

**BEFORE THE BOARD OF APPEALS OF QUEEN ANNE’S COUNTY**

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*In the matter of Application by* \* Case No. BOA-22-10-0134

**Michael D. Schaner and Anita Schaner** \*

for Zoning Variance \*

\* \* \* \* \*

**FINAL DECISION OF THE BOARD**

**Introduction**

The Queen Anne’s County Board of Appeals (the “Board”) held a meeting on March 23, 2023 at 4:00 p.m. to consider Case No. BOA-22-10-0134 for a variance application filed by Michael D. Schaner and Anita Schaner (hereinafter the “Applicants”). The Board members present were Chairman, Howard Dean, and Board Members Michael Lesniowski and Scott MacGlashan.

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 March 23<sup>rd</sup> 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 request a variance to the provision of § 18:1-45.C(2) of the Code of Public Local Laws of Queen Anne’s County, 1996 Edition (the “Code”), to exceed the 60% permissible lot coverage to construct a 9’11” x 20’ pool shed and a 9’11” x 20’ shade structure. The Applicants’ property is located at 127 Three Creeks Drive, Centreville, Maryland (the “Property”). The Property is located in the Agricultural (AG) Zoning District. The Applicants submitted two Zoning Certificates, Z22-08-0315 and Z22-08-0316, to construct the pool shed and covered area next to the pool described above. On August 31, 2022, the Queen Anne’s County Zoning Inspector denied the Applicants’ Zoning Certificates after determining that the proposed accessory buildings exceed the square footage allowed under § 18:1-45.C(2) of the Code.

Section 18:1-45.C(2) of the Code states, “[i]n all districts, all buildings on a residential lot of less than two acres, other than the principal building, may not cover an area of the lot greater than 60% of the area covered by the existing principal building.” The Applicants’ existing

principal building has a foot print of 2,416 square feet. Therefore, the Applicants are permitted to construct 1,449.6 square feet of accessory structures on the Property. The two accessory structures proposed by the Applicants total 1,836 square feet, which necessitates the variance request.

### **Applicable Provisions of the Code**

The standards the Board must apply to the Applicants' 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**

Ken Southard, Zoning Inspector with the Department of Planning & Zoning, presented his staff report. Mr. Southard identified the Property and its location. Mr. Southard identified the Property in the Third Election District of Queen Anne's County at 127 Three Creeks Drive, Centreville, Maryland. The Property is designated as Parcel 69, Lot 45, on Zoning Map 36. The Property is zoned Agriculture (AG) and is not located in the Critical Area.

Mr. Southard said that there are sensitive species on the Property and a ditch system that is partially located within the front yard. The septic reserve area occupies the rear yard. The lot is part of the Three Creeks Subdivision, Phase 11 which was approved on April 12, 2001. Structures already on the Property include a 3,124 square foot dwelling, a 559 square foot deck addition, a 1,440 square foot pole building, and an inground pool.

Mr. Southard explained that the Applicants are seeking a variance from § 18:1-45.C(2) to construct a 9'11" x 20' pool equipment shed totaling 198 square feet, and a 9'11" x 20' pavilion

totaling 198 square feet. Specifically, he said, the Applicants are requesting the variance to exceed the permitted lot coverage by 387 square feet. Given the location of the ditch and the septic area, Mr. Southard said that he believed the siting of the accessory structures was limited. He further stated that he had no objection to the variance request.

### **Applicant's Presentation**

Ms. Schaner presented the application for a variance to exceed the permissible lot coverage on her Property. Ms. Schaner said that after the house was constructed, they applied for and received a building permit for a 1,440 square foot pole building. At that time, the Applicants did not realize that there was a lot coverage limitation for accessory structures on their Property. They learned that there was an applicable lot coverage limitation when they applied for the pool shed and shade structure.

Ms. Schaner said that they are seeking the variance to construct a pool equipment shed in the rear yard located at the back of the pool. The shed will hide the pool equipment, including the pump. In addition to providing aesthetic benefits by hiding the pool equipment, the shed will also protect the equipment from weather. She said that the pool equipment is currently exposed to bad weather which has caused issues.

In addition to the pool equipment shed, the Applicants are also seeking to construct a covered area to be located between their house and the pool. This covered area will provide shade while using the pool and will store pool accessories. She said that there currently is no shade near the pool so those using the pool, or sitting outside near it, are exposed to full sun.

Next, Amy Gervis, the Applicants' neighbor, spoke in favor of the application. She said that the Applicants are great neighbors and take care of their Property. She said that the Applicants have improved the Property since they purchased it and that she had no objection to the additional sheds.

### **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 permissible lot coverage would result in practical difficulty as the Applicants only have 9 square foot of lot coverage remaining which is not enough lot coverage to enclose the pool equipment or provide shade.
2. The residential structure on the Property has a footprint of 2,416 square feet and the existing accessory pole building has a footprint of 1,440 square feet.
3. The location of the sheds is necessary for the intended purpose.
4. The Property is not located in the Critical Area.
5. There is a ditch in the front yard and the septic system takes up a majority of the rear yard.
6. The variance will not be contrary to the public interest.
7. The Board will not permit additional variances to exceed the lot coverage on the Property.


#### **Decision**

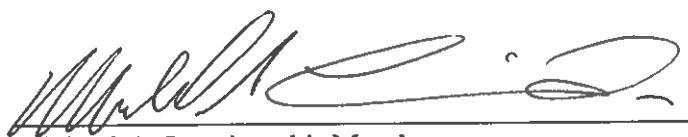
Based on the foregoing findings and conclusions, by a vote of three in favor and none opposed, the Board grants to the Applicant:

A variance from the provisions of § 18:1-45.C(2) to permit the Applicants to exceed the applicable lot coverage by 387 square feet to construct a 9'11" x 20' pool equipment shed and a 9'11" x 20' covered area next to the pool.

**ORDER**

For the reasons set forth in the foregoing Opinion, it is this 21st day of April, 2023  
ordered that the variance requested for Michael D. Schaner and Anita Schaner, in Case No.  
BOA-22-10-0134, be granted.

  
Howard A. Dean, Chairman

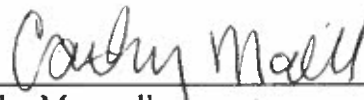
  
Michael A. Lesniowski, Member

  
Scott MacGlashan, Alternate 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-22-10-0134, for Michael D. Schaner and Anita Schaner, which Opinion and Order resulted from a public hearing conducted by the Board of Appeals on March 23, 2023 and that the minutes and a recording of the March 23, 2023 meeting are filed in the office of Board of Appeals.

Certified this 21st day of April, 2023 by:

A handwritten signature in cursive script, appearing to read "Cathy Maxwell", is written above a horizontal line.

Cathy Maxwell  
Clerk to the Board of Appeals

**BEFORE THE BOARD OF APPEALS OF QUEEN ANNE’S COUNTY**

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*In the matter of Application by* \* Case No. BOA-23-02-0142  
**Steven Gervis and Amy Gervis** \*  
for Conditional Use \*

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**FINAL DECISION OF THE BOARD**

**Introduction**

The Queen Anne’s County Board of Appeals (the “Board”) held a meeting on March 23, 2023 at 4:15 p.m. to consider Case No. BOA-23-02-0142 for a conditional use application filed by Steven Gervis and Amy Gervis (hereinafter the “Applicants”). The Board members present were Chairman, Howard Dean, and Board Members Michael Lesniowski and Scott MacGlashan.

At the beginning of the hearing, the Board established that all requirements were met governing the filing of the conditional use application, and proper notice of the March 23<sup>rd</sup> 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 §§ 18:1-14.C(12) and 18:1-95.I of the Code of Public Local Laws of Queen Anne’s County, 1996 Edition (the “Code”), for a group daycare center within the AG zoning district in order to expand an existing daycare from eight (8) to ten (10) children. Group daycare centers are permitted in the Agricultural (AG) District pursuant to § 18:1-14.C(12) of the Code. The Applicants currently operate a daycare center with eight (8) children and they are seeking to increase the number of children to ten (10). A group daycare center is a center that cares for nine (9) or more children pursuant to the County Code.

**Applicable Provisions of the Code**

The standards the Board must apply to the Applicants’ 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.

Pursuant to § 18:1-95.I, there are additional requirements that the Applicants must satisfy to operate a daycare center, which include:

1. Meet all state requirements for daycare and/or childcare facilities;
2. Provide off-street parking and loading areas; and
3. Be located on streets that have adequate capacity to accommodate the volume of traffic generated by the proposed use.

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**

Steven Johnson, County Planner with the Department of Planning & Zoning, presented his staff report on the application. Mr. Johnson described the Property and its location. He identified the Property as located at 169 Goldfinch Lane, Centreville, Maryland in the AG District. He said the Property is located within the Three Creeks Subdivision and is identified on Queen Anne's County Tax Map 36 parcel 69 lot 72. The Property is one (1) acre.

He said that the Applicants have an existing daycare on their Property that provides care for eight (8) children. He said that the daycare is in good standing with the County and the State of Maryland. The current hours of operation are Monday through Friday from 6:30 a.m. to 5:00 p.m. and are not proposed to change. The existing dwelling on the Property is served by a well and an on-site sewage disposal system that was recently upgraded and is adequate to handle the use.

Mr. Johnson said that the Applicants are seeking to provide daycare services to ten (10) children. The daycare center will be located within the existing dwelling, where it is currently located. He said that the Applicants are not proposing to change the current hours of operation. He added that the Code requires that the Applicants provide 2 employee parking spaces and 2 loading spaces, which the Applicants have provided.

He said that the majority of the Three Creeks Subdivision lies within the Sensitive Species Project Review Area, including the subject parcel. However, he stated that correspondence from the Maryland Department of Natural Resources dated January 27, 2023 indicates that they do not

have concerns with the proposed conditional use. He said that there are no other natural resources on site.

Mr. Johnson said that the Code permits group daycare centers as conditional uses. Although permitted, he added that the Code establishes specific standards under § 18:1-95.I to address group daycare centers. He added that the proposed use complies with the standards established by the Code as it meets all state requirements, provides the necessary off street parking and loading areas, and is located on a street that has adequate capacity to accommodate the volume of traffic generated by the use.

Mr. Johnson concluded by stating that no agencies that reviewed the proposed use objected to the application. Therefore, he said he did not object to the Board granting conditional use approval.

#### **Applicant's Presentation**

Ms. Gervis presented the application. She stated that she is seeking to increase her daycare by two (2) children to permit her to accommodate two (2) infant spots. She said that she does not want to provide care to any more than ten (10) children. She said that she has been in business for five (5) years. She said that she completed the mandatory training requirements to operate a licensed home daycare as required by the State. In addition, she said she has completed a forty-five (45) hour infant course, a nine (9) hour administrative course, and other relevant courses.

She added that she will be able to hire one additional employee to assist her with the children which will also permit her to provide care to up to ten (10) children per the applicable State regulations. Regarding parking, Ms. Gervis said that they have two spots at the end of the driveway for drop off and pickup but generally only one car arrives at a time.

Chairman Dean asked the Applicants about safety around their swimming pool. Mr. Gervis said that they have a four (4) foot high white fence around the backyard and a chicken wire fence around the pool. Ms. Gervis said that the fence around the pool was approved by the Department of Education. She also added that she and her husband are foster care parents in Queen Anne's County and that Queen Anne's County also approved the fence.

Mr. Gervis stated that the Applicants installed a new septic BAT system that was sufficient to serve the group daycare center. He added that most of the children in the daycare wear diapers and aren't adding pressure to the septic system. He also said that they have the septic system inspected every six (6) months and use Shore Septic Systems to pump the system when necessary.

Ms. Gervis said that she had received inquiries from County residents about available daycare spots which encouraged her to increase the number of children at her center. She said that there is a need in the County for daycare spots.

### **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. Group daycare centers are a permitted conditional use.
3. The Applicants will meet all state requirements for operating a daycare.
4. The Applicants meet the required parking and loading areas.
5. The Applicants currently operate a daycare that provides care for eight (8) children and an additional two (2) children will not result in substantial changes to the number of vehicles utilizing the Applicants' street.
6. The proposed use does not appear to be inappropriate in the location as the Applicants already provide daycare services to eight (8) children.
7. The expansion of the daycare from eight (8) children to ten (10) children will not result in substantial changes.
8. There is a need for daycare centers in the County.
9. The Property is served by an onsite well and septic system, which was recently upgraded.
10. The continued use of the Property as a daycare center protects sensitive areas which is consistent with the 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:

1. Conditional use approval pursuant to §§ 18:1-14.C(12) and 18:1-95.I of the Code to operate a group daycare center for ten (10) children, subject to the following conditions:
  - a. Any remaining edits and/or documents required by a reviewing agency be reviewed and approved prior to use permit approval;
  - b. Per Environmental Health, the Applicants must contact the on-site sewage disposal system treatment unit manufacturer to arrange the proper pumping/maintenance schedule for the increased usage of the BAT unit.

**ORDER**

For the reasons set forth in the foregoing Opinion, it is this 21st day of April, 2023, ordered that the conditional use approval requested for Steven Gervis and Amy D. Gervis, in Case No. BOA-23-02-0142, be granted, subject to the conditions set forth in the Opinion.



Howard A. Dean, Chairman



Michael A. Lesniowski, Member

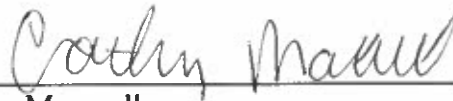


Scott MacGlashan, Alternate Member

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-23-02-0142, for Steven Gervis and Amy D. Gervis, which Opinion and Order resulted from a public hearing conducted by the Board of Appeals on March 23, 2023 and that the minutes and a recording of the March 23, 2023 meeting are filed in the office of Board of Appeals.

Certified this 21st day of April, 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**

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*In the matter of Application by*

\* Case No. BOA-23-02-0143

**Three Seas, LLC**

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for Conditional Use

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**FINAL DECISION OF THE BOARD**

**Introduction**

The Queen Anne’s County Board of Appeals (the “Board”) held a meeting on March 23, 2023 at 4:30 p.m. to consider Case No. BOA-23-02-0143 for conditional use approval to operate a restaurant in the Village Center zoning district at property located at 1104 Price Station Road in the town of Price, near Church Hill, in the 2<sup>nd</sup> Election District (the “Property”). The conditional use application was filed by the Property owner, Three Seas, LLC (hereinafter the “Applicant”). The Board members present were Board Chairman, Howard Dean, and Board Members Michael Lesniowski and Scott MacGlashan.

At the beginning of the hearing, the Board established that all requirements were met governing the filing of the conditional use application, and proper notice of the March 23<sup>rd</sup> public hearing. Board Chairman, Howard Dean, administered the oath to all who wished to testify on the application, including the Applicant’s representatives.

**Applicant’s Request**

The Applicant is seeking conditional-use approval under the provisions of § 18:1-25.C(15) of the Code of Public Local Laws of Queen Anne’s County, 1996 Edition (the “Code”), to operate a restaurant in the Village Center (“VC”) zoning district. § 18:1-25.C(15) of the Code permits medium commercial uses as conditional uses in the VC district. § 18App-1 defines a medium commercial use as a non-fast-food restaurant, among other things. The Applicant is specifically seeking to operate a 2,500 square foot sit-down restaurant, which was approved as a conditional use at the Property in 2009 but has since ceased operation.

**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, County Planner with the Department of Planning & Zoning, presented his staff report. He said that the Property is located in the central part of Queen Anne’s County in the unincorporated crossroads community of Price. He said that the Board of Appeals issued conditional use approval in 2009 to the previous property owner to construct a 2,500 square foot restaurant in the VC zoning district with the conditions that the building permit application and site substantially reflect the renderings provided in the application and concept plan, and that the site design for landscaping, parking, lighting, truck lot, elevations, and internal circulation patterns remain substantially the same as shown on the concept plan. He said that no site plan was required in 2009 because the building constructed replaced a building that was demolished.

In 2010, the Board of Appeals issued a conditional use approval with conditions to construct a 75,000 square foot parking lot to accommodate truck parking on the Property. The conditions included a landscaped buffer, full cutoff lighting, no overnight parking on site, and limited parking to patrons only. However, Mr. Summers said that the use was never constructed and the approval is null and void due to passage of time.

Mr. Summers said that § 18:1-25.C(15) permits non-fast food restaurants as a conditional use in the VC but that nonresidential uses in the VC district must be considered on a case-by-case basis by the Board to ensure compatibility with existing community character within the village pursuant to § 18:1-25.A. Although a conditional use approval was previously granted on the Property for a restaurant, Mr. Summers explained that conditional use approvals are non-

transferrable which necessitated the application filed by the Applicant, who is a subsequent purchaser of the property.

Next, Mr. Summers provided site conditions. He showed aerial imagery photos from 2013 and 2022 and said that the surrounding area is relatively unchanged since 2010, with exception of the removal of the horse track and the addition of a new residential structure to the southeast of the restaurant. He showed a photograph depicting the buffer screening that was planted when the Property received conditional use approval in 2009. He said that the concept plan shows existing light fixtures, which includes light posts that were constructed without obtaining a permit from the County. However, he said the Applicant acknowledged the requirement of a new lighting plan and study which will be submitted prior to the issuance of final permits. He said the Applicant is also proposing to screen the refuse area.

Mr. Summers said there is an existing structure on-site to house the proposed restaurant. Historically, the property has been the site of several restaurant operations, one of which was the Lonesome Dove which operated for approximately 45 years. In 2010, a previous owner constructed the building that currently exists which housed a restaurant until approximately 2019. The structure on site has a paved drive aisle that leads off of Price Station Road to a paved parking lot surrounding the structure with a gravel truck parking area located beyond the rear edge of pavement.

Then, Mr. Summers explained the proposed project details. He said the Applicant has met the required setbacks and building height. The Applicant meets the permitted non-residential floor area, impervious surface area, and parking requirements which includes 20 parking spaces. The Property is served by an on-site septic reserve area and private well and stormwater management was addressed at the time the building was initially constructed. The Property is not located in the Critical Area and there are no streams or wooded area, with exception of a small stream on site that has an appropriate buffer around it. He said the Applicant has not requested additional signage and that the development has a single point of ingress and egress. Mr. Summers added that the structure is within walking distance of numerous residential structures located within the village of Price.

Mr. Summers said that the Department of Planning and Zoning has concerns that the Property will be used for truck parking based on site history and past Board of Appeals discussions. He said that the past conditional use approvals had a record of truck parking discussions and possible negative impacts on nearby residential properties. Mr. Summers reminded the Board of the proximity of the proposed restaurant to residential parcels. In addition, he said that the proximity of the proposed restaurant to U.S. 301 combined with the amount of available parking on site attracts truck traffic. Mr. Summers added that since the last conditional use approval, a residential home was constructed at 1128 Price Station Road, directly adjacent to and facing the Property. Based on the proximity, Mr. Summers recommended the Board consider requiring the Applicant to extend the current landscape screening buffer further down the rear of the Property to avoid any nuisance truck lighting or visibility that would directly impact the new residence.

Chairman Dean asked Mr. Summers the size of the Property. Mr. Summers said that the Property is 3.5 acres. However, the Applicant's representative said that the Property was originally 3.5 acres but was merged with another lot in 2009 creating a 6.873 acre lot.

Next, Mr. Summers advised the Board of the applicable standards associated with approving a conditional use. He said that the Applicant's request is consistent with the 2022 Queen Anne's County Comprehensive Plan as it relates to smart growth strategies. He added that the Comprehensive Plan identifies the VC district to incorporate mixed-use development including both residential and commercial components. In addition, Chapter 8 of the Comprehensive Plan encourages occupancy and redevelopment of vacant commercial space. He said the proposed development plan and use meets VC design guidelines. He said it provides a landscaped screening buffer between the restaurant and nearby residential properties and that a lighting proposal will prevent glare and excess light. He added that no elements of the proposal are expected to pose a safety or health risk.

Mr. Summers concluded by stating that he did not object to the Board granting the request and recommended 7 conditions for the Board to consider.

### **Applicant's Presentation**

Kevin Shearon, P.E., LEED AP, DMS & Associates, LLC, presented the application on behalf of the Applicant. Mr. Shearon explained that the Applicant purchased the Property in September, 2022. He said that the Applicant is seeking to operate a restaurant on the Property pursuant to the permitted medium commercial conditional use. He said the Applicant is seeking to operate a non-fast-food restaurant and catering facility. He said that the Property has been used as a restaurant and rest stop for 60 years.

He said that the Property has been historically used as a rest stop and is commercial by nature. He said the Applicant will submit a lighting plan consistent with the Code and the VC design guidelines. He added that the proposed restaurant is 509 feet from the new residence that faces the Property and he does not believe it will be impacted by light generated from the conditional use.

Chairman Dean asked the Applicant the type of restaurant he intends to open at the Property. Mike Cusimano, a representative of the Applicant, stated that they had not determined the type of restaurant that will be located at the Property. He said that he did not want to engage with a specific type of restaurant without receiving approval for the use from the County first. Mr. Shearon added that the Applicant will provide screening around the waste facility on the Property.

There was some discussion amongst the Applicant and the Board about hours of operation. As the Applicant is unaware of the type of restaurant that will be located at the Property he was hesitant to restrict hours of operation beyond the restrictions already in place in the County Code. However, the Applicant was made aware that the County may enforce operating hours at a later date if operation becomes a compliance matter.

After the Applicant presented the case, Chairman Dean asked if any members of the public wished to speak. No members of the public testified in favor of, or in opposition to, the Applicant's application.

### **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. Non-fast-food restaurants are a permitted medium commercial conditional use.
3. The proposed use at the proposed location is consistent with the general purpose, goals, objectives, and standards of the Comprehensive Plan. Chapter 18:1 of the Code, or any other plan, program, map, or ordinance adopted by Queen Anne’s County.
4. The Applicants meet the required parking.
5. The Property has been used as a restaurant for 60 years and obtained two prior conditional use approvals for use as a restaurant.
6. 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.
7. 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
8. The proposed use is compatible with the neighborhood.

### 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 pursuant to § 18:1-25.C(15) of the Code to operate a non-fast-food restaurant as a medium commercial use, subject to the following conditions:
  - a. Any remaining edits or documents required by Planning and Zoning be reviewed and approved;
  - b. No extended/overnight parking on-site;
  - c. Parking is limited to restaurant patrons, employees, and those conducting business with the restaurant;
  - d. No truck idling on-site;

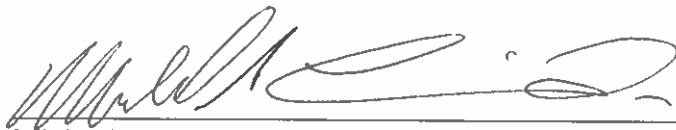
- e. Parking restrictions noted above shall be posted on-site with signage;
- f. A lighting plan to include a lighting study that ensures compliance with § 18:1-85 shall be provided prior to the issuance of building permits;
- g. Adequate screening of the dumpster corral area must be installed prior to issuance of building permits.

**ORDER**

For the reasons set forth in the foregoing Opinion, it is this 2nd day of May, 2023, ordered that the conditional use approval requested for Three Seas, LLC, in Case No. BOA-23-02-0143, be granted, subject to the conditions set forth in the Opinion.



Howard A. Dean, Chairman



Michael A. Lesniowski, Member

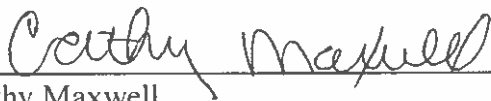


Scott MacGlashan, Alternate Member

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-23-02-0143, for Three Seas, LLC, which Opinion and Order resulted from a public hearing conducted by the Board of Appeals on March 23, 2023 and that the minutes and a recording of the March 23, 2023 meeting are filed in the office of Board of Appeals.

Certified this 2nd day of May, 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-23-01-0141

**Jones Farm Lane Solar, LLC** \*

\*

for Conditional Use \*

\* \* \* \* \*

**FINAL DECISION OF THE BOARD**

**Introduction**

The Queen Anne’s County Board of Appeals (the “Board”) held a meeting on March 23, 2023 at 5:00 p.m. to consider Case No. BOA-23-01-0141 filed by Jones Farm Lane Solar, LLC (the “Applicant”) for conditional use approval to permit the construction of a utility scale solar array, conditional use approval to permit the development of a substation as a public utility use, and a variance to reduce the required side and rear property line setbacks. The Applicant also requests an extension of time to allow up to two years from the approval to begin construction of the conditional uses. The Applicant is seeking reapproval for the same solar array substation the Board of Appeals previously approved in Case No. CU-1704000111, Case No. BOA-19-01-0021, and BOA 21-01-0083. The subject property is located at 148 Jones Farm Lane near Millington in the 1<sup>st</sup> Election District of Queen Anne’s County and is designated as Lot 1, Parcel 5, on Queen Anne’s County Sectional Zoning Map 8 (the “Property”).

The Board members present were Chairman, Howard Dean, and Board Members Michael Lesniowski and Scott MacGlashan. At the beginning of the hearing, the Board established that all requirements were met governing the filing of the conditional use/variance application, and proper notice of the March 23<sup>rd</sup> 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 is seeking two conditional uses and one variance on the Property. Specifically, the Applicant is seeking conditional-use approval under the provisions §§ 18:1-14.C(25) and 18:1-95.S of the Code of Public Local Laws of Queen Anne’s County, (the “Code”)

to permit the construction of a 326.15-acre utility scale solar array on a 601.156-acre lot, conditional use approval pursuant to § 18:1-14.C(19) to permit the development of a substation as a public utility use, and a variance to reduce the required side and rear property line setbacks required by § 18:1-14.E(2)(c). The Applicant also requests an extension of time to allow up to two years from the approval to begin construction of the conditional uses.

The Applicant received Board approval for a conditional use and variance for the proposed solar array located at the Property on February 7, 2018. The Board's decision was extended two times through February 7, 2023. In this application, the Applicant seeks the same approval as previously granted with the exception of a road frontage variance that is no longer necessary as the Applicant has moved the proposed location of the substation.

#### **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.

Section 18:1-95.S identifies specific standards for a solar array conditional use. 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.

Regarding the variance request, the Board must consider whether the evidence is sufficient for the Board to make the findings set forth in § 18:1-121.B, 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**

Rob Gunter, Principal Planner with the Department of Planning & Zoning, presented his staff report on the application. Mr. Gunter said the Applicant is proposing a 326-acre utility solar array operation, including a collection substation that will produce 64-megawatts of energy which will be supplied to the grid when complete. The Applicant is also proposing to construct an electrical substation on a separate 9.506-acre lot, which lot will be owned and operated by Delmarva Power.

Next, Mr. Gunter described the Property and its location. He said the Property is in the far northeast corner of Queen Anne's County along Blanco Road, east of Millington and west of the Delaware state line. Then, Mr. Gunter gave an overview of the project history. He said that the Queen Anne's County Planning Commission granted concept plan approval for the project on October 12, 2017 and forwarded favorable recommendation to the Board of Appeals. On February 7, 2018, the Board of Appeals granted approval for a conditional use for a proposed solar array and conditional use approval for an electric substation. The Board further granted variances from the road frontage standards and the side and rear yard setback requirements. On January 30, 2019, the Board granted extensions, essentially by way of granting a new application, for the two conditional uses and two variances. On April 1, 2021, the Board again approved the two conditional uses and two variances. The Applicant is now seeking to extend the previous approvals by request of two new conditional uses for the proposed solar array and electrical substation and one variance to reduce the side and rear yard setbacks to zero feet.

Then, Mr. Gunter presented the concept plan submitted by the Applicant and proceeded to discuss it. He explained the landscape buffer along Blanco Road and the southeastern portion of the Property. He added that a landscape buffer is not required on the east and west sides because they are fully wooded. He explained that the project is substantially similar to the project that was previously approved by the Board with a few changes. First, the previous proposal had access to the site via an access easement through an existing farm lane. The new proposal has the lot access directly from Blanco Road, which substation lot was required by Delmarva Power. The new substation lot has road frontage along Blanco Road which eliminated the need for one of the variances. The second change to the original project is that the Applicant is now proposing to

install fewer solar modules. Specifically, the 2017 project application included 205,212 modules and the one currently in front of the Board includes 128,220 modules.

Then, Mr. Gunter presented the site features. He said that there are environmental features onsite including floodplain, wetlands, conservation areas, and streams. However, he said the Applicant designed the project to minimize impacts to those areas. Mr. Gunter showed the Queen Anne's County imagery from 2019 and 2023. He said that the area is largely agricultural with a few residences which has not changed since 2019. The Property was the subject of an Administrative Subdivision recorded on March 17, 2022 whereby Lot 1 conveyed 49.466 acres to Lot 2 and Lot 1 was sold to Jones Farm Lane Land.

Mr. Gunter concluded by stating that no agencies that have reviewed the site plan offered objection to its approval. Mr. Gunter said he has no objection to approval of the application provided that the Board include 15 conditions noted in his staff report.

#### **Applicant's Presentation**

Ryan Showalter, Esq., McAllister, DeTar, Showalter & Walker, and Kevin Clark, Utility Scale Solar Project Manager with Urban Grid Solar, introduced themselves on behalf of the Applicant. Mr. Showalter stated that he submitted a Supplemental Narrative with the application and asked the Board to take notice of the Narrative. In addition, Mr. Showalter submitted Final Order No. 88646 issued on April 17, 2018 in Case No. 9436 by the Maryland Public Service Commission affirming and adopting an order granting a Certificate of Public Convenience and Necessity authorizing construction of the Applicant's project, and a letter dated January 20, 2021 whereby the Public Service Commission extended the timeframes for the project to permit commencement of construction by April 17, 2023 and completion of the project for operation by April 17, 2025.

Mr. Showalter said that he has been in front of the Board for this project multiple times. He said the project continues to move forward towards design, permitting, and construction. The challenge to the Applicant has been dealing with the Pennsylvania-New Jersey-Maryland Interconnection ("PJM") which coordinates the movement of electricity through fourteen states, including Maryland. Mr. Showalter explained that PJM has a backlog of interconnection requests which has resulted in delayed interconnection studies and coordination with transmission utilities.

PJM is so backlogged that it stopped accepting interconnection applications for new solar arrays approximately eight months ago.

Despite the backlog, the Applicant has made substantial progress and investment towards construction. One significant change includes Delmarva Power & Light Company's requirement of deeded access to its substation which caused the Applicant to purchase the Property on which the project will be constructed, rather than lease it. The Property was acquired by Jones Farm Lane Land, LLC, an affiliated entity, in March 2022. The Applicant has made further investments toward construction including the purchase of a three phase Generator Step-up Transformer, execution of a purchase order for solar modules, and awarded construction of the photovoltaic portion to Blue Ridge Power. The Applicant's plan is to start construction this year. Mr. Showalter said he anticipates the Applicant is four to six weeks away from submitting for final site plan review and approval.

Mr. Clark gave some specific details about the construction of the project. He said that the solar panels are driven into the ground so no footer is necessary. The installation of the project will use minimal cement and will include a small gravel base. The panels will be installed on single axis tracking equipment that will rotate to maximize exposure. Mr. Showalter added that the only concrete aside from the substations used on site will be for the inverters which will be decommissioned at the end of the life of the project along with the fence, roads, and wires.

Chairman Dean asked if Delmarva Light & Power will place a substation on the Property for the project. Mr. Showalter responded and said that the current generated by the array will be managed by inverters and associated equipment installed within a fence-enclosed site array and will then pass through a substation prior to interconnecting with Delmarva Power & Light Company's existing transmission facilities. Mr. Clark said that the project is expected to generate enough power to supply electric to 1,600 – 2,000 homes.

After some discussion on the matter, Mr. Clark said that the electric lines will be shallow laid to avoid soil disturbance. Rather than use an excavator, where possible, the Applicant will use a ditch witch, or similar equipment. The project may include the addition of a few swales and level spreaders to manage stormwater runoff. When asked about the use of the remainder of the Property, Mr. Clark stated that 128 acres will be placed in forest conservation.

No members of the public testified in favor of or in opposition to the application.

### **Findings and Conclusions of the Board**

The Board finds the testimony, application and exhibits provided by the Applicant, as well as the written report and testimony provided by Mr. Gunter, credible and persuasive. The Board concludes that the evidence justifies approval of the conditional use requests and variance 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 proposed use at the Property 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.
2. No forest is proposed to be disturbed and the Applicant is increasing the width of the buffer.
3. There are no anticipated traffic impacts.
4. The proposed use at the Property 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.
5. The electricity provided by this project may enhance reliability of electrical service in the area.
6. There have been no updates to the Queen Anne's County Comprehensive Plan since the project was first approved by the Board that would affect the Property or project.
7. In 2018, the Board of Appeals granted conditional use and variance approvals for the proposed solar array at the Property, which approvals were extended until February 7, 2023.
8. The project remains substantially similar to what was previously approved by the Board.
9. The variance is needed by necessity because the solar array must connect to the substation. The conditions necessitating the variance approved in 2018 have not changed.
10. There has not been any site, area, zoning, zoning code, or comprehensive plan changes that will affect the proposed project since the Applicant received the last approval from the Board.

### **Decision**

Based on the foregoing findings and conclusions, by a vote of three in favor and none opposed, the Board grants to the Applicant: conditional-use approval under the provisions §§ 18:1-14.C(25) and 18:1-95.S of the Code of Public Local Laws of Queen Anne's County, 1996 Edition (the "Code") to permit the construction of a 326.15-acre utility scale solar array on a 601.156-acre lot, conditional use approval pursuant to § 18:1-14.C(19) to permit the development of a substation as a public utility use, which construction of each conditional use must begin within 2 years, and a variance to reduce the required side and rear property line setbacks required by § 18:1-14.E(2)(c), all subject to the following conditions:

1. If the type or design, or both, of the solar panels change from the solar panels described and depicted in the conditional use application, the Applicant must submit to the Department of Planning and Zoning updated information describing and depicting the new solar panels.
2. The Applicant must submit a minor subdivision application for the substation lot. The subdivision plat must include and state (a) the setbacks the Board has approved and (b) other setbacks as requested or directed by the Department of Planning and Zoning. If the Applicant has applied for subdivision approval, the County may issue permits for the solar array; however, after applying for permits, that Applicant must diligently pursue subdivision approval.
3. The Applicant and the Applicant's successors, if any, must provide the Department of Planning and Zoning with information establishing the ownership of the solar array, and must keep this information up to date when there are any ownership changes.
4. The Applicant must provide clarifying information to the Department of Planning and Zoning to answer the Department's questions about the second pivot south of the existing home.
5. The Applicant must provide the Department of Planning and Zoning with copies of all authorizations issued by the Maryland Department of the Environment for disturbances to any regulated environmental features the Applicant proposes to impact.
6. The Applicant must provide the Department of Planning and Zoning with documents ensuring forest conservation and protection, including a boundary description of a protected forest at least 123 acres in size.
7. Prior to the County issuing permits for the solar array, the Applicant must submit to the Department of Planning and Zoning (or other appropriate County agency) fully engineered plans, including construction drawings, for approval by County agencies and the Soil Conservation Service.



8. The Applicant must provide to the Department of Planning and Zoning all Phase II Maryland Historical Trust ("MHT") information request by the Department, including the location of archeological sites, historic buildings and landscapes, and other cultural resources, as well as any easement that MHT or the County may request for preservation of such sites and resources.

9. The Applicant must submit to the Department of Planning and Zoning ( or other appropriate County agency) an automatically renewable decommissioning bond.

10. The Applicant must submit to the Department of Planning and Zoning (or other appropriate County agency) an automatically renewable landscape surety and landscape maintenance agreement acceptable to the Department.

11. The Applicant must post the Property with emergency contact information at each access gate to the Property, must maintain each such posting in good condition, and must keep the contact information up to date.

12. The Applicant must submit documentation to the Department of Planning and Zoning that Delmarva Power has approved a connection between the solar array and the utility's electrical grid.

13. The Applicant must comply with the requirement and standards set forth in County Ordinance No. 17-17 (as amended) for a Utility-scale Solar Array, specifically including but not limited to the following items identified by the Department of Planning and Zoning:

- a. The chain-link fence must have vinyl coating colored either black or green.
- b. The Applicant must submit to the Department of Planning and Zoning an end-use and decommissioning plan for approval by the Department.
- c. The Applicant must submit a site plan to the Department of Planning and Zoning for review and approval by the Planning Commission, the Department, and other County reviewing agencies.
- d. The Applicant must submit a landscaping plan to the Department of Planning and Zoning for review and approval by the Department and other involved County reviewing agencies.

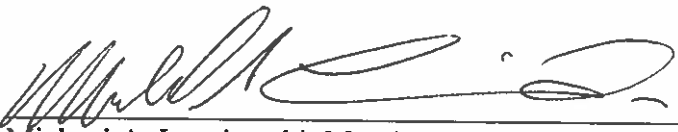
14. The Applicant must submit lighting details to the Department of Planning and Zoning for approval.

15. The Applicant must submit a phasing plan to the Department of Planning and Zoning, including information detailing the staging of construction and information addressing trip generation and distribution, for approval by the Department.

**ORDER**

For the reasons set forth in the foregoing Opinion, it is this 5th day of May, 2023, ordered that the conditional use/variance approvals requested for Jones Farm Lane Solar, LLC, in Case No. BOA-23-01-0141, be granted, subject to the conditions set forth in the Opinion.

  
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Howard A. Dean, Chairman

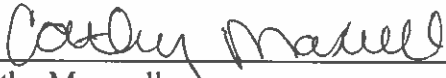
  
\_\_\_\_\_  
Michael A. Lesniowski, Member

  
\_\_\_\_\_  
Scott MacGlashan, Alternate 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-23-01-0141, for Jones Farm Lane Solar, LLC, which Opinion and Order resulted from a public hearing conducted by the Board of Appeals on March 23, 2023 and that the minutes and a recording of the March 23, 2023 meeting are filed in the office of Board of Appeals.

Certified this 5th day of May, 2023 by:

  
\_\_\_\_\_  
Cathy Maxwell  
Clerk to the Board of Appeals

