

TALBOT COUNTY BOARD OF APPEALS
Appeal No. 17-1670

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., September 18, 2017, on the application of **JULIE MONACO and CONRAD GORDON** (Applicants). The Applicants are requesting two variances: (1) to exceed the 100-foot limit for a 215 foot walkway over non-tidal wetlands and wetland buffer and (2) to construct an elevated walkway 85 feet across the shoreline development buffer as part of total 300' x 5' walkway, elevated four feet, to a pier on the property. The property is located at 5318 Black Walnut Road, Tilghman, Maryland in the Rural Conservation (RC) zone. The Applicant, Julie Monaco, owns the property. The request is made in accordance with Chapter 190 Zoning, Article III, §190-75G, Article VI, §§190-139 and 190-140, 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. Gene Slear, Senior Vice President, Environmental Concern, P.O. Box P, St. Michaels, Maryland 21663, appeared and testified on behalf of the Applicants. Brennan Tarleton, Planner I, attended the hearing on behalf of Talbot 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 Applicants' written responses to each applicable warrant.
7. Staff Report dated September 18, 2017.
8. Sign maintenance agreement.
9. Site Plan prepared by Environmental Concern, Inc.
10. Critical Area Commission comments dated August 28, 2017.
11. State of Maryland Department of the Environment, Letter of Authorization, effective March 24, 2017, Authorization No. 16-NT-2008/201660017.
12. Authorization letter from Julie A. Monaco dated September 8, 2017.
13. Independent Procedure Disclosure and Acknowledgement Form.
14. Aerial photograph.
15. Photographs from site visit on August 10, 2017.
16. Email dated 09/15/17 @ 5:42 p.m. and 6:15 p.m. with Attachment A and Attachment B.

Mr. Slear testified in support of the application. He said he had been engaged by Ms. Monaco in 2009 to begin repairing and restoring the shoreline and the shoreline buffer of the subject property. He presented a series of photographs of the property's shoreline and buffer showing extensive deterioration as of 2009 and the improvements made since then. The photographs were made a part of the record as Applicants' Exhibit No. 1.

Mr. Slear explained that by 2009 the property's shoreline was extensively overgrown with vegetation and tidal action had created a noxious pool of standing water behind the shoreline. Unknown persons had used the property as an illegal dumping ground and as a campsite. Since 2009 the owner with the assistance of Environmental Concern has made significant improvements to the property by stabilizing the shoreline and the non-tidal wetland area inside the shoreline. Also, the owner has removed the illegally dumped debris and cleaned up the former campsite.

The property, which is 10 acres in total, now consists of a stabilized shoreline of about 610 feet and an area of tidal and non-tidal wetlands of varying width behind the shoreline.

The owner wants to access a pier at the shoreline from the fast land portion of the property by constructing a small, elevated walkway across the wetlands and the shoreline buffer. The State of Maryland has issued a permit for the walkway subject to the County's approval.

Mr. Slear submitted an amended application for the walkway to be 155 feet over non-tidal wetlands and 145 feet over the shoreline development buffer for a total of 300 feet. The excavation for the pilings will have a minimal permanent impact on the environment. The equipment needed to install the pilings will utilize mats designed to minimize their temporary impact and the owner will repair any resulting damage. The owner has already provided for the mitigation of the permanent disturbance with 8,577 square feet of plantings within the buffer exceeding a mitigation ratio of three to one.

In response to a question from a Board member Mr. Slear confirmed that the elevated walkway over the fast land of the property is necessary because the fast land is low enough that it is periodically flooded during unusual high tide events.

Responding to another question Mr. Slear explained the method Environment Concern used to eliminate the invasive vegetation over a period of three years.

Another Board member asked about the location of the walkway and whether that location represented the minimum adjustment necessary for the Board to consider. Mr. Slear said that the property owner has a right to access her pier from her property and to do so she will have to cross tidal and non-tidal wetlands. An elevated walkway will minimize impacts on those sensitive areas. In addition, the proposed location of the walkway is where those sensitive areas are at their narrowest.

Mr. Tarleton advised the Board that the Staff Report (Board's Exhibit No. 7) had a typographical error. On page four the walkway's maximum width indicated as four feet should be five feet.

The next witness was Merry Danuceau, 5379 Anchor Road, Tilghman, MD. She said she lives in the community adjacent to the subject property and asked about the size of the walkway. She asked if there was going to be a boardwalk along the shoreline of the property. Mr. Slear responded no.

She also asserted that the shoreline work done by Environmental Concern had caused damage to the adjacent community's shoreline. Mr. Slear responded that all the shoreline restoration work they have done on the subject property was done after extensive review by State and local authorities and was done in accordance with the permits issued by those authorities.

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 environmental features on the property prohibit access from the house to the pier absent variances for a walkway.
3. A literal interpretation of the ordinance will deprive the property owner of rights commonly enjoyed by other property owners in the same zone. As do other riparian property owners the Applicants have the right to reasonable access to their shoreline. The access is not available to them without variances for a walkway.
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. As stated above the Applicants need the requested variances to access their pier because of the natural state of their property. Given similar circumstances other property owners would be granted 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. The need for the variance is due to natural conditions on the property. The Applicants have made extensive improvements to the property all designed to correct past natural and man-made damage and to limit future damage the property as well as potential damage to the waters of the Chesapeake Bay and its tributaries.
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. Given the mitigation and improvements on the property its total environmental impact may be positive.
7. The variance does not exceed the minimum adjustment necessary to relieve the unwarranted hardship. The Applicants have designed their improvements to the property in ways that will minimize any adjustment.

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

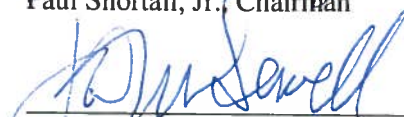
RESOLVED, that the Applicants, **JULIE MONACO and RICHARD GORDON** (Appeal No. 17-1670) are **GRANTED** the requested variances consistent with the evidence presented to the Board of Appeals, subject to the following conditions:

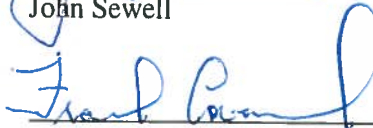
1. Construction of the elevated walkway shall conform to the requirements and conditions as outlined in the Maryland Department of the Environment Letter of Authorization (16-NT-2008/201660017) dated effective March 24, 2017.
2. The Applicant shall make applications to the Office of Permits and Inspections, and follow all of the rules procedures, and construction timelines as outlined regarding new construction.
3. The Applicant shall commence construction on the proposed improvements within eighteen (18) months from the date of this Decision.
4. The Applicant shall provide mitigation for any impacts to the buffer and vegetation at a ratio of three times the disturbance to the buffer.

GIVEN OVER OUR HANDS, this 17th day of October, 2017.

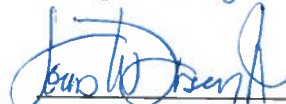
TALBOT COUNTY BOARD OF APPEALS


Paul Shortall, Jr., Chairman


John Sewell


Frank Cavanaugh


Phillip Jones, Vice Chairman


Louis Dorsey, Jr.