

**TALBOT COUNTY BOARD OF APPEALS**  
**Appeal No. 18-1678**

Pursuant to due notice, a public hearing was held by the Talbot County Board of Appeals at the Bradley Meeting Room, Court House, South Wing, 11 North Washington Street, Easton, Maryland, beginning at 6:30 p.m. on June 11, 2018, on the application of **MICHAEL FORSCEY** and **REAMY ANCARROW** (“Applicants”). Applicants request a variance of the 50-foot sideyard setback in the Rural Residential (“RR”) Zoning District for lots larger than two acres, for the purpose of building a residential pier and raised walkway over tidal wetlands to access said pier. The raised walkway portion would be three feet wide and extend 204 feet over tidal wetlands, with an elevation of approximately three feet over said wetlands. The pier would be six feet wide and extend 108 feet from the tidal wetlands over the body of water known as Haskins Cove, and will extend no further than 104 feet channelward. The subject property (the “Property”) is a 4.22-acre improved parcel of land bounded to the south by Haskins Cove, to the east and west by other RR properties and to the north by Shipyard Point Road. The Property is located at 6029 Shipyard Point Road, Royal Oak, MD 21662, and shown on tax map 46, grid 3 as parcel 37. Applicants are the owners of the Property.

The request is made in accordance with Chapter 190 Zoning, Article II, §190-14 B. and Article II, §190-75 B. and Article II, §190-75 C. of the *Talbot County Code* (the “Code”).

Present at the hearing were Board of Appeals members Paul Shortall, Jr., Chairman, Phillip Jones, Vice Chairman, John Sewell, Louis Dorsey and Frank Cavanaugh. Applicants presented their variance request. Five members of the public were present. Brennan Tarleton, Planner I, attended the hearing on behalf of Talbot County. William C. Chapman was the attorney for the Board of Appeals (the “Board”). It was noted for the record that each member of the Board had individually visited the Property.

The following exhibits were offered and admitted into evidence as Board’s Exhibits as indicated:

1. Application for Non-Critical Area variance.
2. Copy of a portion of the Talbot County tax map with the property highlighted.
3. Appeals Notice of Public Hearing.
4. Notice of hearing with a list of nearby property owners attached.

5. Copy of Non-Critical Area variance requirements from the *Code* with the written responses of the Applicants to each applicable warrant.
6. Staff Report dated June 11, 2018
7. Sign maintenance agreement.
8. Independent Procedures Disclosure and Acknowledgment Form.
9. Aerial photographs.
10. Direction to the property.
11. Critical Area Lot Coverage Computation worksheets.
12. Maryland Department of the Environment letter dated January 22, 2018, with General Tidal Wetlands License and attached revised site and proposed walkway construction plans prepared by Weems Brothers, Inc.
13. Authorization letter from the Army Corps of Engineers, Baltimore District, dated March 14, 2018 with attached permit forms.
14. Revised site and proposed walkway construction plans prepared by Weems Brothers, Inc..
15. Certificate of publication of the Notice of Public Hearing from *The Star Democrat*.

Ms. Ancarrow testified on behalf of Applicants. She said all necessary permits for the proposed pier and walkway have been obtained by the Army Corps of Engineers and the Maryland Department of the Environment (“MDE”), respectively. She emphasized the fact that, under the Next Step 190 draft, the side yard setback in RR zoning districts in Talbot County would be reduced from 50 feet to 25 feet. Applicants’ proposed setback is 27 feet, which would not require a variance if the Next Step 190 proposal is enacted by the County; however, Ms. Ancarrow said she and Mr. Forscey sought a variance because they did not wish to wait any longer.

Applicants purchased the Property in 2013. The neighboring property, situated 27 feet from Applicants’ proposed raised walkway, is located at 6009 Shipyard Point Road (“6009 Shipyard”), is also owned by the Applicants since 1988, and has an existing pier. Ms. Ancarrow said Applicants have made “environmental” improvements to both parcels such as adding trees and plantings, as well as safety improvements to the Property in removing debris and having

power lines extending toward Haskins Creek buried. Applicants desire a pier on the Property and require a walkway over wetlands to utilize their riparian access on the Property, Ms. Ancarrow said, noting that at 6009 Shipyard, grass lawn extends all the way to the pier.

Ms. Ancarrow briefly described the history of the Property and failed attempts by previous owners to obtain reasonable riparian access. In 2015, due to a prior “zig-zag” in the western property line dividing the Property and Applicants’ adjacent property at 6009 Shipyard, Applicants were approved by the County for a minor revision plat that straightens out the western lot line. Ms. Ancarrow said that, despite common ownership of the two parcels, they are completely separate properties, and Applicants have no intent to merge them. Each parcel needs its own reasonable riparian access, Ms. Ancarrow said, for any and all persons owning it now or in the future, and the Property currently lacks such reasonable access. She said the Applicants have made all of their plans, including the width of the three-foot raised walkway, with minimal impact to both tidal wetlands and adjacent properties in mind, and that the proposed location of the pier and raised walkway is intentionally closer to Applicants’ adjacent property to further lessen any impact on adjacent property owners, including configuring plans for the proposed pier such that it does not impede the lateral line of the eastern neighboring parcel. One effect of the lot line revision of 2015 was to minimize encroachment into the sideyard setback in the construction of a pier.

Members of the Board inquired further about the nature and dimensions of the proposed pier and raised walkway; Chairman Shortall replied that the pier and walkway were already approved by the Army Corps of Engineers and MDE, respectively, and that this variance request is limited solely to the 50-foot setback requirement in the RR zone. In response to a question from a Board member about whether the Army Corps of Engineers preempts Talbot County restrictions on raised walkway length contained in §190-75 G (2) of the Code, Mr. Tarleton clarified that the proposed walkway is over tidal wetlands, and that the non-tidal limit in §190-75 G (2) does not apply. Because tidal wetlands are state-enforced areas, Mr. Tarleton said, MDE and the Army Corps of Engineers were the proper permitting entities, and the plans prepared by Weems Brothers, Inc. were tailored to the requirements of the same while also satisfying §190-75 B. and C. of the Code regarding sideyard setbacks and lateral line setbacks for piers.

Applicants testified that the current 50-foot sideyard setback requirement creates an unreasonable hardship, because, without a variance, Applicants and any future owners of the

Property would not be able to realize their riparian rights. Ms. Ancarrow said that the Property is one of the only remaining waterfront properties in the Irish Creek area without reasonable riparian access. Ms. Ancarrow further testified that the proposed raised walkway will be only three feet wide, which she described as the narrowest reasonable width of a walkway to access the pier and water.

Vice Chairman Jones emphasized that the riparian right of access to water is a long-established common-law property right in Maryland, and such right runs with the property. The fact Applicants own both the Property and the adjacent property at 6009 Shipyard, although a consideration in a Critical Area variance, is not a consideration for the Non-Critical Area variance at hand.

Valerie Mazur, a neighbor residing at 6030 Kastenhuber Lane, Royal Oak, MD 21662 (a parcel not directly affected by Applicants' request), testified in opposition. Ms. Mazur said the residents of Haskins Cove experience frequent tidal flooding, that the cove is a major drainage basin for the surrounding area, and that all projects involving wetlands must be done with extreme care. Ms. Mazur said she was a signatory to a letter objecting to the prior owner's attempt to obtain a variance for the Property, a request that was denied by the County. Ms. Mazur cited a failing septic system at another nearby property as another reason why residents of Haskins Cove should oppose the granting of Applicants' variance. She described Haskins Cove as one of the last areas that is not overbuilt.

The Board admitted a letter dated June 11, 2018 and signed by Ms. Mazur and Douglas Tylor Wrightson, also of 6030 Kastenhuber Lane, into evidence as Opponents' Exhibit 1 (the "Opposition Letter"). The Opposition Letter states, *inter alia*, that historical files related to prior applications for a variance on the Property have not been found at the County Planning and Zoning office, and that Applicants themselves objected to the plans by the previous owner of the Property, plans described in Opposition Letter as "the same scheme" as Applicants' proposed construction.

The Opposition Letter also expressed concern for MDE's approval and for the overall safety and health of the surrounding wetlands.

Ms. Ancarrow responded to Ms. Mazur's comments, denying that the previous owner's variance request was similar to the one Applicants are requesting. The prior variance request, Ms. Ancarrow said, was for a pier that angled over, and impeded upon, the Applicants' 6009

Shipyard Property. Ms. Ancarrow said Applicants' proposed pier and raised walkway will have no impediment on neighboring properties. Chairman Shortall reminded attendees that this hearing was not related to plans for the pier approved by the Army Corps of Engineers.

Donna Layman, of 5998 Kastenhuber Lane, Royal Oak, MD 21662, testified in opposition of the opposition to Applicants' request for a variance. Ms. Layman lives on the parcel bordering the Property to the east. Ms. Layman stated that the Army Corps of Engineers was not concerned about wetlands, but approved Applicants' plans for a pier only because it would not obstruct navigation to and from Irish Creek. Ms. Layman said her privacy would be invaded by the construction of a pier next-door. Chairman Shortall reminded attendees that this hearing was not related to plans for the pier approved by the Army Corps of Engineers, a matter beyond the County's control.

Ms. Layman said she and her husband were not permitted to place oyster spat on shell on their leased bottom in Irish Creek, yet Applicants would be permitted to drive several pilings into wetlands. She said ducks nest in the wetlands of Haskins Cove and that deer use the wetlands for sustenance.

Mr. Wrightson testified in opposition, stating that the County should not change its 50-foot sideyard setback requirement for properties in the RR zone.

Vice Chairman Jones said wetlands were important to him, but that personal feelings on what neighbors should and shouldn't do with their property cannot deprive owners of legal lots of vested property rights. Applicants have already had their proposed dock and raised walkway approved by the proper federal and state authorities. A member of the Board stated that the County only has the authority to deny the request for a variance in the sideyard setback requirement, but that, if the neighbor infringed upon approved, Applicants could infringe – and in this case, Applicants *are* the infringed neighbor.

The Board then considered the application. Based on the testimony, application and exhibits, upon motion and seconded, the Board approved the requested variance, by a vote of five to zero.

The Board made the following findings of fact and law:

1. All legal requirements pertaining to a public meeting were met.
2. Unique physical characteristics exist, such as unusual size or shape of the property or extraordinary topographical conditions, such that the literal

enforcement of the provisions of this chapter would result in a practical difficulty or unreasonable hardship in enabling the applicant to develop or use this property. The Property is configured such that it narrows significantly as it approaches the Mean High Water line of Haskins Cove. Applicants were approved by the County in 2105 for a minor revision plat that straightens the western lot line between the Property and Applicants' adjacent parcel, 6009 Shipyard, adding a modest amount of additional shoreline to the Property. However, Applicants testified, and the Board found, that reasonable riparian access – including Applicants' right to access a prospective pier via a raised walkway over wetlands – cannot be established within the current 50-foot sideyard setbacks required by the Code.

3. The need for the variance is not based upon circumstances which are self-created or self-imposed. Applicants' 2015 lot line revision did not create the need for the variance from the 50-foot sideyard setback requirement. Under the configuration of the property as it existed when Applicants purchased it in 2013, a variance would still have been necessary to construct a pier and raised walkway to access the pier due to the narrowing of the property as it approaches Haskins Cove.
4. Greater profitability or lack of knowledge of the restrictions shall not be considered as sufficient cause for a variance. Applicants' request for a variance is for the purpose of enjoying their riparian right of access to and from the water.
5. The variance will not be contrary to the public interest and will not be a detriment to adjacent or neighboring properties. The property infringed by a variance in the 50-foot setback requirement is the adjacent property at 6009 Shipyard, also owned

by the Applicants. Enabling Applicants to realize their riparian rights in the Property is not contrary to the public interest. Plans for the pier and raised walkway have already been approved by the Army Corps of Engineers and MDE, respectively. No detriment to adjacent or neighboring properties has been demonstrated.

6. The variance shall not exceed the minimum adjustment necessary to relieve the practical difficulty or unreasonable hardship. Based on the evidence submitted, including plans for the pier and raised walkway, Applicants propose a three-foot-wide raised crossing over the shortest section of tidal wetlands on the Property. Applicants have testified, and the Board finds, that a denial of reasonable riparian access is in itself an unreasonable hardship. Though not the subject of this variance request, it is noted that the proposed pier, approved by the Army Corps of Engineers, complies with the Code standards in §190-75 for piers and related boat facilities. Applicants' efforts to create the minimum adjustment necessary include the lot line revision in 2015, without which the design of a pier on the Property would have caused greater encroachment into the sideyard setback.

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

RESOLVED, that the Applicants, **MICHAEL FORSCEY** and **REAMY ANCARROW** (Appeal No. 18-1678) is **GRANTED** the requested Non-Critical Area variance consistent with the evidence presented to the Board of Appeals, subject to the following conditions:

1. Applicants shall make applications to and follow all of the rules procedures, and construction timelines as outlined by the Department of Permits and Inspections regarding new construction.
2. Applicants shall commence construction on the proposed improvements within eighteen (18) months from the date of this Decision.



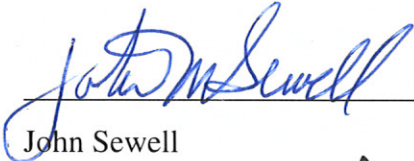
3. Applicants shall comply with all zoning standards, including those set forth in Code §190-75 for piers and related boat facilities.
4. Applicants shall comply with all standards and conditions contained within the approval from the Army Corps of Engineers for permit #2017-61303, issued March 14, 2018.
5. Applicants shall comply with all standards and conditions contained within the MDE approval letter for the tidal wetlands license #17-PR-0745, dated January 22, 2018.

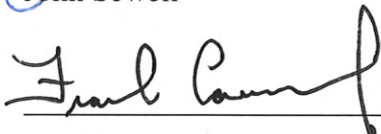
GIVEN OVER OUR HANDS, this 19th day of July, 2018.

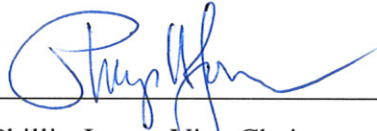
**TALBOT COUNTY BOARD OF APPEALS**

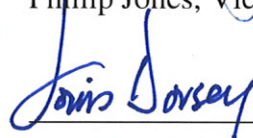
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Paul Shortall, Jr. Chairman

  
John Sewell

  
Frank Cavanaugh

  
Phillip Jones, Vice Chairman

  
Louis Dorsey