

<b>IN RE: PETITION FOR ADMIN. VARIANCE</b>	*	BEFORE THE
W side of Susquehanna Avenue; 223 feet S		
of the c/l of Chester Road	*	DEPUTY ZONING
15 <sup>th</sup> Election District		
6 <sup>th</sup> Councilmanic District	*	COMMISSIONER
(1012 Susquehanna Avenue)		
	*	FOR BALTIMORE COUNTY
<b>Muriel Edwards</b>		
<i>Petitioner</i>	*	<b>Case No. 2009-0319-A</b>

\* \* \* \* \*

**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

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

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

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

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

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.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County, this 13<sup>th</sup> 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.

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SIGNED  
THOMAS H. BOSTWICK  
Deputy Zoning Commissioner  
for Baltimore County

THB:pz