

BEFORE THE BOARD OF APPEALS OF QUEEN ANNE’S COUNTY

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In the Matter of the Application of *
Case No. V-18040002
Kelly L. Stewart *

* * * * *

OPINION AND ORDER

Introduction

The matter before the Board of Appeals of Queen Anne’s County (“Board”) in this case is a variance application filed by Ms. Kelly L. Stewart (“Applicant”). The Applicant seeks relief from the front-yard setback standard applicable to lots in the NC-20 zoning district.

On May 16, 2018, beginning at 5:00 p.m., the Board conducted a public hearing in the main meeting room in the County’s office building 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 May 16, 2018 public hearing. No one attending the public hearing challenged the jurisdiction of the Board to hear the Applicant’s case. Board members hearing the case were Mr. Kenneth R Scott, Chairman; Mr. Howard A. Dean, Vice Chairman; and Mr. Craig W. McGinnes, Member.

Requested Relief

The Applicant requests a variance to §18:1-19.E.(1)(c)[4][f][i] of the Code of Public Laws of Queen Anne’s County (“Code”), which establishes a minimum 35-foot front-yard setback for lots zoned NC-20, Neighborhood Conservation. The Applicant proposes to construct a 16-foot by 24-foot detached garage as close as five feet from the front lot line. The Applicant thus seeks a setback variance in the amount of 30 feet.

The proposed garage would replace—on the same footprint—an existing detached garage. The only difference between the proposed garage and the existing garage is the proposed garage will be two stories and the existing garage is one-story.

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, as follows.

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 of the Code, the Board must find that, if a variance is granted, the variance is no greater than an amount minimally required to ameliorate the circumstances giving rise to any practical difficulties or unnecessary hardship.

Property and Neighborhood Description

The Applicant's lot is in the Fourth Election District of Queen Anne's County at 109 Riverview Road, Stevensville ("Property"). The Property is designated as Lot 12 in Block 1 of the Love Point subdivision. Block 1 of Love Point is designated as Parcel 7 on Sectional Zoning Map No. 41. The Property is zoned NC-20, Neighborhood Conservation (20,000 square-foot average lot size). The Property is in the Chesapeake Bay Critical Area. The County's critical area maps classify the Property as part of an LDA, Limited Development Area.

The Property is approximately 19,300 square feet (0.443 of an acre) in size. The Property is rectangular, although at the northeast corner there is a 22-foot by 50-foot "notch" removed.

The Property consists of a platted lot (Lot 12) and portions of what originally were two platted streets in Love Point, Second Street and River View Avenue. The Property's shape resulted from the combination of Lot 12 with portions of the two platted streets, as well as, apparently, erosion of portions of the Love Point peninsula. This apparent erosion also resulted in the Property becoming a waterfront lot, with 50 feet of shoreline along the Chester River.¹

The Property's front yard abuts what the 1910 Love Point plat shows as a 10-foot wide alley that bisects the original Block 1. Today, however, the ally is known as River View Road. Aerial photographs show that the road provides access to about a half-dozen homes. The Property has 100 feet of frontage along River View Road. The old detached garage the Applicant seeks to replace sits five feet off the road. Other improvements on the Property include a single-family home, a parking area along River View Road next to the garage, concrete walks, and a shoreline protection structure. Much of the Property is lawn, although several mature trees and shoreline vegetation also grow on the Property.

The developed lots in Love Point constitute the neighborhood in which the Property is located. These developed lots are improved with single-family homes and typical residential accessory structures, including detached garages. Many waterfront lots have a private pier. In more recent years, several lots have been redeveloped with relatively large homes. Farmland is located to the south of the neighborhood, farther down the peninsula.

Department of Planning and Zoning Recommendation

Mr. Harold Veasel, a zoning inspector with the Department of Planning and Zoning ("P&Z") represented P&Z during the public hearing. Mr. Veasel offered his staff report into

¹The 1910 plat of Love Point shows River View Avenue and six lots in Block 19 located between the Property and the shoreline, as the shoreline existed over 100 years ago. It appears River View Avenue is a "paper" street that was never constructed. Today, the portions of the street that have not eroded away have been incorporated into abutting lots, such as Lot 12.

evidence, which the Board admitted as P&Z Exhibit 1. Mr. Veasel described the Applicant's proposal as replacing an existing one-story detached garage with a two-story detached garage. The new garage would have the same length and width dimensions as the old garage, 16 feet by 24 feet, and would be located on the footprint of the old garage.

Mr. Veasel noted the home on the Property was built in 1946. He thinks the existing garage was most likely built at the same time, or shortly thereafter. According to Mr. Veasel, the County did not adopt current zoning district standards until many years later. Mr. Veasel testified the Board previously granted a similar variance (in 1991) for a 24-foot by 32-foot two-story garage, so that the garage could be built 10 feet from River View Road. Mr. Veasel attached the Board's decision in the previous case to his staff report (P&Z Exhibit 1).

In conclusion, Mr. Veasel testified the Department of Planning and Zoning has no objection to approval of the variance the Applicant seeks.

Applicant's Presentation

Ms. Kelly Stewart appeared on her own behalf. Ms. Stewart described her proposal. She testified the existing garage is not usable.² In her opinion, it would not be feasible to repair the existing garage due to its age and condition.

Ms. Stewart related some of the history of Love Point, and how the paper roads in the subdivision have generally been added to abutting lots. When Ms. Stewart purchased the Property in November 2017, she learned that portions of two paper roads had been added to Lot 12.

Ms. Stewart testified three of her neighbors have detached garages, which are common in the neighborhood. Her neighbors do not object to the requested variance to allow replacement of

²Specifically, the garage is not usable by humans. Ms. Stewart testified several wild animals appear to have made the garage their home. When the new garage is built, Ms. Stewart presumably will evict these interlopers.

the old garage on the Property. Ms. Stewart offered into evidence a letter of no objection from two of her neighbors, Eric Birenbaum and Katherine Birenbaum. The Birenbaums reside at 113 River View Road, which abuts the Property to the north. In the absence of an evidentiary objection, the Board accepted the letter into evidence as Applicant's Exhibit 8. Given the number of other detached garages throughout the neighborhood, including those along River View Road, Ms. Stewart believes approval of the variance will not adversely affect anyone else's lot.

Testimony by Others

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

Findings and Conclusions of the Board

Based on the testimony and exhibits provided by the Department of Planning and Zoning and the Applicant, 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 literal enforcement of the provisions of §18:1-19.E.(1)(c)[4][f][i] of the Code would result in a practical difficulty. Evidence before the Board establishes the Property was cobbled together as a lot from the originally platted Lot 12 and portions of two adjacent paper streets long before the County adopted current zoning regulations. Both the home on the Property and the existing detached garage were constructed before current zoning regulations. A 1959 survey (part of Applicant's Exhibit 3) shows the home and garage were built closer to lot lines than current zoning regulations would allow. The home's nonconforming setbacks have since been cured by the addition of the two paper streets, but the garage remains a nonconforming structure.

Replacing the garage beyond its existing footprint is impractical because of other features of the lot, including the existing home and several mature trees. Moving the garage would also

involve lengthening the existing driveway from what is presently a parking pad abutting River View Road. Lengthening the driveway would add more impervious cover to land in the Critical Area. On the other hand, constructing a new garage on the footprint of the existing garage means no new impervious cover, as well as no new disturbance, in the Critical Area.

2. The Board concludes that the foregoing conditions are peculiar to the Property. The evidence establishes the Property is peculiarly affected by the platting and development of the Property that occurred prior to the County's adoption of current zoning regulations. Moreover, adoption of Critical Area regulations additionally constrains the options for further developing the Property. But for the peculiar location of the existing garage, constructing a detached garage on the Property would be problematic, given Critical Area buffer, disturbance, and impervious cover limitations. Although other lots in the neighborhood share some of these physical conditions, such conditions affect each lot differently. In this case, the physical conditions have a peculiar effect, especially when coupled with the locations of several mature trees on the Property—trees that are important to preserve because of the Property's inclusion in the Critical Area.

3. The foregoing conditions are not the result of actions taken by the Applicant. The Applicant acquired title to the Property in November 2017. Accordingly, the Applicant is not responsible for the platting and original development of the Property, nor for the peculiar effects of current zoning and Critical Area regulations on the Property, especially given how the Property was previously developed. The Applicant is also not responsible for the locations of the mature trees growing on the Property.

4. The Board concludes that approval of the variance will not be contrary to the public interest. The Board finds the public interest is served by the Applicant's proposal to raze an almost derelict building and replace it with a new building. The public interest is also served

by the Applicant's plan to locate the new building on the footprint of the older building. Doing so means essentially no new disturbance in the Critical Area and no new impervious cover. The Applicant testified her neighbors do not object to the variance. The owners of the abutting lot to the north wrote a letter of no objection. No neighbor, or anyone else, appeared at the public hearing to oppose the variance. The Board also finds that construction of a new detached garage will increase the taxable value of improvements on the Property. In turn, the increase in the value of the Property will incrementally increase the values of other properties in the neighborhood.

The Board finds that the proposed garage, although two-stories instead of one, will not create a sight-distance problem along, nor have any other negative impact on, River View Road. The road serves only about a half-dozen homes. The road is basically straight, with no significant curves. Furthermore, the existing garage has been located five feet from the road for 60 to 70 years, with no reported problems or negative impacts. Other homes along River View Road are improved with detached garages located close to the road. These buildings, too, have not created any reported problems.

In summary, the Applicant's proposal is sensitive to the environment and consistent with the spirit of the County's Critical Area regulations. The Applicant's proposal will create no negative impacts. No neighbor opposes the new garage. A new garage will be a betterment to the Love Point neighborhood.

5. The Board also concludes that an evaluation of possible alternatives proves the requested variance is necessary. Although the Board cannot say no other alternative exists, the Board can say the evidence compellingly establishes no better alternative exists than constructing a new garage on the footprint of the old garage. Using the same footprint, however, requires a

variance because the existing garage was built prior to the County's adoption of current zoning regulations.

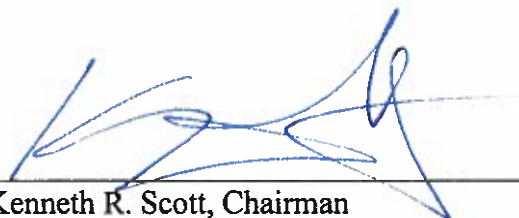
6. Finally, the Board concludes that the variance requested is the minimum variance necessary. The Applicant seeks to maintain an existing front-yard setback, not to decrease it. In addition, requiring a greater setback would increase disturbance and impervious cover in the Critical Area. Given the fact the old garage has existed for many years in the same location, the Board finds maintaining a garage at that location is a beneficial trade-off for the environment and the neighborhood, thus justifying the amount of variance the Applicant requests.

* * * * *

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 NC-20 zoning district's 35-foot minimum front-yard setback requirement, imposed by §18:1-19.E.(1)(c)[4][f][i] of the Code, in the amount of 30 feet. The Board grants the variance to enable the Applicant to construct a 16-foot by 24-foot two-story detached garage. The new garage must be constructed substantially as shown on the site plan drawing (Applicant's Exhibit 7) submitted to P&Z as a part of the variance application.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 30th day of May, 2018,
ordered that the variance requested for Kelly L. Stewart, in Case No. V-18040002, be granted.



Kenneth R. Scott, Chairman



Howard A. Dean, Vice-Chairman



Craig W. McGinnes, Member

State of Maryland, County of Queen Anne's:

I HEREBY CERTIFY that the foregoing is a true and correct copy of the Opinion and Order of the Board of Appeals of Queen Anne's County in Case Number V-18040002, for Kelly L. Stewart, which Opinion and Order resulted from a public hearing conducted by the Board of Appeals on May 16, 2018 and that the minutes and a recording of the May 16, 2018 meeting are filed in the office of Board of Appeals.

Certified this 30th day of May, 2018 by:

A handwritten signature in cursive script that reads "Cathy Maxwell". The signature is written in black ink and is positioned above a horizontal line.

Cathy Maxwell
Clerk to the Board of Appeals

BEFORE THE BOARD OF APPEALS OF QUEEN ANNE’S COUNTY

* * * * *
In the Matter of the Application of *
Thomas Leager, Sr. and Betsy R. Leager * Case No. CU-18010002
for a Conditional Use for a Commercial *
Forestry Operation *
* * * * *

OPINION AND ORDER

Proceedings

The matter before the Board of Appeals of Queen Anne’s County (“Board”) in this case is a conditional use application filed by Thomas Leager, Sr. and Betsy R. Leager (“Applicant”). The Applicant seeks zoning approval for a commercial forestry use on land that is platted as deed-restricted open space.

On May 16, 2018, beginning at 5:15 p.m., the Board conducted a public hearing in the main meeting room in the County’s office building at 110 Vincit Street, Centreville, Maryland, to consider the Applicant’s conditional use request. At the beginning of the hearing, the Board established all requirements were met governing (1) the filing of the conditional use application and (2) notice of the May 16, 2018 public hearing. No one attending the public hearing objected to the Board’s jurisdiction to hear the Applicant’s case. Board members hearing the case were Mr. Kenneth R. Scott, Chairman; Mr. Howard A. Dean, Vice Chairman; and Mr. Craig W. McGinnes, Member.

Applicant’s Request

The Applicant requests conditional use approval under the provisions of § 18:1-12.A. of the Code of Public Laws of Queen’s Anne County (“Code”) to engage in commercial forestry on

approximately 24 acres that are platted as deed-restricted open space. Section 18:1-12.A. of the Code establishes the uses allowed in open space. Commercial forestry is one of those uses. The deed-restricted open space was platted as part of two subdivision applications: (1) a 2005 sliding-scale subdivision that was processed and approved with a companion 2005 minor cluster-subdivision of the “Lands of Thomas R. Leager, *et ux.*,” and (2) a 2017 major cluster subdivision called “Lands of Thomas R. Leager, Sr. and Betsy R. Leager.” For open-space land platted as part of cluster development, commercial forestry is allowed as a conditional use.

In addition, § 18:1-12.G. of the Code mandates that a commercial forestry use on open-space land must “be outlined in a timber harvest plan that has been prepared by a licensed professional forester and approved by a Department of Natural Resources Forester and/or the County Forestry Board, as appropriate.” On March 27, 2018, the Queen Anne’s County Forestry Board reviewed and approved a timber harvest plan for the 24 acres. The Forestry Board’s approval remains in effect until March 27, 2021.

On the 24 acres, the Applicant’s commercial forestry use will involve select-cut harvesting of woodlands that contain a mix of hardwood species. The dominant species are sweetgum, red maple, and yellow poplar.

Conditional Use Standards

The Board must apply several standards to evaluate the Applicant’s conditional use request.¹ First, the Board must apply the standards set forth in §18:1-94 of the Code, which provide as follows:

An application for a conditional use may not be approved unless the Board of Appeals specifically finds the proposed conditional use appropriate in the location for which it is proposed, based on the following criteria:

¹For many conditional uses, § 18:1-95.E. of the Code sets forth specific standards for the use; however, the standards in § 18:1-95.E. do not address a commercial forestry use. Thus, the Board need make no findings under § 18:1-95.E.

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

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

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

Second, § 18:1-123.B. of the Code requires the Board to make the following findings to grant a conditional use:

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

Third, to approve a conditional use, the Board must include in its evaluation of the Comprehensive Plan certain consistency findings required by § 1-303 of the Land Use Article of the Annotated Code of Maryland. As may be applicable, the Board's approval of a conditional use must "further, and not be contrary to, the following items in the [comprehensive] plan:

- (1) policies;
- (2) timing of the implementation of the plan;
- (3) timing of development;
- (4) timing of rezoning;
- (5) development patterns;
- (6) land uses; and
- (7) densities or intensities."

Property and Neighborhood Description

The property that is the subject of the conditional use application consists of about 24 acres of a 131.4-acre lot designated as Lot 1 of the subdivision of the lands of Thomas R. Leager, Sr. and Betsy R. Leager. The Leager subdivision is recorded in the County's land records in plat book SM 46, pages 56A through 56E. The subdivision is designated as Parcel 3 on Sectional Zoning Map No. 18. The subdivision is in the First Election District of Queen Anne's County, in the Sudlersville area of the County. This decision will refer to the 24 acres as the "Property" and to the 131.4-acre lot as the "Overall Tract."

The Overall Tract is located along the south side of Roe Road and the west side of Benton Corners Road, about three miles by road southwest of Sudlersville. The Property is a long and comparatively narrow portion of the Overall Tract, bisecting the Overall Tract from northwest (just to the south of Roe Road) to southeast (touching the west side of Benton Corners Road).

The Property is zoned AG, Agricultural. The Property is unimproved and wooded. The east fork of Red Lion Branch, a perennial stream, traverses through the middle of the Property. Apparently, the Property was platted as open space at least in part to create a buffer of woodlands on each side of the stream. About 10.3 acres of the Property constitute a statutory stream buffer. Nontidal wetlands associated with the stream grow within the buffer. Other physical features of the Property include hydric soils and a few areas of steep slopes. There are no rare, threatened, or endangered species on the Property. Nevertheless, the Property provides habitat for several sensitive species. The Property lies more than 1,000 feet from tidal waters, and thus is not in the Chesapeake Bay Critical Area.

The dominant trees on the Property are sweetgum, red maple, and yellow poplar. The average size of the dominant species is about 20 inches DBH. The forest's hardwoods have a

basil area of about 100 square feet per acre. Post-harvest, the basil area will be about 60 square feet per acre. Other than a portion of a farm access road, the Property is unimproved. Beyond the Property, the Overall Tract is mostly cleared and farmed.

The neighborhood in which the Property is located is a rural and largely agricultural area bounded by U.S. 301 along the west, Route 300 along the north, Route 313 along the east, and Route 302 along the south. In addition to agricultural and forestry uses, the neighborhood includes a few clustered residential areas, as well as a scattering of rural businesses and institutional uses, mostly along Sudlersville Road (Route 300). The town of Sudlersville anchors the northeast corner of the neighborhood. The town of Barclay anchors the neighborhood's southeast corner.

Agency Comments and Recommendations

Mr. Rob Gunter, a Senior Planner with the Queen Anne's County Department of Planning and Zoning ("P&Z"), presented and summarized a written report, which the Board accepted into evidence as P&Z Exhibit 1. In addition, the Board admitted into evidence ten exhibits offered by the Applicant, including the following agency comments:

- A memorandum from Mr. John Nickerson, Director of the Department of Environmental Health, indicating no objection to the application (Applicant's Exhibit 7);
- A memorandum from Ms. Donna Landis-Smith of the Soil Conservation District indicating no comments (Applicant's Exhibit 9);
- A memorandum from Mr. Lee E. Edgar of the Department of Public Works indicating no objection to the proposed conditional use. Mr. Edgar, however, expresses some concern about the Applicant's proposed access to Benton Corners Road. He reminds the Applicant to contact the Department of Public Works to obtain an entrance permit for temporary access to Benton Corners Road. Mr. Edgar also notes the Applicant is

obligated to make sure the forestry operation does not track debris onto County roadways (Applicant's Exhibit 8); and

- An email (Applicant's Exhibit 10) from Ms. Lori Byrne to Ms. Teri Batchelor of the Maryland Department of Natural Resources ("DNR"). Ms. Byrne is the Environmental Review Coordinator with DNR's Wildlife and Heritage Service. In her email, Ms. Byrne indicates DNR has no comments regarding possible impacts to rare, threatened, or endangered species.

Mr. Gunter testified the Property is zoned AG, Agricultural. In addition, the County's Comprehensive Plan designates the Property as part of a rural agricultural area. Mr. Gunter testified commercial forestry is generally a permitted use-by-right in the AG zoning district. In this case, however, the Property was platted as deed-restricted open space when the Leagers subdivided their lands, first in 2004 and then again in 2017. Commercial forestry is allowed on open-space land, but as a conditional use.

Mr. Gunter testified the Applicant proposes a select-cut commercial forestry use, with post-harvest natural regeneration. Mr. Gunter noted the Applicant has submitted various plans and permit applications required for commercial forestry, including a logging permit, a five-year declaration of intent, a sediment and erosion control plan, and a timber harvest plan. The County Forestry Board approved the timber harvest plan, which has an expiration date of March 27, 2021.

According to Mr. Gunter, the Applicant also submitted a nontidal wetlands best-practices agreement. The agreement requires adherence to best-management practices for work in nontidal wetlands on the Property. In addition, the Applicant submitted a stream-buffer management plan to protect the perennial stream on the Property. The Applicant proposes to maintain a 75-foot buffer on both sides of the stream. Presently, there is one stream crossing on

the Property, which the Applicant will use. The Applicant proposes no additional stream crossing. Mr. Gunter told the Board the Property provides habitat for sensitive species; however, DNR indicates the State has no comment about possible impacts to rare, threatened, or endangered species.

The proposed commercial forestry operation will use five onsite loading areas. The Applicant will transport trees from these loading areas to two access points, one on Benton Corners Road and one on Dell Foxx Road. According to the Department of Public Works, because the proposed Benton Corners Road access will be an access for a new commercial use, the Applicant must obtain an entrance permit from the County Roads Division. Mr. Gunter noted an access permit will be required even if an access already exists for farm use.

In response to questions from Board members, Mr. Gunter testified the four single-family lots adjacent to the southern end of the Property are platted but not developed. These four lots are zoned AG. They are not part of the deed-restricted open space. Therefore, commercial forestry is a permitted use on the lots. The same is true for the three lots at the northern end of the Property. The fronts of these three lots, however, are cleared and improved with single-family homes. In addition, the rear yards are platted as part of a forest retention area.

In conclusion, Mr. Gunter testified the Department of Planning and Zoning conditionally supports approval of the requested conditional use. Planning and Zoning's recommended conditions are:

1. The Applicant must mark the locations of the timber harvest signs on the timber harvest plan;
2. The Applicant must mark all trees that will be harvested in the stream buffer, with the marks located at the bases of the stumps so that the marks remain after harvesting; and

3. The Applicant must contact the County Roads Division to obtain an entrance permit for access to Benton Corners Road prior to beginning harvesting operations.

Applicant's Presentation

Mr. Roy Goad and Ms. Noreen Glynn Davis testified for the Applicant. Mr. Goad is a commercial logger. He co-owns R & S Logging, Inc. Ms. Davis is a licensed forester. She prepared the timber harvest plan for the Applicant. The timber harvest plan (Applicant's Exhibit 5) states the proposed forestry use will involve single-tree selection and natural regeneration with sweetgum, poplar, red maple, and mixed oaks. The plan also states the proposed harvest will increase light to the understory, which in turn will increase browsing opportunities and cover for various species of wildlife. The plan notes that of the Property's 24 acres about 10.3 acres fall within the stream buffer.

Ms. Davis testified she presented the timber harvest plan to the County Forestry Board on behalf of the Applicant. The Forestry Board approved the plan on March 27, 2018. She indicated harvesting will focus mainly on sweetgum and red maple, with some oak. Regarding the three lots adjacent to the north of the Property, Ms. Davis testified not much harvesting will occur near those lots. She also testified the lot owners have been notified of the proposed timber harvest. Regarding the four platted lots adjacent to the south of the Property, these lots are zoned AG. Some commercial harvesting will occur on these unimproved lots, but because the lots are zoned AG and are not platted open space, commercial harvesting is a permitted use-by-right. Ms. Davis testified harvesting is presently underway on nearby lands, as well as elsewhere on the Overall Tract outside of the platted open space. As with the four platted lots, the nearby lands and the rest of the Overall Tract are zoned AG.

Concerning the two proposed access points, Ms. Davis testified the Dell Foxx Road access is presently being used by harvesting operations on nearby lands and the Overall Tract

outside of the platted open space. She testified the access is working well. There have been no problems. Ms. Davis told the Board she understands the Applicant will need an entrance permit for the Benton Corners Road access, but she does not see a problem with the access being approved. The proposed access point has been used in the past for farming operations. Trucks using the access for tree harvesting will be comparable to use of the access by farming trucks and equipment.

Mr. Goad addressed the Board using a copy of the 2017 subdivision plat projected onto a view screen. He walked the Board through the proposed harvest area. He pointed out the platted open space, the perennial stream, the existing stream crossing, and the four platted (but undeveloped) lots adjacent to the southern end of the Property. The plat shows that, when developed, these four lots will access Benton Corners Road via a to-be-built private street. Mr. Goad also testified he already marked the trees that will be harvested in the stream buffer.

Presentations by Other Parties

No one else appeared at the hearing to ask questions or to testify.

Findings and Conclusions of the Board

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

Concerning the Comprehensive Plan, Mr. Gunter's testimony and P&Z Exhibit 1 establish the proposed commercial forestry use conforms to, and is consistent with, the County's Comprehensive Plan. Under the Plan, the Property is in an existing agricultural area. Commercial forestry is usually a permitted use in agricultural areas. A conditional use is required in this case only because the Property is platted as open space. Nothing about the Applicant's proposal, however, will negatively affect the Property's usefulness as open space. The open fields on the Overall Tract will remain. The Property's forested area will remain. The Applicant does not propose clear-cutting. Instead, the Applicant proposes select-cut harvesting, which will thin the forest in a manner consistent with DNR-recommended practices. Thinning will leave the forest in better health, with remaining trees having better access to sunlight. Thinning will also increase opportunities for more species to use the open space. Accordingly, harvesting operations will help preserve—and even enhance—the usefulness of the platted open space.

The same evidence also supports a conclusion the proposed conditional use, at the proposed location, is consistent with the general purpose, goals, objectives, and standards of other applicable plans, programs, maps, and ordinances adopted by the County. Regarding the proposed location, the Board finds the Property's location does not increase or intensify any potential impacts inherent in a typical commercial forestry use in platted open space. The Property's AG zoning recognizes that forested areas provide a valuable resource needed in the County. In all directions, the Property abuts other forested and agricultural land. The three lots adjacent to the northern end of the Property are separated from the proposed harvesting by forest retention areas platted on those lots.

Concerning the consistency findings required by § 1-303 of the Land Use Article of the Annotated Code of Maryland, the Board finds the evidence supports a conclusion the proposed

commercial forestry use is consistent the Comprehensive Plan elements listed in § 1-303, to the extent those elements are applicable. The proposed harvesting does not alter or otherwise affect planned densities or intensities, planned development patterns, timing of rezoning, timing of development, or timing of plan implementation. The Property is open space and will remain so.

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

The Board finds the commercial forestry use, at the proposed location, will not result in substantial or undue adverse impacts on adjacent property, the character of the neighborhood, traffic conditions, parking, public improvements, public sites or rights-of-way, or other matters affecting the public health, safety, and general welfare. To begin with, the proposed harvesting is a temporary use. A select-cut harvest of 24 acres will usually take less time than a typical farming season. Although harvesting is dependent on weather conditions, and thus could be extended, during any periods of inclement weather there will be no harvesting to potentially impact adjacent properties, the neighborhood, or the public welfare.

The Board finds the other approvals the Applicant must obtain will minimize potential adverse impacts to the public welfare, including potential impacts to the stream and wetlands on the Property. These other approvals include a best practices agreement for work near nontidal

wetlands, a stream buffer management plan, a timber harvest plan (already approved by the Forestry Board), and a sediment and erosion control plan. Furthermore, DNR's experts express no concerns about potential impacts to sensitive-species habitat.

Concerning traffic conditions, parking, public improvements, and public sites or rights-of-way, the Board infers from the written comments of the Department of Public Works and from the Department of Planning and Zoning's recommendation supporting approval of the conditional use that the Applicant's proposal will have no significant adverse impact on such conditions, uses, and sites. Planning and Zoning factors into its recommendation comments from other governmental agencies. P&Z Exhibit 1 and Applicant's Exhibits 7 through 10 indicate no negative agency comments. The Board further notes the proposed harvesting operation will not involve any work or parking on public improvements, sites, or roads. Harvesting operations will be confined to the Property. Logging trucks will load at five interior locations on the Property.

To the west, logging trucks will use an established road for access to the Property and the on-site loading areas. Ms. Davis testified this access, via Dell Foxx Road, is functioning without problems for the commercial harvesting operations already on-going on other lands, including other portions of the Overall Tract. To the east, the Board will condition its approval on the Applicant obtaining an access permit from the County Roads Division before trucks may access Benton Corners Road. Obtaining an access permit will assure the proposed access to Benton Corners Road will be appropriately designed and safe.

Moreover, the Board finds that a significant portion of the Overall Tract is farmed, and there are other farming operations on all sides of the Property. The Board views traffic associated with forest-harvesting to be little different from traffic associated with agricultural harvesting. This is particularly true in the present case given the relatively short time the 24-acres of forest harvesting will produce traffic.

Regarding the character of the neighborhood, the Board finds the proposed commercial harvesting use will not adversely affect the character of this large, predominantly agricultural neighborhood. Actual harvesting will be of relatively short duration. After harvesting, the forest on the Property will still have a substantial basal area. Harvesting will allow the significant number of remaining trees on the Property to grow larger. Harvesting also will create areas for understory growth and natural forest regeneration. Consequently, there will be a greater range of habitat in the forest, which is one of the purposes of forest thinning.

Regarding the relatively few residential uses in the neighborhood, the distance between the Property and residential uses (except the three homes adjacent to the northern end of the Property) will adequately mitigate potential impacts associated with logging operations. The three adjacent homes will be adequately protected by the forest retention area platted on each lot, especially considering Ms. Davis' testimony that only a few trees will be harvested near these three homes. In addition, the Board notes the fact commercial harvesting operations have already begun on nearby lands and portions of the Overall Tract not platted as open space. The Board is unaware of any complaints generated by the current harvesting operations. No one in the neighborhood appeared before the Board to express concerns about or oppose the proposed harvesting operations on the Property. Accordingly, the Board concludes the residential component of the neighborhood will not be significantly impacted by approval of the requested conditional use.

Concerning public improvements, facilities, utilities and services, the Board finds that, except for public roads, the proposed commercial harvesting at the location proposed will not use such facilities and services. Commercial harvesting does not require public water, public sewer, nor public storm drains. County review agencies have no objection to the proposed use. The Forestry Board has already approved a timber harvest plan. Regarding public roads, the small

amount of traffic generated by temporary tree harvesting will have no significant impact on public roads, and, as previously noted, will not be substantially different in terms of vehicle types from traffic associated with farming activities in the neighborhood. Also, as previously noted, the Applicant will have to obtain an access permit from the County Roads Division to use the existing farm access to Benton Corners Road. For these reasons, the Board finds the harvesting operation will be adequately served by the only public facility it will use (public roads) in a manner consistent with the Comprehensive Plan, Chapter 18:1, and other plans, programs, maps and ordinances adopted by the County.

As required by § 18:1-123.B.(3) of the Code, the Board finds the proposed conditional use will be compatible with the existing neighborhood. The Board here adopts its previous findings that explain the lack of adverse impact on the character of the neighborhood. The harvesting use will be of limited duration, thinning the forest will help ensure the woodlands stay healthy, there will be natural regeneration, and harvesting does not conflict with the Property's open space use. The Applicant proposes no new stream crossings. Furthermore, the bulk of the neighborhood consists of agricultural fields (including the rest of the Overall Tract) and woodlands. A forestry use is compatible with these rural uses. Existing residential uses abut only a very small portion of the Property, where Ms. Davis testified the Applicant will harvest just a few trees.

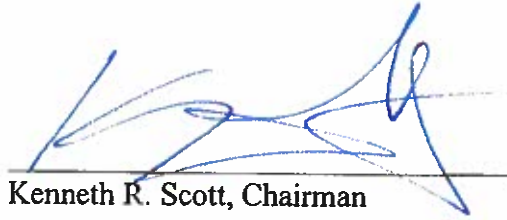
* * * * *

Accordingly, by a vote of three in favor and none opposed, the Board grants conditional approval of the proposed commercial forestry operation on the Property. Commercial forestry is to be conducted in substantial accord with Applicant's Exhibits 5 and 6, and is subject to the following conditions:


1. The Applicant must mark the locations of the timber harvest signs on the timber harvest plan;
2. The Applicant must mark all trees that will be harvested in the stream buffer, with the marks located at the bases of the stumps so that the marks remain after harvesting; and
3. The Applicant must contact the County Roads Division to obtain an entrance permit for access to Benton Corners Road prior to beginning harvesting operations.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 30th day of May, 2018, ordered that the conditional use requested for Thomas Leager, Sr. and Betty R. Leager, in Case No. CU-18010002, be granted, subject to the conditions set forth in the Opinion.



Kenneth R. Scott, Chairman



Howard A. Dean, Vice-Chairman




Craig W. McGinnes, Member

State of Maryland, County of Queen Anne's:

I HEREBY CERTIFY that the foregoing is a true and correct copy of the Opinion and Order of the Board of Appeals of Queen Anne's County in Case Number CU-18010002, for Thomas Leager, Sr. and Betty R. Leager, which Opinion and Order resulted from a public hearing conducted by the Board of Appeals on May 16, 2018 and that the minutes and a recording of the May 16, 2018 meeting are filed in the office of Board of Appeals.

Certified this 30th day of May, 2018 by:



Cathy Maxwell
Clerk to the Board of Appeals