

**DECISION**  
**TALBOT COUNTY BOARD OF APPEALS**  
**Appeal No. 20-1708**

Pursuant to due notice, a public hearing was held by the Talbot County Board of Appeals at the Wye Oak Room, Talbot County Community Center, 10028 Ocean Gateway, Easton, Maryland beginning at 9 a.m. on June 1, 2020, on the application of **EDWARD W. TREACY III and KRISTIN B. TREACY** (the “Applicants”). The Applicants are requesting approval of three Critical Area variances for the purpose of remodeling and expanding an existing nonconforming dwelling. The variance requests seek to permit the following development activities within the 100-foot Shoreline Development Buffer (the “Buffer”): (1) a 239-square-foot screen porch addition to be located 86 feet from Mean High Water (“MHW”); (2) a 95-square-foot master bedroom porch addition at 58 feet from MHW; (3) a 130-square-foot, one-story addition at 88 feet from MHW for the master bedroom dressing room; and (4) a 50-square-foot entry stair and walkway to replace an existing porch that is to be removed, at 88 feet from MHW. The subject property (the “Property”) is a 4.924-acre improved parcel owned by the Applicants and located at 4780 Ferry Neck Road, Royal Oak, Maryland. The Property is shown on tax map 52, grid 04 as parcel 07, and its zoning classification is Rural Conservation (“RC”). The Property is improved by an approximately 3,114 square-foot, two-story nonconforming dwelling constructed around 1800, according to tax records. It is located on the west side of the Ferry Neck peninsula about ¾ of a mile north of Benoni Point, and is bound to the west by the Choptank River and to the south, north and east by residential properties also within the RC zone. Applicants purchased the Property in 2016 and in 2018 received a certificate of nonconformity stating that approximately 844 square feet of the footprint of the existing dwelling is situated within the Buffer.

Applicants' request is made in accordance with Chapter 190 Zoning, Article II, §190-8.5, Table II-6; Article VIII, §190-50.3; and Article VII, §190-58.4 of the Talbot County Code (the "Code").

Present at the hearing were Board of Appeals members Phillip Jones, Chairman, Frank Cavanaugh, Vice-Chairman, and Paul Shortall, member. Members Louis Dorsey and Zakary Krebeck participated remotely by teleconference pursuant to the Fourth Amended Emergency Declaration of the County Council of Talbot County, adopted May 26, 2020 (the "Emergency Declaration"), declaring a state of emergency in Talbot County expiring at midnight on June 30, 2020, recognizing the continued threat posed by COVID-19 and allowing for county board and commission meetings to include an option for participants and the public to "participate by teleconference, live streaming, or other available technology . . ."; and pursuant to Board of Appeals Resolution 20-01, passed on June 1, 2020, implementing a policy to coordinate the Talbot County Board of Appeals Rules of Procedure (the "Rules") with the Emergency Declaration by defining the term "convene" in Rule 4 of the Rules to include Board members who choose to participate remotely by any of the methods set forth in the Emergency Declaration. Maria Brophy, Planner II and Miguel Salinas, Assistant Planning Officer, attended the hearing on behalf of Talbot County. William C. Chapman was the attorney for the Board of Appeals (the "Board"). Zachary Smith, Esq., 114 Bay Street Building C, Easton, Maryland, appeared on behalf of the Applicants. 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 Variances with Applicants' narrative as Attachment A.

2. Tax Map of subject property.
3. Notice of Public Hearing for advertising in *The Star Democrat* newspaper.
4. Newspaper Confirmation.
5. Notice of Public Hearing and Adjacent Property Owner List.
6. Standards for Non-Critical Area Variance with Applicants' responses.
7. Staff Report prepared by Elisa Deflaux, Planner II.
8. Planning Commission Comments.
9. Sign Maintenance Agreement/Sign Affidavit.
10. Comments from Critical Area Commission.
11. Authorization Letter.
12. Disclosure and Acknowledgment Form.
13. Aerial Photos.
14. Direction to the Property
15. Site Plan of the Property prepared by Lane Engineering, LLC.
16. Construction/Floor plans prepared by Speight Studio Architects, Inc.
17. Property deed.

Mr. Smith presented on behalf of Applicants in support of the application. He described the existing dwelling as a very historic home. When the dwelling was first constructed over 200 years ago, he said, it was likely situated more than 100 feet from MHW, but erosion over time has caused the waterline to encroach on two sides such that the dwelling is 58 feet from MHW at its closest point. Mr. Smith said the Applicants wish to convert an existing mudroom and library that encroach in the Buffer to a master bedroom. The current space has no closet, so a small

bump-out is needed for the same. Applicants also desire a small porch off the master bedroom and a small screened porch off the family room, Mr. Smith said.

Mr. Jones said it is evident at the Property that the wind and wave action has caused substantial erosion over time, and that the Property's historical footprint was likely significantly larger. Mr. Cavanaugh noted that the Critical Area Commission had no issues with the Applicants' proposed construction. Mr. Dorsey said Applicants' request is a minor request and meets all standards. Mr. Krebeck agreed, but insisted that a Buffer Management Plan should be required; Mr. Smith said Lane Engineering, LLC has developed such a plan.

The Board then considered the application. Based on the testimony, application and exhibits, upon motion and seconded, the Board approved the requested variance, 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 this chapter would result in unwarranted hardship. According to State Department of Assessment and Taxation records, the existing dwelling was built around 1800. Although the Property has a straight length of shoreline, the Property has Shoreline Development Buffer impacts on two sides, from the west and the south. This special condition locates portions of the existing structure and the proposed renovations to the structure within the 100-foot Buffer. This impact is a result of the western neighboring property's shoreline configuration.

3. A literal interpretation of the Critical Area requirements will deprive the property owners of rights commonly enjoyed by other property owners in the same zoning district. Many residences in all zoning districts, including the Rural Conservation zone, are configured with outdoor areas. The request for the four Critical Area variances does not appear to be providing the Applicants a particular advantage over other property owners within the RC zone. The additions requested would allow the Applicants to update a dated dwelling to meet their current needs as well as create a patio area for outdoor enjoyment of the Property.
4. The granting of the variances will not confer upon the property owners any special privilege that would be denied by this chapter to other owners of lands or structures within the same zoning district. The requested variances allow the Applicants to update a residential dwelling built around 1800. Applicants believe that the proposed additions are modest in size, given the constraints on the Property due to the location of the dwelling. The current owners did not erect the existing dwelling in its location on the Property. Allowing modifications to improve functionality and livability would not grant any special privileges to the Applicants.
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 a 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. The Applicants did not participate in the original subdivision and were not involved in the construction and location

of the current dwelling. Granting the variances should not be contrary to the public interest or a detriment to neighboring properties. Granting these Critical Area variances does not appear to provide Applicants a particular advantage over other property owners within the RC zone. The additions requested will allow Applicants to update a dated dwelling to meet their current needs as well as create porches for outdoor enjoyment of the Property.

6. The granting of the variances will not adversely affect water quality or adversely impact fish, wildlife or plant habitat, and the granting of the variances will be in harmony with the general spirit and intent of the state Critical Area Law and the Critical Area Program. Given the construction date of the dwelling and the constraints of the Property, Applicants have developed a modest project that would allow for the update of the dwelling and is not inconsistent with the Critical Area Program. A modest amount of new lot coverage is being added (1,366 square feet) and will be mitigated for with plantings in the 100-foot Buffer at three times the new lot coverage.
7. The variances shall not exceed the minimum adjustment necessary to relieve the unwarranted hardship. The requested variances provide the minimum adjustment necessary to allow Applicants to update the dwelling. Currently the closest point of the existing dwelling to MHW is 58 feet, and the proposed additions will be no closer to MHW than 58 feet, or, no closer to MHW than the dwelling is in its current state. The requested variances of the 100-foot Buffer would allow the Applicants to modernize an existing older dwelling, and add a dressing room and porches with roofs as well as a walk, stoop and step on the water side. The

dwelling is relatively small and the remodeling has been thoughtfully designed to have most renovations occur outside the Buffer.

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

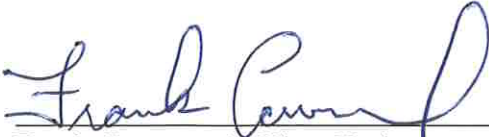
RESOLVED, that the Applicants, **EDWARD W. TREACY III and KRISTIN B. TREACY** (Appeal No. 20-1708) is **GRANTED** the requested variances consistent with the evidence presented to the Board of Appeals, subject to the following conditions:

1. Applicants shall make applications to the Office of Permits and Inspections, and follow all of the rules, procedures and construction timelines as outlined regarding new construction.
2. Applicants shall commence construction on the proposed improvements within eighteen (18) months from the date of the Board of Appeals' approval.
3. A Buffer Management Plan showing all proposed impacts and appropriate mitigation of at least 3:1 for all disturbance within the Buffer shall be submitted in conjunction with the building permit application, and a permit for proposed improvement shall not be issued until the Buffer Management Plan has been approved by Talbot County.

GIVEN OVER OUR HANDS, this 7th day of July, 2020.

**TALBOT COUNTY BOARD OF APPEALS**

  
Phillip Jones, Chairman

  
Frank Cavanaugh, Vice-Chairman

  
Louis Dorsey, Member

  
Paul Shortall, Member

  
Zakary Krebeck, Member