

BEFORE THE BOARD OF APPEALS OF QUEEN ANNE'S COUNTY

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In the Matter of the Application of

*

John H. Hubbard

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Case No. BOA-19-02-0024

for Conditional-Use Approval

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OPINION AND ORDER

Proceedings

The matter before the Board of Appeals of Queen Anne's County ("Board") in this case is an application for a conditional use filed by Mr. John H. Hubbard ("Applicant"). The Applicant is seeking conditional-use approval for a private pier with a length greater than 150 feet.

On March 20, 2019, beginning at 5:00 p.m., the Board conducted a public hearing in the hearing room adjunct to the Board's offices at 110 Vincit Street, Centreville, Maryland, to consider the Applicant's conditional-use request. At the beginning of the public hearing, the Board established all requirements were met governing (1) the filing of the conditional-use application, and (2) notice of the March 20, 2019 public hearing. No one attending the public hearing objected to the Board exercising jurisdiction over the Applicant's case. Board members hearing the case were Mr. Kenneth R. Scott, Chairman; Mr. Howard A. Dean, Vice Chairman; and Mr. Craig W. McGinnes, Member.

Applicant's Request

The Applicant requests approval of a conditional use under the provisions of § 18:1-41 and Article XVII of the Code of Public Laws of Queen's Anne County, 1996 Edition ("Code") to make lawful, retroactively, an existing private pier that extends 176 feet into the waters of Cox

Creek. Under § 18:1-41 of the Code, a private pier may extend into a body of water a maximum of 150 feet, unless the Board approves a pier of greater length as a conditional use. The Applicant's pier includes a 10-foot by 20-foot "L" at the water-end of the pier, a 3-foot by 11-foot catwalk about 13 feet landward of the "L", and two boatlifts. One of the boatlifts is along the "L" at the water-end of the pier and includes two mooring piles 15 feet channelward of the "L". This boatlift and the two mooring piles are included in the 176-foot overall distance.

Conditional-Use Standards

The Board must apply three sets of standards when evaluating the Applicant's conditional-use request.¹ First, the Board must apply the standards set forth in §18:1-94 of the Code, which provide as follows.

An application for a conditional use may not be approved unless the Board of Appeals specifically finds the proposed conditional use appropriate in the location for which it is proposed, based on the following criteria:

A. 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.

B. The proposed use at the proposed location will not result in a substantial or undue adverse impact 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.

C. 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

¹For many conditional uses, § 18:1-95 of the Code sets forth specific standards for the use; however, the standards in § 18:1-95 do not address piers greater than 150 feet in length. Thus, in this case the Board need not make any findings under § 18:1-95. In addition, under § 18:1-41 of the Code, no pier may extend into a body of water more than one-half the distance between the mean high-water line and the centerline of the body of water, regardless of whether the Board has granted conditional-use approval for a pier longer than 150 feet. In this case the Applicant's proposal satisfies the one-half-distance-to-centerline requirement.

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.

Second, § 18:1-123.B. of the Code requires that the Board make the following findings to grant a conditional use.

- (1) The conditions concerning th[e] 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.

Third, to approve a conditional-use request, the Board must include in its evaluation of the Comprehensive Plan certain consistency findings required by § 1-303 of the Land Use Article of the Annotated Code of Maryland. As may be applicable, the Board's approval of a conditional use must "further, and not be contrary to, the following items in the [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 and Neighborhood Description

The Applicant's lot is in the Fourth Election District of Queen Anne's County at 161 Fair Prospect Court, about a mile by road south of U.S. Route 50/301 in the Stevensville area of the County ("Property"). The Property is designated as lot 4 of the Fair Prospect subdivision. In turn, the subdivision is designated as parcel 22 on sectional zoning map no. 56. The subdivision and Property are on a neck of land between Thompson Creek to the west and Cox Creek to the east, on Kent Island.

The Property is zoned CS, Countryside. CS zoning is a rural-residential classification allowing agricultural uses and single-family residential uses. Residential development is allowed on large lots and in cluster subdivisions. The Property is in the Chesapeake Bay Critical Area. The County's critical area maps classify the Property as part of an RCA, Resource Conservation Area. The RCA classification allows agricultural uses and residential development at densities up to one home per 20 acres.

The Property is approximately 22 acres in size. The Property fronts about 500 feet along the east side of Thompson Creek Road. The Property also enjoys about 500 feet of waterfront along the west side of Cox Creek, about a half-mile south of the U.S. Route 50/301 bridge over Cox Creek. At present, the Property is served by a private pier 161 feet in length, with an "L" at the water-end of the pier, two catwalks, and two boatlifts. Including the mooring piles on the channelward side of the boatlift along the "L", the pier and related structures extend 176 feet into Cox Creek.

Fair Prospect Court is a private road the Property shares with the lot to the south. The Property is improved with a large two-and-a-half story single-family home with a basement and an attached four-bay private garage. A private in-ground swimming pool is located along the waterside of the home, with an attendant deck and patio area. Other improvements include a guest home, a paved driveway, and paved parking areas. The Property is served by a private well and a private septic system.

Topographically, the Property is flat. A pond and related vegetation buffer the Property along Thompson Creek Road. Beyond the pond to the east, there is a cleared and tilled field. A line of mature trees grows along the Property's northern boundary. Additional trees and shrubs grow near the home, including a substantial number of trees in the critical-area buffer. The Property's curtilage is mostly lawn, with a fenced grass field farther to the west.

The Property is in a rural-residential neighborhood occupying the southern two-thirds of the neck of land between Thompson Creek and Cox Creek. Uses in the neighborhood include farming, woodlands, and the Cascia Winery and Vineyards. Residential uses include homes on large lots in the Fair Prospect subdivision and a cluster of waterfront homes along the east side of Thompson Creek. Thompson Creek Landing is just west of the Property, on the opposite side of Thompson Creek Road.

Department of Planning and Zoning Recommendation

Mr. Harold Veasel, a Zoning Inspector with the County's Department of Planning and Zoning ("P&Z"), presented and summarized a written staff report, which the Board accepted into evidence as P&Z Exhibit 1. As he testified, Mr. Veasel referred to the staff report and a diagram of the proposed pier projected onto a large screen visible to those attending the public hearing.

Mr. Veasel testified the pier work described in the application is already complete. According to Mr. Veasel, the County issued a permit to a previous owner of the Property for a pier 140 feet in length in the late 1990s. He told the Board the pier as it exists, however, measures 161 feet. Mr. Veasel testified all 161 feet of the pier seem to have been built at one time. The 21 feet of decking beyond the approved 140 feet does not look any different from the rest of the pier. Mr. Veasel indicated the Applicant more recently added the boatlift attached to the pier's "L" and two mooring piles situated 15 feet beyond the boatlift.

Mr. Veasel explained the proposed conditional use would make lawful the pier, boatlifts, and pilings beyond 150 feet. This would include the boatlift along the water-end of the pier and the two attendant pilings 15 feet beyond. Mr. Veasel pointed out the Maryland Department of the Environment ("MDE") approved the Applicant's proposal, but with conditions. MDE is requiring the Applicant to remove one of the two catwalks (the one closest to the shoreline) and two mooring pilings. The Applicant has not yet removed these structures.

Mr. Veasel testified the pier and related improvements do not extend more than one-fourth the distance across this portion of Cox Creek. In conclusion, Mr. Veasel testified the Department of Planning and Zoning does not object to approval of the conditional use as requested.

Applicant's Presentation

Mr. John H. Hubbard addressed the Board as a witness. Mr. Hubbard testified he purchased the Property in December 2012. At that time, the pier existed as it does today except for the boatlift at the water-end of the pier and the two pilings on the outside of the boatlift. Mr. Hubbard testified a contractor he hired installed the boatlift and two pilings. From studying aerial photographs, he can say the pier was built between 1998 and 2005. Mr. Hubbard offered into evidence seven aerial photographs, which the Board admitted as Applicant's Exhibits 9A through 9G. The 1998 aerial photograph does not show a pier extending from the Property. The 2005 aerial photograph shows the pier substantially as it existed until Mr. Hubbard undertook his improvements.

Mr. Hubbard explained that wanting to add a boatlift and pilings at the water-end of the pier, he hired a contractor. The contractor was supposed to obtain all permits for the project. Mr. Hubbard testified MDE approved the work. He was led to believe the contractor also obtained a County permit. Now, after installing the boatlift and two pilings, the contractor has disappeared and has not returned telephone calls.

Mr. Hubbard told the Board he has hired a new contractor to remove the catwalk (also known as a finger pier) and two pilings MDE wants removed. The new contractor is presently working at another location in the creek and will undertake the removal work at the Property soon. Mr. Hubbard offered into evidence a drawing illustrating the removal work, which the Board admitted into evidence as Applicant's Exhibit 10. In response to a question from the

Board, Mr. Hubbard testified he believes MDE wants the finger pier and pilings removed because the State limits the number of slips at a private pier to six.

In concluding, Mr. Hubbard testified the pier length and boatlift at the water-end of the pier is needed because of the shallow depth of the creek in front of the Property. He owns a large boat that requires at least four feet of water at low tide.

Testimony by Others

No one else appeared before the Board to testify or to ask questions about the Applicant's requested conditional use.

Findings and Conclusions of the Board

The Board concludes the evidence in this case justifies approval of the Applicant's requested conditional use. Supporting evidence includes the ten exhibits the Applicant submitted, P&Z's staff report, and the testimony of Mr. Hubbard and Mr. Veasel. The Board also notes the absence of any testimony in opposition to the Applicant's proposed conditional use.

Concerning the comprehensive-plan standards found in §18:1-94 and § 18:1-123.B. of the Code, as well as in § 1-303 of the Land Use Article of the Annotated Code of Maryland, the Board finds the Property is in a rural-residential neighborhood. The Board further finds the proposed pier is a typical accessory use to waterfront residential uses, including many waterfront lots in the neighborhood. The 2002 Comprehensive Plan incorporates into the Plan the established residential land uses in the neighborhood, as well as the neighborhood's CS, Countryside zoning and the neighborhood's RCA critical-area designation. Accordingly, the Board concludes the proposed private pier both conforms to and is consistent with the County's Comprehensive Plan.

The Board further finds the proposed conditional use does not significantly affect the development patterns, land uses, or intensity of land uses set forth in the Comprehensive Plan. The Property is already developed with a single-family home and related improvements. Other lots in the neighborhood are similarly developed with residential uses, with waterfront lots enjoying private piers as accessory uses. Private piers are typical accessory uses in the waterfront residential areas incorporated into the Plan.

The evidence before the Board also supports a conclusion the proposed conditional use, at the proposed location, is consistent with the general purpose, goals, objectives, and standards of other applicable plans, programs, maps, and ordinances adopted by the County. Regarding the proposed location, the Board finds the proposed location will not increase or intensify any potential impacts generally inherent in a private pier with a length greater than 150 feet. The Property is large and has a lengthy waterfront. In front of the Property, Cox Creek is sufficiently wide to accommodate a pier and associated pilings extending 176 feet from the shoreline.

Furthermore, based on the exhibits the Board admitted and the uncontroverted testimony of the witnesses, the Board finds the conditional use, at the proposed location, 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. The Board notes a private pier is considered a "water dependent" land use, and thus is allowed in the critical-area buffer. Adding length to the pier in the form of a boatlift and two attendant pilings would not (and here did not) involve disturbing the buffer.

As previously noted, the Property is relatively large and wide, especially compared to lots on the west side of Thompson Creek Road and other lots north along Thompson Creek Road. The Property's size and width provide more than ample separation between piers serving (or that

could serve) the abutting lots to the north and south. Mr. Hubbard's aerial photographs show the lot to the north does not presently have a pier, and the pier extending from the lot to the south is about 200 feet distant. The proposed 176-foot length of the pier, including boatlift and outboard pilings, will not unduly affect the boating public because the pier satisfies the standard that no pier may extend more than one-half the distance to the centerline of the abutting body of water.

The Board finds it noteworthy that no one appeared before the Board to express concerns about the Applicant's proposal. Furthermore, the Applicant has already obtained approval for the lengthened pier from the Maryland Department of the Environment. MDE's approval comes with many conditions that help assure the proposed pier will not adversely affect the navigability of the creek nor the creek's riparian environment.

Concerning public improvements, facilities, utilities and services, the Board finds that the proposed private pier at the location proposed will not involve any use of such facilities and services. Therefore, the adequacy of such facilities and services, in a manner consistent with the Comprehensive Plan, Chapter 18:1, and other plans, programs, maps and ordinances adopted by the County, is not an issue in this case. A pier longer than 150 feet will have no effect on public facilities, utilities, and services.

As required by § 18:1-123.B.(3) of the Code, the Board, adopting its findings regarding §18:1-94.B. of the Code, concludes the proposed conditional use will be compatible with the existing neighborhood. The fact the proposed pier will be 26 feet longer than permitted by right does not in this case change the character of the pier as a type of residential-accessory use common in this waterfront-oriented, rural-residential neighborhood.

Decision

Based on the foregoing findings and conclusions, by a vote of three in favor and none opposed, the Board conditionally grants the Applicant's conditional use. The Board's

conditional approval will allow the Applicant to obtain permits for and use a 6-foot wide pier with a 10-foot by 20-foot “L”, a catwalk, two boatlifts, and two mooring piles located 15 feet beyond the boatlift that is attached to the water-end of the pier—all extending no more than 176 feet into the waters of Cox Creek. The pier and other improvements must be maintained substantially as depicted in Applicant’s Exhibits 4 and 8, and the conditional use is subject to the following:

1. Before the County may issue a permit to the Applicant, the Applicant must remove the catwalk and two mooring piles marked on Applicant’s Exhibit 10 as to be removed.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 4th day of April, 2019, ordered that the conditional use approval requested for John H. Hubbard, in Case No. BOA-19-02-0024 be granted, subject to the conditions set forth in the Opinion



Kenneth R. Scott, Chairman



Howard A. Dean, Vice-Chairman

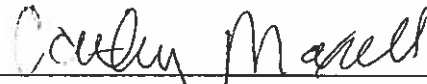


Craig W. McGinnes, Member

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 Number BOA-19-02-0024, for John H. Hubbard, which Opinion and Order resulted from a public hearing conducted by the Board of Appeals on March 20, 2019 and that the minutes and a recording of the March 20, 2019 meeting are filed in the office of Board of Appeals.

Certified this 4th day of April, 2019 by:



Cathy Maxwell
Clerk to the Board of Appeals

BEFORE THE BOARD OF APPEALS OF QUEEN ANNE'S COUNTY

* * * * *

In the Matter of an Application by *
Dennis R. Helmer * Case No. BOA-19-02-0025
Requesting Zoning Variances *

* * * * *

OPINION AND ORDER

Introduction

The matter before the Board of Appeals of Queen Anne's County ("Board") in this case is an application for zoning variances filed by Mr. Dennis R. Helmer ("Applicant"). The Applicant seeks four variances: (1) a setback variance associated with a proposed addition to the Applicant's home, (2) a building-cover variance associated with a proposed accessory building, (3) a yard-locational variance associated with the proposed accessory building, and (4) a setback variance also associated with the proposed accessory building.

On March 20, 2019, beginning at 5:15 p.m., the Board conducted a public hearing in the main meeting room adjunct to the Board's offices at 110 Vincit Street, Centreville, Maryland, to consider the Applicant's variance requests. At the beginning of the hearing, the Board established all requirements were met governing (1) the filing of the variance application, and (2) notice of the March 20th public hearing. No one attending the public hearing objected to the Board exercising jurisdiction over the Applicant's case. Board members hearing the case were Mr. Kenneth R. Scott, Chairman; Mr. Howard A. Dean, Vice Chairman; and Mr. Craig W. McGinnes, Member.

Requested Relief

The Applicant requests four variances to undertake certain improvements to his lot. First, the Applicant asks the Board to vary the provisions of § 18:1-19.E.(1)(c)[4][f][iii] of the Code of

Public Laws of Queen Anne's County, 1996 Edition ("Code") to construct a 14-foot by 27-foot addition to the rear of his single-family home as close as 29 feet to the rear lot line. Section 18:1-19.E.(1)(c)[4][f][iii] of the Code requires a rear-yard setback of at least 50 feet. Thus, the Applicant seeks a variance in the amount of 21 feet.

Second, the Applicant asks the Board to vary the provisions of § 18:1-45.C.(2) of the Code to exceed the maximum building cover allowed for residential accessory buildings on lots less than two acres in size. Section 18:1-45.C.(2) of the Code provides that, cumulatively, residential accessory buildings on lots less than two acres may not cover an area greater than 60% of the lot area covered by the principal building on the lot.

In this case, the principal building is the Applicant's home, which covers 1,224 square feet of lot area. The Applicant proposes to build a 20-foot by 30-foot pole building, which the Applicant plans to use for storage of personal property, including items related to horticultural use of the lot. Together with another accessory building that already exists on the Applicant's lot, the 600 square feet of cover associated with the pole building will bring the total cover by accessory buildings to 1,776 feet. Based on the size of the Applicant's home, including the proposed 378 square-foot addition for which the Applicant seeks a rear-yard variance, accessory buildings on the Applicant's lot may cover up to 977 square feet. Thus, the Applicant seeks a building-cover variance in the amount of 799 square feet.

Third, the Applicant asks the Board to vary the provision in § 18:1-45.B.(1)(b)[3] of the Code requiring accessory buildings to be in a side or rear yard. The Applicant proposes to locate the accessory pole building in one of the property's two front yards. Thus, the Applicant seeks a complete variance to the yard locational standard for accessory buildings.

Fourth, the Applicant asks the Board to allow the proposed pole building to be set back four feet from one of the two streets the Applicant's lot abuts. Section 18:1-19.E.(1)(c)[4][f][i]

of the Code requires a setback of at least 35 feet from a street. Accordingly, the Applicant is requesting a variance to reduce the street setback by 31 feet.

Variance Standards

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

1. Literal enforcement of Chapter 18:1 of the Code 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 the alternatives proves a variance is required.

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

Property and Neighborhood Description

The Applicant's land is in the Seventh Election District of Queen Anne's County at 106 Market Street, about one-half mile by road west of Broad Street (Maryland Route 290) in the Crumpton area of the County ("Property"). The Property is designated as parcel 138 on sectional zoning map no. 5C.

The Property is zoned NC-20T, Neighborhood Conservation. NC-20T zoning provides for an average residential lot size of 20,000 square feet, and the "T" designation allows a single-wide manufactured home as a permitted use on a lot.

Although not a waterfront parcel, about 75% of the Property is in the Chesapeake Bay Critical Area. The County's critical-area maps designate this portion of the Property as part of

an LDA, Limited Development Area. Among other uses, LDA regulations allow for single-family residential development at densities of up to four dwelling units per acre. The addition to the home will be in the critical area, but the addition will not result in an increase in impervious surface on the Property because the addition will be constructed over an existing concrete pad. The proposed pole building will not be in the critical-area portion of the Property, and thus will not add impervious surface within the LDA district.

The Property is 0.895 of an acre in size. The Property is rectangular in shape, about 120 feet deep and 325 feet in length. The Property is a double-frontage lot. The Property's west side fronts 325 feet along the east side of Market Street. The Property's east side fronts 325 feet along the west side of Stephen Lane (North). Stephen Lane is a narrow private road serving land to the east of the Property developed with several manufactured homes.

The Property is improved with a one-story single-family dwelling containing about 1,224 square feet of floor area plus a basement. There are outside steps to the basement along the rear of the home, which faces Stephen Lane. The front of the home faces Market Street. A semi-circular driveway provides access into the Property from Market Street. The driveway also leads to the Property's existing accessory building, which measures 28 feet by 42 feet.

The Property has no significant slopes; it is basically flat. Around the improvements, the Property's yards are mostly grassed, but the Property also contains several mature trees and other vegetation. The trees provide canopy cover over much of the yard area immediately surrounding the home.

The unincorporated village of Crumpton constitutes the Property's neighborhood. Crumpton mostly consists of single-family homes, but also has a post office, a volunteer fire company, institutional uses, and a few businesses. A manufactured-home community known as Pine Springs lies just to the east and south of the Property.

Agricultural fields and large stands of woodlands abut the Crumpton neighborhood on the east, west, and south sides. The Chester River lies to the north. Agricultural uses include a large tract of tilled land opposite the Property on the west side of Market Street. This farm operation includes several sizable farm buildings.

Department of Planning and Zoning Recommendation

Mr. Ken Southard, a zoning inspector with the County's Department of Planning and Zoning ("P&Z") represented P&Z during the public hearing. Mr. Southard offered into evidence P&Z's staff report, which the Board admitted as P&Z Exhibit 1. The staff report includes attachments detailing the accessory-building cover on the Property, as well as a map showing the boundary of the Chesapeake Bay Critical Area. As Mr. Southard went through the report and described the Applicant's proposal, he referred to a copy of the variance site plan projected onto a large screen visible to those attending the hearing.

Mr. Southard testified the Property is a double-frontage lot. This means the Property has two front yards and no rear yard. Mr. Southard testified the home faces Market Street, which is also the Property's postal address. The driveway serving the Property provides access to Market Street. The Property does not access Stephen Lane.

Stephen Lane is not a public road. Rather, the lane is a private right-of-way serving a portion of a manufactured-home community.¹ Assessment records show the home on the Property was constructed in 1975, which is before the County adopted current zoning regulations. Therefore, when first improved, the Property was not considered to have two front yards. At the time, the yard abutting Stephen Lane would have been considered the rear yard. Thus, the existing accessory building, which was built almost on the property line in what was

¹Ms. Vivian Swinson, the County's Zoning Administrator, was also present at the hearing. Ms. Swinson told the Board a right-of-way is considered a street for the purpose of applying the 35-foot street setback set forth in the NC-20T bulk standards.

then the rear yard, is a legal structure. As Mr. Southard noted, the proposed pole building would be in the same yard, four feet off the property line.

In conclusion, Mr. Southard testified P&Z does not object to approval of the variances the Applicant seeks.

Applicant's Presentation

Mr. Dennis R. Helmer appeared before the Board to present his case. Mr. Helmer testified he bought the Property about 2½ years ago. At the time, the home on the Property had water in the basement and otherwise was deteriorating. He is repairing the home and, because of its age, needs to enlarge the home. The proposed addition would be a season room, doubling as a "mud room," and would also allow for indoor access to the basement.

Mr. Helmer testified the alley behind the home (Stephen Lane) is narrow and unpaved. The alley provides access to only three manufactured homes. Mr. Helmer told the Board he spoke to the owner of the manufactured-home park, as well as to the closest tenants, about his plans for the home addition and a second accessory building. No one objected.

Mr. Helmer testified he has planted fruit trees and berries on the Property to create a small orchard for his wife and him to enjoy. Mr. Helmer believes the orchard will also be a nice amenity for the neighbors. Mr. Helmer testified the proposed pole building will allow him, among other things, to store equipment needed to maintain the orchard. He also told the Board the Property's subsurface is nearly pure sand, so the improvements he proposes will not cause any drainage problems.

Mr. Helmer testified the existing accessory building was built at least 30 years ago, perhaps even 40 years ago. That building is located three feet off the property line shared with Stephen Lane. The three-foot setback has not appeared to cause any problems. Mr. Helmer told

the Board the size of the proposed pole building is a standard size. Constructing a non-standard building would create greater difficulties and unnecessary expense.

Mr. Helmer testified the Property has a nice view of the agricultural field and woodlands on the other side of Market Street. He believes the orchard on the Property, as served by the proposed pole building, will be a good companion use to the confronting farming operation.

Testimony by Others

No one else appeared before the Board to testify or to ask questions about the Applicant's variance requests.

Findings and Conclusions of the Board

Based on the testimony and exhibits provided by Mr. Southard and Mr. Helmer, and duly considering the factors set forth in § 18:1-121.C. of the Code, the Board finds and concludes as follows.

1. With regard to the proposed home addition, because of conditions associated with the Property the Board concludes literal enforcement of the rear-yard setback found in § 18:1-19.E.(1)(c)[4][f][iii] of the Code would result in practical difficulty. With regard to the proposed pole building, because of the same physical conditions, the Board concludes literal enforcement of the 60% accessory-building cover requirement found in § 18:1-45.C.(2) of the Code, the yard-locational requirement found in § 18:1-45.B.(1)(b)[3] of the Code, and the 35-foot front-yard setback found in § 18:1-19.E.(1)(c)[4][f][i] of the Code would also result in practical difficulty.

The home on the Property was built in 1975. Applicant's Exhibit 4 shows the Property was surveyed in its present form in 1979, which means it either was subdivided earlier or was subdivided in 1979. Either way, at that time County zoning regulations did not include the provisions that today burden the Property with two front yards and no rear yard. Moreover, at that time the County's zoning regulations did not require a front-yard setback of 35 feet and a

rear-yard setback of 50 feet. For a lot that is only 120 feet deep, these current setbacks encumber 70% of the lot's depth, leaving only a 35-foot strip within which to locate improvements. In siting the home on the Property in 1975, the builder could not have known there would be a future 50-foot setback for additions to the home and a future 35-foot setback (and yard locational requirement) for accessory buildings. Furthermore, and notably, the narrow 35-foot-wide building envelope now falls within the critical-area portion of the Property.

The Applicant proposes to locate the pole building in the yard abutting Stephen Lane. The Board finds this yard is the Property's functional rear yard. The Applicant's home faces Market Street. The Property's driveway accesses Market Street. The Property has a Market Street address. The Property does not access Stephen Lane. Given these conditions, the Board concludes locating a pole building behind the rear of the home in the yard abutting Stephen Lane, which is outside of the Chesapeake Bay Critical Area, is the most appropriate location for an accessory building.

Regarding setbacks, the Applicant proposes a 29-foot setback for a 15-foot by 27-foot addition to the existing home on the property. Applying today's 50-foot rear-yard setback would not allow for any addition to the rear of the dwelling, which sits 44 feet from the property line shared with Stephen Lane. The Board finds the lack of a 50-foot rear-yard setback is due to the shallow depth of the Property, coupled in part with the original siting of the home about 45 feet from Market Street. The Board further finds that originally siting the home about in the middle of the Property's depth is understandable given Market Street is the only public street the Property abuts and there was no 50-foot rear-yard setback to consider in 1975.

The shallow depth of the Property, coupled with the relatively recent LDA critical-area designation for the front 75% of the Property, necessitates moving the proposed pole building toward Stephen Lane. In addition, the Board finds the presence of Stephen Lane exacerbates the

practical difficulty. The four-foot setback the Applicant proposes is about a foot greater than the setback of the existing accessory building on the Property. Also, the proposed four-foot setback would meet the minimum accessory-building setback if Stephen Lane did not abut the shared property line.

Regarding the Applicant's request to exceed the accessory-building cover maximum, the Board finds the Property's location opposite a farming operation, coupled with the existing accessory building constructed prior to adoption of the 60% cover maximum, constitute physical conditions justifying a variance. Moreover, the Property's size and depth together limit the size of the home on the Property, which directly affects the amount of land accessory buildings may cover. But for these physical conditions, past owners of the Property could have built a larger home, which in turn would have allowed for a larger area of accessory-building cover.

2. The Board concludes the foregoing conditions and circumstances are peculiar to the Property. The Board finds the Property is peculiarly affected by the double frontage created by the private right-of-way known as Stephen Lane. Other lots along Market Street do not abut a private right-of-way. Indeed, based on the Board's experience, very few non-corner lots in the County have double frontage, and there are even fewer with the second frontage along a private right-of-way the affected lot does not use for access.

The Property's comparatively shallow depth is also peculiar and predates current zoning regulations. Most lots are deeper than wider, with a depth to width ratio usually in the range of 2:1 to 3:1. Here, the depth to width ratio, at 1:2.7, is reversed. Coupled with the shallow depth, the size and location of existing improvements on the Property also have a peculiar impact. Although the Board ordinarily would not consider the size and location of existing improvements to be physical conditions of the Property justifying a variance, here the improvements were built many years prior to adoption of the current zoning requirements the Applicant seeks to vary.

The Board thus views the existing improvements as having become relevant physical conditions upon the effective date of the 1996 zoning regulations.

The Board also finds the Property's location is peculiar. The Property is one of the few lots in Crumpton to confront an active agricultural use and the CS-Countryside zoning that allows for agricultural uses. As with some of the Property's other physical conditions, the shallow depth of the Property intensifies the effects of the confronting agricultural use.

3. The Board concludes the foregoing conditions are not the result of actions taken by the Applicant. According to Applicant's Exhibit 2, the Applicant purchased the Property on July 1, 2016, which is some 40 years after the home and existing accessory building were built. Thus, the Applicant is not responsible for siting these improvements. The Applicant also is not responsible for the Property's shallow depth, the presence of Stephen Lane, nor the presence of the agricultural use across Market Street.

4. The Board concludes that granting the requested variances will not be contrary to the public interest. In general, the Board finds it to be in the public interest for homeowners to improve their properties, if the improvements do not detrimentally affect the use and enjoyment of other properties and the public. Here, the proposed improvements will not adversely affect abutting lands. The existing accessory building on the Property sits three feet off the lot line shared with Stephen Lane. Mr. Helmer testified the owner of the abutting land to the east and the tenants in the closest manufactured homes do not object to the variances. Moreover, neither the owner nor the tenants relayed information to Mr. Helmer indicating the existing three-foot setback has caused problems. Under these circumstances, the Board finds the proposed 29-foot setback for the home addition suffices to serve the public interest.

The Board also finds the proposed four-foot setback for the pole building suffices to serve the public interest, because the decreased setback will allow the pole building to be located

outside of the portion of the Property designated as part of the Chesapeake Bay Critical Area. The Board notes, too, the pole building will be located near the terminus of Stephen Lane, and thus will not impact sight distance along the lane. The proposed four-foot setback would meet accessory-building setback requirements if Stephen Lane were not located along the shared lot line. Here, the fact the lane is a private right-of-way serving only three homes and carrying very little traffic, as well as the fact the three homes the lane serves are themselves located within 35 feet of the narrow lane, makes the lane more like a private driveway than a public street. The Board finds it significant that contiguous private driveways do not trigger the 35-foot front-yard setback.

The proposed variances will not affect the parcels to the north, south and west, because all required setbacks from these parcels will continue to be met—indeed, exceeded. The yard-locational requirement and additional accessory-building cover will not affect these lands because residents on the lot to the north will see only the proposed pole building and residents on the lot to the south will see only the existing accessory building. The lot to the north will also be buffered by the Applicant's orchard. Regarding the agricultural land to the west, the home on the farm is located a significant distance from the Property and there are several sizable farm buildings close to the farmhouse. Thus, the variances will have no effect on the farm parcel. Likewise, approval of the requested variances will not affect users of Market Street. The variances do not reduce setbacks from Market Street and the additional accessory-building cover the proposed pole barn entails will be about 95 feet from the street. In addition, the accessory building cover will be broken up between two buildings, as opposed to one large building.

Based on the foregoing considerations, and on the fact no one appeared before the Board to oppose the requested variances, the Board concludes the Applicant's proposal is in the public interest. The Board notes the home addition and proposed accessory building, once built, will

increase the value of the Property at least incrementally. In turn, an increase in the Property's value will likely have a positive effect on the values of other lots in the neighborhood. Finally, in this case, the Board finds it significant the Department of Planning and Zoning does not object to approval of the requested variances.

5. The Board concludes an evaluation of possible alternatives establishes that the requested variances are required. The Property's depth is too shallow to support an addition to the home without a variance. Similarly, the shallow depth and abutting private right-of-way (Stephen Lane) prevent strict compliance with the 35-foot setback, here applicable to the pole building. Together, the sizes of the Property and home on the Property do not leave any alternative to varying the 60% limit on accessory-building cover, except not to build a second accessory building. In this case, the Board finds that precluding a second accessory building is not a reasonable alternative given (a) the Property's location opposite a farming operation and (b) the existing and planned vegetation on the Property, which reduces, if not eliminates, any potentially negative effects of increased accessory-building cover. Regarding, the yard-locational requirement, an accessory building can only be built in one of the Property's two front yards; no other alternative exists.

6. The Board concludes the requested variances are the minimum deviations from the provisions of Chapter 18:1 that would allow the Applicant to build a reasonable addition to his home and construct a standard-sized accessory building. As the Board previously concluded, locating the garage in one of the Property's two front yards is the only alternative. Under this circumstance, the minimum variance necessary is complete relief from the yard-locational requirement.

Concerning setbacks, the proposed setback for the home addition is reasonable and exceeds the setbacks maintained by the three abutting manufactured homes from the shared lot

line. The proposed accessory-building setback is also reasonable. The yard abutting Stephen Lane is only technically a front yard, but is the Applicant's functional rear yard. The proposed setback meets the setback that would be required in the absence of Stephen Lane. As the Board previously found, Stephen Lane operates more as a private driveway than a public street, and thus does not need the protections of a 35-foot front-yard setback, at least not for the size building and building location the Applicant proposes. Just as importantly, the amount of setback variance requested is necessary to situate the pole building outside of the Chesapeake Bay Critical Area.

Decision

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

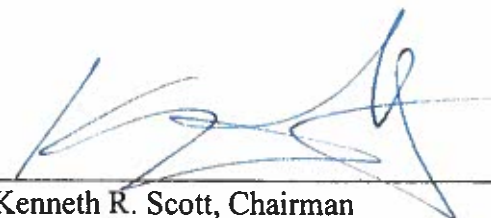
- (A) a variance in the amount of 21 feet from the rear-yard setback requirement set forth in § 18:1-19.E.(1)(c)[4][f][iii] of the Code to allow the Applicant to build a 15-foot by 27-foot addition to the rear of the existing home on the Property, which addition must be set back at least 29 feet from the property line abutting Stephen Lane; and
- (B) a variance from the yard-locational requirement set forth in § 18:1-45.B.(1)(b)[3] of the Code to allow the Applicant to construct a 20-foot by 30-foot pole building, as an accessory building, located in the Property's front yard abutting Stephen Lane; and
- (C) a variance in the amount of 31 feet from the front-yard setback requirement set forth in 18:1-19.E.(1)(c)[4][f][i] of the Code, applicable here to the property line shared with Stephen Lane, to allow the Applicant to construct the 20-foot by 30-foot pole building set back four feet from the property line abutting Stephen Lane; and

(D) a variance in the amount of 799 square feet from the 60% accessory-building cover limit set forth in § 18:1-45.C.(2) of the Code to allow the Applicant to construct the 20-foot by 30-foot pole building with its 600 square feet of accessory-building cover.

The Applicant must locate the 15-foot by 27-foot home addition and the 20-foot by 30-foot pole building authorized by the foregoing variances in substantial accord with Applicant's Exhibit 5.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 8th day of May, 2019, ordered that the variances requested for Dennis R. Helmer, in Case No. BOA-19-02-0025 be granted.



Kenneth R. Scott, Chairman



Howard A. Dean, Vice-Chairman

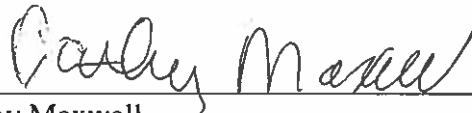


Craig W. McGinnes, Member

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 Number BOA-19-02-0025, for Dennis R. Helmer, which Opinion and Order resulted from a public hearing conducted by the Board of Appeals on March 20, 2019 and that the minutes and a recording of the March 20, 2019 meeting are filed in the office of Board of Appeals.

Certified this 8th day of May, 2019 by:



Cathy Maxwell
Clerk to the Board of Appeals

