

Petition for a Special Hearing
for the purpose of determining
the existence of a non-conforming
use of the premises known as
Lots 207 and 208 Corsica Road
in the 15th Election District
of Baltimore County

BEFORE THE
DEPUTY ZONING COMMISSIONER
OF
BALTIMORE COUNTY
ON 6/20/66

This opinion could probably be characterized as the final (final to a series of various zoning and criminal hearings to determine if in fact the petitioner, Albert J. Fertitta, is conducting a bona fide operation on the premises known as 207 and 208 Corsica Road.

On June 26, 1966, the petitioner filed his Petition for Special Hearing under Section 500.7 of the Baltimore County Zoning Regulations for the purpose of determining the existence of a non-conforming use upon and about the premises known as Lots 207 and 208 Corsica Road, said lots being situate in the 15th Election District of Baltimore County.

Because of the voluminous testimony and exhibits filed, it was necessary to conduct two separate hearings: the first being held on July 20, 1966, and the second, being a continued hearing, conducted on November 9, 1966. Both hearings were properly advertised in accordance with the law. Both the petitioner and respondent were represented by local counsel at both hearings.

At the initial hearing held on July 20, 1966, various motions were made by counsel for the respondents in an effort to have the Petition dismissed. These motions, of course, were filed before any evidence or exhibits were filed. These motions to dismiss are set forth as follows:

(a) That the Deputy Zoning Commissioner exceed the authority to grant a rehearing on issues already decided in previous zoning cases. This motion is hereby overruled. An administrative agency may rehear or reconsider a use pursuant to statutory authority, and it has frequently been held that administrative agencies have inherent or limited power to reopen and reconsider their action or determination. See Maryland State Department of Transportation, Administrative Law and Procedure, Chapter 7, Section 701. See also Maryland State Department of Transportation, Administrative Law and Procedure, Chapter 7, Section 701. See also Maryland State Department of Transportation, Administrative Law and Procedure, Chapter 7, Section 701.

(b) The issues and hearing of July 20, 1966, are res adjudicated.

It is therefore ORDERED by the Deputy Zoning Commissioner of Baltimore County, this 5th day of January, 1966, that the petitioner's property known as Lot 208 Corsica Road may be used for the rental of slips and the sale of marine supplies and sundry items. Storing, repairing, constructing, and sales of marine craft is hereby prohibited. Lot 207 Corsica Road is to be used for residential purposes only.

Edward J. Fertitta
Albert J. Fertitta
Deputy Zoning Commissioner of
Baltimore County

This motion is hereby overruled. The doctrine of res adjudicata is applicable only as to decisions of courts of competent jurisdiction. See Ward v. City of Baltimore, 180 Md. 88, 93 A2d 521, 15.

(c) That if in fact there were legitimate non-conforming uses of the aforementioned lots, the zoning reclassification from residential "R" to Commercial "C" and Special Exception for a Marine Gasoline Station granted on June 16, 1967 had the effect of terminating and abolishing any existing legitimate non-conforming use.

This motion is hereby overruled for reasons hereinafter stated. Because this motion presents a question of law and fact, it will be necessary to review the evidence and exhibits as presented at the hearings.

It would be proper at this point to comment on Lot 207. The petitioner, Albert J. Fertitta, by his own testimony at the hearing conducted on July 20, 1966, admitted that Lot 207 is rented as a private residence and is not being used for business purposes. Therefore, the Deputy Zoning Commissioner holds that Lot 207 may be used only for residential purposes.

On May 15, 1929, Lot 208 was conveyed to Joseph Heintzinger and wife. On October 1, 1965, Lot 208 was conveyed by the Heintzingers to Louis A. Meyer and wife. However, there is an affidavit dated July 18, 1966 (in evidence) from Mrs. Herbert Tuttle (Meyer's daughter) to the effect that her parents rented Lot 208 for two years prior to purchasing it from the Heintzingers.

On January 6, 1967, the Meyers conveyed Lot 208 to George Strusser and wife and on January 6, 1968 the Strussers conveyed Lot 208 to the petitioner, Albert J. Fertitta.

Lot 208 was the subject of Zoning Petition No. 585, and as a result of the hearing on that Petition, on March 20, 1966, a Temporary Permit for two years for storing and selling of row boats was granted. The petitioners in that case were Louis A. Meyer and his wife.

Lot 208 was, also, a subject of Petition No. 964-S, which requested a reclassification of Lot 208 from "R" Residential Zone to an "C" Commercial Zone and a Special Permit to use the property for a Marine Gasoline Pump. The aforementioned request was granted on July 10, 1967. At that time Lot 208 was owned by George Strusser and wife.

Introduced as evidence was an affidavit from George Strusser dated July 21, 1966, to the effect that from the period 1967 to 1968, when he owned the property, boats were stored, painted and repaired. Gasoline and oil were sold and slips were rented; fishing parties were also chartered. He says he bought a "going business" from the Meyers and that there was very definitely a boat yard business being conducted by the Meyers in 1967.

Introduced as evidence was another affidavit dated August 11, 1966, from Merritt Baffle to the effect that he had business dealings with the "Norman Creek Boat Yard" from which he bought his boat in 1966.

An affidavit dated August 12, 1966, from a Mr. John Fischer was also introduced. In addition, Mr. Fischer testified at the hearing held on November 9, 1966, to the effect that he bought a boat from the Norman Creek Boat Yard in 1966. He says boats were moored at the piers in 1966 and that boats were stored and repaired as far back as 1966. He claimed that after 1966 he was not charged for rent because he did odd jobs around the premises both for the Meyers and the Strussers.

The petitioner, also, introduced three advertisements in substantiation of his claim that his property was used for a boat yard prior to 1965. Newspaper clippings advertising "boats bought and sold" from the Daily Sun (May 14, 1964) and the Baltimore Sun (May 17, 1964 and May 13, 1964) were also introduced as evidence. Mr. John Fischer testified that it was pursuant to the advertisement in the newspaper that he bought his boat in 1966.

A Mr. William Huppert, in his affidavit dated August 20, 1966, and in his testimony at the hearing held on November 9, 1966, says he did business with a boat yard on the subject tract in 1963 and 1964 and that for the last thirty years, he has seen boats tied at the piers. He further testified, as did Mr. John Fischer, that signs were erected on Middleborough Road advertising "Norman Creek Boat Yard."

There was testimony from several protesting neighbors, who admitted to seeing boats moored at the piers in front of Lot 208 prior to 1965 but could not definitely state whether the boats were owned by Meyers, Strusser or whether they were rentals.

Counsel for the respondents argues that if in fact there was a non-conforming use on the premises prior to January 2, 1965, the subsequent reclassification in 1965 and 1967 terminated the existing non-conforming use. He argues that a non-conforming use would terminate upon any change from a non-conforming use to a conforming use. However, there never was a change from a boat yard existing before 1965 to a new conforming use. The effect of the 1967 Reclassification and Special Exception was to expand the facilities of an existing yard; that is to say, to sell marine supplies, bait, soda, etc., and gasoline. In other words, the original operation never actually changed—it was merely enlarged in order to offer other services to the public.

The guide lines for determining whether or not there has been an abandonment of a non-conforming use are set forth in Landy v. Board of Appeals, 173 Md. 460, 196 Md. 293, in which the Court said "Abandonment of a non-conforming use in law depends upon the concurrence of two, and only two, factors: one, an intention to abandon or relinquish; and two, some overt act, or some failure to act, which carries the implication that the owner neither claims nor retains any interest in the subject matter of the Abandonment."

There has been no evidence introduced showing an actual abandonment or any overt action carrying an implication that the owners (from Mr. Meyer to Mr. Fertitta) failed to retain any interest in the subject matter of abandonment. On the contrary, much interest in improving the property was shown. The Special Permit for a gas pump and numerous building permits were obtained from Baltimore County.

In conclusion, the Deputy Zoning Commissioner finds that a boat yard as such was operated on the premises known as Lot 208 Corsica Road for sometime prior to 1965 and through 1966, when the petitioner bought the property. But the petitioner admits that boats are no longer sold, constructed, or repaired. He stated the extent of his operation centers around the rental of slips and the sale of marine supplies and various sundry items. The petitioner's property known as Lot 208 Corsica Road is therefore restricted to the rental of slips and the sale of marine supplies and various sundry items such as soda, etc.,

PETITION FOR A SPECIAL HEARING

IN THE MATTER OF
THE PETITION OF

ALBERT J. FERTITTA

Lots 207 - 208 Corsica Road
15th District

Use of property for a
Boat Yard and Marina

For a Special Hearing

To the Zoning Commissioner of Baltimore County

Albert J. Fertitta, Petitioner, hereby petitions for a Special Hearing, upon proper advertisement and notice, under the Zoning law and regulations, especially Section 500.7 of said regulations, of Baltimore County, for the purpose of determining the existence of a non-conforming use upon and about the premises known as Lots 207 and 208 Corsica Road, Baltimore County, Maryland.

Albert J. Fertitta
Route 10, Box 26
Baltimore 19, Maryland
Leonard A. Vadala

William E. Chamberlain
1740 Eastern Boulevard
Baltimore 21, Maryland

MURdock 6-9493

Attorneys for Petitioner

BEFORE THE
ZONING COMMISSIONER
OF BALTIMORE COUNTY



DESCRIPTION
for
ZONING RECLASSIFICATION APPLICATION
#2225 to 2227 GORSICA ROAD
beginning for the same at the point on the south side of
Corsica Road as laid out on the Plat of Middleborough recorded
among the Land Records of Baltimore County in Plat Book W.P.C. #4
folio 191 at the northwest corner of Lot #207 as laid out on said
Plat, said point of beginning being 800.8 feet north 89 degrees 18
minutes west of Middle River as shown on said Plat; and running
thence binding on the side of said Corsica Road the three following
courses and distances, namely: south 89 degrees 18 minutes east
30 feet; south 0 degrees 49 minutes west 102 feet and south 89 de-
18 minutes east 70 feet to the northeast corner of Lot #203 as
laid out on said Plat; thence binding on said Lot #203 south 0 de-
grees 49 minutes west 237 feet to the north side of Norman Creek as
shown on said Plat; thence binding on the north side of said Nor-
man Creek the three following courses and distances, namely: north
39 degrees 51 minutes west 33.88 feet, north 5 degrees 33 minutes
west 78 feet and north 72 degrees 01 minutes west 78 feet to the
west side of said Lot #207 and thence binding on the west
side of said Lot #207 north 0 degrees 49 minutes east 212 feet to
the place of beginning. The improvements shown being shown as
#2225 to 2227 Corsica Road.
Being Lots #207 and 208 as laid out on the Plat of Middle-
borough recorded among the Land Records of Baltimore County in
Plat Book W.P.C. #4 folio 191.
Save and excepting that portion which
is already zoned B1



Ben Anderson
#65-26-SPH

THOMAS E. ANDERSON
ATTORNEY AT LAW
JEROME H. LINDSAY
COUNSEL AT LAW
COUNSEL AT LAW
COUNSEL AT LAW
JULY 1, 1966

By Special Master, Ex parte
Court of Appeals in Maryland
September 1, 1966
Case No. 100

Dear Mr. Mayor:

Enclosed is a copy of my Motion to Dismiss Appeal
which I intend to mail to the Court on Appeals on the 15th
of September, 1966.

With kindest regards, I am

Very truly yours,
Ernest K. Trumbull

Ernest K. Trumbull
Enclosure

65-26-SPH
Petition for a Special Hearing
for the purpose of determining
the existence of a non-conforming
use 3/3 of Corcoran Road to the
Meyers of Norman Creek 15th District
Albert J. Feritita-Petitioner

BEFORE THE
DEPUTY ZONING COMMISSIONER
OF
BALTIMORE COUNTY
No. 15-011-SPH

This opinion could probably be characterized as the grand finale to a series of various zoning and criminal hearings to determine if in fact the petitioner, Albert J. Feritita, is conducting a bona fide operation on the premises known as 207 and 208 Corcoran Road.

On June 24, 1964, the petitioner filed his Petition for Special Hearing under Section 500.7 of the Baltimore County Zoning Regulations for the purpose of determining the existence of a non-conforming use upon and about the premises known as Lots 207 and 208 Corcoran Road, said lots being situated in the 15th Election District of Baltimore County.

Because of the voluminous testimony and exhibits filed, it was necessary to conduct two separate hearings. The first being held on July 20, 1964, and the second, being a continued hearing, conducted on November 9, 1964. Both hearings were properly advertised in accordance with the law. Both the petitioner and respondent were represented by legal counsel at both hearings.

At the initial hearing held on July 20, 1964, various witnesses were called by counsel for the respondents in an effort to show the Petitioner fraudulent. These motions, of course, were filed before any evidence or exhibits were filed. These motions to dismiss are set forth as follows:

(a) That the Deputy Zoning Commissioner lacked the authority to grant a rehearing on issues already decided in previous zoning matters.

This motion is hereby overruled. An administrative agency may rehear and reconsider a use pursuant to statutory authority, and it has frequently been held that administrative agencies have inherent or implied power to reopen and reconsider their action or determination. See Maryland Law Annotated, Administrative Law and Procedures, Chapter 3, Section 207. See also Baltimore County Commissioners, 191 Md. 209, 34 Ann. 166.

(b) The issues and hearing of July 20, 1964, are res adjudicata.

It is therefore ORDERED by the Deputy Zoning Commissioner of Baltimore County, this 15th day of January, 1965, that the petitioner's property known as Lot 208 Corcoran Road may be used for the rental of slips and the sale of marine supplies and sundry items. Storing, repairing, constructing, and sales of marine craft is hereby prohibited. Lot 207 Corcoran Road is to be used for residential purposes only.

Edward D. Hurd
Deputy Zoning Commissioner of
Baltimore County

This motion is hereby overruled. The doctrine of res adjudicata is applicable only as to decisions of courts of competent jurisdiction. See *Knox versus City of Baltimore*, 180 Md. 88, 23 Ann. 253.

(c) That if in fact there were legitimate non-conforming uses the aforementioned lots, the zoning reclassification from Residential "A" to Commercial "C" and Special Exception for a Marine Gasoline Station granted on June 18, 1964 had the effect of terminating and abolishing any existing legitimate non-conforming use.

This motion is hereby overruled for reasons hereinafter stated. Because this motion presents a question of law and fact, it will be necessary to review the evidence and exhibits as presented at the hearings.

It would be proper at this point to comment on Lot 207. The petitioner, Albert J. Feritita, by his own testimony at the hearing conducted on July 20, 1964, admitted that Lot 207 is rented as a private residence and is not being used for business purposes. Therefore, the Deputy Zoning Commissioner holds that Lot 207 may be used only for residential purposes.

On May 15, 1959, Lot 208 was conveyed to Joseph Reitmeyer & Louis A. wife. On October 1, 1965, Lot 208 was conveyed by the Reitmeyers to Louis A. wife. However, there is an affidavit dated July 15, 1964 (in evidence) from Mrs. Herbert Tuttle (Meyers' daughter) to the effect that her parents rented Lot 208 for two years prior to purchasing it from the Reitmeyers.

On January 6, 1967, the Meyers conveyed Lot 208 to George Strasser and wife and on January 6, 1968 the Strassers conveyed Lot 208 to the petitioner, Albert J. Feritita.

Lot 208 was the subject of Zoning Petition No. 585, and as a result of the hearing on that Petition, on March 20, 1964, a Temporary Permit for two years for repairing and selling of new boats was granted. The petitioners in that case were Louis A. Meyer and his wife.

Lot 208 was, also, a subject of Petition No. 955-B-C, which requested a reclassification of Lot 208 from "A" Residential Zone to an "A" Commercial Zone and a Special Permit to use the property for a Marine Gasoline Station. The aforementioned request was granted on July 10, 1967. At that time Lot 208 was owned by George Strasser and wife.

Introduced as evidence was an affidavit from George Strasser dated July 21, 1964, to the effect that from the period 1967 to 1968, when he owned the property, boats were stored, painted and repaired. Gasoline and oil were sold and slips were rented; fishing parties were also chartered. He says he bought a "boating business" from the Meyers and that there was very definitely a boat yard business being conducted by the Meyers in 1967. Introduced as evidence was another affidavit dated August 11, 1964, from Merritt Buffle to the effect that he had business dealings with the "Norman Creek Boat Yard" from which he bought his boat in 1964.

An affidavit dated August 12, 1964, from a Mr. John Fischer was also introduced. In addition, Mr. Fischer testified at the hearing held on November 9, 1964, to the effect that he bought a boat from the Norman Creek Boat Yard in 1964. He says boats were moored at the piers in 1964 and that boats were stored and repaired as far back as 1964. He stated that after 1964 he was not charged for rent because he did odd jobs around the premises both for the Meyers and the Strassers.

The petitioner, also, introduced three advertisements in substantiation of his claim that his property was used for a boat yard prior to 1965. Newspaper clippings advertising "boats bought and sold" from the *Starkey Sun* (May 11, 1964) and the *Baltimore Sun* (May 12, 1964) and May 13, 1964) were also introduced as evidence. Mr. John Fischer testified that it was pursuant to the advertisement in the newspapers that he bought his boat in 1964.

A Mr. William Huppert, in his affidavit dated August 20, 1964, and in his testimony at the hearing held on November 9, 1964, says he did business with a boat yard on the subject tract in 1933 and 1934 and that for the last thirty years, he has seen boats tied at the piers. He further testified, as did Mr. John Fischer, that signs were erected on Middleborough Road advertising "Norman Creek Boat Yard."

There was testimony from several protesting neighbors, who admitted to seeing boats moored at the piers in front of Lot 207 prior to 1965 but could not definitely state whether the boats were owned by Meyers, Meyers and Strasser or whether they were rentals.

Counsel for the respondents argues that if in fact there was a non-conforming use on the premises prior to January 3, 1965, the subsequent reclassification in 1965 and 1967 terminated the existing non-conforming use. He argues that a non-conforming use would terminate upon any change from a non-conforming use to a conforming use. However, there never was a change from a boat yard existing before 1965 to a new conforming use. The effect of the 1967 Reclassification and Special Exception was to expand the facilities of an existing yard; that is to say, to sell marine supplies, bait, soda, etc., and gasoline. In other words, the original operation never actually changed - it was merely enlarged in order to offer other services to the public.

The guide lines for determining whether or not there has been an abandonment of a non-conforming use are set forth in *Landy versus Board of Appeals*, 171 Md. 160, 196 A 793, in which the Court said "Abandonment of a non-conforming use in law depends upon the concurrence of two, and only two, factors: one, an intention to abandon or relinquish and two, some overt act, or some failure to act, which carries the implication that the owner neither claims nor retains any interest in the subject matter of the abandonment."

There has been no evidence introduced showing an actual abandonment or any overt action carrying an implication that the owners (from Mrs. Meyers to Mr. Feritita) failed to retain any interest in the subject matter of abandonment. On the contrary, much interest in improving the property was shown. The Special Permit for a gas pump and numerous building permits were obtained from Baltimore County.

In conclusion, the Deputy Zoning Commissioner finds that a boat yard as such was operated on the premises known as Lot 208 Corcoran Road for sometime prior to 1965 and through 1968, when the petitioner bought the property. But the petitioner admits that boats are no longer sold, constructed, or repaired. He stated the extent of his operation centers around the rental of slips and the sale of marine supplies and various sundry items. The petitioner's property known as Lot 208 Corcoran Road is therefore restricted to the rental of slips and the sale of marine supplies and various sundry items such as soda, etc.,

64-211-SPH
PETITION FOR A SPECIAL HEARING

IN THE MATTER OF
THE PETITION OF
ALBERT J. FERITITA
BEFORE THE
ZONING COMMISSIONER
OF BALTIMORE COUNTY
Lots 207 - 208 Corcoran Road
15th District
Use of property for a
Boat Yard and Marina
For a Special Hearing
To the Zoning Commissioner of Baltimore County

Albert J. Feritita, Petitioner, hereby petitions for a Special Hearing, upon proper advertisement and notice, under the Zoning law and regulations, especially Section 500.7 of said regulations, of Baltimore County, for the purpose of determining the existence of a non-conforming use upon and about the premises known as Lots 207 and 208 Corcoran Road, Baltimore County, Maryland.

Albert J. Feritita
Route 10, Box 26
Baltimore 19, Maryland
Leonard A. Voshell

William E. Chamberlain
1740 Eastern Boulevard
Baltimore 21, Maryland
MFDock 6-9493
Attorneys for Petitioner



DESCRIPTION
FOR
ZONING RECLASSIFICATION APPLICATION
#2223 to 2227 CORCORAN ROAD

Beginning for the same at the point on the south side of Corcoran Road as laid out on the Plat of Middleborough recorded among the Land Records of Baltimore County in Plat Book W.P.C. #4 folio 191 at the northwest corner of Lot #207 as laid out on said Plat, said point of beginning being 209.8 feet north 89 degrees 18 minutes west of Middle River as shown on said Plat; and running thence binding on the side of said Corcoran Road the three following courses and distances, namely: south 89 degrees 18 minutes east 30 feet, south 0 degrees 42 minutes west 100 feet and south 89 degrees 18 minutes east 70 feet to the northeast corner of Lot #208 as laid out on said Plat; thence binding on said Lot #208 south 0 degrees 42 minutes east 237 feet to the north side of Norman Creek as shown on said Plat; thence binding on the north side of said Norman Creek the three following courses and distances, namely: north 89 degrees 31 minutes west 33.88 feet, north 5 degrees 23 minutes west 75 feet and north 72 degrees 01 minutes west 75 feet to the west side of said Lot #207 and thence binding on the west side of said Lot #207 north 0 degrees 42 minutes east 212 feet to the place of beginning. The improvements thereon being known as #2223 to 2227 Corcoran Road.

Being Lots #207 and 208 as laid out on the Plat of Middleborough recorded among the Land Records of Baltimore County in Plat Book W.P.C. #4 folio 191.

Save and excepting that portion which is already zoned B1



Ben Anderson

#65-26-SPH

TRIMBLE & ALDERMAN
ATTORNEYS AT LAW
JACKSON BUILDING
COURT HOUSE SQUARE
TOWSON, MARYLAND 21204
September 28, 1966

E. Scott Moore, Esquire
County Solicitor
Baltimore County Office Building
Towson, Maryland 21204
Re: Feritita v. Brown, et al.
Court of Appeals of Maryland
September Term 1966
Case No. 100

Dear Mr. Moore:
Enclosed is a copy of the Motion to Dismiss Appeal which I intend to mail to the Court of Appeals on the 27th of September, 1966.

With kindest regards, I am
Very truly yours,
Ernest C. Trimble

ECT/deg
Enclosure

ALBERT J. FERTITTA * IN THE COURT OF APPEALS
vs. * OF MARYLAND
LAMBERT A. BROWN, et al. * September Term-Case No. 400

MOTION TO DISMISS APPEAL

TO THE HONORABLE, THE JUDGES OF SAID COURT:

Lambert A. Brown, et al., Appellees, by Ernest C. Trimble, their attorney, move that the Appeal of Albert J. Fertitta be dismissed and say:

1. That the Appeal of Albert J. Fertitta heretofore filed on June 29, 1966, was not filed within thirty (30) days from the date of the judgment appealed from as required by Rule 812 a of the Maryland Rules.
2. That the Appellees here (the Protestants below) appealed an adverse decision of the Board of Appeals of Baltimore County to the Circuit Court for Baltimore County, the said Albert J. Fertitta, on September 17, 1965, filed a Petition to Intervene in said proceedings in the Circuit Court for Baltimore County and the same day filed a Demurrer.
3. That on October 7, 1965, following a hearing, the Honorable Kenneth C. Proctor ordered that the Demurrer filed by Albert J. Fertitta be dismissed and a Board of Appeals be reversed. (A docket entry was duly made by the Clerk but the formal written order was not signed and given to the Clerk until October 14, 1965.)
4. That on October 11, 1965, Albert J. Fertitta filed a "Motion for New Trial" and asked the Circuit Court for Baltimore County to set aside its Order of October 6, 1965, that no order to stay operation of the Order of October 7, 1965 or request therefor was made, and, consequently the Order of October 7, 1965 dismissing the Demurrer of Albert J. Fertitta and reversing the Board of Appeals became enrolled on November 8, 1965, that thereafter no charge of fraud, mistake or irregularity was made by Albert J. Fertitta in an effort to have the Court exercise its review power pursuant to Rule

615 of the Maryland Rules.

5. That on June 16, 1966, following a hearing (counsel only present - no testimony taken), the Honorable Kenneth C. Proctor overruled the Motion for New Trial which had been previously filed by Albert J. Fertitta on October 11, 1965.

6. That on June 29, 1966 Albert J. Fertitta entered an appeal to the Court of Appeals and on July 8, 1966 obtained an Order granting him an extension of time for transmitting the record.

7. That the record was finally received by this Honorable Court on September 22, 1966.

8. That this Motion is based upon subsection (1) of section b of Rule 813 (Dismissal of Appeal) of the Maryland Rules.

9. That this Motion is filed within ten (10) days from the date the record was filed, and is therefore, filed in compliance with sections of Rule 816 of the Maryland Rules.

WHEREFORE the Appellees pray:

- a. That the Appeal of Albert J. Fertitta be dismissed.
- b. That the Court adopt the form and enter the Order which accompanies the Motion.
- c. That should this Honorable Court require oral argument, that argument on this Motion be had as early as possible, and on any record in advance of argument on the merits.
- d. That the Court grant your Movements such other relief as may be proper although not specifically requested.

AND, AS IN DUTY BOUND, etc.

Ernest C. Trimble
Attorney for Lambert A. Brown, et al.,
Appellees-Movants

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ALBERT J. FERTITTA NO. 65-26-SPH
5/5 Conica Road to the Waters of Norman Creek 15th District
Lot 207 - 208 Conica Road
SPECIAL HEARING to determine the existence of a nonconforming use

- | | |
|---------------|---|
| June 24, 1964 | Petition Filed |
| Jan. 15, 1965 | D.C.C. ORDERED: "That the petitioner's property known as Lot 208 Conica Road may be used for the rental of slips and the sale of marine supplies and sundry items. Storing, repairing, constructing, and sales of marine craft is hereby prohibited. Lot 207 Conica Road is to be used for residential purposes only." |
| " 19 | Order of Appeal to C. B. of A. filed by E.C. Trimble, Esq. Attorney for the Protestants |
| July 27 | ORDER OF THE BOARD: "In the prior proceeding the Zoning Commission held that Marine use must come online and until a special exception is obtained. In this proceeding, the right to Marine use is requested on the basis of nonconforming use in lieu of special exception. We find that the subject property was so used in 1955 and 1962, and that the use was authorized under the 1945 regulations without special exception. Thus, the petitioner may resume Marine use." |
| Aug. 16 | Order for Appeal filed in the Circuit Court by Mr. Trimble for the Protestants |
| Oct. 14 | ORDER OF COURT that the Demurrer heretofore filed by the property owner, Albert J. Fertitta, Appellee, be and it is hereby dismissed and it is further ordered that the decision of the C. B. of A. dated July 27, 1965 and the decision of the D.C.C. dated January 15, 1965 be and they are hereby REVERSED, and it is further ordered that the decision of the C. B. of A. dated January 9, 1964 dissolving the appeal and affirming the order of the Z.C. dated July 31, 1963 be and it is hereby declared to be the law of the case. (Proctor) |
| June 16, 1966 | Motion for new trial overruled - Proctor |
| " 29 | Order for Appeal filed in Court of Appeals by Mr. Chamberlain for the Petitioners |
| Sept. 30 | Motion to Dismiss Appeal filed by Mr. Trimble for Protestants |
| Oct. 4 | Answer to Motion to Dismiss filed by Mr. Chamberlain |
| Nov. 8 | Motion to Dismiss GRANTED and appeal dismissed |
| " 16 | Motion for Rehearing of the Motion to Dismiss Appeal filed by Mr. Chamberlain |
| " 17 | Motion for Rehearing DENIED by Court of Appeals |

DENIED

ALBERT J. FERTITTA * IN THE COURT OF APPEALS
vs. * OF MARYLAND
LAMBERT A. BROWN, et al. * Case No. 400
September Term 1966

ORDER

Upon the foregoing Motion to Dismiss Appeal it is this _____ day of _____, 1966, by the Court of Appeals of Maryland

ORDERED that the Order of the Circuit Court for Baltimore County heretofore passed on October 7, 1965 being a final judgment and no order to stay its operation having been requested or entered, and no allegation of fraud, mistake or irregularity having been made, and no appeal to this Court having been timely filed, the appeal of Albert J. Fertitta be and the same be hereby dismissed with costs, pursuant to Rule 813 b (3) of the Maryland Rules.

ALBERT J. FERTITTA * IN THE COURT OF APPEALS
vs. * OF MARYLAND
LAMBERT A. BROWN, et al. * Case No. 400 - September Term, 1966
OFFICE OF LAW

MOTION FOR REHEARING OF THE MOTION TO DISMISS APPEAL

TO THE HONORABLE, THE JUDGES OF SAID COURT:

Albert J. Fertitta, Appellant, by William E. Chamberlain, his attorney, respectfully moves this Honorable Court to grant a rehearing of the Motion to Dismiss the Appeal, and for reasons says:

1. That on Monday, October 11, 1966, and within the time required by the Rules of Court, Albert J. Fertitta, Appellant, filed his Motion for New Trial.
2. That when the Order was signed by the Lower Court on October 14, 1966, the Motion for New Trial was still pending and the said order was not a final order. This is apparent from the proceedings had in the Lower Court on June 16, 1966 wherein the Court said:
"THE COURT: The Intervenor-Petitioner's motion for a new trial, which counsel has orally requested the Court to consider on motion for a hearing, is overruled. This means that the Order is final as of today."
3. That the Order filed on October 14, 1966 is dated October 8, 1966 and was presented ex parte to the Lower Court within the time allowed for the filing of a Motion for a New Trial, and counsel for the Appellant was not served with a copy of the same until after it was signed, nor notified by the Appellant that the same was going to be presented to the Lower Court for its approval.

Therefore, Albert J. Fertitta, Appellant, respectfully requests that a rehearing of the Motion to Dismiss be granted.

William E. Chamberlain
Attorney for Albert J. Fertitta,
Appellant.

STATE OF MARYLAND, BALTIMORE COUNTY, ss: We:

I HEREBY CERTIFY that on this _____ day of November, 1966, before me, the subscriber, a Notary Public of the State of Maryland, in and for Baltimore County, personally appeared William E. Chamberlain, attorney for Albert J. Fertitta, Appellant, and he made oath in due form of law that the matters and facts set forth in the foregoing Motion for Rehearing of the

CERTIFICATE OF MAILING

I HEREBY CERTIFY, That on this _____ day of September, 1966, a copy of the foregoing Motion to Dismiss Appeal and Order was mailed to E. Scott Moore, Attorney for Board of Appeals for Baltimore County, County Office Building, Towson, Maryland 21204, and to William E. Chamberlain, Attorney for Appellant, 1760 Eastern Boulevard, Baltimore, Maryland 21212.

Ernest C. Trimble

Motion to Dismiss Appeal are true to the best of his knowledge, information and belief.

As Witness my hand and Notarial Seal.

Notary Public

CERTIFICATE OF MAILING

I HEREBY CERTIFY, That on this _____ day of November, 1966, a copy of the foregoing Motion for Rehearing of the Motion to Dismiss Appeal was mailed to E. Scott Moore, Attorney for Board of Appeals for Baltimore County, County Office Building, Towson, Maryland 21204, and to Ernest C. Trimble, Attorney for Lambert A. Brown, et al., Appellees-Movants, Jefferson Building, Court House Square, Towson, Maryland 21204.

William E. Chamberlain

Attorney for Albert J. Fertitta,
Appellant.

ALBERT J. FERTITTA
VS.
LAMBERT A. BROWN, et al.
IN THE COURT OF APPEALS
OF MARYLAND
Case No. 400 September Term,
1966

THE COURT OF APPEALS — ANNAPOLIS, MARYLAND
RECEIVED
NOV 21 1966
OFFICE OF LAW

November 18, 1966

William E. Chamberlain, Esq.
Attorney at Law
1760 Eastern Boulevard
Baltimore, Maryland 21221

Dear Mr. Chamberlain:

The Court has considered your "Motion
for Rehearing of the Motion to Dismiss Appeal,"
filed in the case of Albert J. Fertitta vs. Lambert
A. Brown, et al., No. 400, September Term, 1966.
and, for your information, said motion was denied as
of November 17, 1966.

Very truly yours,
J. LLOYD YOUNG
Clerk

JLY/cjr
cc: E. Scott Moore, Esq., County Attorney
For Baltimore County
Ernest C. Trimble, Esq.

EXHIBIT

625 of the Maryland Rules.

5. That on June 16, 1966, following a hearing (counsel only present -
no testimony taken), the Honorable Kenneth C. Proctor overruled the Motion
for New Trial which had been previously filed by Albert J. Fertitta on October
11, 1965.

6. That on June 29, 1966 Albert J. Fertitta entered an appeal to the
Court of Appeals and on July 8, 1966 obtained an Order granting him an exten-
sion of time for transmitting the record.

7. That the record was finally received by this Honorable Court on
September 22, 1966.

8. That this Motion is based upon subsection (3) of section b of Rule
835 (Dismissal of Appeal) of the Maryland Rules.

9. That this Motion is filed within ten (10) days from the date the
record was filed, and is therefore, filed in compliance with section c of Rule
836 of the Maryland Rules.

WHEREFORE the Appellees pray:

- That the Appeal of Albert J. Fertitta be dismissed.
- That the Court adopt the form and enter the Order which
accompanies the Motion.
- That should this Honorable Court require oral argument,
that argument on this Motion be had as early as possible, and in any event,
in advance of argument on the merits.
- That the Court grant your Movents such other relief as may
be proper although not specifically requested.

AND, AS IN DUTY BOUND, etc.

Ernest C. Trimble
Attorney for Lambert A. Brown, et al.
Appellees-Movents

TRIMBLE & ALDERMAN
ATTORNEYS AT LAW
JEFFERSON BUILDING
COURT HOUSE SQUARE
TOWSON, MARYLAND 21204

September 28, 1966

E. Scott Moore, Esquire
County Solicitor
Baltimore County Office Building
Towson, Maryland 21204

Re: Fertitta v. Brown, et al.
Court of Appeals of Maryland
September Term 1966
Case No. 400

Dear Mr. Moore:

Enclosed is a copy of the Motion to Dismiss Appeal
which I intend to mail to the Court of Appeals on the 29th
of September, 1966.

With kindest regards, I am

Very truly yours,

Ernest C. Trimble

Ernest C. Trimble

ECT/dcg
Enclosure

CERTIFICATE OF MAILING

I HEREBY CERTIFY, That on this 29th day of September, 1966, a copy
of the foregoing Motion to Dismiss Appeal and Order was mailed to E. Scott
Moore, Attorney for Board of Appeals for Baltimore County, County Office
Building, Towson, Maryland 21204, and to William E. Chamberlain, Attorney
for Appellant, 1760 Eastern Boulevard, Baltimore, Maryland 21221.

Ernest C. Trimble

ALBERT J. FERTITTA
VS.
LAMBERT A. BROWN, et al.
IN THE COURT OF APPEALS
OF MARYLAND
September Term-Case No. 400

MOTION TO DISMISS APPEAL

TO THE HONORABLE, THE JUDGES OF SAID COURT:

Lambert A. Brown, et al. Appellees, by Ernest C. Trimble, the
attorney, move that the Appeal of Albert J. Fertitta be dismissed and say:

- That the Appeal of Albert J. Fertitta heretofore filed on June 29,
1966, was not filed within thirty (30) days from the date of the judgment
appealed from as required by Rule 812 a of the Maryland Rules.
- That the Appellees here (the Protestants below) appeared an adverse
derision of the Board of Appeals of Baltimore County to the Circuit Court for
Baltimore County; the said Albert J. Fertitta, on September 17, 1965, filed a
Petition to Intervene in said proceedings in the Circuit Court for Baltimore
County and the same day filed a Demurrer.
- That on October 7, 1965, following a hearing, the Honorable Kenneth
C. Proctor ordered that the Demurrer filed by Albert J. Fertitta be dismissed
and the Board of Appeals be reversed. (A docket entry was duly made by the
Clerk but the formal written order was not signed and given to the Clerk until
October 14, 1965.)
- That on October 11, 1965, Albert J. Fertitta filed a "Motion for
New Trial" and asked the Circuit Court for Baltimore County to set aside its
Order of October 8, (sic) 1965; that no order to stay operation of the Order of
October 7, 1965 or request therefor was made, and, consequently the Order
of October 7, 1965 dismissing the Demurrer of Albert J. Fertitta and reversing
the Board of Appeals became enrolled on November 8, 1965; that thereafter
no charge of fraud, mistake or irregularity was made by Albert J. Fertitta
in an effort to have the Court exercise its revisory power pursuant to Rule

LAMBERT A. BROWN,
BARTLETT BROWN,
WILLIAM F. CLARKE and
J. E. GERRARD

VS.
WILLIAM E. CHAMBERLAIN,
ERNEST C. TRIMBLE and
PAUL T. MCKENNEY, JR.
Counseling the County Board of
Appeals of Baltimore County

AND
ALBERT J. FERTITTA
290 Carlton Road
Baltimore County, Maryland
Petitioner and Intervenor

Mr. Clerk:

Please enter an Appeal to the Court of Appeals on behalf of William
E. Chamberlain, John A. Gerrard and Paul T. McKenney, Jr. constituting the
County Board of Appeals of Baltimore County and Albert J. Fertitta,
Petitioner and Intervenor.

WILLIAM F. CLARKE
1760 Eastern Blvd.
Baltimore, Maryland 21221
(410-585)
Attorney for Petitioner

I hereby certify that a copy of the above Order of Appeal was
mailed this 29th day of Sept, 1966 to Ernest C. Trimble, Esq.,
Jefferson Building, Towson, Maryland, Attorney for Protestants.

William F. Chamberlain

LAMBERT A. BROWN,
BEATRICE BROWN,
WILLIAM F. CRAMPTON and
J. E. GERHARDT

IN THE
CIRCUIT COURT
FOR

VS.
WILLIAM S. BALDWIN,
JOHN A. SLOWIK and
PAUL T. MC HENRY, JR.,
Constituting the County Board of
Appeals of Baltimore County

ORDER OF COURT

The Appeal from the County Board of Appeals of Baltimore County having come on for hearing, counsel having been heard, and for the reasons assigned and in conformity with the Memorandum Opinion attached hereto, it is this 14th day of October, 1965, by the Circuit Court for Baltimore County

ORDERED that the Demurrer heretofore filed by the property owner, Albert J. Fertitta, Appellee, be and it is hereby dismissed, and

IT IS FURTHER ORDERED that the decision of the Baltimore County Board of Appeals dated July 27, 1965 and the decision of Edward D. Hardesty, Deputy Zoning Commissioner dated January 15, 1965 be and they are hereby reversed, and

IT IS FURTHER ORDERED that the decision of the Baltimore County Board of Appeals dated January 9, 1964, dismissing the Appeal and affirming the Order of the Zoning Commissioner dated July 31, 1963, be and it is hereby affirmed.

Kenneth C. Proctor, Judge

LAMBERT A. BROWN
BEATRICE BROWN
WILLIAM F. CRAMPTON
and
J. E. GERHARDT

IN THE
CIRCUIT COURT
FOR

VS.
WILLIAM S. BALDWIN
JOHN A. SLOWIK
and
PAUL T. MC HENRY, JR.,
Constituting the
COUNTY BOARD OF
APPEALS OF
BALTIMORE COUNTY

AT LAW
MISC. DOCKET #7

Folio 540
Case No. 3326

ALBERT J. FERTITTA,
Intervenor
Thursday, October 7th, 1965
BEFORE: HONORABLE KENNETH C. PROCTOR, JUDGE

APPEARANCES:

Ernest C. Trimble, Esquire
Representing Brown et al.

William E. Chamberlain, Esquire,
Representing Intervenor Fertitta

Oral Opinion of the Court

Reported by: Paul A. McHickle,
Official Court Reporter
For the Circuit Court
of Baltimore County.

ORAL OPINION OF THE COURT

THE COURT: The background of this zoning appeal filed by the protestants and opposed by the property owner is as follows:

1. On March 20th, 1946, the then owner of the property (Zoned "A" Residential) sought and obtained a temporary permit (two years) for renting and selling row boats, (Zoning Petition No. 385).
2. On July 10th, 1947, the property, by petition, was reclassified from "A" Residential to "C" Commercial, with a special permit to use the property for a marine gasoline station, (Zoning Petition No. 959-R-S).
3. In 1962, the Zoning Commissioner instituted violation proceedings against Albert Fertitta, the present owner of the property, (Zoning File No. 635-2V). After a hearing, the Zoning Commissioner determined that Fertitta needed a special exception in order to operate a marine boatyard, and that, as he had no such special exception, he was in violation of the Zoning Regulations. Although the opinion of the Zoning Commission is silent as to the question of non-conforming use, vel non, it is

the Court's opinion that, in order to reach his conclusion, he necessarily had to determine that as of the date of the hearing, there was no non-conforming use for the operation of a marine boatyard on the property in question. The order in that case is dated August 28th, 1962. There was no appeal, so that the order became final thirty days after its date. So far as the matters determined at that hearing are concerned, Fertitta failed to exhaust his administrative remedies.

4. In 1963, the Zoning Commissioner apparently reopened the zoning violation case (Zoning File No. 635-2V) and held an additional hearing thereon. The question of whether Fertitta had a lawful non-conforming use which would have permitted the operation of a marine boatyard was unquestionably raised, because it is referred to in the opinion of the Zoning Commissioner. The Commissioner decided that even if Fertitta's predecessor had a non-conforming use up to July 10th, 1947, such use was lost as of that date by virtue of the reclassification and special permit sought and obtained by the then property owner. The Court does not agree with that conclusion.

The Zoning Regulations in effect at that time provided among other things that upon any change from such non-conforming use to a conforming use, the non-conforming use would be lost. The Court does not construe the word "change" to encompass a use added to a non-conforming use. So that if, in fact, there was a valid non-conforming use and such use was continued past July 10th, 1947, it would not, in my opinion, have been lost with the reclassification. However, in the light of the Court's conclusion, set forth below, this disagreement is not of real significance. The order of the Zoning Commissioner based upon this decision was dated July 31st, 1963.

An appeal was taken by the property owner from this decision to the County Board of Appeals. After a hearing before the Board, it held that the original decision and the order of Commissioner Rose, dated August 28th, 1962, was final and was binding upon the Board, and for that reason affirmed the order of the Zoning Commissioner.

The property owner appealed that decision and order to the Circuit Court for Baltimore County. For

technical reasons (Failure of the property owner-appellant to file a petition setting forth the grounds for appeal as required by Maryland Rules 3, 2, a) the Court dismissed the appeal.

At the argument on the present appeal, the attorney for the property owner was frank to admit that there had been no change in circumstances between August 28th, 1962, the date of Commissioner Rose's original decision and order, and the present time; counsel for the property owner, although he admitted to the Court that the evidence produced at the 1964 hearings before Deputy Zoning Commissioner Hardesty and the County Board of Appeals was available to the property owner at the earlier hearings, contended that the production of such testimony at those times was virtually impossible. The reason given why the evidence wasn't ascertained and produced at the earlier hearings was that the property owner was involved in the defense of eleven charges of alleged zoning violations before Trial Magistrates.

Although, generally speaking, res judicata

does not apply to decisions of administrative authorities, it is the Court's opinion that when the case presented at a later date could in fact have been presented at the earlier hearing, and when there has been no change in circumstances between the date of the earlier hearing and the date of the later hearing, the final decision in the earlier case is binding upon the parties. In the Court's opinion, this conclusion is in accord with the bases for the decisions in *Whittle v. Board of Zoning Appeals*, 211 Md. 36, *Seneel v. Mayor and City Council*, 203 Md. 306, and *Mayor and City Council v. Linthicum*, 170 Md. 245.

The Court finds from the record in this case that there was no change in circumstances, and it is obvious to the Court from the examination of the record that all the evidence produced at the 1964 hearings could have been produced at the earlier hearings.

Accordingly, the Court concludes that even if the failure to prosecute an appeal from the decision of Commissioner Rose, dated August 28th, 1962, did not bring an end to the matter, (and the Court believes it did),

the failure to go forward with the appeal to the Circuit Court for Baltimore County from the order of Commissioner Rose, dated July 31st, 1963, was the end of the road.

Although the grounds of this decision are those which have been set forth above, the Court is of the further opinion that the evidence adduced before the County Board of Appeals at the last hearing was not legally sufficient to support the Board's finding, and that the Board's decision was, therefore, arbitrary and capricious. The Demurrer is overruled, and the orders of the Deputy Zoning Commissioner dated January 15th, 1965, and of the County Board of Appeals dated July 27th, 1965, be and they hereby are reversed.

(CONCLUSION OF OPINION)

RE: PETITION FOR SPECIAL HEARING :
FOR THE PURPOSE OF DETERMINING :
THE EXISTENCE OF A NONCONFORMING USE :
OF :
S/S OF CORNICE ROAD TO THE WATERS :
OF NORMAN CREEK (Lots 207 and :
208 CORNICE ROAD) :
15th District :
Baltimore County :
Petitioner :
No. 65-26-SPH

Petitioner, Albert J. Fertitta T/A Norman Creek Marina, seeks a declaratory order under Section 500.7 of the Baltimore County Zoning Regulations to establish his right to a nonconforming Marina use on property known as 2227 Cornice Road in the Fifteenth Election District. The subject property is on the south side of Cornice Road and is Lot 208 on the Plat of Middleborough. The said lot is zoned B-L (formerly E Commercial) but no special exception for a Marina or boatyard has been obtained. (See Section 502 and Schedule, Section 270).

The main issue is whether or not the petitioner is required to have such a special exception. He relies upon the right to continue a nonconforming use.

The petitioner is engaged in a going Marina business with some twenty slips and facilities for the sale of gasoline and sundries. He purchased the Marina as a going business in 1958, and in 1960 he obtained written permission from the Zoning Commissioner for a parking lot on Lot 205. Apparently some business use has been made of Lot 207 in the past but any contention in that regard has been withdrawn from the case. The petitioner introduced testimony and exhibits to the effect that at least some of what is now called Marina business has been done on the subject property since before the original 1945 zoning regulations went into effect. The increase in business in recent years has apparently led to a series of zoning violation complaints.

If the past proceedings may be disregarded the Board would merely conclude that the petitioner is entitled to his nonconforming use and call the whole matter closed. However, the gist of the protests contained is that the facts have already been determined and the matter is res judicata.

In 1947 the subject property, Lot 208, was reclassified from A Residential to E Commercial with a special permit for a marine gasoline pump. (George F. Strauser, et al, #959). Under Section VII of the 1945 regulations, then in effect, the use of the property for rental, sale, repair, or service of boats, and the sale of supplies or sundries seems permissible within the E Zone without any special exception. However, a special permit for a marine gasoline pump seems required by Section VIII, E. In 1955 a revised comprehensive zoning ordinance was enacted and the subject property became B-L under the new ordinance. No formal granting of a special exception for Marina use has been made. (Section 502 and Schedule, Section 270). As pointed out above, the Board

is satisfied that petitioner and his predecessors in title have so used the property, and have, in addition to the parking lot, made various other improvements.

The difficulty seems to turn around procedural improvements. The petitioner lost that case. A cease and desist order based upon a finding of violation became final against him.

On August 28, 1962 the Zoning Commissioner held that a violation exists:

"No special exception for marina boatyard, etc. exists so that lots 207 and 208 may not be used for that purpose. Also such commercial activity must cease permanently within 30 days from the date of this Order."

No appeal to the Board was filed from that adverse finding.

On July 31, 1963, after further hearing, the Commissioner issued another Order holding that under XI of the former regulations the nonconforming use (presumably prior to 1945) had been lost by the 1947 change to E Commercial. An appeal was then taken to this Board, but the Board held that the same issues and parties were involved in both the 1962 and 1963 hearings and that the petitioner could not proceed:

"It appears from the file that on July 31, 1963 another hearing was held before the Zoning Commissioner on the exact same issues involving the same parties and the Zoning Commissioner reaffirmed his earlier decision. The Board is at a loss to determine why this matter should appear again on the zoning docket, but it is of the unanimous opinion that since there was no appeal from the order of August 28, 1962 the petitioner or respondent is without remedy before this Board. To decide otherwise would leave the door open for any zoning violator to continually operate once found in violation by merely alleging newly found evidence or other factors pertinent to the main issue in any case. If this be the case then there never could be a prosecution of any zoning violation case in Baltimore County."

The case was then appealed to the Circuit Court and dismissed on April 23, 1964 "for failure to file Petition under the rules. . . ."

On June 24, 1964 the petitioner renewed his efforts and filed the instant proceeding. On January 15, 1965 the Deputy Zoning Commissioner held that the "property known as Lot 208 Cornice Road may be used for the rental of slips and the sale of marine supplies and sundry items." The neighbors appealed to this Board and testimony was heard on May 13, 1965.

There is no question about the general rule that a decision of proper zoning authority is final as to issues decided. If this were not the rule the pending case would be a useless exercise, advisory perhaps, but without the force of any final disposition of the question presented. It is equally apparent that the decision of the Zoning Commissioner does not become final or binding upon matters outside of the scope of the case before him.

- 3 -

Thus, the point in question seems to be a consideration of what was presented and decided in the 1962-1963-1964 violation - late appeal - procedural dismissal case.

In 1962 the Commissioner found against the petitioner upon a violation charge. In 1963 he reconsidered and reaffirmed. In 1964 this Board then proceeded to dismiss the appeal by holding that the 1962 and 1963 proceedings were one and the same case. In other words, the finding of violation was final.

It does not seem to the Board that a violation proceeding has the same effect as a declaratory proceeding. The violation proceeding may be on the complaint of one person and it may be prosecuted without notice to neighbors or to others in interest, such as a landlord. It is an in personam charge of wrongful conduct of the defendant. On the other hand, the declaratory proceeding, like reclassification, requires notice. (See Section 500.7). Not only are the notices and requirements different, but it is more in rem in nature. The applicant seeks to establish eligibility of certain uses for a certain property. We are, as a practical matter, reluctant to say that a person must defend a violation charge with every defense available to him at the risk of loss of rights of future use.

In the prior proceeding the Zoning Commissioner held that Marina use must cease unless and until a special exception is obtained. In this proceeding, the right to Marina use is requested on the basis of nonconforming use in lieu of special exception.

We find that the subject property was so used in 1955 and 1962, and that the use was authorized under the 1945 regulations without special exception. Thus, the petitioner may resume Marina use.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William S. Baldwin, Chairman

John A. Slowik

Paul T. McHenry, Jr.

DATE: July 27, 1965

TRIMBLE & ALDERMAN
ATTORNEYS AT LAW
JERVIS BUILDING
COURT HOUSE SQUARE
TOWSON, MARYLAND 21204

January 18, 1965

Edward D. Hardesty,
Deputy Zoning Commissioner
County Office Building
Towson, Maryland 21204

Dear Mr. Hardesty:

Re: Petition for Special Hearing for the purpose of determining the existence of a nonconforming use - S/S Cornice Road to the Waters of Norman Creek. Albert J. Fertitta - Petitioner. No. 65-21-SPH (67-52).

On behalf of Mr. and Mrs. Lambert A. Brown, et al., please enter an appeal from your decision in the above entitled matter to the Board of Appeals of Baltimore County and forward all papers in connection therewith.

Very truly yours,

Ernest C. Trimble
Attorney for Protestants/Appellants

ECT/dmc

PETITION FOR A SPECIAL HEARING

IN THE MATTER OF
THE PETITION OF

ALBERT J. FERTITTA

Lots 207 - 208 Cornice Road
15th District

Use of property for a
Boat Yard and Marina

For a Special Hearing

To the Zoning Commissioner of Baltimore County

Albert J. Fertitta, Petitioner, hereby petitions for a Special Hearing, upon proper advertisement and notice, under the Zoning law and regulations, especially Section 500.7 of said regulations, of Baltimore County, for the purpose of determining the existence of a non-conforming use upon and about the premises known as Lots 207 and 208 Cornice Road, Baltimore County, Maryland.

Leonard A. Vadaia

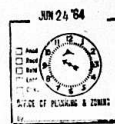
William E. Charnick
1760 Eastern Boulevard
Baltimore 21, Maryland

MURdock 6-9493

Attorneys for Petitioner

BEFORE THE
ZONING COMMISSIONER
OF BALTIMORE COUNTY

Albert J. Fertitta
Route 10, Box 36
Baltimore 19, Maryland



RE: Petition for a Special Hearing
for the purpose of determining
the existence of a non-conforming
use S/S of Cornice Road to the
Waters of Norman Creek 15th District
Albert J. Fertitta-Petitioner

BEFORE THE
DEPUTY ZONING COMMISSIONER
OF
BALTIMORE COUNTY
No. 65-21-SPH

This opinion could probably be characterized as the grand finale to a series of various zoning and criminal hearings to determine if in fact the petitioner, Albert J. Fertitta, is conducting a bona fide operation on the premises known as 207 and 208 Cornice Road.

On June 24, 1964, the petitioner filed his Petition for Special Hearing under Section 500.7 of the Baltimore County Zoning Regulations for the purpose of determining the existence of a non-conforming use upon and about the premises known as Lot 207 and 208 Cornice Road, said lots being situated in the 15th Election District of Baltimore County.

Because of the voluminous testimony and exhibits filed, it was necessary to conduct two separate hearings; the first being held on July 20, 1964, and the second, being a continued hearing, conducted on November 9, 1964. Both hearings were properly advertised in accordance with the law. Both the petitioner and protestant were represented by legal counsel at both hearings.

At the initial hearing held on July 20, 1964, various motions were made by counsel for the protestants in an effort to have the Petition dismissed. These motions, of course, were filed before any evidence or exhibits were filed. These motions to dismiss are set forth as follows:

(a) That the Deputy Zoning Commissioner lacked the authority to grant a re-hearing on issues already decided in previous zoning Orders. This motion is hereby overruled. An administrative agency may rehear and reconsider a case pursuant to statutory authority, and it has frequently been held that administrative agencies have inherent or implied power to reopen and reconsider their action or determination. See Maryland Law Encyclopedia, Administrative Law and Procedures, Chapter 2, Section 29; Del Negro versus County Commissioners, 191 Md. 229, 34 Amd 646.

(b) The law and hearing of July 20, 1964 are res adjudicata.

This motion is hereby overruled. The doctrine of res adjudicata is applicable only as to decisions of courts of competent jurisdiction. See Shurt versus City of Baltimore, 180 Md. 85, 23 Amd Section 15.

(c) That if in fact there were legitimate nonconforming uses the aforementioned lots, the zoning reclassification from Residential "A" to Commercial "B" and Special Exception for a Marine Gasoline Station granted on June 16, 1967 had the effect of terminating and abolishing any existing legitimate nonconforming use.

This motion is hereby overruled for reasons hereinafter stated. Because this motion presents a question of law and fact, it will be necessary to review the evidence and exhibits as presented at the hearings.

It would be proper at this point to comment on Lot 207. The petitioner, Albert J. Fertitta, by his own testimony at the hearing conducted on July 20, 1964, admitted that Lot 207 is rented as a private residence and is not being used for business purposes. Therefore, the Deputy Zoning Commissioner holds that Lot 207 may be used only for residential purposes.

On May 15, 1959, Lot 208 was conveyed to Joseph Raiteneyer and wife. On October 1, 1945, Lot 208 was conveyed by the Raiteneyers to Louis A. Meyer and wife. However, there is an affidavit dated July 18, 1964, (in evidence) from Mrs. Harbert Tuttle (Meyer's daughter) to the effect that her parents rented Lot 208 for two years prior to purchasing it from the Raiteneyers.

On January 6, 1947, the Meyers conveyed Lot 208 to George Streusser and wife and on January 6, 1958 the Streussers conveyed Lot 208 to the petitioner, Albert J. Fertitta.

Lot 208 was the subject of Zoning Petition No. 385, and as a result of the hearing on that Petition, on March 20, 1946, a Temporary Permit for two years for renting and selling of row boats was granted. The petitioners in that case were Louis A. Meyer and his wife.

Lot 208 was, also, a subject of Petition No. 959-B-6, which requested a reclassification of Lot 208 from "A" Residential Zone to an "B" Commercial Zone and a Special Permit to use the property for a Marine Gasoline Pump. The aforementioned request was granted on July 10, 1947. At that time Lot 208 was owned by George Streusser and wife.

Introduced as evidence was an affidavit from George Streusser dated July 21, 1964, to the effect that from the period 1947 to 1958, when he owned the property, boats were stored, painted and repaired. Gasoline and oil were sold and slips were rented; fishing parties were also chartered. He says he bought a "going business" from the Meyers and that there was very definitely a boat yard business being conducted by the Meyers in 1947.

Introduced as evidence was another affidavit dated August 11, 1964, from Harbert Tuttle to the effect that he had business dealings with the "Norman Creek Boat Yard" from which he bought his boat in 1948.

An affidavit dated August 12, 1964, from a Mr. John Fischer was also introduced. In addition, Mr. Fischer testified at the hearing held on November 9, 1964, to the effect that he bought a boat from the Norman Creek Boat Yard in 1948. He says boats were moored at the piers in 1948 and that boats were stored and repaired as far back as 1948. He claimed that after 1948 he was not charged for rent because he did odd jobs around the premises both for the Meyers and the Streussers.

The petitioner, also, introduced three advertisements in substantiation of his claim that his property was used for a boat yard prior to 1945. Newspaper clippings advertising "boats bought and sold" from the Sunday Sun (May 11, 1944) and the Baltimore Sun (May 12, 1944 and May 13, 1944) were also introduced as evidence. Mr. John Fischer testified that it was pursuant to the advertisement in the newspapers that he bought his boat in 1948.

A Mr. William Huppert, in his affidavit dated August 20, 1964, and in his testimony at the hearing held on November 9, 1964, says he did business with a boat yard on the subject tract in 1933 and 1934 and that for the last thirty years, he has seen boats tied at the piers. He further testified, as did Mr. John Fischer, that signs were erected on Middleborough Road advertising "Norman Creek Boat Yard."

There was testimony from several protesting neighbors, who admitted to seeing boats moored at the piers in front of Lot 208 prior to 1945 but could not definitely state whether the boats were owned by Messrs. Meyer and Streusser or whether they were rentals.

Counsel for the protestants argues that if in fact there was a non-conforming use on the premises prior to January 2, 1945, the subsequent reclassifications in 1945 and 1947 terminated the existing non-conforming use. He argues that a non-conforming use would terminate upon any change from a non-conforming use to a conforming use. However, there never was a change from a boat yard existing before 1945 to a new conforming use. The effect of the 1947 Reclassification and Special Exception was to expand the facilities of an existing yard; that is to say, to sell marine supplies, bait, rods, etc., and gasoline. In other words, the original operation never actually changed-it was merely enlarged in order to offer other services to the public.

The guide lines for determining whether or not there has been an abandonment of a non-conforming use are set forth in Landy versus Board of Appeals, 173 Md. 460, 196 & 293, in which the Court said "Abandonment of a nonconforming use in law depends upon the concurrence of two, and only two, factors; one, an intention to abandon or relinquish; and two, some overt act, or some failure to act, which carries the implication that the owner neither claims nor retains any interest in the subject matter of the abandonment."

There has been no evidence introduced showing an actual abandonment or any overt action carrying an implication that the owners (from Mr. Meyers to Mr. Fertitta) failed to retain any interest in the subject matter of abandonment. On the contrary, much interest in improving the property was shown. The Special Permit for a gas pump and numerous building permits were obtained from Baltimore County.

In conclusion, the Deputy Zoning Commissioner finds that a boat yard as such was operated on the premises known as Lot 208 Corsica Road for sometime prior to 1945 and through 1956, when the petitioner bought the property. But the Petitioner admits that boats are no longer sold, constructed, or repaired. He stated the extent of his operation centers around the rental of slips and the sale of marine supplies and various sundry items. The petitioner's property known as Lot 208 Corsica Road is therefore restricted to the rental of slips and the sale of marine supplies and various sundry items such as rods, etc.,

It is therefore ORDERED by the Deputy Zoning Commissioner of Baltimore County, this 15 day of January, 1966, that the petitioner's property known as Lot 208 Corsica Road may be used for the rental of slips and the sale of marine supplies and sundry items. Storing, repairing, constructing, and sales of marine craft is hereby prohibited. Lot 207 Corsica Road is to be used for residential purposes only.

Edward D. Hardesty
EDWARD D. HARDESTY
Deputy Zoning Commissioner of
Baltimore County

PETITION FOR A SPECIAL HEARING

IN THE MATTER OF
THE PETITION OF

ALBERT J. FERTITTA

Lots 207 - 208 Corsica Road
19th District

Use of property for a
Boat Yard and Marina

For a Special Hearing

To the Zoning Commissioner of Baltimore County

BEFORE THE
ZONING COMMISSIONER
OF BALTIMORE COUNTY

Albert J. Fertitta, Petitioner, hereby petitions for a Special Hearing, upon proper advertisement and notice, under the Zoning law and regulations, especially Section 500.7 of said regulations, of Baltimore County, for the purpose of determining the existence of a non-conforming use upon and about the premises known as Lots 207 and 208 Corsica Road, Baltimore County, Maryland.

Leonard A. Vadala
Leonard A. Vadala

Albert J. Fertitta
Albert J. Fertitta, Petitioner
Route 10, Box 20,
Baltimore 19, Maryland

William E. Chamberlain
William E. Chamberlain
1745 Eastern Boulevard
Baltimore 21, Maryland
MUdock 6-9493

Attorneys for Petitioner.

LEW OFFICE
LEONARD A. VADALA
BALTIMORE, MARYLAND

7 COPIES OF PETITION
LOTS 207-208 CORSIKA ROAD
19th DISTRICT
PROPERTY OF ALBERT J. FERTITTA

LAW OFFICES
William E. Chamberlain

December 1, 1964

Baltimore County Office of Planning and Zoning
County Office Building
111 West Chesapeake Avenue
Towson 4, Maryland

Attention: Mr. Edward D. Hardesty

Re: Special Hearing
Albert J. Fertitta
SPH 64-211

Dear Mr. Hardesty:

Enclosed, herewith, please find written Memo of Law, Statement of the Case, Brief Statement of Facts and Argument covering the laws and facts adduced at the hearing of November 9, 1964.

Very truly yours,

William E. Chamberlain
William E. Chamberlain
Attorney at Law

WEC:jjs
enclosure

cc: Ernest C. Trimble, Esq.



ALBERT FERTITTA

SPECIAL HEARING - Nov. 9, 1964
(Subsequent to hearing of July 20, 1964)

COUNTY OFFICE BUILDING
111 West Chesapeake Avenue
Towson 4, Maryland

MEMORANDUM OF LAW

STATEMENT OF CASE

This is a hearing on the Motion of Albert J. Fertitta, for the determination of the existence of a non-conforming use on the premises Lots 207 and 208, known as 2227 Corsica Road, under section 500.7 of the 1955 Edition of Baltimore County Zoning Regulations.

BRIEF STATEMENT OF FACTS

Albert J. Fertitta did produce the following witnesses in an attempt to prove the following facts:

WITNESS: John L. Fischer of 7945 Dalrose Avenue, Baltimore 6, Maryland:

Mr. Fischer testified that he did business with a place called Norman Creek Boat Yard. He further stated that in 1944 he purchased a 10' skiff or closed bow runabout. He also stated that the boat which he purchased was kept moored at the place designated as Norman Creek Boat Yard. He also stated that he noted a number of boats continuously moored at the dock at the place designated as Norman Creek Boat Yard at this time. He stated that he paid the sum of \$10.00 for mooring privileges during the balance of the year in which he bought the boat. He stated that he no longer paid the annual rent after the first year, but indicated that this was a special favor to him as far as he knew. Mr. Fischer stated that in 1944 he answered an ad in a local newspaper in purchasing the aforementioned boat. Mr. Fischer also stated

that he found the Norman Creek Boat Yard by means of directions in the advertisement coupled with signs located on the road. Mr. Fischer stated that he saw boats being repaired at the place designated as Norman Creek Boat Yard. He stated that in his conversation with Mr. Strauser, he understood that Mr. Strauser had purchased the Norman Creek Boat Yard as a "going business".

In corroboration of the foregoing testimony, Albert J. Fertitta submitted to the Commissioner, a photostat taken from the newspaper "Baltimore Sun", which ad appeared in said paper May 12, 13, and 14, 1944. This ad clearly shows the existence of a business located on the premises under consideration. The ad clearly contains an offer by the owner or tenant, of the premises under consideration at this time, to sell boats. In addition, the ad clearly contains an offer to purchase boats. The directions contained in this ad are most explicit and clearly designate subject premises as being the situs of the business.

Albert J. Fertitta also produced an Affidavit from Mrs. Grace Tuttle which stated that to the best of her recollection, Mr. Louis Meyer and his wife, Effie Meyer, rented the subject premises prior to their purchase of it on October 1, 1945 and further stated that said rental was in process for approximately two years prior to 1945 which, of course, would make Louis and Effie Meyer the tenants of the subject premises from 1943 to October 1, 1945, at which time they purchased the premises.

In addition to the foregoing, Albert J. Fertitta did produce another witness by the name of William E. Huppert, 7706 Wyndbrook Road, Baltimore, Maryland. Mr. Huppert stated that he was familiar with the neighborhood in which the subject premises is located and had been for some years, he having a summer home in the vicinity during the years 1933 - 1934. Mr. Huppert

stated that several times during those years, he went to the place designated by Mr. Fischer as Norman Creek Boat Yard, and that he then purchased bait and further, that he purchased this bait during the years 1933 and 1934. He further stated that he had seen five or six boats tied to the pier at this time. In addition, Mr. Huppert stated that he had seen a sign designated Norman Creek Boat Yard continuously visible from the public roads of Baltimore County in 1933 and 1934 and in 1943 and 1944, and subsequent thereto.

In addition to the foregoing, there is in the file, an Affidavit from one George Strauser, which Affidavit listed the names of various persons who had rented slips from him subsequent to his purchase of the place from Louis and Effie Meyer. One of the names given was that of deponent, John Fischer. Mr. Strauser's deposition makes clear that at the time he purchased the subject premises, he purchased them as a "going business". He also states that during the term of his ownership, he operated the business continuously as a business. He also states that he did have difficulty with some neighbors, though he didn't understand why.

QUESTIONS PRESENTED

1. Has the Petitioner, Albert J. Fertitta, produced evidence of the existence of a business in the nature of a boat yard conducted from the subject premises prior to the year 1945?
2. Does the evidence produced constitute a valid non-conforming use?

ARGUMENT

The year 1945 is most important in this matter because this was the year of the enactment of the first zoning regulations in Baltimore County. In 1956 the present comprehensive zoning regulations became effective in Baltimore County.

more County. The applicable laws governing the factual situation produced herein are as follows:

ZONING ORDINANCE

Section 101

"Non-Conforming Use - A legal use of a building or of land that antedates the adoption of these regulations and does not conform to the use regulations for the zone in which it is located."

Section 102.1

"No land shall be used or occupied and no building or structure shall be erected, altered, located or used except in conformity with these regulations and this shall include any extension of a lawful non-conforming use."

Section 104 - "Non-Conforming Uses"

Section 104.1

"A lawful non-conforming use existing on the effective date of the adoption of these regulations may continue; provided that any change from such non-conforming use to any other use, whatever, or any abandonment or discontinuance of such non-conforming use for a period of one year or more, or in case any non-conforming business or manufacturing structure shall be damaged by fire or other casualty to the extent of 75% of its replacement cost at the time of such loss, the right to continue or resume such non-conforming use shall terminate . . ."

American Jurisprudence, Volume 58, Title: Zoning, Section 146, page 1021:

"The general rule against the interpretation of a statute or ordinance, giving it a retrospective operation, especially where vested rights are affected, has been applied in construction of a zoning law. Indeed, zoning statutes or ordinances generally expressly exempt from their operation structures, or uses thereof, in existence at the time of their enactment or effective date."

It is clear from the fact of Section 104.1 that a lawful non-conforming use in existence in early 1945, the effective date of the early Baltimore County Zoning Regulations, is permitted to continue in order to protect the property owners from a deprivation of their property without due process of law. The

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(j) April 23, 1964 - Judge Menchive granted Motion to Dismiss

(k) June 24, 1964 - Fertitta filed Petition for Special Hearing

under Section 500.7 of the Zoning Regulations

(l) January 15, 1965 - Deputy Zoning Commissioner ordered that Lot 208 may be used for rental of boat slips

ARGUMENT:

I - The Deputy Zoning Commissioner had no authority to conduct another hearing in regard to the use of Lot 208, allegedly pursuant to Section 500.7 of the Zoning Regulations.

A careful reading of Section 500.7 discloses that "The Zoning Commission" shall have the power to conduct such other hearings . . . necessary for the proper enforcement of all zoning regulations, subject to the right of appeal . . . The power given hereunder SHALL INCLUDE the right . . . to determine the existence of any purported nonconforming use on any premises or to determine any rights whatsoever . . ." (emphasis supplied) Once the Zoning Commissioner conducts a hearing necessary for enforcement of the Zoning Regulations, the only further remedy is APPEAL, NOT ADDITIONAL HEARINGS. The right to a hearing concerning a nonconforming use is INCLUDED in the inherent power of the Zoning Commissioner just mentioned, not in addition thereto. Therefore, once the question of a nonconforming use has been presented to and decided by the Zoning Commissioner, no matter what the nature of the hearing or how the question is presented, the only further recourse is appeal. Nothing in the language of Section 500.7 indicates that the second sentence, and particularly the specific reference to nonconforming use, is in addition to any other enumerated powers of the Zoning Commissioner. However, it matters not which avenue is used to present the question at a hearing, once the question is determined, appeal is the next step. Last but not least, it should be noted that in Sections 500.5, 500.6 and at the end of the first sentence in 500.7, the right of appeal is specifically

facts proven by Mr. Fertitta clearly indicate that, under the Zoning Regulations in effect in 1945, he has a valid non-conforming use.

173 Md. 460; 196 A. 293, Landay v. MacWilliams, laid down the rule that a non-conforming use once found to be in existence, can only be terminated in accordance with the provisions of the Zoning Ordinance. This case has been cited with approval in 229 Md. 487, 206 Md. 96, and 34 A. 2d 765, and other cases. The provisions for terminating a non-conforming use are set forth in Section 104.1 of our Zoning Ordinance and it is clear that none of the conditions therein listed have occurred with regard to the subject premises, viz: Lots 207 and 208, k/a 2227 Corsica Road.

We must consider that we are considering events that transpired more than twenty years ago. We must also realize that during the years 1943 and 1944, this motion was fully mobilized for a great war effort and leisure time activity was primarily engaged in by those persons who were unable to work a completely full schedule. This means that those persons most likely to have the facts sought by this proceeding were, at the time of the events, either older persons or incapacitated in some way; as a result of this situation there is a tremendous dearth of facts.

In spite of the foregoing, however, Mr. Fertitta has produced people who actually saw boats moored at the subject premises in the year 1944. He has produced assessment records indicating the existence of a business at the subject premises in 1945. He has produced advertisements which clearly show the purchase and sale of boats in the year 1944. Surely it can be inferred that boats were being moored during the process of buying and selling.

Although Mr. Strauser was not available to give testimony at the hearing, nevertheless, our eyes cannot remain closed to the fact of his deposition,

provided. There is no mention of appeal at the end of Section 500.7, which is further proof that the second sentence is merely an example of the kinds of hearings the Zoning Commissioner may conduct and not a separate and exclusive remedy from which appeal lies.

In consideration of the fact that a hearing was held by the Zoning Commissioner (at which time the defense of a nonconforming use could have been asserted) and an Order passed in 1962 that the property could not be used for the renting of slips (and no appeal was taken); that another hearing was erroneously conducted by the Zoning Commissioner, for the specific purpose of raising the defense of a nonconforming use, and another Order was passed in 1963 ruling that the owner did not have the right to let customers or friends rent or use slips; and that the right of appeal from the Zoning Commissioner's Order was exercised by the owner through the Circuit Court, the property owner is not entitled to still another hearing under the Zoning Regulations, and this Board should reverse the Order of the Deputy Zoning Commissioner leaving the previous Order of the Zoning Commissioner to stand. For this Board to hold otherwise, would be to ignore the specific provisions of the Zoning Regulations, providing for the remedy of appeal. The owner having resorted to appeal is not entitled to repeated hearings before the Zoning Commissioner as the previous Board stated in the earlier appeal: "To decide otherwise would leave the door open for any zoning violator to continuously operate once found in violation by merely alleging newly found evidence or other factors pertinent to the main issues in any case."

II - Any nonconforming use existing on January 2, 1945, was terminated upon the request for and granting of a reclassification (conforming use) on Lot 208, in accordance with the Zoning Regulations.

The original Zoning Regulations for Baltimore County came into existence on January 2, 1945. The Zoning Regulations upon the enactment of the original zoning laws, provided for "E" Commercial zoning. The regulations further provided "except as expressly provided in subsequent sections, any

a sworn statement that when he purchased the subject premises as a "going business", that from the time he spent his funds for the premises until he sold them to Mr. Fertitta, he operated a "going business" and represented to Mr. Fertitta that there was in existence, a "going business" with no legal impediments existing. The "going business", of course, included the renting of boat slips and mooring of boats.

In addition to the testimony of Fischer, the testimony of Huppert clearly indicates that he had seen signs advertising the subject premises continuously in the neighborhood from 1943 to date.

CONCLUSION

Mr. Albert J. Fertitta believes that he has proved beyond a reasonable doubt that there was in existence in the years 1943 and 1944, a boat yard engaged in the business of buying boats, selling boats, and mooring boats. In addition, of course, to the sale of all these items necessary and incident to the conduct of a boat yard. Mr. Fertitta believes that the business which he has proved to exist in the years 1943 and 1944 does constitute a valid non-conforming use. The Commissioner is hereby urged to find that there was such a non-conforming use and that the use has not been abandoned in any way by any overt action of any of the owners of the said business from the time of Mr. Louis A. Meyer through Mr. Strauser, to date.

Leonard A. Vadoff
1760 Eastern Boulevard
Baltimore 21, Maryland
686-9491

Attorneys for Albert J. Fertitta

building or structure or land may be used and any building or structure may be hereafter erected, altered, repaired or used for any use or uses except the following." No 18 following the foregoing language stated "all other use for which a special permit is required as hereinafter provided." Section XIII A, entitled "Powers Relative to Special Exceptions and Special Permits" provided at No 18 "Boatyard and/or marine railway for sale, repair and storage of water craft, not exceeding 60 feet in length on tidal waters."

Also, the aforesaid Zoning Regulations adopted on January 2, 1945, in Section XI provided that a lawful nonconforming use existing on the effective date of their adoption, "may continue", provided, however, "upon any change from such nonconforming use to a conforming use, or any attempt to change from such nonconforming use to a different nonconforming use . . . the right to continue to resume such nonconforming use shall terminate . . ."

On July 10, 1947, the Zoning Commissioner in an application filed by the then owner of Lot 208, George F. Strauser, et al., No. 9595, granted a reclassification from "A" to "E", with a special exception for use of the property for a marine gasoline station. The Protestants contend that since the regulations specifically stated that a nonconforming use would terminate upon "any change from a nonconforming use to a conforming use," that if, in fact, a nonconforming use did exist on Lot 208 at the time of the adoption of the Zoning Regulations in 1945, then under said regulations the nonconforming use was terminated when the owner sought and received a reclassification, and therefore, a conforming use.

Your Protestants maintain that when the owner of Lot 208 chose to seek a reclassification and special exception for a "marine gasoline station," he was limited to either the specific use provided under his special exception or any other "permitted use" allowed in "E" commercial zoned area. Inasmuch as the Zoning Regulations, in Section XIII, recited above, permitted a special exception for a boatyard and the sale, repair and storage of boats, had this been the special exception intended it would have been requested; that the

LEGAL MEMORANDUM FOR PROTESTANTS IN THE MATTER OF ALBERT J. FERTITTA LOT 208, CORSICA ROAD

FACTS:

The facts presented at the hearing and pertinent to this memorandum are as follows:

- (a) January 2, 1945 - Original Zoning Regulations and classification of Lot 208 as "A" residential
- (b) 1944-1947 - No evidence of commercial uses i.e., sale of soft drinks, bait, marine supplies, gas and oil, etc., and no storage facilities for those items
- (c) March 20, 1946 - Petition No. 585 - Temporary permit for two (2) years for renting and selling of row boats granted
- (d) July 10, 1947 - Petition No. 959-R-S, reclassification from "A" residential to "E" Commercial and a special permit to use property for a marine gasoline station
- (e) August 28, 1962 - Case No. 635-ZV - Zoning Commissioner ordered no special exception for marina boatyard, etc. exist; no appeal to Board of Appeals filed.
- (f) July 21, 1963 - as a result of another hearing in Case No. 635-ZV based on the allegation by property owner that a nonconforming use existed, the Zoning Commissioner passed an Order denying the existence of a nonconforming use and again holding that the property could not be used for a boatyard or marina.
- (g) January 9, 1964 - Board of Appeals held that it could not overturn a decision of the Zoning Commissioner on the same issues once the time of appeal has lapsed from the Zoning Commissioner's Order. Order of Zoning Commissioner dated July 21, 1963 affirmed.
- (h) February 10, 1964 - Appeal to Circuit Court filed by Fertitta
- (i) April 3, 1964 - Motion to Dismiss appeal filed by Protestants

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present use of Lot 208 is limited to commercial uses and to the special exception granted, i.e., a marine gasoline station.

III - Upon the change from one nonconforming use to a different nonconforming use, any nonconforming use is terminated.

In the present case, through the years there have been changes from one nonconforming use to other nonconforming uses, i.e., from rental of row boats, to sale of row boats, to rental of slips for row boats, to taking out fishing parties, to the uses made of the property by the present property owner of rental of slips, storage and repair of boats, constructing a ramp to put boats in and take them out of water, sale of marine supplies and other sundry items. All of these uses, which have been added since 1945, could not have been done under the guise of a nonconforming use. One cannot expand a nonconforming use by including other uses. These things have been done in the present case and any nonconforming use has terminated.

IV - In addition to the Zoning Regulations themselves, any nonconforming use on the subject property has terminated both logically and legally.

As stated in Beyer vs. Mayor and City Council of Baltimore City, 34 A 2nd, 765 at Page 766, "the view that has been followed is that a few nonconforming buildings and uses as allowed to continue will not be a substantial injury to a community if only such nonconforming buildings are not allowed to multiply where they are harmful or improper. Zoning has sought to safeguard the future, in the expectation that time will repair the mistakes of the past." It is apparent that a nonconforming use is not as valuable to a property owner as the same use under proper zoning classification. This is true because there are definite limitations on expansion of the use; the use can be wiped out completely by an act of God or a fire.

In fact, in the present case the owner filed eleven (11) Building Permit Applications, dating back to 1947, as exhibits, and stated that there were many more. These permits requested, among other things, a permit to build

a marine supply store, snack bar, a ramp for hauling boats in and out of the water, a 20 by 20 platform at the end of the pier, a bulkhead, extensions to the pier, etc. None of these improvements could have been accomplished under a nonconforming use, but the majority of them could be constructed once the property was reclassified and a special exception obtained for a marine gasoline station.

In order to make zoning regulations constitutionally valid, uses in existence at the time of the adoption of Zoning Regulations are permitted to continue in order that there will not be a taking of a man's right to the reasonable use of his property without due process of Law. But once the need to protect that property owner no longer exists, as here for example, where he obtains exactly what he wants by obtaining a reclassification, and even a special exception, from the proper zoning authorities, rather than relying on his constitutional right to continue his former "limited" use, then the very theory underlying the principle of a nonconforming use has disappeared. As stated in Yorkley's Zoning Law and Practice at Page 380, "any change in the premises which tends to give permanency to or expands the nonconforming use would not be consistent with the purposes behind permitting a nonconforming use." In the case of Board of Zoning Appeals of Baltimore County vs. Gue, 141 A 2nd 510 at Page 513, the Court of Appeals acknowledged that even an attempt to change from one nonconforming use to a different nonconforming use caused the termination of the former nonconforming use. Certainly, if a nonconforming use is lost by an attempt to change to a different nonconforming use, then such nonconforming use would obviously be lost by a change from a nonconforming use to a conforming use. For example, in the present case, there was no testimony whatever that there was any sale of soft drinks, ice, fishing tackle and supplies on Lot 208 prior to January 2, 1945. Therefore, had the owner attempted to change his alleged nonconforming use to permit the sale of fishing tackle and/or supplies, this could not have been done,

because one cannot change from one nonconforming use to another. However, the property owner can now employ such use and make such sales because of the reclassification. Any doubts which the Board might entertain as to the validity of the foregoing arguments should be resolved in favor of the Protestants because as stated in M. L. E., Volume 23, Section 18, Page 457, "the spirit underlying zoning regulations is to restrict rather than to increase nonconforming uses."

In conclusion it should be pointed out that, although the Protestants maintain there should have been no hearing at all before the Deputy Zoning Commissioner, in any event, the matter before the Board is restricted to a determination of the specific question of whether or not the property owner has a nonconforming use.

Ernest G. Trimble
Ernest G. Trimble
404 Jefferson Building
Towson, Maryland 21204
825-5512

Attorney for Protestants

6/14/65

SUPPLEMENTAL LEGAL MEMORANDUM
FOR PROTESTANTS IN THE MATTER OF
ALBERT J. FERTITTA
LOT 208, CORONA ROAD

The doctrine of RES JUDICATA is applicable in this case. Mistakenly or not the Zoning Commissioner permitted a second hearing to determine whether or not Albert J. Fertitta's operation was in violation of the Zoning Regulations. The specific question involved was if a nonconforming use existed. The Zoning Commissioner concluded, following a hearing on the merits, that there was no nonconforming use. An appeal was filed by Fertitta to the Board of Appeals as provided by statute. The Board of Appeals affirmed the order of the Zoning Commissioner. Fertitta then appealed to the Circuit Court for Baltimore County -- a court of record -- and that court dismissed the appeal. The issuance of an order by the Circuit Court, concluding the case in that court, results in a decision which is binding on the parties. It is a final order from which an appeal may be taken to the Court of Appeals. No such appeal was filed by Fertitta. At that time (on the date of the order passed by the Circuit Court) the question of the existence or non-existence of a nonconforming use was res judicata. An excellent case on this point is Whittle v. Board of Zoning Appeals, 125 A2 41; 211 Md. 36. The court relied heavily on two previous cases, Mayor and City Council of Baltimore v. Linthicum (170 Md. 245; 183 A 531) and Bensel v. Mayor and City Council of Baltimore (203 Md. 506; 101 A2 826), and at page 45 stated, "The Linthicum and Bensel cases do not hold that the denial of a special permit which has once been sustained (or ordered) by a court of competent jurisdiction can never be reopened or reconsidered, and we do not understand the appellants' contention as going so far as to assert such a doctrine. They seem to concede that a change in circumstances might warrant reconsideration and a different result in an application for a special permit in such a case as the present, but they deny that a showing of any substantial change in facts or

-1-

circumstances has been made." However, a distinction was made earlier on the same page when the court said "The fact that there was not a nonconforming use on a certain date was a fixed and stable fact and could not be changed by anything that happened thereafter." In other words, when the question of a nonconforming use has been determined by a court of record, no change in facts or circumstances can possibly arise and res judicata unequivocally applies.

At the hearing of the subject case, the Board expressed some interest in the possibility that Mr. Fertitta had a permissive use under the 1945 Zoning Regulations. Although the protestants maintain that a careful reading of the Regulations discloses that there was no permissive use following the reclassification from "A" residential to "E" commercial, and/or that this question was resolved when no appeal was taken from the Zoning Commissioner's order of August 28, 1962, nevertheless for sake of argument let it be assumed that a permissive use to operate a boat yard and/or marina was obtained upon the aforesaid reclassification in 1947. Any permissive use was nevertheless lost by the order of the Circuit Court for Baltimore County dated April 23, 1964, making final the declaration of the Zoning Commissioner in his order dated July 21, 1963, that no nonconforming use existed on the subject property. In other words, in 1955 under the newly adopted Zoning Regulations, one could no longer operate a boat yard and/or marina on commercial property without a special exception. Any use of the subject property as a boat yard and/or marina, therefore, became a nonconforming use only in 1955. The question of the existence of a nonconforming use having already been adjudicated, it is not again open to review in this hearing.

Ernest G. Trimble
Ernest G. Trimble
404 Jefferson Building
Towson, Maryland 21204
Telephone: 825-5512
Attorney for Protestants

ALLIANCE VIOLATION OF ZONING REGULATIONS ON PROPERTY OF ALBERT J. FERTITTA, Lots 207-208 Corona Road, 15th Dist.

REPORT
TO THE BOARD OF ZONING APPEALS
OF
BALTIMORE COUNTY
No. 635-IT

RE: ALLIANCE VIOLATION OF ZONING REGULATIONS ON PROPERTY OF ALBERT J. FERTITTA, Lots 207-208 Corona Road, 15th Dist.

REPORT
TO THE BOARD OF ZONING APPEALS
OF
BALTIMORE COUNTY
No. 635-IT

A complaint having been filed with the Zoning Department concerning violation of the Zoning Regulations at the above location, a hearing was held on Friday, July 6, 1962 to determine whether a violation exists.

Testimony at the public hearing indicated that Mr. Albert J. Fertitta owns two lots Nos. 207 and 208. Lot No. 207 is zoned residential and Lot No. 208 is zoned commercial. However, a ramp extends on residential lot No. 207. Mr. Fertitta also has a residence partially constructed on 207 and at one time or another stored soft drinks, cans of motor oil, etc.

Mr. Henry Kurie, Chief Building Inspector, testified that there was no record of a permit having been issued for the ramp on lot 207. Mr. Kurie was unable also to find any permit for the small concrete block building used for the sale of the oil supplies, sundries, fishing tackle, etc.

Testimony also indicated that approximately 20 ships were rented. Some of the row boats kept by Mr. Fertitta for rent were stored on residential lot 207 as well as on lot 208. Therefore, all non-commercial use on lot 207 must cease immediately and application must be made for the commercial use on lot 208.

No special exception for marine boatyard, etc. exists so that lots 207 and 208 may not be used for this purpose. Also such commercial activity must cease permanently within 30 days from the date of this order.

Date: *August 1, 1964*
Zoning Commissioner of Baltimore County

ORDERED by the Zoning Commissioner of Baltimore County, this 18th day of June 1947, that the subject matter of this petition be advertised in a newspaper of general circulation throughout Baltimore County and that the property be posted, as required by the Zoning Regulations and Act of Assembly aforesaid, and that a public hearing thereon be had in the office of the Zoning Commissioner of Baltimore County, Maryland, on the 9th day of July, 1947, at 10:30 o'clock A. M.

Albert J. Fertitta
Albert J. Fertitta
Zoning Commissioner of Baltimore County.

Upon hearing on petition (1) for reclassification of that parcel of land described therein from an "A" Residence Zone to an "E" Commercial Zone and (2) for Special Permit to use said property for Marine Gasoline Station and it appearing by reason of location the said two petitions should be granted, thereon:

It is this 14th day of July, 1947, ORDERED by the Zoning Commissioner of Baltimore County, that the aforesaid two petitions be and the same are hereby granted: (1) for reclassification as aforesaid and (2) for use of property for Marine Gasoline Station. This order is based upon the condition and strict condition that the setback of any buildings or structures to be erected shall not be nearer than 25 feet from the nearest right-of-way line of Corona Road.

Albert J. Fertitta
Albert J. Fertitta
Zoning Commissioner of Baltimore County.

Approved: County Commissioners of Baltimore County

By: *Charles W. White*
President

Date: *August 4, 1947*

FILED JUN 18 1947

0959

PETITION FOR (1) ZONING RECLASSIFICATION (2) SPECIAL PERMIT

To the Zoning Commissioner of Baltimore County:-
I, or we, Sam F. Bismeyer and Marion F. Bismeyer, wife Legal Owners on the south side of Corona Road at Middleborough in the 15th District of Baltimore County beginning 834' east of Miles Road then easterly on said side of Corona Road 50' with an average rectangular depth southerly of 108' and ending on the north shore line of Corona Creek being lot 8208, Plat of Middleborough, Plat Book 4 - 195.

herely petition (1) that the zoning status of the above described property be reclassified, pursuant to the Zoning Law of Baltimore County, from an "A" Residence Zone to an "E" Commercial zone; and (2) for a Special Permit, under said Zoning Law and Zoning Regulations of Baltimore County, to use that portion of the above described property, as hereinafter described, (and improvements now or to be erected thereon), for Marine Gasoline Station.

Property to be posted as prescribed by Zoning Regulations.
I, or we, agree to pay expenses of the zoning reclassification and Special Permit, advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the Zoning Regulations and Restrictions of Baltimore County, adopted pursuant to the Zoning Law for Baltimore County.

Contract Purchaser
Address

Legal Owner
Sam F. Bismeyer
208 Corona Rd
Baltimore 21
RP 16

14. If you have any record or know of your own personal knowledge furnish the names, addresses and last known place of employment of the names of slip renters during your operation of this business.

Leo Feldman, Venetian Isles, Florida
John Elliott, King Street, York, Pennsylvania
Einar Thomas, Baltimore City Police Department, Baltimore, Maryland
John Fisher, Rustless Iron & Steel, Baltimore, Maryland

15. Did you conduct these operations continuously during the term of your ownership of this property and business?

Yes

16. Did the prior owner conduct these operations continuously during the term of his ownership of this property and business?

Yes

17. When did you sell this property and business and to whom?

January 6, 1958

18. Was this sold as a going business?

Yes

19. Were your neighbors friendly?

No

20. If the answer to this question is in the negative, state why. If you know, it was jealousy on the part of one neighbor. I don't know the reason for the other.

21. Name your chief adversary among your neighbors.

Mr. & Mrs. Brown

22. Did you personally apply for zoning for the subject premises?

Yes

23. State your purpose in making the application for the zoning.

We bought a going business and I found out it was zoned commercially on a temporary basis. We applied for a permanent permit and got one at Town.

George F. Stinner

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING

COUNTY OFFICE BUILDING
111 WEST CHEESAPEAKE AVENUE
TOWSON 4, MARYLAND
TELEPHONE 6-8585

September 6, 1960

WILLIAM E. CHAMBERLAIN
Principal Planner

Mr. Wilkie H. Adams, Zoning Commissioner
Office of Planning & Zoning
Baltimore County Office Building
Towson 4, Maryland

Dear Mr. Adams:

The planning staff has been working with Mr. C. V. McFarland, attorney for Mr. Albert J. Fertitta, relative to a use permit closing 3 copies of the layout as approved by this office. It is my understanding that your approval of this permit is subject to an approved layout.

Very truly yours,

William E. Chamberlain
William E. Chamberlain
Principal Planner

cc: Mr. C. V. McFarland
1760 Eastern Boulevard
Baltimore 21, Maryland

April 19, 1960

Leonard A. Vadala, Esq.
Vadala & McFarland
1760 Eastern Boulevard
Baltimore 21, Maryland

Dear Mr. Vadala:

Your request for the permit for Off Street Parking on Lot #205, Middleborough for Mr. Albert J. Fertitta is hereby GRANTED.

This permit is subject to all requirements under Section 109.4 of the Zoning Regulations of Baltimore County.

Yours very truly,

Wilkie H. Adams
Zoning Commissioner
of Baltimore County

WU:bce

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING

COUNTY OFFICE BUILDING
111 WEST CHEESAPEAKE AVENUE
TOWSON 4, MARYLAND
TELEPHONE 6-8585

April 11, 1960

Wilkie H. Adams,
Zoning Commissioner of Baltimore County
Baltimore County Zoning Board
Towson 4, Maryland

Dear Mr. Adams:

Re: Application of Albert J. Fertitta
for off-street parking for Lot #205
Middleborough, 15th Election District,
Baltimore County, Md. - File No. 309-B

I am herewith requesting on behalf of my client, Albert J. Fertitta that you grant Mr. Fertitta an off-street parking permit for all that lot known and designated as Lot #205 and shown on the enclosed plat.

It is the intention of my client to slag the surface of the road so the same may be used in connection with his marina operation which is conducted on Lot #208. At peak hours, occasionally in the summer, his customers are forced to park along the roads. It is therefore for his own interests and that of his neighbors that Mr. Fertitta desires to use Lot #205 for off-street parking. Mr. Fertitta owns Lot #207 which lies between Lots #205 and #208 as shown on the enclosed Plat.

I hope this information will be sufficient for the purpose of your consideration and that you will see fit to grant the Application for off-street parking in this case.

Very truly yours,

Leonard A. Vadala
LEONARD A. VADALA

LAV:lm

Enclosure

ALBERT FERTITTA
SPECIAL HEARING - July 20, 1964

COUNTY OFFICE BUILDING
111 West Chesapeake Avenue
Towson 4, Maryland

PETITIONER'S EXHIBIT
NO. 13

Stipulated
COPY OF
LETTER
FROM ZONING COMMISSIONER
GRANTING OFF STREET
PARKING ON
LOT 205 FOR USE
IN CONNECTION WITH LOT 208

Leonard A. Vadala
1760 Eastern Boulevard
Baltimore 21, Maryland
MU-dock 6-8585

William E. Chamberlain
1760 Eastern Boulevard
Baltimore 21, Maryland
MU-dock 6-9493
Attorneys for Petitioner

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING

COUNTY OFFICE BUILDING
111 WEST CHEESAPEAKE AVENUE
TOWSON 4, MARYLAND
TELEPHONE 6-8585

April 19, 1960

Leonard A. Vadala, Esq.
Vadala & McFarland
1760 Eastern Boulevard
Baltimore 21, Maryland

Dear Mr. Vadala:

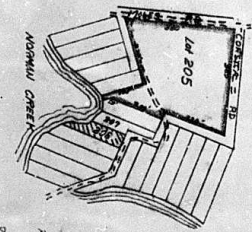
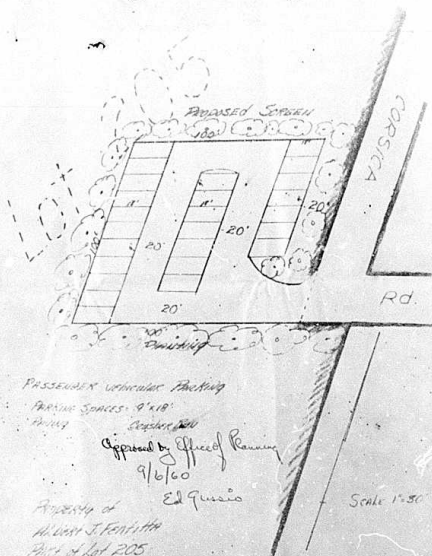
Your request for Use Permit for Off Street Parking on Lot #205, Middleborough for Mr. Albert J. Fertitta is hereby GRANTED.

This permit is subject to all requirements under Section 109.4 of the Zoning Regulations of Baltimore County.

Yours very truly,

Wilkie H. Adams
Wilkie H. Adams
Zoning Commissioner
of Baltimore County

WU:bce



Questions - Answers - Affidavit of Mrs. Herbert Tutte of
3104 Evergreen Avenue, Baltimore, Maryland.

1. What, if any, was your relationship to Joseph and Cora Reitemeyer?
Daughter of Joseph and Cora Reitemeyer
2. Did the said Joseph and Cora Reitemeyer own the property known as Lot 208, Middleborough, Middle River, Maryland?
Yes, this I know from my own knowledge
3. Are there in existence any books or records pertaining to the ownership or operation on their property known as Lot 208, Middleborough, Middle River, Maryland?
No
4. From your own personal knowledge, did Louis and Effie Meyer rent the property referred to from Joseph and Cora Reitemeyer prior to their purchase of the property on October 1, 1945?
Yes
5. If the answer to the above question is in the affirmative, to the best of your knowledge, how long did the said Louis and Effie Meyer rent Lot 208?
Approximately two years, to the best of my recollection

Grace Tutte
Affiant

STATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:

I HEREBY CERTIFY that on this 18th day of July, 1964,
before me, the subscriber, a Notary Public of the State of Maryland, in and for
the County aforesaid, personally appeared Mrs. Herbert Tutte, and she made
oath in due form of law that the foregoing Answers are true and correct to the
best of her knowledge, information, and belief.

AS WITNESS, my hand and Notarial Seal.

William E. Chamberlain
Notary Public

ALBERT FERTITTA
SPECIAL HEARING - July 20, 1964

COUNTY OFFICE BUILDING
111 West Chesapeake Avenue
Towson 4, Maryland

PETITIONER'S EXHIBIT
NO. 9

*COPY OF
TRADERS LICENSE
1948
FOR
PUBLIC DISPLAY*

Leonard A. Vadala
1760 Eastern Boulevard
Baltimore 21, Maryland
MURdock 6-8585

William E. Chamberlain
1760 Eastern Boulevard
Baltimore 21, Maryland
MURdock 6-9493

Attorneys for Petitioners

ALBERT FERTITTA
SPECIAL HEARING - July 20, 1964

County Office Building
111 West Chesapeake Avenue
Towson 4, Maryland

PETITIONER'S EXHIBIT
NO. 1

*1957 Deposit
Slips
on Lots 207 & 208
10-9-1957
10-14-1957
12-17-1957*

Leonard A. Vadala
1760 Eastern Boulevard
Baltimore 21, Maryland
MURdock 6-8585

William E. Chamberlain
1760 Eastern Boulevard
Baltimore 21, Maryland
MURdock 6-9493

Attorneys for Petitioner

ALBERT FERTITTA
SPECIAL HEARING - July 20, 1964

COUNTY OFFICE BUILDING
111 West Chesapeake Avenue
Towson 4, Maryland

PETITIONER'S EXHIBIT
NO.

*FRONT & BACK OF
PUBLIC NOTICE FOR
PERMIT TO CONSTRUCT WHARF
FOR NORMAN CREEK BOAT YARD
DATED MAY 1, 1947*

Leonard A. Vadala
1760 Eastern Boulevard
Baltimore 21, Maryland
MURdock 6-8585

William E. Chamberlain
1760 Eastern Boulevard
Baltimore 21, Maryland
MURdock 6-9493

Attorneys for Petitioner

ALBERT FERTITTA
SPECIAL HEARING - July 20, 1964

COUNTY OFFICE BUILDING
111 W. Chesapeake Avenue
Baltimore 4, Maryland

PETITIONER'S EXHIBIT NO. 11

*LETTER
FROM
UNITED STATES ARMY ENGR.*

*UNITED STATES ARMY ENGR.
VERIFYING PERMISSION FOR
CONSTRUCTION OF BULKHEAD
and RAMP. NORMAN CREEK
MARINA MAY 1, 1959*

Leonard A. Vadala
1760 Eastern Boulevard
Baltimore 21, Maryland
MURdock 6-8585

William E. Chamberlain
1760 Eastern Boulevard
Baltimore 21, Maryland
MURdock 6-9493

Attorneys for Petitioner

ALBERT FERTITTA
SPECIAL HEARING - July 20, 1964

COUNTY OFFICE BUILDING
111 West Chesapeake Avenue
Towson 4, Maryland

PETITIONER'S EXHIBIT
NO.

*DIST 15th
1964-8
COPY OF ASSESSMENT RECORD
SHOWING BUSINESS SCHEDULE
FILED 8-19-46
ASSESSED \$300.00*

Leonard A. Vadala
1760 Eastern Boulevard
Baltimore 21, Maryland
MURdock 6-8585

William E. Chamberlain
1760 Eastern Boulevard
Baltimore 21, Maryland
MURdock 6-9493

Attorneys for Petitioner

ALBERT FERTITTA
SPECIAL HEARING - July 20, 1964

COUNTY OFFICE BUILDING
111 West Chesapeake Avenue
Towson 4, Maryland

PETITIONER'S EXHIBIT
NO. 8

*COPY OF DEED DATED 12-2-53
FROM - ROBT. W. SHIPLEY & NE
TO - ALBERT J. FERTITTA
LOT No 205 K/A 2205 CHESAPEAKE RD*

Leonard A. Vadala
1760 Eastern Boulevard
Baltimore 21, Maryland
MURdock 6-8585

William E. Chamberlain
1760 Eastern Boulevard
Baltimore 21, Maryland
MURdock 6-9493

Attorney for Petitioner

ALBERT FERTITTA
SPECIAL HEARING - July 20, 1964

COUNTY OFFICE BUILDING
111 West Chesapeake Avenue
Baltimore 4, Maryland

Petitioner's Exhibit No. 7

Deed dated January 6, 1956 from George F. Strausser
and wife to Albert J. Fertitta

3299 F 507

Leonard A. Vadala
1760 Eastern Boulevard
Baltimore 21, Maryland
MURdock 6-8585

William E. Chamberlain
1760 Eastern Boulevard
Baltimore 21, Maryland
MURdock 6-9493

Attorneys for Petitioner

ALBERT FERTITTA
SPECIAL HEARING - July 20, 1964

COUNTY OFFICE BUILDING
111 West Chesapeake Avenue
Baltimore 4, Maryland

PETITIONER'S EXHIBIT

NO. 6

Deed dated January 15, 1951 from Walter R. Childs, et al
to George F. Strausser, et al

4925 F 394

Leonard A. Vadala
1760 Eastern Boulevard
Baltimore 21, Maryland
MURdock 6-8585

William E. Chamberlain
1760 Eastern Boulevard
Baltimore 21, Maryland
MURdock 6-9493

Attorneys for Petitioner

ALBERT FERTITTA
SPECIAL HEARING - July 20, 1964

COUNTY OFFICE BUILDING
111 West Chesapeake Avenue
Towson 4, Maryland

PETITIONER'S EXHIBIT

NO. 5

Deed dated January 6, 1947 from Louis A. Meyer & wf.
to George F. Strausser & wf.

533 F 289

Leonard A. Vadala
1760 Eastern Boulevard
Baltimore 21, Maryland
MURdock 6-8585

William E. Chamberlain
1760 Eastern Boulevard
Baltimore 21, Maryland
MURdock 6-9493

Attorneys for Petitioner

ALBERT FERTITTA
SPECIAL HEARING - July 20, 1964

COUNTY OFFICE BUILDING
111 West Chesapeake Avenue
Towson 4, Maryland

PETITIONER'S EXHIBIT

NO. 4

Deed dated October 1, 1945 from Joseph Reitemeyer
and wife to Louis A. Meyer and wife

467 F 41

Leonard A. Vadala
1760 Eastern Boulevard
Baltimore 21, Maryland
MURdock 6-8585

William E. Chamberlain
1760 Eastern Boulevard
Baltimore 21, Maryland
MURdock 6-9493

Attorneys for Petitioner

ALBERT FERTITTA
SPECIAL HEARING - July 20, 1964

COUNTY OFFICE BUILDING
111 West Chesapeake Avenue
Baltimore 4, Maryland

PETITIONER'S EXHIBIT

NO. 3

Deed dated May 15th, 1929 from Middleborough Land
Corp. to Joseph Reitemeyer & Wife

52' 625 F 423

Leonard A. Vadala
1760 Eastern Boulevard
Baltimore 21, Maryland
MURdock 6-8585

William E. Chamberlain
1760 Eastern Boulevard
Baltimore 21, Maryland
MURdock 6-9493

Attorneys for Petitioner

ALBERT FERTITTA
SPECIAL HEARING - July 20, 1964

COUNTY OFFICE BUILDING
111 W. Chesapeake Avenue
Towson 4, Maryland

PETITIONER'S EXHIBIT

NO. 2

Deed dated December 7th, 1928, from Middleborough Land Corp.
to Walter R. Childs, et al

2662 F 101

Leonard A. Vadala
1760 Eastern Boulevard
Baltimore 21, Maryland
MURdock 6-8585

William E. Chamberlain
1760 Eastern Boulevard
Baltimore 21, Maryland
MURdock 6-9493

Attorneys for Petitioner

ALBERT FERTITTA
SPECIAL HEARING - July 20, 1964

COUNTY OFFICE BUILDING
111 West Chesapeake Avenue
Baltimore 4, Maryland

PETITIONER'S EXHIBIT NO. 1

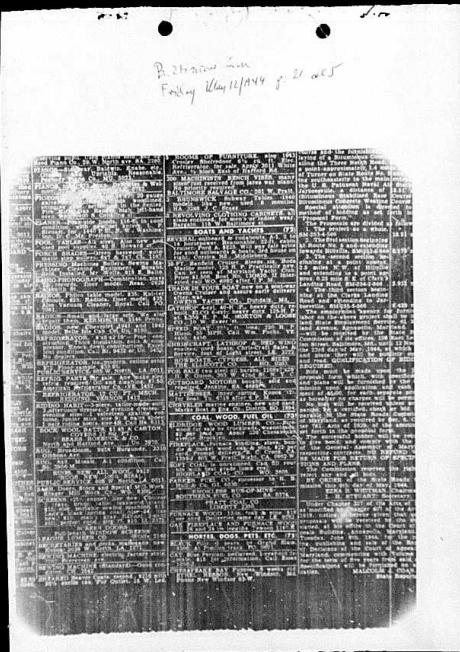
Ad appearing in Baltimore Sun Paper on Friday, May 12, 1944,
on Page 21, Column 5, under Classified Section Heading
"Boats and Yachts (72)", 1st ad shown under heading.

Photostat taken from Microfilm of newspaper ar-
ticle in the Maryland Room of the Enoch Pratt Free Li-
brary. Made under the auspices of the librarian at the
Reference Room of the Enoch Pratt Free Library from
above Microfilm.

Leonard A. Vadala
1760 Eastern Boulevard
Baltimore 21, Maryland
MURdock 6-9493

William E. Chamberlain
1760 Eastern Boulevard
Baltimore 21, Maryland
MURdock 6-9493

Attorneys for Petitioner



QUESTIONS, ANSWERS, AND AFFIDAVIT

RE: SPH 64-211 45-14

The following questions are propounded to Mr. John A. Fischer of 7945 Delrose Avenue, Baltimore, Maryland.

1. State your full name and present address.

John A. Fischer
7945 Delrose Ave. Balt. 6 Md.

2. State your present age.

53 yrs

3. What is your present occupation?

A Clerk For Baltimore Steel & Iron Co.

4. Where were you residing during years 1943 to 1945?

AT BULLFINCH MD. SAME ADDRESS AS ABOVE

5. Did you do business with "Norman Creek Boat Yard"?

YES

5a. If so, when, and state the nature of your dealings.

In 1944 I purchased a 10 ft skiff on a
Clear Bow Runabout which I kept moored there.

6. Did you know who was the owner and operator of "Norman Creek Boat Yard" at that time?

Mr. & Mrs. Myers and his wife

7. Was this business property known as Lot No. 208 Corsica Road?

YES also known as Norman Creek Boat Yard

8. Did you rent boats for hire?

I think so. Boats came in and out and back.

8a. Were Boat slips available for rent to the public?

Yes, I paid rent for mooring or dockage.

9. Was this property held out to the public as a marina-boat yard?

Yes, it was generally known as such, there was a sign on the dock with an arrow.

10. Did you buy any boats from this business?

Yes, I bought a boat from an add in the Sunday paper in 1944 by Mr. Myers!

11. Were any boats moored on the slip rental basis?

There was five or six (Several more on land)

12. Did this Business known as "Norman Creek Marina/Boat Yard" Store boats for the winter?

Yes

13. Did this business known as Norman Creek Boat Yard/Marina Repair Boats?

Some boats being repaired I am not sure by whom.

14. Did "Norman Creek Boat Yard/Marina" permit boats to be repaired either at the pier, dock, or on the premises?

Yes, in both places but I am not sure by whom!

15. Did "Norman Creek Boat Yard/Marina" operate a railway for the hauling of boats?

Yes - they had a hand car for hauling!

16. Did "Norman Creek Boat Yard/Marina" sell gas, oil, ice, soda, bait, etc?

Mr. Myers sold very little if anything and Ben was not with until 1946 or 1947

John A. Fischer

ak

17. If you have any record, or know of your own personal knowledge, furnish the names, addresses, and last known places of employment of the names of slip renters during 1943 to 1945 while or at the time you were doing business with Norman Creek Boat Yard.

I don't know anyone by name

Yes as far as I know

18. Did the owner, Mr. and Mrs. Louis Myers, conduct these operations known as "Norman Creek Boat Yard" continuously during the term of their ownership of this property and business?

Yes as far as I know

19. When did Mr. and Mrs. Louis Myers buy this property and to whom?

Yes as far as I know in the year 1944

20. When did Mr. and Mrs. Louis Myers sell this property and to whom?

I don't know. They sold it about 1945 to Mr. J. Strauser

20a. Was this sold as a going business?

Yes my. Strauser said he purchased it from Mr. & Mrs. Myers as a going business.

John A. Fischer

AFFIDAVIT

STATE OF Maryland
COUNTY OF Baltimore

to wit:

I HEREBY CERTIFY that on this 13th day of August, 1944, before me, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared John A. Fischer, and he made oath in due form of law that the above answers are true and correct to the best of his knowledge, information and belief.

AS WITNESS my hand and Notary Seal.

James A. Hinkle
Notary Public

QUESTIONS, ANSWERS AND AFFIDAVIT

RE: SPH 64-211 45-24

The following questions are propounded to George Strauser, 1341 Southeast 4th Street, Deerfield Beach, Florida.

1. Did you ever own a water-front premises located on Corsica Road, known as Lots 207 - 208? If so, when?

Yes

2. From whom did you purchase these premises?
Louis & Effie Myers

3. Did you reside at these premises?

Yes, I operated a boat marina which includes painting and repair of boats, renting of slips, restoring boats for winter, sold gas and oil and took out fishing parties.

4. Did you operate a business at this location?

Yes

4a. Did the prior owner operate a business at this location?

Yes

5. Was this business a boat yard and marina?

Yes

5a. Did the prior owner operate a boat yard and marina?

Yes

6. Did you rent boats for hire?

Yes

6a. Did the prior owner rent boats for hire?

Yes

7. Did you operate commercially (charter parties for hire)?

Yes

8. Did you have slips available for rent or lease?

Yes

8a. Did the prior owner have slips available for rent or lease?

Yes

9. Did you store boats for winter?

Yes

9a. Did the prior owner store boats for winter?

Yes

10. Did you repair boats?

Yes

10a. Did the prior owner repair boats?

Yes

11. Did you permit boats to be repaired either at the pier or dock or on the premises.

Yes

12. Did you operate a railway for the hauling of boats?

No

13. Did you sell gas, oil, bait, ice, soda, etc.?

Yes

14. If you have any record or know of your own personal knowledge furnish the names, addresses and last known place of employment of the names of slip renters during your operation of this business.

Leo Feldman, Venetian Isles, Florida
Jake Billett, King Street, York, Pennsylvania
Elmer Thomas, Baltimore City Police Department, Baltimore, Maryland
John Fisher, Rustless Iron & Steel, Baltimore, Maryland

15. Did you conduct these operations continuously during the term of your ownership of this property and business?

Yes

15a. Did the prior owner conduct these operations continuously during the term of his ownership of this property and business?

Yes

16. When did you sell this property and business and to whom?

January 6, 1958

16a. Was this sold as a going business?

Yes

17. Were your neighbors friendly?

No

17a. If the answer to this question is in the negative, state why, if you know. It was jealousy on the part of one neighbor. I don't know the reason for the other.

18. Name your chief adversary among your neighbors.

Mr. & Mrs. Brown

19. Did you personally apply for zoning for the subject premises?

Yes

20. State your purpose in making the application for the zoning.

We bought a going business and I found out it was zoned commercially on a temporary basis. We applied for a permanent permit and got one at Town.

George H. Strauser

STATE OF Maryland COUNTY OF Worcester TO WIT:

I HEREBY CERTIFY that on this 31st day of July, 1964,

before me, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared George Strauser, and he made oath in due form of law that the above answers are true and correct to the best of his knowledge, information and belief.

AS WITNESS, my hand and Notarial Seal.

Raymond D. Dumas, Jr.
Notary Public

QUESTIONS, ANSWERS, AND AFFIDAVIT

RE: SPH 64-211 45-26

Q1. STATE YOUR FULL NAME AND PRESENT ADDRESS.

A: MERRITT LEWIS BRUFFE

Q12. STATE YOUR PRESENT AGE.

A: 60

Q13. WHAT IS YOUR PRESENT OCCUPATION?

A: BAR MANAGER

Q14. WHERE WERE YOU RESIDING DURING YEARS 1943 TO 1945?

A: MIDDLEBOROUGH

Q15. DID YOU DO BUSINESS WITH "NORMAN CREEK BOAT YARD"?

A: YES

Q15(a). IF SO, WHEN, AND STATE THE NATURE OF YOUR DEALINGS?

A: PURCHASED A 12' RUNABOUT IN 1944

Q16. DO YOU KNOW WHO WAS THE OWNER AND OPERATOR OF "NORMAN CREEK BOAT YARD" AT THAT TIME?

A: MYERS

Q17. WAS THIS BUSINESS PROPERTY KNOWN AS LOT NO. 208 CORSICA ROAD?

A: YES

Q18. DID YOU RENT BOATS FOR HIRE?

A: NO

Q18(a). WERE BOAT SLIPS AVAILABLE FOR RENT TO THE PUBLIC?

A: I DON'T KNOW BUT BOATS WERE THERE

Merritt L. Bruffe

QUESTIONS, ANSWERS AND AFFIDAVIT, RE: SPH 64-211 continued, page 2:

Q: 9. WAS THIS PROPERTY HELD OUT TO THE PUBLIC AS A MARINA-BOAT YARD?
A: I DON'T KNOW

Q: 10. DID YOU BUY ANY BOATS FROM THIS BUSINESS?
A: YES

Q: 11. WERE ANY BOATS MOORED ON A SLIP-RENTAL BASIS?
A: YES. BOATS WERE THERE BUT I DON'T KNOW IF THEY WERE ON A RENTAL BASIS.

Q: 12. DID THIS BUSINESS BECOME AS "NORMAN CREEK MARINA/BOAT YARD" STORE BOATS FOR THE WINTER?
A: I DON'T KNOW

Q: 13. DID THIS BUSINESS BECOME AS "NORMAN CREEK BOAT YARD/MARINA REPAIR BOATS"?
A: I DON'T KNOW

Q: 14. DID "NORMAN CREEK BOAT YARD/MARINA" permit boats to be repaired either at the pier, dock, or on the premises?
A: I DON'T KNOW

Q: 15. DID "NORMAN CREEK BOAT YARD/MARINA" operate a RAILWAY FOR THE HAULING OF BOATS?
A: I DON'T KNOW

Q: 16. DID "NORMAN CREEK BOAT YARD/MARINA" sell gas, oil, ICE, SODA, BAIT, etc.?
A: YES - GAS

Q: 17. IF YOU HAVE ANY RECORD, OR KNOW OF YOUR OWN PERSONAL KNOWLEDGE, FURNISH THE NAMES, ADDRESSES, AND LAST KNOWN PLACES OF EMPLOYMENT OF THE NAMES OF SLIP-RENTERS DURING 1943 TO 1945 WHILE ON AT THE TIME YOU WERE DOING BUSINESS WITH NORMAN CREEK BOAT YARD?
A: No

Merrett P. Buffa

Q, A, & Affidavit, re: SPH 64-211, CONTINUED, PAGE 3:

Q: 18. DID THE OWNER, MR. & MRS. LOUIS MYERS, CONDUCT THESE OPERATIONS KNOWN AS "NORMAN CREEK BOAT YARD" CONTINUOUSLY DURING THE TERM OF THEIR OWNERSHIP OF THIS PROPERTY AND BUSINESS?
A: I DON'T KNOW

Q: 19. WHEN DID MR. & MRS. LOUIS MYERS BUY THIS PROPERTY?
A: I DON'T KNOW

Q: 20. WHEN DID MR. & MRS. LOUIS MYERS SELL THIS PROPERTY, AND TO WHOM?
A: 1945 TO STRAUSSER

Q: 20 (a) WAS THIS SOLD AS A GOING BUSINESS?
A: I DON'T KNOW Merrett P. Buffa

AFFIDAVIT

STATE OF MARYLAND
COUNTY OF Worcester

to wit:
I HEREBY CERTIFY, that on this 11 day of AUGUST, 1964, before me, a NOTARY PUBLIC OF THE STATE OF MARYLAND, IN AND FOR THE COUNTY AFORESAID, PERSONALLY APPEARED MERRITT LEWIS BREEFFLE, and he MADE OATH IN DUE FORM OF LAW THAT THE ABOVE ANSWERS ARE TRUE AND CORRECT TO THE BEST OF HIS KNOWLEDGE, INFORMATION AND BELIEF.

AS WITNESSE MY HAND AND NOTARIAL SEAL.

William E. Chamberlain
NOTARY PUBLIC
MY COMMISSION EXPIRES MAY 2, 1965

ALBERT FERTITTA

SPECIAL HEARING - July 20, 1964



COUNTY OFFICE BUILDING
111 West Chesapeake Avenue
Towson 4, Maryland

PETITIONER'S EXHIBIT NO.

Ad appearing in Baltimore Sun Paper on Saturday, May 13, 1944,

on Page 17, Column 5, under Classified Section Heading

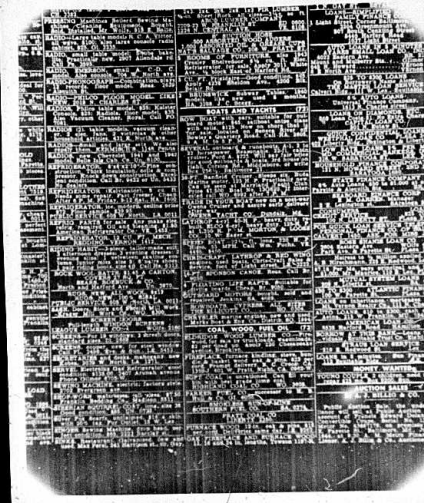
"Boats and Yachts (72)", 2nd ad shown under heading.

Photostat taken from Microfilm of newspaper article in the Maryland Room of the Enoch Pratt Free Library. Made under the auspices of the librarian at the Reference Room of the Enoch Pratt Free Library from above Microfilm.

Leonard A. Vadaia
1760 Eastern Boulevard
Baltimore 21, Maryland
MU-dock 6-8585

William E. Chamberlain
1760 Eastern Boulevard
Baltimore 21k, Maryland
MU-dock 6-9493

Attorneys for Petitioner



ALBERT FERTITTA

SPECIAL HEARING - July 20, 1964

COUNTY OFFICE BUILDING
111 West Chesapeake Avenue
Towson 4, Maryland

PETITIONER'S EXHIBIT NO.

Ad appearing in Baltimore Sun Paper on Sunday, May 14, 1944

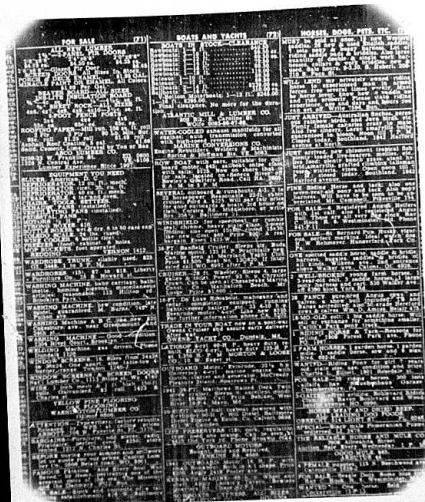
on Page 22 Section A, Column 5, under Classified Section Heading "Boats and Yachts (72)" 4th ad shown in column.

Photostat taken from Microfilm of newspaper article in the Maryland Room of the Enoch Pratt Free Library. Made under the auspices of the librarian at the Reference Room of the Enoch Pratt Free Library from above Microfilm.

Leonard A. Vadaia
1760 Eastern Boulevard
Baltimore 21, Maryland
MU-dock 6-8585

William E. Chamberlain
1760 Eastern Boulevard
Baltimore 21, Maryland
MU-dock 6-9493

Attorneys for Petitioner



LAW OFFICES
William E. Chamberlain

1760 EASTERN BLVD.
ESSEX 27, BALTIMORE

REV. NO. 2-1008
OFFICE NO. 6-9493

August 21, 1964

Baltimore County Office of Planning and Zoning
Baltimore County Office Building
Towson 4, Maryland

Attention: Mr. Hardesty

Re In the matter of the Petition of
Albert J. Fertitta
Special Hearing - July 20, 1964

Dear Mr. Hardesty:

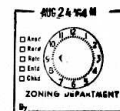
Pursuant to the request contained in our earlier communication, our investigation has been continuing and a witness has been found who distinctly recalls the conduct of a business on the premises known as Lot 208 Corsica Road, during the years 1913 and 1914 at which time he was on the premises and doing business with the then owners of the property.

Accordingly therefore, I enclose, herewith, Questions, Answers and Affidavit of Mr. William E. Huppert of Baltimore County, Maryland which is self-explanatory.

Very truly yours,

William E. Chamberlain
Attorney at Law

WEC:js
encl.



QUESTIONS, ANSWERS AND AFFIDAVIT

RE: SPH 64 - 211

The following questions are propounded to Mr. William E. Huppert, of Baltimore County, Maryland.

1. State your full name and present address.

William E. Huppert
7706 Waplesburg Rd

2. State your present age.

63 yrs.

3. What is your present occupation?

Self-employed - painter

4. Where were you residing during years 1913 to 1914?

Waplesburg Rd - Baltimore
Also 235 Antietam Rd - 21 -

5. Did you do business with Norman Creek Boatyard/Marina?

Yes - purchased boat from them in 1913 & 1914

5a. If so, when, and state the nature of your dealings.

I purchased boat from them
Waplesburg Rd - Baltimore
premises several times in 1913 & 1914

9. Did you know who was the owner and operator of Norman Creek Boat Yard/Marina at that time?

No -

10. Was this business property known as Lot 208 Corsica Rd.?

Yes

11/ Did the owners of this property rent boats for hire?

*They were 2 slip advertising boats for hire in 1964
the slip advertised 200 boats at boat yard*

12. Were boat slips available for rent to the public?

I don't know

13. Was this property held out to the public as a boatyard?

*I don't know. I know there were 20 boats on the slips
and the public was told that there were 200*

14. Did you buy any boats from this business?

No

15. Were any boats moored on a slip-rental basis?

I don't know

16. Did this business known as Norman Creek Marina/Boat Yard store boats for the winter?

I don't know

17. Did this business known as Norman Creek Boat Yard/Marina repair boats?

I don't know

18. Did Norman Creek Boat Yard/Marina operate a railway for the hauling of boats?

I don't know

19. Did Norman Creek Boat Yard/Marina permit boats to be repaired either at the pier, dock or on the premises?

I don't know

20. Did Norman Creek Boat Yard/Marina sell gas, oil, ice, soda, bait, etc.?

*I don't know. I know it was once sold - I was
not interested in other problems - I don't
know.*

21. If you have any record, or know of your own personal knowledge, furnish the names, addresses, and last known places of employment, of slip-renters during 1943 to 1945, while or at the time you were doing business with Norman Creek Boat Yard/Marina?

No

22. Did the owner, Mr. Louis A. Meyer, conduct these operations known as Norman Creek Boat Yard/Marina, continuously during the term of his ownership of this property and business, to the best of your knowledge?

I don't know

23. When did Mr. and Mrs. Louis Meyer buy this property?

I don't know

24. When did Mr. and Mrs. Louis Meyer sell this property, and to whom?

I don't know

24a. Was this sold as a going business?

I don't know

STATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:
I hereby certify that on this 20th day of August, 1964, before me, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared William E. Huppert, and he made oath in due form of law that the above answers are true and correct to the best of his knowledge, information and belief.

As Witness, my hand and Notarial Seal,

William E. Huppert

Notary Public

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. Edward Deal Hardesty Date: August 31, 1964
FROM: Office of Law
SUBJECT: Albert Fertitta - Corvica Road

You have asked for our opinion as to the merit of each of three objectives raised at a hearing held under Section 500.7, Baltimore County Zoning Regulations, to determine the existence of a purported non-conforming use.

The questions presented are as follows:

(a) That the Zoning Commissioner and/or Deputy Zoning Commissioner lacked the authority to grant a re-hearing on issues already decided as evidenced in the attached Orders.

(b) The issues and the hearing of July 20, 1964 are res adjudicata.

(c) That if in fact there were legitimate non-conforming uses on the aforementioned lots, the zoning reclassification from Residential "A" to Commercial "B" and the Special Exception for a Marine Gasoline Station granted on June 18, 1964 had the effect of terminating and abolishing any existing legitimate non-conforming uses.

(a) In answer to your first question, we quote from Maryland Law Encyclopedia, Administration Law and Procedure, Chapter 2, Section 29, "An administrative agency may rehear and reconsider a use pursuant to statutory authority, and it has frequently been held that administrative agencies have inherent or implied power to reopen and rehear a cause and to reconsider their action or determination."

Also, Del. Case v. County Commissioners, 191 Md. 229, 34 A2d 464, in which the Court said: "The legislature can amend, qualify, or repeal any of its laws affecting all persons and property which have not acquired vested rights; all of the courts agree on this. It has been frequently held that this rule applies also to boards and agencies to which legislative power has been delegated and that they may undo, consider and reconsider their actions upon matters before them."

Accordingly, the Zoning Commissioner and/or Deputy Zoning Commissioner having been delegated their powers by the Baltimore County Council have the inherent authority to grant a rehearing.

Mr. Edward Deal Hardesty

-2-

August 31, 1964

(c) Recognizing that the Zoning Commissioner and/or Deputy Zoning Commissioner are administrative agents, it is our opinion that the doctrine of res adjudicata is not applicable to their decisions. The doctrine of res adjudicata is applicable only as to decisions of courts of competent jurisdiction. For authority see Knox v. City of Baltimore, 180 Md. 88, 23 A2d 15, in which the Court said: "The Board of Appeals is not a court of competent jurisdiction hence its decisions are not res adjudicata."

(c) Your third question presents a problem of mixed law and fact which we shall attempt to answer as to the law, but must allow the factual determination to rest with you. The guide lines for determining whether or not there has been an abandonment are most succinctly stated in Landry v. Board of Zoning Appeals, 171 Md. 460, 196 A 291, 14 A2d 984, in which the Court said: "Abandonment (of a non-conforming use) in law depends upon the concurrence of two, and only two, factors: one, an intention to abandon or relinquish; and two, some overt act, or some failure to act, which carries the implication that the owner neither claims nor retains any interest in the subject matter of the abandonment." Clearly, both factors must be present and although the information you have supplied us would indicate an intention to abandon or relinquish, there still remains for factual determination by you, whether by overt act, or some failure to act, express or implied, the owner neither claimed nor retained any interest in the subject matter of the abandonment.

William J. Blondell, Jr.
Assistant County Solicitor

Approved:

E. Scott Moore
County Solicitor

ESM:WJB/jrjm

cc Philip F. Bennett
Harris James George

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING

COUNTY OFFICE BUILDING
111 W. CHESAPEAKE AVE.
BALTIMORE, MD. 21201
14-3000

GEORGE E. CLAVELIN
SOLICITOR
COUNTY OFFICE BUILDING
BALTIMORE, MD.

November 5, 1964

Mr. William F. Crampton,
350 Miles Road
Baltimore 21, Md.

Dear Mr. Crampton:

I received your letter of November 2, 1964 concerning 208 Corvica Road.

Since this matter is now pending before Mr. Edward D. Hardesty, Deputy Zoning Commissioner, we cannot consider it as settled. I suggest that you attend the hearing scheduled November 9, 1964.

It is true that we do not care for prolonged litigation in these matters but such litigation is often unavoidable.

Very truly yours,

George E. Clavelin
Zoning Commissioner

cc: Mr. Edward D. Hardesty,
Deputy Zoning Commissioner,
119 County Office Building
Towson 4, Maryland

Very sincerely,

William F. Crampton

Copies to: Spiro T. Amey; William A. Fornoff; E. Scott Moore;
Edw. D. Hardesty; Samuel Green, Jr.; Walter J.
Jensen; John L. Wozniak; Frank A. Russell III and
William Bolton.

WFO: ab

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: E. Scott Moore, Esquire
FROM: Office of Law
TO: Edward D. Hardesty
FROM: Deputy Zoning Commissioner
SUBJECT: Albert Fertitta - Corvica Road

Reference is made to the last paragraph of my memo dated July 20, 1964, to you in connection with the above captioned subject.

I am enclosing Mr. Chamberlain's letter of July 29, 1964, the contents of which are self-explanatory. I do not disregard my request for an opinion concerning the qualifications of the Protestants' attorney in practicing before the Zoning Commissioner.

Edward D. Hardesty
Deputy Zoning Commissioner

1jh
Attachment

TO: E. Scott Moore, Esquire
FROM: Office of Law
SUBJECT: Albert Fertitta - Corvica Road

Lots 207 and 208 Corvica Road, 15th Election District, being the property of Albert Fertitta, have been the subject of various zoning hearings to determine whether a zoning violation in the nature of storing, leasing and repairing of boats exists. I enclose copies of Mr. Rome's Orders dated August 20, 1962 and July 21, 1963 wherein he has decided that subject violations do exist.

Mr. Fertitta recently filed a petition for a Special Hearing under Section 500.7 of the Baltimore County Zoning Regulations for the purpose of determining the existence of a non-conforming use upon and about the premises known as Lots 207 and 208 Corvica Road.

At the hearing held on July 20, 1964, in connection with the petition for a Special Hearing, counsel for the protestants moved for the dismissal of the petition on three grounds.

(a) That the Zoning Commissioner and/or Deputy Zoning Commissioner lacked the authority to grant a rehearing on issues already decided as evidenced in the attached Orders.

(b) The issues and the hearing of July 20, 1964 are res adjudicata.

(c) That if in fact there were legitimate non-conforming uses on the aforementioned lots, the zoning reclassification from Residential "A" to Commercial "B" and the Special Exception for a Marine Gasoline Station granted on June 18, 1964 had the effect of terminating and abolishing any existing legitimate non-conforming uses.

I would appreciate a legal opinion from your office as to the merit of each objection as set forth above.

Furthermore, counsel for the Petitioner moved that the Deputy Zoning Commissioner disqualify the Protestants' attorney from participating in zoning cases on the theory that the Protestants' attorney is in a general partnership with an employee of Baltimore County. The Petitioner's attorney was relying on Chapter 10, Section 1001, Sub-section (e) of the Baltimore County Charter as authority for his motion. I took the position that this motion was improperly before me, and I felt the tribunal to hear such a motion was the Baltimore County Bar Association. Is my position correct? If not, what advice can you give me in deciding the Petitioner's motion.

EDWARD D. HARDESTY
Deputy Zoning Commissioner

September 22, 1964

William H. Chamberlain, Esquire
1760 Eastern Blvd.
Towson 24, Maryland

Re: Petition for Special Hearing
Albert J. Ferlitta-Petitioner
vs. City of Baltimore

Dear Mr. Chamberlain:

Since the Special Hearing on July 20, 1964, I am in receipt of various affidavits filed by you in connection with the above case.

In view of the public attention focused on the outcome of this alleged zoning violation and in view of the fact that the petitioners are entitled to a cross examination of the various affidavits, I have decided to hold another public hearing on this matter. The cost of such hearing including advertising, posting, etc., is to be born by the petitioner, Albert J. Ferlitta.

By copy of this letter, I am advising a date for the hearing, keeping in mind that I sit Mondays and Thursdays. Kindly let me hear from you.

Yours truly,

ERNEST C. TRIMBLE
Deputy Zoning Commissioner

5b

cc: Ernest C. Trimble, Esquire
Jefferson Building
Towson 4, Maryland

ERNEST C. TRIMBLE
A. BRUCE ALDERMAN

TRIMBLE & ALDERMAN
ATTORNEYS AT LAW
JEFFERSON BUILDING
COURT HOUSE SQUARE
TOWSON, MARYLAND 21204

January 18, 1965

Edward D. Hardesty,
Deputy Zoning Commissioner
County Office Building
Towson, Maryland 21204

Dear Mr. Hardesty:

Re: Petition for Special Hearing for the purpose of determining the existence of a non-conforming use - S/S Corica Road to the Waters of Norman Creek
Albert J. Ferlitta - Petitioner
No. 64-211-SPH

On behalf of Mr. and Mrs. Lambert A. Brown, et al., please enter an appeal from your decision in the above entitled matter to the Board of Appeals of Baltimore County and forward all papers in connection therewith.

Very truly yours,

Ernest C. Trimble
Attorney for Protestants/Appellants

ECT/dmc



LAMBERT A. BROWN,
BRUCE BROWN,
WILLIAM C. GRANTON and
J. E. GERHARDT

vs.
WILLIAM S. BALDWIN,
JOHN A. SLOVICK and
PAUL T. MURPHY, JR.,
countersuing the
COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW
Case No. 7
File No. 540
File No. 3324

CERTIFICATE OF NOTICE

Mr. Clerk:

Pursuant to the provisions of Rule 1101-6 (4) of the Maryland Rules of Procedure William S. Baldwin, John A. Slovic and Paul T. Murphy, Jr., constituting the County Board of Appeals of Baltimore County, has given notice by mail of the filing of the Appeal to the representative of every party to the proceeding before its meeting, Leonard A. Vellela, Esq., 1760 Eastern Boulevard, Baltimore, Maryland 21221 and William E. Chamberlain, Esq., 1760 Eastern Boulevard, Baltimore, Maryland 21221, Attorneys for the Petitioner, and Ernest C. Trimble, Esq., Jefferson Building, Towson, Maryland 21204, Attorney for the Protestants, a copy of which notice is attached hereto and prayed that it may be made a part thereof.

(d) Edith T. Elsenhart

Edith T. Elsenhart, Secretary
County Board of Appeals of Baltimore County
County Office Building, Towson, Md. 21204
VAlley 3-3000, Ext. 270

I hereby certify that a copy of the foregoing Certificate of Notice has been mailed to Leonard A. Vellela, Esq., 1760 Eastern Boulevard, Baltimore, Maryland 21221 and William E. Chamberlain, Esq., 1760 Eastern Boulevard, Baltimore, Maryland 21221, Attorneys for the Petitioner, and Ernest C. Trimble, Esq., Jefferson Building, Towson, Maryland, 21204, Attorney for the Protestants, on this 23rd day of August, 1965.

(d) Edith T. Elsenhart

Edith T. Elsenhart, Secretary
County Board of Appeals of Baltimore County

LEGAL MEMORANDUM FOR PROTESTANTS
IN THE MATTER OF ALBERT J. FERLITTA
LOT 208, CORICA ROAD

FACTS:

The facts presented at the hearing and pertinent to this memorandum are as follows:

(a) January 2, 1945 - Original Zoning Regulations and classification of Lot 208 as "A" residential

(b) 1944-1945 - No evidence of commercial use i.e., sale of soft drinks, bait, marine supplies, gas and oil, etc. and no storage facilities for those items

(c) March 20, 1946 - Petition No. 585 - Temporary permit for two (2) years for renting and selling of row boats granted

(d) July 10, 1947 - Petition No. 959-R-S, reclassification from "A" residential to "E" Commercial and a special permit to use property for a marine gasoline station

(e) August 28, 1962 - Case No. 535-ZV - Zoning Commissioner ordered no special exception for marine boatyard, etc. exists; no appeal to Board of Appeals filed.

(f) July 21, 1963 - as a result of another hearing in Case No. 635-ZV based on the allegation by property owner that a nonconforming use existed, the Zoning Commissioner passed an Order denying the existence of a nonconforming use and again holding that the property could not be used for a boatyard or marina.

(g) January 9, 1964 - Board of Appeals held that it could not overturn a decision of the Zoning Commissioner on the same issues once the time of appeal has lapsed from the Zoning Commissioner's Order. Order of Zoning Commissioner dated July 21, 1963 affirmed.

(h) February 10, 1964 - Appeal to Circuit Court filed by Ferlitta

(i) April 3, 1964 - Motion to dismiss appeal filed by Protestants

-1-

- (j) April 23, 1964 - Judge Meschino granted Motion to Dismiss
(k) June 24, 1964 - Ferlitta filed Petition for Special Hearing under Section 500.7 of the Zoning Regulations

(l) January 15, 1965 - Deputy Zoning Commissioner ordered that Lot 208 may be used for rental of boat slips

ARGUMENT:

I - The Deputy Zoning Commissioner had no authority to conduct another hearing in regard to the use of Lot 208, allegedly pursuant to Section 500.7 of the Zoning Regulations.

A careful reading of Section 500.7 discloses that "the Zoning Commissioner shall have the power to conduct such other hearings . . . necessary for the proper enforcement of all zoning regulations, subject to the right of appeal . . . The power given hereunder SHALL INCLUDE the right . . . to determine the existence of any purported nonconforming use on any premises or to determine any rights whatsoever . . ." (emphasis supplied) Once the Zoning Commissioner conducts a hearing necessary for enforcement of the Zoning Regulations, the only further remedy is APPEAL, NOT ADDITIONAL HEARINGS. The right to a hearing concerning a nonconforming use is INCLUDED in the inherent power of the Zoning Commissioner just mentioned, not in addition thereto. Therefore, once the question of a nonconforming use has been presented to and decided by the Zoning Commissioner, no matter what the nature of the hearing or how the question is presented, the only further recourse is appeal. Nothing in the language of Section 500.7 indicates that the second sentence, and particularly the specific reference to a nonconforming use, is in addition to any other enumerated powers of the Zoning Commissioner. However, it matters not which avenue is used to present the question at a hearing, once the question is determined, appeal is the next step. Last but not least, it should be noted that in Sections 500.5, 500.6 and at the end of the first sentence in 500.7, the right of appeal is specifically

provided. There is no mention of appeal at the end of Section 500.7, which is further proof that the second sentence is merely an example of the kinds of hearings the Zoning Commissioner may conduct and not a separate and exclusive remedy from which appeal lies.

In consideration of the fact that a hearing was held by the Zoning Commissioner (at which time the defense of a nonconforming use could have been asserted) and an Order passed in 1962 that the property could not be used for the renting of slips (and no appeal was taken); that another hearing was erroneously conducted by the Zoning Commissioner, for the specific purpose of raising the defense of a nonconforming use, and another Order was passed in 1963 ruling that the owner did not have the right to let customers or friends rent or use slips; and that the right of appeal from the Zoning Commissioner's Order was exercised by the owner through the Circuit Court, the property owner is not entitled to still another hearing under the Zoning Regulations, and this Board should reverse the Order of the Deputy Zoning Commissioner leaving the previous Orders of the Zoning Commissioner to stand. For this Board to hold otherwise, would be to ignore the specific provisions of the Zoning Regulations, providing for the remedy of appeal. The owner having requested to appeal is not entitled to repeated hearings before the Zoning Commissioner as the previous Board stated. In the earlier appeal: "To decide otherwise would leave the door open for any zoning violator to continuously operate once found in violation by merely alleging newly found evidence or other factors pertinent to the main issues in any case."

II - Any nonconforming use existing on January 2, 1945, was terminated upon the request for and granting of a reclassification (conforming use) on Lot 208, in accordance with the Zoning Regulations.

The original Zoning Regulations for Baltimore County came into existence on January 2, 1945. The Zoning Regulations upon the enactment of the original zoning laws, provided for "E" Commercial zoning. The regulations further provided "except as expressly provided in subsequent sections, any

building or structure or land may be used and any building or structure may be hereafter erected, altered, repaired or used for any use or uses except the following." No. 10 following the foregoing language stated "all other uses for which a special permit is required as hereinafter provided." Section XIII A, entitled "Powers Relative to Special Exceptions and Special Permits" provided at No. 10 "Boatyard and/or marine railway for sale, repair and storage of water craft, not exceeding 80 feet in length on tidal waters."

Also, the aforesaid Zoning Regulations adopted on January 2, 1945, in Section XI provided that a lawful nonconforming use existing on the effective date of their adoption, "may continue", provided, however, "upon any change from such nonconforming use to a conforming use, or any attempt to change from such nonconforming use to a different nonconforming use . . . the right to continue to resume such nonconforming use shall terminate . . ."

On July 10, 1947, the Zoning Commissioner in an application filed by the then owner of Lot 208, George F. Straussner, et al., No. 959, granted a reclassification from "A" to "E", with a special exception for the use of the property for a marine gasoline station. The Protestants contend that since the regulations specifically stated that a nonconforming use would terminate upon "any change from a nonconforming use to a conforming use, or any attempt to change from such nonconforming use to a different nonconforming use . . . the right to continue to resume such nonconforming use shall terminate . . ."

Your Protestants maintain that when the owner of Lot 208 chose to seek reclassification and special exception for a "marine gasoline station", he was limited to either the specific use provided under his special exception or any other "permitted use" allowed in "E" commercial zoned area. Inasmuch as the Zoning Regulations, in Section XIII, recited above, permitted a special exception for a boatyard and the sale, repair and storage of boats, had this been the special exception intended it would have been requested; that the

present use of Lot 208 is limited to commercial uses and to the special exception granted, i.e., a marine gasoline station.

III - Upon the change from one nonconforming use to a different nonconforming use, any nonconforming use is terminated.

In the present case, through the years there have been changes from one nonconforming use to other nonconforming uses, i.e., from rental of row boats, to sale of row boats, to rental of slips for row boats, to taking out fishing parties, to the uses made of the property by the present property owner of rental of slips, storage and repair of boats, constructing a ramp to put boats in and take them out of water, sale of marine supplies and other sundry items. All of these uses, which have been added since 1945, could not have been done under the guise of a nonconforming use. One cannot expand a nonconforming use by including other uses. These things have been done in the present case and any nonconforming use has been terminated.

IV - In addition to the Zoning Regulations themselves, any nonconforming use on the subject property has terminated both logically and legally.

As stated in *Boyer vs. Mayor and City Council of Baltimore City*, 34 A 2nd, 765 at Page 766, "the view that has been followed is that a few nonconforming buildings and uses as allowed to continue will not be a substantial injury to a community if only such nonconforming buildings are not allowed to multiply where they are harmful or improper. Zoning has sought to safeguard the future, in the expectation that time will repair the mistakes of the past." It is apparent that a nonconforming use is not as valuable to a property owner as the same use under proper zoning classification. This is true because there are definite limitations on expansion of the use; the use can be wiped out completely by an act of God or a fire.

In fact, in the present case the owner filed eleven (11) Building Permit Applications, dating back to 1947, as exhibits, and stated that there were many more. These permits requested, among other things, a permit to build

CERTIFICATE OF POSTING

ZONING DEPARTMENT OF BALTIMORE COUNTY

Towson, Maryland

District: 15 Date of Posting: 7/2/64
 Posted for: Edward A. Vadala, Esq.
 Petitioner: Albert J. Fertitta
 Location of property: 315 S. Chesapeake Road, Towson, Md.
 Location of Sign: 315 S. Chesapeake Road, Towson, Md.
 Remarks: See map of 15-2-64
 Posted by: Robert J. Fertitta Date of return: 7/2/64

INVOICE

BALTIMORE COUNTY, MARYLAND

OFFICE OF FINANCE

Division of Collection and Receipts

COURT HOUSE

TOWSON 4, MARYLAND

To: Edward A. Vadala, Esq.
 1760 Eastern Blvd.
 Baltimore 21, Md.

REPORT TO ACCOUNT NO. CL-62 QUANTITY 1 UNIT AMOUNT \$25.00 COST 0.00

Petition for Special Hearing for Albert J. Fertitta

0'246 2726 • 23051 TIP- \$500
 0'246 2726 • 23051 TIP- \$500

IMPORTANT: MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND
 MAIL TO DIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWSON 4, MARYLAND
 PLEASE RETURN UPPER SECTION OF THIS BILL WITH YOUR REMITTANCE.

INVOICE

BALTIMORE COUNTY, MARYLAND

OFFICE OF FINANCE

Division of Collection and Receipts

COURT HOUSE

TOWSON 4, MARYLAND

To: Ernest C. Trumble, Esq.
 Jefferson Building
 Towson, Maryland 21204

REPORT TO ACCOUNT NO. CL-62 QUANTITY 1 UNIT AMOUNT \$40.00 COST 0.00

Cost of appeal - Albert J. Fertitta \$40.00
 net 65-26-071 \$40.00

1-256 994 • 28502 TIP- \$0.00

IMPORTANT: MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND
 MAIL TO DIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWSON 4, MARYLAND
 PLEASE RETURN UPPER SECTION OF THIS BILL WITH YOUR REMITTANCE.

CERTIFICATE OF PUBLICATION

OFFICE OF
 The Community Press

DUNDALK, MD., October 23 19 64

THIS IS TO CERTIFY, that the annexed advertisement of
 "Albert J. Fertitta"
 was inserted in THE COMMUNITY PRESS, a weekly newspaper published in Baltimore County, Maryland, once a week for 1 successive week before the
 10th day of October 19 64; that is to say,
 the same was inserted in the issues of 10-21-64

Stromberg Publications, Inc.
 Publisher.

By: Mrs. Walter Price
Mrs. Walter Price

INVOICE

BALTIMORE COUNTY, MARYLAND

OFFICE OF FINANCE

Division of Collection and Receipts

COURT HOUSE

TOWSON 4, MARYLAND

To: Ernest C. Trumble, Esq.
 Jefferson Building
 Towson, Md. 21204

REPORT TO ACCOUNT NO. CL-62 QUANTITY 1 UNIT AMOUNT \$14.00 COST 0.00

Cost of Certified Documents - No. 65-26-071
 Albert J. Fertitta
 S/S Cornea Road to the Waters
 of Norman Creek
 1.06 Acres

0'216 994 • 29920 TIP- \$4.00

IMPORTANT: MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND
 MAIL TO DIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWSON 4, MARYLAND
 PLEASE RETURN UPPER SECTION OF THIS BILL WITH YOUR REMITTANCE.

INVOICE

BALTIMORE COUNTY, MARYLAND

OFFICE OF FINANCE

Division of Collection and Receipts

COURT HOUSE

TOWSON 4, MARYLAND

To: Albert J. Fertitta
 315 S. Chesapeake Road
 Baltimore 21, Md.

REPORT TO ACCOUNT NO. CL-62 QUANTITY 1 UNIT AMOUNT \$35.45 COST 0.00

Cost of appeal - Albert J. Fertitta \$35.45
 net 65-26-071 \$35.45

1-256 994 • 28502 TIP- \$0.00

IMPORTANT: MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND
 MAIL TO DIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWSON 4, MARYLAND
 PLEASE RETURN UPPER SECTION OF THIS BILL WITH YOUR REMITTANCE.

INVOICE

BALTIMORE COUNTY, MARYLAND

OFFICE OF FINANCE

Division of Collection and Receipts

COURT HOUSE

TOWSON 4, MARYLAND

To: Leonard A. Vadala, Esq.
 1760 Eastern Blvd.
 Baltimore, Md. 21223

REPORT TO ACCOUNT NO. CL-62 QUANTITY 1 UNIT AMOUNT \$14.00 COST 0.00

Advertising and posting of property for Albert J. Fertitta \$14.00
 net 65-211-071 \$14.00

1-279 616 • 25217 TIP- \$0.00

IMPORTANT: MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND
 MAIL TO DIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWSON 4, MARYLAND
 PLEASE RETURN UPPER SECTION OF THIS BILL WITH YOUR REMITTANCE.

INVOICE

BALTIMORE COUNTY, MARYLAND

OFFICE OF FINANCE

Division of Collection and Receipts

COURT HOUSE

TOWSON 4, MARYLAND

To: Ernest C. Trumble, Esq.
 Jefferson Building
 Towson, Md. 21204

REPORT TO ACCOUNT NO. CL-62 QUANTITY 1 UNIT AMOUNT \$14.00 COST 0.00

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 Albert J. Fertitta
 S/S Cornea Road to the Waters
 of Norman Creek
 1.06 Acres

0'216 994 • 29920 TIP- \$4.00

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 MAIL TO DIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWSON 4, MARYLAND
 PLEASE RETURN UPPER SECTION OF THIS BILL WITH YOUR REMITTANCE.

Dear Sirs:

Leonard A. Vadala, Esq.
 1760 Eastern Blvd.
 Baltimore 21, Md.

County Office Building
 111 W. Chesapeake Avenue
 Towson 4, Maryland

Your petition has been received and accepted for filing this
 21st day of June 1964.

Owner Name: Albert J. Fertitta
 Reviewed by: John G. Rose
 Zoning Commissioner

7-1-64

7-1-64

7-1-64

7-1-64

7-1-64

CERTIFICATE OF POSTING

ZONING DEPARTMENT OF BALTIMORE COUNTY

Towson, Maryland

District: 15 Date of Posting: 7/2/64
 Posted for: Edward A. Vadala, Esq.
 Petitioner: Albert J. Fertitta
 Location of property: 315 S. Chesapeake Road to the Waters of Norman Creek Lot 207-208
 Location of Sign: 315 S. Chesapeake Road to the Waters of Norman Creek Lot 207-208
 Remarks: See map of 15-2-64
 Posted by: Robert J. Fertitta Date of return: 7/2/64

CERTIFICATE OF POSTING

ZONING DEPARTMENT OF BALTIMORE COUNTY

Towson, Maryland

District: 15 Date of Posting: 7/2/64
 Posted for: Edward A. Vadala, Esq.
 Petitioner: Albert J. Fertitta
 Location of property: 315 S. Chesapeake Road to the Waters of Norman Creek Lot 207-208
 Location of Sign: 315 S. Chesapeake Road to the Waters of Norman Creek Lot 207-208
 Remarks: See map of 15-2-64
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ZONING DEPARTMENT OF BALTIMORE COUNTY

Towson, Maryland

District: 15 Date of Posting: 7/2/64
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OFFICE OF
 The Community Press

DUNDALK, MD., July 10 19 64

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 10th day of June 19 64; that is to say,
 the same was inserted in the issues of 7-1-64

Stromberg Publications, Inc.
 Publisher.

By: Betty Price

MIDDLEBOROUGH
PLAT BOOK #4
FOLIO 191.

NORTH
Scale 1" = 50'

Note: Off Street Parking Permit
3 Acres.

209.6' To Middle River

#959
Zoning File.

1425' TO
MIDDLEBOROUGH
CORSICA

Lot #205

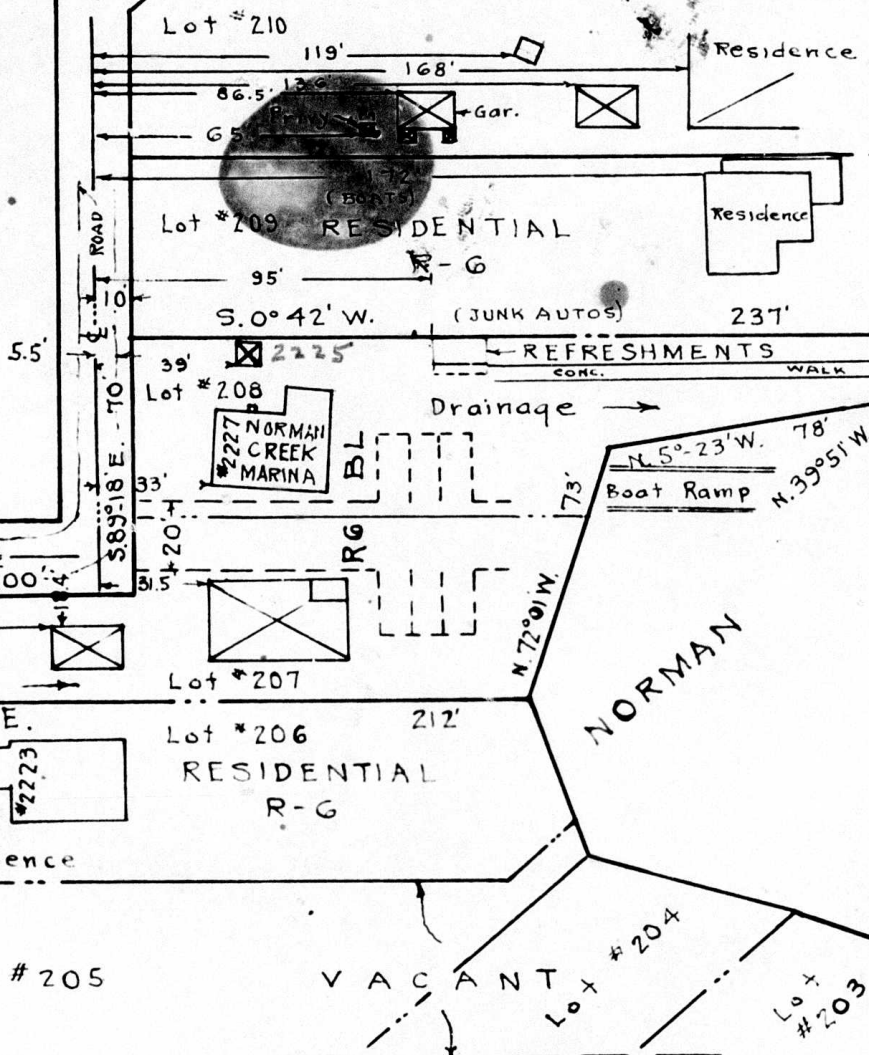
ELECTION DISTRICT: 15TH.
AREA OF PROPERTY: 17622 ± SQ. FT.
EXISTING USE OF PROPERTY:-

Sale of Gasolene at End of Wharf.
Sale of Boat Accessories.
Sale of Refreshments.

PROPOSED USE OF PROPERTY:-

Same as Existing Plus Store. (BL).

ROAD



PRESENT ZONING: RG & Commercial
PROPOSED ZONING: BL with Special Ex-
ception for Sale of Gasolene.

PARKING DATA

BUILDINGS 890 SQ. FT.
ONE PARKING SPACE FOR EACH 200 SQ. FT.
5 PARKING SPACES REQUIRED
6 PARKING SPACES SHOWN
PARKING SPACES 9' x 18'



W.C. Warren
3-29-63.
G. 1-63.