

February 24, 2021

Re: House Bill 1135 – “Environment – State Wetlands – Piers and Other Improvements”

Dear Chairman Barve and Members of the Committee:

HB1135 is intended to ensure that a community or homeowners association is not able to *deprive* a riparian owner of the important and valuable property right granted by Maryland statute to build a pier to maintain access to the navigable water, solely through a refusal to grant the riparian owner “written permission” prior to construction as required by a recorded covenant or restriction, a provision in a declaration, bylaws or rules, or any other property instrument, when the riparian owner has obtained all of the requisite Federal, State, and County approvals.

As the Maryland Department of the Environment (MDE) has stated in its testimony on other Bills before the Committee earlier this Session:

“In Maryland, riparian landowners – whose privately-owned land extends to the mean high water line – generally have a common-law right of reasonable access to navigable water ***and, by statute, the right to build a pier out over State-owned submerged lands to provide such access.***” [Emphasis added]

Importantly, this right for riparian owners to build a pier is not something new – it has been codified in Maryland statute since 1862 – a period of over 160 years.

In addition, Maryland statute also states that “A riparian owner may not be *deprived* of any right, privilege, or enjoyment of riparian ownership...”

Before a pier is built, a riparian owner must apply for and be issued a building permit from the County. Additionally, MDE, through the Code of Maryland Regulations, comprehensively regulates the location, length, size, and construction of piers in the waters of the State. When evaluating applications to build a pier, MDE is required to consider the ecological, economic, developmental, recreational, and aesthetic values of tidal wetlands. Finally, a riparian owner must obtain Federal approval from the U.S. Army Corps of Engineers to build a pier.

From the above, any application to construct a pier must undergo a thorough review by various technical experts via the comprehensive regulatory scheme that has been established by the Federal, State, and County governments.

In cases where there is no dispute regarding whether a property is riparian, or whether the property owner has riparian rights – and the riparian owner properly obtains all of the required Federal, State, and County approvals to build a pier – an association should not be able to then deprive the riparian owner of the right granted by statute to build the pier solely by refusing to provide the riparian owner approval to build the pier pursuant to a general provision in a covenant or similar property instrument that requires the riparian owner to obtain “written permission” from the Association prior to construction. Simply put, the enforcement of a private covenant should not be able to effectively take away property rights that have been granted by statute.

HB1135 does not try to limit the ability of a community or homeowners association to regulate something that is properly within the scope of its authority – things like basketball hoops, sheds, fences, and house colors – things that are not property rights granted by statute. However, as there are longstanding provisions in both common law and in Maryland statute that lay out specific rights of riparian property owners, an association should not be able to abrogate those rights solely via enforcement of a covenant or other restriction that requires the association’s “written permission” before construction when the riparian owner has obtained all necessary Federal, State, and County authorizations.

The intent of HB1135 parallels that of other provisions in Maryland statute – and Federal law – that serve to protect certain property rights. Covenants and other similar provisions can’t be used to prevent property owners in Maryland from installing solar panels (Md. Real Property Code Ann. § 2-119) or clotheslines (Md. Real Property Code Ann. § 14-130), or from operating home-based businesses (Md. Real Property Code Ann. § 11B-111.1) – all of which are property rights granted by Maryland statute. Similarly, Federal law prohibits covenants and similar provisions from preventing a property owner from installing a satellite TV antenna (47 CFR § 1.4000), and from discrimination based on race, color, national origin, religion, etc. (42 U.S.C. 3604).

HB1135 does not attempt to impair, terminate, change, or otherwise affect riparian rights in any way. The Committee heard testimony on two other Bills earlier in this Session relating to riparian rights, and I am happy to discuss the similarities – and more importantly, the distinct differences – between HB1135 and those other Bills if necessary.

In summary, HB1135 closes a gap whereby a community or homeowners association can currently “trump” the responsibilities delegated to the Federal, State, and County governments, and *deprive* a riparian property owner of certain rights that have been granted by statute for over 160 years when there is no issue, concern, or dispute regarding the riparian rights to a property. The responsibility for maintaining a balance between (1) the rights granted by statute for riparian owners to build a pier, and (2) the rights of the general public to use the State’s waterways, has been entrusted to the Federal, State and County governments and their technical experts. This responsibility should not be able to be usurped by the subjective opinions of a group volunteers responsible for enforcing covenants, and specifically, a refusal to provide “written permission” prior to construction pursuant to a property instrument that requires such permission.

Thank you for considering the information provided above regarding HB1135, and I respectfully request that the Committee give HB1135 a favorable report, with amendments. I am available to answer any questions that you may have regarding this important issue. Please feel free to contact me at (410) 353-8249, or by e-mail at simplyhuntley@verizon.net.

Sincerely,

Michael Huntley

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