

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

**APPLICANTS:** David & Melissa Albanese

**ASSESSMENT DISTRICT:** 3

**CASE NUMBER:** 2024-0169-V

**COUNCILMANIC DISTRICT:** 3

**HEARING DATE:** January 9, 2025

**PREPARED BY:** Joan A. Jenkins  
Planner III



**REQUEST**

The applicants are requesting a variance to allow a pier and pilings with less setbacks than required on property located at 384 North Shore Road in Pasadena.

**LOCATION AND DESCRIPTION OF SITE**

The subject site consists of 1.3 acres of land, more or less, and is located with approximately 141 feet of frontage on the southwest side of North Shore Road, southeast of Edgewater Road. The property is identified as Lot 1 on Parcel 159 in Grid 20 on Tax Map 25 in the Leatherwood Property subdivision. The property is zoned R2 - Residential District, is platted to Broad Creek, is within the Chesapeake Bay Critical Area designated as LDA - Limited Development Area, and is mapped both in a buffer modification area and a buffer area. The site is developed with a dwelling and associated features. The property is served by a private well and a septic system.

**APPLICANTS' PROPOSAL**

The applicants propose to construct a new pier (6 feet wide by 120 feet) with 3 pilings, all 135 feet from the shoreline.

**REQUESTED VARIANCES**

§ 18-2-404 (b) of the Code requires a pier or mooring piling be set back a minimum of fifteen feet from a lot line extended. The pier will be located 7 feet from the property line extension on the south side. One piling will be located in line with the pier 7 feet from the south property line extension and two pilings will be on the 15-foot setback line. Variances of 8 feet for the pier and one piling are required. The two pilings on the setback line do not require a variance.

**FINDINGS**

This Office finds that this is an oddly shaped property with 37.59 feet of frontage at the water's edge as shown on the site plan. Per the Leatherwood Property plat the lateral lines (property line extensions) were established by Anne Arundel County under permits B052327 and B062288.

The lateral lines shown on the plat allow for a 6-foot pier. The limited shoreline area creates a hardship in complying with the Code for any configuration beyond a straight 6-foot wide pier.

A review of the County aerial photo from 2024 shows that nearly every property along this shoreline has a pier, most with at least one slip. The adjacent property to the north is operated as Broad Creek Marina, a commercial enterprise. The marina was recognized as a nonconforming use under case number 1977-0010-N. The use was expanded under Board of Appeals case number BA 75-77S. The current marina configuration today is similar to the configuration on the recorded plat that separated the then larger marina property into two lots creating the subject property.

The applicant's letter indicates that they have taken into account the proximity of the adjacent piers and mooring pilings and have a plan that enables all three property owners to have safe usable access.

The **Anne Arundel County Department of Health** has reviewed the on-site sewage disposal and well water supply systems for the property and has determined that the proposal does not affect these systems therefore they have no objection to the request.

The **Development Division (Critical Area Team)** commented that the property line extensions have been reviewed and agree with extended property lines shown on a Family Conveyance Plat recorded in the Maryland Land Records Plat book 210 page 39. A forest conservation easement exists on the property that allows limited access for a riparian walkway although there is no landward access provided as part of the proposed pier. The critical area section of OPZ has no objections to the variance request.

For the granting of a zoning variance, a determination must be made as to whether, because of certain unique physical conditions peculiar to and inherent in the particular lot or because of exceptional circumstances, strict implementation of the Code would result in practical difficulties or an unnecessary hardship. In this particular case the property line extensions that are mandated by the subdivision plat creates a narrow waterway for which to place a pier and slips. Piers with slips are common. The nearly 38-foot waterway width does allow for a 6-foot wide pier, but some relief from the Code may be warranted to allow pilings for a slip.

Approval of the variances would not alter the essential character of the neighborhood, as waterfront properties with a pier are common. The variance would not impair the appropriate use or development of the neighboring properties as the properties on either side have already been developed with piers. The variances would not be detrimental to the public welfare.

It is possible to site a pier within the buildable area that does not require a variance. A pier and one piling sited along the northern buildable area and then the two pilings two feet from the pier would utilize 38 feet of width and would allow for a configuration that would only require a one-foot variance. Therefore, the requested configuration cannot be considered the minimum necessary to afford relief.

**RECOMMENDATION**

Based upon the standards set forth in Section 18-16-305 of the Anne Arundel County Code under which a variance may be granted, this Office recommends ***denial*** of variances of 8 feet to allow construction of the pier and one piling located 7 feet from the southern property line extended.

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.



December 18, 2024

Anne Arundel County Zoning  
Re: 384 N Shore Rd.  
Pasadena, Md. 21122

To whom it may concern:

The request for this variance is to construct a pier starting 7' from the Southern property line, which is 8' into the setback.

This property is narrow on the waterfront and close to the northern adjacent Marina. With consideration of the situation as to the proximity of the adjacent piers and mooring pilings and discussions with both adjacent property owners, we came up with a plan that enables all 3 property owners to have safe usable access.

Construct a 120' long x 6' wide pier with 3 mooring pilings.

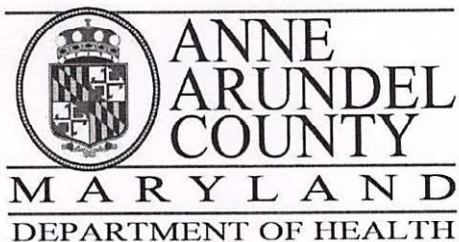
One mooring piling 7' from the Southern property line and 2 mooring pilings 15' from the Southern property line, on the setback line.

We appreciate your cooperation and assistance in this situation.

Sincerely

Lenny Anderson, agent for owner and contractor.

*Lenny Anderson* 12/18/2024



J. Howard Beard Health Services Building  
3 Harry S. Truman Parkway  
Annapolis, Maryland 21401  
Phone: 410-222-7095 Fax: 410-222-7294  
Maryland Relay (TTY): 711  
www.aahealth.org

**Tonii Gedin, RN, DNP**  
**Health Officer**

**MEMORANDUM**

TO: Sadé Medina, Zoning Applications  
Planning and Zoning Department, MS-6301

FROM: Brian Chew, Program Manager  
Bureau of Environmental Health *BC*

DATE: October 21, 2024

RE: David J. Albanese  
384 Shore Road  
Pasadena, MD 21122

NUMBER: 2024-0169-V

SUBJECT: Variance/Special Exception/Rezoning

The Health Department has reviewed the above referenced variance to construct a pair on the South property line and into the 15' setbacks..

The Health Department has reviewed the on-site sewage disposal and well water supply system for the above referenced property. The Health Department has determined that the proposed request does not adversely affect the on-site sewage disposal and well water supply systems. The Health Department has no objection to the above referenced request.

If you have further questions or comments, please contact Brian Chew at 410-222-7413.

cc: Sterling Seay



# 2024-0169-V

Menu Cancel Help

Task Details OPZ Critical Area Team

**Assigned Date**

10/15/2024

**Assigned to**

Melanie Mathews

**Current Status**

Complete w/ Comments

**Action By**

Melanie Mathews

**Comments**

The property line extensions have been reviewed and agree with extended property lines shown on a Family Conveyance Plat recorded in the Maryland Land Records Plat book 210 page 39. A forest conservation easement exists on the property that allows limited access for a riparian walkway although there is no landward access provided as part of the proposed pier. The critical area section of OPZ has no objections to the variance request.

**End Time**

**Billable**

No

**Time Tracking Start Date**

**In Possession Time (hrs)**

**Estimated Hours**

0.0

**Comment Display in ACA**

- All ACA Users
- Record Creator
- Licensed Professional
- Contact
- Owner

**Due Date**

12/26/2024

**Assigned to Department**

OPZ Critical Area

**Status Date**

12/19/2024

**Overtime**

No

**Start Time**

**Hours Spent**

0.0

**Action by Department**

OPZ Critical Area

**Est. Completion Date**

Display E-mail Address in ACA

Display Comment in ACA

Task Specific Information

**Expiration Date**

**Review Notes**

**Reviewer Name**

Melanie Mathews

**Reviewer Phone Number**

410-222-6136

**Reviewer Email**

PZMATH20@aacounty.org



**VICINITY MAP**  
SCALE: 1"=2000'

- GENERAL NOTES**
- INDIVIDUAL CONVEYANCE PLAT MAY BE REQUIRED FOR LOT 1 AT THE TIME OF BUILDING PERMIT APPLICATION.
  - THIS PLAN IS TO BE USED TO OBTAIN A CONVEYANCE PLAT FROM THE REGISTERED PROFESSIONAL SURVEYOR. THE REGISTERED PROFESSIONAL SURVEYOR SHALL BE RESPONSIBLE FOR THE ACCURACY OF THE CONVEYANCE PLAT.
  - THE BOARD OF APPEALS APPROVED A SPECIAL EXCEPTION ON APRIL 26, 1978 FOR THE CONVEYANCE OF THIS PROPERTY TO THE REGISTERED PROFESSIONAL SURVEYOR.
  - EXISTING STRUCTURES NOTED TO BE REMOVED ARE TO BE REMOVED AND THE LOTS TO BE REDEVELOPED AT THE TIME OF BUILDING PERMIT FOR PLANNING AND CODE ENFORCEMENT.
  - EXISTING UTILITIES NOTED TO BE REMOVED ARE TO BE REMOVED AND THE LOTS TO BE REDEVELOPED AT THE TIME OF BUILDING PERMIT FOR PLANNING AND CODE ENFORCEMENT.
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**SET BACK REQUIREMENTS R-2 ZONE**

FRONT - 30' COMBINED  
SIDE - 10' MINIMUM  
REAR - 10' MINIMUM  
MINIMUM SIDE SET BACK - 10'  
MINIMUM REAR SET BACK - 10'  
MINIMUM FRONT SET BACK - 10'  
MINIMUM SIDE SET BACK - 10'  
MINIMUM REAR SET BACK - 10'

**AREA TABULATION**

1) 21,991 S.F. ± (0.50 AC.)  
2) 2,965 S.F. ± (0.07 AC.)  
3) 172,749 S.F. ± (3.9658 AC.)  
4) 3,965 S.F. ± (0.09 AC.)

**IMPERVIOUS CALCULATIONS**

EXISTING IMPERVIOUS AREA TO BE REMOVED: 0.148 AC.  
EXISTING IMPERVIOUS AREA TO BE ADDED: 0.103 AC.  
TOTAL IMPERVIOUS AREA TO BE ADDED: 0.251 AC.  
TOTAL IMPERVIOUS AREA TO BE REMOVED: 0.148 AC.  
NET IMPERVIOUS AREA TO BE ADDED: 0.103 AC.

**PURPOSE OF THIS PLAT IS TO CREATE ONE (1) FAMILY CONVEYANCE LOT WITH THE RESIDUE TO REMAIN IN OPERATION AS A LEGAL NON-CONFORMING MARINA AND RESIDENCE.**

**M.S. 1997-137**

PLAT ONE OF ONE  
FAMILY CONVEYANCE MINOR SUBDIVISION  
M.S. 1997-137  
**LEATHERWOOD PROPERTY**  
TAX MAP 25, BLOCK 20, PARCEL 159

SCALE: 1"=60'  
DATE: APRIL, 1988  
THIRD ASSESSMENT DIST., ANNE ARUNDEL COUNTY, MARYLAND, 21122

**LEGAL NON-CONFORMING USE (M.C. 10-27)**

THE TYPE, LOCATION, AND CHARACTER OF THE USE OF THE PROPERTY IS IN CONFORMANCE WITH THE ZONING REGULATIONS OF ANNE ARUNDEL COUNTY, MARYLAND, AS APPLICABLE TO THE PROPERTY.

**BOARD OF APPEALS DECISION BA-5-775**

THE BOARD OF APPEALS APPROVED A SPECIAL EXCEPTION ON APRIL 26, 1978 FOR THE CONVEYANCE OF THIS PROPERTY TO THE REGISTERED PROFESSIONAL SURVEYOR.

**CRITICAL AREA NOTE**

THE 10,000 S.F. ± CRITICAL AREA IS AN AREA UNDEVELOPED BY ORIGINAL DEVELOPMENT. THE CRITICAL AREA IS AN AREA UNDEVELOPED BY ORIGINAL DEVELOPMENT.

**SIMULTANEOUS DEEDING OF RIGHT OF WAY DEDICATION**

THE 10,000 S.F. ± CRITICAL AREA IS AN AREA UNDEVELOPED BY ORIGINAL DEVELOPMENT. THE CRITICAL AREA IS AN AREA UNDEVELOPED BY ORIGINAL DEVELOPMENT.

**SEPTIC AREA NOTE**

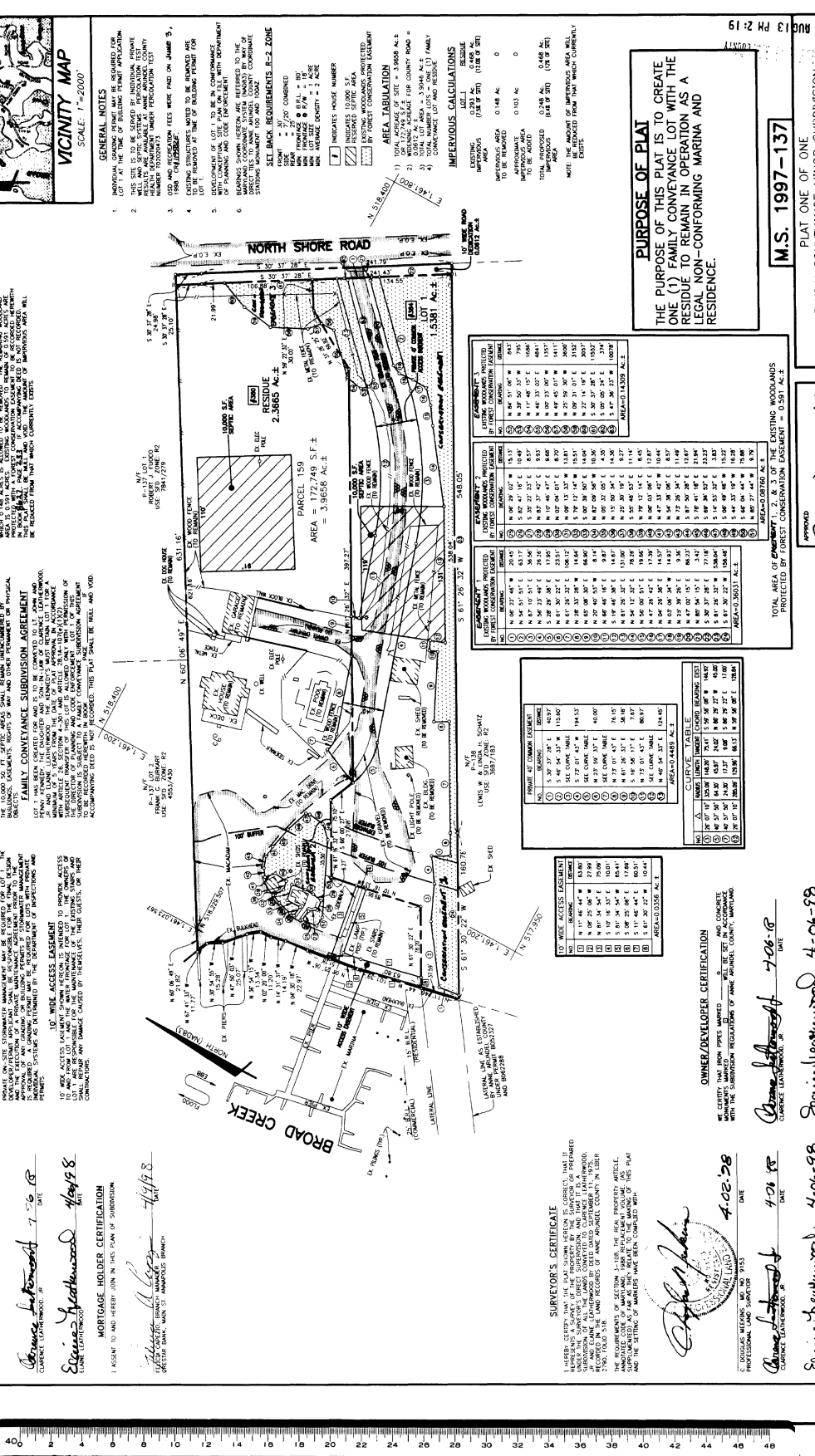
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**FAMILY CONVEYANCE SUBDIVISION AGREEMENT**

THE 10,000 S.F. ± CRITICAL AREA IS AN AREA UNDEVELOPED BY ORIGINAL DEVELOPMENT. THE CRITICAL AREA IS AN AREA UNDEVELOPED BY ORIGINAL DEVELOPMENT.

**WATER NOTE**

THE 10,000 S.F. ± CRITICAL AREA IS AN AREA UNDEVELOPED BY ORIGINAL DEVELOPMENT. THE CRITICAL AREA IS AN AREA UNDEVELOPED BY ORIGINAL DEVELOPMENT.



**TO WIDE ACCESS EASEMENT**

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**EXISTING WOODLANDS PROTECTED BY FOREST CONSERVATION EASEMENT**

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A D M I N I S T R A T I V E   D E C I S I O N

North Shore Marina  
Clarence Leatherwood, Jr.

Assessment District Three  
File #NC 10-77

This administrative decision is the direct result of an application by Clarence and Elaine Leatherwood, Jr. to register North Shore Marina as a non-conforming use pursuant to Section 13-326.8 (as amended by County Bill #72-76) of the Anne Arundel County Zoning Regulations. Such registration as a non-conforming use is a prerequisite to obtaining a Zoning Certificate of Use and for applying for a Special Exception to expand a non-conforming use under Section 13-343.18A.

The administrative process followed was undertaken in accordance with the provisions of Section 13-326.8, which charge the Office of Planning and Zoning with the responsibility of determining the lawful non-conforming status of each applicant's operation, and has resulted in the compilation of documents, maps, photographs and other material supplied by Mr. Leatherwood or collected by this Office. The material supports the following findings of fact:

The subject site consists of 4.02 acres, more or less, located off of North Shore Road on the south, less than 30 feet west of Edgewater Road on the headwaters of Broad Creek off of the Magothy River. The property is designated as Parcel 159 on Tax Map 25, and has approximately 275 feet of waterfront.

The site is zoned R1 - Residential.

The site is now being used as a commercial marina with the following uses and facilities:

One main pier, 140 feet in length by 6 feet wide, with a 110-foot perpendicular extension from the southern side of the pier beginning about 30 feet from the bulkhead. There is also a 6-foot by 20-foot "Tee" at the end of the 140-foot main pier section.

Two small piers, each approximately 30 feet in length, 80 to 100 feet north of the main pier.

Twenty-seven boat slips at the main pier, the smaller piers, and along the bulkhead.

Storage for trailer storage and the parking of about 50 cars on one graveled surface and one black-topped surface.

Vending machines, ice machine, and facilities for minor maintenance of boats.

One accessory building, 9 feet by 13 feet, used for sanitary facilities, containing two toilets and two lavatories; one main building used as an office 18 feet by 20 feet; one residence (of owner) 34 feet by 35 feet with a 6 foot by 8 foot addition.

The zoning for this site from 1949 until 1972 was A-301 (Agricultural District).

Information as to the existence and extent of a non-conforming maritime operation at this site prior to 1965 was examined as a matter of course but will not be presented here because the lawful non-conforming use of the subject site was determined by the Circuit Court of Anne Arundel County in Equity No. 15,848, Judge Sachs, on September 15, 1965 (Addendum 5).

Judge Sachs' ruling was upheld, although slightly modified, by the Maryland Court of Appeals in Jahnigen vs. Stanley (245 Maryland 130) on June 9, 1967. As modified by the appeals court, the lawful non-conforming use of the site was determined to be:

The rental of space for the dockage or wet storage of boats at a wharf not exceeding 90 feet in overall length and 6 feet in width, together with a 24-foot Tee, 6 feet in width, at the end of said wharf, the width of the Tee being included in the 90-foot length of the wharf, with mooring piles apparent thereto.

The rental, storage, and maintenance/repair of rowboats.

The court order specifically prohibited:

The use of any portion of the property or the use or storage thereon of any commercial facilities in connection with the business of launching or hauling out boats.

The business of dry storage, repair or maintenance of boats other than the rowboats owned by the property owners.

The use of the section of pier parallel to and approximately 32 feet from the shoreline of the subject property for commercial purposes.

In July 1967, the subject site was owned by William R. Jahnigen, and was known as "Ja-Cove " or "Ja-Co" Marina. Mr. Jahnigen at that time petitioned for rezoning from an Agricultural District to a Maritime B District (#78-67). This petition was denied on August 17, 1967, and was appealed to the County Board of Appeals, which upheld the denial on October 27, 1967 (BA26-67). An appeal of the Board of Appeals decision was rejected by the Circuit Court, Judge McGill, on August 13, 1968, and the Maryland Court of Appeals, on October 22, 1968, refused to hear an appeal of Judge McGill's decision.

In May 1968, an application by Mr. Jahnigen for a Variance to expand a non-conforming use was heard and denied by the Zoning Hearing Officer (V33-68; June 19, 1968). However, Mr. Jahnigen's appeal was successful and he was granted a 25% expansion of his commercial pier by the Board of Appeals (BA21-68; December 23, 1968), which was upheld in County Circuit Court (No. C-385 Law; February 26, 1970). This 25% expansion allowed him a pier 135 linear feet by 6 feet wide. The decision also allowed Mr. Jahnigen to expand his parking area to accommodate any additional customers permitted by the pier expansion, but reaffirmed that the only dry storage of boats permitted on the property was the storage of the owner's rowboats.

A parcel evaluation done by the Office of Planning and Zoning on April 4, 1970 lists one residence, one office, one pier with wet storage, one shed, one lavatory structure, pile driver, and storage of pilings.

An aerial photograph taken on April 11, 1970 shows the following facilities:

One main pier 90 feet in length, with a 110-foot perpendicular pier extension on the south side of the main pier parallel to and approximately 25 feet from the shoreline, with rowboats docked at the perpendicular extension, and the main section having 10 boat slips, more or less.

Two accessory piers, each 20 to 30 feet in length, with four boats moored to them.

One main structure (residence) and accessory structure (office), along with roadways and parking areas.

As a part of a prefile submittal (#3213 Northern Third District) in 1971 requesting Maritime C zoning for the site, a site plan was submitted showing one 6 by 135 foot main pier, with a 5 by 104 foot perpendicular extension on the south side about 22 feet from the shoreline; two "Travel Lift" piers, each approximately 30 feet in length; one residence 35.6 by 35 feet; one garage 24.5 by 40 feet; one "Bath House" approximately 10 by 15 feet; one "Office" approximately 17 by 25 feet; parking spaces for 69 cars. Maritime C zoning was not granted.

Aerial photographs taken in July 1974, June 1975 and March 1977 show essentially the same pier configurations and lengths, and the same structures as the 1970 aerial photograph and the 1971 plat.

Tax Assessment records indicate this site has been used as a commercial marina since the 1965 court decision, with the 1975-78 assessment noting "Boat Rentals Only" and "29 slips".

The applicant has submitted two affidavits attesting that the marina has been in continuous use since the 1965 court decision, and records from the County Finance Office indicate the slip tax has been paid continuously since the date of inception of the tax in July 1971.

In order to qualify as lawfully non-conforming, the use(s) of the subject property must satisfy the provisions of both Section 13-326 of the 1971 Code and Sections 13-310 and 13-311 of the 1952 Code. These provisions require that the use(s) shall have been in operation at the time of enactment of the respective codes, and that operation shall remain continuous (without a lapse of more than twelve consecutive months). Therefore, this Administrative Decision shall determine: (1) whether a non-conforming use existed at the time of the respective zoning regulations; (2) whether said non-conforming use has been continuous; (3) the extent of the non-conforming use.

The 1965 court decision established the existence, continuity, and extent of the non-conforming use of this property up to that date. From 1965 to the present, all the evidence, including additional court action, zoning cases, photographs, slip tax receipts and affidavits, indicates that the operation remained in continuous use, and still is in use. The lawful extent of the non-conformity is also clearly established by using the 1965 court decision as a base and taking into consideration the 25% pier expansion granted by Variance in December 1968.

It is the decision of the Office of Planning and Zoning that a lawful non-conforming use does exist at the subject site, that the use has been continuous, and that the extent of the use is as follows:

The rental of space for dockage and wet storage of boats on a wharf 6 by 135 feet (810 square feet) with a currently used water area of 35,910 square feet. (The existing 5 by 110-foot perpendicular extension is for private use only, and is not included in the non-conformity of the property.)

The use of two structures, one for sanitary facilities with a floor area of 117 square feet and a cubic building area of 1,521 cubic feet, and the other an office with a floor area of 360 square feet and a cubic building area of 3,960 cubic feet.

The rental, storage and maintenance/repair of rowboats, conducted on a land area of 4,200 square feet.

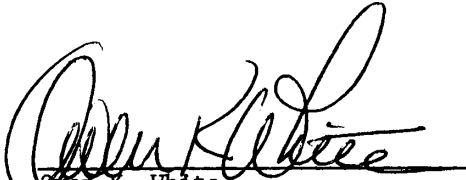
Graveled (white crushed run) and blacktopped areas for trailer storage and parking facilities for approximately 50 cars, consisting of 22,680 square feet of land area.

Pursuant to Section 13-326 of the Zoning Regulations, which requires that non-conforming uses be classified on the basis of the zoning district in which that use is authorized, it is the decision of the Office of Planning and Zoning that, subject to the extent outlined in the preceding paragraph, the non-conforming use of this property is classified as a MA-2 type use.

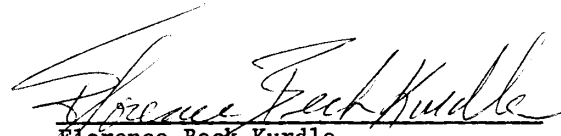
This Administrative Decision shall be binding unless appealed within thirty (30) days, as provided by Section 2-200 Rule 6 of the Anne Arundel County Code.

All uses of the subject property not specifically permitted by this decision must conform to the Zoning Regulations of Anne Arundel County for R-1 residential districts.

This decision has been prepared by Sager A. Williams, Jr. of the Office of Planning and Zoning for the signatures of:

  
Owen K. White  
Zoning Administrator

Date: June 22, 1977

  
Florence Beck Kurdle  
Planning and Zoning Officer

Date: June 22, 1977

A D D E N D U M

North Shore Marina

File #NC 10-77

1. Deed, Jahnigen to Leatherwood
2. Site Plan of subject property
3. 200-Scale Topo Map of subject property and surrounding area
4. Copy of court Decree in Equity No. 15,848 by Judge Sachs reversing maritime zoning previously granted to owner
5. Copy of Decree in Equity No. 15,848 by Judge Sachs outlining the extent of the lawful non-conformity
6. Copy of Illustration prepared by the Office of Planning and Zoning to show Judge Sachs' decision
7. Copy of Court of Appeals decision upholding Judge Sachs' decision (Jahnigen vs. Stanley)
8. Copy of contempt of court citation Order in Equity No. 15,848 by Judge Sachs
9. Copy of Hearing Officer's decision in V37-68 (25% expansion)
10. Copy of Board of Appeals' decision in BA21-68 (25% expansion)
11. Copy of Order in No. C-385 Law by Judge McGill upholding 25% expansion granted by the County Board of Appeals
12. Copy of Parcel Evaluation Sheet prepared by the Office of Planning and Zoning on April 4, 1970
13. Copy of a section of a plat submitted in conjunction with the 1971 Zoning Profile requesting Maritime C zoning
14. Copy of notarized letter from Leatherwood to the Office of Planning and Zoning accompanying Application for Zoning Certificate of Use
15. Copy of Application for Zoning Certificate of Use, along with notarized affidavit
16. Copy of the notarized List of Activities submitted as a part of Application for Zoning Certificate of Use
17. Copy of notarized letter from Leatherwood to the Office of Planning and Zoning submitting additional information required for Application for Zoning Certificate of Use
18. Copy of notarized letter from Leatherwood to the Office of Planning and Zoning attesting to continuous use of marina
19. Copy of notarized letter from Mrs. Gladys Jahnigen to the Office of Planning and Zoning attesting to continuous use of marina
20. Copy of survey of Marina Data compiled by the Office of Planning and Zoning on March 9, 1977
21. Copy of 1975-78 tax assessment records



RE: Special Exception to  
Permit Expansion of  
Non-conforming Use

CLARENCE LEATHERWOOD,  
Petitioner

Before  
COUNTY BOARD OF APPEALS

OF

ARNE ARUNDEL COUNTY

Case No. BA 75-77S

HEARING: March 29, 1978

\* \* \* \* \*

OPINION

This case is an appeal for a special exception to permit eight additional boat slips (expansion of non-conforming use) on property located 242 feet on the west side of North Shore Road, at the intersection of Edgewater Road, North Shore.

Review of Testimony

Clarence Leatherwood, Jr., petitioner, owns this marina and lives on the property, which consists of 4.02 acres. The original request was for a 75-foot pier extension, which has been reduced to 40 feet and will accommodate four boats. There are presently 29 slips, 26 of which are usable. There are no commercial activities on the pier, such as sales, repairs, etc. The use is comparable to a community marina. There is a demand for boat slips and Mr. Leatherwood has a waiting list. He would like to have these deep water slips to replace the shallow water slips he is losing due to siltation. Three of the four proposed slips would be to replace those lost. Petitioner tried to rectify the siltation problem, but was unable to do so. This request will not expand the land to water ratio and meets setback requirements. There is more than sufficient width in the channel here and also depth at these slips. There are in excess of 50 parking spaces, and if any additional trash containers, boarding ladders, etc., are required, they will be installed. In petitioner's opinion there is no obstruction in the creek within 500 feet of his property. When the creek was frozen he measured the distance between the island and the shore. At high tide it was 560 feet and at low tide 470 feet. He believes North Shore Road is at least a collector street, as it picks up traffic from numerous other streets.

M. A. Moore, Jr., a professional surveyor with J. R. McCrone, Jr., Inc., prepared a plat and measured between the island and both shores, from the mean high tide point. North Shore Drive is the only access in and out of the major subdivision of North Shore, serving as a collector road for this densely populated subdivision, by way of a number of local intersecting roads. The island is roughly one-seventh of an acre, with a sandy beach around it, which seems to drop off.

Maurice Ogle, real estate appraiser and consultant, investigated the property and the area to determine the effect from the proposed expansion. The tax map shows two islands, one of which has washed away. North Shore Road is a major artery or collector road. Broad Creek is one of the first creeks reached after coming into the Magothy River, and the approaches are excellent in that there is deep water all the way up to this marina. It can be reached without getting into the congested part of the river. What is being asked for is very simple. Due to construction up the creek, petitioner has lost three slips from siltation. The creek is navigable on both sides of the island, which is less in size than a very small residential lot. Two boats can pass in the channel, with ample distance between. There is another channel on the other side of the island. This little island is meaningless as far as boats approaching or leaving this marina are concerned. There is need for boat slips in every area of the county. The question is whether or not you should accommodate that need. But in this marina the majority of the slips are rented to local people, which is extraordinary. There is no way in which the addition of four slips, really just recouping what has been lost, would be detrimental to the area or its residents. Mr. Ogle stated that 30 years ago the island was five times its present size, and he would predict that in the not too distant future it will be completely gone; in 10 years, if not before. The other island shown on the 1962 tax map is gone. He does not believe this little speck of an island has anything to do with the shoreline.

Seeger Williams, Office of Planning and Zoning, stated the property is zoned R1, with a legal non-conforming use status determined as MA2. Site plan approval was denied because of insufficiencies; primarily because there was no engineering seal or surveyor's stamp. It is the County's

position that North Shore Pond is not a collector street. It was a collector part way in, but not up to the marina. But it has since been reevaluated and is now designated as a collector street. Mr. Williams indicated various ways in which the marina does not comply with regulations, mentioning insufficient number of restrooms, safety devices, etc. He introduced a map with measurements showing less than the required 500-foot distance, meaning the marina is upstream and in a tributary area. This is from the shoreline to the island. He indicated he drew his lines on the map by using straight lines from shoreline to shoreline, and doesn't know whether they terminate at mean high water. Mr. Williams stated petitioner is not limited to a specific number of slips; just water area, pier area, etc. However he designs the slips within that area is up to him. The present request is for 3% expansion, with a 6-foot by 40-foot pier. This will not increase the water area used, only the structure area of the pier. It is not going any farther out. As to the purpose of the 500-foot demarcation line, Mr. Williams said studies were done which tended to suggest marinas be restricted in various ways. A compromise was reached, setting the limit of 500 feet. He does not believe flushing action was the primary concern. That can be done by a deep channel, even if it is narrow. Rather it was for restriction of boats in tributary areas with residential development. Traffic would be coming through residential streets, etc. If this island was not here, this would certainly meet the locational requirement.

The Board Finds:

1. Because shoreline to shoreline means fastland to fastland, petitioner meets the locational requirements of the MA 2 zone.
2. Testimony from the County stated the existing piers are a legal non-conforming use.
3. Section 13-343.18A(a) of the Zoning Ordinance does not address any expansion of a non-conforming use prior to the adoption of this law; therefore, petitioner is allowed the full 30% expansion the law now allows.
4. Evidence presented on behalf of petitioner was sufficient to substantiate that he meets the requirements for granting of a special exception, as set forth in Section 13-341.1 of the Zoning Ordinance.
5. Need was shown by testimony indicating petitioner has a waiting list for boat slips, and that the slips would serve local residents.
6. Petitioner's present sanitary facilities are considered completely adequate to serve this operation.

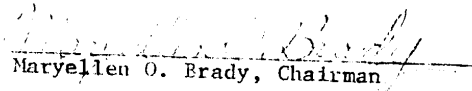
ORDER

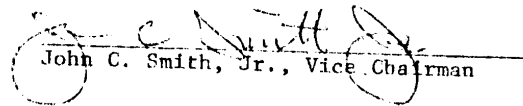
For the reasons set forth in the foregoing Opinion, it is this 26th day of April, 1978, by the County Board of Appeals Ordered, that this request for a Special Exception to permit construction of four (4) additional boat slips, as an expansion of a legal non-conforming use, be and the same is hereby Granted; subject, however, to the following condition:

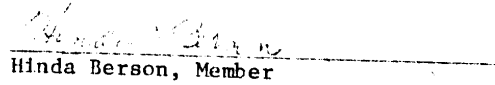
Petitioner must bring this marina operation into conformance with existing safety regulations.

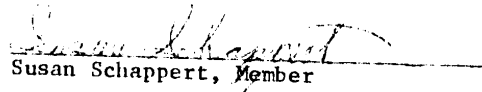
Any appeal from this decision must be in accordance with the provisions of Bill No. 6 of the County Council of Anne Arundel County, Legislative Session 1965, Section 35-139

COUNTY BOARD OF APPEALS  
OF ANNE ARUNDEL COUNTY

  
Maryellen O. Brady, Chairman

  
John C. Smith, Jr., Vice Chairman

  
Hinda Berson, Member

  
Susan Schappert, Member

(Barbara R. Brooks, Member, did not sit on this case)



Appeal for a Variance  
to Permit Expansion of  
a Non-Conforming Use  
(Marina)

HILBERT R. JANNIGER,  
Petitioner

Before  
COUNTY BOARD OF APPEALS

OF  
ARLW ARUNDEL COUNTY

Case No. BA 21-68

HEARING: November 27, 1968

\* \* \* \* \*

O P I N I O N

This case is an appeal from a decision of the Zoning Hearing Officer, denying a Variance to permit the expansion of a non-conforming use (marina) on the property fronting 267 feet on the west side of North Shore Road, 280 feet south of Edgewater Road, near North Shore, in the third district.

To answer the first argument in this case, it is the decision of this Board to recognize and agree with the prior Circuit Court ruling, which established February 15, 1949, as the date for determining the existence of a legal non-conforming use of subject property.

Petitioner's claim as to the extent of the subject property's non-conforming use in 1949 rests mostly on the testimony of Stanley H. Kirchenbauer, the owner at that point in time. Mr. Kirchenbauer, while understandably vague on some details, adequately described the use of the property as follows:

1. A pier, intended for commercial use (hiring of rowboats and slip rentals) was constructed in 1948, prior to his moving onto the property in June, 1949.
2. The owner's rowboats, some 13 in number, in addition to a few other boats, were stored on the shoreline in the fall of 1949.
3. The owner did no repairs, painting, etc., to customers' boats.

4. The bulkhead of the pier is on the north side, and there were no permanent facilities for this purpose.

5. Customers parked their cars on the property.

6. The front of the pier on the pier described in item 1, above, was not used for mooring boats.

7. The mooring piles, which were extended from both sides of the 90-foot length of the pier, were not in a straight line. The ones farthest from the shoreline were used for larger boats, that drew more water.

8. The Kirchenbauers moved into the house on the property in June, 1949, and used the living room as an office.

9. There were no public sanitary facilities in 1949.

Mr. Jahnigen, Petitioner, testified to the need for a travel lift to lift boats for dry storage. The finger piers were built as part of the travel lift, which he used until stopped by the Court order. The finger piers also serve to support a bulkhead, which would collapse without them.

Mr. John T. Latham, Surveyor, testified to the plat introduced as Petitioner's Exhibit #1. Mr. Latham's calculations were based primarily on penciled lines sketched from memory by Mr. Kirchenbauer.

The Protestants, nearby residents, presented the following objections to the proposed expansion of the non-conforming use:

1. Annoyance caused by increased boat activity.
2. Danger to swimming areas.
3. Additional pollution problem.
4. Increase in noise and offensive lighting.

non-conforming uses:

See concern in the case at hand is the scope of the "non-conforming use" enjoyed by the Kirchenbauers in 1949. Petitioners Exhibit #4, Zoning Certificate of Occupancy, dated July 8, 1951, indicates a legal non-conforming use since 1943 for "Hiring of Row Boats". Mr. Kirchenbauer, in testimony, indicated rental of rowboats was the principal use in 1949. He also testified six or seven boat owners rented slip space at the pier. Prior to 1949, there was no storage of boats on the subject property, although a few customers' boats were stored in the fall of 1949. The Decree of the Court, Anne Arundel County, Equity No. 15,848, vested the following non-conforming uses:

1. The rental of seven rowboats.
2. The rental of space for the dockage or wet storage of boats at a wharf not exceeding 90 feet in over-all length and six feet in width, together with a 24-foot T, six feet in width at the end of said wharf, the width of the T being included in the 90-foot length of the wharf, with mooring piles appurtenant thereto.

The Circuit Court Decree specifically found the following uses of the Respondent's property do not constitute lawful non-conforming uses:

1. The use of any portion of the property, or the use or storage thereon of any commercial facilities in connection with the business of launching or hauling out boats.
2. The business of dry storage, repair or maintenance of boats other than the rowboats previously mentioned.

The Court of Appeals affirmed the decree in all respects except that portion thereof which restricted the rental, dry storage, repair or maintenance to the seven rowboats owned by the appellants. This was modified so as to permit the rental of rowboats which appellants might own and the storage, repair and maintenance of those rowboats.

Petitioner, in the case at hand, seeks water area expansion and permission from this Board to allow him the use of a travel lift and the dry storage of customers' boats.

The Board does not feel it is within its power to allow the use of a travel lift and/or the dry storage of any boats other than rowboats owned by the Petitioner.

It seems reasonable to allow Petitioner a twenty-five percent expansion of the 90-foot pier described previously as being 90 feet in over-all length and six feet in width, together with a 24-foot T six feet wide; the width of the T being included in the 90-foot length of the wharf. This establishes the legal non-conforming pier area in 1949 as having been 108 linear feet of pier, six feet wide. A twenty-five percent expansion -- 27 linear feet of pier, six feet wide -- will permit the Petitioner an allowable pier area of 135 linear feet of six-foot wide pier, with mooring piles appurtenant thereto.

The Board does feel that some consideration should be given to the parking area for customers' automobiles. While no attempt will be made here to delineate the area for this, it seems logical to assume the Court of Appeals, in allowing the intensification of the non-conforming water use, recognized any increase in numbers of customers would require a related increase in numbers of parking spaces. It is the opinion of this Board that Petitioner is allowed sufficient parking area to accommodate the number of customers he is allowed to serve.

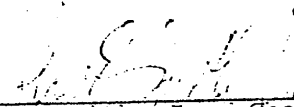
ORDER


For the reasons set forth in the foregoing Opinion, it is this 23rd day of December, 1968, by the County Board of Appeals, Ordered, that the petition for a Variance to expand a non-conforming use (marina) be and the same is hereby Granted; subject, however, to the following restrictions:

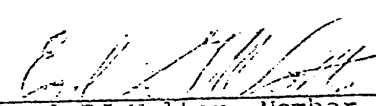
1. The present pier can be expanded to total 135 linear feet, six feet wide.
2. Dry storage is allowed on subject property for only the rowboats Petitioner owns.
3. Sufficient parking area is allowed on subject property to accommodate the additional customers permitted by the 25% expansion.


Any appeal from the above decision must be in accordance with the provisions of Bill No. 6 of the County Council of Anne Arundel County, Legislative Session, 1965, Section 35-139.

COUNTY BOARD OF APPEALS  
OF ANNE ARUNDEL COUNTY

  
John T. Smith, Jr., Chairman

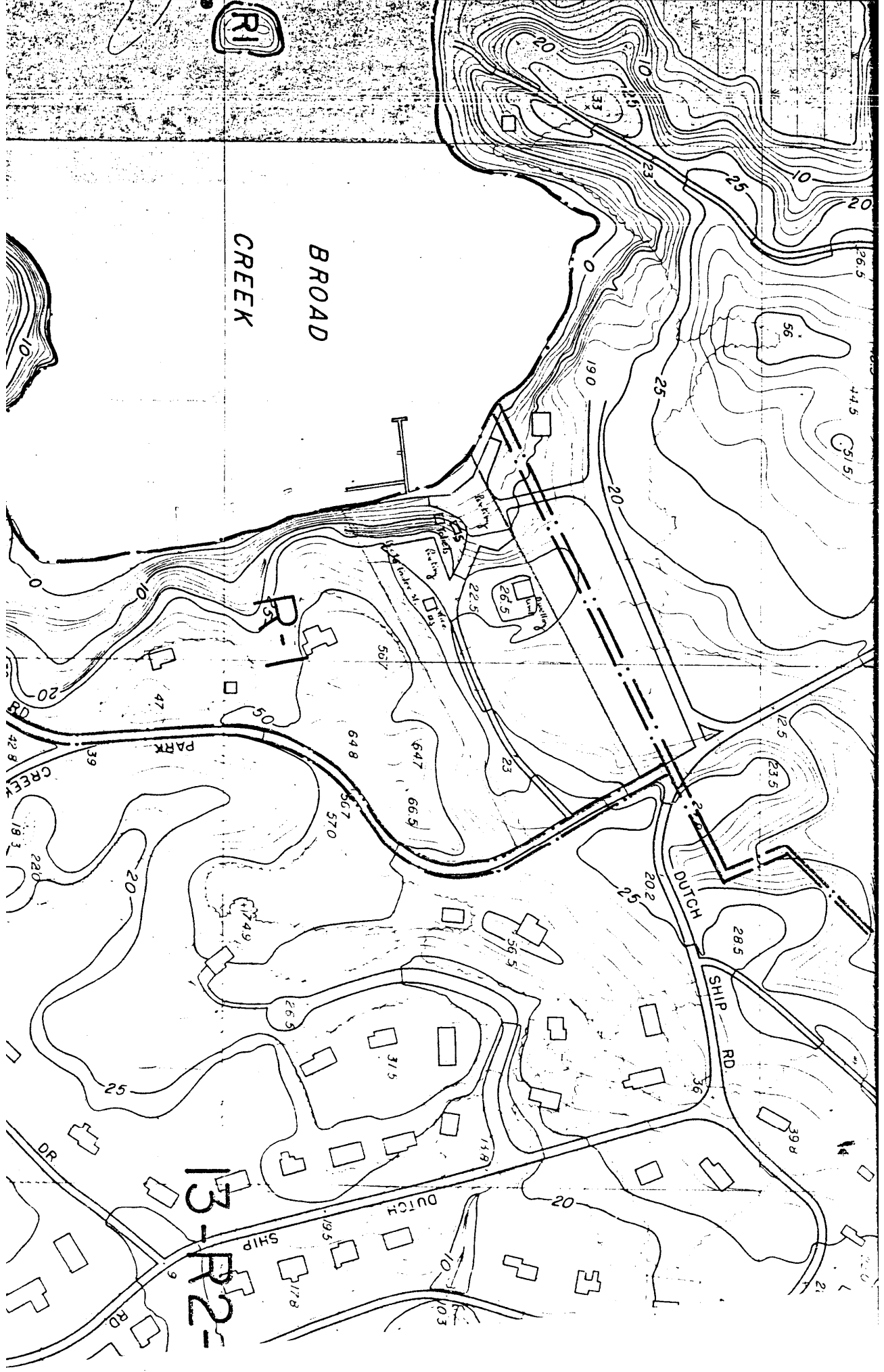
  
Eileen M. Hutchinson,  
Vice Chairman

  
Earl G. Walter, Member

  
Melvin B. Schlossman, Member

Dissents from this Opinion  
Ulric G. Brock, Member





BROAD CREEK

PARK

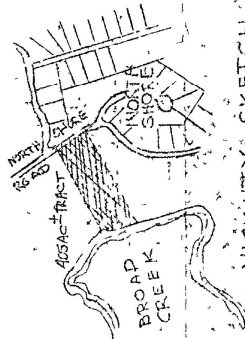
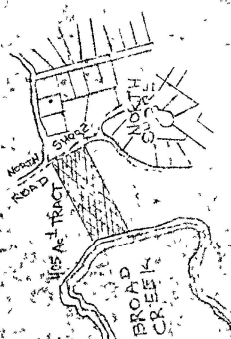
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13-R2-



GLADYS JAHNIGEN  
RTE 7 BONITE  
PASADENA, MD

EDMUND BURKE  
RTE 1 BOX 127  
GLEN BURNIE, MD

OTIS B FRENCH  
RTE 7 BOX 180  
PASADENA, MD

Northshore Development  
Gilbert Mosher Sr  
BALTIMORE, MD

EDGEWATER  
ROAD

ADWARD KAY  
SOKOLOFF  
326 EDGEMERE  
DONALD A MAC DONALD  
330 EDGEWATER RD

JOSEPH GUTBERLET  
3573 N SHORE ROAD

FRED D. FORB  
377 W SHORE ROAD

NORTH SHORE ROAD

NORTH SHORE ROAD

LEATHER WOODS  
SLOT PLAN  
FOR  
ADDITIONAL PIER INCREASE  
AS PER BILL NO 72-576 FAC. W/LEAD  
NORTH SHORE & EDGEWATER ROADS  
325 DIST A.C. MD.

SCALE: 1" = 500'  
DATE: 10/1/68  
BY: J.M. MacDonald, Inc.  
CHECKED: J.M. MacDonald, Inc.  
DRAWN: J.M. MacDonald, Inc.

BROAD CREEK

PROPOSED  
75' PIER

EXISTING  
RAVED  
AREA

EXISTING  
ELECTRIC  
LINE

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**Legend**

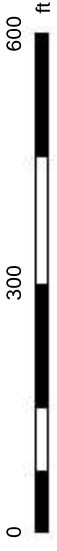
- Foundation Parcels (Orange outline)
- Parcels - Annapolis City (Purple outline)
- Planning County Planning Buffer (Pink fill)
- Modified Buffer (Purple fill)
- Utility Sewer (Green line)
- Force Main (Dark Green line)
- Gravity (Light Green line)
- Low Pressure (Bright Green line)
- Water (Blue line)



Notes

none

This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.



THIS MAP IS NOT TO BE USED FOR NAVIGATION