BEFORE THE BOARD OF APPEALS OF QUEEN ANNE’S COUNTY

* * * * * * * * * * *
In the Matter of the Application of
Matt Hrisko t/a Bayside Auto Service
Contract Purchaser
and
Michael R. Foster and Ellen B. Foster,
Property Owners
for a Conditional Use

* * * * * * * * * * *

Case No. BOA-18-11-0016

OPINION AND ORDER

Proceedings

The matter before the Board of Appeals of Queen Anne’s County (“Board”) in this case is a conditional use application filed by Matt Hrisko, trading as Bayside Auto Service (“Applicant”). The Applicant seeks zoning approval for an auto repair facility with a second-floor apartment and associated off-street parking. Michael R. Foster and Ellen B. Foster own the real property involved in the application. As the property owners, the Board will consider Mr. and Ms. Foster to be co-applicants; however, all references to the Applicant in this decision are to Matt Hrisko and Bayside Auto Service unless specifically noted otherwise.

The Board conducted two public hearings in this matter. The first hearing began at 5:00 p.m. on May 15, 2019. For reasons discussed later in this Opinion, the Board continued the May 15 hearing until May 29, 2019 beginning at 4:00 p.m. The Board conducted both public hearings in the meeting room adjunct to the Board’s offices at 110 Vincit Street, Centreville, Maryland. At the beginning of the first hearing, the Board established all requirements were met governing (1) the filing of the conditional use application, and (2) notice of the May 15,
2019 public hearing.¹ No one attending the May 15 public hearing objected to the Board exercising jurisdiction over the Applicant’s case. Board members hearing the case (at both hearings) were Mr. Kenneth R. Scott, Chairman; Mr. Howard A. Dean, Vice Chairman; and Mr. Craig W. McGinnes, Member.

**Applicant’s Request**

The Applicant requests conditional use approval under the provisions of § 18:1-31.C.(2)(a) and Article XVII of the Code of Public Laws of Queen Anne’s County, 1996 Edition (“Code” or “County Code”) to construct and operate an auto repair use without exterior storage or repairs. Auto repairs will occur on the first floor of a 40-foot by 100-foot, two-story building. The Applicant will use the building’s smaller second floor as a commercial apartment.² The auto repair use is a conditional use in the zoning district. The commercial apartment is a permitted use. Road access to the auto repair use and apartment will be via a shared commercial entrance that connects to Main Street about half-way between Maryland Route 18 and Love Point Road. The Applicant also will provide 29 off-street parking spaces, including five spaces in front of the five service bays the Applicant plans for the building.

**Conditional Use Standards**

The County Code does not contain specific conditional use standards for an auto repair use. Therefore, the Board must evaluate the Applicant’s conditional use request by applying three sets of general standards.

---

¹The Board did not give additional notice of the May 29 hearing because the May 15 hearing was continued to a specific date, time, and place. The date, time and place of the continued hearing were announced during the May 15 hearing and were set forth in the motion the Board adopted to continue the hearing. Under Rule 3 of the Board’s Rules of Procedure, “if the time and place of the continued hearing be publicly announced at the time of the adjournment, no further notice of such continued hearing shall be required . . . .”

²Although called a “commercial apartment,” the apartment is a residential use. In Chapter 18App, Appendix A, the Code defines a commercial apartment as “[a] dwelling unit located above the first floor of a commercial building.”
First, the Board must apply the general conditional use 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 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.

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 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 the Board to make the following findings to grant 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.

Finally, in considering a requested conditional use the Board must include in its evaluation of the County’s comprehensive plan certain consistency findings required by the Land Use Article of the Annotated Code of Maryland in § 1-303 for land outside of a priority funding area and in § 1-304 for land inside a priority funding area. The land involved in this conditional use application is in a priority funding area. Accordingly, to grant the proposed
conditional use, the Board must find that approval of the conditional use will “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; [and]
(5) development patterns[.]

Property and Neighborhood Description

The property that is the subject of the conditional use application is a 1.66-acre portion of an 11.35-acre lot located in the Fourth Election District of Queen Anne’s County. The 11.35-acre lot is designated as Lot 2 in Phase II of the subdivision called “The Village at Benton’s Crossing,” which is recorded in the County’s plat records at SM 24, folio 40 ("Lot 2"). Phase II of The Village at Benton’s Crossing is in turn designated as parcel 324 on sectional zoning map no. 56. The 1.66 acres proposed for the auto repair use will be subdivided from Lot 2 via the minor subdivision process. After subdivision approval, the new lot will be known as Lot 4. The Board will refer to the 1.66-acre proposed Lot 4 (as shown on Applicant’s Exhibit 21) as the “Property.”

The Property is zoned SHVC, Stevensville Historic Village Center. The Property is not in the Chesapeake Bay Critical Area. SHVC zoning is intended to preserve and reinforce the small town, historic, and pedestrian-scale character of the mixed-use village center of Stevensville and provide for development of similar character in certain areas adjacent to the existing center. In addition, SHVC zoning is intended to have specific application to the Stevensville Growth Area. SHVC zoning allows a wide variety of land uses as permitted uses and as uses allowed upon conditional use approval, including residential, retail, service

---

3As discussed later in this Opinion, the Applicant originally proposed to create a 0.798-acre lot for the auto repair use. The 1.66-acre lot results from a revised conditional use application (Applicant’s Exhibit 1B) and a revised site plan (Applicant’s Exhibit 21), both of which the Board accepted into evidence on May 29, 2019.
businesses, offices, banks, restaurants, hotels, trade schools, nurseries, medical clinics, and institutional uses. An auto repair business is a conditional use, but exterior storage areas and exterior repair areas are not allowed as part of the use.

The portion of the 1.66-acre Property the Applicant will improve is basically flat; it has no steep slopes. Overall, the Property drains to the southeast toward the stream and wetlands that encompass over half the Property. The Applicant will disturb 3,335 square feet of wetlands and 8,590 square feet of wetlands buffer, including a portion of the 50-foot stream buffer. The Applicant also will clear 19,782 square feet of woodlands. The area of woodlands clearing calculates to 33.9% of the woodlands on the Property.

The Applicant proposes to house the auto repair use in a commercial building measuring 40 feet in depth by 100 feet in length. The building will have five service bays accessed via garage doors on the building’s northeast side, which faces away from Main Street. The building also will have a customer entrance on its southeast side. A partial second floor within the building will be used for a 720-square-foot apartment. The apartment will include a 4-foot by 20-foot second-floor covered deck situated along the building’s northwest side. The apartment will have its own access via a doorway underneath the deck, leading to an interior stairway.

In addition, the Applicant will construct 24 off-street parking spaces. Five more parking spaces will be available, as needed, in front of the service bays. A 30-foot wide commercial drive will connect the parking area to an existing shared access drive and curb-cut along Main Street. The Applicant’s business will be the third business to use this shared access. Along the southeast side of the building and parking area, the Applicant will construct stormwater management features, including a submerged gravel wetland. The constructed wetland will discharge stormwater via a proposed outfall in the Property’s existing natural wetlands. The Applicant will provide landscaping around the building and parking.
The neighborhood in which the Property is located can be characterized as the center of the traditional Stevensville area, including the Stevensville Historic District. The Board adopts the following delineation of the neighborhood: Business Parkway along the west; U.S. Route 50/301 along the south; the east fork of Cox Creek and its headwaters along the east; and the Cross-Island Trail, Old Love Point Park, and Kent Island High School along the north.

The neighborhood is an eclectic mix of land uses and buildings of all ages. The Historic District includes Christ Church and the old Stevensville post office. There are retail businesses, service businesses, restaurants, banks, general offices, medical offices, single-family residential, schools, a County library, institutional uses, and a few light industrial uses. Along the portion of Main Street between Love Point Road and Business Parkway, land uses include the Benton’s Crossing commercial center, Love Point Deli Wine & Spirits, and a branch of the Queenstown Bank. The deli and bank share the existing access to Main Street the Applicant proposes to use.

**Agency Recommendations**

**May 15, 2019 Hearing**

Mr. Rob Gunter, the Development Review Principal Planner 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. In addition, the Board accepted into evidence as P&Z Exhibit 2 eighteen slides from a Power Point presentation prepared by Mr. Gunter. As he went through the staff report and explained the sides, Mr. Gunter projected the slides onto a large screen visible to those attending the public hearing.

Mr. Gunter testified at length, describing the Applicant’s proposal, explaining issues P&Z raised and discussed with the Applicant that had not been satisfactorily resolved, and

---

4Just prior to the May 15 hearing, the Applicant submitted to P&Z and the Board’s Clerk a revised site plan for the conditional use, which at the beginning of the May 15 hearing the Board admitted into evidence as Applicant’s Exhibit 15 (the “May 15 Plan”). Although P&Z
addressing the Code's conditional use standards. Much of Mr. Gunter's testimony paralleled information and recommendations contained in P&Z's staff report. Accordingly, edited excerpts of the staff report are presented below. Had the Applicant not submitted a revised site plan at the May 29 hearing, the Board would have been inclined to adopt—as the Board's own findings and conclusions—much of the information and many of the recommendations in P&Z's staff report.

Regarding SHVC district guidelines, P&Z's May 15 staff report notes as follows.

**DESIGN GUIDELINES:**

All development in the SHVC is strongly encouraged to incorporate the design guidelines listed in 18:1-31.D.(4)(a)-(n) of the Code. Applications that have not made a practical and good faith effort to comply with the guidelines may not be approved by the Planning Director or Planning Commission.

The applicant has provided a narrative regarding how this proposal intends to comply with the SHVC zoning district design guidelines. The narrative has been included with this report.

18:1-31.D.(4) states: *To the extent practical, parking should be to the side and rear of buildings with allowances for shared and satellite parking. Connecting rear and side parking areas should be encouraged. Individual curb cuts should be reduced.*

Staff has concern due to the applicant proposing 10 parking spaces along Main Street. This is inconsistent with the intent of the SHVC design guidelines and most of the existing properties within the SHVC district, including the two directly northwest of the proposed new parcel.

Staff has proffered alternative designs that address this issue. The applicant has chosen not to accept any of the suggested alternatives.

did not formally object to the May 15 Plan being admitted, both Mr. Gunter and Planning Director Michael Wisnosky told the Board P&Z was not prepared to address the May 15 Plan. P&Z could not address the May 15 Plan because the Applicant did not submit the plan in time for review before the May 15 hearing. The Applicant’s failure to provide P&Z with a copy of the May 15 Plan with sufficient time for P&Z to review the plan and prepare comments on the plan to submit to the Board is one of the reasons the Board decided to continue the May 15 hearing to May 29. *See Board Rule 8(C) (“Once an advertisement for a hearing has been published, the documents submitted with the application may not be changed, substituted, altered, added or amended in any way. The purpose of this rule is to allow the Board and other parties an opportunity to review the evidence prior to the hearing.”)*
Regarding the conditional use standards in §18:1-94 of the Code, P&Z’s May 15 staff report provides the following facts and makes the following recommendations.

**Comprehensive Plan:**

Map LU-5 identifies the property as Mixed use (Residential/Commercial)  
Map LU-7B identifies the property as a Commercial & Mixed Use  
Map BDT-1 identifies the site within the Stevensville Economic Center

**Chapter 18:**

18:1-66.B.(2) states in part: “...regardless of lot size, no more than 40% of the woodlands on a lot may be disturbed...” Woodland clearing appears to be inconsistent with Chapter 18. The proposed parcel contains 0.49 acres of woodlands and 100% of the woodland area proposed to be removed.

18:1-31.D.(4)(f) states: To the extent practical, parking should be to the side and rear of buildings with allowances for shared and satellite parking. Connecting rear and side parking areas should be encouraged. Individual curb cuts should be reduced.  
The applicant is proposing 10 parking spaces and a loading area in the front of the building. This is inconsistent with the intent of the design guidelines and most of the existing properties within the SHVC district, including the two directly northwest of the proposed new parcel.

Chapter 18:2 Forest Conservation Act. The intent of the Queen Anne’s County Forest Conservation Program is to ensure that high-quality forested areas are retained, and appropriate areas afforested, by requiring consideration and protection of forest resources early in the design phase of development projects located outside of the Chesapeake Bay Critical Area.

According to 18:2-11.A.: Trees, shrubs, and plants located in sensitive areas including the 100-year floodplain, intermittent and perennial stream buffers, steep slopes, non-tidal wetlands, and critical habitats are considered priority protection areas and shall be left in an undisturbed condition unless the applicant has demonstrated to the satisfaction of the Department that reasonable efforts have been made to protect the areas and the forest conservation plan for that regulated activity cannot be reasonably altered.

Most of the woodland proposed to be removed is considered priority protection areas according the Code section referenced above. The parent parcel, lot 2, is 11.35 acres in size which allows for the opportunity to modify the design allowing for the retention of more of the priority protection areas. Staff has proffered alternative designs that address this issue. The applicant has chosen not to accept any of the suggested alternatives.

The proposed 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 proposed use is an auto repair facility. Inherent to these types of facilities are concerns that any runoff may carry more petroleum-based pollutants than the runoff from a different type of use. Therefore, there is arguably a greater risk of pollutants being discharged into the disturbed non-tidal wetlands or stream that are adjacent to this site. The proposed lot 4 is adjacent to the headwaters of Thompson Creek. This portion of the creek in classified as an intermittent stream. Approximately 630 feet south of the proposed lot Thompson Creek is classified as perennial. Given the commitment by Queen Anne’s County to protect its natural resources, sensitive areas as well as the Chesapeake Bay and its tributaries, this appears to be a challenging location for this use. An auto repair facility that isn’t located within such close proximity to the headwaters of a creek would not have as great of a risk of pollutants entering the waterway.

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.

The site is proposed to be served by public sewer and water. There is an existing access point from Main Street.

**CONCLUSION:**

Given the auto repair use’s specific location adjacent to the headwaters of Thompson Creek, the removal of more than 40% of the woodland on the proposed lot, and inconsistency with SHVC design guidelines regarding parking, the Department of Planning & Zoning does not support this project as it is currently designed.

During his testimony, Mr. Gunter emphasized three concerns: (1) the proximity of the proposed use to the headwaters of Thompson Creek; (2) the amount of woodlands the Applicant proposes to remove; and (3) a site design that places off-street parking along Main Street. Mr. Gunter noted that woodlands and wetlands are “natural defenses” for the creek’s headwaters. Removing a significant amount of woodlands and wetlands so close to the headwaters is especially problematic given the chemicals and petroleum products associated with automobile
maintenance and repair. In addition, the woodlands in this case are considered priority preservation woodlands because of their proximity to the wetlands and the creek’s headwaters. Regarding parking along Main Street, such a design is contrary to the SHVC design guidelines.

Mr. Gunter testified P&Z prepared several alternative site layouts that follow the SHVC design guidelines and that are more environmentally friendly than the May 15 Plan. As he explained the alternatives, Mr. Gunter discussed the amount of required off-street parking for the project, noting two conflicting Code sections seem to apply. In response to a question from the Board, Mr. Gunter agreed shared parking among the uses in Benton’s Crossing could help mitigate parking problems that sometimes exist at the deli and bank. Mr. Gunter also indicated the amount of off-street parking required for the proposed auto repair use could be resolved as part of redesigning the layout of the proposed use.

Later in the hearing, Mr. Michael Wisnosky, the County’s Director of Planning, addressed the Board. Regarding certain concerns expressed by the Applicant’s engineer and legal counsel, Mr. Wisnosky told the Board P&Z’s alternative plans are similar in various respects, such as setbacks, to the Applicant’s May 15 plan. Primarily, P&Z recommends the Applicant’s improvements (1) be located farther from the headwaters of Thompson Creek, (2) be modified to lessen impacts on wetlands and woodlands, and (3) be designed to conform to the SHVC design guidelines. Mr. Wisnosky said P&Z’s concerns were especially acute in this case because of the nature of the proposed use, including the possibility of discharging pollutants into the creek’s headwaters. Mr. Wisnosky testified there is more than enough space on Lot 2 to accommodate the Applicant’s use while better protecting the environment.

In addition to testimony from Mr. Gunter, testimony from Mr. Wisnosky, and P&Z’s exhibits, the Board admitted into evidence as Applicant’s exhibits written correspondence from three governmental agencies and a Letter of Authorization for wetlands disturbance issued by
the Maryland Department of the Environment ("MDE"). A summary of this correspondence and the MDE document follows.

- An inter-office memo from John Nickerson of the Environmental Health Department indicating the project must be served by public sewer (Applicant’s Exhibit 6).

- An email from Henry R. Dierker, Access Permits Engineer with the State Highway Administration ("SHA"), indicating the Applicant should apply to SHA for an access permit (Applicant’s Exhibit 7).

- A letter from Lori A. Byrne, an Environmental Review Coordinator with the Wildlife Heritage Service of the Maryland Department of Natural Resources ("DNR") stating that because there are no official federal or state records of plant or animal species of concern within the project’s limits of disturbance, DNR has no specific concerns regarding potential impacts to animal species and no recommendations for protective measures (Applicant’s Exhibit 10).

- A Letter of Authorization issued by MDE’s Water and Science Administration on January 29, 2019 authorizing the Applicant to disturb permanently 4,983 square feet of forested nontidal wetlands and 8,607 square feet of the 25-foot nontidal wetlands buffer (Applicant’s Exhibit 11).

May 29, 2019 Hearing

During the May 29 hearing, Mr. Gunter presented a revised P&Z staff report. The revised report addresses the revised site plan (the “May 29 Plan”) the Applicant submitted to P&Z prior to the May 29 hearing, as well as to the Board during the May 29 hearing. Mr. Gunter described the May 29 Plan as a compromise proposal. Mr. Gunter’s revised report includes the following information regarding the project’s redesign.

PROJECT HIGHLIGHTS

Tax Map 56 Parcel 324 Lot 2 totals approximately 11.35 acres. The applicant is proposing a subdivision at the southwestern corner of the property. This proposed Lot 4 will total 1.66 acres.

The building location has been revised and now there is no longer any portion of the building located within the 100-year flood plain.

- Impervious area:
  - Original impervious area = 19,155 sq. ft.
- Proposed impervious area = 12,679 sq. ft.
- Difference = 6,477 sq. ft.

- Woodland Removal:
  - Original area = 21,468 sq. ft.
  - Proposed area = 19,782 sq. ft.
  - Difference = 1,686 sq. ft.

- Non-tidal wetland:
  - Original disturbance = 4,983 sq. ft.
  - Proposed disturbance = 3,335 sq. ft.
  - Difference = 1,648 sq. ft.

- Non-tidal wetland buffer:
  - Original disturbance = 8,607 sq. ft.
  - Proposed disturbance = 8,590 sq. ft.
  - Difference = 17 sq. ft.

Parking

Required = 28 spaces

Proposed = 29 spaces (with allowance to use the area in front of each service bay as a parking space)

Building Location

The building was relocated along Rt. 18 so that all parking is situated behind the building, thereby meeting the intent of the SHVC design guideline, 18:1-31.D.(4)(d), regarding parking.

Mr. Gunter testified the most important changes shown on the May 29 Plan are: (1) removal of the proposed structure entirely from the floodplain; (2) a significant reduction in impervious surfaces; (3) less clearing of nontidal wetlands and woodlands than previously proposed; (4) enlarging the proposed lot by about .86 of an acre, which will enable the Applicant to meet the Code’s woodlands-removal limits; and (5) redesigning the proposed off-street parking to remove parking spaces facing Main Street. Mr. Gunter also noted the project’s planned stormwater management features will be located mostly in the portion of the wetlands.
buffer MDE has allowed to be disturbed. Locating these features in the buffer will be akin to adding new wetlands close to the creek’s headwaters.

Mr. Gunter testified the Applicant will plant additional landscaping along Main Street. The Applicant also will add additional stone, additional windows, and a new dormer to the building’s façade facing Main Street. Mr. Gunter noted the service bays will not face Main Street and the entrance to the second-floor apartment will face the nearby deli. Regarding the amount of off-street parking, P&Z now concurs the Applicant may use the Code section that requires fewer parking spaces and may count as parking spaces the area immediately in front of each service-bay door.

In summary, Mr. Gunter testified that based on “a compromise of all parties involved,” which includes a reduced environmental impact and closer adherence to the SHVC design guidelines, P&Z supports approval of the conditional use as shown on the May 29 Plan, subject to the following conditions:

1. As the conditional use specifies in 18:1-31.C.(2)(a), there shall be no outside storage or repair areas;

2. Applicant may calculate the required parking spaces using Chapter 18:1-83.K.(5), which would require 28 spaces; and

3. Any comments stemming from agency reviews are addressed during site plan submittal.

**Applicant’s Presentation**

**May 15, 2019 Hearing**

Mr. Michael R. Foster, Esquire, of Foster Law in Stevensville, appeared before the Board representing the Applicant. Mr. Foster is also one of the owners of Lot 2, from which the Property will be subdivided. Mr. Foster related to the Board some of the history of the Benton’s Crossing project. He noted that when the County constructed public sewer to serve the area, it
acquired an easement to place a sewer main through the overall tract from which the Property will be subdivided. Mr. Foster told the Board the sewer easement represents a major consideration in how the overall tract can be subdivided and developed. Because a building cannot be placed within the easement, the easement becomes a natural lot line for creating a lot at the eastern end of the overall tract, as the Applicant proposes to do. In addition, the existing shared entrance to Main Street is a factor that must be considered when creating a new lot.

Mr. Foster told the Board restrictive covenants were put in place when, first, the bank and, next, the deli moved into Benton’s Crossing. Maintaining the intent of these covenants is one reason the auto repair use’s service bays cannot face the bank and deli. Regarding P&Z’s concerns about parking and woodlands removal, Mr. Foster indicated these matters would not be issues on the 11.35-acre lot, which, if necessary, the Applicant could use by changing proposed Lot 2 into a lease area.

After concluding his remarks, Mr. Foster called Mr. Barry F. Griffith as the Applicant’s first witness. Mr. Griffith is President of Lane Engineering, LLC, and the company’s principal planner. Mr. Griffith has been a practicing planner for over 30 years. The Board has many times recognized Mr. Griffith as an expert in planning, including site design. For clarification, Mr. Griffith indicated Bayside Auto is his client and that, in designing the project, his firm worked with the proposed lot Bayside Auto contracted to purchase.

Mr. Griffith testified the auto repair use will generate very little peak-hour traffic. The use will not generate even enough peak-hour trips to warrant a formal traffic study under requirements in the County’s Adequacy of Public Facilities Ordinance (“APFO”).

Concerning the intermittent steam and nontidal wetlands along the east side of the lot, Mr. Griffith described the wetlands as “fringe” wetlands of marginal value. Mr. Griffith noted that MDE approved disturbance of 4,983 square feet of nontidal wetlands and 8,607 square feet
of the associated 25-foot wetlands buffer. Also, DNR found no record of sensitive species on
the Property.

Mr. Griffith testified the project meets FAR and other SHVC development standards. He testified the Applicant owns a successful business that has outgrown its current location. At the proposed location, the project will have five service bays as well as an apartment on a partial second floor. Mr. Griffith believes counting an area in front of each bay door as a parking space is appropriate because that space will be used by a vehicle awaiting repair. Mr. Griffith emphasized a successful business must have adequate parking. According to Mr. Griffith, the proposed parking shown on the May 15 Plan is more than adequate for the auto repair use.

Mr. Griffith testified Lot 2 contains 6.2 acres of woodlands. The Applicant proposes to clear only 0.49 of an acre of those woodlands, which is less than the 40% clearing allowed. Regarding stormwater management, the project proposes a system employing Environmental Site Design ("ESD") to the maximum extent possible ("MEP"). The system will include a gravel wetland at one corner of the Property, which will treat runoff before it enters the natural wetlands and stream that make up the headwaters of Thompson Creek. The project will adhere to the 50-foot setback applicable to intermittent streams.

Mr. Griffith opined the project meets the SHVC design guidelines. The proposed building incorporates several architectural features, including façade treatment, windows, lights, and a porch. Mr. Griffith noted the auto repair use is different from a bank or deli. Thus, the use cannot copy the architecture and layout of those businesses. But the proposed building aligns with those businesses and holds the same setback from Main Street. In addition, the service bays will not face Main Street.

Mr. Griffith testified the location of the proposed building was influenced by the existing sewer easement, the shared access from Main Street, and the positioning of the two
existing buildings situated on the same side of Main Street. He explained parking was designed in part to separate parking spaces used by customers from "active areas" such as parking spaces used by vehicles waiting to be repaired and by employees. Mr. Griffith testified he considered the alternative designs sketched by P&Z, but each of those alternatives had at least one significant problem. He felt the cons outweighed the pros. In response to a Board question, Mr. Griffith acknowledged the sewer easement area could be used for parking and access. He also indicated the proposed Lot 4 leaves the potential for two development areas between the auto repair use and the deli.

Mr. Griffith described the May 15 Plan as identical to the site plan the Applicant submitted with the conditional use application, except the proposed lot line was removed and calculations were changed to reflect a lot of 11.35 acres instead of a lot of 0.798 of an acre. If the Board approves the conditional use, the Applicant could enter a long-term lease for the portion of Lot 2 that he will use, or a future Lot 4 could be subdivided after design issues are worked out with P&Z.

At this point, a colloquy ensued among Board members, Mr. Foster, Mr. Griffith, Mr. Gunter, and Mr. Wisnosky as Mr. Foster walked the Board through a series of photographs the Board accepted into evidence as Applicant's Exhibit 20. Much of the discussion concerned the wetlands and stream, as well as the Applicant's proposed stormwater management and the positioning of the proposed building. Mr. Foster reiterated the importance of maintaining the existing character of Benton's Crossing by facing the service-bay doors away from both Main Street and the bank and deli, as well as by using the existing shared access. In responding, Mr. Gunter told the Board it is possible to achieve these goals, reduce environmental impact, and increase compliance with the SHVC design guidelines. Mr. Wisnosky added the 11.35 acres of Lot 2 provides plenty of land on which the Applicant's business can be suitably located.
Mr. Matt Hrisko was the next witness to testify. Mr. Hrisko owns Bayside Auto. He told the Board he trained to be an auto mechanic since tenth grade in Queen Anne’s County High School, from which he graduated in 1994. After graduating he worked for others in the auto servicing and repair field until opening his own business about six years ago. Mr. Hrisko testified Bayside Auto Service presently operates from a four-bay facility at 106 Pier 1 Road in Stevensville. But the original lease has expired, so the business is leasing on a month-to-month basis. Mr. Hrisko hopes to own his own property and building, which will provide the business with a permanent location. In the meantime, operating on a month-to-month lease is worrisome because the owner may find another tenant.

Mr. Hrisko testified he needs a five-bay garage because his business has been growing. From recent experience, he knows the four-bay building the business presently uses is not large enough to serve the business’ customers. Regarding off-street parking, although the four-bay facility is no longer adequate, the nine parking spaces at the facility are all that has ever been needed. Mr. Hrisko testified he looked at other automobile service and repair facilities to see how many parking spaces they use. A nearby Mr. Tire facility with seven bays has 27 parking spaces. Western Auto has eight bays and 25 parking spaces. Thus, Mr. Hrisko believes the 29 parking spaces for his proposed five-bay building will be more than adequate.

Addressing P&Z’s concerns about pollutants possibly leaving the Property, Mr. Hrisko testified he has never had a pollution problem at the business’ present location. All repairs will be done inside the building, which will not have any drains to the outside. The business will keep absorbents on-site in the unlikely event of a leak or spill. If used, absorbents will be collected and disposed of properly. Mr. Hrisko noted that today’s automobiles have seventh-generation engines, which have eliminated the need to clean valve covers and empty oil pans. New engines do not leak oil like old engines. Only catastrophic damage would produce a leak.
Mr. Hrisko testified he expects to employ four workers in addition to himself. He expects to service 10 to 15 cars per day, with 90% of them serviced the same day they arrive. Any vehicles that must stay overnight will either be parked inside the building or in designated spaces just outside the building. In answer to a question from the Board, Mr. Hrisko testified the business will not rebuild engines. Occasionally, the business may install a rebuilt engine acquired elsewhere, but the business will not break seals or do other work that would void the warranty on the engine.

May 29, 2019 Hearing

At the beginning of the Applicant’s case on May 29, Mr. Foster offered into evidence an amended application and a revised site plan. The Board admitted the amended application as Applicant’s Exhibit 1B and the revised site plan as Applicant’s Exhibit 21. Later during the hearing, the Board admitted into evidence an oversized and annotated print of the revised site plan (Applicant’s Exhibit 22) and revised renderings of the proposed building (Applicant’s Exhibit 23).

Mr. Barry Griffith again testified for the Applicant. Mr. Griffith told the Board the basic changes to the site plan involve a reorientation of the building and parking areas. Also, a larger Lot 4 is proposed to facilitate the design, as well as to meet the Code’s 40% woodlands-removal limit. Mr. Griffith testified stormwater management will be essentially the same, with flow across the Property going to the south and entering ESD features at the edge of the existing nontidal wetlands. Mr. Griffith also noted the Applicant has proposed to dress-up the building even more along the façade facing Main Street.

Mr. Griffith opined the conditional use as now proposed will not have an adverse impact on the existing wetlands and the stream’s water quality. He also opined the use will not adversely affect adjacent or nearby properties. Nor will the use adversely affect the public
health, safety, and welfare. Mr. Griffith testified the Property is in an identified growth area that is also a designated priority funding area. Thus, he believes the conditional use is consistent with the County’s comprehensive plan.

Regarding the SHVC design guidelines, Mr. Griffith testified the revised proposal follows the guidelines, including no off-street parking facing Main Street. The revised proposal also satisfies Code requirements for forest conservation and woodlands removal. In addition, the Applicant will be planting a significant amount of landscaping on the property, which Mr. Griffith expects will exceed Code requirements.

**Testimony by Others**

Ms. Elle Bassett, the Miles-Wye Riverkeeper with ShoreRivers, appeared at the May 15, 2019 public hearing. Ms. Bassett testified in opposition to the conditional use application as proposed (on May 15). Ms. Bassett noted Thompson Creek is part of the Miles-Wye-Eastern Bay watershed.

Ms. Bassett testified she does not oppose the auto repair use per se, but she is opposed to the design of the improvements and their location directly along a stream at the headwaters of Thompson Creek. Ms. Bassett told the Board (as the use was proposed on May 15) the significant amount of forest and wetlands clearing the Applicant proposes will adversely affect Thompson Creek, as well as Cox Creek downstream.

Ms. Bassett testified the nontidal wetlands and stream running through Lot 2 represent the headwaters of Thompson Creek. She testified the stream is in declining health, having received poor water-quality scores for several years. Ms. Bassett believes the County must do better than approve the auto repair use as designed and located, especially because the

---

5 According to its website, ShoreRivers is a nonprofit organization working to improve the health of Eastern Shore waterways through science-based advocacy, restoration, and education. See https://www.shorerivers.org/history (accessed July 18, 2019).
watershed continues to develop with new businesses and homes, which means an increase in impervious surfaces.

Ms. Bassett also expressed a concern about sea-level rise. Given projected sea levels within the lifetime of the Applicant's project, Ms. Bassett believes the Applicant's proposed stormwater management measures may fail and are insufficient to protect the creek. She testified the Applicant's plans do not employ ESD measures to the maximum extent possible because the proposed design does not consider the entire 11.35 acres of Lot 2.

Ms. Bassett did not testify on May 29 to address the locational and design changes reflected on the Applicant's revised site plan.

Findings and Conclusions of the Board

The Board is persuaded the proposed auto repair conditional use on the proposed 1.66-acre lot, as located and designed on the Applicant's revised site plan (the May 29 Plan), satisfies the standards for conditional use approval. Regarding the conditional use standards, the Board finds and concludes as follows.⁶

I.
§ 18:1-94.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.

§ 18:1-123.B.(2)

The conditional use conforms to the Comprehensive Plan.

Md. Ann. Code, Land Use, § 1-304

Approval of the conditional use will further, and not be contrary to, the following items in the comprehensive plan:

---

⁶The Board need not address § 18:1-123.B.(1) of the Code, which requires a finding that the Applicant has satisfied the specific conditions governing the proposed conditional use, as detailed in Chapter 18:1. Chapter 18:1 does not establish any specific conditions for an auto repair use in the SHVC zoning district.
(1) policies;
(2) timing of the implementation of the plan;
(3) timing of development;
(4) timing of rezoning; [and]
(5) development patterns[.]

The conditional-use standards in § 18:1-94.A. and § 18:1-123.B.(2) of the County Code and § 1-304 of the state code's Land Use Article concern consistency and conformance with the County's 2002 Comprehensive Plan (the "Plan"). Therefore, the Board will address these standards together. The Board also will address the consistency requirements of § 18:1-94.A. of the Code pertaining to other County plans, programs, maps, and ordinances.

Based on the testimony and exhibits provided by Mr. Gunter and the testimony of Mr. Griffith, the Board is satisfied the Applicant's conditional use proposed meets the consistency and conformity requirements of § 18:1-94.A. and § 18:1-123.B.(2) of the County Code and § 1-304 of the state code's Land Use Article. In his May 29 report, Mr. Gunter noted the following regarding the Plan:

- Map LU-5 identifies the property as Mixed Use (Residential/Commercial)
- Map LU-7B identifies the property as a Commercial & Mixed Use
- Map BDT-1 identifies the site within the Stevensville Economic Center

In his May 29 testimony, Mr. Griffith established the Property is in a Plan and Code-identifying growth area that is also a designated priority funding area. In addition, Mr. Griffith opined on May 29 that the Applicant's proposal meets the SHVC design guidelines. With allowance for design adjustments that P&Z and other review agencies may require during the site plan and subdivision processes, the Board accepts Mr. Griffith's opinion.

Regarding other Plan and Code requirements, in his May 15 report Mr. Gunter raised several issues with the project as then proposed. The Board infers the revised site plan

---

7The issues Mr. Gunter raised are included in the excerpts from his May 15 staff report the Board reproduced on pages 7 through 9 of this Opinion.
adequately addresses these issues because they were not restated in Mr. Gunter's May 29 report. Moreover, Mr. Griffith testified the Applicant's revised proposal meets all applicable SHVC zoning requirements, as well as requirements related to forest conservation, woodlands removal, and stormwater management. Again, with allowance for design adjustments that P&Z and other review agencies may require during the site plan and subdivision processes, the Board accepts Mr. Griffith's testimony.

Regarding § 1-304 of the Land Use Article, the Plan's policies are largely set forth on the maps Mr. Gunter pointed to, the zoning map that serves to implement the Plan's policies, and the priority funding designation. The Board finds the Applicant's revised proposal is consistent with these policies. The Applicant's project does not require rezoning; thus, the timing of rezoning is not a factor in this case. Similarly, the Plan does not include provisions that address timing of implementation or development for either the Property or the various Plan designations applicable to the Property. Concerning development patterns, the Board finds the Applicant's revised proposal is a continuation of development patterns established along this portion of Main Street and generally in the SHVC zoning district. The Plan's policies reinforce these development patterns.

II.

§ 18:1-94.B.

B. The proposed 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.

§ 18:1-123.B.(3)

The conditional use is compatible with the existing neighborhood.

The Board begins its analysis of the conditional use standards in § 18:1-94.B. and § 18:1-123.B.(3) of the Code by noting the neighborhood in which the Property is located is part of a mixed-use community that has a commercial bent in the immediate vicinity of the Property.
On the same side of the road as the Property, the immediate uses to the north are a bank and a deli with a package goods store. To the south, on the other side of the headwaters of Thompson Creek, there is a commercial building with a barbershop, hobby store, and offices. The main part of Benton’s Crossing is on the opposite side of Main Street from the Property. Uses in the northern half of Benton’s Crossing include a convenience store with gasoline sales, a sports bar, a sandwich shop, medical offices, business offices, and retail shops. Opposite the Property in the southern half of Benton’s Crossing, uses include a preschool, a printing business, a pizza restaurant, offices, and an auto body shop. A second auto body shop and an auto repair business are located along the southwestern side of Benton’s Crossing. Given these proximate uses and the Code’s prohibition against outside auto repairs, the Board concludes the location of the Applicant’s proposed use will be compatible with the neighborhood and will not result in substantial or undue impacts to the character of the neighborhood.

The Board also concludes the Applicant’s proposed use will not result in substantial or undue impacts on adjacent property. Service bays in the auto repair building will face away from both Main Street and the existing deli and bank to the north. The Applicant’s revised plans are more sensitive to the SHVC design guidelines. In addition, the remainder of Lot 2 lies between the Property and the businesses to the north and thus will be available to provide a transition from the auto repair use to other uses in Benton’s Crossing. The remainder of Lot 2 also abuts the eastern side of the Property, which, along with the headwaters of Thompson Creek, buffers the uses on the east side of the stream and wetlands, including homes on Cockey Lane. The properties on the west side of Main Street are improved with like uses. Moreover, access to the Property will be via an existing shared commercial entrance that aligns with one of

---

8As noted at the beginning of this Opinion, Michael R. and Ellen B. Foster own Lot 2. Mr. Foster acted as the Applicant’s attorney during the two hearings the Board conducted. It is fair to say Mr. Foster would not have done so if he thought the Applicant’s proposal would adversely impact the remainder of Lot 2.
the entrances into the western portion of Benton's Crossing. Along Main Street, the Applicant will plant and maintain landscaping that will help soften the building façade facing Main Street.

Regarding traffic conditions, the Board finds the fact the Applicant's auto repair use will not generate enough peak-hour trips to require a formal traffic study means the business will not have substantial or undue impacts on traffic conditions in the area. This finding is supported by the fact the Property will use the existing shared commercial entrance for access, instead of adding a new entrance along Main Street that potentially could result in conflicts with traffic movements. Regarding parking, the Board finds the off-street parking the Applicant proposes will adequately serve the auto repair business. Customers will not have to park along a public street. In addition, the Board finds the proposed conditional use will not have substantial or undue impacts on public improvements and public sites or rights-of-way. Again, use of the existing shared commercial entrance will result in the least possible impact to Main Street. In addition, the proposed building and parking have been sited to preserve access to the public sewer easement that crosses Lot 2. The proposed auto repair business is not located adjacent to any other public site.

Regarding possible impacts to the headwaters of Thompson Creek, the Board notes the Applicant's revised site plan shows less disturbance of wetlands and wetland buffers than MDE already approved, as well as less woodlands removal than originally proposed. The Applicant also has moved the proposed building entirely out of the floodplain. Perhaps even more significant, the revised plan shows almost 6,500 square feet less cover with impervious surfaces. The reduction in impervious surfaces and the addition of ESD stormwater management features will help minimize potential impacts to the stream and wetlands. Although the Board still has some concern about the potential for automobile-related pollutants entering the stream, the Board is satisfied on-site abatement measures coupled with modern engine design will
sufficiently reduce this potential such that, in this case, the Property’s location at the headwaters of Thompson Creek is not a disqualifying factor, especially considering (1) the May 29 Plan’s significant reduction in impervious surfaces, (2) less disturbance to the Property’s natural features, (3) and the requirement that all auto repairs must occur inside the building. Mr. Hrisko testified the auto repair building will not have a drain to the outside.

Furthermore, given the lack of negative review-agency comments, P&Z’s support of the Applicant’s revised site plan, and the lack of objections from nearby land and business owners, the Board concludes the conditional use will not otherwise adversely affect the public health, safety, and general welfare. In addition, the Board believes the public welfare is promoted by being able to provide a suitable location to retain an existing business in the County that employs County workers and provides needed services to County residents.

For the foregoing reasons, the Board concludes the proposed conditional use at the proposed location satisfies the conditional use standards in § 18:1-94.B. and § 18:1-123.B.(3) of the Code.

III.

§ 18:1-94.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 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.

Evidence before the Board establishes public sewer and public water will serve the Property in compliance with the County’s APFO regulations. Evidence also establishes area roadways are adequate to serve the proposed auto repair use. The comparatively small number of peak-hour vehicle trips the use itself will generate does not trigger a formal traffic study
under APFO requirements (see Applicant’s Exhibit 9). The auto repair use will have no effect on the adequacy of public schools.  

At present, the evidence leads the Board to conclude the Applicant’s project will not require improvements to those public facilities the APFO addresses other than the ordinary improvements needed to connect the Property to sewer lines, water lines, and the shared access to Main Street. To the extent, however, subsequent reviews of the Applicant’s proposal during the site plan and subdivision processes identify improvements the Applicant may need to make (for example, and hypothetically, an improvement to the shared entrance on Main Street), the Board’s approval of the conditional use does not foreclose the County’s ability to require such improvements.

For the foregoing reasons, the Board concludes the proposed conditional use, as depicted on the revised site plan, meets the requirements of § 18:1-94.C. of the Code.

**Decision**

Based on the preceding findings and conclusions, by a vote of three in favor and none opposed, the Board conditionally grants to the Applicant conditional use approval to construct a building 4,000 square feet in size on a 1.66-acre lot to operate an auto repair use. The building will include a second-floor commercial apartment. The 1.66-acre lot will also be improved with off-street parking, a connection to an existing shared commercial access to and from Main Street, ESD to the MEP stormwater management facilities, landscaping, and necessary related improvements. The 1.66-acre lot must be subdivided from Lot 2, and the improvements on and use of the 1.66-acre lot must be undertaken substantially as shown on the Applicant’s revised

---

9Theoretically, one or more school-age children could occupy the apartment the Applicant proposes to incorporate into the proposed building. The apartment, however, is a permitted use. Therefore, in evaluating the Applicant’s conditional use request, the Board need not consider any potential school impact the apartment may have.
site plan (the May 29 Plan; Applicant's Exhibit 21), with due allowance for the Applicant to comply with subdivision and site-plan requirements, including comments from review agencies.

The Board's approval is also subject to the following conditions:

(1) outside storage and outside vehicle repair are prohibited; and

(2) required off-street parking spaces may be calculated using section 18:1-83.K.(5) of the Code, which would require a minimum of 28 spaces for the auto repair use; and

(3) comments resulting from agency reviews must addressed to the satisfaction of the commenting agency during the subdivision and site-plan review processes.
ORDER

For the reasons set forth in the foregoing Opinion, it is this 14th day of August, 2019, ordered that the conditional use approval requested for Matt Hrisko, Bayside Auto Service, Contract Purchaser of property owned by Michael R. Foster and Ellen B. Foster, in Case No. BOA-18-11-0016, 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-18-11-0016, for Matt Hrisko, Bayside Auto Service, Contract Purchaser of property owned by Michael R. Foster and Ellen B. Foster, which Opinion and Order resulted from public hearings conducted by the Board of Appeals on May 15 and May 29, 2019 and that the minutes and a recording of the May 15 and May 29, 2019 meetings are filed in the office of Board of Appeals.

Certified this 14th day of August, 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 * 

James Scot Barnette * 
and * Case No. BOA-19-01-0022 

Wendy M. Barnette * 

for a Critical-Area Variance * 

* * * * * * * * *

OPINION AND ORDER

Introduction

The matter before the Board of Appeals of Queen Anne’s County (“Board”) in this case is an application filed by Mr. James Scot Barnette and Ms. Wendy M. Barnette (“Applicants”) to vary regulations applicable to land in the Chesapeake Bay Critical Area.\(^1\) Specifically, the Applicants seek a variance to disturb the 100-foot critical-area buffer to construct a single-family home and accessory improvements they plan to build on their lot.

On May 15, 2019, beginning at 6:50 p.m., the Board conducted a public hearing in the main meeting room adjunct to the Board’s offices at 110 Vincet Street, Centreville, Maryland, to consider the Applicants’ variance request. 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 May 15\(^{th}\) public hearing. No one attending the public hearing objected to the Board exercising jurisdiction over the Applicants’ case. Board members hearing the case were Mr. Kenneth R. Scott, Chairman; Mr. Howard A. Dean, Vice Chairman; and Mr. Craig W. McGinnes, Member.

\(^1\)The Chesapeake Bay Critical Area includes all land within 1,000 feet of tidal waters and tidal wetlands. See Md. Ann. Code Nat. Res. § 8-1807(a) (2018).
Requested Relief


a naturally vegetated area or vegetated area established or managed to protect aquatic, wetland shoreline, and terrestrial environments from man-made disturbances. In the Critical Area District, the minimum Buffer is a continuous area located immediately landward of tidal waters (measured from the mean high water line), tributary streams in the critical area, and tidal wetlands and has a minimum width of 100 feet. The Buffer shall be expanded beyond the minimum depth to include certain sensitive areas as per requirements established in . . . Chapter 14:1.

Under § 14:1-51.A. of the Code, with certain exceptions not relevant here, “[n]ew development activities, including clearing of existing natural vegetation, erection of structures, construction of new roads, parking areas or other impervious surfaces, and the placement of sewage disposal systems, are not permitted in the Buffer.” Under § 14:1-51.B. of the Code, again with certain exceptions, “no natural vegetation shall be removed nor shall the slope of the land surface be altered in the Buffer.”

The Applicants propose to build on their lot a two-story single-family dwelling with two porches, a deck, and an attached garage. The Applicants also propose to build an in-ground swimming pool and surrounding patio. A proposed private driveway extending south from Walnut Drive will serve the improvements. The Applicants also must drill a private well on their lot and install a septic system to serve the improvements. Altogether, the Applicants’ improvements will cover 7,728 square feet of their lot with impervious surfaces, which amounts to 8% of the lot. Under critical-area regulations, the Applicants may cover 15% (or 14,571 square feet) of their lot with impervious surfaces. Thus, the Applicants do not need a variance to impervious-surface limits. The Applicants, however, are asking to locate 262 square feet of the
proposed impervious surfaces in the buffer. Additionally, the Applicants are asking to disturb temporarily 2,764 square feet of land in the buffer during construction of the proposed improvements. The 262 square feet of permanent buffer disturbance involve: (a) 52 square feet of the home, (b) 1 square foot of the screened porch, (c) 33 square feet of the deck, and (d) 176 square feet of the pool and patio.

**Variance Standards**

The primary standards the Board must apply to the Applicants’ variance request are found in Title 27 of the Code of Maryland Regulations (“COMAR”) and Title 14:1 of the County Code. In § 27.01.12.04, COMAR provides as follows.

A local jurisdiction may not grant a variance unless the local jurisdiction makes written findings based on competent and substantial evidence that:

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

B. The applicant has satisfied each of the following variance provisions:

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

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

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

(4) The variance request is not based upon conditions or circumstances that are the result of actions by the applicant;

(5) The variance request does not arise from any conforming or nonconforming condition on any neighboring property;

(6) The granting of the variance would not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the jurisdiction’s local Critical Area; and
(7) The granting of the variance would be in harmony with the general spirit and intent of the Critical Area law, the regulations in this subtitle, and the local Critical Area program.

Regarding the variance standards in § 14:1-66 of the County Code, the Board construes many of the Code’s variance standards to be the same as, or legally equivalent to, the variance standards set forth in COMAR, even where the wording is slightly different. In setting forth its findings and conclusions, the Board will combine its discussion of the Code standards with its discussion of the parallel COMAR standards. Where COMAR or the Code sets forth variance standards that are not essentially duplicative, the Board will set forth its findings and conclusions for such standards separately.

In § 14:1-66, the Code provides the Board must be able to make the following findings to grant a variance:

A. A literal enforcement of this Chapter 14:1 would result in unnecessary hardship as the result of specified conditions, which hardship is not shared by owners of other property in the same development area;

B. Those conditions are peculiar to the property involved;

C. Those conditions are not the result of any action taken by the applicant;

D. The variance will not be contrary to the public interest or the policies, goals and objectives of this Chapter 14:1 and the Queen Anne’s County Critical Area Program;

E. The variance will not confer upon an applicant any special privilege denied to other owners of like property and/or structures within the critical area;

F. The variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitats within the critical area;

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

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

The lot involved in this variance application is in the Fifth Election District of Queen Anne’s County at 205 Walnut Drive, about a mile (in a straight line) south of U.S. Route 50/301, in the Queenstown area of the County (“Property”). The Property is designated as lot 5 on the plat of Section A of the Hickory Ridge subdivision. In turn, Section A of Hickory Ridge is designated as parcel 139 on sectional zoning map no. 59. The Property is zoned NC-2, Neighborhood Conservation (two-acre average lot size). The County’s critical-area maps designate the Property as part of an LDA-Limited Development Area. The LDA designation allows single-family residential development at densities of up to four dwelling units per acre.

The Property is 2.23 acres in size. The Property has about 530 feet of shoreline along the east side of the Wye River, about 1,500 feet north of Sandlers Cove. Much of the Property’s shoreline is relatively straight. But toward the south, the shoreline becomes irregular and curves about 90 degrees into a small cove. A significant area of tidal wetlands extends northward from the cove into the Property. Beyond these tidal wetlands there is an area of nontidal wetlands that extends farther into the Property. A drainage ditch that begins at Walnut Drive conveys runoff southward into the nontidal wetlands. Along the west side of the wetlands and drainage ditch, the Property rises sharply eight to ten feet.

The Property is odd-shaped, somewhat like a boomerang. The wetlands to the south form one tip of the boomerang, with Walnut Drive forming the other tip. The Property has about 100 feet of frontage along the south side of Walnut Drive. The Property’s lot line abutting lot 3 to the west is about 350 feet in length, which is roughly the same length of the relatively straight portion of the Property’s shoreline. The Property is presently unimproved and heavily wooded. The Property’s elevation ranges from sea level at the tidal wetlands to about 12 feet above sea level near Walnut Drive. There is a steep bank along much of the straight portion of the shoreline, as well as along the edge of the wetlands.
The critical-area buffer encumbers a significant portion—73.23%—of the Property. An additional portion of the Property is encumbered by buffers required for nontidal wetlands and steep slopes. (The wetland buffers and the critical-area buffer overlap in some areas.) Furthermore, because the Property is not served by public sewer, a 7,500 square foot septic reserve area encumbers even more of the Property. Due to Health Department requirements, the septic reserve area has its own five-foot setback. These physical conditions and the five-foot reserve-area setback severely reduce the size of the Property’s building envelope. The building envelop is further reduced by private covenants that require a 30-foot setback along the western lot line, abutting lot 3. Not counting a narrow strip for the driveway, the Applicants’ variance plan shows the Property’s buildable area constitutes only about 9% of the Property.

The neighborhood in which the Property is located is bounded on the north, west and south by the Wye River and Sportsman Neck Road to the east. The neighborhood largely consists of single-family homes on lots two acres or greater in size. Hickory Ridge Stables and a tilled agricultural field along Hickory Ridge Road are also part of the neighborhood. Sportsman Neck Road provides access to the neighborhood from U.S. Route 50/301.

Most of the neighborhood’s extensive waterfront is developed with single-family homes. The homes are large and similar in size to the home the Applicants propose. The lots in the neighborhood are also improved with residential accessory structures, including garages, decks, sheds, swimming pools, and private piers.

**Agency Recommendations**

Mr. Joe Pippin, a zoning inspector with the County’s Department of Planning and Zoning (“P&Z”) represented the Department during the public hearing. Mr. Pippin offered into evidence P&Z’s staff report, which the Board admitted as P&Z Exhibit 1.

Mr. Pippin testified the Property is an unimproved buildable lot of record. Section A of Hickory Ridge was platted in 1971. Mr. Pippin described the Applicants’ proposal, noting the
fact the planned improvements will result in much less impervious-surface area than allowed by
the Property’s LDA classification. Mr. Pippin testified that in developing the Property the
Applicants must follow guidelines set forth in a letter dated December 28, 2018 from Ms. Lori
A. Byrne of the Maryland Department of Natural Resources (“MDE”). Ms. Byrne’s letter
addresses conservation of habitat for forest interior dwelling birds. In addition, Mr. Pippin noted
the Applicants must adhere to a buffer management plan approved by P&Z.

Regarding the Applicants’ variance plan, Mr. Pippin told the Board the plan before the
Board is a revised plan. The State of Maryland’s Critical Area Commission (the “Commission”)
sent a letter to the County objecting to the original variance plan as excessive, so the Applicants
scaled back the proposed buffer disturbance. Mr. Pippin said he believes the Commission is now
not objecting to the variance if the Applicants otherwise meet the variance standards.

In summary, Mr. Pippin testified P&Z has no objection to the variance as now requested
because the Property’s buildable area is very small, the Applicants have reduced the variance
request to the minimum, and the Applicants must follow MDE’s guidelines for forest-interior-
dwelling-bird habitat and implement a County-approved buffer management plan.

In addition to Mr. Pippin’s testimony and written report, the Board admitted into
evidence as Applicants’ Exhibits 3 and 5 two letters from Ms. Susan Makhlouf, a Natural
Resources Planner with the Commission. Ms. Makhlouf’s first letter (Applicants’ Exhibit 3) is
dated February 14, 2019. The letter addresses the Applicants’ original variance plan. The letter
states the Commission “opposes the variance as requested.” The letter opines the Applicants
cannot meet several of the variance standards because the lot appears adequate to support
reasonable and significant use outside the buffer.

Ms. Makhlouf’s second letter (Applicants’ Exhibit 5) is dated March 27, 2019 and
addresses the Applicants’ revised variance plan. The letter states “it appears the applicant has
further minimized impacts to the Critical Area Buffer.” The letter recites the variance standards
in COMAR; however, the letter does not opine whether the Applicants’ revised plan meets or does not meet each of the COMAR standards. But the letter emphasizes the Applicants must meet each variance standard. In addition, the letter states that if the Board finds the revised variance can be granted, the Applicants: (a) must provide 3:1 mitigation for all buffer disturbance and 1:1 mitigation for any canopy cover removed, (b) must obtain approval of a buffer management plan showing all required mitigation, and (c) must obtain approval of a buffer management plan before obtaining a building permit for the proposed improvements.\(^2\)

In addition, the Board admitted into evidence the following agency documents:

(A) a Letter of Authorization dated June 12, 2018 issued by MDE approving permanent disturbance of 11,347 square feet of the 100-foot and expanded nontidal-wetlands buffer and temporary disturbance of another 3,975 square feet of the expanded nontidal-wetlands buffer to construct a dwelling, driveway, pool, and associated improvements (Applicants’ Exhibit 10); and

(B) a letter dated December 28, 2018 from Ms. Lori A. Byrne, the Environmental Review Coordinator with MDE’s Wildlife and Heritage Service (Applicants’ Exhibit 11). Ms. Byrne’s letter indicates there are no official state or federal records for listed rare plant or animal species, but the letter notes a “remote analysis suggests that the forested area on the [P]roperty contains Forest Interior Dwelling Bird habitat.” The letter states conservation of such habitat is required in the Critical Area. The letter then lists 15 guidelines that “should be incorporated into the project plan (as applicable).” In addition, the letter states a Great Blue Heron colony has been documented near the southern tip of the Property. As with forest-interior-dwelling-bird habitat, critical-area law requires conservation of heron habitat. Moreover, federal law prohibits disturbance of heron colonies during the breeding season. Ms. Byrne’s letter provides six

\(^2\)The Board also admitted into evidence, as Applicants’ Exhibit 4, a letter dated March 13, 2019 from the Applicants’ planner, Mr. Barry Griffith. Mr. Griffith’s letter explains the changes the Applicants made to the original variance plan because of the Commission’s letter of February 14, 2019.
additional guidelines to protect the heron colony and conserve heron habitat. The letter states the Applicants “are encouraged to provide protection and conservation” by implementing the guidelines. Implementing the guidelines would constitute “responsible land stewardship.”

**Applicants’ Presentation**

Mr. Joseph A. Stevens, Esq., of Stevens Palmer, LLC in Centreville, Maryland, represented the Applicants before the Board. After an opening statement, Mr. Stevens presented three witnesses and 17 exhibits.

Mr. Barry F. Griffith was the Applicants’ first witness. Mr. Griffith is President of Lane Engineering, LLC, and the company’s principal planner. Mr. Griffith has been a practicing planner for over 30 years. The Board has many times recognized Mr. Griffith as an expert in planning, including site design for lots in the critical area.

Mr. Griffith testified the Property was platted in 1971, about fifteen years before the County adopted critical-area regulations. The Property is thus a grandfathered lot. Mr. Griffith testified the Property is unique because of many development constraints. These constraints require approval of a variance to develop the Property with a reasonably sized residential use. Development constraints include (1) tidal wetlands, (2) nontidal wetlands, (3) a steep slope rising above the wetlands, (4) a drainage ditch leading into the wetlands, (5) the Property’s odd shape, (6) soil conditions mandating a septic reserve area that, with the access drive, occupies most of the northern buildable portion of the Property, and (7) private covenants that impose a 30-foot setback along the Property’s western lot line.

Mr. Griffith testified that prior to adoption of critical-area regulations, especially the required buffer, the Property’s development constraints would not have presented a significant problem. The buffer, however, covers almost three-quarters of the Property. When the buffer is added to other constraints, the Property’s building envelope becomes very small. The restricted building envelope is illustrated by the fact critical-area regulations allow the Property to be
developed with 14,571 square feet of impervious cover, but the Applicants propose only 7,728 square feet of cover yet still need a variance to locate some of that cover in the buffer.

Mr. Griffith testified MDE has approved 11,347 square feet of permanent disturbance of the expanded nontidal wetlands buffer that encumbers the Property, plus an additional 3,975 square feet of temporary wetlands-buffer disturbance. MDE’s approval has the effect of making the top of the steep slope above the wetlands one edge of the Property’s building envelope. According to Mr. Griffith, without MDE’s approval the Property could not have been developed at all. The Applicants have worked carefully with their architect and Mr. Griffith’s engineering firm to create a design that requires only a minor critical-area buffer variance. The Applicant’s design proposes 2,728 square feet of temporary buffer disturbance. This temporarily disturbed area will be stabilized and revegetated after construction is complete. At that time, only 262 square feet of the buffer will be occupied by permanent structures, which amounts to less than four-tenths of one percent of the Property’s unusually expansive buffer.

Mr. Griffith referred to Applicant’s Exhibits 17A and 17B, which are aerial photographs of several lots in the neighborhood. Mr. Griffith testified other lots in the neighborhood are developed with homes and accessory residential structures (such as garages, pools, and decks) as large as or larger than the improvements the Applicants’ propose. He pointed out two waterfront lots on which homes have been built since adoption of critical-area regulations. Mr. Griffith testified that because the critical-area buffer and natural features such as wetlands do not impact these lots to the same degree that such conditions impact the Property, the home and other improvements on these lots are larger than the Applicants propose on the Property, and there is greater coverage with impervious surfaces than the Applicants can achieve even with a variance.

Mr. Griffith testified the variance will have no negative impact on the environment, including water quality and fish, wildlife, and plant habitat. The Applicants will meet or exceed all requirements for sediment and erosion control during construction, as well as stormwater
management post-construction. In addition, the Applicants will investigate the "suggested" habitat of forest interior dwelling birds ("FIDB"), and, if there is FIDB habitat, take measures to conserve the habitat by following MDE’s guidelines for FIDB habitat. Regarding the small variance request, in Mr. Griffith’s opinion the variance will not increase impacts on FIDB habitat beyond potential impacts associated with improvements located outside of the buffer.

Mr. Griffith also opined the requested variance is in harmony with the general spirit and intent of the critical-area law, including COMAR regulations and the County’s critical-area program. The lot is a grandfathered lot that can be reasonably developed, and the Applicants have minimized the variance. Mr. Griffith further testified that with the recent additional adjustments the Applicants have made to their variance request, the Commission staff no longer opposes the variance.

In response to a question from the Board, Mr. Griffith testified the Applicants will curtail construction activities on the Property from February to July, which is the nesting season of the Great Blue Heron. Mr. Griffith testified the Applicants’ proposed improvements will not encroach on Great Blue Heron habitat.

The Applicants’ next witness was Mr. James Scot Barnette. Mr. Barnette told the Board Ms. Wendy Barnette and he acquired the Property in 2016 from his parents, who live next door. After becoming owners, the Applicants engaged Lane Engineering and an architect to determine the Property’s building envelope and design a home that would be compatible with other homes in the neighborhood. Mr. Barnette testified he approached the owner of lot 3 to the west to obtain permission to reduce the 30-foot setback required by covenants to 20 feet. The owner of lot 3 refused.

Mr. Barnette described the home the Applicants will build as their “forever home” and as a “dream home” in an ideal location. He testified Ms. Barnette and he made numerous concessions in the design of the home to accommodate the Property’s development constraints,
including the expansive critical-area buffer and nontidal wetlands buffer. When they learned the Commission’s staff would oppose the variance, Mr. Barnette said the Applicants returned to their architect and Lane Engineering to adjust the design of the proposed improvements to further reduce disturbance in the critical-area buffer. Mr. Barnette testified the improvements cannot be reduced in size any further and cannot be relocated anywhere else on the Property. According to Mr. Barnette, the Applicants are proposing the minimum improvements that would remain compatible with the neighborhood.

Ms. Wendy Barnette also appeared as a witness. Ms. Barnette agreed with her husband that the proposed improvements are the minimum improvements to maintain compatibility with the neighborhood. She testified the proposed improvements have been located as far from the critical-area buffer as possible given the Property’s development constraints. The proposed improvements also have been reduced in size as much as possible given her family’s needs and the investment the Applicants have made and will make in the Property.

Testimony by Others

Mr. James F. Barnette and Ms. Mildred H. Barnette testified in support of the variance request. Mr. and Ms. Barnette own and reside on the lot known as 201 Walnut Drive. They are Mr. James Scot Barnette’s parents. Their lot abuts the Property to the east. The Barnettes told the Board they are looking forward to having their son and daughter-in-law live next door. They believe the home and related improvements the Applicants propose are compatible with the neighborhood and are reasonable for the Property given the hardships in developing the Property.

No one else appeared before the Board to testify or to ask questions about the variance request.

Findings and Conclusions of the Board

The Board concludes that the evidence provided by Mr. Pippin, Mr. Griffith, and all four of the Barnettes is credible and persuasive. As the Board will discuss later in this opinion, based
on the testimony and exhibits presented in this case, the Board concludes the Applicants have overcome the negative presumption that the specific development activity for which the variance is required does not conform with the general intent of COMAR and the County’s Critical Area Program, including Chapter 14:1 of the Code.

Regarding the variance criteria, the Board will begin by addressing the threshold standard of unwarranted (or unnecessary) hardship. The Board views the hardship standard in COMAR § 27.01.12.04(B)(1) and in County Code §§ 14:1-66.A. and B. to be the same. Thus, the Board will address the two hardship standards together. Similarly, the Board will address together other COMAR and County Code variance standards the Board views as the same or as legally equivalent. The Board will address separately COMAR variance standards that are not in the County Code and the Code’s minimum-deviation standard that is not in COMAR.

I.

COMAR § 27.01.12.04(B)(1)

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

County Code § 14:1-66.A. and B.

A. A literal enforcement of this Chapter 14:1 would result in unnecessary hardship as the result of specified conditions, which hardship is not shared by owners of other property in the same development area; and

B. Those conditions are peculiar to the property involved.

3COMAR uses term “unwarranted hardship.” The County Code uses the term “unnecessary hardship.” The Board construes these terms to mean the same thing. See Belvoir Farms Homeowners Assn. v. North, 355 Md. 259, 275-82 (1999) (addressing unnecessary hardship unwarranted hardship, and “similar manifestations” and holding the terms have the same meaning). State law now defines unwarranted hardship as follows: “[U]nwarranted hardship’ means that, without a variance, an applicant shall be denied reasonable and significant use of the entire parcel or lot for which the variance is requested.” Md. Ann. Code, Nat. Res. § 8-1808(d)(1) (2019); COMAR 27.01.12.01. The Board will apply this state-law definition in its analysis.
The Board concludes strict application of the buffer requirements in § 14:1-11, § 14:1-51.A. and § 14:1-51.B of the Code deprives the Applicants of reasonable and significant use of the entire Property because of features, conditions, and circumstances peculiar to the Property. To begin with, due to the Property’s unusual shape, the critical-area buffer encompasses 1.623 acres, which is 72.23% of the Property. Moreover, reflecting the Property’s irregular shape, the boundary between the buffer and non-buffer portions of the Property is also irregular. Together, the extent and shape of the buffer severely impact use of the Property for all potential improvements except for a very limited number of water-dependent uses allowed in the buffer.\(^4\)

Added to the extraordinary constraint imposed by the buffer, the required private septic system squeezes the Property’s building envelope from the north just as tidal wetlands, nontidal wetlands, and a steep slope squeeze the Property’s buildable area from the east. The septic system includes an initial drainfield and a reserve area for future drainfield replacement. Health Department regulations mandate the size and design of the drainfield and reserve area. The Property’s soil conditions determine the placement of the drainfield and reserve area. Health Department regulations also mandate a five-foot setback from the reserve area. The Applicants can do nothing about these development constraints except accommodate them.

In this case, the reserve area must be 7,500 square feet in size, which is about 7.7% of the Property. Due to the Property’s soils and other factors all 7,500 square feet is located outside of the critical-area buffer, which is land the Applicants’ otherwise could have used for their home and related structures. Furthermore, the reserve area extends southward from Walnut Drive along the Property’s western lot line, a location that collapses the Property’s building envelope southward toward the critical-area buffer.

\(^4\)Under the County Code, all water-dependent uses on a residential lot are considered accessory uses. Besides the fact the Code does not allow accessory uses on a lot that is not improved with a principal use, the Board has no doubt that limiting this 2.23-acre Property to only water-dependent uses denies the Applicants reasonable and significant use of the entire Property.
Regarding the wetlands and steep slope, these natural features trigger a buffer of their own. MDE has in effect reduced the size of the wetlands buffer by allowing the Applicants to disturb 15,322 square feet of the buffer, including 11,347 square feet of permanent disturbance (see MDE’s Letter of Authorization, which is Applicants’ Exhibit 10). Without MDE’s approval, state regulations would have prohibited development on about another 15% of the Property, including the portions of the home and related structures proposed outside of the critical-area buffer, as well as nearly all the proposed driveway.

The nontidal wetlands buffer extends from the east in the same area of the Property where the septic reserve area extends from the west. Even with MDE’s approval for disturbance of the wetlands buffer, the portion of the Property between the undisturbed buffer and the reserve area is just wide enough for a driveway to provide an access connection to Walnut Drive. With a width of about 25 feet, the portion of the property between the undisturbed buffer and the reserve area is much too narrow to support a home and related improvements. Nor could additional permission from MDE for greater disturbance to the wetlands buffer widen this area because the 25-foot width begins at the top of the steep slope and ends at the edge of the septic reserve area. The Applicants could not develop over or beyond the steep slope without causing significant disturbance to the slope and the abutting wetlands themselves.

Still another constraint on development of the Property is the 30-foot setback along the Property’s western lot line required by covenants executed and recorded in the land records in 1971 (see Applicants’ Exhibit 7). Mr. Barnette testified he attempted to negotiate a reduction in the 30-foot setback, but the owner of the abutting lot refused. Although the Board may not always view private covenants as partial justification for a critical-area buffer variance, here the covenant has been part of the Property’ chain-of-title since 1971, which is about 15 years before the County adopted critical-area regulations. Obviously the subdivider in 1971 could not have anticipated the effect the covenants would have vis-à-vis critical-area regulations that did not
exist, just as the subdivider could not have anticipated the effect the Property's odd shape and natural features would have vis-à-vis critical-area regulations. Under these circumstances, the Board views the covenants in the same way it views the platted odd shape of the Property—the covenants just make the shape of the Property even odder and the Property's width in a crucial area even narrower.

The cumulative effect of the development constraints burdening the Property is that the Property's building envelope is exceptionally small. Scaling from the site plan, the Board estimates the building envelope for a home and related improvements constitutes only about 9% of the Property, including the area of the wetlands buffer that MDE has allowed to be disturbed. By way of comparison, under LDA critical-area regulations, the Applicants can cover 15% of the Property with impervious surfaces. The fact the Applicants propose to cover only 8% of the Property with impervious surfaces (including the driveway) illustrates the severity of the Property's development constraints.

For the foregoing reasons, the Board concludes the Applicants would be denied reasonable and significant use of the entire Property without the modest variance the Applicants seek from regulations governing disturbance in the critical-area buffer.

II.

COMAR § 27.01.12.04(B)(2)

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

The waterfront neighborhood in which the Property is located is characterized by large lots developed with large homes, garages, swimming pools, patios, and decks. At least two of these lots were developed after the County adopted critical-area regulations. Other lots may have been developed after the County adopted critical-area regulations, but some lots appear to
have been developed before the County adopted critical-area regulations. In either event, from aerial photographs in evidence it appears most (but not all) of the other waterfront lots in the neighborhood do not have improvements that encroach into the buffer. But it also appears these lots are not encumbered by a buffer as expansive as the buffer on the Property, nor by the multiple development constraints affecting the Property.

The Applicants’ specific development proposal is to build a home and related improvements that are consistent with—and no greater than—improvements on other lots in the neighborhood. In addition, the amount of variance the Applicants seek for the proposed improvements is minor compared to the size of the exceptionally large buffer on the Property. Accordingly, the Board concludes a literal interpretation of the buffer regulations that are included in the County’s critical-area program would deprive the Applicants of a use of the Property the County’s program affords to others. The variance the Applicants request adjusts the buffer regulations in a way that merely puts the Applicants’ Property on roughly an even footing with other lots in the neighborhood.

III.

COMAR § 27.01.12.04(B)(3)

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

County Code § 14:1-66.E.

The variance will not confer upon an applicant any special privilege denied to other owners of like property and/or structures within the critical area.

Approval of the Applicants’ requested variance will not confer upon them any special privilege. The home and improvements the Applicants propose on their 2.23-acre lot are of the same kind and scale as improvements on like property in the neighborhood and elsewhere in the
critical area. For lots of this size, the County's critical-area program would not deny the owners of such lots the ability to develop their lots with improvements like those the Applicants propose. Although most lots would not need a buffer variance, given the Property's expansive buffer and other natural features and circumstances, granting a variance to allow a modest amount of buffer disturbance during construction and a very small amount of permanent disturbance after construction confers no special privilege because most lots are not encumbered by the features and circumstances that encumber the Property. As the Board previously noted, granting the requested variance only compensates in part for the unwarranted hardship the Property's features and circumstances create.

IV.

COMAR § 27.01.12.04(B)(4)

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

County Code § 14:1-66.C.

Those conditions are not the result of any action taken by the applicant.

The evidence establishes the conditions and circumstances giving rise to unwarranted hardship do not result from any actions attributable to the Applicants. The Applicants did not plat the Property nor impose covenants on the Property in 1971. The Applicants did not create the wetlands, steep slope, soil conditions, or any other physical feature of the Property.

V.

COMAR § 27.01.12.04(B)(5)

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

The Applicants' variance request arises from the unwarranted hardship created by strict application of the County's critical-area buffer regulations to a Property encumbered by a
combination of peculiar conditions and circumstances, including an odd shape, an unusually expansive buffer, tidal and nontidal wetlands, soil conditions affecting the location of the required drainfield and reserve area, and restrictive covenants imposed on the Property in 1971. Accordingly, conforming and nonconforming conditions on neighboring lots do not give rise to the variance the Applicants request.

VI.

**COMAR § 27.01.12.04(B)(6)**

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

**County Code § 14:1-66.C.**

The variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitats within the critical area.

The Board accepts Mr. Griffith’s testimony that granting the requested variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat in the critical area. Portions of the buffer that will be temporarily disturbed will be replanted. Permanent disturbance to the buffer will be only 262 square feet within a buffer that totals 71,133 square feet. In addition, the Applicants are required to mitigate for all buffer disturbance.

The Applicants will follow MDE guidelines for work in FIDB habitat and will not undertake construction activities during the nesting season of the Great Blue Heron. The variance does not allow the Applicants to disturb the Property’s wetlands nor the steep slope above the wetlands. Although the variance will allow 262 square feet of impervious surface in the buffer, overall the Applicants’ improvements will cover only 8% of the Property, which is 6,843 square feet less than the 15% coverage allowed on the Property. County law requires the Applicants to maintain sediment and erosion controls during construction and to implement permanent stormwater management for impervious surfaces post-construction.
Moreover, the Board notes that under COMAR 26.23.02.04, MDE evaluates requests to disturb wetlands and wetlands buffers by, among other criteria, making sure the proposal “has no practicable alternative,” will “first avoid and then minimize adverse impacts,” and will not “cause or contribute to a degradation of ground waters or surface waters.” The proposed work MDE approved in the wetlands buffer will be closer to sensitive areas on the Property (including the Great Blue Heron nesting area) than the proposed work in the critical-area buffer. The work approved by MDE in the wetlands buffer also will disturb over five times as much wetlands buffer as the disturbance the Applicants propose in the critical-area buffer. MDE’s conclusion that such disturbance in the wetlands buffer will minimize adverse effects and not degrade water quality is consistent with Mr. Griffith’s testimony that the much smaller proposed critical-area buffer variance will not adversely affect water quality or adversely impact habitat.

VII.

COMAR § 27.01.12.04(B)(7)

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

County Code § 14:1-66.D.

The variance will not be contrary to the public interest or the policies, goals and objectives of this Chapter 14:1 and the Queen Anne’s County Critical Area Program.

County Code § 14:1-66.H.

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

Regarding the Queen Anne’s County Critical Area Program (the “Program”), at page 1 the Program states: “[t]he objective of the . . . Program is to accommodate growth while protecting water quality and conserving habitat in the Critical Area.” On page 8, the Program
sets forth policies for development in LDA-designated areas, including (a) maintaining or improving the quality of groundwater and runoff entering the Bay and its tributaries, and (b) maintaining areas of natural habitat, while (c) accommodating low or moderate intensity development. Also relevant to the Applicants’ variance request are policies for “grandfathered lots” on page 15 of the Program. The Program’s policies for grandfathered lots recognize an owner of a grandfathered lot may need to vary certain critical-area requirements to have a reasonable use of the lot.

As the Board will explain more fully in the following paragraphs, approval of the requested variance will be in harmony with the general spirit, purpose and intent of COMAR and the Program. In addition, approval of the variance will not be contrary to the public interest, nor will approval of the requested variance be contrary to the policies, goals and objectives of Chapter 14:1 of the Code or other aspects of the Program. Approval of the requested variance will accommodate low intensity, in-fill development in a neighborhood consisting of large residential lots mostly improved by large single-family homes and related structures. Approval of the requested variance also will accommodate reasonable development of a grandfathered lot that is severely impacted by strict application of current law.

Policies for the 100-foot buffer on page 42 of the Program identify the purposes of the buffer. These purposes focus on removing potentially harmful runoff, minimizing adverse effects of human activities, and protecting riparian wildlife habitat. On the Property, the first 100 feet from the shoreline that constitutes the critical-area buffer is heavily vegetated, including a significant stand of mature trees. The requested variance would leave the lion’s share of the buffer’s vegetation intact. The closest impervious surface will be 92 feet from the shoreline. This impervious surface is just a small corner of one of the accessory structures situated where the buffer’s boundary forms a sharp “V” shape. The corners of two other structures will be 94 and 95 feet from tidal waters. The rest of the proposed improvements will be outside the buffer.
As noted, altogether the corners encroaching into the buffer total only 262 square feet of permanent disturbance.

Applicants’ Exhibit 16 includes a major buffer-management plan showing removal of nine mature trees inside and just outside the edge of the buffer. Because the Property—inside and outside the buffer—is heavily wooded, the Applicants propose to mitigate buffer disturbance via a fee-in-lieu of replanting or another alternative method. The proposed mitigation will maintain or improve water quality and habitat in the critical area generally. On the Property itself, over 99% of the buffer will remain undisturbed. The Board previously found the evidence supports a conclusion the proposed permanent buffer-disturbance (less than four-tenths of one percent of the buffer) will not degrade water quality or habitat. In addition, post-construction, the Applicants will manage runoff from impervious surfaces using ESD techniques.

The Applicants’ proposal will minimize potential adverse effects of human activities in the buffer and will not adversely affect habitat because the Applicants have been able to site all but a small corner (52 square feet) of their home and one square foot of the home’s screened porch outside the buffer. The Applicants have also been able to site all but 209 square feet of the other proposed improvements outside the buffer. If the edge of the buffer were less sharply angled, most (if not all) of these 209 square feet would be outside the buffer.

Regarding Chapter 14:1, the Code states in § 14:1-3 the primary purpose of the Chapter is to implement “the goals, objectives, criteria and standards set forth in [the] Queen Anne’s County Critical Area Program.” Section 14:1-6(A) states the overall intent of Chapter 14:1 “is to protect both individual property owners and the general public from adverse impacts which might otherwise be the result of a proposed development or activity within the critical area.” Along the same lines, § 14:1-6(A)(3) of the Code states Chapter 14:1 should be construed to “ensure a just balance between the rights of the landowner and all owners who will be affected by that person’s land use proposal.” Finally, § 14:1-6(A)(4) states “Chapter 14:1 has been
carefully designed . . . to avoid regulations that either sacrifice legitimate public goals, including the protection of adjoining property owners, or require undue limitations on the ability of property owners to use their land in manners consistent with the goals of the program.”

Considering these purposes, the Board finds granting the variance the Applicants request will not weaken the protections that Chapter 14:1 affords to the public. Other lots in the neighborhood support large single-family homes. Allowing the Applicants to build a similar home on a 2.23-acre lot is consistent with the Property’s LDA classification, which allows for the type of low-density residential development presently found in the neighborhood. Allowing the Applicants to build a home compatible with other homes in the neighborhood is also consistent with providing a reasonable accommodation to a grandfathered lot, as well as providing an appropriate balance recognizing the rights of all property owners in this critical-area neighborhood. The Board finds the Applicants’ requested variance will not adversely affect adjacent and nearby lots because the Property is substantially wooded and the amount of the requested variance is comparatively small.

The Board’s examination of the policies, goals, and objectives of the Program and Chapter 14:1 of the Code leads the Board to conclude the Applicants’ ability to reasonably use their Property, which is a grandfathered lot, would be limited beyond the goals and intent of the Program unless the Board grants the requested variance. Indeed, in the Board’s view, approval of the requested variance will help achieve pertinent policies, goals, and objectives of the Program and Chapter 14:1. The Applicants will be allowed reasonable use of their Property, the variance will protect adjacent lot owners (including Mr. Barnette’s parents and the owner of lot 3, whom Mr. Barnette testified will not agree to reduce the covenant-imposed 30-foot setback), the neighborhood’s character will not be altered, and the buffer will remain fundamentally intact. The Board thus concludes approval of the requested variance is in the public interest generally. For the same reasons, the Board concludes that granting the requested variance will be in
harmony with the general purpose and intent of the Program and the Program's primary implementation mechanism, Chapter 14:1 of the Code.

The Board also concludes the variance will not result in a non-permitted use in the LDA development area or an increase in LDA density limitations. Residential uses, including single-family homes, are allowed uses on LDA-classified land. The Applicants propose a single-family home. In addition, LDA regulations allow residential densities of up to four homes per acre. The Property on which the Applicants propose their home is 2.23 acres in size, which calculates to a density of less than one home per two acres. Therefore, approval of the variance will not increase density above LDA limitations.

VIII.

County Code § 14:1-66.G.

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

The Commission's letter dated March 27, 2019 states “it appears the applicant has further minimized impacts to the Critical Area Buffer.” The Board agrees. The Applicants propose development activity in the critical-area buffer only where the buffer's boundary is the most irregular, forming a sharp “V” shape. The Board finds it would be unreasonable to compel the Applicants to conform the shape of their home and related improvements to the peculiar shape of the buffer boundary, especially where the Applicants have located the planned improvements as far from the buffer as possible. The evidence establishes the Applicants cannot shift the planned improvements any farther from the buffer due to the location of the drainfield and reserve area to the north, the top of the steep slope to the east, and the 30-foot covenant-mandated setback to the west. Accordingly, the Applicants' requested variance allows them to “square-off” their planned

---

5The Board notes, however, that by submitting a revised variance plan reducing the amount of variance requested, an applicant does not necessarily meet the minimum-deviation requirement. Further analysis is still needed to determine if the revised plan proposes the minimum deviation.
improvements consistent with designs and construction used throughout the neighborhood—and nothing else.

The Applicants, of course, could in theory reduce the size of their planned improvements to eliminate any buffer variance. But the minimum-deviation standard does not require proof of an absolute minimum.\textsuperscript{6} Were this the case, the minimum-deviation standard would require determining at what point a proposal could no longer be reduced by another square foot—a Sisyphean-like task the Board does not believe the law compels it to undertake. Rather, the minimum-deviation standard involves determining whether the requested variance ameliorates the conditions and circumstances that create unwarranted hardship to a degree that makes possible the reasonable use of the involved lot.\textsuperscript{7}

Regarding a residential use on LDA-designated lots, a reasonable use would not usually encompass being able to build the largest home in the neighborhood and would not necessarily require building the smallest home in the neighborhood. The Board must determine reasonability on a case-by-case basis by examining (for buffer variances on LDA-designated lots) factors such as (1) the conditions and circumstances affecting the Property, (2) the amount of variance requested, (3) the percentage of the lot included within the buffer, (4) the overall size of the lot, (5) the type and size of the proposed improvements, (6) the size of other lots in the neighborhood, and (7) the type and size of other improvements in the neighborhood.

In this case, the buffer encompasses an unusually large percentage of the Property. By comparison, the amount of variance requested is very small. Here, too, the overall size of the

\textsuperscript{6}See Becker v. Anne Arundel County, 174 Md. App. 114, 143, 920 A.2d 1118, 1135 (2007) (rejecting an argument the board of appeals applied “an absolute minimum” test, and suggesting that on remand the board would continue to apply the correct “minimum necessary” test).

\textsuperscript{7}See Becker, 174 Md. App. at 144, 920 A.2d at 1136 (“The question of whether the variances were the minimum necessary must be considered . . . in the context of the purpose of the proposed construction, recognizing that appellants are entitled to build some type of reasonable structure.”).
Property is such that the Property could readily support the Applicants’ proposed improvements were it not for the number and degree of development constraints affecting the Property. The requested variance reasonably (and not excessively) compensates for the Property’s development constraints. Finally, other lots in the neighborhood are similarly sized and these other lots support similarly sized improvements. The Applicants’ proposal, therefore, maintains compatibility with, and the character of, the neighborhood.⁸

For the foregoing reasons, the Board concludes the requested variance is the minimum deviation from the provisions of § 14:1-11, § 14:1-51.A. and § 14:1-51.B. of the Code that will make possible a reasonable use of the Property.

IX.

COMAR § 27.01.12.04(A)

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

The Board concludes the Applicants have overcome the presumption that the specific development activity for which the variance is required does not conform with the general intent of the Program. The Board finds the proposed development activity does conform to the general intent of the County’s Critical Area Program.

⁸Ms. Barnette testified that after reducing the amount of the requested variance in response to the Commission’s comments on the initial variance site plan, the Applicants cannot reduce the proposed improvements any further given their needs and the large investment they must make in the Property. The Board is not sure whether, or if so when, it should consider an applicant’s personal needs in evaluating the minimum-deviation standard. The court of special appeals, however, has suggested an applicant’s needs can be relevant considerations. Becker, 174 Md. App. at 144, 920 A.2d at 1136 (“There was no finding by the Board as to appellants’ reasonable needs . . . and why the proposed structure was not the minimum necessary to meet those needs.”). Here, the Board finds Ms. Barnette’s testimony credible and that, to the extent it is relevant, to be an additional reason why the requested variance satisfies the minimum-deviation standard.
The general intent of the County’s Program is to protect the Chesapeake Bay and its tributaries, including improving water quality and enriching the important plant and wildlife habitat the Bay provides, while accommodating sensible development that allows landowners to use their properties in reasonable and significant ways. In this case, the Property is classified LDA. The LDA classification allows residential development at densities up to four homes per acre. The evidence establishes the density of the neighborhood, including the home the Applicants propose, is significantly lower than four homes per acre. Thus, the specific development activity the Applicants propose represents a far lower level of human activity in the critical area than permitted by the Property’s LDA classification.

Moreover, the Property was platted prior to December 1, 1985. This means the Property is entitled to treatment as a grandfathered lot. The Program generally intends to accommodate reasonable development of grandfathered lots. This includes recognizing that strict application of critical-area requirements adopted after a lot was platted may result in a hardship, depending on the conditions and circumstances inherent in the lot. Here, the specific development activity the Applicants propose is essentially the same as, and in some cases less intense than, existing development in the surrounding critical-area neighborhood, which the Board finds is reasonable. Here, too, the Applicants have minimized the impact on the buffer by limiting permanent buffer disturbance to 262 square feet of a buffer 71,133 square feet in size. Thus, despite the fact the critical-area buffer encompasses 73.23% of the Property, the requested variance involves permanent disturbance of just 0.37% of the buffer. Considering the other physical conditions and circumstances affecting the Property, the Board finds the variance aspect of the Applicants’ specific development activity to fall within the Program’s general intent for both grandfathered lots and environmental protection.

Furthermore, as explained more fully in the preceding parts of this decision, the Board finds (1) the specific development activity the Applicants propose on this grandfathered lot
represents a reasonable use of the Property and (2) the proposed development activity will not
detrimentally affect water quality or riparian wildlife habitat. These factors are two of the most
important elements underlying the general intent of the County's Program. Accordingly, the
Board concludes the specific development activity the Applicants propose conforms to the
general intent of the Program, and, therefore, the Applicants have overcome the presumption in
COMAR § 27.01.12.04(A) to the contrary.

**Decision**

Based on the foregoing findings and conclusions, by a vote of three in favor and none
opposed, the Board approves the requested variance to allow the Applicants to develop the
Property with portions of a two-story single-family dwelling, screened porch, deck, and in-
ground swimming pool and associated patio (the "Proposed Improvements") in the 100-foot
critical-area buffer. Specifically, the variance granted will allow the Applicants to disturb
permanently, and to locate a total of 262 square feet of the Proposed Improvements in, the
buffer. Additionally, the variance will allow the Applicants to disturb temporarily up to 2,764
square feet of land in the buffer during construction of the Proposed Improvements. The 262
square feet of permanent buffer disturbance for the Proposed Improvements involve: (a) 52
square feet of the home, (b) 1 square foot of the screened porch, (c) 33 square feet of the deck,
and (d) 176 square feet of the pool and patio. Finally, development of the Property with the
Proposed Improvements must be undertaken in substantial accord with Applicants' Exhibit 15.

The Board advises the Applicants that, as required by state law, the County cannot
approve development permits for the Property until 30 days after the date of this decision.
ORDER

For the reasons set forth in the foregoing Opinion, it is this 9th day of July, 2019, ordered that the variance requested for James Scot Barnette and Wendy M. Barnette, in Case No. BOA-19-01-0022, 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-19-01-0022, for James Scot Barnette and Wendy M. Barnette, which Opinion and Order resulted from a public hearing conducted by the Board of Appeals on May 15, 2019 and that the minutes and a recording of the May 15, 2019 meeting are filed in the office of Board of Appeals.

Certified this 9th day of July, 2019 by:

[Signature]

Cathy Maxwell
Clerk to the Board of Appeals
BEFORE THE BOARD OF APPEALS OF QUEEN ANNE’S COUNTY

* * * * * * * * * *

In the Matter of the Application of

Chester Storage, LLC

for a Conditional Use

* * * * * * * * * *

Case No. BOA-19-01-0023

OPINION AND ORDER

Proceedings

The matter before the Board of Appeals of Queen Anne’s County (“Board”) in this case is a conditional-use application filed by Chester Storage, LLC (“Applicant”). The application requests conditional-use approval for an expansion of an existing miniwarehouse facility.

On May 15, 2019, beginning at 7:30 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 conditional-use request. At the beginning of the hearing, the Board established all requirements were met governing (1) the filing of the conditional-use application, and (2) notice of the May 15th 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 conditional-use approval under the provisions of § 18:1-28.C.(2)(d) of the Public Local Laws of Queen’s Anne County, 1996 Edition (“Code”) to expand an existing miniwarehouse facility on land zoned TC-Town Center. TC zoning does not allow establishment of a new miniwarehouse use as either a permitted or conditional use. But TC
zoning does allow as a conditional use the expansion of a miniwarehouse facility that existed on or before September 7, 2004. Under § 18:1-58.N.(d) of the Code, the expansion cannot exceed 50% of the floor area of the miniwarehouse space that existed on September 7, 2004.

Conditional-Use Standards

The Board must apply several sets of standards to evaluate 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 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 requested conditional use:

¹For many conditional uses, § 18:1-95.E. of the Code sets forth specific standards for the use; however, the standards included in § 18:1-95.E. do not address expansion of a miniwarehouse facility in the TC zoning district.
(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.

Third, in evaluating a requested conditional use the Board must include in its evaluation of the County’s comprehensive plan certain consistency findings required by the Land Use Article of the Annotated Code of Maryland in § 1-303 for land outside of a priority funding area and in § 1-304 for land inside a priority funding area. The land involved in this conditional-use application is in a priority funding area. Accordingly, the Board’s approval of the requested 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; [and]
(5) development patterns[.]

**Property and Neighborhood Description**

The land that is the subject of the conditional-use application consists of two abutting lots in the Fourth Election District of Queen Anne’s County in the Chester area of the County. The first lot occupies the northeast corner of Main Street (Maryland Route 18) and Cheslou Road and has an address of 100 Cheslou Road. The lot is designated as lot 11 of the Cheslou Village subdivision (“Lot 11”). In turn, Cheslou Village is designated as parcel 381 on sectional zoning map no. 57. The Cheslou Village plat is recorded in the County’s land records in liber TSP 18, folio 379.

The second lot has an address of 2315 Main Street and is designated as lot 3 of the subdivision entitled Lands of Maryland General Land Co., LLC (“Lot 3”). In turn, the Maryland General Land Co. subdivision is designated as parcel 155 on sectional zoning map no. 57. The
plat of the subdivision is recorded in the County's plat records in plat book SM 30, page 68. The west side of Lot 3 abuts the east side of Lot 11.

Lot 3 is 2.001 acres in size and fronts about 200 feet along the north side of Main Street. Lot 3 is improved with a six-building miniwarehouse complex totaling 31,400 square feet of floor area. The miniwarehouse complex includes an office, customer parking, loading alleys between the storage buildings, and gated driveway access to Main Street. Security fencing surrounds the complex.

Lot 11 is 0.64 of an acre in size. Lot 11 fronts about 165 feet along the north side of Main Street and about 150 feet along the east side of Cheslou Road. Except for solid fencing along its boundaries, Lot 11 is unimproved. Topographically, Lot 11 is flat. Except for grass, Lot 11 is clear of vegetation.

Both lots are zoned TC-Town Center. About 63% of Lot 3 is in the Chesapeake Bay Critical Area. The critical-area portion of Lot 3 is designated IDA-Intense Development Area. IDA regulations allow those uses allowed by a land's base zoning, in this case TC zoning. Lot 11 is not in the critical area.

The Applicant proposes to merge Lot 11 and Lot 3 into one lot and then expand the miniwarehouse facility onto the land that is now Lot 11. The proposed expansion includes construction of a one-story climate-controlled miniwarehouse building with 11,150 square feet of floor area. The proposed building will increase the complex's floor area by 35.5%, which is less than the 50% increase allowed by § 18:1-58.N.(d) of the Code.

Drive aisles will abut the proposed building on three sides, including new drive aisles the Applicant plans to build along two sides of the new building. The Applicant also plans to add five new parking spaces, which will be sited at four locations around the building. In addition, the Applicant plans to add a gated access to Cheslou Road; however, this access will be for
emergency use only. All customer traffic to the new building will use the complex’s existing entrance on Main Street. The project will also provide buffer yards along three sides of the land that is now part of Lot 11, as well as stormwater management features.

Lots 3 and 11 are part of a neighborhood of predominately commercial uses along the Main Street corridor between Dundee Avenue to the east and Dominion Road (Maryland Route 552) to the west. U.S. Route 50/301 abuts the neighborhood to the north. Agricultural uses abut much of the neighborhood to the south, Single-family residential uses exist mostly along Dominion Road and Dundee Road, at the edges of the neighborhood, with multifamily homes on land abutting Lot 3. Commercial uses in the neighborhood include retail, restaurants, offices, pharmacies, service businesses, auto repair, and other miniwarehouse facilities.

**Agency Recommendations**

Mr. Rob Gunter, the Development Review Principal Planner with the Department of Planning and Zoning ("P&Z"), introduced and summarized a written staff report, which the Board admitted into evidence as P&Z Exhibit 1. As Mr. Gunter testified, he referred to a power-point presentation projected onto a large screen visible to those attending the hearing. The Board admitted the power-point slides into evidence as P&Z Exhibit 2.

In addition to the P&Z staff report, the Board received the following written correspondence from other agencies.

- A letter from Susan Makhlouf, a Natural Resources Planner with the State of Maryland Critical Area Commission, noting all new construction will be located outside of the critical-area portion of Lot 3. The letter states the Commission has no comments at this time (Applicant’s Exhibit 10).

- An email from Henry R. Dierker, Access Permits Engineer with the State Highway Administration ("SHA"), indicating the Applicant should apply to SHA for an access permit (Applicant’s Exhibit 9).

- A letter from Lori A. Byrne, an Environmental Review Coordinator with the Wildlife Heritage Service in the Maryland Department of the Environment ("MDE"), stating that because there are no federal or state records of plant or animal species of concern on Lot
11, MDE has no concerns regarding potential impacts to animal species and no recommendations for protective measures (Applicant’s Exhibit 11).

- Comments from John Nickerson of the Environmental Health Department indicating the new building must be served by public sewer (Applicant’s Exhibit 8).

- A memorandum from Robert Gunter to the Applicant listing P&Z’s comments on the Applicant’s conditional-use concept site plan. Among other matters, P&Z’s comments address landscaping and forest conservation (Applicant’s Exhibit 7).

Mr. Gunter testified the County approved the existing miniwarehouse use on Lot 3 in June 2003, after which the Applicant began construction. The County later approved field revisions to the project in August 2004. The Applicant now seeks approval to expand the existing use by 35.5%, with the expansion occurring on the adjacent Lot 11. If the Board approves conditional use, the Applicant will combine Lot 11 and Lot 3 into one lot via the administrative subdivision process.

Mr. Gunter testified Lot 11 has no steep slopes, streams, wetlands, woodlands, or other sensitive environmental features. Lot 11 is not in the 100-year floodplain and is not in the critical area. In developing the lot, the Applicant will provide stormwater management and landscaping on Lot 11. Landscaping will help establish Code-required buffers. By adding several new parking spaces on Lot 11, the Applicant will meet Code requirements for 14 on-site parking spaces for the overall complex. The Applicant also will extend along the front of Lot 11 an existing sidewalk on the north side of Main Street.

Mr. Gunter noted the Applicant has submitted a narrative describing how the project will comply with site and design guidelines established for the TC zoning district. The Applicant is not proposing new signs nor new lighting. The Applicant will construct an emergency access along Cheslou Road. According to Mr. Gunter, the project conceptually meets setbacks, height, landscaping, and buffer requirements. The existing facility uses public sewer and a private well. This will not change if the Board approves the expansion.
Regarding the County's Comprehensive Plan, Mr. Gunter testified the plan's land-use maps identify both lots as being in a commercial-residential mixed-use area. The plan also includes both lots in the Chester Economic Center. Mr. Gunter opined the proposed expansion appears appropriate for the location because miniwarehouses presently exist on Lot 3, and Lot 11 is available to be combined with Lot 3.

In conclusion, Mr. Gunter told the Board the Department of Planning and Zoning does not object to approval of the conditional use, provided the Applicant addresses all review agency comments during the formal site plan process.

Applicant's Presentation

Mr. Joseph A. Stevens, Esquire, represented the Applicant. Mr. Stevens described to the Board the history of the miniwarehouse use on Lot 3, as well as the history of the legislation that allows for an expansion of a miniwarehouse use that existed as of September 7, 2004. Mr. Stevens then called three witnesses.

First to testify for the Applicant was Mr. Barry Griffith, whom the Board accepted as an expert in land planning. Mr. Griffith is a professional planner with 35 years of experience. Presently, he is President of Lane Engineering, LLC.

Mr. Griffith described the Applicant's proposal and explained how the proposal meets applicable zoning requirements, including the TC design guidelines. Mr. Griffith testified the new building will be integrated into the existing complex. The public will use the facility's existing access along Main Street. Traffic circulation within the complex works well and will continue to do so. The Applicant will add stormwater management features around the new building, which will meet Environmental Site Design standards to the maximum extent possible. An existing fence along Main Street and Cheslou Road will remain. The Applicant will install landscaping between the fence and the two public streets.
The Applicant proposes to add an emergency entrance into the complex from Cheslou Road. The complex’s existing Main Street entrance is tight for fire trucks, so the new entrance will increase safety. The complex uses public sewer, but there will be no bathroom facilities in the new building. The complex does not allow outside storage and prohibits storage of any flammable materials in the buildings. Mr. Griffith testified the expansion will generate fewer than 25 peak-hour trips, which means the Applicant is not required to submit a traffic study.

Mr. Griffith stated the proposed expansion will not produce detrimental effects on adjacent properties or on the neighborhood. The neighborhood contains a mix of residential, commercial, and light industrial uses—many of which Mr. Griffith believes are more intense uses than a miniwarehouse use. Mr. Griffith characterized a miniwarehouse use as an “inert” use. Mr. Griffith opined the location proposed for the expansion is a good location that will not result in any greater impacts than those impacts inherent in a miniwarehouse use irrespective of location.

Regarding public facilities, Mr. Griffith testified the expansion will not burden public sewer, roadways, or other public facilities. The Applicant will need to file an engineered site plan, through which technical details involving stormwater management and landscaping will be addressed with County reviewers. Mr. Griffith noted the Applicant will be providing a sidewalk extension and other street-side improvements, as well as the new emergency access.

Next to testify for the applicant was Mr. Jack Leone. Mr. Leone and his family own Chester Storage, LLC. He operates the existing miniwarehouse use under the trade name of Kangaroo Self Storage. Mr. Leone testified the existing complex represents an investment of about $1.8 million. The LLC paid $300,000 for Lot 11. Expansion of the existing facility onto Lot 11 is needed because the existing facility is full nearly all the time. In addition, today there is a greater demand for climate-controlled storage than in the past.
Mr. Leone testified he began construction of the existing facility in early 2004 and finished construction in August 2004. At that time, tenants had already signed leases and were ready to move in. He had more prospective tenants on a waiting list. Mr. Leone said he was not aware at the time the County Commissioners removed miniwarehouses as an allowed use in the TC district. He discovered the Commissioners' action later. He then asked the Commissioners to amend TC district regulations to allow existing miniwarehouses to expand, which they did. Mr. Leone noted that since he opened the business, no one has ever complained about how the business operates.

Ms. Tammy Jenkins testified next. Ms. Jenkins is the property manager for Kangaroo Self Storage, a position she has held for four years. Ms. Jenkins testified operations do not generate trash or noise. There is no offensive lighting on the property. Since she has worked at the facility, there has been no vandalism and no complaints from customers or neighbors. Many times, customers have complemented her on how nice the facility looks, and customers have told her they are pleased with the extra security the facility provides.

Ms. Jenkins testified only four units in the complex are currently available for lease. None of these units is climate controlled. The climate-controlled units are 100% leased. Mr. Jenkins testified a need exists for more climate-controlled storage units. There are new business in the area, as well as residential growth. For example, she noted apartments have been built next door. In response to a question from the Board, Ms. Jenkins testified climate-controlled units at the facility maintain a temperature of 60 degrees in the winter and 78 degrees in the summer.

**Testimony by Others**

No one else appeared before the Board to testify or to ask questions about the Applicant’s conditional-use request.
Findings and Conclusions of the Board

Based on the testimony of the witnesses, which the Board finds credible, and on the exhibits in evidence, the Board concludes the proposal to expand the Applicant’s existing miniwarehouse facility by 35.5% satisfies the conditional-use standards found in §18:1-94 and § 18:1-123.B of the Code, as well as satisfies the comprehensive-plan consistency requirements set forth in the Land Use Article of the Annotated Code of Maryland.

Beginning with the comprehensive plan, the involved property is zoned TC-Town Center. TC zoning is consistent with the land uses shown in the 2010 Comprehensive Plan. Although miniwarehouses are no longer an allowed use in the TC zoning district, existing miniwarehouse uses can expand up to 50% via the conditional-use process. The Board believes the Applicant’s expansion proposal is needed to serve the growing mix of commercial and residential uses in the Chester area. Lot 3 and Lot 11 are in the Chester Economic Center, which is a priority funding area. Long-range planning policies in the comprehensive plan support growth in designated economic centers and priority funding areas.

The 2010 Comprehensive Plan does not directly address timing of development, timing of rezoning, and timing of similar plan-implementation characteristics. Timing, therefore, is largely left to the marketplace. Here, the Board is convinced the Applicant is appropriately reacting to market forces. The evidence shows a need exists for climate-controlled storage—for new residents, new businesses, and existing business that are growing.

The Board already noted the plan’s polices pertaining to the Chester Economic Center and priority funding areas. The proposed conditional use, which will provide a needed service to the community, is consistent with those policies. The proposed conditional use is also consistent with existing and planned mixed-use development patterns in the area. Uses include shops, offices, restaurants, pharmacies, service businesses, auto-related businesses, and residential.
Expanding the existing miniwarehouse facility provides a compliment to these uses and is consistent with the pattern of development within which the uses are found.

Furthermore, because the proposed expansion will occur in the Chester Economic Center and a priority funding area, the Board concludes the conditional use is consistent with and conforms to other relevant plans, programs, maps, and ordinances the County has adopted.\(^2\)

The Board concludes the proposed location of the miniwarehouse expansion 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. Regarding the proposed location, the Board finds the location will not increase or exacerbate any of the potential impacts inherent in a miniwarehouse use (including an expansion of an existing miniwarehouse use). On the contrary, the Board concludes such inherent impacts will be no more than, or even less than, impacts associated with other possible locations.

Lot 11 abuts a miniwarehouse facility that has existed since 2004. The evidence demonstrates the existing facility serves a community need, is well-managed, and has not created adverse effects on adjacent properties. The existing facility accesses the commercial spine of the Chester area—Main Street—and the proposed expansion will not change this convenient access. Sometime after the existing facility opened, a new mixed-use project was built just to the north of Lot 3. The mixed-use project includes relatively new multifamily housing. If the miniwarehouse use were having adverse effects on residents and on patrons of other businesses, complaints would have been filed with the County. Mr. Gunter did not relay any such complaints to the Board and no resident or landowner appeared before the Board to discuss possible adverse effects. The Board observes the abutting multifamily housing is four stories in

\(^2\)There are no relevant pending ordinances under consideration pursuant to official notice.
height, whereas the existing and proposed miniwarehouse buildings are one-story. The fact residents on the second, third, and fourth floors of the multifamily building can see the miniwarehouse facility did not prevent construction of the building and apparently has not had a negative effect on the success of the multifamily project.

The Board concurs with Mr. Griffith that a miniwarehouse use is a relatively benign use in terms of operational impacts. Massing, building bulk, and buffering can be issues. Here, however, the proposed building will be adequately set back and buffered. The Applicant will undertake SHA-required improvements to Main Street, extend a sidewalk, and create an area planted with shrubs and trees to manage stormwater. These enhancements will result in a 35-foot setback from Main Street. In addition, the Applicant plans to fence the facility and plant landscaping in front of the fence. Together, the setback, fencing, and landscaping will break-up the building’s façade and soften the building’s bulk.

Regarding public improvements, facilities, utilities and services, the Board concludes the proposed conditional use at the location proposed will be adequately served by public sewer, Main Street, and such other public facilities and utilities that may be used—all in a manner consistent with the Comprehensive Plan, Chapter 18:1, and other plans, programs, maps and ordinances adopted by the County. No County review agency objects to the proposed use. The proposed expansion will not generate significant peak-hour traffic (or, for that matter, significant traffic at other times). The Applicant will extend a sidewalk along Main Street and undertake other road upgrades as directed by SHA. The Applicant will install stormwater features in accordance with approvals granted by the County’s Department of Public Works. In addition, the Applicant will construct an emergency entrance into the facility from Cheslou Road, which will help improve public safety.

3The miniwarehouse facility does not use public water; it uses a private well.
Concerning § 18:1-123.B.(1) of the Code, the Code contains no specific conditions in Chapter 18:1 for expansion of an existing miniwarehouse use in the TC zoning district. Thus, the Board need not make findings addressing specific standards. The Board would note, however, Mr. Gunter testified the expansion proposal will meet all TC bulk standards. In addition, Mr. Griffith explained how the Applicant will meet TC design guidelines. The Board also finds the fact that the County Commissioners chose not to adopt specific standards for expanding a miniwarehouse use in the TC district is a strong indication of the compatibility of such an expansion with the purposes and goals of the TC district.⁴

Concerning § 18:1-123.B.(2) of the Code, the Board has already found that the proposed use is consistent with and conforms to the County’s Comprehensive Plan (see pages 10 and 11 of this Opinion.)

Concerning § 18:1-123.B.(3) of the Code, the Board adopts its previous findings and conclusions that the proposed expansion is compatible with the neighborhood. The Applicant seeks to expand a needed service in the community, on a lot abutting the existing miniwarehouse use, in a neighborhood mostly developed with a wide variety of commercial uses. The proposed building will be one story in height and buffered. Traffic will be minimal.

**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 to expand the existing miniwarehouse use on Lot 3 by 11,150 square feet, with the expansion to be located on Lot 11. Through the subdivision process, Lot 3 and Lot 11 must be merged into a single lot. In addition, the expanded miniwarehouse use must be located and constructed substantially as shown on

---

⁴Expansion is limited to 50% of the floor area of the existing use. The Applicant’s proposed expansion is 35.5%, which is less than the maximum expansion allowed.
Applicant’s concept site plan (Applicant’s Exhibit 14), with allowance for the Applicant to comply with Code requirements and comments from review agencies.
ORDER

For the reasons set forth in the foregoing Opinion, it is this 4th day of June, 2019, ordered that the conditional use approval requested for Chester Storage, LLC, in Case No. BOA-19-01-0023, 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-19-01-0023, for Chester Storage, LLC, which Opinion and Order resulted from a public hearing conducted by the Board of Appeals on May 15, 2019 and that the minutes and a recording of the May 15, 2019 meeting are filed in the office of Board of Appeals.

Certified this 4th day of June, 2019 by:

[Signature]

Cathy Maxwell
Clerk to the Board of Appeals
BEFORE THE BOARD OF APPEALS OF QUEEN ANNE'S COUNTY

In the Matter of the Application of

Dorsey D. Patchett, Jr. and
Dorsey D. Patchett, III

for a Conditional Use for a Commercial Forestry Operation

Case No. BOA-19-03-0027

OPINION AND ORDER

Proceedings

The matter before the Board of Appeals of Queen Anne’s County (“Board”) in this case is a conditional use application filed by Mr. Dorsey Patchett, Jr. and Dorsey D. Patchett, III (together the “Applicant”). The Applicant seeks zoning approval for a commercial forestry use on land that is platted as deed-restricted open space.

On May 15, 2019, beginning at 7:30 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 conditional use request. At the beginning of the hearing, the Board established all requirements were met governing (1) the filing of the conditional use application, and (2) notice of the May 15th 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 conditional use approval under the provisions of § 18:1-12.A of the Code of Public Laws of Queen’s Anne County (“Code”) to engage in commercial forestry on
approximately 30 acres of a 189.8-acre lot that includes an area of platted deed-restricted open space. Section 18:1-12.A. of the Code establishes the uses allowed in open space. Commercial forestry is one of those uses. A portion of the 189.8-acre lot was platted as open space as part of a single-family cluster development known as Patchwork Knoll. For open-space land platted as part of a single-family cluster development, commercial forestry is allowed as a conditional use.

In addition, § 18:1-12.G. of the Code mandates that commercial forestry on open-space land must “be outlined in a timber harvest plan that has been prepared by a licensed professional forester and approved by a Department of Natural Resources Forester and/or the County Forestry Board, as appropriate.” On February 26, 2019, the Queen Anne’s County Forestry Board reviewed and approved a timber harvest plan for the 30 acres.

On the 30 acres, the Applicant’s commercial forestry use will involve select-cut harvesting of woodlands that contain a mix of hardwood species. The dominant species are white oak and red oak.

**Conditional Use Standards**

The Board must apply several sets of standards to evaluate 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

¹For many conditional uses, § 18:1-95.E. of the Code sets forth specific standards for the use; however, the standards in § 18:1-95.E. do not address a commercial forestry use on deed-restricted open space. Thus, in this case the Board need make no findings under § 18:1-95.E. of the Code.
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 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 the Board to make the following findings to grant 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.

Third, in evaluating a requested conditional use the Board must include in its evaluation of the County's comprehensive plan certain consistency findings required by the Land Use Article of the Annotated Code of Maryland ("State Code"). Section 1-303 of the State Code establishes consistency findings for land outside of a priority funding area. Section 1-304 of the State Code establishes consistency findings for land inside a priority funding area. The land involved in this conditional use application is not in a priority funding area. Accordingly, the Board’s approval of the requested 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 property that is the subject of the conditional use application consists of about 30 acres of a 189.8-acre lot designated as Lot 1 of the Patchwork Knoll subdivision. The subdivision is designated as parcel 1 on sectional zoning map No. 30. Patchwork Knoll is in the Second Election District of Queen Anne’s County, in the Church Hill area of the County. This decision will refer to the 30 acres as the “Property” and to the 189.8-acre lot as the “Overall Tract.”

The Overall Tract is located generally along the south side of Flat Iron Square Road west of Granny Branch Road. The Overall Tract has an access “pipe stem” along the west side of Granny Branch Road, as well as an assigned address of 260 Granny Branch Road. Approximately 109 acres of the Overall Tract is deed-restricted open space, including the 30 acres that constitute the Property.

The Property lies at the western end of the Overall Tract, about half-way between Granny Branch Road to the east and Lieby Road to the west. The Property is zoned AG, Agricultural. The Property is unimproved and wooded. No streams traverse the Property, but there are several areas of nontidal wetlands. In addition to the oak species to be selectively harvested, vegetation on the Property includes sweetgum, blackgum, pepper brush, and highbush blueberry. The average size of the dominant oak species on the Property is about 20 inches diameter-at-breast-height (“DBH”). The hardwoods have a basal area of about 100 square feet per acre.

The Property is essentially flat; there are no steep slopes. The dominant soil type on the Property is Hammonton sandy loam, 0 to 2 percent slopes. The Property does not provide habitat for any sensitive species. The Property is not in the Chesapeake Bay Critical Area.
Access to the Property is obtained via an existing farm road that extends from Flat Iron Square Road southward along the edge of the forested area that makes up the Property. Beyond the Property, the Overall Tract is cleared and farmed.

The neighborhood in which the Property is located is bounded by Church Hill Road (Maryland Route 213) along the west, Sudlersville Road (Maryland Route 300) along the north, U.S. Route 301 along the east, and White Marsh Road along the south. The character of the neighborhood is rural, dominated by agricultural uses. Agricultural uses include large areas of tilled land, forested land, horse farms, and chicken farms. Single-family homes—on large lots or in small clustered subdivisions—are scattered through the neighborhood, as are a few rural businesses and institutional uses. The town of Church Hill lies at the northwest corner of the neighborhood.

**Agency Comments and Recommendations**

Mr. Rob Gunter, the Development Review Principal Planner with the Queen Anne’s County Department of Planning and Zoning (“P&Z”), presented and summarized a written report, which the Board accepted into evidence as P&Z Exhibit 1. As he testified, Mr. Gunter referred to P&Z’s staff report and various other exhibits projected onto a large screen visible to those attending the public hearing.

In addition to P&Z’s staff report, the Board admitted into evidence eight exhibits offered by the Applicant, including the following agency comments:

- A memorandum from Mr. John Nickerson of the Environmental Health Department indicating no objection to the application (Applicant’s Exhibit 4);

- A memorandum from Ms. Donna Landis-Smith of the Soil Conservation District indicating no comments at this time (Applicant’s Exhibit 5); and
• A letter from Mr. Joe Pippin, a Zoning Inspector with P&Z, indicating conditional use approval is required for commercial forestry on deed-restricted open space in the AG zoning district (Applicant’s Exhibit 8).

Mr. Gunter testified commercial forestry is usually a permitted use in the AG zoning district. In this case, however, the Property was platted as deed-restricted open space when Patchwork Knoll was subdivided. Commercial forestry is allowed on open-space land, but as a conditional use. In addition to the Property’s AG zoning, Mr. Gunter testified the County’s Comprehensive Plan designates the Property as permanently preserved open space.

Mr. Gunter testified the Applicant has submitted various plans and permit applications required for commercial forestry, including a logging permit, a forest management map, a five-year declaration of intent, a sediment and erosion control plan, and a timber harvest plan. The County Forestry Board approved the timber harvest plan on February 26, 2019. According to Mr. Gunter, the Applicant also submitted a nontidal wetlands best-practices agreement and will adhere to best-management practices for work in areas near nontidal wetlands on the Property.

As set forth in Mr. Gunter’s report and testimony, P&Z supports approval of the conditional use, subject to one recommended condition. The recommended condition is that the Applicant be required to mark the location of required timber-harvest signs on the Applicant’s timber harvest map.

**Applicant’s Presentation**

Ms. Noreen Davis, a Licensed Forester, testified for the Applicant. Ms. Davis indicated she prepared a Timber Harvest Plan (Applicant’s Exhibit 7) for the Property, as well as the conditional use application. Ms. Davis corroborated much of the information in P&Z’s report, including the fact red oak and white oak are the dominant species on the Property.
Ms. Davis testified the age of the oaks on the Property are uneven. The select cut will harvest oaks that have a DBH of 18 inches or greater. Younger oaks, which have an average DBH of six to eight inches, will remain, as will a few of the older trees. Ms. Davis testified most of the trees are in good shape, but a few should be harvested right away due to damage. Ms. Davis testified the Applicant plans no harvesting in the nontidal wetlands on the Property. Overall, the select cut will thin the forest by reducing the hardwood basil area by about 50%.

Ms. Davis testified thinning a forest is good forestry practice. Thinning promotes the health of remaining trees and broadens the available habitat. The Applicant does not plan to replant any trees; the forest will be allowed to regenerate naturally. In response to a question from the Board, Ms. Davis testified the Applicant will not remove limbs and similar tree remnants. She told the Board, although potentially unsightly to those not familiar with forestry operations, leaving remnants is a good environmental practice.

Mr. Joe Davis also testified for the Applicant. He testified the company harvesting the trees have top-notch loggers from New York state. Mr. Davis testified the trees on the Property constitute a unique market because they are worth more in New York than in other places. The loggers will leave the forest in good shape. They will clean the haul road and landing area.

Testimony by Others

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

Findings and Conclusions of the Board

The Board finds credible and persuasive the testimony and exhibits provided by Mr. Gunter of P&Z and Ms. Davis and Mr. Davis for the Applicant. Noting Mr. Gunter’s recommendation and Ms. Davis’ expertise as a licensed forester, the Board finds the evidence in this case supports a conclusion the Applicant’s proposal meets the conditional use standards
found in §18:1-94 and § 18:1-123.B. of the Code, as well meets as the comprehensive plan consistency requirements found in the Land Use Article of the Annotated Code of Maryland.

Concerning the Comprehensive Plan, Mr. Gunter’s testimony and P&Z Exhibit 1 establish the proposed commercial forestry use conforms to, and is consistent with, the County’s Comprehensive Plan. Under the Plan, the Property is in identified agricultural and open-space areas. Commercial forestry is usually a permitted use in agricultural areas. A conditional use is required in this case only because the Property is platted as open space. Nothing about the Applicant’s proposal, however, will negatively affect the Property’s usefulness as open space. The agricultural fields on the Overall Tract will remain. The Property’s forested area, although thinned, will remain. The Applicant does not propose clear-cutting. Instead, the Applicant proposes select-cut harvesting. Thinning will leave the forest in better health. Accordingly, harvesting operations will help preserve—and even enhance—the usefulness of the forest portion of the platted open space on the Overall Tract.

The same evidence 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 Property’s location does not increase or intensify any potential impacts inherent in a typical commercial forestry use. The Property’s AG zoning recognizes that forested areas provide a valuable resource needed in the County. The Property abuts either agricultural land or forested land on all sides. To the east, except for the small Patchwork Farm subdivision, there is more agricultural and forested land. Regarding Patchwork Farm, the Property does not abut the residential lots in the subdivision.

Concerning the consistency findings required by § 1-303 of the Land Use Article of the Annotated Code of Maryland, the Board finds the evidence supports a conclusion the proposed
commercial forestry use is consistent the Comprehensive Plan elements listed in § 1-303, to the extent those elements are applicable. The proposed harvesting does not alter or otherwise affect planned densities or intensities, planned development patterns, timing of rezoning, timing of development, or timing of plan implementation. The Property is open space and will remain so.

Regarding land uses and Plan policies, the proposed harvesting furthers, and is not contrary to, these Plan elements. As previously noted, the County’s Comprehensive Plan includes the Property in agricultural and open-space areas. Commercial forestry furthers these land-use designations and the policies that underlie the designations, including the Plan’s continuation of AG zoning for the Property and the Plan’s recognition of timber as an important natural resource. Significantly, too, AG zoning allows commercial forestry as a permitted-use-by-right throughout the lion’s share of the County’s agricultural areas. Thinning forests to maintain their health, as well as to promote habitat variety, is an accepted best-practice to manage woodlands that are adjunct to farming operations.

The Board finds the commercial-forestry 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. To begin with, the proposed harvesting is a temporary use. Once harvesting is concluded, there will be no impacts at all on traffic or other land uses. Access to the Property will not require a new entrance; the Applicant will use an existing farm road. The Board believes the logging equipment and trucks that will use the farm road for a short time in this case are not significantly different from the agricultural equipment and vehicles that use the farm road annually.

The Board infers from P&Z’s recommendation supporting approval of the conditional use that the Applicant’s proposal will have no significant adverse impact. P&Z factors into its
recommendation comments from other governmental agencies. P&Z Exhibit 1 and Applicant's Exhibits 4 and 5 indicate no negative agency comments. The Board also notes the lack of any public concern at the hearing. The Board further notes the commercial forestry use will not involve any work to or parking on public improvements or sites. Logging trucks will load on the Property. As noted, trucks will use an established farm road for access to and from the Property. The Board finds that a significant portion of the Overall Tract is farmed, and there are other farming operations on all sides of the Property. At this location, the Board views traffic associated with forest-harvesting as having no greater impact than traffic associated with agricultural planting and harvesting. This is especially true given the relatively short time the 30-acre forestry use will produce traffic.

Regarding the character of the neighborhood, the Board finds the proposed harvesting use will not adversely affect the character of this predominantly agricultural neighborhood. Forestry uses are part of an agricultural community. Moreover, actual harvesting will be of relatively short duration. After select-cut harvesting, the forest will retain a significant basal area. Thus, residents in Patchwork Farm and the public using nearby roads will not see a significant difference in the appearance of the forest, especially when trees have foliage in the late spring, summer, and autumn. Harvesting will allow the remaining trees on the Property to grow larger and will create areas for understory growth and natural forest regeneration. Consequently, there will be a greater range of habitat in the forest, which is one of the purposes of forest thinning.

Furthermore, the neighborhood and the public welfare will be protected by the other governmental approvals the Applicant has obtained. These approvals include a best-practices agreement for work near nontidal wetlands, a timber harvest plan (already approved by the Forestry Board), a sediment and erosion control plan, a timber harvest map, a forestry declaration of intent, and a logging permit.
Concerning public improvements, facilities, utilities and services, the Board finds that, except for public roads, the proposed commercial harvesting at the location proposed will not use such facilities and services. Commercial harvesting does not require public water, public sewer, nor public storm drains. County review agencies have no objection to the proposed use. The Forestry Board has already approved a timber harvest plan. Regarding public roads, the small amount of traffic generated by temporary tree harvesting will here have no significant impact on public roads, and, as previously noted, in this case will not be substantially different from traffic associated with farming activities in the neighborhood. Therefore, the Board finds the use will be adequately served by the only public facility it will use (public roads) in a manner consistent with the Comprehensive Plan, Chapter 18:1, and other plans, programs, maps and ordinances adopted by the County.

As required by § 18:1-123.B.(3) of the Code, the Board finds the proposed conditional use will be compatible with the existing neighborhood. The Board adopts its previous findings that explain the lack of adverse impact on the character of the neighborhood. The harvesting use will be of limited duration, thinning the forest will help ensure the woodlands stay healthy, there will be natural regeneration, and harvesting does not conflict with the Property’s agricultural and open-space uses. The bulk of the neighborhood consists of agricultural fields (including the rest of the Overall Tract) and woodlands. A forestry use is compatible with these rural uses.

Decision

Based on the foregoing findings and conclusions, by a vote of three in favor and none opposed, the Board grants conditional approval of the requested conditional use to conduct commercial forestry operations on the deed-restricted open-space Property. The commercial forestry use must be conducted in substantial accord with Applicant’s Exhibits 6 and 7, and is subject to the following condition:
1. The Applicant must mark on the timber harvest plan the locations of signs identifying the commercial-forestry use.
ORDER

For the reasons set forth in the foregoing Opinion, it is this 21st day of June, 2019, ordered that the conditional use approval requested for Dorsey D. Patchett, Jr. and Dorsey D. Patchett, III, in Case No. BOA-19-03-0027, 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-19-03-0027, for Dorsey D. Patchett, Jr. and Dorsey D. Patchett, III, which Opinion and Order resulted from a public hearing conducted by the Board of Appeals on May 15, 2019 and that the minutes and a recording of the May 15, 2019 meeting are filed in the office of Board of Appeals.

Certified this 21st day of June, 2019 by:

[Signature]
Cathy Maxwell
Clerk to the Board of Appeals