

PUBLICATION

Who Owns The Right To Develop Along The Shoreline?

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There are 7,719 miles of tidal shoreline in Maryland along the Chesapeake Bay and its tributaries, according to the Maryland Geological Survey. The vast majority of that shoreline is privately owned, thereby limiting the general public's access to water. Despite common law, statutes and regulations, some of which are well-established and discussed in Maryland case law, there are still questions as to who holds or owns the development rights for erecting structures (e.g., piers) in Maryland waters.

In Maryland, a state that almost entirely surrounds the vast waterbody known as the Chesapeake Bay, a person who owns real property fronting on the water holds "riparian rights." These rights historically have allowed a person to access the water, build a pier into the water and enjoy the benefits of using the water, among other things. In fact, Maryland's common law riparian rights date back to the grant of the Magna Carta by King John of England to the Barons of Runnymede. These rights are subject to the general public's right to navigation and fishing and are today codified in the Wetlands Act of 1970 in the Maryland Annotated Code, Environmental Article, § 16-101 *et seq.*

Some of these statutory and common law rights are once again in question as to who owns the right to build a pier or other structure along the shoreline. As noted by the Maryland court, these riparian rights are not limitless, and a riparian owner may be limited in the development and use of his or her land. Under the Rivers and Harbors Act of 1899, the Clean Water Act, and the State Wetlands Act, a person seeking to develop their property with a pier in state waters must obtain a wetlands license from the Maryland Board of Public Works or Maryland Department of Environment (depending on the specific activity and location) under the statutory and regulatory scheme as well as approval from the U.S. Army Corps of Engineers, the agency that administers the federal program.

This permitting and approval framework is based on a person's ownership of land fronting on waters that ebb and flow with the tide giving rise to the riparian rights. But what happens with rising sea levels from climate change or erosion from severe storms that alter the shoreline and its characteristics? Or, in the case of some planned residential communities that own a strip of land fronting along the water between the developed house lots, what happens when that strip of land is completely submerged, altered or eroded away, leaving the residential property owner with having waterfront property? Does that "new" waterfront property owner hold riparian rights? Under today's ever-changing climate conditions, these scenarios are occurring more frequently and creating disputes in residential communities and among neighbors as well as raising questions at the regulatory agency permitting level.

In Maryland, the lawmakers back in 1970 recognized these occurrences (maybe not to today's extent) by providing for changed shoreline conditions. The Wetlands Act in Section 16-201(a) provides that a "person who is the owner of land bounding on navigable water is entitled to any natural accretions to the person's land, to reclaim fast land lost by erosion or avulsion during the person's ownership of the land to the extent of provable existing boundaries." However, despite the long settled common law and statutory provisions covering riparian rights and real property ownership, the Maryland General Assembly in 2021 seeks to afford community associations more rights if they own these small "spike" strips of land to control development along Maryland's shoreline.

There are three legislative bills before the General Assembly addressing riparian rights: House Bills 160 and 214 along with Senate Bill 21. These bills, among other goals, propose altering the bundle of riparian rights held by property owners by allowing a community association that owns or owned a strip of land to maintain the riparian rights even though its land may be lost or destroyed by erosion or sea level rise, or to block a permit issued by the appropriate regulatory agencies.

Whether the bills pass and succeed remains to be seen. The bills attempt to afford more protection to community associations than acknowledge the fundamental obligation for a property owner who holds riparian rights, to take some action to protect those rights. The bills also will likely create future real property title disputes on the ownership and right to develop waterfront property. There is one certainty, however, and that is that waterfront property and riparian rights are an important and contentious issue in Maryland and will remain so for years to come.

For additional information regarding riparian rights and real estate development matters, please contact [Charles R. Schaller](#) or any member of [Baker Donelson's Environmental Group](#).