

The Dorchester County Board of Appeals met in regular session on Thursday, June 21, 2018 in Room 110 of the County Office Building at 7:00 PM. Present were, Catherine McCulley, Chairperson, Elizabeth Hill, Vice Chair, Lin Spicer, Cindy Smith, Mike Starling, Walt Gunby, Attorney, and Brian Soper, Environmental Area Planner. Absent: Steve Dodd, Director

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

**Case # 2630 – Charles Bethel, Loribeth Weinstein - Owners  
Steve Whitten - Applicant**

To request as a variance, expansion of an existing dwelling into the 100 ft. buffer and a new pervious deck within the 100 ft. buffer. Property is located at 3614 Fox Run Road, East New Market, MD 21631. Zoned RR/LDA; containing 7.6 acres.

Steve Whitten, 504 Maryland Avenue, Cambridge, MD, Charles Bethel, 3614 Fox Run Road, East New Market, MD, and any other person who would be testifying in this case, were sworn in.

Mr. Soper read the case and all pertinent information into the record. Mr. Soper noted an amendment to the Staff Report, in the Application of Law to Fact, Of the five Critical Area variance criteria, zero (0) have been met should read one (1) has been met.

Mr. Soper advised that the deck does meet the criteria for an Administrative Variance. Mr. Soper stated that instead of waiting to go before the Planning Commission for the Administrative Variance, they are asking the Board of Appeals to rule on this request as well. He noted that the existing deck is within the 100 ft. buffer now.

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 advised that he would rely on his written responses.

Mr. Whitten reviewed the layout of the property. He passed out a drawing depicting the migration of the buffer over time due to erosion, a picture of the cabin before it was completely restored and SDAT sheet noting the existence of the original building as 1800.

He spoke about the migration exhibit explaining the yellow line, offset by 100 ft., shows where the buffer was in 1999. The red line shows where the buffer is in 2018; comparing the difference in usable area on the side of the house proposed for expansion. Ms. McCulley advised that she understands this but noted that the Critical Area Commission does not allow them to take into consideration historic/previous changes. Mr. Whitten advised that he is demonstrating the area that was once there and a setback because of a regulation that moves. Mr. Whitten noted that the area of expansion is limited due to a natural cause.

Mr. Bethel spoke about the proposed addition. He noted at the time they purchased this property, they knew the dwelling would eventually need to be enlarged to meet their

needs. At that time, they had the buffer boundary measured and no problems were found. They would like to expand the cabin area to include a family, dining area and enlarged kitchen.

Mr. Whitten addressed the proposed area of impact. Mr. Whitten spoke about the existing shed noting that under an Administrative Variance, as long as an existing shed had a permit to build, it can be expanded 500 sq. ft. into the buffer as it exists; pointing out this is the same request being made for the addition. Mr. Soper stated that the shed was legally permitted and not in the 100 ft. buffer at the time of permit. The Critical Area Ordinance, through an Administrative Variance, allows for the expansion of a shed that is legally existing or nonconforming within the buffer of 30% or 500 sq. ft. of the structure. He noted that there have been 43 cases, 42 approved and the other one withdrawn. He also noted the Critical Area Commission has allowed these cases to be approved. Mr. Whitten noted that this is allowed under different considerations; because the shed already exists and is now in the buffer, the Administrative Variance applies. The portion of house to be expanded is not in the buffer but the addition will encroach into the buffer. Mr. Whitten advised that if granted, the shed would be removed. He also noted that under the Administrative Variance, the shed can be expanded under the same amount of disturbance or impact they are requesting for the house.

Mr. Whitten addressed a comment made in the Staff Report, “the applicant has the ability to expand the dwelling outside of the 100 ft. buffer.” Mr. Whitten passed out an exhibit with several potential areas of expansion identified. He noted large old trees that would need to be removed and problems such as limited access by emergency vehicles if the addition were placed on different sides of the house, to keep it out of the buffer. He stated that where they would like to expand would have the least impact to the property. He pointed out the location of the existing septic tank, now in the proposed area of expansion, and the drain fields located in the buffer. If the request is approved, the septic system will be upgraded to the latest technology.

Ms. McCulley stated that she does see the limitations of putting the addition in another area, however the unwarranted hardship criteria has not been met, unwarranted hardship meaning the owner would lose the use of the property. Mr. Bethel pointed out that they do not have the space to entertain family or cook for a large gathering in a galley kitchen, which he considers a significant loss of the use of the property.

Mr. Whitten argued pg. 3, items 1-6 of the Staff Report and the answers to the Critical Area Variance Criteria (items a-f) submitted by the applicant. Mr. Soper then explained how through the law, he arrived at the answers to items 1-6 of the Staff Report. Mr. Soper noted the Administrative Variance was a compromise when the Critical Area law was enacted, to allow for those structures that were placed in the buffer through the law. He pointed out the existing shed falls under the Administrative Variance but the addition does not because it is not within the 100 ft. buffer presently. He also noted that the addition to the shed would not be allowed any closer to the buffer than the closest point of the shed. There was a lengthy discussion on the Administrative Variance and unwarranted hardship criteria. Mr. Whitten also argued that the Critical

Area Commission has left room to review on a case by case basis of unwarranted hardship.

Mr. Soper read agency comments into the record. Based on the information provided, the Planning Commission suggested the Board of Appeals take into consideration the hardship. They had no negative comments. The Department of Public Works stated that if the variance is granted, project will need storm water management and sediment and erosion control approval and site plan/application information to demonstrate compliance. He read into record a letter dated June 11, 2018 from Charlotte Shearin, Critical Area Commission. There was no response from the Health Department.

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

Mr. Whitten added that he believes their case demonstrates that the actual site conditions should be given more consideration than where the buffer line is. Other areas would incur considerably more impact environmentally. It was noted that the existing dwelling at its closest point is less than 2 ft. from the buffer.

Mr. Soper reviewed the staff recommendations on pg. 4 of the Staff Report.

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 the deck. Ms. Smith made a motion "to approve the deck under the Administrative Variance." Seconded by Mr. Starling and unanimously carried.

Ms. McCulley then called for a motion regarding expansion of the existing dwelling. Ms. Smith made a motion "to deny the variance for the addition on the house." Mr. Starling seconded the motion and it passed with Ms. Hill opposing.

A motion was made by Mr. Starling to approve the minutes of May 24, 2018. Seconded by Ms. Smith and unanimously carried.

With no further business, a motion was made by Ms. Smith to adjourn. Seconded by Ms. Hill and unanimously carried. Time of adjournment: 8:50 PM.

Respectfully submitted,

Brian Soper  
Executive Secretary