

AMENDED DECISION¹
TALBOT COUNTY BOARD OF APPEALS
Appeal No. 19-1697

Pursuant to due notice, a public hearing was held by the Talbot County Board of Appeals (the Board) at the Bradley Meeting Room, Court House, South Wing, 11 North Washington Street, Easton, Maryland, beginning at 6:30 p.m. on July 8, 2019, on the Application of **James L. Gannon, III and Evelyn A. Gannon** (the Applicants). The Applicants are seeking approval of a special exception to permit construction of a community pier on Lot 3 to comply with the bulk standards designated by applicable Maryland Department of the Environment (MDE) and Army Corps of Engineers approval(s) as well as the *Talbot County Code*, (the *Code*). The community pier will serve Lots 1, 2, 3, and 4 on Little York Farm.

The request is made in accordance with Chapter 190, Zoning, Article IV, §190-25, §190-31.2 and Article VII, §190-56 of the *Code*. The property owners are James L. Gannon, III and Evelyn A. Gannon and the property is located at 28151 Almshouse Road, Oxford, MD 21654 in the Rural Conservation (RC) District, and is shown on county tax records as Tax Map 48 Grid 20, Parcel 40, Lots 1, 2, 3 and 4.

Present at the hearing for the Board of Appeals were: Phillip Jones, Chairman; Frank Cavanaugh, Vice Chairman; members Paul Shortall, Jr., John Sewell and Louis Dorsey, Jr. Anne C. Ogletree served as attorney for the Board of Appeals. Elisa Deflaux, Environmental Planner, and Miguel Salinas, Assistant Planning Officer, were in attendance.

The Chairman inquired if all members had visited the site and received affirmative responses.

The following Board exhibits were then offered and admitted into evidence as indicated:

- Exhibit 1. Application for a Special Exception;
- Exhibit 2. Attachment A to Application;
- Exhibit 3. Copy of tax map with site highlighted;

¹ This decision has been amended to delete extraneous material included by accident on page 6 of the first decision.

- Exhibit 4. Notice of Public Hearing for Star Democrat;
- Exhibit 5. Newspaper confirmation;
- Exhibit 6. Notice of Public Hearing & Adjacent Property Owners List;
- Exhibit 7. Standards for Special Exception;
- Exhibit 8. Staff Report prepared by Elisa Deflaux, Environmental Planner;
- Exhibit 9. Planning Commission Recommendation;
- Exhibit 10. Sign Maintenance Agreement;
- Exhibit 11. Letter from the Critical Area Commission dated 6/19/19;
- Exhibit 12. MDE authorization dated 9/18/18;
- Exhibit 13. Army Corps of Engineers authorization effective 10/1/18;
- Exhibit 14. Independent Procedures Disclosure and Acknowledgement Form;
- Exhibit 15. Aerial Photo;
- Exhibit 16. Reserved Land Agreement;
- Exhibit 17. Deeds;
- Exhibit 18. Declaration of Road Use and Maintenance Covenants;
- Exhibit 19. Decision, Appeal No. 66;
- Exhibit 20. Site Plan of Subdivision prepared by Lane Engineering, Inc.;
- Exhibit 21. Plat for the Community Pier prepared by Lane Engineering, Inc..

Mr. Jones asked that those who might wish to testify rise and be sworn. All witnesses were then sworn. He next invited the Applicant to tell the Board about the project.

Ryan Showalter, Esq., McAllister, DeTar, Showalter and Walker, LLC, 100 West Street, Easton, MD 21601 introduced himself as the attorney for the Applicants. The purpose of the Application is to construct a single community pier to service four lots created on Little York Farm. Currently only Lot 1 has a residence, and the other three lots are vacant. The pier, if approved would be constructed on Lot 3, as shown on the Plans entered as Board's Exhibit 21. The pier would be serviced by a deeded easement (also shown on the plans). He added that each of the other individual lots, 1, 2, and 4 would be prohibited from having piers if the application is approved.

Referencing a note on the Plat for the Community Pier contained on Exhibit 21, Mr. Jones asked when and how the easement creating the 'community use' could be terminated. Mr. Showalter explained that once the easement was put in place it would run with the land, in other words, each of the lot owners would be bound by the decision to create the community use. While it is currently anticipated that the lots would remain in the extended family, so that there should be no issues, there may come a time when one or more lots are sold out of family control. Those lot owners would have notice of the

community pier and access easement when they purchased. Only if all four (4) lot owners agree to terminate the easement would the pier and access revert to the owners of Lot 3. At that time a document will be recorded to show that the private land use restriction on erecting a pier on the remaining lots would be lifted. Should a lot owner wish to erect a pier after the restriction is lifted, that lot owner would then have to apply to the appropriate governmental authorities to build a pier on the owner's lot. Permission to build would be governed by the land use restrictions in effect at that time.²

Mr. Jones noted that the Applicants had fully and completely addressed the special exception standards in Exhibits 2 and 7.

A member inquired if the proposed pier met all the appropriate lot line setbacks and lateral line restrictions. Mr. Showalter stated the proposal complied as is shown on the third page of Exhibit 21.

In response to a question about the number of slips on the plat Mr. Showalter indicated the current proposal shows one. If additional slips are to be constructed additional applications will have to be made. He noted that the proposed plat creates the minimum disturbance in the buffer. He felt that the owners of Lot 2 and Lot 4 would probably access the pier on foot, and if it became necessary to allow for additional parking, the final approvals may have to permit revisions to the access easement to provide vehicular parking.

Mr. Cavanaugh commented that the plat shows the pier is one hundred one feet (101') in length from the shore to its terminus and there would be some room for expansion.

Mr. Showalter stated that the Planning Commission felt that the Applicants' proposal was sensitive to the environment and would prevent three additional disturbances in the critical area should individual piers be permitted.

Mr. Jones asked if the fifty foot (50') right of way width was sufficient for fire protection equipment. Mr. Showalter stated it was. There being no additional witnesses for the Applicants, the Chairman asked if there were members of the public who wished

² Public and private land use controls are not always coextensive. There is no guarantee that a pier would be permitted under future state or local law when and if the easement is terminated. The Board believes that all possible results would be explained to and/or explored by the lot owners before the decision to terminate the easement is made.

to be heard.

Mr. William (Bill) Poole, 4767 Sailor's Retreat Road, Oxford, MD 21654 was sworn. Mr. Poole lives across the Island Creek from the proposed pier. He explained that Island Creek is pretty narrow at this location. Although he had no problem with the construction of the pier, he wished to know what assurances the local community would have that the pier would not be used commercially. He wished to know if the proposed use could be limited to the landowners. Mr. Salinas referred him to *Code*, §190-31.2. Subsection f (1) prevents the pier being used for the sale of goods. Subsection f (2) limits the use of a community pier to the lot owners of the subdivision. Mr. Salinas added that if a lot owner abused the rights and obligations granted by the *Code*, an adjoining landowner or a member of the public could contact the Code Enforcement Officer and the complaint would be investigated.

There being no additional public comment, the Chairman closed the evidentiary portion of the hearing and opened discussion among Board members.

Mr. Sewell stated that he believed all of the staff comments or concerns were addressed in testimony and in the Applicant's written responses.

Mr. Dorsey believed that the Applicants had met the burden imposed by the special exception standards.

Mr. Shortall felt that having one (1) community pier rather than four (4) individual piers was a good idea.

Mr. Cavanaugh concurred adding that the community pier requirements were put in place to lessen the environmental impact to the waterway. Carefully drafted covenants could close any loopholes such as those concerning Mr. Poole. He believed that the County would like to see shared amenities whenever possible as they lessen the impact on the waterway and habitat. This project meets all the necessary requirements.

Mr. Jones agreed with the comments made by the other Board members.

There being no other discussion, the Board made the following findings of fact and conclusions of law based on the Applicant's written responses, the testimony and the evidence presented:

1. The Applicant has submitted written applications for a special exception to permit a community Pier serving Lots 1-4 on Little York Farm. Exhibit 1.

2. The public hearing was properly advertised, the property was posted, and the adjacent land owners were properly notified. Exhibits 4, 5, 6, 10 and 14.
3. The Applicant has received favorable recommendation from the Planning Commission for the special exception use, Exhibit 9, and from staff for the special exception use. Exhibit 8, Staff Report.
4. The proposed use is consistent with the County's Comprehensive Plan as detailed by the Applicants in Exhibit 2 and by Staff in Exhibit 8. Allowing one pier where four might otherwise be erected does protect the county's sensitive areas.
5. The proposed community pier is a use permitted by special exception in the RC district. It complies with setbacks and is within the lateral lines projected on the waters of Island Creek. It has been authorized by MDE and the Army Corp. *See*, Exhibits 12 and 13 and 21.
6. Piers are common residential amenities in the County's waterfront areas. This pier is one hundred one feet (101') long and will have one boat slip. As it is a community pier, its use will be limited to use by the lot owners. The general area across the creek is low density residential, and the Little York Farm contains significant agricultural reserved land in addition to the four lot subdivision. There is existing vegetation along the shoreline and the Applicant will be required to mitigate for any disturbances in the critical area.
7. The proposed use will not adversely affect neighboring properties if appropriately used. The use has been permitted by both MDE and the Army Corp, and will be less intense than allowing one pier per subdivision lot.
8. The proposed pier will have no adverse impact on public infrastructure or schools. It is solely for the use and enjoyment of the subdivision lot owners, and will be accessed from the subdivision road. The access is sufficient for fire protection, and no need for other public services is anticipated.
9. There will be little, if any, impact on surrounding county roads. There will

be no additional vehicular traffic generated. The use of the pier will not add to routine residential traffic by the lot owners. Although Island Creek is relatively narrow this far upstream, the addition of one pier and several small boats for lot owners use should not adversely impact marine traffic or existing riparian rights of residences across the creek.

10. It is anticipated that the proposed parking area at the end of the proposed easement will suffice for those using the pier. Additional parking would require revisions to the plat, covenants and documents creating the access easement.
11. The pier will be constructed so as to minimize any impact on vegetation or wildlife and should have no effect on the adjoining agricultural areas.

For the reasons set out in the Board's findings, Mr. Dorsey made a motion that the special exception permitting a community pier on Lot 3 of Little York Farm Subdivision to serve Lots 1-4 of that subdivision be approved ~~museum as a community and cultural facility be approved~~ subject to the following conditions proposed by the Critical Areas Commission and by Planning Staff:

A. No permits or new construction associated with the special exception use for the property shall occur until the revision plat contemplated by the Applicant has received County approval.

B. The Applicant shall make applications to, and follow all rules, procedures and construction timelines outlined by the Office of Permits and Inspections for new construction.

C. The Applicant shall commence construction of the proposed improvements within eighteen (18) of the date of the approval by this Board.

Mr. Cavanaugh seconded the motion. There was no further discussion on the motion. The Chairman called for a vote. The motion passed, 5-0 with all members voting to grant the special Exception requested.

HAVING MADE THE FOREGOING FINDINGS OF FACT AND LAW, IT IS,
BY THE TALBOT COUNTY BOARD OF APPEALS,

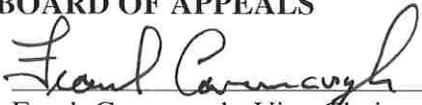
RESOLVED, that the Applicants, **James L. Gannon, III and Evelyn A.**

Gannon,. (Appeal No. 19-1697), are **GRANTED** the requested Special Exception for the property consistent with the evidence presented to the Board of Appeals, and subject to the aforementioned conditions, by vote as previously noted.

GIVEN OVER OUR HANDS, this 3rd day of December, 2019.

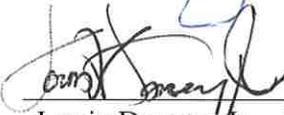
TALBOT COUNTY BOARD OF APPEALS


Phillip Jones, Chairman


Frank Cavanaugh, Vice Chairman

Unavailable for Signature
Paul Shortall, Jr. - Member


John Sewell. - Member


Louis Dorsey, Jr. - Member