

BOARD OF ZONING APPEALS

MEETING MINUTES

Monday, December 9, 2019

Town Office

5:30 p.m.

I. CALL TO ORDER

Chairman William Harvey convened the meeting of the St. Michaels Board of Appeals (BOZA) at 5:30 p.m. in the meeting room of the Edgar M. Bosley, Jr. Municipal Building, 300 Mill Street, St. Michaels, Maryland. Also present were board members John Hunnicutt, Maurice Nelson (Alternate) and Douglas Rollow, and Zoning Officer Kymberly Kudla.

II. APPROVAL OF MINUTES – July 8, 2019

Chairman Harvey said that he and members Doug Rollow and Maurice Nelson were present at the July 8, 2019 meeting. He called for a motion to approve the minutes, as there were no comments or suggested edits. Member Nelson made the motion to approve the July 8, 2019 minutes. Member Rollow seconded it, and the motion passed on a voice vote of 3-0 in favor.

III. NEW BUSINESS

BOZA 596-19: 209 N. Talbot Street - Special Exception application for two principle uses - to establish a restaurant use within a hotel use at the request of the purchaser, Erkiletian Development Company

Chairman Harvey read Exhibits 1-10 for Case No. BOZA 596-19 into the record and stated that he had visited the property at 209 N. Talbot Street. Members Rollow and Hunnicutt attested they had also visited the property. Chairman Harvey then swore in all those intending to testify. Chairman Harvey stated the criteria for granting a special exception under Section 340-74 of the Code of St. Michaels. Chairman Harvey concluded that the Board must find that it is empowered under the Code to grant a special exception and the applicant must meet all criteria for the granting of the special exception, as noted below:

1. Use is consistent with purposes and intent of the St. Michaels Comprehensive Plan
2. Complies with standards of the Zoning District in which it is located
3. Scale, bulk and general appearance of the use is compatible with adjacent land uses and will not be detrimental to the economic value of neighboring property
4. If applicable, the Applicant will go before the Historic District Commission for any changes to the exterior
5. Use will not adversely impact public facilities, police, fire, etc.
6. Use will not constitute a nuisance and will not have a significant impact on the surrounding properties due to pedestrian or vehicular traffic
7. Use will not adversely affect the public health, safety or general welfare

Member Rollow had a comment about the attorney representing the applicant and invited inquiries outside of this procedure. Zoning Inspector Kudla had no additional comments. Attorney Burry Parker provided an overview of the project and a history of the Five Gables Inn, noting that the Inn has had multiple uses, and the applicant wants to reduce the uses from three to

two – a hotel and restaurant. Applicant Mihran Erkiletian introduced himself, Attorney Burry Parker, and Architect Goebel, and noted that his family had been in the area for many years. Attorney Parker said he had represented the applicant's father several years ago. The Erkiletian applicant said his company plans to convert the spa and pool area to a small restaurant/bar and some new guest rooms. He noted there would be 64 seats inside, with patio seating for 24 outside for serving lunch and dinner. The applicant said the pool and spa were being removed and the existing patio space upgraded for seating. The applicant said the building footprint would not change and minor changes would be made to the exterior that would be put before the Historic District Commission. Mr. Erkiletian then responded positively to the seven criteria noted above, as reviewed by Attorney Parker. Chairman Harvey noted the parking requirement and the applicant said he believed that parking would be more than sufficient. Zoning Inspector Kymberly Kudla had no additional comments or questions.

Chairman Harvey acknowledged questions from the public. Doug Stewart of the Bistro Restaurant asked where the applicant would get his employees. The applicant responded that he planned to seek out local and area employees. Chairman Harvey addressed a question on parking, after which he thanked the applicant for his testimony and asked if the board members had any further questions. As there were none, Chairman Harvey then made a motion to approve the applicant's request for a special exception as set forth in BOZA-596-19. Member Hunnicutt seconded it. Chairman Harvey said there should be a Finding of Fact prior to the vote. Member Rollow had a technical question about parking and said he perceived a potential conflict. Chairman Harvey said the Planning Commission had reviewed parking and provided a recommendation of approval for the application. Chairman Harvey then proceeded with the Findings of Fact, reviewing the applicant's compliance with the seven criteria noted above. Chairman Harvey concluded that the applicant had met all the criteria and made a motion to approve the request for a Special Exception. Member Hunnicutt seconded it, and the motion passed on a voice vote of 3-0 in favor. Chairman Harvey said the Special Exception was granted and thanked the applicants for their presentation.

BOZA 597-19: 325 Perry Cabin Drive – Variance from Critical Area 100-foot buffer for a 116-square foot deck addition for the Keller Estate, Patricia Keller

Chairman Harvey recused himself from the case as a neighbor and resident of Perry Cabin Drive. Vice Chairman Rollow took over direction of the meeting and Alternate Member Maurice Nelson came forward as the third member of the board. Maureen McHugh and Dawn Lednum introduced themselves as representing the applicant. Vice Chairman Rollow swore in all those wishing to testify, including Carl Kuhne, a member of the public and resident of Perry Cabin Drive. Vice Chairman Rollow identified the case and incorporated Exhibits 1-13 into the record by reference. The applicant noted additional photos that she had taken. Vice Chairman Rollow said if the photos were used, they could be entered into the record later. Vice Chairman Rollow then summarized the six Findings of Fact required for a variance of the Critical Area 100-foot buffer as outlined in Chapter 340-77. Vice Chairman asked if the Zoning Officer had any comments. Ms. Kudla had no comments. Ms. McHugh then introduced herself and noted that the variance request was to allow the applicant to remove the existing decking and old patio pavers and build a new squared-off deck with pervious materials that will line up with other decks on adjacent properties. Ms. McHugh said the new decking materials and the removal of

pavers would improve the pervious footprint of the property. Ms. McHugh said the property owner's hardship was that they had been unable to sell their property because potential buyers have wanted to know if they can square off the deck like other "D" units in the development. Ms. McHugh said there is a current buyer who is interested if the deck can be squared off to create an updated and improved property. Ms. McHugh continued that the deck issue was not caused by the applicant and the change will not impede the water view of neighbors. Vice Chairman Rollow thanked Ms. McHugh for her presentation. He noted that his visit to the property and the maps indicated that most of this property, and all the adjacent ones, were in the buffer and would have to have been permitted prior to the Critical Area law taking effect. Carl Kuhne, 320 Perry Cabin Drive, said he did not object to the improvement of the deck. Vice Chairman Rollow confirmed that because of the position of this particular unit, none of the neighbors can actually see the deck from their property. Member Hunnicutt confirmed that there would be no change to the property except for an improvement to the buffer. Member Nelson asked if there was any other hardship except for the inability to sell the property. Ms. McHugh said the unit is a four-bedroom, four-bath house that could use more adequate entertaining/outside space. Member Nelson said it appeared that other units in the same location had been built out and did any of them have variances granted. Zoning Officer Kudla said this particular property had applied for a variance previously to square off the deck, but the Board of Appeals denied it. Vice Chairman Rollow noted that if the old deck is removed, and not replaced, the owners would have a three-foot drop out a sliding glass door. Vice Chairman Rollow added that the deck would be an improvement, and in fact, the Critical Area Commission wrote a letter stating their dislike of such projects, but including their conditions should the variance be granted. The applicants were provided a copy of the letter, designated Exhibit 13, for their review of the mitigation requirements. Vice Chairman Rollow said that, should the variance be granted, the Zoning Officer would be responsible for the building permit that would include compliance with the Critical Area conditions. Member Nelson said he had concerns that the variance was denied by a prior board for the same owner and for the same request. Member Hunnicutt said he felt the current board should take the Critical Area's present letter at face value and not decide based on any prior rulings. The Zoning Officer retrieved the file on the prior case, and the members reviewed it and the Critical Area law in a short recess. The members could not find prohibitive wording in the prior law. Vice Chairman Rollow said the members needed to now make Findings of Act according to Chapter 340-77.

1. Failure to grant the variance and allow replacement of one structure with another structure would be a hardship and deprive the applicant of rights currently enjoyed by other properties within the Critical Area (CA), it being clear that other properties have so expanded. There is no special privilege being conferred, as there are other structures within the CA which are identical.
2. The conditions and circumstances are not the result of actions by the applicant, in that the structure was in place prior to the Critical Area Law as instituted in 1986.
3. Water quality, wildlife and plant habitat, etc. will be improved, not impaired, by the granting of the variance with the conditions provided by the Critical Area Commission (CAC).

4. The applicant is not seeking to expand the area covered by the present structure, but in fact will be increasing the pervious surface, and it is the minimum that will make possible the use.

Vice Chairman Rollow concluded that the criteria in Chapter 340-77 had been met and called for discussion. As there were no additional comments, Vice Chairman Rollow called for a motion. Member Hunnicutt made a motion to grant the variance as requested by the applicant. Member Rollow seconded it and called for any discussion on the motion. Member Nelson said he had set forth his concerns, and they remain. The vote was as follows:

Member Hunnicutt	Aye
Member Rollow	Aye
Member Nelson	No
Member Harvey	Abstain

The motion passed on a vote of 2-1 in favor. Vice Chairman Rollow said the variance was granted and thanked the applicants.

IV. MATTERS FROM THE COMMISSION AND STAFF

There were no other matters.

V. ADJOURNMENT

The meeting was adjourned at 7:00 p.m.

Minutes approved by 3:0 vote in favor on 16th day of January, 2020.

William C. Harvey II, Chairman