

DECISION

TALBOT COUNTY BOARD OF APPEALS

Appeal No. 21 -1726

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 November 15, 2021 on the Application of **Charles F. Strasburger** (the Applicant).

The Applicant is requesting a Special Exception to permit the construction of a forty-foot (40') Private residential accessory pier on his property. The property consists of two non-contiguous parcels conveyed by the same deed. There is a minor public road dividing the lots. The lot with the proposed pier does not contain a principal dwelling. The request is made in accordance with Chapter 190, Article IV § 190-33.1.B.4 and Article VII § 190-56 of the *Talbot County Code* (the *Code*). The property is located at 9779 Leeds Landing Road, Easton, Maryland 21601 in the Village Residential (VR) Zone. The property owner is Charles F. Strasburger. The property is shown on Tax Map 24, Grid 2, Parcel 60.

Board of Appeals members Phillip Jones, Chairman, Frank Cavanaugh, Vice Chairman; Paul Shortall, Louis Dorsey, Jr. and Zakary A. Krebeck were present for the hearing. Anne C. Ogletree, acted as attorney for the Board of Appeals. Staff members present were Miguel Salinas, Planning Officer, Brennan Tarleton, Assistant Planning Officer, Elisa Deflaux, Planner II and Lyndsey Ryan, Esq. of Booth Cropper & Marriner, P.C., 130 N. Washington Street, Easton, Maryland 21601 represented the Applicant. The Applicant was present. No other members of the public attended.

The Chairman inquired if all members had visited the site individually. He received affirmative responses from each member. The following Board exhibits were then offered and admitted into evidence as indicated:

- Exhibit 1. Application for a Special Exception;
- Exhibit 2. Tax Map (2 pages);
- Exhibit 3. Notice of Public Hearing for Star Democrat;
- Exhibit 4. Newspaper Confirmation;
- Exhibit 5. Notice of Public Hearing with list of adjacent Property Owners attached

- Exhibit 6. Special Exception Standards;
- Exhibit 7. Staff Report prepared by Elisa Deflaux, Planner II;
- Exhibit 8. Planning Commission Comments;
- Exhibit 9. Sign Maintenance Agreement/ Sign Affidavit;
- Exhibit 10. Comments from Critical Area Commission Staff;
- Exhibit 11. Authorization letter;
- Exhibit 12. Independent Procedures Disclosure and Acknowledgement Form;
- Exhibit 13. Aerial Photo;
- Exhibit 14 Plat;
- Exhibit 15. Pier Permit Drawings;
- Exhibit 16. Copy of newly enacted Talbot County Legislative Act No. 1468;
- Exhibit 17, Letter from Matthew and Megan Miller;
- Exhibit 18. Letter from Warren Stevens dated 11/08/21.

Mr. Jones then requested that those planning to give testimony be identified and sworn. The witnesses, Mr. Strasburger and Ms. Ryan were sworn. The Chairman then requested that Ms. Ryan proceed with the Applicant's presentation.

Ms. Ryan introduced herself. She advised the Board that the Applicant wished to construct a private pier on the portion of his property that does not have a principal residence. This is an interesting property. As Exhibits 2 and 14 show, Tax Map twenty-four (24) Parcel sixty (60) is divided into two lots by Leeds Landing Road, a minor road. The primary structure is on the non-waterfront parcel, and the waterfront parcel is very small – a seventy-seven hundred (7,700) square foot pie shaped lot. Parcel 60 was created in the 1960's by the Wilson family, and the Strasburgers purchased it in 2018. The family planned to make the property its home, and intended to build a pier on the waterfront parcel to enhance their enjoyment of the property. Their property has always been taxed by Talbot County as a waterfront lot. When they went to apply for a pier permit they were made aware that the Department of Planning and Codes considered the property to be two lots for zoning purposes as the parcels were divided by the minor road, making them non-contiguous.

The Applicant went through the Planning Commission and text amendment process before the County Council to obtain a text amendment to the *Code* that would permit a private accessory pier on a non-contiguous waterfront parcel without a principal residence provided that the waterfront parcel is described in the same deed that does contain the owner's principal

residence on the second non-contiguous parcel. The parcels had to be both legally existing and non-conforming. Parcel 60 qualifies. It was created in 1960, prior to the enactment of the Critical Areas Laws that established minimum lot size standards. Currently, in the VR District the minimum lot size is one acre, and this waterfront parcel is only seventy-seven hundred (7,700) square feet. It is non-conforming – too small to build on.

The Applicant wishes to build a forty foot (40') pier. It will encroach into the lateral lines setback. The Applicant has letters of no objection from the Milners and the Wilsons, the adjoining owners, although the Wilsons' letter did not make it into the Board's file prior to the hearing. Ms. Ryan added that the Wilsons' letter will be supplied, and any decision by the Board could be conditioned on its submittal. She also noted that the Applicant went before the Planning Commission at its last meeting, It unanimously recommended approval of the application.

Ms. Ryan pointed out that Leeds Landing Road is a small road, with a low speed limit. There is currently minimal traffic on that road. The Applicants will access the pier by crossing the road, and as this is a private pier, it will be only the Applicant's family using the pier. The Strasburgers do not intend to put a parking area on the waterfront lot. They do not want to invite public use of the pier. It is being built for their personal use and the enjoyment of their riparian rights. Ms. Ryan believed that her introduction and the information supplied on Exhibit 6 met the necessary criteria but added she would be happy to answer any questions the Board might have.

Mr. Cavanaugh noted that Ms. Ryan had addressed a parking area but inquired if there would be any storage of boats or boat related gear on the waterfront parcel. Ms. Ryan advised there would not. The lot is somewhat marshy, and there is not a lot one can do without a pier except sit in a chair enjoying the water view. As one can see from Exhibit 2 most of the properties in the area do have piers.

Mr. Jones asked if other Board members had questions. Mr. Krebeck had none. Mr. Jones explained that Ms. Ryan had answered his one concern that being the lack of a letter of no objection from the other neighbor. He commented that he would be willing to approve the application conditioned on the production of that letter. Ms. Ryan thought the letter had arrived by email that afternoon, and she would submit it promptly.

The Chairman wished to know if Staff had any questions. Hearing none, he opened the floor to discussion or by Board members. Mr. Dorsey had no comment at the time.

Mr. Krebeck complimented the Applicant on pursuing the text amendment process. He felt that the criteria exactly fit this situation and other similar situations without being overly broad or too narrow. He noted that subsection 'e' required that the parcels remain in common ownership, so that the waterfront parcel could not be sold off. He suggested that be made a condition of the approval so that future property owners were aware of the obligation and that it would run with the land. Mr. Jones concurred.

Ms. Ryan had no objection. She felt it was clear from her interaction with the Planning Staff that the department was very clear that the grant of this special exception did not create a "merger" of the two parcels for any purpose other than the construction and maintenance of the pier.

Mr. Dorsey added that at the text amendment solved the issues regarding the pier construction, and that the Applicant had covered each of the criteria in its written and oral presentation. The Staff report and Critical Areas Commission Staff report were not opposed to the application. He could vote for approval.

Mr. Shortall agreed that the criteria were satisfied.

Mr. Cavanaugh also agreed that the Applicant had "checked every box" regarding the criteria necessary for the special exception. 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 private pier on a non-conforming waterfront lot not improved by a principal residence. Exhibit 1.
2. The public hearing was properly advertised, the property was posted, and the adjacent land owners were properly notified. Exhibits 3, 4, 5 and 9.
3. The Applicant has received favorable recommendation from the Planning Commission for the special exception use, Exhibit 8, and from staff for the special exception use. Exhibit 7, Staff Report. The Critical Areas Staff has no objection. The proposed use is consistent with the County's Comprehensive Plan as detailed by Staff in Exhibit 8.

4. The proposed pier meets the setback requirements of the VR Zone. The pier does encroach into the lateral line setbacks. The Applicant has provided 'letters of no objection' from those neighbors affected. Exhibits 17 and 18.
5. The pier will be similar to the private residential piers in the surrounding area, and will be required to be constructed in accord with the approved permit drawings. See, Exhibit 15.
6. The pier on the waterfront lot will be used for the owner's recreation. No improvements other than the pier are contemplated, and there will be no parking area installed on the waterfront parcel. The owners will access the parcel by crossing Leeds Landing Road from their residence. There are no plans to store boats or boat related gear on the parcel. Since the pier is for the private use and enjoyment of its property owners, the Applicant does not anticipate that the use will be a nuisance to the neighbors.
7. Leeds Landing Road is a lightly traveled minor road. Access to the waterfront parcel is by pedestrian crossing from the east side of the property over the road to the waterfront parcel. No additional traffic is contemplated. The pier length is similar to other piers in the area and will not impede marine traffic.
8. The proposed pier and access will comply with *Code* specifications concerning width and surfacing. The construction will require a Buffer Management Plan for the replacement of disturbed vegetation and mitigation at a ratio of two to one (2:1)
9. The pier construction is not anticipated to have any effect on wildlife habitat. Once construction is complete, mitigation plantings may assist in improving water quality and habitat for aquatic creatures and vegetation.
10. The Applicant, through counsel, has consented to the Board's express condition that the pier is a permitted use for so long as Parcel 60 remains intact. In the event that the waterfront parcel is severed from the larger improved parcel by deed, the permitted use shall terminate and the pier must be removed.

For the reasons set out in the Board's findings, Mr. Krebeck made a motion that the special exception No. 21-1726 permitting a private pier on the non-conforming lot without a principal residence be **Granted**, subject to the conditions recommended by Staff, the submission of the Wilson's letter (Applicant's #1, submitted after the hearing) and the condition that the lot with the riparian rights not be severed by deed from the remainder of existing Parcel 60.

Mr. Dorsey clarified that the Critical Area Staff had included a note regarding mitigation required by a Buffer Management Plan, and suggested that compliance with such a plan should also be made a condition. Mr. Krebeck agreed. Mr. Cavanaugh then seconded the amended motion. There being no further discussion, the Chairman called for a vote. The motion passed five in favor, zero opposed.

HAVING MADE THE FOREGOING FINDINGS OF FACT AND LAW, IT IS, BY THE TALBOT COUNTY BOARD OF APPEALS, ORDERED THAT THE REQUESTED SPECIAL EXCEPTION BE GRANTED SUBJECT TO THE FOLLOWING CONDITIONS:

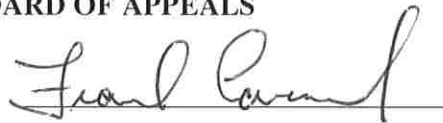
1. Construction of the pier must be implemented and diligently pursued towards completion within eighteen (18) months of the date of this approval;
2. A Buffer Management Plan shall be required to mitigate for the removal of any vegetation required for the proposed project;
3. Exhibit 18, the Stevens letter shall be submitted by the Applicant and made a part of the record in this matter;
4. This special exception will terminate immediately if the waterfront lot is severed by deed from the remainder of Parcel 60;
5. The Applicant shall complete whatever mitigation is required by the Buffer Management Plan.

GIVEN OVER OUR HANDS, this 17TH day of DECEMBER, 2021.

TALBOT COUNTY BOARD OF APPEALS



Phillip Jones, Chairman



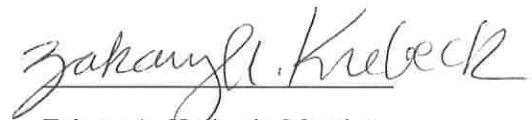
Frank Cavanaugh, Vice-Chairman



Louis Dorsey, Jr., Member



Paul Shortall, Member



Zakary A. Krebeck, Member