DECISION

TALBOT COUNTY BOARD OF APPEALS

Appeal No. 21 -1728

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 6:30 p.m. on April 25, 2022 on the Application of **Christopher and JoRhea Wright**, collectively, (the Applicant).

The Applicant is requesting eight variances: (1) a Critical Area variance to exceed the fifteen percent (15%) lot coverage requirement to allow total lot coverage of eighteen and sixty-four one hundredths percent (18.64%) as well as seven non-critical area variances. Those seven non-critical area variances are for waiver of the twenty five foot (25') side yard setback to allow the following: (2) to permit the continued use of an existing eight foot by thirty foot (8' x 30') woodshed to be located at two and four tenths feet (2.4') from the property line; (3) permit the Applicants to relocate a sixteen foot by twenty foot (16' x 20') structure out of the Shoreline Development Buffer (SDB) to be placed in the location of the existing pump house; (4) permit the continued use of the existing hot tub located twenty-two and nine tenths feet (22.9') from the property line; (5) permit the continued use of a covered grill area located fourteen and eight tenths feet(14.8') from the property line; (6) permit an existing HVAC unit on a three foot by three foot (3'x3') pad to remain located twenty-two and nine tenths feet from the property line; (7) permit a twelve foot by fifty foot (12' x 50') bocce ball court to remain seven and one tenths foot (7.1') from the property line; and (8) to allow the existing children's play area with play set, trampoline and sports equipment to remain located four and five tenths feet (4.5') from the property line.

The request is made in accordance with Chapter 190, Article II § 190-9.1, Article III § 190-15.6 C and Article VII § 190-58 of the *Talbot County Code* (the *Code*). The property is located at 7653 Tred Avon Circle, Easton, Maryland 21601 in the Rural Residential (RR) Zone. The property owners are Christopher and JoRhea Wright. The property is shown on Tax Map 34 Grid 19 as Parcel 275, lot 18.

Board of Appeals members Frank Cavanaugh, Chairman, Louis Dorsey, Jr., Vice Chairman; Paul Shortall, Jeffrey Adelman and Board Alternate Patrick Beard were present for the hearing. Anne C. Ogletree, acted as attorney for the Board of Appeals. Staff members present were Elisa Deflaux, Planner II, Miguel Salinas, Planning Officer, Brennan Tarleton Assistant

Planning Officer, and Christine Corkell, Board Secretary. JoRhea Wright, Esq., one of the Applicants was present and was accompanied by Zachary Smith, Esq. of Armistead, Lee, Rust and Wright, P.C. of Easton, Maryland.

The Chairman inquired if all Board members had visited the site individually. He received affirmative responses from each member. Mr. Cavanaugh then requested that those planning to give testimony be sworn. Ms. Wright, Mr. H. D. Slaughter, III, Ms. Martha V. Slaughter, Ms. Annie Sekerak, Emily Vainieri, Esq. and Ms. Debra Rich were sworn. 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. Non Critical Area Variance Standards with Exhibit C

Exhibit 8. Staff Report prepared by Elisa Deflaux, Planner II;

Exhibit 9. Sign Maintenance Agreement/ Sign Affidavit;

Exhibit 10. Critical Area Commission Comments;

Exhibit 11. Independent Procedures Disclosure and Acknowledgement Form;

Exhibit 12. Aerial Photographs;

Exhibit 13. Attachment A-1, Deed;

Exhibit 14. Attachment A-2, Waverly Subdivision Plat;

Exhibit 15. Attachment A-3, Invoice and Appraisal Report;

Exhibit 16. Attachment A-4, Tax Assessment Sheet, letter, deed and information from Coldwell Banker;

Exhibit 17. Attachment A-5, drawing of accessory structures;

Exhibit 18. Attachment A-6, Photo of Bocce Ball court, woodshed, playhouse, outdoor grill and smoker, and 1999 shed;

Exhibit 19. Attachment A-7, Violations to be remedied – no variance required;

Exhibit 20. Letter from Mike Duell dated January 29, 2021;

Exhibit 21. Information provided by Mike Duell, Chief Code Compliance Officer;

Exhibit 22. Critical Area Lot Coverage Computation worksheet;

Exhibit 23. Existing Conditions Site Plan;

Exhibit 24. Proposed Changes Site Plan;

Exhibit 25. Letter from Harry D. Slaughter, III dated April 16, 2022;

Exhibit 26. Letter from Martha van den Berg Slaughter dated April 16, 2022;

Exhibit 27. Letter from Robert and Debra Rich, dated April 19, 2022.

The Chairman then invited the Applicant to present testimony to support the various requests. Ms. Wright introduced herself and explained that her husband was absent as he was taking a child to a little league game. She stated that she was present with Mr. Smith, one of her law partners. She does not practice in the land use area, but works in the area of estate planning. Mr. Smith was with her for moral support, but also to advise her as might be required, as she had little familiarity with the variance procedure prior to the receipt of the violation notices. Ms. Wright noted that her partners had assisted her by speaking with Mr. Salinas, the Planning Officer and by explaining certain requirements, but that she had prepared the variance application and would be presenting the case.

Ms. Wright began by explaining that she had received the Critical Area Commission (CAC) comments, Exhibit 10, the letters from her concerned neighbors, Exhibits 25, 26 and 27 and the Staff Report, Exhibit 8. All arrived the week prior to the hearing. Those documents were the first feedback the various requests had received, and the Applicant knew those points had to be addressed. She noted that the property is her family's home. They are proud of it and have taken great care to keep it well maintained. The family has spent time and money on the property. She was especially proud of the landscaping. However, she acknowledged that the Applicant had made mistakes. They were extremely sorry for those mistakes.

At the time the family received the abatement order they had lived on the property for four (4) years. Despite living on a waterfront property in the Critical Area, she stated that prior to the receipt of the violation order she was unfamiliar with the Critical Area law, and her husband, who holds a MHIC license, has been primarily a painter although he has recently acquired a partner and expanded his business to include renovation. He, too, had no actual familiarity with the requirements of the Critical Area law. There has never been any intention to violate the law.

The witness stressed that the Applicant had "inherited" a property seriously out of compliance with the law. The Applicant had inadvertently, not maliciously, added to the problems by making improvements. Currently, the impervious surface coverage is twenty-three

and one half percent. (23.5%). About half of that coverage is due to structures or improvements that do not require permits such as the driveway and certain walkways.

Upon receiving the 'feedback' concerning the requested variances, Ms. Wright took a hard look at the proposal she had submitted to determine how to deal with the violations and how to reduce lot coverage even more. She now wished to propose additional actions that she and her husband felt would help bring the property into better compliance with the Critical Areas law, while still maintaining a functional property. She referred the Board members to the variance application, explaining that she and her husband were trying to put the property in better 'legal' condition than it was when they 'inherited' it. Having had the benefit of the feedback from the neighbors, the CAC and planning staff, she wished to present a new and better proposal that would reduce lot coverage. Ms. Wright handed out several pages identified as follows:

> Applicant's Exhibit 28. Variance Hearing document showing existing proposal and new proposals for reduction;
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> Applicant's Exhibit 29. a 3 page document showing structures to be removed or demolished.

The Chairman admitted both exhibits. Ms. Wright explained the Exhibit 28 summarized the existing variance proposals -- they would have reduced lot coverage to eighteen and sixty-four one hundredths percent (18.64%). She explained that, at the time she filed, and for the past forty (40) years everyone thought the property contained one and eighty-eight hundredths (1.88) acres, as shown on the original subdivision plat. Exhibit 14. However, the site plan survey found that the lot was now one and fifty-three hundredths (1.53) acres. The initial reductions proposed would have brought the property into compliance had it been as described on the subdivision plat.

Exhibit 28 also pointed out that at the time the Wright's began making improvements, the lot coverage was already twenty–one and forty-eight hundredths percent (21.48%) and exceeded that allowed by almost six and one half percent (6.5%). She stated that the Wrights had unknowingly exacerbated the problem by adding additional lot coverage of two and five hundredths percent (2.05%)[1]. After reviewing the various responses to the application, the Applicant was now proposing to reduce lot coverage even more by removing or demolishing the woodshed, the children's playhouse, the bocce ball court and moving a small shed. The Applicant wished to retain the pump house. The net reduction of eleven hundred eight (1,108) square feet would reduce lot coverage to sixteen and ninety- eight hundredths percent (16.98%).

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[1] The concrete pad in front of the garage is not included in the figure, as it was already impervious gravel.

She referred the Board to Exhibit 29 explaining that the green areas were improvements the Applicant would remove to reduce lot coverage, and, if approved, would eliminate the need for variances two (2), three (3) and seven (7).

Speaking about the woodshed, Ms. Wright stated that a part of the woodshed was encroaching on the Richs' property, something the Applicant had not realized until the site plan was prepared. They were proposing to remove or demolish that structure which would obviate the need for non-critical variance two (2).

Discussing the playhouse, originally requested as non-critical variance three (3), Ms. Wright proposed that it be removed entirely rather than be relocated. The removal (and the removal of associated decks as originally proposed by the Applicant) would result in a reduction of an additional three hundred thirty (330) sq. ft. of lot coverage. Since there would be no need to replace the pump house if the playhouse is removed, the Applicant was requesting that the pump house structure remain, as it houses the pool pumps. On the third page of Exhibit 29 the Applicant highlighted the structures to be removed in green. The pump house, highlighted in pink, will remain since the playhouse is being demolished.

The witness next addressed the bocce ball court. Over the years there have been many discussions regarding its character – the question being -- is it impervious or pervious? The final determination is that it is impervious and adds to lot coverage. Since the Applicant is trying to reduce lot coverage the bocce court will be removed completely, obviating the need for variance number 7.

Ms. Wright noted that the small ninety-nine (99) square foot shed currently located near the Slaughter line will be moved closer to the garage, and the new placement does not require a variance or add to lot coverage. The various removals result in a reduction of eleven hundred eight (1,108) square feet of lot coverage and bring the overall lot coverage to sixteen and ninety-eight hundredths percent (16.98%). She directed the Board's attention to page two of Exhibit 29 stating that the bocce ball court and the small shed were 'inherited' and were not erected by the Applicant as suggested in the Staff Report, Exhibit 8. The small shed close to the Slaughter line has existed for more than twenty (20) years. She believed the bocce ball court was put in by the previous owners sometime between 1996 (when the previous owners purchased the property) and 2001 when renovations took place. She admitted that the Applicant had repaired and maintained the bocce ball court, although the Applicant was not responsible for creating it.

The Wrights acquired a property that had existing violations that they unfortunately exacerbated by adding to lot coverage. She believed the new proposal would remedy not only what the Wrights did, but also most of what the Wrights predecessors did.

Ms. Wright recognized that a part of the driveway, the woodshed, a small area that formerly contained trash cans and the invisible fence to restrain the Wrights' two (2) dogs all encroached on the Rich property. She apologized to her neighbors, and stated that the Applicant would like to correct the encroachments as soon as they were able to do so. She had already spoken to Mr. Garner and agreed to meet with him following the hearing to remedy those encroachments.

Mr. Shortall asked if the Applicant still intended to relocate the driveway as suggested on the proposed site plan, Exhibit 24. Ms. Wright stated that the Applicant planned to do what was shown on that Exhibit, and in addition, was proposing to eliminate requests two (2), three (3), and seven (7) to reduce lot coverage even more. Mr. Smith commented that the drawing, Exhibit 29, showed additions to the suggestions previously submitted on Exhibit 24. He wanted to be sure the Board understood that the projected actions shown on Exhibit 29 were in addition to what had been proposed on Exhibit 24. Ms. Wright added that the Applicant was going to remove the encroachments on the Rich property and that did include 'slimming down' the driveway. The proposals would put the property closer to compliance than it had been when the Wrights moved in. The new proposal would remove approximately three thousand (3,000) square feet of lot coverage or four and eighty-nine one hundredths percent (4.89%) of lot coverage that the Wrights did not create in order to bring the property into better conformance with the lot coverage requirement.

Ms. Wright noted that in the Turner Appeal (Appeal No. 16-1656) the Applicants had removed one thousand three hundred sixty (1,360) square feet of lot coverage to reduce the lot coverage on that property, located three houses down from the Wrights, to nineteen and five tenths percent (19.5%), four and one half percent (4.5%) over the lot coverage permitted. The Board had approved that reduction, and it was not appealed. Although there were differences[2] she would later discuss, her proposal placed the Wright property one and ninety-eight hundredths percent (1.98%) over the fifteen percent (15%) lot coverage requirement, and

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[2] The purpose of the Turner Appeal was to allow renovation of the residence.

asked that the Board consider the Applicant's lot coverage variance proposal.

Mr. Cavanaugh asked how the new lot coverage percentage had been calculated. He was advised that the Applicant was using the actual acreage, one and fifty-three hundredths (1.53) acres. Ms. Wright felt that any further reduction to adjust the lot coverage to fifteen percent (15%) would require a reduction in the area of the driveway. If the Applicants eliminated a loop and the parking area stopped at the concrete pad it would eliminate another six hundred nineteen (619) square feet, and would bring the property into total compliance. She felt that requiring the Applicant to reconfigure the driveway would result in dysfunction, and created an unwarranted hardship for the Applicant. She listed a number of issues that the changes would create for the family and for elderly relatives visiting, noting that the reconfiguration was just not reasonable given the use of the property as a family residence.

The Chairman inquired about the width of the driveway. The witness estimated eleven feet (11') commenting that it would be 'pretty skinny'. The Chairman asked the Planning Staff what would generally be considered an average width for a driveway. A staff member responded that it would generally be about ten feet (10'). Mr. Cavanaugh commented that it was about average as shown.

Ms. Wright commented that the Turners had been allowed more than fifteen percent (15%) to renovate. The Applicant was asking for more than fifteen percent (15%) to have reasonable and significant use of the existing driveway—a functional driveway. She posited that the grant would not confer a special privilege on the Applicants as reasonable use of a driveway is something all property owners are permitted.

She noted that one of the variance standards requires that the condition from which relief is sought cannot have been created by the Applicant. Referring to her earlier testimony she reiterated that the property was already in violation when the Wrights moved in. The proposed removals would not only eliminate the lot coverage added by the Wrights, but would almost eliminate the excessive lot coverage previously added by prior owners.

The witness addressed the issue of water quality and habitat saying that the Wrights were not proposing to build anything that would affect water quality. On the contrary, they were going to restore several thousand square feet to pervious condition, and provide whatever restoration and mitigation was required to bring the property into better compliance. She noted that in the Turner appeal the Board had suggested that the actions to be taken might have a positive

environmental effect, as they would if the Board granted the requested variances here. The Turner reduction was one thousand three hundred sixty (1,360) square feet while the Applicant was proposing a three thousand two (3,002) square foot reduction in lot coverage. She felt the proposed reduction was fully in harmony with and met the stated goals of the Critical Areas law.

Addressing the variance standard that requires that the variance be the minimum necessary to remedy the situation Ms. Wright stated that the Applicant had reduced lot coverage as much as possible while still maintaining a functional driveway.

Ms. Wright wished to comment on certain statements made in the Staff Report. She first noted that staff had been unsure if the variances were being requested because the property had been unfairly burdened by the law, or whether they were requested solely to remedy the existing violations. She acknowledged that the staff might have had difficulty determining the reasons for the requests initially, but explained that by removing those structures marked in green on Exhibit 29 those violations would no longer exist, and the remaining non-critical area variances were for permanent structures that antedated the Wrights possession. She, personally, felt that the law unfairly burdened her property. It is long and narrow. It has a long driveway. She reminded the Board that gravel drives had not always been treated as impervious surfaces. The law changed in 2012. This residence's driveway had been in place for many years. She submitted a picture of the residence as it existed in 1996 showing the driveway. The picture was admitted as Applicant's Exhibit 30 -- 1996 front view of residence.

The witness noted that if one takes the house, driveway and garage, as they exist today, the lot coverage is already exceeded by one and twenty-three one hundredths percent (1.23%). She pointed out that the pool and patio in the rear of the residence are normal amenities in Talbot County. A note on the back of Exhibit 30 reported that the pool is believed to be the first residential pool in Talbot County. It has been in place for decades. Ms. Wright asked if there were questions.

Mr. Dorsey stated he had some. He wished to know what facts would show that the request for the variance was not due to actions or circumstances created by the Applicant. The witness responded that some of the conditions had been caused by the Applicant, but the revised proposal would not only remedy those conditions but would also remedy conditions caused by the Wrights' predecessors. Mr. Dorsey opined that while the Wright's application had some similarities to that of the Turners (Appeal No. 16-1656) there were differences. The improvements made by the Turners had been constructed with the appropriate permits. That is not

the case for some improvements here. He thought that, given Mr. Wright's occupation as a licensed MHIC contractor, he should have known, from the start, that permits were required. The need for the variances was, in Mr. Dorsey's mind, a direct result of the failure to obtain permits.

Mr. Smith interjected, commenting that Ms. Wright recognized that she was responsible for about two percent (2.0%) of the lot coverage due to structures the Wrights had added. However, when the Wrights acquired the property, the lot coverage was already over twenty-one percent (21.0%) and by removing all of the Wright additions and about four and one-half percent (4.5%) of the lot coverage added by the predecessors, the revised variance proposals addressed those additions made by predecessors.

Mr. Dorsey inquired about a red shed that sits behind the playhouse. He felt it might be in the SDB as well. Ms. Wright responded that the shed did not belong to the Wrights. Ms. Wright produced a two page document showing the shed under discussion from several angles. The Chairman accepted the pictures and they were admitted into evidence as Applicant's Exhibit 31--Slaughter's shed bordering Wright property.

Mr. Harry D. Slaughter, III, 7641 Tred Avon Circle, Easton, MD 21601, addressed the Board explaining that the red shed was on his property and was a permitted structure since the mid-seventies. He explained that the setback at the time was twelve and one-half feet (12.5') for a shed under one hundred (100) square feet, and this shed conforms to that standard. Mr. Dorsey acknowledged the ownership and stated he wanted to be certain that the shed did not belong to the Applicant. Ms. Wright agreed it belonged to the Slaughters who own Lot 19.

A member asked if the Applicant had considered other driveway material alternatives. Ms. Wright said they had not, as the driveway is an impervious surface, and the issue was lot coverage. She believed that there was some period during which driveways were not considered impervious. The Chairman asked if planning staff could clarify the point. Ms. Deflaux explained that there was a short period during which certain pavers were considered pervious, but for the most part, driveways have always contributed to lot coverage. Mr. Cavanaugh commented that as far back as the eighties the driveways were considered impervious, so the exception must have been short lived. He asked if there were other questions from the Board. Hearing none, he requested that the Applicant proceed.

Ms. Wright addressed non-critical variance four (4) – the hot tub. She felt that the tub was a part of an intricate design created by the professional landscaping. She thought that its placement was really the only logical place on the property for the hot tub, and believed it would

be destructive to move, as it is positioned on a poured concrete pad that would have to be taken up to move the tub. Trying to move it to another location would create a significant disturbance.

Non-critical variance five (5) concerns the grill area. The area was created by the prior owners who poured the concrete and installed the shower. The space is next to the kitchen and is very convenient. It is not an enclosed space, as it has no walls, but it has been roofed to allow for use in inclement weather. It is the roof overhang that creates the problem. If the variance is not granted, the offending lot coverage will be removed and the area will still be used for grilling. The Wrights did add a countertop between the grill and smoker and some seating to make the space more functional. Ms. Wright did not believe the additions to the grill area had affected her neighbors.

Non-critical variance request six (6) is to permit the continued use of the HVAC unit that encroaches into the side yard setback adjoining the Slaughter property. It was there when the Wrights moved in, and had been there for some time prior to their occupancy. Ms. Wright did not believe it would adversely affect the character of the neighborhood or the Slaughter property. Relocating it would be a major electrical issue and both burdensome and expensive. She did point out that there was a vegetative border between the unit and the neighbors. She felt a literal enforcement of the setback would result in undue hardship. Allowing the unit to remain will not give the Wrights a special privilege as similar units are found throughout the neighborhood.

Ms. Wright understood that no variance was actually required for non-critical area variance request eight (8) as shown on the application. The children's play equipment can remain as located. Ms. Wright believed that she had addressed all of the originally requested non-critical area variances in her testimony – the only extant requests being variances four (4), five (5) and six (6).

A Board member asked about Ms. Wright's testimony concerning the origin of the concrete pad in the grill area. Ms. Wright confirmed that everything was there in the grill area but for a forty-three (43) square foot concrete section where the chairs were sitting (as shown in the materials supplied by Mr. Duell, Exhibit 21.) That section was added by the Wrights, and has been calculated in their proposed lot coverages. The rest of that area was laid out and built by the prior owners, including the shower, the steps and the concrete pad.

The Chairman asked if the Board members had other questions of the witness. Mr. Dorsey wished to clarify his understanding concerning the woodshed. He was under the impression it would be removed. Was he correct? Ms. Wright confirmed that it encroached on the

neighboring property and under the revised plan it would be removed. There were no other questions from Board members at the time. Mr. Cavanaugh then invited any other interested persons who wished to be heard to give testimony.

Ms. Martha Slaughter, 7643 Tred Avon Circle, Easton, MD 21601 signed in to speak. Ms. Slaughter stated that she had submitted a letter in opposition to the original application, as she had been taught to observe the rules, and felt her neighbors, the Wrights, had not done so. She said that the rules had been created to protect the waterways, the Tred Avon River that adjoins the Wright property, and the Chesapeake Bay. She felt the rules should be obeyed. She explained that otherwise the Wrights had been good neighbors. There were no loud parties or disturbances. The children do not cause problems nor do the Wrights' dogs (although one has become an escape artist and frequently goes visiting around the neighborhood.) She mentioned that she sent a picture of the rear of a shed on the Wright property, and noted the view is not attractive.

Mr. Cavanaugh inquired if the main concern was the playhouse, a/k/a the "Cigar House". Ms. Slaughter stated that it was. The neighbors were aware the property was for sale, and she would like to have the violations remedied before it sold. Mr. Cavanaugh asked if the removal of the structure would be satisfactory. Ms. Slaughter reiterated that if the rules had not been followed, it should not be permitted.

Mr. Dorsey asked if she were satisfied with the Applicant's revised plan. Ms. Slaughter responded that it would solve her problems. She commented that the Wrights' property is well maintained and if the sheds were removed, she would have no problems with the property.

Mr. Cavanaugh thanked Ms. Slaughter for bringing her concerns to the Board and asked the next speaker to approach. Ms. Annie Sekerak, 1804 West Street, Annapolis, MD 21401 is a natural resources planner with the CAC. She introduced herself and explained that she wished to summarize a letter sent by the Commission for this case. She prefaced her comments by noting that the Commission staff had not had the time to thoroughly review the revised plans that were presented at the hearing, so her comments were directed to the initial application and the proposals made in that application. She noted that the additional lot coverage had been added both by the Applicant and by previous owners. She also understood that the revised proposal was to remove more lot coverage that originally suggested, but that the Commission was opposed to the variance request as it did not meet all of the variance standards. She explained that even the new plan fails to meet the first three (3) variance standards – that of an unwarranted hardship, the deprivation of rights commonly enjoyed by others, and it creates grant of special privilege. The

Critical Area Law requires that if the request fails to meet even one of these standards the request may not be approved. The Commission felt that the unwarranted hardship requirement was not met as the Applicant already has reasonable and significant use of the lot with house, garage, patio and pool even without the requested variances. The right to exceed the lot coverage limitation is not a right commonly enjoyed by other properties, and to permit the additional coverage would be to grant the lot owner a special privilege. She noted that the Commission has consistently opposed requests to exceed the lot coverage limitations, as they are inconsistent with the purposes of the law. For these reasons as well as those stated in the CAC letter, Exhibit 10, she requested that the lot coverage variance be denied.

The next witness was Emily Vainieri, 580 Taylor Ave C-4, Annapolis, MD 21401. Ms. Vainieri is an assistant attorney general assigned to the Critical Area Commission. She wished to raise several points for the Board to consider. She felt the Turner case, discussed by Ms. Wright was not precedential, as Critical Areas cases are fact dependent. The facts in these two cases are different. She noted that meeting the unwarranted hardship standard requires more than mere inconvenience. Simply because removing additional square footage from the driveway or reconfiguring it would be inconvenient does not make that removal an unwarranted hardship. Not being familiar with the regulations is also not sufficient to meet the unwarranted hardship standard. Ms. Vainieri pointed out that Ms. Wright had a plan that would reduce lot coverage to fifteen percent (15%). Because reduction is possible, no unwarranted hardship exists as there is a way to eliminate the need for the variance entirely.

Mr. Cavanaugh asked if any of the members had questions of Ms. Vainieri. Mr. Dorsey inquired if the CAC had ever allowed greater than fifteen percent (15%) lot coverage. He referenced the fact that the Commission had not opposed the variance in the Turner case. The witness responded that there were some cases with facts that are simply not present in the Wright case where the CAC had not come out in 'full' opposition to the request. She pointed out that such exceptions were generally for situations where the use of the residence required a little bit extra lot coverage to provide for an amenity that was common to the area.

The next witness was Debra Rich, 7655 Tred Avon Circle, Easton, MD 21601. Ms. Rich and her husband own Lot 17 adjoining the Applicant's property. Ms. Rich stated that the proposed elimination of the woodshed, the bocce ball court and the "Cigar Shed" would satisfactorily address the concerns expressed in her letter of opposition. Ms. Rich explained that her property had also been impacted by a structure built in the SDB by a previous owner, and she

and her husband were given a time frame within which the structure had to be removed. They removed the structure promptly.

A member inquired if Ms. Rich had any problems with the variances for the side setback for the hot tub or the grill area. Ms. Rich stated that they did not mind the hot tub so much because they had planted thirteen (13) trees to safeguard their own privacy. She noted that the Wrights have a large family and there are many activities enjoyed in their yard, but the proximity felt 'invasive' as the Rich family spends a lot of time in their great room which is visible from the Wright's yard. The Richs have also installed blinds to protect their privacy. She noted that the grill area was not an issue, as it was closer to the Rich garage and did not disturb them.

Mr. Harry Slaughter returned to the witness stand. He testified that he owns Lot 19 adjoining the Wright property. Lot 19 contains the guest house for his property, as he and his wife live on Parcel 36 of Woodland Farms located behind the Wright property. He stated that he had no objection to the air conditioning unit.

The Chairman asked if there were other members of the public who wished to speak. There were none. He asked if the planning staff had any comments. Ms. Deflaux replied that staff had not reviewed the new plan discussed at the hearing and had no additional comments at the time. Mr. Cavanaugh then invited the Board members to discuss the case.

Before discussion began Mr. Smith asked if he could respond to comments by the CAC representatives. He explained that Ms. Wright had appeared before the Board recognizing that her property did not comply and hoping for a reasonable accommodation by the County. He acknowledged that the Wrights had done some things incorrectly, but the majority of the issues were inherited, and making them remove enough lot coverage to get down to fifteen percent (15%) would require substantial modification of the driveway making it non-functional. The driveway would end seventy feet (70') away from the house. That proposal is not a reasonable plan, and creates unwarranted hardship.

The Chairman wanted to know if the land planners the Applicant had consulted had come up with a way to reconfigure the driveway so that functionality could be maintained while still reducing its square footage. He agreed with Mr. Smith that the driveway should be configured to service the front entrance of the residence. He inquired if the loop could be reduced. Ms. Wright responded that the center of the circle contained a fountain and a lot of landscaping. Mr. Smith commented that given the narrowness of the driveway, if one did not have a loop one would have to have a turn-around area, and that might be more intrusive.

The Chairman solicited comments from the members. He first asked Mr. Shortall to discuss his concerns. Mr. Shortall thought that the Applicant had done a pretty good job of identifying structures to be removed in an effort to reduce lot coverage as much as possible. He appreciated the Applicant's admissions that there had been mistakes, some of which antedated the Applicant's possession. He agreed that the property was a long narrow lot that required access to the residence. Delivery trucks are wider than cars, so one cannot reduce the driveway much in width. The house is set back a great distance from the road, and met setbacks when built. He was not particularly concerned about the grill area roof overhang – water will run off the concrete as well as the roof. He would allow the lot coverage variance of sixteen and ninety-eight one-hundredths percent (16.98%).

Mr. Dorsey stated that initially, after reviewing the documents, he felt that there was no way the Applicant could meet either the Critical Area variance standard or the non-critical area variance standards. He had reconsidered, to an extent. He felt that the demolition of the bocce ball court, the woodshed, the sixteen foot by twenty foot (16' x 20') shed and the relocation of the eight foot by twelve foot (8' x12') shed did show an intent to comply with the law and reduce lot coverage. Those reductions bring the lot coverage down to one and ninety-eight one hundredths percent (1.98%) over the fifteen percent (15%) requirement and represent a significant change in the property. After listening to the testimony he did not see any way the Applicant could reasonably get down to fifteen percent (15%) by reducing the driveway any further. He would not be opposed to allowing a variance for lot coverage of one and ninety-eight one hundredths percent (1.98%) over the fifteen percent (15%) allowed.

A Board member wanted to know about the process. Since the new proposal was significantly different from that originally proposed, how did the Board go about dovetailing the two proposals? Counsel suggested that the two proposals could be merged and clarified by conditions. The member asked if the Board was comfortable proceeding with the case given the difference in the original request and the Applicant's revised request. Counsel stated that the Board could proceed if it felt comfortable creating a condition that required the Applicant to comply with the actions proposed in its testimony.

Mr. Adleman commented that he felt the Applicant had come prepared to address the neighbor's concerns as well as the county's concerns over the illegal structures. He felt that of the three remaining variances for the HVAC unit and pad, the grill and the hot tub, two were pre-existing having been created by previous owners and 'inherited' by the Wrights. The hot tub was unpermitted, but the encroachment was small. They are asking for permission for that structure

after the fact. The driveway issue is more complicated. While he understood the points both the CAC and the Wrights wanted to make, the gravel driveway issue has gone both ways over the years, being, at different times, both pervious and impervious. Currently there are no other options for the driveway surface. Taken as a whole he thought the intent of the Critical Areas law had been met with the proposed demolitions. He felt the revised request was reasonable.

The Chairman next turned to Mr. Beard. The Board's alternate member indicated that, like his fellow Board members, he had had a different view at the commencement of the hearing. After having heard the new proposals and the testimony of the Slaughters and the Richs regarding the setbacks, he did not oppose allowing lot coverage of sixteen and ninety-eight hundredths percent (16.98%). He added that he was aware that the Wrights had built some things they were not supposed to, and he had difficulty believing that someone with an MHIC license would not have known permits were required, however, he felt that the proposals being made responded to the concerns brought to the Board's attention and should be allowed.

The Chairman believed that the Wrights had made a pretty good compromise proposal. They were penalized for their mistakes and have taken care of those obligations. He reminded those present that we all make mistakes. He was confident that the neighbors most impacted were okay with the new compromise. If the Board were to approve the new proposals, he wanted the neighbors to be certain that the proposals stated on the record would be carried out. He understood the CAC's position, but the driveway is a significant issue. If there were an easy way to reconfigure it, he would have agreed to that option, but it needs to go to the garage and the front entrance of the house, so Ms. Wright's 'nuclear option', cutting the driveway off, is unreasonable and does create an unwarranted hardship that justifies exceeding the fifteen percent (15%) threshold.

The Chairman asked the planning staff how the 'official' size of the lot was determined. Ms. Deflaux responded it was determined by survey. The survey provided by Ms. Wright showed one and fifty-three hundredths (1.53) acres while the original subdivision plat shows one and eighty-eight hundredths (1.88) acres. There could be several reasons for the discrepancy such as erosion or a mistake in the original survey.

Mr. Cavanaugh asked the members if they were comfortable proceeding or whether they needed more information. Mr. Shortall stated he was comfortable going forward and requiring the Wrights to comply with the conditions incorporating the proposals they have made.

There being no other discussion, the Board made the following findings of fact and conclusions of law based on the Applicant's written responses, the testimony and the evidence presented:

1. The Applicant has submitted written applications for a Critical Area variance and eight non-critical variances, 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 9.

3. A recent survey of the property determined its size to be one and fifty-three hundredths (1.53) acres, rather than the acreage shown on the original subdivision plat recorded in 1953. Exhibits 14, 23. Lot 18 is thirty-five hundredths (.35) acre smaller than it was believed to be See Exhibits 14, 15 and 16.

4. Existing lot coverage is twenty-three and five tenths percent (23.5%). Lot coverage at the time the Wrights purchased the property was twenty-one and forty-eight hundredths percent (21.48%). The property was in violation of the fifteen percent (15%) lot coverage threshold prior to the occupancy by the Applicant four (4) years ago and the purchase by the Applicant in 2020.

5. The Applicant presented a revised request at the hearing. The new proposal would remove all the lot coverage proposed on Exhibit 24, and eliminate additional lot coverage by demolishing or removing the structures identified in variance request 2 (the woodshed) variance request 3 (the playhouse) and variance request 7, (the bocce ball court) as shown on Exhibits 28 and 29. Additionally, the eight foot by twelve foot (8' x 12') shed would be relocated so that a variance would no longer be required. The removal or relocation of these improvements would result in a reduction of three thousand two (3,002) square feet of lot coverage or six and fifty-two hundredths percent (6.52%)

6. During its ownership the Applicant added two and five hundredths percent (2.05%) lot coverage. The remaining lot coverage to be removed under the new proposal, four and forty-seven hundredths percent (4.47%) was installed by prior owners, and was not created by the Applicant.

7. This property is long and narrow. Two of the requested non-critical area variances, that of the HVAC unit and pad and the concrete grill area, were inherited by the Wrights, as they were added prior to the family's occupancy. The remaining variance is to permit the continued existence of a hot tub and concrete pad that was installed by the Applicant without a permit. Due to the shape of the lot (it widens as it approaches the water) only a small portion of the hot tub violates the setback.

8. The HVAC unit and the majority of the grill area concrete were added by prior owners and antedate the Wright's ownership. The Wrights are proposing to remove other existing lot coverage added prior to their occupancy. Moving the HVAC unit and pad would result in major electrical work. Removing the concrete grill area and the concrete pad supporting the hot tub would likewise cause major expense. The undertakings would subject the lot owners to unreasonable monetary hardship.

9. The variances are being requested to allow existing permanent structures on the property to remain. While the Wrights admit they 'made mistakes' such as adding the hot tub without a permit, they point out that two of those structures for which they are requesting variances were in place when they moved in.

10. Both of the neighbors who opposed the initial Wright proposals attended the hearing and were satisfied with the Wright's revised plan that includes the correction and removal of encroachments on the Rich property and the removal and demolition of the woodshed, bocce ball court and playhouse. The Board is satisfied that the removal of three thousand two (3,002) square feet of lot coverage does comply with the spirit and intent of the Critical Area law, although the property remains

one and ninety-eight hundredths percent (1.98%) over the permitted fifteen (15%) lot coverage requirement.

11. Since further reduction in lot coverage would have to be made by reducing the driveway in some manner, and the reduction would create a non-functional improvement that would not service the residence, the Board believes that the reductions in lot coverage proposed by the Applicant and the requested non-critical area variances are the minimum adjustment necessary to relieve the practical hardship that removal of concrete structures and relocation of electrical service would create.

12. The Board finds that further reduction of the existing driveway would deprive the Applicant of a functional driveway, an amenity enjoyed by all other property owners in the Critical Area.

13. Granting the variance under the unusual circumstances of this case will not confer a special privilege on the Applicant. Counsel for the CAC did testify that there were cases where the Commission allowed small variances to the lot coverage requirement, generally when additional lot coverage was needed to create a functional living space with common amenities. In this unusual situation, the lot coverage variance requested is largely for permanent improvements most of which antedated the Applicant's acquisition of the property.

14. The Board recognizes that removal of three thousand two (3,002) square feet of lot coverage and the restoration and buffer management plans associated with that work will serve to improve water quality when completed.

15. The Applicant does not own adjoining property.

For the reasons set out in the Board's findings, Mr. Shortall made a motion that (1) the revised Critical Area variance permitting lot coverage of sixteen and ninety-eight hundredths percent (16.98%) be **Granted**, noting that the Applicant is no longer seeking variances 2, 3, 7 and 8 as the structures involved in variance requests 2, 3 and 7 will be demolished; the playset, variance request 8, does not require a variance to remain; and (2) the variance requests 4, 5 and 6 are **Granted,** subject to the conditions required by this Board and as recommended by Staff and

the CAC. Mr. Adelman then seconded the motion. Counsel inquired if the Board was going to impose a time limitation on the demolition work. Following a brief discussion, Mr. Shortall amended his motion by adding a requirement that the demolition work be completed within ninety days of the Board's written approvals. Mr. Adleman seconded the revised motion. There being no further discussion, the Chairman called for a vote. The motion passed 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 REQUESTED CRITICAL AREA VARIANCE AND NON-CRITICAL AREA VARIANCES 4, 5 AND 6 BE GRANTED SUBJECT TO THE FOLLOWING CONDITIONS:

1. The Applicant shall demolish and remove the woodshed, the bocce ball court and the playhouse (a/k/a Cigar House) within ninety (90) days of the receipt of this written opinion.

2. The Applicant shall obtain the appropriate permits for the demolition and removal.

3. The Applicant is permitted lot coverage not to exceed sixteen and ninety-eight hundredths percent (16.98%)

4. The Applicant shall complete and submit a Buffer Management Plan that complies with all requirements of the Critical Areas law.

5. The Applicant shall prepare and submit a restoration plan consistent with Chapter 58 of the *Code*. The plan shall include an agreement to perform the restoration work and shall designate an associated surety to be approved by the Department of Planning and Zoning.

6. The Applicant shall make an application in the Office of Permits and Inspections, and will follow the rules, procedures, and construction/ demolition timelines as directed.

7. The Applicant shall commence the work associated with these variances upon receipt of the Board of Appeals written approvals.

GIVEN OVER OUR HANDS, this 21st day of June, 2022.

TALBOT COUNTY BOARD OF APPEALS

Frank Cavanaugh, Chairman

Louis Dorsey, Jr. Vice-Chairman

Paul Shortall, Member

Jeffrey Adelman, Member

Patrick Beard, Alternate Member