

BEFORE THE BOARD OF APPEALS OF QUEEN ANNE’S COUNTY

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In the matter of Application by * Case No. BOA-22-12-0137

Ronald Fodor *

for Zoning Variance *

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FINAL DECISION OF THE BOARD

Introduction

The Queen Anne’s County Board of Appeals (the “Board”) held a meeting on January 26, 2023 at 4:00 p.m. to consider Case No. BOA-22-12-0137 for a variance application filed by Ronald Fodor (hereinafter the “Applicant”). The Board members present were Chairman, Howard Dean, and Board Members Craig W. McGinnes and Michael Lesniowski.

At the beginning of the hearing, the Board established that all requirements were met governing the filing of the variance application, and proper notice of the January 26th public hearing. Board Chairman Dean administered the oath to all who wished to testify on the application, including the Applicant.

Applicant’s Request

The Applicant requests a variance to the provision of § 18:1-19.E(1)(c)[4][f][i] of the Code of Public Local Laws of Queen Anne’s County, 1996 Edition (the “Code”), to reduce the required 35 foot front yard setback to 14 feet to construct an addition to an existing single family dwelling. The Applicant’s property is located at 101 Baltimore Avenue, Stevensville, Maryland (the “Property”). The Property is zoned Neighborhood Conservation-20 (“NC-20”). The Zoning Inspector determined that the proposed addition of the Applicant’s dwelling did not meet the minimum front yard setback of 35 feet as required by the NC-20 District. Therefore, the Zoning Inspector denied the Applicant’s building permit to construct the addition to the existing dwelling within the front yard setback.

Section 18:1-19.E(1)(c)[4][f][i] of the Code requires a front yard setback of 35 feet in the NC-20 Zoning District. The Applicant proposes to remove an existing pergola and construct a first floor 18’ x 21’ (3) season sunroom and a 6’ x 17’ deck over existing lot coverage. At the beginning

of the hearing, Mr. McGinnes noted a concern about the setback shown on the Applicant's site plan. Specifically, Mr. McGinnes advised that the Applicant's site plan shows an 8 foot setback from the front yard property line instead of a 14 foot setback as requested and advertised in the notice of the hearing. The Applicant advised that the proposed addition is setback 14 feet from the front property line. However, there is additional decking that encroaches 6 feet further into the front yard setback. Ms. Ryan advised the Applicant that he could postpone the hearing to allow time to advertise the greater encroachment into the setback, or that he could proceed with the request to construct an addition 14 feet from the property line. The Applicant chose to proceed with the request to reduce the front yard setback to 14 feet and will file a new application, if necessary, for the deck.

Applicable Provisions of the Code

The standards the Board must apply to the Applicant's variance request are set forth in § 18:1-121.B. of the Code. To grant the requested variance, the Board must find as follows:

1. Literal enforcement of this Chapter 18:1 would result in unnecessary hardship or practical difficulty as the result of specified conditions;
2. Those conditions are peculiar to the property involved;
3. Those conditions are not the result of any action taken by the appellant;
4. The variance will not be contrary to the public interest; and
5. Evaluation of alternatives proves *variance* is required.

In addition, pursuant to § 18:1-122.A. of the Code, the Board must find that any variance granted is no greater than an amount minimally necessary to ameliorate the conditions giving rise to any practical difficulty or unnecessary hardship.

Property Description and Department of Planning & Zoning Recommendations

Joe Pippin, Zoning Inspector with the Department of Planning & Zoning presented his staff report. Mr. Pippin identified the Property and its location. The Property is located in the Fourth Election District of Queen Anne's County at 101 Baltimore Avenue, Stevensville, Maryland. The Property is designated as Parcel 53 on Zoning Map 40 and is 1.03 acres. The Property is zoned Neighborhood Conservation-20 (NC-20).

The Property is partially located in a floodplain Zone VE Elevation 8 feet. There are no hydric soils, wetlands, or sensitive species on the Property. Mr. Pippin advised that the entire Property is in the Limited Development Area (“LDA”) Critical Area. Mr. Pippin said that the house on the Property was constructed in 1906 and is nonconforming. Specifically, he said, the existing structure on the Property is less than 8 feet from the front yard property line. In fact, the existing house sits approximately 3 feet front the front property line. Mr. Pippin said that the Property is improved with a single-family dwelling, two accessory structures, and a pier.

Mr. Pippin stated that the proposed addition is consistent with the Critical Area provisions in the County Code. He said the proposed development meets the lot coverage limits for the Applicant’s Property size. He also said that it is not uncommon for lots in the Love Point community to seek setback variances as the community was developed prior to the adoption of Critical Area law. Specifically, he said, the Board approved a variance in Love Point to reduce the 35 foot front yard setback to 23.1 feet and another variance to reduce the 35 foot front yard setback to 11.8 feet. In addition, the Board previously approved a variance in Love Point to reduce the 35 foot setback to 5 feet for an accessory structure.

After completing his testimony, Mr. Pippin stated that he had no objection to the approval of the variance.

Applicant’s Presentation

The Applicant proceeded to present his application. The Applicant said that he is seeking a variance to reduce the required 35 foot front yard setback to 14 feet to construct an addition to the existing dwelling. The addition will be constructed where an existing patio is located. The Applicant said that he is seeking to enclose that patio to create an 18’ x 21’ (3) season sunroom and 6’ x 17’ deck over existing lot coverage. He said that the front yard property line abuts a paper road so the addition will not abut another structure. He also said that the addition will be setback further from the property line than the existing structure on the Property such that he is not increasing the existing nonconformity.

The Applicant said that he is proposing to enclose the existing patio to protect a large portion of the home from northern winds. Specifically, he said, the area of the house where the existing patio is located gets hit with 50-60 mph winds coming off of the Chesapeake Bay that are causing damage to his home without a buffer. In addition, the direct wind to the house causes heat to escape and creates a colder atmosphere inside. As a method of improving the heat inside the

home, the Applicant said that he switched from baseboard heat to geothermal which has helped some. However, he said, the northern exposure still causes issues with wind seeping into the home.

The Applicant is hopeful that by enclosing the porch, it will create a thermal break. The thermal break will assist with preventing heat loss to the home. He said he believes this is the only method that will prevent the home from damage and encapsulate the heat within the home. He also said that he reviewed neighboring properties in the subdivision and that 44 homes in the subdivision do not meet the required setbacks.

After the Applicant presented his case, the Board Chairman asked for public comment. There being no public comment, the Board deliberated.

Findings and Conclusions of the Board

The Board finds the testimony and application provided by the Applicant credible and persuasive. The Board concludes that the evidence justifies approval of the requested variance. Based on the evidence presented, and duly considering the factors set forth in §18:1-121.C. of the Code, the Board specifically finds and concludes as follows:

1. A literal enforcement of the 35-foot front yard setback would result in practical difficulty.
2. The residential structure on the Property is 3 feet from the property line.
3. The property line abuts a paper road.
4. The property fronts the Chesapeake Bay.
5. The Applicant tried to remediate the issues with keeping the home heated by replacing the baseboards with geothermal heat.
6. A porch already exists in the location that the Applicant is seeking to enclose for the sunroom.
7. There are no obvious environmental impacts to wetlands, hydric soils, or sensitive species.
8. The conditions are not the result of actions taken by the Applicant.
9. The residential structure and the porch existed prior to the Applicant purchasing the Property.
10. The variance is not contrary to the public interest.
11. Reducing the setback in the side yard to 14 feet is the minimum deviation necessary.

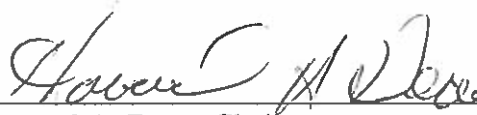
Decision

Based on the foregoing findings and conclusions, by a vote of three in favor and none opposed, the Board grants to the Applicant:


1. A variance from the provisions of § 18:1-19.E(1)(c)[4][f][i] to reduce the required 35-foot front yard setback to 14 feet to permit the Applicant to construct a 18' x 21' (3) season sunroom noting that the proposed deck cannot exceed 18 inches over grade without the Applicant seeking a variance to the setback.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 8th day of March, 2023 ordered that the variance requested for Ronald Fodor, in Case No. BOA-22-12-0137, be granted.



Howard A. Dean, Chairman



Craig W. McGinnes, Vice-Chairman



Michael A. Lesniowski, Member

State of Maryland, County of Queen Anne's:

I HEREBY CERTIFY that the foregoing is a true and correct copy of the Opinion and Order of the Board of Appeals of Queen Anne's County in Case No. BOA-22-12-0137, for Ronald Fodor, which Opinion and Order resulted from a public hearing conducted by the Board of Appeals on January 26, 2023 and that the minutes and a recording of the January 26, 2023 meeting are filed in the office of Board of Appeals.

Certified this 8th day of March, 2023 by:



Cathy Maxwell
Clerk to the Board of Appeals

BEFORE THE BOARD OF APPEALS OF QUEEN ANNE’S COUNTY

* * * * *

In the matter of Application by * Case No. BOA-22-12-0138

Thomas Galli and Cynthia Galli *

for Conditional Use *

* * * * *

FINAL DECISION OF THE BOARD

Introduction

The Queen Anne’s County Board of Appeals (the “Board”) held a meeting on January 26, 2023 at 4:15 p.m. to consider Case No. BOA-22-12-0138 for conditional use approval to construct a 480 ft. x 6 ft. pier with a 10 ft. x 20 ft. “L” shaped platform and one (1) boatlift with associated mooring piles filed by Thomass Galli and Cynthia Galli (hereinafter the “Applicants”). The Board members present were Board Chairman, Howard Dean, and Board Members Craig W. McGinnes and Michael Lesniowski.

At the beginning of the hearing, the Board established that all requirements were met governing the filing of the variance application, and proper notice of the January 26th public hearing. Board Chairman Dean, administered the oath to all who wished to testify on the application, including the Applicants.

Applicant’s Request

The Applicants are seeking conditional use approval under the provisions of § 18:1-41 of the Code of Public Local Laws of Queen Anne’s County, 1996 Edition (the “Code”), to construct a 480 ft. x 6 ft. pier with a 10 ft. x 20 ft. “L” shaped platform and one (1) boatlift with associated mooring piles which exceeds the permitted pier length limit of 150 feet at the Applicants’ property located at 200 The Point Lane, Stevensville, Maryland (hereinafter the “Property”). Pursuant to § 18:1-41 of the Code, a pier may not extend into a body of water a distance greater than 150 feet, as measured from the mean high water line, unless the Board allows a greater length as a conditional use. The Applicants seek to extend a pier a maximum of 490 feet channelward of the mean high water line of the Eastern Bay.

The file reflects that the Applicants have received a general tidal wetlands license from the Maryland Department of the Environment to construct a 480-foot long by 6-foot wide timber pier with a 10-foot long by 20-foot wide “L” shaped platform, a boatlift and associated piles, and a mooring pile, all extending a maximum of 490 feet channelward of the mean high water line. The file further reflects that the Applicants obtained approval from the Department of the Army, Corps of Engineers.

Applicable Provisions of the Code

The standards the Board must apply to the Applicant’s request for a conditional use are set forth in § 18:1-94 of the Code. To approve the conditional use, the Board must find as follows:

1. The proposed use at the proposed location shall be consistent with the general purpose, goals, objectives, and standards of the Comprehensive Plan, this Chapter 18:1, or any other plan, program, map, or ordinance adopted, or under consideration pursuant to official notice, by the County.
2. The proposed use at the proposed location will not result in a substantial or undue adverse impacts on adjacent property, the character of the neighborhood, traffic conditions, parking, public improvements, public sites or rights-of-way, or other matters affecting the public health, safety, and general welfare.
3. The proposed use at the proposed location will be adequately served by, and will not impose an undue burden on, any of the required improvements referred to in this Chapter 18:1, Part 7. Where any such improvements, facilities, utilities, or services are not available or adequate to service the proposed use at the proposed location, the applicant shall, as part of the application and as a condition of approval of the conditional use, be responsible for establishing ability, willingness, and binding commitment to provide such improvements, facilities, utilities, and services in sufficient time and in a manner consistent with the Comprehensive Plan, this Chapter 18:1, and other plans, programs, maps, and ordinances adopted by the County.

In addition, § 18:1-123.B. requires the Board to make the following findings to approve a conditional use:

1. The conditions concerning that conditional use as detailed in this Chapter 18:1 exist;
2. The conditional use conforms to the Comprehensive Plan; and
3. The conditional use is compatible with the existing neighborhood.

Last, pursuant to Maryland Annotated Code, Land Use Article §1-303, the Board must include in its evaluation of the Comprehensive Plan, pursuant to the above-cited section, certain consistency findings. The Board's approval of a conditional use must further, and not be contrary to, the following items in the Queen Anne's County Comprehensive Plan:

1. Policies;
2. Timing of the implementation of the plan;
3. Timing of development;
4. Timing of rezoning;
5. Development patterns;
6. Land uses; and
7. Densities or intensities.

Property Description and Department of Planning & Zoning Recommendations

Joe Pippin, Zoning Inspector with the Department of Planning & Zoning, presented his staff report on the application. Mr. Pippin described the Property and its location. He identified the Property as Map 76, Parcel 08, Lot 30 in the Fifth Election District of Queen Anne's County. The Property is zoned Country Side (CS) and the entire parcel has a Critical Area designation of Resource Conservation Area (RCA). The Property is 15.40 acres and is improved with a dwelling that was constructed in 1987.

The Property is partially located in the floodplain along the shoreline. He said there is also 3.365 acres of hydric soils on the right side of the lot which will not be impacted by the construction of the pier. He said there are no sensitive species located within the project area but the project area is located in a Historic Waterfowl Concentration Area noted on the MDE/USACE License for the proposal. With that, Mr. Pippin noted that the Applicants cannot perform construction during the period of November 15th through March 1st.

Mr. Pippin explained the Applicants' request. He said they are seeking to construct a 490 ft. x 6 ft. pier that includes a 10 ft. x 20 ft. platform and one (1) boatlift with associated mooring piles. He said that the proposed pier will extend 340 feet farther than the 150 feet permitted by the

Code. Therefore, he said, the Applicants are seeking a conditional use to construct a pier that extends farther than the 150 feet permitted. He added that the proposed pier will not extend more than a quarter distance of the waterway, consistent with the requirements of the Code.

Mr. Pippin discussed the application and the applicable standards the Board is required to apply to the Applicants' request for a conditional use. He said that the proposed pier is consistent with the standards provided in the Code. He added that neighboring properties have piers that range from 178 feet to 511 feet and all were constructed after 1997 based on historic aerial imagery. Specifically, he said that the Board previously granted three (3) conditional use applications for piers of 150 feet in the Applicants' neighborhood.

He said that in each instance, the Board found that the piers in the immediate vicinity at the lengths proposed did not result in substantial or undue adverse impacts on adjacent properties and did not negatively impact the character of the neighborhood, traffic conditions, parking, public improvement, public sites or rights-of-way, or other matters affecting the public health, safety, and welfare. Related to the application at hand, Mr. Pippin advised that all electrical installations must meet the current edition of the National Electrical Code and the Flood plain requirements. He added that a Buffer Mitigation Plan will be required for any increase in lot coverage or buffer disturbance onsite at a ratio of 2:1.

Mr. Pippin stated that he had no objection to the approval of the conditional use.

Applicant's Presentation

Cynthia Galli, one of the Applicants, presented the application. Mrs. Galli said that she spends a lot of time on the water, which is why they purchased the Property. She said she likes to sit on the water and watch the sunrise. She said that they are seeking to construct a 490 foot pier to access the water. She then explained the necessity for the length of the pier. The necessity for the long pier is that the water is extremely shallow. In fact, even 490 feet from the shoreline, the water depth is only 2.5 feet. If the Applicants were required to construct a 150 foot pier, the pier would end in water that is 1 to 1.5 feet deep which would make accessing the pier with a boat difficult.

Mrs. Galli said that she hired Heatherwood Consulting, a firm familiar with the eastern shore, to design the pier. Heatherwood Consulting designed the pier with a sling type boat lift,

which Mrs. Galli said was necessary due to the shallow depth of the water at the end of the pier. She said even with the long pier and a sling lift, she will still need to purchase a boat with a shallow hull. She said that the Eastern Bay in front of her Property is so shallow that boaters moor in the area because if they capsize they can walk to shore.

Mrs. Galli said that one of her neighbors has a pier of equivalent length, and the other neighbor has a 580 foot pier. She spoke to the owner of the property with the comparably sized pier and they did not note an objection to the application.

Mrs. Galli ended her presentation by discussing the importance of safety. She said that, if approved, she will install lights every 10 feet on the pier.

After the Applicant presented her case, the Board President asked for public comment. There being no public comment, the Board deliberated.

Findings and Conclusions of the Board

The Board finds the testimony and application provided by the Applicants credible and persuasive. The Board concludes that the evidence justifies approval of the conditional use request. Based on the evidence presented, and duly considering the applicable factors from the Queen Anne's County Code, the Board specifically finds and concludes as follows:

1. The application is consistent with the 2022 Queen Anne's County Comprehensive Plan.
2. A pier may not extend into a body of water a distance greater than 150 feet, as measured from the mean high water line, unless permitted by the Board.
3. The water depth extending out from the Property is shallow.
4. The two neighboring properties are improved with piers that extend greater than 400 feet into the water.
5. The use is compatible with the existing neighborhood.
6. A 490 foot long pier will not result in substantial or undue adverse impacts on adjacent property, the character of the neighborhood, traffic conditions, parking, public improvements, public sites or rights-of-way, or other matters affecting the public health, safety, and general welfare.
7. The pier will be adequately served by, and will not impose an undue burden on, any of the required improvements referred to in Chapter 18:1, Part 7 of the Code.

Decision

Based on the foregoing findings and conclusions, by a vote of three in favor and none opposed, the Board grants to the Applicant:

1. Conditional use approval to construct a 480 ft. x 6 ft. pier with a 10 ft. x 20 ft. "L" shaped platform and one (1) boatlift with associated mooring piles which exceeds the permitted pier length limit of 150 feet, subject to the following condition:
 - a. The Applicants install and maintain safety lights on the length of the pier.

ORDER


For the reasons set forth in the foregoing Opinion, it is this 16th day of March, 2023 ordered that the conditional use approval requested for Thomas Galli and Cynthia Galli, in Case No. BOA-22-12-0138, be granted, subject to the conditions set forth in the Opinion.



Howard A. Dean, Chairman



Craig W. McGinnes, Vice-Chairman




Michael A. Lesniowski, Member

State of Maryland, County of Queen Anne's:

I HEREBY CERTIFY that the foregoing is a true and correct copy of the Opinion and Order of the Board of Appeals of Queen Anne's County in Case No. BOA-22-12-0138, for Thomas Galli and Cynthia Galli, which Opinion and Order resulted from a public hearing conducted by the Board of Appeals on January 26, 2023 and that the minutes and a recording of the January 26, 2023 meeting are filed in the office of Board of Appeals.

Certified this 16th day of March, 2023 by:

A handwritten signature in cursive script that reads "Cathy Maxwell". The signature is written in black ink and is positioned above a horizontal line.

Cathy Maxwell
Clerk to the Board of Appeals

BEFORE THE BOARD OF APPEALS OF QUEEN ANNE’S COUNTY

* * * * *

In the matter of Application by * Case No. BOA-22-11-0135

Matthew E. Sipos *

for Zoning Variance *

* * * * *

FINAL DECISION OF THE BOARD

Introduction

The Queen Anne’s County Board of Appeals (the “Board”) held a meeting on January 26, 2023 at 4:30 p.m. to consider Case No. BOA-22-11-0135 for a variance application filed by Matthew E. Sipos (hereinafter the “Applicant”). The Board members present were Board Chairman, Howard Dean, and Board Members Craig W. McGinnes and Michael Lesniowski.

At the beginning of the hearing, the Board established that all requirements were met governing the filing of the variance application, and proper notice of the January 26th public hearing. Board Chairman, Howard Dean, administered the oath to all who wished to testify on the application, including the Applicant.

Applicant’s Request

The Applicant requests two variances – a variance to the provisions of § 14:1-51 of the Code of Public Local Laws of Queen Anne’s County, 1996 Edition (the “Code”), to construct a 2.5-story single family dwelling with attached garage within the expanded Critical Area Buffer, and a variance to the provisions of §18:1-19E(1)(c)[4][f][i] of the Code to construct the dwelling and improvements within the required thirty-five (35) foot front yard setback. The property subject to the variance requests is located at 361 N. Lake Road, Stevensville, Maryland (the “Property”). The Zoning Inspector denied the Applicant’s Building Permit Application #BR22-11-0825 to construct a 2-story single family dwelling, garage, and 514 square foot deck because the proposed improvements are within the 100 foot Critical Area Buffer and the required front yard setbacks. § 14:1-51.A. of the Code does not permit new development activities within the Buffer. §18:1-19E(1)(c)[4][f][i] requires a front yard setback of thirty-five (35) feet.

Applicable Provisions of the Code

The standards the Board must apply to the Applicant's variance request to reduce the front yard setback from thirty-five (35) feet to twenty-five (25) feet are set forth in § 18:1-121.B. of the Code. To grant the requested variance, the Board must find as follows:

1. Literal enforcement of this Chapter 18:1 would result in unnecessary hardship or practical difficulty as the result of specified conditions;
2. Those conditions are peculiar to the property involved;
3. Those conditions are not the result of any action taken by the appellant;
4. The variance will not be contrary to the public interest; and
5. Evaluation of alternatives proves *variance* is required.

In addition, pursuant to § 18:1-122.A. of the Code, the Board must find that any variance granted is no greater than an amount minimally necessary to ameliorate the conditions giving rise to any practical difficulty or unnecessary hardship.

The standards the Board must apply to the Applicant's variance request from the Chesapeake Bay Critical Area Act to construct improvements in the Buffer and expanded Buffer are set forth in § 14:1-66 of the Code. To grant the requested variance, the Board must find as follows:

1. Literal enforcement of this Chapter 14:1 would result in unnecessary hardship as the result of specified conditions, which hardship is not shared by owners of other property in the same development area;
2. Those conditions are peculiar to the property involved;
3. Those conditions are not the result of any action taken by the applicant;
4. The variance will not be contrary to the public interest or the policies, goals and objectives of this Chapter 14:1 and the Queen Anne's County Critical Area Program;
5. The variance will not confer upon an applicant any special privilege denied to other owners of like property and/or structures within the critical area;
6. The variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitats within the critical area;

7. The variance is the minimum deviation from the provisions of this Chapter 14:1 that will make possible the reasonable use of land or structures; and

8. The granting of the variance will be in harmony with the general purpose and intent of this Chapter 14:1 and the Queen Anne's County Critical Area Program and the variance shall not result in a use not permitted in the applicable development area or an increase in the applicable density limitations.

In addition, the provisions of COMAR 27.01.12.04 require the Board to make certain written findings not addressed in § 14:1-66 of the Code. These additional written findings, set forth in COMAR 27.01.12.04, are as follows:

1. In accordance with Natural Resources Article, §8-1808(d)(3)(ii), Annotated Code of Maryland, an applicant has overcome the presumption that the specific development activity for which the variance is required does not conform with the general intent of the local jurisdictions program;

2. Due to special features of the site or special conditions or circumstances peculiar to the applicant's land or structure, a literal enforcement of the local Critical Area program would result in an unwarranted hardship to the applicant;

3. A literal interpretation of the local Critical Area program would deprive the applicant of a use of land or a structure permitted to others in accordance with the provisions of the local Critical Area program;

4. The granting of the variance would not confer upon the applicant any special privilege that would be denied by the local Critical Area program to other lands or structures in accordance with the provisions of the local Critical Area program;

5. The variance request is not based upon conditions or circumstances that are the result of actions by the applicant;

6. The variance request does not arise from any conforming or nonconforming condition on any neighboring property;

7. The granting of the variance would not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the jurisdictions local Critical Area; and

8. The granting of the variance would be in harmony with the general spirit and intent of the Critical Area law, the regulations in this subtitle, and the local Critical Area program.

Property Description and Department of Planning & Zoning Recommendations

Rob Tracey, AICP, Senior Planner with the Department of Planning and Zoning presented his staff report. He said that the Applicant is seeking a Critical Area buffer variance to construct

a 1,376 square foot single-family dwelling with a deck with patio below and porch, a shed, and driveway in the Critical Area Buffer to be located 53 feet from tidal wetlands. The Applicant is also seeking a variance to reduce the required 35 foot front yard setback to 25 feet to construct the improvements.

The Property is located in the Fourth Election District of Queen Anne's County, Maryland, at Tax Map 70 Parcel 99 Lot 55. The Property is located at 361 North Lake Road, Stevensville, Maryland. The Property is zoned NC-20 and is 26,504 square feet. The Property is entirely within the Critical Area and has a designation of Limited Development Area (LDA). The Property is unimproved and is located within a small lot residential neighborhood.

Mr. Tracey said that the Property consists of a few trees, existing pier and riprap, floodplain, and tidal wetlands. The 100-foot Buffer is expanded for hydric soils according to information submitted by the Applicant. The entire Property is encumbered by the 100-foot Buffer and expanded Buffer. He added that the Property shape is peculiar because the Property narrows and creates a curve at the front yard.

Mr. Tracey directed the Board's attention to a letter that was submitted by Susan Makhlof, Natural Resources Planner, Critical Area Commission, in response to the application. In her letter, Ms. Makhlof provided the standards the Applicant must overcome in order for the Board to permit a variance to disturb the Buffer to construct a new dwelling. She added that the Applicant must provide mitigation in accordance with COMAR 27.01.09.01-2.H. if the application is approved.

Regarding the variance to the front yard setback, Mr. Tracey said that other properties within the community have structures within the front yard setback. Specifically, he said that the dwelling at 100 Bay Drive has a 30 foot setback and the dwelling at 806 Bay Drive has a 25 foot setback instead of the required 35 foot setback. He said that literal enforcement of Chapter 18:1 would result in an unnecessary hardship or practical difficulty caused by the peculiar shape of the Property which was not the result of any action taken by the Applicant.

Regarding the variance to construct the 1,376 single-family dwelling, a 509 square foot deck with patio below, a 1,710 square foot driveway, and a 144 square foot shed in the Critical Area Buffer to be located 53 feet from tidal wetlands, he said the Applicant would be denied a significant use of the Property if the variance was not granted as the entire Property is encumbered

by the 100-foot and expanded Buffer. He said that the dwelling, deck, patio, shed, and driveway are considered reasonable uses of a residentially zoned parcel.

Mr. Tracey concluded by recommending conditions on the application if the Board is inclined to approve the Applicant's request. He recommended that the Applicant provide a Buffer Management Plan developed in accordance with COMAR 27.01.09.01-2H and that the Applicant cannot receive a building permit until the Buffer Management Plan is approved by the County.

Applicant's Presentation

Brandon Davis, PE, Davis, Moore, Shearon & Associates, LLC, presented the application on behalf of the Applicant. He said that the Applicant is the contract purchaser of the Property. He said that the Property is a 26,504 square foot lot in the Kent Island Estates community that was platted in 1951. He added that the Property was created prior to the adoption of the Critical Area Law. He said that the Property is a non-conforming lot with an average width of 83 feet. The Property is waterfront on Tolson Creek and sits at the intersection of North Lake Road and Bay Drive. There is an existing sewer connection valve along Bay Drive.

Mr. Davis explained the intersection of N. Lake Road and Bay Drive. He said that the right of way boundary at the intersection has a large sweeping radial shape which is atypical compared to modern subdivision techniques and reduces the buildable area of the Property. He said that the Bay Drive right of way borders the western boundary of the Property and extends approximately 2/3rds of the north-south length of the Property before it ends. The remainder of the western boundary borders a parcel owned by the private community association.

He said that the Property is unique because of tidal and nontidal wetlands that exist on the Property. Mr. Davis said that the neighboring tidal wetlands parallel the eastern property line ranging from approximately 30 feet to 45 feet from the property line. The nontidal wetlands, which have a 25 foot protective buffer, meet the property line. The 100 foot buffer to tidal waters encumbers 79.9% of the Property. However, he added that because the 100 foot buffer offset is contiguous with hydric soils, the Buffer is expanded. Therefore, the entire Property is located within the Buffer and expanded Buffer.

Mr. Davis explained that the Property has a front setback of 35 feet that extends off both Bay Drive and N. Lake Road since the Property is a corner lot. The rear setback is absorbed by the

Buffer. The Property is nonconforming for lot width for the NC-20 zoning district with an average width of 83 feet. The nonconforming width of the lot for the NC-20 zoning district allows for a reduction to the side setbacks per Code Section 18:1-127.G.1. resulting in a minimum side setback of 8.3 feet and aggregate of 24.9 feet. The proposed dwelling is setback 8.3 feet from the neighboring property at 355 N. Lake Drive.

Mr. Davis then explained the proposed improvements. He reiterated that the Applicant proposes to construct a 2 ½ story single-family dwelling, driveway, typical rear deck with patio below it, shed, and associated improvements. The dwelling includes an attached garage within its footprint. The overall footprint of the house and porch is 1,563 square feet. He said the combination of house, driveway, and other associated improvements propose a total lot coverage of 4,063 square feet which is 1,382 square feet less than the permitted lot coverage which is 5,444 square feet. He said that the average dwelling size of the four neighboring properties is 1,887 square feet.

Mr. Davis said that the Applicant worked with the County staff to locate the dwelling in a manner to reduce impacts to the Buffer. The layout has been sited using a 100 foot offset from the mean high water line from the southern border of the Property. It is sited 25.2 feet off the existing Bay Drive right of way to the proposed porch and 35.4 feet to the proposed dwelling corner. The existing sewer connection is northward of the layout so the STEP sewer tank will be set parallel to the Bay Drive right of way line to help reduce disturbance and have the sewer lateral run to the western façade of the dwelling. The Applicant is proposing to locate the well along Bay Drive south of the dwelling to meet the Health Department's required 30 foot dwelling setback and 20 foot deck setback.

Mr. Davis concluded by giving a summary of the Applicant's request. He said that the Applicant requests a 10 foot variance to the front setback to reduce disturbance to the Buffer and permit the Applicant to have reasonable use of his Property. He discussed the uniqueness of the Property. Specifically, it is a nonconforming narrow width corner lot with a sweeping radial right of way boundary. He added that the Property is located entirely within the Buffer. The location of the Buffer, expanded Buffer, and 35 foot front setback off both Bay Drive and N. Lake Road creates a constricted narrow building envelope. He also said that a front setback of 25 feet is not uncommon in the Kent Island Estates community.

Mr. Davis said that because the entire property is within the Buffer it is impossible to avoid buffer disturbance for any development of the Property.

After Mr. Davis completed his presentation, the Applicant spoke. He said that he is the contract purchaser of the Property. He and his wife currently live in Prospect Bay and are looking to downsize. They particularly like the Property because it is on the water and is improved with a pier.

After the Applicant's presentation, Chairman Dean opened up the hearing to public comment.

Karen Holland asked questions about the ownership of Bay Drive and addressed concerns with traffic. She also raised concern with the pier and driveway that already exist on the Property. Vivian Swinson, Zoning Administrator/Building Official with Queen Anne's County, responded and said that the previous Property owner constructed the pier and driveway without a County permit. As a result of that unpermitted construction, the previous Property owner entered into an agreement with the County whereby the property owner agreed to abate the violation. Pursuant to the agreement, the Applicant has a specific period of time to construct a dwelling on the Property or the previous owner will be required to remove all unpermitted improvements including the pier and driveway.

John Friel testified and said he is directly across N. Lake Road from the Property. He raised concern with construction of Lot 55 and the neighboring property Lot 52 causing flooding. He raised concern with the County's maintenance of ditches, roads, and drainage.

Richard Parreco testified and said his property is 10 houses north on the waterside. He said he is in favor of the application. He said that he likes to take his grandchildren onto the community property next to the Applicant's. He complained of the manner in which the previous property owner kept the property.

Findings and Conclusions of the Board

The Board finds the testimony and application provided by the Applicant credible and persuasive. The Board concludes that the evidence justifies approval of the requested variance to construct a 1,376 square foot single-family dwelling with a deck with patio below and porch, a

shed, and driveway in the Critical Area Buffer to be located 53 feet from tidal wetlands and to reduce the front yard setback from 35 feet to 25 feet.

Based on the evidence presented, and duly considering the factors set forth in §18:1-121.C. of the Code, the Board specifically finds and concludes as follows:

1. A literal enforcement of the 35-foot front yard setback from the front yard would result in practical difficulty due to the narrow width of the lot.
2. The lot was subdivided prior to the adoption of the Zoning Code and Critical Area Law and is legally nonconforming.
3. The conditions are not the result of actions taken by the Applicant.
4. The entire Property is encumbered by the 100-foot Buffer and expanded buffer.
5. There are no alternative locations to construct a dwelling on the Property due to the location of the Buffer and expanded buffer.
6. Reducing the front yard setback to 25 feet is the minimum deviation necessary.

Based on the evidence presented, and duly considering the factors set forth in § 14:1-66 of the Code and COMAR 27.01.12.04, the Board specifically finds and concludes as follows:

1. The conditions of the Property and the location of the 100-foot and expanded Buffer are peculiar to the Property.
2. The entire parcel is located within the 100-foot Buffer and expanded buffer.
3. The 100-foot Critical Area Buffer is expanded for hydric soils;
4. There are no reasonable alternative areas for the single-family dwelling outside of the Buffer;
5. The condition of the Property is not the result of actions taken by the Applicant;
6. Neighboring properties have dwellings that are within the Buffer and are of similar size or larger than the Applicant's;
7. Due to conditions associated with the Property, the Board finds that a literal enforcement of the buffer requirements would result in unnecessary hardship not shared by owners of other properties in the same area;
8. Having a modest home is a reasonable and significant use of the Property;

9. The variance will not be contrary to the public interest or the policies, goals and objectives of Chapter 14:1 and the Critical Area Program;
10. The variance will not adversely affect water quality or impact fish, wildlife, or plant habitat within the critical area;
11. The proposed addition is within the applicable lot coverage permitted;
12. Literal enforcement of Chapter 14:1 would result in unnecessary hardship due to expansion of the buffer;
13. The variance requested is the minimum deviation from the provisions of Chapter 14:1 to allow for the reasonable use of the Property;
14. The Applicant has overcome the presumption that the development of a single-family home in the buffer does not conform with the general intent of the Queen Anne's County Critical Area Program;
15. Due to special features on the site, a literal enforcement of the local Critical Area Program would result in an unwarranted hardship to the Applicant; and
16. The variance is consistent with the Queen Anne's County Comprehensive Plan.

Decision

Based on the foregoing findings and conclusions, by a vote of three in favor and none opposed, the Board grants to the Applicant:

A variance from the provisions of §14:1-51 and §18:1-19E(1)(c)[4][f][i] to permit the Applicant to construct a 1,376 square foot single-family dwelling with a deck with patio below and porch, a shed, and driveway in the Critical Area Buffer to be located 53 feet from tidal wetlands and to reduce the front yard setback from 35 feet to 25 feet, subject to the following conditions:

1. The Applicant submits a Buffer Management Plan in accordance with COMAR 27.01.09.01-2H that shows all the proposed impacts and appropriate mitigation;
2. The Applicant cannot receive a building permit for the proposed improvements until the Buffer Management Plan has been approved by the County.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 21st day of March, 2023 ordered that the variances requested for Matthew E. Sipos, in Case No. BOA-22-11-0135, be granted, subject to the conditions set forth in the Opinion.



Howard A. Dean, Chairman



Craig W. McGinnes, Vice-Chairman

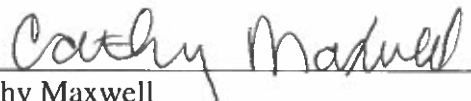


Michael A. Lesniowski, Member

State of Maryland, County of Queen Anne's:

I HEREBY CERTIFY that the foregoing is a true and correct copy of the Opinion and Order of the Board of Appeals of Queen Anne's County in Case No. BOA-22-11-0135, for Matthew E. Sipos, which Opinion and Order resulted from a public hearing conducted by the Board of Appeals on January 26, 2023 and that the minutes and a recording of the January 26, 2023 meeting are filed in the office of Board of Appeals.

Certified this 21st day of March, 2023 by:



Cathy Maxwell
Clerk to the Board of Appeals

BEFORE THE BOARD OF APPEALS OF QUEEN ANNE’S COUNTY

* * * * *

In the matter of Application by * Case No. BOA-22-11-0136
Henry Covington, Jr. and *
Elizabeth H. Covington *
for Conditional Use *

* * * * *

FINAL DECISION OF THE BOARD

Introduction

The Queen Anne’s County Board of Appeals (the “Board”) held a meeting on January 26, 2023 at 5:00 p.m. to consider Case No. BOA-22-11-0136 for conditional use approval to conduct a select timber harvest operation on approximately 20 acres of a 55+ acre parcel on the north side of MD Rt. 404, Queen Anne Highway, near Wye Mills, in the 3rd Election District (the “Property”) filed by Henry Covington, Jr. and Elizabeth H. Covington (hereinafter the “Applicants”). The Board members present were Board Chairman, Howard Dean, and Board Members Craig W. McGinnes and Michael Lesniowski.

At the beginning of the hearing, the Board established that all requirements were met governing the filing of the variance application, and proper notice of the January 26th public hearing. Board Chairman, Howard Dean, administered the oath to all who wished to testify on the application, including the Applicant.

Applicant’s Request

The Applicant is seeking conditional-use approval under the provisions of § 18:1-17.C.(4) of the Code of Public Local Laws of Queen Anne’s County, 1996 Edition (the “Code”), to engage in commercial forestry operations on approximately 20 acres of the Property. Commercial forestry is permitted as a conditional use in the Suburban Estate (SE) District pursuant to § 18:1-17.C. of the Code. The Applicants are seeking to remove 200 overmature trees on the Property that are in jeopardy of dying due to their age.

Applicable Provisions of the Code

The standards the Board must apply to the Applicant's request for a conditional use are set forth in § 18:1-94 of the Code. To approve the conditional use, the Board must find as follows:

1. The proposed use at the proposed location shall be consistent with the general purpose, goals, objectives, and standards of the Comprehensive Plan, this Chapter 18:1, or any other plan, program, map, or ordinance adopted, or under consideration pursuant to official notice, by the County.
2. The proposed use at the proposed location will not result in a substantial or undue adverse impacts on adjacent property, the character of the neighborhood, traffic conditions, parking, public improvements, public sites or rights-of-way, or other matters affecting the public health, safety, and general welfare.
3. The proposed use at the proposed location will be adequately served by, and will not impose an undue burden on, any of the required improvements referred to in this Chapter 18:1, Part 7. Where any such improvements, facilities, utilities, or services are not available or adequate to service the proposed use at the proposed location, the applicant shall, as part of the application and as a condition of approval of the conditional use, be responsible for establishing ability, willingness, and binding commitment to provide such improvements, facilities, utilities, and services in sufficient time and in a manner consistent with the Comprehensive Plan, this Chapter 18:1, and other plans, programs, maps, and ordinances adopted by the County.

In addition, § 18:1-123.B. requires the Board to make the following findings to approve a conditional use:

1. The conditions concerning that conditional use as detailed in this Chapter 18:1 exist;
2. The conditional use conforms to the Comprehensive Plan; and
3. The conditional use is compatible with the existing neighborhood.

Last, pursuant to Maryland Annotated Code, Land Use Article §1-303, the Board must include in its evaluation of the Comprehensive Plan, pursuant to the above-cited section, certain consistency findings. The Board's approval of a conditional use must further, and not be contrary to, the following items in the Queen Anne's County Comprehensive Plan:

1. Policies;
2. Timing of the implementation of the plan;

3. Timing of development;
4. Timing of rezoning;
5. Development patterns;
6. Land uses; and
7. Densities or intensities.

Property Description and Department of Planning & Zoning Recommendations

Doug Summers, Associate Planner with the Department of Planning & Zoning, presented his staff report. Mr. Summers described the Property and its location. He identified the Property as ½ mile west of U.S. Rt. 50 on the north side of Route 404 at 134 Hopkins Place in the Third Election District of Queen Anne's County, Maryland, at Tax Map 67 Parcel 36 Lot 1. The Property is Zoned Suburban Estate (SE).

The Property is 55.997 acres of unimproved land, generally utilized for crop production and harvesting. The dominant species of trees on the Property are Tulip Poplar, White Oak, and Red Oak. The Property contains a 4.86-acre protected forest retention area in which no harvest operations are proposed. There are hydric soils and nontidal wetlands on the Property. In addition, a perennial stream runs down the entire western portion of the Property through a wooded area where there will be no disturbance.

The Applicant is intending to utilize 20 acres of the Property for a selective cut commercial forestry operation. Specifically, Mr. Summers said, approximately 20 acres are proposed within four specific areas that constitute a forest stand on the Property. He said that although the areas are within a contiguous wooded area, the harvest areas are spaced out across the Property due to a proposed stream buffer that will be established and managed during the forest operation.

The Applicants have submitted all the required documentation for a commercial forestry operation which has been reviewed and approved by the appropriate agencies. Specifically, the Applicants submitted a Logging Permit Application, Forestry Declaration of Intent, Approved Sediment & Erosion Control Plan, Timber Harvest Plan approved by the Maryland Board of Foresters, a signed Affidavit of notification to Adjacent Property Owners, Nontidal Wetlands Best Management Practices Agreement, and a narrative detailing the buffer management operations.

The Applicants propose to undertake harvesting activity within the buffer within the first 50 feet of the landward side of the buffer, which is permitted. Mr. Summers said that the Applicants seek to remove 200 trees which have been selected, located inside and outside of the buffer area. The trees are 75 – 85 years old. The selected trees have been marked twice at 28” diameter breast height and at the base with two spots of pink paint. Due to the high quality of the trees harvested, the operation will involve dropping selected trees in a manner that does not damage surrounding trees or scar the harvested trees. Trees will be cabled and winched out, which will also reduce impact to the buffer. No skid trails or log roads will be created in the buffer.

The stand density on the Property is approximately 30-40 trees per acre. An average of 10 trees per acre are to be harvested leaving a healthy remaining density of younger trees to occupy the Property. Mr. Summers said that natural regeneration of Tulip Poplar is expected within 2 years following the harvest. He added that the current basal area within the wooded area is 120 square feet per acre and the post-harvest basal area has been listed at 80 square feet per acre.

Mr. Summers said that due to the Property’s location directly along MD 404, Maryland Department of Transportation State Highways Access Management Division reviewed the proposal and approved it with the following conditions: the logging company is responsible for the debris tracked onto the asphalt roadway and cleaning the area during operations, and the culvert under 134 Hopkins Place is to be in working order and clear of any damage from equipment servicing the logging area.

He concluded by stating that the project as proposed is consistent with the 2022 Queen Anne’s County Comprehensive Plan as it relates to being a resource-based industry and its adherence to resource protection standards set forth by local, state, and federal entities. He added that the proposed commercial forestry operation plan ensures that no harvesting activity will occur near adjacent properties. The buffer management plan and timber harvest details provided by the forester ensure that the operation is carefully planned and will be executed in a delicate manner. In addition, the select cut nature and post-harvest basal area ensure that there will be no adverse effects on the character of the neighborhood.

In conclusion, Mr. Summers said that staff supports the Board of Appeals in granting the conditional use to the Applicants to carry out selective cut commercial forestry operation on the Property with eight conditions as noted in his staff report.

Applicant's Presentation

The Applicants purchased the Property in 2021 from a family member. The Applicants explained the importance of the Property. Mr. Covington said that there are valuable, mature trees on the Property that are unusual to find in Queen Anne's County. After purchasing the Property, the Applicants met with James Klunk, licensed forester of Klunk Forestry Services, Inc., to discuss the forestry operation. Mr. Covington said that Mr. Klunk confirmed that after the mature trees are harvested, sunlight will be able to penetrate the tree canopy which will allow poplar trees to regenerate.

When discussing which trees would be removed, Mr. Covington said that the Applicants specifically marked approximately 50 trees on the Property that were large enough to be removed but that they wanted to remain. In addition, the Applicants required the commercial forester to mark trees that are 2 inches larger in diameter than what a commercial forester would generally mark. They did this in an effort to preserve more mature trees on the Property.

Then, Mr. Klunk testified on behalf of the Applicants. He said that the Applicants are proposing a very delicate timber harvesting operation that involves harvesting high quality, very valuable, veneer log trees. He said that the cutter will drop the trees in a very delicate manner, being careful to not damage the surrounding trees or create defects to the veneer logs. He said that Critical Area Law requires that a minimum of 100 foot vegetated buffer strip be establishing along tidal waters and wetlands with no harvesting permitted in the first 50 foot strip. He added that the Applicants are following that criteria along the fresh waters of the Wye Mills Community Lake.

Mr. Klunk advised that harvesting the trees will result in a healthier forest. He added that the commercial operator is aware of the delicate nature of the trees.

After the Applicants presented their case, Chairman Dean asked if members of the public wished to comment. No members of the public commented.

Findings and Conclusions of the Board

The Board finds the testimony and application provided by the Applicants credible and persuasive. The Board concludes that the evidence justifies approval of the conditional use request.

Based on the evidence presented, and duly considering the applicable factors from the Queen Anne's County Code, the Board specifically finds and concludes as follows:

1. The application is consistent with the 2022 Queen Anne's County Comprehensive Plan, specifically as it relates to being a resource-based industry and its adherence to resource protection standards set forth by local, state, and federal entities.
2. The project protects natural resources and supports economic development.
3. The 20-acre area subject to the conditional use application is not surrounded by residential properties and will have no adverse impact on neighboring properties.
4. The traffic created by the use will not be any more intense than current conditions.
5. Public improvements are not required for the conditional use.
6. The Property does not need water or sewer.
7. A select timber harvest operation is a permitted conditional use on the Property.
8. The Applicants submitted the required plans, applications, and agreements to the County for the conditional use.
9. There are mature trees on the Property that are in danger of dying due to their age.
10. The Applicants are proposing a delicate method of tree removal within the buffer.
11. The commercial forestry operation will result in natural regrowth of poplar within 2 years.
12. After the harvest, a healthy remaining density of younger trees will occupy the Property.

Decision

Based on the foregoing findings and conclusions, by a vote of three in favor and none opposed, the Board grants to the Applicants:

1. Conditional use approval pursuant to § 18:1-17.C.(4) of the Code to conduct a select timber harvest operation on approximately 20 acres of a 55.997+ acre parcel, subject to the following conditions:
 - The Applicants will adhere to the Queen Anne's County Forestry Board's approved Timber Harvest Plan, specifically focusing on meeting and/or exceeding the Stand 2 post-harvest basal area of 80 square feet per acre;
 - The Applicants will adhere to the approved erosion and sediment control plan;

- The Applicants will adhere to the Non-Tidal Wetlands Best Management Practices Agreement for Forest Harvest Operations;
- The Applicants adhere to the Buffer Management Harvesting Plan provided by the forester to the Department of Planning on December 27, 2022;
- The hours of operation on the Property will be Monday through Friday from 7:00 a.m. to 5:00 p.m.
- The Applicants mark the trees to be harvested below the cut line for future reference;
- Per Maryland Department of Transportation State Highways Access Management Division, the Applicants are responsible for the debris tracked onto the asphalt roadway and cleaning that area during operations; and
- Per Maryland Department of Transportation State Highways Access Management Division, the culvert under 134 Hopkins Place is the responsibility of the Applicants and the culvert is to be in working order and clear of any damage from equipment servicing the logging area.

ORDER

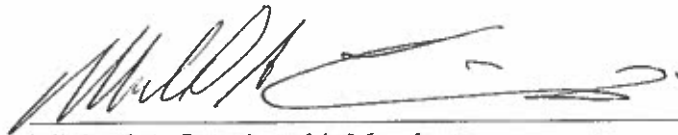
For the reasons set forth in the foregoing Opinion, it is this 17th day of March, 2023 ordered that the conditional use approval requested for Henry Covington, Jr. and Elizabeth H. Covington, in Case No. BOA-22-11-0136, be granted, subject to the conditions set forth in the Opinion.



Howard A. Dean, Chairman



Craig W. McGinnes, Vice-Chairman

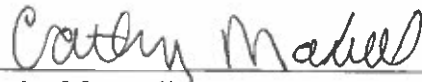


Michael A. Lesniowski, Member

State of Maryland, County of Queen Anne's:

I HEREBY CERTIFY that the foregoing is a true and correct copy of the Opinion and Order of the Board of Appeals of Queen Anne's County in Case No. BOA-22-11-0136, for Henry Covington, Jr. and Elizabeth M. Covington, which Opinion and Order resulted from a public hearing conducted by the Board of Appeals on January 26, 2023 and that the minutes and a recording of the January 26, 2023 meeting are filed in the office of Board of Appeals.

Certified this 17th day of March, 2023 by:



Cathy Maxwell
Clerk to the Board of Appeals

