

The Dorchester County Board of Appeals met in regular session on Thursday, April 24, 2014 in Room 110 of the County Office Building at 7:00 PM. Present were Ed Howard, Vice-Chairman, Dwight Cromwell, Wendell Foxwell, Catherine McCulley, Chairperson, Elizabeth Hill, Walt Gunby, Attorney, Steve Dodd, Director of Planning, with Merris Hurley recording.

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

Case #2451 - Roger Bowen, Owner  
Ryan Showalter, Applicant

To request a (supplemental) tidewater buffer variance to Board of Appeals Case #1099 to allow a deck (part of) to be located in the tidewater buffer. Property located at 2452-2 Hoopers Island Road and contains .33 acres. V, Village Zoning District.

Mr. and Mrs. Bowen, Mr. Showalter, Ms. Henderson, 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.

Ryan Showalter, 101 Bay Street, Suite 2, Easton, Maryland and Roger Bowen, 1114 Muller Road, Westminster, Maryland came forward and told the Board that they would rely on their written responses to the criteria. Mr. Showalter added that they wanted to solve this unintentional violation. He explained that Mr. Bowen started construction of the home in 1991 and this home was intended to be his retirement home. It took a lot longer to build because he wanted to build it himself. Inspections were done throughout the process and it wasn't until the final inspection in 2013 that the violation was discovered. Mr. Bowen was cited and paid a fine and will mitigate on a 4:1 basis. Mr. Showalter submitted Applicant's Exhibit #9, the inspection reports. Building Permit #BP91-82 was the first building permit issued and under it, the construction was started. A stakeout inspection was approved on February 17, 1992 and a footer inspection was approved on February 20, 1992. The foundation was in place as of October 25, 1999 and a framing inspection was approved on February 21, 2007. On August 16, 2013 a final inspection was conducted and violations were found. Mr. Showalter explained that Mr. Bowen will be removing decking so that the deck will only be 4' wide and the staircase will be moved away from shoreline.

Mr. Bowen told the Board that the building plans show the deck at intervals so that you can build additional sections later. The house has a spiral staircase that are only wide enough for a person to use. The stairs and deck on the outside are essential for moving large furniture and appliances, as most of the living space is on the second floor. The septic system is on the roadside of the house which further constrains the building envelope. He also told the Board that his property has eroded a great deal.

Janice Henderson, Environmental Planner for Planning and Zoning, told the Board that her staff report should have said "not all criteria have been met". The one that is not met is the one that says "The special conditions or circumstances (did) (did not) result from actions of the applicant, (including the commencement of development activity before an application for a variance or building permit 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." Mr. Showalter argued that the property is 95% encumbered by the tidewater buffer, the well and septic add more constraints and wherever the staircase goes, it will be in the Buffer.

Mr. Dodd informed the Board that until 2001, the only thing built was the foundation. The 2001 permit that Mr. Showalter provided for the Board was the code copy and not the original. Mr. Dodd provided a copy of the original for the Board to see with conditions on it saying "must meet setback established under that appeal case (BOA #1099). He also added that there were no building plans with the deck as it is, it shows a deck smaller. He wanted the Board to understand that the County did not approve the deck that Mr. Bowen built. Mr. Dodd explained to the Board that he takes offense with the applicant's strategy that since the County didn't find the violation sooner, that the applicant is entitled to the variance. He stated that the Board shouldn't grant a variance based on the county not finding violations, the Board should grant the variance because he met the criteria.

Mr. Dodd read agency comments into the record. The Department of Public Works had no comment or objection but stated that any disturbance over 5,000 square feet will require a stormwater management plan and erosion or sediment control plan be submitted for review and approval. The Health Department had no objection. The Planning Commission, based on the information presented, gave a favorable recommendation. The Critical Area Commission doesn't oppose this request if the applicant makes the modifications presented. Stark McLaughlin of Fink, Whitten and Associates, submitted in a letter dated April 14, 2014, that the site conditions are not favorable for the establishment of a vegetative forest or shrub buffer. He recommended payment of a fee-in-lieu of planting.

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

Ms. McCulley announced the end of testimony. Mr. Howard made a motion to adjourn to meet with counsel. Seconded and unanimously carried.

When the Board reconvened, the Board began their deliberations.

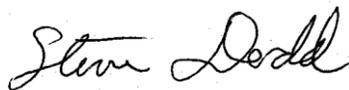
At this time, each Board member explained his decisions regarding the criteria.

After all testimony, Ms. McCulley called for a motion regarding this case. Ms. Hill made a motion "to approve this request with the following stipulations: applicant must mitigate for disturbance or pay fee-in-lieu of planting." Seconded by Mr. Foxwell and unanimously carried.

A motion was made by Mr. Howard to approve the minutes of the March 20, 2014 meeting. Seconded by Mr. Foxwell and unanimously carried.

With no further business, a motion was made by Mr. Howard to adjourn. Seconded by Mr. Cromwell 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