



# Commissioners of Leonardtown

41660 Courthouse Drive • P. O. Box 1, Leonardtown, Maryland 20650

301-475-9791 • FAX 301-475-5350

J. HARRY NORRIS III  
Mayor

leonardtown.commissioners@verizon.net  
leonardtown.somd.com

LASCHELLE E. MCKAY  
Town Administrator

## Commissioners of Leonardtown LEONARDTOWN BOARD OF ZONING APPEALS

41660 Courthouse Drive  
August 23, 2011 at 5:00 p.m.

Attendees: Dr. Herbert Winnik, Chairman  
Jerome DuVal, Member  
Dr. William Icenhower, Member  
Joan Ritchie, Member

Absent: Darren Meyer, Member

Also in attendance were: Mr. Brian Gass, Applicant; William Higgs, Engineer with LSR Inc., present on behalf of the Applicant; Mr. Dan Slade, next door neighbor; Mr. Mark Cohen, Attorney for Mr. Slade; William Mehaffey, Professional Engineer and owner of Mehaffey and Associates, present on behalf of Mr. Slade; Joseph Mitchell, Attorney for the Board of Appeals ("BOA"); DeAnn Adler, Plans Reviewer; and Teri Dimsey, Recorder. An official list of attendees is on file at the Town Hall.

Chairman Winnik called the meeting to order at 5:00 p.m. and then took up the first item of business.

### **APPROVAL OF MINUTES – June 8, 2010**

Chairman Winnik entertained a motion to approve the June 8, 2010 meeting minutes.

**Chairman Winnik then entertained a motion to approve the minutes as presented.**

**Member Ritchie moved to approve the November 3, 2008 minutes as amended; seconded by Member DuVal; no further discussion, motion passed unanimously.**

Chairman Winnik moved on to the next order of business.

### **NEW BUSINESS:**

Chairman Winnik stated that because there is so much material submitted for this case he will read off the title of each document and number each document for clarity.

Chairman Winnik asked Ms. Adler to present the case information.

Ms. Adler reported that the Board of Appeals is assembled today to hear:

**Case # 18-11 – 22490 Breton Bay Drive – Request for a variance to construct a home within the 100' Critical Area Buffer.**

**Applicant:** Mr. Brian Gass of Springhaven Homes, Inc.

**Engineer:** LSR, Inc.

**Project Description:**

History of Site – This is a grandfathered lot located in the Limited Development Area (“LDA”) of Breton Bay. It was originally created in 1947 as part of the Tudor Hall subdivision. In 1986 the Critical Area Ordinance was adopted, placing most of this lot within the 100' Critical Area Commission (“CAC”) buffer zone. In September, 2004 a request was made by Benjamin Garner to the P & Z board to construct a new home on this lot within the 100' critical area buffer. This new home had a footprint of 2,270 s.f. and a total impervious surface area of 4,100 s.f., which included driveways, sidewalks and a patio. This request was given a recommendation of approval by the P & Z Board at that meeting. The CAC did not oppose the variance request, provided mitigation was done at 3:1 for any disturbance to the buffer – see enclosed 2004 letter. The Board of Appeals also approved this variance request in October of 2004. I have also enclosed the minutes of those two meetings.

Today, Mr. Brian Gass has an option to purchase this property. He would like to construct a two-story home with a footprint of 2,617 s.f. and 1,213 s.f. of porches, sidewalk and driveway, as shown on the enclosed site plan and architectural. This new building site plan equals 3,830 s.f. of impervious surface area - 270 s.f. less than the original 2004 plan. He has agreed to plant extensive mitigation plantings that are acceptable to the CAC – see response letter from them dated June 2, 2011. Also fees-in-lieu will be paid to the Town in the amount of \$23,400 to satisfy the remaining mitigation required by the CAC. A bond will be required (as per CAC) to ensure that the plantings survive for five years. This new plan was submitted to the CAC, Department of Public Works and Soil Conservation. It has received approval from Soil Conservation and the Department of Public Works.

In order to grant the variance, the Board must find that the Applicant has met each of the Critical Area variance standards as listed in their letter dated June 2, 2011.

This project was presented at the July 18, 2011 P & Z Commission meeting. A vote was taken, and a recommendation of approval was sent to the Board of Appeals - see the enclosed minutes of that meeting.

**Action Needed Today: The Applicant is requesting a variance to construct a home within the 100' Critical Area Buffer. The Board of Appeals may vote to approve, approve with conditions, deny, or delay a decision.**

Chairman Winnik proceeded to go through the materials and documents from 2004 to present and asked for any comments or questions as he stated the title and number of each document.

Chairman Winnik invited Mr. William Higgs to present their case.

***Mr. Higgs swore and affirmed that the testimony he was about to give was true to the best of his knowledge, information and belief under penalty of perjury.***

Chairman Winnik asked if the 100' critical area buffer began at the water's edge.

Mr. Higgs stated that it would be from the water or any tidal or non-tidal wetlands that might be adjacent to the buffer.

Mr. Higgs brought forward a copy of the plat of the property to show where the 100' buffer line is located.

Chairman Winnik noted that the Applicant is claiming unwarranted hardship and asked to have that explained.

Mr. Higgs explained that they are saying this is not something that was created by the property owner himself but was created because the critical area ordinance came into effect after the creation of this lot. Now, because of the 100' buffer requirement, which covers almost all of this lot, a house cannot be built on it without a variance.

Chairman Winnik noted that this lot was grandfathered before the critical area buffer ordinance came into effect.

Member DuVal commented that he heard that the topography of this lot has changed drastically, not naturally, but manmade, and asked what impact that has on this lot. Our information does not note that the topography has changed.

Mr. Mitchell remarked that when the critical area legislation was adopted, a map of the entire Chesapeake Bay area was prepared in conjunction with global planning laws and the 100' buffer was established on maps of record.

Chairman Winnik asked, "So when you say in Section B that it creates an unwarranted hardship on this property, you mean that it is not because of the property, but because of some agency drawing a line saying you can't build here?"

Chairman Winnik proceeded to review the documents provided concerning this case, such as the previous minutes of the Planning and Zoning Commission. He asked the Members to please comment or ask any questions during the review.

Member Ritchie inquired about a shared driveway mentioned among the 2004 documents. "The plat shows that part of the neighbor's driveway is on this lot. Is that in writing somewhere attached to the deed, that this will be a shared driveway so that both homeowners have access forever? This could become a point of contention among the homeowners in the future."

Mr. Higgs responded that he is not aware of any such record.

Member DuVal asked if this was the only entrance he was considering to this property.

Mr. Higgs responded, for this plan, yes. This driveway is already there and has existed as such for many years. It begins on the property discussed today, and then continues onto Mr. Slade's property next door.

Mr. Slade remarked that this driveway entrance is attached to his deed.

Member DuVal noted that it appears that the layout of the house has changed. "Is this a one, two or three story house? What is the real square footage?"

Mr. Gass remarked that it is a two story house with a walk-in attic for storage.

There was much discussion regarding the height of the structure from the ground up. The peak is at 41'5" which includes 13'6" for the attic addition. This is at elevation zero. The first floor elevation is 9'6". The plan only shows the first floor elevation with a 2'6" foot crawl space. One of the concerns is the height of the building potentially blocking a certain portion of the neighbors' view.

Chairman Winnik moved on to the Critical Area Commission report dated June 6, 2011. The report states that they do not oppose this house being built; however, extensive mitigation will be required on site in addition to \$23,200 in Fees-In-Lieu. Also, they would like to see a reduction in the footprint size of the home to further reduce the limits of disturbance.

Ms. Adler wanted to clarify that they are not saying there should not be any Fees-In-Lieu paid, but the CAC is saying that the house could be smaller so that more plantings could be fit on the lot, thus reducing the Fees-In-Lieu.

Member Ritchie remarked that it is her understanding that this Board does not have to take that recommendation.

Ms. Adler responded yes, their report is only a recommendation and not a requirement.

Chairman Winnik stated that this gives us insight into one of the things we should consider seriously. The purpose of the CAC is to prevent erosion and pollutants from going into the bay and a whole range of things that affect our environment.

Member Ritchie noticed that in reviewing the material it seems they will be putting in more plantings than the CAC required.

Member Icenhower noted that there were a large majority of trees and vegetation on this lot that would block the view of the home being built.

Chairman Winnik read the last paragraph of the first page of the letter from the CAC to the Town and asked for interpretation.

Mr. Higgs remarked that the Town had adopted the critical areas program, and so when you apply the 100' critical area buffer and the building restriction lines to this lot, you literally deny any sort of building on the property, which is why the owner needed to ask for a variance. The granting of this

variance will not confer upon the Applicant any special privilege that would be denied by the Town's critical area program to other lands or structures within the Town's critical areas.

Mr. Higgs stated that this means that you have granted this type of variance to other properties that are in the critical area within the Town. They are not asking for anything that has not already been granted to other applicants that have requested variances.

Chairman Winnik moved on to a document labeled number seven - Minutes of the Leonardtown Planning and Zoning Commission meeting which took place on July 18, 2011.

Member Ritchie referred to the paragraphs on pages 3 and 4 which talked about this lot being underwater from a storm surge. "I understand the house being moved away from the water helps that, but how much help will it be if there is a large storm surge?"

Mr. Higgs responded that there are requirements for building in a floodplain. The flood elevation is elevation six and on the plan the flood line is shown and it comes right up to the porch on the plan. The house is located outside of the floodplain.

Chairman Winnik referred to paragraph four where Member Hammett stated that he was concerned about how low this lot is and asked if the property was in the floodplain. Mr. Higgs had stated no, it was not.

Mr. Higgs clarified that no, the house is not in the floodplain, but the lot itself is in the floodplain.

Member DuVal inquired about the soil erosion and sediment control. He said the Code states that the sediment control practice shall be appropriately designed to reduce the water quality impact, and asked if that had been taken into consideration.

Mr. Higgs stated that that is an engineered sediment & erosion control plan, and it has been reviewed by Soil Conservation and they do have a letter on file and are ready to sign off on it as soon as they get the Applicants' signatures. We did not get signatures yet, as we wanted to wait until we came before the Board of Appeals in case there are any changes.

Chairman Winnik continued with the document labeled number nine - the engineering drawings. There were no questions and he moved on to the next set of documents, which were a set of documents from Mr. Slade's attorney.

Ms. Adler stated that these documents were just received about two hours prior to today's meeting.

Mr. Mitchell asked for clarification in the document where it mentions a 2008 variance when it should be a 2004 variance.

Member DuVal inquired about the actual lot itself and asked if anything, such as the wetlands, was included in the calculations.

Mr. Higgs responded that no, the wetlands were not included.

Member Ritchie asked what exactly you are referring to as offsite mitigation.

Mr. Cohen responded that the drawings before you today show two-thirds of the mitigation plantings somewhere other than on the lot.

Chairman Winnik suggested holding off on this discussion until we get to where they will be putting the plantings. He asked them to continue to review the remaining documents they received.

Chairman Winnik asked the applicants to proceed with the presentation of their case, but noted that each person speaking would be required to be sworn in according to the State regulations, because these proceedings may go directly to a judge.

Mr. Higgs stated that there seems to be some discrepancy about the acreage and house plan changes that have occurred, and we may need to confer with the Applicant to verify the correct information.

Mr. Higgs stated that with this plan they attempted to keep the house as close to the front and side yard restriction lines as possible, which still puts it as far from the creek and wetlands as possible without getting in the way of the existing driveway and still allows for ample parking in front of the house.

Mr. Higgs noted that there is a footprint of 2,617 s.f. and 1,213 s.f. of additional driveway, which equates to 3,830 s.f. of impervious surface which is 23.5% of impervious surface. We are allowed up to 25% of impervious surface.

Member Ritchie pointed out that 718 s.f. is reflected on the site plan.

Mr. Higgs responded that it is the existing driveway plus the proposed driveway, for a total of 1,213 s.f.

There is an existing forested area on the edge of this property and we are not clearing any trees on this site. There are some improvements we are doing and they are inside the cleared area. We do plan to infill new trees along with the existing trees and make a contiguous forest. This will be a mixture of shrubs, perennial trees and understory trees.

Member DuVal stated that he was a concerned about where all the additional new plantings were to be located.

Mr. Higgs noted that they were planning to do some offsite mitigation for the additional trees that needed to be planted, but that may change.

Chairman Winnik remarked that the entire limit of disturbance is 7,200 s.f. The Applicant is correctly providing mitigation of 3 to 1, over 6,000 s.f. plantings on the site; the remaining mitigation will be paid by Fees-In-Lieu. There is a total of 21,600 s.f. of required plantings for this property.

Ms. Adler remarked that 15,600 s.f. of mitigation will be addressed with Fees-In-Lieu instead of plantings.

Chairman Winnik asked what could be further minimized to get more planting on the site.

Mr. Higgs stated that there is nothing more they can do to minimize without reducing the size of the house.

Mr. Gass was sworn in and stated that the house is a four bedroom, two and a half bath, two story home with a walk in attic. There will also be a small two car garage with limited storage. The footprint has been reduced from the floor plan previously presented in 2004. He said they have less impervious surface disturbed than what was previously approved in 2004.

The members reviewed the mitigation plans and discussed the footprint of the home and asked a variety of questions concerning the view, the impervious surface, and the mitigation plantings.

Chairman Winnik asked Ms. Adler if the proper procedures have been followed. Were the adjacent and surrounding neighbors notified by certified mail? Had a sign been placed on the property notifying the community and had this request been posted in the newspapers?

Ms. Adler responded yes to all, with two postings made in the local newspapers.

Chairman Winnik asked the representative for the opposing side to present their case at this time.

Mr. Cohen, the attorney representing Mr. and Mrs. Slade, the opposing neighbors, addressed Mr. Higgs and asked the size of house for which he was requesting approval.

Mr. Higgs responded that he does not know the entire square footage. He does know what the footprint is.

Member DuVal commented that it is 4,869 s.f., which includes the driveway.

Mr. Cohen remarked that he is referring to the square footage of the house itself.

Member DuVal read off the plan: first floor - 1,692 s.f.; second floor finished- 1,658 s.f. and second floor unfinished - 221 s.f.; third floor - 722 s.f.; for a total of 4,293 s.f., and this does not include the garage at 576 s.f., for a grand total of 4,869 s.f.

Mr. Cohen asked Mr. Higgs if he could make this house smaller.

Mr. Higgs responded yes.

Mr. Cohen stated that they did not really need a house over 5,000 s.f. on this lot.

Mr. Higgs responded that this house is not 5,000 plus s.f.

Mr. Cohen noted that the third story would be open for the residents to use.

Mr. Gass remarked that the third floor is to be used as a storage area only.

Mr. Cohen stated that with the third story, it is then a bit more than 5,000 s.f.

Mr. Higgs said it sounds that way, if you add in the storage attic.

Mr. Cohen stated that the initial application was for a 3,223 s.f. two-story house.

Mr. Cohen remarked that the submitted plan only shows the first floor elevation. "The height of the home is 41 feet in elevation. So if we measure from ground level to the very peak of the building how high would that be?"

Mr. Higgs responded, "31.5' from the first floor and 33.5' from the crawl space."

Mr. Cohen asked that if we are considering the ground as it now lies. "When you build this house, how high would the tallest peak be from ground level?"

Mr. Higgs remarked it would be about 33.5 feet high.

Mr. Cohen stated that there was a prior approved variance for this lot for a one-story house. In that previously approved variance, mitigation was to be provided on-site. He asked how large the original house was going to be, and said it was so much smaller than the house proposed now.

Mr. Higgs noted square-foot wise, yes.

Mr. Cohen asked "in looking at the plans if it would be possible to do all the mitigation on-site?"

Mr. Higgs replied no, he did not think so. We could possibly do some more mitigation, but I do not think it is possible.

Mr. Cohen directed his attention to the smaller planting plan, which does not show any plantings in and around the house, but said it looked like plantings could be done there as well.

Mr. Higgs said yes, they could do additional plantings around the house, but they could not get all of the plantings on-site.

Mr. Cohen asked if he was aware of any fill being placed on this site.

Mr. Higgs commented that he is not aware of the history of this lot. He did say that in looking at the lot it appears as if some fill may have been placed on it, but he cannot tell what or how much.

Mr. Cohen asked if they were aware that fill was placed on the site to fill in the tidal marshland, and if this was the case, then no one could build on it because it is State wetlands.

Mr. Higgs responded no.

Member DuVal commented that this was one of his initial questions. "Was this topography disturbed by man in any way? The response I had gotten was either I don't know or no."

Chairman Winnik asked Mr. Cohen if he has any evidence to prove this.



Mr. Cohen referred to Mr. Higgs response saying that he believed it had been filled in at some time just looking at the topography.

Mr. Cohen stated that they do have witnesses that know it was tidal marshland and it was filled and they are present today and that would be Mr. and Mrs. Slade, the adjacent landowners.

Member Ritchie asked, "Don't you think Critical Areas Commission took all this into consideration when they gave their report and witnesses came before them?"

Mr. Cohen stated that he did not.

Member Ritchie stated that we don't know that it wasn't taken into consideration either.

Member DuVal wanted to know if there was any record of complaints or any breaking of the law or anything that was filed. If the existing landowner saw this happening did they ever report it or was there any record of it anywhere besides your eyewitness?

Mr. Cohen noted that he does have the adjoining property owners present to testify.

Mr. Cohen asked Mr. Higgs if he could tell us about any properties that he is aware of in Town that were allowed to do off-site mitigation.

Mr. Higgs said no, other than the Leonardtown Wharf, which was a Town project.

Ms. Adler added that in the 2004 letter from the CAC for the previous variance, it was noted on the bottom that they could put it on the adjacent property owned by the Applicant, which means the CAC would allow them to do off-site mitigation.

Mr. Cohen noted that the only time the Board has allowed off-site mitigation was one time, for the public Wharf project.

Mr. Cohen called forth Mr. Daniel Slade, the adjoining property owner.

***Mr. Slade swore and affirmed that the testimony he was about to give was true to the best of his knowledge, information and belief under penalty to perjury.***

Mr. Cohen confirmed with Mr. Slade that he is the directly contiguous property owner. He asked, "Can you tell us whether you believe that the proposal you heard today would have any adverse effect on the enjoyment of your property or your property value?"

Mr. Slade responded, "Absolutely, it would have a devastating effect. It would take away our water view."

Chairman Winnik stated that they are approximately 22' higher than the proposed building.

Mr. Cohen asked if, in his opinion, the size and height of the proposed house would block their view of the water.

Mr. Slade responded yes, it would diminish it by at least a quarter.

Mr. Cohen asked Mr. Slade how large his home is.

Mr. Slade responded that it is approximately 2,000 s.f. It is a two story brick home with a basement. He stated, "I did not have any problems with the original variance for the one-story home. I could still look over the house and continue to have a water view." He provided the Board with photos of the water view from the porch of his home.

Mr. Cohen stated that there was some discussion about how much of the lot they believed was filled. From Mr. Higgs' testimony he also believes some of the lot was filled.

Mr. Slade stated that he believed the lot had been filled from talking to his neighbors who have lived there for many years, and from Mr. Garner who had previously owned his property and would stop by every so often and walk the grounds with them. He said Mr. Garner mentioned that there used to be a swimming pool that was covered up, etc. and when we walked down the hill he stated that yes, he had filled it in with extra loads of fill off of a dump truck to fill in the marsh.

Mr. Slade pointed out the area on the plat that he was referring to.

Mr. Gass commented that this should be considered hearsay.

Chairman Winnik remarked that he would like him to continue to see how much evidence he may have, but stated to Mr. Slade that he had no other evidence other than hearsay.

Mr. Slade said he has the Dorsey, Norris and Drury families, who have said they witnessed this lot being filled in and he also has a signed petition from them stating that they oppose this size home being built on this lot.

Mr. Slade said that they are not opposing this variance request, but are opposing the size of the home being built.

Member DuVal asked Mr. Slade if he had an eyewitness who saw them and could testify that this lot had been filled in.

Mr. Slade responded yes, that the families he just mentioned had all shown him what area had been filled.

Chairman Winnik stated that this is still considered hearsay and if Mr. Slade had signed and certified statements then that would be evidence. He stated they may have told him that the lot had been filled, but they are not present today to verify that information. We accept what you have heard, but it is not considered legal evidence.

Member Ritchie asked if Mr. Slade had received notification about a year ago regarding a variance on this property.

Mr. Slade said no, the first notification he received was about three weeks ago. He has never received any notice from the Critical Areas Commission.

Member Ritchie felt that this variance request should go back to the CAC because this was not something the Board can decide on.

Mr. Higgs asked Mr. Slade if anyone he talked to mentioned if the fill covered all of the marsh or just the lowland and non-tidal wetlands, and whether anyone clarified what was filled in.

Mr. Higgs asked Mr. Slade who maintained the grass on the lot.

Mr. Slade stated that the bank takes care of it.

Mr. Higgs questioned if the lot was not maintained, wouldn't it grow up into trees, which would then obstruct the view also?

Member Ritchie noted that she took a look at the water marks and the vegetation and the particular trees that are there are fast growing and will grow considerably taller very quickly.

Mr. Cohen called forth Mr. William Mehaffey, Professional Engineer and owner of Mehaffey and Associates.

***Mr. William Mehaffey swore and affirmed that the testimony he was about to give was true to the best of his knowledge, information and belief under penalty to perjury.***

Mr. Cohen asked Mr. Mehaffey to provide a summary of his education and background.

Mr. Mehaffey responded that he is a graduate of engineering school at Old Dominion University in Virginia, having graduated in 1979. He is licensed and practices professional engineering in both Virginia and Maryland and has been doing land development engineering in Maryland since 1990 and is familiar with the critical areas laws.

Mr. Cohen asked what mitigation is required for approximately 7,000 s.f. of buffer disturbance.

Mr. Mehaffey noted that the plan reflects 7,200 s.f. of disturbance for a variance of 3 to 1 mitigation, so approximately 21,600 s.f. of mitigation is required.

Mr. Cohen asked Mr. Mehaffey if he felt that all of the mitigation plantings could fit on this lot.

Mr. Mehaffey said yes.

Member DuVal addressed Mr. Slade, "The previous homeowners had shown you where fill was placed on this lot. Prior to attending this meeting, you obtained signatures from the various homeowners. Do any of those signatures represent any of the individuals who witnessed where the filling took place?"

Mr. Slade stated that Mr. Garner was the only one who actually walked the lot and showed him where it had been filled.

Member DuVal noted that the signatures of the surrounding homeowners were also witnesses to the lot being filled.

Member Ritchie said she believes that this should now go back to the CAC for review.

Mr. Slade agreed.

Chairman Winnik stated that we do have CAC approval and they did say they would like some reduction in house size. We do have the site and house plan before us, and we have to make a decision to accept, accept with provisos or object.

Mr. Slade noted concern for the safety of his children with the driveway planned so close to his home.

Mr. Cohen stated that he would like to provide a brief summary of their case. He wanted the Board members and Applicant to know that they have no objection to a house being built on this site. They saw the 2004 approval and were happy with the size of the smaller home. The reason we raised the issue of the tidal marsh is because we believe this area was filled in the past. The application, as we understood it, was for 3,223 s.f. two-story house and when you are requesting a variance you have to consider the rights of the adjoining property owners and the applicant has to demonstrate they need the variance and that it is equitable and fair. We think a smaller, one-story house is fine. Even the CAC said to make the house a bit smaller. The testimony you heard today about allowing off-site mitigation really does violate your variance standards because you would be granting the Applicant something you don't give to anyone else. What is the right? The right not to do mitigation on his own property and the only time this was permitted was for a public interest project. There are also a number of specific issues you must touch on in deciding whether to grant mitigation. There has been no expert testimony to confirm that if this variance is granted, it will not have an adverse affect on water quality and plant habitat. That is a finding you have to make in order to grant this variance, and you have had no expert testimony whatsoever that this project will not adversely affect water quality and plant habitat. It is the Applicant's burden to present that to you.

Chairman Winnik stated that they will take a five minute break and then hear closing remarks.

Mr. Higgs asked if his associate, Mr. Wayne Hunt, could make some remarks.

***Mr. Wayne Hunt swore and affirmed that the testimony he was about to give was true to the best of his knowledge, information and belief under penalty to perjury.***

Mr. Hunt stated that he heard a statement made that they did not address water quality or adverse impacts of water quality. This plan was designed in accordance with storm water management regulations for environmental site design. They have been reviewed and approved by the Town and the St. Mary's County Department of Public Works as adequate.

Mr. Hunt also stated that they have prepared a drawing showing the elevation and height of the proposed home. It shows the peak elevation of 41.5' and an elevation of 28.5', which is the gable for the garage. There is a straight line drawn, not shown on this particular exhibit, from across the front of the house

towards the shoreline towards Breton Bay. It shows that the proposed house will block only a part of the Slade's view, but I do not believe that it will totally obstruct their view of the water.

Mr. Higgs commented that they looked at the environmental impact of the house and they actually have a smaller footprint. We are planting a lot more trees now than were required in 2004.

Mr. Gass remarked that when Mr. Slade was speaking about the square footage of his home, he said it was approximately 2,000 s.f., but then he mentioned a basement, which would mean it is similar to the attic storage for his proposed house. There is a combination of different sized homes in the surrounding neighborhood. The Dorsey home is 3,751 s.f. of heated living space and my proposed home is 3,400 s.f. of heated living space, which means that if you added in their garage and porches this home would be well over 4,000 or 5,000 s.f. So the home being proposed is not really any larger than some of the surrounding homes.

Chairman Winnik read the variance code pertaining to this case:

Member DuVal commented that he had visited the lot and took a video scanning the view from the Slade's residence. After reviewing the video it did not appear that the proposed home would take away the entire water view because the Slades' home is positioned at a higher elevation. It would block some of the view, but not all of it.

Mrs. Slade agreed that yes, they would lose about three-fourths of their view, but would retain about one-fourth.

Member Icenhower asked why the home could not be set back further.

Mr. Hunt stated that doing so would increase the limit of disturbance and make the home closer to the resource protection areas.

Member DuVal asked, "If the Board were to step aside for a period of time to review some of the material they just received from Mr. Slade today, right before the meeting, what impact would that have on the applicant?"

Mr. Gass remarked that, per the bank, he has six months to get approval and it has been five and half months just to get to today's meeting. It would be a hardship for him to delay this decision.

Member DuVal stated that if the Board held an executive session right now, he could come back in with a decision.

Mr. Mitchell stated that it would be appropriate for the Board to confer with their attorney.

Chairman Winnik entertained a motion.

**Member DuVal moved to go into executive session to discuss issues with their attorney for a period of no more than thirty minutes; seconded by Member Ritchie, motion passed unanimously.**

**The Board of Appeals retired to executive session for thirty minutes.**

**The Board of Appeals reconvened the public hearing.**

Member DuVal stated that he does not want to cause the Applicant any additional hardship due to the length of time the Applicant has already spent in getting to this point.

Member Ritchie noted that she looked at the existing homes on the street, the size of the homes and their lots, and felt that this proposed home was in keeping with what has been added to this neighborhood over the last eight to ten years.

Chairman Winnik remarked that while Mr. Slade will have a reduced view, he will not have a totally obstructed view. He does feel though that off-site mitigation is a bad precedent to set and that there should not be any off-site mitigation allowed.

**Chairman Winnik entertained a motion on Case # 18-11 – 22490 Breton Bay Drive – Request for a variance to construct a home within the 100' Critical Area Buffer.**

**Member Ritchie moved to approve the granting of the variance; seconded by Member Icenhower. Member Ritchie and Member Icenhower voted aye, Member DuVal abstained and Member Winnik voted nay.**

*Attorney Joe Mitchell stated that even with Member DuVal abstaining it has not broken the quorum, so two to one would be the majority, and the motion would pass.*

**Chairman Winnik stated there being a quorum, the motion passed.**

Chairman Winnik continued with the review of the Rules and Procedures for Administrative Appeal. Since no one had any changes to be made, the Board of Appeals members wished to pass on the Rules and Procedures for Administrative Appeal to the Town Council for inclusion in the next round of ordinance changes.

**Chairman Winnik entertained a motion to adjourn.**

**Adjournment:**


**Member DuVal moved to adjourn the meeting at 8:00 p.m., seconded by Member Ritchie, no further discussion, motion passed unanimously.**

Respectfully submitted:

  
Teri P. Dimsey, Recording Secretary

**Approved:**

\_\_\_\_\_  
Dr. Herbert Winnik, Chairman

  
Jerome DuVal, Member

\_\_\_\_\_  
Dr. William Icenhower, Member

\_\_\_\_\_  
Absent  
Darren Meyer, Member

  
Joan Ritchie, Member