

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1213

September Term, 2012

MURIEL A. EDWARDS, *et vir.*

v.

ROSEMARIE LEHNER, *et vir.*

Eyler, Deborah S.,
Watts,
Salmon, James P.
(Retired, Specially Assigned),

JJ.

Opinion by Watts, J.

Filed: June 24, 2013

In a September 22, 2011, order, the Board of Appeals for Baltimore County (“the Board”) concluded that: (1) Muriel A. Edwards and her husband, Dennis Farwol (together, “appellants”), did not need a variance¹ from Baltimore County Zoning Regulation (“B.C.Z.R.”) § 417.4 to build two mooring piles² (“the proposed mooring piles”) and a pier (“the proposed pier”) that would extend from 1012 Susquehanna Avenue, Middle River, Baltimore County, Maryland (“Lot 13”), which Edwards owns along with the adjacent property, 1016 Susquehanna Avenue (“Lot 305”); and (2) Lot 13 and Lot 305 never merged for zoning purposes.

Rosemarie and Thomas Lehner (together, “appellees”)—owners of 1004 Susquehanna Avenue (“Lot 12”), adjacent to Lot 13—petitioned for judicial review of the Board’s order in the Circuit Court for Baltimore County (“the circuit court”), which, in an April 27, 2012, opinion: (1) reversed the Board’s conclusion that Lot 13 and Lot 305 never merged for zoning purposes; (2) reversed the Board’s conclusion that appellants did not need a variance from B.C.Z.R. § 417.4 to build the proposed pier; and (3) remanded to the Board with instructions to comply with B.C.Z.R. § 500.14.

Appellants appealed to this Court, raising three issues, which we rephrase:

- I. Was the Board correct in concluding that Lot 13 and Lot 305 never merged for zoning purposes?

¹A variance is “[a] license or official authorization to depart from a zoning law.” Black’s Law Dictionary 1588 (8th ed. 2004).

²A mooring pile—also known as a pile mooring or a mooring pole—is a structure that sits in the water near a pier to which a vessel may be secured.

II. Was the Board correct in concluding that appellants did not need a variance from B.C.Z.R. § 417.4 to build the proposed pier?

III. Was the Board correct in not complying with B.C.Z.R. § 500.14?^[3]

For the reasons below, we answer question I “no,” and we answer questions II and III “yes.”

Thus, we affirm in part, reverse in part, and remand to the Board.

BACKGROUND

Frog Mortar Creek	Lot 12	Susquehanna Avenue ^[4]
	Lot 13	
	Lot 305	

(A) Deed and Lot 305’s Pier

On April 26, 1985, by one deed, Edwards and her previous husband acquired Lot 13 and Lot 305.⁵ While her previous husband was living, Edwards lived at Lot 305, from which

³In their brief, appellees raise three issues that do not correspond to the issues that appellants raise; however, appellees did not cross-appeal. Generally, this Court will consider issues that an appellee raises only where the appellee cross-appeals. See Bray v. Aberdeen Police Dep’t, 190 Md. App. 414, 420 n.1, cert. denied, 415 Md. 39 (2010) (“In the absence of a cross-appeal, [] the appellee’s issues are not before us.”); Maxwell v. Ingerman, 107 Md. App. 677, 681, cert. denied, 344 Md. 117 (1996) (“[I]f a timely cross-appeal is not filed, we will ordinarily review only those issues properly raised by the appellant[.]”). Thus, we do not consider the three issues that appellees raise.

⁴For reference only, we created this table, which does not reflect each lot’s size or shape.

⁵Although a deed does not appear in the “Record Extract” that appellants submitted to this Court, a deed appears in the “Appellee[s] Appendix” that appellees submitted to this Court.

(continued...)

a pier (“Lot 305’s pier”) extends into Frog Mortar Creek. Sometime around the late 1990s, Edwards extended Lot 305’s pier approximately fifteen or twenty feet to be approximately seventy-five feet long. According to Edwards, she did not “think [a survey] would have been needed [to extend Lot 305’s pier] since [she] owned both lots.” While Edwards lived at Lot 305, she owned a boat, which she presumably moored at Lot 305’s pier.

Currently, Lot 305’s pier violates B.C.Z.R. § 417.4, which states: “No construction, beyond mean low tide, including mooring piles, will be permitted within 10 feet of divisional lines^[6] as established. The effect of this requirement will be to maintain a twenty-foot open access strip between the facilities of adjoining property owners.” Currently, Lot 305’s pier

⁵(...continued)

On brief, appellees argued that appellants violated Maryland Rule 8-501(d)(1) by “fail[ing] serve on [a]ppellee[s] a statement of those parts of the [r]ecord that [a]pellant[s] proposed to include in the Record Extract.” Thus, relying on Maryland Rule 8-501(e), appellees filed an appendix with this Court. Appellees do not seek any remedy related to documents before this Court, as appellees did not move to strike any part of the Record Extract that appellants submitted, and took advantage of the opportunity to file an appendix with this Court. As such, we need not determine whether appellants violated Maryland Rule 8-501(d)(1).

In a reply brief, appellants move to strike certain documents in the “Appellee[s] Appendix,” arguing that those documents were not part of the record. Because we do not use those documents in our analysis, we need not rule on the motion to strike.

In their reply brief, appellants do not move to strike the deed that appears in the “Appellee[s] Appendix.” The deed is labeled “Protestant’s Exh #9,” and is consistent with testimony about Protestant’s Exhibit # 9. Furthermore, in their brief and before the Board, appellants admitted that Edwards acquired Lot 13 and Lot 305 at the same time. Thus, we consider the deed as part of the record.

⁶B.C.Z.R. § 417.3 defines divisional lines, which are drawn in the water “[f]or the purpose of defining boundaries within which waterfront construction may take place[.]”

not only encroaches on Lot 13's "setback,"⁷ but also crosses the divisional line between the water behind Lot 13 and the water behind Lot 305 ("the divisional line between Lot 13 and Lot 305").⁸

(B) Petition for Variance from B.C.Z.R. § 417.4 and Hearing Before the Board

After her previous husband died, Edwards married Farwol. Edwards and Farwol built a home on Lot 13, at which they currently live. At one point, Edwards had a tenant in the house on Lot 305. Appellants wanted to build the proposed mooring piles and the proposed pier, which would extend from Lot 13. Edwards applied for a building permit.

In a letter dated April 27, 2009, the Maryland Department of the Environment advised Farwol to obtain a variance from B.C.Z.R. § 417.4 to build the proposed mooring piles, which would be south of the proposed pier—*i.e.*, between the proposed pier and the water behind Lot 305. Farwol filed a petition for variance from B.C.Z.R. § 417.4 ("the petition for variance") to build the proposed mooring piles—not the proposed pier.

⁷In this context, a "setback" is the minimum amount of space that B.C.Z.R. § 417.3 requires—*i.e.*, ten feet—between waterfront construction and a divisional line.

⁸We agree with appellants that—contrary to statements by the Board and the circuit court—Lot 305's pier does not cross the **property** line between Lot 13 and Lot 305; rather, Lot 305's pier crosses the **divisional** line between the **water** behind Lot 13 and the **water** behind Lot 305. A divisional line is a product of zoning law, not property law. See B.C.Z.R. § 417.3 (defining divisional lines). The fact remains, however, that Lot 305's pier not only encroaches on Lot 13's setback, but also crosses the divisional line between Lot 13 and Lot 305.

The Baltimore County Deputy Zoning Commissioner granted the petition for variance. Appellees–appellants’ next-door neighbors and Lot 12’s owners–appealed to the Board the grant of the petition for variance.

During a hearing before the Board, Farwol admitted that he had submitted a plot diagram that did not show Lot 12; thus, Farwol’s plot diagram did not comply with B.C.Z.R. § 417.2, which states: “All applications for waterfront construction . . . shall be accompanied by a plot diagram . . . showing the outlines of the property in question and of adjoining properties[.]”

As a witness for appellants, John Staley testified as an expert in the field of property line surveying. Staley had visited and surveyed Lot 13. According to Staley, the divisional line between the water behind Lot 12 and the water behind Lot 13 (“the divisional line between Lot 12 and Lot 13”) extended from the corner of a bulkhead that straddles Lot 12 and Lot 13. The Board admitted Staley’s supplemental plat into evidence. Based on his supplemental plat, Staley opined that appellants would not need a variance from B.C.Z.R. § 417.4 to build the proposed pier or the proposed mooring piles, as: (1) there would be ten feet between the proposed pier and the divisional line between Lot 12 and Lot 13; and (2) there would be ten feet between the proposed mooring piles and the divisional line between Lot 13 and Lot 305.

As a witness for appellees, James Patton testified as an expert in the fields of land planning, zoning and site engineering. Patton opined that the corner of the bulkhead that straddles Lot 12 and Lot 13 does not mark the property line between Lot 12 and Lot 13.

In an order on September 2, 2010, “the Board submit[ted] the question to [the Director of Environmental Protection and Sustainability (“DEPS”)]⁹ as to whether or not the installation of [the proposed] mooring piles will meet the requirements of [B.C.Z.R. §] 500.14[,],” which states: “No decision may be rendered by the Zoning Commissioner on any petition for . . . variance . . . unless the Zoning Commissioner has received from [DEPS] written recommendations[.]”

(C) Board’s Conclusions

In an order on September 22, 2011, the Board concluded as follows:

(1) Lot 13 and Lot 305 Never Merged for Zoning Purposes

In concluding that Lot 13 and Lot 305 never merged for zoning purposes, the Board stated:

[Lot 13 and Lot 305] were purchased at different times by Ms. Edwards. Lot 305 was the original Lot owned by her and her [previous] husband and [Lot 13] was purchased several years later.¹⁰ Lot 13 and Lot 305] have always been kept separate for tax purposes and two tax bills have been sent and paid by the property owner. While the Edwards may have used Lot 13 occasionally for recreational purposes, they subsequently decided to build a second home

⁹At the time, DEPS was known as the Department of Environmental Protection and Resource Management.

¹⁰As noted above, Edwards acquired Lot 13 and Lot 305 at the same time. As appellants concede, the Board clearly erred in finding otherwise.

on Lot 13 and rent the home on Lot 305. M[rs. Edwards proposes to build a second pier off of Lot 13 and proposes to rent or sell Lot 305, where a pier has already been contracted.

(2) Appellants Did Not Need a Variance from B.C.Z.R. § 417.4 to Build the Proposed Pier

In concluding that appellants did not need a variance from B.C.Z.R. § 417.4 to build the proposed pier, the Board stated:

[Staley's supplemental plat] will be accepted by the Board and . . . Staley has properly determined the "mean low water line" as the point where [appellees'] property and the neighbor's property to the [n]orth intersects the water.

* * *

The Board accepts the starting point of Mr. Staley's mean low water line as the proper line to be drawn to the point of the bulkhead where [appellants'] property intersects the water.

* * *

[T]he line drawn by Mr. Staley to the point at the corner of the bulkhead on the property line of [appellants], adjacent to [appellees], is the proper line to be drawn. The drawings attached to [B.C.Z.R. §] 417.3, particularly Appendix J, are of assistance in making this determination. The drawing shows an irregular shore line which is concave, similar to the shoreline of [appellees'] property. A baseline is drawn from the corner of the subject property down to the intersection of the adjacent property and the property line for the adjacent property and the property to the right of it. It shows mean low tide where the adjacent property and its neighboring property meet. It does not show the property line between the adjacent property and its neighbor to the right, extended into the water for the drawing of the baseline. The Board rejects the testimony of Mr. Patton that the proper line to be utilized is some point further back on the bulkhead for mean low water. The bulkhead has been constructed and the corner of the bulkhead is where [appellants'] property ends. If the mean low water is higher at the bulkhead than it is further down the shore at [appellees'] property, then that is the point at which the mean low water line will be measured.

Because the Board concluded that appellants did not need a variance from B.C.Z.R. § 417.4 to build the proposed pier, the Board dismissed as moot the petition for a variance and did not address B.C.Z.R. § 500.14.

(D) Circuit Court's Reversal and Remand

Appellees petitioned for judicial review of the Board's order in the circuit court, which: (1) reversed the Board's conclusion that Lot 13 and Lot 305 never merged for zoning purposes; (2) reversed the Board's conclusion that appellants did not need a variance from B.C.Z.R. § 417.4 to build the proposed pier, stating that the Board lacked the authority to so conclude and that Farwol had failed to comply with B.C.Z.R. § 417.2; and (3) remanded to the Board with instructions to comply with B.C.Z.R. § 500.14, stating: "Because [appellants]' request for a variance was still active at the time the Board issued its September 2, 2010 [o]rder requesting DEP[S]'s assistance, [B.C.Z.R.] § 500.14 applied."

STANDARD OF REVIEW

In People's Counsel for Balt. Cnty. v. Surina, 400 Md. 662, 681-83 (2007), the Court of Appeals stated:

When [an] appellate court reviews the final decision of an administrative agency such as the [Board], the [appellate] court looks through the [trial] court's . . . decision[], although applying the same standard[] of review, and evaluates the decision of the [administrative] agency

In doing so, [the appellate c]ourt may not substitute its judgment for the administrative agency's in matters where purely discretionary decisions are involved, particularly whe[re] the matter in dispute involves areas within th[e administrative] agency's particular realm of expertise, so long as the [administrative] agency's determination is based on substantial evidence. In

that latter regard, [the appellate court] inquire[s] whether the [administrative agency]'s determination was supported by such evidence as a reasonable mind might accept as adequate to support a conclusion. . . . Thus, [the appellate court] will uphold the administrative decision of the [administrative agency] if that action was fairly debatable on the facts as found by it.

[The appellate court is] less deferential in [its] review, however, of the legal conclusions of the administrative [agency] and may reverse those decisions where the legal conclusions reached by th[e administrative agency] are based on an erroneous interpretation or application of the zoning statutes, regulations, and ordinances relevant and applicable to the property that is the subject of the dispute. When determining the validity of those legal conclusions reached by the [administrative agency], however, a degree of deference should often be accorded the position of the administrative agency whose task it is to interpret the ordinances and regulations the [administrative] agency itself promulgated. Thus, [e]ven though the decision of the [administrative agency] was based on the law, its expertise should be taken into consideration and its decision should be afforded appropriate deference in [the appellate court's] analysis of whether it was premised upon an erroneous conclusion of law.

(One alteration and third ellipsis in original) (citations and internal quotation marks omitted).

DISCUSSION

I. Merger of Lot 13 and Lot 305 for Zoning Purposes

Appellants contend that the circuit court erred in reversing the Board's conclusion that Lot 13 and Lot 305 never merged for zoning purposes.¹¹ Appellants argue that Lot 13 and Lot 305 did not automatically merge just because Edwards owned both. Appellants assert

¹¹Presumably, appellants so contend because each lot can have only one dwelling, see B.C.Z.R. § 1A04.3B5, and only one pier, see B.C.Z.R. § 415A.2; thus, if Lot 13 and Lot 305 have merged for zoning purposes: (1) the existence of a house on Lot 13 and another house on Lot 305 would violate B.C.Z.R. § 1A04.3B5; and (2) the existence of the proposed pier and Lot 305's pier would violate B.C.Z.R. § 415A.2.

that substantial evidence supported the Board's conclusion that Edwards did not intend for Lot 13 and Lot 305 to merge for zoning purposes.

Appellees respond that the circuit court was correct in reversing the Board's conclusion that Lot 13 and Lot 305 never merged for zoning purposes. Appellees contend that Lot 13 and Lot 305 must have merged for zoning purposes because, otherwise, Lot 305's pier would violate B.C.Z.R. § 417.4 by crossing the divisional line between Lot 13 and Lot 305.

In a reply brief, appellants respond that appellees' contention relies on the doctrine of automatic merger, which Maryland has rejected.

In Remes v. Montgomery Cnty., 387 Md. 52, 87 (2005), the Court of Appeals held that two lots had merged for zoning purposes where the two lots "were under common ownership, and at the time of that common ownership, [] were used in service to one another." The Court stated:

[T]here is ample evidence to conclude the [previous landowners] intended to use [the two lots] as one property for zoning purposes: the pool on Lot 11 violates (or violated) the prescribed setbacks from the street and from Lot 12, unless it was dedicated for zoning purposes to Lot 12, and from the time of its creation was thus an accessory use to the structure or use of Lot 12; the additions to the house on Lot 12 encroach upon that lot's setbacks; the circular driveway traverses both Lot 11 and Lot 12; until very recently the lots were assessed for tax purposes as a single parcel; and the subsequent . . . deed conveying Lot 11 and Lot 12 . . . described a single lot comprised of two lots, in that it reads "Lot numbered eleven (11) and twelve (12)."

Id. at 68 (footnote omitted). The previous landowners had the pool, additions, and driveway built before the two lots were inherited by their son, who was a party to the case. Id. at 57-58.

Here, we conclude that Lot 13 and Lot 305 have merged for zoning purposes. Edwards acquired Lot 13 and Lot 305 at the same time by the same deed. Edwards lived at Lot 305 and extended Lot 305's pier, which now not only encroaches on Lot 13's setback, but also crosses the divisional line between Lot 13 and Lot 305. In a statement that showed her intent for Lot 13 and Lot 305 to merge for zoning purposes, Edwards testified: "I don't think [a survey] probably would have been needed [to extend Lot 305's pier] since I owned both lots." While Edwards lived at Lot 305, she owned a boat, which she presumably moored at Lot 305's pier, which violates B.C.Z.R. § 417.4 by encroaching on Lot 13's setback; thus, Edwards used Lot 13 in service of Lot 305—*i.e.*, Edwards needed Lot 13 to enjoy the use of Lot 305.

Two lots have merged for zoning purposes where—as proof of the two lots' current owner's intent for the two lots to merge for zoning purposes—the two lots' current owner: (1) acquired the two lots at the same time by the same deed; (2) built or expanded on one lot an improvement that violates zoning regulations by encroaching on the other lot's setback; and (3) uses one lot in service of the other lot. See Remes, 387 Md. at 68 (The Court of Appeals held that two lots had merged for zoning purposes where the two lots' owner at the time: (1) acquired the two lots at the same time by the same deed; (2) built on one lot a pool that violated zoning regulations by encroaching on the other lot's setback, and built on one

lot's house additions that violated zoning regulations by encroaching on the other lot's setback; and (3) used a driveway on one lot in service of the other lot.).

We reject appellants' contention that the holding of the Court of Appeals in Remes, id. at 87, depended on the fact that the two lots "were used in service to one another"—as opposed to one lot serving the other lot, but not vice versa. Rather, in Remes, id. at 68, the Court's holding depended on the fact that the two lots' previous owner "intended" for the two lots to merge for zoning purposes. As shown by the evidence discussed above, Edwards intended for Lot 13 and Lot 305 to merge for zoning purposes.

Although we agree with appellants that two lots have merged for zoning purposes if and only if the two lots' owner intended for the two lots to merge for zoning purposes, we reject appellants' contention that this Court would adopt the doctrine of "automatic merger" by relying on the fact that Lot 305's pier crosses the divisional line between Lot 13 and Lot 305. To be sure, two lots do **not** automatically merge for zoning purposes just because the two lots' owner built or expanded on one lot an improvement that violates zoning regulations by encroaching on the other lot's setback. However, as the Court of Appeals held in Remes, id., the encroachment is a highly important **factor** in determining whether or not the two lots' owner **intended** for the two lots to merge for zoning purposes.

We reject appellants' contention that Edwards did not intend for Lot 13 and Lot 305 to merge for zoning purposes because Lot 305's pier's encroachment occurred before Edwards acquired Lot 13 and Lot 305. Appellants state that, **before** Edwards acquired Lot

13 and Lot 305, Lot 305's pier was built and B.C.Z.R. § 417.4 was adopted. However, even if Edwards did not **cause** Lot 305's pier's encroachment, she **worsened** Lot 305's pier's encroachment by extending Lot 305's pier. Edwards's extension of Lot 305's pier—together with her statement that "I don't think [a survey] probably would have been needed [to extend Lot 305's pier] since I owned both lots"—help show her intent for Lot 13 and Lot 305 to merge for zoning purposes.

We reject appellants' and the Board's contention that Edwards **currently** intends for Lot 13 and Lot 305 not to merge for zoning purposes; regardless of Edwards's current intent, she **previously** intended for Lot 13 and Lot 305 to merge for zoning purposes. **Before** building a house on Lot 13, living at Lot 13, and having a tenant in the house on Lot 305, Edwards: (1) acquired Lot 13 and Lot 305 at the same time by the same deed; (2) lived at Lot 305 and extended Lot 305's pier, which now not only encroaches on Lot 13's setback, but also crosses the divisional line between Lot 13 and Lot 305; and (3) used Lot 305's pier to moor her boat. Regardless of two lots' current owner's current intent, the two lots have merged for zoning purposes where—at any time, by any owner—the two lots' owner intended for the two lots to merge for zoning purposes. See Remes, id. at 82, 85, 87 (The Court of Appeals held that two lots had merged for zoning purposes where the two lots' previous owners—not the two lots' owner at the time—used the two lots "in service to one another"; the Court stated that, by the time the two lots' owner at the time acquired the two lots, "zoning merger had already occurred.").

We reject appellants' contention that, under Mueller v. People's Counsel for Balt. Cnty., 177 Md. App. 43 (2007), cert. denied, 403 Md. 307 (2008), Lot 13 and Lot 305 never merged for zoning purposes. In Mueller, 177 Md. App. at 101-02, this Court held that two lots had not merged for zoning purposes where the two lots' owners at the time "never needed the undeveloped [lot] for them to enjoy the use of their developed" lot. Although the two lots' owners used the undeveloped lot for a "boat launch[,], a moveable storage shed[,], and] ball playing[,]" the two lots' owners acquired the two lots at different times, and no improvement on one lot violated zoning regulations by encroaching on the other lot's setback. Id. at 101. Mueller does not apply where, as here, the two lots' current owner: (1) acquired the two lots at the same time by the same deed; (2) built or expanded on one lot an improvement that violates zoning regulations by encroaching on the other lot's setback; and (3) uses one lot in service of the other lot.

We reject appellants' contention that, under Mueller, id. at 62 n.11, it is "not material" that the Board clearly erred in finding that Edwards acquired Lot 13 and Lot 305 at different times. In Mueller, id., this Court noted that the Board clearly erred in finding that the two lots' previous owner acquired the two lots at the same time. However, the Board's clearly erroneous finding was "not material" because both the Board and this Court determined that the two lots had not merged for zoning purposes—a conclusion **against** which the clearly erroneous finding weighed. In contrast, here—as appellants admit—the Board clearly erred in finding that Edwards acquired Lot 13 and Lot 305 at different times; and the Board's clearly

erroneous finding **supported** its conclusion that Lot 13 and Lot 305 never merged for zoning purposes. As discussed above, it is material that Edwards acquired Lot 13 and Lot 305 at the same time by the same deed.

For all of the reasons discussed above, we reverse the Board's determination that the two lots did not merge, and affirm the circuit court's holding that Lot 13 and Lot 305 merged for zoning purposes; thus, we remand to the Board for further proceedings consistent with this opinion.¹²

II. Petition for Variance

Appellants contend that the circuit court erred in reversing the Board's conclusion that appellants did not need a variance from B.C.Z.R. § 417.4 to build the proposed pier.

¹²On remand, the Board should determine the proper remedy for the apparent violation of B.C.Z.R. § 1A04.3B5 due to the existence of a house on Lot 13 and another house on Lot 305. Additionally, the Board should determine the proper remedy for the apparent violation of B.C.Z.R. § 415A.2 due to the existence of Lot 305's pier and the proposed pier, which appellants have already built, as they admitted at oral argument. One possible remedy is resubdivision, through which both houses might legally remain if Lot 305's pier is removed or altered so that it no longer encroaches on Lot 13's setback. See Remes, 387 Md. at 87 ("In order for Lot 11 to be utilized separate and apart from Lot 12, there would have to be a resubdivision of the combined lot, creating two lots both of which meet the requirements of both the zoning ordinance and the subdivision regulations. In that process it may well be necessary to seek zoning variances as to setbacks, or to remove the setback encroachments of the structure on Lot 12.").

We note that, although Lot 13 and Lot 305 have merged for zoning purposes, Lot 13 and Lot 305 remain separate for title purposes. Two lots' merger for zoning purposes does not cause the two lots to merge for title purposes. See Remes, *id.* at 66 ("[Z]oning merger does not cause a nullification of any subdivision that has previously occurred. It merely consolidates lots insofar as the determination of what can be constructed upon that land, or what uses can be made of it, bearing in mind the requirement that one must comply with zoning requirements including area, setback, etc.").

Appellants argue that, although Farwol did not apply for a variance from B.C.Z.R. § 417.4 to build the proposed pier, appellees raised the issue before the Board by contending that appellants needed a variance from B.C.Z.R. § 417.4 to build the proposed pier.

Preliminarily, for four interrelated reasons, we invoke our discretion to review the issue of whether or not appellants needed a variance from B.C.Z.R. § 417.4 to build the proposed pier. See Md. R. 8-131(a) (“Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court, but the Court may decide such an issue if necessary or desirable . . . to avoid the expense and delay of another appeal.” First, at oral argument, the parties agreed that this Court should address the issue. Second, the record is sufficiently complete for this Court to decide the issue, as: (1) the parties raised the issue before the Board; (2) the parties offered evidence that was relevant to the issue; and (3) the Board decided the issue. See O’Brien v. Bd. of License Comm’rs for Washington Cnty., 199 Md. App. 563, 585 (2011) (“[T]he record was sufficiently complete for . . . this Court to decide all the issues[.]”). Third, to remand this issue to the Board would waste judicial resources. See Zimmer-Rubert v. Bd. of Educ. of Balt. Cnty., 179 Md. App. 589, 595 (2008), aff’d, 409 Md. 200 (2009) (“[F]or this Court to remand the issue . . . to the trial court for ‘full consideration’ would be a waste of judicial resources.”). Fourth, a review of the record clarifies that appellees’ opposition to

the proposed pier—rather than the proposed mooring piles—was the heart of the case.¹³ See Parham v. Dep’t of Labor, Licensing & Registration, 189 Md. App. 604, 616 (2009) (This Court decided a certain issue where the issue was “the heart of the case.”).¹⁴

Next, we are satisfied that substantial evidence supported the Board’s conclusion that appellants did not need a variance from B.C.Z.R. § 417.4 to build the proposed pier. The Board credited Staley’s supplemental plat, which: (1) draws the divisional line between Lot 12 and Lot 13 as extending from the corner of the bulkhead that straddles Lot 12 and Lot 13;¹⁵ and (2) shows ten feet of space between the proposed pier and the divisional line between Lot 12 and Lot 13.

Finally, for three reasons, we conclude that—although Farwol’s plot diagram did not show Lot 12’s outlines—Farwol’s failure to comply with B.C.Z.R. § 417.2¹⁶ does not merit

¹³Indeed, Mr. Lehner testified that the proposed pier “was going to be interfering with the only channel [he] ha[s] to get in and out of [his] own pier.” Additionally, the proposed mooring piles were to be south of the proposed pier—*i.e.*, near the proposed pier’s side that was opposite Lot 12 (appellees’ property).

¹⁴Because we invoke our discretion to review the issue of whether appellants needed a variance from B.C.Z.R. § 417.4 to build the proposed pier, we do not reach the circuit court’s holding that, because the petition for variance was strictly for the proposed mooring piles, the Board lacked the authority to conclude that appellants did not need a variance from B.C.Z.R. § 417.4 to build the proposed pier.

¹⁵The Board discredited Patton’s testimony that the divisional line between Lot 12 and Lot 13 extends from another part of the bulkhead that straddles Lot 12 and Lot 13.

¹⁶“All applications for waterfront construction . . . shall be accompanied by a plot diagram . . . showing the outlines of the property in question and of adjoining properties[.]” B.C.Z.R. § 417.2.

reversal of the Board's conclusion that appellants did not need a variance from B.C.Z.R. § 417.4 to build the proposed pier. First, before the Board was a petition for variance, not an application for a building permit,¹⁷ which B.C.Z.R. § 417.2 concerns.¹⁸ Second, the parties had the opportunity to review Staley's supplemental plat, which apparently complies with B.C.Z.R. § 417.2. Third, it is unclear what issue, if any, the Board would need to resolve on remand.

For all of the reasons discussed above, we affirm the Board's determination that a variance was not required, and reverse the circuit court's reversal of the Board's conclusion that appellants did not need a variance from B.C.Z.R. § 417.4 to build the proposed pier; thus, the Board's conclusion stands.

III. Compliance with B.C.Z.R. § 500.14

Appellants contend that the circuit court erred in remanding to the Board with instructions to comply with B.C.Z.R. § 500.14. Specifically, appellants argue that B.C.Z.R. § 500.14 did not apply to the petition for variance because the Board dismissed as moot the petition for variance.¹⁹

¹⁷An application for a building permit is distinct from a petition for variance. Compare Balt. Cnty. Code ("B.C.C.") § 35-2-301 *et seq.* (concerning building permits) with B.C.C. § 32-3-301 *et. seq.* (concerning variances). Here, Edwards applied for a building permit, and Farwol filed the petition for variance.

¹⁸Specifically, B.C.Z.R. § 417.2 applies to "applications for waterfront construction[.]"

¹⁹In their brief, appellees do not respond to this contention.

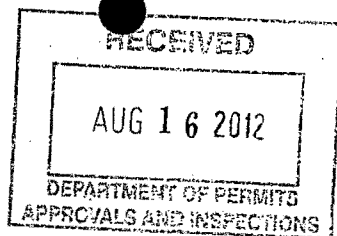
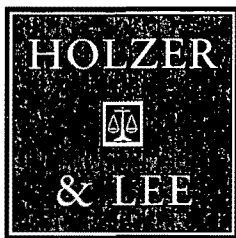
“No decision may be rendered by the Zoning Commissioner on any petition for . . . variance . . . unless the Zoning Commissioner has received from [DEPS] written recommendations[.]” B.C.Z.R. § 500.14.

Here, we conclude that B.C.Z.R. § 500.14 did not apply to the petition for variance because the Board never made a decision on the petition for variance—*i.e.*, the Board never decided whether to grant or deny the petition for variance. In its September 2, 2010, order, the Board deferred its final order, stating: “This hearing will remain open[.]” In its September 22, 2011, order, the Board dismissed as moot the petition for variance. Because the Board never made a “decision . . . on any petition for . . . variance[.]” B.C.Z.R. § 500.14 did not apply to the petition for variance.²⁰

²⁰Because we conclude that B.C.Z.R. § 500.14 did not apply to the petition for variance, we do not reach the circuit court’s holding that the Board failed to comply with B.C.Z.R. § 500.14.

For all of the reasons discussed above, we affirm the Board's decision not to address B.C.Z.R. § 500.14, and reverse the circuit court's remanding to the Board with instructions to comply with B.C.Z.R. § 500.14.

JUDGMENT OF THE BOARD OF APPEALS OF BALTIMORE COUNTY REVERSED, IN PART, AND AFFIRMED, IN PART, AS FOLLOWS: REVERSED AS TO THE CONCLUSION THAT LOT 13 AND LOT 305 NEVER MERGED FOR ZONING PURPOSES AND REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION; AFFIRMED AS TO THE CONCLUSION THAT A VARIANCE FROM B.C.Z.R. § 417.4 WAS NOT REQUIRED TO BUILD THE PROPOSED PIER; AND AFFIRMED AS TO THE BOARD'S DECISION NOT TO ADDRESS B.C.Z.R. § 500.14. COSTS TO BE PAID 2/3 BY APPELLEES AND 1/3 BY APPELLANTS.



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August 13, 2012
#7904

Arnold Jablon, Esquire
Deputy Administrative Officer
Director, Department of Permits
Approvals & Inspection
111 West Chesapeake Avenue
Towson, Maryland 21204

RE: *In the Matter of the Application of: Muriel Edwards
Property Located at 1012 Susquehanna Avenue
Before the Baltimore County Board of Appeals
Circuit Court Case No.: 03-C-11-010501
CBA Case No.: 09-319-A*

Dear Mr. Jablon:

This case has been before the Baltimore County Board of Appeals with the subsequent appeal to the Circuit Court for Baltimore County. Judge Susan Souder, in the attached Decision, reversed and remanded the matter back to the Board of Appeals for Baltimore County. Subsequently, a Motion was filed by John H. Michel, Esquire, of Huddles, Jones, *et al.*, on behalf of Muriel Edwards to reconsider her decision.

We have received an Order dated July 24, 2012, in which the Judge refuses to alter or amend the Court's April 27, 2012, Memorandum, Opinion and Order. I am attaching a copy of the Court's April 27, 2012, Opinion and Order as well as her July 24, 2012, Order denying the Motion to Alter.

Her Decision raises serious questions about a pier already constructed by the property owner, as well as a potential issue relative to whether or not there was a merger of lots by the property owner which resulted in an illegal second home being constructed.

2009-0319-A

Arnold Jablon, Esquire
August 13, 2012
Page two

By copy of this letter, I am forwarding it to Mr. Brand who was a witness in the case, and to Mr. Gardina, who is familiar with this issue as well.

At this point, we do not know whether the Edwards are going to appeal to the Court of Special Appeals or subject themselves to jurisdiction of the County Board of Appeals again. In any event, I wanted the County to be brought up-to-date with the last Order of the Circuit Court for Baltimore County.

Very truly yours,

A handwritten signature in black ink, appearing to read 'J. Carroll Holzer', with a stylized flourish at the end.

J. Carroll Holzer

JCH:mlg

Enclosure

cc: Mr. Thomas Lehner
The Honorable Vince Gardina
Mr. Donald Brand

4/27/12
IN THE MATTER OF:
ROSEMARIE LEHNER, *et al.*

FOR JUDICIAL REVIEW OF
THE DECISION OF THE
BOARD OF APPEALS
OF BALTIMORE COUNTY

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY
* Case No. 03-C-10-10501

* * * * *

MEMORANDUM OPINION AND ORDER

This matter comes before the Court on the Petition for Judicial Review filed by Rosemarie and Thomas Lehner ("Petitioners") on October 21, 2011. Petitioners are seeking review of the September 22, 2011 decision of the Baltimore County Board of Appeals ("the Board") which decided that Muriel Edwards and Dennis Faruol ("Respondents") did not need a zoning variance for mooring piles and a pier in Frog Mortar Creek near Respondents' property. A hearing on this matter was held in this Court on April 5, 2012. For the reasons set forth herein, the decision of the Board shall be affirmed in part and reversed in part.

BACKGROUND

In June 2009, Respondents applied to Baltimore County for a variance for two mooring piles in Frog Mortar Creek off shore from their properties, 1012 Susquehanna Avenue (Lot 13) and 1016 Susquehanna (Lot 305) in the Bowleys Quarters area. Petitioners own 1004 Susquehanna Avenue (Lot 12), adjacent to Respondents' property. Specifically, Respondents requested a variance from 10-foot setback rules so that they could install the piles on the property line between

2009-0319-A

Lots 13 and 305, even though they own both properties. Respondents applied for the variance on the advice of a Baltimore County zoning office employee. See Transcript of Baltimore County Board of Appeals hearing, March 10, 2010, pp. 25-26.¹ In their application and accompanying plot diagram, Respondents also described a proposed pier that would extend from Lot 13, close to Petitioners' property at 1004 Susquehanna Avenue (Lot 12). Respondents, however, did not apply for a variance to build the proposed pier because they believed it would not cross the 10-foot setback line from Petitioners' lot. T1, p. 43.

On July 28, 2009, the county Deputy Zoning Commissioner (DZC) conducted a hearing in the matter. Respondent Dennis Faruol testified that the proposed pier would still allow a 55-foot-wide navigable access to Petitioners' existing pier and would also meet divisional line requirements.² See In Re: Petition for Administrative Variance, Case No. 2009-0319-A, Findings of Fact and Conclusions of Law, (hereinafter DZC Decision), p. 3. Petitioner Thomas Lehner testified that he believed the proposed pier would violate environmental regulations and also interfere with navigation to Petitioners' pier. DZC Decision, pp. 4-5; also T1, p. 122.

On August 13, 2009, the DZC granted the variance for the mooring piles. The DZC found that, because the piles would be on the side of Lot 13 opposite

¹ The Board conducted three hearings in this matter. The transcript of the March 10, 2010 hearing will be referred to as T1 hereafter. The transcript of the hearing held June 17, 2010 will be designated as T2. The transcript from the August 9, 2011 hearing will be designated as T3.

² No mention is made in the DZC Decision of the requirements of Baltimore County Zoning Regulation (BCZR) 417.3(b), which defines how divisional lines on waterfront lots are calculated. Respondents did not draw property boundaries correctly in their plot diagram.

from Petitioners' Lot (12), they would not interfere with Petitioners' access to Petitioners' pier. DZC Decision, p. 6. Of the proposed pier, the DZC wrote that it *appeared* Respondents could build it without variance relief but would need to follow environmental regulations. *Id.* Petitioners appealed the DZC Decision to the Board.

The Board conducted *de novo* hearings on March 10, 2010 and June 17, 2010. Testifying were Respondents; Petitioner Thomas Lehner; James S. Patton and Bruce Doak, expert witnesses for Petitioners; and John A. Staley, expert witness for Respondents. Mr. Doak and Mr. Staley, both professional surveyors, disagreed on the location of the "mean low water line" ("MLW line"), which was needed to create a baseline along the shore of Petitioners' property. In fact, neither side produced a definition of the MLW line that was acceptable to the Board. Under BCZR 417.3(b), this definition was essential to draw the divisional line between Petitioners' and Respondents' properties. The determination of the divisional line, in turn, was needed to decide whether a variance was needed on the Lot 12-Lot 13 side of Respondents' property to install the piles.

In its Order dated September 2, 2010, the Board determined it was essential for the county building engineer, Donald Brand, to clarify and define MLW. The Board invoked Baltimore County Zoning Regulations (BCZR) § 501.4 to request the assistance of the engineer. See Order of September 2, 2010 ("First Order"), p. 4. The Board also submitted a question to the county Department of Environmental Protection Resource Management ("DEPRM"), to wit, whether the installation of the piles would meet the requirements of § 500.14.

Id., p. 5. Even though the First Order mentions Respondents' desire to build a pier, the Order focuses on the answers needed about variance, the division line and MLW in regards to the piles only.

The Order's final line stated that a party could petition for judicial review of the Order. *Id.* Petitioners did so on September 30, 2010. On April 15, 2011, the Court remanded the matter back to the Board, as it was not final.

The Board held a third hearing on August 9, 2011, primarily on the MLW issue. Mr. Brand sent the Board a letter on September 7, 2010, stating that the MLW was the average of all water heights observed over the National Tidal Datum Epoch ("NTDE"), currently 1983-2001. At the August 9 hearing, Mr. Brand testified that if there were conflicts among surveyors as to a MLW line, he would weigh most heavily in favor of a surveyor who used the NTDE. T3 32:12-14. Mr. Staley testified that once he understood that NTDE was to be the basis of the MLW line, he visited the properties on October 18, 2010 and drove a stake into the NTDE-determined MLW line at the property line between Petitioners' and Respondents' properties. T3 47-50. He concluded that no variance was needed for the piles. T3 62.

In an earlier survey, Mr. Staley determined that the MLW line intersected with the corner of a bulkhead between Petitioners' and Respondents' properties. T2 88:16 to 89:15. Mr. Doak, the surveyor who testified as an expert for the Petitioners, also testified he used the corner of that bulkhead for his calculations. T2 159:6. Mr. Doak testified as to why his diagram, Protestants Exhibit 15, was correct in showing a baseline along the shore of Petitioners' property at an angle

significantly different than Mr. Staley calculated. T2 156:03-170:04. Mr. Doak's calculation of the division line between Petitioners' and Respondents' property was, therefore, different. The 10-foot setback from Mr. Doak's division line allowed, in his opinion, only a small, cross-hatched area in which Respondents could build a pier. T2 162:17-19. Mr. Doak implied from his testimony and diagram that Respondents would need a variance for the piles and pier, but he never directly gave that opinion.

In any case, all of Mr. Doak's testimony was given before the Board obtained the NTDE-based definition of the MLW line from Mr. Brand and before Mr. Staley redid his calculations using that definition.

The Board issued its Final Order on September 22, 2011. The Board accepted the findings of DEPRM that the mooring piles would have no adverse environmental impact. In addition, the Board concluded that Mr. Staley's testimony was more credible than that of Mr. Doak or Mr. Patton. The Board stated:

The Board is of the opinion that the line drawn by Mr. Staley to the point at the corner of the bulkhead on the property line of the Edwards, adjacent to the Lehniers, is the proper line to be drawn. See Final Order, pp. 8-9.

Based on Mr. Staley's opinion, the Board concluded that no variance was needed to install the piles.

The Board addressed the proposed pier as well:

While the Petition did not request a variance for the construction of the pier on the Edwards property, the Board is of the opinion that it should not leave that question in doubt. The Board finds that there is no

necessity for a variance to be granted for construction of the pier extending from Lot 13, which is the proposed pier that the Petitioners are planning to build. Final Order, p. 9.

This opinion was also based on the Board's determination that there was never a merger of Respondents' lots, Lot 13 and Lot 305, for zoning purposes. This decision was based on a Board conclusion that Respondent Edwards had purchased the two lots at different times, that the two lots have always been kept separate for tax purposes, and that Respondents propose to sell or rent Lot 305 in the future. *Id.*, pp. 9-10.

Finally, the Board accepted the findings of DEPRM in that the mooring piles would have no adverse environmental effect. *Id.*, p. 10. The Board noted that neither party questioned the information DEPRM submitted. *Id.* p. 7.

In conclusion, the Board ordered that the Respondents' petition for variance for the mooring piles be dismissed because it was moot.

ISSUES FOR REVIEW

1. Did the Board err by accepting Respondents' original site plan and further compound the error by subsequently remanding the matter to the Baltimore County building engineer?
2. Did the Board err by determining the mean low water line as defined by Respondents?
3. Did the Board legally err in denying that Respondents' properties (Lots 13 and 305) were not merged?
4. Did the Board err in not denying Respondents' request, thus providing them with a "second bite of the apple"?
5. Did the Board err in relying on the DEPRM report because it fails to provide facts and reasoning for its conclusion?

STANDARD OF REVIEW

A court is "limited to determining if there is substantial evidence in the record as a whole to support the agency's findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law." *United Parcel Service Inc., et al. v. People's Counsel for Baltimore County, Md.*, 336 Md. 569, 577 (1994); see also MD. ANN. CODE, STATE GOV'T ART. § 10-222(h).

"In applying the substantial evidence test, a reviewing court decides 'whether a reasoning mind could have reached the factual conclusion the agency reached.'" *Board of Physician Quality Assur. v. Banks*, 354 Md. 59 at 68 (1999) (quoting *Bulluck v. Pelham Wood Apts.*, 283 Md. 505, 512 (1978)). The court "must review the agency's decision in the light most favorable to it; the agency's decision is *prima facie* correct and presumed valid...." *CBS v. Comptroller*, 319 Md. 687, 698 (1990) (quoting *Ramsey, Scarlett & Co. v. Comptroller*, 302 Md. 825, 834-35 (1985)). The court needs to defer to the fact-finding of the agency and the inferences drawn by the agency, as long as those inferences are supported by the record. *Id.*

A reviewing court must not "substitute its own judgment for the expertise of those persons who constitute the administrative agency." *United Parcel Service*, 336 Md. at 576-77 (quoting *Bulluck*, 283 Md. at 513). Furthermore, "an administrative agency's interpretation and application of the statute which the agency administers should ordinarily be given considerable weight by reviewing

courts." *Banks*, 354 Md. at 69 (citing *Lussier v. Md. Racing Commission*, 343 Md. 681, 696-97 (1996)).

In judicial review of zoning matters, including special exceptions and variance, the correct test to be applied is whether the issue before the administrative body is "fairly debatable," that is, whether its determination is based upon evidence from which reasonable persons could come to different conclusions. *White v. North*, 356 Md. 31, 44 (1999). However, when an administrative agency's conclusions are not supported by competent and substantial evidence, or where the agency draws impermissible or unreasonable inferences from undisputed evidence, such decisions are due no deference. *Chesley v. City of Annapolis*, 176 Md. App. 413, 431 (2007). Whether reasoning minds could reasonably reach a conclusion from facts in the record is the essential test. *Id.*

DISCUSSION

- 1. Did the Board err by accepting Respondents' original site plan and further compound the error by subsequently remanding the matter to the Baltimore County building engineer?**

Petitioners request the Court reverse the Board's decision based on the failure of Respondents to comply with BCZR §417.2 at the beginning of the proceedings. The Court affirms the Board's decision with regard to the mooring piles but reverses with regard to the proposed pier.

BCZR §417.2 applies to all applications for waterfront construction which must be filed with the Building Engineer. All such applications must be accompanied by a plot diagram

showing the outlines of the property in question and of adjoining properties, and showing any existing construction beyond mean low tide, as well as details of the proposed construction.

The diagram submitted by Respondents did not show the outlines of all adjoining properties and as a result, did not comply with the regulation.

Respondents' petition for variance, at the beginning of the process, concerned only a variance requested for a setback from the property line between Respondents' lots, Lots 13 and 305, for the purpose of installing the mooring piles. Although the DZC mentions the proposed pier, his remarks are conclusory as to whether a variance would be required because of setbacks from Petitioners' property:

Mr. Faruol noted that the proposed pier would still allow a 55-foot-wide navigable water access to Mr. and Mrs. Lehner's existing pier and would also meet divisional line requirements. The need for the variance comes from the other side of the proposed pier where the mooring piles would be located.

DZC Decision, p. 3.

Although it appears Petitioner can construct the proposed pier without variance relief, it is also evident that Petitioner would be unable to set mooring piles of any meaningful width from the pier in order to accommodate a boat slip and boat lift without the requested variance relief.

Id., p. 6.

Finally, the DZC made it clear that the variance request focused exclusively on the mooring piles. The DZC noted Petitioners' protests against the proposed pier interfering with Petitioners' property, *Id.*, pp. 4-5. He concluded that installation of the *piles* would not have any detrimental impact on

Petitioners' pier or Petitioners' ability to access and continue to use and enjoy their pier. *Id.*, p. 6. Regarding the proposed pier, the DZC focused only on Petitioners' environmental concerns; he concluded that Respondents' compliance with Critical Area Variance regulations and DEPRM comments submitted to the Zoning Advisory Committee would address those concerns. *Id.*

During the proceeding, both sides submitted diagrams prepared by land surveyors to the Board, although only the Respondents' diagrams bore the seal of a surveyor. Petitioners also submitted to the Board diagrams that a civil engineer had prepared for Petitioners.

Respondents ultimately did submit two plot diagrams prepared by a professional land surveyor which fully complied with BCZR §417.2. Petitioners had ample opportunity to address the diagrams submitted.

Although the Court agrees that the Building Engineer erred in accepting Respondents' original diagram, which did not comply with BCZR §417.2, that error was not "compounded." There was no "remand" to the Building Engineer. Rather, the Board invoked BCZR §501.4 to solicit the assistance of the Engineer.

Concerning the mooring piles, the Court has not been persuaded that Petitioners have been prejudiced by the submission of the original plan that did not fully comply with the rule.

Regarding the proposed pier, however, the Court concludes that the Board did not have substantial evidence to conclude that no variance is needed. While the Board hears appeals from the Zoning Commissioner *de novo*, BCZR §501.6, that does not mean it can rule on a waterfront construction project that

was not the subject of the appeal. The DZC's Decision focused exclusively on the mooring piles. The Board did not have the authority to also make a ruling on the proposed pier, a separate project that was not a subject of the appeal.

Respondents did not follow the proper procedures from the beginning of the zoning process for constructing a pier. Because of the lack of compliance with BCZR §417.2 regarding the outlines of adjoining properties, the Court finds there was not substantial evidence for the DZC or the Board to conclude that no variance from the setbacks of Petitioners' property was required for construction of a pier. Such evidence, as part of an application for waterfront construction in compliance with §417.2, must be submitted to the Building Engineer before the DZC and Board can rule.

The Board's decision regarding the pier is reversed. The matter shall be remanded for further proceedings consistent with this Opinion.

2. Did the Board err by determining the mean low water line as defined by Respondent?

The properties of both Petitioners and Respondents have irregular shorelines. BCZR §417.3(b) defines how divisional lines between properties with irregular shorelines are to be drawn:

Where the shoreline is not straight, draw a baseline between the two corners of each lot *at mean low water line*. Then draw a line from the corner of each proprietor's property into the water at right angles with the base line (emphasis added).

Nearly all of the Board's focus at the August 9, 2011 hearing concerned the location of the mean low water ("MLW") line. According to the regulation, the point from which the divisional lines must be drawn is the intersection of two

lines: the MLW line and the property line between Petitioners' and Respondents' properties. Evidence presented at the August 9, 2011 hearing demonstrated that the NTDE was the required, objective measure to determine the MLW line on any given property.

There is substantial evidence to support the Board's decision that Mr. Staley's calculations of intersection of the MLW line and Petitioners-Respondents property line are correct. It is clear from the exhibits and testimony that Mr. Staley, like Mr. Doak, used the corner of the bulkhead that aligned with the Petitioners-Respondents' property line to determine one corner point for his calculations. There are two chief differences between Mr. Staley's and Mr. Doak's calculations. The first is their respective determinations of the MLW line; Mr. Doak did not use the NTDE. The second difference is based on the first: their respective determinations of the other corner point, with Lot 11, on the opposite side of Petitioners' property. These differences caused their respective divisional lines to vary considerably from each other. Because Mr. Doak did not use the NTDE, however, the Board was within its authority to reject his calculations of the other corner point, baseline and divisional line. In addition, the Board was within its authority to reject Mr. Patton's location of the MLW line.

Testimony was elicited that the end width of the bulkhead, 1.5 feet, was on Petitioners' property. Mr. Staley eventually agreed with Mr. Doak and Mr. Patton that this fact was true. T3 66:5-12 and 71:4-7. But the fact that the end width of the bulkhead between Lots 12 and 13 lies on Petitioners' property is immaterial,

as Mr. Staley did not calculate the joint property line from the end width of the bulkhead.

Mr. Staley's credentials are part of the record and not questioned by Petitioners. He visited the properties twice. On the second occasion, he used the NTDE to calculate the MLW line. The Board found Mr. Staley to be a credible witness. There is competent and substantial evidence for the Board's determination of the MLW line.

Did the Board legally err in denying that Respondents' properties (Lots 13 and 305) were not merged?

The Board found that there was never a merger of Lots 13 and 305. Final Order, p. 9. The Board reasoned that the instant case was different from *Remes v. Montgomery County*, 387 Md. 52 (2005), cited by Petitioners. The Board found that Respondents bought the lots at different times and that the two lots were taxed separately. The Board's finding that the lots were bought at different times appears incorrect. Mrs. Edwards testified that she purchased both lots in 1985. T1, p. 155. See also Respondents' Answering Memorandum, p. 24.

In *Remes*, a family owned two contiguous lots, 11 and 12, bought in the 1950s. They built a semi-circular driveway that served both lots, a swimming pool on Lot 11 that was an accessory to their home on Lot 12, and made additions to the home that encroached on the setback lines of Lot 11. The lots were not taxed separately until 2003.

The Court in *Remes* applied its concept of zoning merger from *Friends of the Ridge v. Baltimore Gas & Elec. Co.*, 352 Md. 645 (1999): two or more lots

held in common ownership where one lot is used in service to one or more of the other common lots solely to meet zoning requirements. 387 Md. at 64. Merger may be derived from the common owner's intent, as evidenced by integrating or utilizing the contiguous lots in the service of a single structure or project. 387 Md. at 66, citing 352 Md. at 658. When zoning merger occurs, however, the lots remain divided for subdivision purposes. 387 Md. at 67. The Court found that for Lot 11 to be used separately and apart from Lot 12, there would have to be a resubdivision of the combined lot, creating two lots, both of which would have to meet zoning regulations and subdivision regulations.

Respondents argue that the instant case is more like that of *Mueller v. People's Counsel for Baltimore County*, 177 Md. App. 43 (2007). See Respondents' Answering Memorandum, p. 25. In *Mueller*, the properties in question were lots 66 and 67. Lot 66 was used for the residence; Lot 67, for recreational purposes only. The lots were deeded and taxed separately. The owner testified that he never intended to merge the lots, and that Lot 67 did not serve as a side yard to Lot 66. The Court's key finding, however, is that the owner never needed Lot 67 to enjoy the use of Lot 66.

The instant case is different from the *Mueller* case. Exhibits and testimony established that the existing pier extending from Lot 305 crosses the Lot 13 Lot 305 property line and extends well into Lot 13. Lot 13 is clearly used in service of Lot 305 to enable the use of the existing pier. Put another way, Respondents need Lot 13 to enjoy the full use of Lot 305.

Therefore, under *Ridge*, *Remes* and *Mueller*, Lots 13 and 305 are merged for zoning purposes, even if they remain separate for subdivision purposes. Because the lots are merged, no variance would be required for the piles if all other conditions were satisfied.

While the Board erred in its application of the zoning merger law, it was correct to note the existing pier will become problematic upon sale of Lot 305. As noted in *Remes*, both lots would have to meet zoning regulations and subdivision regulations. The existing pier would do more than cross the property line; it would encroach far beyond the 10-foot setback line from Lot 13.

The Board's decision in regards to the merger is hereby reversed and remanded for further proceedings consistent with this Opinion.

3. Did the Board err in not denying Respondents' request, thus providing them with a "second bite of the apple"?

Petitioners argue that the Board, at the close of its hearing on June 17, 2010, should have denied Respondents' petition for a variance because Respondents failed to present necessary evidence, i.e., the definition of MLW.

As Respondents note, this argument must assume that the Board's proceedings ended with the June 17, 2010 hearing. That is not so. In its September 2, 2010 Order, the Board properly invoked Baltimore County Zoning Regulations (BCZR) §501.4 to request the assistance of the county building engineer and DEPRM. The Board also clearly noted:

This hearing *will remain open* until such time as a decision is rendered by the Building Engineer and DEPRM (emphasis added). Should either party desire to question DEPRM or the Building Engineer or their Representatives, under oath, or present additional

evidence as a result of the decision of the Building Engineer or DEPRM, the Board will reconvene a hearing to accept evidence solely with respect to that issue. September 2, 2010 Order, p. 4.

Despite boilerplate language regarding judicial review at the end of the Order, the language quoted above provides substantial evidence for the Board to reconvene. This Court definitively answered this question on March 28, 2011 when it granted Respondents' motion to dismiss Petitioners' September 30, 2011 petition for judicial review. That petition was premature. The case was properly remanded to the Board for further proceedings and a final decision.

4. Did the Board err in relying on the DEPRM report because it fails to provide facts and reasoning for its conclusion?

Petitioners argue that the Board relied on a report from DEPRM that "abjectly failed to satisfy the requirements" of BCZR §500.14 because it was conclusory instead of stating factual findings.

BCZR §500.14 states:

No decision may be rendered by the Zoning Commissioner on any petition for special exception, variance or special hearing unless the Zoning Commissioner has received from the Director of Environmental Protection and Sustainability³, or his designated representative, written recommendations describing how the proposed request would:

A. Minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands;

B. Conserve fish, wildlife and plant habitat; and

C. Be consistent with established land use policies for development in the Chesapeake Bay Critical Area

³ DEPRM was renamed DEPS effective January 16, 2011.

which accommodate growth and also address the fact that, even if pollution is controlled, the number, movement and activities of persons in that area can create adverse environmental impacts.

Because Respondents' request for a variance was still active at the time the Board issued its September 2, 2010 Order requesting DEPRM's assistance, §500.14 applied. On its face, however, the section does not require written findings of fact. It requires DEPRM to issue written *recommendations* describing how the proposed request would affect three categories of environmental impacts. DEPRM's letter of recommendations adequately addresses the first two areas of concern as required under §500.14. See October 1, 2010 letter from Regina Esslinger, DEPRM, to Baltimore County Board of Appeals on Zoning Item # CBA 09-319-A. In the third area of concern, however, DEPRM merely states a policy; it does not apply that policy in the instant case so that DEPRM has written a recommendation concerning the mooring piles here.

Petitioner argues that DEPRM's letter in the instant case is equivalent to a one-paragraph summation of evidence the Board of Appeals gave in *People's Counsel for Baltimore County v. Beachwood I Ltd.*, 107 Md. App. 627, 661 (1995). In that case, the Board summed up findings regarding the Chesapeake Bay Critical Areas in what the Court described as a "cavalier attempt to finesse the requirement of precise and considered findings of fact[.]" *Id. Beachwood*, however, concerned requirements that the Board must follow to reclassify the zoning of an entire property. Petitioners do not show that a similar requirement exists in requests for variances only. Moreover, the Board's one paragraph in *Beachwood* was insufficient because it too succinctly summed up the testimony

of a land-use expert who had made many points. In the instant case, only the third area of concern is insufficiently addressed concerning the piles.

The lack of DEPRM (now DEPS) recommendations concerning the proposed pier, however, is another matter entirely. As noted in the Discussion of Issue 1, *infra*, the proposed pier was not before the Board at the outset. If Respondents submit an application for waterfront construction to the Building Engineer for the pier and the Zoning Commissioner then receives a petition for special exception, variance or special hearing, the Commissioner must obtain DEPS' recommendations under BCZR §500.14, applying subsections A, B and C to the pier project.

Finally, Petitioners argue that Respondents have violated condition(s) in the Final Order by building the pier. Petitioners did not file a motion asking that new evidence be taken by this Court and, in any event, no motion or evidence was presented during the April 5, 2012 hearing. That issue, therefore, is not before the Court.

The issue regarding DEPRM's recommendations concerning approval of the mooring piles is reversed and remanded for further proceedings consistent with this Opinion.

CONCLUSION

For the reasons set forth herein, the decision of the Board of Appeals of Baltimore County shall be affirmed in part and reversed in part regarding the mooring piles, and reversed in regards to the proposed pier. The matter shall be

remanded for further proceedings consistent with this Opinion. It is so
ORDERED.

4/27/12
Date

Susan Souder
Judge Susan Souder

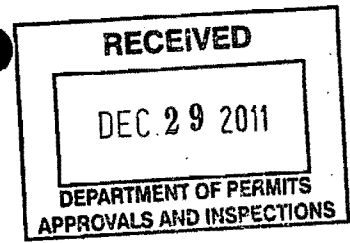
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12/29/11

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IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF:
ROSEMARIE AND THOMAS LEHNER

CIVIL ACTION
NO. : 03-C-11-010501

FOR JUDICIAL REVIEW OF THE OPINION OF *
THE COUNTY BOARD OF APPEALS *
OF BALTIMORE COUNTY *
JEFFERSON BUILDING - ROOM 203 *
105 W. CHESAPEAKE AVENUE *
TOWSON, MARYLAND 21204 *

IN THE MATTER OF : *
MURIEL EDWARDS - LEGAL OWNER AND *
PETITIONER FOR ADMINISTRATIVE *
VARIANCE ON THE PROPERTY LOCATED *
ON THE W/SIDE SUSQUEHANNA AVENUE *
223' S OF C/L OF CHESTER ROAD *
(1012 SUSQUEHANNA AVENUE) *

15TH ELECTION DISTRICT *
6TH COUNCILMANIC DISTRICT *

BOARD OF APPEALS CASE NO.: 09-319-A *

* * * * *

**PROCEEDINGS BEFORE THE ZONING COMMISSIONER
AND THE BOARD OF APPEALS OF BALTIMORE COUNTY**

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now comes the County Board of Appeals of Baltimore County and, in answer to the Petition for Judicial Review directed against it in this case, herewith transmits the record of proceedings had in the above-entitled matter, consisting of the original papers on file in the Department of Permits and Development Management and the Board of Appeals of Baltimore County:

**ENTRIES FROM THE DOCKET OF THE BOARD OF APPEALS AND
DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
OF BALTIMORE COUNTY**

No. 09-319-A

June 6, 2009	Petition for Administrative Variance filed by Muriel Edwards, Petitioner, to permit mooring piles with a setback of 0 feet in lieu of the minimum required 10 feet of divisional lines.
June 21	Certificate of Posting.
June 26	Formal Demand for Hearing filed by Rosemarie and Thomas Lehner, Protestants.
June 30	Entry of Appearance filed by People's Counsel for Baltimore County.
July 12	Certificate of Posting.
July 16	Certificate of Publication in newspaper.
July 22	ZAC Comments.
July 28	Hearing held before the Zoning Commissioner
August 13	Findings of Fact and Conclusions of Law issued by the Deputy Zoning Commissioner. Petition for Administrative Variance was GRANTED with conditions, permitting mooring piles with a setback of 0 feet in lieu of the minimum required 10 feet from divisional lines.
September 9, 2009	Notice of Appeal filed by Rosemarie and Thomas Lehner, Protestants.
January 11, 2010	Notification of Appeal issued by the Department of Permits and Development Management.
February 4	Notice of Appearance filed by John H. Michel, Esquire on behalf of Muriel Edwards, Petitioner.
March 5	Entry of Appearance filed by Office of People's Counsel.
March 10	Board convened for hearing, Day 1.
June 17, 2010	Board convened for hearing, Day 2.

Exhibits submitted at hearing (two days) before the Board of Appeals:

Petitioner's Exhibit No.

- 1 – Letter to Petitioners from Maryland Department of the Environment dated 4/27/09
- 2 – Letter to Jeff Gosnell, Contractor on behalf of Petitioners from Maryland Department of the Environment dated 5/22/09
- 3 – Petition for Administrative Variance with Site Plan
- 4 – Revised Plat dated 7/22/09
- 5a – Aerial Photos (3) – Photo circle middle wide view. MISSING FROM FILE
- 5b – Close up view MISSING FROM FILE
- 5c – Close up view (additional writing about piers/poles) MISSING FROM FILE.
- 6 – Letter from Maryland Department of the Environment with state approvals, dated 9/9/09.
- 7 – Letter from DEPRM dated 10/26/09
- 8 – Letter dated 7/25/09 To Whom it May Concern...
- 9 – Resume for John A. Staley
- 10 – Surveyor's Drawing dated June 2010
- 11 – Baltimore County Code Section 417.3.
- 12 – Large Drawing dated June 2010
- 13 – Photo Image with Overlay

Protestants' Exhibit No.

- 1 – BCZR Section 417.2
- 2 – Survey of 1012 and 1016 Susquehanna (Petitioner's properties)
- 3 – Aerial Photo of Lehner property as well as Petitioner's properties
- 4 – Photo of Lehner pier
- 5 – Resume of Jim Patton, P.E.
- 6 – Permit Tracking System printout from Permits and Development Management
- 7 – A-F Photographs
- 8 – Site Plan with two aerial photos
- 9 – Deed to 1012 Susquehanna dated 4/26/85, purchase by Petitioner, Muriel Edwards
- 10 – Resubdivision
- 11 – Acetate Overlay based on Deeds
- 12 – Overlay of Petitioner's Exhibit 3, Site Plan
- 13 – Overlay showing "correct" property line
- 14 – BCZR Section 307.1 regarding Variance
- 15 – Exhibit Plat of Lehner Property dated 5/14/10 – with markings
- 15a – Exhibit Plat of Lehner Property dated 5/14/10 – without markings

People's Counsel Exhibit No.

- 1 – ADC Road map of Bowley's Quarters and site
- 2 – Longbeach Subdivision Map
- 3 – SDAT Printout for property
- 4 – Correspondence from DEPRM to Timothy Kotroco, Director of Permits and Development Management, dated 7/30/09 with attached letter dated 6/10/05.
- 5 – County Council Bill 64 from 1963

July 16, 2010	Memorandum of People's Counsel for Baltimore County.
July 19	Letter received by facsimile from J. Carroll Holzer, Esquire on behalf of Rosemarie and Thomas Lehner, Protestants, adopting the memorandum of the Office of People's Counsel.
July 23	Petitioner's Post-Hearing Brief filed by John H. Michel, Esquire on behalf of Muriel Edwards, Petitioner.
August 5	Letter from People's Counsel including correct enclosures for their July 16, 2010 Memorandum.
August 26	Board convened for Public deliberation.
September 2	Order issued by the Board in which the Board ordered that with respect to compliance, both plats submitted to the Board at the hearing, be submitted to the Building Engineer for clarification and definition of 'mean low water line' as set forth in Section 417.3B and the Board submits the question to DEPRM as to its recommendations under Section 500.14 of the BCZR, as to whether or not the installation of two (2) mooring piles will meet the requirements.
September 8	Letter dated September 7, 2010, received from Donald E. Brand, P.E., Building Engineer pursuant to the request of the Board, clarifying and defining 'mean low water'.
September 29	Supplemental Order issued by Board including the letter from the Building Engineer.
September 30	Petition for Judicial Review filed in the Circuit Court for Baltimore County by J. Carroll Holzer, Esquire, on behalf of Rosemarie and Thomas Lehner, Protestants, in Civil Action No: 03-C-10-011609.

October 4 Interoffice Correspondence dated October 1, 2010 received from Regina Esslinger on behalf of DEPRM, pursuant to the Board's request reviewing and commenting on whether the requested mooring piles meet the requirements of Section 500.14 of the BCZR.

October 4 Copy of Petition for Judicial Review received from the J. Carroll Holzer, Esquire, on behalf of Rosemarie and Thomas Lehner, Protestants in Civil Action No: 03-C-10-011609.

October 6 Copy of Petition for Judicial Review received from Circuit Court for Baltimore County in Civil Action No: 03-C-10-011609.

October 7 Certificate of Compliance sent to all parties and interested persons in Civil Action No: 03-C-10-011609.

October 8 Petition for Judicial Review filed by Office of People's Counsel in the Circuit Court for Baltimore County in Civil Action No: 03-C-10-011609.

October 14 Second Certificate of Compliance sent to all parties and interested persons in Civil Action No: 03-C-10-011609..

October 26 Response to Petitions for Judicial Review and Motion to Dismiss Petitions for Judicial Review as Premature filed in the Circuit Court by John H. Michel, Esquire on behalf of Muriel Edwards in Civil Action No: 03-C-10-011609.

November 9 Petition of Rosemarie and Thomas Lehner's Answer to Motion to Dismiss and Request for Hearing filed in the Circuit Court for Baltimore County in Civil Action No: 03-C-10-011609.

November 29, 2010 Record of Proceedings filed in the Circuit Court for Baltimore County without Transcript of Proceedings in Civil Action No: 03-C-10-011609.

December 15, 2010 Respondent's Motion to Dismiss Pursuant to Rule 7-206(d) filed by John H. Michel, Esquire on behalf of Muriel Edwards in Civil Action No: 03-C-10-011609.

December 27, 2010 Petitioner's Response to Motion to Dismiss Pursuant to Rule 7-206(d) and Request for Hearing filed by J. Carroll Holzer, Esquire on behalf of Rosemarie and Thomas Lehner in Civil Action No: 03-C-10-011609.

January 7, 2011 Motion to Dismiss for Failure to File Mandatory Memorandum filed by John H. Michel, Esquire on behalf of Muriel Edwards in Civil Action No: 03-C-10-011609.

January 13, 2011	Petitioner's Response to Third Motion to Dismiss for Failure to File Mandatory Memorandum filed by J. Carroll Holzer, Esquire on behalf of Rosemarie and Thomas Lehner, in Civil Action No: 03-C-10-011609.
February 14, 2011	Motions Ruling dated January 3, 2011 received from Circuit Court for Baltimore County Denying the Motion to Dismiss filed by John H. Michel, Esquire on behalf of Muriel Edwards, dated October 27, 2010, in Civil Action No: 03-C-10-011609.
February 17, 2011	Respondent's Motion to Dismiss for Petitioner's Failure to Obtain Required Transcripts for Transmittal to Court Within Maximum Time Permitted by Rules filed by John H. Michel, Esquire on behalf of Muriel Edwards in Civil Action No: 03-C-10-011609.
March 14, 2011	Transcripts of March 10, 2010 and June 17, 2010 hearings before the Board of Appeals received for filing in the Circuit Court for Baltimore County in Civil Action No: 03-C-10-011609..
March 14, 2011	Supplemental Record of Proceedings filed in the Circuit Court for Baltimore County in Civil Action No: 03-C-10-011609.
March 23, 2011	Letter to the Honorable Judith C. Ensor, Judge for the Circuit Court for Baltimore County from John H. Michel, Esquire on behalf of Muriel Edwards in Civil Action No: 03-C-10-011609.
March 28, 2011	Order Granting Respondent's Motion to Dismiss Petitions for Judicial Review as Premature issued by Circuit Court for Baltimore County in Civil Action No: 03-C-10-011609.
May 3, 2011	Record in Civil Action No: 03-C-10-011609 retrieved from Circuit Court for Baltimore County after no further appeals were noted.
May 17, 2011	Letter to Counsel enclosing the September 7, 2010 response from the Building Engineer with regard to the definition of "mean low water line" and the October 1, 2010 response from the Department of Environmental Protection and Sustainability (formerly known as Department of Environmental Protection and Resource Management "DEPRM") regarding the determination of the effects of mooring poles in compliance with the Board of Appeals Opinion dated September 2, 2010.
August 9, 2011	Board convened for hearing; matter concluded.
September 8, 2011	Board convened for public deliberation.

September 22, 2011 Final Opinion and Order issued by the Board of Appeals dismissing the Petition for Variance as moot with conditions.

October 21, 2011 Petition for Judicial Review filed by J. Carroll Holzer, Esquire on behalf of Rosemarie and Thomas Lehner.

October 31, 2011 Copy of Petition for Judicial Review received by Board from the Circuit Court for Baltimore County in Civil Action No: 03-C-11-010501.

November 1, 2011 Certificate of Compliance sent to all parties and interested persons in Civil Action No: 03-C-11-010501.

December 20, 2011 Transcript of testimony filed.

December 28, 2011 Record of Proceedings filed in the Circuit Court for Baltimore County.

Record of Proceedings pursuant to which said Order was entered and upon which said Board acted are hereby forwarded to the Court, together with exhibits entered into evidence before the Board.


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County Board of Appeals
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Towson, Maryland 21204
410-887-3180

c: Muriel Edwards
Thomas and Rosemarie Lehner
Dennis Faruol
Office of People's Counsel
Arnold Jablon, Director/PAI
Michael Field, County Attorney
Donald Brand, Building Engineer
Vincent Gardina, Director/EPS

John H. Michel, Esquire
J. Carroll Holzer, Esquire
Mike Vivirito
Lawrence M. Stahl, Managing Administrative Law Judge
Andrea Van Arsdale, Director/Department of Planning
Nancy West, Assistant County Attorney
Patricia Farr/DEPRM

7/16/10

RE: PETITION FOR ADMINSTRATIVE * BEFORE THE COUNTY
 VARIANCE
 1012 Susquehanna Avenue; W/S Susquehanna* BOARD OF APPEALS
 Avenue, 223' S c/line of Chester Road
 15th Election & 6th Councilmanic Districts * FOR
 Legal Owner(s): Muriel Edwards
 Petitioner(s) * BALTIMORE COUNTY
 * 09-319-A

* * * * *
MEMORANDUM OF PEOPLE'S COUNSEL FOR BALTIMORE COUNTY

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 Petitioner(s) * BALTIMORE COUNTY
 * 09-319-A

* * * * *

MEMORANDUM OF PEOPLE'S COUNSEL FOR BALTIMORE COUNTY

Statement of the Case

In June, 2009, Muriel Edwards filed a petition for "administrative variance" for construction of a pier and mooring piles at 1012 Susquehanna Avenue bordering Frog Mortar Creek in the Bowleys Quarters area. In our view, variances relating to waterfront construction should be filed as full variances, with a public hearing. Here, Thomas and Rosemarie Lehner of 1004 Susquehanna Avenue requested a public hearing. They were concerned that the proposed pier would hinder the access from their pier into the creek.

Deputy Zoning Commissioner Thomas Bostwick conducted the hearing. He subsequently granted the variance on August 13, 2009. The Lehnars filed a timely appeal. The County Board of Appeals thereupon conducted its *de novo* hearing commencing on March 10, 2010 and concluding on June 17, 2010.

Waterfront Construction: BCZR Section 417

In 1963, the County Council enacted Bill 64 to establish BCZR Section 417 and control waterfront construction "extended into navigable waters below mean low tide." BCZR Section 417.1. There have since been amendments to the law, but none which affect this case.

One of the principal purposes of the law is to ensure that waterfront construction does not hinder adequate access to the water for riparian owners. At common law, there was a general rule of equitable access, which could give rise to uncertainty and controversy. See Wicks v. Howard 40 Md. App. 135 (1978).

Bill 64 set up a method to establish "divisional lines" extending out from waterfront properties. BCZR Section 417.3. It delineated methods for drawing such lines

for straight and irregular shorelines. There was provided as guidance an Appendix J, which includes illustrative drawings for straight, concave, and convex shorelines. To ensure access, the law required all waterfront construction to be located with a minimum setback of 10 feet from the divisional lines. BCZR Section 417.4. That is to say,

“No construction, beyond mean low tide, including mooring piles, will be permitted within 10 feet of divisional lines as established.

To administer the law, an applicant would have to submit a plot diagram and, when required by the Building Engineer, in his discretion, a plan prepared by a professional engineer or surveyor. BCZR Section 417.2.

Background

Petitioner owns two lots on Susquehanna Avenue in the Long Beach Estates subdivision. They are Lots 13 and Lot 305 (which also includes a part of Lot 306). The subdivision was platted in 1910. The zoning classification is D.R. 3.5, Density-Residential. Thomas and Rosemarie Lehner own part of the original Lot 12, which adjoins Lot 13 on the north.

In 1985, Petitioner and her former husband, Philip Edwards, acquired both lots. There was an existing dwelling on Lot 305, and a pier extending from this lot to a length of about 45—50 feet in length. Because the water was shallow, Ms. Edwards and her husband extended that pier to a length of 75 feet shortly thereafter (as she said, between 1985 and 1990). They used both lots together for their enjoyment.

Meanwhile, in 1991, the Lehnrs acquired Lot 12. They have a pier extending out from his shoreline. For many years, the Edwardses and Lehnrs co-existed, each with a single pier. In 2007, the Edwardses constructed a new dwelling on Lot 13 and moved in. They rented the older dwelling on Lot 305. Sadly, Mr. Edwards then passed away. Mrs. Edwards subsequently married Dennis Faruol. It came to pass that they wanted a new pier and boatlift for Lot 13. They also would like to sell Lot 305, with the older dwelling and existing pier.

This led to the present waterfront construction application.. Petitioner submitted with it a plot diagram prepared by Mr. Faruol. He is not a qualified engineer or surveyor. It has turned out that his submission is riddled with serious errors and omissions.

The Delineation of Divisional Lines on an Irregular Shoreline

The shoreline here is straight along Ms. Edwards' two lots, with a bulkhead running along the entire boundary. The shoreline becomes irregular as it recedes east and then north into a cove along the Lehnern's property. Furthermore, because of the relatively flat topography in this area, the daily high tide inundates the cove much further in than the low tide, about 120 to 150 feet, according to the evidence.

This configuration presents more than the usual difficulty in the delineation of the required divisional lines. The difficulty arises because, in the case of an irregular shoreline, it is necessary to determine the corners of each lot at the mean low water line (or mean low tide) as a baseline to draw the divisional lines. BCZR Section 417.3.B.

Because of the degree of difficulty, it should have been imperative for an engineer or surveyor to prepare a detailed site plan and survey. This did not happen. As the evidence showed, this a daunting task here even for a professional surveyor.

Mr. Faruol's Errant Plot Diagram

Under these circumstances, it was predictable that Mr. Faruol would submit an inaccurate and incomplete diagram. This has led to many problems in this case.

There is no evidence as to what discretion or judgment was exercised by the Building Engineer or anyone else in accepting the diagram without a plan prepared by a professional engineer or surveyor. If any discretion were exercised, it was abused.

All of the experts at the CBA hearing agreed that the plot diagram is insufficient on its face. Among other things, it lacks any description of the adjoining property, an elementary omission. James Patton, the Lehnern's engineering and planning consultant, identified this problem on March 10, 2010, the first day of hearing. Bruce Doak, the Lehnern's surveying consultant confirmed this point on June 17, 2010. John Staley, Ms. Edwards' surveying consultant, concurred on this point as well.

The Petitioner is at fault for submitting a defective petition. A lax county bureaucracy is also at fault. This is symptomatic of a problem arising in many cases at the CBA, the submission of inaccurate or incomplete site plans. Even the Deputy Zoning Commissioner did not identify the problem. It was not until James Patton reviewed the case for the Lehnerns that the problems came into focus.

As a result, the case underwent a metamorphosis at the CBA. Ultimately, both the Lehnerns and Ms. Edwards presented new and different surveys at the June 17 hearing. These had never been reviewed by any of the parties or anyone else.

As the day wore on, it became apparent that the determination of the mean low water line is a very difficult task indeed. The errant filing of the plot diagram made a difficult task all the more perplexing.

Because of the defective plot diagram, this petition should really be disqualified for what amounts to a false start. The petition is simply unacceptable as a matter of law in the way it was filed. The disqualification of the petition would send a healthy message to other petitioners and the bureaucracy to do an a proper job.

In Search of the Mean Low Water Line I: the Surveyors

The Lehnerns retained Bruce Doak, a licensed surveyor with his principal office in Baltimore County. He sent his survey team out on May 10, 2010 to do the necessary surveying tasks. Mr. Doak said he had performed many surveys to determine waterfront divisional lines over the years. As a result, he submitted a plat dated May 14, 2010. While it did not bear his seal, he said he would seal it if necessary.

Significantly, he referred to the tide tables to instruct his team to measure the low water line at the time of day shown on the chart, approximately 8:30 A.M. In the end, his survey confirmed what Mr. Patton had concluded, that the proposed pier would actually cross the divisional line between Ms. Edwards' lot 13 and the Lehnerns' lot 12. Therefore, the proposed pier itself would require a variance of zero feet (actually negative numbers) instead of the required 10 feet minimum setback.

There is no BCZR definition of mean low water line. In general, the word "mean" in this context is synonymous with "average." This would appear to require a series of observations over some period of time. Mr. Doak cited practical reasons for limiting his team's survey to a particular day. He did not believe there would be much difference over a single week, but could not say what the variation would be over a year's time. Therefore, his evaluation would be an estimate of the mean, an imperfect estimate.

Ms. Edwards subsequently retained John Staley to do a survey. Unfortunately, when Mr. Staley visited the site on a day in June, he did not know in advance that the

request would involve the determination of divisional lines. Had he known, he would also have checked the navigation charts. As it happened, he did his survey just before 10 A.M. He thought that there would not be much difference then from the low water at about 8:30. But he admitted that he didn't know, and he didn't consider returning the next day to take another measurement. Given the flatness of the topography, an hour and a half could indeed make a big difference in the location of the mean low water.

In contrast to Mr. Doak's plat, Mr. Staley's June 11, 2010 survey placed the mean low water line much further back into the cove. As a result, he came up with a divisional line which would place the proposed pier more than ten feet away. Upon this basis, he said that there was actually no need for a variance. The same went for the mooring piles.

Mr. Doak, in a brief response, added that Mr. Staley had not connected the point at the end of Ms. Edwards bulkhead with another point in the cove area, and that this omission made Mr. Staley's survey uncertain or unreliable. Mr. Doak also identified some practical problems in placing the low water line back in the cove.

Apart from the disagreement about the location of the mean low water line, both Mr. Doak' and Mr. Staley's surveys were otherwise fairly similar in methodology. For example, they both agreed on the divisional line between the two Edwards lots, lot 13 and lot 305. Because the shoreline was straight in this area, with a bulkhead, there was no problem identifying the mean low water line and the division line.

Significantly, these surveys both showed that the existing pier extending from lot 305 actually crosses the divisional line between lot 305 and lot 13. This brings into play a problem of zoning merger, which we shall discuss later.

In Search of the Mean Low Water Line II: Personal Observations

The parties also presented to personal observations to bolster their descriptions of the low water line. According to Mr. Lehner, the water typically receded to reveal a flat land area in the cove, with water remaining in the depression formed around his boat. In contrast, Mr. Faruol described the cove as a body of water. The surveyors and/or their teams made parallel conflicting observations.

In Search of the Mean Low Water Line III: the Quandary

As the case evolved on June 17, the CBA panel recognized the problematic nature of the evidence relevant to determination of the mean low water line. To our recollection, the gist of the Chair's comments indicated the understandable concern that a measurement on one day would not suffice to give an average. Mr. Grier made the relevant inquiry as to whether there is a design manual which addresses the subject. Mr. Doak said there was none.

We could leave it at that, and simply say that the burden is on the Petitioner, and it is difficult to see how this burden has been met. The errant plot diagram is just an aggravating factor. Neither of the surveys appears to suffice, although Mr. Doak can be credited at least with producing one measurement of the low water line at the right time of day.

Nevertheless, in search of more clues, we decided to see if there were any other definitions or information about the mean low water line which might be helpful. We checked the Maryland digest for case law, but came up empty. Eventually, we did find a definition in the Maryland regulations promulgated by the Maryland Department of Environment ("MDE").

In Search of the Mean Water Line IV: the MDE Definition and the Case Law

The MDE Water Management Administration regulates tidal wetlands under Title 16 of the Environment Article of the Maryland Code. This includes Section 16-105, which governs construction of piers and bulkheads. Section 16-105(b)(2)(ii) leaves to local jurisdiction to address "Zoning divisional lines and building codes." So, there is concurrent state and local authority over various aspects of waterfront construction. This is illustrated by the evidence in this case concerning MDE review.

The MDE regulations for tidal wetlands begin at COMAR Section 26.24.01.01. The definition section is 26.24.01.01. Among others, it includes definitions for "Mean high higher water," "Mean high wter," "Mean high water line," "Mean low water," and "National tidal datum epoch."

Subsection (33) states, "'Mean low water' mean the average of all the low water levels observed over the national tidal datum epoch." Subsection (35) provides,

“‘National tidal datum epoch’ mean the specific 19-year period adopted by the National Ocean Service as the official time segment over which tidal observations are taken and reduced to obtain mean values for tidal datums.”

In Borax Consolidated, Ltd. V. City of Los Angeles 296 U.S, 10, 26-27 (1935) the United States Supreme Court accompanied its discussion of the history of the law relating to tidal lands and the boundaries between state and private property, with an explanation of the source of the 19-year cycle for measurement of the water lines. This relates to theoretical astronomy and the cycles of the moon. The Rhode Island Supreme Court provided a more recent description in State v. Ibbison 448 A.2d 728 (R.I. 1982).

It is likely that data exists which would help determine accurately the mean low water line in this area of Frog Mortar Creek. At the very least, the parties might have made some inquiry to see whether such information exists.

The Merger Problem

There is another problem, which should not be sidestepped. Because the existing pier extending from Lot 305 plainly crosses the divisional line with Lot 13, these two lots merged as a matter of law. If viewed as separate lots, the pier conflicts with BCZR Section 417.4 and is illegal. It was legal only because the Mr. & Mrs. Edwards used both lots together as one for zoning purposes.

Remes v. Montgomery County 387 Md. 52 (2005) is the landmark case. The key to the finding of merger there was that an adjacent vacant lot was used to satisfy setback requirements for an addition to a dwelling and for a swimming pool on the developed lot. There was also curved driveway which traversed both lots. In the absence of zoning merger, the addition, swimming pool, and driveway would be illegal. To put it in perspective, the present case is the waterfront equivalent of the Remes the situation.

Under these circumstances, Ms. Edwards may not sell Lot 305 unless she applies for resubdivision and either removes the existing pier or relocates it in such a way as to comply with BCZR Section 417.4. It is also doubtful that the permit for the second dwelling on the merged lot is actually valid.

The DEPRM Written Recommendation Requirement

There is a failure to comply with BCZR § 500.14, which requires specific written DEPRM findings to be sent to the Zoning Commissioner for zoning petitions within the Chesapeake Bay Critical Area (CBCA). There is no dispute that Frog Mortar Creek in the CBCA. It is also noteworthy that James Patton confirmed that the addition of a pier in this area would naturally raise environmental and water quality issues.

The pertinent provision is as follows,

Section 500.14 Within the Chesapeake Bay Critical Area [Bill Nos. 32-988; 9-1996]

No decision may be rendered by the Zoning Commissioner on any petition for special exception, variance or special hearing unless the Zoning Commissioner has received from the Director of the Department of Environmental Protection and Resource Management, or his designated representative, written recommendations describing how the proposed request would:

- A. Minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands;
- B. Conserve fish, wildlife and plant habitat; and
- C. Be consistent with established land use policies for development in the Chesapeake Bay Critical Area which accommodate growth and also address the fact that, even if pollution is controlled, the number, movement and activities of persons in that area can create adverse environmental impacts.

The DEPRM comments and correspondence here do not address the itemized environmental criteria. The July 30, 2009 DEPRM comment from Dave Lykens refers back to and attaches the Critical Area Variance approved on June 10, 2005 for the new single family home. It focuses on the access between the house and the pier, the Critical Area easement, and a limitation on width. P.C. Exh. 4. An October 26, 2009 letter from DEPRM's Thomas Krispin to Muriel Edwards refers to the same subject. Pet. Exh. 7.

In its Becker opinion (No. 06-651SPHA, March 8, 2008, attached), the CBA (Messrs. Wescott, Stahl, and Grier) found a similar failure to satisfy this provision. There were DEPRM comments, but they did not address the legislative standards. The Beckers argued they were excused from BCZR § 500.14 when the case was appealed to the CBA, because the provision refers to a required recommendation to the "Zoning

Commissioner.” The CBA rejected this false premise. If that were true, the CBA could not address special hearings, special exceptions and variances because BCZR §§ 500.7, 502.1 and 307.1 assign each of these to the Zoning Commissioner. The CBA necessarily applies all relevant zoning laws as part of its *de novo* appellate review function. The CBA had similarly applied BCZR § 500.14 in Shaneybrook/Basso, No. 00-139-X, dated July 16, 2001. Circuit Court Judge Lawrence Daniels affirmed in Case No. 3-C-01-8460, February 18, 2002.

There should be no genuine dispute that the DEPRM comments here are insufficient. The CBA correctly analyzed the same issue at pages 16-17 of its Becker opinion,

“The Board finds that DEPRM did not meet its obligations under § 500.14. While it is true that the Petitioner cannot force DEPRM to make any findings under § 500.14, the Petitioner could certainly have requested DEPRM to make such findings in order to comply with the law as written. The County Council has passed § 500.14 of the BCZR and the Board will enforce that section until such time as the Council repeals it. If a Petitioner has requested the review by DEPRM under § 500.14 and DEPRM refuses to make a recommendation, then the Board will deal with that situation when it arises. Until that point, the Board will require the recommendations of DEPRM under § 500.14. The Board rejects the argument that § 500.14 only applies to decisions before the Zoning Commissioner. The Board adopts the contention of People’s Counsel on this issue.”

The Becker case went to the Circuit Court. Judge Thomas Bollinger remanded the matter for reconsideration of an issue of *res judicata*. The CBA subsequently issued a June 17, 2009 opinion denying the request on that basis as well. The case is back again in Circuit Court, but has not yet been heard by Judge Bollinger a second time.

Conclusion

For the foregoing reasons, the County Board of Appeals must deny this petition. The CBA should also find that the Lot 305 and Lot 13 have merged for zoning purposes.

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

CAROLE S. DEMILIO
Deputy People's Counsel
Jefferson Building, Room 204
105 West Chesapeake Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this ___ day of July, 2010, a copy of the foregoing Memorandum of People's Counsel for Baltimore County was mailed to J. Carroll Holzer, Esquire, Holzer & Lee, 508 Fairmount Avenue, Towson, MD 21286 and John Michel, Esquire, Huddles Jones Sorteberg & Dachille, 10211 Wincopin Circle, Suite 200, Columbia, MD 21044, Attorney for Petitioner(s).

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

8/13/09

IN RE: PETITION FOR ADMIN. VARIANCE *
W side of Susquehanna Avenue; 223 feet S
of the c/l of Chester Road *
15th Election District *
6th Councilmanic District *
(1012 Susquehanna Avenue) *

BEFORE THE
DEPUTY ZONING
COMMISSIONER
FOR BALTIMORE COUNTY
Case No. 2009-0319-A

Muriel Edwards
Petitioner

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Administrative Variance filed by the legal owner of the subject property, Muriel Edwards. The Variance request is from Section 417.4 and of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit mooring piles with a setback of 0 feet in lieu of the minimum required 10 feet from divisional lines. The subject property and requested relief as filed are more particularly described on the site plan that was marked and accepted into evidence as Petitioner's Exhibit 1A.

This matter was originally filed as an Administrative Variance, and was posted with a sign on June 21, 2009 with a closing date of July 6, 2009. On June 26, 2009, adjacent property owners Thomas and Rosemarie Lehner of 1004 Susquehanna Avenue filed a Formal Demand for Hearing. The hearing was subsequently scheduled for Tuesday, July 28, 2009 at 10:00 AM in Room 104 of the Jefferson Building, 105 West Chesapeake Avenue in Towson, Maryland. In addition, a sign was posted at the property on July 12, 2009 and an advertisement was published in *The Jeffersonian* newspaper, giving neighbors and interested citizens notice of the hearing.

Appearing at the public hearing in support of the requested relief was Petitioner Muriel Edwards and Dennis Faruol, who assisted Petitioner in filing the Petition and preparing for the hearing. Also appearing was Mike Vivirito of 3619 Bay Drive, President of the Bowleys Quarters

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Improvement Association. Appearing as Protestants were Thomas and Rosemarie Lehner who reside at 1004 Susquehanna Avenue, and who filed the Formal Demand for Hearing. There were no other interested citizens in attendance.

Testimony and evidence offered revealed that the subject waterfront property is rectangular in shape and contains approximately 0.6 acre of land zoned DR 3.5. The property is located on the west side of Susquehanna Avenue, west of Bowleys Quarters Road, in the Middle River area of Baltimore County. It has water access on Frog Mortar Creek. The property is improved with an existing dwelling that is situated close to the roadside access on Susquehanna Avenue. The property has an unusual shape in that it is fairly long and narrow and tapers inward from the roadside to the waterside. In fact, the property is approximately twice as narrow at the waterside than at the roadside. Adjacent to the subject property to the south is 1016 Susquehanna Avenue, also owned by Petitioner. This property is improved with an existing dwelling, as well as a 75 foot long pier and two mooring piles located to the immediate left of the pier. The adjacent property to the north is 1004 Susquehanna Avenue and is owned by Protestants Thomas and Rosemarie Lehner. This property is also improved with an existing dwelling as well as a long pier.

Further evidence revealed that Petitioner has owned the subject property since 1985 and constructed a new home on the property in 2007. At this juncture, Petitioner desires to construct a 75 foot long pier on the waterside of the property (similar to the existing 75 foot pier to the south at 1016 Susquehanna Avenue), and also desires to erect two mooring piles to the left of the proposed pier (again, similar to the two mooring piles at 1016 Susquehanna Avenue). As shown on the site plan that was marked and accepted into evidence as Petitioner's Exhibit 1A, Petitioner originally envisioned a 10 foot by 10 foot platform along the proposed pier; however, that

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proposal was rejected by the State. As a result, Petitioner prepared a revised site plan on July 27, 2009 that was marked and accepted into evidence as Petitioner's Exhibit 1B. The revised site plan is identical in all respects to the original site plan except that the 10 foot by 10 foot platform has now been eliminated from Petitioner's proposal.

In support of Petitioner's variance request, Mr. Faruol submitted an aerial photograph of the property that was marked and accepted into evidence as Petitioner's Exhibit 4A. Mr. Faruol explained that the subject property -- and the adjacent properties -- are unusual in that they are situated in a small artery of Frog Mortar Creek where the land is significantly indented from the water, causing the property to be tapered inward and much narrower at the waterside. This results in division lines that are also tapered inward, thereby limiting the width of proposed piers and the placement of mooring piles.

Mr. Faruol submitted an aerial photograph with a more detailed view of the subject property that was marked and accepted into evidence as Petitioner's Exhibit 4B. This photograph also shows the existing pier and mooring piles at 1016 Susquehanna Avenue. Mr. Faruol then submitted the same aerial photograph, however, this photograph also depicts the proposed pier and mooring pile improvements on the subject property and shows what the improvements would look like from above. This aerial photograph was marked and accepted into evidence as Petitioner's Exhibit 4C. Mr. Faruol noted that the proposed pier would still allow a 55 foot wide navigable water access to Mr. and Mrs. Lehner's existing pier and would also meet divisional line requirements. The need for the variance comes from the other side of the proposed pier where the mooring piles would be located. These mooring piles would be located with a 0 foot setback to the divisional line that is adjacent to Petitioner's property at 1016 Susquehanna Avenue. According to Mr. Faruol, this is necessary to accommodate a proposed boat lift design that

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requires a 15 foot wide mooring area between the pier and the mooring piles. Photographs of the property taken from the land were also submitted and were marked and accepted into evidence as Petitioner's Exhibits 5A through 5C. Finally, in further support of the variance request, Mr. Faruol indicated that the granting of setbacks of less than 10 feet from divisional lines has occurred in the area in a number of instances, most recently at the property of John and Karen Michel located at 3735 Clarks Point Road, less than one mile east of the subject property on Seneca Creek. In Case No. 2008-0469-A, Zoning Commissioner William J. Wiseman, III issued an Order dated June 6, 2008 granting a request for variance to allow three mooring piles with a setback of 5.5 feet in lieu of the required 10 feet to create a boat slip. A copy of the Order was marked and accepted into evidence as Petitioner's Exhibit 6B.

Testifying in opposition to the requested relief were Protestants Thomas and Rosemarie Lehner. As previously indicated, Protestants' reside next door to the subject property. They are opposed to the variance request based primarily on the potential environmental impacts of the proposed pier and mooring piles on existing marshes and wetlands. Mr. Lehner referenced the Critical Area Administrative Variance that was granted for the subject property by the Department of Environmental Protection and Resource Management (DEPRM) in a letter dated June 10, 2005. A copy of this letter was marked and accepted into evidence as Protestants' Exhibit 1. The letter highlights several conditions, including that a "living fence" be planted along the critical area consisting of native species of small trees and shrubs, and "do not disturb" signs to be posted along the limit of the critical area. It also requires that future access to the waterfront be no wider than six feet and consist of an elevated pier or boardwalk over the top of the tidal marsh.

Another point of objection is that Petitioner's proposed pier and mooring piles on the subject property would interfere with Mr. and Mrs. Lehner's water access to their existing boat

8.13.09

pier and mooring slips. They believe Petitioner's proposed pier would jut out too far and beyond their pier, thereby making navigation to their pier more difficult.

The final witness was Mr. Vivirito with the Bowleys Quarters Improvement Association. Mr. Vivirito indicated that he does not desire to support one particular neighbor over another in a matter like this and does not wish to see disagreements between neighbors. He believes neither Petitioner nor Protestants would ever do anything to harm the community or the environment; however, he indicated that he did not see any harm or negative impact resulting from the variance requested by Petitioner for the two mooring piles.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Department of Environmental Protection and Resource Management dated July 30, 2009 which indicates that the property must comply with the Chesapeake Bay Critical Area Regulations. This property contains a Critical Area Easement between the house and the proposed pier. In order to access said pier, Petitioner must abide by the approved Critical Area Variance dated June 10, 2005, specifically note #6 which states "Further access waterfront must be shown on the revised plan with proposed means of access to the shoreline. Please be advised access should be no wider than 6 feet and shall consist of elevated pier or boardwalk over the top of the tidal marsh, a minimum of 3 feet above mean high tide or non-tidal wetlands."

Considering all the testimony and evidence presented, I am persuaded to grant the variance request. I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. The unique shape of the property, which tapers inward on the waterside, is the result of the very unusual shape of the shoreline in that area of Frog Mortar Creek. This also results in the inward tapering of divisional lines that significantly limits

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Petitioner in the construction of a usable pier and mooring piles for a boat slip. It is also apparent that the marsh areas and wetlands on the property limits the area available for Petitioner to make improvements on the property. As such, I find the subject property unique in a zoning sense. I also find that practical difficulty or unreasonable hardship would befall Petitioner if the relief were not granted. Although it appears Petitioner can construct the proposed pier without variance relief, it is also evident that Petitioner would be unable to set mooring piles of any meaningful width from the pier in order to accommodate a boat slip and boat lift without the requested variance relief. This also stems from the narrowness of the divisional lines due to the unique shape of the property and the shoreline.

Finally, I find the variance request can be granted in strict harmony with the spirit and intent of said regulations, and in such manner as to grant relief without injury to the public health, safety and general welfare. While Protestants make several important points regarding the potential environmental impact of Petitioner's proposed pier and mooring piles, I believe these and other issues related to the previously granted Critical Area Administrative Variance can be addressed so long as Petitioner complies with the terms and conditions of that Variance, as well as the specific ZAC comments submitted by DEPRM for this case. As to the issue raised by Protestants regarding interference with access to their pier if the variance is granted, I do not believe granting the variance to permit two mooring piles on the side of Petitioner's proposed pier, opposite the area where Protestant's pier is located, will have any detrimental impact on their pier or their ability to access and continue to use and enjoy their pier.

Pursuant to the posting of the property and the provisions of both the Baltimore County Code and the Baltimore County Zoning Regulations, and for the reasons given above, the requested variance should be granted.

8-13-09

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County, this 13th day of August, 2009 that a Variance from Section 417.4 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit mooring piles with a setback of 0 feet in lieu of the minimum required 10 feet from divisional lines as depicted on Petitioner's Exhibit 1B be and is hereby GRANTED, subject to the following:

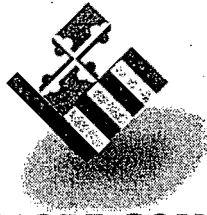
1. Petitioner may apply for her building permit and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at her own risk until such time as the 30 day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioner would be required to return, and be responsible for returning, said property to its original condition.
2. Development of this property must comply with the Chesapeake Bay Critical Area Regulations (Sections 33-2-101 through 33-2-1004 and other Sections of the Baltimore County Code).
3. This property contains a Critical Area Easement between the house and the proposed pier. In order to access said pier, Petitioner must abide by the terms and conditions of the approved Critical Area Variance dated June 10, 2005 (Protestant's Exhibit 1), specifically Condition #6 which states "Further access to waterfront must be shown on the revised plan with proposed means of access to the shoreline. Access shall be no wider than 6 feet and shall consist of elevated pier or boardwalk over the top of the tidal marsh, a minimum of 3 feet above mean high tide or non-tidal wetlands."

Any appeal of this decision must be made within thirty (30) days of the date of this Order.


THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz

~~RECEIVED FOR FILE~~
8-13-09

BALTIMORE COUNTY

M A R Y L A N D

JAMES T. SMITH, JR.
County Executive

THOMAS H. BOSTWICK
Deputy Zoning Commissioner

August 13, 2009

MURIEL EDWARDS
1012 SUSQUEHANNA AVENUE
BALTIMORE MD 21220

Re: Petition for Administrative Variance
Case No. 2009-0319-A
Property: 1012 Susquehanna Avenue

Dear Ms. Edwards:

Enclosed please find the decision rendered in the above-captioned case.

In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal within thirty (30) days from the date of the Order to the Department of Permits and Development Management. If you require additional information concerning filing an appeal, please feel free to contact our appeals clerk at 410-887-3391.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Thomas H. Bostwick".

THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz

Enclosure

c: Dennis Faruol, 1012 Susquehanna Avenue, Baltimore MD 21220
Mike Vivirito, 3619 Bay Drive, Baltimore MD 21220
Thomas and Rosemarie Lehner, 1004 Susquehanna Avenue, Baltimore MD 21220



Petition for Administrative Variance

to the Zoning Commissioner of Baltimore County

for the property located at 1012 SUSQUEHANNA AVE.

which is presently zoned DR3.5

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section(s) 417.4 BCZR

To permit mooring piles with a setback of 0' in lieu of the minimum required 10' of divisional lines

of the zoning regulations of Baltimore County, to the zoning law of Baltimore County, for the reasons indicated on the back of this petition form.

Property is to be posted and advertised as prescribed by the zoning regulations.

I, or we, agree to pay expenses of above Variance, advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser/Lessee:

Name - Type or Print N/A

Signature

Address

Telephone No.

City

State

Zip Code

Attorney For Petitioner:

Name - Type or Print N/A

Signature

Company

Address

Telephone No.

City

State

Zip Code

Legal Owner(s):

MURIEL EDWARDS

Name - Type or Print

Signature Muriel Edwards

Name - Type or Print

Signature

1012 SUSQUEHANNA AVE 410-335-

Address

Telephone No.

BALTIMORE MD 21220 4716

City

State

Zip Code

Representative to be Contacted:

DENNIS FARVOL

Name

1012 SUSQUEHANNA AVE

Address

Telephone No.

BALTIMORE, MD 21220 410

City

State

Zip Code

335-4716

A Public Hearing having been formally demanded and/or found to be required, it is ordered by the Zoning Commissioner of Baltimore County, this 8-13-09 day of August that the subject matter of this petition be set for a public hearing, advertised, as required by the zoning regulations of Baltimore County and that the property be reposted.

Zoning Commissioner of Baltimore County

CASE NO. 2009-0319-A

Reviewed By JP Date 6-9-09

REV 10/25/01

Estimated Posting Date 6-21-09

Affidavit in Support of Administrative Variance

The undersigned hereby affirms under the penalties of perjury to the Zoning Commissioner of Baltimore County, as follows: That the information herein given is within the personal knowledge of the Affiant(s) and that Affiant(s) is/are competent to testify thereto in the event that a public hearing is scheduled in the future with regard thereto.

That the Affiant(s) does/do presently reside at 1012 SUSQUEHANNA AVENUE (410) 335-4716
Address
MIDDLE RIVER MARYLAND 21220
City State Zip Code

That based upon personal knowledge, the following are the facts upon which I/we base the request for an Administrative Variance at the above address (indicate hardship or practical difficulty):

Factual Basis for the Variance request

The pie shape of the property is unique in regards to typical rectangular shaped lots. The pie shape property lines converge toward the waterfront that diminishes the property width. To achieve sufficient water depth (2 feet at mean low tide) for a boat of 25 foot in length with an 18 inch draft the proposed pier length is required to be 75 feet in length due to the shallow water. The proposed pier is located to provide 10 feet of right side setback. Therefore, the right side of the proposed pier is in compliance with the 10 foot side setback. The left side of the proposed pier is 15 feet from the left property line. In order to secure a 25 foot in length boat with an 8 foot beam to the left side of the pier two mooring/boatlift piles are needed. The only reasonable location of the mooring piles would be on the left property line in order to provide for a wide enough location for the boat and a boat lift. Due to the unique shape of the property the location of the piles will not be able to comply with the required 10 foot side setback since the distance would be zero feet for a 15 foot wide slip to accommodate a boat on a lift.

This situation is similar to the pie shaped lot configuration that currently exists at the adjacent property address 1016 Susquehanna Avenue, Middle River, MD 21220. The pier at this address is 75 feet in length with mooring piles off the left side of the pier that are less than 10 feet from the left property line.

Therefore, this request is for the left side setback to be zero feet left side setback in lieu of the required 10 foot side setback. **MURIEL EDWARDS IS THE OWNER OF 1012 AND 1016 SUSQUEHANNA AVE.**

That the Affiant(s) acknowledge(s) that if a formal demand is filed, Affiant(s) will be required to pay a reposting and advertising fee and may be required to provide additional information.

Muriel A. Edwards
Signature

Signature

MURIEL A. EDWARDS

Name - Type or Print

Name - Type or Print

STATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:

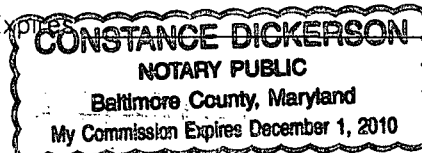
I HEREBY CERTIFY, this 8th day of June, 2009, before me, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared

Muriel Edwards
the Affiant(s) herein, personally known or satisfactorily identified to me as such Affiant(s).

AS WITNESS my hand and Notarial Seal

Constance Dickerson
Notary Public

My Commission Expires



Affidavit in Support of Administrative Variance

The undersigned hereby affirms under the penalties of perjury to the Zoning Commissioner of Baltimore County, as follows: That the information herein given is within the personal knowledge of the Affiant(s) and that Affiant(s) is/are competent to testify thereto in the event that a public hearing is scheduled in the future with regard thereto.

That the Affiant(s) does/do presently reside at 1012 SUSQUEHANNA AVENUE (410) 335-4716
Address
MIDDLE RIVER MARYLAND 21220
City State Zip Code

That based upon personal knowledge, the following are the facts upon which I/we base the request for an Administrative Variance at the above address (indicate hardship or practical difficulty):

Factual Basis for the Variance request

The pie shape of the property is unique in regards to typical rectangular shaped lots. The pie shape property lines converge toward the waterfront that diminishes the property width. To achieve sufficient water depth (2 feet at mean low tide) for a boat of 25 foot in length with an 18 inch draft the proposed pier length is required to be 75 feet in length due to the shallow water. The proposed pier is located to provide 10 feet of right side setback. Therefore, the right side of the proposed pier is in compliance with the 10 foot side setback. The left side of the proposed pier is 15 feet from the left property line. In order to secure a 25 foot in length boat with an 8 foot beam to the left side of the pier two mooring/boatlift piles are needed. The only reasonable location of the mooring piles would be on the left property line in order to provide for a wide enough location for the boat and a boat lift. Due to the unique shape of the property the location of the piles will not be able to comply with the required 10 foot side setback since the distance would be zero feet for a 15 foot wide slip to accommodate a boat on a lift.

This situation is similar to the pie shaped lot configuration that currently exists at the adjacent property address 1016 Susquehanna Avenue, Middle River, MD 21220. The pier at this address is 75 feet in length with mooring piles off the left side of the pier that are less than 10 feet from the left property line.

Therefore, this request is for the left side setback to be zero feet left side setback in lieu of the required 10 foot side setback. *MURIEL EDWARDS IS THE OWNER OF 1012 & 1016 SUSQUEHANNA AVENUE.*

That the Affiant(s) acknowledge(s) that if a formal demand is filed, Affiant(s) will be required to pay a reposting and advertising fee and may be required to provide additional information.

Muriel A. Edwards
Signature

MURIEL A. EDWARDS
Name - Type or Print

Signature

Name - Type or Print

STATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:

I HEREBY CERTIFY, this 8th day of June, 2009, before me, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared

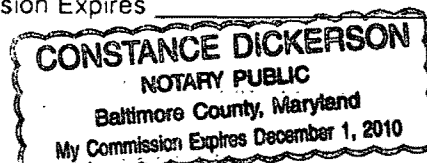
Muriel Edwards
the Affiant(s) herein, personally known or satisfactorily identified to me as such Affiant(s).

AS WITNESS my hand and Notarial Seal

Constance Dickerson
Notary Public

My Commission Expires _____

REV 10/25/01





Petition for Administrative Variance

to the Zoning Commissioner of Baltimore County

for the property located at 1012 SUSQUEHANNA AVE.

which is presently zoned DR 3.5

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section(s) 417.4 BCZR

To permit mooring piles with a setback of 0' in lieu of the minimum required 10' of divisional lines.

of the zoning regulations of Baltimore County, to the zoning law of Baltimore County, for the reasons indicated on the back of this petition form.

Property is to be posted and advertised as prescribed by the zoning regulations.

I, or we, agree to pay expenses of above Variance, advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser/Lessee:

Name - Type or Print

Signature

Address

Telephone No.

City

State

Zip Code

Attorney For Petitioner:

Name - Type or Print

Signature

Company

Address

Telephone No.

City

State

Zip Code

Legal Owner(s):

MURIEL EDWARDS

Name - Type or Print

Signature

Name - Type or Print

Signature

Address

City

State

Zip Code

Representative to be Contacted:

DENNIS M. FAROOL

Name

Address

City

State

Zip Code

A Public Hearing having been formally demanded and/or found to be required, it is ordered by the Zoning Commissioner of Baltimore County, this 8 day of August, 2009, that the subject matter of this petition be set for a public hearing, advertised, as required by the zoning regulations of Baltimore County and that the property be reposted.

Zoning Commissioner of Baltimore County

CASE NO. 2009-0319-A

Reviewed By JA

Date 6-9-09

REV 10/25/01

8.13.09

Estimated Posting Date

6-21-09

**ZONING DESCRIPTION FOR 1012 Susquehanna Avenue, Middle River, MD
21220**

Beginning at a point on the West side of Susquehanna Avenue which is 125 feet wide at the distance of 223 feet South of the centerline of the nearest improved intersecting street, Chester Road, which is 30 feet wide. *Being Lot # 13, Block __, Section # __, in the subdivision of Long Beach Estates, as recorded in Baltimore County Plat Book # 4, Folio # 131, containing 27,760 square feet.

Also know as 1012 Susquehanna Avenue and located in the 15th Election District, 6th Councilmanic District.

319

NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing in Towson, Maryland on the property identified herein as follows:

Case: # 2009-0319-A

1012 Susquehanna Avenue

W/side of Susquehanna Avenue, at the distance of 223 feet south of centerline of Chester Road

15th Election District 6th Councilmanic District

Legal Owner(s): Muriel Edwards

Variance: to permit mooring piles with a setback of 0 feet in lieu of the minimum required 10 feet from divisional lines.

Hearing: Tuesday, July 28, 2009 at 10:00 a.m. in Room 104, Jefferson Building, 105 West Chesapeake Avenue, Towson 21204.

WILLIAM J. WISEMAN, III

Zoning Commissioner for Baltimore County

NOTES: (1) Hearings are Handicapped Accessible, for special accommodations Please Contact the Zoning Commissioner's Office at (410) 887-4386.

(2) For information concerning the File and/or Hearing, Contact the Zoning Review Office at (410) 887-3391.
JT 7/664 July 14

205626

CERTIFICATE OF PUBLICATION

7/16/ 2009

THIS IS TO CERTIFY, that the annexed advertisement was published in the following weekly newspaper published in Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 7/14/ 2009.

- ☒ The Jeffersonian
- ☐ Arbutus Times
- ☐ Catonsville Times
- ☐ Towson Times
- ☐ Owings Mills Times
- ☐ NE Booster/Reporter
- ☐ North County News

S. Wilkinson

LEGAL ADVERTISING

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET AND FINANCE
MISCELLANEOUS CASH RECEIPT

No. **39839**

Date: **6-9-09**

PAID RECEIPT

POSTEDS ACTUAL TIME DOL
 6/10/2009 6/09/2009 14:31:13 2
 68 M302 MAYL 1004 JEE
 RECEIPT # 637114 6/09/2009 OFFER
 5 528 ZIMMERS VERIFICATION
 NO. 039839

				Rev	Sub				
				Source/	Rev/				
Fund	Dept	Unit	Sub Unit	Obj	Sub Obj	Dept	Obj	BS Acct	Amount
001	806	00001		6150					65.00
									</

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET AND FINANCE
MISCELLANEOUS CASH RECEIPT

No. **41589**

Date: **June 21, 2009**

PAID RECEIPT

BUSINESS: 7/01/2009 ACTUAL: 6/30/2009 11:19:41 TIME: 5

G W503 WALKIN RDOS LRB
 RECEIPT # 401769 6/30/2009 OFLN

Dept 5 52B ZONING VERIFICATION
 NO. 041589

Recpt Tot \$50.00
 \$50.00 CK \$.00 CA
 Baltimore County, Maryland

Fund	Dept	Unit	Sub Unit	Rev Source/Obj	Sub Rev/Obj	Dept Obj	BS Acct	Amount
001	806	0000		60150				50.00

Total: **\$50.00**

Rec From: **Rosemarie Leher**

For: **Formal Demand**
2009-0319-A

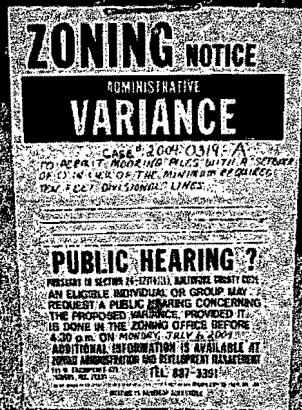
DISTRIBUTION

WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER GOLD - ACCOUNTING

PLEASE PRESS HARD!!!!

**CASHIER'S
 VALIDATION**

Monte 6/23/09



: OF POSTING

No 2009-0319-A

Developer MURIEL
ARDS

Date Of Hearing/Closing: 7/6/09

Baltimore County Department of
Permits and Development Management
County Office Building, Room 111
111 West Chesapeake Avenue

Attention:

Ladies and Gentlemen

This letter is to certify under penalties of perjury that the necessary
sign(s) required by law were posted conspicuously on the property
at 1012 SUSQUEHANNA AVE.

This sign(s) were posted on June 24, 2009

Month, Day, Year
Sincerely,

Monte 6/21/09
Signature of Sign Poster and Date
Martin Ogle
60 Chelmsford Court
Baltimore, Md, 21220
443-629-3411



FORMAL DEMAND FOR HEARING

CASE NUMBER: 2009-0319-A

Address: 1012 Susquehanna Ave. 21220

Petitioner(s): Ann Edwards

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

I/We Thomas + Rosemarie Lehner
Name - Type or Print

☒ Legal Owner OR ☐ Resident of
1004 Susquehanna Avenue
Address

Baltimore MD 21220
City State Zip Code

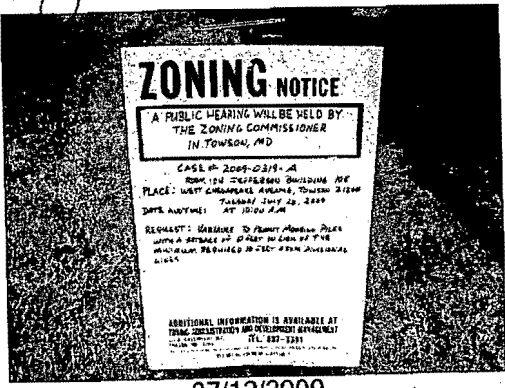
410-335-0013
Telephone Number

which is located approximately _____ feet from the
property, which is the subject of the above petition, **do hereby**
formally demand that a public hearing be set in this matter.
ATTACHED IS THE REQUIRED PROCESSING FEE FOR THIS
DEMAND.

Rosemarie L Lehner 6/26/09
Signature Date

Signature Date
Revised 9/18/98 - wcr/scj

replied 08/7/12/09



07/12/2009

CERTIFICATE OF POSTING

RE: Case No 2009-0319-A

Petitioner/Developer MURIEL EDWARDS

Date Of Hearing/Closing: 7/28/09

Baltimore County Department of
Permits and Development Management
County Office Building, Room 111
111 West Chesapeake Avenue

Attention:

Ladies and Gentlemen

This letter is to certify under penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property at 1012 SUSQUEHANA AVENUE

This sign(s) were posted on July 12, 2009

Month, Day, Year
Sincerely,

Martin Ogle 7/12/09
Signature of Sign Poster and Date
Martin Ogle
60 Chelmsford Court
Baltimore, Md, 21220
443-629-3411

ADMINISTRATIVE VARIANCE INFORMATION SHEET AND DATES

Case Number 2009- 0319 -A Address 1012 SUSQUEHANNA AVE.

Contact Person: JUN FERNANDO Phone Number: 410-887-3391
Planner, Please Print Your Name

Filing Date: 6-9-09 Posting Date: 6-21-09 Closing Date: 7-6-09

Any contact made with this office regarding the status of the administrative variance should be through the contact person (planner) using the case number.

1. **POSTING/COST:** The petitioner must use one of the sign posters on the approved list (on the reverse side of this form) and the petitioner is responsible for all printing/posting costs. Any reposting must be done only by one of the sign posters on the approved list and the petitioner is again responsible for all associated costs. The zoning notice sign must be visible on the property on or before the posting date noted above. It should remain there through the closing date.
2. **DEADLINE:** The closing date is the deadline for an occupant or owner within 1,000 feet to file a formal request for a public hearing. Please understand that even if there is no formal request for a public hearing, the process is not complete on the closing date.
3. **ORDER:** After the closing date, the file will be reviewed by the zoning or deputy zoning commissioner. He may: (a) grant the requested relief; (b) deny the requested relief; or (c) order that the matter be set in for a public hearing. You will receive written notification, usually within 10 days of the closing date if all County agencies' comments are received, as to whether the petition has been granted, denied, or will go to public hearing. The order will be mailed to you by First Class mail.
4. **POSSIBLE PUBLIC HEARING AND REPOSTING:** In cases that must go to a public hearing (whether due to a neighbor's formal request or by order of the zoning or deputy zoning commissioner), notification will be forwarded to you. The sign on the property must be changed giving notice of the hearing date, time and location. As when the sign was originally posted, certification of this change and a photograph of the altered sign must be forwarded to this office.

(Detach Along Dotted Line)

Petitioner: This Part of the Form is for the Sign Poster Only

USE THE ADMINISTRATIVE VARIANCE SIGN FORMAT

Case Number 2009- 0319 -A Address 1012 SUSQUEHANNA AVE

Petitioner's Name MURIEL EDWARDS Telephone 410-335-4716

Posting Date: 6-21-09 Closing Date: 7-6-09

Wording for Sign: To Permit mooring piles with a setback of 0'
in lieu of the minimum required ten feet of divisional lines.

WCR - Revised 7/7/08

DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
ZONING REVIEW

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

The Baltimore County Zoning Regulations (BCZR) require that notice be given to the general public/neighboring property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property (responsibility of the petitioner) and placement of a notice in a newspaper of general circulation in the County, both at least fifteen (15) days before the hearing.

Zoning Review will ensure that the legal requirements for advertising are satisfied. However, the petitioner is responsible for the costs associated with these requirements. The newspaper will bill the person listed below for the advertising. This advertising is due upon receipt and should be remitted directly to the newspaper.

OPINIONS MAY NOT BE ISSUED UNTIL ALL ADVERTISING COSTS ARE PAID.

For Newspaper Advertising:

Item Number or Case Number: 2009-0319-A

Petitioner: MURIEL A. EDWARDS

Address or Location: 1012 SUSQUEHANNA AVENUE, MIDDLE RIVER, MD. 21220

PLEASE FORWARD ADVERTISING BILL TO:

Name: MURIEL A. EDWARDS

Address: 1012 SUSQUEHANNA AVENUE
MIDDLE RIVER, MD. 21220

Telephone Number: 410-335-9476

Revised 7/11/05 - SCJ

TO: PATUXENT PUBLISHING COMPANY
Tuesday, July 14, 2009 Issue - Jeffersonian

Please forward billing to:

Muriel Edwards
1012 Susquehanna Avenue
Baltimore, MD 21220

410-335-4716

NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 2009-0319-A

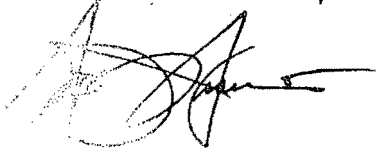
1012 Susquehanna Avenue

W/side of Susquehanna Avenue, at the distance of 223 feet south of centerline of Chester Road
15th Election District – 6th Councilmanic District

Legal Owners: Muriel Edwards

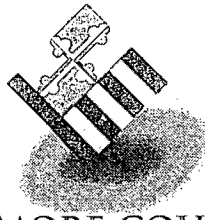
Variance to permit mooring piles with a setback of 0 feet in lieu of the minimum required 10 feet from divisional lines.

Hearing: Tuesday, July 28, 2009 at 10:00 a.m. in Room 104, Jefferson Building,
105 West Chesapeake Avenue, Towson 21204



WILLIAM J. WISEMAN III
ZONING COMMISSIONER FOR BALTIMORE COUNTY

- NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMODATIONS, PLEASE CONTACT THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.



BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

June 30, 2009
TIMOTHY M. KOTROCO, *Director*
Department of Permits and
Development Management

NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 2009-0319-A

1012 Susquehanna Avenue

W/side of Susquehanna Avenue, at the distance of 223 feet south of centerline of Chester Road
15th Election District – 6th Councilmanic District

Legal Owners: Muriel Edwards

Variance to permit mooring piles with a setback of 0 feet in lieu of the minimum required 10 feet from divisional lines.

Hearing: Tuesday, July 28, 2009 at 10:00 a.m. in Room 104, Jefferson Building,
105 West Chesapeake Avenue, Towson 21204

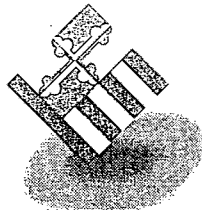
Handwritten signature of Timothy Kotroco in cursive.

Timothy Kotroco
Director

TK:klm

C: Muriel Edwards, 1012 Susquehanna Avenue, Baltimore 21220
Dennis Farvol, 1012 Susquehanna Avenue, Baltimore 21220

- NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY MONDAY, JULY 13, 2009.**
- (2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
- (3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.



BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

TIMOTHY M. KOTROCO, *Director*
Department of Permits and
Development Management

July 22, 2009

Muriel Edwards
1012 Susquehanna Ave
Baltimore, MD 21220

Dear: Muriel Edwards

RE: Case Number 2009-0319-A, 1012 Susquehanna Ave

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on June 9, 2009. This letter is not an approval, but only a **NOTIFICATION**.

The Zoning Advisory Committee (ZAC), which consists of representatives from several approval agencies, has reviewed the plans that were submitted with your petition. All comments submitted thus far from the members of the ZAC are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to ensure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. All comments will be placed in the permanent case file.

If you need further information or have any questions, please do not hesitate to contact the commenting agency.

Very truly yours,

A handwritten signature in black ink, reading "W. Carl Richards, Jr.".

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR:lnw

Enclosures

c: People's Counsel
Dennis Faruol

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Timothy M. Kotroco, Director
Department of Permits &
Development Management

FROM: Dennis A. Kennedy, ^{DMK}Supervisor
Bureau of Development Plans
Review

SUBJECT: Zoning Advisory Committee Meeting
For June 22, 2009
Item Nos. 2009-299, 315, 316,
317, and 318, 319

DATE: June 17, 2009

The Bureau of Development Plans Review has reviewed the subject-zoning items, and we have no comments.

DAK:CEN:dak
cc: File
ZAC-06172009 -NO COMMENTS

TB
9-28-09

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence



RECEIVED

JUL 30 2009

ZONING COMMISSIONER

TO: Timothy M. Kotroco

FROM: Dave Lykens, DEPRM - Development Coordination

DATE: July 30, 2009

SUBJECT: Zoning Item # 09-319-A
Address 1012 Susquehanna Avenue
(Edwards Property)

Zoning Advisory Committee Meeting of June 15, 2009

X The Department of Environmental Protection and Resource Management offers the following comments on the above-referenced zoning item:

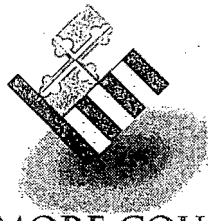
X Development of this property must comply with the Chesapeake Bay Critical Area Regulations (Sections 33-2-101 through 33-2-1004, and other Sections, of the Baltimore County Code).

Additional Comments:

This property contains a Critical Area Easement between the house and the proposed pier. In order to access said pier, the applicants must abide by the approved Critical Area Variance dated June 10, 2005, specifically note #6, which states "Future access to waterfront must be shown on the revised plan with proposed means of access to the shoreline. Please be advised access should be no wider than 6 feet and shall consist of elevated pier or boardwalk over the top of the tidal marsh, a minimum of 3 feet above mean high tide or non-tidal wetlands."

Reviewer: T. Krispin

Date: 7/29/09



BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

JOHN J. HOHMAN, *Chief*
Fire Department

County Office Building, Room 111
Mail Stop #1105
111 West Chesapeake Avenue
Towson, Maryland 21204

June 4, 2009

ATTENTION: Zoning Review Planners

Distribution Meeting Of: June 22.2009

Item Numbers 299,0315,0316,0317,0318,0319,0320

Pursuant to your request, the referenced plan(s) have been reviewed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

1. The Fire Marshal's Office has no comments at this time.

Lieutenant Roland P Bosley Jr.
Fire Marshal's Office
410-887-4881 (C) 443-829-2946
MS-1102F

cc: File

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Timothy M. Kotroco, Director
Department of Permits and
Development Management

DATE: June 19, 2009

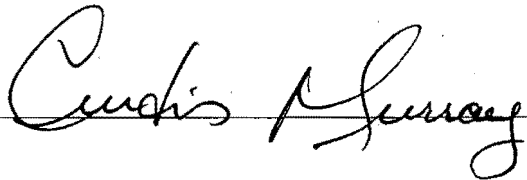
FROM: Arnold F. 'Pat' Keller, III
Director, Office of Planning

SUBJECT: Zoning Advisory Petition(s): **Case(s) 09-319- Administrative Variance**

The Office of Planning has reviewed the above referenced case(s) and has no comments to offer.

For further questions or additional information concerning the matters stated herein, please contact Laurie Hay in the Office of Planning at 410-887-3480.

Prepared By:
CM/LL

A handwritten signature in cursive script, appearing to read "Curtis R. Murray", is written over a horizontal line.



Martin O'Malley, Governor
Anthony G. Brown, Lt. Governor

State Highway
Administration

Beverly K. Swaim-Staley, Acting Secretary
Neil J. Pedersen, Administrator

Maryland Department of Transportation

Date: June 17, 2009

Ms. Kristen Matthews
Baltimore County Office of
Permits and Development Management
County Office Building, Room 109
Towson, Maryland 21204

RE: Baltimore County
Item No. 2009-0319-A
1012 SUSQUEHANNA AVE.
EDWARDS PROPERTY
ADMINISTRATIVE VARIANCE

Dear Ms. Matthews:

Thank you for the opportunity to review your referral request on the subject of the above captioned. We have determined that the subject property does not access a State roadway and is not affected by any State Highway Administration projects. Therefore, based upon available information this office has no objection to Baltimore County Zoning Advisory Committee approval of Item No. 2009-0319-A.

Should you have any questions regarding this matter, please contact Michael Bailey at 410-545-2803 or 1-800-876-4742 extension 5593. Also, you may E-mail him at (mbailey@sha.state.md.us).

Very truly yours,

For ^ Steven D. Foster, Chief
Engineering Access Permits
Division

SDF/MB

RE: PETITION FOR ADMINISTRATIVE * BEFORE THE
VARIANCE
1012 Susquehanna Avenue; W/S Susquehanna* ZONING COMMISSIONER
Avenue, 223' S c/line of Chester Road
15th Election & 6th Councilmanic Districts * FOR
Legal Owner(s): Muriel Edwards
Petitioner(s) * BALTIMORE COUNTY
* 09-319-A

* * * * *

ENTRY OF APPEARANCE

Pursuant to Baltimore County Charter § 524.1, please enter the appearance of People's Counsel for Baltimore County as an interested party in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and the passage of any preliminary or final Order. All parties should copy People's Counsel on all correspondence sent and all documentation filed in the case.

RECEIVED

JUN 30 2009

EW

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio

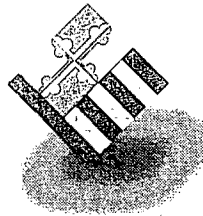
CAROLE S. DEMILIO
Deputy People's Counsel
Jefferson Building, Room 204
105 West Chesapeake Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of June, 2009, a copy of the foregoing Entry of Appearance was mailed to Muriel Edwards, 1012 Susquehanna Avenue, Baltimore, MD 21220, Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County



BALTIMORE COUNTY
M A R Y L A N D

JAMES T. SMITH, JR.
County Executive

TIMOTHY M. KOTROCO, *Director*
Department of Permits and
Development Management

June 30, 2009

Muriel Edwards
1012 Susquehanna Avenue
Baltimore, MD 21220

Dear Ms. Edwards:

RE: Demand for Public Hearing, Administrative Variance, Case Number: 2009-0319-A

The purpose of this letter is to officially notify you that your administrative posting procedure has been superceded by a timely public hearing demand by Rosemarie Lehner requiring a public hearing concerning the above proposed administrative procedure.

The hearing has been scheduled, and the notice of public hearing indicating the date, time and location of the hearing. This notice will also contain the date that the sign must be reposted with the hearing information.

The property must be reposted with the hearing date, time and location. This notification will be published in the Jeffersonian and you will be billed directly by Patuxent Publishing for this.

If you need any further explanation or additional information, please feel free to contact Jun Fernando at 410-887-3391.

Very truly yours,

A handwritten signature in black ink, reading "W. Carl Richards, Jr." with a stylized flourish at the end.

W. Carl Richards, Jr.
Supervisor
Zoning Review

WCR:klm

C: Dennis Farvol
Rosemarie Lehner

1004 Susquehanna Avenue
Baltimore, Maryland 21220

Department of Permits and Development Management
105 West Chesapeake Avenue, Suite 103
Towson, Maryland 21204

Re: Case No. 2009-0319-A
Property: 1012 Susquehanna Avenue

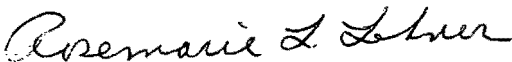
September 9, 2009

We would like to file an appeal to the decision rendered in the above-captioned case.

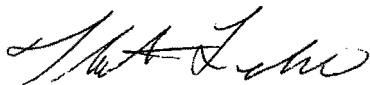
We are appealing on the grounds that the Plat that accompanied the petition for a zoning variance for 1012 Susquehanna Avenue, Baltimore, Maryland 21220, inaccurately represents the existing pier at 1016 Susquehanna Avenue and proposed pier at 1012 Susquehanna Avenue. The Plat shows an inaccurate departure of the piers from the bulkhead. The existing pier is actually angled towards the right, much less than 90 degrees as shown. If the new pier is constructed parallel to the existing pier as shown on the Plat this would place the new pier less than the 10 foot setback on the right towards 1004 Susquehanna Avenue. This is in direct contradiction to the Plat submitted by Muriel Edwards. The hardship decision by Thomas H. Bostwick, Deputy Zoning Commissioner for Baltimore County granted the variance for a 0' setback on the left side of the proposed pier. We are asking that an accurate Plat be submitted from a certified surveyor and not the homeowner's fiancée.

Updated Baltimore County aerial photographs will confer that the angle of the pier is not at 90 degrees as prepared by 'DMF'.

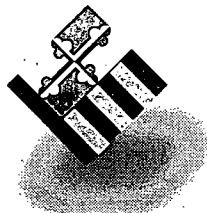
Respectfully,



Rosemarie L. Lehner



Thomas A. Lehner



BALTIMORE COUNTY
M A R Y L A N D

JAMES T. SMITH, JR.
County Executive

TIMOTHY M. KOTROCO, *Director*
Department of Permits and
Development Management

January 11, 2010

Muriel Edwards
1012 Susquehanna Avenue
Baltimore, MD 21220

Dear Ms. Edwards:

RE: Case: 2009-0319-A, 1012 Susquehanna Avenue

Please be advised that an appeal of the above-referenced case was filed in this office on September 9, 2009 from Mr. & Mrs. Lehner. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

If you are the person or party taking the appeal, you should notify other similarly interested parties or persons known to you of the appeal. If you are an attorney of record, it is your responsibility to notify your client.

If you have any questions concerning this matter, please do not hesitate to call the Board at 410-887-3180.

Sincerely,

A handwritten signature in black ink that reads "Timothy Kotroco".

Timothy Kotroco
Director

TK:klm

c: William J. Wiseman III, Zoning Commissioner
Timothy Kotroco, Director of PDM
People's Counsel
Mr. & Mrs. Lehner, 1004 Susquehanna Avenue, Baltimore 21220
Dennis Faruol, 1012 Susquehanna Avenue, Baltimore 21220
Mike Vivirito, 3619 Bay Drive, Baltimore 21220

APPEAL

Petition for Administrative Variance
1012 Susquehanna Avenue
W/s Susquehanna Ave; 223 ft. s/of c/l of Chester Road
15th Election District – 6th Councilmanic District
Legal Owner: Muriel Edwards

Case No.: 2009-0319-A

Petition for Administrative Variance (June 9, 2009)

Zoning Description of Property

Demand for Formal Hearing (June 26, 2009)

Notice of Zoning Hearing (June 30, 2009)

Certification of Publication (the Jeffersonian – July 14, 2009)

Certificate of Posting (July 12, 2009) by Martin Ogle

Entry of Appearance by People's Counsel (June 30, 2009)

Petitioner(s) Sign-In Sheet – One Sheet

Protestant(s) Sign-In Sheet - None

Citizen(s) Sign-In Sheet – One Sheet

Zoning Advisory Committee Comments

Petitioners' Exhibit

1. Site Plan (A & B Revised Site Plan)
2. SDAT Data Search
3. Zoning Map
4. Aerial Photos (A – C)
5. Photos of Property (A – C)
6. A) Written Testimony of Petitioner
B) case #08-469-A

Protestants' Exhibits:

1. Letter dated 6-10-05 from DEPRM to Mr. Edwards
2. Site Plan of Protestant's property
3. Sign Posted on Wetlands
4. Photos of Petitioners property
5. Photos of Pier at 1016 Susquehanna (A & B)

Miscellaneous (Not Marked as Exhibit) - None

Deputy Zoning Commissioner's Order (GRANTED – August 14, 2009)

Notice of Appeal received on September 9, 2009 from Mr. & Mrs. Lehner

c: People's Counsel of Baltimore County, MS #2010
Zoning Commissioner/Deputy Zoning Commissioner
Timothy Kotroco, Director of PDM
Muriel Edwards
Mr. & Mrs. Lehner
Dennis Faruol
Mike Vivirito

date sent January 11, 2010, klm



June 10, 2005

Mr. Phil Edwards
1016 Susquehanna Avenue
Baltimore, MD 21220

Re: Edwards Property
1000 block Susquehanna Ave.
Critical Area Administrative Variance

Dear Mr. Edwards:

The Department of Environmental Protection and Resource Management (DEPRM) has received your variance request to construct a single family home on an existing lot of record impacting 9,200 square feet of Chesapeake Bay Critical Area buffer, 1,480 square feet of non-tidal wetlands, and 5,890 square feet of non-tidal wetland buffer. The Director of DEPRM may grant a variance to the Chesapeake Bay Critical Area regulations in accordance with regulations adopted by the Critical Area Commission concerning variances as set forth in COMAR 27.01.11. There are five (5) criteria listed in COMAR 27.01.11 that shall be used to evaluate the variance request. All five of the criteria must be met in order to approve the variance.

The first criterion requires that special conditions exist that are peculiar to the land or structure, and that literal enforcement of the regulations would result in unwarranted hardship. The location of the lot relative to tidal waters causes almost the entire lot to fall within the 100-foot buffer from tidal water. The only portion of the lot outside of the Critical Area buffer is a small sliver of land immediately adjacent to Susquehanna Avenue. A small non-tidal wetland and associated 25 foot buffer further expand the Critical Area buffer. Therefore, special conditions exist that are peculiar to the land such that a literal enforcement would result in unwarranted hardship; consequently, this criterion is met.

The second criterion requires that a literal enforcement of the regulations would deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area. A literal enforcement would require that the applicant not build on this single lot of record. Other similar properties have been granted variances to encroach into the Critical Area Easement provided all variance criteria were met. Therefore, a literal enforcement of the regulations



Mr. Phil Edwards
1000 block Susquehanna Ave.
June 10, 2005
Page 2

would preclude the applicant of rights commonly enjoyed by similar properties in the Critical Area and this criterion is met.

The third criterion requires that granting of a variance will not confer upon an applicant any special privilege that would be denied to other lands or structures within the Critical Area. Similar properties have been granted variances to construct a dwelling within the Critical Area buffer and non-tidal wetlands where all variance criteria could be met. Therefore, granting a variance to impact these buffers will not confer upon the applicant any special privileges that would be denied to other lands or structures in the Critical Area. Consequently, this criterion is met.

The fourth criterion requires that a variance is not based upon conditions or circumstances which are the result of actions by the applicant, nor does the request arise from any condition relating to land or building use, either permitted or non-conforming, on any neighboring property. This variance does not arise from any condition or circumstances that are the result of actions by the applicant or from any condition or land use on any neighboring properties. In fact, the actions of the applicant to mitigate for the proposed impacts will provide a better functioning buffer to the tidal wetlands than the current lawn. Therefore, this criterion is met.

The fifth criterion requires that granting of the variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area, and that the granting of the variance will be in harmony with the general spirit and intent of the Critical Area regulations. The proposed native mixed tree and shrub plantings will enhance this buffer, which has historically been mowed. Therefore, granting this variance will not adversely impact water quality, fish, wildlife or plant habitat within the Critical Area, and this criterion is met.

Based upon our review, this Department finds that the first four of the above criteria have been met, and that the fifth criterion can be met by implementing the measures prescribed below. Therefore, the requested variance is hereby approved in accordance with Section 33-2-205 of the Baltimore County Code with the following conditions:

1. The attached "Notice of Granting of Variance" must be published in The East County Times or The Avenue. Final variance approval cannot be granted until fifteen (15) calendar days after the notice has been published. A copy of the Certificate of Publication for the advertisement issued by the newspaper, or a copy of the advertisement from the paper must be submitted to this office prior to

receiving final variance approval.

2. A minimum 28-foot setback from the proposed Critical Area Easement to the single-family dwelling shall be provided.
3. Development of this property requires the establishment and recordation of a Critical Area Easement and protective covenants in the land records of Baltimore County, prior to permit approval. Please submit an "Exhibit A" and Declarations in accordance with the attached instructions.
4. A living fence shall be planted along the Critical Area Easement limit using native species of small trees and shrubs. Trees shall be container-grown stock a minimum of 1.5 inches caliper; shrubs shall be a minimum 24 inches high and also container-grown. Ten (10) trees shall be planted 8 feet on center with fourteen (14) shrubs planted 6 feet on center. Please submit a revised plan detailing the placement of the above.
5. "Critical Area Easement-Do Not Disturb" signs shall be posted as shown on the plan accompanying your variance application, and along the limit of the Critical Area Easement. After it is planted and within the boundary of this Critical Area Easement, a person may not disturb vegetation, including disturbance by tree removal, shrub removal, clearing, mowing, burning, spraying, or grazing.
6. Future access to waterfront must be shown on the revised plan with proposed means of access to the shoreline. Please be advised access should be no wider than 6 feet and shall consist of elevated pier or boardwalk over the top of the tidal marsh, a minimum of 3 feet above mean high tide or non-tidal wetlands.
7. All planting and sign posting shall occur prior to issuance of any Use & Occupancy Certificate for the proposed house.
8. Authorization to fill 1,480 square feet of forested non-tidal wetlands must be obtained from the Maryland Department of the Environment and any required wetland mitigation secured or fee in lieu of mitigation paid prior to building permit issuance.
9. Buffer mitigation for 9,200 square feet of Critical Area buffer impact is required at a rate of 3:1. The onsite plantings will account for 8,500 square feet of mitigation. The remaining mitigation of 19,100 square feet

Mr. Phil Edwards
1000 block Susquehanna Ave.
June 10, 2005
Page 4

or \$7,640.00 must be paid into Baltimore County's Critical Area Buffer Mitigation Fund prior to building permit issuance.

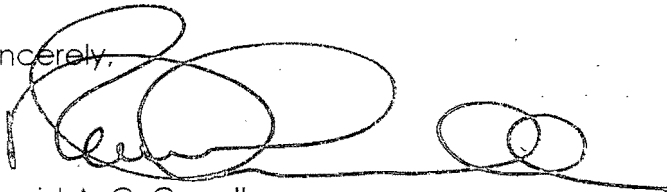
10. All other applicable Critical Area Regulations shall be strictly adhered to in the development of the homesite.

It is the intent of this Department to approve this variance subject to the above conditions. Changes in site layout may require submittal of revised plans and an amended variance request.

Please sign the statement on the next page and then return a copy of the Certificate of Publication, the revised plot plan, and the letter to this Department c/o Mr. Glenn Shaffer of Environmental Impact Review. Failure to return a signed copy of this letter and the other two items may result in delays in processing of permits or other development plans for the subject property, and/or may render this variance null and void.

If you have questions regarding this project, please contact Martha Stauss at 410-887-3980.

Sincerely,

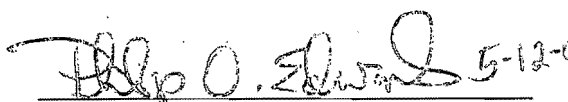


David A. C. Carroll
Director

DACC:mls

c: Ms. Lisa Hoerger, CBCA Commission

I/We have read and agree to implement the above requirements to bring my/our property into compliance with Chesapeake Bay Critical Area regulations.

	5-12-06	Philip O. Edwards	5-12-06
Owner's Signature	Date	Owner's Printed Name	Date

Marcel A. Edwards	Marcel A. Edwards
5/10/06	5/10/06

CASE NAME _____
CASE NUMBER 200-0319-A
DATE 7-28-09

[illegible]

Case No.:

Case No. 2009-0319-A

Exhibit Sheet

Petitioner/Developer

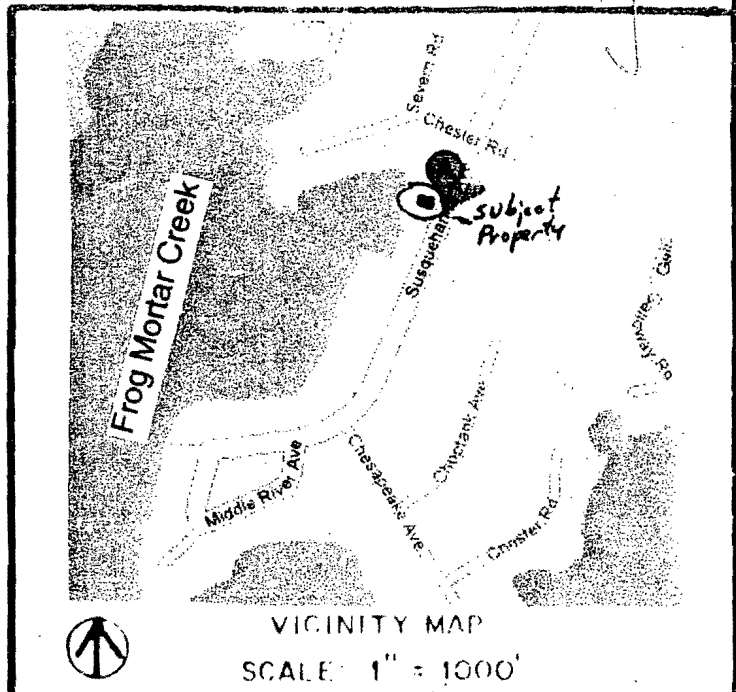
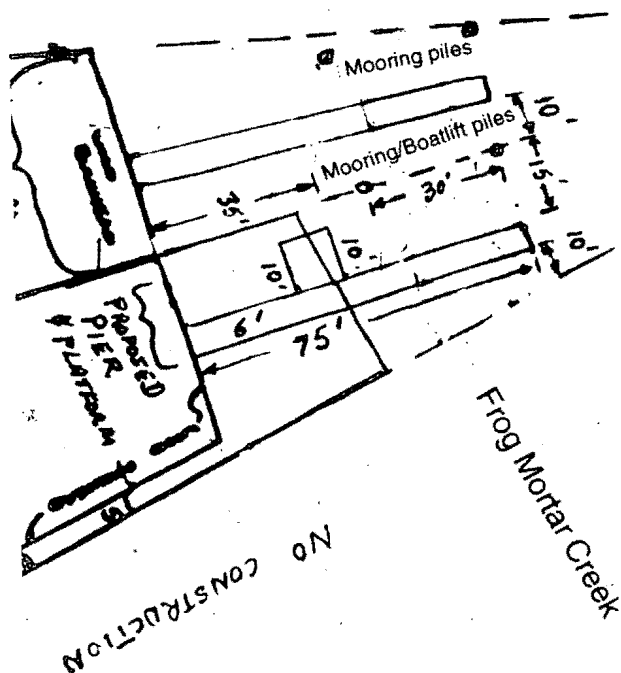
Protestant

No. 1 A+B	Site Plan Revised Site Plan	6-10-05 letter to Edwards granting Critical Area Variance to build home
No. 2	SORT Aerial Search	Site plan of Protestant's property
No. 3	Zoning Map	sign posted as wetlands not to mow
No. 4 A-C	Aerial Photography	Photos of Pet's property as it looks after marsh grown in
No. 5 A-C	Photos of property	A+B - photos of pier at 1016 Susquehanna
No. 6 A+B	A - written testimony of Pet. B - Case # 08-469-A	
No. 7		
No. 8		
No. 9		
No. 10		
No. 11		
No. 12		

FOR ZONING ☒ VARIANCE ☐ SPECIAL HEARING

SEE PAGES 5 & 6 OF THE CHECKLIST FOR ADDITIONAL REQUIRED INFORMATION

2009



LOCATION INFORMATION

ELECTION DISTRICT 15th

COUNCILMANIC DISTRICT 6th

1" = 200' SCALE MAP # 09133

ZONING DR3.5

LOT SIZE 0.6 ACRES 27,760 SQUARE FEET

	PUBLIC	PRIVATE
SEWER	☒	☐
WATER	☒	☐

	YES	NO
CHESAPEAKE BAY CRITICAL AREA	☒	☐

100 YEAR FLOOD PLAIN	☒	☐
----------------------	-------------------------------------	--------------------------

HISTORIC PROPERTY/ BUILDING	☐	☒
-----------------------------	--------------------------	-------------------------------------

PRIOR ZONING HEARING NONE

PETITIONER'S

EXHIBIT NO.

1A

SCALE OF DRAWING: 1" = 40'

ZONING OFFICE USE ONLY
REVIEWED BY ITEM # CASE #

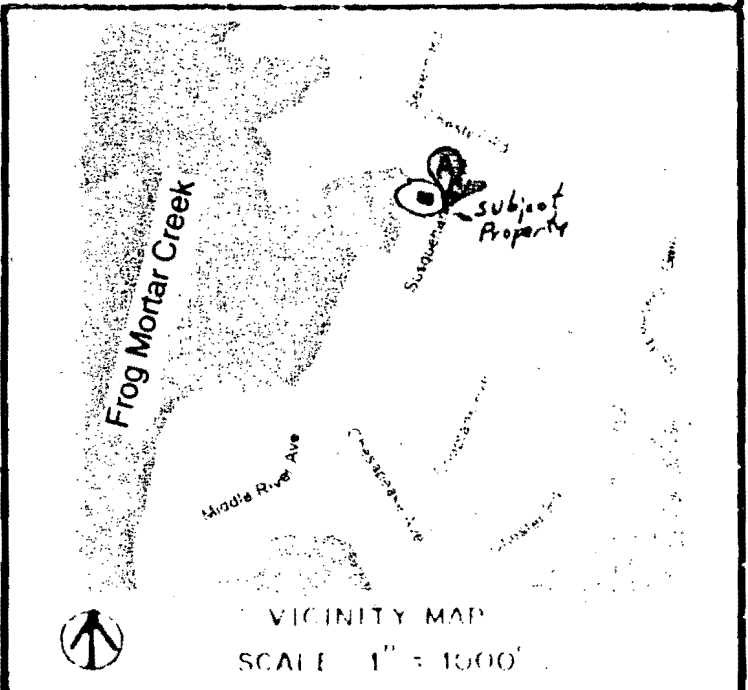
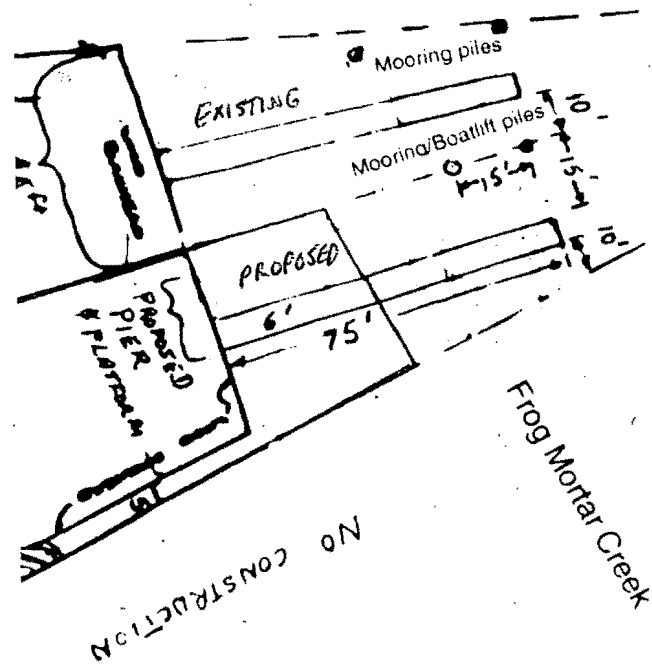
JF

319

IN FOR ZONING ☒ VARIANCE | SPECIAL HEARING

SEE VARIANCE APPLICATION FOR ADDITIONAL REQUIRED INFORMATION

11 #
4, 2009
7, 2009 DMF



LOCATION INFORMATION

ELECTION DISTRICT 15th

COUNCILMANIC DISTRICT 6th

1" = 200' SCALE MAP #

ZONING DR.3.5

LOT SIZE 0.6 27,760
ACREAGE SQUARE FEET

	PUBLIC	PRIVATE
SEWER	☒	☐
WATER	☒	☐

	YES	NO
CHESAPEAKE BAY CRITICAL AREA	☒	☐

100 YEAR FLOOD PLAIN	☒	☐
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HISTORIC PROPERTY BUILDING	☐	☐
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PRIOR ZONING HEARING

PETITIONER'S

EXHIBIT NO.

1B

SCALE OF DRAWING 1" = 40'

ZONING OFFICE USE ONLY
REVIEWED BY ITEM # CASE #



Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search (2007 vw6.3)

[Go Back](#)
[View Map](#)
[New Search](#)

Account Identifier: District - 15 Account Number - 1519270611

Owner Information

Owner Name: EDWARDS PHILIP O(DEC)
 EDWARDS MURIEL A
Use: RESIDENTIAL
Principal Residence: YES
Mailing Address: 1012 SUSQUEHANNA AVE
 BALTIMORE MD 21220-4314
Deed Reference: 1) / 6906/ 483
 2)

Location & Structure Information

Premises Address 1012 SUSQUEHANNA AVE
Legal Description WATERFRONT LONG BEACH ESTATES

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:	C
98	4	203					13	3	Plat Ref:	4/ 131

Special Tax Areas
 Town
 Ad Valorem
 Tax Class

Primary Structure Built	Enclosed Area	Property Land Area	County Use
2007	2,744 SF	27,760.00 SF	34

Stories	Basement	Type	Exterior
2	YES	STANDARD UNIT	SIDING

Value Information

	Base Value	Value As Of 01/01/2009	Phase-in Assessments As Of 07/01/2008	As Of 07/01/2009
Land	337,920	325,940		
Improvements:	387,780	605,860		
Total:	725,700	931,800	725,700	794,400
Preferential Land:	0	0	0	0

Transfer Information

Seller:	Date:	Price:
SENASACK FLORENCE M	04/30/1985	\$0
Type: NOT ARMS-LENGTH	Deed1: / 6906/ 483	Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:

Exemption Information

Partial Exempt Assessments	Class	07/01/2008	07/01/2009
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO

Exempt Class:

Special Tax Recapture:

* NONE *

PETITIONER'S

EXHIBIT NO. 2

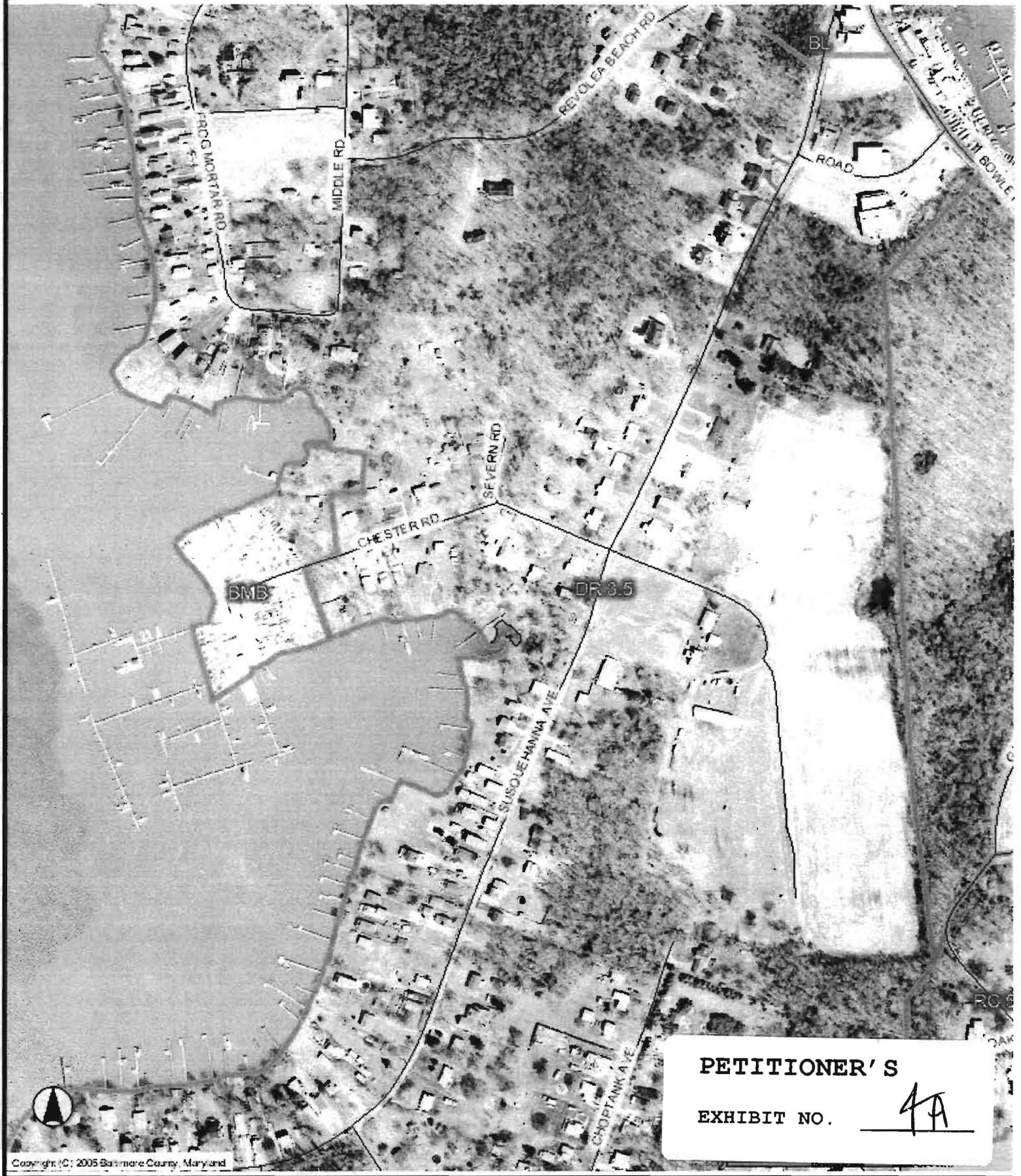


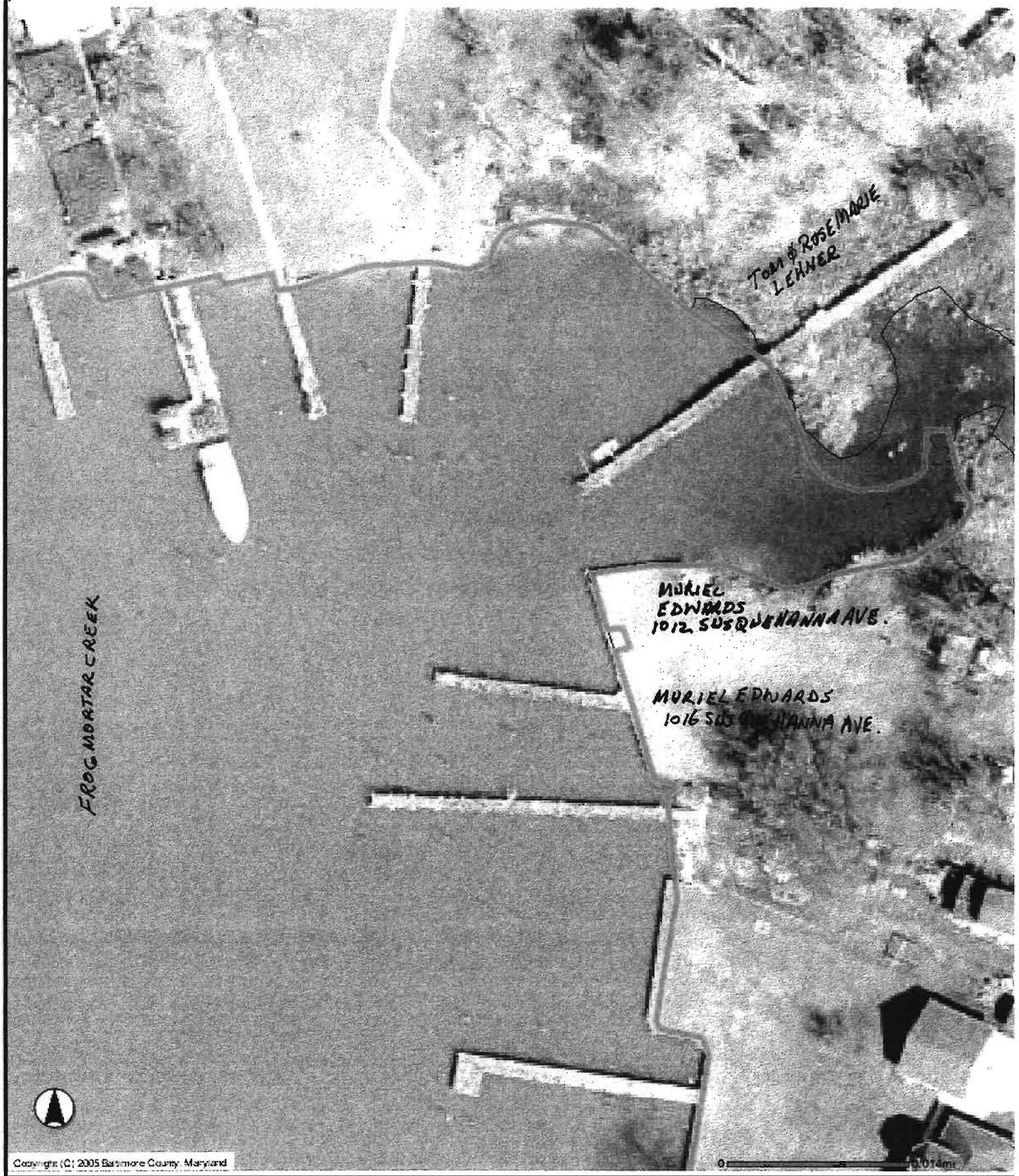
PETITIONER'S

EXHIBIT NO.

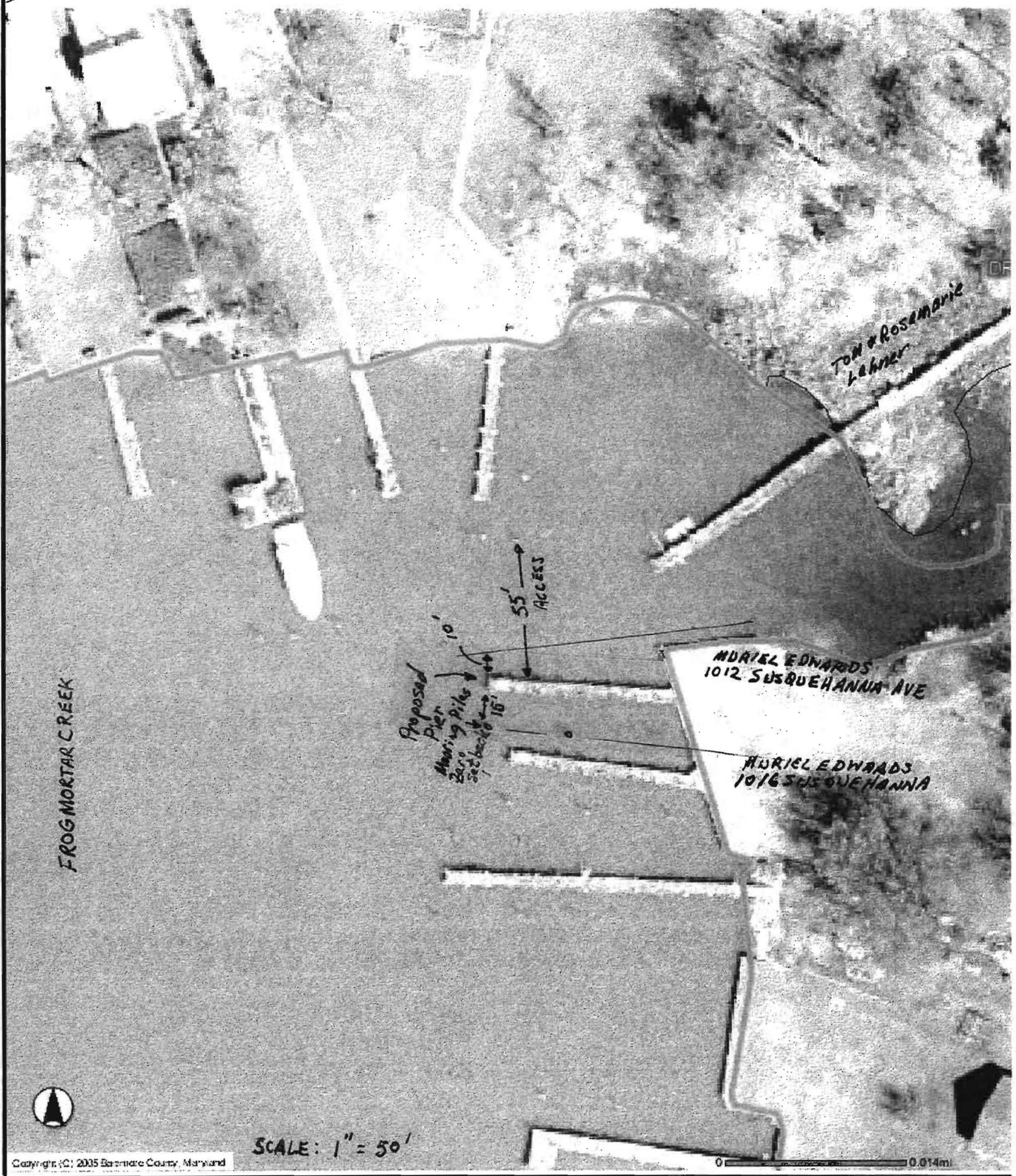
3

Baltimore County - My Neighborhood

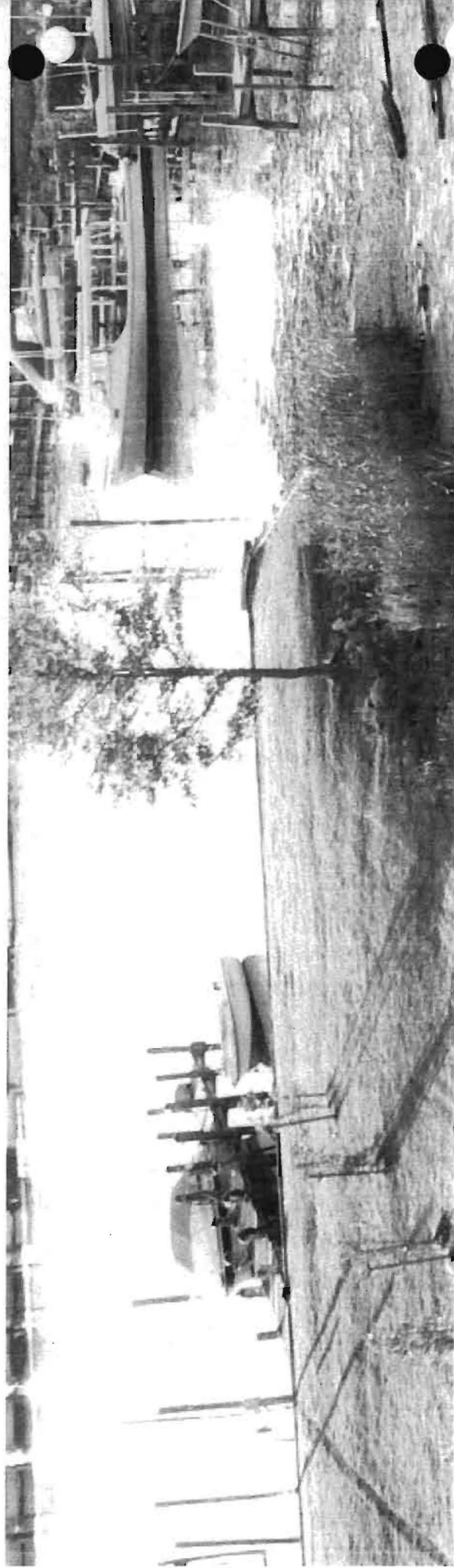




Baltimore County - My Neighborhood



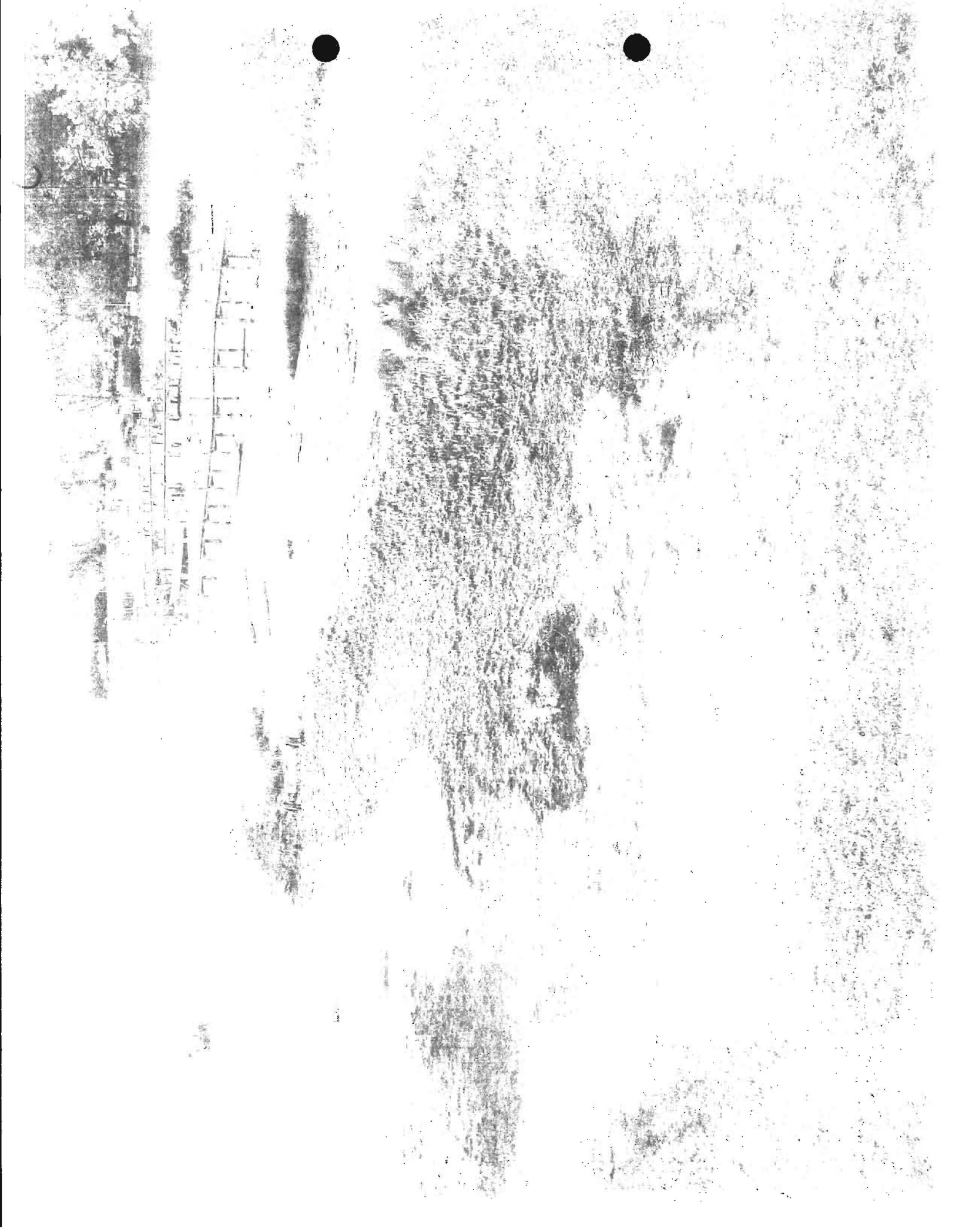
A



PETITIONER'S

EXHIBIT NO. 5A-C





Muriel A. Edwards
1016 Susquehanna Ave.
Middle River, Maryland 21220

July 25, 2009

Re: Muriel A. Edwards
1012 Susquehanna Ave.
Middle River, Maryland 21220
Permit B717891

Subj: **Consent to Mooring Pile Installation**

TO WHOM IT MAY CONCERN:

I am the owner of both 1012 and 1016 Susquehanna Ave. I desire to have two (2) mooring piles installed on the property line between these two addresses to create a boat slip for 1012 Susquehanna Ave. Both properties have property lines that converge towards the water. This unique configuration limits the water frontage and requires the mooring piles to be located on the property line between these two addresses in order to accommodate a 15' wide slip and corresponding boat lift. Locating the mooring piles in this manner will allow the side set back with the adjoining neighbor property line, Thomas and Rosemarie Lehner 1004 Susquehanna Ave., to be maintained at 10' as required by Section 417.4 of the Baltimore County Zoning Regulations.

Specifically, that after installation the setback between the divisional property line of my two properties and the mooring piles may be as little as 0' in lieu of 10'. The proposed installation will not create a hardship for me or any other neighbor.

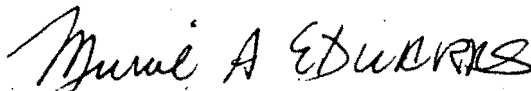
Simply put, narrow lot widths with property lines converging on the water like these dictate that the 10' setback be relaxed. In addition, a boat merely tied alongside the pier without the assistance of mooring piles would easily become damaged.

The granting of side set backs of less than 10' has occurred in many instances. The most recent that I'm aware of was for mooring piles side set back of less than ten feet for

John & Karen Michel
3735 Clarks Point Road
Bowley's Quarters, Maryland 21220
Case No. 08-469-A

For all of the above reasons I do not object to the request for a variance and permit, or to the installation of the two (2) mooring piles.

Respectfully,



Muriel A. Edwards

PETITIONER'S

EXHIBIT NO.

6A

IN RE: **PETITION FOR VARIANCE**
S/S of Clarks Point Road, 1000' E of
Bowleys Quarters Road
(3735 Clarks Point Road)
15th Election District
6th Council District

John H. Michel, et ux
Petitioners

BEFORE THE

ZONING COMMISSIONER

OF

BALTIMORE COUNTY

Case No. 08-469-A

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Variance filed by the owners of the subject property, John H. Michel, and his wife, Karen A. Michel. The Petitioners request a variance from Section 417.4 of the Baltimore County Zoning Regulations (B.C.Z.R.) to allow three (3) mooring piles to be driven with a setback of 5.5 feet from the established divisional property line in lieu of the required 10 feet to create a boat slip. The request originated in the form of a Petition for Administrative Variance, filed on April 8, 2008, which included the Petition, a notarized Affidavit in Support of Administrative Variance, a zoning description, a zoning/site map, several photographs of the Michel's existing pier, and a March 22, 2008 letter in support of the Michel's request provided by the adjacent/impacted neighbors, August and Rosslee Dixon. The subject property and requested relief are more particularly described on a site drawing that was likewise submitted with the original petition. All of the aforementioned documents form a part of the record and have been accepted into evidence.

Notice of the Petition for Administrative Variance was properly posted. No objections or requests for hearing were received from neighbors or other interested parties. Nonetheless, the administrative variance procedure was superseded by the authority of the Deputy Zoning Commissioner who required a public hearing. The subject property was reposted with notice of the public hearing which occurred on June 6, 2008. Appearing at the hearing in support of the request was John H. Michel, Esquire on behalf of himself and his wife as the

PETITIONER'S

EXHIBIT NO.

6B

property owners. No protesting parties or other interested persons were present at the hearing. All Zoning Advisory Committee (ZAC) representatives (Bureau of Development Plans Review, State Highway Administration [SHA], Office of Planning, Department of Environmental Protection and Resource Management [DEPRM], etc.) responded to the petition prior to the June 6th hearing with no adverse input regarding the Michel's request. Also introduced and accepted into evidence was a copy of the Joint Federal and State Permits/Authorizations already issued by the Tidal Wetlands Division of the Maryland Department of Environment (MDE) for the subject mooring piles; specifically MDE Authorization No. 08-NF-1320 (an exemption), and MDSPGP Authorization No. 200861849 from the Army Corps of Engineers.

The testimony and evidence offered and accepted during the hearing disclosed that the subject property is a narrow rectangular shaped (50' wide by approximately 450' deep) waterfront lot, with parallel side boundaries, located with frontage on Seneca Creek and the south side of Clarks Point Road in Bowleys Quarters. The property contains a gross area of .49 acres, more or less, zoned D.R.5.5 and is improved with a single-family dwelling and a detached garage. The Petitioners have owned and resided on the property since August 2004.

At the time of their purchase an existing fixed pier extended approximately 58 feet from a wood bulkhead into Seneca Creek, with a floating pier extending an additional 30 to 40 feet further into the creek. Soon after acquiring the property the Michel's recognized the floating pier section as being poorly constructed and perhaps a hazard to the community. They demolished and disposed of it in early 2005. The floating pier was subsequently replaced with a fixed pier extension approximately 42 feet long in early November 2005. The fixed pier extension was properly permitted and installed under Building Permit No. B611561.

Mr. and Mrs. Michel intended to install two of the three subject mooring piles simultaneously with the new fixed pier extension in late 2005. During that time, however, DEPRM was coordinating the early stages of a dredging project for Seneca Creek. As a part of the County's project the Petitioners opted to have and pay for a dredged spur (No. 33) alongside the new fixed pier extension at a cost of \$14,475. The spur, a standard twenty (20) feet in width,

would not be dredged until long after the new fixed pier extension was installed. Therefore, and at the suggestion of DEPRM personnel (Candace Croswell & David Riter), the Michel's deferred having the new mooring piles installed. This was because the two new piles, along with one existing pile, would block the dredging contractor's equipment and prohibit the spur dredging. Had the new piles been installed at the same time as the new fixed pier extension they would have necessarily been removed (and not reinstalled) by the County's dredging contractor during the spur work. Mr. Michel testified and the photographs submitted into evidence indicate that one of the three requested piles is in fact a replacement for a previously existing pile that the dredging contractor necessarily removed in order to properly dredge the spur in January 2008. Mr. Michel also testified that installation of the subject piles appeared on the drawing submitted to obtain the fixed pier extension building permit, as well as the drawings submitted in relation to the spur dredging project, indicated as "piles by owner post-dredging."

In support of the request, testimony indicated that due to the unique configuration of the property, pre-existing location of piers and pilings, and the limited water frontage of the subject and adjacent lots, it is not possible to utilize the existing fixed pier and recently dredged spur as a boat slip without relaxing the 10 feet setback requirement for installation of the two (2) new and one (1) replacement piles. In other words, strict conformance with the 10 feet setback requirement would result in a practical difficulty, as the slip is too narrow to allow its use for a boat of the size and width traditionally moored on Seneca Creek. Additionally, the dredging project itself was intended to ensure such a use and allow for continued navigation in the area.

Notably, the site drawing indicates that the adjacent/impacted neighbors (the Dixons) existing pier likewise protrudes several feet into their 10 feet setback. Even so Mr. Michel testified, as indicated on the site plan (Petitioner's Exhibit 1) that a minimum 12 foot wide passageway would still remain between his and the Dixon's mooring piles and piers as proposed, thereby maintaining sufficient access for boats capable of floating in the shallow water inland of the proposed piles. In short, access to the Michel's and Dixon's adjoining shoreline/wood bulkheads will not be impeded in any practical way by the proposed mooring piles. In fact, in

their March 22, 2008 letter consenting to the installation of the proposed piles, the Dixons acknowledge that *"the proposed installation will not create a hardship for us or any other neighbor."* A copy of the Dixon's letter appears in the case file as Petitioners' Exhibit 2. It is therefore apparent that the location of the Petitioners' proposed mooring piles will not interfere with their neighbors' use and enjoyment of their respective piers or shorelines, or impede access thereto.

Accordingly, I am persuaded after due consideration of the testimony and evidence presented to grant the Petitioners' requested variance. The variance can be granted in strict harmony with the spirit and intent of waterfront construction regulations, and in such a manner as to avoid any injury to the public health, safety and general welfare. There will be no change to the character of the neighborhood. Mooring piles to create a boat slip are a reasonable accessory to waterfront property. Relief is necessitated given the unique configuration of the property, its narrow frontage on the water, and the location of existing piers in the vicinity. As indicated above, I find that strict compliance with the regulations would be unduly burdensome and would result in a practical difficulty and unreasonable hardship for the Petitioners. There were no adverse comments submitted by any County reviewing agency, a joint State and Federal permit has already been issued, and the neighbors on the affected side have no objections. Thus, I am persuaded that relief can be granted without detrimental impact to adjacent properties or the surrounding locale.

Pursuant to the advertisement, posting of the property and public hearing on this Petition held, and for the reasons set forth above, the relief requested shall be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 6th day of June 2008 that the Petition for Variance seeking relief from Section 417.4 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit two (2) new and one (1) replacement mooring piles to be driven with a 5.5 feet setback from the established divisional property line in lieu of the required 10 feet, in accordance with Petitioners' Exhibit 1, be and hereby is GRANTED, subject to the following restrictions:

- 1) The Petitioners may apply for their building/mooring pile permit and be granted same upon receipt of this Order; however, the Petitioners are hereby made aware that proceeding at this time is at their own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.
- 2) Compliance with Chesapeake Bay Critical Areas regulations and all other appropriate environmental, floodplain and B.O.C.A. regulations relative to the protection of water quality, streams, wetlands and floodplains. See attached ZAC comments from the Department of Environmental Protection and Resource Management (DEPRM), if applicable.
- 3) When applying for any permits, the site plan filed must reference this case and set forth and address the restrictions of this Order.

SIGNED
WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

401 Bosley Avenue, Suite 416
Towson, Maryland 21204



James T. Smith, Jr., County Executive

PROTESTANT' S

EXHIBIT NO. 1

June 10, 2005

Mr. Phil Edwards
1016 Susquehanna Avenue
Baltimore, MD 21220

Re: Edwards Property
1000 block Susquehanna Ave.
Critical Area Administrative Variance

Dear Mr. Edwards:

The Department of Environmental Protection and Resource Management (DEPRM) has received your variance request to construct a single family home on an existing lot of record impacting 9,200 square feet of Chesapeake Bay Critical Area buffer, 1,480 square feet of non-tidal wetlands, and 5,890 square feet of non-tidal wetland buffer. The Director of DEPRM may grant a variance to the Chesapeake Bay Critical Area regulations in accordance with regulations adopted by the Critical Area Commission concerning variances as set forth in COMAR 27.01.11. There are five (5) criteria listed in COMAR 27.01.11 that shall be used to evaluate the variance request. All five of the criteria must be met in order to approve the variance.

The first criterion requires that special conditions exist that are peculiar to the land or structure, and that literal enforcement of the regulations would result in unwarranted hardship. The location of the lot relative to tidal waters causes almost the entire lot to fall within the 100-foot buffer from tidal water. The only portion of the lot outside of the Critical Area buffer is a small sliver of land immediately adjacent to Susquehanna Avenue. A small non-tidal wetland and associated 25 foot buffer further expand the Critical Area buffer. Therefore, special conditions exist that are peculiar to the land such that a literal enforcement would result in unwarranted hardship; consequently, this criterion is met.

The second criterion requires that a literal enforcement of the regulations would deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area. A literal enforcement would require that the applicant not build on this single lot of record. Other similar properties have been granted variances to encroach into the Critical Area Easement provided all variance criteria were met. Therefore, a literal enforcement of the regulations

would preclude the applicant of rights commonly enjoyed by similar properties in the Critical Area and this criterion is met.

The third criterion requires that granting of a variance will not confer upon an applicant any special privilege that would be denied to other lands or structures within the Critical Area. Similar properties have been granted variances to construct a dwelling within the Critical Area buffer and non-tidal wetlands² where all variance criteria could be met. Therefore, granting a variance to impact these buffers will not confer upon the applicant any special privileges that would be denied to other lands or structures in the Critical Area. Consequently, this criterion is met.

The fourth criterion requires that a variance is not based upon conditions or circumstances which are the result of actions by the applicant, nor does the request arise from any condition relating to land or building use, either permitted or non-conforming, on any neighboring property. This variance does not arise from any condition or circumstances that are the result of actions by the applicant or from any condition or land use on any neighboring properties. In fact, the actions of the applicant to mitigate for the proposed impacts will provide a better functioning buffer to the tidal wetlands than the current lawn. Therefore, this criterion is met.

✓ The fifth criterion requires that granting of the variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area, and that the granting of the variance will be in harmony with the general spirit and intent of the Critical Area regulations. The proposed native mixed tree and shrub plantings will enhance this buffer, which has historically been mowed. Therefore, granting this variance will not adversely impact water quality, fish, wildlife or plant habitat within the Critical Area, and this criterion is met.

Based upon our review, this Department finds that the first four of the above criteria have been met, and that the fifth criterion can be met by implementing the measures prescribed below. Therefore, the requested variance is hereby approved in accordance with Section 33-2-205 of the Baltimore County Code with the following conditions:

1. The attached "Notice of Granting of Variance" must be published in The East County Times or The Avenue. Final variance approval cannot be granted until fifteen (15) calendar days after the notice has been published. A copy of the Certificate of Publication for the advertisement issued by the newspaper, or a copy of the advertisement from the paper must be submitted to this office prior to

Mr. Phil Edwards
1000 block Susquehanna Ave.
June 10, 2005
Page 4

or \$7,640.00 must be paid into Baltimore County's Critical Area Buffer Mitigation Fund prior to building permit issuance.

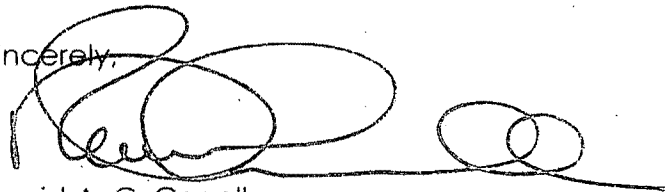
10. All other applicable Critical Area Regulations shall be strictly adhered to in the development of the homesite.

It is the intent of this Department to approve this variance subject to the above conditions. Changes in site layout may require submittal of revised plans and an amended variance request.

Please sign the statement on the next page and then return a copy of the Certificate of Publication, the revised plot plan, and the letter to this Department c/o Mr. Glenn Shaffer of Environmental Impact Review. Failure to return a signed copy of this letter and the other two items may result in delays in processing of permits or other development plans for the subject property, and/or may render this variance null and void.

If you have questions regarding this project, please contact Martha Stauss at 410-887-3980.

Sincerely,



David A. C. Carroll
Director

DACC:mls

c: Ms. Lisa Hoerger, CBCA Commission

I/We have read and agree to implement the above requirements to bring my/our property into compliance with Chesapeake Bay Critical Area regulations.

Philip O. Edwards 5-12-06
Owner's Signature Date

Philip O. Edwards 5-12-06
Owner's Printed Name Date

Muriel A Edwards

5/10/06

MURIEL A EDWARDS

5/12/06

FROG MORTAR CREEK

N39°07'31"W
70.03'

N31°12'44"E

Approx. Location of Wood Walk & Pier

123.66'

281.42'

10' DRAINAGE & UTILITY EASEMENT

*
ZONE A10

*
ZONE B

1004 SUSQUEHANNA AVENUE
LOT 12-A RESUBDIVISION OF LOT 12
PLAN "C" LONG BEACH ESTATES 45/128
BALTIMORE COUNTY MARYLAND

31°00'55"E 016.65'

S06°31'40"W
30.30'

10' REVERSIBLE SLOPE EASEMENT

233.82'

12

16'±

S78°12'43"W

20'
1004 25' FIRM
10' CHIM

STONE

BAY

MAC

R=649.26'

DRIVE

A=148.89'

S06°26'42"E

85.09'

HIGHWAY WIDENING AREA

EDGE PAVING

11.78'

S06°31'40"W

100.00'

R=385.12'

8.27'

* NOTE: LOCATION OF FLOOD ZONES
SCALED FROM F.E.M.A. MAP

The plat is of benefit to a consumer only insofar as it is required by a lender or a title insurance company or its agent in connection with contemplated transfer, financing or refinancing. The plat is not to be relied upon for the establishment or location of fences, garages, buildings, or other existing or future improvements. The plat does not provide for the accurate identification of property boundary lines, but such identification may not be required for the transfer of title or securing financing or refinancing.

THE LOT SHOWN HEREON IS IN FLOOD ZONE A10 & B PER F.E.M.A.
FLOOD INSURANCE RATE MAP PANEL # 240010-0435B

SUSQUEHANNA AVENUE
40' R.W.

PROTESTANT'S

EXHIBIT NO.

2



single sign post wetland

PROTESTANT'S
EXHIBIT NO. 3

A



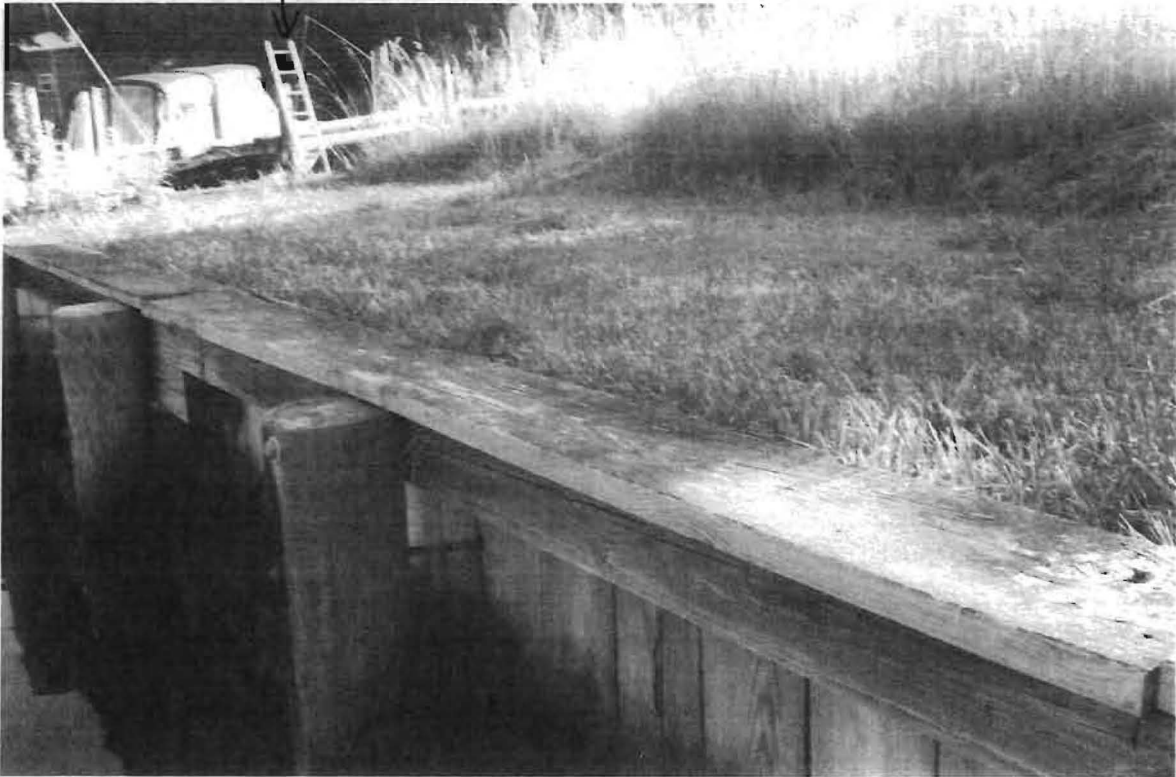
B



PROTESTANT' S

EXHIBIT NO. 4A-D

Dock at 1004 Susquehanna Ave,



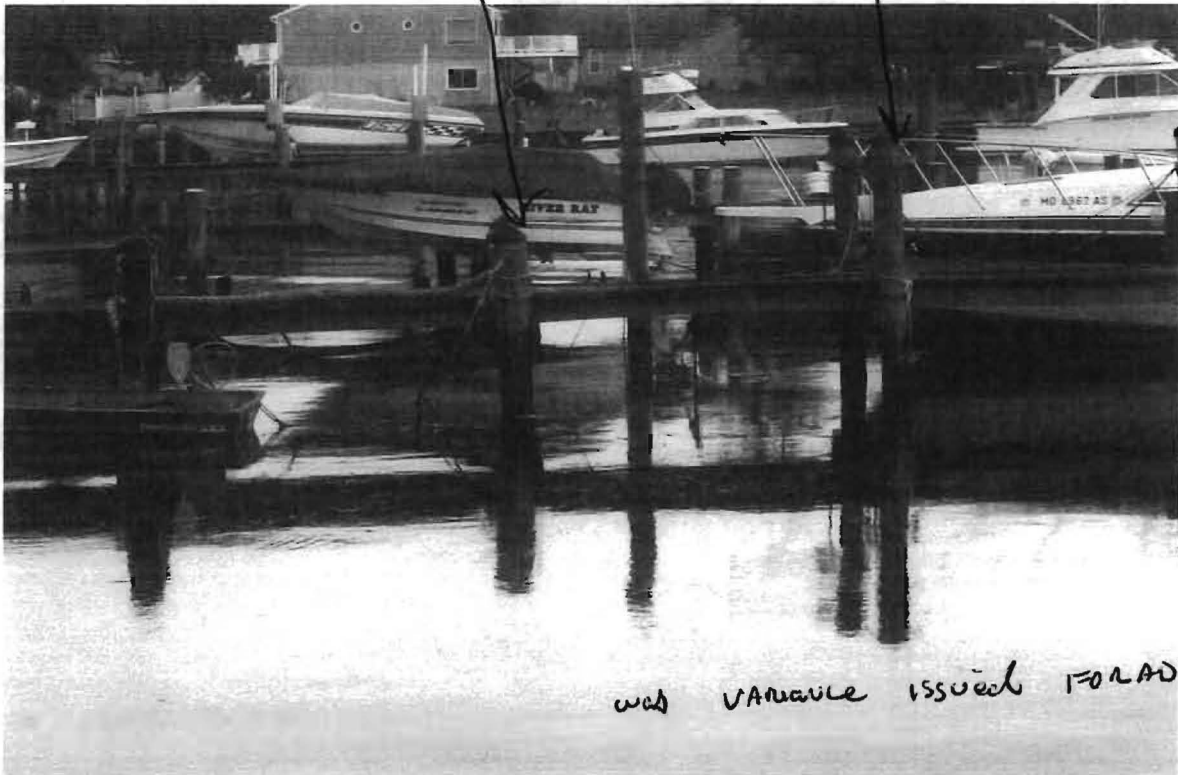
C



D

Cutting of wetland Buffer no signs posted.

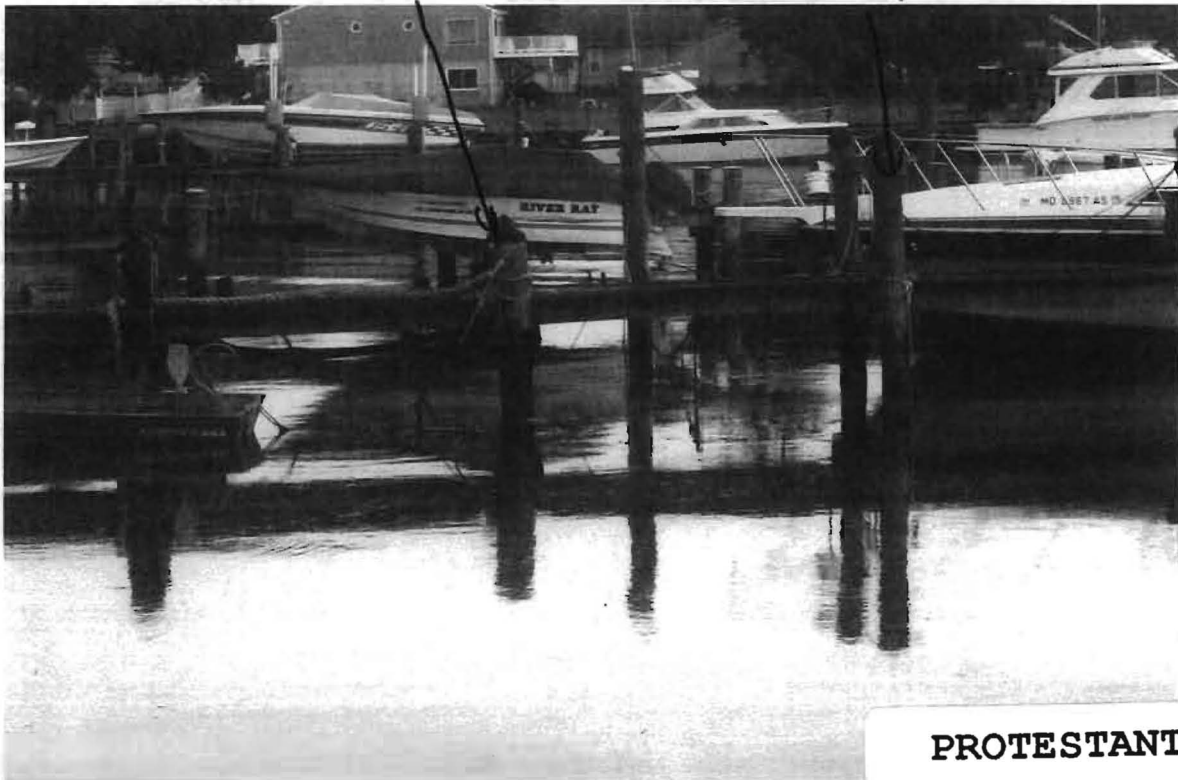
Pier located at 1016 Susquehanna Ave



was variance issued for addition?

END of old dock

START of new dock



PROTESTANT'S

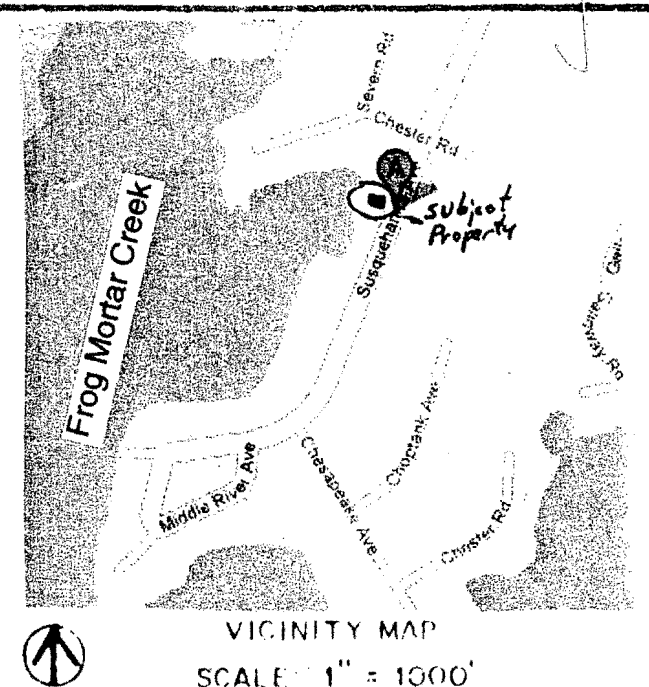
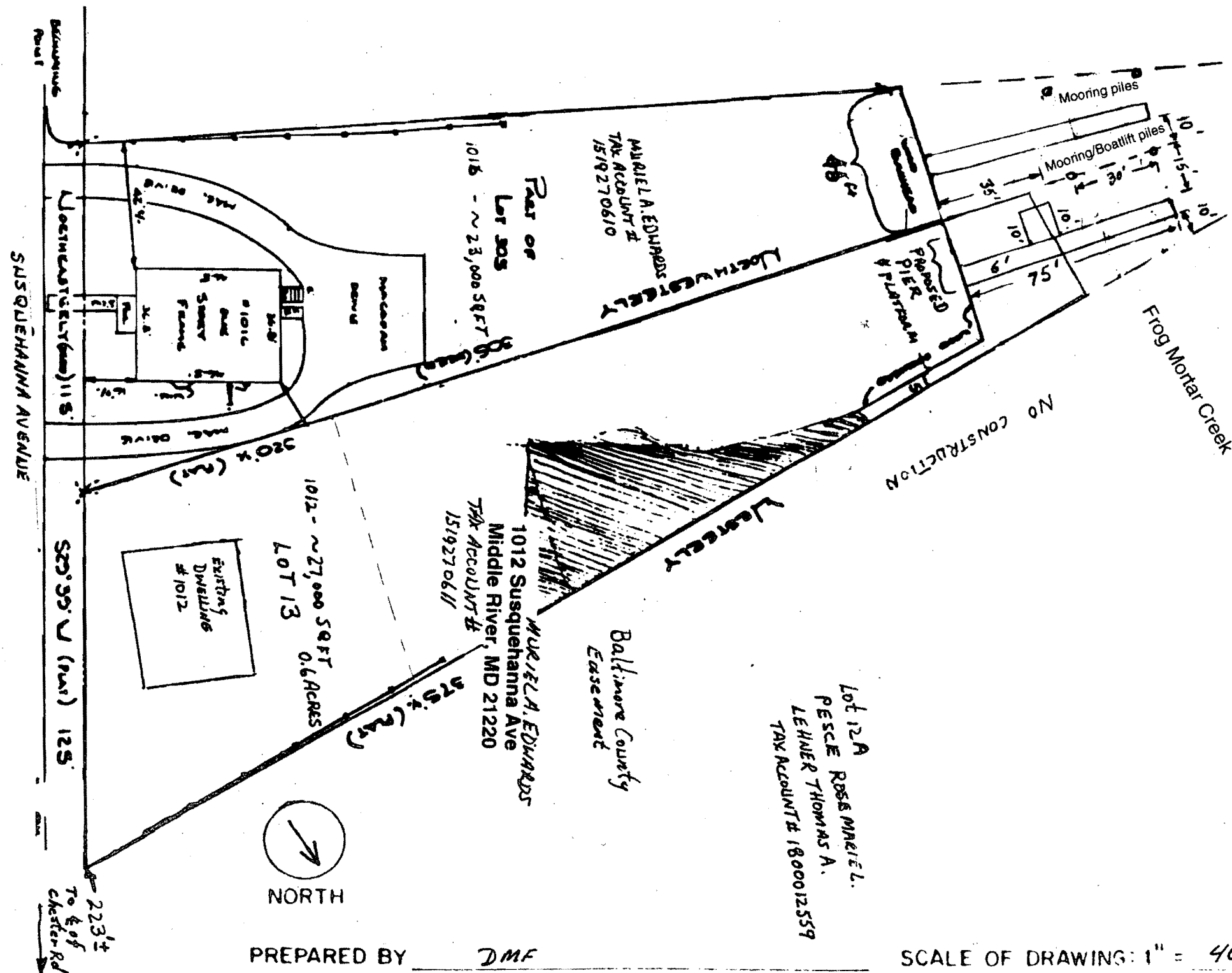
EXHIBIT NO. 5A+B

57

SEE PAGES 5 & 6 OF THE CHECKLIST FOR ADDITIONAL REQUIRED INFORMATION

PLAT BOOK # 4 FOLIO # 131 LOT # 13 SECTION #

OWNER MURIEL A. EDWARDS JUNE 4, 2009



ELECTION DISTRICT 15th
COUNCILMANIC DISTRICT 6th
1"=200' SCALE MAP # 091B3
ZONING DR3.5

LOT SIZE	0.6	27,760
	ACREAGE	SQUARE FEET

	PUBLIC	PRIVATE
SEWER	☒	☐
WATER	☒	☐

	YES	NO
CHESAPEAKE BAY CRITICAL AREA	☒	☐
100 YEAR FLOOD PLAIN	☒	☐
HISTORIC PROPERTY/ BUILDING	☐	☒
PRIOR ZONING HEARING	None	

ZONING OFFICE USE ONLY
REVIEWED BY _____ ITEM # _____ CASE # _____

57

319