BEFORE THE BOARD OF APPEALS OF QUEEN ANNE’S COUNTY

In the Matter of an Application by

Charles E. Page

Requesting a Zoning Variance

Case No. BOA-19-05-0035

OPINION AND ORDER

Introduction

The matter before the Board of Appeals of Queen Anne’s County (“Board”) in this case is an application for a zoning variance filed by Mr. Charles E. Page (“Applicant”). The Applicant seeks a variance to allow an accessory building to cover more lot area than allowed.

On June 25, 2019, beginning at 5:00 p.m., the Board conducted a public hearing in the main meeting room adjunct to the Board’s offices at 110 Vincit Street, Centreville, Maryland, to consider the Applicant’s variance 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 June 25th 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. Howard A. Dean, Vice Chairman (acting as Chairman); Mr. Craig W. McGinnes, Member; and Mr. William D. Moore, Alternate Member.

Requested Relief

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

In this case, the principal building is the Applicant’s home, which covers 1,152 square feet of lot area. The Applicant proposes to build a 30-foot by 32-foot storage building, which the Applicant plans to use as a garage and to store personal property. The new storage building will replace an existing 10-foot by 14-foot shed presently on the Applicant’s lot.¹ Based on the size of the Applicant’s home, accessory buildings on the Applicant’s lot may cover up to 691 square feet. Thus, to accommodate the 960 square feet of cover associated with the proposed storage building, the Applicant seeks a variance in the amount of 269 square feet.

**Variance Standards**

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

1. Literal enforcement of Chapter 18:1 of the Code would result in unnecessary hardship or practical difficulty as the result of specified conditions;

2. Those conditions are peculiar to the property involved;

3. Those conditions are not the result of any action taken by the appellant;

4. The variance will not be contrary to the public interest; and

5. Evaluation of the alternatives proves a variance is required.

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

¹As noted later in this Opinion, the Applicant testified he will raze the existing shed after finishing construction of the new storage building, assuming the Board grants the requested variance. The Applicant is not basing the amount of variance requested on keeping the existing shed. Thus, the amount of variance the Applicant seeks, and the amount of variance the Board will consider, is based on the new storage building being the only accessory building on the lot.
Property and Neighborhood Description

The Applicant's lot is in the Fourth Election District of Queen Anne's County at 107 Tennessee Road, about 300 feet west of Romancoke Road (Maryland Route 8) in the Stevensville area of the County ("Property"). The Property is a platted lot in the Kent Island Estates subdivision, designated as lot 20 in block R. In turn, block R of Kent Island Estates is designated as parcel 92 on sectional zoning map no. 70.

The Property is zoned NC-20, Neighborhood Conservation. NC-20 zoning allows single-family homes, including related accessory structures, and provides for an average residential lot size of 20,000 square feet. Although not a waterfront parcel, about 65% of the Property is in the Chesapeake Bay Critical Area. The County's critical-area maps designate this portion of the Property as part of an LDA, Limited Development Area. Among other uses, LDA regulations allow for single-family residential development at densities of up to four dwelling units per acre. The proposed storage building will be located mostly outside of the critical-area portion of the Property. The small amount of impervious surface associated with one corner of the proposed storage building in the critical area will not cause the Property to exceed critical-area limitations on impervious surfaces, and thus no critical-area variance is needed for the proposed building.

The Property is 21,600 square feet (about a half-acre) in size. The Property is rectangular in shape, with a depth of 180 feet. The Property's north side fronts 120 feet along the south side of Tennessee Road. The Property has no significant slopes; it is basically flat. The Property's yards are mostly grassed, but the Property also contains several mature trees and other vegetation, especially in the rear yard.

The Property is improved with a split-level single-family home containing 1,358 square feet of floor area. The home has a small deck and steps along the rear, at the southeast corner, and a stoop and steps along the street side. There is also an access ramp and small landing along
the home’s east side, next to the driveway. The driveway is paved and opens to a parking area by the home. The existing shed the Applicant proposes to remove is situated at the Property’s southwest corner in the critical area. The Property’s side and rear yards are fenced.

The west side of Kent Island Estates constitutes the Property’s neighborhood. The neighborhood is bounded by Maryland Avenue to the north, Romancoke Road to the east, Virginia Road and North Lake Road to the south, and the Chesapeake Bay to the west. Lots in the neighborhood are generally the same size as the Property. The lots are generally improved by single-family homes similar in size to the Applicant’s home, although most of the homes near and along the Chesapeake Bay are larger. The neighborhood can be characterized as a medium-density single-family community.

**Department of Planning and Zoning Recommendation**

Mr. Harold Veasel, a zoning inspector with the County’s Department of Planning and Zoning ("P&Z") represented P&Z during the public hearing. Mr. Veasel offered into evidence P&Z’s staff report, which the Board admitted as P&Z Exhibit 1. Near the end of his testimony, after questions arose about the Chesapeake Bay critical area, Mr. Veasel projected an aerial photograph (Applicant’s Exhibit 3) onto a large screen visible to those attending the hearing. The photograph is annotated with the critical-area boundary.

Mr. Veasel testified the home on the Property covers 1,152 square feet of ground, which means the 60% limit for accessory-building cover is 691 square feet. Mr. Veasel noted no reduction was taken from the 691 square-foot figure for the existing shed in the Property’s rear yard because the Applicant plans to remove the shed when the new storage building is finished.

Mr. Veasel testified the proposed storage building will measure 30 feet by 32 feet. The proposed building will thus cover 960 square feet of ground, which would require a variance in the amount of 269 square feet.
Regarding the critical area, Mr. Veasel testified that when the small portion of the proposed building that will be in the critical area is added to existing improvements in the critical area, the total impervious surface in the critical area would not exceed the limit on impervious surfaces. Finally, Mr. Veasel testified the Applicant’s proposed building will not be out of character with other improvements in Kent Island Estates because some lots are improved with large detached garages and pole buildings.

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

**Applicant’s Presentation**

Mr. Charles E. Page appeared before the Board to present his case. Mr. Page testified he needs the proposed storage building to house his two trucks and motorcycle. The building will help protect the vehicles and free-up outdoor space for guests to park. Mr. Page also told the Board he is a mechanic by trade. He has a large quantity of tools and equipment for which he needs storage space.

Mr. Page testified the proposed building will be a pole building but will have a cement floor and will be enclosed on all sides, with garage doors facing Tennessee Road. Mr. Page mentioned he plans to build a larger deck along the home’s south side. At this point, Mr. Veasel interjected that the footprint of the deck would be considered as part of the home’s footprint. Thus, when the larger deck is built, the amount of the variance will become less because the building-cover limit will be increased by 60% of the deck’s increased footprint.

Mr. Page testified the lot next door at 105 Tennessee Road is improved with a large detached building, as is a nearby lot to the west at 326 Tennessee Road. Mr. Page presented two aerial photographs that show the accessory buildings on these lots. The Board admitted the photographs into evidence as Applicant’s Exhibits 7A and 7B. Mr. Page does not believe his
proposed building will adversely affect nearby lots or the community generally. Concerning the existing shed in the Property’s rear yard, Mr. Page testified he will remove the shed when he is able to use the new storage building. He told the Board he currently keeps a mower and other lawn-maintenance equipment in the shed.

**Testimony by Others**

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

**Findings and Conclusions of the Board**

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

1. Because of conditions associated with the Property, the Board concludes that a literal enforcement of the provisions of §18:1-45.C.(2) of the Code would result in a practical difficulty. Evidence before the Board establishes the Property was platted in 1950 as two smaller lots long before the Property was zoned NC-20. Even though assemblage of the two lots resulted in a parcel of about a half-acre in size, the Property was developed in 1987, which is before the accessory-building cover limit was adopted into law. Therefore, the developer could not have foreseen the effect of the 60% cover limit when designing and locating the home on the Property.

If the developer had been able to consider the effect of the 60% cover limit, the home on the Property could have been located and designed to accommodate an attached garage. An attached garage would be part of the principal structure and not an accessory structure, and thus would not be subject to the 60% cover limit. Applicant’s Exhibit 4 demonstrates there is ample room on the Property to have sited the home closer to one side lot line or another, thereby leaving room for an attached garage on the opposite side if the home were designed for such a
future addition. As sited, however, there is not enough room on the west side of the home for an attached garage, and, although there would be room for an attached garage on the east side of the home, the home was not designed for such an addition on that side. A garage addition on the east side would eliminate outdoor space needed for access and parking, would require removal of an access ramp and associated landing, and would diminish the use and enjoyment of the deck along the rear of the home.

The foregoing conditions preclude construction of an attached garage, even though the Property’s existing impervious surfaces are sufficiently below the maximum to allow an attached garage the same size as the detached building the Applicant proposes. The foregoing conditions thus create a practical difficulty for constructing a detached building, in that these conditions limit the size of a detached building beyond the purposes of the 60% lot cover requirement.

2. The Board concludes that the foregoing conditions are peculiar to the Property. The evidence establishes the platting and development of the Property prior to NC-20 regulations uniquely affects the Property. Although the Board would not usually consider the location of existing improvements on a lot to be physical conditions justifying a variance, in this case the improvements existed prior to the 60% cover limit. Accordingly, in the Board’s view, at the time the 60% cover limit became law, the improvements were just as much a part of the Property’s physical conditions as, for example, conditions such as lot shape and topography.

3. The foregoing conditions are not the result of actions taken by the Applicant. The Applicant is not responsible for the platting and original development of the Property. The Applicant took title to the Property on March 23, 2016 (see Applicant’s Exhibit 2), well after the Property was platted and developed.

4. The Board concludes the variance will not be contrary to the public interest. The Board finds it significant in this case that the 60% cover limit would not apply to an attached
garage. Had the home on the Property been designed and sited differently, this one-half-acre lot could have supported attaching a garage addition to the home (the principal structure), as shown by the fact that the proposed detached building meets applicable setback and lot-coverage requirements, including critical-area limits on impervious surfaces. Even if the Applicant were able to add a garage to the east side of the home, the Board finds such a location would cause a greater impact to the abutting lot than will the proposed detached building, because the detached building allows for greater light, air, and view around the home on the abutting lot, as well as around the home on the Property.

Furthermore, some similarly sized lots in Kent Island Estates, including along Tennessee Road, are improved with similarly sized detached accessory buildings. The lot next door to the east is one of those lots. Other lots are improved with homes that include attached garages. Thus, garages and storage buildings of one form or another are common in Kent Island Estates. Constructing a new storage building on the Property will add to the value of the Property, which in turn will incrementally benefit property values in the neighborhood. Also, the Board notes the impervious surface associated with the older storage building (to be removed) is in the critical area. Removing that impervious surface is in the public interest.

The Board finds it significant that no one appeared before the Board to object to the variance. In addition, the Department of Planning and Zoning does not object to the variance. Accordingly, the Board infers that adjacent and nearby lots will not be adversely impacted by the grant of the requested variance. Moreover, as previously noted, the evidence establishes that even with an accessory building that exceeds the 60% Code maximum, proposed development on the lot will not exceed the critical-area impervious coverage limits for LDA-designated lots.

5. The Board also concludes that an evaluation of alternatives proves the requested variance is required. Other than constructing an attached garage, which is not a viable option in
this case, no practical alternative exists to add a storage building to the Property. Conceivably, the Applicant could construct a smaller detached building. But given the fact the Property could have easily accommodated a 960-square-foot garage attached to the home, if the home had been designed and located differently, the Board finds in this case that a smaller detached building represents an artificial limit. Moreover, a smaller building would not meet the Applicant’s needs and would not have the same degree of positive effect on property values.

6. The Board concludes the variance requested is the minimum variance necessary. An additional 269 square feet equates to about a 39% increase in accessory-building cover, which the Board finds is a supportable increase for a one-half-acre lot in this Kent Island Estates neighborhood. The Board also finds the proposed accessory building is a reasonable improvement to the Property, consistent with other accessory buildings in the neighborhood. Furthermore, if the home on the Property were only about 448 square feet larger—as some homes in Kent Island Estates are—the Applicant could construct the proposed garage without a variance. Finally, the Board notes the Applicant plans to enlarge the deck along the rear of his home, which will have the effect of retroactively reducing the amount of the variance.

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 in the amount of 269 square feet from the 60% accessory-building cover limit set forth in § 18:1-45.C.(2) of the Code to allow the Applicant to construct a 30-foot by 32-foot pole building to be used as a residential garage and for storage of personal property. The Applicant must locate the accessory building authorized by the foregoing variance in substantial accord with Applicant’s Exhibit 4.
ORDER

For the reasons set forth in the foregoing Opinion, it is this 17th day of July, 2019, ordered that the variance requested for Charles E. Page, in Case No. BOA-19-05-0035, be granted.

Howard A. Dean, Vice-Chairman (Acting as Chairman)

Craig W. McGinnes, Member

William D. Moore, Alternate Member
State of Maryland, County of Queen Anne's:

I HEREBY CERTIFY that the foregoing is a true and correct copy of the Opinion and Order of the Board of Appeals of Queen Anne's County in Case Number BOA-19-05-0035, for Charles E. Page, which Opinion and Order resulted from a public hearing conducted by the Board of Appeals on June 25, 2019 and that the minutes and a recording of the June 25, 2019 meeting are filed in the office of Board of Appeals.

Certified this 17th day of July, 2019 by:

\[Signature\]

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

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In the Matter of an Application by

Saunders Construction Co. Case No. BOA-19-05-0034

Requesting a Zoning Variance

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OPINION AND ORDER

Introduction

The matter before the Board of Appeals of Queen Anne’s County ("Board") in this case is an application for a zoning variance filed by Saunders Construction Co. ("Applicant"). The Applicant seeks a variance to reduce the minimum rear-yard setback applicable to lots zoned NC-20, Neighborhood Conservation.

On June 25, 2019, beginning at 5:15 p.m., the Board conducted a public hearing in the main meeting room adjunct to the Board’s offices at 110 Vincit Street, Centreville, Maryland, to consider the Applicant’s variance 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 June 25th 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. Howard A. Dean, Vice Chairman (acting as Chairman); Mr. Craig W. McGinnes, Member; and Mr. William D. Moore, Alternate Member.

Requested Relief

The Applicant requests a variance to build a one-story single-family home with a 17-foot rear-yard setback. Overall, the proposed home measures 33.8 feet in depth by 74 feet in length. This overall size includes a 20-foot by 24-foot attached garage and a 6-foot by 29.6-foot porch
along the front of the home. For lots zoned NC-20, the minimum rear-yard setback established by § 18:1-19.E.(1)(c)[4][f][iii] of the Code is 50 feet. Accordingly, the Applicant requests a variance in the amount of 33 feet.

**Variance Standards**

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

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

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

**Property and Neighborhood Description**

The Applicant’s lot is in the Fourth Election District of Queen Anne’s County at 210 Wicomico Road, about 1,500 feet east of Romancoke Road (Maryland Route 8) in the Stevensville area of the County (“Property”). The Property consists of four platted lots originally designated as lots 3, 5, 7, and 9 in section 1, block N, in the Kent Island Estates subdivision. In turn, block N of Kent Island Estates is designated as parcel 112 on sectional

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1 At present, Loraine M. Dailey owns the Property. An LLC associated with the Applicant is the contract purchaser of the Property. The Applicant will build the proposed home.
zoning map no. 70. To receive a sewer allocation, the four original lots were merged into one lot. The new lot is known as lot 3.

The Property is zoned NC-20, Neighborhood Conservation. NC-20 zoning allows single-family homes and provides for an average residential lot size of 20,000 square feet. Although located in a community with waterfront lots, the Property is not in the Chesapeake Bay Critical Area. The Property is 33,200 square feet (about 0.76 of an acre) in size. The Property is basically rectangular in shape. The Property’s north side fronts 400 feet along the south side of Wicomico Road. The Property’s depth, west to east, ranges from 86.61 feet to 76.49 feet.

At present, the Property is unimproved and heavily wooded. The Property has no significant slopes; it is essentially flat. But the Property includes significant areas of nontidal wetlands. Nontidal wetlands also abut the Property to the south.

The east side of Kent Island Estates and adjacent parcels constitute the Property’s neighborhood. The neighborhood can be characterized as a still-developing medium-density single-family community. The neighborhood is bounded by Laird Benton Road to the north, Shipping Creek and Eastern Bay to the east, and Romancoke Road to the south and west. Many homes in the neighborhood are situated on two (or more) lots. Owners merged abutting lots in the same ownership to obtain a sewer allocation. Without access to public sewer, lots in the neighborhood generally are unbuildable.

Along the neighborhood’s waterfront, lots are developed with single-family homes larger than the home the Applicant proposes to build. The waterfront homes include attached or detached garages, decks, driveways, and private piers. Several waterfront lots are improved with in-ground swimming pools.

Away from the waterfront, significant areas of the neighborhood are undeveloped. Developed lots in the neighborhood contain single-family homes generally as large as, or larger
than, the home the Applicant proposes to build. These lots also support attached or detached garages, driveways, and other residential accessory structures.

From Romancoke Road, Wicomico Road runs west to east, then turns southward. Along the north side of the west-to-east portion of Wicomico Road, there are about ten homes. Along the south side, there are about half that number, mostly clustered close to Romancoke Road. Two large undeveloped parcels, not part of Kent Island Estates, abut many of the lots along the south side of Romancoke Road. From aerial photographs in evidence, these large parcels appear to contain streams and wetlands.

**Department of Planning and Zoning Recommendation**

Mr. Harold Veasel, a zoning inspector with the County’s Department of Planning and Zoning (“P&Z”) represented P&Z during the public hearing. Mr. Veasel offered into evidence P&Z’s staff report, which the Board admitted as P&Z Exhibit 1. As Mr. Veasel went through the report and described the Applicant’s proposal, he referred to a copy of the variance site plan projected onto a large screen visible to those attending the hearing.

Mr. Veasel testified the four original lots were combined into one building lot that today forms a lot of about three-quarters of an acre. As with other abutting lots in the neighborhood under the same ownership, the four lots were required to be merged to receive a sewer allocation. According to Mr. Veasel, public sewer is now available to this portion of Kent Islands Estates. The availability of public sewer means development in the neighborhood has resumed and lot owners will be building homes on undeveloped lots in the future, as some owners already have.

Mr. Veasel described the Property as having a narrow configuration in terms of depth. Mr. Veasel testified the Property is located close to a corner lot owned by MD Residential Lacrosse, LLC on the north side of Wicomico Road. The Board recently granted a variance to reduce the front-yard setback for one of this lot’s two front yards (Case No. BOA-19-03-0029).
In answer to a question from the Board, Mr. Veasel testified the large parcel (parcel 18) to the south of the Property would not access Wicomico Road. Instead, the parcel’s access would most likely be via Romancoke Road. Regarding the porch along the front of the proposed home, Mr. Veasel testified the porch will meet the 35-foot minimum front-yard setback required for lots zoned NC-20.

In summary, Mr. Veasel testified P&Z has no objection to the requested variance due to the shallow depth of the Property.

**Applicant’s Presentation**

Mr. Scott Saunders appeared before the Board to present the Applicant’s case. Mr. Saunders confirmed there had been a lot consolidation of the original four lots into one lot. As a result of the lot consolidation, a sewer allocation is available for the Property. But Mr. Saunders told the Board the Property does not yet have a physical sewer tap in place.

Mr. Saunders testified that even with the consolidated lot, a variance is needed to build a home on the Property because of the Property’s shallow depth. He testified the Property is not in the critical area; however, 75% to 80% of the Property consists of nontidal wetlands. The wetlands caused the Applicant to place the proposed home at the western end of the Property. Although locating the home toward the west, the Applicant will still need a permit from the Maryland Department of the Environment (MDE) to disturb a small area of nontidal wetlands. Mr. Saunders indicated the Applicant could not obtain a County building permit until it obtains MDE approval.²

**Testimony in Opposition**

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²Ms. Vivian Swinson, the County’s Zoning Administrator, was present during the hearing. Ms. Swinson confirmed the County would not issue a building permit until MDE has issued a letter of authorization to disturb nontidal wetlands.
Ms. Robin Morgan of 511 Talbot Road appeared in opposition to the Applicant’s variance request. Although her waterfront lot is some distance away from the Property, Ms. Morgan testified she travels by the Property all the time, usually while biking in the neighborhood.

Ms. Morgan described the Property as having an unusual configuration, but she opined the Property could still be developed without a variance. Ms. Morgan told the Board she is a landscape architect and even though she has not seen many details about the Applicant’s proposal, she believes the Property can support a home within existing regulations. For example, Ms. Morgan noted the Applicant could move the front porch to the side of the home, which would allow the home to be sited closer to Wicomico Road.

Ms. Morgan testified the Property is “special” and needs to be treated specially. She has seen the Property flood and has watched water and sediment flow from the Property after storms. Observing that many lots in the neighborhood have recently been offered for sale, Ms. Morgan testified the quality of life in this part of Kent Island is at stake. She is concerned that approval of a variance to develop the Property would set a bad precedent. Ms. Morgan told the Board the best solution may be that the Property remain undeveloped.

Testimony by Others

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

Findings and Conclusions of the Board

The Board finds the testimony and exhibits provided by Mr. Veasel and Mr. Saunders to be credible and persuasive. The Board also accepts the factual content of Ms. Morgan’s testimony, but respectfully disagrees with her suppositions regarding the requested variance.
Accordingly, after duly considering the factors set forth in § 18:1-121.C. of the Code, the Board finds and concludes as follows.

1. Because of conditions associated with the Property the Board concludes literal enforcement of the minimum rear-yard setback found in § 18:1-19.E.(1)(c)[4][f][iii] of the Code would result in practical difficulty. The most obvious condition is the shape—and especially the depth—of the Property. Also relevant is the fact most of the Property consists of nontidal wetlands. These conditions work together to create practical difficulty in developing the Property.

The Property is long and shallow. Although basically rectangular in shape, the Board finds it significant that, from west to east, the Property’s depth decreases by about ten feet. As Mr. Saunders testified, because of the presence of nontidal wetlands, the Applicant needs to site the planned home at the western end of the Property, where coincidentally the depth is the greatest. Indeed, the Applicant has sited the home as close to the Property’s western side lot line as possible while still observing the minimum 15-foot side-yard setback. Even so, the Applicant still must disturb a small area of nontidal wetlands, for which the Applicant must seek approval from MDE.

The 50-foot minimum rear-yard setback required by § 18:1-19.E.(1)(c)[4][f][iii] of the Code is mirrored by a minimum 35-foot front-yard setback required by § 18:1-19.E.(1)(c)[4][f][i] of the Code. Added together, the two setbacks equal 85 feet. At its deepest point, along the Property’s western side lot line, the Property is only 86.61 feet deep. This depth decreases as the Property stretches to the east, such that along about 350 feet of the Property’s 400-foot width the Property is less than 85 feet deep. Indisputably, therefore, the Property cannot be developed without a setback variance. The Board will explain later why it believes a
variance from the rear-yard setback requirement is preferable to a variance from the front-yard setback requirement.

2. The Board concludes the foregoing conditions are peculiar to the Property. The Board finds the Property is peculiarly affected by its shallowness. The Property is so shallow, in fact, only a tiny triangular-shaped sliver of land at the extreme western end of the Property is outside the 85-foot combination of front-yard and rear-yard setbacks. Using Applicant’s Exhibit 6, the Board estimates the base of the triangular-shaped sliver is 1.61 feet and its height is about 105 feet. These dimensions translate into a theoretical building envelope of about 85 square feet. 3

In addition to an 85-square-foot building envelope being far too small to support reasonable development, most of the Property outside the triangular-shaped sliver is nontidal wetlands. Because state and federal law require landowners to look for alternatives to disturbing wetlands, the Applicant must locate the proposed home at the far western side of the Property where a portion of the Property is not wetlands. 4 This location gives the Applicant the advantage of being able to use the deepest part of the Property, but that advantage gains the Applicant only about a foot of depth—perhaps enough for a clothesline.

The Property is also peculiarly affected by the presence of nontidal wetlands over 75% to 80% of the Property. The wetlands both limit development of the Property and push development to the western side of the Property. Ordinarily, a lot that is three-quarters of an acre in size could support a single-family home much larger than the home the Applicant proposes. But in this case, the Applicant must obtain MDE approval for at least some wetlands disturbance

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3The formula is one-half times the product of the base and height; here, (0.5)(1.61 x 105) = 84.525.
4Under COMAR 26.23.02.04, for example, MDE must evaluate requests to disturb wetlands and wetland buffers by, among other things, making sure the proposal “has no practicable alternative.”
to build even the proposed improvements, which the Board finds are modest in size. Therefore, effectively, the wetlands make the Property much smaller than the 20,000 square-foot lot size contemplated by NC-20 regulations.

3. The Board concludes the foregoing conditions are not the result of actions taken by the Applicant. Neither the Applicant nor the current landowner is responsible for the Property’s shape and the presence of nontidal wetlands.

Concerning the Property’s shape, Applicant’s Exhibit 8 shows that the original lots today constituting the Property were platted in February 1953, which is long before the County adopted the Property’s NC-20 zoning and associated regulations governing development in the NC-20 zoning district. The subdivider in 1953 could not have foreseen the County would impose setbacks that would make the lots unbuildable without a variance. Today, using public sewer as a carrot, the County has been able to merge four lots into one. Nevertheless, although the merger of the lots created a lot with considerable length, the merger had no effect on the depth of the lot. Lot depth was established in 1953—and not by the Applicant or current Property owner.

Concerning the wetlands, as with lot shape, the subdivider could not have foreseen that future restrictions on filling wetlands to make buildable fastland would make all the original lots except a portion of original lot 3 unbuildable, at least without federal and state approvals. It is stating the obvious to say neither the Applicant nor the current Property owner created the nontidal wetlands and today’s regulations protecting the wetlands.

4. The Board concludes that granting the requested variance will not be contrary to the public interest. In reaching this conclusion, the Board is not unmindful of the testimony of Ms. Robin Morgan. As an initial matter, the Board will address Ms. Morgan’s concerns by noting that the Board neither enacts law nor makes policy. Under the law, just as are other undeveloped lots in Kent Islands Estates, each of the original four lots in this case is a platted lot
of record and is grandfathered under current subdivision and zoning regulations. Not wanting to see so many small lots developed in Kent Island Estates, County agencies formulated a policy under which abutting lots in the same ownership must be combined into one lot to receive a public sewer allocation. In this case the County’s policy had the effect of merging the four lots into one lot. But zoning-and-subdivision-grandfathering and the availability of a sewer allocation now combine to make this one lot—the Property—a buildable lot.

Ms. Morgan may be right that the Property should not be developed. The Board, however, cannot require the Property to remain undeveloped because to do so would be an unconstitutional taking of the Property. Without a variance, the Applicant cannot build anything on the Property. In the Board’s view, now that the County has made a sewer allocation available, denying the Applicant the ability to build anything on the Property is the type of categorical taking the Supreme Court ruled illegal in *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 112 S. Ct. 2886 (1992). Thus, if the Property is to remain undeveloped, the County (or some other entity or person) must pay the Applicant constitutionally required just compensation.

Paying the Applicant just compensation to keep the Property in its natural state is not up to the Board. The Board’s task is to apply the Code’s variance criteria to the Applicant’s proposal. Regarding the public-interest criterion, the Board concludes it is not contrary to the public interest for the Board to approve the requested variance. As a rule, the Board believes it serves the public interest for landowners to use their land reasonably, including building reasonable improvements on the land. In this case specifically, the Board finds the home Applicant proposes is a reasonable improvement. The proposed home’s 1,451 square feet of habitable floor area is not excessive by today’s standards. The floor area is comparable in size with other homes in the neighborhood and appears smaller than most. At 20-feet wide by 24-feet
deep, the proposed attached garage is also comparable in size to (and also appears smaller than most) other garages in the neighborhood. Similarly, a six-foot deep front porch is a modest improvement by any yardstick.

The Board concludes the Applicant’s proposed improvements strike a reasonable balance between using the Property in an economically beneficial way and protecting the sensitive environment of most of the Property and adjacent land. The Board credits Ms. Morgan testimony that she has seen the Property flood and has witnessed stormwater and sediment running off the Property. But these problems exist; they are not caused by the requested variance or the yet-to-occur development of the Property.

Presumably, Ms. Morgan’s point is that development of the Property will exacerbate the flooding and runoff problems she has witnessed. The Board is confident, however, County laws regulating building and stormwater management will prevent the proposed development of the Property from increasing flooding and runoff. Because of measures the law will require the Applicant to take to prevent flooding of the new home and manage runoff from impervious surfaces on the Property, development of the Property may even decrease the existing problems Ms. Morgan mentioned. Developing the Property may be a challenge. But the Board finds no reason to conclude the Applicant is not up to the challenge and no reason to conclude it would be contrary to the public interest to allow the Applicant to meet the challenge.

Approval of the variance will have no detrimental impact on the lots to the west and east of the Property because the proposed home will meet required side-yard setbacks. Approval of the variance will have no detrimental impact on Wicomico Road or those who drive, bike, and walk along the road because the proposed home will meet the required front-yard setback. The Board also finds approval of the variance will have no detrimental impact on the parcel to the
south because of the parcel’s large size, access from Romancoke Road well to the south, and the extensive wetlands on the parcel, especially in the area next to the Property.

Regarding the neighborhood, the Board finds the requested variance and the Applicant’s proposed home will not adversely affect the character of the neighborhood and will not be contrary to the public interests pertinent to the neighborhood. The size of the proposed home, including garage and porch, is compatible with other homes in the neighborhood. Moreover, the reduced rear-yard setback abuts a large parcel that is not part of Kent Island Estates. Thus, the variance will not decrease a yard that is next to an existing platted lot. The Board believes a variance from the front-yard setback, or even a combination variance from the front-yard and rear-yard setbacks, would potentially have a detrimental impact because the result of the variance would be visible by other lot owners and users of Wicomico Road. In contrast, no one will notice a reduced rear-yard setback while the parcel to the south remains undeveloped—and most likely beyond.

The Board finds it significant that no owner of, or resident on, an abutting or nearby lot appeared before the Board to object to the variance. For this type of setback variance, an abutting lot is more likely to be adversely affected than other lots. The Board also finds it significant that the Department of Planning and Zoning does not object to the variance. The Board notes Ms. Morgan’s objections, but in a straight line Ms. Morgan’s lot is several hundred feet away from, and not within sight of, the Property. Furthermore, when testifying about flooding and runoff from the Property, Ms. Morgan did not indicate stormwater and sediment leaving the Property flowed onto her lot. The Board must weigh the lack of proximity between the Property and Ms. Morgan’s lot when evaluating Ms. Morgan’s concerns.
5. The Board concludes an evaluation of possible alternatives establishes that the requested variance is required. The Property's shallowness makes it impossible to improve the Property without a variance. Period.

Regarding a variance, the only options are (a) to reduce the rear yard and meet the front-yard setback, or (b) to reduce the front yard and meet the rear-yard setback, or (c) to reduce both the front-yard and rear-yard setbacks by some amount. As previously explained, the Board concludes the best option is to reduce the rear yard and meet the front-yard setback. Given the circumstances, including the characteristics of the parcel that abuts the Property to the south, in this case the Board concludes a 17-foot rear yard effectively meets the purposes of a rear-yard setback.

6. The Board concludes the requested variance is the minimum deviation from the provisions of Chapter 18:1 that will ameliorate the conditions creating a practical difficulty and that will allow the Applicant to build a reasonably sized and compatibly designed home in this single-family neighborhood. As the Court of Special Appeals has noted, the minimum-deviation standard does not require an absolute minimum.\(^5\) In this case, an absolute minimum would involve determining at what point the rear-yard setback could no longer be reduced by another fraction of a foot—an inquiry raising the specter of Zeno's dichotomy paradox. Rather than engaging is such a Sisyphean-like task, the Board will analyze the minimum-deviation standard by determining whether the requested variance appropriately ameliorates the conditions that create the practical difficulty, so that the Applicant may develop the Property in a manner similar

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\(^5\) *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).
to and compatible with improvements on other lots in this single-family neighborhood while still respecting the concept that not all lots can support same intensity of development.⁶

Here, the Property is larger and wider than the typical NC-20-zoned lot. Assuming the extent of nontidal wetlands were not an issue, if the depth of the Property corresponded to its size and width,⁷ the Applicant’s proposed improvements would not need a variance and would represent a development intensity that is lower than the neighborhood’s median. The Property, however, is so shallow that a variance is needed for any development. And the presence of nontidal wetlands essentially reduces the size of the Property by 75% to 80%. Effectively, therefore, the Property becomes a lot of a little over 7,200 square feet in size with dimensions of about 85 feet by 85 feet.

The effective size of the Property results in a lot that is closer in size to an NC-20 cluster residential lot, which must contain a minimum of 10,000 square feet. NC-20 cluster lots must maintain a minimum rear-yard setback of 25 feet and a minimum front-yard setback of 15 feet. Accordingly, if the Property were considered an NC-20 cluster lot, it would have a building envelope about 45 feet in depth. Overall, including the 6-foot deep porch, the proposed home will be 33.8 feet in depth. The proposed home thus would easily fit within the building envelope established by NC-20 cluster regulations. Environmentally, the proposed home, including its curtilage, will leave at least 75% of the Property in its natural state. For these reasons, the Board finds the proposed home to be a reasonable size for the Property.

⁶See 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.”).

⁷Typically, single-family residential lots have a depth-to-width ratio of between 1:1 to 3:1. If the Property were typical in this way, the Property would be between 400 feet and 1,200 feet deep.
Furthermore, given that the Property's effective lot area is even less than the size of an NC-20 cluster lot, the Board believes the extent of the practical difficulty imposed on the Property by its shallowness and extensive wetlands justifies a variance that would allow a rear-yard setback of 17 feet. A 17-foot rear yard is just eight feet less that the rear yard required for an NC-20 cluster lot that must be roughly 3,000 square feet larger than the effective size of the Property. Pro-rating the 3,000 square-foot difference over the Property's effective width of 85 feet yields an additional depth of about 35 feet, which, if the Property had, would eliminate the need for a variance.

Finally, in the Board's view, if the home were any narrower, it would detract from the character of the Kent Island Estates neighborhood. Therefore, the Board finds the Applicant has minimized the variance needed to develop the Property in a reasonable manner.

**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 § 18:1-19.E.(1)(c)[4][f][iii] of the Code to reduce the required rear-yard setback from 50 feet to 17 feet to construct a one-story single-family home with an attached garage and front porch. The Applicant must construct these improvements in substantial accord with the variance site plan (Applicant's Exhibit 5), with due allowance for minor changes that may be required by MDE as part of its review of the Applicant's request to disturb nontidal wetlands.
BEFORE THE BOARD OF APPEALS OF QUEEN ANNE'S COUNTY

In the Matter of an Application by

Henry C. Filter, III
Elizabeth M. Filter

Case No. BOA-19-03-0028

Requesting Conditional Use Approval
for a Bed and Breakfast

OPINION AND ORDER

Introduction

The matter before the Board of Appeals of Queen Anne’s County ("Board") in Case No. BOA-19-03-0028 is an application for conditional use approval filed by Henry C. Filter, III and Elizabeth M. Filter ("Applicants"). The Applicants propose to operate a Bed and Breakfast use on land zoned NC-5, Neighborhood Conservation.

On June 25, 2019, beginning at 5:30 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 Applicants’ 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 June 25 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. Howard A. Dean, Vice Chairman (acting as Chairman); Mr. Craig W. McGinnes, Member; and Mr. William D. Moore, Alternate Member.

Requested Relief

The Applicants request conditional use approval of a Bed and Breakfast use. Under § 18:1-19.C.(2) of the Code, a Bed and Breakfast is a conditional use in the NC-5 zoning district. The Applicants will operate the Bed and Breakfast in their existing home.
Conditional Use Standards

The Board must evaluate the Applicants' conditional use request by applying standards found in several sections of the Code. First, the Board must evaluate whether the proposed use meets the specific standards for a Bed and Breakfast conditional use, as set forth in § 18:1-95.G. of the Code. The § 18:1-95.G. standards are as follows.

(1) A bed-and-breakfast or country inn may be approved as an adaptive reuse of an existing building, provided that the structure is at least 10 years old.

(2) All bed-and-breakfasts and country inns shall:

(a) Be required to obtain permits to serve food and beverages; and

(b) Be inspected annually at a fee as established by a separate ordinance or resolution to verify that the uses continue to meet all applicable regulations.

(3) In noncommercial districts, only one thirty-five-square-foot sign shall be allowed. Signs shall be set back from the road to maintain a rural character except in areas where adjoining uses are on the road.

(4) There shall be:

(a) One parking space for each room;

(b) Three parking spaces for the owner; and

(c) One and one-quarter spaces per four seats for the country inns having extra seating capacity.

(5) Restaurant size shall be limited to the number of rooms in the facility.

Second, the Board must apply the general standards set forth in §18:1-94 of the Code.

Section 18:1-94 provides 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.

Third, § 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 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 a priority funding area and in § 1-304 for land inside a priority funding area. The land involved in this conditional use application is not 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;
5. development patterns;
6. land uses; and
7. densities or intensities.”

**Property and Neighborhood Description**

The Applicants’ property is in the Fourth Election District of Queen Anne’s County at 215 Slipper Lane (“Property”). The Property abuts the west side of Romancoke Road (Maryland Route 8) about three miles south of U.S. Route 50/301, in the Stevensville area of the County.
The Property is designated as parcel 3 on sectional zoning map no. 63. The Property is zoned NC-5, Neighborhood Conservation. NC-5 zoning allows a single-family home as a permitted use, with a minimum lot size of five acres. NC-5 zoning allows a Bed and Breakfast as a conditional use. The Property is in the Chesapeake Bay Critical Area. The County’s critical area maps include the Property in an LDA, Limited Development Area. The LDA classification allows residential development at a density of up to four units per acre, as well as most other land uses allowed by the underlying zoning district, including a Bed and Breakfast use.

The Property is 13.6 acres in size. The Property is trapezoidal, somewhat rectangular, in shape. The Property’s east side fronts about 270 feet along the west side of Romancoke Road. The Property’s west side follows the shoreline of the Chesapeake Bay for about 420 feet. The northern lot line, which is not quite parallel to the southern lot line, runs from Romancoke Road approximately 1,731 feet to the shoreline. The southern lot line runs from the road 1,748 feet to the shoreline.

The Property is improved with a two-story single-family home containing about 7,350 square feet of floor area. The home includes an attached two-car garage, an upper and lower veranda along the home’s waterside, and an inground swimming pool at the home’s northwest corner. Slipper Lane is a graveled private road leading to a paved circular driveway just to the east of the home. The Applicant will be adding five paved parking spaces along the southern portion of the circle. Other existing improvements include a private well, a private septic system, and a private pier. A small accessory structure sits near the landward end of the pier.

The curtilage of the Property is mostly cleared and covered with lawn. Overall, however, the Property is heavily wooded. The woods are thinner around the home, but mature trees still provide privacy. The trees also create an effective buffer between the home and the properties to the north and south. The Property has no significant slopes; it is essentially flat. A portion of the
Property falls within the 100-year floodplain, but the improvements on the Property are in a designated minimal-flooding area. Riprap protects the Property’s shoreline.

The neighborhood of which the Property is part is bounded on the north by Matapeake State Park, along the east by Warehouse Creek, along the south by Batts Neck Road and Washington Drive, and along the west by the Chesapeake Bay. The neighborhood is largely rural-residential in character. The neighborhood contains large homes on large lots along the Bay, including the lots immediately to the north and south of the Property, agricultural uses, and significant areas of woodlands. The neighborhood also contains a scattering of other single-family homes, mostly along Batts Neck Road and in the Matapeake Estates subdivision just south of Matapeake State Park.

**Agency Recommendations**

Mr. Stan Kosick, a Senior Planner with the County’s Department of Planning and Zoning (“P&Z”) represented P&Z during the public hearing. Mr. Kosick offered into evidence P&Z’s staff report, which the Board admitted as P&Z Exhibit 1. As Mr. Kosick went through the report and described the Applicant’s proposal, he referred to an aerial photograph that was projected onto a large screen visible to those attending the hearing.

Mr. Kosick’s testimony paralleled P&Z’s staff report. Because there was no evidence challenging the facts and conclusions in the staff report, the Board adopts as its own findings and conclusions the following portions of the staff report, P&Z Exhibit 1.

**Location and Site Characteristics**

Located on the Bay side of Kent Island the western most part of Queen Anne’s County within the Neighborhood Conservation-5 (NC-5) zoning district, the existing lot has a generally rectangular shape with its long dimensions running east to west. Romancoke Road right-of-way forms the property’s east boundary and the Chesapeake Bay shoreline forms the western boundary.

Residentially zoned properties abut the property on the north and south. The lot currently has a residential structure with access drive to Romancoke Road. The property has forest cover of nearly 10 acres of the total 13.6 acres.
Applicable Code References

Chapter 18:1 Zoning and Subdivision Regulations

Article V, Section 18:1-19 Neighborhood Conservation (NC)

The NC Districts are intended to preserve the character, density, and scale of existing residential neighborhoods. All NC District regulations apply to NC Districts with a "T" designation on the Zoning Maps; except that single-wide manufactured homes are a permitted use within NC-T Districts.

C. Conditional Uses.

(2) Bed-and-breakfast.

Chapter 18App: BED-AND-BREAKFAST residential building:

A. That contains a permanently occupied dwelling unit;

B. That contains no more than five guest rooms, which may not have individual exterior entrances;

C. That provides overnight lodging not exceeding 30 consecutive days; and

D. Where guests may receive only one meal per day, to be served between the hours of 6:00 a.m. and 11:00 a.m.
E. Dimensional and bulk requirements.

(1) Residential uses

(a) Maximum impervious surface ratio.


(b) Minimum lot frontage. 35 feet.

(c) Minimum setbacks.


F. Additional conditional use review criteria.

(1) In addition to the requirements set forth in Chapter 18:1, Part 5, Article XVII, the following shall apply to major single-family cluster subdivisions or major or minor multifamily developments:

(a) Units may be located as infill development on undeveloped parcels throughout an NC District neighborhood. Not more than 30% of the total dwelling units permitted within the immediate NC District shall consist of a planned residential development.

(b) The dwelling units developed within the cluster and planned residential developments shall be in keeping with the architectural character of the area as well as the colors and materials of surrounding buildings; and

(c) Planned residential development may not consist of more than six dwelling units per building.

The Filter residence already exists and is not part of a planned residential development. Therefore, this code section does not apply to the proposed Bed and Breakfast.

Article XVII, Section 18: 1-93 Conditional use procedures.

A. Application.

On March 21, 2019, the applicant provided a complete application meeting all requirements for a Conditional Use request.

B. Approval procedure.

Staff has reviewed the application and scheduled a public hearing before the Queen Anne's County Board of Appeals for June 25, 2019.
**2010 Comprehensive Plan**

Element 6.0 Economic Development & Tourism

**Goal 3: Explore Opportunities for Hospitality Industry Niches**

**Objective 1:** Develop, support, and promote County cultural activities and heritage tourism opportunities.

Approving a bed and breakfast would promote tourism in Queen Anne’s County.

**Agency Comments**

MD SHA: No comment.

Environmental Health: No objection.

Department of Public Works: No objection – Stormwater Management will be addressed during the permitting process.

Historic Resources: The site is not listed on any inventory or any register.

Department of Parks & Recreation: None received.

Critical Area Commission: CAC was not consulted.

Department of Planning and Zoning Comments (Stan Kosick): After reviewing the application, applicable County Codes, and agency comments, Department of Planning and Zoning offers no objection to the Conditional Use request for the proposed Bed and Breakfast on real property addressed 215 Slipper Lane, owned by Henry Filter, in the Neighborhood Conservation-5 zoning district.

**Staff Findings**

The proposed use at the proposed location is consistent with the general purpose, goals, objectives, and standards of the Comprehensive Plan, Chapter 18:1 Zoning and Subdivision Regulations, and Chapter 18:2 Forest Conservation Act.

The proposed bed and breakfast at the 215 Slipper Lane will not result in 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 at the proposed location will be adequately served by the required improvements referred to in this Chapter 18:1, Part 7.

**Staff Recommendation**

Planning staff recommends approval of the Conditional Use application as requested by Filter Bed and Breakfast, subject to conditions.

**Conditions of Approval**

1. The applicant shall apply for and obtain the necessary permits through the Department of Planning and Zoning.
2. The applicant shall provide additional landscaping around the parking stalls as needed.

In concluding his presentation, Mr. Kosick testified approval of the Bed and Breakfast will not result in any significant changes to the Property. The Applicants must add only a few off-street parking spaces, which will be located well within the Property’s interior and not visible from Romancoke Road. In addition, Mr. Kosick told the Board the Applicants will not be hosting special events in conjunction with the Bed and Breakfast. He noted the Property does not meet the minimum 20-acre lot size required for a special-events conditional use.

In addition to Mr. Kosick’s testimony and staff report, the Board accepted into evidence written comments from three review agencies. A summary of these comments follows.

- An inter-office memo from Mr. John Nickerson of the Environmental Health Department indicating no objection to approval of the requested conditional use. (Applicants’ Exhibit 6.)

- An inter-office memo from Mr. Henry R. Dierker, III, Access Permits Regional Engineer with the State Highway Administration ("SHA"), requesting that the Applicants submit to SHA an application for a District Access Permit. (Applicants’ Exhibit 7.)

- A letter from Ms. Susan Makhoul, a Natural Resources Planner with the State’s Critical Area Commission ("Commission"), indicating the Commission has no comments on the Bed and Breakfast proposal. The letter notes the Applicants will not be impacting the critical area buffer. (Applicants’ Exhibit 8.)

**Applicants’ Presentation**

Mr. Joseph A. Stevens, Esquire, of Stevens Palmer LLC in Centreville, represented the Applicants. After brief opening remarks, Mr. Stevens called three witnesses.

First to testify for the Applicants was Mr. Steve Layden. Mr. Layden is a civil engineer with 23 years of work experience, including 16 years with McCrone, Inc. of Centreville. Mr. Layden testified he is very familiar with the Property because he worked on the site plan when the existing home on the Property was built. For the Bed and Breakfast proposal, Mr. Layden testified he prepared the conditional use conceptual site plan.
Mr. Layden described the location, shape, and size of the Property. He characterized the Property as mostly wooded. He noted the Property is served by a private well, a private septic system, and a long, private driveway called Slipper Lane. Mr. Layden testified the Applicants’ proposal meets lot coverage requirements, impervious surface limits for land designated LDA, and off-street parking requirements. Regarding off-street parking, Mr. Layden told the Board the site plan shows five new parking spaces along the circular portion of the driveway, one space each for the four guestrooms in the Applicants’ home and one employee space.

Mr. Layden testified the Applicants will not host special events. The Applicants also will not offer full meal service; only a continental breakfast. Using the Property as a Bed and Breakfast will not require any exterior changes to the home. Inside the home, the Applicants will use four existing bedrooms for guests. The Applicants do not plan to add to the home to create additional guestrooms. Thus, the existing septic system will continue to serve the home adequately, especially since the Applicants will not be providing meals.

Mr. Layden opined the Bed and Breakfast will not negatively impact adjacent and nearby properties. The Property is large, there will be no outside events, and woodlands buffer the Property on three sides. Mr. Layden noted the Code allows a Bed and Breakfast use in all NC zoning districts. Because the Property is zoned NC-5, which is the least intense NC district, Mr. Layden thought potential impacts would be less on the Property than on lots in the NC zoning districts that allow smaller lot sizes.

Mr. Layden testified the Bed and Breakfast will produce no impact on public facilities. The Property has a private well and a private septic system. Use of services such as electricity will not be significantly different from a single-family home. Traffic will be minimal, much less than the threshold for an APFO traffic study. Also, the small amount of traffic will be spread throughout the day. Thus, there will be no significant increase in peak-hour traffic.
Mr. Layden opined the proposed conditional use is consistent and compatible with the County’s Comprehensive Plan. He pointed to Plan provisions promoting economic development and tourism. The Bed and Breakfast will provide a unique tourism experience. The Bed and Breakfast is a small business, which the Plan also promotes. In addition, Mr. Layden opined the Applicants’ proposal furthers the Plan’s sustainability goals, noting again the Bed and Breakfast proposal will not affect the Property’s existing woodlands.

Mr. Henry Filter, one of the Applicants, briefly testified that Ms. Filter and he moved to the area in 1992. They married in 1994, raised children, and are now looking for something to do as they phase into retirement. He believes the Property is ideal for a Bed and Breakfast.

Ms. Elizabeth Filter appeared as the next witness. Ms. Filter testified the Applicants plan to use four bedrooms as guestrooms. Mr. Filter and she will continue to live in the home’s fifth bedroom. The home has five full baths, one for each bedroom, and one half-bath. Mr. Filter and she purchased the Property in 2004. The home was finished in 2007. They moved into the home in June 2008.

Ms. Filter testified the Bed and Breakfast proposal will not involve any new construction other than the five Code-required parking spaces. Moreover, the parking spaces will be in the area their family and social guests now use to park during visits. The Bed and Breakfast proposal will not involve any interior changes that would necessitate a permit. Mostly, the Applicants will be decluttering. The four guestrooms do not have individual ingress/egress. Access is through the home. The Applicants will not serve full meals. But they will offer a continental breakfast consistent with Health Department requirements. Also, they plan to provide a few amenities, such as bicycles for guests to use on County trails. Ms. Filter told the Board the Applicants will operate the Bed and Breakfast in accordance with all County laws, rules, and regulations, including meeting the limits on the number of nights guests may stay.
Ms. Filter testified Mr. Filter and she are very much looking forward to running the Bed and Breakfast. They have always enjoyed entertaining family and friends at their home. Mr. Filter is currently planning for retirement. Running a small Bed and Breakfast would be a wonderful way to earn post-retirement income and socialize with others.

**Testimony by Others**

Mr. Michael J. Roberts of 300 Roberts Lane appeared before the Board to support the Applicants’ conditional use request. Mr. Roberts lives on the abutting lot to the north of the Property. Mr. Roberts testified the Applicants have been good neighbors. He “fully supports” their Bed and Breakfast proposal. Mr. Roberts said he believes the Bed and Breakfast will be no more disruptive than having weekend guests. The Filters have had weekend guests in the past, which has not adversely affected the use and enjoyment of his lot. Mr. Roberts opined the Applicants will operate the Bed and Breakfast appropriately. He believes the Bed and Breakfast will be a positive for the County.

After Mr. Roberts, no one else appeared before the Board to testify or to ask questions about the Applicants’ conditional use request.

**Findings and Conclusions of the Board**

The Board finds the testimony and exhibits provided by Mr. Kosick, Mr. Layden, and the Applicants to be credible and persuasive. Overall, the evidence establishes the Applicants have met, and will meet, the requirements for conditional use approval.

I.

§ 18:1-123.B.

*The conditions concerning that conditional use as detailed in this Chapter 18:1 exist.*

Section 18:1-95.G. of the Code sets forth specific standards that apply to a Bed and Breakfast use. The Board finds the existing home on the Property is more than ten years old, and thus qualifies for what the Code calls “adaptive reuse.” The Board further finds the Applicants
will provide the required off-street parking for a Bed and Breakfast use. The evidence shows there are two spaces inside the home’s attached garage and the Applicants will add five outside spaces along the existing driveway, for a total of seven parking spaces. Seven spaces meet the requirement of three spaces for the owners and one space for each guest bedroom.¹

Regarding the other standards in § 18:1-95.G. of the Code, these standards are on-going performance standards the Applicants must meet. The Board is satisfied the Applicants can and will meet these standards. To make sure County agencies have the authority to enforce these standards, the Board will appropriately condition its approval of the requested conditional use.

II.

§ 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:

(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.”

The conditional use standards in § 18:1-94.A. and § 18:1-123.B.(2) of the County Code, and in § 1-304 of the state code’s Land Use Article, concern consistency and conformance with

¹The Applicants will not be operating a country inn. Therefore, the parking requirement in § 18:1-95.G.(4)(c) of the Code does not apply. In addition, the restaurant provision in § 18:1-95.G.(5) of the Code does not apply because the Applicants will not have a restaurant in the Bed and Breakfast.
the County’s 2010 Comprehensive Plan (the “Plan”). Therefore, the Board will address these County and state standards together. The Board also will address in this portion of the Opinion the consistency requirements of § 18:1-94.A. of the County Code pertaining to other County plans, programs, maps, and ordinances.

Based on the testimony and exhibits, especially evidence provided by Mr. Kosick and Mr. Layden, the Board concludes approval of the requested Bed and Breakfast conditional use is consistent with and conforms to the Plan. In addition, to the extent the Plan includes the elements set forth in Land Use Article § 1-304, the Board concludes approval of the conditional use will further those elements of the Plan.

In Section 6.0 of the Plan, the Plan states “small businesses are the backbone of the Queen Anne’s County’s economy.” A Bed and Breakfast is a small business. Moreover, it is a business linked with tourism and the County’s hospitality sector. One of the Plan’s “overarching goals” is to promote a growing hospitality industry. In addition, the Plan names tourism as one of the ways the County will seek to balance its tax base.

The Plan also calls for economic development that is sensitive to the environment. In this case, the Bed and Breakfast will occupy an existing structure on Property that already has access to a State road. Furthermore, much of the Property is heavily wooded. The Bed and Breakfast use will not necessitate disturbance of woodlands, wetlands, or other sensitive areas. The Board thus finds the Property is well-located to help achieve sustainable economic development in a manner that has no significant adverse effect on the environment.

Regarding the elements set forth in Land Use Article § 1-304, the Board has just discussed Plan policies and has concluded approval of the conditional use will further relevant Plan policies. The Plan does not specifically address timing of plan implementation, or timing of development, or timing of rezoning, except to encourage development to follow the availability
of adequate public facilities. In this case, as the Board will discuss further in Part IV of this Opinion, the public facilities the Bed and Breakfast will use are adequate.

This Bed and Breakfast proposal furthers the development patterns, land uses, and land-use intensities in the Plan, primarily because the proposal will not alter these Plan elements. Existing development patterns will remain unchanged. The Bed and Breakfast will not affect land uses and land-use intensities because (1) the Bed and Breakfast is an allowed use in low-density residential areas zoned NC-5 and (2) the proposed use, in this case, is no more intense that a typical large-lot residential use. Moreover, the Property is deep and well-buffered. The home the Bed and Breakfast will occupy is set back nearly 1,500 feet from Romancoke Road.

Regarding other plans, programs, maps, or ordinances, the County’s critical area program is relevant. Evidence shows the Property’s existing improvements are located outside the vital 100-foot buffer. The Bed and Breakfast use will not involve disturbing the buffer. In addition, the five required off-street parking spaces outside the buffer will add only 560 square feet of impervious surface to the Property. With the newly added parking, about 5.6% of the Property will be covered with impervious surfaces, which is far less than the 15% maximum coverage allowed. Evidence also shows the Applicants are aware of and intend to comply with applicable Health Department requirements. As Applicants’ Exhibit 6 indicates, the Health Department has no objection to approval of the conditional use.

III.

§ 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 will address the adverse-impacts and neighborhood-compatibility standards in § 18:1-94.B. and § 18:1-123.B. (3) of the Code together. Although other standards applicable to a Bed and Breakfast conditional use are legally as important, the standards in § 18:1-94.B. and § 18:1-123.B. (3) of the Code represent the core analysis the Board must undertake to approve or deny a conditional use.

The Board previously defined the boundaries of the neighborhood. Despite being located near suburban development on Kent Island, the character of the neighborhood is distinctly rural residential. The neighborhood contains large agricultural tracts, particularly on the east side of Romancoke Road. The neighborhood also contains significant areas of woodlands. Residential use in the neighborhood consists mostly of large-lot single-family homes and a scattering of homes on smaller lots located along some of the neighborhood’s local roads. Other land uses include a few rural businesses, institutional uses, and governmental uses.

The Property is especially typical of neighborhood land use west of Romancoke Road. Between Matapeake Estates to the north and Sunny Isle/Chesapeake Estates to the south, there is a series of comparatively large lots with comparatively large homes overlooking the Chesapeake Bay. The Board finds, therefore, the Bed and Breakfast use will be compatible with, and will not result in substantial or undue adverse impacts on, the neighborhood. As proposed, the Bed and Breakfast will maintain the large-lot nature of land uses along the west side of Romancoke Road. As proposed, the Bed and Breakfast will harmonize with other neighborhood land uses and will augment the neighborhood’s pastoral charm.

The Board further finds the proposed Bed and Breakfast will not result in substantial or undue adverse impacts on adjacent property. The proposed Bed and Breakfast will be located on a large, wooded, and well-buffered parcel improved with an existing home that will not have to be enlarged or altered in any significant way. The proposed Bed and Breakfast will be a modest
 addon to the existing single-family use of the Property, essentially using on a more regular basis guestrooms that would often be used by family and friends. The owner of the abutting parcel to the north testified he supports the Applicants' request and anticipates no adverse effects on his property.

Regarding traffic conditions, parking, public improvements, public sites or rights-of-way, or other matters affecting the public health, safety, and general welfare, the Board finds that approval of the proposed Bed and Breakfast at the proposed location will not result in substantial or undue adverse impacts. The Bed and Breakfast will generate minimal traffic. The Property is large enough to accommodate the small amount of off-street parking needed for the use. The Applicants will make use of an existing driveway connection to Romancoke Road, thus minimizing potential impacts on the road and its right-of-way. Other than Romancoke Road, potential impacts on public improvements, public sites or rights-of-way are nonexistent. In addition, development review agencies do not object to the requested conditional use and County planners recommend conditional approval of the use.²

Potential impacts on adjacent property, the neighborhood, and the general welfare could be greater if the Bed and Breakfast were larger or if the use were to include a restaurant or other meal service. Accordingly, the Board will impose conditions on its approval of the requested conditional use to limit the size of the Bed and Breakfast to four guestrooms and to limit food offerings to a continental breakfast. With these conditions, the Board concludes the Applicants' proposal meets the standards in § 18:1-94.B. and § 18:1-123.B.(3) of the Code.

²The Health Department's written comments to the Board (Applicants' Exhibit 6) indicate the Health Department does not object to approval of the Bed and Breakfast. The Board heard testimony, however, that the Applicants and the Health Department discussed food service as part of the Bed and Breakfast use. These discussions resulted in the Applicants limiting food service to a continental breakfast, which appears to have satisfied the Health Department's concerns.
IV.
§ 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.

The County Code sets forth requirements of the County’s Adequacy of Public Facilities Ordinance (“APFO”) in Chapter 28 of the Code, to which Chapter 18:1, Part 7 refers. The APFO addresses impacts of development on the capacity of four public services: public sewer, public water, schools, and transportation. The Property is served by private water and septic. A Bed and Breakfast use does not generate school children. Accordingly, of the APFO facilities, the proposed Bed and Breakfast will use only public roads.

Regarding possible impacts to public roads, the Board concludes the Bed and Breakfast use, at the location proposed, will not impose an undue burden on local roads. To the contrary, the existing road network will adequately serve the Bed and Breakfast. The Board bases its conclusion on the following: (1) the Applicants will confine the Bed and Breakfast to four guestrooms in their existing home; (2) the Bed and Breakfast will not always be 100% occupied; (3) the vehicle trips the Bed and Breakfast will generate are below the threshold of an APFO-required traffic study; (4) of the small number of vehicle trips, most will not be peak-hour trips; and (5) SHA voiced no objection to approval of the conditional use. The Board also notes that, even at full occupancy, traffic associated with the Bed and Breakfast will not be significantly greater than traffic generated by a large single-family home with several driving-age residents.

In addition to APFO requirements, Chapter 18:1, Part 7 of the County Code refers to other required improvements. The County Code defines a “required improvement” as:
A. An improvement or facility for a particular site required under this Chapter 18 or under the County Roads Ordinance, the Sediment Control Ordinance, the Stormwater Management Ordinance or by the Department of Health.

B. Includes resource protection, lighting, landscaping, and buffer yards.

Some of these improvements (i.e., buffering and stormwater management) are in place and adequate. The Board concludes the Applicants, to the extent applicable, will adequately provide other required improvements, including landscaping and sediment control for the minor work needed to construct five paved parking spaces.

For the foregoing reasons, the Board concludes the Applicants’ proposed conditional use meets the requirements of § 18:1-94.C. of the Code.

Decision

Based on the findings and conclusions set forth in this Opinion, by a vote of three in favor and none opposed, the Board grants to the Applicants conditional use approval to operate a Bed and Breakfast on the Property, subject to the following conditions:

1. The Applicants must limit the Bed and Breakfast use to no more than four guestrooms in the Applicants’ existing home.

2. Except for a continental breakfast, no restaurant or other food service is allowed.

3. The Applicants must apply for and obtain necessary permits through the Department of Planning and Zoning or other County agencies as appropriate.

4. The Applicants must construct five new parking spaces generally as shown on the conditional use conceptual site plan (Applicants’ Exhibit 5) and must provide additional landscaping around the parking spaces to the satisfaction of the Department of Planning and Zoning.

5. The Applicants must operate the Bed and Breakfast in compliance with § 18:1-95.G.(2) and (3) of the Code.
ORDER

For the reasons set forth in the foregoing Opinion, it is this 11th day of September, 2019, ordered that the conditional use requested for Henry C. Filter, III and Elizabeth M. Filter, in Case No. BOA-19-03-0028, be granted, subject to the conditions set forth in the Opinion.

Howard A. Dean, Vice-Chairman (Acting as Chairman)

Craig W. McGinnes, Member

William D. Moore, Alternate Member
State of Maryland, County of Queen Anne's:

I HEREBY CERTIFY that the foregoing is a true and correct copy of the Opinion and Order of the Board of Appeals of Queen Anne's County in Case Number BOA-19-03-0028, for Henry C. Filter, III and Elizabeth M. Filter, which Opinion and Order resulted from a public hearing conducted by the Board of Appeals on June 25, 2019 and that the minutes and a recording of the June 25, 2019 meeting are filed in the office of Board of Appeals.

Certified this 11th day of September, 2019 by:

[Signature]
Cathy Maxwell
Clerk to the Board of Appeals