

## A locality should not authorize construction until it is certain the structure is being built in the correct location so as not to impose upon the surrounding property owners and the general public.

tial conflicts with neighboring parcels are obvious? Often, the potential conflicts are discovered when a permit application is filed and notice is given to surrounding property owners. If a neighbor disputes the placement of the pier or structure, should the locality deny the building permit even though it is not in a position to determine whether the pier or structure is within or outside the applicant's riparian rights? One can argue that a permit application should not be denied based upon speculation. Following this school of thought, you can argue that the neighbor's recourse is to seek relief in a court of law, where a final determination of riparian rights can be made. The contrary argument is that a locality should not authorize construction until it is certain the structure is being built in the correct location so as not to impose upon the surrounding property owners and the general public. This is the purpose of a zoning regulation. These conflicting arguments illustrate the difficulties in implementing zoning restrictions where the boundaries and parameters are difficult to define.

### FEDERAL ISSUES

The majority of the discussion thus far has focused on the balancing of rights between the landowners and local and state governments. However, in some cases, federal law may also become an issue. For example, Congress has authority over navigable waters in the United States as a result of the Commerce Clause of the U.S. Constitution. Congress has delegated to the U.S. Army Corps of Engineers the authority to regulate issues related to navigability. Accordingly, most district offices of the Corps have developed guidelines for the construction of docks, piers, and other water structures. These guidelines are designed to ensure that the construction of these structures does not interfere with the ability of boats to navigate on the waterway. Some of the more pertinent guidelines can be summarized as follows:

- A dock or pier should generally not extend more than 20 to 25 percent across the width of a waterway, resulting in the maintenance of at least 50 to 60 percent of the channel width for navigation.
- Piers and docks should be built to maintain a minimum separation of 50 feet between adjacent structures. The purpose is to allow boats to navigate, turn, and dock at a structure without interference from an adjoining structure.
- Piers and docks should not be extended into a navigable channel, turning basin, or mooring field.

Any local zoning ordinance that seeks to regulate these types of water-based structures should consider these requirements and be consistent with federal standards.

### EXAMPLES OF ZONING ORDINANCES REGULATING DOCKS AND PIERS

It is illustrative to look at some examples of how some states and localities have addressed some of the issues described above. In Wisconsin, the state has authorized local governments to adopt zoning ordinances that regulate pier placement as well as size and number. As a result, several counties in the state have adopted ordinances that regulate pier and dock construction. For example, one ordinance provides that “[p]iers may only be placed by the riparian owner in the riparian zone.” The ordinance sets a maximum pier width of six feet and states that the pier “shall not enclose any portion of the water and shall not have decks, platforms, or other construction not essential to the berthing of boats.” Note that the owner is required to establish that the pier is constructed within the owner's “riparian zone.” As discussed earlier, this can be a potentially difficult and expensive feature to define. It appears that, under this ordinance, if there is a question on this issue, the property owner must establish that the location is proper.

One local ordinance from Virginia provides:

There shall be no rear yard [setback] requirement for docks, piers, or boathouses; how-

ever, a setback of ten feet (10') from side lot lines, or extensions thereof into the bodies of water, shall be observed. All such uses shall be subject to the permitting requirements of the Virginia Marine Resource Commission and the United States Army Corps of Engineers.

In this case, the municipality has added language to ensure that its zoning requirements are consistent with state and federal requirements. However, the language related to the setback requirements is problematic. The ordinance states that the 10-foot setback requirements include a setback from lot lines extended into the waterway. The ordinance does not define how the lines are extended into the waterway. As a result, you would presumptively assume that the lot lines would be extended in the same direction as on the shoreline. As discussed above, however, this may be inconsistent with the landowner's riparian rights.

### CONCLUDING THOUGHTS

The discussion presented above demonstrates that local zoning officials must consider multiple factors in attempting to draft a zoning ordinance regulating docks, piers, or other water-based structures. First, look at state law to determine if the authority has been granted to regulate these structures. Second, if so, ensure that any zoning regulation is consistent with any state or federal regulations that may supersede local authority. Finally, draft the ordinance to be consistent with a landowner's riparian rights, and be certain that the ordinance does not arbitrarily terminate these rights.

## NEWS BRIEF THE RIGHT TO DRY

By Dwight Merriam, FAICP

That clothes dryer down in your basement is sucking you dry—to the tune of \$1,530 over its 18-year lifespan ([www.consumerenergycenter.org/home/appliances/dryers.html](http://www.consumerenergycenter.org/home/appliances/dryers.html)). Appliances use 17 percent of household energy, and clothes dryers are among the prime culprits ([www1.eere.energy.gov/consumer/tips/appliances.html](http://www1.eere.energy.gov/consumer/tips/appliances.html)).

In round numbers, that's a ton of CO<sub>2</sub> per household per year. Nationwide, call it 30 million tons of coal or 33,000 rail cars full of West Virginian mountain-tops. Jeezum (as they say in Vermont—more on that later), we should all feel guilty.