May 13, 2021

The regular monthly meeting of the Oxford Board of Port Wardens was called to order by the Chairman, Thomas Campbell, on Thursday, May 13, 2021, at 6:00 p.m. The meeting was held virtually by Zoom. Other board members in attendance were Bob Hyberg and Bob Trevorrow. Also in attendance were Town Administrator, Cheryl Lewis, and Town Attorney, Lyndsey Ryan, as well as members of the public.

The following applications were reviewed by the Board:

***Application #18-01*** - Megan Hauck, 704 S. Morris Street, request to construct a 104’ long by 6’ wide pier, including a 20’ x 10’ end section platform, and install one four-pile boat lift, not to exceed approximately 79’ channel ward of the mean high water line. Mr. Campbell stated that the Board received a request from Zach Smith to table the application due to a pending property dispute court case between Ms. Hauck and her neighbor, Ms. Keegan. After addressing Mr. Smith’s request, Mr. Trevorrow made a motion to deny the request to table the application which was seconded by Mr. Hyberg.

Mr. Campbell introduced Mr. Showalter and asked him to present Ms. Hauck’s application. Mr. Showalter stated that Ms. Hauck was seeking the same approval that the Board granted in March, 2018 – a 6’ wide pier as depicted by the plans, but excluding the 10’ x 20’ end platform that extended into the side yard and set back to the south. Mr. Showalter displayed of a portion of the permit application that showed the location of Ms. Hauck’s property and the property immediately to the north owned by Ms. Keegan. He noted the existence of a shared pier in front of Ms. Keegan’s property that was constructed pursuant to approved permits by the Board in 1986. He also pointed out the property to the south owned by Dr. and Mrs. Andrews that consists of a pier. He explained that Ms. Hauck is located between Ms. Keegan and Dr. and Mrs. Andrews parcels, both of which have wharfed out and exercised their riparian rights. He stated that Ms. Hauck does not have a pier and desires to construct a pier to gain access to the water.

Mr. Showalter again advised that Ms. Hauck was seeking a 6’ pier along with 10’ x 20’ platform area that extended south of the Andrews’ 15’ property line setback. He stated the lift located on the north side of the pier complies with the lateral line setback and that Ms. Hauck would amend her application to eliminate the 10’ x 20’ platform. He stated that this Board conducted three different meetings for this application beginning in 2017. After discussions to find a pier alignment and configuration that worked within the construct of the existing neighborhood Ms. Hauck’s application was filed.

Mr. Showalter gave the history of Ms. Hauck’s application and explained that the application was back in front of the Board because it was timely appealed in 2018 but a pending court case and covid-19 delayed the rehearing. He went on to say that the Board is charged with evaluating this application’s compliance with the Oxford Town Code. Mr. Showalter gave an overview of the history of the Town’s Harbor Management Ordinance.

Mr. Showalter gave a brief history of pier applications the Board approved by applying lot lines extended. He said that the history of approvals supports the fact that the Town has, for decades, determined the usable waterway area by extending the property lines in a straight manner to mean high water. Mr. Showalter described the shared pier between the properties owned by Ms. Keegan and the Leahys. He explained that the pier was constructed and centered on the property line extended and comes out to the southwest and then turns approximately 20-25 degrees west to comply with the later line using the property line extended from the Hauck parcel.

Mr. Showalter then gave an overview of a Shared Dock Agreement between Ms. Keegan’s property and property which is now owned by the Leahys which was established in 2002. He said the Agreement is recorded in the Talbot County Land Records and establishes a shared pier on the property line between Ms. Keegan’s property and the Leahys. He said the Agreement provides for the exclusive use and sharing of the dock by those two parcels. Mr. Showalter gave a brief overview of the history of Town’s file approving the shared pier.

Mr. Showalter introduced the Town file for building permit no. 91-028 relating to construction on Ms. Keegan’s property which was submitted by a previous owner. Mr. Showalter explained the relevance of the file as the building permit depicted the property boundary line by using the property line extended method. Mr. Showalter then introduced a previous application by the previous owner of Ms. Keegan’s property for a 40’ extension of the shared pier.

The next exhibit Mr. Showalter presented was a decision of the Board of Port Wardens, which decision was reached September 5, 1996, in relation to that proposal to extend the pier. The Board denied the requested extension application after finding that the 40’ extension would extend into the usable waterway area of a neighboring property.

The next exhibit presented by Mr. Showalter was an application filed by Willard Andrews in relation to the construction of a 105’ pier with two mooring piles and a boat lift. The application was submitted in May, 1998. Mr. Showalter explained that the pier application was approved using property lines extended.

Mr. Showalter then presented the Town’s file for Building Permit No. 99-09 containing a survey plat sealed and prepared by Lane Engineering that shows the property boundary of the properties owned by Ms. Keegan and Ms. Hauck. Lane Engineering determined that the common boundary between the properties owned by Ms. Keegan and Ms. Hauck by extending the platted line beyond the former mean high water across the accreted land and did the same thing at the north side showing the property line extended to the center point of the pier which is consistent with what the Shared Dock Agreement provides is consistent with the representations to the Board for approval of that shared pier.

Mr. Showalter then submitted, for the record, minutes from the Board’s November 2, 2017 and December 7, 2017 meetings which reflect discussions of Ms. Hauck’s application before the application was finalized and submitted. Mr. Showalter then submitted the Town of Oxford’s zoning map. Ms. Hauck’s property is zoned R-1 which expressly permits, as a matter of right, a series of accessory uses, one of which is a pier.

Mr. Showalter stated that the Board is charged with evaluating the construction of the proposed structure under the provisions of the Town Code, which he reiterated.

He stated that the relevant provision of the Town Code for the Board’s consideration was Section 11.12.A.2. which defines lot lines extended and provides four methods for establishing lot lines. Mr. Showalter raised that only two of the methods are relevant in this case: Section 11.12.A.2.b – an extension of the last course of the lot line into the water; and Section 11.12.A.2.d – extending the lot lines from the side lot lines generally parallel or consistent with the existing piers located on adjacent lots. Mr. Showalter stated that the Board historically applied the lot lines extended method and had done so when approving Ms. Keegan’s shared pier and Dr. Andrews’ pier.

Mr. Showalter submitted to the Board that constructing Ms. Hauck’s pier in a manner that is parallel with both Dr. Andrews’ pier and Ms. Keegan’s shared pier is entirely consistent with Subsection 2.d.

Mr. Showalter shared one more exhibit, a photo prepared by Lane Engineering depicting a pier proposed by Ms. Keegan. Mr. Showalter gave an overview of how the proposed pier would negatively impact the existing piers in that area. Mr. Showalter said that if the Board accepted Ms. Keegan’s theory, the shared pier on her property would shift to entirely within the neighboring property owned by the Leahys and a portion of the Andrews’ pier would be located on Ms. Hauck’s property. Ms. Showalter stated that Ms. Keegan’s position that Ms. Hauck’s pier should extend into the water using lateral lines would directly conflict with the Andrews’ existing pier and would negatively impact his riparian rights, or completely devoid Ms. Hauck of her riparian right to wharf out.

Mr. Campbell stated that the application of property lines extended was how the Board historically considered pier applications, and should be applied to Ms. Hauck’s application. He said that a review of piers in Oxford would establish that over 95% of the piers were approved and constructed by applying property lines extended.

Mr. Campbell opened up discussion to the floor. Dr. Andrews stated that he owns 706 and 708 South Morris Street. Dr. Andrews stated that he had no objection to Ms. Hauck’s application as amended.

Zach Smith introduced himself on behalf of Ms. Keegan. He wanted to comment for the record that the MDE permit that Mr. Showalter introduced earlier as an exhibit, has been challenged and it is in dispute. It is currently stayed because it is under review by the Court. He further stated that Ms. Keegan objects to this location of the proposed pier and believes it will adversely impact her riparian rights. He further stated that it was important that the Board remember riparian rights is not just the right to a pier. Mr. Smith stated that they think that the pier as proposed by Ms. Hauck will impair Ms. Keegan’s riparian rights and for that reason, the Board should deny the application. He conceded that Ms. Keegan has some limited right to use the shared pier on the neighbor’s property. However, he said the shared pier is not functional due to the accretion that has occurred and that Ms. Keegan does not have the right to extend the shared pier. He further stated that it is foreseeable that more accretion may occur in this area.

Mr. Smith also argued the application of property lines extended. He said he understood that the Board has used that in other instances, but that Ms. Hauck’s application is distinguishable from other cases that Mr. Campbell mentioned throughout the Town because the significant accretion that has occurred in the area.

He argued that simply extending the lot line, as Mr. Showalter proposed, was not equitable. He explained that if the Board approves Ms. Hauck’s application as presented, Ms. Keegan essentially loses all waterfront and her riparian right. He said that the Board of Port Wardens has a duty to equitably distribute and allocate the usable waterway area. He argued that he did not believe the Board had the authority to determine the useable waterway until the court makes a determination of ownership related to the accredited land. Mr. Smith stated that case law is clear that the Board does not have the authority to take an action that is going to deprive a riparian owner of their riparian rights and that if Ms. Hauck’s application is approved, it will result in a taking of Ms. Keegan’s riparian rights.

Ms. Keegan introduced herself and gave a statement as to how Ms. Hauck’s proposed pier would negatively affect her. She explained how important her property is to her and the issues that exist with her shared pier. She further stated her opposition to Ms. Hauck’s application.

Mr. Jackson then made a statement in opposition to the application. Mr. Jackson gave an overview of Maryland statute and his contention that the Board had authority to regulate actions within the water only and that a key issue is where the water begins related to accredited land on the beach in front of Ms. Keegan’s property. Mr. Jackson raised the argument that the Board must consider distributing the land that has accredited since 1972. He stated that approval of Ms. Hauck’s application as presented would result in a taking of the beach that belongs to Ms. Keegan. Mr. Jackson then gave an overview of the history of the shared pier and an explanation as to why the shared pier is now useless to Ms. Keegan. He also gave an overview of the pending legal proceedings related to Ms. Keegan and Ms. Hauck’s properties.

Jeff Hubbard of Lane Engineering introduced himself and stated that the only thing he would add to that he conducted research of Maryland shorelines in 1972 with the Wetlands Act which led him to revisit former surveys that were completed for permitting purposes.

Mr. Showalter asked to respond to two points briefly. Mr. Showalter stated that Ms. Hauck would like access to the water by a pier, which is a right that both of her neighbors have the ability to exercise. Mr. Showalter asked the Board to review survey’s that Mr. Hubbard had submitted on other projects which reflected a use of the 1972 mean high water line and contradicted Mr. Hubbard’s current position.

Mr. Showalter stated that he failed to introduce an exhibit before and requested to add one more exhibit. Mr. Showalter submitted the Deed to Ms. Keegan’s property which is recorded among the Land Records in Liber 1969 folio 421 and added that the property was conveyed to Ms. Keegan subject to the Shared Dock Agreement. She purchased this property subject to that Shared Dock Agreement which expressly says her northern boundary is centered on the existing pier consistent with the long permitting history by the Board. Mr. Showalter then addressed riparian rights.

Mr. Campbell asked if the Board has heard from everybody who wanted to make a comment on this application.

Mr. Jackson raised an issue that he had trouble hearing Mr. Showalter due to a technological malfunction. Mr. Showalter restated his position. Mr. Jackson responded that the Shared Dock Agreement represents an easement and not a boundary line agreement.

Having no further comments from the public, Mr. Campbell addressed the points raised. He explained that Ms. Keegan had access to the water via the shared pier. Ater reviewing Ms. Hauck’s application and hearing the testimony, he said that it is consistent with the guidelines of the Town Code and that it meets all of the setbacks. Therefore, Mr. Campbell stated that he was ready to make a motion to approve Ms. Hauck’s application to construct a 104’ long by 6’ wide pier, and install one 4-pile boat lift not to exceed approximately 79’ channel ward and asked for a second. Mr. Hyberg asked the applicant to submit a revised drawing removing the platform at the end of the pier and added that the Board’s approval is contingent upon MDE and the Army Corps of Engineers issuing permits. Mr. Hyberg seconded the motion to approve the Hauck application. All were in favor.

***Rebecca Keegan application to construct a 103’ long by 6’ wide pier –*** Jeff Hubbard with Lane Engineering introduced himself on behalf of Rebecca Keegan, the property owner of parcel 799. Mr. Hubbard stated that the application is to build a pier 103’ long within the lot to meet the 15’ setback to the south of parcel 805. Mr. Hubbard explained to the Board that the traditional application of lot lines extended is not feasible in Ms. Keegan’s situation because her property is within a cove.

Mr. Jackson gave the history of a permit that was submitted to the Corps of Engineers by the Spears, the previous neighboring property owner, in 1984. Mr. Jackson said that Ms. Keegan was seeking to exercise her riparian right to wharf out and, if permitted, she would abandon the shared pier which is unusable. Mr. Jackson stated the other alternative for a pier is to extend the pier straight out using the property line that Mr. Showalter advanced and go out 110’ from the shoreline.

Mr. Showalter said that the proposed pier is located within the setback extending from the Leahy lateral line as prepared by Lane Engineering. Mr. Showalter said Section 11.12.b.3. of the Town Code does not permit the lateral line setback to be encroached unless there is a letter of no objection from the adjacent property owner and a recorded covenant in the Land Records. He said that there was no evidence of that in the Board’s file that he has seen, and that he believed this violated the setback. Mr. Showalter also stated that Ms. Keegan’s application is in conflict with the application the Board approved for Ms. Hauck. He also explained that approving Ms. Keegan’s application would adversely affect multiple property owners. Specifically, he said it would preclude Ms. Hauck from constructing a pier.

Mr. Showalter added that he would like to make sure the record included a letter addressed to Ms. Keegan dated January 23, 2020 from MDE. Mr. Showalter gave a summary of the letter whereby MDE concluded that Ms. Keegan could not construct a pier on her property due to the existence of the shared pier. He said that a condition of the Board’s approval is that a state permit is received, which could not be met in this instance and, therefore, did not comply with Section 11.12.E. of the Town Code.

Mr. Jackson advised that he could obtain a letter of no objection from the neighboring property owner to permit the pier within the setback. Mr. Jackson then raised a suggested modification to the application. Mr. Campbell advised that Ms. Keegan may be able to reach a resolution by coming to an agreement with her neighbors. Mr. Campbell stated that the letter from MDE made it clear that MDE would not approve Ms. Keegan’s application so the Board should deny the application.

Zach Smith asked the Board to table the application so that they could (1) go to the neighbor and seek the letter of no objection to encroach into the setback; and (2) go back to MDE and provide them with the additional information that they hoped would cause them to reverse that decision. Mr. Smith stated in order for Ms. Keegan to continue to enjoy riparian rights with access to the water, she would need to expand that pier, which she does not have the authority to do.

Dr. Andrews made it clear that he had not been approached by his neighbors to reach a solution.

Mr. Campbell stated that he thought the Board needed to make a motion on the application presented. Mr. Smith requested to withdraw the application. Mr. Hyberg made a motion to accept the withdrawal of the application, which was seconded by Mr. Trevorrow and unanimously approved.

***Ben Sheets, mooring application*** - Mr. Sheets stated that he bought a 65’ sailboat. He requested the mooring for access to his restaurant, Capsize, which can be difficult to dock at during low tide. He stated that the mooring would be permanent, but the boat wouldn’t be out there all of the time and gave a description of the boat. Mr. Campbell told Mr. Sheets to make sure he submitted the proper vessel information to the Town. Mr. Hyberg made a motion to approve the mooring application for Ben Sheets and his vessel and Mr. Campbell seconded the motion. The application was approved.

***Robert Trevorrow, mooring application*** – Mr. Trevorrow requested a helical mooring for his boat to be located 100 feet from an existing mooring. Mr. Trevorrow explained the location of the requested mooring and a description of his boat. Mr. Campbell made a motion to approve Mr. Trevorrow’s mooring application as submitted. Bob Hyberg seconded. The application was approved.

Cheryl Lewis told the Board she met with Jeff Mathias to review the current moorings.

Mr. Campbell asked for a motion to adjourn the meeting. Mr. Trevorrow made the motion and Mr. Hyberg seconded.

There being no further business, the meeting was adjourned.

Respectfully submitted,