

BEFORE THE BOARD OF APPEALS OF QUEEN ANNE’S COUNTY

* * * * *
In the matter of Application by * Case No. BOA-23-03-0149
Jeffrey Owens and Stephanie Owens *
for Variance *
* * * * *

FINAL DECISION OF THE BOARD

Introduction

The Queen Anne’s County Board of Appeals (the “Board”) held a meeting on June 21, 2023 at 4:45 p.m. to consider Case No. BOA-23-03-0149 for a variance application filed by Jeffrey Owens and Stephanie Owens (hereinafter the “Applicants”). The Board members present were Chairman, Howard Dean, and Board Members Craig W. McGinnes and Michael Lesniowski.

At the beginning of the hearing, the Board established that all requirements were met governing the filing of the variance application, and that there was proper notice of the June 21st public hearing. Board Chairman Dean administered the oath to all who wished to testify on the application, including one of the Applicants.

Applicants’ Request

The Applicants request a variance to the provision of § 14.3-41.C.(2) of the Code of Public Local Laws of Queen Anne’s County, 1996 Edition (the “Code”), to permit an additional 280 square feet of floor area below the Flood Protection Elevation to construct an addition to the existing residence. The Applicants’ property is located at 208 Cabin Creek Road, Grasonville, Maryland (the “Property”). The Property is located in the NC-20 Zoning District.

The Applicants submitted a Building Permit (No. BR22-12-0868) to construct additions to their existing single-family home including a 16’ x 22’ garage addition to extend the garage by one bay; a second story to include a 22’ x 39’6” game room, 27’ x 49’ to include 3 bedrooms, 2 bathrooms, and a laundry room; and a 16’ x 20’ master bedroom on the rear with a 4’ x 12’ deck. The total floor area of the additions is 2,944 square feet. On March 9, 2023, the Queen Anne’s County Department of Public Works denied the Building Permit after determining that the

application adds 352 square feet to an existing 528 square foot garage which totals 880 square feet and is 280 square feet above the permitted square feet established by § 14.3-41.C.(2) of the County Code.

Applicable Provisions of the Code

The standards the Board must apply to the Applicants' variance request to the Floodplain Management Ordinance are set forth in § 14:3-66 of the Code. To grant the requested variance, the Board must find as follows:

- A. A showing of good and sufficient cause. Good and sufficient cause deals solely with the physical characteristics of the property and cannot be based on the character of the improvement, the personal characteristics of the owner/inhabitants, or local provision that regulate standards other than health and public safety.
- B. (Reserved).
- C. A determination that failure to grant the *variance* would result in exceptional hardship due to the physical characteristics of the property. Increased cost or inconvenience of meeting the requirements of these regulations does not constitute an exceptional hardship to the applicant.
- D. A determination that the granting of a variance for development within any designated floodway, or flood hazard area with base flood elevations but no designated floodway, will not result in increased flood heights beyond that which is allowed in these regulations.
- E. A determination that the granting of a variance will not result in additional threats to public safety; extraordinary public expense, nuisances, fraud or victimization of the public, or conflict with existing local laws.
- F. A determination that the building, structure or other development is protected by methods to minimize flood damages.
- G. A determination that the variance is the minimum necessary to afford relief, considering the flood hazard.

Property Description and Department of Public Works Recommendations

John Kling, Floodplain Manager with the Queen Anne's County Department of Public Works, presented his Staff Report. Mr. Kling advised that the Property is located at 208 Cabin Creek Road. The existing structure on the Property is located in the Special Flood Hazard Area AE 5 based on the National Flood Insurance Rate Maps with a Base Flood Elevation of 5 feet. He said that the house on the Property was constructed in 1980 and had a 22 foot by 24-foot garage added in 1995. He said the Applicants are seeking to construct a 16 foot by 22-foot garage addition which totals 352 square feet and to expand the second floor. With the addition, the garage footprint would be 880 square feet. § 14:3-41.C.(2) provides that enclosures below the lowest floor shall be less than 600 square feet in area. The Applicants are seeking to exceed the permitted amount by 280 square feet.

Mr. Kling said that Queen Anne's County adopted floodplain management regulations in 2014 that exceed the minimum requirements of the National Flood Insurance Program. He added that the proposed project constitutes substantial improvement defined in the Code as "any combination of repairs, reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure before the work is started." Therefore, if approved, the Applicants will be required to meet the standards established by § 14:3-28 which will require elevation of the first floor of the residence, installation of flood vents, and installation of damage resistant materials.

Mr. Kling explained the required elevation of structures due to the Floodplain Ordinance. He said that Queen Anne's County established a two-foot freeboard requirement. Therefore, the Flood Protection Elevation for the Property which has a Base Flood Elevation of 5 feet is 7 feet. Mr. Kling said that garages are generally flooded so they are not normally elevated. In this instance, he said that there is already an existing garage and that it would be impractical to elevate 1 bay. Then, Mr. Kling discussed NFIP's Community Rating System and concern noted by MDE that the County's grant of variances to higher regulatory standards adopted could affect the County's ability to receive credit for the higher standards. In his opinion, Mr. Kling said he does not believe the County would receive points for the standard established for enclosures below the lowest floor.

Mr. Kling said that the primary issue is that the Department of Public Works cannot approve the project because the Applicants' request exceeds the permitted size of enclosures below the lowest floor by 280 square feet. He said that if the Applicants elevated the additional garage bay 2 more feet, the project could be approved without a variance. However, the elevation would require additional fill and would require a ramp from the existing garage to the new bay.

Applicant's Presentation

Mr. and Mrs. Owens presented their application. Mr. Owens said that they are seeking to extend the existing garage by 1 bay. He said that the existing garage is small and cannot accommodate two vehicles. In addition, they are seeking to construct a staircase inside of the new bay to access the second-floor addition. The Applicants submitted pictures which were identified as Applicants' Exhibit 9.

Mr. Owens said that they are seeking the variance to permit them to construct the additional garage bay at the same elevation of the existing garage. Alternatively, the Applicants will be required to raise the existing garage which would be expensive and require a lot of disturbance on the site.

Mr. Owens said that they have lived at the Property for six years and have not witnessed water rise to the foundation of the existing house. He added that the previous Property owner said that water rose to the bottom of the existing garage slab as a result of hurricane Isabel. Mrs. Owens added that there are features on the Property that protect it from flooding such as a marsh and 100 foot trees.

Mr. Owens stated that they hired Lane Engineering to complete an elevation certificate and to assist the Applicants with the project. They are seeking to add a second floor over the existing one-story rancher-style dwelling with the inclusion of the additional bay on the garage. The additional garage bay will permit the Applicants to park two vehicles in the garage, which they currently cannot do as a result of the size of the garage. The additional bay will also permit them to construct an interior stairway to access the new second floor addition. This additional stairway will provide faster ingress and egress in the event of a fire.

Mr. Kling added that the entire Property, with exception of one small corner area, is in the floodplain. The Property is also in the Critical Area.

Testimony from the Public

After the Applicant presented his case, Chairman Dean asked if any members of the public wished to testify. No one testified.

Findings and Conclusions of the Board

The Board found the testimony and application provided by the Applicants credible but concluded that the evidence did not justify approval of the requested variance to the Floodplain Management Ordinance. Based on the evidence presented, and duly considering the factors set forth in § 14:3-65 and a document entitled, "Guidance on Granting Variances to Floodplain Management Requirements" issued by MDE, a copy of which is attached, the Board specifically found and concluded that the Applicants failed to establish good and sufficient cause for a variance or that they would suffer hardship if denied the variance.

Decision

Based on the foregoing findings and conclusions, by a vote of three in favor and none opposed, the Board denied the Applicants' request for a variance from the provisions of § 14:3-41.C(2) to construct a 16' x 22' garage addition to extend the garage by one bay which would exceed the enclosures below the lowest floor by 280 square feet.

ORDER

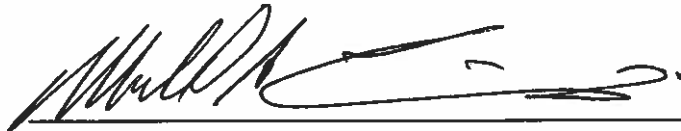
For the reasons set forth in the foregoing Opinion, it is this 20th day of July, 2023, ordered that the variance requested for Jeffrey Owens and Stephanie Owens, in Case No. BOA-23-03-0149, be denied.



Howard A. Dean, Chairman



Craig W. McGinnes, Vice-Chairman

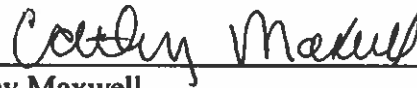


Michael A. Lesniowski, Member

State of Maryland, County of Queen Anne's:

I HEREBY CERTIFY that the foregoing is a true and correct copy of the Opinion and Order of the Board of Appeals of Queen Anne's County in Case No. BOA-23-03-0149, for Jeffrey Owens and Stephanie Owens, which Opinion and Order resulted from a public hearing conducted by the Board of Appeals on June 21, 2023 and that the minutes and a recording of the June 21, 2023 meeting are filed in the office of Board of Appeals.

Certified this 20th day of July, 2023 by:



Cathy Maxwell
Clerk to the Board of Appeals

GUIDANCE ON GRANTING VARIANCES TO FLOODPLAIN MANAGEMENT REQUIREMENTS

A variance, for National Flood Insurance Program (NFIP) purposes, is a grant of relief by a community from floodplain management regulations. It is granted for floodplain management purposes only; hence flood insurance will still be rated according to risk. A variance pertains to a piece of property and must not be personal in nature. A properly issued variance is granted for a parcel of property with physical characteristics so unusual that complying with the ordinance would create exceptional hardship on the applicant or surrounding property owners. The unique characteristics must pertain to the land itself, not the structure, its inhabitants, or the property owners.

The NFIP does not provide any absolute criteria for granting a variance, except in the cases cited below. The best policy is not to grant any variance to the NFIP minimum regulations unless it fits into the categories below, or there are compelling reasons. Individual discretion may be used when considering a variance to ordinance criteria which are more stringent than the NFIP requirements unless those criteria are established by State law or regulations. Specifically, NFIP regulations provide for the granting of a variance in the following situations:

- 1) A structure individually listed on the Federal or State Register of Historic Places is not required to meet the elevation requirement when it is substantially improved, provided the modifications do not preclude the structure's continued designation as a historic structure.
- 2) A functionally dependent use, in which the use of the building is absolutely dependent on its close proximity to water, may be excluded from the elevation requirement, provided that acceptable methods of wet floodproofing are incorporated into the design.
- 3) A new structure or substantial improvement on a lot of one half acre or less in size and contiguous to and surrounded by existing structures below flood level, provided all other variance criteria are met. The assumption is that a larger lot will allow enough flexibility to meet all of the NFIP requirements. This variance situation is not consistent with State regulations, and is not a recommended criterion.

CRITERIA FOR GRANTING VARIANCES

In granting a variance, the following factors must be considered:

- 1) Applicant must show good and sufficient cause for a variance. The cause must pertain to constraints of the property which would not allow reasonable use while meeting the requirements of the ordinance. The variance must not grant special benefits to the applicant not enjoyed by other floodplain residents.
- 2) Applicant will suffer hardship if denied the variance. Again, the hardship must pertain to the characteristics of the land itself, not personal hardship. Any physical characteristic of the land that would justify a variance to the flood elevation requirement is difficult to imagine. Therefore, a variance would be very difficult to grant in the case of #3 above, since other options must be exhausted.
- 3) A variance will not cause increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with other State and local laws or ordinances.
- 4) The variance granted must be the minimum necessary, considering the flood hazard, to afford relief. The greater the hazard, the less the relief that can be afforded. The variance must be modified to be the minimum that will both provide relief and preserve the integrity of the local ordinance. The resulting variance issued may be considerably less than that requested.
- 5) Additional conditions may be added to mitigate any possible detrimental effects of granting the variance. Other property owners cannot be adversely affected in any material way.

HARDSHIP AND VARIANCES

Hardship is the least understood and hardest to establish criterion for granting a variance. To determine whether an applicant has established an exceptional hardship sufficient to justify a variance, the local appeals board must weigh the hardship against the purpose of the ordinance. The floodplain ordinance is based on public safety and damage reduction. If the variance requested is to waive or reduce the elevation requirement, the individual hardship must be weighed against the community's need to protect its citizens against the dangers and damages due to flooding. Only a truly exceptional and unique hardship should persuade a local board to set aside provisions of an ordinance designed with the entire community's safety in mind. In many cases, the applicant may be better advised to seek a variance to other standards that have less impact on public safety, such as lot line setbacks or height requirements. In many cases, the personal circumstances evoke compassion, but the hardship is not sufficient to justify deviation from the flood damage prevention requirements.

A variance cannot be based on the personal circumstances of the applicant. The effects of the variance often survive long after a personal hardship ceases to exist, and can create unforeseen flooding problems. Even if flooding does not occur, the salability of the property may be affected.

A variance to provide access for a handicapped person cannot be granted as an exceptional hardship because the problem is personal in nature and can be solved in other ways than not elevating. In addition, granting a variance in this case raises a critical public safety concern. A disabled person may be unable to evacuate the building during flooding, but may be able to survive the flood by remaining at home safely above the level of the flood waters, if the building is elevated properly. A variance would postpone, and perhaps increase, the personal hardship.

INSURANCE RATES

In considering a variance, the effects on flood insurance premiums should not be minimized. A structure at greater risk to flooding than the ordinance allows will be rated according to the risk. Premiums may be as high as \$25 for each \$100 of coverage. The community must notify the applicant in writing that the issuance of a variance to construct a structure below the BFE will result in increased premium rates and that such construction increases risks to life and property. This notification shall be maintained with a record of all variance actions. Since flood insurance is required by lenders, prohibitively high rates can result in a structure which is difficult or impossible to sell.

FRAUD AND VICTIMIZATION

Buildings that are constructed below the elevation of the 100-year flood will probably remain part of the community for 50 to 100 years. During this time they remain subject to increased risk of damage from flooding and to higher flood insurance premiums. Fraud and victimization may occur if future owners who purchase the building are unaware that it is subject to increased risk and can be insured only at very high flood insurance rates. Therefore, variances should be recorded on the deed to the property so that a title search will disclose these facts.

STATE REGULATIONS AND VARIANCES

Local authorities cannot grant variances to more restrictive State requirements or regulations. State criteria for granting variances differ from NFIP requirements. Therefore, all variance requests must be reviewed and commented on by the Maryland Department of the Environment's State NFIP Coordinating Office.

SUMMARY

The duty of local governments to protect their citizens from flooding is so compelling, and the implications of the cost of insuring a structure below flood level are so serious, that variances from the 100-year flood elevation requirement should not be granted. A grant of relief from the one foot freeboard may be considered, provided all variance criteria are met. Requests for variances to ordinance requirements must be evaluated according to the public safety function that the requirement serves and the additional risk granting a variance would generate. In some cases, variances to other zoning or code requirements may satisfy the need of the applicant, but have less public safety impact. The applicant should be advised to seek relief from these other requirements first.

BEFORE THE BOARD OF APPEALS OF QUEEN ANNE’S COUNTY

* * * * *

In the matter of Application by * Case No. BOA-23-02-0144

Harry D. Covely, Jr. and Donna L. *

Covely *

for Conditional Use *

* * * * *

FINAL DECISION OF THE BOARD

Introduction

The Queen Anne’s County Board of Appeals (the “Board”) held a meeting on June 21, 2023 at 5:00 p.m. to consider Case No. BOA-23-02-0144 for conditional use approval to construct a 150 ft. x 6 ft. extension to an existing 150 ft. x 6 ft. pier, including two (2) 35 ft. x 3 ft. finger piers and four (4) mooring piles filed by Harry D. Covely, Jr. and Donna L. Covely (hereinafter the “Applicants”). The Board members present were Board Chairman, Howard Dean, and Board Members Craig W. McGinnes and Michael Lesniowski.

At the beginning of the hearing, the Board established that all requirements were met governing the filing of the conditional use application, and that proper notice of the June 21st public hearing was provided. Board Chairman Dean administered the oath to all who wished to testify on the application, including the Applicants.

Applicant’s Request

The Applicants are seeking conditional use approval under the provisions of § 18:1-41 of the Code of Public Local Laws of Queen Anne’s County, 1996 Edition (the “Code”), to construct a 150 foot long by 6 foot wide extension to an existing 150 foot long by 6 foot wide pier, including two (2) 35 foot long by 3 foot wide finger piers and four (4) mooring piles, with a total pier length of 300 ft.¹ feet which exceeds the permitted pier length limit of 150 feet at the Applicants’ property located at 435 Cinnamon Teal Drive, Centreville, Maryland in the Third Election District

¹ At the beginning of the Applicants’ presentation, the Applicants amended their application to reduce the length of the pier addition to 100 feet rather than 150 feet so the total length of the proposed pier is 250 feet, and removed the request for finger piers.

(hereinafter the “Property”). Pursuant to § 18:1-41 of the Code, a pier may not extend into a body of water a distance greater than 150 feet, as measured from the mean high water line, unless the Board allows a greater length as a conditional use. The Applicants seek to add an addition to an existing pier which will result in a 300-foot-long pier channelward of the mean high water line.

The file reflects that the Applicants have received a general tidal wetlands license from the Maryland Department of the Environment to construct a 150-foot long by 6-foot wide pier extension, two 35-foot long by 3-foot wide finger piers, and four mooring piles, all extending a maximum of 300 feet channelward of the mean high water line. The file further reflects that the Applicants obtained approval from the Department of the Army, Corps of Engineers.

The Applicants submitted a Zoning Certificate (No. Z23-01-0005) to construct the proposed addition to the existing pier, finger piers and mooring piles, on January 6, 2023. On January 13, 2023, the Queen Anne’s County Department of Planning & Zoning denied the application for exceeding the maximum pier length permitted by § 18:1-41 of the Code.

Applicable Provisions of the Code

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

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

consistent with the Comprehensive Plan, this Chapter 18:1, and other plans, programs, maps, and ordinances adopted by the County.

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

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

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

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

Property Description and Department of Planning & Zoning Recommendations

Ken Southard, Zoning Inspector with the Queen Anne's County Department of Planning & Zoning, presented his Staff Report. Mr. Southard explained the Property. He said it is partially located in a floodplain and has wetlands on the east side. He added that there are hydric soils on the east side of the Property which will not be impacted by the proposal to extend the pier.

Mr. Southard said the Applicants are proposing to construct a 150' by 6' extension to an existing 150' by 6' pier including two 35' by 3' finger piers and four mooring piles. The proposed

pier will extend 150 feet beyond that permitted by the County Code. The existing pier was approved in 2006, around the time when the primary dwelling was constructed. The Property is 27.7 acres.

Mr. Southard said that the proposed pier is consistent with the approval the Applicants received from MDE. He said that the neighboring properties have piers that are 125 feet and 175 feet in length. He added that the proposed pier would far exceed the lengths of adjacent piers in the vicinity. He advised that the Applicants must identify that construction of the pier will not result in substantial or undue adverse impacts on adjacent properties, 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.

Applicant's Presentation

Jeff Thompson, the Applicants' attorney, presented the application. Mr. Thompson advised that the Applicants agreed to revise their application to reduce the total length of the pier to 250 feet instead of 300 feet. Therefore, the Applicants are seeking to extend their existing pier by 100 feet. The Applicants have also removed the request for finger piers from the application. Mr. Thompson explained that the additional 50 feet and the finger piers are not necessary to accommodate the size of the Applicants' boat, which resulted in amending the application.

Mr. Thompson provided an aerial that depicts extensions into the Corsica River around the Applicants' Property, which was marked as Applicants Exhibit 9. Mr. Thompson specifically noted two properties that are adjacent to the Applicants on the same side of the Cove with piers exceeding 150 feet in length: 400 Point Lane is improved with a 271-foot-long pier, and 564 North Hibernia Road is improved with a 338-foot-long pier. Then, Mr. Thompson introduced an aerial photograph of the Chester River, also identified as Applicants Exhibit 9, that identifies multiple properties with piers that exceed 150 feet in length. Both Exhibits identify the Applicants' Property in close proximity to piers that exceed 150 feet in length.

Then, Mr. Thompson introduced Robert Buck Nickerson. Mr. Nickerson is a licensed Land Surveyor and owner of Extreme Measures, LLC, a land surveying company. Mr. Nickerson introduced Applicants Exhibit 10, a bathymetric survey of the Applicants' Property. He added that he has been recognized as an expert in bathymetric surveys and water depths. Mr. Nickerson said

that the average low tide at the end of the Applicants' existing pier is 4.4 to 5 feet. By extending the pier an extra 100 feet, the Applicants will gain an additional 2 feet of water depth. Mr. Nickerson testified that the distance to the channel is 1,300 and advised that a 250-foot-long pier would not exceed $\frac{1}{2}$ of the distance from the mean high water line to the center line of the body of water.

Mr. Nickerson said that he previously testified in front of the Board on a conditional use application to extend a pier longer than 150 feet into the Chester River for a property located on Primrose Point Lane. He said that the property on Primrose Point Lane was similar to the Applicants due to the size of the property. He added that the Applicants have waterfrontage spanning 700 – 800 feet.

Then, Mr. Thompson introduced one of the Applicants, Harry Covely, Jr. Mr. Covely stated that he purchased the Property one year ago. He said that he owns a 65-foot Grand Banks boat with a hard bottom that he currently keeps at Osprey Point in Rock Hall. He applied for this conditional use application to extend his existing pier to permit him to store his boat at his Property during the summer. He explained that the existing pier does not extend into deep enough water because the draft of his boat is 4'3". He added that his boat has a hard bottom which cannot sit on the bottom of water. Mr. Thompson added that a neighboring property owner, Steve Bisciotti, has a 130-foot yacht named the Winning Drive.

Mr. Covely said that he will place lights down the side of the proposed pier. Mr. Thompson explained the bathymetric survey in more detail. He said that the water depths shown are mean low tide which is an average depth at the lower of each day's low tides. However, he explained that the water depth could be lower or higher at times, which must be accounted for in the length of the pier. For example, he explained that the current mean low water depth at the end of the existing pier is 4'4" but at times drops lower than that which would result in damage to the Applicants' boat. Mr. Thompson introduced Applicants Exhibit 12 which contains the specifications for the Applicants' boat and identifies the length of the boat as 66'10". At this length on the existing pier, a portion of the boat would be in water depths of less than 4 feet. He added that the boat is too large to fit on a boat lift.

Testimony from the Public

After the Applicant presented his case, Chairman Dean asked if any members of the public wished to testify. Mark Berry testified in opposition to the application.

Mr. Berry identified himself as an attorney representing Jim Wright, a neighboring property owner in opposition to the application. Mr. Berry brought a previous decision of the Board of Appeals in 2006, Case No. CU-06050001, to the Board's attention. In that application, the property owners of 359 Cinnamon Teal Drive sought to construct a 290-foot long pier. Mr. Berry stated that 359 Cinnamon Teal Drive is 1/3 mile from the Applicants' Property and also abuts Middle Quarter Cove. In that case, Mr. Berry said the applicants sought conditional use approval for a 290-foot pier to accommodate their yacht and that the mean low water depth at 150 feet was 2 feet deep and 3 feet deep at 250 feet. The Board denied the request to exceed the pier length of 150 feet after finding that the proposed use at the proposed location would result in a substantial or undue adverse effect on adjacent properties, the character of the neighborhood, and would be out of proportion for the particular location and the angle that it would cross the cove would interfere with the view and enjoyment of other property owners on the Cove.

After representing Mr. Wright's position, Mr. Berry testified on his own behalf in opposition to the application. He explained the location of his property in relation to the Applicants. He said that there are 10 piers within Middle Quarter Cove, all of which are 150 feet long or less except for one pier which is 170 feet long which was approved after adjacent neighbors agreed to the request. Mr. Berry reiterated the previous Board of Appeals finding on the application for a 290-foot pier at 359 Cinnamon Teal Drive. He said that the character of the Cove has not changed since that application was considered. He argued that if the Applicants' request is approved, it will change the character of the Cove and impact navigability.

Mr. Berry admitted Opposition Exhibit 1 which depicts the site lines of properties within Middle Quarter Cove. He expressed that he and eight of his neighbors would be able to see the Applicants' pier if extended to 250 feet in length. He said that a 250-foot-long pier in the Cove would change the character of the Cove and cause visual distractions, particularly during nighttime while the pier is lit.

He said that the Applicants will not suffer a hardship if not permitted to extend their pier to accommodate their large boat because they currently accommodate two boats on their existing pier. He said that the Applicants currently store a 20-foot-long center console boat and a 35-foot

center console boat at their existing pier. He said that he can already see the Applicants' pier from his property, which would increase if the length of the pier is extended.

Then, Mr. Thompson questioned Mr. Berry. Mr. Thompson explained the differences between the Applicants' Property and 359 Cinnamon Teal Drive. Particularly, 359 Cinnamon Teal Drive is directly across from Middle Quarters Lane and sits at the mouth of Middle Quarter Cove in a narrow area. If the owners of 359 Cinnamon Teal Drive were permitted to extend their pier beyond 150 feet, the pier would have interfered with adjacent piers and impacted navigation due to the close proximity of the property to other piers. Mr. Thompson explained the angle of the property located at 359 Cinnamon Teal Drive and the unique impacts of extending a pier beyond 150 feet in length at a property on an angle. He said that the Applicants' Property is different because it is not on an angle and the pier extends out into open water, rather than towards piers on neighboring properties.

Findings and Conclusions of the Board

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

1. The application is consistent with the 2022 Queen Anne's County Comprehensive Plan which encourages boating and water recreation.
2. A pier may not extend into a body of water a distance greater than 150 feet, as measured from the mean high water line, unless permitted by the Board.
3. The water depth extending out from the Property is shallow.
4. The Property is unique given the amount of waterfront shoreline it has and the proximity to other piers in the Cove.
5. A 250-foot-long pier will not result in substantial or undue adverse impacts on adjacent property, the character of the neighborhood, traffic conditions, parking, public improvements, public sites or rights-of-way, or other matters affecting the public health, safety, and general welfare.
6. The pier will be adequately served by, and will not impose an undue burden on, any of the required improvements referred to in Chapter 18:1, Part 7 of the Code.

Decision

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

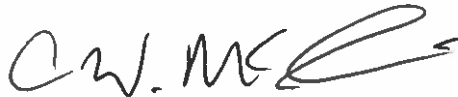
1. 100 ft. x 6 ft. extension to an existing 150 ft. x 6 ft. pier, including four (4) mooring piles, subject to the following condition:
 - a. The Applicants install and maintain safety lights on the length of the pier.

ORDER

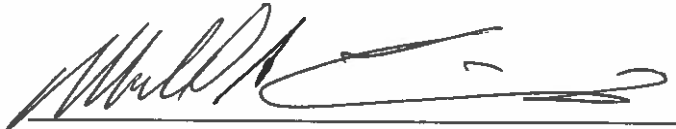
For the reasons set forth in the foregoing Opinion, it is this 19th day of July, 2023, ordered that the conditional use approval requested for Harry D. Covely, Jr. and Donna L. Covely, in Case No. BOA-23-02-0144, be granted, subject to the conditions set forth in the Opinion.



Howard A. Dean, Chairman



Craig W. McGinnes, Vice-Chairman

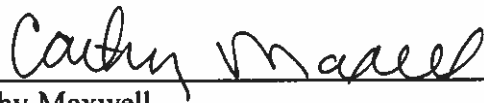


Michael A. Lesniowski, Member

State of Maryland, County of Queen Anne's:

I HEREBY CERTIFY that the foregoing is a true and correct copy of the Opinion and Order of the Board of Appeals of Queen Anne's County in Case No. BOA-23-02-0144, for Harry D. Covely, Jr. and Donna L. Covely, which Opinion and Order resulted from a public hearing conducted by the Board of Appeals on June 21, 2023 and that the minutes and a recording of the June 21, 2023 meeting are filed in the office of Board of Appeals.

Certified this 19th day of July, 2023 by:

A handwritten signature in cursive script, reading "Cathy Maxwell", is written over a horizontal line.

Cathy Maxwell
Clerk to the Board of Appeals

BEFORE THE BOARD OF APPEALS OF QUEEN ANNE’S COUNTY

* * * * *
In the matter of Application by * Case No. BOA-23-05-0152
Michael F. Wertz and Terina W. Wertz *
for Zoning Variance *
* * * * *

FINAL DECISION OF THE BOARD

Introduction

The Queen Anne’s County Board of Appeals (the “Board”) held a meeting on June 21, 2023 at 5:15 p.m. to consider Case No. BOA-23-05-0152 for a variance application filed by Michael F. Wertz and Terina W. Wertz (hereinafter the “Applicants”). The Board members present were Chairman, Howard Dean, and Board Members Craig W. McGinnes and Michael Lesniowski.

At the beginning of the hearing, the Board established that all requirements were met governing the filing of the variance application, and that there was proper notice of the June 21st public hearing. Board Chairman Dean administered the oath to all who wished to testify on the application, including one of the Applicants.

Applicants’ Request

The Applicants request a variance to the provision of § 18:1-36.B. of the Code of Public Local Laws of Queen Anne’s County, 1996 Edition (the “Code”), to reduce the required fifty (50) foot rear yard setback to thirty-three (33) feet to construct a sixteen (16) foot by sixteen (16) foot screen porch with a four (4) foot by four (4) foot landing and steps to the existing dwelling. The Applicants’ property is located at 206 Mallard Drive in the Mallard Pond Subdivision near Stevensville in the 4th Election District (the “Property”). The Property is located in the Countryside (CS) Zoning district.

The Applicants submitted a Building Permit (No. BR23-03-0155) to construct the addition to the existing single-family dwelling to include the sixteen (16) foot x sixteen (16) foot screen porch with a four (4) foot by four (4) foot landing and steps to grade. The total floor area of the

addition is two hundred seventy-two (272) square feet. On April 11, 2023, the Queen Anne’s County Zoning Inspector denied the Applicants’ Building Permit after determining that the proposed addition did not meet the minimum rear yard setback of fifty (50) feet as required by Chapter 18:1-36 of the County Code.

Applicable Provisions of the Code

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

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

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

Property Description and Department of Planning & Zoning Recommendations

Joe Pippin, Zoning Inspector with the Queen Anne’s County Department of Planning & Zoning presented his Staff Report. Mr. Pippin advised that the Property contains no hydric soils, wetlands, or sensitive species and that the Property is not located within the Critical Area. He said the Applicants are proposing to construct a sixteen (16) foot by sixteen (16) foot screen porch addition with a four (4) foot by four (4) foot landing and steps to grade. The Applicants are requesting relief from § 18:1-36.B. to reduce the required fifty (50) foot rear yard setback to thirty-three (33) feet.

Then, Mr. Pippin described the Property. He said that the existing dwelling was built in 1994 and that the Applicants purchased the Property in 2022. The Property is currently improved with a house, detached garage, and shed. He said that the existing dwelling was constructed on the

fifty (50) foot rear building restriction line. The existing shed and garage on the Property sit closer to the rear yard property line than the proposed addition will. The shed and garage are approximately twenty-five (25) feet from the rear yard property line.

The Property fronts a cul-de-sac and the front yard is narrower than the rear yard. The Applicant is seeking to construct the porch addition on the rear side of the existing dwelling. The only other location for a porch addition due to the location of the existing driveway and garage is the side yard on the east. However, the southeast portion of the Property is encumbered by the septic reserve area and cannot be constructed upon.

Applicant's Presentation

Michael Wertz, Property owner, presented the application. He said that the Property fronts Mallard Drive and abuts Plantation Lane, a private roadway. He said he is seeking to construct a modest porch addition to provide a place to relax which he currently does not have. The proposed porch is two hundred seventy-two (272) square feet. Mr. Wertz said that the proposed porch is in line with neighboring properties.

Mr. Wertz explained the peculiar shape of the Property which creates a small building envelope. Due to the location of the Property on the cul-de-sac, the front yard of the Property is smaller than neighboring properties. The existing dwelling is also setback further from the street than neighboring properties which causes it to sit on the rear yard property line. Mr. Wertz explained the location of the septic reserve area and the inability to construct an addition in that location. He added that due to site restrictions, the porch addition cannot be constructed in another location to meet the applicable setbacks.

Testimony from the Public

After the Applicant presented his case, Chairman Dean asked if any members of the public wished to testify. No one testified.

Findings and Conclusions of the Board

The Board finds the testimony and application provided by the Applicant credible and persuasive. The Board concludes that the evidence justifies approval of the requested variance.

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

1. A literal enforcement of the rear yard setback would result in practical difficulty.
2. The location of the existing septic reserve area creates practical difficulty and site restrictions.
3. The proposed porch addition sits farther from rear yard property line than the existing shed and garage on the Property.
4. The Property is a peculiar shape given its location in a cul-de-sac.
5. The variance will not be contrary to the public interest.
6. The proposed porch addition is modest.
7. There are no alternative locations available on the Property to construct the porch addition.
8. The variance is the amount minimally necessary to ameliorate conditions giving rise to any practical difficulty or unnecessary hardship.

Decision

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

A variance from the provisions of § 18:1-36.B. to permit the Applicant to reduce the required fifty (50) foot rear yard setback to thirty-three (33) feet to construct a sixteen (16) foot by sixteen (16) foot screen porch with a four (4) foot by four (4) foot landing and steps.

ORDER

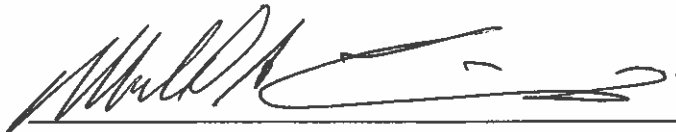
For the reasons set forth in the foregoing Opinion, it is this 18th day of July, 2023 ordered that the variance requested for Michael F. Wertz and Terina W. Wertz, in Case No. BOA-23-05-0152, be granted.



Howard A. Dean, Chairman



Craig W. McGinnes, Vice-Chairman



Michael A. Lesniowski, Member

State of Maryland, County of Queen Anne's:

I HEREBY CERTIFY that the foregoing is a true and correct copy of the Opinion and Order of the Board of Appeals of Queen Anne's County in Case No. BOA-23-05-0152, for Michael F. Wertz and Terina W. Wertz, which Opinion and Order resulted from a public hearing conducted by the Board of Appeals on June 21, 2023 and that the minutes and a recording of the June 21, 2023 meeting are filed in the office of Board of Appeals.

Certified this 18th day of July, 2023 by:



Cathy Maxwell
Clerk to the Board of Appeals

BEFORE THE BOARD OF APPEALS OF QUEEN ANNE’S COUNTY

* * * * *

In the matter of Application by * Case No. BOA-23-03-0151

Damon Pruitt and Sharrell Boyles *

for Conditional Use *

* * * * *

FINAL DECISION OF THE BOARD

Introduction

The Queen Anne’s County Board of Appeals (the “Board”) held a meeting on June 21, 2023 at 5:30 p.m. to consider Case No. BOA-23-03-0151 for conditional use approval to construct a 215 ft. x 6 ft. pier with a 100 ft. x 3 ft. walkway, a 24 ft. x 3 ft. “L” shaped finger pier, one (1) boatlift with associated mooring piles, and two (2) mooring piles filed by Damon Pruitt and Sharrell Boyles (hereinafter the “Applicants”). The Board members present were Board Chairman, Howard Dean, and Board Members Craig W. McGinnes and Michael Lesniowski.

At the beginning of the hearing, the Board established that all requirements were met governing the filing of the conditional use application, and that proper notice of the June 21st public hearing was provided. Board Chairman Dean administered the oath to all who wished to testify on the application, including the Applicants.

Applicant’s Request

The Applicants are seeking conditional use approval under the provisions of § 18:1-41 of the Code of Public Local Laws of Queen Anne’s County, 1996 Edition (the “Code”), to construct a 215 ft. x 6 ft. pier with a 100 ft. x 3 ft. walkway, a 24 ft. x 3 ft. “L” shaped finger pier, one (1) boatlift with associated mooring piles, and two (2) mooring piles which exceeds the permitted pier length limit of 150 feet at the Applicants’ property located at 238 Cabin Creek Road near Grasonville, Maryland in the 5th Election District (hereinafter the “Property”). Pursuant to § 18:1-41 of the Code, a pier may not extend into a body of water a distance greater than 150 feet, as measured from the mean high water line, unless the Board allows a greater length as a conditional use. The Applicants seek to extend a pier 215 feet channelward of the mean high water line.

The file reflects that the Applicants have received a general tidal wetlands license from the Maryland Department of the Environment to construct a 100 foot long by 3 foot wide walkway over vegetated tidal wetlands, a 215 foot long by 6 foot wide timber pier, a 24 foot long by 3 foot wide “L” shaped finger pier, a boat lift with associated piles, and two mooring piles, all extending a maximum of 215 feet channelward of the mean high water line. The file further reflects that the Applicants obtained approval from the Department of the Army, Corps of Engineers.

The Applicants submitted a Zoning Certificate (No. Z23-01-0018) to construct the proposed walkway and pier, to include the boat lift and piles, on January 23, 2023. On March 1, 2023, the Queen Anne’s County Department of Planning & Zoning denied the application for exceeding the maximum pier length permitted by § 18:1-41 of the Code.

Applicable Provisions of the Code

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

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

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

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

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

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

Property Description and Department of Planning & Zoning Recommendations

Mike Olds, Zoning Inspector with the Queen Anne's County Department of Planning & Zoning, presented his Staff Report. Mr. Olds advised that the Property is 2.11 acres. It is located in the Neighborhood Conservation-20 (NC-20) District. The entire Property is located within the Critical Area and is designated Resource Conservation Area (RCA). Mr. Olds said that the Property is partially located in a floodplain which will require any electrical panel boxes placed onsite to meet floodplain requirements. There are hydric soils on the rear of the Property which will not be impacted and he added that there are no sensitive species located within the project area. He said that the proposed project site is located in a Historic Waterfowl Concentration Area

which is noted on the Maryland Department of the Environment and Army Corps. of Engineers License for the proposed pier.

He said that the Applicants are proposing to construct a 100' by 3' walkway over vegetated tidal wetlands to a 215' by 6' pier to include a 24' by 3' L-shaped walkway, one boatlift with associated mooring piles and two additional mooring piles. He added that the proposed pier will extend 65 feet over the 150 feet permitted by the County Code. He said the Applicants are seeking to exceed the length permitted by the County Code and that the pier will not extend more than a quarter distance of the waterway.

Mr. Olds said that the existing dwelling on the Property was constructed in 2000 and the Applicants purchased the Property in 2022. He added that the proposed pier does not meet the applicable zoning requirements due to the length. The pier will extend out of a cove into Cabin Creek. The proposed pier will be setback 62 feet from the existing pier located at 208 Cabin Creek and 56 feet from the existing pier located at 240 Cabin Creek, which properties are on either side of the proposed pier. Mr. Olds said that the width of the applicable section of waterway is approximately 12,542 feet.

Mr. Olds said that the pier located at 208 Cabin Creek is 150 feet and the pier located at 240 Cabin Creek is 110 feet.

Applicant's Presentation

Damon Pruitt, one of the Applicants, presented the application. Mr. Pruitt said that he has a 24-foot boat that he would like to moor at his Property and is seeking to construct a 215 foot long pier to access the water and moor his boat. He then explained the necessity for the length of pier. The necessity for a 215-foot-long pier is that the water in the cove is shallow. If the Applicants are required to construct a 150-foot pier, the pier would end in water that is 1 to 2 feet deep at high tide. With a 215-foot-long pier, the water depth at the end of the pier will be 3 to 4 feet at high tide.

Mr. McGinnes asked about the location of the Property. Mr. Pruitt said that the Property is setback into the cove. Due to how far the Property is setback, with a pier that is 215 feet long, the pier will not extend as far into the channel as the neighboring piers that are less than 150 feet in

length. Mr. Pruitt said that he is seeking to construct a pier that extends the same distance as his neighbors' piers.

Mr. Pruitt submitted photographs, Applicants Exhibit 9, depicting his children standing at the end of a neighbor's pier with the water level at their knees. He also admitted a pamphlet, Applicants' Exhibit 8, to depict the nature of the Property setback within the cove. Leifur Sweitzer, from Sweitzer Marine, testified that the Maryland Department of the Environment requires a water depth of 3.5 to 4 feet at mean low water to permit a boat lift. He added that the Applicants desire a boat lift so that they may store their boat at the Property safely.

Testimony from the Public

After the Applicant presented his case, Chairman Dean asked if any members of the public wished to testify. There being no public comment, the Board deliberated.

Findings and Conclusions of the Board

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

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

1. The application is consistent with the 2022 Queen Anne's County Comprehensive Plan.
2. A pier may not extend into a body of water a distance greater than 150 feet, as measured from the mean high water line, unless permitted by the Board.
3. The water depth extending out from the Property is shallow.
4. The Property is set back into the cove.
5. The two neighboring properties are improved with piers that will extend further into the water than the Applicants.
6. The use is compatible with the existing neighborhood.
7. A 215-foot-long pier will not result in substantial or undue adverse impacts on adjacent property, the character of the neighborhood, traffic conditions, parking, public

improvements, public sites or rights-of-way, or other matters affecting the public health, safety, and general welfare.

8. The pier will be adequately served by, and will not impose an undue burden on, any of the required improvements referred to in Chapter 18:1, Part 7 of the Code.

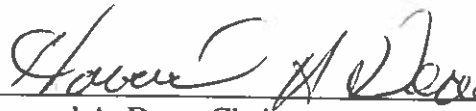
Decision

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

1. 215 ft. long x 6 ft. wide pier with a 100 ft. long x 3 ft. wide walkway, a 24 ft. long x 3 ft. wide “L” shaped finger pier, one (1) boatlift with associated mooring piles, and two (2) mooring piles, subject to the following condition:
 - a. The Applicants install and maintain safety lights on the length of the pier.

ORDER

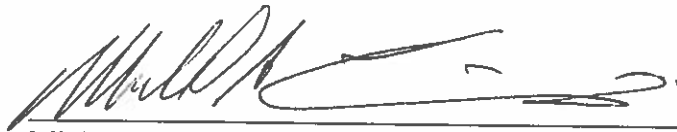
For the reasons set forth in the foregoing Opinion, it is this 18th day of July, 2023, ordered that the conditional use approval requested for Damon Pruitt and Sharrell Boyles, in Case No. BOA-23-03-0151, be granted, subject to the conditions set forth in the Opinion.



Howard A. Dean, Chairman



Craig W. McGinnes, Vice-Chairman



Michael A. Lesniowski, Member

State of Maryland, County of Queen Anne's:

I HEREBY CERTIFY that the foregoing is a true and correct copy of the Opinion and Order of the Board of Appeals of Queen Anne's County in Case No. BOA-23-03-0151, for Damon Pruitt and Sharrell Boyles, which Opinion and Order resulted from a public hearing conducted by the Board of Appeals on June 21, 2023 and that the minutes and a recording of the June 21, 2023 meeting are filed in the office of Board of Appeals.

Certified this 18th day of July, 2023 by:



Cathy Maxwell
Clerk to the Board of Appeals