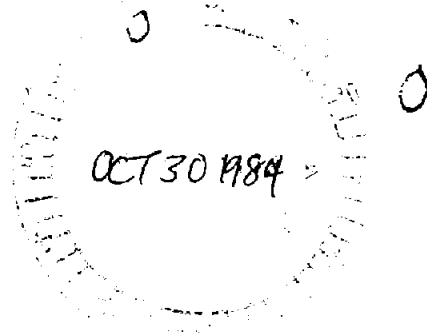




County Board of Appeals of Baltimore County

Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

October 30, 1984



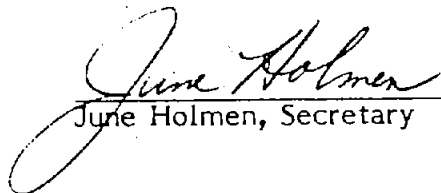
John B. Gontrum, Esq.
809 Eastern Blvd.
Baltimore, Md. 21221

Re: Case No. 84-147-XSPHA
James R. Myrick, et ux

Dear Mr. Gontrum:

Enclosed herewith is a copy of the Opinion and Order
passed today by the County Board of Appeals in the above entitled case.

Very truly yours,


June Holmen, Secretary

Encl.

cc: James R. Myrick, et ux
James F. Offutt, Jr., Esq.
Christopher LaMartina, Pres.
Bowley's Quarters Improve. Assn.
Ralph K. Rothwell, Jr., Esq.
Phyllis C. Friedman
Ted Zaleski, Jr.
Norman Gerber
James Hoswell
Arnold Jablon
Jean Jung
James Dyer

PCF. *renew*
E

People's Counsel Exh #8

PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY, et al,

Appellants and
Cross-Appellees

v.

JAMES R. MYRICK, et ux,

Appellees and
Cross-Appellants

IN THE

CIRCUIT COURT

FOR

BALTIMORE COUNTY

(ZONING FILE #84-147-XSPHA)

Case No. 84-CG-1503

* * * * *

OPINION AND ORDER

The above captioned case comes before the Court on an Appeal by the People's Counsel for Baltimore County and on a Cross-Appeal by the property owner, James R. Myrick, concerning an application for Special Exception for a Fishing Facility in an R.C. zone and the necessary variances on property located on Goose Neck Road some 626 feet northwest of the center line of Goose Harbor Road in the 15th District of Baltimore County.

On May 17, 1985, counsel for the parties were heard, including counsel for Baltimore County. Voluminous testimony by the Board of Appeals having been reviewed, along with the exhibits, and Memorandums filed by counsel and Opinion of the County Board of Appeals, the Court finds:

1. That the Order of the Board dated the 30th day of October, 1984, contains an obvious misnomer citing Lot #246 when it should refer to a parcel of land owned by James R. Myrick that lies behind Lot #247.

20 Bw

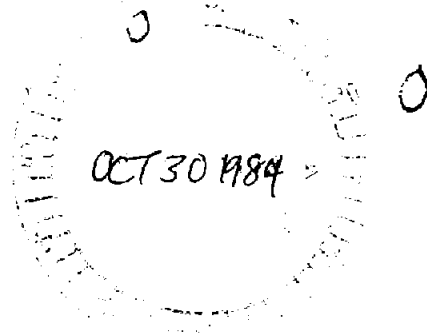
FILED MAY 27 1985



County Board of Appeals of Baltimore County

Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

October 30, 1984



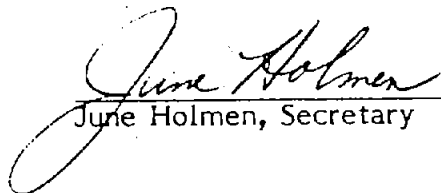
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E

People's Counsel Exh #8

PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY, et al,

Appellants and
Cross-Appellees

v.

JAMES R. MYRICK, et ux,

Appellees and
Cross-Appellants

IN THE

CIRCUIT COURT

FOR

BALTIMORE COUNTY

(ZONING FILE #84-147-XSPHA)

Case No. 84-CG-1503

* * * * *

OPINION AND ORDER

The above captioned case comes before the Court on an Appeal by the People's Counsel for Baltimore County and on a Cross-Appeal by the property owner, James R. Myrick, concerning an application for Special Exception for a Fishing Facility in an R.C. zone and the necessary variances on property located on Goose Neck Road some 626 feet northwest of the center line of Goose Harbor Road in the 15th District of Baltimore County.

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20 Bw

FILED MAY 27 1985

IN RE:	*	BEFORE THE
Petitions for Special Except-	*	BOARD OF
ion, Special Hearing and	*	APPEALS OF
Variances of James and Cecile	*	BALTIMORE COUNTY
Myrick	*	84-147-XSPNA

*** **

MEMORANDUM OF PETITIONERS

STATEMENT OF CASE

James and Cecile Myrick, owners of property in Baltimore County, filed three petitions for relief before the Zoning Commissioner. They sought a special exception for a Class I fishing and shoreline facility in a RC 5 zone. They requested a special hearing to file an amended site plan for a fishing and shellfishing facility and to determine whether two lots separated by a right of way may be considered as one for a fishing and shellfishing facility. Finally, a petition for variances from setback requirements and to allow parking, maneuvering and driveway areas to be paved with crusher run in lieu of the required macadam, concrete or tar and chip paving was filed.

By Order dated January 16, 1984, the Zoning Commissioner denied all requested relief. From that Order, Petitioners noted a timely appeal to the Board of Appeals.

STATEMENT OF FACTS

The Petitioners are owners of property separated by Gooseneck Road in the eastern part of Baltimore County. Lot No. 247, as depicted in the First Addition of Plat #2 of

IN RE:	*	BEFORE THE
Petitions for Special Except-	*	BOARD OF
ion, Special Hearing and	*	APPEALS OF
Variances of James and Cecile	*	BALTIMORE COUNTY
Myrick	*	84-147-XSPNA

*** **

MEMORANDUM OF PETITIONERS

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STATEMENT OF FACTS

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In Maryland not only has the federal district court adopted the broader term of contiguous but also the Court of Appeals has recognized, particularly in zoning cases that "contiguous properties" may mean "near" or "in close proximity", and have adopted the definition of Black's Dictionary. "In Black's Law Dictionary, 'contiguous' is defined to mean 'in close proximity; near though not in contact; neighboring; adjoining; near in succession; an actual close contact; touching; bounded or traversed by.'" Swarthmore Company v. Kaestner, 258 Md. 517, 266 A.2d 341, 347 (1970). Evidently what determines the precise degree of contiguity is the intent of the wording of the ordinance and the relationship of the properties.

Swarthmore Company v. Kaestner is a leading Maryland zoning case which arose out of Baltimore County. The case involved a piece of property across from Eudowood Plaza in Towson. One of the issues was whether a C.S.A. district could be established across Goucher Boulevard from a C.C.C. district to which it had to be contiguous. Furthermore, there was evidence that there was an additional strip of undistricted property of six (6) feet between the proposed and existing districts. The Court found that the Districts were contiguous even if it were assumed that they did not abut.

The County Council in the enactment of the shellfishing definition was most concerned with kinds of activity and general proximity to the water. Obviously, size of parcel was not a consideration since no limitation was placed in the definition. Specific proximity to the water also was not a consideration since there is no requirement that the occupation take place within so many feet of the water or be confined to an area within so many feet of the water. Indeed there are existing several parcels now occupied by watermen of several acres or more, the operations of which are set back

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crabbing equipment until informed that this was impermissible without prior zoning approval. Testimony indicated that at all times they have used and are using the property across Gooseneck Road from their residence for parking of family cars and storage of firewood for the residence as well as outside storage of picnic furniture and tools. All parties also testified as to the frequent number of daily trips across the road indicating again the unity of their use. The entire right of way is only thirty (30) feet and the paved portion of the road is smaller still.

The property across Gooseneck Road is a very useful adjunct area and has been used as next door property to the residential area. The dwelling and garage are both located on Lot 247 of the Bowleys Quarters Subdivision. That lot, though typical of many subdivided lots in the county is only 50 feet by 247 feet. It would not be out of the ordinary for there to be utilized adjacent space for storage, etc. Indeed additional area is usually welcomed. Consequently, the two tracts can readily be thought of as one lot in usage under any of the generally accepted zoning definitions. See Yokley, op.cit., §23-10.

As a practical matter the filed site plan if adopted would preclude use of the properties for anything other than for the special exception filed. Certainly with adoption of the site plan neither site could be used separately for commercial fishing or shellfishing for practical reasons. Petitioners would be willing to be bound by an explicit restriction on the site plan that neither site could be used for any other purpose other than residential use for the Petitioners and family without abandoning the special exception.

IV. CONCLUSION.

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from the water more than that herein proposed. These are matters of record in the Zoning Commission files on permits in R.C. Zones. In addition there are many sizeable parcels of land along the tidal waters that would qualify under the existing wording for shellfishing operations under either Class I or Class II non-residential permits that theoretically could occupy far greater portions of land much further removed from the water than the instant operation. Finally, scope of business operation was not really a factor in the definition since a Class II operation, of which there are several, has absolutely no restrictions as to scope. What was of obvious concern was that watermen not be allowed to use lots far removed from the water for the retail sale of crabs or fish or for storage without commercial zoning. Consequently, the definition of "lot" as used therein should be read to include properties which for other legitimate purposes might be considered as one with it, meaning contiguous, adjacent or abutting properties.

II. EFFECT OF RIGHT OF WAY.

The presence of right of ways does not generally affect the contiguity of properties for zoning, annexation or assessment purposes. The cases of Grand Union, Swarthmore Company, and Commissioners of Taxes cited above all involved properties separated by very substantial public rights of way.

In addition to those cases several other cases also pertain to the lack of effect of roadways on the consideration of separate tracts as one property.

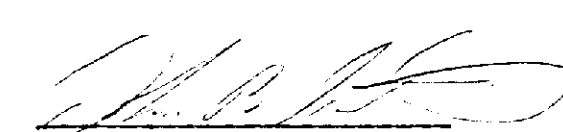
In Gruver-Cooley Jade Corp. v. Perlis, 252 Md. 684, 251 A. 2d 589 (1969), the Court allowed a Montgomery County developer to consider two separately recorded subdivisions, both in time and in scope to be considered as adjoining even though they were separated by an eighty (80) foot public

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It is Petitioners' belief that when the unities of property line, ownership and use are applied to the property in the subject case that there exists one lot for the purposes of the definition of Fishing and shellfishing facility, shoreline as contained in the B.C.Z.R. The term "lot" as used therein can only be construed by common usage as of the time of the definition's enactment. That usage indicates that lot means generally a parcel or tract of property. The intent of the regulation is also that said property be adjacent or along the shoreline of tidal water. Zoning has commonly considered lots lying contiguous or adjacent to one another to be considered as one if they had usage, ownership and proximity. In this case all of those determining criteria are present to a far greater degree than in cases which have had occasion to define the terms "contiguous", "abutting", or "adjacent".

We would, therefore, respectfully request the granting of the Petitions for Special Exception, Special Hearing and Variances in this case.

Respectfully submitted,


JOHN B. GONTUM
Attorney for Petitioners
James and Cecile Myrick

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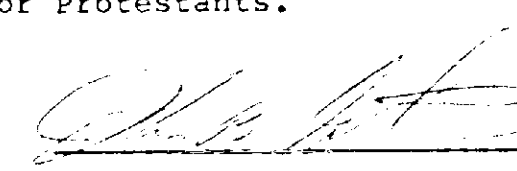
street and other tracts to permit the transfer of excess area from one subdivision to the adjoining subdivision for purposes of density. The Court cited 2 C.J.S. Adjoin in making its interpretation. That section states that the meaning of the word must be determined from intent, context and the particular circumstances of how the word is used. Both Perlis and C.J.S. cite the New York case of Homac Corp. v. Sun Oil Co., 137 Misc.551, 244 N.Y.S. 51 (1930), as instructive on the meanings of "abutting", "adjoining" and "contiguous".

Homac involved a tort claim for fire damage. One of the issues involved whether the property damaged was adjacent to the property where the fire originated. Under New York law a claim could only be brought by property owners whose property adjoined the subject site. In this case a street separated the properties, and the evidence was that title did not extend to the middle of the street. The Court held that for the purposes of tort properties may be considered as abutting, adjacent, or contiguous "when they are quite near to each other and are separated by no other property which can be put to a private use.... Hence it is that whether the Homac Corporation or the defendant did nor did not own to the center of Turtle Street, for the purposes of this action, they are, nevertheless, adjoining properties, being separated only by a 67 foot street." 244 N.Y.S. 51, 54. The facts in the subject case before the Commissioner are stronger than in Homac in that the title expert for Protestants stated conclusively that the properties did meet in fee in the center of the thirty (30) foot right of way. Numerous other cases do not consider public rights of way to be a factor as to contiguous property. See e.g., Town of Lyons v. City of Lake Geneva, 56 Wis. 2d 331, 202 N.W. 2d 228, 231 (1972) (annexation); Stewart Concrete & Material Co. v. James H. Stanton Const. Co., 433

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum was mailed by first class mail, postage prepaid, to James Offutt, Jr. Jefferson Building, 105 W. Chesapeake Ave., Towson, Md. 21204, Attorney for Protestants.


JOHN B. GONTUM

ROBERT J. ROMADKA
ATTORNEY AT LAW
TOWSON, MARYLAND

8

S.W. 2d 76,79-81 (Mo.App. 1968) (mechanics lien); In re Thomas' Estate, 178 Neb. 578, 134 N.W. 2d 237, 241-242 (1965) (homesteading).

For zoning purposes public rights of way may or may not be considered as separating lots. For example, in Baltimore County excess density may be transferred from one subdivision across a right of way to another subdivision so that the two subdivisions may be considered as one. The Planning and Zoning Department apparently recognizes the Section 2-114 of the Real Property Article of the Annotated Code of Maryland referred to by Protestant's title expert as controlling on its interpretations of subdivisions. In Swarthmore Co. v. Kaestner, 258 Md. 517, 266 A. 2d 341 (1970), the Court cited testimony of then Planning Director George Gavrellis that district lines are usually set at the center of roadways or on the property lines. Setbacks for P.C. zones are from the center of roadways and lot lines on the sides. Finally, for lot size purposes and density the property is considered to include one half of the roadway up to sixty (60) feet. We believe, therefore, that there is established precedent that under certain circumstances the existence of a public right of way has no impact on zoning considerations.

III. SUBJECT PROPERTY USE.

The tracts of land involved in the subject case share a common boundary, common ownership and common usage. As the testimony and site plan filed indicated both pieces of land belong to the Petitioners and meet along the center of Gooseneck Road. Protestants conceded that the properties have a common property line. Testimony at the hearing indicated that since the purchase of the tract of property from the Gross family the two properties have been used together as complementary units. Petitioners had used both properties for storage of

PETITIONS FOR SPECIAL EXCEPTION, SPECIAL HEARING AND VARIANCES

15th Election District

ZONING: Petitions for Special Exception, Special Hearing and Variances
LOCATION: Southwest side of Goose Neck Road, 625.89 ft. Northwest of the centerline of Goose Harbor Road
DATE & TIME: Monday, December 5, 1983 at 10:00 A.M.
PUBLIC HEARING: Room 107, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing:

Petition for Special Exception for a fishing and shellfishing facility, shoreline, Class I in a R.C. 5 zone; Special Hearing under Section 509.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Density Zoning Commissioner should approve an amended site plan for fishing and shellfishing facility to the one approved September 29, 1978 and to determine whether two lots separated by a right-of-way roadway are contiguous and Variances to permit minimum side yard setbacks of 2.5 ft. and 15 ft. in lieu of the required 50 ft., to permit a distance of 20 ft. to centerline of street in lieu of required 75 ft. and to permit a distance between buildings of 18 ft. in lieu of required 100 ft., and to allow parking, maneuvering areas and driveways to be paved with crusher run in lieu of the required macadam, concrete or tar and chip

The Zoning Regulations to be excepted as follows:
Section 1A04.3E.3 (102.2) - side yard setbacks, distance to centerline of street and distance between buildings in R. C. 5 zone
Section 490.2(c) - paving standards for parking areas
All that parcel of land in the Fifteenth District of Baltimore County

Being the property of James R. Myrick, et ux, as shown on plat plan filed with the Zoning Department.

In the event that these Petitions are granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be received in writing by the date of the hearing set above or made at the hearing.

BY ORDER OF
ANNOUNCED
OFFICE OF THE
ZONING COMMISSIONER
OF BALTIMORE COUNTY

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PETITION FOR SPECIAL HEARING 84-147-XSPHA

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and or Deputy Zoning Commissioner should approve an amended site plan for fishing and shellfishing facility

to the one approved September 20, 1973, and to determine whether two lots separated by a right-of-way roadway are contiguous.

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of the above Special Hearing 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.

I We do solemnly declare and affirm, under the penalties of perjury, that I we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser: Legal Owner(s):
 (Type or Print Name) James R. Myrick
 Signature Cecile V. Myrick
 Address (Type or Print Name)
 City and State
 Attorney for Petitioner: John B. Contrum/Robert J. Romadka
 (Type or Print Name) 1326 Goose Neck Road 335-4284
 Address Phone No.
 City and State Baltimore, Maryland 21220
 Signature
 Name, address and phone number of legal owner, contract purchaser or representative to be contacted
 John B. Contrum, Esquire
 Address
 City and State Baltimore, Maryland 21221
 Attorney's Telephone No.: 686-8274 809 Eastern Blvd. 686-8274
 Address Phone No.

ORDERED By The Zoning Commissioner of Baltimore County, this 31st day of October, 1983, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 5th day of December, 1983, at 10:00 o'clock A.M.

Cal Jan
 Zoning Commissioner of Baltimore County.

ZCO-No. 1

(over)

PETITION FOR SPECIAL EXCEPTION 84-147-XSPHA

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Exception under the Zoning Law and Zoning Regulations of Baltimore County, to use the herein described property for a fishing and shellfishing facility, shoreline, Class I in a R.C. 5 Zone.

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Special Exception 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.

I We do solemnly declare and affirm, under the penalties of perjury, that I we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser: Legal Owner(s):
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 Signature
 Name, address and phone number of legal owner, contract purchaser or representative to be contacted
 John B. Contrum, Esquire
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Cal Jan
 Zoning Commissioner of Baltimore County.

ZCO-No. 1

(over)

PETITION FOR ZONING VARIANCE 84-147-XSPHA

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section 1304.2B.3.102.21 to permit minimum sideyard setbacks of 7.5 feet and 15 feet in lieu of required 50 feet; to permit a distance of 20 feet to centerline of street in lieu of required 75 feet and to permit a distance between buildings of 38 feet in lieu of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County; for the following reasons: (indicate hardship or practical difficulty)

Improvements now exist on site pursuant to residential development, site plan on file, and would create undue hardship to remove with little benefit to neighborhood.

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Variance 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.

I We do solemnly declare and affirm, under the penalties of perjury, that I we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser: Legal Owner(s):
 (Type or Print Name) James R. Myrick
 Signature Cecile V. Myrick
 Address (Type or Print Name)
 City and State
 Attorney for Petitioner: John B. Contrum/Robert J. Romadka
 (Type or Print Name) 1326 Goose Neck Road 335-4284
 Address Phone No.
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 Name, address and phone number of legal owner, contract purchaser or representative to be contacted
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 Zoning Commissioner of Baltimore County.

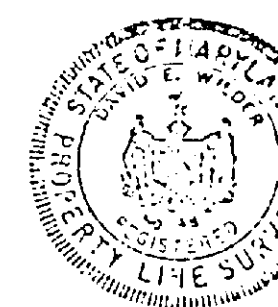
(over)

ZONING DESCRIPTION

Zoning Description
 To accompany petition for variances, special exception and special hearing, #1326 Goose Neck Road and contiguous vacant lot owned by James Myrick, et al.

Beginning, for the same at a point located on the south side of Goose Neck Road, said point being 626.89 feet distant from the Northwest side of the intersection of Goose Neck Road and Goose Neck Road. Thence leaving

- South 37 degrees 39 minutes West - 400.00 ft.
- North 52 degrees 24 minutes West - 110.00 ft.
- North 37 degrees 39 minutes East - 400.00 ft. To the south side of Goose Neck Road (30 ft. right of way). Thence crossing said right of way to the North side of Goose Neck Road a distance of 30.0 feet and running the following courses and distances:
- North - 52 degrees 24 minutes West - 20 ft.
- North 37 degrees 39 minutes East - 247 ft.
- South 52 degrees 24 minutes East - 50 ft.
- South 37 degrees 39 minutes West - 247 ft. to the North side of Goose Neck Road (30 ft. right of way). Thence crossing said right of way to the South side of Goose Neck Road and running the following course and distance:
- South 52 degrees 24 minutes East - 80 ft. to the place of beginning.



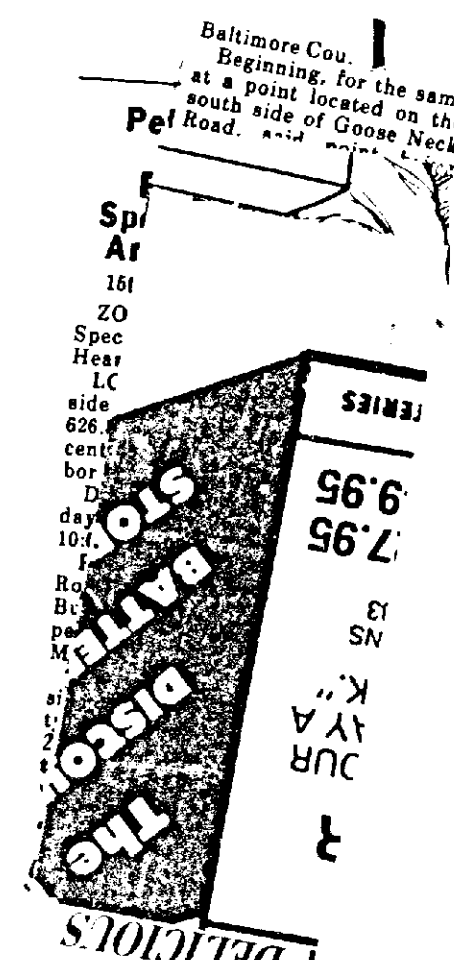
CERTIFICATE OF PUBLICATION

TOWSON, MD. 1983

THIS IS TO CERTIFY that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., once in each of two successive weeks before the day of December, 1983, the first publication appearing on the day of December, 1983.

THE JEFFERSONIAN, Manager.

Cost of Advertisement, \$.



The Times

Middle River, Md. 1983
 This is to Certify, That the annexed

was inserted in the Times, a newspaper printed and published in Baltimore County, once in each of two successive weeks before the day of December, 1983. Publisher.

CERTIFICATE OF POSTING ZONING DEPARTMENT OF BALTIMORE COUNTY Towson, Maryland

District: 15 Date of Posting: 12/1/83
 Posted for: 10 days
 Location of property: 1326 Goose Neck Road
 Location of Signs: 1326 Goose Neck Road
 Remarks:

RE: PETITION FOR SPECIAL EXCEPTION : BEFORE THE ZONING COMMISSIONER
 PETITION FOR SPECIAL HEARING : OF BALTIMORE COUNTY
 PETITION FOR VARIANCES :
 SW/3 of Goose Neck Rd., 626.89' :
 NW of the Centerline of Goose :
 Harbor Rd., 15th District :
 JAMES R. MYRICK, et ux, : Case No. 84-147-XSPHA
 Petitioners :

ORDER TO ENTER APPEARANCE

Mr. Commissioners:

Pursuant to the authority contained in Section 324.1 of the Baltimore County Charter, I hereby enter my appearance in this proceeding. You are requested to notify me of any hearing date or dates which may be now or hereafter designated therefor, and of the passage of any preliminary or final Order in connection therewith.

Peter Max Zimmerman
 Deputy People's Counsel

John W. Hession, III
 People's Counsel for Baltimore County
 Rm. 223, Court House
 Towson, MD 21204
 474-2138

I HEREBY CERTIFY that on this 13th day of November, 1983, a copy of the foregoing Order was mailed to David A. Radgers, Esquire, 209 E. Fayette Street, Baltimore, MD 21202, Attorney for Petitioners.

John W. Hession, III

BALTIMORE COUNTY
 OFFICE OF PLANNING & ZONING
 TOWSON, MARYLAND 21204
 494-3353

ARNOLD JABLON
 ZONING COMMISSIONER

November 22, 1983

John B. Contrum, Esquire
 809 Eastern Boulevard
 Baltimore, Maryland 21221

Re: Petitions for Special Exception, Special Hearing and Variances of James R. Myrick, et ux SW/3 of Goose Neck Rd., 626.89' NW of the c/l of Goose Harbor Road Case No. 84-147-XSPHA

Dear Mr. Contrum:

This is to advise you that \$114.92 is due for advertising and posting of the above property. This fee must be paid before an Order is issued.

Please make the check payable to Baltimore County, Maryland, and remit to Mrs. Arlene January, Zoning Office, Room 113, County Office Building, Towson, Maryland 21204, before the hearing.

Sincerely,

Arnold Jablon
 Zoning Commissioner

BALTIMORE COUNTY, MARYLAND
 OFFICE OF FINANCE - REVENUE DIVISION
 MISCELLANEOUS CASH RECEIPT

No. 122993

DATE 12/1/83 ACCOUNT R-01-615-000

AMOUNT \$114.92

RECEIVED FROM John B. Contrum, Esquire

DATE 12/1/83

FOR

C

VALIDATION OR SIGNATURE OF CASHIER

Robert J. Romadka, Esquire
 John B. Contrum, Esquire
 809 Eastern Boulevard
 Baltimore, Maryland 21221

November 22, 1983

NOTICE OF HEARING

Re: Petitions for Special Exception, Special Hearing and Variances of James R. Myrick, et ux SW/3 of Goose Neck Road, 626.89' NW of the c/l of Goose Harbor Road James R. Myrick, et ux - Petitioners Case No. 84-147-XSPHA

TIME: 10:00 A.M.

DATE: Monday, December 5, 1983

PLACE: Room 106, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland

cc: James F. Offutt, Esquire
 Jefferson Building
 Towson, Maryland 21204

Mr. & Mrs. Stephen Bauer
 1324 Goose Neck Road
 Baltimore, Maryland 21220

Mr. & Mrs. Theodore Gress
 1328 Goose Neck Road
 Baltimore, Maryland 21220

Arnold Jablon
 Zoning Commissioner
 of Baltimore County

BALTIMORE COUNTY, MARYLAND
 OFFICE OF FINANCE - REVENUE DIVISION
 MISCELLANEOUS CASH RECEIPT

No. 107975

DATE 12/1/83 ACCOUNT 1-01-615-000

AMOUNT

RECEIVED FROM

DATE

FOR

C

VALIDATION OR SIGNATURE OF CASHIER

Item #2 on the Remand Order states that the Board's Order on page 4 ordering that a building permit for an existing building (garage and cool box) be issued is illegal. The Board in this Order will amend that portion of its Order on page 4 by striking the sentence that states, "The Board will therefore reluctantly order that a building permit for this existing building be issued", but leaving the portion of that sentence that requires an

The third petition presented this Board is a request to submit an amended site plan for Lot #267, the lot granted the use permit in 1978. There are several alterations to the original site plan that occasion this request, the principal one being the erection of a new building replacing the original building, a truck body being used as a "cool box" and a shed type back area. Petitioners' position is that the new building encompasses only the approximate same area as that contained on the original site plan and therefore should be allowed. Mr. Myrick admits that no building permits were requested for this construction until it had been completed. Surely Mr. Myrick knew that permits for this work were required and if he did not, the contractor involved should have. This appears to be a flagrant violation of Baltimore County regulations. Baltimore County Buildings Engineer testified that no permit for new construction would have been granted because the elevation places it within the 100 year flood plain and no new construction is permitted there.

William R. Buchanan, Sr.
Judge

Items 1 and 4 address the need for variances necessary to the building noted on the plot as Brick Garage and Cool Box. Petitioner has submitted a site plan by a Registered Professional Engineer as noted in Item #2. This site plan indicates a need for a side yard variance from 5'0" to 1.8", a variance from 75' to 17.5' from the center line of the street and a variance from 100' to 52' for the distance between the two buildings on this parcel. The need for these variances is discussed in detail on pages 3 and 4 of the Board's original Order. Section 307 of the Baltimore County Zoning Regulations gives the Board the authority to grant these variances where strict compliance would result in practical difficulty and unreasonable hardship. In this case it would mean removal of the building which, admittedly, was constructed without proper permits. The denial of these variances and subsequent removal of this building would in the Board's opinion, cause substantial injury to the general welfare of the neighborhood when consideration is accorded to that which may legally be replaced on the parcel, should this building be removed. The Board is therefore of the opinion that the requested variances as shown on Petitioners' site plan be granted and will so Order. It is therefore ordered that the side yard variance from 5'0" to 1.8' be granted, the variance from 75' to 17.5' from the center line of the street be granted and the variance from 100' to 52' for the distance between the two buildings on this parcel be granted. Since the Special Exception for the use proposed on the parcel of land owned by James R. Myrick that lies behind Lot #247 is denied, the request for 15' side yard setbacks on that parcel is moot and need not be addressed.

While the validity of the existing use permit is not an issue before this Board, the Board feels it would be remiss in not commenting on this in view of the lengthy testimony presented at this hearing regarding the alleged intensification of usage. Mr. Myrick testified he originally had some 12 - 1400 pots on this site. There was testimony that as many as 2000 pots have been observed on the site. Mr. Myrick testified he now has a splinter type crabbing operation in place on the Eastern Shore and trucks these crabs to the subject site for storage in the cool-box. Mr. Myrick testified that he is operating a retail crab sales at some other location but will use this site as part of his product supply. While the areas on site grandfathered through the use permit may not have increased, the intensification of use on this site is surely suspect. The Board would encourage anyone desiring to intensify use of the permit altogether.

O R D E R

For the reasons set forth in the foregoing Opinion, it is this 30th day of October, 1984, by the County Board of Appeals, ORDERED:

1. That the two lots, known as lots #246 and #247, be found to be separate parcels and not shoreline properties in total, but that lot #247 be found to be a shoreline property and lot #246 to be found not to be a shoreline property.
2. The Special Exception for a Class I Fishing and Shellfishing Facility on this site is DENIED and that the variances on lot #246 be declared moot and therefore ALSO DENIED.
3. That an amended site plan for lot #247 be prepared by a Registered Professional Engineer to accompany the existing use permit, this site to be accurately portray the size and position of the new building on this site and accurately delineate the setback dimensions from all pertinent points on this site to this building.

The Petitioners herein request a special exception to allow expansion of their existing business to a Class I status. They also request approval, by special planning, to expand their business to property owned by them and located across the street from their existing property. They request that the two properties be considered contiguous and therefore treated as one for zoning purposes. The Petitioners want to amend the original site plan, filed in 1978, and marked Petitioners' Exhibit 1, to include both lots and to show the "renovation of an existing garage" on the north lot. Other minor additions and/or deletions to that site plan are also requested. Additionally, the Petitioners seek variances to permit side yard setbacks of 2.5 feet, 15 feet, and 25 feet instead of the required 50 feet, a setback of 20 feet to the centerline of the street instead of the required 75 feet, a distance between buildings of 38 feet instead of the required 100 feet, and to allow the requested parking areas to be paved with crusher run material. These requests are more fully described on Petitioners' Exhibit 9.

1) Wherever the designation as Lot #246 is noted in the original Order that the designation Lot 246 be amended to designate this parcel as a parcel of land owned by James R. Myrick that lies behind Lot #247.

2) The Board will amend that portion of its Order on page 3 by striking the sentence that states, "the Board will therefore reluctantly order that a building permit for this existing building be issued", but leaving the remainder of that sentence.

3) Items 3 and 4 in the Remand Order address the need for variances. The Board will grant a side yard variance from 10' to 1.8', a variance from 75' to 17.5' from the center line of the street, and a variance from 100' to 52' for the distance between the two buildings. The request for the use of the existing building as a parcel behind Lot #247 are moot and therefore D.N.I.D.

William T. Hackett
William T. Hackett, Chairman

William R. Evans
William R. Evans

Patricia Phipps
Patricia Phipps

4. That the Buildings Engineer grant a building permit for this building as it now exists.
5. That the necessary variances as shown on the amended site plan prepared by the undersigned Professional Engineer be GRANTED to allow the above building permit.
6. That no further building permits for expansion or alteration of this building be granted whatsoever.

Any appeal from this decision must be in accordance with Rules B through B-13 of the Maryland Rules of Procedure.

William T. Hackett
William T. Hackett, Chairman

William R. Evans
William R. Evans

Patricia Phipps
Patricia Phipps

This case comes before this Board on appeal from a decision of the Baltimore County Zoning Commission dated January 16, 1984, denying all the relief prayed for by the Petitioners. The Board will note that the hearing in this case consumed three full days of direct testimony, the introduction of over 50 exhibits, many of which are multiple exhibits, and produced much controversial testimony. In addition, there were lengthy memorandums submitted for the Board's consideration by Petitioners' attorney, Protestants' attorney and People's Counsel, plus a lengthy Findings of Fact and Conclusions of Law by the Baltimore County Zoning Commission. All of this has been carefully considered by this Board, but we will not attempt in this Opinion to detail or summarize these factors but will attempt to confine this Opinion to the specific issues before us. It will be noted, however, that the following persons testified during these three days of hearing.

1. Captain Harry Phillips - Charter Boat Captain
2. James Myrick - Petitioner and property owner
3. Kenneth Hubbard - Commercial crabber
4. Patti Chatterton - Neighborhood resident
5. Dennis Fandi - Neighborhood resident
6. Anthony Reale - Area resident and customer

Testifying for Protestants

7. Mrs. Ruth Gress - Next door neighbor
8. Mr. Theodore Gress - Husband of Mrs. Gress
9. William O. Luette - Professional engineer and land surveyor
10. Richard Davis - Attorney and real estate broker

A circular stamp with a date in the center and a signature below it. The date is MAY 29 1985. The signature is handwritten and appears to be 'H. H. H.'. The stamp is surrounded by a circular border with numbers 1 through 12.

The above captioned case comes before the Court on an Appeal by the People's Counsel for Baltimore County and a Cross-Appeal by the property owner, James R. Myrick, concerning an application for Special Exception for a Fishing Facility in an R.C. zone and the necessary variances on property located on Goose Neck Road some 626 feet northwest of the center line of Goose Harbor Road in the 15th District of Baltimore County.

On May 17, 1985, counsel for the parties were heard, including counsel for Baltimore County. Voluminous testimony by the Board of Appeals having been reviewed, along with the exhibits, and Memorandums filed by counsel and Opinion of the County Board of Appeals, the Court finds:

1. That the Order of the Board dated the 30th day of October, 1904, contains an obvious misnomer citing Lot #246 when it should refer to a parcel of land owned by James R. Myrick that lies behind Lot #247.

property line, a side yard setback of 15 feet from the proposed storage area on the new lot to each property line, a setback of 20 feet from the garage to the centerline of the road, a distance of 38 feet between the garage and the residence, and that crusher run material be allowed for the proposed parking area on the new lot.

The Petitioners claim that the new garage occupies the same area as the old garage, truck, and storage area and is not an expansion. If this is true, no variances should be required. A building moratorium presently exists in the Bowler's Quarters peninsula. The land across from the Myricks, the Gressers, and the Bauers cannot be developed, and the Petitioners argue that there would be no adverse impact if the special exception were granted. The property is wooded and only a portion is cleared for use. The Petitioners would clear the storage and parking areas with fencing and/or shrubbery, and there would be a 30-foot entrance onto the property from Goose Neck Road, as shown on Petitioners' Exhibit 9. All parties acknowledged that other garages exist as close or closer to the road as the Petitioners' garage. Mr. Myrick testified that 65 to about 70 garages are off site and the remainder is on site.

There was conflicting testimony provided by all witnesses, some of which was important. Specifically, whether there has been intensification and, if so, to what extent. The Petitioners maintained that there has not been, while the respondents argue that there has been significant expansion. Robert Eulice

[illegible]

11. Amy Von Bauer - Next door neighbor
12. Steve Bauer - Husband of Mrs. Bauer
- Testifying for People's Counsel
13. Shirley Reising - Secretary to People's Counsel
14. John Reisinger - Buildings Engineer, Baltimore County
15. David Filbert - Director, Baltimore County Air Pollution Control
16. Bernard Simon - Real estate appraiser and consultant
17. Christopher LaMartina - President, Bowleys Quarters Comm. As
18. Thomas Fritsch - Neighborhood resident
19. James Hoswell - Baltimore County Planner
- Rebuttal Witnesses
20. Dennis Fandl - Neighborhood resident
21. Kenneth Hubbard - Commercial crabber
22. James Myrick - Petitioner

There was presented uncontested testimony that Mr. Myrick purchased the property known as Lot #267 in March, 1971. He had, however, been familiar with this property for many years prior to this and it had been used during these years for crabbing purposes. In 1977, in compliance with Baltimore County legislation, he applied for a use permit and was granted same in October, 1978. This use permit required the submission of a site plan and this plan is part of the record as Petitioners' exhibit #3. It is noted that this legislation, Bill #98-75, provided for these use permits to grandfather the use of those operations in existence at the effective time of this legislation, all proper requirements being attained and further specifically noted that any such use existing at the time of enactment of this subsection may continue at the same level of intensity (emphasis added). In June, 1978, Mr. Myrick purchased the lot directly to the rear and across the road from his Lot #267. This parcel contains 1.0⁺ acres and is known as Lot #266. After this purchase, he cleared a part of this lot and stored equipment on same from sometime in 1979 until sometime in 1982, when its commercial use was questioned and this usage discontinued. Mr. Myrick now pleads that since these two lots abutt on the centerline of Goose Neck Road, they should be found to be contiguous property and therefore the entire holdings be considered shoreline property.

2. That the Board has no authority to order the Baltimore County Buildings Engineer to grant a building permit that was illegally constructed on Lot #247, especially in light of the fact that the Office of Buildings Engineer was not even named a party. This part of the Order is illegal.

3. As to "the necessary variances", there is nothing to appeal from since the Board did not specify the nature of "the necessary variances".

4. Concerning these variances on Lot #247, the case is REMANDED so that the necessary Registered Professional Engineer site plan can be filed in order for a determination to be made by the Board.

5. As to the Appellees' Cross-Appeal concerning the Appellees' Special Exception for a Class I Fishing and Shellfish Facility, the Court cannot find that the Board was erroneous, arbitrary or capricious in the interpretation and finding of fact and the conclusion from these facts, nor in the application of the law to the facts; and in light of the entire record, it had competent material and substantial evidence that was legally sufficient to support its decision on this Petition for Special Exception and the variances on the parcel of land owned by the Appellee, James R. Myrick, that lies behind the Appellees' Lot 9247.

Petitioners' Exhibit 11, signed by 29 residents of Goose Neck Road, indicating support of the Petitioners. He was quite clear in his belief that all those living on Goose Neck Road, except for the Greeses and the Bauers, were in support. He further emphasized that the other Protestants appearing lived elsewhere and did not represent the opinions and feelings of those living on Goose Neck Road. Christopher LaMartina, in behalf of the Improvement association, testified that it was a matter of concern to all who live in Bowley's Quarters and not just for those living on Goose Neck Road. He pointed out that Mr. Farley is also a member of this association. Many of the Protestants did not testify, but supported Mr. LaMartina's testimony.

It is clear that the requests made by the Petitioners have caused sharp lines to be drawn, both pro and con. Mr. LaMarina, in support of the Greeses and Steven Bauer, testified that the proposed expansion would cause a serious disruption to the area because the already bad traffic conditions would be aggravated. There is only limited access onto the peninsula, and with the existence of Miami Beach, a public recreational area, the traffic flow would be even more adversely impacted if the special exception were granted. Goose Neck Road is a dead end and not an outlet for traffic. Also, granting the special exception would effectively allow development not otherwise permitted. Mrs. Gress testified that enjoyment of her property has been seriously limited as a result of the Petitioners' commercial steel-fishing business. She and Mr. Gress complain that their health has been adversely effected, that they are exposed to heavy traffic and dangerous traffic conditions,

[illegible]

ALLAN J. KODENSKI
BIRMINGHAM, T. CANARAS
MICHAEL MAGRUDER
HICAH A. RODGERS
RICHARD W. WINKLANDER
MICHAEL J. RICHARDSON

LAW OFFICES
KODENSKI AND CANARAS
209-311 E. FAYETTE STREET
BALTIMORE, MARYLAND 21202
TELEPHONE (301) 688-5100

HIGHLANDTOWN OFFICE
412 S. HIGHLAND AVENUE
BALTIMORE, MARYLAND 21224
PHONE 563-8000

June 1, 1983

John B. Gontrum
809 Eastern Boulevard
Essex, Maryland 21221

Dear Mr. Gontrum:

I represent Mr. James Myrick who lives at 1326 Gooseneck Road, Baltimore, Maryland 21220. At the present time, he is incurring some rather complicated zoning problems that basically stem from a neighbor dispute.

However, since his crabbing operation is a non-conforming use, there is a risk down the road that may be proven against him that he is illegally expanded.

As of last week, Mr. Myrick has asked that I consult Bob Romadka's office to seek his assistance and or course he has also agreed to pay any fees incurred by your office. Therefore, I would like to set up a meeting between perhaps Mr. Romadka and/or yourself and Mr. Myrick and myself.

Once you have checked your schedule, I would appreciate if you could get back to me and see if we can arrange a meeting at a convenient time for all concerned.

I thank you for your cooperation in this matter.

Very truly yours,

David A. Rodgers

DAR/sjs

cc: James Myrick

LAW FIRM
Romadka, Gontrum, Hennigan & Peas

GERMANIA FEDERAL BUILDING
808 EASTERN BOULEVARD
ESSEX, MARYLAND 21221
TELEPHONE (301) 564-6474

February 2, 1984

ROBERT J. ROMADKA
JOHN B. GONTRUM
JOHN D. HENNIGAN
CHARLES E. PEAS, III
JOANNE M. FINROAN

Mr. Arnold Jablon, Zoning Commissioner
for Baltimore County
Office of Planning & Zoning
County Office Building
Towson, Maryland 21204

RE: James R. Myrick, et ux Petitioners
Case No. 84-147-XSPHA
Petitions Special Exception, Special
Hearing and Variances

Dear Mr. Jablon:

Please find enclosed herewith Order for Appeal together with a check in the amount of \$100.00 for filing of same in the above entitled case.

Thank you for your kind attention in this matter.

Very truly yours,

John B. Gontrum

JBG/msw

enc: Mr. James R. Myrick
James F. Offutt, Jr., Esquire
Mr. Christopher LaMartina, President
of Bowley's Quarters Improvement Assn.
Phyllis C. Friedman, People's Counsel

BALTIMORE COUNTY
DEPARTMENT OF PERMITS & LICENSES
TOWSON, MARYLAND 21204
454-0010

ALFRED M. WALSERT
DIRECTOR

March 9, 1983

Mr. James Myrick
1326 Gooseneck Road
Baltimore, Maryland 21220

RE: B-83-038-15
Permit Application 47752
1326 Gooseneck Road

Dear Mr. Myrick:

In 1978 you submitted a plat to Baltimore County Office of Zoning. The purpose of that plat was your attempt to establish the existence of a commercial crabbing operation being conducted from this property. On February 6, 1983, you submitted an application to construct an addition to an existing garage to square-off the same. You indicated on that application that the property was used as a single family dwelling.

A comparison of the improvements presently existing on the site and the site plan you submitted in 1978 indicates that extensive work has been performed without benefit of permits and in violation of Zoning requirements eliminating any expansion of a non-conforming use. Construction of a 39 x 22 foot garage, the construction of the addition on the rear of your house and the construction of the deck on the front portion of your property were not authorized by the issuance of a valid permit.

To resolve this matter, it will be necessary for you to prepare an accurate scale site plan of your property, showing all the new improvements constructed on your property since 1978, accompanied by commercial permit application for all the improvements, accurately reflecting the actual use of the particular improvements and the actual use of the property. The plan must contain the actual elevations above sea level on the property at the location of all the improvements. At the time of applications, the Commercial Building Inspector and the Chief of the Plans Review Division will determine whether or not any professional construction drawings would be required for each of the improvements.

I have been informed by the Office of Zoning that their laws and regulations require that a hearing be held to determine if the required permits can be issued for the work on your property. A plan acceptable to the Office of Zoning and all commercial permit applications must be submitted to this office not later than April 10, 1983. Please be advised that if the required site plans and permit applications are not filed by that date, I will refer the matter to the District Court for criminal prosecution.

BOWLEY'S QUARTERS IMPROVEMENT ASSN., INC.
1124 BOWLEY'S QUARTERS ROAD
BALTIMORE, MARYLAND 21220
Telephone: 335-9802

Arnold Jablon, Zoning Commissioner
111 W. Chesapeake Avenue
Towson, Maryland 21204

Dear Commissioner Jablon,

In reviewing your petition of January 15, 1984, on page 15 of your final 84-147-XSPHA, the petitioners state that they are "in violation of Bill 8-79" leaves in unanswered questions what will or should be done to enforce the provisions of the bill in 84-752. Could you please inform me to whom the jurisdiction in this matter so that we can see that the petition is valid.

We would like to thank you for your time concerning filing of the 84-147-XSPHA. It is a trying to know that a new Commissioner has taken the time and effort to review the findings of this case in such as this.

Sincerely,
Mr. & Mrs. Theodore Gress
Mr. & Mrs. Theodore Gress

County Board of Appeals

Room 219, Court House
Towson, Maryland 21204
May 18, 1983

NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). ABSOLUTELY NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE IN ACCORDANCE WITH RULE 2(c), COUNTY COUNCIL BILL #108

CASE NO. CBA-83-108

JAMES MYRICK, ET UX

1326 Gooseneck Road

Re: Commercial crabbing operation
Site plan/commercial permit
application

3/9/83 - Letter to Mr. Myrick from Asst.
Bldgs. Engineer stating that he must prepare an accurate scale site plan of property accompanied by commercial permit application for all the improvements

ASSIGNED FOR:

WEDNESDAY, JULY 27, 1983, at 10 a.m.

cc: David A. Rodgers, Esq.

Counsel for Appellants

Mr. & Mrs. James Myrick

Appellants

T. J. Bollinger

Office of Law

T. Zaleski, Jr.

Permits & Licenses

J. Nolan

" " "

J. Reisinger

" " "

Mr. & Mrs. Theodore Gress

Protestants

Mr. & Mrs. Stephen Bauer

"

June Holmen, Secy.

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

B. Melvin Cole,
To Administrative Officer

Date: July 25, 1984

FROM: Office of Law

SUBJECT: James Myrick, et ux
Commercial Crabbing Site Plan
Commercial Permit Application
1326 Gooseneck Road
No. CBA-83-108

Subsequent to the meeting in your office on June 29, 1984 regarding the above property, we have discussed the question of an injunction against the Myricks.

In preparation for the injunction, this entire building application permit and surrounding circumstances has been discussed with the Building Engineer's Office. On July 12th, 1984, Assistant County Attorney Thomas J. Bollinger met with John Reisinger and Joseph Nolan, Assistant Buildings Engineer regarding this property. Our main concern was whether or not an order had been issued by the Buildings Engineer citing the Myricks for a violation of the Building Code because they were in fact in a floodplain without sufficient elevation on the improvement constructed therein. For various reasons the Buildings Engineer advised us that the property and owners have not been cited for this violation.

We feel that a court would be unlikely to grant an injunction in view of the fact that we have not cited the Myricks to be in violation.

We will be happy to discuss this matter with you in the future, but it is our present suggestion that the court would not be inclined to grant an injunction at this point.

MILCOLM F. SPICER, JR.
County Attorney

MFS:TJB:rmc

cc: Stanley J. Schapiro, Esquire
Thomas J. Bollinger, Esquire
Phyllis Friedman, People's Counsel
Ted Zaleski, Jr., Director,
Permits & Licenses
John Reisinger
Joseph Nolan
Arnold Jablon, Esquire

Mr. & Mrs. Theodore Gress
Bowley's Quarters Improvement
Association, Inc.
1124 Bowley's Quarters Road
Baltimore, Maryland 21220

RE: Case No. 84-147-XSPHA
James R. Myrick, et al

Dear Mr. & Mrs. Gress:

Thank you for your letter dated January 28, 1984.

Please be advised that I have been informed by counsel for the Myricks that they will appeal my decision. If so, I would not take any action until the appeal was exhausted. At that time, I will consider further action, if necessary.

Sincerely,

ARNOLD JABLON
Zoning Commissioner

AJ/srl

cc: The Honorable Donald P. Hutchinson
County Executive

ARNOLD JABLON
ZONING COMMISSIONER

February 10, 1984

James F. Offutt, Jr., Esquire
Jefferson Building
Towson, Maryland 21204

Re: Petitions Special Exception, Special Hearing
and Variances
SW/S of Goose Neck Rd., 626.89' NW of the
c/l of Goose Harbor Road
James R. Myrick, et ux - Petitioners
Case No. 84-147-XSPHA

Dear Mr. Offutt:

Please be advised that an appeal has been filed by John B. Contrum,
attorney for the petitioners, from the decision rendered by the Zoning
Commissioner of Baltimore County, in the above referenced matter.

You will be notified of the date and time of the appeal hearing when it
is scheduled by the County Board of Appeals.

Very truly yours,

Arnold Jablon
Arnold Jablon
Zoning Commissioner

AJ:jaj

cc: Christopher LaMartina, President
Bowley's Quarters Improvement Assn.
3703 Bay Drive
Baltimore, Maryland 21220

Phyllis Cole Friedman, Esquire
People's Counsel

Ted Zaleski, Jr., Director, Permits & Licenses

March 24, 1983

Baltimore County
Board of Appeals
Court House
Towson, Maryland 21204

Re: P-83-038-15
Permit Application 47252
Appellants: Mrs. and Mrs. James Myrick
Property: 1326 Gooseneck Road
Baltimore, MD 21220

To The Honorable Board:

This letter will serve as a formal request of an appeal of
an Order issued by Mr. Joseph M. Nolan, Assistant Building Engineer
dated in a letter dated March 9, 1983. A copy of same is attached
hereto and marked as Exhibit A. The Appellant states for grounds,
the following:

a) That there is an issue as to whether or not the property
is residential and/or commercial and that commercial permits may
not be required for all or part of this property.

b) That at this time, counsel for the Appellant is working
with the Baltimore County Zoning Plans Advisory Committee in order
to determine what must be filed to amend the Appellant's original
site plan submitted in 1978 and that the Order, by virtue of a
letter dated March 9, 1983, as stated, is not coordinated with
other offices and departments of Baltimore County and that such
Order would be considered wholly arbitrary and capricious.

c) That at no time was there any opportunity to be heard
afforded to the Appellant and that to direct such an Order on the
facts as given would be wholly arbitrary and capricious as it was
the Appellant who was the moving force in the current situation as
he had applied for a commercial permit.

Baltimore County
Board of Appeals
March 24, 1983
Page 2

d) That the Order as stated in a letter dated March 9, 1983
provides for criminal prosecution in violation of the Appellant's
rights under the Fourteenth Amendment of the United States Constitu-
tion and correspondingly in the Maryland Constitution. An Order
which, if violated, could lead to imprisonment or fine certainly
must provide for some sort of an opportunity to be heard to effec-
tively safeguard the Appellant's constitutional rights.

e) That an inquiry is mandated by this case in order to
adequately acquire evidence so that a proper determination can be
made by Baltimore County as a whole rather than conflicting Orders
or requirements from the various departments of the County.

Enclosed please find a check payable in the amount of \$75.00
to accompany this appeal. In addition, please enter my appearance
in this case as counsel for the Appellant.

Very truly yours,

David A. Pedgona

DAR:ajb

cc: James Myrick

Enclosure

May 15, 1984

Mr. & Mrs. Theodore Gress
1328 Gooseneck Road
Baltimore, Maryland 21220

and

Mr. & Mrs. Steve Baurer
1324 Gooseneck Road
Baltimore, Maryland 21220

RE: Myrick Property
1326 Gooseneck Road
15th Election District

Ladies and Gentlemen:

As you may already know, the Myricks' have appealed my Order denying them
the relief requested. Although I appreciate what you have been told by your
attorney, to proceed with a zoning violation case at this time would be pre-
mature. If the County Board of Appeals reverses me, the Myricks' would be able to
continue what they are doing. I can only hope that the Board upholds my deci-
sion. In any event, I will have an inspector visit the site to confirm your
observations.

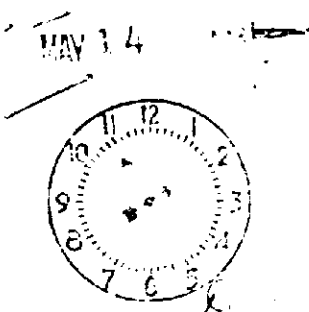
Sincerely,

ARNOLD JABLON
Zoning Commissioner

AJ:arl

cc: Case Nos. 84-147-XSPHA
and 84-194-CV

1326 Gooseneck Rd.
1324 Gooseneck Rd.
Baltimore, Md 21220
May 11, 1984



Dear Commissioner Jablon,

We are writing you to ask you to
please send an inspector down to 1326 Gooseneck
(back lot) to inspect and prove that the
Myricks' are still using the lot for their
business. We called Community Affairs,
who then called zoning and they told us
to bring the subject up at the Board of
Appeals. Someone should come down here
and check it out. To our knowledge we
have. We Hammond found them for using
as once before. We have plenty of pictures to
prove it. They use it to load up their
crab pots and haul them to Reel Island.

1. They have a large sign on the lot which they
use for their other business up the road.
2. Truck body, heavy upon poles, which they used
to use to bring fish-net.
3. Truck tank on lots for trucks for business.
4. Wire cutter to cut wire for crab pots.
5. Crab baskets stacked up.
6. Helpos can parked over there plus their own
trucks.

(2)

7. Trailer to haul crab pots
8. Large box they use to hold the air compressor
they use to clean pots.

My lawyer claim that it was not good to bring
stuff at the Board of Appeals because it is a zoning
matter. Please help us Mr. Jablon and send someone
down here. Thank You

Yours truly,
Mrs. Theodore Gress
Mrs. Amy Baurer
Stable

January 16, 1984

John B. Contrum, Esquire
Germania Federal Building
809 Eastern Boulevard
Baltimore, Maryland 21221

IN RE: Petitions Special Exception,
Special Hearing, and Variances
SW/S of Goose Neck Road, 626.89'
NW of the centerline of Goose
Harbor Road - 15th Election
District
James R. Myrick, et ux,
Petitioners
Case No. 84-147-XSPHA

Dear Mr. Contrum:

I have this date passed my Order in the above-referenced matter in accord-
ance with the attached.

Sincerely,

ARNOLD JABLON
Zoning Commissioner

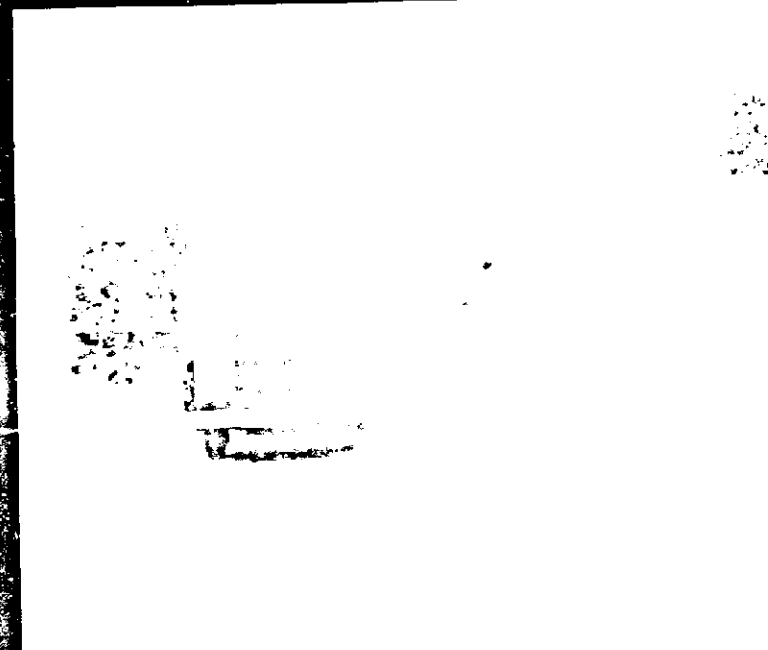
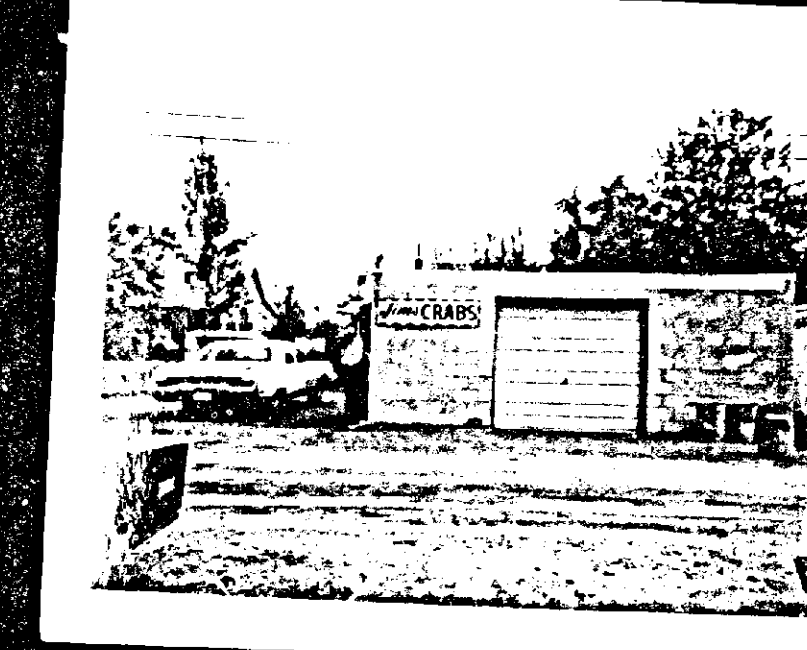
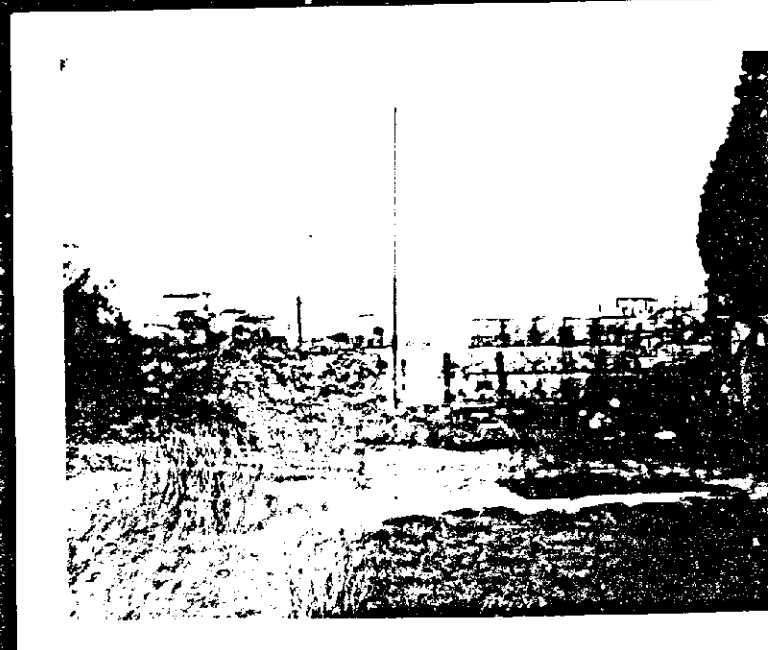
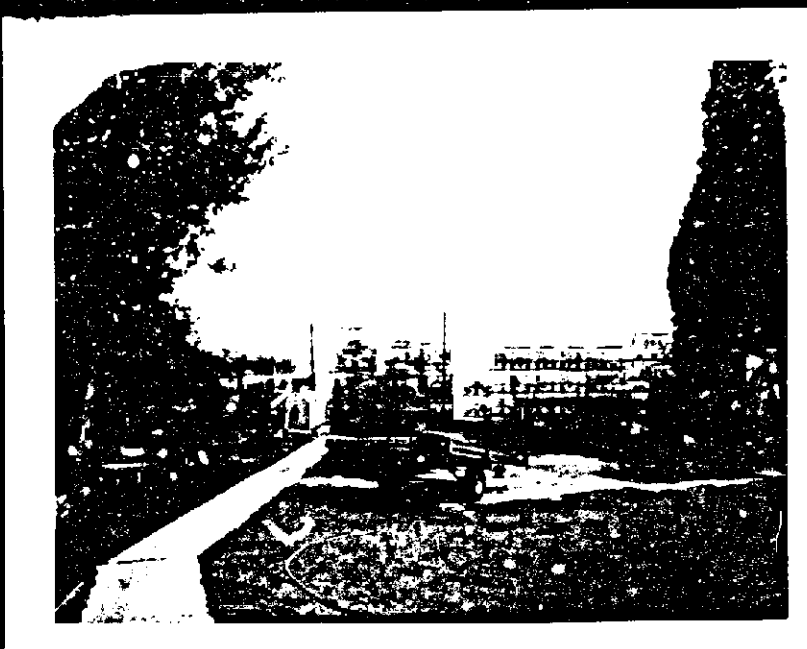
AJ:arl

Attachments

cc: James F. Offutt, Jr., Esquire
Jefferson Building
Towson, Maryland 21204

Mr. Christopher LaMartina, President
Bowley's Quarters Improvement Association
3703 Bay Drive
Baltimore, Maryland 21220

John W. Hession, III, Esquire
People's Counsel



BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

November 29, 1983

John B. Contrum, Esquire
Robert J. Romadka, Esquire
809 Eastern Boulevard
Baltimore, Maryland 21221

RE: Item No. 42 - Case No. 84-147-XSPHA
Petitioner - James R. Myrick, et ux
Special Exception, Special Hearing
and Variance Petitions

Gentlemen:

The Zoning Plans Advisory Committee has reviewed the plans submitted with the above referenced petition. The following comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of plans or problems with regard to the development plans that may have a bearing on this case. The Director of Planning may file a written report with the Zoning Commissioner with recommendations as to the suitability of the requested zoning.

The subject property consists of two parcels of land located on the north and south sides of Goose Neck Road in the 15th Election District. The first parcel is improved with a dwelling and garage building from which your client is conducting a fishing and shellfishing operation, while the second parcel is vacant. As you are aware this hearing originated as a result of a previous violation hearing (C-85-194-CV).

The special exception and special hearing are required to allow an expansion of the existing operation on the present site as well as the property across Goose Neck Road, while the variances are included for existing and proposed setbacks of buildings and storage areas and to allow parking areas to have a crusher run surface.

Item No. 42 - Case No. 84-147-XSPHA
James R. Myrick, et ux
Special Exception, Special Hearing
and Variance Petitions

Enclosed are all comments submitted from the members of the Committee at this time that offer or request information on your petition. If similar comments from the remaining members are received, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

Very truly yours,

Nicholas B. Commodari
NICHOLAS B. COMMODARI
Chairman
Zoning Plans Advisory Committee

NBC:bsc

Enclosures

cc: Brandonwood Associates
100 W. Padonia Road
Timonium, Maryland 21093

John B. Contrum, Esquire
Robert J. Romadka, Esquire
809 Eastern Boulevard
Baltimore, Md. 21221

Brandonwood Associates
100 W. Padonia Road
Timonium, Md. 21093

BALTIMORE COUNTY OFFICE OF PLANNING & ZONING

County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Your petition has been received and accepted for filing this
31st day of October, 1983

Arnold Jablon
ARNOLD JABLON
Zoning Commissioner

Petitioner: James R. Myrick, et ux
Petitioner's Attorney: Contrum/Romadka, Esq.

Received by: *Nicholas B. Commodari*
Nicholas B. Commodari
Chairman, Zoning Plans
Advisory Committee

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

William E. Hammond, Zoning Commissioner
TO: Office of Planning and Zoning Date: October 26, 1982
FROM: Ian J. Forrest
SUBJECT: Zoning Variance Items

The Baltimore County Department of Health has reviewed the following zoning variance items, and has no specific comments regarding same:

- Item #22 - Simon B. & Esther P. Weiner
- Item #23 - James R. & Cecile Myrick
- Item #44 - Joseph E. Seipp, D.D.S.
- Item #48 - Herbert S.W. & Mary V. Hasler
- Item #49 - Donald Ellis
- Item #50 - Wayne Sullivan
- Item #52 - Quality House, Inc.
- Item #55 - Roy & Margaret Bolyard
- Item #56 - Earl R. & Janice C. Jackson, Jr.
- Item #58 - Paul Goodman
- Item #59 - Dorothy Haines
- Item #60 - Margaret Emala, et al
- Item #61 - Primo & Elise A. China
- Item #63 - Chrysler Overseas Capital Corp.
- Item #64 - Daniel A. & Janice B. Agostino
- Item #67 - Francis W. & Victoria A. Rippel
- Item #68 - D. C. & Elizabeth Poling
- Item #70 - Sarah & Martin Lazarus, L.P.T.
- Item #71 - Roscoe Vandevander
- Item #72 - Jean G. Young, et al
- Item #73 - Helmut G. & Theresa T. Paul

Ian J. Forrest
Ian J. Forrest, Director
BUREAU OF ENVIRONMENTAL SERVICES

IJP/fth



BALTIMORE COUNTY
FIRE DEPARTMENT
TOWSON, MARYLAND 21204
623-7010

PAUL H. RENCKE
CHIEF

October 8, 1982

Mr. William Hammond
Zoning Commissioner

Office of Planning and Zoning
Baltimore County Office Building
Towson, Maryland 21204

Attention: Nick Commodari, Chairman
Zoning Plans Advisory Committee

RE: Property Owner: James R. & Cecile Myrick

Location: SA/S Goose Neck Road 626.89' W/W from centerline of Goose Harbor Road

Item No.: L2 Zoning Agenda: Meeting of August 31, 1982

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below marked with an "X" are applicable and required to be corrected or incorporated into the final plans for the property.

() 1. Fire hydrants for the referenced property are required and shall be located at intervals of _____ feet along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works.

() 2. A second means of vehicle access is required for the site.

() 3. The vehicle dead end condition shown at _____

EXCEEDS the maximum allowed by the Fire Department.

() 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.

(X) 5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1976 Edition prior to occupancy.

() 6. Site plans are approved, as drawn.

() 7. The Fire Prevention Bureau has no comments at this time.

REVIEWER: _____ Noted and Approved: *George M. Reganatt*
Planning Group Fire Prevention Bureau
Special Inspection Division

/mb/wr



BALTIMORE COUNTY
DEPARTMENT OF PUBLIC WORKS
TOWSON, MARYLAND 21204

MARY J. PISTEL P.E.
DIRECTOR

September 22, 1982

Mr. William E. Hammond
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Re: Item #42 (1982-1983)
Property Owner: James R. & Cecile Myrick
SA/S Goose Neck Rd. 626.89' W/W from centerline
of Goose Harbor Rd.
Acres: 1.01 District: 15th

Dear Mr. Hammond:

The following comments are furnished in regard to the plat submitted to this office for review by the Zoning Advisory Committee in connection with the subject item.

Highways:

Goose Neck Road, an existing public road, is proposed to be further improved in the future as a 30-foot closed section roadway on a 50-foot right-of-way.

The entrance locations are subject to approval by the Department of Traffic Engineering, and shall be constructed in accordance with Baltimore County Standards and Specifications.

Sediment Control:

Development of this property through stripping, grading and stabilization could result in a sediment pollution problem, damaging private and public holdings downstream of the property. A grading permit is, therefore, necessary for all grading, including the stripping of top soil.

Storm Drains:

The Petitioner must provide necessary drainage facilities (temporary or permanent) to prevent creating any nuisances or damages to adjacent properties, especially by the concentration of surface waters. Correction of any problem which may result, due to improper grading or improper installation of drainage facilities, would be the full responsibility of the Petitioner.

The property to be developed is located adjacent to tidewater. The Petitioner is advised that the proper sections of the Baltimore County Building Code must be followed whereby elevation limitations are placed on the lowest floor (including basements) of residential and commercial developments.



BALTIMORE COUNTY
DEPARTMENT OF PERMITS & LICENSES
TOWSON, MARYLAND 21204
444-0900

TED ZALEM JR.
DIRECTOR

Mr. William E. Hammond, Zoning Commissioner
Office of Planning and Zoning
County Office Building
Towson, Maryland 21204

Dear Mr. Hammond:

Comments on Item # L2 Zoning Advisory Committee Meeting
are as follows:

Property Owner: James R. & Cecile Myrick
Location: SA/S Goose Neck Road 626.89' W/W from centerline of Goose Harbor Road
Bearing: S 89° 51' 00" E
Proposed Zoning: R.C. 5
See page 2

Acres: 1.01

District: 15th

The items checked below are applicable:

A. All structure shall conform to the Baltimore County Building Code 1981/ Council Bill L-82 State of Maryland Code for the Handicapped and Aged and other applicable Code.

B. A building/and other miscellaneous permits shall be required before beginning construction.

C. Residential: Three sets of construction drawings are required to file a permit application. Architect/Engineer seal is/is not required.

D. Commercial: Three sets of construction drawings with a Maryland Registered Architect or Engineer shall be required to file a permit application.

E. An exterior wall erected within 6'0" of an adjacent lot line shall be of one hour fire resistive construction, no openings permitted within 3'-0" of lot lines. A firewall is required if construction is on the lot line. See Table 401, Line 2, Section 407 and Table 402.

F. Requested variance conflicts with the Baltimore County Building Code, section/s _____

G. A change of occupancy shall be applied for, along with an alteration permit application, and three required sets of drawings indicating how the structure will meet the Code requirements for the proposed change. Drawings may require a professional seal.

H. Before this office can comment on the above structure, please have the owner, thru the services of a Registered in Maryland Architect or Engineer certify to this office, that the structure for which a proposed change in use is proposed can comply with the height/area requirements of Table 505 and the required construction classification of Table 401.

I. Comments:

NOTE: These comments reflect only on the information provided by the drawings submitted to the office of Planning and Zoning and are not intended to be construed as the full extent of any permit. If desired, additional information may be obtained by visiting Room #122 (Plans Review) at 111 West Chesapeake Ave., 21204.

Very truly yours,

Charles S. Burman
Charles S. Burman, Chief
Plans Review

CBB/tjt

PDM C1-22

Item #42 (1982-1983)
Property Owner: James R. & Cecile Myrick
Page 2
September 22, 1982

Water and Sanitary Sewer:

There is an 8-inch public water main in Goose Neck Road. Public sanitary sewerage is not available to serve this property, which is assumed to be utilizing private onsite means of sewage disposal.

This property is within the Baltimore County Metropolitan District and beyond the Urban-Rural Demarcation Line. Baltimore County Water and Sewerage Plans W and S-28, as amended, respectively indicate "Existing Service" and "No Planned Service" in the area.

Very truly yours,

Robert A. Norton
ROBERT A. NORTON, P.E., Chief
Bureau of Public Services

RAM:EAM:FWB:ess

cc: Jack Wimbley

2-SW Key Sheet
5 & 6 NE 46 Pos. Sheets
ME 2 L Topo
98 Tax Map

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

March 7, 1983

David A. Rodgers, Esquire
209 E. Fayette Street
Baltimore, Maryland 21202

RE: Item No. 42
Petitioner - James Myrick, et ux
Special Exception & Special Hearing
Petitions

RE: Item No. 42
Petitioner - James Myrick, et ux
Special Exception & Special Hearing
Petitions

Dear Dave:

In accordance with our conversation today, you will contact your clients and decide how you wish to pursue this matter. I will await for further directions.

Very truly yours,

Nicholas B. Commodari
NICHOLAS B. COMMODARI
Chairman
Zoning Plans Advisory Committee

NBC:bsc

cc: Zoning Enforcement

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

Arnold Jablon
Zoning Commissioner
Date: November 1, 1982
Norman E. Berger, Director
Office of Planning and Zoning
James R. Myrick, et ux
84-147-XSPHA

It is this office's opinion that the lot located in the northwest corner of Goose Neck Road cannot be used as a part of a fishing and shellfishing facility. As to the requested variances for the lot on Goose Neck Road, this office has no comment.

Norman E. Berger
Norman E. Berger
Director of Planning and Zoning

NEB:JDR:ov

LAW FIRM
Romada, Roberts, Hargrove & Fox
100 EASTERN BOULEVARD
TOWSON, MARYLAND 21204
TELEPHONE 840-2582
FACSIMILE 840-2582

September 13, 1985

Mr. William T. Hackett,
Chairman, Baltimore County
Board of Appeals
200 Courthouse
Towson, Maryland 21204

RE: James & Cecile Myrick
Case No. 84-147-XSPA

Dear Mr. Hackett:

Enclosed please find three revised site plans
per order of Circuit Court for Baltimore County requiring
us to re-file sealed site plans petition only to Variances
which we are requesting for the garage.

It is my understanding that the Board granted
these Variances but that the Court requested that specific
set-backs be contained in the Board's order.

Please let me know if a hearing will be necessary.

Very truly yours,
John B. Gontrum

JBG/mrd
Enclosures: 3
cc: James Offutt, Esquire
cc: Ralph K. Rothwell, Jr., Esquire
cc: Phyllis Cole Friedman
cc: Thomas J. Bollinger
cc: Malcolm P. Spicer, Jr.

CIRCUIT COURT FOR BALTIMORE COUNTY
CIVIL - GENERAL
DOCKET PAGE 3 CASE NO. 84 CG 1503 CATEGORY APPEAL

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY
BALTIMORE COUNTY ZONING COMMISSIONER
BALTIMORE COUNTY, MARYLAND
Protestants
MR. & MRS. THEODORE GRESS
Appellants

ATTORNEYS
Phyllis Cole Friedman
Peter Max Zimmerman
Room 220 Courthouse (O) 494-2168
Ralph K. Rothwell, Jr., Esquire
7508 Eastern Ave.
Baltimore, Maryland 21204
Malcolm P. Spicer, Jr., Esquire
Thomas J. Bollinger
Hennegan, Courthouse (O) 494-4420

IN THE MATTER OF
JAMES R. MYRICK, ET UX
FOR SPECIAL EXCEPTION FOR
A FISHING FACILITY IN AN R.C.
ZONE FOR SPECIAL HEARING
REGARDING AMENDED SITE PLANS
FOR VARIANCES TO PERMIT SET-
BACKS AND TO ALLOW PARKING
AREAS TO BE PAVED WITH CRUSHER
RUN IN LIEU OF MACADAM ON
PROPERTY LOCATED ON THE
SOUTHWEST SIDE OF GOOSE NECK
RD., 626.89' NORTHWEST OF THE
CENTER LINE OF GOOSE HARBOR RD.,
- 15TH DISTRICT

CECILE MYRICK (cross appellant)
JAMES R. MYRICK (cross appellant)
COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
Appellees (cross appellee)

John B. Gontrum-Robt. J. Romada
Romada, Gontrum-Hennegan & Fox
809 Eastern Blvd. (21) 686-8274

COSTS
CV GEN \$41503
CV CLK 70.00
CLOCKER 1 70.00
\$31242 D01 202 715/2
11/28/85

1) Nov. 28, 1984 - Appellants' (PEOPLE'S COUNSEL FOR BALTIMORE COUNTY & MR. & MRS. THEODORE GRESS) Order for Appeal from the decision of County Board of Appeals & same day Petition for Appeal. fd.

2) Nov. 28, 1984 - Appellants' (BALTIMORE COUNTY ZONING COMMISSIONER & BALTIMORE COUNTY, MARYLAND) Order for Appeal from the decision of Board of Appeals & same day Petition for Appeal. fd.

3) Nov. 29, 1984 - Certificate of Notice. fd.

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5) Dec. 7, 1984 - Order for Cross Appeal. fd.

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7) Dec. 19, 1984 - App. of John B. Gontrum and Robert J. Romada for Cross Appellants James R. Myrick and Cecile Myrick and same day Petition for Appeal. fd.

8) Dec. 28, 1984 - Transcript of Record. fd.

9) Dec. 28, 1984 - Notice of Filing of Record. fd.

10) Dec. 31, 1984 - Deft's (James R. Myrick and Cecile Myrick) Answer and Motion to Dismiss appeal. fd.

11) Jan. 16, 1985 - Protestants' Appellants & Cross-Appellees' Motion to Dismiss & Statement of Points & Authorities. fd.

12) Jan. 25, 1985 - Cross Appellants' (Myrick) Answer to Motion to Dismiss & Statement of Points & Authorities. fd.

13) Jan. 28, 1985 - Appellants' (People's Counsel) Memorandum in Support of Petition on Appeal. fd.

14) Jan. 30, 1985 - Appellants' Memorandum in Support of Petition on Appeal. fd.

(15) Feb. 4, 1985 - Left's Request to set all pending motions for hearing on same day as hearing on merits which is scheduled for Feb. 11, 1985.

Feb. 14, 1985 - Plaintiff's (Baltimore County) Consent to the Dismissal of the Sealed Petition of Baltimore County's Order of Dec. 28, 1984, the Zoning Commission for Baltimore County, is hereby dismissed as a Party Appellant in the above entitled case. (17M)

Mar. 5, 1985 - Correspondence from People's Counsel with Exhibit 12.

Apr. 6, 1985 - Hon. William B. Buchanan, Sr. Hearing had, Defendants' (James R. Myrick, Cecile Myrick) Motion to Dismiss (paper 410) JUDGE, Same date, Plaintiff's Motion to Dismiss (paper 411) JUDGE (same date).

April 30, 1985 - Petitioners' Memorandum in Support of its Petition on Appeal and in Answer to People's Counsel's Memorandum. fd.

May 14, 1985 - Plaintiff's (People's Counsel) Memorandum in Opposition to that Portion of Petitioners' Memorandum Supporting the Treatment of Two Lots as One for Purpose of a Shoreline Fishing & Recreational Facility. fd.

May 27, 1985 - Order of Court that the decision of Board of Appeals for Baltimore County is affirmed on the decision denying the Appellees' James R. Myrick, Petition for a Special Exception for a Class 2 Fishing & Recreational Facility; and the case is REMANDED in accordance with this Order. (17M)

CIRCUIT COURT FOR BALTIMORE COUNTY
CIVIL - GENERAL
DOCKET PAGE 3 CASE NO. 84 CG 1503 CATEGORY APPEAL

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY
BALTIMORE COUNTY ZONING COMMISSIONER
BALTIMORE COUNTY, MARYLAND
Protestants
MR. & MRS. THEODORE GRESS
Appellants

ATTORNEYS
Phyllis Cole Friedman
Peter Max Zimmerman
Room 220 Courthouse (O) 494-2168
Ralph K. Rothwell, Jr., Esquire
7508 Eastern Ave.
Baltimore, Maryland 21204
Malcolm P. Spicer, Jr., Esquire
Thomas J. Bollinger
Hennegan, Courthouse (O) 494-4420

IN THE MATTER OF
JAMES R. MYRICK, ET UX
FOR SPECIAL EXCEPTION FOR
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CENTER LINE OF GOOSE HARBOR RD.,
- 15TH DISTRICT

CECILE MYRICK (cross appellant)
JAMES R. MYRICK (cross appellant)
COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
Appellees (cross appellee)

John B. Gontrum-Robt. J. Romada
Romada, Gontrum-Hennegan & Fox
809 Eastern Blvd. (21) 686-8274

COSTS
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DECEMBER 11, 1984

BILLED TO: JOHN B. GONTRUM, ESQUIRE
809 EASTERN BOULEVARD
ESSEX, MARYLAND 21221

COST OF CERTIFIED COPIES OF DOCUMENTS
FROM FILE #84-147-XSPA \$ 75.00

REMIT TO: COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
ROOM 200, COURTHOUSE
TOWSON, MD 21204

MAKE CHECKS PAYABLE TO: BALTIMORE COUNTY, MARYLAND

IN THE MATTER OF
JAMES R. MYRICK, ET UX
FOR SPECIAL EXCEPTION FOR
A FISHING FACILITY IN AN R.C.
ZONE FOR SPECIAL HEARING
REGARDING AMENDED SITE PLANS
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LOCATED ON THE SOUTHWEST
SIDE OF GOOSE NECK ROAD,
626.89' NORTHWEST OF THE
CENTER OF GOOSE HARBOR ROAD
15th DISTRICT

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW
CG Docket No. 5
Folio No. 3
File No. 84-CG-1503

Mr. Clerk:

Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Procedure, William T. Hackett, William R. Evans and Patricia Phipps, constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the Cross-Appeal to the representative of every party to the proceeding before it; namely, John B. Gontrum, Esquire, 809 Eastern Boulevard, Essex, MD 21221, Attorney for the Petitioners, and James R. Myrick, et ux, 1326 Goose Neck Road, Baltimore, MD 21220, Petitioners, and James F. Offutt, Jr., Esquire, Jefferson Building, Towson, MD 21204, Attorney for the Protestants, and Christopher LaMartina, President, Bowley's Quarters Improvement Association, 3703 Bay Drive, Baltimore, MD 21220, Protestant, and Ralph K. Rothwell, Jr., Esquire, Maslan, Maslan & Rothwell, 7508 Eastern Avenue, Baltimore, MD 21224, Attorney for Protestants (Gress and Bauer), and Phyllis Cole Friedman, Courthouse, Towson, MD 21204, People's Counsel for Baltimore County, and Malcolm P. Spicer, Jr., Esquire, County Attorney, and Thomas J. Bollinger, Esquire, Assistant County Attorney, Courthouse, Towson, MD 21204, Attorneys for Baltimore County, Maryland and the Zoning Commissioner of Baltimore County, Maryland, a copy of which Notice is attached hereto and prayed that it may be made a part thereof.

Edith T. Eisenhart
Edith T. Eisenhart, Adm. Secretary
County Board of Appeals of Baltimore County
Room 200, Courthouse, Towson, MD 21204
494-3180

RECEIVED
COUNTY BOARD OF APPEALS
JAN 14 11:03 AM '85

CIRCUIT COURT FOR BALTIMORE COUNTY
CIVIL - GENERAL
DOCKET PAGE 3 CASE NO. 84 CG 1503 CATEGORY APPEAL

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY
BALTIMORE COUNTY ZONING COMMISSIONER
BALTIMORE COUNTY, MARYLAND
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Appellants

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- 15TH DISTRICT

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COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
Appellees (cross appellee)

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IN THE MATTER OF
JAMES R. MYRICK, ET UX
FOR SPECIAL EXCEPTION FOR
A FISHING FACILITY IN AN R.C.
ZONE FOR SPECIAL HEARING
REGARDING AMENDED SITE PLANS
FOR VARIANCES TO PERMIT SET-
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PROPERTY LOCATED ON THE
SOUTHWEST SIDE OF GOOSE NECK
RD., 626.89' NORTHWEST OF THE
CENTER LINE OF GOOSE HARBOR RD.,
- 15TH DISTRICT

CECILE MYRICK (cross appellant)
JAMES R. MYRICK (cross appellant)
COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
Appellees (cross appellee)

John B. Gontrum-Robt. J. Romada
Romada, Gontrum-Hennegan & Fox
809 Eastern Blvd. (21) 686-8274

COSTS
CV GEN \$41503
CV CLK 70.00
CLOCKER 1 70.00
\$31242 D01 202 715/2
11/28/85

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DECEMBER 11, 1984

BILLED TO: JOHN B. GONTRUM, ESQUIRE
809 EASTERN BOULEVARD
ESSEX, MARYLAND 21221

COST OF CERTIFIED COPIES OF DOCUMENTS
FROM FILE #84-147-XSPA \$ 75.00

REMIT TO: COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
ROOM 200, COURTHOUSE
TOWSON, MD 21204

MAKE CHECKS PAYABLE TO: BALTIMORE COUNTY, MARYLAND

IN THE MATTER OF
JAMES R. MYRICK, ET UX
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15th DISTRICT

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW
CG Docket No. 5
Folio No. 3
File No. 84-CG-1503

Mr. Clerk:

Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Procedure, William T. Hackett, William R. Evans and Patricia Phipps, constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the Cross-Appeal to the representative of every party to the proceeding before it; namely, John B. Gontrum, Esquire, 809 Eastern Boulevard, Essex, MD 21221, Attorney for the Petitioners, and James R. Myrick, et ux, 1326 Goose Neck Road, Baltimore, MD 21220, Petitioners, and James F. Offutt, Jr., Esquire, Jefferson Building, Towson, MD 21204, Attorney for the Protestants, and Christopher LaMartina, President, Bowley's Quarters Improvement Association, 3703 Bay Drive, Baltimore, MD 21220, Protestant, and Ralph K. Rothwell, Jr., Esquire, Maslan, Maslan & Rothwell, 7508 Eastern Avenue, Baltimore, MD 21224, Attorney for Protestants (Gress and Bauer), and Phyllis Cole Friedman, Courthouse, Towson, MD 21204, People's Counsel for Baltimore County, and Malcolm P. Spicer, Jr., Esquire, County Attorney, and Thomas J. Bollinger, Esquire, Assistant County Attorney, Courthouse, Towson, MD 21204, Attorneys for Baltimore County, Maryland and the Zoning Commissioner of Baltimore County, Maryland, a copy of which Notice is attached hereto and prayed that it may be made a part thereof.

Edith T. Eisenhart
Edith T. Eisenhart, Adm. Secretary
County Board of Appeals of Baltimore County
Room 200, Courthouse, Towson, MD 21204
494-3180

DECEMBER 11, 1984

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Edith T. Eisenhart
Edith T. Eisenhart, Adm. Secretary
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Room 200, Courthouse, Towson, MD 21204
494-3180

County Board of Appeals of Baltimore County
Room 200 Court House
Towson, Maryland 21204
(201) 494-3180

December 11, 1984

John B. Gontrum, Esquire
809 Eastern Boulevard
Baltimore, MD 21221

RE: Case No. 84-147-XSPA
James R. Myrick, et ux

Dear Mr. Gontrum:

In accordance with Rule B-7 (a) of the Rules of Procedure of the Court of Appeals of Maryland, the County Board of Appeals is required to submit the record of proceedings of the appeal which you have taken to the Circuit Court for Baltimore County in the above entitled matter within thirty days.

The cost of the transcript of the record must be paid by you. Certified copies of other documents necessary for the completion of the record must also be at your expense.

The cost of the transcript, plus any other documents, must be paid in time to transmit the same to the Circuit Court not later than thirty days from the date of any petition you file in court, in accordance with Rule B-7 (a).

Enclosed is a copy of the Certificate of Notice which has been filed in the Circuit Court. Also enclosed is an invoice covering the cost of certified copies of necessary documents which must be included in this file. Please remit as indicated on invoice.

Very truly yours,
Edith T. Eisenhart, Adm. Secretary

CIRCUIT COURT FOR BALTIMORE COUNTY
CIVIL - GENERAL
DOCKET PAGE 3 CASE NO. 84 CG 1503 CATEGORY APPEAL

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY
BALTIMORE COUNTY ZONING COMMISSIONER
BALTIMORE COUNTY, MARYLAND
Protestants
MR. & MRS. THEODORE GRESS
Appellants

ATTORNEYS
Phyllis Cole Friedman
Peter Max Zimmerman
Room 220 Courthouse (O) 494-2168
Ralph K. Rothwell, Jr., Esquire
7508 Eastern Ave.
Baltimore, Maryland 21204
Malcolm P. Spicer, Jr., Esquire
Thomas J. Bollinger
Hennegan, Courthouse (O) 494-4420

IN THE MATTER OF
JAMES R. MYRICK, ET UX
FOR SPECIAL EXCEPTION FOR
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DECEMBER 11, 1984

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809 EASTERN BOULEVARD
ESSEX, MARYLAND 21221

COST OF CERTIFIED COPIES OF DOCUMENTS
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ROOM 200, COURTHOUSE
TOWSON, MD 21204

MAKE CHECKS PAYABLE TO: BALTIMORE COUNTY, MARYLAND

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IN THE
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AT LAW
CG Docket No. 5
Folio No. 3
File No. 84-CG-1503

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ROOM 200, COURTHOUSE
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15th DISTRICT

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW
CG Docket No. 5
Folio No. 3
File No. 84

PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY, et al.,
Appellants and
Cross-Appellees
v.
JAMES R. MYRICK, et ux.,
Appellees and
Cross-Appellants

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY

Case No. 84-CG-1503

OPINION AND ORDER

The above captioned case comes before the Court on an Appeal by the People's Counsel for Baltimore County and on a Cross-Appeal by the property owner, James R. Myrick, concerning an application for Special Exception for a Fishing Facility in an R.C. zone and the necessary variances on property located on Goose Neck Road some 626 feet northwest of the center line of Goose Harbor Road in the 15th District of Baltimore County.

On May 17, 1985, counsel for the parties were heard, including counsel for Baltimore County. Voluminous testimony by the Board of Appeals having been reviewed, along with the exhibits, and Memorandums filed by counsel and Opinion of the County Board of Appeals, the Court finds:

1. That the Order of the Board dated the 30th day of October, 1984, contains an obvious misnomer citing Lot #246 when it should refer to a parcel of land owned by James R. Myrick that lies behind Lot #247.

2. That the Board has no authority to order the Baltimore County Buildings Engineer to grant a building permit that was illegally constructed on Lot #247, especially in light of the fact that the Office of Buildings Engineer was not even named a party. This part of the Order is illegal.

3. As to "the necessary variances", there is nothing to appeal from since the Board did not specify the nature of "the necessary variances".

4. Concerning these variances on Lot #247, the case is REMANDED so that the necessary Registered Professional Engineer site plan can be filed in order for a determination to be made by the Board.

5. As to the Appellees' Cross-Appeal concerning the Appellees' Special Exception for a Class I Fishing and Shellfish Facility, the Court cannot find that the Board was erroneous, arbitrary or capricious in the interpretation and finding of fact and the conclusion from these facts, nor in the application of the law to the facts; and in light of the entire record, it had competent material and substantial evidence that was legally sufficient to support its decision on this Petition for Special Exception and the variances on the parcel of land owned by the Appellee, James R. Myrick, that lies behind the Appellee's Lot #247.

-2-

Therefore, it is this 24th day of May, 1985, ORDERED that the decision of the Board of Appeals for Baltimore County is AFFIRMED on the decision denying the Appellee's, James R. Myrick, Petition for a Special Exception for a Class I Fishing and Shellfish Facility; and the case is REMANDED in accordance with this Opinion.

William R. Buchanan, Sr.
William R. Buchanan, Sr.
Judge

-3-

IN THE MATTER OF
JAMES R. MYRICK, ET UX.,
FOR SPECIAL EXCEPTION FOR
A FISHING FACILITY IN AN R.C.
ZONE; FOR SPECIAL HEARING
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IN THE
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AT LAW
CG DOC. NO. 5
FOLIO NO. 3
FILE NO. 84-CG-1503

ZONING COMMISSIONER OF
BALTIMORE COUNTY, ET AL.,
ZONING FILE NO. 84-147-
XSPHA

**ANSWER AND MOTION TO
DISMISS APPEAL**

NOW COMES JAMES R. MYRICK and CECILE MYRICK, his wife, by and through their attorneys John B. Gontrum and ROMADKA, GONTRUM, HENNENEGAN AND FOOS, and pursuant to Maryland Rule of Procedure B9 answers the Petition on Appeal filed by People's Counsel and Protestants state as follows:

1. That the decision of the Board of Appeals in granting the zoning variances on the garage is based on substantial evidence in the record as a whole showing undue difficulty and practical hardship in removing the existing garage.

ROBERT J. ROMADKA
ATTORNEY AT LAW
ESSEX, MARYLAND

2. That the board had the legal authority to take the action to allow the variances.

3. That the garage is legal under the Baltimore County Building Code.

WHEREFORE, James R. Myrick and Cecile Myrick pray that the portion of the County Board of Appeals decision granting the aforesaid building permit and variance be affirmed.

AND FURTHER, James R. Myrick and Cecile Myrick, his wife, in Answer to the Petition for Appeal filed by Baltimore County and on behalf of the Zoning Commissioner pray this appeal be dismissed and in support thereof says as follows:

1. That neither the Zoning Commissioner nor Baltimore County were parties to the action before the Baltimore County Board of Appeals;

2. That neither the Zoning Commissioner nor Baltimore County entered their appearance in this case anywhere in the process;

3. That the Zoning commissioner lacks standing to pursue an appeal to his decision;

4. That neither a copy of the Order for Appeal nor Petition for Appeal was ever served on James R. Myrick nor a Notice of Appeal or Petition on Appeal;

5. That pursuant to Maryland Rules of Procedure B.3, B.5 and B.9 the appeal of Baltimore County and of the Zoning Commissioner should be dismissed;

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6. That Movants in the alternative deny the allegations in the Petition and assert that the action of the Board of Appeals was based on substantial facts in the record and was legal.

WHEREFORE, James Myrick and Cecile Myrick pray this Court affirm the decision of the Board of Appeals insofar as it pertains to the variances and the garage and dismiss the Appeal of Baltimore County and of the Zoning Commissioner.

John B. Gontrum
ROMADKA, GONTRUM, HENNENEGAN & FOOS
809 Eastern Boulevard
Baltimore, Maryland 21221
Phone No.: 686-8274

Attorneys for Protestants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this _____ day of _____, 1984, a copy of the foregoing Answer and Motion to Dismiss Appeal was mailed to the Administrative Secretary, County Board of Appeals, Room 200, Court House, Towson, Maryland 21204 and to Phyllis Cole Friedman, Peoples Court, Court House, Towson, Maryland 21204; James F. Offutt, Jr., Esquire, Jefferson Building, 105 W. Chesapeake Avenue,

3

Towson, Maryland 21204, also Ralph K. Rothwell, Jr., 7508 Eastern Avenue, Baltimore, Maryland 21224, Malcolm Spicer, County Attorney, Court House, Towson, Maryland 21204 and Arnold Jablon, County Zoning Commissioner, County Office Building, Towson, Maryland 21204.

John B. Gontrum

ROBERT J. ROMADKA
ATTORNEY AT LAW
ESSEX, MARYLAND

4

PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY, et al.,
Appellants
v.
JAMES R. MYRICK, et ux.,
Appellees

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY
CG Docket No. 5
Folio No. 3
File No. 84-CG-1503

NOTICE OF APPEAL

Please note an appeal to the Circuit Court for Baltimore County from the Opinion and Order of the County Board of Appeals of Baltimore County, under date of October 30, 1984, in the above-captioned matter.

Ralph K. Rothwell, Jr.
Ralph K. Rothwell, Jr.
Maslan, Maslan & Rothwell, P.A.
7508 Eastern Avenue
Baltimore, MD 21224
Attorney for Protestants,
Mr. & Mrs. Theodore Gress
282-2700

Phyllis Cole Friedman
Phyllis Cole Friedman
People's Counsel for Baltimore County

Peter Max Zimmerman
Peter Max Zimmerman
Deputy People's Counsel
Room 223, Court House
Towson, MD 21204
494-2188

I HEREBY CERTIFY that on this 28th day of November, 1984, a copy of the foregoing Notice of Appeal was delivered to the Administrative Secretary, County Board of Appeals, Rm. 200, Court House, Towson, MD 21204; and a copy mailed to John B. Gontrum, Esquire, 809 Eastern Blvd., Baltimore, MD 21221; and James F. Offutt, Jr., Esquire, Jefferson Bldg., 105 W. Chesapeake Ave., Towson, MD 21204.

Phyllis Cole Friedman

ROBERT J. ROMADKA
ATTORNEY AT LAW
ESSEX, MARYLAND

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County Board of Appeals of Baltimore County
Room 200 Court House
Towson, Maryland 21204
(301) 494-3180
October 30, 1984

John B. Gontum, Esq.
809 Eastern Blvd.
Baltimore, Md. 21221

Dear Mr. Gontum:

Enclosed herewith is a copy of the Opinion and Order passed today by the County Board of Appeals in the above entitled case.

Very truly yours,
John Holman, Secretary

Encl:
cc: James R. Myrick, et ux
James F. Offutt, Jr., Esq.
Christopher LaMartina, Pres.
Bowley's Quarters Improve, Assn.
Ralph K. Rothwell, Jr., Esq.
Phyllis C. Friedman
Ted Zaleski, Jr.
Norman Gerber
James Howell
Arnold Jablon
Jean Jung
James Dyer

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 15
Posted for: James R. Myrick, et ux
Location of property: SW/3 Goose Neck Road, 626.89' NW of the C/L of Goose Harbor Road
Location of Sign: 15th District

Date of Posting: 2/18/84

Remarks: 2/24/84

Posted by: John B. Gontum, Esq.
Number of Signs: 2

BALTIMORE COUNTY, MARYLAND
OFFICE OF PLANNING, REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

DATE: 5/20/84 ACCOUNT: 01.712

AMOUNT: \$12.00

RECEIVED: John B. Gontum, Esq., 809 Eastern Blvd., Baltimore, Md.
for: Capital from Case No. 84-147-XSPHA, James R. Myrick, et ux

RE: PETITIONERS SPECIAL EXCEPTION
SPECIAL HEARING AND VARIANCE
SW/3 of Goose Neck Road,
626.89' NW of the C/L of the
of Goose Harbor Road-15th
Election District.

BEFORE THE
ZONING COMMISSIONER
OF BALTIMORE COUNTY
Case No.: 84-147-XSPHA

James R. Myrick, et ux
Petitioner(s)

ORDER FOR APPEAL

Mr. Commissioner:

Please note an appeal from your decision in the above-entitled case, under date of January 16, 1984, to the County Board of Appeals and forward all papers in connection therewith to said Board for hearing.

FEB 6 AM

JOHN B. GONTUM
ROMADKA, GONTUM, HENNEGAN & POOS
809 Eastern Boulevard
Baltimore, Maryland 21221
686-8274
Attorneys for Petitioners

County Board of Appeals of Baltimore County
Room 200 Court House (Hearing Room #218)
Towson, Maryland 21204
(301) 494-3180
June 22, 1984

NOTICE OF ASSIGNMENT
CONTINUED HEARING

NO POSTONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). ABSOLUTELY NO POSTONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE IN ACCORDANCE WITH RULE 2(c), COUNTY COUNCIL BILL #59-79

CASE NO. 84-147-XSPHA

JAMES R. MYRICK, ET UX
SE - Fishing facility in an RC 5 zone
SH - Amend site plan
Variance - to permit setbacks and to allow parking areas to be paved with crusher run in lieu of macadam

SW/3 GOOSE NECK ROAD 626.89' NW OF C/L OF GOOSE HARBOR ROAD
15th DISTRICT

1/16/84 - ZC DENIED PETITION

WEDNESDAY, JULY 25, 1984 at 10 a.m.

ASSIGNED FOR:

cc: John B. Gontum, Esq.
James R. Myrick
Ralph K. Rothwell, Jr., Esq.
James F. Offutt, Jr., Esq.
Christopher LaMartina, President
Bowley's Quarters Imp. Assn.
Phyllis Cole Friedman
N. E. Gerber
J. G. Howell
A. Jablon
Jean M. H. Jung
J. E. Dyer

Counsel for Petitioner
Petitioner
Counsel for Protestants, Gress and Bauer
Protestant
People's Counsel

Edith T. Eisenhart, Adm. Secretary

John Gontum
James Myrick, et ux
James Offutt, Jr.
Christopher LaMartina
P. Friedman
T. Zaleski
N. Gerber and J. Howell
A. Jablon, J. Jung, J. Dyer

5/31/84 - Above notified of CONTINUED HEARING scheduled for THURSDAY, JUNE 21, 1984 at 10 a.m.

6/22/84 - Above notified of CONTINUED HEARING set for WEDNESDAY, JULY 25, 1984 at 10 a.m.

7/25/84 - On WITH - Show all to 9/5/84 to submit memo

no answer
no submitted

County Board of Appeals of Baltimore County
Room 200 Court House (Hearing Room #218)
Towson, Maryland 21204
(301) 494-3180
May 31, 1984

NOTICE OF ASSIGNMENT
CONTINUED HEARING

NO POSTONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). ABSOLUTELY NO POSTONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE IN ACCORDANCE WITH RULE 2(c), COUNTY COUNCIL BILL #59-79

CASE NO. 84-147-XSPHA

JAMES R. MYRICK, ET UX
SE - Fishing facility in an RC 5 zone
SH - Amend site plan
Variance - to permit setbacks and to allow parking areas to be paved with crusher run in lieu of macadam

SW/3 GOOSE NECK ROAD 626.89' NW OF C/L OF GOOSE HARBOR ROAD
15th DISTRICT

THURSDAY, JUNE 21, 1984 at 10 a.m.

ASSIGNED FOR:

cc: John B. Gontum, Esquire
James R. Myrick
Ralph K. Rothwell, Jr., Esquire
James F. Offutt, Jr., Esquire
Christopher LaMartina, President
Bowley's Quarters Imp. Assn.
Phyllis Cole Friedman
Ted Zaleski, Jr., Director
N. E. Gerber
J. G. Howell
A. Jablon
Jean M. H. Jung
J. E. Dyer

Counsel for Petitioner
Petitioner
Counsel for Protestants, Gress and Bauer
Protestant
People's Counsel
Dept. of Permits and Licenses

Edith T. Eisenhart, Adm. Secretary

County Board of Appeals of Baltimore County
Room 200 Court House (Hearing Room #218)
Towson, Maryland 21204
(301) 494-3180
March 2, 1984

NOTICE OF ASSIGNMENT

NO POSTONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). ABSOLUTELY NO POSTONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE IN ACCORDANCE WITH RULE 2(c), COUNTY COUNCIL BILL #59-79

CASE NO. 84-147-XSPHA

JAMES R. MYRICK, ET UX
SW/3 Goose Neck Rd., 626.89' NW of the C/L of Goose Harbor Rd.
15th District

SE-Fishing facility in an RC 5 zone
SH-Amended site plan
Var-To permit setbacks and to allow parking areas to be paved with crusher run in lieu of macadam

TUESDAY, MAY 29, 1984, at 10 a.m.

ASSIGNED FOR:

cc: John Gontum, Esq.
James Myrick, et ux
Ralph K. Rothwell, Jr., Esq.
James Offutt, Jr., Esq.
Christopher LaMartina, Pres. Protestant
Bowley's Quarters Improvement Assoc.
Phyllis C. Friedman
T. Zaleski, Jr.
N. Gerber
J. Howell
A. Jablon
J. Jung
J. Dyer

Attorney for Petitioner
Petitioners
Counsel for Protestants, Gress and Bauer
Atry. for Protestants
Protestant
People's Counsel
Permits and Licenses

June Holman, Secy.

MASLAN, MASLAN AND ROTHWELL, P.A.
ATTORNEYS AT LAW
1008 EASTERN AVENUE
BALTIMORE, MARYLAND 21204
TEL. (301) 288-2700

May 25, 1984

Re: Appeal of Case No. 84-147-XSPHA
Petition of James R. Myrick

Dear Chairperson:

Please enter my appearance on behalf of the protestants, Mr. and Mrs. Gress and S. Bauer.

The case is set for Tuesday May 19, 1984.

Very truly yours,
Ralph K. Rothwell, Jr.

RRK/ddg

cc: James Offutt, Esquire
Robert J. Romadka, Esquire
John B. Gontum, Esquire

RECEIVED
COUNTY BOARD OF APPEALS
MAY 29 1984

MASLAN, MASLAN AND ROTHWELL, P.A.
ATTORNEYS AT LAW
1008 EASTERN AVENUE
BALTIMORE, MARYLAND 21204
TEL. (301) 288-2700

May 25, 1984

Re: Appeal of Case No. 84-147-XSPHA
Petition of James R. Myrick

Dear Chairperson:

Please enter my appearance on behalf of the protestants, Mr. and Mrs. Gress and S. Bauer.

The case is set for Tuesday May 19, 1984.

Very truly yours,
Ralph K. Rothwell, Jr.

RRK/ddg

cc: James Offutt, Esquire
Robert J. Romadka, Esquire
John B. Gontum, Esquire

RECEIVED
COUNTY BOARD OF APPEALS
MAY 29 1984

DEC 19 AM

MEMORANDUM ON SPECIAL HEARING

Petitioners James and Cecile Myrick have filed petitions for Special Hearing, Special Exception and Variances for certain property which they own on Gooseneck Road in the Fifteenth Election District of Baltimore County. All of the petitions pertain to an existing and proposed Fishing and Shellfishing Facility, Shoreline, Class I. A hearing was held on the Petitions and site plans and testimony taken on December 5, 1983, at the conclusion of which memoranda were requested on a particular issue of law.

STATEMENT OF ISSUE

MAY A TRACT OF GROUND ACROSS A THIRTY FOOT PUBLIC RIGHT OF WAY BE CONSIDERED AS PART OF A PARCEL LYING ALONG THE SHORELINE OF TIDAL WATERS FOR THE PURPOSE OF SECTION 101 OF THE BALTIMORE COUNTY ZONING REGULATIONS PERTAINING TO FISHING AND SHELLFISHING FACILITIES, SHORELINE?

SUMMARY OF DISCUSSION

There are circumstances which exist in this particular case which permit the conclusion that the two tracts of ground may be considered as one for the purposes of Section 101 of the Baltimore County Zoning Regulations (hereinafter cited as B.C.Z.R.). Legal authority in Maryland as well as in other states interprets the word "lot" to include contiguous

Petitions for Special Exception, Special Hearing and Variances: SW/3 of Goose Neck Road, 626.89' NW of the C/L of Goose Harbor Road. James R. Myrick, et ux - Petitioners

BRIEF ON BEHALF OF PROTESTANTS

Three petitions were filed on behalf of James R. and Cecile V. Myrick for certain relief from the zoning regulations of Baltimore County. These petitions request variances, a special exception and a special hearing for their property located on Goose Neck Road in Bowley's Quarter in Baltimore County.

One of the questions which was presented as a part of the special hearing request is a determination of the status of two parcels of land vested in one common owner and abutting on either side of a public road. The determination of the status is necessary because of the requirement that "a fishing; shellfishing facility shall be situated on a lot on the shoreline of tidal waters". And further that a class one facility as petitioned for shall be "situated on a lot occupied by the primary residence of its operator".

At the request of the Zoning Commissioner, this brief will deal solely with the question of whether or not these properties, separated by a public road, may be treated as a single parcel of land.

It is not disputed that Mr. and Mrs. Myrick are the owners of Lot No. 247 as shown on the Plat of the First Addition

DUPLICATE
CERTIFICATE OF PUBLICATION

TOWSON, MD. 10/27/83

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., on the day of one (1) week, 10/23, 1983, the 10th publication appearing on the 17th day of November, 1983.

THE JEFFERSONIAN
Frank Smith
Manager

Cost of Advertisement, \$ 42.00

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 15
Date of Posting: 11/23/83

Posted for: James R. Myrick, et ux

Petitioner: James R. Myrick, et ux

Location of property: SW/3 of Goose Neck Road, 626.89' NW of the C/L of Goose Harbor Road

Location of Sign: 15th District

Posted by: John B. Gontum, Esq.

Date of return: 11/23/83

Number of Signs: 2

Baltimore County
Board of Appeals
Court House
Towson, Maryland 21204

March 24, 1983

Permit Application 47252
Applicant: Mr. and Mrs. James Myrick
Property: 1326 Gooseneck Road
Baltimore, MD 21220

To The Honorable Board:

This letter will serve as a formal request of an appeal of an Order issued by Mr. Joseph M. Nolan, Assistant Building Engineer, dated in a letter dated March 9, 1983. A copy of same is attached hereto and marked as Exhibit A. The Applicant states for grounds, the following:

a) That there is an issue as to whether or not the property is residential and/or commercial and that commercial permits may not be required for all or part of this property.

b) That at this time, counsel for the Applicant is working with the Baltimore County Zoning Plans Advisory Committee in order to determine what must be filed to amend the Applicant's original site plan submitted in 1978 and that the Order, by virtue of a letter dated March 9, 1983, as stated, is not coordinated with other offices and departments of Baltimore County and that such Order would be considered wholly arbitrary and capricious.

c) That at no time was there any opportunity to be heard afforded to the Applicant and that to direct such an Order on the facts as given would be wholly arbitrary and capricious as it was the Applicant who was the moving force in the current situation as he had applied for a commercial permit.

BALTIMORE COUNTY
DEPARTMENT OF PERMITS & LICENSES
TOWSON, MARYLAND 21204
494-3610

March 9, 1983

Mr. James Myrick
1326 Gooseneck Road
Baltimore, Maryland 21220

RE: B-83-038-15
Permit Application 47252
1326 Gooseneck Road

Dear Mr. Myrick:

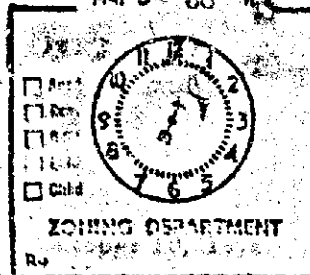
In 1978 you submitted a plat to Baltimore County Office of Zoning. The purpose of that plat was your attempt to establish the existence and the site plan you submitted in 1978 indicates that extensive work had been performed without benefit of permits and in violation of Zoning requirements for all the improvements, accurately reflecting the actual use of the particular improvements and the actual use of the property. The plat must contain the actual elevations above sea level on the property at the location of all the improvements. At the time of applications, the Commercial Building Inspector and the Chief of the Plans Review Division will determine whether or not any professional construction drawings would be required for each of the improvements.

I have been informed by the Office of Zoning that their laws and regulations require that a hearing be held to determine if the required permits can be issued for the work on your property. A plan acceptable to the Office of Zoning and all commercial permit applications must be submitted to this office not later than April 10, 1983. Please be advised that if the required site plan and permit applications are not filed by that date, I will refer the matter to the Board of Appeals for final action.

BALTIMORE COUNTY
OFFICE OF LAW
TOWSON, MARYLAND 21204
494-3146

LEONARD S. JACOBSON
COUNTY SOLICITOR

April 18, 1980



Mr. William E. Hammond,
Zoning Commissioner
Office of the Zoning Commissioner
First Floor - County Office Building
Towson, Maryland 21204

Re: Opinion regarding special exception
use permits relative to fishing and
shell fishing in R.C. 2, 3 and 5 zones

Dear Mr. Hammond: Regarding property owner in R.C. 2, 3 and 5 zones.

You have asked our opinion with respect to the special exception use permits under Bill No. 98-75 for fishing and shell fishing in R.C. 2, 3 and 5 zones. Your inquiry specifically requested opinion as to three pertinent questions which we will address hereafter and, in addition, we have elected to issue an opinion on the question of whether or not the zoning commissioner has the right to review a special use permit granted by a previous zoning commissioner.

SALIENT FACTS

1. Baltimore County Council passed Bill No. 98-75 effective on December 22, 1975 establishing commercial fishing and crabbing as a special exception in R.C. 2, 3 and 5 zones. Section 1A02.2, Subparagraph B, Paragraph 10 states,

"Commercial fishing, crabbing and shell fishing operation, Primary or Secondary, EXCEPT THAT ANY SUCH USE EXISTING AT THE TIME OF DATE OF ENACTMENT OF THIS SUBSECTION MAY CONTINUE AT THE SAME LEVEL OF INTENSITY PROVIDED THAT WITHIN 365 DAYS OF THE ENACTMENT DATE OF THIS LEGISLATION, THEY SHALL FILE FOR A USE PERMIT AS PRESCRIBED UNDER SECTION 500.4 OF THE ZONING REGULATIONS."

Although Bill No. 98-75 was approved and enacted on November 7, 1975, and took effect on December 22, 1975. The R.C. zones did not come into existence until the adoption of the zoning maps by the County Council in October, 1976 and effective November, 1976. On October 5, 1977 a request was made for

RE: PETITION FOR SPECIAL EXCEPTION BEFORE THE ZONING COMMISSIONER
PETITION FOR SPECIAL HEARING
PETITION FOR VARIANCES : OF BALTIMORE COUNTY
SW/S of Goose Neck Rd., 526.99' :
NW of the Centerline of Goose :
Harbor Rd., 15th District :
JAMES K. MYRICK, et al :
Petitioners : Case No. 94-147-XSPHA

ORDER TO ENTER APPEARANCE

Mr. Commissioners

Pursuant to the authority contained in Section 524.1 of the Baltimore County Charter, I hereby enter my appearance in this proceeding. You are requested to notify me of any hearing date or dates which may be now or hereafter designated therefor, and of the passage of any preliminary or final Order in connection therewith.

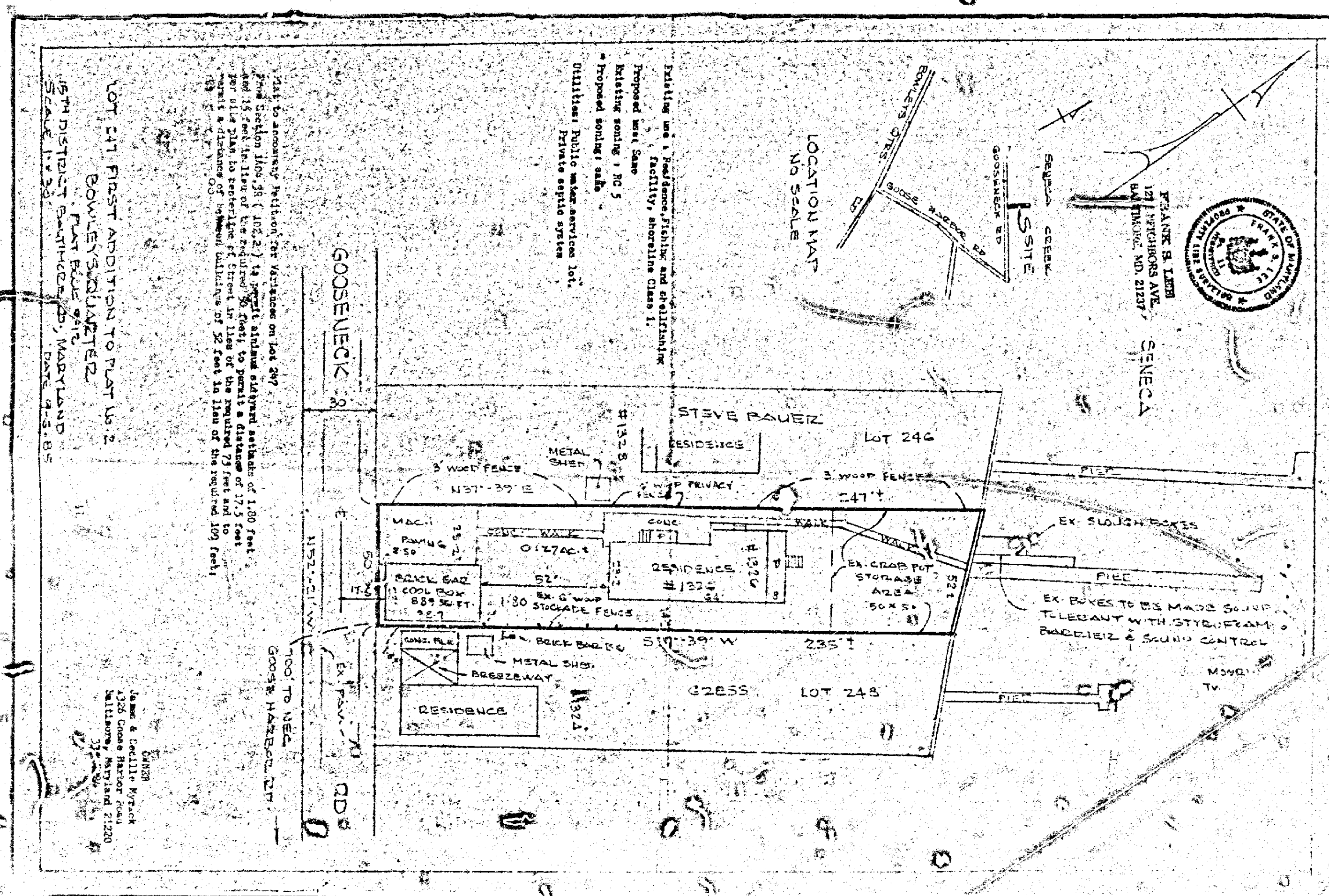
Peter Max Zimmerman
Deputy People's Counsel

John W. Hession, III
People's Counsel for Baltimore County
Rm. 223, Court House
Towson, MD 21204
494-2188

I HEREBY CERTIFY that on this 18th day of November, 1983, a copy of the foregoing Order was mailed to David A. Rodgers, Esquire, 209 E. Fayette Street, Baltimore, MD 21202, Attorney for Petitioners.

John W. Hession, III

James K. Myrick 6143 Fleming Rd. 335-7659
Sharon Myrick 6143 Fleming Rd. 335-7659
Celine Myrick 6143 Fleming Rd. 335-7659
New Beauty 4845 Vicky Rd. 256-4739
Al Batty 4845 Vicky Rd. 256-4739
Edith M. Batty 4845 Vicky Rd. 256-4739
Michael Montgomery 512 Foxcroft Rd. 391-8031
Kimberly Batty 2253 Southern Rd. 574-0625
Kenneth M. Batty 2253 Southern Rd. 574-0625
Dana Batty 4845 Vicky Rd. 256-4739
Melissa Bennett 6105 Fleming Rd. 335-8651
Terry Bennett 18 Bertram Rd. 768-1427
Teresa Bennett 18 Bertram Rd. 768-1427



PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY, et al.,
Appellants
V.
JAMES R. MYRICK, et ux,
Appellees

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY
AT LAW
CG Docket No. 5
Folio No. 3
File No. 84CG-1503

PETITION ON APPEAL

People's Counsel for Baltimore County and Ralph K. Rothwell, Jr.,
Attorney for Mr. and Mrs. Theodore Gress, Protestants below and Appellants
herein, in compliance with Maryland Rule B-2(e), file this Petition on
Appeal setting forth the grounds upon which this Appeal is taken, viz:

1. That the decision of the County Board of Appeals is illegal,
arbitrary, and capricious insofar as it orders that the Buildings Engineer
grant a building permit for the existing new building after an amended
site plan for Lot #247 is prepared by a Registered Professional Engineer
and that necessary variances as shown on amended site plan be granted to
allow the above building permit.

2. That the decision of the County Board of Appeals is unlawful
in particular because the building for which Petitioners seek a variance
(and which is already on the site in defiance of the law) cannot be
built under the Baltimore County Building Code (Section 519.11

WHEREFORE, Appellants pray that the part of the County Board
of Appeals decision granting the aforesaid building permit and variance,
under date of October 30, 1984 be reversed.

Ralph K. Rothwell, Jr.
Ralph K. Rothwell, Jr.
7508 Eastern Avenue

Phyllis Cole Friedman
Phyllis Cole Friedman
People's Counsel for Baltimore County

- 2 -

I HEREBY CERTIFY that on this 25th day of November, 1984,
a copy of the foregoing Petition on Appeal was delivered to the
Administrative Secretary, County Board of Appeals, Room 200, Court
House, Towson, MD 21204; and a copy mailed to John B. Gontum, Esquire,
809 Eastern Blvd., Baltimore, MD 21221; and James F. Offutt, Jr.,
Esquire, Jefferson Bldg., 105 W. Chesapeake Ave., Towson, MD 21204.

Phyllis Cole Friedman
Phyllis Cole Friedman

IN THE MATTER OF
JAMES R. MYRICK, ET UX
FOR SPECIAL EXCEPTION FOR
A FISHING FACILITY IN AN R.C.
ZONE; FOR SPECIAL HEARING
REGARDING AMENDED SITE PLAN;
FOR VARIANCES TO PERMIT SET-
BACKS AND TO ALLOW PARKING
AREAS TO BE PAVED WITH CRUSHER
RUN IN LIEU OF MACADAM ON
PROPERTY LOCATED ON THE
SOUTHWEST SIDE OF GOOSE NECK
RD., 626.89' NORTHWEST OF THE
CENTER LINE OF GOOSE HARBOR RD.
- 15TH DISTRICT

* BEFORE THE
* COUNTY BOARD
* OF
* APPEALS
* OF
* BALTIMORE COUNTY
* NO. 84-147-XSPHA

ORDER FOR APPEAL BY APPELLANTS, BALTIMORE COUNTY
ZONING COMMISSIONER AND BALTIMORE COUNTY, MARYLAND

MR. CLERK:

Please enter an appeal on behalf of the Baltimore
County Zoning Commissioner and Baltimore County, Maryland from
the Order of the Board of Appeals of Baltimore County, passed
in the above case on October 30, 1984. This appeal is taken
pursuant to Maryland Rule B2.

Malcolm F. Spier, Jr.
MALCOLM F. SPIER, JR.
County Attorney

Thomas J. Bollinger
THOMAS J. BOLLINGER
Assistant County Attorney
Mezzanine - Courthouse
Towson, Maryland 21204
494-4420
Attorneys for Appellants

I HEREBY CERTIFY, that prior to filing the foregoing
ORDER FOR APPEAL by the Appellant, Baltimore County Zoning
Commissioner, a copy thereof was served upon the County Board
of Appeals of Baltimore County.

Thomas J. Bollinger
THOMAS J. BOLLINGER
Assistant County Attorney

RECEIPT of a copy of the foregoing ORDER FOR APPEAL
is acknowledged this 25th day of November, 1984.
County Board of Appeals of Baltimore County,
By: *Erin J. Baskett*
Erin J. Baskett, Administrative Secretary.

-2-

IN THE MATTER OF
JAMES R. MYRICK, ET UX
FOR SPECIAL EXCEPTION FOR
A FISHING FACILITY IN AN R.C.
ZONE; FOR SPECIAL HEARING
REGARDING AMENDED SITE PLAN;
FOR VARIANCES TO PERMIT SET-
BACKS AND TO ALLOW PARKING
AREAS TO BE PAVED WITH CRUSHER
RUN IN LIEU OF MACADAM ON
PROPERTY LOCATED ON THE
SOUTHWEST SIDE OF GOOSE NECK
RD., 626.89' NORTHWEST OF THE
CENTER LINE OF GOOSE HARBOR RD.
- 15TH DISTRICT

* BEFORE THE
* COUNTY BOARD
* OF
* APPEALS
* OF
* BALTIMORE COUNTY
* NO. 84-147-XSPHA

PETITION FOR APPEAL

The Baltimore County Zoning Commissioner and Baltimore
County, Maryland, Appellants herein, by their attorneys, Malcolm
F. Spier, Jr., County Attorney and Thomas J. Bollinger, Assistant
County Attorney, in conjunction with their Order for Appeal,
filed herewith, state:

ACTION APPEALED FROM:

The Appellants appeal from the Order of the Baltimore
County Board of Appeals dated October 30, 1984, reversing the
decision of the Baltimore County Zoning Commissioner and order-
ing the Buildings Engineer to grant a building permit for the
building that presently exists on the property.

ERROR COMMITTED:

The County Board of Appeals, in its Opinion, states
that a new building has been erected on the property and no
building permits were requested until after construction was
completed. The County Board of Appeals states that this appeared
to be a flagrant violation of Baltimore County regulations and

further that the building permit could not be issued because
the elevation places the property within the 100 year flood-
plain and does not permit new construction therein. (Opinion,
P. 3). The Appellants respectfully aver that the Opinion
of the Board ordering the Zoning Commissioner and the Buildings
Engineer to grant permits after a building had been constructed
without permits and in a floodplain, without sufficient elevation
to permit new construction is a flagrant violation of the
Baltimore County Code and an illegal act on the part of the
Baltimore County Board of Appeals.

RELIEF SOUGHT:

The Appellants petition this court to reverse the
Order of the County Board of Appeals and have the Petitioner
remove the building which has been illegally constructed without
permits and within the 100 year floodplain. The Appellants also
respectfully petitions this court to affirm the decision of the
Baltimore County Zoning Commissioner and the Buildings Engineer
with respect to this property.

Malcolm F. Spier, Jr.
MALCOLM F. SPIER, JR.
County Attorney

Thomas J. Bollinger
THOMAS J. BOLLINGER
Assistant County Attorney
Mezzanine - Courthouse
Towson, Maryland 21204
494-4420
Attorneys for Appellant

-3-

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 25th day of November,
1984, a copy of the foregoing Petition for Appeal was mailed,
postage prepaid, to Arnold Jablon, Esquire, Zoning Commissioner,
First Floor, County Office Building, Towson, Maryland 21204;
and to Joseph M. Nolan, Assistant Buildings Engineer, First
Floor, County Office Building, Towson, Maryland 21204; and to
Phyllis C. Friedman, Esquire, People's Counsel, Second Floor,
Old Court House, Towson, Maryland 21204; and to David A. Rodgers,
Esquire, 209 E. Payette Street, Baltimore, Maryland 21202,
counsel for the Petitioners; and to William T. Hackett, Chairman,
William R. Evans and Patricia Phipps, the County Board of Appeals
of Baltimore County, Room 200, Courthouse, Towson, Maryland
21204.

Thomas J. Bollinger
THOMAS J. BOLLINGER
Assistant County Attorney

-3-

IN THE MATTER OF
JAMES R. MYRICK, ET UX,
FOR SPECIAL EXCEPTION FOR
A FISHING FACILITY IN AN R.C.
ZONE; FOR SPECIAL HEARING
REGARDING AMENDED SITE PLAN;
FOR VARIANCES TO PERMIT SET-
BACKS AND TO ALLOW PARKING
AREAS TO BE PAVED WITH
CRUSHER RUN IN LIEU OF
MACADAM ON PROPERTY LOCATED
ON THE SOUTHWEST SIDE OF
GOOSE NECK RD., 626.89'
NORTHWEST OF THE CENTER
OF GOOSE HARBOR RD. - 15TH
DISTRICT

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY
* AT LAW
* CG DOC. NO. 5
* FOLIO NO. 3
* FILE NO. 84-CG-1503

ZONING COMMISSIONER OF
BALTIMORE COUNTY, ET AL,
ZONING FILE NO. 84-147-
XSPHA

ORDER FOR APPEAL

Please note a cross-appeal pursuant to Maryland Rule of
Procedure B 4 (g) to the Circuit Court for Baltimore County for
the Opinion and Order of the Board of Appeals of Baltimore
County, under date of October 30, 1984, in the above captioned
matter.

John B. Gontum
John B. Gontum
Robert J. Romadka
ROMADKA, GONTUM, HENNEGAN & FOOS
809 Eastern Boulevard
Baltimore, Maryland 21221
Phone No.: 686-8274

FILED DEC 7 1984

COUNTY
CLERK
BALTIMORE
MAY 11 A 9 43

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of December, 1984, a copy of the foregoing Order for Appeal was delivered to the Administrative Secretary, County Board of Appeals, Room 200, Court House, Towson, Maryland 21204 and copy mailed to Phyllis Cole Friedman, Peoples Court, Court House, Towson, Maryland 21204; James F. Offutt, Jr., Esquire, Jefferson Building, 105 W. Chesapeake Avenue, Towson, Maryland 21204 and Malcolm Spicer, County Attorney, Court House, Towson, Maryland 21204.

John B. Gontrum

Robert J. Romadka

IN RE: PETITIONS SPECIAL EXCEPTION * BEFORE THE
SPECIAL HEARING AND ZONING * ZONING COMMISSIONER
VARIANCES *
SW/8 of Goose Neck Road, * OF BALTIMORE COUNTY
626.89' NW of the centerline *
of Goose Harbor Road-15th * Case No.: 84-147 XSPHA
Election District *

James R. Myrick, et ux *

Petitioners *

ORDER FOR APPEAL

Mr. Commissioner:

Please note an appeal from your decision in the above-entitled case, under date of January 16, 1984, to the County Board of Appeals and forward all papers in connection therewith to said Board for hearing.

ROBERT J. ROMADKA

JOHN B. GONTRUM
809 Eastern Boulevard
Baltimore, Maryland 21221
686-8274
Attorneys for Petitioners

ROBERT J. ROMADKA
ATTORNEY AT LAW
BALTIMORE, MARYLAND

IN THE MATTER OF :
JAMES R. MYRICK, ET UX :
FOR SPECIAL EXCEPTION FOR :
A FISHING FACILITY IN AN R.C. :
ZONE: FOR SPECIAL HEARING :
REGARDING AMENDED SITE PLAN: :
FOR VARIANCES TO PERMIT SET- :
BACKS AND TO ALLOW PARKING :
AREAS TO BE PAVED WITH CRUSHER :
RUN IN LIEU OF MACADAM :
ON PROPERTY LOCATED ON THE :
SOUTHWEST SIDE OF GOOSE NECK :
RD., 626.89' NORTHWEST OF THE :
CENTER LINE OF GOOSE HARBOR :
RD. - 15th DISTRICT :

BEFORE FE (3)

COUNTY BOARD OF APPEALS

OF

BALTIMORE COUNTY

No. 84-147-XSPHA

OPINION

This case comes before this Board on appeal from a decision of the Baltimore County Zoning Commissioner dated January 16, 1984, denying all the relief prayed for by the Petitioners. The Board will note that the hearing in this case consumed three full days of direct testimony, the introduction of over 50 exhibits, many of which are multiple exhibits, and produced much controversial testimony. In addition, there were lengthy memorandums submitted for the Board's consideration by Petitioners' attorney, Protestants' attorney and People's Counsel, plus a lengthy Findings of Fact and Conclusions of Law by the Baltimore County Zoning Commissioner. All of this has been carefully considered by this Board, but we will not attempt in this Opinion to detail or summarize these factors but will attempt to confine this Opinion to the specific issues before us. It will be noted, however, that the following persons testified during these three days of hearing.

Testifying for Petitioners

1. Captain Harry Phillips - Charter Boat Captain
2. James Myrick - Petitioner and property owner
3. Kenneth Hubbard - Commercial crabber
4. Patti Chatterton - Neighborhood resident
5. Dennis Fandl - Neighborhood resident
6. Anthony Reale - Area resident and customer

Testifying for Protestants

7. Mrs. Ruth Gress - Next door neighbor
8. Mr. Theodore Gress - Husband of Mrs. Gress
9. William O. Luetke - Professional engineer and land surveyor
10. Richard Davis - Attorney and real estate broker

James R. Myrick, et ux
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11. Amy Von Bauer - Next door neighbor
12. Steve Bauer - Husband of Mrs. Bauer
13. Shirley Hess - Secretary to People's Counsel
14. John Reisinger - Buildings Engineer, Baltimore County
15. David Filbert - Director, Baltimore County Air Pollution Control
16. Bernard Simon - Real estate appraiser and consultant
17. Christopher LaMartina - President, Bowleys Quarters Comm. Assn.
18. Thomas Fritsch - Neighborhood resident
19. James Hoswell - Baltimore County Planner
20. Dennis Fandl - Neighborhood resident
21. Kenneth Hubbard - Commercial crabber
22. James Myrick - Petitioner

There was presented uncontested testimony that Mr. Myrick purchased the property known as Lot #247 in March, 1971. He had, however, been familiar with this property for many years prior to this and it had been used during these years for crabbing purposes. In 1977, in compliance with Baltimore County legislation, he applied for a use permit and was granted same in October, 1978. This use permit required the submission of a site plan and this plan is part of the record as Petitioners' exhibit #3. It is noted that this legislation, Bill #98-75, provided for these use permits to grandfather: the use of those operations in existence at the effective time of this legislation, all proper requirements being attained and further specifically noted that any such use existing at the time of enactment of this subsection may continue at the same level of intensity (emphasis added). In June, 1978, Mr. Myrick purchased the lot directly to the rear and across the road from his Lot #247. This parcel contains 1.0+ acres and is known as Lot #246. After this purchase, he cleared a part of this lot and stored equipment on same from sometime in 1979 until sometime in 1982, when its commercial use was questioned and this usage discontinued. Mr. Myrick now pleads that since these two lots abut on the centerline of Goose Neck Road, they should be found to be contiguous property and therefore the entire holdings be considered shoreline property.

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The regulations clearly require that to obtain a Special Exception for a Class I Fishing and Shellfishing facility, the property in question must be a shoreline property and one of the petitions before the Board seeks a Special Exception for a Class I Fishing and Shellfishing facility on this property. The Board can find no logical reason to classify these two parcels as shoreline property. Had both these properties been in active use as a crabbing operation at the time the application for a use permit was filed and the required site plan so shown, there may have been justification for granting the use permit for both lots but such was not the case. At the time application for the use permit was filed, Mr. Myrick did not even own Lot #246. Mr. Myrick presented as exhibits, several properties divided in some manner, i.e., right-of-way, street or easement, etc., to buttress his claim that they are considered one property. The Board cannot, however, apply any of these standards to this situation. Mr. Myrick purchased one property in 1971 and the second in 1978, from different owners, indicating these have always been separate parcels. They are so designated for tax purposes. It is this Board's Opinion that Mr. Myrick owns two parcels, one a shoreline parcel and one not a shoreline parcel. Since one of the most primary requirements for the granting of a Special Exception for a Fishing and Crabbing facility is that the facility must be located on shoreline property, the request for the Special Exception will be denied and this denial moots the requests on this property for variances from side yard setbacks and the paving on this parcel with crusher run instead of the required paving.

The third petition presented this Board is a request to submit an amended site plan for Lot #247, the lot granted the use permit in 1978. There are several alterations to the original site plan that occasion this request, the principal one being the erection of a new building replacing the original building, a truck body being used as a "cool box" and a shed type porch area. Petitioners' position is that this new building encompasses only the approximate same area as that contained on the original site plan and therefore should be allowed. Mr. Myrick admits that no building permits were requested for this construction until it had been completed. Surely Mr. Myrick knew that permits for this work were required and if he did not, the contractor involved should have. This appears to be a flagrant violation of Baltimore County regulations. Baltimore County buildings Engineer testified that no permit for new construction would have been granted because the elevation places it within the 100 year flood plain and no new construction is permitted therein.

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Case No. 84-147-XSPHA

This situation causes the Board grave concern. The easiest course is to order this illegally constructed building removed. However, if this course is followed, Mr. Myrick could replace this building with a shanty type building and an old truck body, as described on his plot plan. While this may be legally correct, it could also subject the neighbors and the area to an obvious eyesore. The new building is apparently well constructed and is attractive enough to be in keeping with the neighborhood, and to order its removal seems to serve no purpose whatsoever. The Board will therefore reluctantly order that a building permit for this existing building be issued and that an amended site plan be submitted accurately portraying its exact dimensions and its exact position on the lot, said site plan to accompany the existing use permit.

While the validity of the existing use permit is not an issue before this Board, the Board feels it would be remiss in not commenting on this in view of the lengthy testimony presented at this hearing regarding the alleged intensification of usage. Mr. Myrick testified he originally had some 12 - 1400 pots on this site. There was testimony that as many as 2000 pots have been observed on the site. Mr. Myrick testified he now has a splinter type crabbing operation in place on the Eastern Shore and trucks these crabs to the subject site for storage in the cool-box. Mr. Myrick testified that he is opening a retail crab sales at some other location but will use this site as part of his product supply. While the areas on site grandfathered through the use permit may not have increased, the intensification of use on this site is surely suspect and Mr. Myrick may be skating precariously close to losing his use permit altogether.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 30th day of October, 1984, by the County Board of Appeals, ORDERED:

1. That the two lots, known as lot: #246 and #247, be found to be separate parcels and not shoreline properties in total, but that lot #247 be found to be a shoreline property and lot #246 be found not to be a shoreline property.
2. The Special Exception for a Class I Fishing and Shellfishing Facility on this site be DENIED and that the variances on lot #246 be declared moot and therefore ALSO DENIED.
3. That an amended site plan for lot #247 be prepared by a Registered Professional Engineer to accompany the existing use permit, this site plan to accurately portray the size and position of the new building on this site and accurately delineate the setback dimensions from all pertinent points on this site to this building.

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4. That the Buildings Engineer grant a building permit for this building as it now exists.
5. That the necessary variances as shown on the amended site plan prepared by a Registered Professional Engineer be GRANTED to allow the above building permit.
6. That no further building permits for expansion or alteration of this building be granted whatsoever.

Any appeal from this decision must be in accordance with Rules B-1 through B-13 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William T. Hackett
William T. Hackett, Chairman

William R. Evans

Patricia Phipps

IN THE MATTER OF :
JAMES R. MYRICK, ET UX, :
FOR SPECIAL EXCEPTION FOR :
A FISHING FACILITY IN AN R.C. :
ZONE: FOR SPECIAL HEARING :
REGARDING AMENDED SITE PLAN: :
FOR VARIANCES TO PERMIT SET- :
BACKS AND TO ALLOW PARKING :
AREAS TO BE PAVED WITH CRUSHER :
RUN IN LIEU OF MACADAM :
ON PROPERTY LOCATED ON THE :
SOUTHWEST SIDE OF GOOSE NECK :
RD., 626.89' NORTHWEST OF THE :
CENTER LINE OF GOOSE HARBOR :
RD. - 15th DISTRICT :

IN THE

CIRCUIT COURT

FOR

BALTIMORE COUNTY

AT LAW

CG Doc. No. 5

Folio No. 3

File No. 84-CG-1503

ZONING COMMISSIONER OF BALTIMORE COUNTY, ET AL, PLAINTIFFS

ZONING FILE NO. 84-147-XSPHA

CERTIFICATE OF NOTICE

Mr. Clerk:

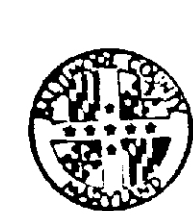
Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Procedure, William T. Hackett, William R. Evans, and Patricia Phipps, constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the appeal to the representative of every party to the proceeding before it; namely, John B. Gontrum, Esq., 809 Eastern Blvd., Essex, Md. 21221, Attorney for Petitioner; James R. Myrick, et ux, 1326 Goose Neck Rd., Baltimore, Md. 21229, Petitioners; James F. Offutt, Jr., Esq., Jefferson Bldg., Towson, Md. 21204, Attorney for Protestants; Christopher LaMartina, Pres., Bowley's Quarters Improvement Assoc., 3703 Bay Drive, Baltimore, Md. 21220, Protestant; Ralph K. Rothwell, Jr., Esq., Maslan, Maslan & Rothwell, 7508 Eastern Ave., Baltimore, Md. 21224, Attorney for Protestants, Gress & Bauer; Phyllis C. Friedman, Court House, Towson, Md. 21204, People's Counsel for Baltimore County; and Malcolm F. Spicer, Jr., Esq. and Thomas J. Bollinger, Esq., Mezzanine, Court House, Towson, Md. 21204, Attorneys for Baltimore County, Maryland, a copy of which Notice is attached hereto and prayed that it may be made a part thereof.

William T. Hackett
County Board of Appeals of Baltimore County
Rm. 200, Court House, Towson, Md. 21204
694-3189

James R. Myrick, et ux
Case No. 84-147-XSPHA

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to John B. Gontrum, Esq., 809 Eastern Blvd., Essex, Md. 21221, Attorney for Petitioner; James R. Myrick, et ux, 1326 Goose Neck Rd., Baltimore, Md. 21220, Petitioners; James F. Offutt, Jr., Esq., Jefferson Bldg., Towson, Md. 21204, Attorney for Protestants; Christopher LaMartina, Pres., Bowley's Quarters Improvement Assoc., 3703 Bay Drive, Baltimore, Md. 21220, Protestant; Ralph K. Rothwell, Jr., Esq., Maslan, Maslan & Rothwell, 7508 Eastern Ave., Baltimore, Md. 21224, Attorney for Protestants, Gress & Gauer; Phyllis C. Friedman, Court House, Towson, Md. 21204, People's Counsel for Baltimore County; and Malcolm F. Spicer, Jr., Esq. and Thomas J. Bollinger, Esq., Mezzanine, Court House, Towson, Md. 21204, Attorneys for Baltimore County, Maryland, on this 29th day of November, 1984.

John B. Gontrum
John B. Gontrum
County Board of Appeals of Baltimore County



County Board of Appeals of Baltimore County
Room 200, Court House
Towson, Maryland 21204
(301) 494-3180

December 11, 1984

Phyllis Cole Friedman
People's Counsel for Baltimore County
Courthouse
Towson, MD 21204

Re: Case No. 84-147 PHA
James Myrick, et ux

Dear Ms. Friedman:

Notice is hereby given, in accordance with the Rules of Procedure of the Court of Appeals of Maryland, that an appeal has been taken to the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

Edith T. Eisenhart
Edith T. Eisenhart, Adm. Secretary

Enclosures

cc: Thomas J. Bollinger, Esquire
James F. Offutt, Jr., Esquire
Christopher LaMartina
Ralph K. Rothwell, Jr., Esquire
Ted Zaleski, Jr.
Norman E. Gerber
James G. Hoswell
Arnold Jablon
Jean M. H. Jung
James E. Dyer

IN THE MATTER OF :
JAMES R. MYRICK, ET UX :
FOR SPECIAL EXCEPTION FOR :
A FISHING FACILITY IN AN :
R.C. ZONE: FOR SPECIAL :
HEARING REGARDING AMENDED :
SITE PLAN: FOR VARIANCES TO :
PERMIT SETBACKS AND TO ALLOW :
PARKING AREAS TO BE PAVED :
WITH CRUSHER RUN IN LIEU OF :
MACADAM ON PROPERTY :
LOCATED ON THE SOUTHWEST :
SIDE OF GOOSENECK ROAD, :
626.83' NORTHWEST OF THE :
CENTER OF GOOSE HARBOR ROAD :
15th DISTRICT :
ZONING FILE NO. 84-147-XSPHA :
JAMES R. MYRICK, ET UX :
DEFENDANTS-APPELLANTS :

IN THE :
CIRCUIT COURT :
FOR :
BALTIMORE COUNTY :
AT LAW :
CG Docket No. 5 :
Folio No. 3 :
File No. 84-CG-1503 :

CERTIFICATE OF NOTICE

Mr. Clerk:

Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Procedure, William T. Hackett, William R. Evans and Patricia Phipps, constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the Cross-Appeal to the representative of every party to the proceeding before it; namely, John B. Gontrum, Esquire, 809 Eastern Boulevard, Essex, MD 21221, Attorney for the Petitioners, and James R. Myrick, et ux, 1326 Goose Neck Road, Baltimore, MD 21220, Petitioners, and James F. Offutt, Jr., Esquire, Jefferson Building, Towson, MD 21204, Attorney for the Protestants, and Christopher LaMartina, President, Bowley's Quarters Improvement Association, 3703 Bay Drive, Baltimore, MD 21220, Protestant, and Ralph K. Rothwell, Jr., Esquire, Maslan, Maslan & Rothwell, 7508 Eastern Avenue, Baltimore, MD 21224, Attorney for Protestants (Gress and Bauer), and Phyllis Cole Friedman, Courthouse, Towson, MD 21204, People's Counsel for Baltimore County, and Malcolm F. Spicer, Jr., Esquire, County Attorney, and Thomas J. Bollinger, Esquire, Assistant County Attorney, Courthouse, Towson, MD 21204, Attorneys for Baltimore County, Maryland and the Zoning Commissioner of Baltimore County, Maryland, a copy of which Notice is attached hereto and prayed that it may be made a part thereof.

Edith T. Eisenhart
Edith T. Eisenhart, Adm. Secretary
County Board of Appeals of Baltimore County
Room 200, Courthouse, Towson, MD 21204
494-3180

JAMES R. MYRICK, ET UX - 5/3/84-CG-1503

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to John B. Gontrum, Esquire, 809 Eastern Boulevard, Essex, MD 21211, Attorney for the Petitioners, and James R. Myrick, et ux, 1326 Goose Neck Road, Baltimore, MD 21220, Petitioners, and James F. Offutt, Jr., Esquire, Jefferson Building, Towson, MD 21204, Attorney for the Protestants, and Christopher LaMartina, President, Bowley's Quarters Improvement Association 3703 Bay Drive, Baltimore, MD 21220, Protestant, and Ralph K. Rothwell, Jr., Esquire, Maslan, Maslan & Rothwell, 7508 Eastern Avenue, Baltimore, MD 21224, Attorney for Protestants (Gress and Bauer), and Phyllis Cole Friedman, Courthouse, Towson, MD 21204, People's Counsel for Baltimore County, and Malcolm F. Spicer, Jr., Esquire, County Attorney, and Thomas J. Bollinger, Esquire, Assistant County Attorney, Courthouse, Towson, MD 21204, Attorneys for Baltimore County and the Zoning Commissioner of Baltimore County, Maryland, on this 11th day of December, 1984.

Edith T. Eisenhart
Edith T. Eisenhart, Adm. Secretary
County Board of Appeals of Baltimore County

IN RE: PETITIONERS SPECIAL EXCEPTION, *
SPECIAL HEARING, AND ZONING *
VARIANCES *
SW/S of Goose Neck Road, *
626.83' NW of the centerline *
of Goose Harbor Road - 15th *
Election District *
James R. Myrick, et ux *
Petitioners *
* * * * *

BEFORE THE *
ZONING COMMISSIONER *
OF BALTIMORE COUNTY *
Case No. 84-147-XSPHA

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioners herein request a special exception to allow expansion of their shellfishing business to a Class I status. They also request approval, by special hearing, to expand their business to property owned by them and located across a public road from their primary property. They request that the two properties be considered contiguous and therefore treated as one for zoning purposes. The Petitioners want to amend the original site plan, filed in 1978 and marked Petitioners' Exhibit 3, to include both lots and to show the "renovation" of an existing garage shown thereon. Other minor additions and/or deletions to that site plan are also requested. Additionally, the Petitioners seek variances to permit side yard setbacks of 2.5 feet, 15 feet, and 25 feet instead of the required 50 feet, a setback of 20 feet to the centerline of the street instead of the required 75 feet, a distance between buildings of 38 feet instead of the required 100 feet, and to allow the requested parking areas to be paved with crusher run material. These requests are fully described on Petitioners' Exhibit 9.

The Petitioners appeared and were represented by Counsel. Testifying were James R. Myrick, Petitioner; Robert Hurice, President of the Baltimore County Watermen's Association; Daniel Beck, Vice President of that Association; Craig Rogers, a fisherman on surveying crews; and Dennis Fandi, a neighbor. Numerous Protestants appeared. Mr. and Mrs. Theodore Gress and Steven Bauer were represented by Counsel

and testified. Testifying in behalf of the Protestants were Richard E. Davis, Esquire, an expert in real estate law, and William Luetke, a registered surveyor. Christopher LaMartina, President of Bowley's Quarters Improvement Association, testified in behalf of the many other Protestants.

Testimony indicated that the Petitioners, owners of Lot 247, as shown on Petitioners' Exhibit 1, have operated a shellfishing facility on that R.C.5 zoned property for many years. On or about 1975, the Baltimore County Council passed legislation allowing shellfishing businesses to operate in R.C.5 Zones only by special exception. The Council permitted these fishermen presently in operation to file for use permits to "grandfather" their businesses, thereby negating the necessity of seeking special exceptions for continuation. Each fisherman was required to submit a site plan to the Zoning Commissioner within a certain time frame so that the Zoning Commissioner could approve the continued operation of each shellfishing business in existence at the time the legislation was enacted. Each fisherman would be bound by the site plan as to the extent of his business and would be limited to the "same level of intensity" forevermore. Of course, nothing would prevent any fisherman so protected from requesting a special exception in order to expand, as is the primary purpose for the requests by the Petitioners herein.

The Petitioners filed a site plan, Petitioners' Exhibit 3, and it is self-explanatory. The Zoning Commissioner approved a use permit, Petitioners' Exhibit 4, and the Petitioners continued their business unabated. The total square feet utilized for the business on Lot 247 was 4,132, excluding the slough boxes which protruded into Seneca Creek. This represented only approximately 33% of the entire lot used for commercial enterprise. The use permit allowed approximately 50% of the total net area of the property to be utilized for the operation. On or about 1981, the Petitioners decided that the existing garage, the

truck permanently parked to its side and used as a "cool box", and the lean-to attached to its rear and used as a storage area all needed to be replaced. Thereupon, the Petitioners began construction of a new garage in the same location as the old garage (the Protestants dispute the accuracy of this allegation) which afforded the Petitioners the opportunity to remove the truck and replace the lean-to with a more modern and aesthetically pleasing building which would include a place to work inside, a cool box, and a storage area. Unfortunately, the Petitioners decided to construct this building without a permit. The Petitioners have also changed the configuration of the slough boxes since the original site plan was submitted from 10' x 20' to 4' x 50'. The boat storage area, pool, and commercial use of the steam area shown on Petitioners' Exhibit 3 have been abandoned, although personal use of the steam area still exists. In effect, the Petitioners maintain that only 3,918 square feet of lot area is now being used, which is 250% square feet less than what was approved in 1978. The Petitioners state that in 1978 they had a total of 1,400 crab pots in use, one boat for crabbing, and one boat for backup and general fishing. James R. Myrick states that he keeps approximately 1,200 pots in the water and pulls up approximately one-third each day, returning those pots immediately to the water. There was some discrepancy or confusion in the testimony about the total number of pots now being used by the Petitioners. At one point, Mr. Myrick testified that he had about 1,400 pots total, including his reserve; at another point, he testified that he had about 1,400 pots plus 500 pots in reserve. During later testimony, he stated he had about 1,100 pots with another 150 pots on another location not pertinent to this case. It is presumed that in 1978 the Petitioners had a total of 1,400 pots and since has expanded that number to 1,400 or 1,900, although at the present time there is only 1,100. The Petitioners admitted to manufacturing and selling pots; however, they fabricate and manufacture the pots primarily for their own use. They also use and store eel pots,

various nets, and other material used for their business. They have used the area under the sun porch attached to their residence for storage and own and their boat out it is out of the water and not used. In addition, the Petitioners clean and paint their pots on the property, which causes an odor disturbing to those in the immediate vicinity. Apparently, and it was uncontested, this maintenance work also caused some pollution to either soil or water.

The Petitioners bought the property across from Lot 247 from Mr. and Mrs. Theodore Gress in 1974 for the express purpose of partially clearing the site and storing their pots thereon. Mr. Myrick planned to remove all of the pots, eel traps, nets, etc., from his primary property and use the new property for storage and additional parking, as more fully described on Petitioners' Exhibit 4. The Petitioners argue that the new lot is actually contiguous to their original property and therefore should be considered as one for zoning purposes. Additionally, they feel that the fee simple ownership of the underlying parcel to the centerline of the road would allow a Class I shellfishing operation by special exception. The Protestants vigorously opposed this premise and presented expert testimony to contradict the Petitioners' position.

Mr. Myrick testified that he has moved the fabrication of pots from the parking area shown on Petitioners' Exhibit 3 into the new parcel. He also testified that if the special exception were granted, he would move the painting operation onto the new property and would transport the pots from the new property to the water via golf carts. No pots would be stored on Lot 247.

Before the new garage was constructed, the cool box (stationary truck) actually transgressed the Gress' property line. The new garage is situated approximately 15 feet from their common property line, according to Petitioners' Exhibit 4. The Petitioners request a side yard setback of 2.5 feet from the rear to the Gress' property line, a side yard setback of 15 feet from the garage to the

property line, a side yard setback of 15 feet from the proposed storage area on the new lot to each property line, a setback of 20 feet from the garage to the centerline of the road, a distance of 38 feet between the garage and the residence, and that crusher run material be allowed for the proposed parking area on the new lot.

The Petitioners claim that the new garage occupies the same area as the old garage, truck, and storage area and is not an expansion. If this is true, no variances should be required. A building moratorium presently exists in the Bowley's Quarters peninsula. The land across from the Myricks, the Gresses, and the Bauers cannot be developed, and the Petitioners argue that there would be no adverse impact if the special exception were granted. The property is wooded and only a portion is cleared for use. The Petitioners would screen the storage and parking areas with fencing and/or shrubbery, and there would be a 30-foot entrance onto the property from Goose Neck Road, as shown on Petitioners' Exhibit 5. All parties acknowledged that other garages exist as close or closer to the road as the Petitioners' garage. Mr. Myrick testified that 65 to 75% of his business is off site and the remainder is on site.

There was conflicting testimony provided by all witnesses, some of which was important. Specifically, whether there has been intensification and, if so, to what extent. The Petitioners maintained that there has not been, while the Protestants argue that there has been significant expansion. Robert Eurice testified that he became familiar with the Petitioners in 1978 and that they had approximately 1,000 to 1,200 pots at that time. It was his opinion that there had been no expansion, but based on his experience, a reserve of 500 pots is needed. Mrs. Gress testified that in 1978 the Petitioners only had about 500 pots. However, up to 3,000 pots were on the property prior to moving to the new lot. Upon receiving a zoning violation notice, the Petitioners ceased the move. She agrees that the Petitioners now have about 1,000 pots.

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Craig Rogers testified that as a linesman he is primarily responsible for measurement and location of property lines and coordinates. He is neither a registered surveyor nor an architect. He testified that on or about September, 1982, he went to the subject properties at the request of the Petitioners and physically measured distances between the garage and the adjoining property. In fact, he did the field work for the site plan submitted as Petitioners' Exhibit 9. At one point, said plan had been prepared by a registered surveyor, but numerous revisions had been made and noted thereon. Mr. Rogers testified that he does not know who made the revisions and cannot verify their accuracy. He did not bring his field notes and testified only from memory. He admitted to adding the new storage and parking areas on the new lot to the site plan. The name of the company, Brandonwood Associates, of which Mr. Rogers is a part-owner, appears on the site plan. Mr. Rogers does not know whether the original surveyor is aware of the changes. He measured the distance between the garage and the property lines without finding any property coordinates and based his measurements on the existing fences that separate each property from the Petitioners' property. He assumed that the fences accurately reflected the property lines. According to his memory, the distances reflected on the site plan are accurate; otherwise, he would have so noted the differences on the plan.

William Luetke stated that he conducted a survey of the Petitioners' and Gress' property in September, 1983, Protestants' Exhibit 4. He concluded that there was 1.7 feet from the Gress' property line to the garage, 25 feet from the Bauers' property line to the garage, and 15.5 feet from the centerline of the road and 11 feet from the edge of the paving to the garage. There is, of course, a presumption that the garage did not move between September, 1982 and September, 1983—only the property line!

Dennis Fandl resides on Goose Neck Road and testified that he favored the Petitioners' requests. He presented a petition dated September 8, 1982,

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Petitioners' Exhibit 11, signed by 29 residents of Goose Neck Road, indicating support of the Petitioners. He was quite clear in his relief that all those living on Goose Neck Road, except for the Gresses and the Bauers, were in support. He further emphasized that the other Protestants appearing lived elsewhere and did not represent the opinions and feelings of those living on Goose Neck Road. Christopher LaMartina, in behalf of the improvement association, testified that it was a matter of concern to all who live in Bowley's Quarters and not just for those living on Goose Neck Road. He pointed out that Mr. Fandl is also a member of this association. Many of the Protestants did not testify but supported Mr. LaMartina's testimony.

It is clear that the requests made by the Petitioners have caused sharp lines to be drawn, both pro and con. Mr. LaMartina, in support of the Gresses and Steven Bauer, testified that the proposed expansion would cause serious disruption to the area because the already bad traffic conditions would be aggravated. There is only limited access onto the peninsula, and with the existence of Miami Beach, a public recreational area, the traffic flow would be even more adversely impacted if the special exception were granted. Goose Neck Road is a dead end and not an outlet for traffic. Also, granting the special exception would effectively allow development not otherwise permitted. Mrs. Gress testified that enjoyment of her property has been seriously limited as a result of the Petitioners' commercial shell-fishing business. She and Mr. Gress complain that their health has been adversely affected, that they are exposed to heavy traffic and dangerous traffic conditions, their privacy has been invaded, and the quiet enjoyment of their waterfront property is limited. The Gresses complained of the odor emanating from the painting procedure done by the Petitioners, the noise of the cool box motor, and the expansion of the Petitioners' business over the past five years. Mrs. Gress also complained of the smokestack and the resulting fumes. Essentially, the Gresses

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oppose all the requests and want the garage removed. They feel it is too close to their property and the road, causing a dangerous situation for them because the garage obstructs their view of incoming traffic. They feel strongly that the Petitioners have expanded their business and are willing to tolerate the use of lot 2-7 only to the extent allowed by the use permit approved in 1978. They do not want the property across the road to be used at all. It is also noted that the Gresses dispute Mr. Myrick's assertion that he will stop of the intended use of the new lot when he purchased it from them. The Gresses have lived on their property since 1954.

Mr. Bauer, who purchased his property in 1972, totally concurred with these views. He testified that if the special exception were granted, the Petitioners could only use the walkway between their home and his property to transport the pots between the two lots and that this would increase the activity immensely inasmuch as the Petitioners' home is only six feet from the property line and his house is only 15 feet from that line. He insists the Petitioners have expanded their business greatly since 1978 and believes the new garage is located five feet closer to the road than the old garage.

Richard E. Davis testified that in his opinion the ownership of the area along the roadway did not constitute contiguous ownership sufficient to allow the Petitioners to treat both parcels as one for the purpose of enjoying the benefits provided by Seneca Creek. Goose Neck Road is a public road notwithstanding the fact that it has never been deeded to Baltimore County. Title to the underlying road is vested in the abutting property owners to the center of the roadway. It is his opinion that the public easement for a 30-foot right of way interrupts the complete ownership necessary to enjoy the riparian rights to lot 2-7 and that the two lots cannot be treated as one.

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Testimony and evidence presented by witnesses for both sides raise serious questions of fact and law.

The Petitioners seek relief from Section 1404.3.B.3. (122.2), pursuant to Section 307, of the Baltimore County Zoning Regulations (BCZR) to allow side yard setbacks of 2.5 feet from the new garage to the Gress' property line, 25 feet from the new garage to the Bauers' property line instead of the required 50 feet, and 15 feet from the storage area on the new lot to each property line; a setback of 20 feet from the new garage to the centerline of the road instead of the required 75 feet; and a distance of 38 feet between the garage and the residence (principal buildings) instead of the required 100 feet. They also seek relief from Section 409.2.(c), pursuant to Section 307, BCZR, to allow the proposed parking areas on the new lot to be paved with a crusher run surface instead of the required macadam, concrete, or tar and chip.

The Petitioners maintain that the variances should be granted inasmuch as it would create a practical difficulty and would serve no useful purpose to deny them, especially in light of the nature of the neighborhood. In fact, the crux of the Petitioners' case revolves around the new garage, and it is obvious that a decision as to its legitimacy must be made. It is also important to note the contentions raised by the Petitioners that the new garage only replaced the old garage and represented no effective change in size. The Petitioners maintain that the old garage must be considered to include the truck and shed attached to the building, and if so considered, the total size so represented equals that of the new building. Therefore, they argue that no variances are required inasmuch as the site plan approved in 1978 grandfathered those buildings shown thereon and the compliance with the setbacks need not be required. The alternative argument includes the claim that a practical difficulty exists, that the spirit and intent of the zoning regulations would be met, and that there would be no adverse

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impact on the health, safety, and general welfare of the community to satisfy the burden required to grant the variances. Both arguments are rejected for the reasons set forth below.

The Petitioners admit that they replaced the old garage with the new garage without obtaining a building permit. A building permit was required before the new garage could be built, but the Petitioners failed to recognize that fact.

The BCZR define a fishing and shellfishing facility as a principal use that consists of the buildings, equipment, or other facilities necessary to carry on the business and that is situated on a lot on the shoreline of tidal waters. A building is defined as a structure enclosed within exterior walls or firewalls for the shelter, support, or enclosure of persons, animals, or property of any kind.

This language is crystal clear. The original site plan describes a garage, cool box, and storage area as three distinct entities. They were not all enclosed by the same exterior walls, which would establish that they were indeed one building. No matter that the new building, constructed around the old building prior to the old building being razed, is equal in total square feet to the sum of the old garage, truck, and shed, it is a new building and a definite change from the site plan approved in 1978. Therefore, a building permit and variances, if necessary, were required. Failure to obtain a building permit or to question the need for one flaws the Petitioners' arguments. The Petitioners look it upon themselves to build a new structure in violation of the laws of Baltimore County. The fact that the cost of building the new garage, or the potential cost of moving it, is great is not a factor to be considered when such facts and circumstances exist.

The hardship here relied on was entirely self-created and the Board properly refused to allow it to be used as a fulcrum to lift, by way of variance, the valid limitations imposed. Aside

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from the fact that the hardship shown...was self-inflicted, it was also shown to be of a purely financial nature...

Salisbury Board of Zoning Appeals v. Bonds, 240 Md. 547.

There is a strong presumption of the correctness of original zones and of comprehensive zoning. Howard County v. Dorsey, 438 A.2d 1339 (1982). There is a presumption of validity that must be accepted. Johnson & Wales College v. Dilete, 448 A.2d 1271 (R.I., 1982). In interpreting the zoning regulations, the restrictive language contained must be strictly construed so as to allow the landowner the least restrictive use of his property. Lake Adventure, Inc. v. Zoning Hearing Bd. of Dingman Township, 440 A.2d 1284 (Pa. Cmwlth., 1982). When the language of a zoning regulation is clear and certain, there is nothing left for interpretation and the ordinance must be interpreted literally. Montgomery v. Revillacqua, 432 A.2d 661 (R.I., 1981).

A landowner can establish a right to a variance by showing that the effect of the regulations is to burden his property with an unreasonable hardship that is unique to his property. This can be accomplished by showing that the physical or topographical features of the property are such that the property cannot be used for a permitted purpose, or by showing that the property can be arranged for such use only at a prohibitive expense. Anderson v. Bd. of Appeals of Town of Chesapeake Beach, 22 Md. App. 28 (1974); Marlowe v. Zoning Hearing Bd. of Haverford Township, 415 A.2d 945 (Pa. Cmwlth., 1980).

The Court of Special Appeals has held that a variance relating to certain "area" restrictions, as distinguished from restrictions on the use of the property, must be judged under the "practical difficulty" test. Anderson, supra. See Bd. of Adjustment, Etc. v. Kwik-Check Realty, 399 A.2d 1249 (Del. Supr., 1979). As noted in Anderson, the factors to be considered under this test in determining whether a variance should be granted are:

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1. whether strict compliance with requirements would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;
2. whether the grant would do substantial injustice to applicant as well as other property owners in district or whether a lesser relaxation than that applied for would give substantial relief;
3. whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Anderson, supra.

If property cannot be adapted reasonably to use in conformity with zoning ordinance restrictions due to unique circumstances, any hardship may be relieved through the variance procedure. However, if the unusual circumstances which hinder reasonable use of the property in accordance with zoning controls have been caused or created by the property owner or his predecessor in title, hardship cannot be demonstrated since it is essentially self-created and not the result to the manner of the operation of the ordinance upon the subject property.

Any petitioner who seeks a variance must exercise proper diligence in ascertaining zoning ordinance requirements to avoid a practical difficulty before he acquiesces the property. If such diligence is not exercised, the hardship must be regarded as self-created, and a variance can properly be refused. Baltimore Mayor and Commissioners of District 15 v. Md. App. 411 (1977).

The Petitioners' problem here is a personal one and is not a practical difficulty. The hardship is in the application of the zoning regulations to the land. Such personal problems are not generally appropriate subjects for relief by way of the variance procedure. See 3 Anderson, Anderson v. Bd. of Appeals, 415 A.2d 945 (Pa. Cmwlth., 1980).

The Petitioners certainly did not exercise the appropriate diligence that is required. Notwithstanding the testimony presented, there is insufficient evidence to permit a finding that the hardship or difficulty to be experienced if

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the requested variances were denied will be caused by the zoning restrictions from which relief is sought.

Therefore, the requested variances to allow side yard setbacks of 2.5 feet (or 1.7 feet) from the new garage to the Gress' property line and 25 feet from the new garage to the Bauers' property line are denied.

Inasmuch as the old garage and shed were demolished and the truck previously used as a cool box removed, the uses described on Petitioners' Exhibit 3 have been effectively abandoned. If the Petitioners were to move the new garage more equidistant to both side property lines and new variance requests submitted, it would be more appropriate to consider its legitimacy at that time. The closeness to the Gress' property line, failure to provide an adequate and accurate site plan (Petitioners' Exhibit 9), and blocking of on-coming traffic on the roadway from the Gress' view all militate against the location of the new garage.

The other requested variances emanating from the new garage, i.e., a setback of 20 feet from the new garage to the centerline of the road and a distance of 38 feet between the garage and the residence are moot and, therefore, denied for the same reasons set forth above. The garage must be removed from its present location.

The remaining variances to allow 15 feet from the storage area on the new lot to each property line and to allow the proposed parking areas on the new lot to be paved with a crusher run surface instead of the required macadam, concrete, or brick and chip are also denied for reasons more fully set forth below.

The Petitioners also seek a special hearing to amend the site plan approved in 1978 (Petitioners' Exhibit 3). Although unclear, it seems that part of this request is to allow a change from the old garage to the new garage. An amendment of that plan shall not be allowed and, therefore, denied for the reasons set forth below.

Petitioners' Exhibit 3 was submitted for approval in 1978 to the then Zoning Commissioner as a result of legislation enacted by the Baltimore County Council on November 7, 1975. Bill No. 95-75, effective December 22, 1975, established commercial fishing and crusting enterprises in R.C.2, 3, and 5 Zones. This legislation mandated that any such use existing on the date of enactment of the law could continue at the same level of intensity provided the user obtained a use permit from the Zoning Commissioner. The R.C. Zones were not created until the adoption of the comprehensive zoning maps by the Council in October, 1976, effective November, 1976. In June, 1975, the Council passed Bill No. 30-78, effective June 22, 1978, which repealed Bill No. 95-75 and, in effect, deleted any reference to use permits and provided that fishing and shellfishing facilities in R.C.2, 3, and 5 Zones be allowed only by special exception. In the interim period, between 1976 and the passage of Bill No. 30-78, use permits were submitted for approval to the Zoning Commissioner and were subsequently approved after Bill No. 30-78 went into effect. Approval, however, was contingent upon a site plan being submitted and total compliance being attained by the user. Because of the confusion rendered by the late approvals, the Council passed Bill No. 139-93 validating the continuation of such shellfishing activities by those who submitted site plans in 1977 and which were approved in 1978.

This legislation recognized the importance of those site plans by reemphasizing the language of Bill No. 95-75, to wit, limiting the continued use to that which existed at the time the use permit was approved. Any attempt to expand the use as defined by the site plan would require a special exception and would not be allowed by amending the site plan.

Only have the Petitioners varied from the site plan (Petitioners' Exhibit 3) by removing the old garage, shed, and truck, they also have abandoned the rear area, except for personal use, and the area marked as boat storage.

removed the pool, and redesigned the slough areas from 10' x 20' to 4' x 50'. In addition, they have moved the fabrication of pots from the area so noted to the new garage. Although the Petitioners maintain that the actual use is approximately 250 square feet less than what was approved in 1978, it is obvious that there has been an intensification of use over the past five years.

The Protestants claim that the Petitioners had 500 pots in 1978; the Petitioners claim they had approximately 1,400 pots including the reserve pots. Mr. Burice testified the Petitioners had approximately that number in 1978; however, by his own admission, Mr. Myrick testified that he now averages about 1,400 pots plus 500 in reserve. At another point in his testimony, Mr. Myrick testified he now had about 1,400 pots on the property. It must be presumed, therefore, that the 1,300 figure is an average and that the Petitioners regularly maintain that amount on the property. Mrs. Gress testified that she has counted as many as 3,000 pots on the property.

Mr. Myrick further testified that he operates the business eight hours a day, employing five or six additional people, and also is employed by Bethlehem Steel. Further, there was uncontradicted testimony that the Petitioners have manufactured pots in the new garage which were advertised and sold to the public (Petitioners' Exhibits 11 and 12). About 65 to 70% of these sales are off site. When questioned, Mr. Myrick testified that the room was needed to store not only crab pots, but also eel traps, pound nets, gill nets, anchors, floats, and other material necessary to carry on the shellfishing business. There is no doubt that this is right; however, after weighing all of the evidence and testimony presented, there is no doubt that the Petitioners have expanded and intensified their business in violation of Bill No. 95-75. Mr. Burice acknowledged that 500 pots held in reserve was an unusually large number. He maintains about 1,200 to 1,300 pots in the water at any one time, but only has about 200 pots in

reserve. Why then is such a large number needed to average about 1,400 pots? Petitioners intend to expand. Has the activity expanded from a part-time use to a full-time business?

Intensity is defined by Webster's New World Dictionary as "excessive degree of any thing, 12 great energy or persistence of activity, and 13 degree of extent; relative strength, magnitude, vigor, etc." There is no question that the Petitioners have intensified their business since 1978, notwithstanding the lack of physical growth. Therefore, no amendment of the site plan to allow the garage area to be changed can be permitted.

The requested special hearing, special exception and variance were not predicated on Petitioners' Exhibit 3. The proposed amendments are contained therein. This site plan shows the seal of a registered surveyor, David M. Wilder. Directly under the seal appears the notation "Prepared by: Brandon B. Reason, 101 W. Federal Pk., Timonium, Md. 21093". Brandon Reason stated that the changes proposed and made there also have been from 1978 to 1983. The Petitioners would like to have this site plan submitted for review and approval in 1978 by having the amendments, the special exception, and the variance all granted.

Petitioners' Exhibit 3 cannot be permitted to modify any other document necessary for approval of the aforementioned requests. It is imperative, Mr. Burice testified that he represents Brandon Reason, not David M. Wilder. Mr. Reason is not a registered surveyor or an architect. He did not submit the approval to amend or revise the site plan, that is, he was not David M. Wilder. Mr. Reason cannot attempt to amend the revisions to the site plan, as the measurements appearing thereon. At best, the information that Brandon Reason prepared the site plan under the supervision of Mr. Wilder, at which time Mr. Reason represents a fraud on the integrity of this administrative process. Mr.

Rogers used the existing fence lines separating the lots to measure for the requested variances and assumed that they actually represented the separation of the lots. He did not perform a survey and could only testify to the dimensions of the buildings. He failed to bring his field notes with him and testified from memory as to the measurements made in September, 1982. It is obvious from Mr. Rogers' testimony that Mr. Wilder does not know of the changes to the site plan. Mr. Luetke, a registered surveyor since 1939, testified that he surveyed the property and found the property line that Mr. Rogers could not find as well as different distances. Mr. Luetke's testimony totally rebuts and negates the testimony of Mr. Rogers. Petitioners' Exhibit 9 cannot be given much credence or weight; therefore, any amendment to the 1978 site plan predicated on Petitioners' Exhibit 9 cannot be allowed.

Nonetheless, assuming that the amendment request is denied, the issue of allowing a special exception to expand the use, as permitted by Bill No. 95-75, still exists. If granted, it would in fact allow the increased intensity of use; however, it would not overcome the denial of the requested variances.

The Petitioners request that a special exception be granted pursuant to the following: 1.004-2.B.7, and 502.1, RUMS.

The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore valid. The special exception use is a valid zoning mechanism that delegates a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any fact or circumstance negating the presumption. The duties given are to judge whether the use in the particular case is in harmony with the general purpose and intent of the plan.

See Schultz v. Fritz, 432 A.2d 1313 (1981). The Petitioners have the burden of adducing testimony and evidence which would show that the proposed use, the expansion of the use to a Class I fishing and shellfishing facility, meets the prescribed standards and requirements set

forth in Section 502.1. In fact, the evidence and testimony has shown that the proposed expansion would be detrimental to the neighborhood and would adversely affect the public interest. The facts and circumstances of the use proposed show that at the subject site there would be an adverse effect above and beyond that inherently associated with such a special exception use irrespective of its location within the zone. Schultz, supra. The Petitioners did not meet this burden.

Testimony and evidence presented at the hearing, the opinions or conclusions of the witnesses testifying, must be measured by the soundness of their underlying reasons or facts. Anderson v. Sawyer, 329 A.2d 716 (1974). The testimony provided by the Petitioners' witnesses was not substantial while the testimony provided by the Protestants' witnesses was convincing and strong. See Coppolino v. County Board of Appeals of Baltimore County, 329 A.2d 95 (1974). There is no doubt that the business described by the Petitioners has an inherent depressing and disturbing psychological effect which has adversely affected the adjacent residents the enjoyment of their homes. There was insufficient evidence presented by the Petitioners to rebut that conclusion.

For these reasons, the request for a special exception for a fishing and shellfishing facility, shoreline, Class I in a R.C.5 Zone is denied.

The Petitioners also request that the site plan approved in 1978 be amended to allow expansion of the original use to the lot across Goose Neck Road, i.e., to determine whether the two lots owned by the Petitioners and separated by a right-of-way roadway are contiguous. The import of this request is obvious. If contiguous, the same riparian rights enjoyed by the Petitioners' primary property would accrue to the adjacent lot.

This contention is attractive, but it cannot be allowed to shield the primary issue, i.e., whether the use described in the 1978 site plan can shift to

the lot across Goose Neck Road. The Petitioners seek to legitimize the transfer by requesting a special exception to expand and a special hearing to amend that 1978 site plan. Either, if allowed, would give the Petitioners relief. Assuming arguments that the two lots are contiguous, this fact in and of itself does not satisfy the burden required of the Petitioners.

Bill No. 95-75 recognized the then existing shellfishing businesses by exempting them from extinction. The Petitioners were one of the beneficiaries. The site plans submitted to gain such exemption limited both the use and its location on a property. In the instant case, even if the two lots were considered as one, an amendment to the site plan would be required to allow the shift in location from Lot 247 to the other lot. The issue is this constrictive. Such an amendment will be denied for all of the same reasons which supported the denials of the variances and the amendment to the 1978 site plan. Any interpretation of the legislation affecting shellfishing in Baltimore County must lead to the conclusion that the Council intended that the existing uses, grandfathered by that legislation, be limited in size and scope to that described on the site plans submitted in 1978 and that if there was to be any attempt to change the original use by location or intensification, a special exception would be the only relief.

Of course, in order for a special exception to be granted, the Petitioners must meet the burden established by Section 502.1. For the reasons explained previously, such burden has not been met. The Petitioners have not established that there would be no adverse effect on the health, safety, or general welfare of the locality, and the totality of the testimony presented by both sides concludes that there would be such an adverse effect. The prerequisites delineated by Section 502.1 are singular in importance, and the Petitioners did not present sufficient evidence to meet this burden.

Notwithstanding the Petitioners' assumption that the two lots are contiguous, which thereby created mutuality of benefits, as prescribed by Bill No. 95-75 and 30-78, no special exception will be granted.

The proposed use will be detrimental to the health, safety, and general welfare of the locality; tend to create congestion in streets, sidewalks, and parking areas; be inconsistent with the purposes of the property's zoning classification; and be inconsistent with the spirit and intent of the RUMS.

However, after a review of the Memoranda submitted to this authority, it is concluded that both lots, although contiguous, do not follow the line of the lot. The court in Quinn v. Board of Appeals, 329 A.2d 1313, 1314, 1315, 1316, 1317, 1318, 1319, 1320, 1321, 1322, 1323, 1324, 1325, 1326, 1327, 1328, 1329, 1330, 1331, 1332, 1333, 1334, 1335, 1336, 1337, 1338, 1339, 1340, 1341, 1342, 1343, 1344, 1345, 1346, 1347, 1348, 1349, 1350, 1351, 1352, 1353, 1354, 1355, 1356, 1357, 1358, 1359, 1360, 1361, 1362, 1363, 1364, 1365, 1366, 1367, 1368, 1369, 1370, 1371, 1372, 1373, 1374, 1375, 1376, 1377, 1378, 1379, 1380, 1381, 1382, 1383, 1384, 1385, 1386, 1387, 1388, 1389, 1390, 1391, 1392, 1393, 1394, 1395, 1396, 1397, 1398, 1399, 1400, 1401, 1402, 1403, 1404, 1405, 1406, 1407, 1408, 1409, 1410, 1411, 1412, 1413, 1414, 1415, 1416, 1417, 1418, 1419, 1420, 1421, 1422, 1423, 1424, 1425, 1426, 1427, 1428, 1429, 1430, 1431, 1432, 1433, 1434, 1435, 1436, 1437, 1438, 1439, 1440, 1441, 1442, 1443, 1444, 1445, 1446, 1447, 1448, 1449, 1450, 1451, 1452, 1453, 1454, 1455, 1456, 1457, 1458, 1459, 1460, 1461, 1462, 1463, 1464, 1465, 1466, 1467, 1468, 1469, 1470, 1471, 1472, 1473, 1474, 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The entire subdivision must be shown on the plat of the preliminary plan. The development of the entire subdivision may be accomplished on a piecemeal basis by the use of record plats which when all added together will comprise the entire subdivision as shown on the preliminary plan. Since the ordinance contemplates the transfer of excess area from one record plat to another record plat it would seem to matter little that a matching line might happen to be on one or the other side of one of the streets in the development.

James Bowley-Jude Corp., supra, at p. 596.

In each of the cases cited by the Petitioners, the courts were required to interpret specific statutes, or a lease, which incorporated the word "contiguous" or "adjoining". This is not the case here. Intent of the statute or ordinance is the thread holding these cases together. The intent of Bill Nos. 98-75 and 99-75 is to limit fishing and shellfishing facilities to lots of record existing on the effective date of those laws. A "lot of record" is defined by the ECZB as "A parcel of land with boundaries as recorded...on the same date as the effective date of the zoning regulations which governs the use, subdivision, or other condition thereof." In 1978, and as presently existing, Lot 247 and the new lot were recorded separately and distinctly and were in fact two lots of record or "record lots", as that term is defined in the ECZB. There was a requisite dividing of the tract for the purpose of selling off lots of record individually.

The Council did not intend that a party could extend the benefits provided to lots situated on the shoreline of tidal waters to contiguous lots not on the water. The mere fact that the property is contiguous does not do what the Petitioners claim. The intent of the State Legislature in 1892, as codified, and of the Court of Appeals in *Hunt v. Brown*, 75 Md. 481, would be misconstrued if the Petitioners' argument was accepted. The existence of the road, which for all practical and legal purposes is a dedicated roadway, does not separate the contiguous nature of the two lots now held by single ownership. It also does not

allow for reciprocal benefits of such ownership. An analogy would be to two separate lots of record, each zoned differently, singularly owned. Could the benefits of one such lot be utilized on the other simply because they were contiguous? The obvious answer to both is no. Although the lots are zoned alike, one is on the water and the other is not. Any rational reading of the statutes could lead in no other direction. "The meaning of the plainest words in a statute may be controlled by the context. A statute should be so construed that all its parts harmonize with each other and render them consistent with its general object and scope." *Pitman v. Housing Authority*, 25 A.2d 466, 469. There is nothing showing that at any time since 1975 were the two lots recorded among the Land Records of Baltimore County as one.

For the aforementioned reasons, the variances requested for side yard setbacks from the storage area to either side property line on the new lot will be denied. Additionally, the requested variance to allow the parking areas to be paved with crusher run material is moot due to the reasons set forth above and, as such, will be denied as well.

Pursuant to the advertisement, posting of the property, and public hearing held, and it appearing that by reason of the requirements of Sections 502.1 and 507 not having been met and the health, safety, and general welfare of the community being adversely affected, the special exception, special hearing, and variances should not be granted. Therefore, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 16th day of January, 1984, that all of the relief prayed for by the Petitioners be and are hereby DENIED.

[Signature]
Zoning Commissioner of
Baltimore County

Petitions for Special Exception,
Special Hearing and Variances
SW/8 of Goose Neck Road, 626.89'
NW of the c/l of Goose Harbor Road
James R. Myrick, et ux - Petitioners

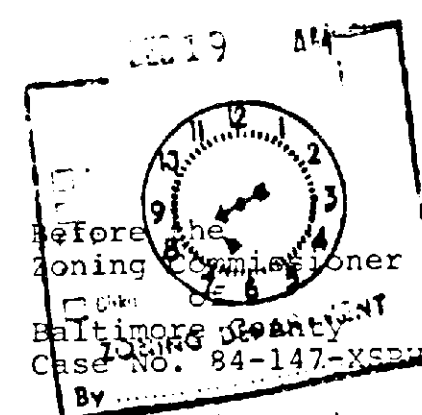
BRIEF ON BEHALF OF PROTESTANTS

Three petitions were filed on behalf of James R. and Cecile V. Myrick for certain relief from the zoning regulations of Baltimore County. These petitions request variances, a special exception and a special hearing for their property located on Goose Neck Road in Bowley's Quarter in Baltimore County.

One of the questions which was presented as a part of the special hearing request is a determination of the status of two parcels of land vested in one common owner and abutting on either side of a public road. The determination of the status is necessary because of the requirement that "a fishing, shellfishing facility shall be situated on a lot on the shoreline of tidal waters". And further that a class one facility as petitioned for shall be "situate on a lot occupied by the primary residence of its operator".

At the request of the Zoning Commissioner, this brief will deal solely with the question of whether or not these properties, separated by a public road, may be treated as a single parcel of land.

It is not disputed that Mr. and Mrs. Myrick are the owners of Lot No. 247 as shown on the Plat of the First Addition



to Plat No. 2 of Bowley's Quarter as recorded among the Land Records of Baltimore County in Plat Book LMcLM No. 9, folio 12, said lot being situate on the northeast side of Goose Neck Road, and of a parcel of land containing 1.01 acre and being situate on the southwest side of Goose Neck Road. Lot No. 247 also abuts Seneca Creek, said creek being tidal water, and contains the primary residence of Mr. and Mrs. Myrick.

The title to the aforementioned parcels devolves from one common owner; namely, Bowley's Quarter Company of Baltimore County, hereinafter referred to as "The Company". In 1927, The Company, being the owner of a large tract of land abutting, in part, on Seneca Creek, caused to be filed among the Land Records a plat of a portion of its holdings and being the plat hereinbefore mentioned. This plat depicts, as a part thereof, Lots No. 234 through 261, all being situate on the northeast side of Goose Neck Road (Seneca Road on the plat) and all abutting Seneca Creek, and a large, unsubdivided tract situate on the southwest side of Goose Neck Road. The plat does not indicate any reservation of title or reservation from dedication of Goose Neck Road or any other road as shown thereon.

Subsequent to the recording of the aforesaid plat, The Company proceeded to convey Lots No. 234 through 261 to purchasers thereof by deeds duly recorded among the Land Records. None of the deeds from The Company contain any reservation of title or reservation from dedication with respect to Goose Neck Road. The balance of the tract on the southwest side of said road was included in a deed from The Company to Mercantile Safe

Deposit and Trust Company, et al, dated July 18, 1956 and recorded among the Land Records in Liber CLA No. 2988, folio 298. This deed was also silent with respect to any reservation of title or dedication of Goose Neck Road. By mesne conveyances, title to Lot No. 247 and the 1.01 acre parcel became vested in the Myricks without any reservation of title or dedication. It is to be noted that title to Lots No. 246 and 248, being owned by two of the protestants, devolves under similar circumstances.

Prior to 1892, there was considerable litigation with respect to the ownership of the underlying fee simple title in the beds of roads. In the case of *Hunt vs. Brown* 75 Md. 481, at page 485, the Court of Appeals of Maryland observed as follows:

"Now, the the ground upon which this and other like grants are held to be exceptions to the general rule, which carries the fee to the middle of the road, is the supposed intention of the parties as disclosed by the terms of the grant. It is a matter of legal construction. At the same time we cannot shut our eyes to the fact that in nine cases out of ten there is no intention either way on the part of the grantor or the grantee. We say no intention because the road-bed itself is a highway, dedicated or intended for public travel, and the probability of its being closed or discontinued as such, is so remote that the fee in the bed of the road is seldom, if ever, considered by the parties to the grant. And hence the property conveyed is generally described as running "to" or "along", or with the highway. In the course of time, however,--in a century or half of a century, as in this case, the road is closed as a highway, and then springs up a costly and harassing litigation about the title to this narrow strip of land, which before was practically of little or no value whatever. And to avoid litigation of this kind, involving the construction as to the intention of the parties, at the best sometimes doubtful, it would be better, it seems to us, to declare by legislative enactment, that all grants hereafter

made of land bordering on a highway, shall carry the fee to the middle of the highway, provided the grantor is the owner of the fee, unless the fee is reserved in express terms of the grantor."

As a result of this case, the General Assembly of Maryland enacted Chapter 684, approved April 7, 1892, and now codified as part of Title 2-114 of the Real Property Article of the Annotated Code of Maryland. (See Exhibit "A" attached.) Inasmuch as The Company failed to reserve title to the bed of Goose Neck Road and failed to reserve the same from dedication, the fee title to the center of said road passed to the various grantees from The Company to the extent that their ownership abutted the road, subject, however, to the private rights of user therein by said grantees as and for a road incident to such ownership.

By failing to reserve Goose Neck Road from dedication (by this is meant public dedication) The Company, in effect, offered the same for dedication to be consummated upon acceptance by municipal authority. Acceptance can be accomplished by deed to such authority or by its acts in pais (paving the surface, installation of utilities, patrolling by police, trash collection, etc.). The Bureau of Land Acquisition has no record of any conveyance to the County Commissioners of Baltimore County or Baltimore County, Maryland transferring the bed of the road as a public highway or any other rights therein, nor do the Land Records of Baltimore County disclose any such conveyance. The records of the Office of Finance, Cost and Computation indicate that County authorities installed public water in the bed of Goose Neck Road thirty years ago without obtaining any recorded

rights of way therefor, it being then the position of the County that the road was a county road. The records of the Bureau of Highways reveal that the County maintains this portion of Goose Neck Road for a distance of .27 of a mile from the eastern terminus of Goose Neck Road (as extended easterly from Bowley Road), northwesterly to a point short of Goose Harbor Inlet.

It is, therefore, submitted that the County has, by its acts, accepted Goose Neck Road as a public road for the use of the general public. It is also submitted that title to the center of said road is vested in the present owners of Lots No. 246, 247 and 248 as shown on the aforesaid plat and the 1.01 acre parcel to the extent that said properties abut the road subject, however, to the rights of Baltimore County, Maryland, the general public and the owners of the remaining land on either side of the road.

The petitioners have advanced the argument that their ownership of Lot No. 247 and the 1.01 acre parcel by deeds together with their ownership of a portion of the bed of Goose Neck Road by virtue of the operation of Chapter 684, Acts of 1892, codified as aforesaid, can be construed to constitute ownership of one parcel of land extending from the rear of the 1.01 acre parcel southeasterly to the waters of Seneca Creek so as to bestow upon such parcel all of the benefits normally appurtenant to properly abutting the shoreline of tidal waters and thereby bringing said parcel within the purview of the provisions of Baltimore County Zoning Regulations, 1981 Edition,

defining fishing and shellfishing facility. With this contention, the protestants must disagree.

By the recordation of the plat and the subsequent conveyances on either side of the road, The Company and its successors effectively severed that portion of its holdings on the southwest side of the road from Seneca Creek except for that part abutting what is now called Goose Harbor Inlet, said Inlet being about 700 feet northwest of the 1.01 acre parcel. The 1.01 acre parcel now stands alone and, of itself, has no rights as "a lot on the shoreline of tidal waters". The fact of common ownership by the petitioners of property on both sides of the road together with their ownership of the underlying bare legal title to a portion of the road cannot be construed in the manner as requested by the petitioners. Lot No. 247 and the 1.01 acre parcel must remain separate. The result requested by the petitioners can only be accomplished by a proper closing of the road which would require an agreement to that effect by all parties having a private right therein and an order of the County Executive pursuant to closing proceedings as required by law.

Lot No. 247 and the 1.01 acre parcel are currently carried on the tax rolls of Baltimore County as two separate accounts, Lot No. 247 being classified as "Water Front/Residential" and the other parcel being classified as "Residential". Inquiry at the office of the Supervisor of Assessments for Baltimore County indicates that office would not entertain a request to consolidate these accounts and that portion of the road owned

For the Commissioner to agree with the petitioners' request that the ownership of the parcels on both sides of Goose Neck Road and a portion of the bed of Goose Neck Road constitute one parcel would be an interpretation that would strain the intent of the Court of Appeals and the Legislature in the case of Hunt vs. Brown and Chapter 684 of the Acts of 1892, as codified. Such an interpretation would be in derogation of the private rights of other persons owning property abutting said road, and the rights of the public, in general, to use the same as and for a public road. We would, therefore, submit that the petition for a special exception should not be entertained for the 1.01 acre parcel of land.

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Crown crowns. As a condition of this section, see § 15-102 of this article.

This section does not affect conveyances made before the effective date of this section. Baltimore Bd. R.R., 81 Md. 66, 31 A. 444 (1895); Title Ins. & Trust, 177 Md. 85, 9 A.2d 225, 151 A.2d 929 (1959).

Dead. While called out to the alloys and where they were counted prior to passage of this section, the alloys were not dead. *Alloys America, Inc. v. Crown Cork & Seal Co.*, 190 Md. 106, 87 A.2d 245 (1953).

Public. The alloys are not on a public street, as alleged by a public street, *Campaign v. Wasefield*, 157 Md. 229, 14 A. 549 (1899).

This section is applicable to property binding on the public. *State R.R. Comm'n v. Hiers*, 210 Md. 213, 18 A.2d 369 (1955).

This section is applicable to a private way as well as a public street. *Hiers v. State R.R. Comm'n*, 210 Md. 219, 18 A.2d 929 (1955).

The provision that any conveyance binding on the public is binding on the public at the center thereof, in the absence of an express provision to the contrary, applies to a private way as well as a public street. *See* *Wasefield v. Campaign*, 157 Md. 229, 14 A. 549 (1899), *expressly a presumption that was recognized in common law*. *Callahan v. Clements*, 184 Md. 106, 39 A.2d 101 (1954).

Value of abutting landowner's interest. The value of abutting landowner's interest of dead street. There was no error in court's refusal to award the value of the abutting owner's interest in the value of the property of landowner to the value of the property of the abutting owner.

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It is quite common for contiguous parcels to be considered as one. In Grand Union Co. v. Laurel Plaza, Inc., 256 F. Supp. 78. (M.D. 1966), the Court had before it the enforcement of a restrictive covenant of a lease. The Court examined the factual circumstances involving the lease including the relationship of the tracts involved. The Court found that contiguous tracts included property separated by substantial highways. Two factors of that case are important to the subject case: first, in enforcing the restrictive covenant the Court looked to factors of ownership and the relationship of usage of the properties in determining contiguity and second, the Court found that the term "contiguous" may embody the concept of touching or it may not and may mean "near". 256 F. Supp. 78, 81.