

BEFORE THE BOARD OF APPEALS OF QUEEN ANNE’S COUNTY

* * * * *

In the matter of Application by * Case No. BOA-23-06-0156

Kenneth W. Marshall and Victoria M. Marshall *

for Zoning Variance *

* * * * *

FINAL DECISION OF THE BOARD

Introduction

The Queen Anne’s County Board of Appeals (the “Board”) held a meeting on July 27, 2023 at 5:00 p.m. to consider Case No. BOA-23-06-0156 for a variance application filed by Kenneth W. Marshall and Victoria M. Marshall (hereinafter the “Applicants”). The Board members present were Chairman, Howard Dean, and Board Members Craig W. McGinnes and Michael Lesniowski. Those in attendance also included Board Attorney, Lyndsey Ryan; Clerk to the Board, Cathy Maxwell; Zoning Inspector, Joe Pippin; Zoning Administrator, Vivian Swinson; and Applicant, Kenneth W. Marshall.

At the beginning of the hearing, the Board established that all requirements were met governing the filing of the variance application, and proper notice of the July 27th public hearing. Board Chairman Dean administered the oath to all who wished to testify on the application, including the Applicants.

Applicant’s Request

The Applicants request a variance to the provision of § 18:1-19.E(1)(c)(4)[e][iii] of the Code of Public Local Laws of Queen Anne’s County, 1996 Edition (the “Code”), to reduce the required 50 foot rear yard setback to 46.5 feet to construct a 15’ x 20’ roof over an existing rear deck to create a porch. The Applicants’ property is located at 5 Kimberly Court in the Cloverfields Subdivision near Stevensville in the 4th Election District and is located in the Neighborhood Conservation-15 (NC-15) Zoning District (the “Property”).

The Applicants submitted a Building Permit (No. BR23-03-0170) on March 15, 2023 to renovate their existing single-family home by constructing the roof described above. On May 2, 2023, the Queen Anne’s County Department of Planning & Zoning denied the Building Permit

after determining that the proposed rear deck addition is 46.5' from the Property's rear lot line. Joe Pippin, Zoning Inspector, determined that the minimum rear yard setback on the Property is 50 feet as required by § 18:1-19.E of the 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 identified the Property and its location. He identified the Property as 0.456 acres in the NC-15 Zoning District. There are no natural resources on the Property and it is not located within the Critical Area.

He said the Applicants are seeking to construct a 15' x 20' roof over an existing rear deck. He added that the rear deck was constructed in 2005 after the Applicants received a building permit. The Property is part of the Cloverfields subdivision that was created in 1959. He added that the Property is improved with a house, shed, and above ground swimming pool. The house was built in 1984.

Mr. Pippin explained the Applicants' request. He said they are seeking to reduce the rear yard setback from 50 feet to 46.5 feet. Therefore, they are seeking to encroach 3.5 feet into the rear yard setback. Mr. Pippin showed the Board an aerial photograph of the Property and explained

that it is at the end of a cul-de-sac causing it to have a triangular shape with the widest portion at the rear of the Property. Given the shape of the Property, he said the west side yard lot line extends much further than the east side yard lot line reducing the rear yard on the east side and creating an angle on the rear property line. He said that the lot configuration causes the right corner of the dwelling and proposed rear deck roof to encroach into the rear yard setback.

At the conclusion of his presentation, Mr. Pippin stated no objection to the variance application.

Applicants' Presentation

Kenneth Marshall presented the application. He said that he is seeking to add a roof to his existing deck to block the sun. With more shade on the deck, the Applicants will get more use out of their Property. Mr. Marshall said that the deck was constructed with a building permit and that he believes it was constructed 50 feet from the rear yard lot line. He said he used the same footer that was permitted. However, he said there is a lot of brush on the rear lot line that could have impacted the measurement when the deck was constructed.

Since the deck is already constructed, there is no alternative location to add a roof to create a porch. Mr. Marshall admitted pictures of his Property, including the deck, depicting the lack of shade.

At the conclusion of his presentation, Mr. Marshall requested that the Board grant his application.

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 Applicants 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 50-foot rear yard setback would result in practical difficulty as there are no alternative locations to construct the covered porch.
2. The lot was created in 1959 and predates Queen Anne’s County zoning regulations.
3. The Property is at the end of a cul-de-sac and has a peculiar shape.
4. The Applicants are seeking shade from the sun so that they may enjoy their Property.
5. The variance is not contrary to the public interest.
6. The variance of 3.5 feet is a minimal deviation and is the minimal amount necessary to add a roof over the existing deck to create a porch.

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. A variance from the provisions of § 18:1-19.E(1)(c)(4)[e][iii] to reduce the required 50-foot rear yard setback to 46.5 feet to permit the Applicants to construct a 15’ x 20’ roof over an existing deck to create a porch within the rear yard setback.

ORDER

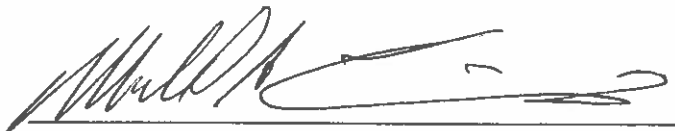
For the reasons set forth in the foregoing Opinion, it is this 31st day of August, 2023 ordered that the variance requested for Kenneth W. Marshall and Victoria M. Marshall, in Case No. BOA-23-06-0156, be granted.



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-23-06-1056, for Kenneth W. Marshall and Victoria M. Marshall, which Opinion and Order resulted from a public hearing conducted by the Board of Appeals on July 27, 2023 and that the minutes and a recording of the July 27, 2023 meeting are filed in the office of Board of Appeals.

Certified this 31st day of August, 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-23-06-0157
George W. Lanman, Jr. *
for Variance *

* * * * *

FINAL DECISION OF THE BOARD

Introduction

The Queen Anne’s County Board of Appeals (the “Board”) held a meeting on July 27, 2023 at 5:15 p.m. to consider Case No. BOA-23-06-0157 for a variance application filed by George W. Lanman (hereinafter the “Applicant”). The Board members present were Chairman, Howard Dean, and Board Members Craig W. McGinnes and Michael Lesniowski. Those in attendance also included Board Attorney, Lyndsey Ryan; Clerk to the Board, Cathy Maxwell; Zoning Inspector, Joe Pippin; Zoning Administrator, Vivian Swinson; and Applicant, George W. Lanman, Jr.

At the beginning of the hearing, the Board established that all requirements were met governing the filing of the variance application, and proper notice of the July 27th public hearing. Board Chairman Dean administered the oath to all who wished to testify on the application, including the Applicant.

Applicant’s Request

The Applicant requests a variance to the provision of § 18:1-19.E(1)(c)(4)[a][i] of the Code of Public Local Laws of Queen Anne’s County, 1996 Edition (the “Code”), to reduce the required 35-foot front yard setback to 27 feet to construct a 15’ x 7’ porch addition to an existing dwelling and convert it to living space. The Applicant’s property is located at 116 Johnson Lane near Queenstown in the 5th Election District (the “Property”). The Property is in the Neighborhood-Conservation-1 (NC-1) Zoning District.

The Applicant submitted a Building Permit (No. BR23-05-0335) on May 10, 2023 to construct a second-floor addition and enclose an existing porch. On May 30, 2023, the Queen Anne’s County Department of Planning & Zoning denied the Building Permit after determining

that the proposed addition will not meet the required 35-foot front yard setback in the NC-1 zone as required by § 18:1-19.E of the Code.

Applicable Provisions of the Code

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 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 identified the Property and its location. He identified the Property as 1.13 acres in the NC-1 Zoning District. There are approximately 12,483 square feet of hydric soils on the south side of the Property that will not be impacted by the project. There are no sensitive species on the Property and it is not located in the Critical Area.

Mr. Pippin said that the Applicant is proposing to construct a 15’ x 7’ porch addition to the existing dwelling and to convert that addition to living space. The Applicant needs a variance to reduce the required 35-foot front yard setback to 27 feet so that he may construct the porch addition. He said the dwelling was constructed in 1944, prior to the adoption of the Code.

The Applicant purchased the Property in 2018. He said the Applicant is proposing minor construction to expand the living area within the dwelling. Mr. Pippin provided a picture of the Property depicting the area where the original porch was that was removed. The Applicant seeks to construct a porch in the same location, which encroached 8 feet into the front yard setback.

At the conclusion of his presentation, Mr. Pippin stated no objection to the variance application.

Applicant's Presentation

George W. Lanman, Jr., presented the application. He said that the house was built in 1944 and included a front screened-in porch. He removed the porch after he purchased the Property in 2018 because it was damaged. He said that the porch was constructed on piers only and needed a better foundation, including brick between the piers. After he removed the porch, he filled-in the ground around the piers with brick. He is now seeking to build a new porch on the same footprint.

However, the Applicant was advised that he could not construct a porch in the same location as the prior porch without a variance because he demolished the structure that existed. Therefore, he applied to the Board seeking the variance.

With the variance, the Applicant intends to construct a new porch in the same location as the original porch but will enclose the porch with windows and remove the wall at the front entrance to extend the interior living space. In addition to extending the interior living space, by extending the front entryway, it allows the Applicant to readjust a small interior staircase to the second floor. He said that the stairs are small and turn at the end making them difficult to utilize. The Applicant is not seeking to increase the size of the porch beyond what previously existed and will not encroach any further into the front yard setback.

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 35-foot front yard setback would result in practical difficulty as there are no alternative locations to construct the porch addition.

2. The lot was created in 1944 and predates Queen Anne's County zoning regulations.
3. A porch previously existed on the Property in the same location the Applicant seeks to construct the porch addition.
4. The dwelling is in the front corner of the Property close to the side yard lot line and front yard lot line.
5. It is necessary to extend the front entrance to increase the size of the stairs to the second story.
6. The variance is not contrary to the public interest.
7. The variance is a minimal deviation and is the minimal amount necessary to add additional living space.

Decision

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

1. A variance from the provisions of § 18:1-19.E(1)(c)(4)[a][i] to reduce the required 35-foot front yard setback to 27 feet to permit the Applicant to construct a 15' x 7' porch addition to an existing dwelling and convert it to living space within the rear yard setback.

ORDER

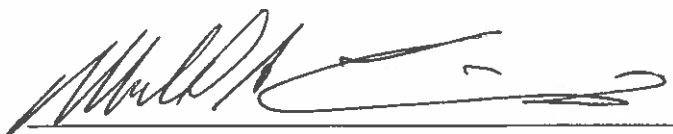
For the reasons set forth in the foregoing Opinion, it is this 31st day of August, 2023 ordered that the variance requested for George W. Lanman, Jr., in Case No. BOA-23-06-0157, be granted.



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-23-06-0157, for George W. Lanman, Jr. which Opinion and Order resulted from a public hearing conducted by the Board of Appeals on July 27, 2023 and that the minutes and a recording of the July 27, 2023 meeting are filed in the office of Board of Appeals.

Certified this 31st day of August, 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-22-09-0132
Timothy B. Wilson *
for Variance *

* * * * *

FINAL DECISION OF THE BOARD

Introduction

The Queen Anne’s County Board of Appeals (the “Board”) held a meeting on July 27, 2023 at 5:30 p.m. to consider Case No. BOA-22-09-0132 for a variance application filed by Timothy B. Wilson (hereinafter the “Applicant”). The Board members present were Chairman, Howard Dean, and Board Members Craig W. McGinnes and Michael Lesniowski. Those in attendance also included Board Attorney, Lyndsey Ryan; Clerk to the Board, Cathy Maxwell; Zoning Inspector, Joe Pippin; Zoning Administrator, Vivian Swinson; and the Applicant, Timothy B. Wilson.

At the beginning of the hearing, the Board established that all requirements were met governing the filing of the variance application, and proper notice of the July 27th public hearing. Board Chairman Dean administered the oath to all who wished to testify on the application, including the Applicant.

Applicant’s Request

The Applicant requests a variance to the provision of § 18:1-45.C(2) of the Code of Public Local Laws of Queen Anne’s County, 1996 Edition (the “Code”), to exceed the 60% lot area coverage for a 50 ft. x 80 ft. existing detached garage with an L-shaped porch. The Applicant’s property is located at 777 Clannihan Shop Road near Church Hill in the 3rd Election District (the “Property”). The Property is located in the Agricultural (AG) Zoning District.

The Applicant received a building permit, #BR21-04-0357, to construct a single-family home with an attached garage. On August 29, 2022, the Applicant submitted building permit BR22-08-0635 to revise the building permit that was previously approved to remove a breezeway from the single-family home to the garage to permit the Applicant to have a detached garage. On

August 31, 2022, the Queen Anne’s County Department of Planning & Zoning denied the building permit after determining that the removal of the breezeway created a noncompliance on the Property. Specifically, the Code does not permit accessory buildings to exceed the square footage of the dwelling on the Property. The Applicant’s detached garage exceeds the permitted size by 2,058 square feet.

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 identified the Property and its location. He said that the Property is 1.75 acres in the AG Zoning District. The Property is not located in the Critical Area but there are hydric soils on the east side of the Property and sensitive species on the Property that will not be impacted by the application.

He said that the Applicant is proposing to revise a previously approved building permit to remove a 140 square foot breezeway between the 3,469 square foot single-family house and the 4,312 square foot accessory building. He explained that removing the breezeway will result in a detached accessory structure that will not comply with the Queen Anne’s County Zoning Code. Specifically, he said that § 18:1-45C(2) states, “in all districts, all buildings on a residential lot of less than 2 acres, other than the principal building, may not cover an area of the lot greater than

60% of the area covered by the existing principal building.” He said that the Applicant received a building permit in 2023 to construct a 288 square foot porch and deck, resulting in a total single-family dwelling area of 3,757 square feet. He said that the 60% limit on an accessory structure allows the maximum size of an accessory structure to be 2,254 square feet.

He said that the Applicant received a building permit in 2021 to construct a single-family home and garage attached by a breezeway. The single-family home and garage were constructed but the breezeway was not. He said the Applicant is seeking a variance to exceed the 60% limit on the size of accessory structures by 2,058 square feet.

Applicants’ Presentation

Timothy Wilson presented the application. He said that the breezeway as permitted in the 2021 building permit would connect from the back side of a bedroom in the house to the detached shop. He said that while building the structures on the Property he realized that the breezeway would serve no purpose which resulted in him deciding not to construct the breezeway. He added that the addition of the breezeway would prevent vehicles from accessing his back yard. Specifically, he said that if the breezeway is constructed, a septic tank will not be able to enter the backyard. He added that he has two septic tanks on his Property, one at the back of the detached shop and one on the side of his house.

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 was not persuasive. The Board concludes that the evidence does not justify 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 60% size limitation on accessory structures would result in practical difficulty.
2. The conditions are peculiar to the Property.

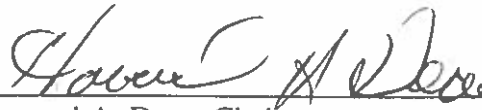
3. The conditions are the result of actions taken by the Applicant.
4. The variance is not contrary to the public interest.
5. An evaluation of alternatives does not prove that a variance is required.

Decision

Board Member Lesniowski made a motion to approve the variance to permit the detached accessory structure to exceed 60% of the area covered by the existing principal building to permit a 50 ft. x 80 ft. detached garage with L-shaped porch. The motion was not seconded. Therefore, the application was not approved.

ORDER

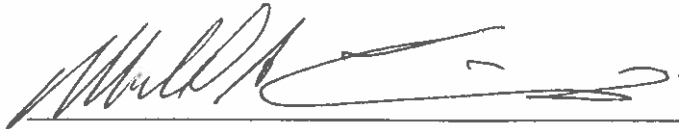
For the reasons set forth in the foregoing Opinion, it is this 5th day of September, 2023, ordered that the variance requested for Timothy B. Wilson, in Case No. BOA-23-09-0132, be denied.



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-23-09-0132, for Timothy B. Wilson, which Opinion and Order resulted from a public hearing conducted by the Board of Appeals on July 27, 2023 and that the minutes and a recording of the July 27, 2023 meeting are filed in the office of Board of Appeals.

Certified this 5th day of September, 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-22-07-0128

Cheryl G. Handley *

*

for Variance

* * * * *

FINAL DECISION OF THE BOARD

Introduction

The Queen Anne’s County Board of Appeals (the “Board”) held a meeting on July 27, 2023 at 5:45 p.m. to consider Case No. BOA-22-07-0128 for a variance application filed by Cheryl G. Handley (hereinafter the “Applicant”). The Board members present were Chairman, Howard Dean, and Board Members Craig W. McGinnes and Michael Lesniowski. Those in attendance also included Board Attorney, Lyndsey Ryan; Clerk to the Board, Cathy Maxwell; Senior Long Range Planner, Rob Tracey; Zoning Administrator, Vivian Swinson; the Applicant, Cheryl G. Handley; and agents of the Applicant including Jeffrey Thompson, Esq.; Jack Kirby, Kirby & Associates, Inc.; and Jon Beauchamp, Mid Atlantic Deck & Fence Company.

At the beginning of the hearing, the Board established that all requirements were met governing the filing of the variance application, and proper notice of the July 27th public hearing. Board Chairman Dean administered the oath to all who wished to testify on the application, including the Applicant.

Applicant’s Request

The Applicant requests a variance to the provision of § 14:1-51.A of the Code of Public Local Laws of Queen Anne’s County, 1996 Edition (the “Code”), to replace two (2) existing decks and one (1) screened porch attached to the existing residence within the 100 foot Critical Area Buffer. The Applicant’s property is located at 200 N. Lake Ct, Stevensville, Maryland in the 4th Election District (the “Property”). The Property is located in the Neighborhood-Conservation-1 (NC-1) Zoning District and Limited Development Area (LDA) Critical Area designation.

The Applicant submitted a Building Permit (No. BR22-06-0477) on June 27, 2022 to construct an addition to an existing single-family dwelling consisting of a 16’ x 24’ open deck

with steps to grade, a 12' x 23' open upper deck, a 12' x 23' lower screen porch, and a 15' x 16' open deck with steps to grade. On July 12, 2022, the Queen Anne's County Department of Planning & Zoning denied the Building Permit after determining that the proposed deck addition is within the 100 foot setback from tidal water as required by § 14:1-51.A of the Code.

Applicable Provisions of the Code

The standards the Board must apply to the Applicant's variance request from the Chesapeake Bay Critical Area Act are set forth in § 14:1-66 of the Code. To grant the requested variance, the Board must find as follows:

1. Literal enforcement of this Chapter 14:1 would result in unnecessary hardship as the result of specified conditions, which hardship is not shared by owners of other property in the same development area;
2. Those conditions are peculiar to the property involved;
3. Those conditions are not the result of any action taken by the applicant;
4. The variance will not be contrary to the public interest or the policies, goals and objectives of this Chapter 14:1 and the Queen Anne's County Critical Area Program;
5. The variance will not confer upon an applicant any special privilege denied to other owners of like property and/or structures within the critical area;
6. The variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitats within the critical area;
7. The variance is the minimum deviation from the provisions of this Chapter 14:1 that will make possible the reasonable use of land or structures; and
8. The granting of the variance will be in harmony with the general purpose and intent of this Chapter 14:1 and the Queen Anne's County Critical Area Program and the variance shall not result in a use not permitted in the applicable development area or an increase in the applicable density limitations.

In addition, the provisions of COMAR 27.01.12.04 require the Board to make certain written findings not addressed in § 14:1-66 of the Code. These additional written findings, set forth in COMAR 27.01.12.04, are as follows:

1. In accordance with Natural Resources Article, §8-1808(d)(3)(ii), Annotated Code of Maryland, an applicant has overcome the presumption that the specific development

activity for which the variance is required does not conform with the general intent of the local jurisdictions program;

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

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

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

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

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

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

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

Property Description and Department of Planning & Zoning Recommendations

Rob Tracey, Senior Planner with the Department of Planning & Zoning presented his staff report. Mr. Tracey identified the Property and its location. The Property is located in the Fourth Election District of Queen Anne's County at 200 N. Lake Ct., Stevensville, Maryland. The Property is designated as Parcel 14, Lot 10 on Zoning Map 76. The Property is zoned Neighborhood Conservation-1 (NC-1) and is 14,267 square feet. The Property is entirely within the State's Chesapeake Bay Critical Area on land designated Limited Development Area (LDA).

Mr. Tracey said that the Applicant is seeking a Critical Area Buffer variance to reconstruct and reconfigure 713 square feet of existing deck and screened-in porch in the Critical Area Buffer to be located 76 feet from tidal wetlands. Specifically, the Applicant is proposed to square off the circular portion of the existing 241 square foot screened-in porch in an effort to resolve stormwater management issues. He said that the Property is within the applicable LDA lot coverage limit of 4,458 square feet with the proposed total lot coverage of 4,407 square feet. He added that the Property owner is seeking to remove 18 square feet of existing lot coverage and replace 14 square feet of lot coverage resulting in a net decrease of lot coverage.

Mr. Tracey said that the Property is improved with a single-family residence; attached garage; two decks, one with a screened-in porch and deck on top; two driveways; and a pier. He said the Property narrows along the eastern side towards the water. In addition, half of the Property is encumbered by the 100-foot Critical Area Buffer.

Mr. Tracey discussed the applicable standards that the Board must find to grant the variance. Mr. Tracey advised the Board to discuss and determine if the Applicant can meet the unwarranted or unnecessary hardship standard. Mr. Tracey advised the Board of the letter submitted by Susan Makhoulf, Natural Resource Planner, Critical Area Commission. Ms. Makhoulf's letter stated that the Board must determine that the Applicant satisfies the burden to prove that the request meets each and every one of the State's variance standards provided in the Natural Resources Article and COMAR to grant approval.

Then, Mr. Tracey discussed the Critical Area variance standards as provided by the Code. He said that the Applicant is seeking to square off the circular portion of the existing deck to address drainage issues caused by the existing roof line. He said that a literal enforcement of Chapter 14:1 may not result in an unnecessary hardship to the Applicant because the Applicant would be permitted to repair and replace the existing structures with no modification to the layout through the building permit process. He added that although the Applicant has suggested that the lot coverage in the Buffer will correct a stormwater management issue on the Property, the Applicant has not provided documentation to support that claim.

Regarding conditions peculiar to the Property, Mr. Tracey said that approximately half of the Property is encumbered by the 100-foot Buffer. However, the Applicant's application provides

that the practical difficulty or unwarranted hardship stems from the design of the roofline but no evidence supporting the claim was submitted. He added that the condition is not a result of action taken by the Applicant and that the variance will not confer upon the Applicant any special privilege.

At the conclusion of his presentation, Mr. Tracey advised the Board to discuss the variance requirements established by the Code, COMAR, and Natural Resources Article.

Applicant's Presentation

Jeffrey Thompson, Esq., presented the application. Mr. Thompson said that the Applicant seeks to square off the angled corners of an existing screened-in porch to address drainage issues. If permitted to square off the deck, Mr. Thompson said that the Applicant will remove 18 square feet of existing screened-in porch and 472 square feet of existing stones underneath of the existing decks resulting in a net reduction of approximately 476 square feet of lot coverage. The Applicant's Property is improved with two existing decks with a screened-in porch in the center that has a deck on top of it. The Applicant seeks to replace the two existing decks and square off the screened-in porch in the center and deck above it.

Mr. Thompson introduced Jack Kirby, professional land surveyor at Kirby & Associates, as an agent of the Applicant's. Mr. Kirby introduced Applicant's Exhibit 9, which he described as an aerial photograph of the Property. He described the 45° angles on the screened-in porch and upper deck. He also identified other properties within the Applicant's neighborhood and explained how the structures on those properties sit closer to the water than the Applicant's. Mr. Kirby said that the existing screened-in porch is 75.9 feet from mean high water and the proposed additions to the screened-in porch are 76 feet from mean high water. Therefore, he explained, the Applicant is not seeking to encroach any further into the Buffer than what already exists.

Mr. Kirby reiterated that the Applicant seeks to remove 18 square feet of existing screened-in porch and add 14 square feet to square off the corners of the screened-in porch. In addition, the Applicant proposed to remove existing stone underneath of the existing decks to reduce the total lot coverage.

Next, Mr. Thompson introduced Jon Beauchamp, contractor at Mid Atlantic Deck & Fence Company. Prior to Mr. Beauchamp testifying, Mr. Thompson advised the Board that the Applicant has the ability to rebuild her existing deck by obtaining a building permit but because she wants to square off the corners, which encroach 0.1 feet further into the Buffer, she is required to obtain Board approval. Then, Mr. Beauchamp explained the existing screened-in porch and upper deck. He said the upper deck and screened-in porch have 45° angles on the corners and no gutters. In addition, the upper deck was built on top of an existing screened-in porch shingled roof. To improve the soundness of the upper deck, the Applicant seeks to construct a reverse rafter roof with a rubber membrane on top of a 2 x 10 which will be cut at an angle and will divert stormwater runoff. He explained that a reverse rafter roof is the best method for constructing an upper deck to efficiently divert stormwater away from the house. In addition, the Applicant will add a downspout to direct stormwater. Mr. Thompson added that the location of where the stormwater will drain to will be addressed by the Planning & Zoning Office during the building permit process.

Mr. Beauchamp said that the angled corners of the screened-in porch and upper deck make it difficult to control the direction of the stormwater. He said that a straight corner provides a clear direction for stormwater to flow away from the house.

Next, Mr. Thompson introduced the Applicant, Cheryl Handley. Ms. Handley explained the necessity to add onto the screened-in porch and upper deck to square off the corners. She said that the condition of the existing screened-in porch and upper deck have caused significant damage to her house. Specifically, because there is no way to divert stormwater, the stormwater runs from the upper deck and porch to the French doors on the front of her house. Due to water damage from stormwater runoff, she has replaced plywood on the front of her house. She said that there are no gutters on the upper deck or screened-in porch to divert stormwater. Due to the damage caused by stormwater runoff, Ms. Handley is seeking to reconstruct the screened-in porch and upper deck to divert stormwater away from her house.

In addition, Ms. Handley will replace the existing decks to include spacers to reduce lot coverage. She will also remove existing stone underneath of the decks to further reduce the total lot coverage.

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 § 14:1-66 of the Code and COMAR 27.01.12.04, the Board specifically finds and concludes as follows:

1. The Applicant seeks to reconstruct an existing screened-in porch and upper deck to address drainage issues caused by the existing roof line and angled corners.
2. Squaring off the corners of the screened-in porch and upper deck will divert water away from the Applicant's house preventing damage.
3. The existing screened-in porch is 75.9 feet from the shoreline and the proposed screened-in porch addition is 76 feet from the shoreline.
4. The angled roof of the house and construction of the existing screened-in porch and upper deck are peculiar.
5. Approximately half of the Property is encumbered by the 100-foot Buffer and the eastern property line narrows as it approaches tidal waters resulting in a narrowing area towards the water.
6. The improvements and stormwater issues existed on the Property prior to the Applicant purchasing the Property.
7. The request is consistent with the County Code and will not confer upon the Applicant any special privilege.
8. As a result of receiving the variance, the Applicant will reduce approximately 476 square feet of existing lot coverage.
9. Reconfiguring the existing screened-in porch and upper deck to add 14 square feet 0.1 feet closer to the shoreline is the minimum amount necessary to direct stormwater away from the Applicant's house.
10. Other properties in the neighborhood are improved with decks and screened-in porches and are located closer to the shoreline than the Applicant's structures.

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 § 14:1-51.A. to replace 2 existing decks and reconstruct a screened-in porch to square off the corners of the screened-in porch to be located 76 feet from tidal wetlands, subject to the following conditions:

1. The Property adheres to the lot coverage limits of the Limited Development (LDA) designation.
2. The Applicant must adhere to all other agency comments.

ORDER

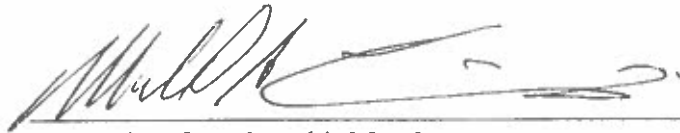
For the reasons set forth in the foregoing Opinion, it is this 1st day of September, 2023, ordered that the variance requested for Cheryl G. Handley, in Case No. BOA-22-07-0128, be granted, subject to the conditions set forth in the Opinion.



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-22-07-0128, for Cheryl G. Handley, which Opinion and Order resulted from a public hearing conducted by the Board of Appeals on July 27, 2023 and that the minutes and a recording of the July 27, 2023 meeting are filed in the office of Board of Appeals.

Certified this 1st day of September, 2023 by:



Cathy Maxwell
Clerk to the Board of Appeals