

Circuit Court for Talbot County
Case No. C-20-CV-22-000027

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1258

September Term, 2022

IN THE MATTER OF REBECCA S.
KEEGAN

Beachley,
Shaw,
Killough, Peter K.
(Specially Assigned),

JJ.

Opinion by Killough, J.

Filed: November 14, 2023

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Appellant, Rebecca Keegan, appealed a decision of the Town of Oxford Board of Port Wardens (“Port Wardens”) approving the application of Appellee Megan Hauck¹ to construct a pier from her waterfront property. The Commissioners of the Town of Oxford (“Commissioners”) affirmed the Port Wardens’ decision. The Appellant then filed a timely Writ of Administrative Mandamus with the Circuit Court for Talbot County. On September 2, 2021, the circuit court affirmed the Commissioners’ decision. This appeal followed.

This appeal asks us to determine whether the Port Wardens erred when they approved Hauck’s application to construct a pier and presents three questions for review,² which we have reorganized and condensed into two:

1. Whether the Port Wardens acted within their legal authority when they approved the Appellee’s permit to build a pier based on property lot lines extended?

¹ Formerly Megan Marshall.

² The three issues raised by Appellant on page 6 of her brief are:

- I. Did the Oxford Port Wardens unlawfully adjudicate the ownership of accreted real property and location of the Keegan and Marshall property boundary lines?
- II. Whether the decision of the Oxford Port Wardens to allocate riparian rights in the context of a concave shoreline on the basis of “property lot lines extended” is an error of law and must be reversed?
- III. Whether the application of the Oxford Port Wardens and the Oxford Commissions [sic] of Section 11.12 of the Oxford Town Code, amended pursuant to Ordinance 1801, requiring the Oxford Port Wardens to allocate riparian rights in the context of a concave shoreline on the basis of “property lot lines extended” is an error of law and must be reversed?

2. Whether there was “substantial evidence” in the record to support the Port Wardens’ decision to issue a permit to Appellee to build a pier?

For the reasons explained below, we answer both questions in the affirmative and affirm the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

A. Background

We begin by describing the process for an applicant to obtain a permit to build a pier in the Town of Oxford. To build any structure in the water, an applicant must first obtain a permit from the Oxford Board of Port Wardens. Before the actual construction of the structure can commence, however, the applicant must first obtain state and federal permits and submit such documents to the Port Wardens. *See* The Code of Ordinances of the Town of Oxford (“Oxford Town Code”) § 11.12.E.

The Board of Port Wardens is established by Section 10.1 of the Oxford Town Code. They regulate, among other things, “the placement, erection, or construction of structures . . . within or on the waters of the municipality, including, but not limited to the issuing of licenses [to build piers].” Oxford Town Code § 10.3.A. “No person may build [a pier] without a license or permit from the Board of Port Wardens.” Oxford Town Code § 10.4. Any party aggrieved by a decision of the Port Wardens to issue a permit may appeal to the Commissioners of Oxford. *See* Oxford Town Code § 10.6.

This dispute involves adjacent waterfront properties along the Tred Avon River in Talbot County. Megan Hauck owns the property at 704 South Morris Street in Oxford. The

Hauck property lot is essentially rectangular in configuration, with parallel lot lines. She does not have a pier located on her property.

Rebecca Keegan is Hauck's immediate northern neighbor and owns the property located at 109 West Pier Street in Oxford. The Keegan property lot has a concave configuration, with the narrow portion fronting the river. The lot lines bounding Keegan's property are not parallel. Keegan has a right to access the Tred Avon River through a pier she shares with her immediate northern neighbor – the Leahy family.

The Hauck property lot was created in 1973 and pre-dates the Keegan property lot by five years. When the Hauck lot was initially platted, it had a width of seventy-three feet on the Tred Avon River. When the Keegan lot was platted in 1978, it had a width of forty-five feet on the Tred Avon River.

Between the 1970s and 2000s, the properties have accumulated significant natural accretions as the result of the mean high-water line of both properties retreating adding upward of forty feet of new beach land to the Keegan and Hauck property lots. The net result of this natural occurrence is that Rebecca Keegan's waterfront has been substantially narrowed over time. For example, the previous owners of the Keegan lot produced a plat submitted in connection with a previous building application in March 1999 that demonstrated that the width of the waterfront on the lot had decreased from forty-five feet to twenty-six feet. Megan Hauck's waterfront has remained substantially the same due to Hauck's side lot lines being essentially parallel.

On April 18, 1986, James Spear, the previous owner of Keegan's lot at 109 West Pier Street, and his northern neighbor, Peter Tyrrell, obtained approval from the Port

Wardens to build a jointly owned ninety-foot dock on their common property line. Hauck's predecessor, William Campbell, initially opposed construction of the dock, but consented so long as the dock "did not cross the Campbell property line extended." On August 31, 2002, Spear and Tyrrell entered into a shared dock agreement for the dock that is binding on their respective successors – now Keegan and the Leahy family. The shared dock agreement provides for the exclusive use and sharing of the dock by those two parcels and is recorded in the Talbot County land records. Thus, when Keegan purchased 109 West Pier Street in Oxford in 2012, her riparian³ rights to the Tred Avon River were preserved through the shared dock agreement.

B. Hauck's Initial Pier Application

On November 2, 2017, the Port Wardens met to consider Hauck's request to build a pier from her property. Central to this dispute is whether Hauck's pier should be built in the water in front of her waterfront property lot by using "lot lines extended" or by "lateral lines." With respect to "lot lines extended," the Oxford Town Code generally requires straight lines be drawn from the shore at a 90-degree angle and generally consistent with other piers on adjacent lots. *See* Oxford Town Code § 11.12.A.2. With respect to "lateral lines," the Oxford Town Code defines it as: "[l]ines extending from the shoreline to the harbor line separating adjacent developable water way areas." Oxford Town Code § 11.7.

³ "A riparian owner 'is a person who owns land bordering upon, bounded by, fronting upon, abutting or adjacent and contiguous to and in contact with a body of water, such as a river, bay, or running stream.'" *Becker v. Litty*, 318 Md. 76, 82 (1989) (citation omitted).

Appellant does not actually define the term “lateral lines” in her brief but describes it without any attribution as “calculated lines determined on the basis of a geometric formula designed to create proportionate and equitable boundaries and preserve all parties’ riparian rights when allocating riparian rights in areas with a convex or concave shoreline.” Based on diagrams contained in her brief, the upshot of Appellant’s position is that the “lateral lines” in this case should be drawn at an angle from the boundaries of her shoreline and extend in front of Appellee’s lot.

At the November 2, 2017 meeting, the parties and the Port Wardens, along with interested neighbors, discussed whether the proposed pier should be sited in the water by using lateral line or by extending property lines from the shore. Hauck represented to the Port Wardens that she was prepared to construct the pier by using either method. It was discussed at the hearing, however, that if the Hauck pier was constructed in the water by using lateral lines, that would have a negative impact on the surrounding neighbors and render most of the piers on the shoreline non-conforming. Accordingly, the Port Wardens instructed Hauck to re-submit plans to build the pier closer to Keegan’s lot while complying with the fifteen-foot set back requirement. The Port Wardens wanted to avoid creating “another impediment by using lateral lines and [wanted] to create as much navigable water [as possible] between everyone.” James Jackson, Keegan’s spouse, also attended the hearing and objected to the proposed pier on the basis that it would compromise his view.

At the December 7, 2017 Port Wardens’ meeting, the parties and the Port Wardens, along with interested neighbors, including Keegan’s spouse, continued discussions on

where to place the Hauck pier. Jackson opposed the pier based on property lines extended and argued that lateral lines should be used. Chairperson Campbell explained that:

[H]istorically, many of the docks in this area pre-date the building ordinance and Harbor Management Plan that was established in 1982. The existing piers were extended straight out in front of properties. Whether it was intended or not, that was the way it was done. Very few options were even used or applied. If one were to try to establish the strict use of lateral lines now to one of those existing piers, one would have one pier on top of another. All the docks that have been put in over the years established guidelines in which the building property line setbacks were honored. Not until the most recent write up did the use of lateral lines even get that much attention. . . . if Mr. Jackson were to apply the use of lateral lines extended on his own property, he would have been unable to build any pier at all on his property and that he could not meet the setbacks on either side of him as well.

The Port Wardens also addressed Keegan's claim that her pier was unusable at low tide. They noted that the pier was, in fact, usable and has been used for years. They added that had Keegan "request[ed] a pier on [her] property, using today's laws, [s]he would not be granted one. By the agreement he has with [her] neighbor, [Keegan has] a usable dock where there would not be one." If the Port Wardens were to use lateral lines to satisfy Keegan, that "would end up creating a conflict and issue[] with every other dock on the shoreline whereas the Hauck's application, as presented, would meet all the guidelines and criteria." The Port Wardens noted further that "though use of lateral lines had always been in the guidelines, it wasn't the rule and, if one were to apply it to everything in town, there would be issues everywhere." The Port Wardens stated that Keegan "simply could not have it all . . . meaning a view, a bigger pier, and a boat lift given the size of [her] property." They ended the meeting with the expressed hope that a compromise could be reached.

On January 29, 2018, Hauck submitted Permit No. 18-01 with the Port Wardens to “[c]onstruct a 104’ long by six-foot wide pier from her property, including a twenty-foot by ten-foot end section platform, and install one four-pile boat lift not to exceed seventy-nine feet channel ward of the mean highwater line.” The Port Wardens considered the application during a public hearing held on March 1, 2018. The Port Wardens heard testimony and reviewed evidence from several witnesses and experts, including the parties to this appeal.

At the hearing, Hauck’s engineer stated that he prepared two options to site the pier based on the guidance given during the November 2, 2017 hearing – one based on a boundary survey with lot lines extended and the other based on a lateral line survey – and that Hauck “was waiting for the [Port Wardens] to make a decision as to which one should be approved.” Chairperson Campbell stated that “the option using lot lines extended was in keeping with what had historically been done since the establishment of the harbor management line.”

James Jackson argued that structures in the water should be placed using lateral lines and that was the “rule around the country.” Keegan stated further that “their view was beautiful,” and complained that if the Port Wardens were to allow Hauck to construct the pier, it would “ruin[] their view and creat[e] a problem in allowing them access to deep water.” As noted at the hearing, however, the Port Wardens “do not regulate aesthetics or view and that there is no view easement or view that is free of a pier.”

Chairperson Campbell stated that he had hoped that a solution could have been worked out between the various owners living on the shoreline after the November and

December 2017 meetings. Because no agreement was reached, “it was up to the board to decide and make the decision.” He opined that Hauck should be permitted to build a pier and observed that:

[I]f one were to look at a satellite view of Oxford one would find that 80% of the docks in town fit the property line extended criteria. However, if one were to go with lateral lines, a vast number of docks in town would be non-conforming today. . . . [L]ateral lines have always been used as a solution to problem areas and adjusted by cooperating neighbors who also wanted their rights to use the water.

Chairperson Campbell noted further that Hauck’s neighbors, including Keegan, both had piers extending from their properties built in the 1980’s based on property lot lines extended. Addressing Keegan’s argument that the Hauck pier should be sited by using lateral lines, Campbell stated that the Port Wardens have the authority under the Oxford Town Code to site the pier based on the lot lines extended method where there has been or will be state or federal approval and that extending lot lines do not have an adverse impact on the riparian rights of surrounding properties.

After an opportunity to be heard was extended to all interested parties, the Port Wardens determined that the pier would have no adverse impact on surrounding properties or on navigable water, and unanimously approved the construction of the Hauck Pier less the “L” shape platform at the end, pending state and federal approvals. By letter dated March 13, 2018, Hauck was issued a permit approving the pier with an effective date of April 11, 2018. Thereafter, Hauck applied for and received state approval to construct the pier from the Maryland Department of the Environment (“MDE”) on June 12, 2018.

In July 2018, Keegan filed a petition for judicial review of the MDE permit issued to Hauck. That case was stayed pending resolution of the declaratory judgment action Keegan filed against Hauck in the circuit court in November 2018 to determine ownership of the accreted land between the Keegan and Hauck properties. *See Rebecca Keegan v. Megan Hauck Marshall Revocable Trust U/T/A, et al.*, Case No. C-20-CV-18-183 (“Declaratory Judgment Action”).

On May 4, 2018, Keegan noted a timely appeal to the Commissioners of the Town of Oxford. Because the recordings of the March 1, 2018, hearing were inadvertently erased, the Commissioners did not rule on Keegan’s appeal. Rather, Keegan elected on June 13, 2018 to have the matter remanded for a new hearing before the Port Wardens rather than proceed solely on the minutes of the March 1, 2018 hearing. Covid delays followed, but ultimately the Hauck application was remanded to the Port Wardens for public hearing on May 13, 2021.

C. The April 18, 2018 Amendment to the Town Ordinance Regarding Waterway Areas in the Town of Oxford

On March 13, 2018, the Oxford Commissioners introduced Ordinance 1801 to amend the Oxford Town Code regarding the placement of structures in the water. Specifically, Ordinance 1801 was introduced to revise Section 11.12 of the Oxford Town Code. That revision established that the method for determining the useable waterway area for the construction of structures in the water was by using property lot lines extended. That section, however, provides the Port Wardens with the flexibility to vary from that methodology if the proposed structure has been or will be approved by applicable

state or federal jurisdictions having authority and the variation “does not have an adverse impact upon surrounding properties or riparian rights of others.” The Commissioners stated that the intent for the amendment was to “clarify the standards for determining useable waterway area for construction of waterfront structures.” The Commissioners enacted Ordinance 1801 after a public hearing on April 10, 2018.

The Oxford Town Code Section 11.12, as amended in April 2018, captioned “Waterfront Development Requirements,” provides, in pertinent part:

The following regulations apply to waterfront development structures. The Board of Port Wardens shall have the authority to issue a municipal permit for waterfront development structures based upon, but not limited to, the following criteria. The Port Wardens shall have the authority to allow for a variation of the provisions of this Section 11.12 upon a finding that the application has been or will be approved by any applicable state and/or federal jurisdiction having authority over the same, and that the alteration does not have an adverse impact upon surrounding properties or riparian rights of others, or navigable waterways.

A. Useable Waterway Areas. The useable waterway area is the area enclosed by the harbor line, shoreline and lot lines extended as determined by the Port Wardens based on its impact on the use and enjoyment of adjacent waterfront lots.

1. Harbor line and Shorelines. The harbor line and shoreline are the lines labeled as such on the Oxford Harbor Line Map, as amended.
2. Lot Lines Extended shall be determined by one of the following methods:
 - a. from the side lot line at a 90-degree angle to the shoreline;
 - b. from the extension of the last course of the lot line into the water;

- c. from the side lines to the center of the cove; or from the side lot lines general parallel or consistent with the existing piers located on adjacent lot(s).
- d. From the side lot lines generally parallel or consistent with the existing piers located on adjacent lot(s).

Thus, on or after the effective date of April 30, 2018, the presumptive method for determining useable waterway areas for the construction of structures on the Tred Avon River is by property lot lines extended.

D. The May 2021 Port Wardens Hearing

The Port Wardens held a hearing on May 13, 2021 to again consider Hauck's application. Both parties were represented by counsel and relied upon expert testimony. Prior to the hearing, Keegan requested that the Port Wardens stay the hearing pending the Declaratory Judgment Action. The Port Wardens denied Keegan's request and proceeded with the hearing.

At the hearing, Hauck presented evidence demonstrating that the pier complied with the Oxford Town Code. Specifically, the proposed pier complied with the applicable setbacks and would be situated in the useable waterway area fronting Hauck's lot using property lot lines extended. *See* Oxford Town Code § 11.12.A. Keegan opposed the pier and argued that given her property lot's concave configuration, the Port Wardens should determine the useable waterway area by drawing lateral lines. By using lateral lines, Keegan argued that Hauck could not build the pier because it would violate the fifteen feet setback from Keegan's property. Further, due to the natural accretions that have taken place for decades since the creation of these lots, the Port Wardens' approval of Hauck's

pier would amount to a constitutional taking by the Port Wardens. During the hearing, however, Keegan did not present any evidence to the Port Wardens as to what she believed were the appropriate boundary lines.

Hauck argued that using lateral lines to place the pier would have an adverse impact upon the surrounding properties on the shoreline. Hauck noted that “for decades” the Port Wardens determined the useable waterway area for piers and other structures by extending the property lines in a straight manner to mean high-water. Further, Hauck argued that Keegan’s riparian rights to the river were secured through the dock she shares with the Leahys.

Hauck presented evidence to the Port Wardens regarding the appropriate lot lines to determine the useable waterway area.

- Keegan’s predecessor owner sought and obtained Building Permit No. 91-028, filed on or about January 20, 1992. That permit depicted the current property boundary line between the Keegan and Hauck property and was drawn using the property lot lines extended.
- On September 5, 1996, the Port Wardens denied Keegan’s predecessor from building a forty-foot extension on the shared dock with the Leahys because such an extension would extend into the usable waterway area of Hauck’s predecessor.
- Hauck’s southern neighbor, Dr. Andrews, sought and obtained a permit from the Port Wardens in May 1998 to construct a 105’ pier with two mooring piles and a boat lift. That application depicts the current property lines relied upon by Hauck in her application and was drawn using property lot lines extended.
- Building Permit No. 99-09 contained a survey plat sealed and prepared by Lane Engineering (Keegan’s current engineer) that shows the current property boundary lines of the Keegan and Hauck properties. Lane Engineering determined the common boundary of those properties by extending the platted line beyond the former mean high water across the

accreted land and used the same methodology at the north side showing the property line extended to the center point of the pier, which is consistent with what the Shared Dock Agreement provides.

- The Keegan and Leahy shared dock was constructed and centered on property lot lines extended and comes out to the southwest and then turns approximately 20-25 degrees west so as not to intrude into Hauck's usable waterway area.
- In November 2012, Keegan successfully applied for a building permit to construct an addition to her residence. In Keegan's application, she attached a diagram of her property that extended the side property lines over the accreted lands using lot lines extended.
- In November 2019, Keegan submitted an application to MDE for approval of a 103' pier extending from her property using property lot lines extended to determine the location of her proposed pier. MDE denied the application, reasoning that Keegan already has a pier.

In other words, the lot lines that Hauck presented to the Port Wardens to site the pier were based on the property lot lines that Keegan, her predecessors, and other neighbors used in connection with their construction projects on file in county records.

The Port Wardens also heard from Hauck's southern neighbor, Dr. and Mrs. Andrews, who testified that they did not have an objection to the Hauck pier so long as the "L" shaped platform was removed.

Ultimately, Chairperson Campbell stated that he was in favor of permitting the pier because it "fits within the guidelines the Town of Oxford has been practicing since 1982" and that it met all the setbacks. He reasoned that "over 95% of the piers [in Oxford] were approved and constructed by applying property lines extended." If the Port Wardens were to require Hauck to construct her pier using lateral lines, that would negatively impact many of the property owners living on the river and disrupt currently existing piers. The

Port Wardens thereafter voted unanimously to approve the Hauck permit. The final written decision was issued July 8, 2021.

E. Appeal before the Town of Oxford Commissioners

A timely appeal was filed with the Commissioners on August 5, 2021, and a hearing was held on January 27, 2022. Both parties were represented by counsel. At the hearing, Keegan argued that the Port Wardens unlawfully allocated ownership of the accreted land⁴ when they granted Hauck a permit to construct a pier and that its actions amounted to a constitutional violation. Keegan also argued that the Port Wardens erred by not staying the hearing pending resolution of the declaratory judgment action. Finally, Keegan argued that the Port Wardens' decision was not supported by substantial evidence.

Hauck urged the Commissioners to affirm the Port Wardens. Hauck's counsel argued that the lot lines extended methodology used by the Port Wardens was consistent with the Oxford Town Code. The property lines that Hauck used to configure her proposed pier were based on the property lines on file with the town and county, including Keegan, whose shared pier is oriented using property lot lines so as not to violate the setbacks for Hauck's property. Keegan conceded that the site drawings were based on county records reflecting existing property lines but argued that it was up to the circuit court to change

⁴ The parties use the terms "fast lands" and "accreted lands" synonymously. "Fast land" and "accreted land" refers to the land that is above the high-water mark formed by the process of accretion, which is defined as "[t]he gradual accumulation of land by natural forces." Blacks Law Dictionary 11th edition 2019.

those property lines in the Declaratory Judgment Action due to the accretion that has occurred.

Addressing the argument that the Port Wardens should have stayed the hearing pending the resolution of the Declaratory Judgment Action, Hauck's counsel disagreed:

Ms. Hauck is one of the few waterfront property owners along the shoreline who has yet been able to construct a pier. So I agree that the Circuit Court will determine the location of property lines. What I don't agree with is the notion that a neighbor who seeks to interfere with the construction of a pier can have essentially a de facto moratorium by continuing litigation and debate about property lines and forestall considerations by this town.

Hauck conceded that if the circuit court rules in favor of Keegan in the Declaratory Judgment Action, that may require her to change the location of the pier and that she would be proceeding at her own risk.

After consideration of the record before the Port Wardens on May 13, 2021, the Commissioners voted unanimously to affirm the Port Wardens' decision to approve the Hauck permit.

F. Judicial Review in the Circuit Court

Keegan appealed the decision of the Commissioners to the Circuit Court for Talbot County by filing a Writ of Administrative Mandamus. In a written opinion dated September 6, 2022, Judge Stephen Kehoe affirmed the decision of the Commissioners. Judge Kehoe found that the Port Wardens did not adjudicate ownership of the accreted land, but rather complied with the Oxford Town Code in approving the pier. A timely appeal was taken from this decision on September 22, 2022.

STANDARD OF REVIEW

On an appeal from the denial of a petition for writ of administrative mandamus, the standard of review is essentially the same as the judicial review of an administrative decision. *See Armstrong v. Mayor and Council of Baltimore*, 169 Md. App. 655, 667-68 (2006). When the appellate court reviews a denial of a writ of administrative mandamus, the court does not consider whether the circuit court erred, but rather “whether the administrative agency erred.” *Consumer Protection Division v. Morgan*, 387 Md. 125, 160 (2006). *See also W. Montgomery County Citizens Ass’n v. Montgomery County Plan. Bd. of Md.-Nat’l Cap. Park & Plan. Comm’n*, 248 Md. App. 314, 332-33 (2020) (When reviewing the final decision of an administrative agency, “we look through the decision of the circuit court and review the agency’s decision directly”) (citations omitted). Thus, on this appeal, the Court must determine whether the Port Wardens erred when they approved Hauck’s pier.

Our review consists of two parts—we analyze whether (1) there is substantial evidence in the administrative record to support the factual findings made by the agency, and (2) “the administrative decision is premised upon an erroneous conclusion of law.” *Chesapeake Bay Found., Inc. v. DCW Dutchship Island, LLC*, 439 Md. 588, 611 (2014). “Substantial evidence” has been defined as “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion[.]” *Catonsville Nursing Home, Inc. v. Loveman*, 349 Md. 560, 569 (1998).

Because an agency’s decision is presumed *prima facie* correct, we review the evidence in the light most favorable to the agency. The court reviews purely legal

questions *de novo*, “with considerable weight afforded to the agency’s experience in interpretation of a statute that it administers.” *Schwartz v. Md. Dep’t of Nat. Res.*, 385 Md. 535, 554 (2005). What a reviewing court must not do is to substitute its judgment for that of the administrative body on matters that are within the realm of the administrative body’s expertise. *See Montgomery County v. Longo*, 187 Md. App. 25, 49 (2009).

DISCUSSION

In 2021, the Port Wardens granted Megan Hauck a permit to build a pier from her property based on lot lines extended “from the side lot lines general[ly] parallel or consistent with the existing piers located on adjacent lots.” This methodology has been used for the construction of structures in the municipal waters of Oxford since 1982 and is the methodology set forth in Section 11.12.A of the Oxford Town Code. Nevertheless, her neighbor, Rebecca Keegan, argues that because her lot lies on an irregular shoreline with converging lot lines and new fast lands, the Port Wardens were legally required to either use lateral lines to site the pier or deny the application. She claims that by using property lot lines, the Port Wardens unlawfully determined ownership of the accreted land that is the subject of the Declaratory Judgment Action. These arguments lack merit.

As discussed below, the Port Wardens did not determine ownership of the accreted lands or make any determination as to their equitable use. Rather, adhering to the requirements of the Oxford Town Code, the Port Wardens approved the construction of a pier in the municipal waters of the Town of Oxford by using the method prescribed by the code. To the extent that Keegan complains that the proposed pier interferes with her riparian rights, that is not the conclusion reached by the Port Wardens after an evidentiary

hearing and, as discussed in Section II below, that conclusion is supported by substantial evidence.

The issues before this Court on this appeal are (1) whether the Port Wardens had the legal authority to approve the Hauck pier using property lot lines extended, and (2) whether that approval was based on substantial evidence. For the reasons stated below, the Court's answer to both of those questions is yes and we will affirm the circuit court.

I. The Port Wardens Acted Within Their Legal Authority When They Approved Appellee's Application to Build a Pier Based on Property Lot Lines Extended.

It cannot be seriously disputed that the Port Wardens had the legal authority to use property lot lines extended to approve Hauck's application to build a pier. Section 5-208 of the Local Government Article enables a municipality to create a board of port wardens to regulate the construction of structures in the water, including the granting of a license to build a pier. When issuing such a permit, the board shall consider, among other things, "the effect of the proposed use of the waters on other riparian owners." Md. Code Ann., Local Gov't § 5-208(b)(3)(iv).

Pursuant to that specific grant of statutory authority, the Town of Oxford created the Oxford Board of Port Wardens. *See* Oxford Town Code § 10.1. As set forth in Section 10.3, the Port Wardens have the authority, in pertinent part:

To regulate the placement, erection, or construction of structures or other barriers within or on the waters of the municipality, including, but not limited to the issuing of licenses to create or build wharves or piers . . . taking into account the present and proposed uses, and the effect of present and proposed uses on marine life, wildlife, conservation, water pollution, erosion, navigational hazards, the effect of the proposed use on congestion within the waters, *the effect on other riparian property owners*, and the present and projected needs for any proposed commercial or industrial use.

Oxford Town Code § 10.3.A (emphasis supplied). No person may build a pier “without a license or permit from the Board of Port Wardens.” Oxford Town Code § 10.4.

In 1982, the town adopted the Harbor Management Plan that provides for the management and regulation of the construction of structures in the municipal waters⁵ of Oxford. That plan was codified in 2013 and contains Chapter 11, titled “Harbor Management Ordinance.” Section 11.3 of the Oxford Town Code specifies that the purpose of the Harbor Management Plan is to “provide regulations for the orderly management, development, and control of the waters within the corporate boundaries of the Town of Oxford” and is “not intended to deprive any riparian landowner of any right[s]. . . .” Section 11.12.A applies to “waterfront development structures.” “Developable Waterfront Land” is defined as “[a]ny waterfront property from which access to a waterway area can be achieved.” Oxford Town Code § 11.7. “Waterfront structures” is defined as “[a]ny number of structures employed to facilitate access to waterfront, including, but not limited to bulkheads, riprap, living shoreline, wharfs, piers, floating docks, boat lifts, or mooring piles.” *Id.* In April 2018, the Commissioners amended Section 11.12 of the

⁵ “Waters of the Municipality” is defined under Section 11.7 of the Oxford Town Code as:

[A]ll waters within the corporate boundaries of the Town of Oxford over which the Town of Oxford may exercise zoning or police power authority whether or not the ordinary or mean high tide line has been fixed by ordinance, statute, court action or otherwise and whether or not the lands lying under said tidal water are privately or publicly owned.

Oxford Town Code to require the Port Wardens to use property lot lines extended unless the Port Wardens determined that another method was more appropriate.

Pursuant to the specific grant of authority conferred on the Port Wardens by the Oxford Town Code, they determined the “useable waterway area” for Hauck’s pier by extending Hauck’s property lot lines from the shoreline into the water. *See* Oxford Town Code § 11.12.A. As mandated by the code, the Port Wardens also considered the impact of the proposed pier “on the use and enjoyment of adjacent waterfront lots.” Oxford Town Code § 11.12. After determining that the pier Hauck wanted to construct did not have an adverse impact on the riparian rights of any adjacent property owner and satisfied the applicable setbacks, *see* Oxford Town Code § 11.12.B, the Port Wardens approved the pier.

A. The Port Wardens did not adjudicate the boundary dispute between the parties.

Keegan’s first assignment of error relates to the claim that the Port Wardens unlawfully adjudicated ownership of the fast lands when it determined the useable waterway area by extending lot lines. Characterizing the conclusion that the Port Wardens did not make such an adjudication as “specious,” Keegan argues that when Port Wardens considered the county records of previous building project applications on the property lots at issue in deciding where to locate the pier, they decided ownership of the accreted lands. This argument mischaracterizes what the Port Wardens did in this case.

The Port Wardens do not have jurisdiction to quiet title in real property. As the circuit court aptly noted, resolving real property disputes is the exclusive province of the circuit court. *See* Real Property Article § 14-108. Rather, the duty of the Port Wardens is

limited to the regulation of structures in the municipal waters. Keegan fails to show how extending lot lines from property boundaries on file with the county to determine the useable waterway area constitutes an adjudication of ownership of real property. It is well-settled that an “agency’s authority extends only as far as the General Assembly prescribed.” *Thanner Enters., LLC v. Baltimore Cnty.*, 414 Md. 265, 276 (2010). “Subject matter jurisdiction is the court’s ability to adjudicate a controversy of a particular kind.” *John A. v. Bd. of Educ. for Howard Cnty.*, 400 Md. 363, 388 (2007). In the case of an administrative agency, that ability is derived from, and circumscribed by, the statute or statutes the agency administers. *See Adamson v. Corr. Med. Servs., Inc.*, 359 Md. 238, 250 (2000). “Stated differently, agencies have no powers beyond those that have been conferred upon them by statute.” *Brzowski v. Maryland Home Improvement Comm’n*, 114 Md. App. 615, 626 (1997).

No provision in the Local Government Article or in the Oxford Town Code confers power to the Port Wardens to quiet title in real property. The Port Wardens did not hold any hearings on the possession of the fast lands, review title searches, deeds or land surveys to determine ownership, or consider any evidence of the sort that is typically offered into evidence in real property disputes. Their grant of authority is limited to approving structures built in the water. Chairperson Campbell said as much when he advised Keegan on May 13, 2021 that the Port Wardens were not going to stay the proceedings in favor of the Declaratory Judgment Action because their job is “essentially issuing permits for water related activities, piers that go out to the water.”

In any event, at no time did the Port Wardens determine ownership of the fast lands. The Port Wardens specifically acknowledged the existence of the fast lands: “[i]t’s wonderful that you guys are accruing new beach . . . you got a growing beach.” Yet, the Port Wardens did not go on to determine who owned the “growing beach” and, important to this appeal, Keegan does not cite to anywhere in the record where such a determination was made. Oblique references to the evidence that the Port Wardens necessarily considered to determine the useable waterway area and the applicable setbacks do not show that they determined ownership of the fast lands. Keegan conceded as much in her appeal to the Commissioners when she acknowledged the property boundary lines that are on record in the county records, but that it was up to the circuit court to change those lines based on the natural accretions that had taken place.

B. The Port Wardens did not err when it determined the useable waterway area to permit the Hauck pier by extending property lot lines.

Appellant takes issue with the Port Wardens’ decision to extend property lot lines into the water to determine the useable waterway area to site Appellee’s pier. Appellant argues that because her property lies on a concave shoreline, the proposed pier when built would interfere with her common law riparian right to access the water. Moreover, to the extent that the Port Wardens relied upon Section 11.12 of the Oxford Town Code, as amended in 2018, to site the Hauck pier, that provision “violate[s] and [is] preempted” by Section 16-201(a) and (b) of the Environmental Article (“EN”). These arguments have no merit.

It is well-settled that nearly all the navigable waters in Maryland, as well as the lands beneath them, are owned by the State for the benefit of all its Citizens. *See Harbor Island Marina, Inc. v. Board of County Commissioners of Calvert Co.*, 286 Md. 303, 314 (1979) (citations omitted). “As proprietor of this area, the State holds all powers of regulation and control over these ‘lands,’ subject to the paramount power of the United States to regulate navigation.” *Id.* (quoting *Wester Contracting Co. v. Titter*, 255 Md. 581, 587 (1969)). Nevertheless, an owner of property that is adjacent to navigable water has riparian rights under both common law and statute. *See Worton Creek Marina, LLC v. Clagett*, 381 Md. 499, 508-12 (2004). Fundamental among these riparian rights is access to the water. *Id.* It is well-settled that a riparian property owner has “the right to make a landing, wharf, or pier” to provide access to navigable water subject to “general rules and regulations necessary to protect the rights of the public.” *Causey v. Gray*, 250 Md. 380, 387 (1968). *See also Harbor Island Marina*, 286 Md. at 316 (after a comprehensive examination of riparian rights under Maryland common law and its interplay with legislative enactments beginning in 1745, the Supreme Court of Maryland held riparian rights are subject to regulation).

Keegan does not cite to any legal authority that prescribes the methodology for apportioning statutory riparian rights between coterminous landowners on irregular shorelines. Instead, the cases relied on by Appellant involve claims by riparian owners against their neighbors either objecting to or claiming ownership over extant structures in the water. In *Wicks v. Howard*, the appellees built a pier that was constructed based lot lines extended, but then “dog-legged” left toward the channel. 40 Md. App. 135, 138

(1978). This pier was constructed 16 years prior to the appellants taking title to the neighboring lot. *Id.* Appellants complained that the appellee’s pier prevented them from constructing a pier in a perpendicular manner to reach the channel “without ramming” into appellee’s existing pier. *Id.* Claiming a right to construct their pier in a straight line from their property “for a sufficient distance to reach the channel,” the appellants sued and requested that the court order the removal of the offending pier or award them damages for appellee’s “encroach[ment] upon their riparian rights.” *Id.* at 139. The trial court granted judgment to the appellee and this Court affirmed. We held that a riparian owner does not have “a right to construct a wharf in a direction from their land in such a way as to maximize their convenience in striking the channel perpendicularly.” *Id.* at 139-140. We recognized the common law right of riparian owners to access to navigable waters and the General Assembly’s grant of a privilege to make “improvements in State-owned waters abutting his property.” *Id.* But until this right is exercised “and the improvements [are] actually completed, he has no vested interest in any particular imagined, proposed, or even partially finished construction project.” *Id.*

Similarly, the case *Baltimore & O.R. Co. v. Chase*, involved waterfront property in the City of Baltimore that was legally seized from British subjects after the Revolutionary War, subdivided into lots and sold by officials appointed by the State. 43 Md. 23 (1875). Two of the lots adjacent to the lot owned by the plaintiff made substantial improvements to their waterfront property pursuant to authority granted to them under the Act of 1745 and with the permission of City of Baltimore authorities. Plaintiff made no such improvements to his lot and sued to obtain a portion of the improvements that the plaintiff

claimed infringed upon his riparian rights. Relying on the Act of 1745 and the cases construing it, the Supreme Court held that “the right of improvement in cases of conflicts between riparian proprietors, arising from the curvature of the shore of the river, vested in the elder patentee, and those claiming under him, and is not divested or in any manner impaired by a subsequent grant by the State.” *Id.* at 38.

In *Owen v. Hubbard*, the appellants were riparian owners who built a bulkhead in their cove with the written permission of the two other riparian owners living on the cove, including the appellee. 260 Md. 146 (1970). Most of the bulkhead was sited in front of Owens’ lot, but approximately forty-one feet was sited in front of the appellee’s lot. *Id.* at 148-49. The Owens claimed ownership over those forty-one feet and the appellee filed suit. *Id.* at 155. The trial court ruled that the appellee did not by “consent, conduct, acquiescence and failure to object” disclaim ownership of the portion of the bulkhead in front of his property. *Id.* at 161. The Supreme Court affirmed the trial court, reasoning that the Owens did not have “the right to interfere with the riparian rights of their neighbors, without their consent.” *Owen v. Hubbard*, 260 Md. at 161. Moreover, the *Owen* case also involved whether superior rights are afforded to “front” riparian owners as opposed to “side” riparian owners,⁶ a complication that is not present in the instant action. *Id.* at 151.

In this case, Keegan does not have any existing structures in the navigable waters in useable waterway area fronting her lot with which the Hauck pier would interfere. While it is true that Keegan has a vested right in the dock that she shares with the Leahys, there

⁶ The terms “front” and or “side” refer to which direction the house faces the water.

is no claim in this case that the Hauck pier would interfere with that dock. Thus, Keegan does not have any vested right to make improvements in the state-owned navigable waters fronting what she claims are her fast lands and she cannot appropriate Hauck's riparian rights to wharf out from her property based on these claims. *See, e.g., Causey*, 250 Md. at 387 (an exercise of riparian rights cannot appropriate the riparian rights appurtenant to neighboring properties).

This Court has often been called upon to determine the respective rights of riparian owners whose properties adjoin each other on an irregular shore. In those cases, except where consent or a prior patent was involved, we have stood by the "rule that adjoining owners on a concave shore must share available space for wharfing." *Cahill v. Baltimore*, 173 Md. 450, 458 (1938). "It need hardly be noted that geographic variables preclude complete equality of access on a formula basis There is no rigid method of apportioning the statutory riparian rights to construct improvements, the governing principle being merely that the division must be equitable, not necessarily equal." *Wicks v. Howard*, 40 Md. App. at 140 (1978). The Port Wardens made such a division in this case and, as discussed in Section II below, that division is supported by substantial evidence.

In sum, we are persuaded by a plain reading of Section 5-208 (b)(3)(iv) of the Local Government Article and of Section 11.12 of the Oxford Town Code, that the Port Wardens have authority to employ the appropriate methodology to determine the useable waterway area for the placement of structures in the water in fulfillment of its statutory obligation. None of the cases that Keegan cites in her briefs support the conclusion that the Port

Wardens were legally required to apply “lateral lines” or some other method to determine the useable waterway area for Hauck’s pier.

Keegan also argues that Section 11.12 of the Oxford Town Code is preempted by Section 16-201 of the Environmental Article. EN Section 16-201 provides, in pertinent part, that a riparian owner “may make improvements into the water in front of the land to preserve that person’s access to the navigable water.” Keegan does not explain, however, why Section 11.12 is preempted by state law. Given that the Oxford Town Code specifically addresses riparian rights of adjacent property owners and ties the Port Wardens’ final approval for structures in the water to obtaining MDE and Army Corps permits, *see* § 11.12.E, there does not appear to be a basis for us to find that Section 11.12 of the Oxford Town Code is preempted. Moreover, as the circuit court observed, “the Port Wardens determined how [] Hauck could have access without denigrating [] Keegan’s right to the water.”

C. The Port Wardens’ approval of the Hauck Pier does not constitute an unlawful taking.

Finally, Appellant argues that the Port Wardens’ issuance of a permit to Appellee to build a pier pursuant to Section 11.12 of the Oxford Town Code amounts to “a taking of Keegan’s property without due process of law and without fair and just compensation under [the U.S. Constitution, the Maryland Constitution, and Article 24 of the Maryland Declaration of Rights].” We disagree.

Under the “taking” standard, “a regulation which denies all economically beneficial or productive use of land will require compensation under the Takings Clause [of the 5th

Amendment to the U.S. Constitution].” *Palazzolo v. Rhode Island*, 533 U.S. 606, 617 (2001) (internal quotation marks omitted). This is a demanding standard. *Cf. Assateague Coastal Trust, Inc. v. Schwalbach*, 448 Md. 112, 127-128 (2016) (proving “unwarranted hardship” to receive a variance from the restrictions of the “Critical Area” law is not as demanding as the “taking” standard) (citing *Chesapeake Bay Foundation, Inc. v. DCW Dutchship, LLC*, 439 Md. 588 (2014)).

In this case, Keegan does not even attempt to argue—much less show – that the Port Wardens’ issuance of a permit for a neighbor’s pier denied Keegan of “all economically beneficial or productive use” of her property. The proposed pier has not been constructed, and as already discussed, the Port Wardens’ issuance of the permit is not dispositive on whether it ever will be inasmuch as construction of the pier is conditioned on future state and federal approvals. Thus, *nothing* has been taken from Keegan that involves compensation. In fact, nowhere in her brief does Keegan articulate how the Port Wardens’ decision has caused her any injury whatsoever. In sum, there is no constitutional taking in this case.

II. There Is Substantial Evidence Supporting The Port Wardens’ Decision to Authorize The Hauck Pier.

When we examine the record in this case, we find ample evidence by which a reasonable mind could have reached the conclusion that the Port Wardens correctly approved Hauck’s pier. The Port Wardens held four meetings on Hauck’s pier and heard from the parties, area residents and experts. Other than Keegan, none of the area residents opposed Hauck’s pier. Indeed, it is difficult to ascertain just how the Port Wardens’

decision to locate the Hauck pier by property lot lines extended can be deemed unreasonable when that is the prescription under the code. The reasonableness of this conclusion is amplified by the uncontested fact that Keegan's shared pier to the north and nearly all of the piers to the south of Hauck's property enter the Tred Avon River at a 90-degree angle from the shoreline. They were all approved by the Port Wardens by extending property lot lines into the water.⁷ Orienting Hauck's pier similarly with those existing piers in the cove and with the method that has been historically applied by the Port Wardens was neither an error of law nor arbitrary.

Keegan argues that this matter should be remanded with instructions that the "allocation [of the useable waterway area] must be equitable and should provide the fullest utilization of the respective properties under the circumstances." In reality, Keegan's opposition to the Hauck pier does not actually center on her lack of access to the water. Although Keegan theorizes that one day she will eventually "cease to be a riparian landowner" due to natural accretions if Hauck is permitted to build a pier, nowhere in her brief does Keegan explain why this is true given that her riparian rights are already secured by her shared pier. Nor does she explain how Hauck's construction of a pier will contribute to the elimination of her riparian rights. In fact, Keegan does not even mention the fact that

⁷ During oral arguments on September 6, 2023, Counsel for Appellant conceded that if the Court found that if the Port Wardens' use of lot lines extended was lawful, the location of the pier would comply with the Oxford Town Code because it met the fifteen-foot setback.

she has access to the water through her shared pier in her brief – a glaring omission for a party claiming that her riparian rights are being denied.

It is important to note that the Port Wardens are authorized to use lateral lines, as that term is defined in the code, but only “upon a finding that the application has been or will be approved by any applicable state and/or federal jurisdiction having authority over the same, and that the alteration does not have an adverse impact upon surrounding properties or riparian rights of others, or navigable waterways.” Oxford Town Code §11.12.

The Port Wardens did not ignore Keegan’s opposition and specifically considered what impact using lateral lines would have “upon surrounding properties or riparian rights of others, or navigable waterways.” In this regard, the Port Wardens determined that if the pier is placed using lateral lines, “a vast number of docks in town would be non-conforming today.”

The Port Wardens also specifically considered the impact the proposed Hauck pier would have on Keegan’s use and enjoyment of her property.

MR. CAMPBELL: All right. Anything else, folks? So I guess we’re getting close to here where we need to make a motion, guys. So I just want to chime in a couple things here just as far as *access and solution*. *So access to the water was established for both these parcels when the shared pier was established many years ago, basically almost three decades ago....* Mooring fields have been established since – since all these things have taken place, so there’s other access to the water that you will enjoy. And I think you just hit the nail on the head there, that when you bought the property, the value was enhanced by the fact that you had a dock shared agreement there. When you purchased the property, it was a unique shape parcel. And obviously many years ago it was still a unique piece of property. *And the Board and many owners and neighbors came together and they solved it by creating a shared dock. So I feel like you have access to the water there on that side.* But as far

as the Hauck permit, it fits within the guidelines the Town of Oxford has been practicing since prior to 1982. It meets all the setbacks.

The Port Wardens noted that Keegan already had access to the water through the shared dock and admonished her in the December 2017 hearing that she “simply could not have it all . . . meaning a view, a bigger pier, and a boat lift given the size of [her] property.”

To be sure, the review of an administrative decision is narrow and requires this Court not to engage in judicial fact-finding. Here the application process was defined and unambiguous. Based on testimony of neighbors, expert witnesses and arguments from counsel, the Port Wardens determined that the location of the proposed pier was consistent with other piers in the area and that the location was the least intrusive to other riparian owners, including Keegan, who already exercised her right to wharf out via the shared dock. In making this decision, the Port Wardens considered the riparian rights of the neighboring properties and the impact on those properties and structures already placed within the water, as required by the Oxford Town Code. Therefore, we are of the opinion that the Port Wardens’ findings were based on substantial evidence in the record and its decision was not an erroneous conclusion of law.

**JUDGMENT OF THE CIRCUIT COURT
FOR TALBOT COUNTY IS AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**