

BEFORE THE BOARD OF APPEALS OF QUEEN ANNE’S COUNTY

* * * * *
In the matter of Application by * Case No. BOA-23-01-0139
Kent Island Federation of Arts, Inc. *
*
for Conditional Use *
* * * * *

FINAL DECISION OF THE BOARD

Introduction

The Queen Anne’s County Board of Appeals (the “Board”) held a meeting on September 13, 2023 at 5:15 p.m. to consider Case No. BOA-23-01-0139 for conditional use approval to include the existing art center and a new 864 square foot pole building to be utilized as a standalone clay center at 405 Main Street in the town of Stevensville within the 4th Election District (the “Property”) filed by Kent Island Federation of Arts, Inc. (hereinafter the “Applicant”). The Board members present were Chairman, Howard Dean, and Board Members Craig W. McGinnes and Scott MacGlashan.

At the beginning of the hearing, the Board established that all requirements were met governing the filing of the conditional use application, and proper notice of the September 13th public hearing. Board Chairman, Howard Dean, administered the oath to all who wished to testify on the application, including the Applicant.

Applicant’s Request

The Applicant is seeking conditional-use approval under the provisions of § 18:1-19.C.(13) of the Code of Public Local Laws of Queen Anne’s County (the “Code”), to include the existing art center and a new 864 square foot pole building to be utilized as a standalone clay center. The Property is zoned Neighborhood Conservation-8 (“NC-8”). Nonprofit and for-profit institutions are permitted as conditional uses in the NC-8 district pursuant to § 18:1-19.C.(13) of the Code.

Applicable Provisions of the Code

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

1. The proposed use at the proposed location shall be consistent with the general purpose, goals, objectives, and standards of the Comprehensive Plan, this Chapter 18:1, or any other plan, program, map, or ordinance adopted, or under consideration pursuant to official notice, by the County.

2. The proposed use at the proposed location will not result in a substantial or undue adverse impacts on adjacent property, the character of the neighborhood, traffic conditions, parking, public improvements, public sites or rights-of-way, or other matters affecting the public health, safety, and general welfare.

3. The proposed use at the proposed location will be adequately served by, and will not impose an undue burden on, any of the required improvements referred to in this Chapter 18:1, Part 7. Where any such improvements, facilities, utilities, or services are not available or adequate to service the proposed use at the proposed location, the applicant shall, as part of the application and as a condition of approval of the conditional use, be responsible for establishing ability, willingness, and binding commitment to provide such improvements, facilities, utilities, and services in sufficient time and in a manner consistent with the Comprehensive Plan, this Chapter 18:1, and other plans, programs, maps, and ordinances adopted by the County.

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

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

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

1. Policies;
2. Timing of the implementation of the plan;
3. Timing of development;

4. Timing of rezoning;
5. Development patterns;
6. Land uses; and
7. Densities or intensities.

Property Description and Department of Planning & Zoning Recommendations

Steven Johnson, County Planner with the Queen Anne’s County Department of Planning & Zoning, presented his staff report. He identified the Property, located at 405 Main Street in Stevensville, Maryland, and further identified as Tax Map 56 Parcel 95. The Property is within the Historic Stevensville Arts & Entertainment District. The existing art center on the Property is a legally nonconforming use. He explained that the existing two-story building is nonconforming regarding required 10’ side setback, which is only 6.8’ from the property line.

The Property is zoned NC-8 and is located in the Chester/Stevensville Growth Area. Nonprofit institutional uses are permitted as a conditional use in the NC-8 district. The Property is partially located within the Sensitive Species Project Review Area but correspondence from the Maryland Department of Natural Resources indicates that there are no official State or Federal records for listed plant or animal species on-site. Mr. Johnson said that there are no other natural resources on-site. The Applicant will meet the requirements of the Forest Conservation Act through a fee-in-lieu due to space limitations on the Property. The Property is served by a new well and public sewer. Stormwater management will be provided onsite and will be reviewed and approved by the Department of Public Works.

Mr. Johnson provided the Board with the Applicant’s Concept Plan which identifies the location of the existing art center, existing shed, and proposed clay center. He explained that the existing shed will be relocated 4 feet east to ensure that all nonresidential structures are 15 feet apart. Conceptually, he said, the application meets the nonresidential development standards required by the Code. He added that 4 parking spaces are required onsite and the Applicant has proposed 5 parking spaces. In addition, the Applicant will add a tree buffer along the west side lot line, and shrubs and trees to the front of the Property.

Mr. Johnson gave an overview of the renderings of the proposed building to the Board. At conclusion of his testimony, Mr. Johnson said that no agencies that reviewed the Concept Plan offered objections to approval. He added that staff does not object to the Board of Appeals granting conditional use approval.

Applicant's Presentation

Genevieve MacFarlane, attorney on behalf of the Applicant, presented the Application. She said that the Applicant is seeking conditional use approval to construct a 24' x 36' one-story pole building and accompanying 5 parking spaces and sidewalk to expand the existing legally nonconforming nonprofit institutional use. The Applicant intends to utilize the pole building as a clay center.

Then, Ms. MacFarlane introduced Ryan Anderson, professional land surveyor with McCrone. He said he has worked in the industry for 24 years and routinely handles matters such as the Applicant's. He said the Applicant's project began in 2021. The Property contains an existing art center and shed that is not on a foundation. There are 3 large trees on the Property and adequate parking.

Mr. Anderson said that the Property is relatively flat but drains well. As part of the project, the Applicant will be required to meet stormwater management requirements. To meet stormwater management requirements, he said the Applicant will use Environmental Site Design ("ESD") practices such as nonstructural techniques.

He said the Applicant is proposing to build an 864 square foot pole building to house a clay center. The existing art center is utilized for painting and other forms of art while the new building will primarily be used for clay activities. Mr. Anderson said that the impervious surface area will remain below the permitted limit of 50% at 41.5%. The maximum nonresidential floor area will remain below the permitted limit of 30% at 12.1%. Mr. Anderson added that the Applicant will screen the parking area with plants.

Then, Mr. Anderson addressed letters received from state agencies on the Concept Plan. He said that the Department of Natural Resources noted no specific concerns due to no official records for State or Federal listed, candidate, proposed, or rare plant or animal species within the

project area. Additionally, the Maryland Department of Transportation State Highway Administration provided no concerns. He concluded by stating that the project is within the growth area and expands the existing use of property located in the Arts & Entertainment District which is consistent with Chapter 8 of the Comprehensive Plan.

Then, Maureen Wheatley, member of Applicant for 30 years, testified. Ms. Wheatley said that she served for 8 years as the Applicant's Gallery Director. She said that the Applicant wants to offer classes for clay due to requests from the community and members. In addition, she said the Applicant received a bequest from an estate for \$250,000 for a clay center and clay equipment. Currently, the Applicant is storing donated clay equipment including kilns, tables, and shelving, in a storage unit because they have nowhere else to place it. Then, Ms. Wheatley described the programs and projects the Applicant currently provides to members and the age ranges that are served by the various programs.

Testimony from the Public

After the Applicant presented his case, Chairman Dean asked if any members of the public wished to testify. Joel Purcell testified in favor of the application. He said that the Applicant's organization serves people from ages 9 to 90 and that the use is a positive for community.

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

1. The application is consistent with the 2022 Queen Anne's County Comprehensive Plan, specifically Chapters 5 and 8.
2. The Property is located within the Arts & Entertainment District.
3. The proposed use is not inappropriate at the location as the Applicant is currently operating an art center at the Property.

4. The expansion of the existing art center will not result in substantial changes in the day-to-day operations, including traffic.
5. There is adequate parking on the Property.
6. The parking area will be adequately screened from the neighboring properties.
7. The expansion of the institutional use on the Property will not result in substantial or undue adverse impacts on adjacent properties, the character of the neighborhood, traffic conditions, parking, public improvements, public sites or rights-of-way, or other matters affecting the public health, safety, and general welfare.

Decision

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

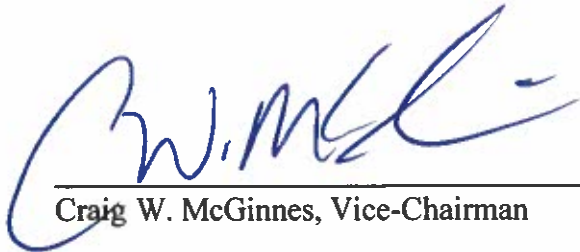
1. Conditional use approval pursuant to § 18:1-19.C.(13) of the Code to expand the existing legally nonconforming nonprofit institutional use to include a 24' x 36' one-story pole building to be utilized as a clay center, subject to the following condition:
 - Any remaining edits and/or documents required by a reviewing agency be reviewed and approved prior to site plan approval.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 17th day of October, 2023, ordered that the conditional use approval requested for Kent Island Federation of Arts, Inc., in Case No. BOA-23-01-0139, be granted, subject to the conditions set forth in the Opinion.



Howard A. Dean, Chairman



Craig W. McGinnes, Vice-Chairman



Scott MacGlashan, Member

State of Maryland, County of Queen Anne's:

I HEREBY CERTIFY that the foregoing is a true and correct copy of the Opinion and Order of the Board of Appeals of Queen Anne's County in Case No. BOA-23-01-0139, for Kent Island Federation of Arts, Inc., which Opinion and Order resulted from a public hearing conducted by the Board of Appeals on September 13, 2023 and that the minutes and a recording of the September 13, 2023 meeting are filed in the office of Board of Appeals.

Certified this 17th day of October, 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-23-05-0153

Queen Anne’s Infrastructure, LLC *

*

for Conditional Use *

* * * * *

FINAL DECISION OF THE BOARD

Introduction

The Queen Anne’s County Board of Appeals (the “Board”) held a meeting on September 13, 2023 at 5:30 p.m. to consider Case No. BOA-23-05-0153 for conditional use approval to conduct a select cut commercial forestry operation on approximately 28¹ acres of land extending across two individual land parcels on the north side of Wright’s Neck Road, just east of its intersection with Recovery Drive near Centreville, in the 3rd Election District (the “Property”) filed by Queen Anne’s Infrastructure, LLC (hereinafter the “Applicant”). The Board members present were Chairman, Howard Dean, and Board Members Craig W. McGinnes and Scott MacGlashan.

At the beginning of the hearing, the Board established that all requirements were met governing the filing of the conditional use application, and proper notice of the September 13th public hearing. Board Chairman, Howard Dean, administered the oath to all who wished to testify on the application, including the Applicant.

Applicant’s Request

The Applicant is seeking conditional-use approval under the provisions of § 18:1-19.C.(3) of the Code of Public Local Laws of Queen Anne’s County, (the “Code”), to engage in a select cut commercial forestry operation on approximately 28 acres of land extending across two individual

¹ The Board of Appeals Notice of Hearing provides that the Applicant seeks conditional use approval for a select cut commercial forestry operation on approximately 48 acres. After the Notice was advertised, the Applicant advised the Board that the State Department of Assessments and Taxation incorrectly classified Parcel 4, one of two parcels within the deed, as containing 38.59 acres and that the correct size of Parcel 4 is 18.8 acres. Therefore, the application is for conditional use approval on approximately 28 acres of land, not 48 acres of land.

land parcels. Commercial forestry is permitted as a conditional use in the Neighborhood Conservation-1 (NC-1) district pursuant to § 18:1-19.C. of the Code.

Applicable Provisions of the Code

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

1. The proposed use at the proposed location shall be consistent with the general purpose, goals, objectives, and standards of the Comprehensive Plan, this Chapter 18:1, or any other plan, program, map, or ordinance adopted, or under consideration pursuant to official notice, by the County.

2. The proposed use at the proposed location will not result in a substantial or undue adverse impacts on adjacent property, the character of the neighborhood, traffic conditions, parking, public improvements, public sites or rights-of-way, or other matters affecting the public health, safety, and general welfare.

3. The proposed use at the proposed location will be adequately served by, and will not impose an undue burden on, any of the required improvements referred to in this Chapter 18:1, Part 7. Where any such improvements, facilities, utilities, or services are not available or adequate to service the proposed use at the proposed location, the applicant shall, as part of the application and as a condition of approval of the conditional use, be responsible for establishing ability, willingness, and binding commitment to provide such improvements, facilities, utilities, and services in sufficient time and in a manner consistent with the Comprehensive Plan, this Chapter 18:1, and other plans, programs, maps, and ordinances adopted by the County.

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

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

Last, pursuant to Maryland Annotated Code, Land Use Article §1-303, the Board must include in its evaluation of the Comprehensive Plan, pursuant to the above-cited section, certain consistency

findings. The Board's approval of a conditional use must further, and not be contrary to, the following items in the Queen Anne's County Comprehensive Plan:

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

Property Description and Department of Planning & Zoning Recommendations

Prior to providing the Staff Report, Barry Waterman, member of Queen Anne's Infrastructure, LLC, spoke on behalf of the Applicant to address a discrepancy in the application and the advertisement for the public hearing. Specifically, Mr. Waterman stated that the Property consists of two deed parcels, Parcels 4 and 43. He said that the State Department of Assessments and Taxation ("SDAT") incorrectly identified Parcel 4 as containing 38.59 acres. After purchasing the Property, Mr. Waterman completed a survey of the Property which identified Parcel 4 as containing 18.8 acres, not 38.59 acres. Deed Parcel 43 contains 10.212 acres. Given the accurate size of Parcel 4, Mr. Waterman stated that the application is for conditional use approval to permit a select cut commercial forestry operation on two separate but adjoining parcels consisting of approximately 28 acres.

Then, Doug Summers, Associate Planner with the Department of Planning & Zoning, presented his staff report. He identified the Property as Queen Anne's County Tax Map 34 Parcels 4 and 43, on the north side of Wright's Neck Road, approximately 3 miles west from Centreville town limits. He said the Applicant is seeking to conduct a selective cut commercial forestry operation on two separate but adjoining parcels consisting of approximately 28 acres. He said that the Applicant submitted all requirements, including the logging permit application; forestry

declaration of intent; approved sediment and erosion control plan; timber harvest plan approved by DNR; signed affidavit of notification to adjacent property owners; nontidal wetlands best management practices agreement; and a narrative detailing adherence to Critical Area guidelines on forest interior dwelling species ("FIDS") habitat.

Mr. Summers said that the Property is unimproved. The dominant tree species on the Property are loblolly pine; poplar; white and red oak; beech; and sweetgum. There are hydric soils and nontidal wetlands on site but there are no USGS blue line streams on site. However, he said that there is a watercourse ditch identified in Parcel 4. Due to the location of the ditch, a Stream Management Area was established along with a location for crossing during harvest operations. In addition, a buffer area was established running approximately 75' along both sides of the ditch. Mr. Summers added that the Property lies directly west of a residential subdivision known as Recovery that was created over a 10-year period from the late 1960s to late 1970s.

In addition, approximately 4.4 acres of Parcel 4 are located within the Critical Area designated Limited Development Area. There is also presence of FIDS within the wooded area of the Property. Given the presence of FIDS, commercial forestry activities will be prohibited during breeding season from April 1 – August 31.

Mr. Summers said that the Applicant submitted a timber harvest plan to select cut within Stand A and Stand B. He said the proposed post-harvest basal area is 60 square feet per acre which, in his opinion, is a healthy basal area. He said that the Property currently has a harvest basal area of approximately 120 square feet per acre. Per the harvest plan, upon completion of the select cut, natural regrowth of mixed oaks and poplar is expected on the Property.

He concluded by stating that the project as proposed is consistent with the 2022 Queen Anne's County Comprehensive Plan as it relates to being a resource-based industry and its adherence to resource protection standards set forth by local, state, and Federal entities. He added that the select cut nature and post-harvest basal area ensure that there will be no adverse effects on the character of the neighborhood. Mr. Summers said that staff supports the Board of Appeals in granting the conditional use to the Applicant to carry out selective cut commercial forestry

operation on the Property with 7 conditions as noted in his staff report and a requirement that the Applicant amend all submittals to reflect the appropriate acreage for Parcel 4.

Applicant's Presentation

Joseph Stevens, attorney and agent on behalf of the Applicant, presented the Application. Mr. Stevens described the location of the Property in the NC-1 District. He said that lot sizes of properties within Neighborhood Conservation districts are between 8,000 square feet and 5 acres and that the districts are placed near existing neighborhoods. Then, Mr. Stevens explained the standard the Board must consider for conditional use applications. He said that conditional uses are authorized in specified zoning districts based on the presumption that they are generally appropriate and compatible in those specified districts. He added that the Board must consider whether the use at the proposed location will have an adverse impact above and beyond what it would typically have in a similarly zoned district. He described the location of the Property and said that it is on the outskirts of an NC district encompassed with large lots and that it abuts a property zoned Countryside.

Then, Mr. Stevens introduced Noreen Davis, Forester with Davis & Associates. Ms. Davis gave an overview of her background in the forestry field and said that she has been accepted as an expert in the field. Ms. Davis is familiar with forestry plans and has completed many over the years. Then, Ms. Davis explained the Applicant's project. She said that the Applicant proposes to select cut portions of the Property which is the process of removing mature trees while leaving some mature trees for regeneration. She explained that the Applicant's tree stand consists of uneven aged trees resulting in a mixture of large trees and small trees.

She said that the Applicant will select cut some of the existing large trees. The Applicant will leave a basal area, which is the average amount of a square feet per acre occupied by trees. The Property currently has a basal area of 120 square feet per acre and the select cut operation will reduce the basal area to 60 square feet per acre. The desired basal area after a select cut harvest is 40 – 60 acres per square foot. Ms. Davis described forestry operations and regeneration and explained that tree removal is necessary to promote regeneration of oak trees, which is a more desirable tree that has additional environmental benefits.

Ms. Davis said that the trees to be cut will be marked once the Applicant receives approval to conduct the forestry operation. She said that a typical logging company will remove 30 – 50 trees per acre. Therefore, they envision removing approximately 900 trees from the Property in a 29-acre tree stand area. Based on the number of trees to be removed, Ms. Davis estimated that the forestry removal process will take 2 – 3 weeks. She said that the operation will have a short-term impact on neighbors due to the activity of removing trees. As proposed, the project will result in 5 – 10 loads of trees per day.

After removing the trees, a tree stump 6 – 10 feet above ground will remain. Leaving a stump of 6 – 10 feet allows the tree to decompose faster and protects regenerating trees. Ms. Davis added that the process also provides benefits to wildlife. Then, she explained the logging operation. She said that the company removing the trees will access the Property away from the residential neighborhood and will load the trees in the same area of entry. The Property will be accessed off Wrights Neck Road, rather than Recovery Drive which is surrounded by residences. Chairman Dean raised concerns about removing trees near the residential properties such that no damage is caused to the existing residences. Ms. Davis said that the Applicant considered placing a 50-foot buffer around the rear of the residential properties but that the neighbors expressed desire for trees to be removed within the buffer.

Then, Mr. Stevens introduced Barry Waterman, a member of Queen Anne's Infrastructure, LLC. Mr. Waterman said that he has been a real estate broker for 39 years in Queen Anne's County. He is actively involved in development and has been a member and Chairman of the Planning Commission. Then, he addressed the comment about the 50-foot buffer around the existing residential properties. He said that some of the neighbors expressed a desire for him to remove trees within that buffer area that are in danger of falling over.

Mr. Waterman discussed the proposed operation and the benefits of it. He compared harvesting trees to harvesting corn. He said that crops and trees that fall to the ground on their own go to waste if not harvested. He said that harvesting is necessary to preserve the wood. Then, Mr. Waterman expressed his opinion regarding consistency of the operation with the Queen Anne's County Comprehensive Plan. He said that the Comprehensive Plan goes into great detail about protecting forests and the addition of more forests. He said the Comprehensive Plan anticipates

the harvest of mature timber so that forests may be regenerated and sustainable for the future. He added that the Comprehensive Plan promotes Queen Anne's County as a rural community where resource-based industries support the goals of the County.

Then, Mr. Waterman commented on the zoning of the property. He said that Neighborhood Conservation zoning is generally used in areas where residential development exists. Generally, in Neighborhood Conservation districts, a forested or rural area is surrounded by residential properties. He said that the Property is unique because it is on the edge of a Neighborhood Conservation district, rather than within the residential community.

Ms. Davis addressed the Board again. Ms. Ryan asked Ms. Davis the size of tree Stand B, which she responded is 20.6 acres. Ms. Davis said that clearing on the Property needs to occur to allow sunlight to come through the tree canopy to support growth of new trees. Given the FIDS habitat, the project will avoid large openings and the basal area will be limited to 60 square feet per acre. Limiting the basal area will support the breeding of FIDS. If unable to harvest the trees on the Property, Ms. Davis said that the mature ones will fall over and die. Decaying trees on the Property will not support regeneration.

Testimony from the Public

After the Applicant presented his case, Chairman Dean asked if any members of the public wished to testify. Dominick Ruscitti, owner of Tax Map 34 Lot 24, which abuts the Property, testified in favor of the application. He said that the trees on the Property pose a danger to his home and that he is in favor of the Applicant removing them. Stephen Michaels, owner of Tax Map 34 Lot 79, testified. He said he is not opposed to the application but raised concerns about a wet area on the Property and drainage onto his property. Ms. Davis responded and said that the removal of trees will not increase the amount of water runoff.

Tyler Ellis, owner of Tax Map 34 Lot 25, which abuts the Property, testified in favor of the application. Mr. Ellis owns the property closest to the proposed tree loading area on the Property. Ralph Hubbard, owner of Tax Map 34 Lot 23, testified in favor of the application. Thomas Hummel, owner of Tax Map 34 Lot 39, testified in favor of the application.

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

1. The application is consistent with the 2022 Queen Anne's County Comprehensive Plan, specifically as it relates to being a resource-based industry and its adherence to resource protection standards set forth by local, state, and federal entities.
2. The project protects natural resources and supports economic development.
3. The Property subject to the conditional use is surrounded by residential properties on one side but will not have an adverse impact on neighboring properties based on testimony of the property owners.
4. The traffic created by the use will not be any more intense than current conditions.
5. Public improvements are not required for the conditional use.
6. The Property does not need water or sewer.
7. A select timber harvest operation is a permitted conditional use on the Property.
8. The Applicant submitted the required plans, applications, and agreements to the County for the conditional use.
9. There are mature trees on the Property that are in danger of dying due to their age.
10. The Applicant is proposing a less intense method of tree removal than clear cutting.
11. The commercial forestry operation will result in natural regrowth of trees.
12. After the harvest, a healthy remaining density of trees will occupy the Property.

Decision

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

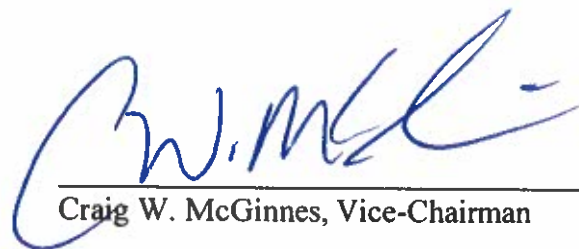
1. Conditional use approval pursuant to § 18:1-19.C.(3) of the Code to conduct a select timber harvest operation on approximately 29 acres, subject to the following conditions:

- The Applicant will adhere to the Queen Anne's County Forestry Board's approved Timber Harvest Plan, specifically focusing on meeting and/or exceeding the post-harvest basal area of 60 square feet per acre;
- The Applicant will adhere to the approved erosion and sediment control plan;
- The Applicant will adhere to the Non-Tidal Wetlands Best Management Practices Agreement for Forest Harvest Operations;
- The hours of operation on the Property will be Monday through Friday from 7:00 a.m. to 5:00 p.m.
- Per Maryland Department of Natural Resources and the Critical Area Commission guidelines, the Applicant adheres to the time-of-year restriction for timber harvesting within Forest Interior Dwelling Bird Habitat (FIDS) located within the Critical Area acreage. The restriction timeline is April 1 – August 31;
- Per Queen Anne's County permit guidelines, timber to be harvested within the Critical Area must be marked by a registered forester;
- The Applicant will submit revised documents to reflect the appropriate size of Parcel 4; and
- The Applicant will consult with neighbors of the Property prior to beginning the operation to identify dangerous trees to be removed.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 17th day of October, 2023, ordered that the conditional use approval requested for Queen Anne's Infrastructure, LLC, in Case No. BOA-23-05-0153, be granted, subject to the conditions set forth in the Opinion.


Howard A. Dean, Chairman


Craig W. McGinnes, Vice-Chairman


Scott MacGlashan, Member

State of Maryland, County of Queen Anne's:

I HEREBY CERTIFY that the foregoing is a true and correct copy of the Opinion and Order of the Board of Appeals of Queen Anne's County in Case No. BOA-23-05-0153, for Queen Anne's Infrastructure, LLC, which Opinion and Order resulted from a public hearing conducted by the Board of Appeals on September 13, 2023 and that the minutes and a recording of the September 13, 2023 meeting are filed in the office of Board of Appeals.

Certified this 17th day of October, 2023 by:



Cathy Maxwell
Clerk to the Board or Appeals

BEFORE THE BOARD OF APPEALS OF QUEEN ANNE’S COUNTY

* * * * *
In the matter of Application by * Case No. BOA-23-07-0158
Diana Waterman *
for Zoning Variance *
* * * * *

FINAL DECISION OF THE BOARD

Introduction

The Queen Anne’s County Board of Appeals (the “Board”) held a meeting on September 13, 2023 at 5:45 p.m. to consider Case No. BOA-23-07-0158 for a variance application filed by Diana Waterman (hereinafter the “Applicant”). The Board members present were Chairman, Howard Dean, and Board Members Craig W. McGinnes and Scott MacGlashan.

At the beginning of the hearing, the Board established that all requirements were met governing the filing of the conditional use application, and proper notice of the September 13th public hearing. Board Chairman, Howard 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 provisions of § 18:1-19.E.(1)(c)[4][f][i] and (c)[f][iii] of the Code of Public Local Laws of Queen Anne’s County (the “Code”), to reduce the required 35 foot front yard setback to 25 feet and reduce the required 50 foot rear yard setback to 10 feet to construct a two-story single family dwelling including a garage. The Applicant’s property is located at 105 Virginia Road, in the Kent Island Estates subdivision near Stevensville in the 4th Election District (hereinafter the “Property”). The Property is located in the Neighborhood Conservation-20 (NC-20) Zoning District with a Limited Development Area (LDA) Critical Area designation.

The Applicant submitted a Building Permit (No. BR23-06-0435) to construct a two-story single-family dwelling with the first floor measuring 32’ x 34’ overall to include a 21’8” x 14’ garage and a second floor measuring 32’ x 34’ overall. The proposed total floor area is 2,068 square feet. On July 6, 2023, the Queen Anne’s County Zoning Inspector denied the Applicant’s

Building Permit after determining that the proposed dwelling did not meet the required front yard setback of 35 feet, or the rear yard setback of 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 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

Ken Southard, Zoning Inspector with the Department of Planning & Zoning presented his staff report. Mr. Southard said the Applicant is seeking to construct a two-story single-family dwelling 32' x 34' overall to include a garage and porch. He said that the Applicant has requested to reduce the front yard setback from 35 feet to 25 feet and the rear yard setback from 50 feet to 10 feet.

Mr. Southard identified the Property and its location. He identified the Property in the Fourth Election District of Queen Anne's County located at 105 Virginia Road, Stevensville. The Property is 0.75 acres, is zoned NC-20 and is partially located within the Limited Development Area (LDA) of the Critical Area. Specifically, he said that 20,318 square feet of the Property are located within the Critical Area. The Property is part of the Kent Island Estates subdivision that was created in 1939 and will be served by public sewer and a private well.

The Property is triangular shape and has an approximate depth of 75 feet at the construction location. Mr. Southard said that the depth of the lot makes it impossible to fit a dwelling on the

Property without a variance. However, the Property size is legally conforming within the NC-20 district. He said that the proposed construction will meet the square foot lot coverage limits established by the Code. The lot coverage limit on the Property is 31.24%, or 6,349 square feet. The Applicant is proposing a total of 1,372 square feet of total lot coverage, all of which will occur in the Critical Area LDA. Due to development within the Critical Area, the Applicant will be required to plant five 4' – 6' tall container grown native trees to comply with mitigation requirements.

Mr. Southard concluded by stating that Zoning Staff does not object to the approval of the application for two variances.

Applicant's Presentation

Joe Stevens, attorney for the Applicant, introduced the application on behalf of the Applicant. He advised the Board that the application is not for a Critical Area variance, although the Property is located within the Critical Area. He added that the Property was created long before the Code was adopted and that it is very peculiar.

Mr. McGinnes asked the Applicant about a discrepancy between Applicant's Exhibit 4, which is included in the Board's file, and Applicant's Exhibit 7, submitted by the Applicant. Specifically, Applicant's Exhibit 4, within the Board's file, depicts a rear yard setback of 12.4' while Applicant's Exhibit 7 depicts a rear yard setback of 10'. The Applicant clarified that Applicant's Exhibit 7 depicts the requested relief – a 10' rear yard setback and a 25' front yard setback.

The Applicant stated that she is seeking variances to the required front yard setback and rear yard setback in the NC-20 district as without relief she cannot construct a reasonable home on the Property due to the triangular shape of the Property. Then, she called Barry Waterman to testify. Mr. Waterman stated that he is a Real Estate Broker on Kent Island and has been for 39 years. In addition, he has developed property on Kent Island, including 15 – 20 homes within the Kent Island Estates subdivision. Mr. Waterman previously served as a member of the Queen Anne's County Planning Commission and served as the Chairman of the Planning Commission.

Within the Kent Island Estates subdivision specifically, Mr. Waterman said that he has applied for dozens of non-tidal wetlands permits.

Then, the Applicant introduced Exhibit 8, a plat depicting the Property's building restriction lines which includes the applicable setbacks from property lines and the location of the non-tidal wetland on the Property. He said that the available building envelope is a small sliver and that it is too small to fit a dwelling. Regarding the shape of the lot, Mr. Waterman said that there are over 1,000 lots in Kent Island Estates and that less than 10 lots are triangularly shaped. He said that most of those lots are legally nonconforming because they do not meet the minimum lot size for the zoning district. However, the Applicant's Property meets the minimum lot size for the NC-20 district. In addition, no other lot in the subdivision has a non-tidal wetland encroaching a large portion of the building envelope.

Then, the Applicant introduced Exhibit 9. Mr. Waterman stated that Exhibit 9 is a record plat that was recorded in 1951, which created the Property. Then, the Applicant introduced the following Exhibits depicting other lots within the Kent Island Estates subdivision that do not meet the required setbacks for the NC-20 district:

- Exhibit 10 is a plat of Lot 68 with a dwelling that is setback 25 feet from the front property line and 8 and 10 feet from the side lot lines;
- Exhibit 11 is a plat of Lot 34 with a dwelling that is setback 25 feet from the front property line to avoid placing the dwelling within a tidal wetland buffer area in the rear yard. In addition, the dwelling is setback 4.3 feet and 8.8 feet from the side property lines;
- Exhibit 12 is a plat of Lot 38 with a dwelling that is setback 14 feet from Eastern Bay due to the size of the lot;
- Exhibit 13 is a group of aerial images depicting lots within the Kent Island Estates subdivision with dwellings that do not meet the required setbacks within the zoning district and that have comparable setbacks to the setbacks the Applicant is seeking.

After introducing and describing the exhibits, Mr. Waterman said that the Applicant's proposed dwelling will not be built closer to the front or rear property lines than other dwellings within the subdivision. While Mr. Waterman gave an overview of other lots within the subdivision

that do not meet the required setbacks, he clarified that not all of the lots came before the Board for a variance. He explained that the Code contains a provision that permits the Planning Office to allow setback reductions on a particular lot if the lot is nonconforming. However, because the Applicant's Property meets the minimum lot size within the NC-20 district, it is conforming and the Planning Office does not have the authority to grant the Applicant relief from the required setbacks.

Then, the Applicant introduced Exhibit 14, a plat of the Property depicting the only alternative location to construct a dwelling on the Property. Mr. Waterman explained that the only alternative to seeking the variance to the required setbacks is to construct a dwelling within the non-tidal wetland, which requires a permit from the Maryland Department of the Environment ("MDE") and would have environmental impacts. He added that even if the Applicant received a permit from MDE, given the setbacks, she would be limited to constructing a dwelling that is 19' deep and 27' wide, resulting in a 500 square foot home which is not consistent with the subdivision. He added that most people would not find a 500 square foot home to be a reasonable size.

Mr. Waterman said that the Property is served with public sewer, which the Applicant paid \$27,000 to receive with the expectation of constructing a residence on the Property. He added that all property owners of the Property, current and prior, paid property taxes on the lot for residential use. The Applicant asked Mr. Waterman if the Code permitted any other reasonable use of the Property. He said that the size of the Property severely limits the permitted uses of the Property and that the only reasonable use is residential.

Then, the Applicant introduced Exhibit 15, depicting the distances between the proposed dwelling and existing dwellings on abutting properties. Mr. Waterman said that the minimum distance between the proposed dwelling and a dwelling on an abutting property is 440'. In addition, there are substantial woods between the Property and the abutting lots. Mr. Waterman explained Virginia Road, including that it is 12' wide with a 40' wide County right of way. He said that the Applicant is seeking to construct a dwelling 25' from the edge of the 40' easement, and not the roadbed of Virginia Road.

Regarding the proposed dwelling, Mr. Waterman stated that the size is modest. He added that the proposed rear deck, which requires the rear yard setback, is smaller than others in the subdivision.

Testimony from the Public

After the Applicant presented her case, Chairman Dean asked if any members of the public wished to testify. Sharon Bradford testified in opposition of the application. Ms. Bradford said that she lives across from the Property and is concerned about water runoff and vehicles utilizing her property during construction due to the narrow width of Virginia Road.

Mr. Waterman responded by stating that the construction of the dwelling and associated ditch will improve drainage on the Property.

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 variances. 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 front yard and rear yard setbacks would result in practical difficulty.
2. The peculiar shape of the Property and the location of the non-tidal wetland creates practical difficulty and site restrictions.
3. The proposed dwelling is modest compared to homes within the Kent Island Estates subdivision.
4. The Property is a conforming lot served by County sewer.
5. The Property was created in 1951.
6. The variance will not be contrary to the public interest.
7. The variance is the amount minimally necessary to ameliorate conditions giving rise to any practical difficulty or unnecessary hardship.

Decision


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

A variance from the provisions of §18:1-19.E.(1)(c)[4][f][i] and (c)[f][iii] to permit the Applicant to reduce the required 35 foot front yard setback to 25 feet and reduce the required 50 feet rear yard setback to 10 feet to construct a two-story single-family dwelling with a garage, conditioned on the construction of a 30 ft. wide driveway and extension of the drainage ditch as discussed to ensure that neighboring properties are not impacted.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 20th day of October, 2023, ordered that the variance requested for Diana Waterman, in Case No. BOA-23-07-0158, be granted, subject to the conditions set forth in the Opinion.


Howard A. Dean, Chairman


Craig W. McGinnes, Vice-Chairman


Scott MacGlashan, 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-23-07-0158, for Diana Waterman, which Opinion and Order resulted from a public hearing conducted by the Board of Appeals on September 13, 2023 and that the minutes and a recording of the September 13, 2023 meeting are filed in the office of Board of Appeals.

Certified this 20th day of October, 2023 by:



Cathy Maxwell
Clerk to the Board of Appeals