

BEFORE THE BOARD OF APPEALS OF QUEEN ANNE'S COUNTY

* * * * *

In the Matter of the Application of *

Leroy A. Chimini *

and *

Michelle Chimini *

Case No. CU-18070051

for a Conditional Use for a Private Pier *

with a Length Greater than 150 feet *

* * * * *

OPINION AND ORDER

Proceedings

The matter before the Board of Appeals of Queen Anne's County ("Board") in this case is an application for a conditional use filed by Leroy A. Chimini and Michelle Chimini (collectively "Applicant"). The Applicant is seeking conditional-use approval for a private pier with a length greater than 150 feet.

On August 22, 2018, beginning at 5:30 p.m., the Board conducted a public hearing in the hearing chambers that are adjunct to the Board's offices at 110 Vincit Street, Centreville, Maryland, to consider the Applicant's conditional use request. At the beginning of the public hearing, the Board's Chairman established that all requirements were met governing (1) the filing of the Applicant's conditional-use application, and (2) notice of the August 22, 2018 public hearing. Upon inquiry by the Chairman, no one attending the public hearing objected to the Board's jurisdiction to hear and decide 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. McGinnis, Member.

Applicant's Request

The Applicant requests approval of a conditional use under the provisions of § 18:1-41 of the Code of Public Laws of Queen's Anne County ("Code") to lengthen an existing 100-foot private pier by 298 feet, resulting in a pier that extends 398 feet into the waters of Cox Creek. Under § 18:1-41 of the Code, a private pier may extend into a body of water a maximum of 150 feet, unless the Board approves a pier of greater length as a conditional use. The Applicant's proposed pier includes a 10-foot by 12-foot "L" at the water-end of the pier and two boatlifts.

Conditional Use Standards

The Board must apply several standards when evaluating 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:

- 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

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 piers greater than 150 feet in length. Thus, in this case the Board need not make any findings under § 18:1-95.E. In addition, under § 18:1-41 of the Code, no pier may extend into a body of water more than one-half the distance between the mean high-water line and the centerline of the body of water, regardless of whether the Board has granted conditional-use approval for a pier longer than 150 feet. In this case the Applicant's proposal satisfies the one-half-distance-to-centerline requirement.

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 that the Board make the following findings to grant a conditional use.

- (1) The conditions concerning th[e] 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 request, 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 involved in the conditional-use application is located at 102 Cox Court, in the Fourth Election District of Queen Anne's County (the "Property"). Cox Court is a local street in the Cox Creek Acres subdivision, which is located about seven miles south of Maryland Route 50 in the Chester area of the County. The Property is designated as Lot 13, Parcel 148, on Sectional Zoning Map No. 63. The Property is zoned NC-1, Neighborhood Conservation (one-

acre 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 1.1 acres in size. The Property fronts about 150 feet along the west side of Cox Court, where the street ends in a cul-de-sac. The Property also enjoys about 250 feet of waterfront along the east side of Cox Creek, about two miles north of Turkey Point. The Property's shoreline is protected by rip-rap and small areas of marsh. At present, the Property is served by a private pier 100 feet in length, with an "L" and boatlift at the water-end of the pier.

The Property is improved with a two-story single-family home and a paved driveway. The Property is mostly flat and grassed. There are a few shrubs and a row of trees along the northern lot line. The Property is served by a private well and a private septic system.

The neighborhood around the Property is known as Cox Creek Acres, which is accessed via Old Point Road. The neighborhood is about a mile west of the intersection of Cox Neck Road and Old Point Road. The neighborhood consists of about 20 single-family homes. In addition to the homes, lots in the neighborhood are improved with typical residential accessory uses, including swimming pools, garages, and other outbuildings. The neighborhood's waterfront lots are served by private piers. Most of the private piers are longer than 150 feet. A 292-foot pier is located on the lot south of the Property and a 307-foot pier is located on the lot north of the Property.

The broader neighborhood consists of the peninsula separating Cox Creek to the west from Crab Alley Bay to the east. Toward Turkey Point to the south, the peninsula is developed with single-family homes. Toward the north, along Cox Neck Road, the neighborhood is a mixture of agricultural uses, woodlands, and single-family homes.

Agency Recommendation

Mr. Harold Veasel, a Zoning Inspector with the County's Department of Planning and Zoning ("P&Z"), presented and summarized a written staff report, which the Board accepted into evidence as P&Z Exhibit 1. As he testified, Mr. Veasel referred to a diagram of the proposed pier projected onto a public viewing screen in the hearing chambers.

Mr. Veasel testified the piers on either side of the Property are longer than 150 feet. He noted the Board approved a conditional use for a 307-foot pier at 500 Old Point Road to the north and a conditional use for a 284-foot pier at 104 Cox Court to the south. The Applicant proposes to lengthen the existing pier on the Property, which is located between the two piers the Board previously approved. The Applicant would angle the lengthened pier relative to the Property's lot lines, so that the lengthened pier remains within an extension of the lot lines into the creek.

Mr. Veasel indicated the Property fronts on a shallow cove. According to Applicant's Exhibit 5, water depth at the end of the existing pier is 1.2 feet at mean low-tide. The lengthened pier would reach a mean low-tide depth of 3.2 feet. Mr. Veasel testified the lengthened pier would not extend more than one-half the distance to the centerline of Cox Creek.

In conclusion, Mr. Veasel told the Board that P&Z does not object to approval of the Applicant's conditional-use request.

Applicant's Presentation

Mr. Leroy Chimini addressed the Board as the Applicant's witness. Mr. Chimini testified the Property's shoreline borders a cove-like indentation in the shoreline of Cox Creek, a short distance south of the Cox Creek sanctuary. He told the Board water depths in the cove necessitate a pier longer than 150 feet. At 150 feet off the Property, water depth is only 1.4 feet. Mr. Chimini testified a depth of 1.4 feet is too shallow for anything other than a small boat to

reach the existing pier. He said the prior owner had a boat; however, the owner had to moor his boat elsewhere. Mr. Chimini testified that adding 298 feet to the pier will allow the pier to reach a water depth of 3.2 feet. According to Mr. Chimini, a water depth of 3.2 feet is the minimum needed because in the winter the creek experiences extremely low tides.

Mr. Chimini testified the Property is located at the back of the cove, farther from the creek's channel than the two abutting lots. Thus, even though a 398-foot pier would be longer than the piers on the abutting lots, the lengthened pier will not be any closer to the channel. In addition, Sheet 4 of 6 in Applicant's Exhibit 8 shows a third pier located at the northern edge of the cove. Mr. Chimini noted that the water-end of the lengthened pier will fall behind a straight line drawn from the end of this third pier and the end of the pier on the lot that abuts the property to the south. For this reason, Mr. Chimini believes the lengthened pier will not interfere with safe navigation by boaters using the creek.

Mr. Chimini estimated the lengthened pier would be 500 feet to 600 feet from the channel. Sheet 3 of 6 in Applicant's Exhibit 8 indicates the width of the creek from the two ends of the cove range from 1,530 feet to 1,595 feet. From the middle of the cove in front of the Property, the creek is 1,699 feet wide.

In response to a question from the Board's Chairman about a navigational light at the end of the lengthened pier, Mr. Chimini said he would be willing to place a light at the water-end of the pier as a safety measure.

Citizen Testimony

No one else appeared before the Board to testify either in favor of or in opposition to the Applicant's requested conditional use.

Findings and Conclusions of the Board

The Board concludes the evidence in this case justifies approval of the Applicant's requested conditional use. Supporting evidence includes eight exhibits the Applicant submitted, P&Z's staff report, and the testimony of Mr. Chimini and Mr. Veasel. The Board also notes the absence of any testimony in opposition to the Applicant's proposed conditional use.

Concerning the comprehensive-plan standards found in §18:1-94 and § 18:1-123.B of the Code, as well as § 1-303 of the Land Use Article of the Annotated Code of Maryland, the Board finds the Property is in a residential neighborhood that is part of a larger area of rural-residential land uses. The Board further finds the proposed pier is a typical accessory use to waterfront residential uses. The 2002 Comprehensive Plan incorporates into the Plan the established residential land uses in the neighborhood, as well as the neighborhood's NC-1 residential zoning and the neighborhood's LDA critical area designation. Accordingly, the Board concludes the proposed private pier both conforms to and is consistent with the County's Comprehensive Plan.

The Board further finds the proposed conditional use does not significantly affect the development patterns, land uses, or intensity of land uses set forth in the Comprehensive Plan. The Property is already improved with a single-family home and other lots in the neighborhood are improved with similar residential uses, with waterfront lots served by private piers as accessory uses. Such uses are typical of waterfront residential areas incorporated into the Plan.

The evidence before the Board 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 proposed location will not increase or intensify any potential impacts generally inherent in a private pier with a length greater than 150 feet. To the contrary, because of the cove, the water-end of the pier will be at least 500 feet from the main channel of Cox Creek, and some of the generally inherent impacts (such as impacts on the

boating public) will be less at the proposed location than at other potential locations. Moreover, in this case the lengthened pier will be located between two piers that are greater than 150 feet in length, and thus will not interject a new potential obstruction into Cox Creek.

Furthermore, based on the exhibits the Board admitted, and the uncontroverted testimony of the witnesses, the Board finds the conditional 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. The Board notes a private pier is considered a “water dependent” land use, and thus is allowed in the Critical Area buffer. Moreover, the two nearby piers that exceed 150 feet in length have not resulted in any reported negative impacts.

In addition, the Applicant’s lengthened pier will remain inside a straight line-of-sight between the end of the second pier to the north and the end of the 292-foot pier to the south. These piers, although shorter than the Applicant’s proposed pier, project from the two ends of the cove, thus putting the nearby piers about the same distance from the creek’s channel as the Applicant’s lengthened pier. The Board also finds that placing a safety light at the water-end of the lengthened pier will mitigate the potential impact on navigation through this portion of Cox Creek and the small cove.

The Board finds it significant that no one appeared before the Board to express concerns about the Applicant’s proposal. Furthermore, the Applicant has already obtained a wetlands license for the lengthened pier from the Maryland Department of the Environment (“MDE”). MDE’s license prohibits pier construction during periods when waterfowl are known to stage in the creek.

Concerning public improvements, facilities, utilities and services, the Board finds that the proposed private pier at the location proposed will not involve any use of such facilities and services. Therefore, the adequacy of such facilities and services, in a manner consistent with the Comprehensive Plan, Chapter 18:1, and other plans, programs, maps and ordinances adopted by the County, is neither impacted nor implicated in this case.

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 proposed pier will extend channelward about the same distance as nearby piers to the north and south, and, given the pier's cove location, will not unreasonably project into the waters of Cox Creek. Based on an examination of aerial photographs (Applicant's Exhibit 3), it appears that a significant majority of other neighborhood waterfront lots along Cox Creek are improved with private piers. Where water depths appear to demand it, these other piers exceed 150 feet in length. Based on the plans the Applicant submitted (Applicant's Exhibits 5 and 8), work on the pier will not adversely affect the existing shoreline, which is protected by rip-rap. Accordingly, the Applicant's proposal is compatible with existing uses and structures in the neighborhood.

* * * * *

Based on the foregoing findings and conclusions, by a vote of three in favor and none opposed, the Board conditionally grants the Applicant's conditional use. The Board's conditional approval will allow the Applicant to construct and use a 298-foot by 6-foot extension to the existing pier on the Property, with a 10-foot by 12-foot "L" platform at the water-end of the pier and two boatlifts along the south side of the pier, all extending a maximum of 398 feet into the waters of Cox Creek. The lengthened pier must be constructed substantially as depicted in Applicant's Exhibits 5 and 8, and the conditional use is subject to the following condition:

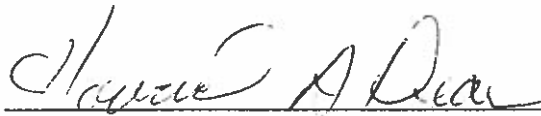
1. The Applicant must place and maintain in good operating condition a navigation safety light at the water-end of the lengthened pier. The light must be turned on from sunset to sunrise, as well as during daylight hours when weather conditions (such as fog, mist, and heavy rain) warrant.

ORDER

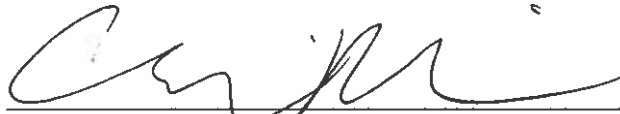
For the reasons set forth in the foregoing Opinion, it is this 27th day of September, 2018, ordered that the conditional use approval requested for Leroy A. Chimini and Michelle Chimini in Case No. CU-18070051 be granted, subject to the conditions set forth in the Opinion.



Kenneth R. Scott, Chairman



Howard A. Dean, Vice-Chairman



Craig W. McGinness, 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-18070051, for Leroy A. Chimini and Michelle Chimini, which Opinion and Order resulted from a public hearing conducted by the Board of Appeals on August 22, 2018 and that the minutes and a recording of the August 22, 2018 meeting are filed in the office of Board of Appeals.

Certified this 27th day of September, 2018 by:



Cathy Maxwell

BEFORE THE BOARD OF APPEALS OF QUEEN ANNE’S COUNTY

*	*	*	*	*	*	*	*
In the Matter of the Application of			*				
Ryan W. Morris			*	Case No. V-18070004			
For a Floodplain Ordinance Variance			*				
*	*	*	*	*	*	*	*

OPINION AND ORDER

Proceedings

The matter before the Board of Appeals of Queen Anne’s County (“Board”) in this case involves a variance application filed by Ryan W. Morris (“Applicant”) seeking relief from certain regulations in the County’s Floodplain Ordinance.

On August 22, 2018, beginning at 5:45 p.m., the Board conducted a public hearing in the hearing chambers that are adjunct to the Board’s offices at 110 Vincit Street, Centreville, Maryland, to consider the Applicant’s variance request. At the beginning of the public hearing, the Board’s Chairman established that all requirements were met governing (1) the filing of the Applicant’s variance application, and (2) notice of the August 22, 2018 public hearing. Upon inquiry by the Chairman, no one attending the public hearing objected to the Board’s jurisdiction to hear and decide 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. McGinnis, Member.

Applicant’s Request

The Applicant requests a variance from the floodplain regulations in § 14:3-41.A.(1) and § 14:3-41.C.(2) of the Code of Public Laws of Queen’s Anne County (“Code”) to construct more than 600 square feet of enclosed, non-habitable floor area below the seven-foot flood protection elevation. Specifically, the Applicant proposes 1,036 square feet of non-habitable floor area, in a 28-foot by 37-foot configuration, to be used as a garage. The proposed garage will exceed the

600-square-foot maximum by 436 square feet. The proposed garage will be part of a new single-family dwelling. The habitable portion of the new single-family dwelling will be above the seven-foot flood protection elevation, and thus does not require a variance.

To build the new dwelling, the Applicant will raze an existing single-family dwelling on the property, raze two sheds, and remove trees and other vegetation. In addition, the Applicant will reconfigure the driveway and parking area near the new dwelling, install a new septic system, and construct an in-ground swimming pool with walkways to and paving around the pool.

Variance Standards

The standards the Board must apply to a request for a variance from the County's floodplain regulations are set forth in § 14:3-66 of the Code. The Code requires the Board to make the following affirmative findings.

A. A showing of good and sufficient cause. Good and sufficient cause deals solely with the physical characteristics of the property and cannot be based on the character of the improvement, the personal characteristics of the owner/inhabitants, or local provision[s] that regulate standards other than health and public safety.

B. (Reserved)

C. A determination that failure to grant the variance would result in exceptional hardship due to the physical characteristics of the property. Increased cost or inconvenience of meeting the requirements of these regulations does not constitute an exceptional hardship to the applicant.

D. A determination that the granting of a variance for development within any designated floodway, or flood hazard area with base flood elevations but no designated floodway, will not result in increased flood heights beyond that which is allowed in these regulations.

E. A determination that the granting of a variance will not result in additional threats to public safety, extraordinary public expense, nuisances, fraud or victimization of the public, or conflict with existing local laws.

F. A determination that the building, structure or other development is protected by methods to minimize flood damages.

G. A determination that the variance is the minimum necessary to afford relief, considering the flood hazard.

In addition, when considering the standards in § 14:3-66 of the Code, § 14:3-65.B. of the Code requires the Board to make findings that address the following factors.

- (1) The danger that materials may be swept onto other lands to the injury of others.
- (2) The danger to life and property due to flooding or erosion damage.
- (3) The susceptibility of the proposed development and its contents (if applicable) to flood damage and the effect of such damage on the individual owner.
- (4) The importance of the services to the community provided by the proposed development.
- (5) The availability of alternative locations for the proposed use which are not subject to, or are subject to less, flooding or erosion damage.
- (6) The necessity to the facility of a waterfront location, where applicable, or if the facility is a functionally dependent use.
- (7) The compatibility of the proposed use with existing and anticipated development.
- (8) The relationship of the proposed use to the comprehensive plan and hazard mitigation plan for that area.
- (9) The safety of access to the property in times of flood for passenger vehicles and emergency vehicles.
- (10) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site.
- (11) The costs of providing government services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
- (12) The comments provided by MDE (NFIP State Coordinator).

Property and Neighborhood Description

The property involved in this variance application is located at 300 Avalon Farm Lane, in the Fourth Election District of Queen Anne's County (the "Property"). Avalon Farm Lane is a private road that connects to Parson Island Road. Traveling north, Parson Island Road leads to

Dominion Road (Maryland Route 552), which in turn leads to Main Street in Chester and access to U.S. Route 50. The Property is about two miles from U.S. Route 50.

The Property is designated as Parcel 20, Block 3, on Sectional Zoning Map No. 64. The Property is zoned CS, Countryside. Countryside zoning is intended “to preserve and protect the rural and agricultural areas of the County that generally lie within the Chesapeake Bay Critical Area and contain extremely sensitive natural resources.” Most of the Property is in the Chesapeake Bay Critical Area. The County’s critical area maps classify 130 acres of the Property as part of an RCA, Resource Conservation Area.

The Property totals 140 acres in size. The Property sits along the northern end of Crab Alley Bay and enjoys several thousand feet of shoreline along Crab Alley Bay and Little Creek. Large portions of the shoreline are protected by marshlands, with a few small beach areas. Other portions of the shoreline appear to be stabilized with rip-rap and rocks. Much of the Property is farmed; significant portions are wooded. In addition to Avalon Farm Lane, improvements on the Property include a two-story single-family dwelling, a small cottage near the shoreline, a detached garage, several other outbuildings, and interior farm roads. No public utilities serve the Property.

The neighborhood in which the Property is located is a peninsula bounded by Crab Alley Creek to the west, Crab Alley Bay and Prospect Bay to the south, and Kirwan Creek to the east. The predominant uses in the neighborhood are agricultural and forested lands, but significant areas of single-family development exist to the southeast of the Property along Queen Anne Drive and southwest of the Property along Little Creek Road. Two commercial marinas occupy land at the confluence of Little Creek and Crab Alley Creek.

Agency Recommendations

Mr. John Kling, a Certified Floodplain Manager with the Department of Public Works (“DPW”) briefly addressed the Board. Mr. Kling drew the Board’s attention to his letter of July

16, 2018 and to an August 10, 2018 letter from Mr. Kevin J. Wagner, the Community Assistance Program Manager with the State NFIP Coordinating Office in the Maryland Department of the Environment (“MDE”). These letters were in evidence before the Board as Applicant’s Exhibits 6 and 7, respectively. Mr. Kling told the Board he would be available to answer questions, but that initially he had no comments other than the matters stated in the letters.

Mr. Kling’s letter describes the variance request and recommends, if the Board approves the variance, that approval should be subject to two conditions, as follows:

1. The Applicant must address MDE’s comments; and
2. The Applicant must comply with all provisions of Chapter 14:3 of the Code that are not varied.

Mr. Wagner’s letter sets forth MDE’s comments. Mr. Wagner notes the Property is affected by multiple flood zones, but the proposed home and garage would be in the AE Zone associated with Crab Alley Bay’s tidal floodplain. At this location, the Base Flood Elevation (“BFE”) is five feet. Adding the two-foot freeboard the Code requires results in a Flood Protection Elevation (“FPE”) of seven feet.

Concerning the 600-square-foot restriction the Applicant seeks to vary, Mr. Wagner notes this restriction exceeds the minimum requirements established by the National Flood Insurance Program (“NFIP”), and thus MDE has no specific comments on the variance request. Nevertheless, Mr. Wagner warns that granting variances to higher regulatory standards could negatively affect the County’s ability to receive credit for such standards through NFIP’s Community Rating System. In any event, according to Mr. Wagner, variance approvals should be consistent throughout the County’s floodplain areas.

In his letter, Mr. Wagner provides references to additional information for the Applicant to consult. In addition, he emphasizes the importance of the Applicant adhering to all floodplain standards that are not varied, stressing (1) the requirement to install flood openings in the garage

walls, (2) limiting the garage to vehicle parking, access to the home and storage, and (3) recording in the land records a declaration of restrictions to ensure the garage is not converted into living space unless such a conversion can meet future flood-hazard regulations.

Later during the hearing, Mr. Kling explained the only alternatives to a variance would be raising the elevation of the garage to seven feet or reducing the size of the garage to 600 square feet. Subsequently, in response to a question from the Board, Mr. Kling indicated the Board had previously granted a variance to the 600-square-foot requirement for parking areas proposed below a condominium building.¹

Applicant's Presentation

Three witnesses testified for the Applicant: (1) Mr. Barry F. Griffith, President of Lane Engineering, LLC and the company's Principal Planner; (2) Mr. Jefferson E. Hubbard, who has extensive experience in the engineering and surveying industries, including FEMA elevation certificates; and (3) the Applicant's fiancé Kasie Shaver. In addition to these witnesses, the Applicant produced eight exhibits, all of which the Board admitted into evidence.

Mr. Griffith testified the 140-acre Property is known as Marlin Farm. An older two-story home is on the Property, but the home is in a state of disrepair. The home also sits on the

¹See *In the Matter of the Application of Wells Cove Development, LLC*, Case No. V-040001 (Aug. 31, 2015); see also *In the Matter of the Application of Element Homes and Consulting, LLC*, Case No. V-16020042 (May 20, 2016). In *Element Homes*, Mr. Kling explained the County's 600 square-foot limit for non-habitable area is stricter than NFIP requirements, which contain no such limit for a primary structure. Mr. Kling also told the Board the 600 square-foot limit was based on continuing a previous County policy that restricted unoccupied floor area beneath buildings in flood-prone areas. But now, according to Mr. Kling, the purpose underlying the restriction is not as important as it once was to protect public health and safety, nor to reduce flood insurance premiums for property owners. Mr. Kling explained the purpose of the restriction was to reduce damage to structures, and thus to keep repair costs lower; however, other standards the County has adopted (such as break-away walls, flood vents, and locational standards for electrical elements) now accomplish the same purpose. Mr. Kling also said the County is considering eliminating the 600 square-foot restriction as it reviews the County's flood-hazard standards. In the present case, Mr. Kling did not provide an update on the status of the County's review. Nevertheless, as long as the 600 square-foot restriction is law, the Board must evaluate variances from the restriction just as it evaluates variances from any other provision of Chapter 14:3 of the Code.

ground; it is not elevated above the FPE. Mr. Griffith believes the home was used as a hunting lodge. Rather than trying to renovate the home, the Applicant proposes to raze the structure and build a new home in Eastern Shore vernacular style. Habitable space in the new home will total 4,036 square feet, with the garage adding 1,036 square feet of non-habitable floor area. All habitable floor area will be raised at or above the County's seven-foot FPE. But the garage floor will be set at about five feet in elevation, and thus the garage requires a variance. Mr. Griffith noted that five feet is the actual BFE.

Mr. Griffith testified the area of the Property where the home will be located is not mapped as tidal floodplain; however, the 600-square-foot requirement applies because of the Property's elevation in that area. The home will be 40 feet to 50 feet away from the mapped floodplain. Mr. Griffith opined that application of the 600-square-foot limit is not a practical or necessary solution in this case. Mr. Griffith noted the five-foot BFE in this area has been rounded up from an actual BFE of 4.6 feet. In any event, he also understands the County will be eliminating the 600-square-foot restriction.

Mr. Griffith described the proposed home as a typical size for larger properties, here 140 acres. He testified the garage will have room to park three cars. The Applicant needs a three-car garage because both the Applicant and his fiancé, Kasie, are working professionals. In addition, the home will incorporate an in-law apartment. Addressing the conditions recommended by Mr. Kling and MDE, Mr. Griffith told the Board the Applicant agrees to abide by the recommended conditions, including recording a non-conversion agreement.

Mr. Hubbard testified regarding the criteria in § 14:3-65.B. of the Code and the variance standards in § 14:3-66 of the Code. Based on his training and experience, the Board recognizes Mr. Hubbard as an expert in floodplain management. For this reason, and because no contradictory evidence exists in the record, the Board will adopt as its own findings addressing the criteria in § 14:3-65.B. of the Code those facts and conclusions in Mr. Hubbard's testimony

described in the following pages of this Opinion. Furthermore, based on other evidence in the record, the Board will add supplementary findings to its findings derived from Mr. Hubbard's testimony. For the sake of efficiency, the Board will present these combined findings on the following four pages.

(1) The danger that materials may be swept onto other lands to the injury of others.

(2) The danger to life and property due to flooding or erosion damage.

(3) The susceptibility of the proposed development and its contents (if applicable) to flood damage and the effect of such damage on the individual owner.

Mr. Hubbard testified the proposed garage will pose no danger to the land of others and no danger to life and property. The garage will meet the five-foot BFE and will incorporate vents and flood-resistant materials. Furthermore, below the seven-foot FPE, the Applicant will use the garage only for parking motor vehicles. All storage will be overhead, above the FPE. Thus, the contents of the garage would not be susceptible to flood damage. The Board finds, too, that the Property is 140 acres in size. The proposed home and garage will be located well within the boundaries of this large Property. The closest home on adjacent land is off Willow Point Lane, about 900 feet to the southeast (see Applicant's Exhibit 3). This distance significantly reduces the likelihood of materials being swept onto the Willow Point Lane property, as well as danger, injury and damage to improvements on that property.

(4) The importance of the services to the community provided by the proposed development.

Mr. Hubbard testified this standard is not applicable because the proposal is not intended to provide services to the public. The Board agrees. But the Board also finds demolition of a dilapidated structure, construction of a new home, and having full-time residents in the home will benefit the community.

(5) The availability of alternative locations for the proposed use which are not subject to, or are subject to less, flooding or erosion damage.

Mr. Hubbard testified the garage will be an integral part of the home and will provide an additional means of access to the home and the in-law apartment. Mr. Hubbard testified the home will be located on the same historically used home site as the existing structure. Avalon Farm Lane already serves the existing home site and the home site is close to the septic system that will serve the new home. Moreover, the existing home site is located outside the Critical Area buffer and is not in a mapped flood zone. In addition, the Board finds that other portions of the Property fall within flood zones, are protected marshlands, or both (see Applicant's Exhibits 7 and 8), thus reducing hypothetical alternative locations. The Board further finds that using the existing home site will help preserve agricultural and forested lands on the Property, which are important goals of the County's Comprehensive Plan.

(6) The necessity to the facility of a waterfront location, where applicable, or if the facility is a functionally dependent use.

Mr. Hubbard acknowledged the proposed garage is not a "functionally dependent use" as the Code defines the term, but he believes the garage is an important part of the proposed home and the Applicant considers it a necessary component. In addition, the Board finds the Property has an extensive and irregular waterfront. Locating improvements farther away from the flood zones associated with the waterfront would thus be difficult and would unnecessarily limit use of upland portions of the Property, thereby reducing open space. Moreover, as the Board previously noted, using the existing home site—which is outside the Critical Area buffer—will help preserve agricultural and forested lands on the Property.

(7) The compatibility of the proposed use with existing and anticipated development.

(8) The relationship of the proposed use to the comprehensive plan and hazard mitigation plan for that area.

Mr. Hubbard testified the proposed garage will be part of the new home the Applicant will build. All the home except the garage will be located above the FPE. Single-family homes with garages are compatible with existing development in this primarily rural area. Mr. Hubbard

opined the proposed single-family home and garage are consistent with both the Comprehensive Plan and the area's hazard mitigation plan. The Board agrees and, based on the Comprehensive Plan, finds: (a) the neighborhood will not support large-scale new development, and (b) in-fill development in the neighborhood will be mostly single-family homes.

(9) The safety of access to the property in times of flood for passenger vehicles and emergency vehicles.

Mr. Hubbard testified the Applicant will use and improve existing access to the Property and the new home. Thus, there will be no safety issues.

(10) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site.

Mr. Hubbard testified no sediment transport is expected during a flood event. Additionally, the Board finds floodwaters and wave action will not significantly affect the proposed garage. The Applicant will use vents and flood-resistant materials in the garage, as well as employ other flood-mitigation techniques. The garage will be built on a well-constructed foundation and attached to the home, which is above the FPE. Only two feet of the garage will be below the FPE, and those two feet are above the BFE. The Board also finds the marsh and the largely vegetated Critical Area buffer between the garage (and home) and the Property's natural shoreline will help stem wave action and reduce potential off-site sediment transport.

(11) The costs of providing government services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

Mr. Hubbard testified the Property is not served by public utilities. He opined the proposed variance will have no effect on public services, utilities, and facilities. The Board agrees. The Board finds that immediate access to the proposed home and garage is via a private road, which, the Applicant will not change except near the proposed home. Near the home the Applicant will improve the existing driveway. But none of the proposed construction will affect the closest public road, Parson Island Road.

(12) The comments provided by MDE (NFIP State Coordinator).

Mr. Hubbard noted the lack of objection by MDE's NFIP coordinator (see Applicant's Exhibit 7). Moreover, the Board finds relevant the fact MDE points out the 600-square-foot requirement exceeds NFIP standards. The Board notes Mr. Griffith's testimony that the County is moving toward eliminating the 600-square-foot requirement. This testimony is consistent with Mr. Kling's comments in a previous variance case. The Board also finds Mr. Griffith's testimony stating that the Applicant will comply with Mr. Kling's recommended conditions, which incorporate recommendations in MDE's letter (Applicant's Exhibit 7), is an important consideration that militates in favor of approving the requested variance.

Regarding the variance standards in § 14:3-66 of the Code, Mr. Hubbard presented additional facts, and emphasized certain facts already in evidence, as the basis for his opinion that the Applicant's proposal satisfies the variance standards. As appropriate, the Board will refer to Mr. Hubbard's testimony when setting forth its own findings under § 14:3-66 of the Code.

After Mr. Hubbard's testimony, Ms. Kasie Shaver testified. Ms. Shaver explained that the proposed in-law apartment is designed to be a separate living area attached to the main home, with the apartment having its own entrance through the proposed garage. Ms. Shaver testified that in addition to parking vehicles, the garage will be used for storage of personal property in an overhead area, which Mr. Hubbard indicated will be elevated above the FPE.

Appearance by Others

Ms. Lisa Meagher addressed the Board after the Applicant's presentation. Ms. Meagher told the Board she was attending the hearing because she wanted to make sure the Applicant is proposing to build only one home on the Property, as opposed to subdividing the Property for more homes. Mr. Griffith answered, telling Ms. Meagher the Applicant will be building only one home, with an attached in-law apartment. No subdivision is proposed.

Findings and Conclusions of the Board

Previously in this decision, the Board adopted (as part of the Board's findings required by § 14:3-65.B. of the Code) the testimony and opinions of Mr. Hubbard that addressed the § 14:3-65.B. criteria. In addition, the Board previously made supplementary findings of its own addressing the § 14:3-65.B. criteria. Based on (1) the Board's adopted and supplementary findings regarding the § 14:3-65.B. criteria, (2) the testimony of the Applicant's witnesses and Mr. Kling, and (3) the Applicant's exhibits, the Board finds and concludes as follows.

1. The evidence before the Board establishes good and sufficient cause for a variance based on the physical characteristics of the Property. To keep new development away from the Critical Area buffer and to preserve agricultural land and woodlands on the Property, the Applicant has little choice but to use the existing home site. Use of the existing home site also places the new home and garage near the portion of the Property with soils that can support a private septic system. Furthermore, Avalon Farm Lane already serves the existing home site, meaning the Applicant will not have to disturb additional land to extend or otherwise modify access to Parson Island Road, which is the closest public road.

Moreover, the existing home site is not in a mapped flood zone. Although the site's topography results in the garage floor being two feet below the FPE, the rest of the home will be above the FPE and the garage floor will still be above the BFE. Other physical characteristics of the Property, including its long and irregular shoreline, the presence of tidal wetlands along the shoreline nearest the existing home site, and the largely vegetated Critical Area buffer, provide at least some protection from the effects of tidal flooding and wave action. Additionally, due to the Property's size and overall configuration, the existing home site is sufficiently isolated to minimize potential dangers to the lands and personal property of others should the garage be flooded.

2. The Board concludes the foregoing physical characteristics of the Property create an exceptional hardship. The Applicant's only reasonable option is to place the new home and garage on the existing home site. Doing so will (1) minimize land disturbance in the Critical Area, (2) minimize impervious surfaces, (3) avoid potential drainage issues associated with hypothetical alternative locations, (4) result in less impact to the environment, (5) minimize danger to adjacent properties, and (6) help preserve the Property's agricultural and woodland areas. Theoretically, the Applicant could move tons of soil to elevate the garage two feet and construct an earthen ramp for vehicles to reach the garage. But such construction would potentially have greater negative effects than would placing the garage floor essentially at grade (which is two feet below the FPE), because earthwork would require greater disturbance, would result in a larger and less porous "barrier" to floodwaters, and would create greater long-term maintenance and safety issues. Given the physical characteristics of the Property, the Board is convinced that compelling the Applicant to abandon the historically used home site or requiring the Applicant to elevate the garage would impose an exceptional hardship.

3. Based on the facts that (1) the floodplain in question is a tidal floodplain and the size of the garage is insignificant compared to the total flood area, (2) the non-habitable area of the garage will be vented to allow water to pass through in the event of a flood, and (3) the garage floor will be situated just above the BFE, the Board concludes that granting the variance will not result in increased flood levels.

4. Based on Mr. Hubbard's testimony, the Board concludes that granting the variance will not result in additional threats to public safety, extraordinary public expense, nuisances, fraud or victimization of the public, or conflict with existing local laws. No evidence was offered to the Board suggesting otherwise. The garage will exceed the 600-square-foot standard by 436 square feet. But to put this number into perspective, if the Applicant were to separate the in-law apartment from the rest of the home and construct a 600 square-foot garage

under each structure, the result would be 1,200 square feet of floor area below the FPE that needs no variance. With the variance requested here, there will be 1,036 square feet below the FPE, and all the non-habitable floor area will be at one location on the Property instead of two. These types of hypothetical maneuvers are perhaps one reason NFIP representatives have recommended the County eliminate the 600 square-foot restriction.

5. Mr. Hubbard testified the Applicant will use flood vents and flood-resistant construction to protect the proposed garage and minimize flood damage. Ms. Shaver testified use of the garage for storage of personal property other than vehicles will be overhead, above the FPE. Accordingly, the Board concludes the proposed garage (and its contents) will be adequately protected by methods to minimize flood damage.

6. Finally, the Board concludes the Applicant has requested the minimum variance necessary to afford relief, considering the rural-residential neighborhood in which the Property is located, the Property's physical characteristics, and the nature of the flood hazard potentially affecting the Property. The proposed garage, perhaps large by absolute standards, is proportional to the size of the home and in character with the relatively bigger garages and outbuildings found in large-lot rural-residential areas of the County. In addition, Mr. Hubbard testified the BFE is generally safe. This is especially so for non-habitable structures such as the garage proposed here, where the floor will be just two feet below the FPE and the garage (and home) will be set back between 200 feet and 400 feet from the Property's irregular natural shoreline.

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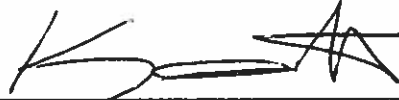
Based on the foregoing findings and conclusions, by a vote of three in favor and none opposed, the Board conditionally grants the Applicant's requested variance. The Board's conditional approval will allow the Applicant to construct and use a 28-foot by 37-foot garage with 436 square feet more floor area below the FPE than the 600 square feet ordinarily allowed. The garage must be constructed in substantial accord with Applicant's Exhibit 8; the garage may

be used only for vehicle parking and storage of personal property; and the garage may not be converted into habitable floor area unless such a conversion is later allowed by law. The variance is subject to the following conditions:

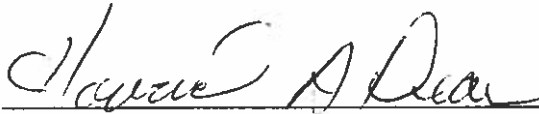
1. The Applicant must address to the satisfaction of the Department of Public Works the comments in MDE's letter dated August 10, 2018 (Applicant's Exhibit 7) and any other comments MDE may make during the permitting process; and
2. Other than the variance to the 600-square-foot requirement, the Applicant must comply with all requirements set forth in Chapter 14:3, Floodplain Management, of the Code. For emphasis, such compliance includes executing and recording in the land records a non-conversion agreement satisfactory to the Department of Public Works.

ORDER

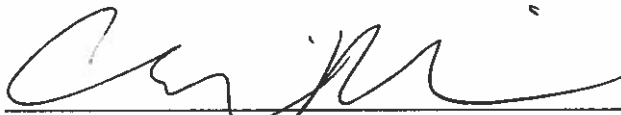
For the reasons set forth in the foregoing Opinion, it is this 28th day of September, 2018, ordered that the variance requested for Ryan M. Morris in Case No. V-18070004 be granted, subject to the conditions set forth in the Opinion.



Kenneth R. Scott, Chairman



Howard A. Dean, Vice-Chairman

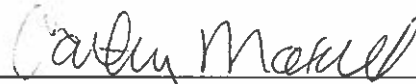


Craig W. McGinnes, Member

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 V-18070004, for Ryan M. Morris, which Opinion and Order resulted from a public hearing conducted by the Board of Appeals on August 22, 2018 and that the minutes and a recording of the August 22, 2018 meeting are filed in the office of Board of Appeals.

Certified this 28th day of September, 2018 by:



Cathy Maxwell
Clerk to the Board of Appeals