

**TOWN OF MILLVILLE**  
**BOARD OF ADJUSTMENT HEARING MINUTES**  
**March 14, 2018**

1. **CALL TO ORDER:** Chairperson Andy Lyons called the meeting to order at 7:00 p.m.
2. **ROLL CALL:** Commissioners' Andy Lyons, Nancy Maupai, and Sharon Brienza. Attorney Vince Robertson of Griffin and Robertson P.A., Code & Building Official Eric Evans, and Town Clerk Matt Amerling.
3. **PLEDGE OF ALLEGIANCE**
4. **APPROVAL OF BOARD OF ADJUSTMENT MINUTES**
  - A. February 24, 2016

Chairperson Andy Lyons motioned to accept the February 24, 2016, Board of Adjustment (BOA) minutes. Commissioner Sharon Brienza seconded the motion. Motion carried 3-0.

5. **NEW BUSINESS:**
  - A. Public Hearing on the following:  
Consideration of BOA 18-01 submitted by Bay to Beach Builders, Tax Map Parcel #134-12.00-280.00, 35745 Atlantic Avenue, Millville, DE 19967, for a variance of Town Code 155-29B(2), to reduce the buffer to twenty-five (25) feet; Town Code 155-28C(13), to allow the drive aisle/parking area to encroach into the side yard setback by 85%.

Mr. Robertson stated just as a refresher, there is going to be the introduction which will begin with hearing as advertised on the agenda, then, second, there's going to be background given by the Town Code and Building Administrator, and the only purpose of that is to give a brief synopsis of the matter to be heard. Then, the Board, if you have any questions for the Town official in the initial presentation, and again, that is simply to provide neutral background information, that would be an opportunity to ask at that point. Then the appellant will be offered an opportunity to present evidence or argument concerning the appeal this evening. Following that, if there are any statements in favor of the appellant's position from the public. After that, there is the quote-unquote "opponent's" evidence, which is, in this case, an appeal from the Town - the Town's presentation. And after the Town's presentation, there will again be statements from the public in support of the Town's position. Then there will be an opportunity for rebuttal evidence from the appellant. Finally, we'll wrap up with closing arguments, and, at that point, the Board can deliberate and determine what decision it wants to make. Mr. Robertson issued the oath to Mr. John Murray, of Kersher Group Inc. in Rehoboth Beach, asking if Mr. Murray swears to tell the truth, the whole truth, and nothing but the truth. Mr. Murray stated yes.

Mr. Murray stated he is representing applicant Deric Parker, owner of Bay to Beach Builders, and they are here tonight regarding the property on Tax Map Parcel #134-12.00-280.00, 35745 Atlantic Avenue, which is currently zoned as C-1 (Commercial), is forty-four-thousand-eight-hundred-sixty-seven (44,867) square feet. Mr. Murray stated Bay to Beach Builders purchased this property in September 2017, and the property currently contains an existing residential dwelling, an attached garage, and a horseshoe-shaped driveway. Mr. Murray stated the site plan distributed to the BOA shows a muted detail of the existing structure footprint, with the darker details showing what Bay to Beach plans on doing. Mr. Murray stated Bay to Beach Builders is planning on demolishing the existing structure currently on the property and the associated infrastructure to establish a new office for the business, as well as a design studio to support their home sales closer to the beaches, where they have been seeing much more business. Mr. Murray stated the new design center would be three-thousand-five-hundred-sixty (3,560) square feet in size, while the offices/model home combination would have a footprint of two-thousand-forty (2,040) square feet. Mr. Murray further stated while the underlying property zoning and location of the property is ideal for the site use, a survey of the property identifies the western property boundary follows by and with the center line of an established drainage swale. Mr. Murray stated upon review of the Delaware Department of Natural Resources and Environmental Control (DNREC) mapping, this feature is a tributary of Whites Creek, which shows on the plan along the east side of the property, located adjacent to RIB Services LLC (Dickens Parlour Theatre).

Mr. Murray stated during a site investigation by Tom Noble, who is a professional wetlands scientist and U.S. Army Corps of Engineers-certified wetland delineator with Environmental Resources Inc., the ordinary high water line of the drainage feature was flagged as an extensive jurisdictional wetlands. Mr. Murray stated while his client has no intention of disturbing any of those areas within the tributary, a review of the Town's Code, specifically Chapter 155-29B(2), identifies critical restrictions which are placed upon the property, specifically from the Code that "a fifty (50)-foot-wide buffer zone is required from all designated wetlands, and a buffer of one-hundred (100) feet is required from the mean high water line of ... tidal tributary streams, and tidal wetlands and from the ordinary high water line of perennial nontidal rivers and nontidal streams in Millville." Mr. Murray stated further, "no structures, streets, roads, lot lines or other improvements, except those required for stormwater management or erosion and sediment control shall be constructed in the buffer zone." Mr. Murray stated, when consulting with Mr. Noble, it is his professional opinion the tributary along the western property line would be considered to be a perennial stream and as such, the more restrictive 100-foot buffer on the subject parcel would apply. Mr. Murray stated the last BOA meeting with A Shade Above's variance dealt with the exact same issues as tonight's requested variance. Mr. Murray stated the 100-foot buffer effectively bisects the property and significantly limits its commercial development potential. Mr. Murray stated the existing features of the property on the plan show where the existing house and garage are located, which are outside of the buffer line, but the driveway itself encroaches on the 100-foot-wide buffer; and that gives the BOA an

idea of the limitation of space on a property there for any development potential of a commercial property. Mr. Murray stated the Town Code permits sixty percent (60%) maximum coverage of a lot by impervious surfaces and, in the case of this parcel, that area - if it were to be maximized - will be twenty-six-thousand-nine-hundred-twenty (26,920) square feet, but, as is proposed on this site plan, Bay to Beach Builders is proposing nineteen-thousand-eight-hundred-sixteen (19,816) square feet of impervious coverage, which is forty-four-point-two percent (44.2%) of the site area. Mr. Murray further stated the proposed design studio is single story, but the office itself and the model home areas will be a three-story structure; and Bay to Beach Builders has done its best to limit the footprint on the property.

Mr. Murray stated the drive aisle and the majority of the parking has been placed as close as is reasonable from a design standard to the eastern property line in an effort to maximize those site improvements outside of the 100-foot buffer zone. Mr. Murray stated on the plan, twenty-four (24) parking spaces are required per the Town Code, and twenty-five (25) have been provided. Mr. Murray stated they tried to place those parking spaces at the rear of the dwelling - to go along with the Town's design standards - but there are still challenges trying to fit all of the improvements outside of the buffer zone. Mr. Murray stated, of the nineteen-thousand-eight-hundred-sixteen (19,816) square feet of impervious coverage proposed on site, only six-thousand-four-hundred-thirty (6,430) square feet of that is within the 100-foot buffer - that is thirty-two-point-four-five percent (32.45%) of the impervious coverage. Mr. Murray stated he and Mr. Parker are here tonight to seek relief on the 100-foot-wide buffer, as well seeking relief to reduce the width on the property down to twenty-five (25) feet. Mr. Murray stated the 25 feet is measured from the corner of the three-story section, which is the office and model home area. Mr. Murray stated it should be noted a majority of the impervious coverage beyond the 100-foot buffer is actually rooftop, and DNREC considers runoff from rooftop to be clean runoff. Mr. Murray further stated they are doing their best to limit the impact beyond the 100-foot buffer line. Mr. Murray stated the placement of the drive aisle is as far east on the property as reasonable has also created the need this evening to seek permission to have a portion of the drive aisle and parking area encroaching within the sideyard setback. Mr. Murray stated part two (2), Chapter 155, Article VII, Section 28-C, item thirteen (13) of the Code only allows fifty percent (50%) of the drive aisle parking area to be located outside of a sideyard setback or in the setback area. Mr. Murray stated, as is shown in the plan, the drive aisle itself and one of our parking spaces as shown in the back, the encroachment is actually eighty-five percent (85%) into the sideyard setback, which is thirty-five percent (35%) more than permitted by Code; but, as you can see, it's being done in an effort to keep as much of the proposed improvements as possible to the east side of the one-hundred (100)-foot buffer line. Mr. Murray stated he and Mr. Parker don't feel the drive aisle itself can go any closer to the property and meet the necessary grading. Mr. Murray stated, as for the building itself, while they would like to be able to push it a little further to the east, you can see it is showing a ten (10)-foot separation between the drive aisle serving the parking area

and the building itself. Mr. Murray further stated the office of the State Fire Marshal requires the primary drive aisles be located no closer than ten (10) feet to a building. Mr. Murray stated he and Mr. Parker feel the site is in concert with A Shade Above and First Shore Federal Bank, which are located directly across the subject parcel on Atlantic Avenue. Mr. Murray stated Mr. Parker has brought some printed examples of what is proposed for the building itself on the outside, even though this isn't about the site plan tonight but more about the variance. Mr. Parker handed out a copy to each BOA member.

Mr. Robertson asked for the lot coverage numbers again. Mr. Murray stated the lot itself is forty-four-thousand-eight-hundred-sixty-seven (44,867) square feet in size, and Bay to Beach Builders is proposing a lot coverage of nineteen-thousand-eight-hundred-sixteen (19,816) square feet, which is forty-four-point-two percent (44.2%) of the site. Mr. Murray further stated the other coverage of what he was noting was if you look at what's proposed as impervious coverage, including the sidewalk, dwelling, the parking area, the drive aisle and the supporting parking area, that is six-thousand-four-hundred-thirty (6,430) square feet of the proposed impervious is beyond the 100-foot buffer line. Mr. Murray stated just for the impervious coverage, it is thirty-two-point-four-five percent (32.45%) of the actual impervious coverage itself. Mr. Murray stated almost seventy percent (70%) of what is proposed as an impervious impact to the site is located - by Code - outside of beyond the 100-foot buffer required. Mr. Robertson asked what the sixty percent (60%) max coverage. Mr. Murray stated the property is zoned C-1 Commercial and, if Mr. Murray is not mistaken, the Code states a C-1 is permitted a 60% maximum lot coverage, and Mr. Murray thinks there is an escalator in the Code which allows someone to go up to seventy percent (70%), but they are not shooting for 70%. Mr. Robertson stated Mr. Murray gave a number of twenty-six-thousand-nine-hundred-twenty (26,920) square feet. Mr. Murray stated yes, that number is the 60% of the lot, but Bay to Beach Builders is only using nineteen-thousand-eight-hundred-sixteen (19,816) square feet. Mr. Robertson stated yes. Mr. Murray stated that concludes his presentation and he's willing to take any questions the BOA may have.

Code & Building Official Eric Evans stated the Town is familiar with the site and the Town has seen it in other issues. Mr. Evans stated he's not exactly sure when the Town originally adopted the 100-foot buffer but this property is way before that. Mr. Robertson stated yes, that was one of the things he was looking up online was the Creekside condos look like they're closer together than what is proposed here. Mr. Evans stated correct. Mr. Evans stated the only thing he can think is the buffer was put in place for future developments out in vacant land, in the fields, so the Town could protect what is out in those fields. Mr. Murray stated they noticed themselves that if you follow the tributary from Whites Creek down, there are several real impacts which are far closer within that 100-foot area. Mr. Murray stated he and Mr. Parker had a preliminary meeting just to go over the nature of what was proposed and he thinks that question was asked and Mr. Murray thinks the answer was the development in the back pre-dated the buffer. Mr. Robertson stated

it's hard to tell where the stream is just because of the way it goes. Commissioner Nancy Maupai stated a lot of it goes underground too and comes up, goes back underground. Mr. Evans stated the development behind this property has retention walls holding the dirt back from going in. Mr. Murray stated if you look at Google Earth, it looks like they may have incorporated some of their stormwater management with the tributary itself, where it kind of feeds into a stormwater pond, and, from there, it kind of comes out. Mr. Robertson stated that is always a struggle with the buffer ordinance, when you have pre-existing lots which are undeveloped or you want to redevelop them, those types of ordinances work a lot better in site design. Mr. Robertson further stated when you have vacant land, you have a stream next to it, they don't work so well, when you have single lots that are pre-existing.

#### **B. Discussion and possible vote on Application No. 18-01**

Mr. Robertson stated Bay to Beach Builders has asked for two (2) variances: one is from the 100-foot buffer, and Mr. Robertson asked if this one was from Tidewater. Mr. Murray stated in dealing with Mr. Noble, from Environmental Resources, not only was the high water line flagged in the ditch but his professional opinion was that it would be considered a perennial stream. Mr. Murray stated whether it would be considered tidal or nontidal, he and Mr. Parker didn't really get into that because once you get "into the Code," and if it's considered perennial, whether it's labeled tidal or nontidal, it's a 100-foot nonetheless. Mr. Robertson stated the second variance is Town Code 155-28C(13), prohibiting encroachment no more than fifty percent (50%) into the side yard for the drive aisle. Mr. Robertson stated the standard is to recognize whether there is an unnecessary hardship or exceptional practical difficulty that exists in complying with the Code. Mr. Robertson if the BOA were to act favorably on this case, it would be that the lot is pre-existing and is relatively small, and it would be difficult to comply with the buffer requirements, for example, given the lot size. Mr. Robertson stated whether the property can be developed in strict conformity with the Code, the BOA can make that judgement based upon where the 100-foot buffer lies on this property. Mr. Robertson stated whether the condition requiring leading to the variance is not created by the applicant and doesn't create any special privilege to the applicant, those are the standards the BOA has to consider. Mr. Lyons stated he has noted there is a conflict with that buffer existing and properties that are not in compliance with this, including some new structures as well as existing structures. Mr. Lyons stated he doesn't think any of these requests are unreasonable. Ms. Brienza stated she agrees with Mr. Lyons. Mr. Robertson stated this is very similar to A Shade Above's variance from the last BOA meeting.

Ms. Brienza stated she motions to granting the variances from Town Code 155-29B(2), with regard to the 100-foot buffer from perennial waters; and from Town Code 155-28C(13), regarding encroachment of no more than fifty percent (50%) in the sideyard to allow the drive aisle/parking area to encroach into the side yard setback by 85%. Mr. Lyons seconded the motion. Motion carries 3-0. Mr. Robertson

stated since there was no one from the public in attendance tonight, there were no comments.

**6. ADJOURNMENT:**

Ms. Brienza motioned to adjourn the meeting at 7:25 p.m. Mr. Lyons seconded the motion. All present voted in favor. The motion carried unanimously 3-0. Meeting adjourned at 7:25 p.m.

*Respectfully submitted, Matt Amerling*