

DECISION
TALBOT COUNTY BOARD OF APPEALS
Appeal No. 20-1709

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 **SAFE HARBOUR CONSTRUCTION, LLC** (the “Applicant”). The Applicant is requesting approval of a non-Critical Area variance for the purpose of constructing a 1.5-story model home with handicap accessible amenities within the 50-foot front yard setback, to be 30 feet from the property line at its closest point. The model home is to be used as a professional office on the first floor and an accessory dwelling on the second floor. The subject property (the “Property”) is a 0.142-acre improved parcel owned by William G. Poore III and located at 947 Talbot Street South, St. Michaels, Maryland. Dawn Lednum is the contract purchaser for the Property. The Property is shown on tax map 201, grid 0 as parcel 1305, and its zoning classification is General Commercial (“GC”), within the Gateway Overlay District (“GWO”). The Property is improved by 1,107 square-foot, two-story nonconforming dwelling constructed around 1900. It is bound to the southwest by State Highway Rt. 33, identified as Talbot Street South, to the northwest by residential/commercial property and to the east by a commercial property. All adjacent parcels are within the GC zone. The area encompassing the proposed variance request is not situated within the 100-foot Critical Area buffer.

Applicant’s request is made in accordance with Chapter 190 Zoning, Article II, §190-11.4, Table II-11; and Article VII, §190-58.3 of the Talbot County Code (the “Code”). Pursuant to §190-11.4, Table II-11, a 50-foot front setback is required for all structures on properties

within the GC zone, along with 10-foot side setbacks and a 10-foot rear setback from adjacent properties also within the GC zone.

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. Miguel Salinas, Assistant Planning Officer and Maria Brophy, Planner II attended the hearing on behalf of Talbot County. William C. Chapman was the attorney for the Board of Appeals (the “Board”). Christopher D. Waters, PLS of Davis, Bowen & Friedel, Inc. appeared on behalf of the Applicant.

The following exhibits were offered and admitted into evidence as Board’s Exhibits as indicated:

1. Application for a Non-Critical Area Variance 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 Applicant's responses.
7. Staff Report prepared by Maria Brophy, Planner II.
8. Sign Maintenance Agreement/Sign Affidavit.
9. Authorization Letter.
10. Disclosure and Acknowledgment Form.
11. Aerial Photos.
12. Photos from Site Visit.
13. Direction to the Property
14. Site Plan of the Property prepared by Davis, Bowen & Friedel, Inc.
15. Construction/Floor plans prepared by Safe Harbour Construction, LLC.
16. Board of Appeals decision No. 17-1667.
17. Email dated April 20, 2020 to Chris Corkell from Henry R. Dierker, III, Maryland Department of Transportation.

Mr. Waters said the Application had been previously approved in Board of Appeals decision 17-1667 on July 14, 2017, but that the authorization had since expired and no extension was filed, requiring Applicant to return to the Board to renew the request. Building constraints on the site related to the Maryland State Highway Administration have been resolved, Mr. Waters said.

Mr. Jones asked if anything had changed from the prior application, to which Mr. Waters responded that the stormwater management plan had enhanced detail. The existing shed will be removed, and the existing home will be demolished, Mr. Waters said, but all other facts relating to the initial application remain the same.

In response to a question from Mr. Cavanaugh, Mr. Waters said the new building will be situated further back from the front property line than the existing home. Ms. Brophy clarified that the original application called for the new building to be 28 feet from the property line; the revised application now moves it two feet back to 30 feet. Mr. Jones said the existing home is on an angled alignment with Rt. 33, and the proposed new building will be in a parallel alignment with Rt. 33.

Mr. Krebeck said he concurred with the Staff Report findings, but recommended, because of the Property's situation within the GWO district, that future interparcel connection, including pedestrian interconnectivity, be considered in the alignment of the proposed development. Mr. Salinas said a plan for a service road exists in the GWO plan, but not in the County's plan. The next sidewalk closest to the Property, Mr. Salinas said, is in the Town of St. Michaels, and the Town's main concern was a set-aside for sidewalk connection. Mr. Waters said whatever was put in place now for such interparcel connectivity may not comply with a future drainage study pattern.

Mr. Cavanaugh said right-of-way issues were resolved, and that the State Highway Administration had no objection to the Application. The proposed development would improve the Property, he said. Mr. Shortall agreed.

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. Unique physical characteristics exist, such as unusual size or shape of the property or extraordinary topographical conditions, such that the literal enforcement of the provisions of this chapter would result in a practical difficulty or unreasonable hardship in enabling the applicant to develop or use this property. The existing legal nonconforming dwelling is currenting within the 50-foot front yard setback, approximately 16 feet from the front property line. Additionally, the legal nonconforming Property does not meet the minimum lot size requirements of the GC zone, and is small in size compared with adjacent properties. The proposed development is designed to meet both side and rear setbacks. Given the small size of the Property, it would be difficult to satisfy all setback requirements and have a reasonably sized structure on this parcel. Decision 17-1667 is hereby incorporated by reference herein.
3. The need for the variance is not based upon circumstances which are self-created or self-imposed. The existing dwelling was built around 1900, according to tax assessment records, prior to the enactment of any zoning regulations. Due to the legal nonconforming dimensions of the Property, the need for a variance is inherent and not self-created or self-imposed. Decision 17-1667 is hereby incorporated by reference herein.
4. Greater profitability or lack of knowledge of the restrictions shall not be considered as sufficient cause for a variance. Applicant is constructing a facility to display home safety equipment to Talbot County's elderly population. The lot itself is between two other commercial lots and will serve as a beneficial service for Talbot County's aging population. As noted above, the small size of the

Property restricts the construction of a reasonably sized structure. Decision 17-1667 is hereby incorporated by reference herein.

5. The variance will not be contrary to the public interest and will not be a detriment to adjacent or neighboring properties. The Model Home will be a welcome improvement to the GWO district. The improvements will have no impact on the neighboring properties, given that said properties are also used for commercial purposes. Decision 17-1667 is hereby incorporated by reference herein.
6. The variance shall not exceed the minimum adjustment necessary to relieve the practical difficulty or unreasonable hardship. The Board finds that the proposed development is modest in size and not out of scale with existing commercial buildings on adjacent properties. Even with the small lot size, the placement of the proposed structure will comply with both rear and side setbacks. Decision 17-1667 is hereby incorporated by reference herein.

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

RESOLVED, that the Applicant, **SAFE HARBOUR CONSTRUCTION, LLC** (Appeal No. 20-1709) is **GRANTED** the requested variance consistent with the evidence presented to the Board of Appeals, subject to the following conditions:

1. Applicant shall make application to and seek waivers from any applicable standards of the Gateway Overlay District by the Planning Commission.
2. 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. Applicant shall commence construction on the proposed improvements within eighteen (18) months from the date of the Board of Appeals' approval.

GIVEN OVER OUR HANDS, this 6 th 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