

The Dorchester County Board of Appeals met in regular session on Thursday, March 23, 2017 in Room 110 of the County Office Building at 7:00 PM. Present were, Catherine McCulley, Chair, Gordon Hill, Wendell Foxwell, Lin Spicer, Steve Dodd, Director of Planning and Walt Gunby, Attorney. Absent was Elizabeth Hill.

An introduction was made by Chairperson McCulley explaining the procedures of the meeting to the audience. She then asked Mr. Dodd to read the first case.

Case # 2604- Grason Jackson
Applicant: Steve Whitten

To request a variance of 55' from the front yard setback requirement for a dwelling unit located abutting a major collector road. Applicant proposes to construct a dwelling unit 45 feet from front property line. Property is located at 5108 Rhodesdale-Vienna Road, Vienna, MD 21869. Containing 0.5 Acres, zoned AC.

Steve Whitten, Applicant, Fink, Whitten, & Associates, 108 Dorchester Ave., Cambridge, MD, and any other person who would be testifying in this case, were sworn in.

Mr. Dodd read the case and all pertinent information into the record. Mr. Dodd noted that there is a plat pending in the Planning & Zoning Office, prepared by Mr. Whitten, consolidating parcels 74, 75 and 76 into a single parcel. The plat has been approved but has not yet been recorded. Mr. Whitten agreed that if this variance request is approved, the plat will then be recorded.

Ms. McCulley advised the applicant of his two options, to rely on his written responses to the criteria or comment on the responses. Mr. Whitten stated that he would rely on his written responses and supplement with some background history.

Mr. Whitten advised that the three parcels together make up ½ acre. Mr. Jackson would like to place a new dwelling and septic system on the three parcels, but in order to do this, per Health Department request, he must abandon the interior property lines and make one parcel. Mr. Whitten noted that in the process of doing this, they realized that the setback from Rt. 331 is 100 ft., and the rear setback is 50 ft. Once this new lot is created it is no longer a lot of record and will require a variance for the front yard setback. Mr. Whitten explained how he arrived at the variance of 55 ft. from the front yard setback. He noted that a variance from the rear setback will not be needed. Mr. Spicer asked why they were not requesting a variance from the rear rather than the front. Mr. Whitten advised that there is an accessory structure and a well to the rear.

Mr. Dodd read agency comments into record. The Planning Commission, based on the information provided, would like the Board of Appeals to make sure the applicant demonstrates a hardship and consider comments from surrounding neighbors. The Health Department has no objection to the request. The Department of Public Works had no comment or objection to the variance, however, the Maryland Highway Administration may have an issue with the setbacks from the right of way. The applicant should contact SHA for confirmation. A stormwater management plan and erosion sediment control plan will need to be submitted for review and approval prior to any new construction in excess of 5,000 sq. ft. Mr. Dodd noted that comments were

solicited from Rochelle Outten of the State Highway by e-mail on March 8, 2017 and no response was received.

No one spoke in favor of this request and no one was opposed.

Ms. McCulley announced the end of testimony and the Board began their deliberations.

At this time, each Board member explained his decisions regarding the criteria.

After all testimony, Ms. McCulley called for a motion regarding this case. Mr. Foxwell made a motion to approve the request with the stipulations that the applicant obtain the necessary permits and the plat consolidating the three lots be recorded. Seconded by Mr. Spicer and unanimously carried.

**Case # 2607- Sean & Sherri Delioselle
Steve Whitten- Applicant**

To request a variance of 24' of the required 40' front yard setback to allow an accessory building to be located 16' off of a private right of way line. Property is located at 4311 Osborne Road Hurlock, MD 21643. Containing .999 acres. Zoned AC.

Steve Whitten, Applicant, Fink, Whitten, & Associates, 108 Dorchester Ave., Cambridge, MD, and any other person who would be testifying in this case, were sworn in.

Mr. Dodd read the case and all pertinent information into the record.

Ms. McCulley advised the applicant of his two options, to rely on his written responses to the criteria or comment on the responses. Mr. Whitten stated that he would rely on his written responses and supplement with some background history.

Mr. Whitten referenced a survey done by William Ludlow dated 1976 and noted this lot was created in 1970. In 1978, three more lots were created. In 1992, Mr. Ludlow mapped the parcels again, defining where the right of way was located. At that time, all three lot owners executed a maintenance agreement for the right of way.

Mr. Whitten advised that the Zoning Code requires setbacks from privately owned roads, local roads and right of ways. He noted that the primary dwelling on the subject property is located 8.6 ft. from the edge of the right of way, and tax assessment records show the house has been there since 1973.

The accessory structure will be a standard pole barn and will have electricity but no plumbing. Mr. Spicer asked if the surrounding neighbors had any comments. Mr. Dodd stated no.

Mr. Dodd read agency comments into record. The Planning Commission, based on the information provided would like the Board of Appeals to make sure the applicant demonstrates a hardship. The Department of Public Works had no comment or objection to the variance requested. A stormwater management plan and erosion

sediment control plan will need to be submitted for review and approval prior to any new construction in excess of 5,000 sq. ft. The Health Department has no objection to the requested variance.

No one spoke in favor of this request and no one was opposed.

Ms. McCulley announced the end of testimony and the Board began their deliberations.

At this time, each Board member explained his decisions regarding the criteria.

After all testimony, Ms. McCulley called for a motion regarding this case. Mr. Foxwell made a motion to approve the request with the stipulation that the applicant obtain all required permits for the accessory structure. Seconded by Mr. Hill and unanimously carried.

**Case # 2608- Kevin McGinnis
Ryan Showalter- Applicant**

A request has been made for a variance from the Expanded Tidewater Buffer to permit installation of an in-ground pool and deck within 129.5' of mean high water. Zoned RR-Rural Residential. Property is located at 5906 Heather Lane Cambridge, MD 21613. Containing 2.37 acres.

Ryan Showalter, Esq., Applicant, 100 N. West Street, Easton, MD, Renee Hixson, Owner, 5906 Heather Lane, Cambridge, MD, also 68 Cherrywood Lane, Media, PA and any other person who would be testifying in this case, were sworn in.

Mr. Dodd read the case and all pertinent information into the record.

Ms. McCulley advised the applicant of his two options, to rely on his written responses to the criteria or comment on the responses. Mr. Showalter stated that they would rely on their written responses and supplement further.

Mr. Showalter reviewed the site plan prepared by Whitten & Associates, noting where the 100 ft. and expanded buffers are located. He stated that the property currently complies with the lot coverage limitations and will still be in compliance if the variance for the swimming pool and deck is approved. Mr. Showalter pointed out that the applicants are in a unique and unfortunate position from a buffer prospective since the General Assembly changed the laws, prior to their ownership, to require expansion of the buffer for hydric soils. He advised that the applicants now have 67% of their property encumbered by shoreline buffer or expanded buffer. Under the current regulations, if they had 8% more of the property encumbered by buffers, there would be no need for a variance. He noted that the law states if 75% or more of the parcel is in the buffer or expanded buffer, the local jurisdiction can permit development in the expanded buffer as long as the owner provides mitigation at a 1:1 ratio.

Mr. Showalter reviewed Applicant's Exhibit 1. He noted that in the Staff Report and the Critical Area letter dated March, 20, 2017, both state that there is room for the pool and deck outside the buffer. Mr. Showalter pointed out that the pool would need to

be constructed in the front yard to be out of the buffer, and this would be unusual from a use and community esthetics standpoint. He also noted that placing the pool in the front yard would be a great distance from the house and the kids would need supervision since they could not be seen from the house.

Mr. Showalter asked Mrs. Hixson to address the Board. She spoke about the reasons they would like to have the pool located in the proposed area.

Mr. Showalter asked Mr. Whitten to address the proposed mitigation. He reviewed the types of plantings that would survive in the mitigation area.

Mr. Showalter reviewed the Variance Application Narrative noting applicant's answer to criteria question (c). He pointed out that the Hixon's hardship has been created because 67% of their property is encumbered by buffers. Because they don't meet the 75% rule, they must meet the criteria for a variance and if approved, provide mitigation. He argued that there are properties within the same zoning district (RR) that have pools that don't need to obtain a variance or mitigate.

Mr. Dodd read agency comments into the record. The Planning Commission stated that based on the information provided, they would like the Board of Appeals to consider whether being denied a swimming pool constitutes an unwarranted hardship and whether the applicants are being denied all reasonable and significant use of the property if the request is denied. The Department of Public Works had no comment or objection to the variance sought. A stormwater management plan and erosion sediment control plan will need to be submitted for review and approval prior to new construction in excess of 5,000 sq. ft. The Health Department had no objection to the requested variance. Mr. Dodd entered a letter into evidence from Julie Roberts of the Critical Area Commission dated March 20, 2017.

No one spoke in favor of this request and no one was opposed.

There was a lengthy discussion between Mrs. Hixson and the Board members concerning required mitigation and areas where the plantings could be placed. Mr. Soper spoke about plantings that would benefit the habitat areas and plantings that would thrive in hydric soils. They also discussed the vegetation that is presently on the property.

Ms. McCulley announced the end of testimony and the Board began their deliberations.

At this time, each Board member explained his decisions regarding the criteria.

After all testimony, Ms. McCulley called for a motion regarding this case. Mr. Foxwell made a motion to deny the request. Seconded by Mr. Spicer and unanimously carried.

A motion was made by Mr. Hill to approve the minutes of December 8, 2016 with one correction and the minutes of December 22, 2016 and January 19, 2017 as submitted. Seconded by Mr. Foxwell and unanimously carried.

Mr. Dodd reminded the Board members that the continued hearing of the Sunnee Bee Solar project has been scheduled for Thursday, April 13, 2017, 7:00 pm.

Mr. Dodd advised that he has confirmed that the Circuit Court upheld the Board of Appeals decision on the Cambridge Skeet Club vs the FOP.

With no further business, a motion was made by Mr. Hill to adjourn. Seconded by Mr. Foxwell and unanimously carried. Time of adjournment: 8:45 pm

Respectfully submitted,

A handwritten signature in cursive script that reads "Steve Dodd".

Steve Dodd
Executive Secretary