



## THE COMMISSIONERS OF ST. MICHAELS

### BOARD OF ZONING APPEALS

300 MILL STREET  
P.O. BOX 206

ST. MICHAELS, MD 21663

SETTLED 1670-1680

INCORPORATED 1804

TELEPHONE: 410.745.9535

FACSIMILE: 410.745.3463

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Applicant(s): CHESAPEAKE BAY MARITIME MUSEUM  
Case No.: BOZA-587-18  
Property Location: Navy Point, St. Michaels, MD  
(Tax Map 0200, Parcel 1607)  
Filing Date: October 24, 2018  
Hearing Date: November 20, 2018 continued to December 10,  
2018  
Decision Date: December 10, 2018

### OPINION AND DECISION

Chairman William Harvey convened the public hearing of the St. Michaels Board of Appeals (BOZA) at 5:30 p.m. in the meeting room of the Edgar M. Bosley, Jr. Municipal Building, 300 Mill Street, St. Michaels, Maryland, on November 20, 2018. Also present were board members John Hunnicutt, Douglas Rollow, and Zoning Officer Jean Weisman. One member of the public was present at the meeting.

#### I. Introduction

This case arises out of an Application for a Variance from the Critical Area Commission (CAC) Buffer Management Area (BMA) setback provisions as set forth in §340-27-13; and relief from maximum height provision of the Town Code, §340-30B-(5) (a). The variance applications were filed by the Chesapeake Bay Maritime Museum on Navy Point (Tax Map 200, Parcel 1607) in the MM Zone, for relief from the 25' setback requirement for accessory structures in the Critical Area BMA Zone, for the construction of stormwater management features, as well as a variance from the 35' height restriction on an exhibit building.

#### II. Jurisdiction

The Board of Zoning Appeals (the "Board"), pursuant to Town Code (the "Town Code"), Article VIII (Board Procedure) and IX (Board Powers and Duties), is empowered, upon written application therefor, to authorize upon appeal in specific cases the requested variance from the terms of [Chapter 340 of the Town Code]. Board Exhibits

The following exhibits were admitted as part of the public record:

1. Variance Application, filed on October 24, 2018, filed by Applicants Attorney, Zachary Smith.
2. Letter from Applicant's representative, Zachary Smith, responding to variance requirements of Building Height (Attachment A-1), dated October 24, 2018.
3. Letter from Applicant's representative, Zachary Smith, responding to variance requirements of Critical Area Buffer Encroachments (Attachment A-2), dated October 24, 2018.
4. §340-27.13 Buffer Management Area (BMA) provision of the Code.
5. Staff report prepared by Planning and Zoning Officer, dated November 8, 2018
6. Written property excerpt from Maryland Department of Assessments and Taxation.
7. Notice of Public Hearing.
8. Certification of public notice publication dated November 6 and 13, 2018.
9. List of adjacent property owners notified.
10. Affidavit of property posting signed by Mr. Byrne.
11. Site Plan survey prepared by Lane Engineering, LLC, dated October 23, 2018.
12. Existing site conditions.
13. Email trail Nov 14<sup>th</sup> – 20<sup>th</sup> between Nick Kelly(CAC) and Zach Smith Attorney for applicant
14. Letter dated November 20, 2018 from Jennifer Esposito, Critical Area Planner
15. Email trail August 22, 2017 between William Harvey and Kristen Greenaway
16. Email trail August 31, 2017 – September 2, 2017 between John Hunnicutt and Steven Gerrard

### III. Testimony

Chairman Harvey introduced the applicant's representatives – Attorney Zack Smith, Brett Ewing of Lane Engineering and Steve Bryn of the CBMM, and identified the property (known as Navy Point) as Parcel 1607. Chairman Harvey and members John Hunnicutt and Douglas Rollow affirmed that they had visited the site. Chairman Harvey then performed the swearing in of all persons wishing to testify, and read the conditions under which the board could grant a variance as outlined in Chapter 340 of the Code. Member Rollow asked if the variance requests – the buffer issue and the building height – could be dealt with separately, and the members agreed to begin with the variance request for a height allowance. Zoning Officer Jean Weisman then referred to the staff report, which was already a part of the record as Exhibit No. 5. Mrs. Weisman noted that the applicant was requesting a height of 36 feet for the building, which was one foot higher than the Code specification of 35 feet.

Chairman Harvey then called upon the applicant's representatives Mr. Smith, Engineer Brett Ewing, and Steve Brynes, Vice President of operations for the Museum. Mr. Smith said that the Museum Library and Exhibition Building was proposed to be elevated from average grade to 36 feet in order to meet flood code requirements, and to accommodate the special conditions necessary to protect the exhibits and the library, including highly sophisticated and specialized mechanical systems. Member Rollow asked if one foot could be eliminated at the top of the building to meet the Town Code's 35-foot limit. Attorney Smith said that architects for the proposed building said that the extra foot was needed to accommodate two floors and appropriate mechanical space. Mr. Smith and Mr. Brynes explained that the building would also have to meet the flooding and structural standards of the exhibit owners to attract them to the museum. There were no questions or comments from the public.

Chairman Harvey then closed the public portion of the hearing, and opened deliberations. Member Rollow said he was sympathetic to the need to accommodate the flood plain, but asked why the height of the building couldn't be reduced by one foot to meet the 35 ft. regulation. Member Rollow asked if the roof line could be stepped to allow the mechanical, and noted that he felt he could not make a decision without more information. Member Hunnicutt asked if it were not for the flood plain issue, would the building be considered typical and would the 36 feet be needed. Mr. Brynes responded no, that the building design was created by a national architectural firm known for creating specialized museum/educational structures. Member Hunnicutt said then the building is not a typical structure, and Attorney Zack Smith said correct, if you consider that the building is designed with taller ceilings to accommodate exhibit and library space. Chairman Harvey asked if the architect could appear before the board, perhaps via Go-to-Meeting or Skype technology. Attorney Smith said if necessary yes.

After some additional discussion, Chairman Harvey suggested a 2-step procedure to move forward - first, that the board receive a narrative from the architect to address Mr. Rollow's questions, focusing on the design as related to flood concerns, and the design as related to exhibit/library/office space - and secondly, outlining what hardship would be caused by trying to conform to the 35-foot regulation. Engineer Brett Ewing interjected that the architect was aware of the 35-foot limitation and that they had done what they could to compress the structure. Chairman Harvey said that the architect's input would help clarify things and strengthen the record. A continuance was discussed, and the members and the applicants agreed on the board's December 10th meeting as a date by which to obtain the architect's input.

Chairman Harvey made the motion to continue the building height portion of the variance request (hereinafter "Variance Subset A-1 of §340-30-B5") to December 10<sup>th</sup> to allow the applicants sufficient time to address the architectural concerns raised by the board. Member Hunnicutt seconded the motion, which then passed on a voice vote of 3-0 in favor. Chairman Harvey said the record would be kept open and the board would take public comment.

Chairman called upon Zoning Officer Jean Weisman, who noted that the staff report contained background on both variance requests. Zack Smith, attorney for the applicant, said the museum is constrained in finding areas to address storm water management (SWM) and meet the buffer management area 25-foot setback requirement. Attorney Smith said the museum was therefore requesting encroachment into the BMA to satisfy SWM requirements, and he submitted a site plan and photos for the record. Chairman Harvey then read the new exhibits into the record as follows:

17. Site Plan for CAC variance dated 11/20/18.
18. Photo of existing conditions, dated August 2018
19. Four photos A-D, dated August 2018

Mr. Smith said the museum was proposing two SWM locations, the first would be to remove the planter area (Exhibit 18) and substitute a SWM feature. Mr. Ewing said the area would

not look that much different in that existing plantings would be replaced with SWM plantings, which would improve water quality as it drains into the tidal water. Mr. Smith continued that a second SWM location would be on the northern side of the site, a submerged tidal wetland that does slightly encroach into the BMA. Mr. Ewing said the changes to the site there would also treat the storm water and improve the water quality as it goes into the tidal area.

Chairman Harvey asked when the applicants would be talking to the Maryland Department of the Environment (MDA) Mr. Ewing said that the MDE permit would be submitted once the Board of Appeals made their determination. Member Rollow asked for clarification of the SWM features on the site plan. After some additional discussion and some speculation on the CAC's comments to date, Chairman Harvey asked if the December 10<sup>th</sup> meeting would be enough time to get a better understanding of the CAC's position on the SWM solutions. Chairman Harvey then called for any further comment. Member Rollow asked if there are any other feasible alternatives or locations for SWM systems. Mr. Smith said no, and that the applicants were proposing a solution that appeared to be the most practical option, and which they believed actually improved water quality. Mr. Smith said efforts would be made to work with MDE and the Critical Area prior to December 10<sup>th</sup>, but also emphasized that the Board of Appeals has the final say in approving a variance in this matter.

As there were no further comments, Chairman Harvey proposed a motion to continue Subset A-2 of the request for a variance from the CAC Buffer Management Area setback requirement, §340-27-13, to allow sufficient time for the CBMM to address the concerns of the board in a way that would enable them to make a determination. Member Hunnicutt seconded the motion, which then passed on a voice vote of 3-0 in favor.

### **December 10, 2018**

Chairman William Harvey re-convened the continuation of a hearing held on November 20, 2018 before the St. Michaels Board of Appeals (BOZA) at 5:30 p.m. in the meeting room of the Edgar M. Bosley, Jr. Municipal Building, 300 Mill Street, St. Michaels, Maryland. Also present were board members John Hunnicutt and Douglas Rollow, and Zoning Officer Jean Weisman. Attorney Smith announced that the Applicant was withdrawing their application for a height variance.

Attorney Smith called upon Tim Glass, who provided an update on the museum's plans to meet the storm water management requirements of the Maryland Department of the Environment (MDE). Mr. Glass said the museum's plan to construct a submerged gravel wetland to filter runoff into the tidal area was a major improvement over presently non-existent storm water treatment. Mr. Glass said that less than 20 percent of the planned storm water feature located at the water's edge was in the BMA setback, and that there were no other feasible locations or systems that would work for the site. Member Rollow asked for confirmation that alternatives had been explored. Mr. Glass responded that given the topography, soils and high ground water, the submerged gravel wetland emerged as the best and only workable solution.

Exhibits 20-29 were entered into the record as follows:

20. Email correspondence from Zach Smith Attorney dated 12.5.18.
21. Concept Stormwater management report dated 12.4.18
22. Site plan for Variance dated 12.3.18.
23. Demolition plan dated 10.5.18.
24. Overall context plan dated 10.5.18.
25. Existing conditions CAC calculations.
26. Proposed conditions CAC calculations.
27. Email correspondence from Zach Smith Attorney dated 12.7.18.
28. Site plan for Variance dated 12.3.18 marked as rev. 12.7.18
29. Email dated December 10, 2018 from Nick Kelly –DNR. Letter attached.

Chairman Harvey asked if the applicants had received any input from MDE or the Critical Area Commission other than the letter before the board, which appeared to oppose the variance. Mr. Smith said the museum had not submitted any plans to MDE, and that in his experience, while it is not uncommon for them to take initial positions against variances, these agencies typically do not officially weigh in on a project until the applicant has received all required local approvals. Chairman Harvey said the CAC letter posed some questions, the first one being, without the variance would there be no reasonable and significant use of the property. Mr. Smith said that without the variance, the project could not meet storm water management requirements. Mr. Smith said the design is dictated by the constraints of the site, and includes demolishing functionally obsolete buildings to maintain a similar footprint. Chairman Harvey posed the letter's second question, which was whether a re-design of the new building had been considered in order to not intrude into the buffer. Mr. Smith said a great deal of work had gone into mirroring the existing footprint and utilizing every available space, and a re-design would be a costly exercise with no viable alternative solution. Member Rollow said his interpretation of the CAC letter was that their solution was to pull the building back from the buffer. Member Rollow said however, that he believed the museum had established to his satisfaction that there was no other space for the storm water management system and it was the only workable solution.

Member Rollow then read through the criteria and responses for granting a variance, as established in Chapter 340.27.13a and Chapter 340-77:

1. Applicant has established that there is no other feasible or physically permissible place to put the storm water management feature, and that the plan is designed to minimize buffer impacts.
2. N/A The plan has already been pulled back from the living shoreline.
- 3B The plan utilizes existing footprint.
4. N/A
5. N/A
6. N/A
7. The plan does not create new buildable area (fast land).

8. None removed.
9. Mitigation requirements will be observed.

Chapter 340-77:

1. There would be unwarranted hardship and loss of economic viability of the parcel.
2. The parcel has special purpose and is unique.
3. Special privilege – storm water management is not a privilege but a requirement.
4. Applicant has not caused the circumstances on the property.
5. Not granting the variance would adversely affect the applicant.
6. The plan is a reasonable use of the parcel; and reducing size of the building does not enable a workable storm water management solution.
7. Denial of the variance is an unreasonable hardship.

As there were no additional comments, Chairman Harvey closed the public portion of the hearing at 6:30 p.m. and opened deliberations. He then made a motion to approve the variance, as set forth in Application 587-18 as revised, with three development conditions.

Member Rollow said there were still two outstanding issues to be deliberated – the boardwalk and the planter boxes. Chairman Harvey then re-opened the public portion of the hearing for those deliberations. Mr. Glass said a retrofitting of the planter boxes to facilitate storm water management was in the original proposal, but was no longer essential because the submerged gravel wetland feature was more than sufficient to meet storm water requirements on the site. The members also agreed the boardwalk was part of the submerged gravel wetland and did not need to be addressed separately.

IV. Findings

Chairman Harvey again closed the public portion of the hearing at 6:40 p.m. and opened deliberations. He then made a motion to approve the applicants' requested variances, Nos. 1, 2, and 3, as set forth in Application 587-18 as revised, and subject to the following conditions:

1. Applicant must obtain all MDE approvals for the proposed outfall disturbance of the Buffer Management Area setback prior to beginning construction.
2. Applicant must provide mitigation at a 3-1 ratio in the BMA setback and at a 2-1 ratio outside of the BMA.

3. Applicant will resubmit a plan that eliminates Item No. 4 (small SWM feature involving retrofitting planter boxes). Item No. 4 is dismissed without prejudice to enable it to be re-introduced at a later date if necessary.

Member John Hunnicutt seconded the motion. As there were no additional comments, the motion passed on a voice vote of 3-0 in favor.

V. Decision

THEREFORE, the Board of Zoning Appeals, in light of the foregoing evidence and upon a motion made and seconded, hereby grant the variance as submitted per Variance Application BOZA-587-18.

The motion was made by Member Rollow and second by Member Hunnicutt with the following vote:

Harvey	<u>Aye</u>
Hunnicutt	<u>Aye</u>
Rollow	<u>Aye</u>

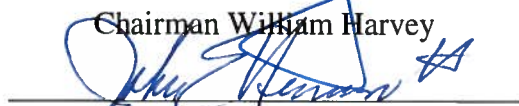
The motion carried by vote of 3:0 in favor and the Board of Zoning Appeals hereby ORDERS that Variance Application BOZA-587-18, in accordance with exhibits and testimony offered in this matter, is hereby APPROVED.

Chairman Harvey and members present submit and adopt this Written Opinion and Decision on the day 4 of January, 2019.

**St. Michaels Board of Zoning Appeals**

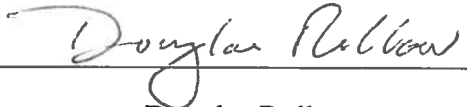


Chairman William Harvey



John Hunnicutt

BOZA-587-18

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Douglas Rollow