

Summary sheet July 3,2025

Our names are Henry and Celeste Behr and Robert and Christina Romanowski. We live at 102 Bar Harbor road, Pasadena Md.

This summary sheet is our objection to the proposed installation of a pier by Lindsay A. Estabrook case number 2025-0081-V (AD3,Cd3). This is based on the numerous Anne Arundel hearing for certain requirements and limitations. We feel the placement of the proposed pier and boatlift will be a navigational hazard, to us, since it is being placed right in front of our docking facilities. We are also requesting that no dredging or grading be permitted. (Environmental issues) In addition, Ms Estabrook only has 17 feet of waterfront properly available. We are also requesting an on- site- visit.

This pier issue has been going on for years, and we feel that a history of this pier (2017/18 to present) needs to be mentioned here due to numerous Anne Arundel county statements and hearing results on the present pier installation.

Attached are copies of the numerous variance, Board of Appeals (BOA) and court hearings results that have occurred that have occurred over the years. We are summarizing and attaching these hearings and results as follow:

History

Case number C-02-CV-22-002125 signed 5/23/23 (attached) Circuit Court Judge Cathleen M. Vitale decision:

- a) Upheld all previously decisions and issues by BOA and the courts.
- b) No boat docking greater than 6 feet wide
- c) No docking on the east side
- d) Removal of the 2 foot by 15 foot cat walk.
- e) Affirmed 40-18 A (below decision)
- f) Ordered original building permit denied

Case number BA 40-18A (B02345690) Hearing date October 5, 2022 (attached) The BOA stated "Thus the Board's decision became the law of the land governing Ms. Estabrook's pier."

- a) The Board granted a 40 foot pier
- b) Boat beam limited to only 6 feet
- c) No water craft docked on east side of pier
- d) Remove 15 foot by 2 foot catwalk

Case number BA 30-18V (2017-0317-V) Hearing dates January 4, 21, and 22 2020

- a) Administration Hearing Officer (AHO ) set restrictions stated that no vessel is to moored on the east side of Ms. Estabrook's pier

- b) Planning and Zoning stated that the maximum beam boat on west side be limited to 6 foot beam
- c) Pier cannot be shifted any closer to the east side or it would impact navigability
- d) Removal of catwalk (15feet)
- e) No grading or dredging

March 27, 2018

a) Letter from Planning and Zoning "The extended pier length, boatlift and poles seriously impact any access to and from the current adjacent pier located at 90 Johnson Road and would also influence possible navigation to the recently approved boat lift on the west side of the pier at 102 Bar Harbor Road."

April 5 2018 Original Pier permits submitted by Ms Estabrook.

- a) Almost identical to the same proposal as presently being submitted.
- b) After discussions, the present pier 40 foot and a 15 foot catwalk was agreed upon
- c) The Powell's did not agree with this pier's proposal and appeal this decision. They requested a Board of Appeal hearing. Hence all the hearings from 2018-May 2023

Case number 2017-0317-V-AD3 ,CD3 (April 5, 2018) revision and comments from Diane Windell (Critical Area Environmental Review Team and same comments from development Division (pier Approvals)

- A) Comments March 29,2018 Quoting " Not only would the extended pier length, boat lift and poles, seriously impact any access to and from the current adjacent pier located at 90 Johnson road, it also influences possible navigation to the already approved boatlift on the western side of the pier at 102 Bar Harbor Road. "
- "While the extended pier length may be helpful for a deeper depth, it is not reasonably permissible in the very small building wedge for this property. The piling and lift should not be located as proposed and pier length shortens to remove the possibility that a boat could be moored in such a way as to eliminate access to the neighboring site at 92 Johnson Road."

The pictures represent some history, of what we have been dealing with for the last numbers of years. In addition, pictures (P1 thru p7) are showing our concerns about the possibility of navigational hazards due to the placement of the pier in front of our boat.

In conclusion, we are hoping, these attachments and pictures will assist you in understanding our position. Thank you for your consideration.

Henry Behr (email CBshore@verizon.net) Robert Romanowski (email rromano@comcast.net)

Celeste Behr

Christina Romanowski

Attachment  
#1

LINDSAY ESTABROOK

*Petitioner*

v.

ROBERT J. POWELL

*Respondent*

\* IN THE  
\* CIRCUIT COURT FOR  
\* ANNE ARUNDEL COUNTY  
\* MARYLAND  
\* Case No.: C-02-CV-22-002125

\* \* \* \* \*

**MEMORANDUM OPINION**

Lindsay Estabrook ("Petitioner") seeks judicial review of the Board of Appeals of Anne Arundel County's ("Board") decision issued on November 9, 2022, in case no. BA 40-18A. Petitioner argues that the Board failed to conduct a proper *de novo* hearing. A hearing was held on the petition for judicial review on May 22, 2023. The opinion of the Anne Arundel County Board of Appeals is affirmed.

**BACKGROUND**

Petitioner lives at 92 Johnson Road, Pasadena, MD 21122. Petitioner's neighbor, Robert Powell ("Respondent"), lives next door at 90 Johnson Road.

On June 7, 2017, Petitioner applied for a Building Permit Application for a pier to Anne Arundel County (the "County"). The proposed pier was 4' wide x 60' long, and a boat lift with two lift piles located 11' from the pier. Due to the limited width of the property and the existing adjacent piers, the proposed pier would be located within the 15-foot setbacks to both the east and west extended property line. To conform with County code, Petitioner applied for a variance that requested a fifteen-foot variance to the eastern lot line, a nine-foot variance to the western lot line, and a ten-foot variance to the then allowed maximum length of the pier of forty-five feet for a total of 55 feet. On May 8, 2018, the administrative hearing officer granted variances for the setbacks and the length, which allowed Petitioner to construct a 4-foot by 40-foot pier with a 2-foot by 15-

05/23/2023

foot catwalk extension. A building permit was issued on July 12, 2018. Respondent appealed both the variance and the building permits.

Petitioner obtained a building permit from the Department of Inspections and Permits for the installation of a 4-foot by 40-foot pier with a 2-foot by 15-foot extension on July 12, 2018, which Respondent appealed. Petitioner's pier was constructed and passed inspection by the County on January 21, 2020, prior to the appeal hearing.

The appeal of the variance went before the Board of Appeals, and on June 2, 2021, the Board granted in part and denied in part the variance that had been previously approved by the administrative hearing officer. The Board denied Petitioner's request for a 10-foot variance with respect to the length of the pier and its relation to the center of the cove, and it also prohibited Petitioner from docking a boat greater than 6 feet wide on the west side of the pier. Petitioner was required to remove the 2-foot by 15-foot-long catwalk extension from the pier.<sup>1</sup>

Respondent also appealed the issuance of the July 12, 2018 building permit, which was heard by the Board of Appeals on October 5, 2022. The Board conducted a *de novo* hearing and denied Petitioner's Request for Building Permit in a decision issued on November 9, 2022, on the basis that it did not meet the variance condition because the Board specifically denied the 2-foot by 15-foot-long catwalk extension. The Board noted that once the building permit was appealed, the Board had *de novo* authority to review the application and that it must review the building permit application as of the date of the hearing held on October 5, 2022.

Petitioner seeks judicial review of the Board of Appeal's decision issued on November 9, 2022, which denied Petitioner's request for a building permit (B02345690) to construct a pier

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<sup>1</sup> It is noted that at the time of the hearing before this Court, no new building permit had been applied for that conforms to the June 2021 variance decision. It should also be noted that the catwalk extension has not been removed.

measuring 4 by 40 feet with a 2 by 15-foot extension. The singular question posed by Petitioner is whether the Board of Appeals erred when it reviewed *de novo* the building permit as of October 5, 2022, and not as of July 12, 2018, when the permit was originally issued. Interestingly, the question is attacking the manner of review, not the decision.

### STANDARD OF REVIEW

Circuit Court review of an administrative agency decision is governed by Maryland's Administrative Procedure Act. Md. Code Ann., State Gov't § 10-201, et seq. A reviewing court may only reverse an agency determination if the determination:

- (i) is unconstitutional;
- (ii) exceeds the statutory authority or jurisdiction of the final decision maker;
- (iii) results from an unlawful procedure;
- (iv) is affected by any other error of law;
- (v) is unsupported by competent, material, and substantial evidence in light of the entire record as submitted; [or]
- (vii) is arbitrary or capricious.

Md. Code Ann., State Gov't § 10-222 (West)

Judicial review of an administrative law decision is narrow; a reviewing court does not substitute its judgment for the expertise of those conducting the administrative law hearing. *United Parcel Service, Inc. v. People's Counsel for Baltimore County*, 336 Md. 569, 576-577 (1994). Deference must be accorded to the administrative agency in its interpretation and application of its statutes; the expertise of the agency in its own field should be respected. *Board of Physician v. Banks*, 354 Md. 59, 729 A.2d 376 (1999). An agency's interpretation of the statute it administers is generally entitled to weight. *Bd. of Ed. for Dorchester Co. v. Hubbard*, 305 Md. 774, 790-791, 506 A.2d 625, 633 (1986); *Comm'n on Hum. Rel. v. Mass Transit*, 294 Md. 225, 233, 449 A.2d 385, 389 (1982), and cases there cited. Upon review of an error of law, however, the administrative

hearing does not receive such deference. *Baltimore Lutheran High Sch., v. Employment Sec. Admin.*, 302 Md. 649, 662 (1985).

The substantial evidence test does not require the court to make independent findings of fact or substitute its judgment for that of the agency. *Baltimore Lutheran High Sch.*, 302 Md. 649, 662 (1985). Substantial evidence is defined as “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Id.* A reviewing court may, and should, examine any conclusion reached by an agency, to see whether reasoning minds could reasonably reach that conclusion from facts in the record before the agency, by direct proof, or by permissible inference. *See Commissioner, Baltimore City Police Dep’t v. Cason*, 34 Md. App. 487 (1977). The agency’s decision must be reviewed in the light most favorable to it since decisions of administrative agencies are prima facie correct and carry with them the presumption of validity as it is the agency’s province to resolve conflicting evidence and to draw inferences from that evidence. *Maryland Aviation Admin. v. Noland*, 386 Md. 556, 571 (2005).

A reviewing court shall determine (1) the legality of the decision and (2) whether there was substantial evidence from the record as a whole to support the decision. *Baltimore Lutheran High Sch., v. Employment Sec. Admin.*, 302 Md. 649, 662 (1985). The arbitrary or capricious standard sets a high bar for judicial intervention, meaning the agency action must be “extreme and egregious” to warrant judicial reversal under that standard. *Bd. of Physician Quality Assur. v. Mullan*, 381 Md. 157, 171, 848 A.2d 642, 650 (2004). Thus, the focus of review must be on determining “whether the complainant’s rights under federal or State law were violated.” Md. Code Ann., Corr. Servs. (“CS”) § 10-210(b)(3)(ii).

### **DISCUSSION**

Petitioner argues that the Board’s decision was not based on a proper *de novo* hearing.

Petitioner contends that the Board, in considering the issuance of the permit as of October 5, 2022, took into consideration the Board's 2021 variance decision, which was not in front of the Department of Inspections and Permits at the time it issued the permit on July 12, 2018. At the time the permit was issued, Petitioner asserts that only the variance order from May 2018 was in effect, so the Board was essentially deciding the case on a different "charging document" when it considered the 2021 variance decision. Petitioner relies on *Pinkett v. State*, 30 Md. App. 458 (1976); however, *Pinkett* is not binding because it is a criminal case that dealt with a defendant who was convicted in district court and appealed to the circuit court for a *de novo* review. In *Pinkett*, the Court held that the defendant was required to be tried in the circuit court under the same statement of charges and arrest warrant that led to his convictions in the district court. *Pinkett* is not relevant to the case at bar.

Respondent argues that the Board is allowed to consider after-the-fact evidence when conducting a *de novo* hearing. Further, Respondent contends that Petitioner waived her right to object to the Board's consideration of the 2021 variance decision by not objecting to the admission of the 2021 variance decision as an exhibit during the hearing, nor objecting to the line of questioning with respect to its contents. Respondent notes that it was Petitioner who was the first to question any witness about the 2021 variance decision before it was even entered as an exhibit.

Section 603 of the Anne Arundel County Charter requires that "[a]ll decisions by the County Board of Appeals shall be made after notice and hearing *de novo* upon the issues before said Board." It is well established through case law that a *de novo* hearing "is one that starts fresh, on a clean slate, without regard to prior proceedings and determinations ... it puts all parties back at 'square one.'" *Mayer v. Montgomery County*, 143 Md. App. 261, 281 (2002). The Board of Appeals did not commit an error of law because it properly conducted a *de novo* hearing. The

Board “started from scratch” because it heard from numerous witnesses, such as Doug Musser (an environmental consultant), Petitioner, Petitioner’s fiancé Christopher Beach, Respondent, John Dowling (an expert surveyor), and Diane Windell (employee of the Office of Planning and Zoning). The Board determined the facts based on first-hand evidence presented to it as of October 5, 2022.

In addition, the Board was allowed to take into consideration newly discovered facts that were not presented at the first hearing. *See Halle v. Crofton Civic Ass’n*, 339 Md. 131, 145 (1995) (stating that the Anne Arundel County Board of Appeals “conducts wholly original proceedings with regard to all issues properly before it, and may consider new and additional evidence beyond that introduced before the administrative officer”). Furthermore, there is substantial evidence in the record to support the Board’s decision. The Board was unable to grant Petitioner a building permit because the Board denied the variance for the 2’ by 15’ long catwalk extension in granting the 2021 variance. As such, the permit based on the original dimensions was unacceptable to the Board.

Petitioner contends that the Board should not have considered the 2021 variance decision at the time of the hearing. “A party who knows or should have known that an administrative agency has committed an error and who, despite an opportunity to do so, fails to object in any way or at any time during the course of the administrative proceeding, may not raise an objection for the first time in a judicial review proceeding.” *Cicala v. Disability Review Bd. for Prince George’s County*, 288 Md. 254 (1980). While the Court does not believe the consideration of the terms contained in the 2021 variance decision was an error, Petitioner likely waived her right to raise this issue on an appeal for judicial review as she failed to object to the evidence regarding the 2021 variance decision at the initial hearing.



LINDSAY ESTABROOK

*Petitioner*

v.

ROBERT J. POWELL

*Respondent*

\* IN THE  
\* CIRCUIT COURT FOR  
\* ANNE ARUNDEL COUNTY  
\* MARYLAND  
\* Case No.: C-02-CV-22-002125

\* \* \* \* \*

**ORDER**

UPON consideration of Petitioner's Memorandum, Robert Powell's Response to Petitioner's Memorandum, and oral arguments made at the hearing on this matter held on Monday, May 22, 2023, it is by the Circuit Court for Anne Arundel County, Maryland hereby

**ORDERED**, that the decision of the Board of Appeals for Anne Arundel County in BA 40-18A is **AFFIRMED**; and it is further

**ORDERED**, that the Building Permit #B0234590 is **DENIED**.

5/23/2023  
Date


  
CATHLEEN M. VITALE, Judge  
Circuit Court for Anne Arundel County

05/23/2023 TLM

**CONCLUSION**

For the reasons stated above and the discussion set forth on the record, the Court affirms the Board's decision.

5/23/2023  
Date

  
CATHLEEN M. VITALE, Judge  
Circuit Court for Anne Arundel County

**RE: An Appeal from a Decision of the  
Department of Inspections & Permits**

**LINDSAY ESTABROOK**

**Petitioner**

\* **BEFORE THE**  
\*  
\* **COUNTY BOARD OF APPEALS**  
\*  
\* **OF ANNE ARUNDEL COUNTY**  
\*  
\* **CASE NO.: BA 40-18A**  
\* **(B02345690)**  
\*  
\* **Hearing Date: October 5, 2022**  
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**MEMORANDUM OF OPINION**

**Summary of Pleadings**

This is an appeal of a decision from the Department of Inspections and Permits for a building permit (B02345690) to install a 4-foot by 40-foot pier with two pilings with 2-foot wide by 15-foot-long extension, on property known as 92 Johnson Road, Pasadena.

**Summary of Evidence**

Mr. Doug Musser, an expert environmental consultant, assisted with the plans for the Petitioner's pier. He described the aerial photos that he used to analyze the area for potential pier placement, and the history of the pier length and setback proposals through the variance and building permit process. Here, there is a center point of cove that impacts the location of the subject pier. The Petitioner requested variances, which were granted, the building permit application was revised, and the building permit issued on July 12, 2018. The pier was constructed 7 feet 4 inches from the Powell's property line and 5 feet from the Behr's property line. The pier passed final inspection by the County on January 21, 2020. The Board of Appeals granted the setback variances, but denied the extension of the pier and conditioned the grant to restrict the width of the beam of any boat moored to 6 feet. Pilings are permitted to be placed on the center line of the setback distance.

Mr. Christopher Beach, the fiancé of the Petitioner, owns a 30-foot center console boat. The photos of his boat at the pier were taken in 2018. The pier was built after the notice of appeal was filed. The Powell's pier was rebuilt prior to construction of the subject pier. He has lived at the site since 2011. There is a 15-foot catwalk at the end of the pier and his boat is at the end of the pier. No navigation issues have occurred because of the use of the Estabrook pier. The Powell's live at 90 Johnson Road. The pier was inspected by the County and passed the inspection.

Ms. Lindsay Estabrook, the Petitioner, owns 92 Johnson Road and has lived there since 2011. She constructed a pier on her property to moor her boat. The boat is wider than 6 feet. Both the Petitioner's boat and Mr. Powell's boat have docked at the pier and there is no issue with navigation.

Mr. Robert Powell, the Protestant, lives at 90 Johnson Road, next door to the subject property. There is a 2-foot catwalk on the end of the Petitioner's pier. He owns a small boat that is sometimes moored to his dock. He objects to the Petitioner's pier because he is limited in the type of boat he can moor to his dock. The length of the main pier is 45 feet long, but the catwalk has not been removed. The pier is likely built of sufficient quality, but a portion must be removed to comply with the Board's variance decision.

Mr. John Dowling, an expert surveyor, testified regarding the improvements on site. He measured to the decking of the piers. The pier as built does not meet the variance. The photos of the as-built setbacks presented by the Petitioner does not match up with the property line.

Ms. Diane Windell testified that she reviewed the permit for the Office of Planning and Zoning for the subject pier. It was applied for on June 7, 2017. All relevant departments reviewed the application. The pier required variances to setbacks from side lot lines extended and length. After the Administrative Hearing Officer granted the variances, the building permit

was issued. The building permit is now closed since it was approved, issued, and inspected. The permit was granted with accurate information. If the pier does not meet the variance, then it would be subject to the enforcement process. The center point of the cove is drawn to scale. Here, the piers are in a cove off a larger cove area. The Board of Appeals did not grant the length variance to  $\frac{1}{2}$  the distance to the center of cove. The Petitioner could have an additional 5 feet to the center of cove if the center of cove is longer. The existing piers were built under prior Code provisions that focused on the farther point of cove.

Mr. Christopher Beach testified on rebuttal that Petitioner's Exhibit 11 is a photo of the setback of the pier to the end of the bulkhead. The property line is 18 inches farther on both sides. The Petitioner was not permitted to connect their bulkhead to the adjoining property's bulkhead. He is not a surveyor. Mr. Beach's boat has a 7-foot, 9-inch beam. The witness is unsure whether the 15-foot extension of the pier is going to be removed or whether he is going to get a boat with a 6-foot wide beam.

All testimony was stenographically recorded and the recording is available to be used for the preparation of a written transcript of the proceedings.

### **Findings and Conclusion**

This case has an unusual history. The Petitioner applied for a building permit to construct a pier and variances to permit the desired pier within the required 15-foot setback from property lines extended into the water and farther than the limit of no more than  $\frac{1}{2}$  the distance to the point of cove. The Administrative Hearing Officer granted variances to the side lot lines and granted the Petitioner a variance to permit a 55-foot long pier. Following the grant of the variances, the Department of Inspections and Permits issued the building permit in keeping with the Administrative Hearing Officer's decision prior to the expiration of the 30-day appeal period. The Protestant subsequently appealed that variance decision to this Board (and the grant of the

building permit, which has been stayed pending the resolution of the variance case). We ultimately granted the Petitioner variances for the placement of her pier in case number BA 30-18V. The Petitioner was granted a 15-foot variance to the east extended property line, and a 9-foot variance to the west extended property line to the minimum setback of 15 feet for the construction of a 4-foot wide by 40-foot-long pier, on condition that the maximum beam of any watercraft accommodated on the west side of the pier be limited to 6 feet and that no watercraft may be docked on the east side of the pier. The Board denied the right to extend the pier farther than 40 feet and the Petitioner was required to remove the 15-foot by 2-foot catwalk at the end of the subject pier.

The Department of Inspections and Permits argues that the building permit was accurately granted based on the information available at the time of issuance. Their argument continues that if the construction does not match the variances granted by the Board of Appeals, then the County could bring an enforcement action against the property owner. We believe that this position is accurate, in part. The County has the right to bring an enforcement action. However, once the building permit was appealed, this Board has *de novo* authority over it, therefore, divesting the Office of Inspections and Permits of jurisdiction. Thus, we review the building permit application as of the date of the hearing held on October 5, 2022. It is here where the Petitioner's application fails.

The application requests a 4-foot wide by 40-foot long pier with a 2-foot wide by 15-foot long extension. The Board granted variances for the 4-foot wide by 40-foot long pier, but specifically denied the 2 by 15-foot long catwalk extension. Therefore, we deny the Petitioner's request for a building permit since it does not meet the variance condition.

We note that the Petitioner requested that the 6-foot maximum boat beam condition be ignored or dismissed as part of this appeal. No. The 6-foot maximum boat beam condition was

imposed in BA 30-18V. The Petitioner appealed the Board's decision, but then withdrew her appeal before the Circuit Court. Thus, the Board's decision became the law of the land governing this pier. If the Petitioner moors a boat with a beam greater than 6 feet at this pier, she is in violation of the issued decision and an enforcement action should ensue.

### **ORDER**

For the reasons set forth in the foregoing Memorandum of Opinion, it is this 9<sup>th</sup> day of November, 2022, by the County Board of Appeals of Anne Arundel County, ORDERED, that the Petitioner's request for a building permit (B02345690) to construct a pier measuring 4 by 40 feet with a 2 by 15-foot extension is hereby **DENIED**.

Any appeal from this decision must be in accordance with the provisions of Section 604 of the Charter of Anne Arundel County, Maryland.

If this case is not appealed, exhibits must be claimed within 90 days of the date of this Order; otherwise, they will be discarded.

Any notice to this Board required under the Maryland Rules shall be addressed as follows: Anne Arundel County Board of Appeals, Arundel Center, P.O. Box 2700, Annapolis, Maryland 21404, ATTN: Deana L. Bussey, Clerk.

NOTICE: This Memorandum of Opinion does not constitute a building or grading permit and may be valid for a limited time period. In order for the applicant to construct or retain any structures allowed by this opinion, or to perform or retain any grading allowed by this opinion, the applicant must apply for and obtain the necessary building or grading permit and any other approval that may be required to perform the work described herein within the time allotted by law or regulation.

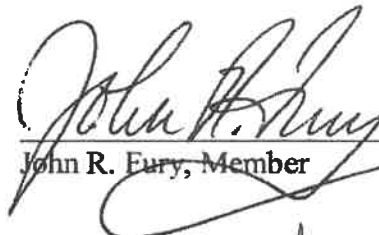
COUNTY BOARD OF APPEALS  
OF ANNE ARUNDEL COUNTY



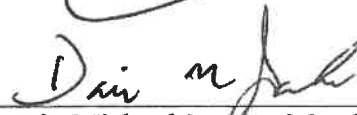
Anthony V. Lamartina, Chair



Patsy Baker Blackshear, Member



John R. Eury, Member



Darrin Michael Jacobs, Member

*(Scott MacMullan, Vice Chair, Richard Forgo, Member,  
and Maria K. Patterson, Member, did not participate in  
this appeal.)*



**RE: An Appeal From A Decision Of The  
Administrative Hearing Officer**

**LINDSAY ESTABROOK**

**Petitioner**

\* **BEFORE THE**  
\*  
\* **COUNTY BOARD OF APPEALS**  
\*  
\* **OF ANNE ARUNDEL COUNTY**  
\*  
\* **CASE NO.: BA 30-18V**  
\* **(2017-0317-V)**  
\*  
\* **Hearing Dates: January 4, 21, and**  
\* **22, 2020**  
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**MEMORANDUM OF OPINION**

**Summary of Pleadings**

This matter is before the Board as a result of an Order entered on October 17, 2019 from the Circuit Court for Anne Arundel County, Case Number: C-02-CV-18-003361, remanding the matter. This is an appeal of a decision of the Administrative Hearing Officer to grant a variance to allow a pier and pilings with fewer setbacks than required on property known as 92 Johnson Road, Pasadena.

**Summary of Evidence**

Ms. Lindsay Estabrook, the Petitioner, resides at the subject property with her partner, Chris Beach. The property is located on a small cove on the north side of Rock Creek, close to Riviera Beach. Ms. Estabrook presented photographs of the subject property prior to and following construction of her pier as well as photographs of the surrounding cove. (See, Petitioner's Exhibits 1-4). The property and its improvements were in poor condition when purchased by the Petitioner. Following her acquisition of the property, Ms. Estabrook addressed erosion along the shoreline by constructing a new bulkhead and the pier and pilings were installed. The subject pier is 4 feet wide until the last 15 feet, which measures 2 feet wide, for a total length of 55 feet. The length of the pier was motivated by the shallowness of the waterway

at low tide. Her property is the last in the cove upon which a pier was constructed. There are 10 piers located in the cove. Ms Estabrook's boat is 30 feet long with two outboard engines. The pier is located 10 feet from the adjacent Behr pier. The variance requests were minimized. Navigational issues have not occurred when travelling to and from the pier. When docked at the pier, the boat is approximately 6 to 8 feet from the adjacent Powell pier. The location of the pier does not inhibit the Powell's use of their pier, or their ability to navigate safely the surrounding waterways.

Mr. Doug Musser, the Petitioner's expert environmental consultant, assisted the Petitioner with filing her variance requests. Mr. Musser evaluated the property records for the subject property, the abutting properties, as well as aerials of the surrounding neighborhood and cove. After submission of the application for the pier, the County requested that the proposed lot line extensions be reconfigured. Mr. Musser had extended the property lot lines parallel to the adjacent piers. The neighboring pier, belonging to Mr. Powell, was replaced in-kind in September 2017. Ultimately, the extensions of the lot lines were revised prior to submission of the application to the Administrative Hearing Officer. There is a 17-foot wide bulkhead on the subject property, but the deed states that the waterfront property line is 19 feet wide. The west extended property lot line terminates at the exterior boat lift pile on the Behr's pier. The east extended property lot line terminates at the interior boat lift pile. The Estabrook pier is located 6 feet from the west extended property line. There is 16 feet between the Estabrook pier and the Powell pier. The Petitioner's pier has been located as far from Mr. Powell's pier and into as much deep water as possible. Ms. Estabrook also requested a 10-foot variance to the provision that piers not exceed one-half the distance to the center of the cove. MDE approved the plan on June 15, 2018. The building permit was issued on July 12, 2018 for a 55-foot long pier, zero feet from the east side extended lot line and 6 feet from the west side extended lot line, following

approval of the requested variances. He believes these variances are the minimum necessary to afford relief. Most people prefer a 6-foot wide pier. The State and County allow a 200 square foot platform on a pier, two catwalks, boat lifts and 6 mooring piles. This pier is 4 feet wide with a 40-foot long main stem and a 15-foot long, 2-foot wide catwalk. The water levels are very shallow at mean low water. He does not believe this project will impact the use or enjoyment of the neighboring properties or piers.

Mr. Chris Beach, a witness for the Petitioner, lives at the subject project with Ms. Estabrook. He operates the boat that is moored to the pier. He has been boating since he was about 10 years old. Their current boat is a 30-foot center console with approximately 1600 hours logged. The average boat owner in this area averages 100 hours per season; they average 230 hours. The main goal of the pier was to obtain reasonable and easy access to the boat and access to their home. They must access their home a few times a day when they are out on the boat because they have dogs. The pier is a necessity. They have resided in the neighborhood for 10 years. They were the only dwelling in the neighborhood without a pier. He researched many options with OPZ and MDE. He discussed a railway, a floating boat lift and a pier with pilings. MDE does not like floating structures. The railways are not common in this area. MDE suggested a piled pier and recommended a boat lift. MDE suggested a 65-foot length to access the deepest water. The current pier size is sufficient. If the pier were to be reduced in length, the boat could not be moored at the pier during low tide because of the shallow water. The boat is tied to the pier with tide slides. They are cleats that are on steel poles that bolt to the pilings themselves. The boat only moves up and down with the tide. Entering the cove between their pier and Mr. Powell's pier, the sea floor drops off and there is plenty of deep water. The docking location between Mr. Powell's pier and the subject pier is very shallow. He happens to have a little more water where his boat is moored. The shallow water is focused between the other side

of his pier and the Powell pier. He believes Mr. Powell would only be able to moor a rowboat on the side of his pier facing the Estabrook pier. The water is deeper on the other side of the Powell pier. He has never had any issues navigating his boat in and out of the cove. He usually puts the boat in on Thursday or Friday afternoon and removes it on Monday or Tuesday afternoon. When the boat is moored at the pier, there is about 8 feet between his boat and Mr. Powell's closest piling. The beam of his boat is 7.9 feet. You would add a few inches for the cleat; that would make it approximately 8 feet total for the boat and cleat. He believes that when his boat is docked at this pier, there would be a problem with docking at the Powell pier, but only because there is not enough water depth. If there was adequate water depth on that side of Mr. Powell's pier and the witness's boat was moored, Mr. Powell could moor a boat on the adjoining side of his pier without issue.

Mr. Shep Tullier, the Petitioner's expert in land use, planning and zoning, reviewed the variance application and visited the property. The property is a unique, pie-shaped lot with a shoreline measuring 17 to 18 feet. The Anne Arundel County Code requires a minimum of 15 feet between piers and the side property lines extended into the waterway. A pier cannot be constructed on this property without variances. The Petitioner is requesting a 15-foot variance on the east side (the Behr property side) and a 6-foot variance on the west side (the Powell property side). If the variances are denied, the Petitioner would suffer a hardship in the denial of access to the waterfront. All the neighbors have access in the small cove. It would also be a practical difficulty if they could not proceed. This is a very small, tight cove with small lots and a dense population. Other variances have been granted here. The Behrs do not object to the subject variances if there is no boating activity by the applicant on the Behr side of the pier. He believes that the Behrs could use some of that water area. The applicant understands that Board approval would be conditioned on them not using that area. There are some issues with the contour of the

shoreline and the water depth. He visited when there was an extremely low tide. Some accretion has occurred adjacent to the Powell pier and that area looks suitable for a small boat or one without a motor. The applicant is an experienced boater and will use that side of the pier. When leaving, the Powells will come closer to the Behr pier than the Estabrook pier because it extends farther into the cove. He believes the request is the minimum to afford relief. The pier is only 4 feet wide and narrows to a 2-foot catwalk at 40 feet. The pier is the narrowest pier in the immediate area. They are seeking the minimum necessary given the specific circumstances of this lot. The community is going through rejuvenation with new dwellings and additions. He looked at other waterfront improvements on the cove and there were other variances granted. In cases from 2017 and 2018, one-foot setbacks were granted and the Petitioner is asking for a zero-foot setback. With respect to the essential character of the neighborhood, the adjacent properties are developed with dwellings and piers. There are so many piers in such a small area that there must be a sense of cooperation in the community. Some of the piers are extremely close together. The Behr pier has boat lifts on both sides at the end, and the Wood pier has a boat lift and pilings at the end. If granted, the variance would not result in any loss of forest cover and would not be contrary to acceptable clearing and replanting practices within the Critical Area. It will not be detrimental to the public welfare. This cove has many piers and high levels of boating activity, some relief is warranted. The Estabrook property is the last to construct a pier. This is the narrowest property at the shoreline. The shallow depth creates a practical difficulty. The Petitioner would suffer an unwarranted hardship if the variances were denied since everyone else in the cove has constructed a pier. They originally asked for a 65-foot pier, but are now asking for a 55-foot pier.

Mr. Robert Powell, the Protestant, resides at 90 Johnson Road, next door to the Estabrook property. His wife and daughter own the property with him. His property has 36 feet of

waterfront and his pier is 40 feet long. He uses a jon boat for crabbing. The Estabrook pier interferes with his use of the jon boat when he turns into his pier. If he were to tie-up on the other side of his pier, his boat would interfere with his other neighbor's pier. The angle of the Estabrook pier and boat make it difficult to navigate. He could never get a larger boat in there. The jon boat is 4 feet wide, but it has outriggers so it does not tip over while crabbing. He used to be able to launch from his bulkhead. The Estabrook pier limits his access. He has hardly used his pier since the Estabrook pier was built. Water depth was previously not an issue. He thinks the water depth is the same on both sides of his pier. Dredging was done when the Estabrook pier was constructed which affected the sediment. He could put a boat on the western side of his pier, but he does not want to encroach on his neighbor. His pier is about 2 feet from the property line of 88 Johnson Road. Any boat on that side would interfere with their riparian rights.

Ms. Karen Powell, Mr. Powell's daughter, is one of the owners and has lived at 90 Johnson Road for over 40 years. She agrees with her father's testimony regarding the depth at the pier. The dredging caused problems. There was no previous issue with water depth. The Estabrook property is now higher than her property. They have to wait until Ms. Estabrook's boat is out in order to launch any boat. There is not enough room to navigate her father's boat past Ms. Estabrook's boat and her pier.

Mr. John Dowling is the Protestant's expert in land title abstracts and research and as a surveyor regarding riparian rights. He visited the site and performed surveys of 90 and 92 Johnson Road. He determined the riparian envelope for the Estabrook property from the property corner to the outside of the boat lift on the Behr property and from the Behr/Estabrook property line to the inside. The point-of-cove method was used. It is the riparian envelope depicted by OPZ for the original variance. OPZ had also used the parallel method to an existing pier. The subject pier is 38.5 feet by 4 feet intersecting the eastern property line and a 2-foot catwalk

coming out another 12.5 feet. The request for a 55-foot pier cannot fit inside the building envelope. The pier was supposed to hug the east property line and the original configuration was on the east line. He surveyed the pier as built. It does not conform to the variances requested and is over the 6-foot setback line. Approving the pier as built would violate the requested variances, a zoning violation. There is less than 4 feet between the pier and the riparian line. The Estabrook pier impacts the use of the Powell property.

Mr. Lee Mayer, the Protestant's expert in navigation and civil engineering regarding piers, has visited the site and reviewed the plans for the variance. He believes the Estabrook plan interferes with the Powell's ability to approach and depart from their dock. He does not believe this is a navigational issue as much as it is a mariner issue; the ability to get in and out of the location as it is now. There is 8 feet of distance between the Estabrook boat and the Powell pier. Vessels here range from 7.5 to 8.5 feet wide. He would not attempt to dock a vessel while a vessel is moored at the Estabrook pier. On questioning, Mr. Mayer stated that he is not familiar with the topography of the cove and had not done depth imagery.

Mr. Henry Behr, a Protestant, has lived at 102 Bar Harbor Road for approximately 38 years. His current pier was constructed approximately 25 years ago. Prior to the development of the Estabrook pier, it was very easy to access the west side of his pier. If he wanted to, he could back his boat up on that side and work on his boat on the beach. The east side of his pier is closer to the extended property line. Prior to any installation on the Estabrook's side, he was restricted on the east side of his pier. The variance granted by the AHO was a variance of 15 feet to allow a setback of 0 feet from his extended property line. Also, the AHO set restrictions that there be no vessels on the east side of the Estabrook pier, the pier can be no closer than 10 feet to his pier and be no longer than 55 feet. As the pier is built now, he can get his boat down to the pier and beach on the Estabrook's side. It is a little tight, but he can make it. He just wants to make sure

he can have access to his beach and can get to the boat if he has to work on it. Getting to his boat lifts is a little more difficult now that the pier is installed. He does not object to the pier as built. However, if anything is moved closer, he would lose approximately two-thirds the use of the west side of his pier. He would not be able to get his boat with less area.

Mr. Robert Konowal, a planner for the Anne Arundel County Office of Planning and Zoning, reviewed the Petitioner's application. The Petitioner is proposing a 55-foot long pier. It has already been constructed under building permit (B02345690) pursuant to variances granted under Case 2017-0317-V. The pier is 4 feet wide for the first 40 feet from the shore and then 2 feet wide for the final 15 feet of length. The Petitioner has located the pier as close as 0 feet from the east extended property line and 6 feet from the west extended property line, necessitating variances of 15 feet and 9 feet, respectively. The Code requires a 15-foot setback from the extended property lines. The second variance is to pier length. The Code states that a pier or mooring piling may not extend into the water any further than one-half the distance from the mean high water line to the center point of the cove. In this case, one-half the distance from the mean high water line to the center point of the cove is 45 feet, whereas the applicant is constructing a 55-foot long pier, necessitating a variance of 10 feet. The subject property is located in an older subdivision in the County that was platted around 1920. There are a lot of sub-standard lots, particularly in width. This lot has only 17 feet of frontage at the water's edge. The lands are also located within a cove where the property lines converge towards the center of the cove. These conditions create a practical difficulty in complying with Code requirements for piers and mooring pilings. Typically, docking and mooring facilities require 46 to 48 feet of frontage on the water to provide for a 6-foot wide pier and a 10 to 12-foot wide boat lift set back 15 feet from the extended side property lines. Denying the requested variances would deny the Petitioner reasonable use of these lands; mainly access to the water, which is a common right



enjoyed by waterfront properties. The variances requested are the minimum necessary to afford relief. The Petitioner has minimized the variances by constructing a pier with less width than the typical 6-foot width. The applicant has located the pier to maximize the area that is available to dock a boat within the extended property lines mainly on the west side of the pier. The requested variance to pier length is also the minimum necessary so as to provide for adequate water depth. The variances are in keeping with the confined character of docking facilities in the neighborhood. He does not believe the facility would hamper navigation to adjacent piers. It is recommended that the maximum beam of any boat that may be accommodated on the west side of the pier, be limited to 6 feet to ensure any docked boat remains inside the extended property line of the subject property. The Office of Planning and Zoning recommends approval of the variances, subject to the condition that the maximum beam of any watercraft that may be accommodated on the west side of the pier be limited to 6 feet and that no watercraft may be docked on the east side of the pier.

Mr. Chris Beach testified on rebuttal that the bulkhead was built for soil retention on the subject property. The water depths between the Powell and the Behr pier have changed since owning the subject property as a result of a tidal surge from a hurricane. Mr. Dowling's drawing shows the pier less than 6 feet from the corner of the bulkhead, which is an inaccurate depiction of the as-built condition of 7 feet, 4 inches. The survey also shows a fence line, which he believes is the common lot line. He has observed the Powells launch the jon boat off their pier. They tend to launch it in spring and not pull it out until fall, keeping it docked at the end of the pier throughout the summer. He has not observed them confronted with any difficulty in this process. The Powells never put a boat in the water until Ms. Estabrook began making improvements to the waterfront.

Mr. Doug Musser testified on rebuttal that he prepared the building permit application for the subject property. The building plan as approved is the same as the variance plan that is the subject of this appeal. The County has inspected the pier and issued its final inspection approval. The County used two different methods to determine the extended lot lines, parallel with the Behr's pier, and the point of the cove. Similar methods have been used for other piers located within this cove, and 0-foot setback variances were granted. Mr. Dowling's exhibit has inaccuracies in that the pier was shifted 6 inches to the west from where it was constructed. The distance of the pier from the Behr pier is also off by 18 inches, and the end of the 2-foot section is not correct. The distance from the bulkhead to the pier is also incorrect. Those inaccuracies shift the pier 4 to 6 inches to the east based on Mr. Dowling's drawings. Mr. Musser's drawing is a true depiction of the as-built pier, which complies with the setbacks and variance approvals.

All testimony was stenographically recorded and the recording is available to be used for the preparation of a written transcript of the proceedings.

#### **Findings and Conclusion**

This appeal is taken from the conditional granting of a variance to permit a pier with fewer setbacks than required. The Petitioner must meet all of the requirements of Section 3-1-207 (a) and (e) of the Anne Arundel County Code (the "Code") to obtain the requested variances. The proposed pier would measure 55 feet long, consisting of a 4-foot by 40-foot main pier, with a 15-foot by 2-foot catwalk at the end. Section 18-2-404(b)(3) of the Code requires that a pier or piling for a private pier be located at least 15 feet from the lot line extended into the water. The proposal requires a 15-foot variance to the east side riparian lot line, and a 9-foot variance to the west side riparian lot line. Section 18-2-404 (c)(2) requires that a pier or mooring piling may not extend into the water any further than one-half the distance from the mean high water line to the center point of the cove. In this instance, one-half the distance from the mean high water line to

the center point of the cove is 45 feet; thus, the Petitioner requires a 10-foot variance to the center of the cove pier length restriction.

The Petitioner must first establish "that because of certain unique physical conditions, such as irregularity, narrowness or shallowness of lot size and shape or exceptional topographical conditions peculiar to and inherent in the particular lot, there is no reasonable possibility of developing the lot in strict conformance with this article." Code, Section 3-1-207(a). The community consists of substandard lots, particularly in width and was platted in the 1920s. The property is pie-shaped and the shoreline measures approximately 17 to 18 feet. A minimum of 36 feet would be required to meet the minimum setback requirements for the extended lot lines. A pier cannot be constructed on this property without variances. The property is located on a densely populated, small cove and is the last of the properties in the cove to be developed with a pier. The existing piers dictate how the lot lines are extended. The narrowness of the lot, limited water frontage and location of the surrounding piers necessitates the variance requests. The pier cannot be shifted any closer to the east side lot line, or it would impact navigability, and is located as far from the neighboring pier on the west side. Without the variances, adherence to the setback requirements would not permit the Petitioner to develop reasonably the pier. To maximize the navigability of the waterway, the Petitioner would be conditioned on limiting any vessel docked at her pier to a 6-foot beam width, so as to not cross the riparian lot lines. We find that strict conformance with the Code would not allow for the reasonable possibility of developing this lot to include any pier; therefore, we find that the Petitioner has satisfied the first requirement necessary for the variance requests to the extended lot lines. The Board; however, finds that the inclusion of the catwalk at the end of the proposed pier is unwarranted. The contour of the shoreline and the water depth do not require additional footage for the Petitioner to be able to reach the mean high water line. The Petitioner and Mr. Beach both testified that they were

able to moor their boat along the main section of the pier without the necessity of the catwalk, which means that mean high water can be met along the main section of the pier. The variance request to extend the pier more than one-half the distance to the center of the cove is unwarranted.

The Petitioner also must show that "the variance is the minimum variance necessary to afford relief." *Id.* §3-1-207(e)(1). The proposed pier would be approximately 40 feet long by 4 feet wide with a 15-foot by 2-foot catwalk. Given the closeness of the adjoining piers, the Petitioner would have 6 feet of water area adjacent to the proposed pier within which a boat can be moored without crossing the west side extended lot line. Any lesser variance would reduce the mooring area below 6 feet in width and negatively impact navigation. Therefore, we find that the Petitioner's variance requests to the extended lot lines are the minimum necessary to afford relief. The extended catwalk, however, is unnecessary to access safely the pier, or the mean high water line. The Petitioner presently moors her boat along the main stem of the pier, and thus the catwalk is not needed where a variance is not necessary it cannot be the minimum necessary to afford relief.

Next, the Petitioner must show that "the granting of the variance will not alter the essential character of the neighborhood or district in which the lot is located." *Id.* § 3-1-207(e)(2)(i). The character of the neighborhood is a typical waterfront residential community. It is densely populated and the majority of the waterfront properties have piers including all of the adjacent properties. This property is in a small cove and the Petitioner is the last to construct a pier. As stated by Mr. Tullier, use of this cove requires cooperation among the neighboring properties. Piers are expected in waterfront neighborhoods and are typical here. The Petitioner's proposal, as conditioned by this Board's approval, conforms to the essential character of the neighborhood (water oriented, pier focused) and does not detract from it or alter it.

The Petitioner presented sufficient evidence to convince us that the variance requests to the extended lot lines would not substantially impair the appropriate use or development of adjacent properties. See, *Id.* § 3-1-207(e)(2)(ii). As stated above, the properties on either side of the subject property are already developed with piers. There is no impact to the property to the east and, provided the Petitioner's vessel does not exceed a 6-foot beam width, we find that the development will not impact the use of the adjacent lots. Therefore, the Board finds that the requested variances to the extended lot lines will not substantially impair the appropriate use or development of adjacent properties. We find that the addition of the catwalk may have an impact on the navigability of the waterway and is unnecessary, and thus, we find that the evidence presented for variance limiting piers to one-half the distance to the center of the cove is insufficient to meet this criteria.

The granting of the variances will "not reduce forest cover", and will not be "contrary to accepted clearing or replanting practices," for the obvious reason that the pier construction will occur on the water. Furthermore, the variances, as conditioned by this Board, "will not be detrimental to the public welfare." As described previously, safe navigation is assured providing ample navigable waterways between the proposed pier and the neighboring property to the west within the Petitioner's riparian lot lines. In sum, we find that the Petitioner's requests to the extended lot lines meet all of the Code criteria necessary to grant approval. (See §§ 3-1-207(a)(ii), (b)(i), (c)(iv), and (e)(2)(v)). However, we find that the catwalk extension could impact the navigable waterway and there was insufficient evidence to demonstrate its necessity, and find that it does not meet the criteria for section 3-1-207(e)(2)(v).

**ORDER**

For the reasons set forth in the foregoing Memorandum of Opinion, it is this 2nd day of JUNE, 2021, by the County Board of Appeals of Anne Arundel County, **ORDERED**, that the Petitioner's request to construct a pier 5 feet wide by 40 feet long, which requires a 15-foot variance to the east extended property line, and a 9-foot variance to the west extended property line minimum setback requirements of 15 feet are hereby **GRANTED** conditioned that the maximum beam of any watercraft that may be accommodated on the west side of the pier be limited to six feet and that no watercraft may be docked on the east side of the pier. The Petitioner's request for a 10-foot variance to the requirement that the piers be no longer than one-half distance from the mean high water line to the center point of the pier is hereby **DENIED**, and the Petitioner is required to remove the 15-foot by 2-foot catwalk at the end of the subject pier.

Any appeal from this decision must be in accordance with the provisions of Section 604 of the Charter of Anne Arundel County, Maryland.

If this case is not appealed, exhibits must be claimed within 90 days of the date of this Order; otherwise, they will be discarded.

Any notice to this Board required under the Maryland Rules shall be addressed as follows: Anne Arundel County Board of Appeals, Arundel Center 300, Box 3700, Annapolis, Maryland 21404, ATTN: Dena L. Bussaty, Clerk.

**NOTICE:** This Memorandum of Opinion does not constitute a building or grading permit and may be valid for a limited time period. In order for the applicant to construct or retain any structures allowed by this opinion, or to perform or retain any grading allowed by this opinion, the applicant must apply for and obtain the necessary building or grading permit and

any other approval that may be required to perform the work described herein within the time allotted by law or regulation.

COUNTY BOARD OF APPEALS  
OF ANNE ARUNDEL COUNTY

DocuSigned by:

Tony Martina

Anthony Martina, Chair

DocuSigned by:

Scott R. Rouse

Scott R. Rouse, Vice Chair

DocuSigned by:

Michael Rouse

Michael Rouse, Member

DocuSigned by:

John F. Rouse

John F. Rouse, Member

DocuSigned by:

Martha Jacobs

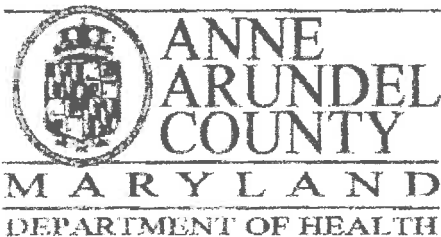
Martha Jacobs, Member

DocuSigned by:

Maria K. Petersen

Maria K. Petersen, Member

*Patsy Baber Rousehear, Member, did not participate  
this appeal.*



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3 Harry S. Truman Parkway  
Annapolis, Maryland 21401  
Phone: 410-222-7053 Fax: 410-222-7678  
Maryland Relay (TTY): 711  
[www.ahealth.org](http://www.ahealth.org)

Frances B. Phillips, R.N., M.H.A.  
Acting Health Officer

### MEMORANDUM

TO: Krystyna Lane, Planning & Zoning  
Planning & Zoning  
MS-6301

FROM: Clifford G. Ruehle, Program Manager  
Bureau of Environmental Health  
MS-3101

DATE: March 27, 2018

RE: Lindsay A. Estabrook  
92 Johnson Rd.  
Pasadena, MD 21122

CASE  
NUMBER: 2017-0317-V-REVISION

SUBJECT: Variance

The Health Department has reviewed the above referenced variance request to allow a pier and pilings with less setbacks than required.

The above referenced property is served by public water and sewer facilities. The Health Department has no objection to the above referenced request.

If you have further questions or comments, please contact me at 410-222-7053.



**FINDINGS AND RECOMMENDATION  
OFFICE OF PLANNING AND ZONING  
ANNE ARUNDEL COUNTY, MARYLAND**

**APPLICANT:** Lindsay Estabrook

**ASSESSMENT DISTRICT:** 3<sup>rd</sup>

**CASE NUMBER:** 2017-0317-V

**COUNCIL DISTRICT:** 3<sup>rd</sup>

**HEARING DATE:** May 8, 2018

**PREPARED BY:** Robert Konowal  
Planner

**REQUEST**

The applicant is requesting Variances to allow a pier and mooring pilings with less setbacks than required at 92 Johnson Road in the subdivision of Bar Harbor, Pasadena.

**LOCATION AND DESCRIPTION OF SITE**

The subject property has 92 feet of road frontage on the south side of Johnson Road, 75 feet west of Bar Harbor Road. The property is 13,750 square feet in area and is identified as Lot 65 in Parcel 71, Block 23 on Tax Map 11. The property has been zoned R5-Residential District since the adoption of the zoning maps for the Third Council District effective January 29, 2012.

This is a waterfront lot located in a cove off Rock Creek in the Chesapeake Bay Critical Area and has been designated as "IDA-Intensely Developed Area". The property is located in a buffer modification area.

These lands are currently improved with a single-family detached dwelling. There are no mooring or docking facilities at the subject property at this time.

**APPLICANT'S PROPOSAL**

The applicant is proposing to construct a four-foot wide by 65-foot long pier with two mooring piles located 11 feet off the west side of the proposed pier.

**REQUESTED VARIANCES**

Section 18-2-404 (b) (3) of the Anne Arundel County Zoning Ordinance requires that a pier, platform or mooring piling be setback a minimum 15 feet from the extended property lines. The applicant has proposed to construct a pier 0 feet off the east extended property line and three feet from the west extended property line necessitating variances of 15 feet and 12 feet respectively.

Two pilings are proposed to be located to west of the proposed pier beyond the property's west extended property lines. The applicant has not obtained authorization from the adjacent property

owner to locate these pilings within their extended property lines. Without authorization from the adjacent property owner this Office cannot consider nor grant a variance for these pilings.

Section 18-2-404 (c) (2) of the Code states a pier or mooring piling may not extend into the water any further than one-half the distance from the mean high waterline to the center point of the cove. In this case one-half the distance from the mean high waterline to the center point of the cove is 45 feet whereas the applicant is proposing a pier 65 feet in length necessitating a variance of 20 feet.

### **FINDINGS**

This Office finds that the subject property has only 17 feet of frontage at the water's edge. These lands are also located within a cove where the property lines converge inward towards the center of the cove. These conditions do create a practical difficulty in complying with the Code requirements for piers and mooring pilings. Typically, docking and mooring facilities require 46 to 48 feet of frontage on the water to provide for a six-foot wide pier and a 10 to 12-foot wide boat lift set back 15 feet from the extended side property lines. Denial of a variance in principle would cause hardship in the use of these lands as it would essentially deny a mooring and docking facility on these lands which is a common right enjoyed by waterfront properties.

The variances to the extended side lot line set backs are considered to be the minimum necessary to afford relief. The applicant has minimized the variance by proposing a pier four feet in width which is less than typical six foot width. The location of the pier on the east extended property line is necessary to maximize the area available to dock a boat within the extended property lines of the subject site. The requested variance to pier length is not considered to be the minimum necessary to afford relief. A 45-foot long pier is ample length to provide for the docking of one or possibly two watercraft. While the size of the watercraft that may be accommodated by these facilities might not suit the current owner the relative size of this facility is considered to be commensurate with the limitations (i.e. width) of this property.

The variances requested for the location of the pier in relation to the extended property lines are in keeping with the tight character of docking facilities in the neighborhood. The length of the pier is not. The proposed pier length of 65 feet would hamper navigation as any boat docked near the end of the 65-foot long pier would encroach into the domain of the adjacent property to the west.

**The Development Division (Pier Approvals)** noted that the very limited building envelope for this property would require a variance under all circumstances. However, the extended pier length, boat lift and poles seriously impact any access to and from the current adjacent pier located at 90 Johnson Road and would also influence possible navigation to the recently approved boat lift on the western side of the pier at 102 Bar Harbor Road. While the proposed extended pier length may be helpful for a deeper depth, it is not reasonably permissible in the very small buildable wedge for this property. The pilings and lift should not be located as proposed and the pier length shortened to remove the possibility that a boat could be moored in such a way as to eliminate access to the neighboring pier at 92 Johnson Road. The Development Division does not support the request as proposed.

The Anne Arundel County Department of Health advised that the property is served by public water and sewer facilities. The Health Department has no objection to the request.

### **RECOMMENDATION**

With regard to the standards set forth in Section 18-16-305, under which a variance may be granted under the County Code, the Office of Planning and Zoning would recommend that the following:

That the following variances be **approved**:

1. A variance of 15 feet to allow a 45-foot long pier to be located as close as 0 feet to the east extended property line,
2. A variance of nine feet to allow a 45-foot long pier to be located as close as six feet to the west extended property line and;

That the following variance be **denied**:

1. A variance of 20 feet to allow a pier 65 feet in length.

DISCLAIMER: This recommendation does not constitute a building permit. In order for the applicant(s) to construct the structure(s) as proposed, the applicant(s) shall apply for and obtain the necessary building permits and obtain any other approvals required to perform the work described herein. This includes but is not limited to verifying the legal status of the lot, resolving adequacy of public facilities, and demonstrating compliance with environmental site design criteria.

  
LGR/WREK

**To: Zoning Division**

**From: Diane Windell - Critical Area Environmental Review Team**

**Re: Variance Application: 2017-0317-V Lindsay Estabrook**

**Date: March 29, 2018**

**Comments:**

**The applicant requests a variance to allow a pier and two boatlift pilings with less setbacks than required.**

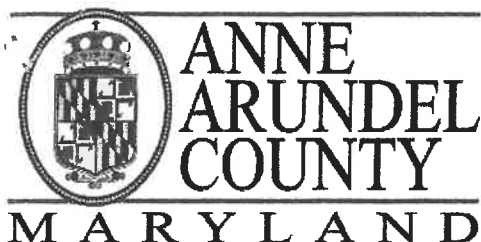
**The very limited building envelope for this property would require a variance under all circumstances. The waterfrontage width is only 17'.**

**The variance is to construct a 4' x 65' pier (whereas, the Building Permit has only requested a 4' x 60' pier) and place pilings on the west side for a boat lift. The new construction requires variances of 15' to the 15' eastern side setback to install the pier; a variance of 12' to the 15' western side setback for the same pier; and a variance of 20' to the maximum 45' length permitted, which is ½ the distance to the center of cove. Additionally, the boat lift piles will be 8' outside of the western side building envelope.**

**Not only would the extended pier length, boat lift and poles, seriously impact any access to and from the current adjacent pier located at 90 Johnson Road, it would also influence possible navigation to the already approved boat lift on the western side of the pier at 102 Bar Harbor Road.**

**While the extended pier length may be helpful for a deeper depth, it is not reasonably permissible in the very small buildable wedge for this property. The pilings and lift should not be located as proposed and the pier length shortened to remove the possibility that a boat could be moored in such a way as to eliminate access to the neighboring pier at 92 Johnson Road.**

**The Development Division does not support the request as proposed, but will defer to the Zoning Division and the Administrative Hearing Officer.**



OFFICE OF ADMINISTRATIVE HEARINGS  
ARUNDEL CENTER, P.O. BOX 2700  
ANNAPOLIS, MARYLAND 21404-2700  
410-222-1266 FAX 410-222-1268

**JONATHAN A. HODGSON, Esq.**  
Administrative Hearing Officer

April 5, 2018

**NOTICE OF HEARING**

To: Property Owners Within 175 feet

RE: **LINDSAY ESTABROOK – 2017-0317-V (AD 3, CD 3)** variance to allow a pier and pilings with less setbacks than required on property with 92 feet of frontage on the south side of Johnson Road, 75 feet west of Bar Harbor Road, Pasadena.

**Property Address:** 92 Johnson Road, Pasadena, MD 21122

**Date of Hearing:** **Tuesday, May 8, 2018 at 10:30 a.m.**

**Location:** ARUNDEL CENTER  
Room 161, First Floor  
44 Calvert Street  
Annapolis, Maryland 21401

**You can view the application and site plan by going to our webpage at**  
**<http://www.aacounty.org/departments/admin-hearings/admin-hearings-schedule>**

NOTE: It is the responsibility of the applicant to post this property for at least **14** days prior to the hearing.

Your presence at this hearing is welcome as either a proponent or a protestant of the application. IF YOU DECIDE TO ATTEND, PLEASE ARRIVE ON TIME.

Individuals who need special accommodation should communicate with Tammy Norman at least seven working days prior to the hearing at 410-222-1266 or by e-mail to [tnorman@aacounty.org](mailto:tnorman@aacounty.org) or through the Maryland Relay Service at 711. All materials are available in an alternative format upon request. All other inquiries should be directed to a zoning analyst with the Office of Planning and Zoning, Heritage Office Center, 2664 Riva Road, Third Floor, Annapolis - **Telephone No. 410-222-7437** with reference to the above case number(s).

## For Office Use Only

CASE # 20-7-137-1FEE PAID 52DATE 11/17

## For Office Use Only

ZONE R5CRITICAL AREA: IDA ☒ LDA ☐ RCA ☐BMA: Yes ☒ No ☐NO. OF SIGNS 2

## VARIANCE APPLICATION

Applicant(s): Lindsay Estabrook

(All persons having 10% or more interest in property)

Property Address: 92 Johnson Rd, Pasadena MD 21122Property Location: 92 feet of frontage on the (n, s, e, w) side of Johnson (St, Rd, Ln, etc.);  
75 feet (n, s, e, w) of (Nearest intersecting street) Bar Harbor Rd (St, Rd, Ln, etc.).Tax Account Number 3065-9003-7804 Tax District 3 Council District 3Waterfront Lot Yes Corner Lot No Deed Title Reference 23560/230Zoning District R5 Lot # 65 Tax Map 11 Block/Grid 23 Parcel 71Area (sq. ft. or acres) 13,750 Subdivision Name Bar Harbor

Description of Proposed Project and Variance Requested (Brief, detail fully in letter of explanation)

Proposed 4' wide by 60' long pier with 2 mooring piles  
all located within the 15-foot setbacks of ext. prop lines

The applicant hereby certifies that he or she has a financial, contractual, or proprietary interest equal to or in excess of 10 percent of the property; that he or she is authorized to make this application; that the information shown on this application is correct; and that he or she will comply with all applicable regulations of Anne Arundel County, Maryland.

Applicant's Signature Lindsay Estabrook Owner's Signature XPrint Name Lindsay Estabrook Print Name \_\_\_\_\_Mailing Address 92 Johnson Rd Mailing Address \_\_\_\_\_City, State, Zip Pasadena MD 21122 City, State, Zip \_\_\_\_\_

Phone \_\_\_\_\_ (Work) \_\_\_\_\_ (Home) Phone \_\_\_\_\_ (Work) \_\_\_\_\_ (Home)

Cell Phone \_\_\_\_\_ Cell Phone \_\_\_\_\_

Email Address \_\_\_\_\_ Email Address \_\_\_\_\_

## \*\*\* Below For Office Use Only \*\*\*

Application accepted by Anne Arundel County Office of Planning and Zoning: \_\_\_\_\_

Initials

Date

Variance to \_\_\_\_\_

***Pen Mar Environmental Services, LLC***

*for your environmental permit needs*

P.O. Box 6809

Annapolis, MD 21401

443.875.3955

February 28, 2018

Sara Anzelmo  
Anne Arundel County  
Planning and Zoning Division  
2664 Riva Road, 3<sup>rd</sup> Floor  
Annapolis, MD 21401

Re: Proposed Pier and  
Boatlift Installation  
92 Johnson Road  
Pasadena, MD 21122  
Lot 65 Bar Harbor Subdivision  
Tax ID# 3065-9003-7804

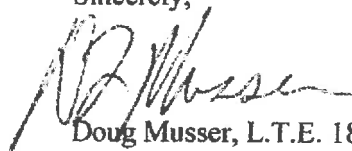
Dear Ms. Anzelmo,

Per the County's further review of our project, I have met with Ms. Diane Windell of the County Planning Section to determine and correct the property lines as they extend from the shore of the subject property.

Per the attached corrected drawing, we are revising our original Variance request. We will now be requesting a Variance of fifteen feet to the required 15-foot setback to the extended east property line and a Variance request of 12 feet to the required 15-foot setback of the extended west property line for the construction of a pier. Additionally, now that the extended property lines have been determined, we will be in need of a Variance of 20' to the maximum allowable distance of 45' which is one-half the distance to the center of the cove for the requested 65-foot pier. The extra length is proposed to achieve maximum water depth. Finally, two boat lift piles are proposed to be located 8' outside of the extended west property line.

Please let me know if you need any other information.

Sincerely,



Doug Musser, L.T.E. 1818  
Environmental Consultant

Cc: Lindsay Estabrook, owner

Bar Harbor Rd

H. Behr  
102 Bar Harbor Rd  
Pasadena, MD 21122

Johnson Rd



288'

SITE

246'

Property Line

Property Line

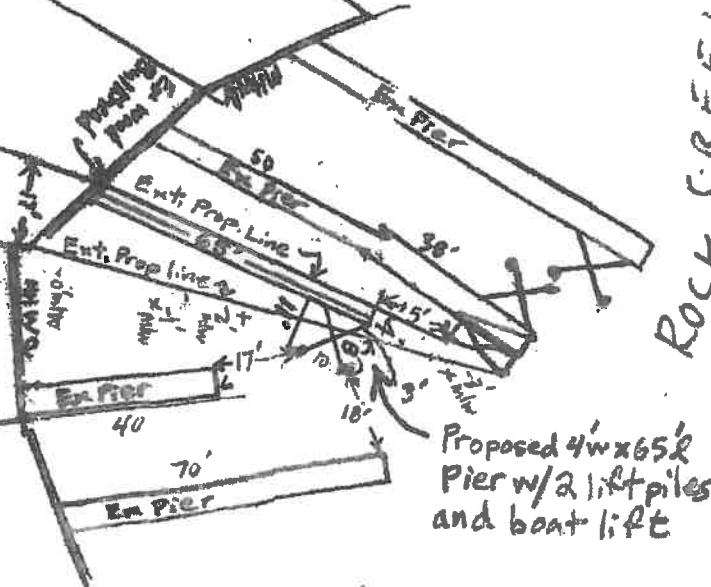
R. Powell  
90 Johnson Rd  
Pasadena, MD 21122

Scale: 1" = 40'



NOTE: The distance to the determined center of the Cove is 90'  
- 1/2 the distance to the center of the Cove is 45' (i.e., max pier length)

ROCK CREEK



Proposed: Pier w/ lift  
County: Anne Arundel  
Waterway: Rock Creek  
Date: ~~June 2, 2017~~ Revised 2/20/18 2/20/18

## SITE PLAN

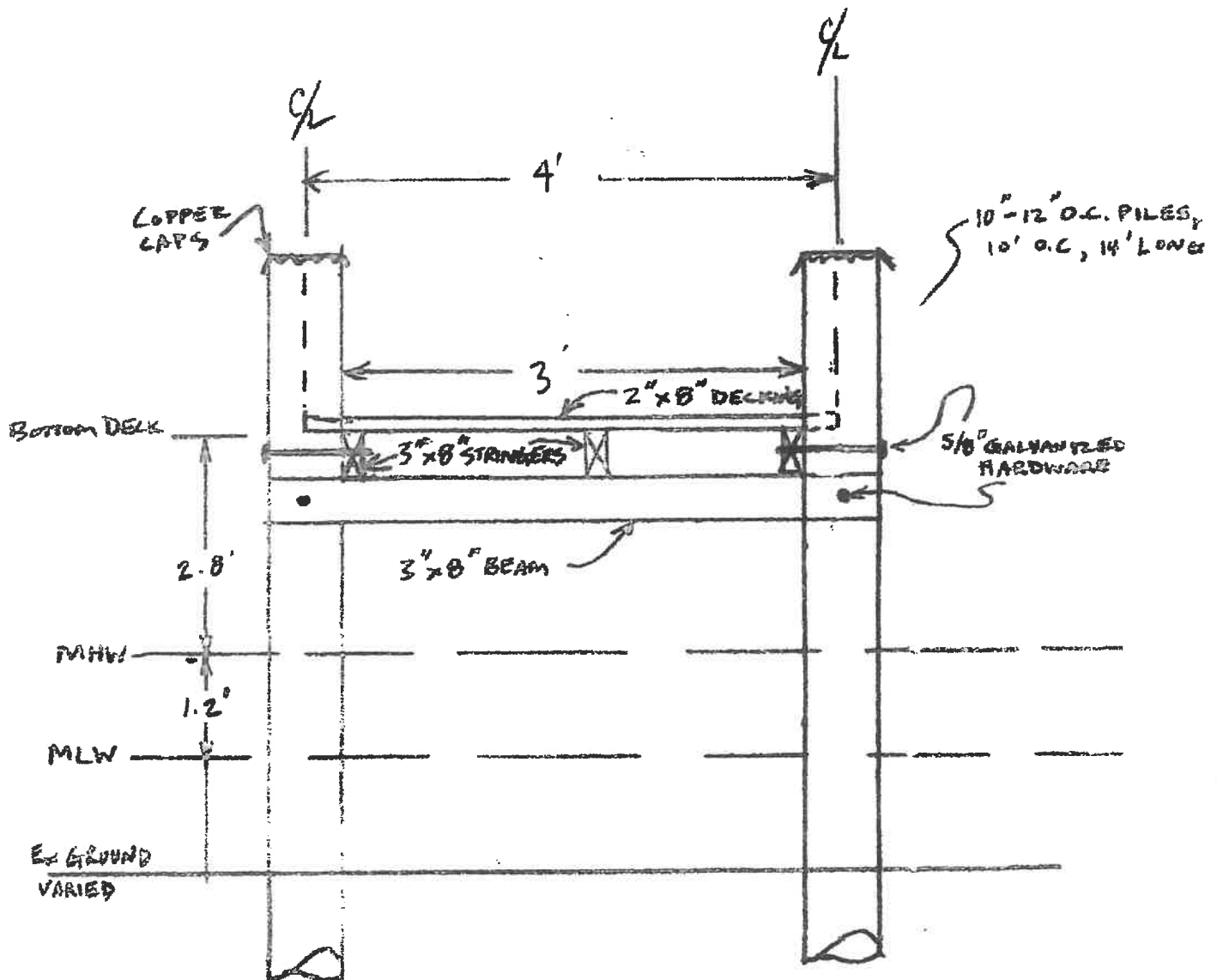
92 Johnson Road  
Pasadena, MD 21122

Owner: Lindsay Estabrook  
92 Johnson Rd  
Pasadena, MD 21122

Fig 2 of 6



SCALE: N.T.S. (as shown)



\* NOTE: MAXIMUM DECKING WIDTH NOT TO EXCEED 6 FEET ON MAIN WALKWAY

### PIER X-SECTION FRONT

COUNTY: Anne Arundel  
WATERWAY: Rock Creek  
DATE: May 25, 2017

OWNER: Lindsay Esterbro  
ADDRESS: 92 Johnson Rd  
Pasadena, MD 2112

Fig 3 of 6

# VICINITY MAP

92 Johnson Rd  
Pasadena, MD 21122



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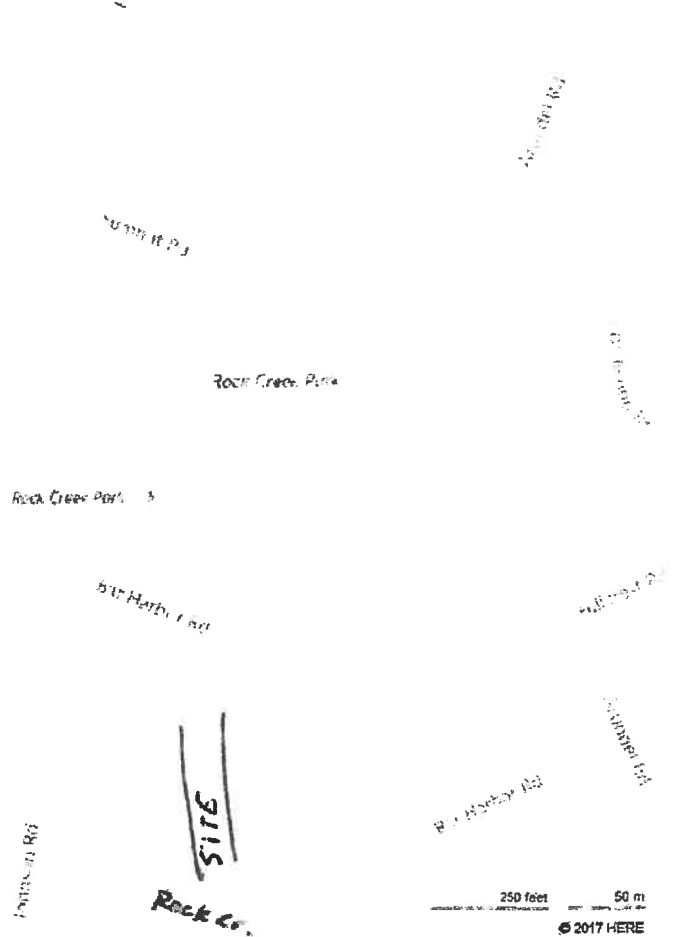


Fig 1 of 6

(ESTABROOK)<sup>92</sup> JOHNSON

POWELL)

90

JOHNSON  
RD



BIRCH  
|  
102

BARZ  
HARBOR

P1

(POWELL) 90  
JOHNSON ED

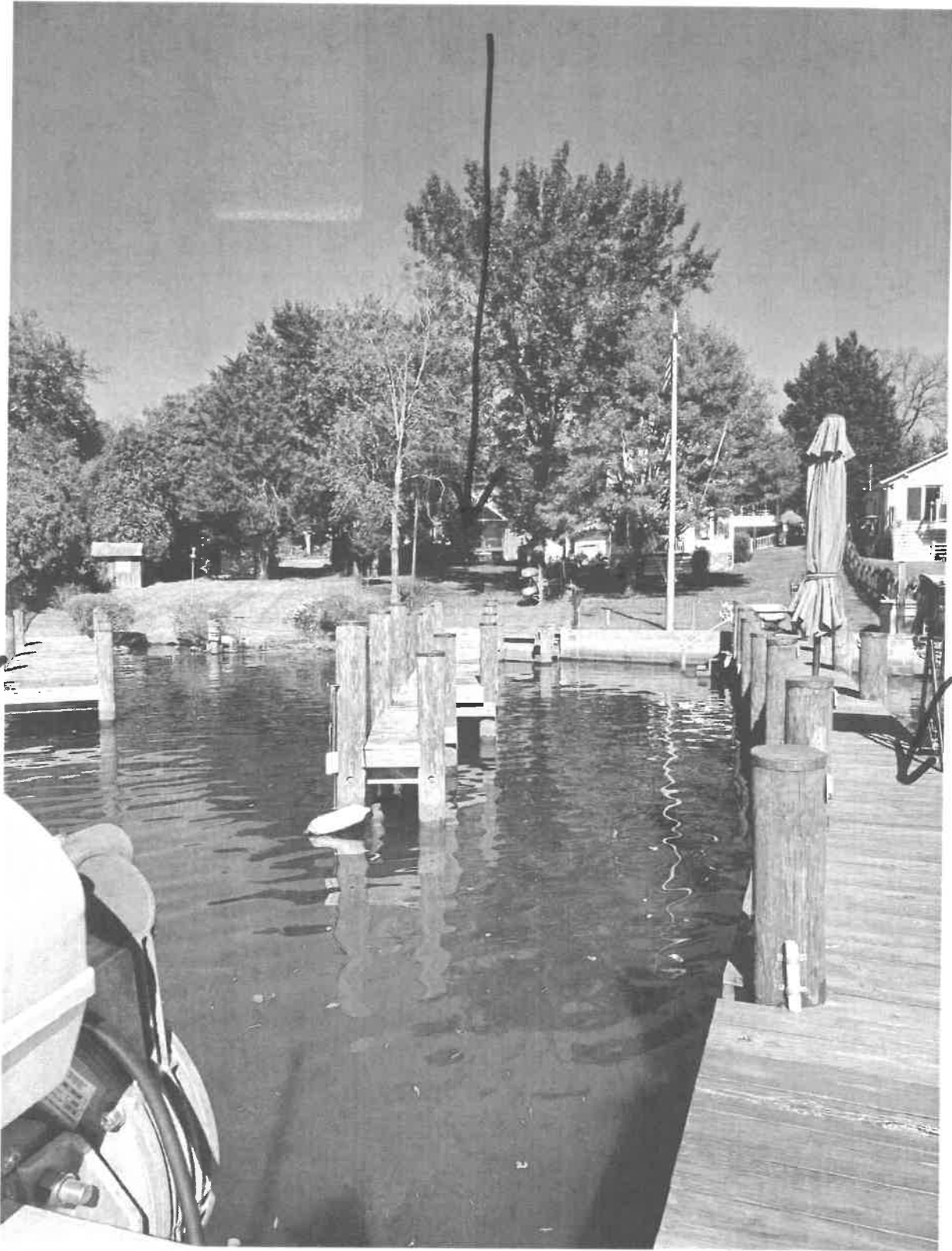


JUST  
BROS  
12  
JOHNSON  
ED

P 2

(ESTABROOK)  
92 JOHNSON RD

ESTABROOK - 92 JOHNSON RD  
↓



(HOUSE)  
102  
BAR  
HARBOR

P3

POWELL  
90  
JOHNSON  
RD

ESTABROOK

92  
JOHNSON

DEH

102

BAR  
HARBOR  
RD

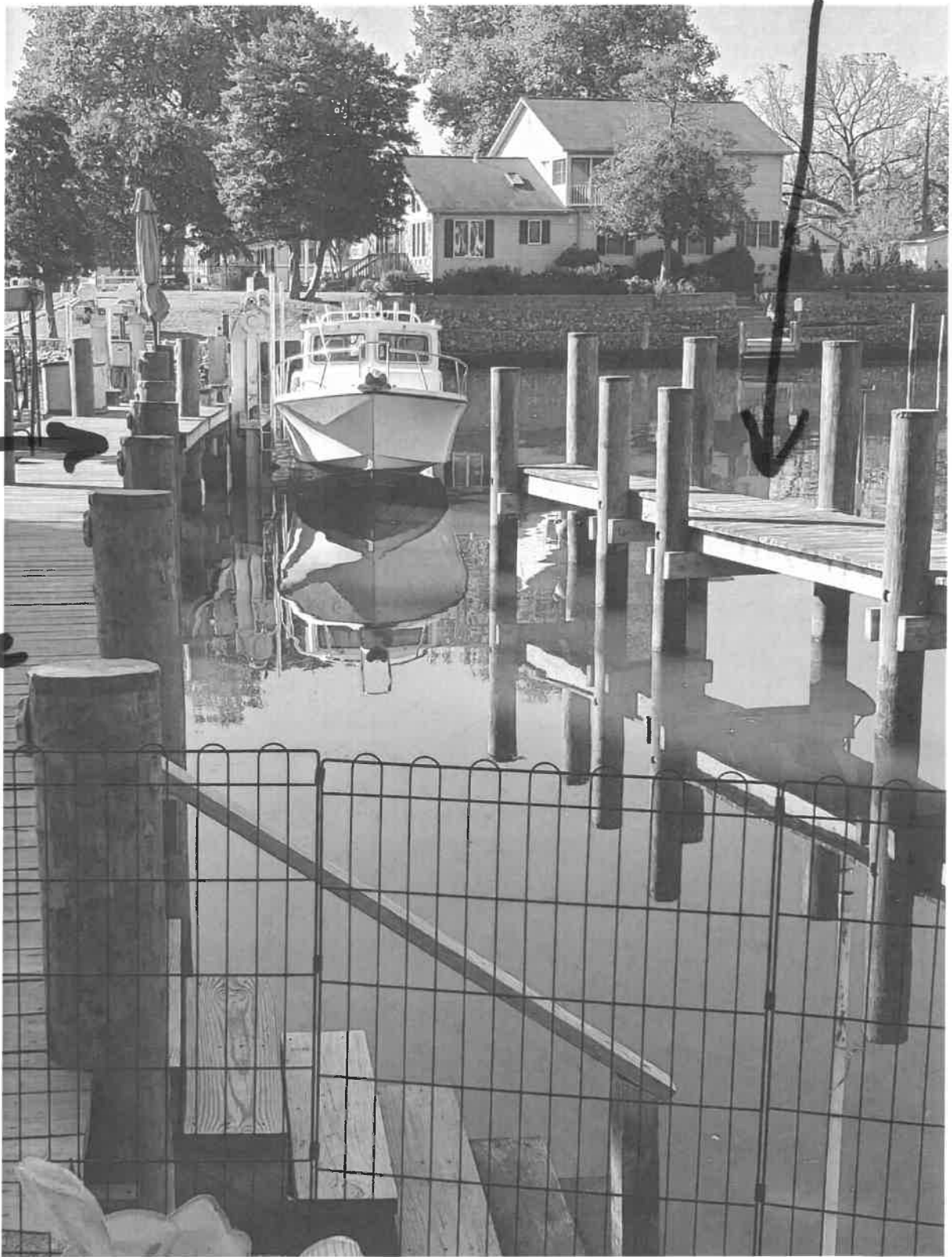
FD





ESTABROOIZ  
92 JOHNSON

BE  
HR  
1  
0  
2  
BAR  
HARBOR



P5

BEHR  
102  
BAR  
HARBOR  
RD



POWELL

90  
JOHNSON

ESTABROOK

92  
JOHNSON

P6



102 BAR HARBOR  
BEN

Doc #3



102 Bar Harbor

102 BAR HARB RD

90 JOHNSON  
POWELL

92 JOHNSON RD

ESTABLISHED

P7