

The Dorchester County Board of Appeals met in regular session on Thursday, November 15, 2018 in Room 110 of the County Office Building at 7:00 PM. Present were, Catherine McCulley, Chair, Elizabeth Hill, Vice Chair, Lin Spicer, Mike Starling, Walt Gunby, Attorney and Rodney Banks, Deputy Director. Absent: Cindy Smith and Steve Dodd, Director

An introduction was made by Chairperson McCulley, explaining the procedures of this meeting to the audience. She then asked Mr. Banks to read the first case.

**Case #2636- James Tucker, applicant
Roman Coale Et al (owners of property subject to appeal)**

Decision on allegation of error. Applicant believes that Chapter 155-50 Supplementary Use Regulations II, Waterfront structures which was relied on to establish the lateral line and subsequent pier layout was incorrectly evaluated with respect to the two properties. Property located at 3810 West Haven Court, East New Market, MD 21631 containing 4.48 acres. Zoned RR- Rural Residential District.

James A. Tucker, 3808 West Haven Court, East New Market, MD, and any other person who would be testifying in this case, were sworn in.

Mr. Banks read the case and all pertinent information into the record.

Mr. Tucker advised he received a notice in early 2016 advising that a pier was to be constructed at 3810 West Haven Court. Attached to the notice was a drawing showing the pier parallel to the property line. He read Chapter 155-50, Supplementary Use Regulation II, Waterfront structures, (2) (e), how divisional lines are established. He stated the original drawing was done this way and he had no objection to this drawing. He noted that nowhere in the code did it state that the pier should be perpendicular to the shoreline.

Mr. Tucker noted that on October 10, 2018, work began on the pier. Mr. Tucker had a discussion with the workers when he saw that the pilings were crossing his property line in the water. He was given the name and phone number for Fink, Whitten & Associates. After contacting the company, he received an email from Brandon Wingate showing how the lateral line was computed between the properties. The email also stated that they used bisecting angles.

Mr. Tucker obtained a copy of the permit from the Planning Office on October 17, 2018. Mr. Tucker stated that attached to the permit was a revised drawing of the pier location. He believes the pier is now over his property line.

Mr. Spicer asked Mr. Tucker what his exact issue is with the pier as it is now. Mr. Tucker advised that it is blocking his waterfront view; noting that Mr. Coale's pier is being built 2 ft. higher than his pier.

Ms. McCulley advised Mr. Tucker that the height of the pier is not under the purview of the Board of Appeals. Ms. McCulley asked Mr. Tucker to state what Mr.

Coale's pier construction has done that is in error of the zoning code. Mr. Tucker stated the property line should have been the divisional line, not the lateral line. Ms. McCulley asked if he meant the property line dividing the two properties. Mr. Tucker stated yes. Again he stated that the original drawing (dated December, 2015) is very different from where the pier has been placed.

Ryan Showalter, Attorney for the Coales, asked Mr. Tucker if he had appealed the MDE permit, issued in 2016. Mr. Tucker advised he knew nothing about this permit until 2018 because it was not posted. Mr. Showalter then asked, if the pier had been constructed in accordance with the 2015 drawing, Mr. Tucker would have no objection to its location. Mr. Tucker stated he would not.

Mr. Showalter called Steve Whitten, Professional Land Surveyor, Fink, Whitten & Associates, LLC. Mr. Showalter entered the West Haven subdivision plat, plc 37, page 35, into record as Applicant's Exhibit 1. Mr. Whitten advised this was the plat used to calculate the location of the pier. Mr. Showalter entered into record Applicant's Exhibit 2, a permit that was issued March 9, 2016 by Maryland Department of the Environment. Mr. Whitten explained that this provides the riparian land owner a license through the State of Maryland to construct a water dependent facility such as a pier. Mr. Showalter noted that the December, 2015 drawing is attached to this permit. Mr. Showalter entered into record Applicant's Exhibit 3, excerpts from the Zoning Ordinance. Mr. Showalter read from §155.50, II, Waterfront Structures, subsection (e) describing how divisional lines between lots in the water are established within the County. He noted two methods for determining this and, asked Mr. Whitten to explain the differences.

Mr. Whitten described the bisecting angle method using an aerial of the properties. Ms. McCulley asked Mr. Whitten to explain the difference between lateral lines and base lines. Mr. Whitten advised the lateral line is the line that projects into the water; the base line is used for computation of the lateral line. Mr. Showalter advised that the lateral line is the same as the divisional line. It was noted that the lateral line is not a property line but is used to calculate setbacks to allocate the waterway area. Mr. Showalter entered Applicant's Exhibit 4, a divisional property line drawing. Using Applicant's Exhibit 4, Mr. Whitten discussed how the bisected angle is determined using the calculations for an irregular shoreline. Mr. Showalter noted the line is perpendicular to the shoreline, not in line with the property lines. Mr. Whitten then used the calculations for a straight shoreline, as Mr. Tucker suggested. Mr. Whitten noted that this method would still result in basically the same calculations as the first method used. Mr. Showalter then read from the zoning code, "where it is practical to do so, the property boundaries shall be extended as a straight line into the water". Mr. Whitten explained where this application would be used, such as a small property that has been bulkheaded or a property line and shoreline that make almost a 90° angle. Mr. Showalter entered into record Applicant's exhibit 5, a site plan showing the location of the pier per MDE license for land of Roman and Christine Coale, done by Fink, Whitten & Associates. Mr. Whitten spoke briefly about this exhibit. Mr. Showalter passed out Applicant's Exhibit 6, an 11 x 17 aerial of the property and as-built for the Coale's pier and pilings. Mr. Whitten noted the 25 ft. setback required by the County. Mr. Showalter then handed out Applicant's Exhibit 7, the same aerial as #6 but with a transparency of the December, 2015 drawing placed over it. Mr. Showalter noted that Mr. Coale's pier is further away from the 25 ft. setback than the MDE approved drawing. Mr. Showalter

entered into record Applicant's Exhibit 8, an email sent by Mr. Dodd on October 12, 2018, advising the pier was constructed as proposed and the lateral line calculations were correct.

Mr. Showalter submitted Applicant's Exhibit 9, an email dated October 23, 2018, from Deborah Hinkle, MDE, referencing a compliance inspection report performed by MDE on the subject pier advising the project was found to be in compliance.

Mr. Starling asked if there was documentation concerning posting of the permit. Mr. Whitten advised that notice is given to adjoining land owners by MDE when the permit is applied for and there is a two week time period to voice concern about the project. After the state and federal permits are issued to the applicant, they must apply for a county permit. He noted the state and federal permits are good for three years; the county permit is good for one year.

Mr. Tucker asked why the County permit was not posted on the property. Mr. Banks stated that this is a zoning permit rather than a building permit. Zoning permits are not required to be posted on the property. Mr. Spicer asked Mr. Tucker if he had been notified about the proposed pier. Mr. Tucker stated yes.

Mr. Showalter asked Roman Coale, 3501 Indian Creek Rd., East New Market, MD, to come forward and speak about the pier construction. Mr. Showalter asked Mr. Coale if he had made any adjustments to the location of the pier. Mr. Coale stated the pier was moved an additional 25 ft. from the required 25 ft. setback.

Ms. McCulley asked Mr. Tucker if he had closing statements. Mr. Tucker advised that he still believes the shoreline is straight and that the property lines should have been used to determine the location of the pier. He also stated that he could find no requirement that the pier should be perpendicular to the shoreline.

Mr. Showalter agreed there is no requirement that the pier be perpendicular to the shoreline, there is also no requirement that the pier be in the center of the usable waterway. Mr. Showalter stated that the County requires a 25 ft. setback from the lateral and divisional line and within that distance, the owner has a right to use as much of the area as necessary. He also stated that Mr. Whitten has shown that whichever method used to calculate the lateral or divisional lines results in basically the same location. Mr. Showalter also stated that there are no riparian rights pertaining to views. He noted that MDE and the Director of Planning & Zoning have approved the permit.

Mr. Showalter noted for the record that the Doctrine of Laches which states it is inequitable for someone to sit on the rights to the detriment of another and then raise an issue at a later time, can be applied to this case. Mr. Showalter noted that the MDE permit was issued three years before Mr. Tucker raised any issue with it. Mr. Gunby advised that the Board would probably not need to apply the doctrine to this case.

Mr. Banks read agency comments in record. Lane Engineering on behalf of the Department of Public Works stated there are no stormwater management or grading issues to be reviewed and no recommendations. The Planning Commission stated that based on the information provided, they support the Director's decision.

After all testimony, Ms. McCulley called for a motion regarding this case.

Ms. Hill stated, “Based on the evidence presented, either method of calculating division lines would have resulted in the pier being located in approximately the same location. Additionally, the evidence shows that the divisional lines are not the same as property lines, and the overlays show that the original permit submitted to MDE would have had the pier located even closer to Mr. Tucker’s property.” Ms. Hill made a motion “that the Board of Appeals find the Director of Planning and Zoning did not err in his decision.” Seconded by Mr. Starling and, the motion unanimously passed.

Case #2638-Sandra H. Dodson and Susan H. Creighton

To request a variance, to reduce the width of a lot at the front lot line on a Major Collector road. Reduction requested from the required 200’ = 66.03’ (Proposed frontage of a lot = 136.94’). Property located at east side of Mount Holly Road, East New Market, MD 21613, containing 14 acres. Zoned AC, Agricultural Conservation District.

Steve Whitten, Agent, Fink, Whitten & Associates, 504 Maryland Ave., Cambridge, MD, and any other person who would be testifying in this case, were sworn in.

Mr. Banks read the case and all pertinent information into the record.

Ms. McCulley advised the applicant of his two options, to rely on his written responses to the criteria or comment on the responses. Mr. Whitten advised he would rely on his written responses and comment further. He then asked if he could hear the agency comments before his presentation. The Board was agreeable to this request.

Mr. Banks read agency comments into the record. As of this meeting, no comments had been received from the Health Department. Lane Engineering commenting on behalf of the Department of Public Works, stated they had no stormwater management comments, grading comments or other recommendations. The Planning Commission stated that based on the information provided, they have no problem with the request. Mr. Banks advised an email was received from Daniel Wilson, State Highway Administration noting that his comments are the same as for the subdivision plat, #1094 A, stating, “A field review of the property determined existing access points located along MD 16, Mount Holly Rd. MDOT SHA does not anticipate the subdivision plat as proposed will negatively impact the surrounding State roadway network. If this plat is proposed to be developed in the future and a new access is needed, the proposed access must be reviewed, approved and permitted by MDOT SHA. Subject to the aforementioned comments, MDOT SHA has no objection to the subdivision plat as proposed.”

Mr. Whitten noted for the record that Mr. Banks stated the frontage is 63 ft. for the residue parcel. The frontage is 63 ft. short of the required setback of 200 ft. Mr. Whitten spoke about the subdivision that was approved in 2005 creating lot 1. He handed out a copy of the proposed subdivision and noted the existing entrance to the

parcel that will be used for the shared driveway. He advised that SHA has approved the existing entrance for the proposed subdivision.

No one spoke in favor of this request and no one was opposed.

Ms. McCulley announced the end of testimony and the Board began their deliberations.

At this time, each Board member explained his decisions regarding the criteria.

After all testimony, Ms. McCulley called for a motion regarding this case. Mr. Spicer made a motion “to approve this request.” Seconded by Ms. Hill and unanimously carried.

Case #2639-Robert S. Collison & Cami L. Collison

To request, as a Special Exception, to permit an existing barn measuring 40’ x 70’ to be located as an accessory prior to principal structure. Applicant plans to relocate the line of division between the following parcels so as to create a building lot: (1) Map 30, Parcel 345, (address: 1418 School St) (2) Map 30, Parcel 346, (address “Barn Lot”). Property located at 1418 School St, Cambridge, MD 21613 containing 1.64 acres. Zoned SR-Suburban Residential District.

Robert S. Collison, 1418 School St., Cambridge, MD, and any other person who would be testifying in this case, were sworn in.

Mr. Banks read the case and all pertinent information into the record.

Ms. McCulley advised the applicant of his two options, to rely on his written responses to the criteria or comment on the responses. Mr. Collison advised he would rely on his written responses.

Mr. Collison gave a brief history of the residence and “barn lot”. He advised the property will be put on the market soon and they would like the option to sell the “barn lot” separately.

Ms. McCulley referenced the Staff Report that states that the barn could be used as a dwelling unit. Mr. Banks noted that in the SR District one of the uses is a dwelling unit. Mr. Collison advised the parcel would have access to water and sewer; the property was granted two connections.

Mr. Banks read agency comments into the record. The Dorchester County Sanitary District stated they have reviewed the special exception and have no objection to the request. Comments were not received from the Health Department. The Department of Public Works had no comments. The Planning Commission advised that based on the information provided, they have no objection to the request.

No one spoke in favor of this request and no one was opposed.

Ms. McCulley announced the end of testimony and the Board began their deliberations.

At this time, each Board member explained his decisions regarding the criteria.

After all testimony, Ms. McCulley called for a motion regarding this case. Ms. Hill made a motion “to approve the request.” Seconded by Mr. Spicer and unanimously carried.

A motion was made by Mr. Spicer to approve the minutes of the October 25, 2018, meeting. Seconded by Ms. Hill and unanimously carried.

With no further business, a motion was made by Mr. Starling to adjourn. Seconded by Ms. Hill and unanimously carried. Time of adjournment: 9:00 PM.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Rodney Banks', with a large, sweeping flourish above the name.

Rodney Banks
Executive Secretary