as the demolished residence. The action was necessary in order to elevate the living space. The Applicant obtained a certification from the Planning Officer on May 4, 2021 that the existing residence was a legally non-conforming structure. Exhibit 7, Staff Report.

The owners would like to construct an elevated pervious deck with a stairway descending to the rear yard. The new deck and stair that will not be any closer to MHW than the existing residence. The Applicant felt that establishing access to the rear yard from the living space would alleviate the existing unsafe conditions.

Mr. Rogers explained that the site plan, Exhibit 14, showed a set of doors facing the water on the ground floor. Those doors are non-functional, as they do not provide access from the living space to the rear yard and the water. This situation constitutes a safety hazard, since to reach any kind of emergency at the dock or water one would have to exit by the front door or through the garage and would lose sight of what might be happening. By replacing windows in the elevated living space with doors leading from the living space to the elevated pervious deck, the rear yard could be accessed from the living space without losing sight of what might be happening in the rear yard or at the water. Mr. Rogers felt that for a family with small children

the currently existing situation was a safety hazard. Allowing access to the rear yard by means of the elevated deck and stair would ameliorate that concern. He noted that the proposed plan also calls for replacing the existing ground level doors with windows, as those doors do not add to the functional use of the residence.

Mr. Cavanaugh asked if any of the members had questions. Mr. Krebeck did. He inquired if Mr. Rogers' firm was handling the Buffer Management Plan. Receiving an affirmative response Mr. Krebeck asked about the proposed plan. Mr. Rogers explained that the Applicant planned to do more landscaping around the property than that required by the Critical Area mandate requiring a three to one (3:1) replacement. That would be the minimum the Applicant would propose. Additionally, the Applicant would be signing a pervious deck agreement that would ensure that rainwater penetrated the board surface and reached the ground. A pervious deck does not contribute to lot coverage. The proposed structure will comply with all existing regulations.

Mr. Cavanaugh asked about the plans for the ground surface under the deck. He wanted to know of what the ground surface might consist. Would it be gravel, mulch or bare ground? Mr. Rogers stated that gravel would not be permitted as it might contribute to lot coverage, and that mulch might be permitted, but he would have to discuss that with planning staff. He noted that this is a relatively high structure. The only soil disturbances would be for those structural members that had to be placed in the ground — the posts supporting the deck structure and stair structure.

The Chairman reminded the members that the Board needed to find that the Applicant had met all seven (7) standards to approve the variance. He noted that the written Attachment A to the Application provided answers confirming that the proposal met those standards.

Mr. Dorsey asked about the proposed windows to replace the doors set in the center of the ground floor walls. The witness said that utilizing the ground floor doors would require a deck that would be closer to MHW than the existing residence and might also include an impervious walkway of some kind. After discussing the matter with the Applicant they had decided to replace the ground floor doors with windows and install French door opening to the proposed elevated deck, as that configuration would cause the least disturbance and would not require a deeper incursion into the Buffer. He added that the French doors would be located on the south side of the existing dining and breakfast area.

Mr. Cavanaugh asked if there were any additional questions. Hearing none, he requested comments from Board members.

Mr. Dorsey commented that after visiting the site, he felt that the Applicant's request was reasonable. The proposed deck will be on the side of the house, will not intrude further into the Buffer than the existing residence and is necessary for safety reasons. Other homes in the area have direct access to the water from the residence. He felt the request should be approved.

Mr. Krebeck opined that the use of a pervious structure would be a net gain for water quality and habitat. The addition of more plantings would enhance both.

Mr. Shortall commented that following the site visit he thought it would be a pretty good drop from the living space to the ground in an emergency and felt that the addition of the deck and stairway would make the residence safer in the event of a fire or other emergency. He felt that not providing access to the rear yard for emergencies was unsafe.

Mr. Jones concurred with his fellow Board members. He also noted that the Staff Report (Exhibit 7) did not identify any other issues that might affect the Property or the Board's ultimate decision.

Mr. Cavanaugh agreed with the other Board members. He thought that the Applicant's proposal was reasonable. The existing ground floor doors are not used and do not provide direct access to the rear of the residence from the living space. He agreed that the lack of access constituted a safety issue and that the proposed pervious deck and stairway would create the least incursion into the Buffer. He observed that almost everyone who lives on the water has some kind of deck or patio, and the unusual circumstances of this case, a reconstructed dwelling, would prevent the Applicants from enjoying that amenity if the variance is not granted.

There being no other discussion, the Board made the following findings of fact and conclusions of law based on the Applicant's written responses, the testimony and the evidence presented:

1. The Applicant has submitted written applications for a Critical Area variance to construct a pervious deck and stair that would be located 83.04' feet from MHW but would be further from the water than the existing residence. 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, and 8.

3. The structure on the property is a replacement for a residence demolished in 2007. The previous structure was built in the flood plain, and was demolished to elevate the living space. The front yard is almost entirely dedicated to sewage disposal. Were it not for the fact that this is a replacement structure, the Applicant would have been able to apply for a minor variance. *Code* §190-50.4 requires that any variance resulting in an enlargement of a replacement structure must be presented to the Board.
4. The Applicants purchased the property in its current configuration, so the circumstances requiring a variance are not self-created.
5. The Applicants are requesting the variance to improve safety for their own use and that of their family. The unique factor that triggers the need for the variance is the fact that the residence is a replacement structure built on the footprint of an earlier residence. The *Code* provides that no enlargement can take place. Currently it is not possible to have direct access from the living space to the rear yard and the water. If there were an emergency at the water, a responder would have to exit the building by the front door or through the garage. Precious time would be lost.
6. The Applicant is not being granted a special privilege. Most property owners in the Critical Area have a right to enlarge their homes. Owners of replacement dwellings have that right only if they can convince this Board that they have a unique situation due to either land or structure configuration. In this case lack of direct access from the living area of the structure to the rear yard constitutes a safety hazard.
7. The Applicant has planned to locate the deck and stairway on the side of the residence. This location will create minimum impact on the Buffer, since the structures are set back farther from the water than the residence itself. The only soil disturbed will be that necessary to be extracted for the positioning of the posts supporting the structures. As Mr. Krebeck observed, the environment and the homeowners are both winners here –

water quality will be enhanced by the required mitigation, and the homeowners will improve the safety of their home and property.

8. The Applicants do not own adjoining property.

For the reasons set out in the Board's findings, Mr. Dorsey made a motion that the variance No. 21-1734 permitting the construction of a raised pervious deck with stairway to the rear yard located 83.04' from MHW be **Granted**, subject to the conditions recommended by Staff. Mr. Krebeck then seconded the motion. There being no further discussion, the Chairman called for a vote. The motion passed five in favor, zero opposed.

HAVING MADE THE FOREGOING FINDINGS OF FACT AND LAW, IT IS, BY THE TALBOT COUNTY BOARD OF APPEALS, ORDERED THAT THE REQUESTED VARIANCE BE GRANTED SUBJECT TO THE FOLLOWING CONDITIONS:

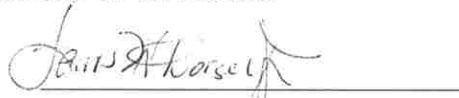
1. The deck shall be no larger than it is proposed as shown on the site plan filed in this case.
2. The deck shall intrude no further into the SDB than the residence as proposed on the site plan approved by the Board of Appeals and filed in this matter
3. The Applicant shall address and comply with all Critical Area Commission comments and requirements, including the completion of a Buffer Management Plan that complies with the Critical Area Law. The Applicant shall provide 3:1 mitigation for any permanent disturbance within the Buffer and 1:1 mitigation for any temporary disturbance within the SDB as a condition of variance approval.
4. The Applicant shall make an application in the Office of Permits and Inspections, and will follow the rules, procedures, and construction timelines as directed for new construction.
5. The Applicant shall commence construction of the proposed improvements within eighteen (18) months of the date of the Board of Appeals approvals.
6. At the time of issuance of the building permit the Applicant shall execute a pervious deck agreement and follow the guidelines for construction and planting associated with a pervious deck.

GIVEN OVER OUR HANDS, this 3rd day of March, 2022.

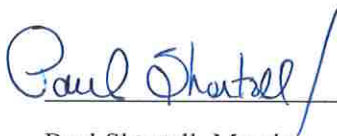
TALBOT COUNTY BOARD OF APPEALS



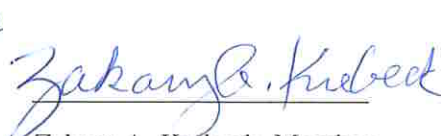
Frank Cavanaugh, Chairman



Louis Dorsey, Jr., Vice-Chairman



Paul Shortall, Member



Zakary A. Krebeck, Member



Phillip Jones, Member