

DECISION

TALBOT COUNTY BOARD OF APPEALS

Appeal No. 21 -1727

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 6:40 p.m. on October 4, 2021, on the Application of **Lucinda A. Arlotta** (the Applicant).

The Applicant is requesting a Critical Area variance: to construct a ten foot (10') wide residential driveway that will encroach approximately 1,617 square feet into a portion of the Shoreline Development Buffer (SDB) associated with a tributary stream. The request is made in accordance with Chapter 190, Article III, §190-15.11 C 2 and Article VII, § 190-58 of the *Talbot County Code* (the *Code*). The property is located at 32777 Hickory Run Drive, Cordova, MD 21625 in the Rural Conservation (RC) Zone. The property owner was Barbara Mitchell at the time the application was filed, but is now the Applicant, Lucinda Arlotta. The property is shown on Tax Map 12 Grid 17 Parcel 60, Lot 3.

Board of Appeals members Phillip Jones, Chairman, Frank Cavanaugh, Vice Chairman; Paul Shortall, Louis Dorsey, Jr. and Zakary A. Krebeck 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 and Elisa Deflaux, Planner II. Mr. Zachary Smith, Esq., Armistead, Lee, Rust and Wright, P.A., 112 Bay Street, Easton MD 21601 represented the Applicant. The Applicant was present. There were other members of the public in attendance.

The Chairman inquired if all members had visited the site individually. He received affirmative responses from each member. The following Board exhibits were then offered and admitted into evidence as indicated:

- Exhibit 1. Application for a Critical Area Variance with Attachment A;
- Exhibit 2. Tax Map with subject property highlighted;
- 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 B;

- Exhibit 7. Staff Report prepared by Elisa Deflaux, Planner II;
- Exhibit 8. Sign Maintenance Agreement/ Sign Affidavit;
- Exhibit 9. Comments from Critical Area Commission Staff;
- Exhibit 10. Authorization letters;
- Exhibit 11. Independent Procedures Disclosure and Acknowledgement Form;
- Exhibit 12. Aerial Photo;
- Exhibit 13. Site Plan prepared by Davis, Bowen & Friedel, Inc.
- Exhibit 14. Private Road Maintenance Agreement.

Mr. Jones requested that those planning to give testimony be identified and sworn. The witnesses, Mr. Smith and Ms. Arlotta were both sworn. The Chairman then requested that Mr. Smith proceed with the Applicant's presentation.

Mr. Smith first made a correction for the record. At the time the application was filed, Ms. Arlotta was the contract purchaser of the property. She settled on the property about a week prior to the hearing. Due to the conditions prevalent in the local real estate market, Ms. Arlotta did not feel comfortable asking the seller to extend the contract. Ideally, she would have waited until the variance matter was heard, but opted to proceed, based in part on Mr. Smith's counsel regarding the variance issue. Although he did not wish to predict what the Board would do, he had explained that he believed this to be a "textbook variance case". He had another case before the Board in August where the question was the need for a variance to build a driveway – it was granted, and that is the same fact pattern that is before the Board in the matter being presented. For that reason he felt comfortable with his advice to Ms. Arlotta.

The property involved is a part of the Mitchell Farm in Cordova. Mr. Smith is personally familiar with the farm having camped there with the Boy Scouts while growing up. It is an agricultural area. The Mitchells created a number of lots primarily for their children and other family members. This lot was created by a subdivision plat in 1976, then conveyed to Mr. Steven Mitchell, one of the original owner's children. After Mr. Mitchell passed away, his wife continued to own the property until purchased by the Applicant. It remained undeveloped until 2018 when a sewage disposal area was platted and recorded.

There have been numerous changes in the law over the intervening years, the most significant being the adoption of Talbot County's Critical Area Program and the establishment of the SDB and expansions to the SDB. The overlay of the Program requirements on this property created a number of constraints as shown on Exhibit 13, the Site Plan. The property is two and six

tenths (2.6) acres in size, and when one takes into consideration the stream buffers – there are two, one on the east and one on the west of the proposed residence -- the result is that the developable area is compressed to a very narrow strip, in which the residence and septic must be constructed, and the driveway put in place to serve the residence. On this site it is impossible to do that without a variance.

The sewage disposal area (SDA) is located so as to cause the least environmental impact, but it and the location of proposed residence do require that the driveway encroach on a small portion of the stream SDB buffer. While the home can be built outside the sensitive areas, there is no approved way to cross the SDA. A large portion of the property's road frontage has been denied access to the private road serving the site further limiting the options for a driveway. After consultation with her surveyor, the Applicant believed that placing the driveway on the left (or west) made the most sense primarily because that placement will not require the removal of any trees. This would create the minimum disturbance necessary to construct a driveway under the unique factual circumstances of this particular property. The driveway will be ten (10) feet wide and surfaced in gravel. Mr. Smith and the Applicant are both in agreement that ten feet (10') is the minimum necessary to provide for delivery vehicles. He pointed out that the proposed driveway for this application is several feet narrower than approved in his previously mentioned case. Mr. Smith also commented that the Staff Report was favorable, and that the Critical Areas Staff comments, Exhibit 9, raised no objection to the proposed variance.

Mr. Smith then called the Applicant. Ms. Arlotta resides at 8925 Discovery Terrace, Easton, MD 21601. The witness confirmed that she is the current owner of the property for which the variance is sought. She is planning to build her home on the property, and hopes to begin construction after the holidays. Directing her attention to the site plan, Mr. Smith confirmed with the witness that the small two bedroom residence and septic system would be located outside the SDB, and that she would require a driveway to access the proposed residence. The driveway, unfortunately, has to cross the stream buffer as the other lot constraints prevent any other logical place of access. The proposed location is in the cleared area and will not require removal of trees. She had consulted with Mr. Waters, her surveyor, and both felt the proposed location would be the option causing the least environmental impact. The proposed driveway would be ten feet (10') wide. She did not believe she would require more width.

There was no additional testimony. Mr. Smith stated that the Applicant would be happy to answer any questions proposed by the Board members.

As there were members of the public present, the Chairman asked for any additional comments. Hearing none, he asked if the Board members had comments or questions.

Mr. Dorsey had no questions at the time.

Mr. Krebeck felt that the proposed driveway was the minimum necessary but had some question regarding the 'turn around' shown on the site plan. On the whole he thought that the 'turn around' area shown was probably necessary given the narrow driveway. Mr. Smith commented that the Applicant had decided against building the 'turn around' area as shown on the site plan. It is outside the SDB, but she doesn't think it necessary. Ms. Arlotta commented she didn't want a "parking lot" in front. It would not be attractive.

Mr. Shortall had no questions.

Mr. Cavanaugh stated he was comfortable with the Applicant's answers as supporting the seven (7) findings that the Board is required to meet in order to approve the variance. He noted that the residence was being located in the spot causing the least impact, and there is nowhere one could put a driveway that would not impact the SDB or require the removal of trees. He thought the width of the driveway was modest, and thought the variance justified.

Mr. Jones asked for additional comments. Mr. Dorsey asked if any additional variances were required for the project and was assured that no other variances would be required. Noting that the Board would like to see a storm water concept plan if runoff was going to be an issue, he asked if storm water management would be addressed at the building permit stage and received an affirmative response.

Mr. Jones stated he agreed with his colleagues. He thought this case was more compelling than the case Mr. Smith had referenced. Mr. Smith commented that he believed this to be a 'classic' variance case.

Having considered the Code, the Application and the testimony presented, the Board makes the following findings of fact and conclusions of law:

1. The Applicant has submitted written applications for a Critical Area variance -- to permit the construction of a ten foot (10') wide residential driveway encroaching 1,617 sq. ft into the SDB. 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 property for which the variance is sought was created in 1976 in a subdivision plat recorded at that time. It remained undeveloped until 2018 when Ms. Mitchell sought to see if the property could be developed under the current regulations. The survey delineated the SDB, including steep slopes and stream buffers affecting the property. Combined with the denied access prohibition on the original plat, the only way to access the property would be by encroaching on a portion of the stream buffer for the tributary streams that cross the property. The Applicant has chosen to access the property in the location shown on the site plan, Exhibit 13, since the area is already cleared and will not require the removal of existing trees. The combination of stream buffers, SDA and denied access make this property unique and properly the subject of a variance.
4. All property owners in the critical area have the right to construct a residence on an unapproved lot that existed prior to the enactment of the County's Critical Area Program. In order to exercise that right, for this property, a critical area variance is required for the encroachment of the portion of the driveway that projects into the stream buffer.
5. The Applicant will not enjoy any special privileges when the variance is granted. The variance merely allows the Applicant to utilize her lot for a permitted purpose, construction of a residence and necessary amenities such as a driveway.
6. The Applicant has recently acquired the property, and has done nothing to cause the need for a variance. The variance is required due to the unique set of constraints that make placement of a driveway in any other location a greater impact on the environment.
7. The Applicant has carefully considered her options with regard to the property. Both the residence and the septic system will be placed on the least sensitive areas of the property. The Applicant has chosen the location of the driveway carefully as the location shown will be in open land, no trees will be removed, and the area to be impacted is small, given the size of the driveway. Mitigation will be required at a three to

one ratio (3:1) for disturbance in the buffer. The Applicant will be required to address storm water management at the building permit stage due to soil disturbances necessitated by the construction of residence and driveway.

8. Applicant proposes a small two bedroom residence with a narrow ten foot (10') driveway for access. She is willing to forego the 'turn around'. She and her consultants have done their best to minimize the area requiring a variance given the various site constraint.

For the reasons set out in the Board's findings, Mr. Cavanaugh made a motion that the requested variance be granted, subject to the conditions suggested by Planning Staff and the Critical Areas Commission staff, as follows:

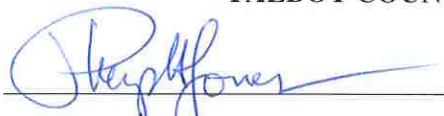
1. Mitigation at a three to one (3:1) ratio for permanent disturbance to the one hundred foot (100') SDB, one to one (1:1) mitigation for all temporary disturbance in the Buffer and an additional one to one (1:1) mitigation for the square footage of tree canopy removed is required.
2. Prior to the start of construction, the Applicant shall field delineate and flag the limits of the Critical Area Buffer for County staff inspection to help ensure only the square footage of the driveway approved under this variance shall impact the Buffer.
3. Buffer establishment is to be based on the total square footage of lot coverage for all portions of the Buffer impacted.
4. The Applicant shall not receive a building permit for the proposed project until the Buffer Management Plan associated with this variance is approved by Talbot County.
5. The Applicant shall comply with and address all Critical Area Commission comments and requirements including the completion of a Buffer Management Plan that complies with the Critical Areas Law. The Applicant shall provide three to one (3:1) mitigation for a permanent disturbance within the Buffer and one to one (1:1) mitigation for any temporary disturbance within the Buffer as a condition of this approval.

Mr. Dorsey seconded the motion. There being no further discussion, the Chairman called for a vote. The motion passed with a vote of 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 VARIANCE BE GRANTED.

GIVEN OVER OUR HANDS, this 12TH day of NOVEMBER, 2021.


TALBOT COUNTY BOARD OF APPEALS



Phillip Jones, Chairman



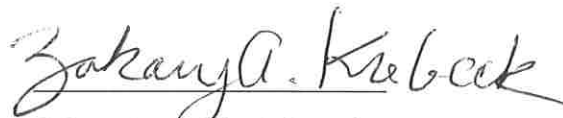
Frank Cavanaugh, Vice-Chairman



Louis Dorsey, Jr., Member



Paul Shortall, Member



Zakary A. Krebeck, Member