

84-326-SPH PETITION FOR SPECIAL HEARING TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and 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 a crabbing, shellfishing and fishing operation now being conducted allegedly pursuant to bill 178-83 and 98-75 of the Baltimore County Council on property adjacent to the petitioners which is owned by John and Alice Lamar on lots 12, 13 and 16 on the plot of Berotess Farm Beach, 568 Beach Drive in the 15th Election District.

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: _____

(Type or Print Name)

Signature: _____

Address: _____

City and State: _____

Interests for Petitioner:

Michael E. Marr, Esquire
(Type or Print Name)

Signature: _____

Address: 10 North Calvert Street, Suite 430
Baltimore, MD 21202
City and State: Baltimore, MD 21202

Attorney's Telephone No.: 539-4250

Address: _____

Phone No.: _____

Petitioners

Richard Kowalski
(Type or Print Name)

Signature: _____

Address: 700 Asher Road
Baltimore, Maryland 21220
City and State: Baltimore, Maryland 21220

Name, address and phone number of legal owner, contractor purchaser or representative to be contacted

Name: _____

Address: _____

Phone No.: _____

ORDERED By The Zoning Commissioner of Baltimore County, this 27th day of March, 1984, 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 24th day of May, 1984, at 10:00 o'clock A.M.

Call John

Zoning Commissioner of Baltimore County.

ECO-1 (over)



HARRY J. PISTEL, P.E.
DIRECTOR

May 4, 1984

Mr. Arnold Jablon
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Re: Item #250 (1983-1984)
Property Owner: Richard Kowalski, et ux
W/S Beach Dr. 1300' N. Carroll Island Road
N/S Asher Rd. 1420' N. Carroll Island Road
Acres: No Plat Required
District: 15th

Dear Mr. Jablon:

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.

General:

Baltimore County highway and utility improvements are not directly involved.

Very truly yours,

Robert A. Merion, P.E., Chief
Bureau of Public Services

RM:EM:FW:SS

2-NW Key Sheet
13 NE 47 Pos. Sheet
NE 4 L Topo
91 Tax Map

RE: PETITION FOR SPECIAL HEARING : BEFORE THE ZONING COMMISSIONER
Parcel 1 - W/S Beach Dr., 1,300' N of Carroll Island Rd.; Parcel 2 - N/S Asher Rd., 1,420' N of Carroll Island Rd., 15th District
Richard Kowalski, et ux, Petitioners : Case No. 84-326-SPH

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned matter. Notices should be sent of any hearing dates or other proceedings in this matter and of passage of any preliminary or final Order.

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

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

I HEREBY CERTIFY that on this 2nd day of May, 1984, a copy of the foregoing Entry of Appearance was mailed to Michael E. Marr, Esquire, 10 N. Calvert St., Suite 430, Baltimore, MD 21202, Attorney for Petitioners.

Peter Max Zimmerman
Peter Max Zimmerman

PARCEL 1

Located on the west side of Beach Drive approximately 1300' north of Carroll Island Road and known as lots No. 12 and No. 13. Also known as 568 Beach Drive.

PARCEL 2

Located on the north side of Asher Road approximately 1420' north of Carroll Island Road and known as lot No. 16.

Both parcels are recorded on the Plat of Bengies Farm Beach which is recorded among land records of Baltimore County in liber 10, folio 54.

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

May 14, 1984

COUNTY OFFICE BLDG.
111 W. Chesaapeake Ave.
Towson, Maryland 21204

Michael E. Marr, Esquire
Chairman

MEMBERS

Bureau of Engineering
Department of Traffic Engineering
State Roads Commission
Bureau of Fire Protection
Health Department
Project Planning
Building Department
Board of Education
Zoning Administration
Industrial Development

Michael E. Marr, Esquire
10 North Calvert Street
Suite 430
Baltimore, Maryland 21202

RE: Item No. 250 - Case No. 84-326-SPH
Petitioners - Richard Kowalski, et ux
Special Hearing Petition

Dear Mr. Marr:

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.

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. Connolly, Jr.
NICHOLAS B. CONNOLLY, Jr.
Chairman
Zoning Plans Advisory Committee

NBC:bsc

Enclosures

March 27, 1984
Date

BALTIMORE COUNTY DEPARTMENT OF HEALTH

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

Zoning Item # 250, Zoning Advisory Committee Meeting of March 27, 1984

Property Owner: Richard Kowalski, et ux

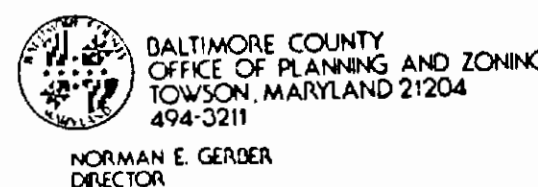
Location: W/S Beach Drive District 15

Water Supply private Sewage Disposal private

COMMENTS ARE AS FOLLOWS:

- () Prior to approval of a Building Permit for construction, renovation and/or installation of equipment for any existing or proposed food service facility, complete plans and specifications must be submitted to the Plans Review Section, Environmental Support Services, for final review and approval.
- () Prior to new installation/s of fuel burning equipment, the owner should contact the Division of Air Pollution Control, 154-3775, to obtain requirements for such installation/s before work begins.
- () A permit to construct from the Division of Air Pollution Control is required for such items as spray paint processes, underground gasoline storage tank/s (5,000 gallons or more) and any other equipment or process which exhausts into the atmosphere.
- () A permit to construct from the Division of Air Pollution Control is required for any charbroiler operation which has a total cooking surface area of five (5) square feet or more.
- () Prior to approval of a Building Permit Application for renovations to existing or construction of new health care facilities, complete plans and specifications of the building, food service area and type of equipment to be used for the food service operation must be submitted to the Plans Review and Approval Section, Division of Engineering and Maintenance, State Department of Health and Mental Hygiene for review and approval.
- () Prior to any new construction or substantial alteration of public swimming pool, wading pool, bathhouse, saunas, whirlpools, hot tubs, water and sewerage facilities or other appurtenances pertaining to health and safety; two (2) copies of plans and specifications must be submitted to the Baltimore County Department of Health for review and approval. For more complete information, contact the Recreational Hygiene Section, Division of Environmental Support Services.
- () Prior to approval for a nursery school, owner or applicant must comply with all Baltimore County regulations. For more complete information, contact the Division of Maternal and Child Health.
- () If lubrication work and oil changes are performed at this location, the method providing for the elimination of waste oil must be in accordance with Water Resources Administration requirements.

SS 20 1082 (1)



Mr. Arnold Jablon
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Re: Zoning Advisory Meeting of 3/27/84
Item # 250
Property Owner: Richard Kowalski, et ux
Location: W/S Beach Drive, 1300' N. Carroll Island Rd.
N/S Asher Rd. 1420' N. Carroll Island Rd.

Dear Mr. Jablon:

The Division of Current Planning and Development has reviewed the subject petition and offers the following comments. The items checked below are applicable.

- () There are no site planning factors requiring comment.
- () A County Review Group Meeting is required.
- () A County Review Group meeting was held and the minutes will be forwarded by the Bureau of Public Services.
- () This site is part of a larger tract; therefore it is defined as a subdivision. The plan must show the entire tract.
- () A record plat will be required and must be recorded prior to issuance of a building permit.
- () The access is not satisfactory.
- () The circulation on this site is not satisfactory.
- () The parking arrangement is not satisfactory.
- () Parking calculations must be shown on the plan.
- () This property contains soils which are defined as wetlands, and development on these soils is prohibited.
- () Construction in or alteration of the floodplain is prohibited under the provisions of Section 22-98 of the Development Regulations.
- () Development of this site may constitute a potential conflict with the Baltimore County Master Plan.
- () The amended Development Plan was approved by the Planning Board.
- () Landscaping should be provided on this site and shown on the plan.
- () The property is located in a deficient service area as defined by Bill 178-79. No building permit may be issued until a Reserve Capacity Use Certificate has been issued. The deficient service is:
- () The property is located in a traffic area controlled by a "D" level intersection as defined by Bill 178-79, and as conditions change traffic capacity may become more limited. The Basic Services Areas are re-evaluated annually by the County Council.
- () Additional comments:

Eugene A. Boser
Eugene A. Boser
Chief, Current Planning and Development

cc: James Hoswell

Zoning Item # 250 Zoning Advisory Committee Meeting of March 27, 1984
Page 2

- () Prior to raising of existing structure/s, petitioner must contact the Division of Water Quality and Waste Management at 154-3768, regarding removal and/or disposal of potentially hazardous materials and solid wastes.
- () Any abandoned underground storage tanks containing gasoline, waste oil, solvents, etc., must have the contents removed by a licensed hauler and either be removed from the property or properly backfilled. Prior to removal or abandonment, owner must contact the Division of Water Quality and Waste Management at 154-3768.
- () Soil percolation tests (have been/must be) conducted.
 - () The results are valid until _____
 - () Soil percolation test results have expired. Petitioner should contact the Division of Environmental Support Services to determine whether additional tests are required.
- () Where water wells are to be used as a source of water supply, a well meeting the minimum Baltimore County Standards must be drilled.
- () In accordance with Section 13-117 of the Baltimore County Code, the water well yield test
 - () shall be valid until _____
 - () is not acceptable and must be retested. This must be accomplished prior to conveyance of property and approval of Building Permit Applications.
- () Prior to occupancy approval, the potability of the water supply must be verified by collection of bacteriological and chemical water samples.
- () If submission of plans to the County Review Group is required, a Hydrogeological Study and an Environmental Effects Report must be submitted.
- () Others: The site upon which the fishing operation is being carried out is served by a private well and septic system. There were no heavy problems noted regarding the fishing operation, however, no activity was noted during the site inspection.

Ian J. Pyzyet, Director
BUREAU OF ENVIRONMENTAL SERVICES

SS 20 1263 (2) R

1 A On this northern end it appears to be. We are
2 talking about looking in an easterly direction, and also here
3 (indicating), you are talking about this shrubbery going all
4 the way back.

5 You are totally forgetting that behind this is
6 a sixteen-foot -- you are not talking about -- the shrubbery
7 is not growing through this boat or on either side.

8 Q Isn't it true the boat is located along the
9 shrubbery?

10 A No, it is in back of the shrubbery.

11 Q Okay.

12 A If there is any shrubbery there of a good height
13 it is something newly planted.

14 Q The site plan also shows an area on Lot 13 for
15 the storage of two boats, fishnets, fish boxes and live-boxes,
16 is that true?

17 A Yes, yes, sir.

18 Q Isn't it also true that there is quite a bit of
19 shrubbery that separates that portion of Lot 13 from that
20 portion of Lot 14, which is your lot?

21 A There is a couple trees there.

1 Q Okay. Now this site plan was prepared and
2 approved by the Office of Planning and Zoning on 9-20-78,
3 correct? It is shown here on this?

4 A Um-hum, yes, sir.

5 MR. MARR: It says --

6 A (Continuing) Can I refer to a note or reminder
7 for this?

8 Q (By Mr. Romadka) No, you just answer my questions.

9 MR. MARR: He can refer to anything to refresh --

10 Q (By Mr. Romadka) I believe you testified also
11 that the pier that's located on Lot 13 off of that extends
12 itself off of Lot 13 was built in about 1970.

13 A '70 or '71, very early '70's, without a permit.

14 Q Is it your testimony that after 1975 when the
15 Court of Appeals gave its decision, that after that period
16 of time there were no boats kept there?

17 A I didn't say -- I said there were one or two
18 boats there, rowboats. They were either on land or in the
19 water.

20 Q Okay. I also would like to have you identify, if
21 you could, out of this zoning file, Exhibit 1, two pictures

1 that were taken by the Zoning Inspector. According to the
2 back of this photo it has got marked lots 12 and 13.

3 Would you look at that picture?

4 A No date?

5 Q No.

6 MR. MARR: I am going to object to it if there is
7 no date. We don't know when it was taken.

8 THE CHAIRMAN: Did we have -- this was not intro-
9 duced into evidence?

10 MR. ROMADKA: It is already -- it is part of the
11 zoning case, Exhibit 1, which was the --

12 THE CHAIRMAN: It has been three days. I can't
13 remember the details of that.

14 MR. CONTRUM: I just opened the file and found
15 three photographs.

16 MR. MARR: Your file?

17 MR. CONTRUM: Exhibit 1.

18 Q (By Mr. Romadka) Are these lots 12 and 13?

19 A Yes, that's correct.

20 Q Isn't it true part of the pictures shows your home?

21 A No.

1 Q A garage?

2 A It is a garage.

3 Q It is a garage we are looking at, okay.

4 And between your garage and Lot 13 there appears
5 to be a line of shrubbery, is that correct, on that picture?

6 A There is shrubbery. I can't see if it is in
7 a line.

8 Q Doesn't that shrubbery run from your garage all
9 the way out to the waterfront?

10 A Talking about this picture (indicating)?

11 Q Yes. The line of shrubbery runs from there to
12 the waterfront?

13 A Let me say -- the answer is no, if you say shrub-
14 bery. There are trees devoid of any foliage from the fall to
15 the spring. Shrubby is something else.

16 Q Well, looking at this particular picture, and
17 looking at the other trees that are in the pictures, it looks
18 like this picture was taken in the wintertime, wouldn't you
19 agree?

20 A Well, this is a willow tree with foliage on it.

21 MR. CONTRUM: June --

1 MR. MARR: Taken in June. Mr. Contrum said it was
2 taken in June.

3 MR. CONTRUM: Well --

4 A (Continuing) The willow is very early to develop
5 its foliage.

6 Q (By Mr. Romadka) Now here is another picture,
7 again of Lots 12 and 13. This has a date on it, 6-8-78.

8 Is this Lots 12 and 13?

9 A Yes.

10 Q Isn't that the same two lots as the picture of
11 which you have just testified to?

12 A Yes.

13 Q Isn't the foliage much heavier on that second
14 picture than it is on the first one?

15 A It is on that particular tree and certainly on
16 this one, yes.

17 Q Wouldn't that indicate to you that the first pic-
18 ture you spoke of was at a time of year when the foliage was
19 not out, so therefore it must have been taken in the winter-
20 time, early spring?

21 A Or late fall.

1 MR. MARR: And certainly not in June.

2 MR. ROMADKA: We didn't say June.

3 MR. MARR: Mr. Contrum said that was when it was
4 taken.

5 MR. ROMADKA: That is what you said, Mr. MARR.

6 MR. MARR: That is what Mr. Contrum said.

7 MR. CONTRUM: I was presuming.

8 A (Continuing) This has more foliage at this point
9 than that. This may be several weeks earlier. When these
10 things go, the maple particularly, they burst out.

11 Q (By Mr. Romadka) Now on the second picture,
12 June 8, '78, on these lots there appears to be a number of
13 things located on these lots, stored on these lots, is that
14 true?

15 A Very much so.

16 Q Do you have -- do you know what they are?

17 A Nets and so on, all fishing paraphernalia, all
18 types of strange things, as a matter of fact.

19 Q All right. And that was in June of '78?

20 A Yes. I didn't put the date on that picture.

21 Q That is what the picture says, assuming that

1 would be the correct date.

2 A Let me see that last picture again. May I?

3 Q Sure.

4 A What I see here are several pieces of plywood on
5 edge here. These things here I cannot identify.

6 Q What picture?

7 A This is the one on June 8, '78.

8 Q Now --

9 A Where the foliage is maybe a little thicker.

10 Q You are now saying it is not nets and equipment
11 and that sort of thing?

12 A I am assuming it was, but here, as I say, behind
13 the plywood we don't know what is behind there.

14 Q Why would you assume that, Mr. Kowalski?

15 A Well, I can assume a lot of things. All kind of
16 equipment is stored back there.

17 I can assume that there are things I can't even --
18 I wouldn't venture to say.

19 I cannot identify this thing. I wish I had a mag-
20 nifying glass to bring it out closer. I don't carry one.

21 Any chance you do?

1 Q No.

2 A So I don't think -- I can't readily identify
3 these things as nets. I am sorry.

4 Q What you are saying is you don't know what they
5 are?

6 A I don't.

7 Q Okay. Fine. Thank you, sir.

8 I want -- I am going to show you another picture,
9 which has already been referred to as an exhibit. It is
10 marked on the back as P-3-A.

11 Can you identify that picture, sir? Are they the
12 Lunar boats? I believe this is June of '79.

13 A They are the Lunar boats, that is correct.

14 Q Is that located at the pier off of Lot 13?

15 A Yes, sir.

16 Q All right. Are you saying those boats were not
17 there in 1978?

18 A That's correct.

19 Q Are you saying those boats were not there in 1977?

20 A That's correct, yes, sir.

21 Q At no time?

1 A Off and on, yes. I had seen them there.
 2 Q Off and on -- let's start with '78.
 3 When did you see them in '78?
 4 A In the latter part of '78. As I testified
 5 earlier, the late fall or very early winter.
 6 Q Of '78?
 7 A '78.
 8 Q Up until that time you did not see them there from
 9 June through -- January through --
 10 A In '77 I had seen them.
 11 Q Excuse me. I am talking about '78.
 12 A Okay. That's correct.
 13 Q You just saw them for a few months in '78? That
 14 was from September?
 15 A I said off and on.
 16 Q In those several months? Maybe I misunderstood
 17 you. Did you say off and on from September through --
 18 A That's correct.
 19 Q (Continuing) -- December? Okay. Fine.
 20 What about in '77? When did you see them then?
 21 A I may have seen this boat (indicating).

1 MR. MARR: Which boat?
 2 THE WITNESS: The twenty-foot or twenty-five-foot
 3 or workboat, maybe once or twice or whatever.
 4 Q (By Mr. Romadka) Do you know when in '77?
 5 A Specifically no, not at this point; but we got
 6 a diary of all of this. It is not handy at the moment.
 7 Q I see. You only saw that once or twice in '77?
 8 A Yeah, because I think he bought this in '77 when
 9 he separated from his first wife.
 10 Q Did you see the runabout in '77?
 11 A In '77 I think I saw it up on the beach. This is
 12 one of the sources of the stench that we put up with even in
 13 the wintertime. It smells pretty bad.
 14 Q Did you ever see it in the water in '77?
 15 A I may have. Definitely I cannot say I did not,
 16 but it was maybe here or there.
 17 Q Did you see the runabout in '76 in the water?
 18 A Same answer to that question. I may have seen it
 19 here or there, you know.
 20 Q Did you see any other boat that might have been
 21 located there?

1 A This one, standard rowboat.
 2 Q Other than that?
 3 MR. MARR: The gray one in the foreground?
 4 THE WITNESS: Yes, fifteen- or sixteen-foot
 5 rowboat belonging to Mr. Lamar.
 6 Q (By Mr. Romadka) Did you see any other boat
 7 there in '76?
 8 A In '76?
 9 Q Uh-huh.
 10 A Offhand, no, not that I can recall.
 11 Q What about in 1975? Did you see any boats in the
 12 water off of that pier in 1975?
 13 A In the very early part of 1975.
 14 Q What did you see?
 15 A Quite a few boats, which was not this boat,
 16 twenty-five-foot boats; but there was this boat that I am
 17 referring to now, if I recall, and also a type of boat,
 18 whaler type I think it was, Revlon type, an open boat.
 19 Q Workboat?
 20 A Depends on what you use it for. It was a small
 21 enough boat. It had a bathtub design. It was a fiberglass

1 thing. You use a boat for whatever you want. I think some
 2 of these things go either way, where you can work -- or use
 3 it for a workboat or regular boat.
 4 Q In '76 no boats that you can recall?
 5 A Not that I can recall. You just asked me that.
 6 THE CHAIRMAN: You did.
 7 MR. ROMADKA: Okay.
 8 Q (By Mr. Romadka) Mr. Kowalski, I believe you had
 9 testified that the Lamars got this special permit in 1978, or
 10 you got a copy of this special permit --
 11 A That's correct.
 12 Q (Continuing) -- in 1978.
 13 Prior to that time were you aware of any public
 14 hearings that took place by the Planning Board or the County
 15 Council concerning zoning regulations that would allow commer-
 16 cial fishing and crabbing operations to be held in residential
 17 zones?
 18 A You said prior to the '78 issuance of the permit?
 19 Q Yes, sir. Did you attend any public hearings?
 20 A No, I didn't.
 21 Q Were you aware of any public hearings?

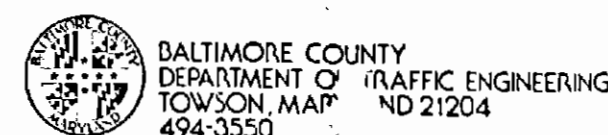
1 A There was something that is somewhat vague in my
 2 mind that Mr. DiMenna told me about, and it goes back quite
 3 a ways. It is not very recent.
 4 I don't think that -- I can't recall the specifics
 5 on that. It had to do I don't know with what particular
 6 direction, but I don't think it amounted to any great revela-
 7 tion of changes.
 8 Q Did you -- were you aware of any public hearings
 9 held by the Planning Board or the County Council concerning
 10 commercial fishing and shell-fish operations after 1978?
 11 A No.
 12 Q I believe you testified it was in 1978 that you
 13 first noticed some activity there on the Lamar property.
 14 A That's correct.
 15 Q So I take it from -- certainly from that point on
 16 you started -- as I think you testified -- started contacting
 17 the Office of Zoning and so forth concerning this matter.
 18 A That's correct.
 19 Q But yet you did not become aware of any public
 20 hearings after that period of time concerning commercial fish-
 21 ing or shell-fishing?

1 A Not that I am aware of.
 2 Q Okay.
 3 MR. ROMADKA: I have no further questions.
 4 MR. MARR: I have just one question.
 5 REDIRECT EXAMINATION BY MR. MARR
 6 Q During the period of time from '75 or May of 1975
 7 until the late fall, early winter of 1978, when you were away
 8 from your property in connection with any business, can you
 9 tell us whether or not your wife, who is present here this
 10 morning in the hearing room, was present on the premises?
 11 A Yes, almost -- just about anytime I was away.
 12 Q During that period of time did she ever complain
 13 to you about any commercial activity being engaged in by any
 14 of the Lamars or anybody on that property?
 15 A No.
 16 Q If there had been any activity would she have
 17 complained to you?
 18 A Very definitely.
 19 MR. ROMADKA: One final.
 20
 21

1 RE-CROSS-EXAMINATION BY MR. ROMADKA
 2 Q Were there periods of time that you and your wife
 3 would leave the premises together?
 4 A Well certainly.
 5 Q Would that be -- how frequently, once a week?
 6 A Not very often, maybe possibly once a week, maybe
 7 to go shopping and couple that up with going out in the
 8 evening.
 9 Q Did you take vacations?
 10 A No, sir, never yet.
 11 THE CHAIRMAN: Any other questions?
 12 MR. ROMADKA: I have no further questions.
 13 MR. BOLLINGER: One final thing in rebuttal.
 14 The County would offer at this time and supply
 15 copies to Mr. Marr and Mr. Romadka, a copy of the State of
 16 Maryland Annotated Code, entitled Natural Resources, Section
 17 4-706, subparagraph B entitled Gillnets. That reads for
 18 itself.
 19 A commercial net-fishing license to set a gillnet
 20 may be transferred only to the widow, father, brother, sister,
 21 son or daughter of the licensee as provided in Subsection A.

1 I have nothing further.
 2 MR. MARR: By way of proffer, which I understand
 3 is acceptable to counsel for the defense and --
 4 I will proffer the testimony of Mrs. Kowalski,
 5 who is present here, that if she were called to the stand she
 6 would testify that during the period from approximately May
 7 of 1975 until late fall, early winter of 1978 she saw no
 8 fishing activity in connection with the subject premises,
 9 located on Lots 12, 13, and 16, no fishing or crabbing.
 10 THE CHAIRMAN: We accept it.
 11 MR. SPURRIER: Do you have any idea what number
 12 this is? (Whereupon, the document was
 13 marked County's Ex. G.)
 14 MR. BOLLINGER: I believe -- no, because we
 15 already have some County exhibits in. It would be the next one.
 16 MR. SPURRIER: All right. I will find it.
 17 MR. BOLLINGER: We can do it easily enough.
 18 THE CHAIRMAN: Any other statements at this time?
 19 MR. MARR: No, your Honors.
 20 THE CHAIRMAN: Let me make a statement to you all
 21 if I can.
 22 Since we have obviously lived with each other for

Pursuant to the advertisement, posting of property, and public hearing on the Petition and it appearing that by reason of the following finding of facts:



STEPHEN E. COLLINS
DIRECTOR

April 16, 1984

Mr. Arnold Jablon
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Item No. 240, 241, 242, 243, 244, 246, 247, 249, and 250 Meeting of March 27, 1984
Property Owner:
Location:
Existing Zoning:
Proposed Zoning:

Acres:
District:

Dear Mr. Jablon:

The Department of Traffic Engineering has no comments for item numbers 240, 241, 242, 243, 244, 246, 247, 249, and 250.

Michael S. Flanigan
Traffic Engineering Assoc. II

MSF/ccm

SPECIAL NOTE FOR CONSTRUCTION IN TIDAL OR RIVERINE AREAS

BILL 4-82 BALTIMORE COUNTY BUILDING CODE 1981

EFFECTIVE MARCH 25, 1982

SECTION 519 A section added to read as follows:

SECTION 519.0 CONSTRUCTION IN AREAS SUBJECT HAZARD TO FLOODING

519.1 AREAS SUBJECT TO INUNDATION BY TIDEWATERS:

1. Whenever building or additions are constructed in areas subject to inundation by tides, the building's lowest floor (including basement) shall be not lower than one (1) foot above the 100 year flood elevation, as established by the U.S. Army Corps of Engineers or the Federal Flood Insurance study, whichever is the more restrictive. These buildings or additions shall be designed and adequately anchored to prevent flotation, collapse, or lateral movement of the structure with materials resistant to flood damage.

2. Crawl space under buildings constructed in the Tidal Plain, as determined by the U.S. Army Corps of Engineers or the Federal Flood Insurance study, whichever is the more restrictive, shall be constructed so that water will pass through without resulting debris causing damage to the improvements of any property.

3. New or replacement utility systems, including but not limited to water supply, sanitary sewage, electric, gas and oil, must be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and require onsite waste disposal systems to be located so as to avoid impairment of them or contamination from them during flooding.

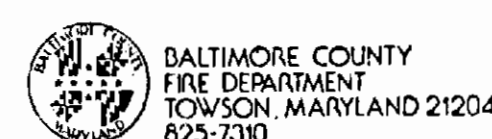
519.2 RIVERINE AREAS SUBJECT TO INUNDATION BY SURFACE WATERS WITHIN THE 100 YEAR FLOOD PLAIN.

1. No structures or additions shall be constructed within the 100 year flood plain of any watercourse. The 100 year flood plain shall be based upon the Federal Flood Insurance study or the Department of Public Works, whichever is the more restrictive; this determination shall include planned future development of the watershed area.

2. Reconstruction of residential dwelling units shall be governed by Sections 106.0 or 123.0 as applicable, except that rebuilding of residential dwelling units damaged in excess of 50 percent of physical value shall also be governed by the provisions of Subsection 519.1 of this section.

3. Reconstruction of other than residential buildings or structures in the riverine areas shall be made to conform to 519.1 when damage exceeds 50 percent of physical value.

Form 02-82



PAUL H. REMCKE
CHIEF

March 27, 1984

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

Attention: Nick Comodari, Chairman
Zoning Plans Advisory Committee

RE: Property Owner: Richard Kowalski, et ux

Location: W/S Beach Drive 1300' N. Carroll Island Road

Item No. 250 N/S Asher Road 1420' N. Zoning Agenda: Meeting of 3/27/84
Carroll Island Road

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.

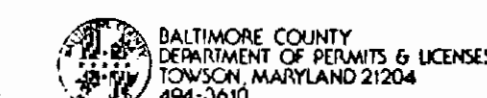
() 5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1976 Edition prior to occupancy.

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

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

REVIEWED BY: [Signature] 3/27/84 Noted and Approved: [Signature]
Planning Group Fire Prevention Bureau
Special Inspection Division

/mb



TED ZALESKI, JR.
DIRECTOR

March 27, 1984

Mr. Arnold Jablon, Zoning Commissioner
Office of Planning and Zoning
County Office Building
Towson, Maryland 21204

Dear Mr. Jablon:

Comments on Item # 250 Zoning Advisory Committee Meeting are as follows:

Property Owner: Richard Kowalski, et ux
Location: W/S Beach Drive 1300' N. Carroll Island Road, W/S Asher Road, etc.
Existing Zoning: R.C. 5
Proposed Zoning: Special hearing to disapprove a crabbing, shellfishing and fishing operation now being conducted, etc.

Acres: No plat required
District: 15th.

The items checked below are applicable:

A. All structures shall conform to the Baltimore County Building Code 1981/Council Bill 4-82 State of Maryland Code for the Building and Code, and other applicable codes.

B. A building/_____ permit 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. Non-reproduced seals and signatures are required on Plans and Technical Data.

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" for commercial use or 3'0" for One & Two Family use group 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, Item 2, Section 1407 and Table 1402, also Section 503.2.

F. Requested variance appears to conflict with the Baltimore County Building Code, Section/_____

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.

(X) Comments - These parcels appear to be subject to the tidal inundation controls of Section 519.0, Bill 4-82. See the attached copy. Also show elevations above sea level on each lot.

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 Section) at 111 W. Chesapeake Ave., Towson.

Very truly yours,

[Signature]
Charles E. Burnham, Chief
Plans Section

CEB:ee

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

Arnold Jablon
TO: Zoning Commissioner
FROM: Norman E. Gerber, Director
Office of Planning and Zoning
SUBJECT: Richard Kowalski, et ux
84-326-SPH

Date: May 3, 1984

On the basis of the paucity of information in the file, this office is unable to offer any comment.

[Signature]
Norman E. Gerber, Director
Office of Planning and Zoning

NEG/gh/sf

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

The Honorable Donald P. Hutchinson
TO: County Executive
FROM: Arnold Jablon
Zoning Commissioner
SUBJECT: Case No. 84-326-SPH
Richard Kowalski, et ux, Petitioners

Date: July 2, 1984

This matter dates back to 1971 when Mr. and Mrs. Kowalski initiated a complaint that the Lamars were violating the BC2R. The matter went to the Court of Special Appeals which ruled in favor of the Kowalskis and ordered that the Lamars cease operation of their shellfishing operation. This reversed the County Board of Appeals and Circuit Court decisions.

Not until late 1978, after their use permit was approved by Eric DiNenna, did the Lamars initiate activity again. The Kowalskis went back to court, which remanded to Bill Hammond, who ruled that the Lamars were operating illegally under a use permit that was invalid because DiNenna approved it too late. The Lamars appealed, but Hammond's Order was upheld. The Lamars again stopped operation. Recently the County Council enacted legislation legalizing the old use permits signed by DiNenna. Based upon this legislation, the Lamars again resumed operation.

The Kowalskis now have filed for an interpretation of the BC2R to determine that the Lamars were an exception to this legislation and that they should not be allowed to operate because the law in 1978 which allowed the use permits specifically limited those eligible to those in operation at the time. Since the Lamars were not in operation due to the Court of Special Appeals decision ordering them to cease, the Lamars are not entitled to the use permit signed by DiNenna.

I disagreed. My opinion is attached.

The Kowalskis have appealed this decision to the Board of Appeals.

AJ/srl

County Board of Appeals of Baltimore County

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

July 26, 1985

Michael E. Marr, Esquire
10 N. Calvert St., Suite 430
Baltimore, MD 21202

Re: Case No. 84-326-SPH
Richard Kowalski, et ux

Dear Mr. Marr:

On Tuesday, July 16, 1985, you appeared before the Board of Appeals representing the Petitioners in the above entitled case, Mr. and Mrs. Richard Kowalski.

It has this date been brought to my attention that you are representing the Stancils in a suit that is pending between myself and the Stancils. Had I known this the day of the hearing on the above cited case, I would have immediately disqualified myself.

If this situation creates a problem for you and you would prefer to have the case reheard by a different Board, please advise this office. As it stands now, the Board is awaiting some forty days for Memorandums to be filed and, therefore, no final decision will be forthcoming prior to that time.

Thanking you for your consideration of this information.

Very truly yours,

[Signature]
William I. Hackett, Chairman

WTH:e

cc: Thomas J. Bollinger, Esquire
John Lamar, et ux
Richard Kowalski, et ux

APR 6 1985

three days on this hearing I suspect there will be no summations at this time, that you will submit memorandum on points of law and facts as you may see them.

I think it is fair to at least mention to you some of the points which obviously occurred to me as Chairman in our three days of testimony on this case. I will give these to you not in any order, in any preference, only because they seem to occur to me.

I think that it is fair to do that after such a lengthy hearing.

I mention first that issue of whether the decision of the Court of Appeals in April of 1975 against the Lamar commercial operation continued on in effectiveness after Bill 75-98 was passed and any other bill.

Obviously a question is, was the operation under Bill 75-98 timely filed.

Another question that seems to be -- needs to be answered is, did the Zoning Commissioner err in allowing the application past the 365th day, the apparent -- I will use the word apparent -- limit of Bill 75-98.

MR. ROMADKA: Repeat that.

THE CHAIRMAN: Did the Zoning Commissioner err in allowing the application for a commercial license from the Lamars past the 365th day. I use the word apparent limit by Bill 75-98.

Did the County Council intend Bill 75-98 to be effective only after the 1976 maps became effective which would actually allow R.C. zones to, in fact, exist in practice, if you would like.

Then there is some issues of fact which you may want to comment on, although the Board itself, I am sure, has its opinions, and can make its own decision.

Did the Lamars fish and crab commercially continually from the starting date, since that is an issue to be decided, such that they would fall under any nonconforming use provisions of the Baltimore County Zoning Regulations.

Did the facts of the Lamar fishing and crabbing operations work in the same way towards any grandfathering under any of the bills that have been introduced as evidence.

A factual question for the Board, although I don't think there is need for comment, is whether Mr. Lamar, Tom Lamar, the son's moving would end a nonconforming use or

would, in fact, end a grandfathering arrangement.

MR. ROMADKA: I am sorry. Would you repeat that?

THE CHAIRMAN: Did Mr. Tom Lamar's moving from the property, physically from the property at Beach Road, wherever it is, to other locations -- whether it is a domicile or residence we will have to determine -- end the nonconforming use.

There also is a second question of whether John Lamar, in fact, did enough to keep any of those issues alive when he moved.

There is perhaps a legal issue of domicile versus residence as far as Mr. Lamar's -- Mr. Tom Lamar is concerned.

Mr. Bollinger raised the issue of gillnet license applications, and we will certainly make our decision on whether Mr. Kowalski has the power of observation, considering the facts you have presented to us over the last several hours.

There are other issues certainly in the case. This is a random selection of issues that I have jotted down, again in no sequence or order, and in no set of priority, but perhaps it would be interesting to know those questions -- if I have to answer them myself, to have your opinions.

Thank you all very much.

MR. MARR: Before you close, I take it that the overriding issue is whether or not there is, in fact, a legislative basis given the subsequent activity by the County Council, is also an issue that you intend to address?

THE CHAIRMAN: Certainly.

MR. GONTRUM: Did the Board intend to set any schedule for filing briefs or memorandum?

THE CHAIRMAN: What is your opinion?

MR. MARR: I think it would be wise to do so.

MR. GONTRUM: How much time have we got?

THE CHAIRMAN: Can we do this in thirty days?

MR. BOLLINGER: I'd say so.

MR. GONTRUM: Thirty days, if that is what the Board --

MR. MARR: Ten days to rebut?

THE CHAIRMAN: Ten days to rebut, and we will have a decision following shortly.

MR. ROMADKA: I was going to say, is there any order in which you want these memorandum followed or just --

THE CHAIRMAN: No order at all. Your preference.

chronological, however.

MR. ROMADKA: Filed within thirty days, ten days to rebut.

MR. MARR: Perhaps that ought to be thirty days from the date we receive transcript. I take it a transcript will be --

(Discussion off the record.)

MR. MARR: All parties, the County and Lamars and Kowalskie, agreed to split the cost of the transcript in thirds.

THE CHAIRMAN: And the memorandum for each of the parties will be due thirty days from receipt of transcript, ten days to rebut, and any appeal from the decision of this Board will be from the date of the opinion of this Board and not from today's date.

(Whereupon, the hearing concluded at 2:00 o'clock p.m.)

I-N-D-E-X

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TESTIMONY OF ERIC DINENBAUM

if I object on that and I ask him questions --

MR. ROMADKA: I don't think you can have your cake and eat it too.

MR. MARR: With all due respect I think the Court whatever court would look at it, would look at it as to whether or not it is admissible. I think that particular position is not sound.

I intend to ask questions without waiving any objection. I am going to continue along those lines in state or federal court.

THE CHAIRMAN: I agree.

(Whereupon, the documents were entered as Defendants Exhibits 2-1 thru 15.)

Q Do you have before you, sir, the so-called Lamar application?

A No, I don't.

MR. MARR: I wonder if I could have that, please.

Q (By Mr. Marr) This is what has been marked as Defendants' Exhibit 1.

I would like you to look at this, if you would, sir. (Witness reviewing file.)

Q You have had an opportunity to look at this particular file, and we isolated in that file, did we not, the application for a zoning use permit.

Is there anything on that application for a zoning use permit -- strike that question.

I think you indicated that a particular individual seeking to utilize such a 500.4 of 98-75 was required to do so within one year of October 7 or within 265 days of October 7, 1976. Do you recall that question?

A Yes.

Q That is how you had interpreted the law that was passed at that time; that is, 98-75 in terms of when the cutoff date was?

A Again, I go back to that same point of the actual language in the original bill, trying to use common sense and trying to interpret what the Council actually did in setting forth 365 days, which we had suggested to give them time to do it.

We actually extended it a year because there was no property zoned R.C. at the time, or any properties were not rezoned at all at the time because there was no R.C. regul-

PETITIONER'S EXHIBIT

1 tions. We -- yes, I said 365 days from October 7 or enactment
2 of the comprehensive zoning.

3 Q If that was from October 7, 1976, would you
4 agree with me 365 days would expire on October 6, 1977?

5 A I guess so.

6 Q If it were October 8, then it would expire
7 October 7, 1977?

8 A Yes, '77, correct.

9 Q October 7, '77?

10 A Yes.

11 Q That it would expire then, if that was the ad-
12 tion of the zoning map?

13 A Correct.

14 Q Now you have before you the application for the
15 zoning use permit in connection -- or in the file that's
16 been marked Defendants' Exhibit 1 that has previously been
17 identified as the one submitted by John R. Lamar and
18 Alice M. Lamar?

19 A Correct.

20 Q Does that particular application for a zoning use
21 permit indicate anywhere there on the date that it was, in

1 fact, filed with your office?

2 A No.

3 Q All right. You have, do you not though, a letter
4 in the file dated October 5, 1977, to you from Robert J.
5 Romadka, the attorney for the Lamars?

6 A That's correct.

7 Q Does that particular letter, which is dated
8 October 5, 1977, and which refers to an application for
9 a zoning use permit -- does that in any way, anywhere indi-
10 cate on that letter the date it was actually received in your
11 office?

12 A No.

13 Q Can you tell me whether or not the file contains
14 an envelope of some kind?

15 A No.

16 Q Is there any way you can determine from this file
17 when, in fact, that application was in fact filed in your
18 office?

19 A From this file, no.

20 Q Any other way you can determine when, in fact,
21 it was filed?

1 A It was from Mr. Romadka walking in with not only
2 this one but, I think, numerous applications. How many,
3 I don't know.

4 Q Do you remember the date he walked in?

5 A No, I don't remember the exact date, but I do
6 remember him walking in.

7 You know, I don't think he walked into my office,
8 the inner chambers, but into the Zoning Office.

9 I think I recall seeing him there with other
10 applications, if this was included. I assure it was, but he
11 did file numerous applications on one day. I do recall that.

12 Q Do you recall what date it was?

13 A Exact day or date, no.

14 Q Any record in your office that would indicate
15 what date that was?

16 A I don't think so. I don't know if there is any
17 record in there now. I don't know.

18 Q Was there at the time? Was there any method of
19 logging these in or anything like that that you could use to
20 establish when, in fact, it was filed?

21 A On correspondence to me that came to me, yes, my

1 secretary had a logging-in method of logging it in when it
2 was received, what date, who is it from, and who does it go to.

3 A lot of correspondance or a lot of attorneys,
4 a lot of engineers would not come to the Zoning Commissioner's
5 office but to his technicians down the hall and submit plans,
6 would submit letters that really as a practical matter
7 I never saw, even though they may have been addressed to me.

8 It was maybe being handled by one technician, but
9 they were not logged in, so I can't --

10 Q All right.

11 A It is a normal process, actually.

12 Q Let me ask you this question. With respect to
13 the property covered in Defendants' Exhibit 1, do you have
14 any recollection about any prior zoning violations regarding
15 the use of that particular property?

16 A Yes.

17 Q All right. Did you know an individual by the
18 name of Richard Kowalski at or about October 10, '78?

19 A Yes, I did.

20 Q For how long had you known Mr. Kowalski?

21 A Six, seven years, give or take. Six, seven --

1 I would say '71 or '72 is the first time I met him.

2 Q Do you recall the circumstances under which you
3 first met him?

4 A Yes.

5 Q Tell the members of the Board what those circum-
6 stances were.

7 MR. ROMADKA: I am going to object unless counsel
8 can first lay the foundation for why he is going to pursue
9 this line of questioning concerning Mr. DiNenna meeting Mr.
10 Kowalski back in '72 or '73.

11 MR. MARR: I think if he is allowed to answer --

12 MR. ROMADKA: It does not appear to be germane to
13 the issues.

14 MR. MARR: It is germane.

15 THE CHAIRMAN: Could we have a brief summary of --

16 MR. MARR: A proffer to educate the witness?

17 THE CHAIRMAN: Tell us, if you would, what basic
18 thrust you are trying to --

19 MR. MARR: What I am trying to establish at this
20 particular juncture is to show in 1971 -- in fact, I have got
21 a letter that Mr. Kowalski sent to DiNenna where he complained

1 about the use of the property by the Lamars for commercial
2 fishing, for a marina, various other activities.

3 There were two cases Mr. DiNenna handled. In
4 both those cases he found violations, and he ordered them to
5 cease and desist.

6 The cases wound their way through the courts.

7 Ultimately Mr. Kowalski's position was vindicated in the
8 spring of 1974; and Mr. Kowalski kept in touch with Mr.

9 DiNenna on a fairly regular basis to determine whether or not
10 any action was taken on the part of the Lamars to get some

11 sort of permission or to have the zoning changed; and that,
12 in fact, if in fact when he signed this particular permit that
13 he had known about the facts in question -- and I am posing
14 this upon his previous testimony -- he is not certain that he
15 would have or would not have signed that use permit knowing
16 the history of this particular piece of property which was the
17 subject of litigation which did result in a Court of Appeals
18 of Maryland opinion.

19 MR. ROMADKA: Again, I don't see where this is
20 germane to this particular case per se.

21 You already have in evidence over our objection ar

1 exhibit of the Court of Appeals case that Mr. Marr is refer-
2 ring to. That speaks for itself.

3 Any correspondence Mr. DiNenna's office might
4 have had with Mr. Kowalski concerning that particular case
5 back in '72, I don't see where that is germane to this case.

6 MR. MARR: I am not going to put the correspon-
7 dence in.

8 THE CHAIRMAN: Maybe let us go a little ways down
9 that road.

10 Mr. Marr, if you would just --

11 What Mr. DiNenna thought at the time or didn't
12 think at the time he signed the order, the fact is he signed
13 the order and apparently granted the use permit.

14 So that if you could -- if you are going to con-
15 centrate on his particular thoughts of what he would or would
16 not have done -- obviously he signed it.

17 We don't need to go back to the history as to
18 what has obviously been a long involved case.

19 MR. MARR: Your Honor, do you mean to tell me
20 then you don't want me to ask foundation questions about how
21 we get to October 10?

1 THE CHAIRMAN: I believe counsel would stipulate
2 he does know him.

3 MR. MARR: Do you accept my proffer, it was
4 through the prior violation hearing?

5 THE CHAIRMAN: Yes.

6 MR. MARR: Thank you.

7 Q (By Mr. Marr) Now let me direct your attention,
8 if I can then, to October 10, 1978, which was the date that
9 appears on the application.

10 Had you had conversations with Mr. Kowalski
11 immediately preceding that date about whether or not any
12 activity was going to be undertaken toward legitimating
13 a commercial fishing use on the property adjacent to his
14 property?

15 A Mr. Marr, the only way I can answer that is --

16 I think you said immediately preceding.

17 I don't know if it was immediately or a year
18 before or when. I think --

19 And I do recall one conversation, and Mr. Kowalski
20 would call periodically. I don't know if every month.

21 I don't know if every six months. I don't know how often.

Every once in a while, all right, even if it is just to say hello.

I do recall one conversation with Mr. Kowalski, the essence of which was, I think, he had become familiar or knew of these bills because, in fact, I even told him, if I recall that conversation, that I was one of the persons instrumental in recommending such a bill to the county emanating from the Lamar violation hearing originally, and I do recall that.

And I think I do recall saying to him that if -- in my opinion at least, if the Lamars were to -- wanted a shell-fishing operation, I think they would have to ask for a special exception which is in accordance with Bill -- excuse me -- 98-75.

I am assuming that is the bill which was -- I don't know. I don't recall exactly when.

Q Was it prior to October 10, '78, as best you can recall?

A I don't know exactly, Mr. Marr. I would assume so, but I just don't know.

Q In fact, it was your testimony to the best of

your recollection -- then it is your testimony before Commissioner Hammond, to the best of your recollection it was prior to October 10, '78?

A Mr. Hammond's hearing was a year ago. You know, if that is what I said it is recorded. I would assume so, it is correct.

Q Now --

A Today I don't recall exactly, but, you know.

Q You told him that he would have to get a special exception -- Lamars would have to get a special exception?

A I am pretty sure I went one step further. The Lamars would have the right to ask for it. I said this to everyone. I am assuming I said that to him.

Q That would involve notice to the Kowalskis, among other things?

A Public notice.

Q And his opportunity to be heard?

A Yes.

Q Now in fact, a use permit was granted, which was different from a special exception, isn't that correct?

A Yes.

Q The use permit was based upon the activity existing prior thereto and the grandfather clause that 98-75 created, isn't that correct?

A That's correct.

Q But you indicated to Mr. Kowalski, based upon your knowledge of the Lamar property, knowledge of that case, that the Lamars would be required, if they wanted to, to apply for a special exception, isn't that correct?

A Yes, sir.

Q Now -- and you did that because you knew that the Lamars were not, in fact, engaged in a commercial fishing operation which would or could be grandfathered in under 98-75 as far as you knew?

MR. ROMADKA: I object.

Mr. Chairman, that is asking a too direct or leading, I should say -- not too direct. That is very leading.

THE CHAIRMAN: I agree it is a leading question. Please break it up into sections, if you would.

We will get to the same thing.

The formal requirements here are --

Q (By Mr. Marr) Mr. DiNenna, when you told Mr. Kowalski that you -- that he had -- that the Lamars had to apply for a special exception, that was because at the time you said that you were aware that there was no commercial fishing operation on the property, isn't that correct?

MR. ROMADKA: I object, Mr. Chairman.

THE CHAIRMAN: Let's hear the answer to that question.

I overrule your objection.

A I was only aware that the Lamars were not operating from Mr. Kowalski, and only on that basis -- the basis upon which I advised -- again, it is recall -- Mr. Kowalski would be that they had to apply for a special exception, and it was based on the decision of the Court of Special Appeals, which said the Lamars had to cease and desist.

I could only assume they had ceased and desisted because Mr. Kowalski said nothing was going on.

I didn't hear any complaints from him. It was an assumption.

I didn't personally look at it.

I personally looked at the property on one

occasion back in '71.

Subsequent to that -- I couldn't even find it today if I wanted to.

The answer is I didn't see it.

MR. MARR: The record will reflect the decision from the Court of Appeals was entered on April 4, 1975, and the mandate was May 4, 1975.

Well, that is what the record reflects.

I will tell you that.

Q When was it you left office?

A To be exact, May 7, 1979.

Q All right. Prior to October 10, 1978, and from May 4, 1975, did Mr. Kowalski to your knowledge --

A I am sorry.

Q During the period May 4, 1975, that is the mandate of the Court of Special Appeals in the case of Kowalski vs. Lamar, date when the mandate was issued, from that date until October 10, 1978, did Mr. Kowalski at any time call you to complain about commercial fishing activity by the Lamars on the subject property?

A I don't recall specifically, but I don't think so.

Q All right. Now can you tell us the circumstances under which, as best you can recall, your signing this particular application contained in Defendants' Exhibit 1 --

A Okay. I think again we go back to the process.

MR. ROMADKA: I don't think I quite understand Mr. Marr's question.

MR. MARR: Let me ask it this way.

Q (By Mr. Marr) Did you have a number of these applications in front of you on October 10, 1978?

A From what was -- I am sure, because from what was just submitted there were three, plus Mr. Lamar's.

Q Were you busy at that time, engaged in any other activity?

A Mr. Murphy and I just lost an election one -- a month preceding.

Q Can you describe that?

A Yeah. I was coming back off the -- coming back off the, you know, campaign trail. I was running for public office.

I am assuming there was a lot of catching up, and yes, I was probably pretty busy, and right into a new cycle.

Q Can you recall as best you can, or can you tell us as best you can what occurred in connection with this particular application and others on October 10, 1978?

A The only thing I can say is, going back to the process that we used, whereby the inspector would inspect. If he would get an okay when the technician looked at it, they would be brought to me to be signed, and I was -- and I think I have said this before, that I relied upon the staff, and I defended their actions even if they were wrong.

But I did tell them they were wrong. I am positive on this date in question the inspector or whoever it was -- I don't remember specifically brought me applications, and I specifically said, Every one of them is okay? Yes, they are okay.

I relied upon them. They were my right arm, and proceeded to sign them, date them and sign them.

Q If at the time you were confronted with the application, Defendants' Exhibit 1, the one for the Lamars' permit herein, you actually -- can you recall whether or not you actually considered the problem that the Kowalskis and the Lamars had over the years as of the date that you signed

that particular use permit?

A No.

Q If you had recalled that, what actions, if any, would you have taken in connection with that particular permit?

THE CHAIRMAN: Mr. Marr, just --

MR. ROMADKA: I am going to object.

THE CHAIRMAN: It is difficult to do that at this point.

MR. MARR: I think he will testify that he would have held that particular application up and made a determination as to whether or not there was grandfathering, and in fact that wasn't done.

THE CHAIRMAN: The point is the use permit was granted.

MR. MARR: But you have permitted Mr. Romadka to go into this whole issue.

I think I have the right then to ask questions along those lines.

THE CHAIRMAN: Let's continue on. I understand where you are going. Let's go.

A Repeat the question.

Q (By Mr. Marr) Yes.

MR. MARR: Can I have the question read back, please?

(Whereupon, the reporter read back the pending question.)

A What actions would I have taken specifically?

I can't say what action I would have taken, but I don't think I would have signed the permit.

I certainly, having the knowledge and having remembered this problem, would have inquired as to what was going on; and that is the best I can say.

MR. MARR: That's all I have.

THE CHAIRMAN: Thank you.

REDIRECT EXAMINATION BY MR. ROMADKA

Q I take it from your last remarks, when you say you would not have signed the order at that time, you would have, as you said, looked into the matter further, and then possibly would have signed the order sometime after that, after October 10?

A I would have to answer that question, Yes.

PETITIONER'S
EXHIBIT 2

TESTIMONY OF GARY FREUND

MR. ROMADKA: I have no further questions of Mr. Freund.

Thank you.

MR. BOLLINGER: No questions.

MR. MARR: Just a moment's indulgence, please.

CROSS-EXAMINATION BY MR. MARR

Q I want you to look now at this particular property.

The above property was inspected on June 8, 1978. Preprinted on this, commercial fishing, crabbing.

A Yes.

Q It was found to be in general compliance with the site plan submitted with the above application.

A That's right.

Q Then there is a place for Recommend Approval or Recommend Withholding Approval, and that's X'd to recommend withholding approval.

The reason it says under D, remark sections, one boat in proper storage place, one boat in water, area for crab and eel pots occupied by wood and other materials, also

unlicensed trailer with wood in it in area for storage of fishnets and live-boxes, one boat in yard in front of house slough boxes in proper place, no visible signs of crab or eel pots on property.

This was as of June 1978?

A That's right.

Q It was then again inspected on 11-27-78, which would have been six weeks after October 10, 1978, the date the use permit was signed, and it was found -- property was found in neat, orderly condition, no storage out of place.

So the site plan was in compliance with as of 11-27-78, but not as of June 8, 1978, correct?

A That's correct.

MR. MARR: No further questions.

MR. ROMADKA: You have the file there, Mr.

Chairman.

Just give me a moment, please.

THE CHAIRMAN: Sure.

REDIRECT EXAMINATION BY MR. ROMADKA

Q Mr. Freund, I show you the zoning file now before

PETITIONER'S
EXHIBIT 3

TESTIMONY OF JAMES H. THOMPSON

MR. MARR: Objection.

THE CHAIRMAN: Overruled.

A No, I did not.

Q (By Mr. Romadka) I believe you had testified that you made the first inspection -- that is, in May of '79 as a result --

I believe you stated Mr. DiNenna had talked to Mr. Kowalski.

A Evidently Mr. Kowalski had been in touch with Eric, and Mr. DiNenna then asked me to make an inspection of the property.

Q That was in May of '79?

A Yes, sir.

Q Okay.

MR. ROMADKA: I have no further questions, Mr. Thompson.

MR. MARR: I have some.

CROSS-EXAMINATION BY MR. MARR

Q You reported that fact to Mr. DiNenna, that you saw a commercial fishing establishment down on the Lamar

property?

A Yes, sir. My job when I got out in the field -- I can't make a determination as to whether or not a violation exists -- is just to report to my supervisor what is there.

There definitely was a setup for a commercial operation at the site.

Q Was it Mr. DiNenna that wanted to do something about that?

A It was Mr. DiNenna that wanted to set the case in for a hearing because of the prior history.

Then the time element involved with him leaving office, plus the backlog of cases, it just was not feasible.

I was told to lay low on the case --

I don't know if that is the exact terminology.

(Continuing) -- until such time a new commissioner was appointed, then try to give this case priority.

Q Then that happened?

A Yes, sir.

Q Now -- so you weren't asked to issue any violation notice?

A No, sir.

Q That wasn't the purpose for you going there?

A The purpose for me to go there, like I say, was to bring to the Commissioner exactly what was taking place there on the site.

Q Now when you went down there you saw this piece of property where they had this large commercial fishing operation, isn't that a fact?

A Well --

Q A commercial --

A A commercial fishing operation.

Q You didn't see anyone fishing, but you saw evidence of one?

A Evidence they could certainly conduct one with the materials they had on the property.

Q You also saw lots of other pieces of property?

A Yes.

Q Where were houses on those properties?

A Yes.

Q That was basically a residential zone, wasn't it?

A I would think it would be. It is an excellent location, very nice.

PETITIONER'S
EXHIBIT 4

TESTIMONY OF MR. JOHN LAMAR

Defendants, having been previously duly sworn, was examined and testified further as follows:

CROSS-EXAMINATION BY MR. MARR (Continued)

Q Mr. Lamar, before the -- back before Mr. Dyer's testimony, you were telling us -- you told us that you were unemployed as of today. You were employed through --

A Friday I was.

Q You were employed through last Friday?

A Um-hum.

Q So Friday was -- last Friday you were employed. Did you retire?

A No, got laid off.

Q Laid off. Who were you working for again?

A Tom Gorman.

Q And you worked for him for a year and seven months?

A Year and seven months.

Q For whom did you work before you worked for Mr. Gorman?

A For whom?

MR. BOLLINGER: Mr. Chairman, we will offer a copy of the bill.

THE CHAIRMAN: Let's interrupt a moment.

We were debating the issue of the bill. Mr.

Bollinger, please.

MR. BOLLINGER: Yes. This is a copy of Bill 112 of '76 concerning the five councilmanic districts, shown enactment date of October 15, '70, and effective date of November 29, 1976.

THE CHAIRMAN: That is stipulated by all parties?

MR. ROMADKA: I am sure.

MR. BOLLINGER: That would be a joint exhibit.

MR. MARR: If it is going to be an exhibit we

don't need a stipulation.

THE CHAIRMAN: Joint exhibit.

MR. BOLLINGER: Joint Exhibit 1.

THE CHAIRMAN: Joint Exhibit 1.

MR. BOLLINGER: All right. If it would be

simpler we will mark it County's Exhibit --

MR. MARR: Why don't you make it Defense Exhibit.

THE CHAIRMAN: I will make it Joint Exhibit 1.

(Whereupon, the document was marked Joint Exhibit No. 1.)

THE CHAIRMAN: Mr. Lamar, we have interrupted you two times so far. We are going to try one more time.

A (Continuing) The firm's name is Johns & Lewis from New York.

Q (By Mr. Marr) Johns & Lewis from New York. Did you work in New York?

A No, disposal plant down Patapsco Treatment.

Q What kind of work were you doing?

A Plumbing.

Q For how long were you working for them?

A I'd say roughly close to two years.

Q Two years, all right. So that's taken us back to sometime, I would gather, in 1977.

A I guess it would be somewhere around there.

Q Who did you work for before that?

A I was unemployed for -- I guess it was over a year at least, I know.

Q Would that have been during the year 1977 that you were unemployed?

MR. ROMADKA: Mr. Chairman, I don't quite understand why counsel is interested in Mr. Lamar's previous

employment.

THE CHAIRMAN: I understand your objection.

I overrule it. I am interested as well, obviously having an issue of commercial crabbing and fishing, if he was doing something else, perhaps there is an issue here before the Board.

Q (By Mr. Marr) When were you unemployed? What year?

A Let's see. That would be the year -- it would have to three and a half years ago. It would be --

I can't think. This is '80. I guess it would be around '77.

Q Would it be sometime from the middle of '76 to the middle of '77? Would that be fair? -- or the first part of '76 or first part of '77?

A Unless I look at my records, I'd say yes.

Q Three years and seven months would take us back to approximately April of 1977. Would you agree with me on that?

A Yes.

Q So from April of '76 to April of '77 you were

unemployed?

A I'd say yes.

Q Who did you work for prior to April of '76?

A Oh, boy. I worked for different ones.

I worked down Western Electric for a few

days, and prior to that I worked Broyles & Broyles. I worked for them when they were building -- let's see -- that is when they were building Maryland Academy of Science.

Q You were working for them when they were building the Maryland Academy of Science, Broyles & Broyles?

A Yeah.

Q Any other companies?

A Broyles & Broyles, before then Mitche's.

Lloyd E. Mitche's.

Q Lloyd E. Mitche's?

A Yes.

Q Was all this plumbing work?

A Uh-huh.

Q Full-time plumbing work?

A That is all I have ever did in my life.

Q You say yes to that, full-time plumbing work?

A Yes, sir.

Q Were you doing that in '75 and '74?

A Yes, sir.

Q For '74 and '75, and up through approximately April of '76 you were engaged in the full-time plumbing business?

A Well --

Q Working as a plumber?

A Working as a plumber.

Q You were off for a year?

A Better than a year.

Q Better than a year. Thirteen, fourteen months?

A Something like that, yes, sir.

Q Then you went back to full-time plumbing after that period of time?

A Yes.

Q Were you sick during that year?

A No, just wasn't any work around. Things were real bad.

Q Okay. You were asked to bring with you -- as a matter of fact, you were summoned to bring with you copies

of your Federal Income Tax Returns from '74 to '79, is that correct?

A Yes.

Q Did you bring them with you?

MR. ROMADKA: We have his records.

If counsel is going to ask that he has an opportunity to review them or that they be introduced I would object to counsel either reviewing them or introducing them as a record because Mr. Lamar's testimony on direct examination was that during the period of 1974 to 1979 while he was -- had this joint business with his son Tom Lamar, that he did not reflect on his income tax returns any income from this business or any expenses or made any reference thereto, and the income tax returns concerning that particular business, concerning the commercial fishing, shell-fish operation since he has made this admission, then I see no point in making this personal record available to Mr. Marr.

THE CHAIRMAN: Mr. Marr?

MR. MARR: Well, I disagree wholeheartedly with counsel's reason for the objection.

One of the issues in this case is what was he

doing during 1974 through '79.

It seems to me that any litigation of this type where a person put at issue what he is doing, I have a right to look at the tax returns.

The law is elementary on that. They are not privileged.

They were filed with the federal government.

In fact, when a person puts in issue what he is doing, he opens up things like the tax returns.

THE CHAIRMAN: I have no problem with that reason except for the fact Mr. Romadka and Mr. Lamar have stipulated to precisely the point you may be driving at.

If that is the case, they have admitted the fact he reflected nothing on his tax returns indicating commercial crabbing or fishing, no income or expenses.

MR. MARR: Don't I have a right to look at that to determine in fact the statement he took no deductions for expenses for commercial crabbing is accurate? I think I have a right to do that.

MR. ROMADKA: I think maybe an agent would have a right. We are here on a zoning case.

THE CHAIRMAN: I believe Mr. Marr has a right to look at the tax returns.

Let him do that. Let him look at the tax returns at this point. I believe we know your point.

MR. MARR: I know I do. I think I am --

There may be another point I might be able to hammer home as a result of looking at them.

THE CHAIRMAN: I am overruling the objection to asking him about the tax returns.

MR. ROMADKA: Mr. Chairman, we strenuously disagree that Mr. Marr has any right to look at these personal records.

We have a situation here where Mr. Kowalski, who is a neighbor of Mr. Lamar -- there is a lot of bad blood between these two families.

We certainly hope that Mr. Marr would not make any of this information available.

THE CHAIRMAN: I agree. He will not, I am sure. If there are no other issues raised by examination of these records than the ones we have already discussed, we will let it pass.

MR. ROMADKA: What is it you are looking for specifically in the returns?

MR. MARR: Let me see the returns.

MR. ROMADKA: No. I want to know specifically what he wants out of those returns.

MR. MARR: I want to see what he was reporting in terms of what he was doing, what his business was, whether or not there were deductions.

MR. ROMADKA: Mr. Murphy, we have made a statement we have not showed any income on these returns pertaining to this particular business.

I see, therefore, no reason why this man has any right to look into this man's personal income tax records.

I don't understand.

THE CHAIRMAN: Mr. Marr?

MR. MARR: Well, I think I do have a right. I think he has put that at issue. The matters that he puts within an income tax return, those are not privileged documents.

THE CHAIRMAN: I understand they are not privileged, but just as a point -- I recognize the point you are

But we do not want this financial information made available to Mr. Marr who represents Mr. Kowalewski in this case.

MR. MARR: I haven't stipulated to anything. (Board having discussion off record.)

THE CHAIRMAN: After discussion with the Board, Mr. Romadka, in understanding your objections, and there is some -- a good deal of sympathy from the Board members about your position; nevertheless, Mr. Marr is the attorney, and rather than putting this Board in the position of being the attorney for one side or the other, we would ask that the subpoenaed records be made available to Mr. Marr, and that he is very well aware of the Board's feelings as to how delicate the situation is, please.

MR. MARR: I will treat it with appropriate delicacy; by the same token not surrendering any of my client's rights.

MR. ROMADKA: Do you have the records? (Discussion off the record.)

(Mr. Marr reviewing records.)

MR. ROMADKA: Mr. Chairman, I note that Mr. Marr

in reviewing the income tax returns is noting information from the income tax returns on a yellow tablet, or writing down figures of income and so forth.

It is my understanding that the Board was allowing Mr. Marr to review the income tax returns. I don't recall anything about his taking notes from the income tax returns and writing them down on a yellow tablet, such as the man's income.

I think that is not relevant since the man's testimony in no way has shown any of this business he is involved in with his son is on his income tax returns.

This is highly privileged information concerning income, and he wants to keep it that way.

Therefore, I would ask counsel not be allowed to make this -- to take this information down on this yellow tablet.

I don't know what is going to be done with that information, who it is going to be passed on to, who else would see it.

It is uncalled for. I would ask the Board not allow Mr. Marr to do this.

THE CHAIRMAN: Mr. Marr?

MR. MARR: Yes, Mr. Chairman.

THE CHAIRMAN: Would you like to respond to that?

MR. MARR: Yes, I am copying down information for purposes of cross-examining the witness.

The issue is whether there is any relevance to any of the numbers involved as far as his income is concerned.

If there is relevancy in terms of his employment if a person works for a business and makes fifty cents, he doesn't work there very often or very much.

If he works there making \$22,000 he is working full time there.

THE CHAIRMAN: We have had a stipulation. Mr. Lamar has said he worked full time as a plumber. There is no reflection on the income tax returns of any items that are connected with the crabbing business.

MR. MARR: Well, your Honor, I think he also said in 1976 he was unemployed, part of '75 and '76 he was unemployed.

I think I can impeach that with the information I have right here.

THE CHAIRMAN: I don't think you want to.

MR. MARR: If he was unemployed between '75 and '76 as a plumber, I want to show what his employment was.

MR. ROMADKA: Well, he has admitted it was full-time employment.

What he makes as a full-time employee I don't see where that is germane, whether he makes \$5,000 or \$20,000.

He admitted he was full-time employed. We all understand what full-time employed means, forty hours or fifty hours a week.

THE CHAIRMAN: I am listening. Gentleman, just bear with me a moment.

MR. ROMADKA: I believe I made a motion for Mr. Marr not to be allowed to write down this information.

I don't know if the Board has made a ruling on my motion.

MR. MARR: I think that is going to effectively restrict my ability to cross-examine this witness. I don't think the Board can do that constitutionally.

MR. ROMADKA: I think you have to go and prove to the Board these income tax returns pertain to this zoning

case. I just don't see where they do.

THE CHAIRMAN: I am listening to you. I am not ignoring you, Mr. Romadka.

It just -- I would like to get these issues straightened out at one time, and then we can dispose of them all.

MR. MARR: I am through with the returns.

THE CHAIRMAN: Let's address the issue that was raised by Mr. Romadka in regard to the relevancy to any writing you may have taken.

At this point what items have you noted and what types of items?

MR. MARR: What I have noted, Mr. Chairman -- the left-hand column of my notes I have placed the years in question, '74 through '79. I have put up at the top, Route 14, Box 569, as the address he used.

In the second column I have put the names of the employers, in the third column I put the amounts earned.

THE CHAIRMAN: What relevancy does that have?

MR. MARR: Well, relevancy is what he was doing during this period of time, what he was earning; and I don't

I think that --

This is information reported to the United States Government. I can't understand the reason for any objection to my inquiring about these salaries of him.

THE CHAIRMAN: My only concern is the question of relevancy. The defendant has admitted he has not taken any items within the income tax returns as far as crabbing operations are concerned -- the alleged crabbing operation.

MR. MARR: I agree with that statement.

THE CHAIRMAN: You agree with that.

I think that the point is, very little would be served to go beyond that and look into them.

He has admitted he is a full-time plumber. He was unemployed one period of time, '76 to '77; and his income tax returns reflect that totally and completely.

Given that set of circumstances --

MR. MARR: You see, your Honor, you are wrong.

The man's income tax returns do not reflect that he was unemployed between '76 and '77.

If I might be allowed to point out why, I can tell you.

THE CHAIRMAN: All right.

MR. MARR: Might I? In 1976 from January, J & B Plumbing. It shows \$22,922.

And then there is this same amount or a little more in '77.

THE CHAIRMAN: Mr. Marr, the item of unemployment had he been employed or not employed as far as his own testimony is concerned, I would say at this time this point is certainly relevant to the issue of crabbing; but he has addressed that.

I don't believe further pursuit of this line of questioning is going to help in any way the Board to understand what is obviously clear to both counsel and to the Board that, in fact, he has been employed as a full-time plumber.

That has been said. That is his testimony.

Perhaps you can controvert whether in fact his tax returns are accurate. You can controvert whether, in fact, he was unemployed; but neither of those issues go to the issue of crabbing and to the issue of whether he was employed in that manner.

So with that I will sustain Mr. Romadka's objection, and ask you to give Mr. Romadka your notes.

MR. MARR: Might I state that -- for the record that at this particular juncture I have to protect my clients.

I didn't choose the issue. This Board, by the way, chose to hear it; and the issue is whether or not this man was engaged in a commercial crabbing and fishing operation so he can allegedly be grandfathered under a particular statute or ordinance.

The question is whether or not he was functioning in that capacity.

I have a right, it seems to me, to show what he has said in other situations, in other forms to other agencies of what he was doing and how he was employed; particularly, when he comes in here and claims he was acting as a commercial fisherman.

I have a right to do that, impeach his testimony. I think that restricts me.

THE CHAIRMAN: On the testimony of commercial fishing, you certainly can impeach his testimony as you may

1 see fit.

2 MR. MARR: The only way I can do that is to ask
3 these questions.

4 THE CHAIRMAN: I believe that is not the case.

5 The Board would accept Mr. Romadka's objection,
6 and let's end this line of questioning concerning income tax
7 returns.

8 I thought you might find something else under
9 another heading that would be relevant to this case of
10 whether he is a crabber or commercial fisherman.

11 If there is no evidence of that precise issue on
12 those tax returns as you have indicated to me, then I will
13 accept Mr. Romadka's objection, and let's stop this line of
14 questioning and go on to the precise point you made as to
15 whether or not Mr. Lamar, in fact, is a commercial crabber
16 and does it on a part-time basis.

17 MR. MARR: Can I be allowed to ask him, for
18 example, if in 1974 --

19 MR. ROMADKA: Mr. Chairman, I am going to object.

20 MR. MARR: Could we approach the bench?

21 THE CHAIRMAN: Please, if we could do that.

1 (Whereupon, a discussion was held off the record.)

2 THE CHAIRMAN: Back on the record, Carol, if you
3 would.

4 Mr. Marr and counsel for all parties have
5 approached the bench indicating that his notes contain ques-
6 tions that he has along the line of employment which go to
7 Mr. Lamar's previous testimony.

8 We do agree, and Mr. Marr's exception --

9 At this point our ruling as far as the dollar
10 value of income during those years we will not go into those
11 lines of questioning, but you will address --

12 MR. MARR: I except to it. I think it is wrong,
13 but I will abide by it.

14 THE CHAIRMAN: Let's go on.

15 Q (By Mr. Marr) Mr. Lamar, in 1974 your tax returns
16 indicate that you worked for Riggs Disler & Company and
17 Broyles & Broyles.

18 A Yes.

19 Q What did you do for Riggs Disler? That was
20 plumbing work?

21 A Um-hum, Riggs Disler.

1 Q Can you spell that for the record? R-i-g-g-s?

2 THE CHAIRMAN: D-i-s-l-e-r?

3 THE WITNESS: Yes.

4 Q (By Mr. Marr) Pronounced Riggs Disler?

5 A That's right.

6 Q Then Broyles & Broyles? That was full-time
7 employment?

8 A Right.

9 None of my work is full time for -- see, the
10 job -- you work on a job and it may last a year, may last
11 two years, whatever.

12 When the job is finished if they don't have more
13 work, you get laid off.

14 If you can't find a job yourself you generally go
15 up the hall, see if there is any openings.

16 If there is you try to get them. That is the
17 way my work is.

18 Q In 1975 you continued to work for Riggs Disler,
19 didn't you?

20 A '75?

21 Q Anyway that is what your tax return reflects.

1 A I guess so, if it is in here I did.

2 Q J & R Plumbing & Heating, you also worked for
3 them that year?

4 A That's right.

5 Q Is it J & K?

6 A J & K.

7 Q In 1975 you worked for J & K Plumbing, in '76 and
8 '77 also?

9 A Yeah, that's right.

10 That time off might have been fouled up with the
11 date on the time I was off, but it seems like I was off
12 before I got on --

13 I was out of work a good while before I went to
14 work for J & K Plumbing, whatever year that was.

15 Q Your returns, sir, indicate that you worked for
16 them in 1975.

17 A It would be the year of '75.

18 Q Did you work for them before you worked for
19 Riggs Disler?

20 A I then went with J & K.

21 Q So you stopped with Riggs Disler.

1 A Got laid off, finished up. I went to work for
2 J & K.

3 Q Your tax returns indicate you got income from
4 Riggs Disler in '75.

5 The easiest way is to look at the W-2's.

6 A That's right, yeah, Riggs Disler, right.

7 Q You were working for Riggs Disler in '74, then
8 in '75. When you were laid off from Riggs Disler. Is that
9 your testimony?

10 A Yes, that's correct.

11 Q Then that same year you started with J & K
12 Plumbing, didn't you?

13 A Yeah, that's right.

14 Q What was the period of time you were unemployed
15 during 1975? Can you tell by looking at the tax returns?
16 Does that reflect --

17 It would have been less than a year, wouldn't it?

18 A Probably would have been. Seems like I was out
19 of work over a year.

20 Q Well in any event we can agree the period of time
21 you were speaking of, you were out of work and not working as

1 a full-time plumber, was between Riggs Disler employment and
2 J & K Plumbing & Heating employment, isn't that correct?

3 A Yeah, right. I know it was before J & K, I went
4 to work for J & K.

5 Q You started for J & K in 1975.

6 A Yeah, I guess it was '75.

7 Q Would you say you were employed on a full-time
8 basis as a plumber --

9 A Yeah.

10 Q (Continuing) -- from sometime in '75 --

11 A Yeah.

12 Q (Continuing) -- when you went to J & K?

13 A Yeah.

14 MR. ROMADKA: I would ask, Mr. Chairman, that Mr.
15 Marr turn over the yellow page to me that you had instructed
16 him to do.

17 MR. MARR: I don't think you have authority.

18 MR. ROMADKA: Because it has the income figures
19 on there, which he has agreed not --

20 THE CHAIRMAN: He has not agreed -- I understand
21 he has not agreed.

1 MR. ROMADKA: Then delete that from the page and
2 give me the income figures off the yellow tablet.

3 MR. MARR: Are you ordering me to do that?

4 I except to it, but I will abide by it.

5 THE CHAIRMAN: Please.

6 MR. MARR: I don't think you have the authority.

7 THE CHAIRMAN: Please do. I am looking to make
8 some sense out of this, and to try and exclude the income
9 tax figures that were objectionable and sustained by the
10 Board.

11 I think that your questioning in regard to
12 employment is proper, and we have accepted that.

13 MR. MARR: Now do I understand that I am to tear
14 off the income portion of this?

15 MR. ROMADKA: That's what I want.

16 MR. MARR: That is what you are ordering me to do.

17 THE CHAIRMAN: Please do.

18 MR. MARR: I just want to have a moment to confer
19 with counsel.

20 (Discussion off the record.)

21 MR. MARR: Mr. Chairman, I just would like to make

1 a very brief statement, and maybe this is a matter more of
2 philosophy and practicality.

3 I would yield to your order in the interests of
4 practicality.

5 However, it does violence to me to have anybody,
6 in effect, order counsel to divest himself of his work
7 product.

8 That is the philosophical thing I have a dilemma
9 with. As an attorney I find it repugnant to do so.

10 In the interest of expediting this matter, and
11 because it probably does not pertain to a matter of great
12 importance, and certainly doesn't harm any rights that my
13 clients have, I will comply with your order, Mr. Chairman.

14 I must say for the reasons previously stated
15 I except to it.

16 Let the record reflect the figures have been
17 given to Mr. Romadka.

18 THE CHAIRMAN: Let me also mention, Mr. Marr,
19 for whatever it is worth, that Mr. Romadka objected to the
20 taking of your notes early on in the process, and that I pre-
21 vailed upon him to let you continue so that we could look at

hearing was continued until August 31, 1979, pending the submission of Memoranda by the parties. Thereafter, the Zoning Commissioner determined that the Respondents were permitting a commercial fishing, crabbing and shellfishing operation in violation of the Baltimore County Zoning Regulations. Determining that the use permit which had been issued to the Lamars on October 10, 1978 was invalid because it had no statutory underpinning, Commissioner Hammond ordered that all commercial fishing, crabbing and shellfishing from the Lamar's property cease within thirty days of May 29, 1980.

On June 28, 1980, the instant appeal was noted. Hearings were held on September 11, 1980, November 12, 1980, and February 10, 1981, at the conclusion of which the Board requested memoranda from the parties.

II. QUESTIONS PRESENTED

1. Was the use permit dated October 10, 1978, validly issued.
2. Does §1A04 of Bill 98-75 permit the grandfathering in prior activity which was expressly declared illegal by the Court of Special Appeals.
3. Assuming arguendo that the use permit dated October 10, 1978 had a valid statutory underpinning were the Lamars entitled to the benefit of grandfathering by evidence of sufficient use during the period from May 1975 until the fall of 1978.
4. Assuming arguendo that the use permit dated October 10, 1978 had a valid statutory underpinning and that the Lamars were entitled to the benefit of grandfathering was an application for use permit timely filed within the limits of 75-98.

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III. STATEMENT OF FACTS

The properties in question are lots 12-16 designated on a plat of Bengles Farm Beach, Baltimore County, Maryland. Protestant is record title holder to lots 14 and 15, bounded on the east and the south by Respondent's property, lots 12, 13, and 16.

It is undisputed that between the years 1971-75, Respondent permitted his land to be used for a commercial fishing operation notwithstanding that the area was zoned residential. As a result of that commercial fishing, Mr. Kowalski filed a zoning violation complaint in 1971 seeking to prevent the activity. A hearing was held before the Zoning Commissioner, and a cease and desist order was issued. On appeal to the Board of Appeals, this order was reversed, and that reversal was affirmed by the Circuit Court for Baltimore County. However, Mr. Kowalski took the matter to the Court of Special Appeals which, by a decision issued on April 4, 1975, ruled that the commercial fishing operation was in violation of the zoning regulations, and the Court reinstated the Zoning Commissioner's original cease and desist order. See Kowalski v. Lamar et. al., 25 Md.App. 493 (1975).

Mr. Kowalski testified that within thirty days after the Court of Special Appeals decision, the Lamar commercial fishing operation ceased. (T. 539).¹ He further testified that there was no commercial activity evident on the Lamar property until the Fall of 1978 when he began to notice some activity (T. 541, 542). He stated as well that it was not until the Spring of 1979 that the commercial activity reached its present size and scope, (T. 543).

1/ References to T are to Transcript of hearing before the Board.

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Mr. Kowalski also testified that following the decision of the Court of Special Appeals, he periodically checked with Mr. DiNenna and Mr. Martinak of the Office of Zoning to see if the Lamars had applied for any sort of special consideration in hope of reviving the commercial fishing activity, (T. 548). He indicated that Mr. DiNenna told him that should the Lamars seek special permission to operate a fishing venture, then that permission, in whatever form it may take, would not be granted without actual notice to Kowalski and the other neighbors and a formal hearing, (T. 92).

Also called as a witness was Eric DiNenna, former Baltimore County Zoning Commissioner. He described the history of County Bill 95-78 which provided for a modification of the zoning classification from R.D.P. to R.C. 5 and established certain procedures for obtaining exemptions. Through Mr. DiNenna, it was established that Respondent had applied for a use-permit pursuant to §1A04.2(B)(7) to conduct commercial fishing. Notwithstanding the Zoning Inspector's recommendation of withholding approval of that application, Mr. DiNenna indicated that he signed the approval on October 10, 1978.

Mr. DiNenna, however, was quite candid in stating that he had mistakenly granted that approval, testifying unequivocally that had he realized that the application pertained to the Lamar property, he would never have signed the approval, (T. 99). Rather, he stated that he would have taken no action until a formal hearing could be held preceded by actual notice to Mr. Kowalski.

The testimony adduced by the Lamars corroborated Mr. Kowalski's observations in full. Fishing and crabbing income for 1975, 76, 77 and 78 was de minimus. Only in 1979 did income jump dramatically. In fact, the only recorded expenditures

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introduced by the Lamars show no significant expenses prior to obtaining of the bogus use permit on October 10, 1978.

IV. ARGUMENT

A. AS FOUND BY THE ZONING COMMISSIONER THE USE PERMIT OF OCTOBER 10, 1978 WAS NOT VALIDLY ISSUED.

Absent statutory underpinning the Zoning authority cannot grant a special use for fishing, crabbing or shellfishing in Baltimore County. Kowalski v. Lamar et. al., supra. Bill No. 98-75 purported to give a valid basis for a use permit but in fact was later repealed by Bill No. 30-78. That legislation required obtaining a special exception for crabbing, fishing, etc. which could be granted only after petitioning, posting, advertising and a public hearing. Since there was no statutory basis for a use permit on October 10, 1978 its issuance was invalid. Therefore this Board must affirm Commissioner Hammond's cease and desist order.

B. RESPONDENT MAY NOT OBTAIN THE BENEFIT OF THE §1A04.2(B)(7) GRANDFATHER CLAUSE WHERE HIS PRIOR ACTIVITY, IF ANY, WAS TAKEN IN DIRECT AND FLAGRANT DISREGARD OF THE COURT OF SPECIAL APPEALS MANDATE.

Prior to 1976 Respondent's property was zoned R.D.P., a classification which did not permit commercial fishing. Notwithstanding that prohibition, Respondent engaged in that activity. In 1971, Protestant complained, and that complaint ultimately resulted in a decision in 1975 from the Court of Special Appeals requiring Respondent to cease and desist.² In 1976, the Baltimore County Council revised the zoning classification, changing the zoning to R.D. 5 (rural-residential), a classification also prohibiting commercial fishing by right. See Bill 95-78 §1A04.2(A). Section 1A04.2(B)(7), however,

2/ Whether Respondent in fact stopped his fishing activity is a factual question. Protestant submits that Respondent ceased activity from April of 1975 to the Fall of 1978. Respondent's factual showing supports this, even though Respondent contends that the activity continued from 1975 to the present at the same intensity as is now in existence. Nonetheless, Protestant's second argument does not turn on whether Respondent ceased, and Protestant assumes solely for the purpose of this argument that the activity did continue.

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zoning was and is to reduce non-conformance as speedily as possible with due regard for the legitimate interests of all concerned, and the ordinances forbid or limit expansion of non-conforming uses...

(Emphasis Supplied) 212 Md. at 307

The above passage indicates that it is only the valid or legitimate interests which are to be recognized in determining exceptions and illegal activities, particularly where they are used to justify expanding non-conformity, receive little regard.

Consistent with the general purpose of encouraging conformity while recognizing legitimate non-conformity is the rule of construction requiring that statutory exceptions are to be strictly construed. See Heath v. Mayor and City Council of Baltimore City, 190 Md. 478, 484 (1948) in which the Court said:

The need to justify an exception must be real and substantial. If an exception to the general rule is permitted for reasons that are not urgent and substantial, but for mere convenience, then a provision of the ordinance for an exception might cease to be such and, in practice, become the rule. A broad interpretation of an exception could lead to an unequal administration of the ordinance and result in discrimination. For these reasons a provision of the ordinance for an exception to the general rule should be strictly construed.

See also, Perdue v. State Department of Assessments and Taxation, 264. Md. 228, 232 (1972).

In the face of the general thrust of zoning regulations and the instruction to strictly construe exceptions, Respondent urges this tribunal to interpret §1A04.2(B)(7) in a broad fashion so as to permit wholesale circumvention of the expressed intention of the County Council to maintain the residential quality of the area. Such an interpretation clearly runs counter to well established zoning principles, see, City of Hagerstown v. Wood, 257 Md. 558, 563 (1969), and would operate to expand

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provides two possible mechanisms by which one could obtain special permission to conduct commercial fishing. An applicant may apply for a special exception pursuant to Baltimore County Zoning Regulation (hereinafter referred to as "B.C.Z.R.") 500.5. Alternatively, an applicant may obtain a use-permit pursuant to B.C.Z.R. 500.4 as long as he satisfies three criteria. First, his use for that purpose must have been "existing" at the time Bill 98-75 was enacted. Second, his future use is limited to the scope in existence at that time. Third, his application must have been filed within one year of the enactment of the statute. It was this second alternative which Respondent followed to obtain permission in 1978 to conduct a commercial fishing venture.

Protestant's position is quite simple: in order for Respondent to invoke the §1A04.2(B)(7) "grandfather" clause, the use in existence must have been a legal use. Since any commercial fishing conducted or allowed by Respondent between April of 1975 and 1976 (when 98-75 was enacted) was illegal,³ and hence, not cognizably "existing", the only procedure available to Respondent was by way of B.C.Z.R. 500.5. Since Respondent followed the incorrect procedure, the use-permit was wrongfully issued and cannot now be used to justify a fishing venture.

1. The Express Language of the Zoning Regulations Requires That Any Prior Use Must Have Been A Legal Use.

Section 1A04.2(B)(7) speaks only in terms of a prior use as "existing". There is no qualifying language specifying whether the existence must be legal. Nonetheless an examination of other zoning regulations indicates that "existing" must

be understood to mean only "legally existing".

There are three recognized types of zoning exceptions: a variance, a special exception, and a non-conforming use. Respondent obtained what amounts to a non-conforming use-permit. B.C.Z.R. 101 defines a "non-conforming use" as:

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

(Emphasis Supplied)

Consequently, to the extent the issue is viewed in light of the express definition of "non-conforming use," it becomes immediately apparent that the antecedent use must have been valid and legal.

2. Traditional Tenets of Statutory Construction Support Protestant's Position That Any Antecedent Activity Was Required To Be Legal.

If one accepts Respondent's position that §1A04.2(B)(7) seeks to legitimize all prior commercial fishing, whether legal or not, then one is confronted with an irrational result. Preliminarily, one should note that Respondent could have avoided the present dispute by seeking a special exception prior to the enactment of Bill 98-75.⁵

4/ It is conceivable that Respondent will take the position that §1A04.2(B)(7) creates a fourth type of zoning exception for this limited one-time purpose. Such an argument appears untenable, however, absent any express statement indicating such a radical step. Rather, it is far more reasonable to view §1A04.2(B)(7) as simply directing which procedure to follow in seeking a traditional non-conforming use permit.

5/ See Footnote 3, supra, at 6.

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Then Section 1A04.2(B)(7) would have been available to him and when Bill 98-75 took effect, he would not have needed to repeat the more cumbersome special exception procedure.⁶

Respondent did not seek a special exception prior to 1976, and now takes the position that that failure should make no difference. Respondent argues that the bare fact of "existing" is enough. The logical implication of this argument, however, is that Respondent is now better off by having flagrantly defied the Court of Special Appeals mandate, for had he complied with the law, his activity would have ended. Had the activity ended, he would clearly be ineligible under the grandfather clause. Consequently, to the extent that Respondent's construction is given credence, Bill 98-75 discriminates in favor of lawbreakers to the detriment of law-abiders. Since such a result is clearly irrational, §1A04.2(B)(7) must be seen as sanctioning only antecedent legal activity.

The general purpose and intent of zoning regulations and exceptions also support Protestant's construction. For example, the Court of Appeals noted in Grant v. City of Baltimore, 212 Md. 301, 307 (1957), that the underlying principles of conformity must be balanced against legitimate non-conforming interests. The Court recognized that non-conforming uses have long been a part of zoning plans:

[M]ost, if not all, zoning ordinances provided that lawful uses existing on the effective date of the law could continue although such uses could not thereafter be begun. Nevertheless, the earnest aim and ultimate purpose of

6/ It may be true, as well, that there exist two types of "illegality": the first encompassing a violation complained of by neighbors and subject to official rebuke, and the second type involving an illegality which is simply accepted or tolerated. Protestant suggests that there is a qualitative difference between those two situations. In the latter, the acquiescence by any aggrieved party may well constitute an equitable substitute for the formal special exception. In other words, if one engaged in commercial fishing prior to 1976 without obtaining a special exception, the failure of those affected to object, operating as an estoppel or as laches, may be sufficient to give that person the benefit of the grandfather clause. In any event, that question is not here presented since it is obvious that Protestant has vigorously sought to enforce his own rights over the course of the past ten years.

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the relevancy of the issues involved.

As far as the Board is concerned the work product of the attorney was done with that stipulation. It was a continuing objection by Mr. Romadka; and that is the reason, precisely having looked at that particular issue -- that is the reason we have ruled the way we have ruled.

Let's go back then to your cross-examination.

Q (By Mr. Marr) Now Mr. Lamar, you testified that you had a license to engage in commercial crabbing, and I believe that license was dated June 13, 1980. I think it was admitted as an exhibit.

Do you recall that testimony from September 11, 1980?

A Yes, sir.

Q Defense Exhibit 5. We have a copy of that.

MR. MARR: For the record, Mr. Chairman, I think I found some more exhibits stuck in the folder.

THE CHAIRMAN: Do you have any -- let's let Mr. Romadka see these in case there is any problems with them.

MR. BOLLINGER: Mr. Chairman, I found on the table with some other files that were produced, documents

which purport to be marked as Exhibits 1, 2, 5, and 6.

THE CHAIRMAN: I believe -- let's make sure that the Board makes the distinction. Off the record.

(Discussion off the record.)

THE CHAIRMAN: Okay. Back on the record.

Again we have, I believe, straightened out the exhibits. The Board's present exhibits are as introduced by counsel, and those exhibits we believe are part of the Zoning Commissioner's original file, which has not been received in evidence.

All right, Mr. Marr.

Q (By Mr. Marr) Mr. Lamar, I have in front of you Defendants' Exhibit 5, which is a copy of the State of Maryland commercial crabber's license issued to you. It indicates thereon that it expires December 31, 1980.

You obtained that license, as you testified, on June 13, 1980, didn't you?

A Yes.

Q All right. You didn't have that license before that date?

A Before the date on it, no.

Where is your 1979 license?

A She has it. My wife has them.

Q Can you produce them? You have a '78, '77, '76, '75, '74? Do you have all the licenses you have ever had, sir?

MR. GONTREUX: For what?

MR. MARR: For commercial crabbing and fishing.

Q (By Mr. Marr) You say your wife has all of these?

A That's it.

Q This is --

MR. MARR: What she has shown me, I'd like this marked as -- what are we calling them, Complainant's Exhibits?

THE CHAIRMAN: Complainant.

MR. MARR: I don't know if we marked any yet.

Q (By Mr. Marr) This is a commercial crabber license, State of Maryland, for 1979.

Now, I am showing you --

MR. MARR: Shall I write on it? Do you want it written on?

THE CHAIRMAN: Well, write on it.

MR. GONTREUX: The exhibit?

May I beg the Board's pardon. Is this Exhibit 1?

MR. MARR: Complainant's Exhibit 1.

THE CHAIRMAN: Yes.

MR. MARR: It will be identified.

MR. BOLLINGER: Are you using letters?

MR. MARR: We are using numbers too, because the County is using numbers.

MR. BOLLINGER: Complainant's Exhibit 1.

(Whereupon, the document was marked Complainant's Exhibit No. 1.)

Q (By Mr. Marr) I will show you what has been marked Complainant's Exhibit 1. You will agree with me, will you not, Mr. Lamar, that it is a State of Maryland commercial crabber license?

A No.

Q It is not a commercial fishing license.

A Crabber license.

Q Crabber license?

A Yes.

Q It is issued to you, John R. Lamar, 704 Asher Road?

A Right.

Q It expires December 31, 1979?

A That's correct.

Q Did you obtain it, did you not, on August 14, '79?

A Right.

Q So you had it for about four months, four and a half months?

A (Shaking head affirmatively.)

MR. MARR: I'd offer that into evidence as Complainant's Exhibit No. 1.

THE CHAIRMAN: Exhibit 1.

MR. ROMADKA: No objection.

Q (By Mr. Marr) Do you have any prior licenses?

A No, sir.

Q You didn't have one for 1974, did you?

A No.

Q You didn't have one for '75?

A No, sir.

Q Didn't have one for '76?

A No, sir.

Q Didn't have one for '77?

A No, sir.

Q You didn't have one for '78, did you?

A No, sir.

Q Do you have any commercial fisherman's licenses?

A No, sir.

Q Did you ever have one at any time?

A No, sir.

Q Now during your direct examination -- I know it's been a while -- you were asked to identify certain checks that your wife, I think, executed but drawn on a joint account.

A Yes, sir.

Q These were all marked as Defense Exhibit 6 and admitted into evidence.

MR. SPURRIER: There were five checks.

MR. MARR: Five checks.

Q (By Mr. Marr) Check Nos. -- Mrs. Alice Lamar, Check Nos. 263, 268, 256, 150, and 122.

Was this a joint account you and your wife had?

Did you hear my question?

A I didn't hear.

THE CHAIRMAN: His name isn't on it.

Q (By Mr. Marr) Did you have a joint account with your wife?

A I guess I did, yes.

Q You did?

A Yes.

Q Were there any expenses made in connection with in connection with any crab operation or fishing operation from the joint account?

MR. GONTREUX: If you remember.

Q (By Mr. Marr) If you remember.

A As far as I know she used to pay some bills with it.

Q Other than these checks that have been introduced are there any other checks that you are aware of?

A Not offhand, no, sir.

Q All right. Now you testified that No. 150, Ford Motor Credit Company, \$83.97, was for Thomas R. Lamar's truck that was February 21, 1978.

What was the year of that truck?

A I don't know what year it was, to tell you the truth.

Q All right. How long has he had a dump truck?

A He didn't have a dump truck.

Q What kind of truck?

A Pickup truck.

Q Pickup truck. How long had he had --

A He's had pickup trucks for -- since -- I am thinking -- off and on since '68, I think.

Q Since '68, okay.

This State Farm Insurance has to do with that truck, didn't it?

A Yes, sir.

Q There is a check here dated June 11, 1979, to Jotun Baltimore Copper Paint Company, \$300.

I believe you testified that was paint used in painting crab pots. Do you remember that?

A Yes, sir.

Q Do you remember any checks for any paint that you bought for any crab pots prior to June 11, 1979?

A I don't.

Q Do you know if anybody else does?

A Not that I know of.

Q This is a business you were involved in with your son?

A I don't have them.

Q I mean, are there other expenditures you are not aware of?

A It is possible.

Q June 26, 1979, \$1,258.85, is your wife's check.

A That's right.

Q That was for Louis Peele. He sold crab pots --

A Peele.

Q I know his name is Peele and not Peeler.

A Yeah.

Q Any other expenses in connection with crab pots prior to that date?

A Yeah.

Q Do you -- did you buy any crab pots prior to that date?

A Have I bought any?

Q Prior to that date, that's right.

A Years past he bought.

Q Who is he?

A My boy.

Q How many?

A Oh, I guess off and on, three-, four hundred at

a time.

Q When, if you know?

A The year, I couldn't exactly say the years.

Q How many crab pots did he buy with these --

A How many did I buy?

Q Yeah.

A I don't know exactly how many he bought.

Q All right. There is a check for A & W Fishing Supply Company, \$136.13. Do you -- what that's for?

A What is that?

Q A & W Fishing Supply.

A Fishing nets.

Q Do you have any other checks for fishing-net expenses?

A I don't, no.

Q Do you know if anybody else might have them?

A My boy may have them.

Q All right. Where does your son live?

A I don't know his address.

Q He doesn't live with you?

A Off and on he does, yes, sir.

Q Off and on?

A Yes, sir.

Q Tell us what you mean by off and on.

A Well, he is there three quarters of his time.

Q Three quarters of his time?

A Yes, sir.

Q He is married, isn't he?

A Yes.

Q Does he live in a house with his wife?

A She has a business too.

Q What is her business?

A She is in the antique business.

Q Your son works with her in connection with that business also?

A No.

Q How long have they been married?

A Year, I think a year.

Q What other kind of work does your son do?

A He is a stevedore.

Q How long has he been a stevedore?

A Oh, boy, let me see. I'd say -- I don't know.

Offhand I'd say ten years or more. I don't know.

Q How old is he?

A He is twenty-nine.

Q How you remember you testified during your direct examination that in April of 1975 after the Court of Appeals issued a ruling ordering you to stop commercial fishing, that you continued?

A That's correct.

MR. ROMADKA: I am going to object, Mr. Chairman, unless counsel can show specifically what questions and answers he is referring to in the copy of the transcript.

MR. MARR: I don't believe I have to do that.

THE CHAIRMAN: I will overrule that. I do remember -- the Board remembers the basic sequence. We will see if there is a specific --

MR. ROMADKA: I understand, but he is -- the way he is wording his question as inferring -- to Mr. Lamar, he is characterizing his testimony that this is what he said and --

THE CHAIRMAN: Let's go back to the point -- that issue was brought up on direct, that question whether,

in fact, he had operated after the 1975 ruling, assuming that is the case.

Mr. MARR, go ahead.

Q (By Mr. MARR) All right. Had you engaged in commercial fishing and crabbing operations prior to 1974, prior to the date of this --

A Yes.

Q You had?

A Yes.

Q So that your testimony is that you started commercial fishing prior to 1974?

A Yes, sir.

Q Are you sure about that?

A Yes, sir.

Q Well then, do you want to correct this testimony you gave then?

A I will correct it, yes.

MR. ROMADKA: Why don't you read it to him.

MR. MARR: I will read the testimony to him.

THE CHAIRMAN: What are you reading from?

MR. MARR: Reading page 5.

THE CHAIRMAN: Of what?

MR. MARR: Transcript of his testimony.

THE CHAIRMAN: Of when?

MR. MARR: September 11, 1980. I was about to get to that.

Q (By Mr. MARR) In connection with the questions, I show you, Mr. Lamar, what is a transcript of your testimony prepared by this young lady right here, Carol Ann Deresh.

MR. MARR: The reporter is nodding her head yes.

Q (Continuing) It was taken on Thursday, September 11, 1980, 10:00 a.m., Hearing Room, Court House.

Q Do you remember testifying at that time?

A Yes, sir.

Q Do you remember being on direct examination by Mr. Romadka?

A Yes, sir.

Q Okay.

MR. MARR: Your Honor, if you would, turn to page 53, bottom.

Q (By Mr. MARR) You were talking about commercial fishing business prior to 1974.

Counsel says, I don't mean sport fishing, I mean commercial fishing, or did you start in 1974?

You indicated, I actually started in '74, but I had fished before that.

Do you remember that?

A Um-hum.

Q You had fished?

A Yeah.

Q What kind of fishing?

A Rock fishing or whatever you want to --

Q Sport fishing?

A Well, net, if you call that sport fishing. Nets, I have used nets for -- I don't know whether I should say it or not.

Q Did you sell those fish?

A Fish that I caught?

Q Yeah.

A Most of the ones that I ever caught we'd eat.

Q You'd eat?

A Yes.

Q All right, okay. So --

A Freeze them, so on.

Q When did you start selling the fish that you caught in that commercial fishing operation?

A When did I start selling them? I never sold them.

Q You never sold any, okay.

Isn't it a fact that a commercial fishing operation was being conducted on the property, I think Lots 12 and 13, by people by the name of Maddox?

A What is this again?

Q Isn't it a fact that in 19 -- from 1970 to 1974 a commercial fishing operation was being engaged in in connection with Lots 12 and 13 by people known as the Maddoxes?

A They were there.

Q They were there and using that property in connection with their commercial fishing operation, isn't that correct?

A Yes, sir.

Q After the Court of Appeals opinion in 1974 they stopped engaging in the commercial fishing activity there, isn't that --

A Yes, sir.

Q When -- you are telling us that you and your son Tom continued to go out and fish from time to time?

A Yes, sir.

Q And crab from time to time?

A Yes, sir.

Q But as time goes on -- well, strike that.

In 1979 your testimony indicates that you acquired a large number of crab pots, fishnets, and various things like that, isn't that correct?

A Yes.

Q And you got all that stuff in connection with the special exception that Mr. Romadka had gotten you in October of 1978?

MR. ROMADKA: I object.

THE CHAIRMAN: What is the objection?

MR. ROMADKA: Again, his characterizing the testimony of Mr. Lamar that he had given before the Board on direct, and if he is going to be referring to testimony I would ask that he specifically ask him to refer to the question or the statement that he made as characterized by Mr. Lamar.

THE CHAIRMAN: Again, we will refer to --

From the Board's standpoint that that issue was raised on direct, I can't quote obviously the section of the p.c.s, but I believe the Board has had that issue raised on direct.

It is a proper question to ask.

MR. MARR: All right. Let me rephrase the question.

Q (By Mr. MARR) You had started to indicate yes, shaking your head yes when the objection was lodged?

A (Nodding head affirmatively.)

Q Now in the summer of 1979 -- strike that.

In the spring of 1979 and in the summer of 1979 you started acquiring additional nets, crab pots, and the like in connection with the commercial fishing business and crabbing business.

Now Mr. Lamar, Mr. Romadka got you a special use permit in October '78, didn't he?

A Yes, sir.

Q And pursuant to that, in the spring of '79 you began acquiring nets and crab pots to engage in a commercial

fishing and crabbing operation, isn't that correct?

A Yes, sir.

Q You stored them on the property?

A Yes, sir.

Q Okay. That was an activity that was much greater than the activity that was being engaged in before, wasn't it?

A No, sir.

Q You mean to tell me that you bought additional nets and crab pots, and you had no more there than you had before?

A No, we had nets.

Q You bought more.

MR. ROMADKA: Let him finish answering the question.

MR. MARR: I thought he had.

A (Continuing) We have always had fishnets.

I would like to talk a little bit or answer what he says.

THE CHAIRMAN: I think we would like to have you talk.

THE WITNESS: I would like to talk if I could.

MR. MARR: You are doing a good job.

THE WITNESS: Thank you.

A (Continuing) When my boy bought this fishing license from a man -- if I am not mistaken he was --

Can I ask him a question?

MR. MARR: I don't care.

THE WITNESS: Where did you buy that?

MR. THOMAS LAMAR: Bush River.

A (Continuing) At Bush River he bought a commercial fisherman's license.

You can't obtain a fishing license anymore. You got to get them from somebody.

Q (By Mr. MARR) When was that he obtained it?

MR. THOMAS LAMAR: '69 or '70.

Q (By Mr. MARR) Go ahead.

A It was in '69 or '70 when he bought that man's license, and he also bought all the equipment this man had, including nets, traps, you name it, and he had it, and he filled the whole lower end of the property with nets and stuff that he had gotten from him, and we have always had fishing nets.

We have always had oal pots, always had crab pots.

We have always had boats. You name it, and we have had it.

Q You increased the number of pots and nets in 1979, didn't you?

A Well, he always had a gang of --

Q I understand that. My question is, you increased the number of nets and pots in 1979?

A I'd say no, sir.

Q Are you sure about that?

A Yes, sir.

Q What about the \$1,200 check?

A That was for crab pots.

Q All right. You increased the number of crab pots with that check?

A Well, you think of the price going up and things, and you get the same amount, but it costs you more.

The check would be higher because the crab pots cost you more money to have them made.

Q Will you agree with me you put additional crab pots and nets on the property?

A No, sir. He always had a big pile of crab pots. I don't know offhand exactly.

He had, I'd say, 4- or 500 at least he'd have had at that time.

Q The ones he bought in '79 did not add to the number that he had --

A No, sir.

Q (Continuing) -- prior to that?

A No, sir, because the other ones were gone.

Q Where were they?

A They only last so long. They disintegrated.

Q How long do they last?

A Well, two -- maybe two, three -- if you get three years out of them you are lucky.

MR. MARR: Let me have a moment's indulgence, your Honor.

(Discussion off the record.)

Q (By Mr. MARR) Mr. Lamar, isn't it a fact that your son Thomas carried on a commercial fishing and crabbing operation at a location other than Lots 12 and 13, the subject property?

A Not that I know of.

Q Did he ever store any equipment at a lot other

than 12 and 13?

A Not that I know of, no.

Q If he did you are not aware of it, is that what you are saying?

A Right.

MR. MARR: That's all I have.

MR. ROMADKA: Just a couple questions.

MR. BOLLINGER: May I?

CROSS-EXAMINATION BY MR. BOLLINGER

Q Mr. Lamar, where is 704 Asher Road in Baltimore County?

A Where is it?

Q Yes, sir.

A It is off Carroll Island Road. It is the same address, just changed our box number, same as Box --

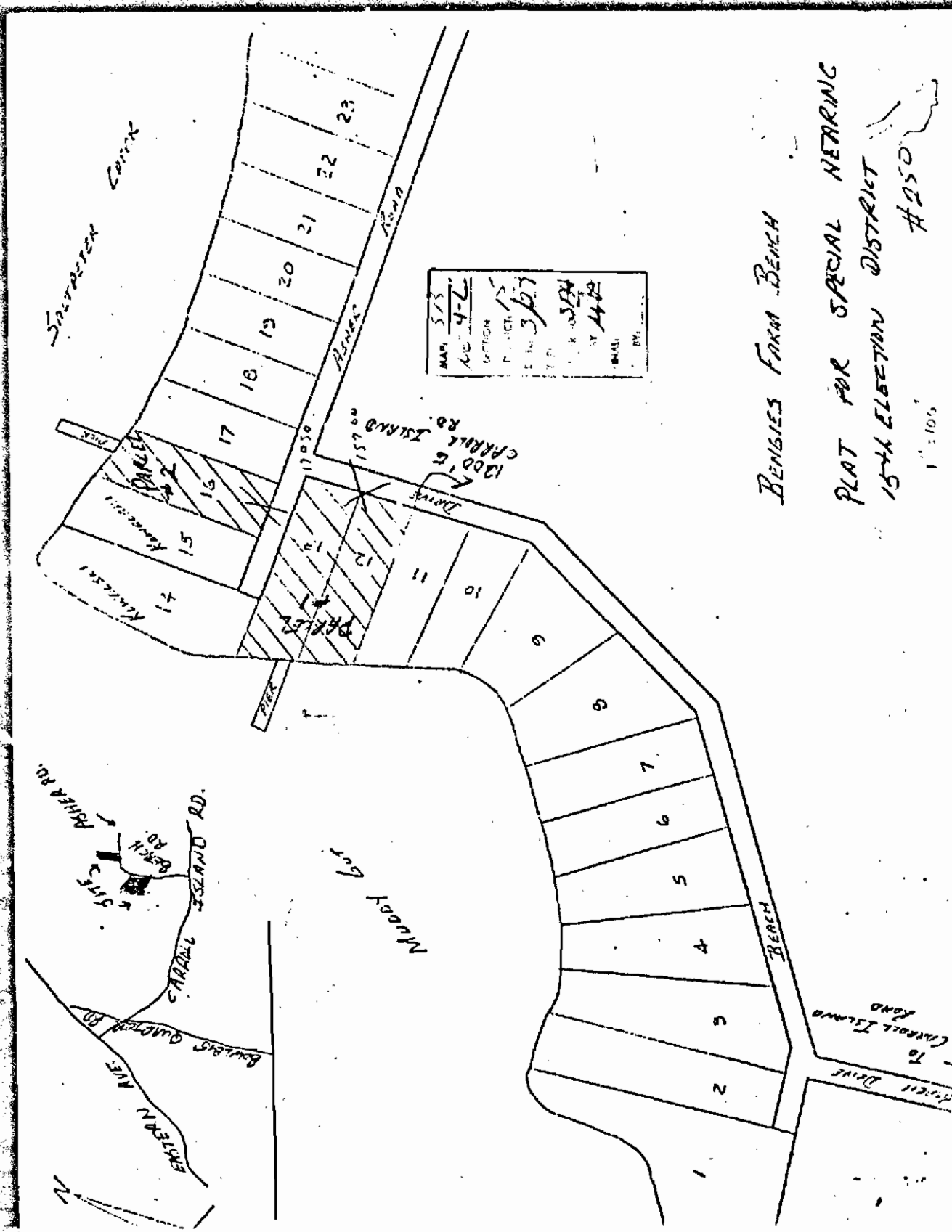
Q Box 569?

A Yes, sir.

Q That is where -- you live there, is that correct?

A Sir?

Q You live there?



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

ARNOLD JABLON
ZONING COMMISSIONER

May 17, 1984

Michael E. Marr, Esquire
10 North Calvert Street
Suite 430
Baltimore, Maryland 21202

Re: Petition for Special Hearing
Parcel 1 - W/S Beach Dr., 1,300' N of Carroll Island
Road; Parcel 2 - N/S Asher Rd., 1,420' N of Carroll
Island Road
Richard Kowalski, et ux - Petitioners
Case No. 84-326-SPH

Dear Mr. Marr:

This is to advise you that \$58.99 is due for advertising and posting of the above property.

This fee must be paid and our zoning sign and post returned on the day of the hearing before an Order is issued. Do not remove sign until day of hearing.

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,

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

No. 130519

LD JABLON
Commissioner

DATE: 6/5/84 ACCOUNT: R-01-615-000

AMOUNT: \$58.99

RECEIVED FROM: Michael E. Marr, Esquire
FOR: advertising and posting Case 84-326-SPH
(Kowalski)

6 002*****589915 606AA

VALIDATION OR SIGNATURE OF CARRIER

Michael E. Marr, Esquire
10 North Calvert Street
Suite 430
Baltimore, Maryland 21202

April 26, 1984

NOTICE OF HEARING

Re: Petition for Special Hearing
Parcel 1 - W/S Beach Dr., 1,300' N of Carroll
Island Road; Parcel 2 - N/S Asher Rd., 1,420' N
of Carroll Island Road
Richard Kowalski, et ux - Petitioners
Case No. 84-326-SPH

TIME: 10:00 A.M.

DATE: Thursday, May 24, 1984

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

cc: Mr. & Mrs. John Lamar
704 Asher Road
Baltimore, Maryland 21220

[Signature]
Zoning Commissioner
of Baltimore County

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

No. 128206

DATE: 3/16/81 ACCOUNT: P-01-615-000

AMOUNT: \$102.00

RECEIVED FROM: Michael E. Marr
FOR: advertising and posting Case 84-326-SPH
(Kowalski)

6 070*****1006015 615AA

VALIDATION OR SIGNATURE OF CARRIER

CERTIFICATE OF PUBLICATION

TOWSON, MD., May 3, 1984

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 May, 1984, the day of May, 1984, appearing on the 3rd day of May, 1984.

THE JEFFERSONIAN
[Signature]
Manager

Cost of Advertisement, \$ 2400

84-326-SPH

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 27th day of March, 1984.

ARNOLD JABLON
Zoning Commissioner

Petitioner Richard Kowalski, et ux
Petitioner's Attorney Michael E. Marr, Esquire

Nicholas B. Commodari
Chairman, Zoning Plans
Advisory Committee

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 15 Date of Posting: 7/14/84
Posted for: Richard Kowalski, et ux
Petitioner: Richard Kowalski, et ux
Location of property: Parcel 1 - W/S Beach Dr., 1,300' N of Carroll Island Rd.; Parcel 2 - N/S Asher Rd., 1,420' N of Carroll Island Rd.
Location of Signs: Parcel 1 - facing Beach Dr.; Parcel 2 - facing Asher Rd.
Remarks: *[Signature]*
Posted by: *[Signature]* Date of return: 7/20/84
Number of Signs: 2

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 15 Date of Posting: 5/16/84
Posted for: Petition for special hearing
Petitioner: Richard Kowalski, et ux
Location of property: Parcel 1 - W/S Beach Dr., 1,300' N of Carroll Island Rd.; Parcel 2 - N/S Asher Rd., 1,420' N of Carroll Island Rd.
Location of Signs: Parcel 1 - facing Beach Dr.; Parcel 2 - facing Asher Rd.
Remarks: *[Signature]*
Posted by: *[Signature]* Date of return: 5/17/84
Number of Signs: 2

Petition for Special Hearing
15th Election District
BORING: Petition for Special Hearing
LOCATION: Parcel 1 - West side Beach Drive, 1,300' N. North of Carroll Island Road; Parcel 2 - North side Asher Road, 1,420' N. North of Carroll Island Road.
DATE & TIME: Thursday, May 24, 1984 at 10:00 A.M.
PUBLIC HEARING: Room 106, 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 on the Petition for Special Hearing under Section 101.1 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should disapprove a building operation now being conducted allegedly pursuant to Bill 130-83 and 86-76 of the Baltimore County Council on property adjacent to the petitioners, which is owned by the Lamar family, et ux.

The Times

Middle River, Md., May 3, 1984

This is to Certify, that the annexed

was inserted in The Times, a newspaper printed and published in Baltimore County, once in each of 3 successive weeks before the 3rd day of May, 1984.

place of Benjamin Farm Beach, 100 Beach Drive in the 15th Election District. Being the property of Richard Kowalski, et ux, as shown on plat plan filed with the Zoning Department.

In the event that this Petition is 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
Arnold Jablon
Zoning Commissioner
Of Baltimore County

PETITIONER'S
EXHIBIT 12

TESTIMONY OF THOMAS LAMAR

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Q What does that represent in the journal?
A It is my crab income.
Q For what period of time are we talking about there?
A July, August, September of '79.
Q That's still September?
A Oh, okay.
Q Again, does this reflect all the income that you might have received for '79, or part of it?
A It is pretty close.
MR. ROMADKA: I have no further questions.
Mr. Chairman.
Thank you.
THE CHAIRMAN: Fine, thank you.
Mr. Marr?
MR. MARR: Thank you, Mr. Chairman.

CROSS-EXAMINATION BY MR. MARR
Q Mr. Lamar, you told us that you started this business with your parents in 1974, do you remember that?
A Yes.

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Q And that's the date you started?
A Close.
Q What do you mean by close?
A Well, '74 -- it could have started a little bit sooner. I'd say '74.
Q Do you have records for '73?
A I should have records.
MR. GONTIUM: Exhibit 21-A covers the years '72 through '74 -- marked for identification.
Q (By Mr. Marr) I have before me a ledger which I want to go over.
MR. MARR: I presume this is 21-A, is that correct?
THE CHAIRMAN: Let me -- excuse me.
MR. MARR: 21-A.
THE CHAIRMAN: My notes indicate -- I apologize -- for not remembering exactly why Exhibit 21-A, the ledger of income and expenses for '72, '73, and '74 was not admitted into evidence.
MR. GONTIUM: It was only admitted for identification purposes.
MR. MARR: It has been identified.

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THE CHAIRMAN: Okay. I wanted to make sure I am with you.
Q (By Mr. Marr) I am showing you what has been marked as Exhibit 21-A for identification.
It indicates on here 21-A for identification purposes. It has 1972, 1973, 1974. 1972 is page 1.
Then it has a variety of entries thereon.
The first page, Fish and Crab Income, page 1 through 7, total page 9, expenses page 10, profit page 11, licenses and fees, page 13, purchases page 15, miscellaneous page 17, tolls page 18, motor parts, etc.
Do you recognize that?
A Yes.
Q Whose handwriting is that?
A I don't know.
Q It's not yours, is it?
A No.
Q We have some pages here, Fish and Crab Income. Is that your handwriting?
A No.
Q We have 1972, March 6, 7, W. T. Freeburger.

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\$24.41, \$8.15, total of \$32.56.
A Yes.
Q So, \$32.56 worth of fish were sold.
Was that fish or crabs?
A That would be fish.
Q That would be fish because you fished the winter months?
A Yes.
Q You fished through April, then after that you crabbed?
A Yes.
Q You crabbed from May through November, I believe your testimony was the last time. Do you remember that?
A No, it wasn't May. It was June through November.
Q All right, June through November you crabbed, and you fished then from February through April?
A Yes.
Q You didn't do anything in May?
A Eeled.
Q You eeled?
A Okay.

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Q Do you sell Freeburger eels?
A No.
Q Who did you sell the eels to?
A I use them for my own use.
Q Eat them?
A No. Eat some of them; most of them for the trout line.
Q You mean in connection with your crabbing later on you'd catch them as bait?
A Yes.
Q 1972, April 14, 13, it shows Freeburger here once again. You sold him \$56.68 worth of fish; that is, April 14 and 13.
A Uh-huh.
Q The 13 is below the 14.
You don't recognize that writing?
A No.
Q Then you have got some items here, August 8, 10, 11, 12, 13, and 15.
A Um-hum.
Q You got number one's, number two's.

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Number one would be the type of crab involved.
Number two would be the type of crab?
A Yes.
Q That would be two bushels at \$10, \$20, etc., and that is the legend?
A Yes.
Q Then you go on in 1972 through September, October. Now when was this record made?
A 1972.
Q In 1972. Do you know who made this record?
A I don't know.
Q Do you have the information that you gave to someone to make this record?
A Yes.
Q Where would that information be? Did you disregard that once this record was made?
A I used to keep everything in a cigar box, receipts for whatever I had. I would come in and put it all in the box.
Q All right. 1972, page 10 talks about expenses, licenses for \$91, purchases \$825.16.

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What does purchases mean?
A It could have been wire.
Q You don't remember what it was though?
A No.
Q You have got a variety of things down here, gas and oil.
Looks like you have --
What is this entry here? Is that Lynch parts replacement?
A I don't know what that is.
Oh, that's truck parts.
Q All right. 1972, you have got licenses \$91.
A Uh-huh.
Q Then you explained the licenses, didn't you?
A Yes.
Q All right. 1972, February 11 you had Department of Natural Resources. That's the boat license?
A Yes.
Q \$5, what boat was that for?
A I don't recall.
Q That was for one of the small workboats?

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A I'd say.
Q Runabout license?
A Boat license.
Q June 8, Fish and Wildlife. -- what is that word after that?
A Abbreviation -- that is net.
Q This is nets?
On November 18 --
A That is pots.
Q Pots, \$25. How many pots? How many pot licenses would that be?
A That is one license.
Q For how many pots?
A A hundred.
Q All right, now. December 3, Fish and Wildlife, \$2.80, do you know what this is for?
A No.
Q And that totals up to \$91?
A Right.
Q You have broken down your purchases, page 15, miscellaneous on page 17, 18 is tunnel tolls.

1 You have broken down -- on 19 you have broken
2 down motor parts and repairs;
3 You have broken that down, and that's all for '72
4 Then you have got gas and oil here. You have
5 broken it all down as to where you went and spent, etc.
6 1973, this looks like it started on page 29.
7 It has 1973. It has income, total expenses,
8 profit, licenses and fees, miscellaneous, tolls, etc.
9 You break it down again for 1973.
10 Here you have fish income, 1973 in January and
11 February.
12 Looks like you were selling fish to Susquehanna
13 Fish Company in 1973.
14 A Yes, it would be.
15 Q You have the dates, and you have a subtotal.
16 Then you have Freeburger again. In February he
17 bought some fish from you.
18 In February you have a subtotal there of \$210.64.
19 In March you have more fish to Mr. Freeburger
20 Company. I take it this was work that you were doing by
21 yourself alone before you and your parents went into business?

1 A In '73?
2 Q '73.
3 A I'd say yes.
4 Q You hadn't started in business with them yet?
5 A No.
6 Q '73, then page 32 you got Freeburger again buying
7 some stuff from you for a subtotal of \$491.82.
8 The total fish income was \$1,367.71.
9 Expenses, licenses and fees, miscellaneous, tolls,
10 motor parts and repairs, truck parts and repairs, and gas and
11 oil, do you remember all that?
12 A Yes.
13 Q That is page 33 of this book marked 21-A.
14 Thirty-four, income from fish, \$1,367.71,
15 expenses \$822.94, a profit of \$544.77.
16 Then for licenses and fees you have got -- you
17 have got one in April for \$5, one in May for \$5.
18 That is both licenses?
19 A Yes.
20 Q And then 1972 for 1973 license, what does that
21 mean?

1 A Let me see.
(Witness reviewing document.)
2 A (Continuing) I don't know what that would be.
3 Q It is either March or November 15, Department of
4 Natural Resources?
5 A Yes.
6 Q Would that be November 15 of '72 for the 1973
7 license?
8 A That is probably when it was purchased.
9 Q That would be for fish, wouldn't it?
10 A Yeah, I imagine.
11 MR. ELLINGER: Counsel said they don't need Mr.
12 Thompson. I don't think we do.
13 Is there any reason why he can't be excused?
14 THE CHAIRMAN: No. Thank you.
15 Q (By Mr. Marr) Now in 1972 you paid \$25 to Fish
16 and Wildlife for a pots license. That was a license for
17 a hundred pots.
18 November 18 you had Fish and Wildlife, \$58.20.
19 That would be for nets, gill nets?
20 A Yes, gill, and fike both.

1 Q What was that payment to Natural Resources
2 (indicating)? That wasn't for a license, was it?
3 A It could have been more licenses. I don't recall
4 Q Fish and Wildlife, that was a different agency,
5 Fish and Wildlife?
6 A That would be -- let's see -- well, Department of
7 Natural Resources.
8 Q That is for the boat?
9 A Used to be Fish and Wildlife.
10 Q So it changed.
11 In 1972 you got this license?
12 A Yeah.
13 Q '72 it was Fish and Wildlife, November 18?
14 A Yeah.
15 Q Here on November 15 you make a check to the
16 Department of Natural Resources, but that's the same place as
17 Fish and Wildlife?
18 A Yeah, they changed around, called D.N.R. now,
19 Department of Natural Resources.
20 Q Then you have got miscellaneous. You have got
21 tolls, motor parts and repairs, truck parts and repairs.

1 You have all your gas and oil. Then you come to
2 crab income. 1974 crab income.
3 So apparently there was no fish income in 1974,
4 and no crab income in 1973?
5 Would you agree with me on that?
6 A Well, I don't recall.
7 Q Well the records reflect no crab income for 1973.
8 Would these records be accurate?
9 A They are close.
10 Q All right. So it -- if it doesn't show crab
11 income, 1973, you didn't do any crabbing?
12 A I still crabbed for myself.
13 Q How about commercially?
14 A I still used the commercial line.
15 Q You crabbed for your own consumption? You didn't
16 sell any crabs in 1973?
17 A I don't recall.
18 Q Well, will you agree with me that your records
19 reflect that you didn't sell any crabs in '73?
20 A According to that.
21 Q The record reflects that.

1 1974, you have got crab income in this book.
2 A Um-hum.
3 Q In the back, crab income.
4 A Okay.
5 Q Page 45, total crab income, all right; and the
6 total crab income was \$893.50?
7 Is that what it looks like?
8 A Let me take a look.
9 Q You were selling to Jim's Crabs?
10 A Jim's Crabs.
11 Q What is that, a seafood house?
12 A He is another crabber.
13 Q Another crabber. You were selling your catch to
14 him?
15 A Yes, he was reselling it.
16 Q Then he was reselling it to retail establishments?
17 Okay. All you did was sell some crabs to Jim
18 Myrick?
19 A Yes.
20 Q What is this figure that is down here? It is
21 either an 8 or maybe a 9 or maybe it is a 7. I don't know

1 What these figures add up to.
2 That is what you made?
3 A Right.
4 Q Then you had some expenses which exceeded the
5 income, right?
6 So you had a loss that year?
7 A Yeah.
8 Q Of about \$500-some?
9 A Let's see what it says here.
10 Q Five -- minus \$505.62, which is a loss.
11 A Yeah, right.
12 Q That is on page 47 of this book, 21-A.
13 Then you got licenses and fees, Department of
14 Natural Resources.
15 Then you got -- June 24, you have got another \$25.
16 I guess that would be for a hundred crab pots.
17 A Yeah.
18 Q By the way, do you have a copy of that license?
19 A No. You just renew them every year. We don't
20 keep them, just throw them away. They are not valid, so no
21 sense keeping them.

1 Q Okay. Then you have got a little thing in here,
2 1973 for '74 license, November 30, Department of Natural
3 Resources.
4 Whatever that would be, that went up about \$5.
5 A That would have been a net.
6 Q You think that's probably a net?
7 A Well, let's see -- no, it says for license, so it
8 is something --
9 Q You didn't do any fishing in 1974, did you,
10 commercial fishing?
11 A Oh, yeah.
12 Q Did you?
13 Well let's see. 1974 crab income.
14 Do you have records for fish income?
15 A You just went past it with the Freeburger.
16 Q Miscellaneous, that is under expenses.
17 A Oh, yeah.
18 Q That's not fish income.
19 Do you have 21-B here? Let's look at 21-B.
20 MR. GONTFERN: May I ask if you are going to admit
21 that into evidences?

MR. MARR: That is not my exhibit.

MR. CONTRUM: Well --

MR. MARR: I'd just like to continue my cross-examination if you don't mind, Mr. Contrum.

Q (By Mr. Marr) Well this looks like 21-B starts in 1975 -- okay, '74.

The only income you reflect is crab, and it is actually a loss.

That was the first year you started with your parents, '74?

A Yeah.

Q You had a hundred pots at that time?

A Um-hum.

Q All right, then. In 1975 we had crab income. It starts on July 5. See that on page 3?

A Oh, yeah.

Q And this C.I. on pages 4 and 5 would be crab income?

A Yes.

Q And do you remember whose writing that is once again?

A That is my handwriting.

Q This is the first time you recognize your handwriting, 1975?

A Uh-huh.

Q You don't know whose handwriting that is here, '72 through '74?

A I'd have to really look at this.

Q You didn't look at it when we were going through it?

A Not the handwriting. This --

Q You were on page 45 there, which was crab income for 1974.

A This is definitely not my handwriting.

Q You don't know whose it is?

A No, I don't.

Q As a matter of fact, you don't know whose handwriting is in any of this book?

THE CHAIRMAN: I think that was the testimony we had in before. I believe that --

MR. MARR: I am sorry. I am belaboring it.

THE CHAIRMAN: I believe that was a key point why

we didn't admit it into evidence.

I must admit the Board is somewhat confused as to why you are going through the record book which we have not admitted into evidence, unless one of the parties again would make a request.

MR. MARR: I have a reason. I think it will become obvious.

I don't want to telescope for the witness what my reason is.

Q (By Mr. Marr) Pages 4 and 5 reflect crab income for '74.

Pages 8 and 9 is fish income.

Now let me ask you, did you make these records contemporaneous with the events?

A I don't understand.

Q Did you make them at the time you sold them or sometime later in the year?

A Well sometimes I'd write it in the book. If not, I'd hold my receipts out.

Q I notice -- go ahead. I didn't mean --

A And then sit down when I had time and do them.

Q I notice that the crab income, in fact, came later in the year.

You started the first few pages, and then the fish income is pages 8 through 11, or 8 and 9 actually.

You had crab income first and fish income later.

A Yes.

Q Even though it was just the reverse. You made money off crabs in 1974 before you made money off of fish.

Your crab income that year was \$750.75.

Is that correct? Is that your income?

A Oh, yeah.

Q The total was \$1,501.50, but there was a partner who got half of that.

A My partner.

Q What was his name?

A In '75, I'd say Charlie Simon.

Q Charlie Simon?

A Another crabber.

Q Where did he live?

A Gunpowder.

Q Is that anywhere near 704 Asher?

A In the same area.

Q Same area. How far from 704 Asher?

A About, I guess, four miles, something like that.

Q Did you use his facilities?

A At times, yes.

Q You used his piers and docks and things like that?

A Uh-huh.

Q Okay.

THE CHAIRMAN: His name again?

MR. MARR: Charlie Simon, S-I-M-O-N.

THE WITNESS: Yes.

Q (By Mr. Marr) Now then, in your fish income you didn't have a partner in connection with your fishing, I take it. You made a thousand dollars in that year. Okay.

Did you use Charlie's facilities in connection with your fishing also that year?

A No.

Q You sure of that?

A Yeah, I was by myself.

Q It was a thousand dollars' worth, okay.

Now your expenses for that year totaled \$2,055.53.

Do you see that?

A Um-hum.

Q Is that accurate?

A Close, yes.

Q All right. And you have got expenses that exceed your income, which gives you almost a \$300 loss.

A Uh-huh.

Q And once again you have got a \$25 payment to the Department of Natural Resources on July 1, which would be for the crab pots, a hundred crab pots?

A Uh-huh.

Q Okay. You have got various miscellaneous expenses. Okay.

Now that concludes 1975, doesn't it?

A Uh-huh.

Q In 1974 you had a loss in just crabbing only, '73 fishing only.

A I'd have to look at it.

Q All right. Well, the records will speak for themselves.

MR. CONTRUM: Not if they are not in evidence.

Mr. Marr.

MR. MARR: Well, do you want to offer them? Go ahead and offer them.

MR. CONTRUM: All right. I offer them into evidence.

MR. MARR: I have no objection.

THE CHAIRMAN: 21-A is not objected to at all at this time. Then we will admit it into evidence for whatever it is worth.

We had sustained your objection the last time because it was unauthenticated.

MR. MARR: I don't have an objection now after thinking about it.

THE CHAIRMAN: 21-A is in.

(Whereupon, the document 21-A was received in evidence as Defendants Exhibit 21-A)

Q (By Mr. Marr) Now in 1975 you showed an overall loss of \$300, both fishing and crabbing.

You had a partner, and you utilized his facilities?

A At times.

Q At times. Now can you give us an estimate of how much time you utilized those facilities of his?

A No, I can't.

Q Now 21-C is 1977, correct?

A 21-D is.

Q I am trying to find out what year. 21-D is '79, '80, okay.

You don't have any records at all for 1976, isn't that correct?

A They are not here.

Q Well, do you have records for what income you earned in 1976, what income and expenses you had in 1976?

A They should be here.

Q Well, you don't have a ledger, do you?

A No.

Q You don't have anything to show any income in 1976, correct?

A Unless it is here.

Q Let's take a look at your tax returns.

Incidentally, these ledgers do not reflect figures for 1976, nor do they reflect figures for 1978, correct?

A I thought '78 was in there.
 Q All right. Well let's look at it.
 This one right here, 21-C, is '77.
 Incidentally, '77 there is a total of three pages of entries, correct? They are just amount of sales, right?
 A Right.
 Q It really doesn't have a total, I take it?
 Looks like it is from March 3, 5, 7, 9, 11, 15, 18, and April 6, correct?
 A Uh-huh.
 Q And beyond that it reflects nothing else, correct?
 A Right.
 Q Very well. I presume the tax return would have a total of what that is?
 A Oh, yeah.
 Q 1978, we have nothing for 1978.
 We have '79 and '80, I think you testified to on direct, for 21-D.
 Do you remember just answering some questions Mr. Rowadka asked you?

A Yes.
 Q This book 21-D is for '79 and '80.
 So we have no records at all for 1978, isn't that correct?
 A No ledger.
 Q Did you make a ledger for '78?
 A I don't recall.
 Q Isn't it a fact that you did not make a ledger for '78?
 A Like I said --
 Q How about for '77? Do you recall '77?
 A No, I don't either.
 Q '77 is right here in front of you, so you made one for '77. Do you now recall that?
 A Yes.
 Q The reason you don't recall whether you made one for '76 or '78 is because it is not here, isn't that correct?
 A True.
 Q I take it you made a diligent search for all these for Mr. Rowadka?
 A Oh, yeah.

Q This is what you could come up with?
 A Right.
 Q Now the records for '79, you have fish sales. Looks like they go from -- let's see -- 2-23 to 12-10. Then you have got a series of crabs, seven, eight, nine.
 Okay. Then you have got a halper's share. Who was the helper?
 A I had a boy who was helping me.
 Q What was his name?
 A I had a couple that helped me, a cousin.
 Q What was his name?
 A John Modier.
 Q Spell that for the record.
 A I don't know.
 Q Modier?
 A Modier.
 Q Who else?
 A Couple other boys.
 Q Neighborhood boys?
 A Went to school with one.

Q What was his name?
 A Gary Shuggard.
 Q Who?
 A Gary Shuggard.
 Q Who was the other one?
 A His brother Bruce.
 Q You got other expenses in here for the year 1979. You had a crab-pot license. \$50 it shows.
 A Right.
 Q That is a 200 --
 A Right.
 Q (Continuing) -- pot license? This is the first year you got the 200-pot license, isn't that correct?
 A What year?
 Q 1979.
 A I guess that would be.
 Q All right. The records you have here available for '78 shows a hundred pots. '77 doesn't show one at all, does it?
 A I don't know. I'd have to take a look.

(Witness reviewing documents.)
 A (Continuing) No, it don't. It would be in the income tax returns.
 Q Well we will look at that.
 1980, you have got fish sales from two through three right in here.
 Did you have any crab sales in 1980?
 A Let me see, unless this is it here (indicating).
 Q Crab sales, okay. That is for seventy -- that is for '79 though, isn't it?
 A Yeah, that's what you asked me.
 Q For 1980, I asked you if you had any crab sales for 1980, was my question.
 If you misunderstood it I apologize. We are back here to 1980.
 You had only fish sales?
 A Okay, unless it is backwards.
 Q It could be backwards?
 A Yeah. It is just throwed in any old way.
 Q Have you kept any records other than these for 1980?

A I don't recall unless they are home somewhere.
 Q Now let's take a look at what we have in the way of tax returns.
 In 1974 you listed Thomas R. and Vera L. Lamar, and you listed your address as 616 Carrollwood Road, Apartment E. Do you see that?
 That is not 704 Asher.
 A No.
 Q Where is that in relation to 704 Asher?
 A About two miles up the road.
 Q You weren't living at 704 Asher?
 A Oh, yes I was.
 Q Even though in your tax return it says, Present home address, you listed 616 Carrollwood Road?
 A Right.
 Q Why did you do that if you lived at 704?
 A We moved there. I stayed both places.
 Q You stayed both places?
 A Uh-huh.
 Q What did you consider to be your domicile, your home?

A At that time 704.
 Q At that time?
 A Uh-huh.
 Q Why didn't you list that on your tax return?
 A I didn't fill them out. My wife did.
 Q Your wife did, or was it this fellow David Moore?
 A She gave him that.
 Q She gave him the information?
 A Yeah. Of course I had my information too.
 Q You gave her that information, and as a matter of fact that information is reflected on the Schedule C, isn't it, Profit or Loss from Business or Profession?
 This is the crabbing -- it says commercial fishing, product, sale of fish.
 This is for '74 though that would be prepared sometime in 1975.
 Looks like it was 3-4-75.
 You list as a business address there 616 Carrollwood Road, Apartment E.
 A Uh-huh.
 Q That is not 704 Asher Road.

A No.
 Q Once again, are you saying that --
 A I couldn't conduct a business from an apartment.
 Q Well I understand that, but were you living at 616 Carrollwood? Right?
 A Yes, and 704, too.
 Q And where were you spending most of your time?
 A 704.
 Q Was your wife staying with you at 704, Vera?
 A Sometimes.
 Q When did you all get married?
 A '73, I think.
 Q Okay. This shows income in the amount of \$904 gross receipts or sales in 1974.
 A Right.
 Q There it is here.
 Here you have \$903.50, but it comes out to \$904?
 A Uh-huh.
 Q Then with all the various expenses that -- you made repairs to the boat and motor, gas and oil, fishnets, crab pots, etc., it came up to \$2,495.

You showed a loss of \$1,591.

So you didn't make any money in 1974?

A Right.

Q '75 --

A That would be in here too.

Q '75 is in here. I thought it was in another book. '75 is right here.

'75 is the one that you -- first one, you recognized as yourself with the crab income and fish income.

Let's look at -- incidentally, you listed -- you did sign these returns, I take it?

A Oh, yeah.

Q '74 and '75, you signed them, read them over before you signed them?

A (Nodding head affirmatively.)

Q You signed it where -- it is right underneath where it says, "Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct and complete."

You signed it right below that.

A Yes.

Q You read this return before you signed it?

A Yes.

Q Same with '74?

A Uh-huh.

Q Now this return lists your present home address as 9842 Sapelo Road, 1975.

A That was correct.

Q Had you moved?

A From Carrollwood, yes.

Q Was that your home, 9842 Sapelo Road?

A Residence.

Q Are you telling us 704 Asher was your home?

A Yes.

Q Domicile?

A Yes.

Q Even though you and your wife lived 9842 Sapelo?

A I have always lived 704.

THE CHAIRMAN: Excuse me. There was one thing that I don't recall. It would help the Board, I am sure. Again, 704 Asher is the same thing as 558 Beach.

Drive?

MR. MARR: That's correct.

Q (By Mr. Marr) Let's take a look at your business address. You listed it as 9842 Sapelo Road, the sale of fish, commercial fishing.

A Yes.

Q And it shows a gross receipt in that year, 1975, of \$1,756.

Once again -- it shows a loss of \$1,115.

So you lost money that year also, correct?

A Yes.

Q All right. Now we will take a look at 1976. You have once again listed your address as 9842 Sapelo Road.

A Yes.

Q Were you living at Sapelo Road that year?

A Yes.

Q What was your domicile that year?

A 704 Asher.

Q You actually conceived that in your mind at that time in 1975 that 704 Asher was your domicile?

A It was.

Q Did you think about that in your mind at the time in 1976?

A I don't understand.

Q Well, when you lived at Sapelo Road and you went down to 704, did you actually envision the thought in your mind when you went to 704 that here I am returning to my domicile from my residence two miles up the road?

Is that the kind of thing that went on in your mind at that time?

A I didn't think about it, to be honest with you.

Q Thank you. That is what I thought.

Now let's take a look at your business, again profit or loss.

Once again, Sapelo Road is used, and it looks to me like you have \$137.50 in income. Then you got your expenses.

You have got fishing license, gas and oil, boat registration, business transportation, and you come up with a loss of \$189.50.

Only \$137.50 represents sales. Did you do both fishing and crabbing that year, commercial fishing and crabbing?

A I don't recall.

Q You don't have records for that year?

A No.

Q The answer is no, you didn't do anything, did you?

A I don't recall.

Q All right. In 1977 where you do have records, you show a total of gross receipts \$949. You got all your expenses, and you have a loss of \$232, correct?

A (No response.)

Q \$232?

A Yeah.

Q You didn't make any money that year. Your total gross revenue was only \$949.

You do have records for '77, correct?

A Yes.

Q For '78 --

MR. RONADKA: Could I see the '77 return?

Q (By Mr. Marr) For 1978 you show income gross receipts and sales of \$200, correct?

A Yes.

Q Once again, you don't have any records to

substantiate that?

A I thought I did.

Q No, you don't have '78 records. You have '79 and '80.

You don't have any records to substantiate that?

A Other than this here (indicating).

Q You have gross receipts and sales of \$200. You don't show what it was, to whom it was or anything.

MR. MARR: Do you have '77? Do you still have it (Discussion off the record.)

Q (By Mr. Marr) '77, incidentally, you listed -- looks like you are filing a single return in '77.

I take it you had gotten divorced?

A Yes.

Q There you are listing Route 14, Box 559. That would be your parents' residence?

A Mine too or --

Q You moved back in with them in '77?

THE CHAIRMAN: Route 14?

MR. MARR: Route 14, Box 569.

THE CHAIRMAN: Is the same thing as --

MR. MARR: 704 Asher and 558 Beach.

THE WITNESS: No, no. 569 is the old address.

They changed it to 704 Asher, no rural route no more.

THE CHAIRMAN: It is the property?

MR. MARR: It is the property, yes.

THE CHAIRMAN: Thank you.

Q (By Mr. Marr) In '78 you referred to it as 704 Asher, is that correct?

A Yes.

Q '78 is where you have no records, at all for any income except for gross receipts or sales where you put \$200 down?

A Yeah.

Q Incidentally, the same accountant, David J. Moore, was doing this in '77 and '78, wasn't he?

A Yes.

Q The return, okay.

Now then we come to '79, and this is really -- this is not a copy of what you filed, isn't that correct?

A What do you mean a copy?

Q Well, I mean it is not a copy.

You don't have a Schedule C here. There is no copy. It wasn't --

In any event, it wasn't prepared, was it, by an accountant?

A No.

Q This is all you have available for 1979?

A I believe so.

Q 1979 was the first year, was it not, that you made a profit selling fish and crabs? Well, you have got it reflected as a plus figure.

A Yes.

Q \$666.25?

A Yes.

Q And we find whatever information was on the Schedule C, which was not attached to your 1979 return -- we find that in 21-D, don't we -- Ledger 21-D or Exhibit 21-D that starts with fish sales here for \$1,966.92, crab sales \$2,576.75?

A What year?

Q '79.

A '79?

Q '79 went up. The amount of sales in '79 increased. Let's see. Would you agree with me that you made about \$4,500 selling crabs and fish in 1979, correct?

A I guess if it is in that book.

Q Well, that is what the book said. Do you agree with me the book says that?

A Oh, yeah.

Q In 1978 the total amount of income reflected on the tax return, for which there is no journal, was \$200.

A Uh-huh.

Q So you have gotten up to twenty times the amount of income, right, from '78 to '79?

A I guess.

Q So your activity was much greater in '79, wasn't it?

A No, I wouldn't say that.

Q You wouldn't? You just had a better year, better catch? You didn't have any more pots or anything like that?

A I had more pots.

Q Or more extensive commercial activity?

A You had to with this day and age of inflation.

Q Do you have a tally for 1980 yet as to what you

made?

A I don't know if it is put together yet.

Q You got an estimate for us?

A No, I don't.

Q Was it about the same, about the same as the \$4,500?

A I don't know. I can't make that estimate because I don't know.

Q Were you as active in '80 as you were in '79?

A Yes.

Q So would you agree it is roughly the same? It is not any less, is it?

A No, sir, I can't make that statement. I'd be lying either way if I don't know.

Q Can you give us an estimate?

A No, sir.

Q Your testimony last time -- you offered into evidence -- let's check this out -- as Defendants' Exhibit 13, your voting card.

Q Do you have that? I can't seem to locate it.

A I am sure it is in here.

You listed -- I show you your testimony. We can take care of it in that fashion.

MR. MARR: Page 9, Counsel. It actually is starting on page 8.

Q (By Mr. Marr) Questions: Did you vote last election?

Answer: Yes, sir.

Question: Do you have a voting card?

Answer: Yes, sir.

Question: Issued to you from Baltimore County?

Answer: Yes, sir.

Question: Do you have that on you?

Answer: Yes, sir.

Question: May I see that?

(Witness handing over card to Mr. Romadka.)

Then you indicate, Mr. Chairman, this indicates his address is Box 569 Asher Road, Route 14, which would be the same as 704.

It also indicates that it was issued April 14, 1978, and looks like it indicates he is a Democrat.

Then Mr. Romadka: I'd like to introduce that as

a defendants' exhibit, and the Chairman says, We will just take the information from it and give it back.

The exhibit was marked No. 13.

Mr. Romadka, That particular card issued April of '78. Did you have the opportunity to vote prior to '78?

Answer: Yes.

Question: What address did you list with the Supervisor of Elections prior to 1978 as your place of residence?

Answer: You said, I don't recall.

You did vote though, didn't you, prior to '78?

Answer: Yes.

And that card that you had was a duplicate card, wasn't it?

Well prior to 1978 do you now recall what address you listed with the Supervisor of Elections?

A Yes. Well, 704, probably on there 569, I guess.

Q You listed your parents' address, not on this -- not on the one we looked at, but the one prior to that?

A New one.

Q No, no. What address did you list with the

Supervisor of Elections prior to '78 as your place of residence?

A I don't recall what was on there.

Q Isn't it true that what you listed was the place where you and your wife Vera were living, 9342 Sapelo Road? Isn't that a fact?

A On my voting card?

Q Yeah.

A I don't recall.

Q Now you indicate that you bought your twenty-five-foot cabin cruiser during your testimony last time in 1977. Do you remember that?

A Yeah.

Q Yet on the 1976 tax return you indicated that you purchased that boat on July 1, 1974.

A Yeah.

Q How do you account for that discrepancy?

A I don't know, because I don't remember buying it in '74.

Q You indicated that you crabbed during the summer and fished during the winter months, correct?

A Yes.

Q Do you remember Mrs. Martin when she testified earlier in the proceeding indicating there was a big fish fry in the summer and that you supplied all the fish?

A Yes. Well, late spring I guess you'd call it.

Q Do you remember her testifying it was in the summer, July, August?

A No.

Q You don't remember her testimony.

A If she did testify it was in the summer, she was incorrect?

A - I thought it was in the spring of the year; might have been summertime.

Q What year was it?

A I don't know.

Q If it were in the summer you wouldn't have supplied the fish, would you?

A No.

Q Somebody else would have?

A No. I had the fish, and they freeze them.

Q You froze the fish for a thousand people?

A I didn't freeze them. The fellows, I guess they got freezers, and they froze them.

Q For a thousand people?

A Whatever. I don't know how many people was there. Everybody don't eat fish.

Q How I think you testified a while ago that there was other fish that you sold, and that wasn't reflected in those journals.

A Yes, could have been.

Q Could have been. Do you know whether, in fact, there were?

A No, I don't.

Q You are saying it is possible you sold some fish and forgot to record them?

A Yes.

Q In any event it wouldn't have been very much?

A No.

Q You were faithful in terms of keeping records, and that is reflected in 21-A for '72, '73, '74, and 21-B reflects '75, and then 21-C reflects '77, and '79 and '80 is on 21-D, correct?

(Continued on page 509)

(Continued from Page 507)

A I don't know all these things like that.

Q I think the records though will speak for themselves.

But you were -- you made an effort to keep track of those things for income tax purposes?

A Yes.

Q You have no records at all for '76 or for '78, and '77 shows that you made, like about, \$900?

A Correct.

Q For what year?

A '77. I'd have to look. I don't remember those figures and stuff.

Q All right. Okay.

MR. MARR: Just a moment's indulgence. That is all I have.

MR. GOATHEM: I will try and keep it fairly brief.

MR. DOLLINGER: What is this, redirect?

MR. GOATHEM: I am sorry, go ahead.

CROSS-EXAMINATION BY MR. DOLLINGER

Q Mr. Lamar, just a few questions I'd like to clear

a narrow category, i.e. all those legally engaged in commercially fishing prior to 1976, into a broad category embracing all those engaged in antecedent commercial activity, whether legal or not, and whether subjected to express sanctions or not.

3. Appellate Decisions Addressing Similar Issues Also Support Protestant's Position

In a situation very similar to the instant one, the Court of Appeals reached the result now urged by Protestant. In Harris v. County Board of Appeals for Baltimore County, 249 Md. 554 (1967) the Court was confronted with an owner of several apartment buildings in an area not zoned accordingly. The owner took the position that since the apartments were legal under the prior regulations, enacted in 1945, they constituted a legal non-conforming use relative to the newer 1955 regulations under which the apartments were clearly illegal and which formed the basis for the protestants' claim. The Court determined, however, that even under the 1945 regulations, the apartments were not legal. The Court went on to hold that since the apartments were not valid under the earlier 1945 regulations, they could not now be justified as a non-conforming use under the 1955 regulations. Protestant submits that the Court's explicit holding in Harris controls the instant matter: before a prior use may justify a present non-conformance, that prior use must be legal.

Of support as well is the decision in Ocean City Taxpayers for Equal Rights v. Mayor and City Council of Ocean City, 280 Md. 585 (1977) in which the Court was required to construe the word "existing". A charter resolution passed by the City Council in July 1977 to amend a similar but defective resolution passed the preceeding January. The July resolution, however, was not passed in conformity with Ann. Code of Md. Art. 23A§17 which requires a code or charter amendment to refer to the "existing

section or sections [sought to be amended]". The plaintiffs attacked the July resolution for its failure to refer to the defective January resolution. The issue, then, was whether the January resolution could be said to be "existing" despite its defect. The Court held that, at least for the purpose of Art. 23A§17, a defective act is not considered "existing". 280 Md. at 592. Applying the logic of Ocean City Taxpayers to the instant case, leads to the conclusion that a prior use of land can only "exist", for the purposes of zoning, if that antecedent use was legal.

4. Conclusion

Protestant submits that to construe §1A04.2(B)(7) to permit the grandfathering of prior illegal activity would contradict logic, common sense, and fair play as well as the accepted tools of statutory construction and case precedent. Consequently, for all of the reasons stated above, Protestant strongly urges this tribunal to rule that the express finding of the Court of Special Appeals, absent an intervening "legalizing" event, precludes Respondent from relying upon §1A04.2(B)(7)'s grandfather clause.

C. ASSUMING ARGUENDO THAT THE USE PERMIT DATED OCTOBER 10, 1978 WAS VALIDLY ISSUED, THERE IS INSUFFICIENT EVIDENCE OF USE FOR GRANDFATHERING DURING THE PERIOD FROM MAY 1975 UNTIL THE FALL OF 1978.

All evidence presented by the Respondents suggest that the fishing operation conducted prior to May of 1975 stopped in accordance with the order of the Court of Special Appeals. The paucity of records, highly questionable in themselves, suggest that at best Thomas Lamar's "business" was a tax gimmick only. No profit was ever shown until 1979. Clearly there is no evidence sufficient to justify a grandfather special use permit. Moreover, the evidence taken in a light most favorable to Thomas Lamar suggests that he was not domiciled in his parents' home.

Any claim to that status is a plain and simple sham. This Board should recognize it and order the operation terminated.

D. ASSUMING ARGUENDO THAT THE USE PERMIT HAD A VALID STATUTORY UNDERPINNING AND ASSUMING THAT THERE WAS SUFFICIENT EVIDENCE OF GRANDFATHERING ACTIVITY AN APPLICATION FOR A USE PERMIT WAS NOT TIMELY FILED.

Respondents have the burden of proving that they applied in time to obtain the privileges of a valid use permit. Nowhere in the record is there any proof as to when the use permit was filed. The Zoning Commissioner's office could not establish it, and neither did Respondent. However, and more importantly, there was an illegal and unauthorized extension by the Zoning Commissioner of the one year filing period. Nowhere does Bill No. 98-75 indicate that the year period commences to run upon the adoption of the zoning maps; nor was there anything preventing an applicant from filing within a year of the effective date of 98-75 and describing the location as opposed to the actual or proposed zoning maps. Simply put, there was no basis for the extension. Accordingly this Board has no choice but to order a cessation of Respondent's operation.

V.

CONCLUSION

For the foregoing reasons, Protestant strongly requests this Board to revoke, or declare as a nullity, the October 1978 use-permit, and find Respondent in violation of the Baltimore County Zoning laws.

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CERTIFICATE OF SERVICE

I hereby certify this 15th day of June, 1981, that a copy of the foregoing Memorandum of Law was mailed to Robert J. Romacka, Esq., 809 Eastern Boulevard, Baltimore, Md. 21221.

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PETITIONER'S
EXHIBIT 4

RE: ALLEGED ZONING VIOLATION
on property at 568 Beach Drive
15th District
John and Alice Lamar,
Defendants
Case No. 80-87-V
BEFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY

OPINION

This case comes to the Board from an appeal by the Lamars arising out of an adverse ruling by the Zoning Commissioner in which the Lamars were held to be in violation of the Baltimore County Zoning Regulations by permitting a commercial fishing and crabbing operation on their property. The Board, after three days of hearings on the merits of the appeal agree with the Zoning Commissioner that the Lamars are in violation of the Zoning Regulations for the reasons that follow: The Board recognizes that these same issues which have caused at least nine years of dispute between the Lamars and their neighbors and principal protestants, the Kowalskis, will likely again be reviewed by the Courts above and for this reason the Board will attempt to make a thorough determination of the issues to aid the Courts above. This basic issue has already been litigated extensively, culminating in the case of Kowalski v. Lamar, et al, 25 Md. App. 493 (1975) in which the Court of Special Appeals reinstated the Zoning Commissioner's finding that the Lamars were in violation of the Baltimore County Zoning Regulations by operating a commercial fishery from the property during 1971 to 1975. The property was zoned at the time R. D. P.

Subsequent to the Court of Special Appeals' decision supra, the County Council adopted the new rural conservation zones and allowed commercial fishing in RC zones with a use permit issued by the Zoning Commissioner. The Lamars' property was changed to RC-5 zoning. Approximately one year later, the Lamars applied for and were granted a use permit by Zoning Commissioner Eric DiNenna along with many other use permits to other commercial fishermen.

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Issuance of this use permit is strenuously challenged by the protestants as being without legal underpinning. The protestants also dispute that commercial fishing took place prior to adoption of the RC zones which would open the possibility of a non-conforming use for the Lamars.

In order to put these issues in context, a schedule of events, as the Board sees them, might be helpful:

1971-75 - Undisputed that the Lamars conducted a commercial fishing operation from the property.

April 4, 1975 - Court of Special Appeals rules that the Lamars were in violation of operating a commercial fishery in the R. D. P. zone and ordered the Lamars to cease operation.

December 22, 1975 - Bill 98-75 became effective and defined the new RC zones in general but did not apply them, but determined that applications for use permits should be filed within one year of enactment (Nov. 7, 1975).

October 15, 1976 - Bill 112-76, which enacted zoning for the Fifth Councilmanic District and rezoned the Lamars' property from R. D. P. to RC-5.

October 7, 1977 - Defendant alleges he applied for use permit with Zoning Office of Baltimore County.

May 8, 1978 - Bill 30-78 repealed that portion of Bill 98-75 allowing commercial fishing in RC zones through use permits and reinstated special exceptions as the only mechanism for establishing a commercial fishing operation.

October 10, 1978 - Zoning Commissioner DiNenna approved Lamars use permit for commercial fishing.

The first issue raised by the schedule above, is whether Bill 98-75 requires that applications for use permits for commercial crabbing and fishing in RC zones be filed by November 7, 1976, (one year from enactment) or whether these applications were to be filed by October 15, 1977, the date that was one year past the date Bill 112-76, which actually changed the Lamars zoning from R. D. P. to RC-5. The Board finds that reason rather than form must prevail and hold that the one year application deadline was intended by the County Council to be triggered by the application of the RC-5 zone on October 15, 1976. Although the language of Bill 98-75 specifically says in Section 1A04.2.B.7 that

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applications must be filed within 365 days of enactment of "this legislation", the Board notes that Section 6 of the same Bill says that any new zoning classifications shall be effective only upon the adoption by the County Council of any new zoning maps. This logically follows, since property owners would not be sure that their property would be zoned RC until the maps were adopted the following year.

Bill 112-76, which applied the RC zones to the subject property, became effective November 29, 1976. Thus, the Board finds that the Lamars did apply, based on the testimony before it, within the one year provided by Bill 98-75, that is, November 29, 1977.

The Board next turns to the issue of whether the use permit approved by the former Zoning Commissioner DiNenna on October 10, 1978, to the Lamars, has the legal underpinning found lacking by Zoning Commissioner Hammond and which is the basis for this appeal. This issue turns on the interpretation of Bill 30-78, which ostensibly adds to the DR zones fishing and crabbing operations, but buried within the Bill repeal paragraph 1A04.2.B.7, having to do with commercial crabbing and fishing in RC zones and the use permit system upon which the Lamars rely. Former Zoning Commissioner DiNenna, testified as a witness for the Lamars that he was surprised by the final version of Bill 30-78 passed by the Council. He stated that he worked closely with the Council in drafting Bill 30-78, which was intended only to fill in a void permitting commercial fishing in DR zones. The Board can understand Commissioner DiNenna's problem. The entitlement paragraph describes the purpose of the legislation "to allow shoreline fishing and shellfishing facilities, by special exception, in DR zones in addition to permitting the continuation of existing shoreline fishing and shellfishing facilities in such zones" but then goes on to repeal and re-enact Section 1A04.2.B.7 which provides the basis of the use permit system for RC zones such as the Lamars. The next paragraph again mentions only DR zones as the

John and Alice Lamar
Case No. 80-87-V

intended target of legislation. Is then the repeal and re-enactment of 1A04.2.B.7 merely an anomaly incident to perhaps a mechanical reorganizing of the commercial fishing definitions or did the Council intend to end the use permit system in RC zones? The Board would be sympathetic to the Defendants' interpretation except for Section 3 of the Bill, which adds a new paragraph to 1801.1.C providing for overriding special exceptions when use permits already have been granted and a 6 month period for new applications. Obviously, the provision for new applications was intended for DR zones which had not previously been covered. The only possible meaning of the former paragraph allowing continuation of existing use permits is that the Council intended to apply them to previously covered zones such as the Lamars RC-5.

The Lamars had at the time of the effectiveness of Bill 30-78 (June 22, 1978) not received their use permit. Indeed, Gary Freund, Zoning Inspector for Baltimore County, testified the Zoning Office records revealed that on June 8, 1978, another Zoning Inspector, Mr. Parr, inspected the Lamars' property pursuant to their application and found it wanting. (See Defendants' Exhibit 3.) Had the property passed, undoubtedly the time limit of Bill 30-78 would have been met. The Lamars had until July 1, 1978, to beat the new deadline and have the use permit grandfathered. Unfortunately for the Defendants, they did not. More importantly, the County Council, in Bill 30-78, clearly acted to end the use permit system in all RC zones and did not provide for persons who had timely filed, but had not succeeded in perfecting their permit beyond July 1, 1978. The Board cannot say the Council was arbitrary in setting July 1, 1978, as a deadline nor could we say that with the evidence before us, the County was arbitrarily responsible for the Lamars not getting the permit until after the deadline passed. The Board has no doubt that Commissioner DiNenna issued the permit in good faith on October 10, 1978, but we believe he was clearly in error in doing so.

up, if you will, please.

Were you ever in the service?

A No, sir.

Q Now you know the Maddox family?

A Yes, I do.

Q Did they ever fish off that property on Beach Road, Asher Road, the property?

A Yes, sir.

Q When were they fishing off of that property?

A (No response.)

Q It was between 1970 and '75?

A I don't recall dates.

Q But it was around that period of time?

A What year did you say?

Q 1970 to 1975.

A Yes, sir.

Q Now do you recall your father testifying to the obtaining originally of the gillnet license, 1980 license marked as Defendants' Exhibit 16?

Do you recall him talking about how you-all eventually got that license or originally got that license?

A I don't understand that.

Q Well, you have a gillnet license?

A Yes.

Q One that's a copy of, which is in evidence as Defendants' 16, is the 1980 license, right?

A Valid license today you talking about?

Q Yeah, 1980 license.

A 1981.

Q Or '81.

Q Going back -- this is a yearly license? You have to renew that every year?

A Yes.

Q So every year you would get a 19 -- or a renewal application for a gillnet license for that year, is that correct?

A Yes.

Q How long -- do you recall that you periodically filed for that gillnet license? You filled out the forms and sent them back in?

A When I first got my license?

Q Yes, sir, gillnet license, not crabbing.

A When I got my license the only way you could get them is buy them from another fisherman. You couldn't go down and purchase a license.

A How long ago was that?

A Well I'd say that would be -- '70 to '81 -- what is that, eleven years?

Q Eleven years ago is when you first got yours?

A Yes.

Q Do you recall who you got yours from?

A Yeah, fellow down Bush River, a -- I don't know.

Q You didn't get it from your father, did you?

A No.

Q You didn't get it from a brother?

A No.

Q You didn't get it from a sister?

A No.

Q You didn't get it from a widow?

A Another fisherman.

Q You didn't get it from a son or daughter, is that correct?

A No.

Q Just some other fisherman?

A Yes.

Q And you think you got that in 1970?

A I'd say yes.

MR. BOLLINGER: Thank you. I have no other questions.

THE CHAIRMAN: Redirect?

REDIRECT EXAMINATION BY MR. CONTRUM

Q Mr. Lamar, Mr. Marr brought up a number of things with respect to your income over the last couple years.

Why did your income increase in 1979 as opposed to 1978, say?

A I guess I worked a little harder at it.

Q What do you mean by that?

A Fished.

Q You didn't fish in 19 --

A I did fish.

Q All right. Do your income tax records reflect income for 1978 from your business?

A I'd have to look at them. I forget.

MR. MARR: Here they are. It shows -- it shows \$200, but doesn't have any backup for it.

MR. CONTRUM: All right.

Q (By Mr. Contrum) Assuming, Mr. Lamar, that your 1978 schedule -- 1978 Schedule C shows \$200 from gross receipts or sales as profit or loss from business or profession, where would that \$200 be from?

MR. MARR: If you know.

A If I made money it must have been from fishing.

Q (By Mr. Contrum) Okay. 1976, Mr. Lamar, in Exhibit 22-B includes certain documents. Here is W. T. Freeburger and Company, fresh fish. What are those?

A That is my receipts from selling fish.

Q You sold fish to Freeburger in '76?

A Yes, sir.

MR. MARR: Can't I see them?

MR. CONTRUM: Sure.

Q (By Mr. Contrum) Mr. Lamar, do you recall where you voted in 1978?

A No, I don't.

Q Do you recall where you voted in the last election?

Did you vote in the last election?

A Yes.

Q Where did you vote?

A Chase Elementary School.

Q Where is that located?

A Off Eastern Avenue, I guess that is about --

Q Is that near your residence?

A Within a couple miles, yes.

Q One last thing, on page 49, Mr. Lamar, of your 1972, '73, '74 journal, which is now, I believe, Exhibit 21-A, it has miscellaneous, W. T. Freeburger Company.

Were those monies you made from Freeburger, or were those monies you received from Freeburger?

A I don't know.

Q Do you know why you would be paying Freeburger money?

A Buying ice or something.

Q Okay. Do you recall, Mr. Lamar, when or if ever you obtained your gillnet license from the State of Maryland?

A I believe it was 1970.

Q What do you have to do to obtain a gillnet license?

A How?

Q Yeah.

A Well as long as you got the money anybody can buy a license. It is -- they opened it up now.

Q Has it always been this way?

A No, just the last few years they done this.

Q What was it like before?

MR. BOLLINGER: Objection. When is before?

MR. CONTRUM: Before the current procedure for obtaining a license.

Q (By Mr. Contrum) Within the -- what was the procedure preceding the current procedure?

A You'd have to fish with somebody else who had a license.

Q How would you acquire a license in your own name?

A When are you talking about?

Q Before you made direct application to the State for a gillnet license, how would you acquire a license in your own name?

A Well, if another fisherman at that time had it for sale, somebody, another fisherman knew the fellow, and

they told me, and I went up and seen the man; and he sold me the license.

Q Did you have to notify the State?

A Oh, yes, because it left his name and transferred into my name.

I had to go down to Annapolis. That is before they had D.M.R. in Bel Air, and you -- they transferred it over to me.

Then once you had a license then you could get on the list. That was a waiting list to get more yardage.

Like if another fisherman died or turned his license in to the State, then they had X number of yards, and then if your name come up they notified you if you wanted additional yardage, and that was up to you if you wanted to spend the money and get the additional yardage.

Q To the best of your knowledge was this the procedure established by whatever administration was then running the show?

MR. BOLLINGER: Objection to whatever administration was running the show. I really don't know what that means.

Q (By Mr. Contrum) What was the acting State

authority at that time?

A I believe it was Fish and Wildlife.

Q Assuming, subject to check, that the Fish and Wildlife Administration was the governing authority of gillnet licenses back then, was the procedure you followed to the best of your knowledge an established procedure?

A Procedure -- repeat that.

Q Assuming, subject to check, that the Fish and Wildlife Administration was the authority which controlled issuance of gillnet licenses, did you follow in obtaining your gillnet license an accepted procedure established by them?

A Yes.

MR. CONTRUM: I have no further questions.

THE CHAIRMAN: Thank you.

MR. BOLLINGER: I have some on that subject just to follow up on that.

RECROSS-EXAMINATION BY MR. BOLLINGER

Q Mr. Lamar, when you went down to Annapolis, do you recall going down to Annapolis and filling out an

application for transfer?

A Yes.

Q Did you make an affidavit?

MR. CONTRUM: At what time?

Q (By Mr. Bollinger) Whenever you got the license. You said in 1970 was the point in which you got a gillnet license. Once you got this license every year they would automatically send you an application for renewal --

A Yes.

Q (Continuing) -- which you had to fill out every year. If you didn't, then it lapsed?

A You'd lose it.

Q So in 1970, that is when you first got the license, you said you went down to Annapolis.

Did you have to fill out an affidavit?

Do you know what an affidavit is? A form swearing to the facts in the application being correct and true.

A I don't recall having to fill one of them out.

Q Do you recall filling out anything?

A I had to sign my license.

Q Was there an application for transfer that you had

to fill out?

A I believe it was.

Q And did it also not have to be signed by the transfer or the fisherman who you got the license from?

A Yes, I believe I had to have that. I think now I had to get that notarized.

Q Do you recall if there was a statement in there as to whether or not you were a son, daughter, or brother, perhaps, of the fisherman who was transferring the license?

A Don't recall.

Q You don't recall that?

A No.

Q Now you do recall though you filled out an application and had to have it notarized, and it was down in Annapolis?

A Yes.

Q And you did also know that it wasn't a widow, father, brother, sister, son, or daughter that you got it from, your license?

A Yes.

MR. BOLLINGER: I have no further questions.

MR. HARR: I have a few.

RECROSS-EXAMINATION BY MR. HARR

Q Getting back to your tax returns again, picking up on something Mr. Contrum just asked you. There are various envelopes that have been admitted into evidence as 22-A through whatever letter -- I think 22-E, I think, is the last one.

Taking a look at 22-B, that is for the year 1975,

correct?

A Yes.

Q And Mr. Contrum showed you fish sales that you made with W. T. Freshburger Company. One was on 2-25-75, February 25, 1976, and that was a total of \$70.90, correct?

A Yes.

Q Then the next sale you made was March 1, 1976, and that was \$56.70, correct?

A Yes.

Q Would you agree with me that the addition on that adds up to \$137.50?

A Yes.

Q All right. It is \$137.50, and on your tax return for 1976 on your Schedule C you listed as gross receipts \$137.50, correct?

A Yes.

Q So that is all the selling that you did in 1976, correct?

A According to them papers.

Q Did you do more than that, and you didn't report the income?

A (No response.)

Q The answer to that is, No, right? You reported faithfully everything you sold?

A Right.

Q Now let's take a look at 1978.

I have an envelope for 1978, which was marked Defendants' Exhibit 22-D, correct?

A Yes.

Q That contains, does it not, gasoline receipts from Arco?

A Yes.

Q Various amounts? It has Harkley's Marina, and

Eastern Speed Center, Auto-Marine Electric & Parts, Inc. We have Weaver Yacht Sales and Ward's Marine Automotive Service.

Those are all expenses?

A Yes.

Q No income is reflected in the envelope for 1978?

A Yes.

Q So that \$200 figure was made up?

A No.

Q What records do you have to substantiate it? You don't have any, do you?

A I don't know if I do or not.

Q They are not here, are they?

A No, they are not.

MR. HARR: That's all I have.

THE CHAIRMAN: I think we have gone around enough.

Any questions from the Board?

Thank you, Mr. Lamar.

Okay. I believe at this point we have some complainant's witnesses.

MR. ROMADKA: That's our case, Mr. Chairman.



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

November 7, 1985

Michael E. Marr, Esquire
10 N. Calvert Street
Suite 430
Baltimore, MD 21202

Re: Case No. 84-326-SPH
Richard Kowalski, et ux

Dear Mr. Marr:

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,

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

Encl.

cc: Richard Kowalski, et ux
John Lamar, et ux
Thomas J. Bollinger, Esq.
Norman E. Gerber
James G. Hoswell
Arnold Jablon
Jean M. F. Jung
James E. L. "

IN THE MATTER OF THE APPLICATION OF RICHARD KOWALSKI, ET UX FOR A SPECIAL HEARING TO DETERMINE LEGALITY OF BUSINESS OPERATION ON PROPERTY LOCATED ON THE W/S BEACH DR. 1300' N. OF CARROLL ISLAND ROAD, AND N/S ASHER RD. 1420' N. OF CARROLL ISLAND ROAD 15th DISTRICT

BEFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
NO. 84-326-SPH

OPINION

This case comes before this Board on an appeal from a decision of the Zoning Commissioner denying a petition by Mr. and Mrs. Richard Kowalski requesting that a crabbing, shellfishing and fishing operation being conducted on an adjacent property be disapproved, said petition being pursuant to §500.6 and §500.7 of the Baltimore County Zoning Regulations (BCZR). The Zoning Commissioner, on June 7, 1984, denied the requested petition.

This case has a long and bitter history. It has been heard at every level of administrative appeal and through the courts to the Court of Special Appeals. The Board will not, in this Opinion, attempt to recap all of these proceedings but will confine this Opinion to those points upon which its decision is based. Sometime in the early 1970s, after a hearing before the Zoning Commissioner, the Lamars, owners of the property which is the subject of this petition, were found to be in violation of the regulations. The case was appealed to the County Board of Appeals, heard by the Board and a decision was rendered reversing the Zoning Commissioner. This decision was appealed to the Circuit Court and the Board's Order was affirmed. The Circuit

RICHARD KOWALSKI - #84-326-SPH

Court's Order was appealed to the Court of Special Appeals which, in May of 1975, reversed the Circuit Court and affirmed the Zoning Commissioner's Order, declaring the fishing and crabbing operation as being not allowed. The Board will note that this operation was being conducted, at that time, in an R.D.P. zone and this use in that zone was not legal. After this ruling in May, 1975, by the Court of Special Appeals, the Baltimore County Council, in December, 1975, enacted Bill 98-75 which set forth all permitted uses in the newly formed R.C. zones. This legislation allowed any use existing on the date of the enactment provided a use permit was obtained from the Zoning Commissioner. The property in question was afforded an R.C. classification in October, 1976, and the Lamars requested a use permit in October, 1977. In May, 1978, Bill 30-78 repealed that portion of Bill 98-75 allowing commercial fishing in R.C. zones through use permits and reinstated special exceptions as the only mechanism for establishing a commercial fishing operation. Bill 30-78 ostensibly includes fishing and crabbing operations in the D.R. zones by special exception but repeals paragraph 1A04.2.B7, which addresses fishing and crabbing operations in an R.C. zone and the use permit system upon which the Lamars are now operating. Bill 30-78 became effective in May, 1978, and provided that all prior use permits would be grandfathered into existence providing they complied with all County requirements.

The Lamars, for whatever reason, did not meet this July 1, 1978,

RICHARD KOWALSKI - #84-326-SPH

requirement, however, in October, 1978, the use permit was issued and once again the fishing and crabbing operation commenced. This operation was protested and a hearing was held by the Zoning Commissioner and was found to be illegal. This decision was appealed to the Board of Appeals and in October, 1981, the operation was found to be in violation and ordered to cease immediately. No appeal from this decision was taken and it appeared this case was settled. However, in 1983, the Baltimore County Council enacted Bill 139-83 which ratified those permits approved later; "... continuation of existing commercial fishing, crabbing and shellfishing operations. . . . be and they are hereby ratified, reinstated and approved." (Emphasis added). Under the premise that this Bill applied to them, the Lamars once again began a commercial fishing and crabbing operation on the subject site and hence, the petition by Protestants requesting that it be disallowed.

The Board is of the opinion that the commercial fishing and crabbing operation in question is indeed in violation of the Baltimore County Zoning Regulations. In 1975, Maryland's second highest court found the operation to be illegal. In July, 1978, the property did not conform to all Baltimore County requirements so it was still illegal. In October, 1978, despite this nonconformity, a use permit was issued which, in this Board's opinion, was wrong. This is substantiated by the fact that this use was the subject of a hearing by the Zoning Commissioner and the Board of Appeals in case #80-67-V

RICHARD KOWALSKI - #84-326-SPH

and after lengthy testimony was found to be illegal. It is also the opinion of this Board that the Baltimore County Council, in enacting Bill 139-83, certainly did not intend to grandfather into existence those operations that had not conformed to Baltimore County requirements or had been found in violation, but was intended for those operations which were legally existing. The Board finds, as a matter of law, that a nonconforming use as a commercial fishing or crabbing operation should not be permitted after the Court of Special appeals ruled that such use is illegal, and will so order.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 7th day of November, 1985, by the County Board of Appeals, ORDERED that the Defendants, the Lamars, are in violation of the Baltimore County Zoning Regulations, and shall cease and desist immediately all commercial fishing and shellfishing activities on the subject property.

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
William R. Evans
Patricia Phlips
Patricia Phlips

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: County Attorney's Office Date: November 26, 1984
FROM: Peter Max Zimmerman, Deputy People's Counsel
SUBJECT: Richard Kowalski, et ux, Petitioners
Zoning Case No. 84-326-SPH (Item 250)

The above case, set for Tuesday, November 27, 1984 before the County Board of Appeals is to be postponed in open hearing. Upon review of the file, it appears that this is a special hearing as to whether a violation exists at a shellfishing facility. This involves consideration of the legality of the Lamar's operation and use permit under Bill 139-83. The history is complicated and is recited in the Zoning Commissioner's Opinion dated June 7, 1984, attached.

Because it is a legal issue and analogous to a nonconforming use or grandfathering case, it seems appropriate that the County Attorney's Office be involved. The matter will be rescheduled by the County Board of Appeals. If you have any questions, please do not hesitate to call me.

Peter Max Zimmerman
Peter Max Zimmerman
Deputy People's Counsel

Enclosure

PMZ:sh

cc: County Board of Appeals

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COUNTY BOARD OF APPEALS
NOV 26 P 2 17E

RICHARD KOWALSKI, et ux.

Protestants
v.
JOHN LAMAR
Respondent
* IN THE
* BALTIMORE COUNTY
* OFFICE OF PLANNING
* AND ZONING
* Re: 568 Beach Drive
* Case No: 84-326-SPH

MEMORANDUM OF LAW

Richard Kowalski, et ux, Protestants, by their attorneys, Michael E. Marr and MARR & BENNETT, submit the following Memorandum of Law.

I. STATEMENT OF THE CASE

Protestants have timely appealed the decision of the Baltimore County Zoning Commissioner, Arnold Jablon, in failing to find certain property owners, John and Alison Lamar, to be in violation of the Baltimore County Zoning Regulations (BCZR) by their operation of a fishing, crabbing, and shellfishing business.

The Protestants initiated this action pursuant to Sections 500.6 and 500.7, BCZR, which respectively allow any interested party to petition the Zoning Commissioner for a public hearing to determine and/or interpret compliance with the BCZR and to determine any rights whatsoever of such person regarding any property insofar as the property is affected by the BCZR.

The issue presented here is not new; it has plagued these parties since 1971 when the Protestants first filed the Complaint with the County alleging that the Lamars were in

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violation of the BCZR by operating a commercial fishing business in a residential zone. After a hearing before the Zoning Commission, the Lamars were found to be in violation and were ordered to cease and desist. Upon appeal, the County Board of Appeals appeal to the Circuit Court for Baltimore County, the Board's decision was upheld. The Protestants did not forsake their beliefs and went to the Court of Special Appeals of Maryland, which rewarded their perseverance by reversing the Circuit Court and upholding the Zoning Commissioner. Kowalski v. Lamar, 25 Md. App. 493 (1975).

After the Court of Special Appeals decision, Bill No. 98-75 was passed. That Bill allowed commercial fishing and crabbing businesses in newly created R.C. Zones (2,3, and 5). The subject property became located within a new R.C. designation. The legislation allowed any such use existing on the date of enactment to continue at the same level of intensity provided a use permit was obtained from the Zoning Commissioner.

In June, 1978, Bill No. 30-78, was passed, repealing Bill No. 98-75. All references to use permits required by Bill No. 98-75 were deleted, and fishing operations in R.C. 2,3, and 5 Zones were to be allowed by special exception only.

In the period between 1976 and the passage of Bill No. 30-78, in 1978, request for use permits were submitted to the Zoning Commissioner but were not approved until after Bill No. 30-78 went into effect. The Lamars requested and were granted a use permit in October, 1978.

After the permit was issued the Protestants filed for

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injunctive relief in the Circuit Court to enforce the Court of Special Appeals's order, but the matter was remanded to the Zoning Commissioner in order to determine if the Lamars were in violation. A hearing was held, and the Lamars were found to be in violation. The Commissioner determined as a matter of law that the approval of the Lamars use permit was illegal because it was issued after Bill No. 98-75 had been repealed; therefore, the Lamars were operating pursuant to a invalid permit. The Lamars appealed to this Board, and the Board found that not only was the permit invalid because it was issued after Bill No. 98-75 had been repealed, but also that there could be no legal grandfathering of any prior activity, since any activity had been declared illegal by the Court of Special Appeals of Maryland. (See Opinion of County Board of Appeals of Baltimore County, Case No. 80-87-V, at 5, 9 October 1981, (Opinion attached as Exhibit 1)).

The Lamars then ceased operation. The County Council then passed Bill No. 139-83, which ratified the continuation of existing commercial fishing. Once again, the Lamars began to operate their business, once again the Protestants complained.

The Zoning Commissioner, Arnold Jablon, decided that the Larmer's business permit should be ratified under Bill No. 139-83, irrespective of the fact that the Lamar's were not in continuous operation at the time of the passage of the Bill. Commissioner Jablon reasoned that the Lamars were not in continuous operation because they were in compliance with the law, and further, that the Lamars were in a "Catch-22" situation

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in that if they had operated their business they would have been in violation of the law, but by not operating it they would be injured in failing to conform to the continuous operation requirement. What Commissioner Jablon missed is that, for any prior non-conforming use to be grandfathered that use must be legal.

The finding by the Court of Special Appeals of Maryland in 1975, and by this Board in '81, support the Protestants' claim that the Lamars' activities may not be grandfathered because any continuing operation would be in violation of the law. The Lamars were not in a "Catch-22" situation created by the Council and the Zoning Commissioners. They themselves created this situation by applying for a use permit, which could never be valid regardless of the timing of the respective legislation, because it would have been grandfathered based upon unlawful prior activities. The proper course for the Lamars would have been to follow the instructions of the legislation and apply for a special exception. They have no one but themselves to blame for this predicament.

II. FACTS

The Protestants are adjacent neighbors of the Lamars, sandwiched on either side by property owned by the Lamars. The Protestants own Lots 14 and 15 and the Lamars own Lots 12, 13, and 16, all on the water. The Lamars had been in operation of a commercial fishing and crabbing business in a residential zone in 1971. The Protestant complained and that complaint led to the above-mentioned Court of Special Appeals case. Kowalski v.

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Lamar, 25 Md. App. 493 (1975). In the appeal before this Board in 1981, the Lamars attempted to establish a non-conforming use by stipulating that commercial fishing and crabbing took place after June 1979, in violation of the mandate of the Court of Special Appeals of Maryland. By doing this the Lamars made the county's case for a violation.

Realizing that this approach would no longer work, the Lamars did not take part in the lower proceedings in this case. The only testimony and evidence received came from the Protestant without rebuttal. The Protestant did not aver that the Lamars had actually operated the fishing and crabbing operation during the time after the Court of Special Appeals Mandate. The Protestant argued that even if there had been no operation during that time, there had in fact been no operations since the last decision by this board, and there was no operation at the time of the passage of Bill No. 139-83. Because there was no operation at that time, the Lamars were not affected by that Bill and could not benefit from its language.

III. QUESTION PRESENTED

1. Does Bill 139-83 permit the grandfathering of a business that was not in operation for several years because it was declared illegal by the Court of Special Appeals?

IV. BILL 139-83 DOES NOT PERMIT THE GRANDFATHERING OF PRIOR ACTIVITY THAT WAS DISCONTINUED FOR SEVERAL YEARS BECAUSE IT WAS DECLARED ILLEGAL BY THE COURT OF SPECIAL APPEALS

Prior to 1976 Respondent's property was zoned R.D.P., a classification that did not permit commercial fishing. Notwithstanding that prohibition, respondent engaged in that

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activity. In 1971, Protestant complained, and the complaint ultimately resulted in a decision in 1975 from the Court of Special Appeals requiring Respondent to cease and desist.

Whether Respondents in fact stopped their fishing activity is a factual question yet unresolved. However, whether they actually ceased their activity is not the deciding factor; the deciding factor is that the activity, if continued, would have been illegal. Because the activity would have been illegal, it could not have been continued as a basis for a prior non-conforming use. This is exactly the conclusion reached by this Board in 1981.

If affirmed, the conclusion reached by Commissioner Jablon would create an extremely dangerous precedent. The logic upon which commissioner Jablon relied would allow grandfathering of non-conforming uses when those uses were not in fact in operation, because if they had been in operation they would have been illegal. This reasoning is entirely circular. This type of precedent would allow land owners to take advantage of a grandfather clause where they had in fact been engaging in no business. They would simply argue that if they had been engaging in a business it would have been an unlawful one and therefore they would not have been allowed to grandfather it, but because they did not operate an illegal business they should now be allowed to open one. This scenario would fly directly in the face of the logic of prior-use exceptions.

Bill 139-83 speaks only of the continuation of existing commercial fishing, there is no qualifying language specifying

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that the existence must be legal. Nonetheless, an examination of other zoning regulations indicates that "existing" must be understood to mean only "legally existing".

There are three recognized types of zoning exceptions: a variance, a special exception, and a non-conforming use. Respondent obtained what amounts to a non-conforming use permit. BCR 101 defines a non-conforming use as "a legal use of a building or of land that antedates the adoption of these regulations and does not conform to the use regulations for the zone in which it is located." (emphasis added) Consequently, to the extent the issue is viewed in light of the express definition of non-conforming use, it becomes immediately apparent that the antecedent use must have been valid and legal. Irrespective of the snafu created by the changes in legislation, the prior use in this case had expressly been declared illegal by the Court of Special Appeals and by this Board.

Case law also supports Protestant's position. In a situation very similar to the instant one, the Court of Appeals of Maryland reached the result now urged by the Protestant. In Harris v. County Board of Appeals for Baltimore County, 249 Md. 554 (1968), the court was confronted with an owner of several apartment buildings in an area not zoned accordingly. The owner took the position that, since the apartments were legal under the prior regulations, enacted in 1945, they constituted a legal non-conforming use relative to the newer 1955 regulations, under which the apartments were clearly illegal and which formed the bases for the Protestants' claim. The court determined,

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however, that even under the 1945 regulations, the apartments were not legal. The court went on to hold that, since the apartments were not valid under the earlier regulations, they could not now be justified as a non-conforming use under the 1955 regulations. The Protestants submit that the court's explicit holding in Harris controls the instant matter; before a prior use may justify a present a non-conforming use, that prior use must be legal.

Another Court of Appeals case on point is Ocean City Taxpayers for Equal Rights v. Mayor and City Council of Ocean City, 280 Md. 585 (1977), in which the Court of Appeals was required to construe the word "existing". A charter resolution passed by the City Council in July sought to amend a similar, but defective, resolution passed the preceding January. The July resolution, however, was not in conformity with MD. Ann. Code, art. 23 A Section 17, which requires a code or charter amendment to refer to the "existing section or sections [sought to be amended]." The Plaintiffs attacked the July resolution for its failure to refer to the defective January resolution. The issue was whether the January resolution could be said to be "existing" despite its defect. The court held that for the purpose of art. 23 A Section 17, a defective act is not considered "existing." 280 Md. at 592. Applying the logic of Ocean City Taxpayers to the instant case, the prior use of land can only "exist," for the purposes of zoning if that antecedent was legal.

V. CONCLUSION

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Protestants submit that to construe Bill 139-83 to permit the grandfathering of prior illegal activity, whether or not that activity actually occurred, would contradict logic, common sense, and fair play, as well as the accepted tools of statutor, construction and case precedent. Consequently, for all the reasons stated above, protestants strongly urge this Board to rule that the express findings of the Court of Special Appeals precluded respondent from relying on bill 139-83's grandfather clause.

Respectfully submitted,

Michael E. Marr
Michael E. Marr

MARR & BENNETT
SUITE 400
10 NORTH CALVERT STREET
BALTIMORE, Maryland 21202
(301) 539-4250

Attorneys for Protestant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of August, 1985, I caused a copy of the foregoing Memorandum of Law, to be mailed, postage prepaid, by first class mail to Thomas J. Bollinger, Esquire, Assistant County Solicitor for Baltimore County, County Courts Building, P.O. Box 6754, Towson, Maryland 21204-0754 and Mr. & Mrs. John Lamar, 568 Beach Drive, Baltimore, Maryland 21220.

Michael E. Marr
Michael E. Marr

MARR, BENNETT
ATTORNEYS AT LAW
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10 NORTH CALVERT STREET
BALTIMORE, MD 21202
(301) 539-4250

- 9 -

RE: ALLEGED ZONING VIOLATION
on property at 568 Beach Drive
15th District
John and Alice Lamar,
Defendants
Case No. 80-87-V

BEFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY

OPINION

This case comes to the Board from an appeal by the Lamars arising out of an adverse ruling by the Zoning Commissioner in which the Lamars were held to be in violation of the Baltimore County Zoning Regulations by permitting a commercial fishing and crabbing operation on their property. The Board, after three days of hearings on the merits of the appeal agrees with the Zoning Commissioner that the Lamars are in violation of the Zoning Regulations for the reasons that follow: The Board recognizes that these same issues which have caused at least nine years of dispute between the Lamars and their neighbors and principal protestants, the Kowalskis, will likely again be reviewed by the Courts above and for this reason the Board will attempt to make a thorough determination of the issues to aid the Courts above. This basic issue has already been litigated extensively, culminating in the case of Kowalski v. Lamar, et al, 25 Md. App. 493 (1975) in which the Court of Special Appeals reinstated the Zoning Commissioner's finding that the Lamars were in violation of the Baltimore County Zoning Regulations by operating a commercial fishery from the property during 1971 to 1975. The property was zoned at the time R.D.P.

Subsequent to the Court of Special Appeals' decision supra, the County Council adopted the new rural conservation zones and allowed commercial fishing in RC zones with a use permit issued by the Zoning Commissioner. The Lamars' property was changed to RC-5 zoning. Approximately one year later, the Lamars applied for and were granted a use permit by Zoning Commissioner Eric DiNenna along with many other use permits to other commercial fishermen.

EXHIBIT 1

John and Alice Lamar
Case No. 80-87-V

Issuance of this use permit is strenuously challenged by the protestors as being without legal underpinning. The protestors also dispute that commercial fishing took place prior to adoption of the RC zones which would open the possibility of a non-conforming use for the Lamars.

In order to put these issues in context, a schedule of events, as the Board sees them, might be helpful:

1971-75 - Undisputed that the Lamars conducted a commercial fishing operation from the property.

April 4, 1975 - Court of Special Appeals rules that the Lamars were in violation of operating a commercial fishery in the R.D.P. zone and ordered the Lamars to cease operation.

December 22, 1975 - Bill 98-75 became effective and defined the new RC zones in general, but did not apply them, but determined that applications for use permits should be filed within one year of enactment (Nov. 7, 1975).

October 15, 1976 - Bill 112-76, which enacted zoning for the Fifth Councilmanic District and rezoned the Lamars' property from R.D.P. to RC-5.

October 7, 1977 - Defendant alleges he applied for use permit with Zoning Office of Baltimore County.

May 8, 1978 - Bill 30-78 repealed that portion of Bill 98-75 allowing commercial fishing in RC zones through use permits and reinstated special exceptions as the only mechanism for establishing a commercial fishing operation.

October 10, 1978 - Zoning Commissioner DiNenna approved Lamars use permit for commercial fishing.

The first issue raised by the schedule above, is whether Bill 98-75 requires that applications for use permits for commercial crabbing and fishing in RC zones be filed by November 7, 1976, (one year from enactment) or whether these applications were to be filed by October 15, 1977, the date that was one year past the date Bill 112-76, which actually changed the Lamars zoning from R.D.P. to RC-5. The Board finds that reason rather than form must prevail and hold that the one year application deadline was intended by the County Council to be triggered by the application of the RC-5 zone on October 15, 1976. Although the language of Bill 98-75 specifically says in Section 1A04.2.B.7 that

John and Alice Lamar
Case No. 80-87-V

applications must be filed within 365 days of enactment of "this legislation", the Board notes that Section 6 of the same Bill says that any new zoning classifications shall be effective only upon the adoption by the County Council of any new zoning maps. This logically follows, since property owners would not be sure that their property would be zoned RC until the maps were adopted the following year.

Bill 112-76, which applied the RC zones to the subject property, became effective November 29, 1976. Thus, the Board finds that the Lamars did apply, based on the testimony before it, within the one year provided by Bill 98-75, that is, November 29, 1977.

The Board next turns to the issue of whether the use permit approved by the former Zoning Commissioner DiNenna on October 10, 1978, to the Lamars, has the legal underpinning found lacking by Zoning Commissioner Hammond and which is the basis for this appeal. This issue turns on the interpretation of Bill 30-78, which ostensibly adds to the DR zones fishing and crabbing operations, but buried within the Bill repeals paragraph 1A04.2.B.7, having to do with commercial crabbing and fishing in RC zones and the use permit system upon which the Lamars rely. Former Zoning Commissioner DiNenna, testified as a witness for the Lamars that he was surprised by the final version of Bill 30-78 passed by the Council. He stated that he worked closely with the Council in drafting Bill 30-78, which was intended only to fill in a void permitting commercial fishing in DR zones. The Board can understand Commissioner DiNenna's problem. The entitlement paragraph describes the purpose of the legislation "to allow shoreline fishing and shellfishing facilities, by special exception, in DR zones. In addition to permitting the continuation of existing shoreline fishing and shellfishing facilities in such zones but then goes on to repeal and re-enact Section 1A04.2.B.7 which provides the basis of the use permit system for RC zones such as the Lamars. The next paragraph again mentions only DR zones as the

John and Alice Lamar
Case No. 80-87-V

Intended target of legislation. Is then the repeal and re-enactment of 1A04.2.B.7 merely an anomaly incident to perhaps a mechanical reorganizing of the commercial fishing definitions or did the Council intend to end the use permit system in RC zones? The Board would be sympathetic to the Defendants' interpretation except for Section 3 of the Bill, which adds a new paragraph to 1B01.1.C providing for avoiding special exceptions when use permits already have been granted and a 6 month period for new applications. Obviously, the provision for new applications was intended for DR zones which had not previously been covered. The only possible meaning of the former paragraph allowing continuation of existing use permits is that the Council intended to apply them to previously covered zones such as the Lamars RC-5.

The Lamars had at the time of the effectiveness of Bill 30-78 (June 22, 1978) not received their use permit. Indeed, Gary Freund, Zoning Inspector for Baltimore County, testified the Zoning Office records revealed that on June 8, 1978, another Zoning Inspector, Mr. Parr, inspected the Lamars' property pursuant to their application and found it wanting. (See Defendants' Exhibit 3.) Had the property passed, undoubtedly the time limit of Bill 30-78 would have been met. The Lamars had until July 1, 1978, to beat the new deadline and have the use permit grandfathered. Unfortunately for the Defendants, they did not. More importantly, the County Council, in Bill 30-78, clearly acted to end the use permit system in all RC zones and did not provide for persons who had timely filed, but had not succeeded in perfecting their permit beyond July 1, 1978. The Board cannot say the Council was arbitrary in setting July 1, 1978, as a deadline nor could we say that with the evidence before us, the County was arbitrarily responsible for the Lamars not getting the permit until after the deadline passed. The Board has no doubt that Commissioner DiNenna issued the permit in good faith on October 10, 1978, but we believe he was clearly in error in doing so.

John and Alice Lamar
Case No. 80-87-V

The Defendants submitted substantial evidence to establish a non-conforming use of a commercial fishing operation. Their testimony and records indicated that they (father, John and son, Thomas) actively worked from the property as commercial fishermen. Without weighing the value of this evidence, the Board finds as a matter of law that the Lamars are not entitled to a non-conforming use because any commercial fishing done while the property was zoned R.D.P. and after the Court of Special Appeals ruled that they were in violation of the Zoning Regulations would be illegal. A fundamental rule of non-conforming use is that the prior use must be a legal use to be a basis for continuation after the zoning has changed. For these reasons, the Board finds the Defendants in violation of the Baltimore County Zoning Regulations. By proving its case for non-conforming use and stipulating that commercial fishing and crabbing took place after June, 1979, until the present, the Defendants confirmed the County case for violation.

ORDER

For reasons set forth in the foregoing Opinion, it is this 9th day of October, 1981, by the County Board of Appeals, ORDERED that the Defendants are in violation of the Baltimore County Zoning Regulations and shall cease and desist immediately of all commercial fishing and shellfishing activities from the subject property.

Any appeal from this decision must be in accordance with Rules 8-1 thru 8-12 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

John V. Murphy, Acting Chairman

Patricia Phipps

Leroy B. Spurrier



ARNOLD JABLON
ZONING COMMISSIONER

July 11, 1984

Mr. & Mrs. John Lamar
704 Asher Road
Baltimore, Maryland 21220

Re: Petition for Special Hearing
Parcel 1 - W/S Beach Dr., 1,300' N of Carroll Island Rd.; Parcel 2 - N/S Asher Rd., 1,420' N of Carroll Island Rd. - 15th Election District
Richard Kowalski, et ux - Petitioners
Case No. 84-326-SPH

Dear Mr. & Mrs. Lamar:

Please be advised that an appeal has been filed by Michael E. Marr, 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
Zoning Commissioner

AJ:aj

cc: Phyllis C. Friedman, Esquire
People's Counsel for Baltimore County

IN RE: PETITION FOR SPECIAL HEARING
Parcel 1 - W/S Beach Dr., 1,300' N of Carroll Island Rd.; Parcel 2 - N/S Asher Rd., 1,420' N of Carroll Island Rd. - 15th Election District
Richard Kowalski, et ux
Petitioners
* * * * *

* BEFORE THE BOARD OF APPEALS OF BALTIMORE COUNTY

* Case No. 84-326-SPH

* * * * *

Entry of Appearance

Please enter my appearance as a party in the above captioned matter, pursuant to Section 501.6, B.C.Z.R., and I hereby request that any and all notices be forwarded to my office, including but not limited to hearing dates and/or preliminary or final Orders.

Arnold Jablon
Zoning Commissioner of Baltimore County
Room 109 - 111 West Chesapeake Avenue
Towson, Maryland 21204
494-3353

Certificate of Mailing

IT IS HEREBY CERTIFIED that on this 11th day of July 1984, copies of the foregoing Entry of Appearance were mailed, postage prepaid, by first class delivery to the County Attorney of Baltimore County, People's Counsel for Baltimore County, Petitioner(s) and/or Protestor(s) in the above captioned matter.

Arnold Jablon
Zoning Commissioner

IN RE: PETITION SPECIAL HEARING
Parcel 1 - W/S of Beach Drive, 1,300' N of Carroll Island Road; Parcel 2 - N/S of Asher Road, 1,420' N of Carroll Island Road - 15th
Richard Kowalski, et ux,
Petitioners
* * * * *

* BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY
* Case No. 84-326-SPH

ORDER FOR APPEAL

Please note that the Petitioners, Richard Kowalski, et ux, 700 Asher Road, Baltimore, Maryland 21220, hereby appeal the decision of the Zoning Commissioner dated June 7, 1984 in the above-captioned case to the County Board of Appeals.

Respectfully submitted,

Michael E. Marr
MARR, BENNETT & CARMODY
Suite 430
10 North Calvert Street
Baltimore, Maryland 21202
(301) 539-4250
Attorneys for Petitioners

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

DATE 7/11/84 ACCOUNT R-01-615-COC

AMOUNT \$85.00

RECEIVED FROM Michael E. Marr, Esquire
FOR: Appeal fee on Case #84-326-SPH
(Richard Kowalski, et ux)

G 622*****8500a 4114A

VALIDATION OR SIGNATURE OF CASHIER

IN RE: PETITION SPECIAL HEARING
Parcel 1 - W/S of Beach Drive, 1,300' N of Carroll Island Road; Parcel 2 - N/S of Asher Road, 1,420' N of Carroll Island Road - 15th Election District
Richard Kowalski, et ux,
Petitioners
* * * * *

* BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY
* Case No. 84-326-SPH

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioners herein request the Zoning Commissioner to find certain property owners, John and Alice Lamar, to be in violation of the Baltimore County Zoning Regulations (BCZR) by their operation of a fishing, crabbing, and shellfishing business.

The Petitioners initiated this action pursuant to Sections 500.6 and 500.7, BCZR, which respectively allow any interested party to petition the Zoning Commissioner for a public hearing to determine and/or interpret compliance with the BCZR and to determine any rights whatsoever or such person regarding any property insofar as the property is affected by the BCZR.

The Petitioners appeared and testified and were represented by Counsel. The Lamars appeared but did not take part in the proceedings. Therefore, the only testimony and evidence received came from the Petitioners without rebuttal. The Petitioners are adjacent neighbors of the Lamars, sandwiched on either side by property owned by the Lamars. They own Lots 14 and 15 and the Lamars own Lots 12, 13, and 16, all on the water. The issue presented here is not new; it has plagued these parties since 1971 when the Petitioners first filed a complaint with the County alleging that the Lamars were violating the BCZR by operating a commercial fishing business in a residential zone. After a hearing

ORDER RECEIVED FOR FILING

DATE 7/11/84 BY [Signature]

before the Zoning Commissioner, the Lamars were found to be in violation and were ordered to cease and desist. Upon appeal, the County Board of Appeals for Baltimore County reversed the Commissioner's decision. After appeal to the Circuit Court for Baltimore County, the Board's decision was upheld. The Petitioners did not forsake their beliefs and went to the Court of Special Appeals, which rewarded their perseverance by reversing the Circuit Court and upholding the Zoning Commissioner. Kowalski v. Lamar, 25 Md. App. 493 (1975).

The testimony presented was exactly as it was before other quasi-judicial and judicial forums, i.e., waterfront property; operation of a commercial fishing business; complaints of violations of the BCZ; subsequent, resular hearings; orders to stop; and de facto legislation. All is familiar and voluminous. See Petitioners' Exhibit 4, p. 2, the Board's decision in Case No. 80-87-V, for an excellent chronology.

Bill No. 98-75, effective December 22, 1975, passed after the Court of Special Appeals decision in Kowalski, supra, established commercial fishing and crabbing businesses in the newly created R.C. Zones (2, 3, and 5). The subject property became located within a new R.C. designation. The legislation allowed any such use existing on the date of enactment to continue at the same level of intensity provided a use permit was obtained from the Zoning Commissioner. The R.C. Zones were not implemented, however, until the Baltimore County Council adopted the Comprehensive Zoning Maps in October, 1976, which became effective in November, 1976. In June, 1978, Bill No. 30-78, effective June 22, 1978, was passed repealing Bill No. 98-75. All reference to the use permits required by Bill No. 98-75 was deleted, and fishing operations in R.C. 2, 3, and 5 Zones were to be allowed by special exception only. In the period between 1976 and the passage of Bill No. 30-78 in 1978, requests for use permits were submitted

to the Zoning Commissioner but were not approved until after Bill No. 30-78 went into effect. The Lamars' use permit was approved in October, 1978. The Petitioners allege that during the period prior to this approval, the Lamars were not operating their business (in compliance with the Court of Special Appeals' Order of 1975). Since they were not operating the business, the Lamars could not have met the intent and language of Bill No. 98-75, which required current operation at the time of its passage in order to receive a use permit. The Lamars, they argue, were not entitled to the use permit.

Subsequent thereto, the Petitioners led for injunctive relief in the Circuit Court to enforce the appellate Court's Order, but the matter was remanded to the Zoning Commissioner in order to determine if the Lamars were in violation. A hearing was held, and the Lamars were found to be in violation. The Commissioner determined as a matter of law that the approval of the Lamars' use permit was illegal because it was issued after Bill No. 98-75 had been repealed; therefore, the Lamars were operating pursuant to an invalid permit. The Lamars appealed, and the Commissioner's findings and Order were upheld. The Lamars then ceased operation.

Once more the County Council entered the fray. Because of the confusion rendered by the late approvals, Bill No. 139-83 was passed ratifying those use permits approved later. "...continuation of existing commercial fishing...be and they are hereby ratified, reinstated and approved."

Once again, the Lamars began to operate their business; once again, the Petitioners have complained. The Petitioners argued that the Lamars' business is not affected by Bill No. 139-83 since they have not been in continuous operation. Bill No. 139-83 is unambiguous, and the Lamars cannot benefit from its language.

It is clear that if the Lamars were not in continuous operation, it is because they were in compliance with the law. The Petitioners confirm that the Lamars ceased operation when ordered to do so and began operation when they thought they could. Their failure to meet the stricture of continuous operation is not one of their own making. They did not voluntarily interrupt the operation of their business. The "catch-22" situation in which they find themselves was woven by the Council, implemented by the Zoning Commissioner, and enforced by the Courts and definitely is not of the Lamars' creation nor the result of their negligence.

It is equally clear that the Petitioners also find themselves in the same catch-22. They live next door to a business which has no doubt adversely affected the quiet enjoyment of their property. No matter what the law, the Petitioners have been adversely affected and have suffered.

Unfortunately, the Council did not require those fisherman who had received invalid use permits to have them ratified by the Zoning Commissioner, which might have allowed for review and regulation. The implementation of restrictions by a review of the operation could easily have resolved most, if not all, of the problems resulting between the fishermen and their neighbors. The County Council did not choose this solution but instead chose the one afordescribed. As such as the Petitioners' plight requires understanding and empathy, the action of the Council leave little choice but to find that the Lamars are not in violation of the pertinent regulations and laws.

Throughout the legislative process, the Council has legalized the existence of the right to operate fishing businesses on the water. At no time has the Council outlawed them or in effect made them nonconforming. The Council obviously intended to allow their operation as a matter of right and as a special

exception. While there is no doubt that the business described by the Petitioners here and in earlier hearings has an inherent depressing and disturbing psychological effect which to some degree adversely impacts the enjoyment of the Petitioners home, it cannot be said that the Lamars have operated their business to a degree which has exceeded the impact considered by the Council when it passed Bill Nos. 98-75, 30-78, and 139-83. See Schultz v. Pritts, 432 A.2d 1319 (1981).

It is true that an ordinance must be interpreted literally when its language is clear and certain. Mongony v. Bevilacqua, 432 A.2d 661 (R.I., 1981). It is also true that restrictive language contained in an ordinance must be strictly construed so as to allow a 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). The regulations passed by the Council must be construed according to the ordinary and natural import of their language since it is the language of the statutes which constitutes the primary source of legislative intent. Grosvenor v. Supervisor of Assessment, 271 Md. 232 (1974). When statutes are construed, however, results that are unreasonable, illogical, or inconsistent with common sense should be avoided whenever possible and consistent with the statutory language, with the real legislative intention prevailing over the intention indicated by the literal meaning. B. F. Saul Co. v. Westland Park, 250 Md. 707 (1968).

Applying these principles to the statutes and regulations now being considered, I conclude that, unfortunately, there can be no other decision but that the Lamars are not in violation. The Lamars have not created a business which has intensified the prior use nor have they failed to obey the Orders of the Zoning Commissioner, Board of Appeals, or Court of Special Appeals.

ORDER RECEIVED FOR FILING

DATE June 7, 1978
BY John P. Langford

ORDER RECEIVED FOR FILING

DATE June 7, 1978
BY John P. Langford

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DATE June 7, 1978
BY John P. Langford

ORDER RECEIVED FOR FILING

DATE June 7, 1978
BY John P. Langford

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief prayed for by the Petitioners in their Petition for Special Hearing should not be granted. Therefore, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 7th day of June, 1984, that the relief prayed for be and the same is hereby DENIED.

Arnold Jablon
Zoning Commissioner of
Baltimore County

Ad/arl

cc: Michael E. Marr, Esquire
Mr. & Mrs. John Lamar
People's Counsel

PETITION FOR SPECIAL HEARING

15th Election District

ZONING: Petition for Special Hearing

LOCATION: Parcel 1 - West side Beach Drive, 1,300 ft. North of Carroll Island Road; Parcel 2 - North side Asher Road, 1,420 ft. North of Carroll Island Road

DATE & TIME: Thursday, May 24, 1984 at 10:00 A.M.

PUBLIC HEARING: Room 106, 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 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 disapprove a crabbing, shellfishing and fishing operation now being conducted allegedly pursuant to Bills 139-83 and 98-75 of the Baltimore County Council on property adjacent to the petitioners, which is owned by John and Alice Lamar on Lots 12, 13 and 16 on the plot of Bengies Farm Beach, 568 Beach Drive in the 15th Election District

Being the property of Richard Kowalski, et ux, as shown on plat plan filed with the Zoning Department.

In the event that this Petition is 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
ARNOLD JABLON
ZONING COMMISSIONER
OF BALTIMORE COUNTY

PETITIONER'S MANDATE

Court of Special Appeals of Maryland

No. 587, September Term, 1974

Richard Kowalski

v.

John Lamar et al

Appeal from the Circuit Court for Baltimore County.

Filed: September 10, 1974

September 10, 1974 - Order by Court of Appeals transferring case to the Court of Special Appeals.

October 10, 1974 - Appearance of W. Lee Harrison, Esquire, stricken as counsel for appellant.

April 4, 1975 - Opinion by Davidson, J. Order reversed. Costs to be paid by appellees.

May 5, 1975 - Mandate issued.

STATEMENT OF COSTS:

In Circuit Court:

Record \$15.00
Stenographer's Costs

In Court of Special Appeals:

Filing Record on Appeal \$20.00 (pd. to Ct. of Appeals)
Printing Brief for Appellant \$197.60
Reply Brief
Portion of Record Extract - Appellant
Appearance Fee - Appellant

Printing Brief for Appellee None
Portion of Record Extract - Appellee
Appearance Fee - Appellee

STATE OF MARYLAND, Set:

I do hereby certify that the foregoing is truly taken from the records and proceedings of the said Court of Special Appeals.

In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Special Appeals, this fifth day of May A. D. 1975

Julius A. Romano

Clerk of the Court of Special Appeals of Maryland.

Costs shown on this Mandate are to be settled between counsel and NOT THROUGH THIS OFFICE

REPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 587
September Term, 1974

RICHARD KOWALSKI

v.

JOHN LAMAR et al.

Orth, CJ.
Davidson,
Melvin, JJ.

Opinion by Davidson, J.

Filed: April 1, 1975

On 7 March 1971 Richard Kowalski, the appellant, filed a complaint with the Department of Permits and Licenses of Baltimore County, alleging that John Lamar, the appellee,¹ was violating the Baltimore County Zoning Regulations² (zoning regulations) by operating a commercial fishing business in a residential zone. On 14 February 1972 the appellant filed a second complaint with the Zoning Commissioner (Commissioner) alleging that the appellee was violating the zoning regulations by operating a boat yard in a residential zone. After hearings, the Commissioner found that the appellee was violating the zoning regulations by operating a boat yard and by conducting a commercial business upon land classified in a residential zone. He ordered that such uses cease. The County Board of Appeals for Baltimore County (Board) reversed, and, on appeal to the Circuit Court for Baltimore County, Judge H. Kemp MacDaniel on 11 July 1974 entered an order affirming the Board. This appeal is taken from that order.

Most of the facts are not in dispute. For approximately 30 years the appellee has owned three lots designated on a plat of Bengies Farm Beach (see plat attached hereto) as lots 12, 13 and 16. The appellee's year-round single family home is located on lot 16, which fronts on Saltpeter Creek. A pier is located on this lot which extends into the navigable waters of the creek.

Lots 12 and 13, which front on Muddy Gut, are undeveloped except for a plat located on lot 13 which extends into

¹The Baltimore County Board of Appeals is also an appellee.
²Baltimore County Zoning Regulations (Interim Ed. 1971).

-5-

Section 400), including, but not limited to:

- "a. An office or studio of a doctor, dentist, lawyer, architect, engineer, artist, musician, or other professional person, provided that such office or studio is established within the same building as that serving as his bona fide residence...
- "b. Home occupations as defined in Section 101, also subject to the sign provisions of Section 413.
- "c. Parking space, including residential-garage space.
- "B. Uses Permitted by Special Exception. The following uses, only, are permitted as special exceptions:
- "1. Airports.
- "2. Antique shops...
- "3. Boat yards.
- "4. Cemeteries.
- "5. Commercial beaches.
- "6. Community buildings, swimming pools, or other structural or land uses devoted to civic, social, recreational, or educational activities.
- "7. Conservatories for music or other arts.
- "8. Dwellings or other buildings converted to tea rooms or restaurants...
- "9. Excavations, controlled...
- "10. Golf courses, country clubs, or other outdoor recreation clubs; also quasi-public camps, including day camps.
- "11. Golf driving ranges, miniature-golf ranges, or baseball-batting ranges.

navigable waters. In 1971 this pier was improved and extended to a length of 90 feet. There are no other buildings or structures on these lots, nor are any water or sewer facilities or any electrical connections available.

In 1954 the appellant purchased lots 14 and 15 which front on both Muddy Gut and Saltpeter Creek and which are bounded on the east by the appellee's home and on the south by appellee's vacant lots. The single family residence located on these lots is owned by the appellant and is occupied by him and his wife on a year-round basis. All of the property owned by the parties is classified in the R.D.P. zone (rural, deferred-planning) and lies in an area devoted exclusively to R.D.P. zoning and uses.

There was uncontradicted and unrefuted evidence to show that within the last two years the pier extending from lot 13 into Muddy Gut has been used extensively for fishing activities. On various occasions as many as nine boats have been moored at the pier or stored on the lots. These boats, of varying sizes, are open and equipped with outboard motors. They belong to the appellee's son and two cousins of the appellee's wife. A large number of rolled up gill and fyke nets, seines, boxes, which were utilized to lift the nets full of fish from the water onto the pier, and wooden crates used to package the fish, are stored on the pier. Several truckloads of crushed gravel have been deposited on the lots in order to provide a driveway for the trucks upon which the crated fish

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- "12. Helistops.
- "13. Marinas.
- "14. Public-utility uses not permitted as of right.
- "15. Residential art salons...
- "16. Riding stables...
- "17. Sanitary landfills...
- "18. Shooting ranges.
- "19. Volunteer-fire-company facilities.
- "20. Wireless transmitting and receiving structures...
- "21. Large-scale unit developments, as provided in Section 430."

These sections establish that the only uses permitted in the R.D.P. zone are those designated as uses permitted as of right and uses permitted by special exception. Any use other than those permitted and being carried on as of right or by special exception is prohibited. See Town of Harvard v. Maxant, 275 N.E.2d 347, 349-50 (Mass. 1971); Williams v. City of Bloomington, McLean County, 247 N.E.2d 446, 449-50 (Ill. App. 1969); Samsa v. Neck, 234 N.E.2d 312, 315-16 (Ohio App. 1967); Gada v. Zoning Board of Appeals of the Town of East Lyme, 193 A.2d 502, 503 (Conn. 1963); Gordon v. Zoning Board of the City of Stamford, 145 A.2d 746, 750 (Conn. 1958); Silver v. Zoning Board of Adjustment, 112 A.2d 84, 86-87 (Penn. 1955); City of Warwick v. Campbell, 107 A.2d 334, 336-37 (R.I. 1954); City of Knoxville v. Brown, 260 S.W.2d 264, 267 (Tenn. 1953);

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are loaded and hauled to the market. At various times as many as six trucks have been parked upon this driveway.

The appellee himself is a plumber who is not engaged in any way in the fishing activities. He has not authorized and does not permit the general public to use the pier extending from lot 13. While he has never leased the pier to anybody, he has given permission to use the pier to his 20 year-old son, Mr. Thomas R. Lamar, and two of his wife's cousins, Mr. Arnold Clifton Maddox and his son, Mr. William E. Maddox. The appellee obtains no profit or any other return from the use which he has authorized.

Thomas Lamar, who is employed full-time at a hardware company, possesses a "fyke and gill net license." Arnold Clifton Maddox, who is employed full-time as a longshoreman, has had a commercial fishing license for 18 years. William Maddox also has a commercial fishing license. During January, February and March, at various times when they were not working, such as evenings, Saturdays and Sundays, and depending upon weather and tides, the three men would set out, each in his own boat, often accompanied by a helper, to fish. Upon their return the fish would be hoisted onto the pier, packed into crates, loaded onto trucks and hauled away to the wholesale fish market where they were sold. But for the fact that a sufficient quantity of fish were caught to be sold, the fishing expeditions would not take place. There were no sales of fish conducted on the property nor were there any signs indicating

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Dolan v. McCapra, 80 A.2d 655, 659 (N.J. Super. 1951); Roman v. Robertson, 180 P.2d 929, 931 (Cal. App. 1947). Thus, the question before the Board was whether the use of vacant land, by the owner's relatives, for the berthing, storage, maintenance and launching of boats, as well as for the fishing activities described above, to which uses the owner consented, was prohibited by section 1A00.2 of the zoning regulations, rather than whether the uses complained of were boat yard, marina or commercial uses. The Board found that the uses complained of constituted neither a marina nor a boat yard, nor a commercial business or trade use. The Board failed to determine whether the uses complained of were permitted in the R.D.P. zone and, therefore, were not prohibited, and, if so, whether they were being properly conducted as a matter of right or by special exception. In so doing the Board erred.

Here there is not an iota of evidence to show that the uses complained of do or can constitute any use permitted as of right other than an accessory use. Section 101 of the zoning regulations defines an accessory use or structure as follows:

"A use or structure which--(a) is customarily incident and subordinate to and serves a principal use or structure; (b) is subordinate in area, extent, or purpose to the principal use or structure; (c) is located on the same lot as the principal use or structure served; and (d) contributes to the comfort, convenience, or necessity of occupants, business, or industry in the principal use or structure served...."

A principal use is defined under this section to be a "main

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the existence of any business operation on the property.

Section 102.1 of the zoning regulations provides, insofar as here relevant:

"No land shall be used or occupied and no building or structure shall be erected, altered, located, or used except in conformity with these regulations...." (Emphasis added.)

Section 1A00.2 of the zoning regulations provides:

"A. Uses Permitted as of Right. The following uses, only, are permitted as of right in R.D.P. zones:

- "1. Farms...
- "2. One-family detached dwellings.
- "3. Churches or other buildings for religious worship.
- "4. Trailers...
- "5. Research institutes...
- "6. Hospitals.
- "7. Telephone, telegraph, electrical-power, or other electrical lines...
- "8. Other cables; conduits; gas, water, or sewer mains; or stormdrain systems...
- "9. Railroads or other transportation lines.
- "10. Animal boarding places (regardless of class), kennels, veterinarians' offices or veterinarians...
- "11. Excavations, uncontrolled.
- "12. Schools...
- "13. Accessory uses or buildings (not subject to the provisions of

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use of land, as distinguished from an accessory use."

The record here unequivocally establishes that the subject property is vacant, contains no buildings or structures, is not served by water or sewer facilities, and is not equipped with any electrical service. It has no use other than those authorized and permitted by the owner, all of which are associated with the berthing, storage, maintenance and launching of boats, as well as the fishing activities previously described. Thus, the record establishes that at the present time the only uses of the subject property are the uses of which the appellant complains. Under these circumstances such uses constitute the main or principal uses of the subject property. They do not and cannot fall within the ambit of the definition of an accessory use.³ See Town of Harvard, supra; City of Bloomington, supra; Samsa, supra; Silver, supra; City of Warwick, supra.

Moreover, there is not an iota of evidence to show that the uses complained of are being carried on pursuant to a special exception. Section 1A00.2B provides for a "boat yard" and a "marina" as permitted uses by special exception in the R.D.P. zone. Section 101 defines a "boat yard" as:

"A commercial or non-profit boat basin with facilities for one or more of the following: sale, construction, repair, storage, launching, berthing, securing, fueling and general servicing of marine craft of all kinds." (Emphasis added.)

A "marina" is defined by section 101 as:

"A modern boat basin, restricted to

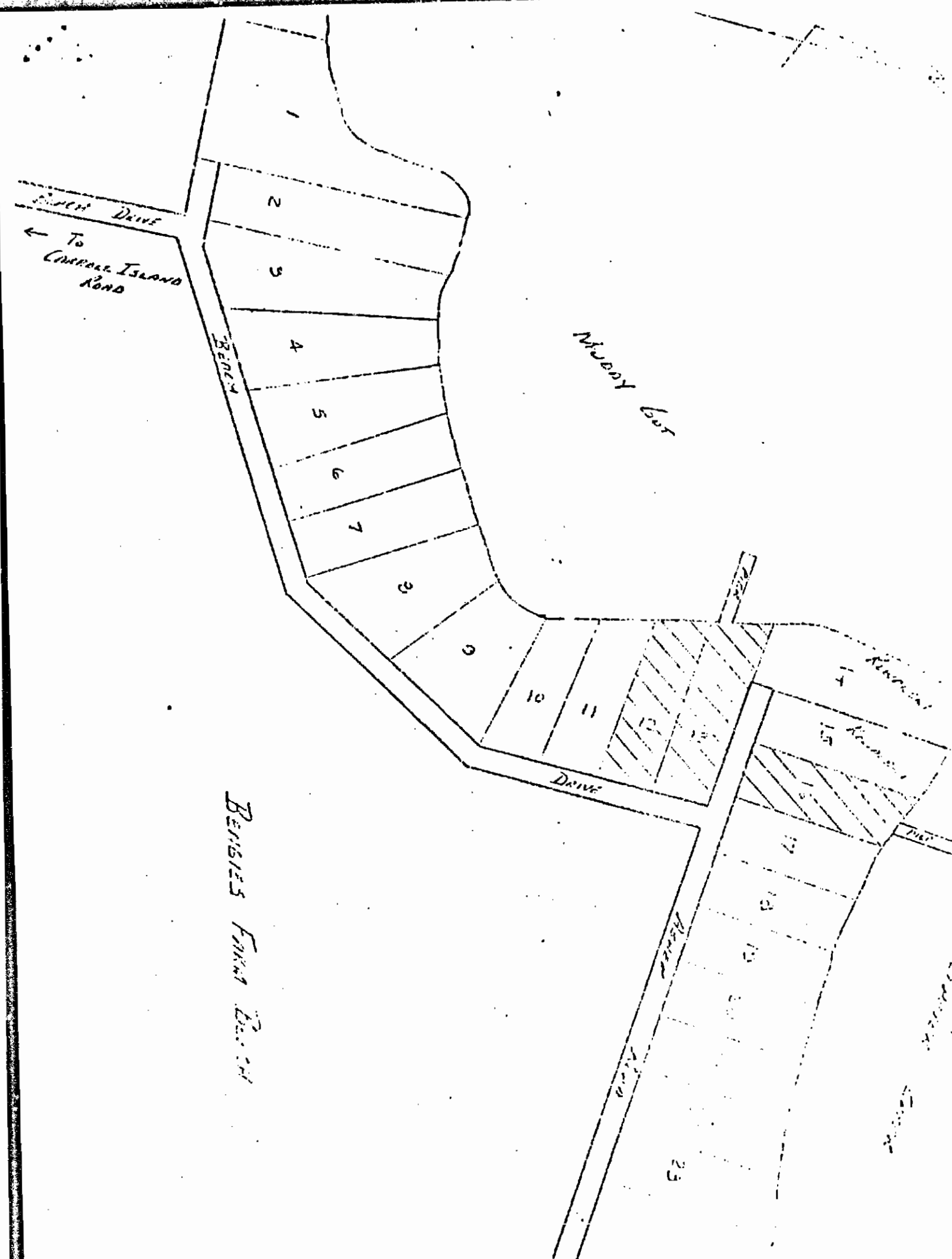
³We are not here confronted with the question of what, if any, personal use an owner can make of a vacant parcel of R.D.P. zoned waterfront land.

recreational marine craft of all types, with facilities for one or more of the following: berthing, launching, and securing such craft, and permitting incidental minimum provision for refueling and emergency servicing, and also land (out-of-water) storage as provided in subsection 417.7."

But even assuming without deciding, that some or all of the activities complained of, particularly those centering around the berthing, launching and maintenance of boats, are permitted uses by special exception, such uses under the circumstances here would still be prohibited by section 1A00.2 because a special exception had not been obtained.

In the absence of any evidence to support a finding that the uses complained of were permitted uses, being carried on as a matter of right or by way of special exception, the order of the trial court, affirming the decision of the Board, will be reversed.

ORDER REVERSED. COSTS TO BE PAID BY APPELLEES.



use permit, although provided for in the Regulations, was not available for issuance until 45 days after the map adoption, to wit, November 29, 1976.

The testimony of Mr. Richard Kowalski, the owner of Lots 14 and 15 and the next door neighbor of John and Alice Lamar, indicated that he first complained of a commercial fishing, crabbing, and shellfishing operation in 1971. The finding of a violation proceeded through the appellate process to an affirmation of the violation by the Court of Special Appeals in the case of *Kowalski v. Lamar*, 25 Md. App. 493, 334 A2d 536 (1975). He further testified that he saw no activity from May, 1975 through December, 1975; however, he did observe some crabs being put in "sluff" boxes during the 1976 season and also some sport fishing. He then observed fish nets being used and carried from the Lamar property during the middle of 1978. From that point, the operation continued to increase to such an extent that he called the Zoning Office to determine if the Lamars had applied for a special exception. This testimony would appear to be substantiated by the past history of Mr. Kowalski's complaints and the absence of his complaints until the middle of 1978, which culminated in the Order of the Circuit Court of Baltimore County.

Prior to the passage of Bill No. 30-78, the applicable law (Bill No. 98-75) grandfathered such uses "...existing at the time of date of enactment..." (November 7, 1975), but only to the extent of "the same level of intensity..." and that a use permit be filed for within 365 days of enactment. (Section 1A04.2.B.7). Although there was no testimony to indicate the date Mr. Lamar filed the application for a use permit, a letter from Mr. Joseph D. Parr, Planning and Zoning Associate I, dated June 22, 1978, refers to the office (Zoning) "...withholding approval...based on the inspection report". Although Section 1A04.2B.7 refers to the 365 days as being

measured from date of enactment of Bill No. 98-75, it is clear that all parties agree that the aforementioned 365 days began running as of the effective date of the adoption of the Comprehensive Zoning Maps on October 15, 1976; otherwise, the 365 days would have expired prior to the date the Comprehensive Zoning Maps took effect. In spite of the absence of a specific date the use permit application was filed, it must be concluded that it was filed within 365 days of the enactment of the maps; otherwise, the application would presumably not have been processed to a point of time when the permit was issued on October 10, 1978.

It is the issuance of this use permit, dated October 10, 1978, that brought this matter before the Circuit Court and then before the Zoning Commissioner to determine the validity of the use permit and whether or not a violation exists. If the use permit is valid, then, assuming the operation to be in keeping with the site plan, there would be no violation, but, if the use permit is invalid, then a violation would exist.

On May 1, 1978, the County Council passed Bill No. 30-78 which became effective on June 22, 1978. This Bill amended Sections 1A01.2.C.6, 1A02.2.B.10, and 1A04.2.B.7 by deleting the previous reference to a "use permit" for previous existing commercial fishing, crabbing, and shellfishing operations and substituted in lieu thereof "Fishing and shellfishing facilities, shoreline, Class I or II as uses subject to processing as Special Exceptions. At this point it is significant to note that the letter withholding approval of the application for a use permit was dated on the same day as Bill No. 30-78 took effect.

It is significant to note that Bill No. 30-78, in repealing Section 1A01.2.C.6, 1A02.2.B.10, and 1A04.2.B.7, made no provisions for such a "use permit" in the amended language. Therefore, upon Bill No. 30-78 taking effect, shellfishing facilities, shoreline, Class I or II, in R.C. Zones, were subject to being allowed only after petitioning, posting, advertising, and hearing for a special exception.

BE: ALLEGED ZONING VIOLATION : BEFORE THE
568 Beach Drive : ZONING COMMISSIONER
15th Election District :
John R. and Alice Lamar : OF
Route 14, Box 569 :
Baltimore, Maryland 21220 : BALTIMORE COUNTY
Defendants : 80-87-V, C-80-64

This matter comes before the Zoning Commissioner by reason of an Order of the Circuit Court of Baltimore County, Judge Frank E. Cicone, in the case entitled *Richard Kowalski v. John Lamar*, No. 100964, Docket 136, Folio 302, and requests the Zoning Commission(er) to determine whether the Respondent Lamar presently is in violation of the Baltimore County Zoning Regulations.

The following Baltimore County Zoning Regulations are involved:

Section 102.1 - "No land shall be used or occupied and no building or structure shall be erected, altered, located, or used except in conformity with these regulations and this shall include any extension of a lawful nonconforming use."

Section 101 - Definitions - "Commercial fishing, crabbing and shellfishing operation - Secondary - A residential property which is the domicile of a person engaged full or part time as a commercial fisherman and who is required under Title 4 of the Department of Natural Resources to possess a license for the purpose of catching by net, line, trap or tongs, of fish, crabs or shellfish and has limited facilities for the storage and berthing of a commercial fishing boat and the loading or unloading of catches and gear."

Section 1A04.2 - "Use Regulations (R.C. 5 Zones)."

Section 500.4 - "In cases in which no building permit is required, any person desiring to use any land for any purpose other than that for which said land is being used at the time of adoption of this Order and Resolution, shall make application to the Zoning Commissioner for a use permit, upon such form as the Zoning Commissioner may prescribe. If such use is permissible the Zoning Commissioner may issue a use permit, conditioned by other provisions contained in the Regulations which shall indicate that it authorizes particular use applied for."

Responding to the Order of the Circuit Court, a hearing was scheduled for August 3, 1979, at 9:00 a.m. Prior thereto, the attorneys representing the adversary parties entered into a

County Exhibit D
PETITIONER'S EXHIBIT D

Since the operation presently being conducted by John Lamar is under a use permit, dated October 10, 1978, and issued by the then Zoning Commissioner some 3 1/2 months after the effective date of Bill No. 30-78, it is clear that the statutory authority under which the use permit was issued had been repealed and so any rights attendant to it were negated by its invalidity. Therefore, the operation conducted from the property by the Lamars constituted a violation of the Zoning Regulations.

Therefore, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 29th day of May, 1980, that all commercial fishing, crabbing, and shellfishing operations must cease within 30 days from the date of this Order.

Any appeal from this decision must be in accordance with Section 500.10 of the Baltimore County Zoning Regulations within 30 days.

John E. Lamar
Zoning Commissioner
of
Baltimore County

LARR & BENNETT, P.A.
ATTORNEYS AT LAW
SUITE 200
CHARLES CENTER SOUTH
A SOUTH CHARLES STREET
BALTIMORE, MD. 21201
(410) 526-4200

stipulation by which it was agreed, in part, that John Lamar conducted a commercial fishing, crabbing, and shellfishing operation on the property, known and designated as Lots 12, 13, and 16 on the plat of Bengie's Farm Beach, from June, 1979, up to and including the date of the hearing.

Mr. James H. Thompson, Zoning Inspector, testified that although he inspected the property in May, 1979 and on August 2, 1979, he did not see any such business being conducted but did observe the necessary equipment therefor. He also testified that Mrs. Alice Lamar indicated her husband had secured a use permit from the then Zoning Commissioner, S. Eric DiNenna.

Section 500.4 of the Zoning Regulations provides that whenever "...any person desiring to use any land for any purpose other than that for which said land is being used...shall make application to the Zoning Commissioner for a use permit..."

Until the passage of Bill No. 98-75 by the County Council, there was no provision in the Zoning Regulations for commercial fishing, crabbing, and shellfishing and so all those persons conducting such an operation were, in fact, if not by judicial finding, in violation of the Zoning Regulations. If this were not true, there would have been no need for legislation to provide the means of legalizing such use. However, this Bill established, from its effective date on December 22, 1975, this type of operation as being subject to a special exception in R.C. Zones "...except that any such use existing at the time of the date of enactment of this subsection may continue at the same level of intensity provided that within 365 days of the enactment date...they shall file for a use permit..." (Section 1A04.2.B.7). Although the R.C. Zones were in effect on December 22, 1975, as far as the Zoning Regulations were concerned, there were no properties so zoned until the adoption of the Comprehensive Zoning Maps on October 15, 1976. Therefore,

PETITIONER'S EXHIBIT 3

RICHARD KOWALSKI, PROTESTANT
v. JOHN AND ALICE LAMAR, RESPONDENT
COUNTY BOARD OF APPEALS
FOR BALTIMORE COUNTY
Re: 568 Beach Drive
15th District
Case No: 80-87-V
(C-80-64)
ZV - Commercial Fishing,
Crabbing, etc.

MEMORANDUM OF LAW

Richard Kowalski, Protestant, by his attorneys, Michael E. Marr and MARR AND BENNETT, P.A. submits the following Memorandum of Law.

I. STATEMENT OF THE CASE

On July 18, 1979, Protestant Richard Kowalski sought and obtained an *ex parte* injunction from the Circuit Court for Baltimore County enjoining Respondents John and Alice Lamar from allowing or conducting any commercial fishing operations on Lamar's property. On July 27, 1979, Protestant filed a Petition for a Final Injunction. On July 28, the *ex parte* injunction expired. On July 30, 1979, a chambers conference was held between counsel for the parties and Judge Frank E. Cicone. By agreement of the parties, the matter was forwarded to the Baltimore County Office of Planning and Zoning for the taking of testimony, if necessary, and for resolution of the parties' respective legal rights. An order to that effect was signed on August 2, 1979.

A zoning violation hearing was begun on August 3, 1979, formal notice of that hearing being waived by the parties. Mr. William E. Hammond, Zoning Commissioner for Baltimore County, presided. At the conclusion of Kowalski's case-in-chief, the

The Defendants submitted substantial evidence to establish a non-conforming use of a commercial fishing operation. Their testimony and records indicated that they (father, John and son, Thomas) actively worked from the property as commercial fishermen. Without weighing the value of this evidence, the Board finds as a matter of law that the Lamars are not entitled to a non-conforming use because any commercial fishing done while the property was zoned R.D.P. and after the Court of Special Appeals ruled that they were in violation of the Zoning Regulations would be illegal. A fundamental rule of non-conforming use is that the prior use must be a legal use to be a basis for continuation after the zoning has changed. For these reasons, the Board finds the Defendants in violation of the Baltimore County Zoning Regulations. By proving its case for non-conforming use and stipulating that commercial fishing and crabbing took place after June, 1979, until the present, the Defendants confirmed the County case for violation.

ORDER

For reasons set forth in the foregoing Opinion, it is this 9th day of October, 1981, by the County Board of Appeals, ORDERED that the Defendants are in violation of the Baltimore County Zoning Regulations and shall cease and desist immediately of all commercial fishing and shellfishing activities from the subject property.

Any appeal from this decision must be in accordance with Rules B-1 thru B-12 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

John V. Murphy
John V. Murphy, Acting Chairman

Patricia Phipps
Patricia Phipps

Leroy B. Spurrier
Leroy B. Spurrier

TESTIMONY OF RICHARD KOWALSKI PETITIONER'S EXHIBIT 5

1 THE CHAIRMAN: Thank you.
2 Mr. Marr, call your witnesses.
3 MR. MARR: Could I have -- could we take a ten-
4 minute recess?
5 THE CHAIRMAN: Certainly.
6 (Whereupon, a short recess was taken.)
7
8 THE CHAIRMAN: Back on the record.
9 Mr. Marr?
10 MR. MARR: Yes, Mr. Chairman. I'd like to call
11 at this time Mr. Richard Kowalski.
12 THE CHAIRMAN: Mr. Kowalski, you have been sworn
13 in before the break.
14 Thereupon --
15 RICHARD KOWALSKI
16 the Complainant, called for oral examination on his own
17 behalf, having been first duly sworn by the Notary Public, was
18 examined and testified as follows:
19 DIRECT EXAMINATION BY MR. MARR
20 Q Would you state your name, please?
21 A Richard John Kowalski.

541-583

1 Q What do you do for a living?
2 A I am a longshoreman.
3 Q Where do you live, sir?
4 A 700 Asher Road.
5 Q How long have you lived there?
6 A Since 1954.
7 Q Can you tell us what proximity that has to the
8 property in question now, which is 704 Asher Road?
9 A We are adjacent. We are on the corner of the
10 entire section of two bodies of water.
11 Q What are those two bodies of water?
12 A Salt Peter Creek and Muddy Gut.
13 Q Your lot then is Lot No. what, 15?
14 A Fifteen or 16. It is a double lot.
15 Q Fifteen and 16, right there at the --
16 MR. KOWALSKI: Fourteen and 15.
17 A (Continuing) Yeah, Lamar is 15. Regardless --
18 Q (By Mr. Marr) Tell us what, if anything -- tell
19 us what -- tell us where 704 Asher Road is.
20 A It is next door to us.
21 Q How on what body of water is that?

1 A Salt Peter Creek.
2 Q Now what is next to you on Muddy Gut?
3 A Double lot belonging to Mr. Lamar, unimproved.
4 Q Are there any structures adjacent to that lot
5 which jut out into the water?
6 A There is a pier approximately ninety feet, maybe
7 a hundred or so.
8 Q Do you know what direction that is from your
9 house, north, east, south, west?
10 A South, about southwest as it appears.
11 Q What location from your home is the residence
12 704 Asher Road? What direction?
13 A That would be east.
14 Q Now you say you commenced residence there in 1954.
15 A '54.
16 Q '54. Did there come a time subsequent to your
17 taking up residence at that property that various individuals
18 began engaging in commercial fishing operations that were
19 from the property of 704 to the east and also from the prop-
20 erty to the south as you have previously described it?
21 A Before we moved there?

1 Q No, subsequent to the time you moved there.
2 A Yeah. In 1970 it apparently started, if I under-
3 stand your question.
4 Q My question was did there come a time after you
5 moved into that residence that commercial fishing commenced --
6 A Yes.
7 Q (Continuing) -- adjacent to your property?
8 A Yes.
9 Q Now what properties were used in connection with
10 that commercial fishing operation?
11 A From the very beginning on an extremely small
12 scale doing it all by himself it was at 704 at a pier there,
13 a small pier maybe thirty feet long.
14 Q Can you tell us the date of that in the very
15 beginning?
16 A It would be somewhere around 1970, but probably
17 in the spring of that year.
18 Q Who was operating that particular --
19 A Tommy Lamar.
20 MR. ROMADKA: Mr. Chairman, I am going to object
21 to this line of questioning having to do with what may or

1 may not have taken place on the Lamar property in those
2 particular years for the reason that under County's Exhibit A,
3 which is a stipulation between the parties at the time we
4 went before the Zoning Commissioner when this matter was
5 first heard by him --
6 The stipulation, I think, spells out the only
7 reasons why the matter was being brought before the Zoning
8 Commissioner by Mr. Kowalski, and that the Zoning Commissioner
9 in hearing that case was restricting the testimony only to
10 those facts as stated in the stipulation.
11 Now in this particular exhibit entitled
12 Stipulation, paragraph 3 of said stipulation indicates the
13 following:
14 "Petitioner, Richard Kowalski, is relying on
15 Section 1A04 of Bill No. 98-75, enacted by the Baltimore
16 County Council, and Sections 500.4, 500.5 and 502 of the
17 Baltimore County Zoning Regulations."
18 Paragraph 4 says, "The parties have agreed to
19 submit to a Baltimore County Zoning Violation Hearing on
20 August 3, 1979, at 9:00 a.m., and have further agreed to
21 waive any and all notice requirements prefatory to holding

1 said hearing."
2 It was signed by the attorney for Kowalski and
3 myself for Lamar.
4 That was the only issue that was to be brought up
5 before the Zoning Commissioner. That was the only issue that
6 was brought up before the Zoning Commissioner concerning these
7 particular sections, whether or not we were in violation of
8 the sections.
9 So I fail to see why this line of questioning has
10 anything to do with these particular sections.
11 These sections have to do with the issuance of
12 a special permit that was given to Mr. Lamar as a result of
13 his application for a commercial crabbing and fishing license.
14 That is what these sections pertain to.
15 THE CHAIRMAN: Mr. Marr? Do you want to respond
16 to that?
17 MR. MARR: Very briefly. The objection is not
18 valid for this reason. This is now the rebuttal stage of the
19 case.
20 We took that same position, it seems to me, during
21 the presentation of the case in chief, that there was a very

1 narrow issue in this case.
2 We wanted to limit it to that. The Board over our
3 objection opened it up, and there has been testimony not just
4 about 1979 to the present, and not just about Section 500.4,
5 500.5, and 502, but there has been testimony about the
6 activity on the land in question; Lots 12, 13, and 15 from
7 1974 -- even back now to '72 and '73.
8 I am introducing evidence about 1970 for the
9 background showing the inception, and I also intend, if
10 I might be allowed to proffer, to bring the Board up to date
11 from the beginning of the commercial fishing operations on
12 that property, what happened after the Court of Appeals deci-
13 sion in April of 1975, and then what happened subsequent
14 thereto.
15 THE CHAIRMAN: Mr. Bollinger?
16 MR. BOLLINGER: I would submit.
17 THE CHAIRMAN: I will overrule the objection.
18 Mr. Romadka, one of the things we wanted to do
19 when we started was allow the defendant to have every possi-
20 ble defense, and again the reason for opening up the hearing
21 beyond those limitations that you had mentioned -- but perhaps

more importantly, there are several items which the Board has taken note in as far as potential defenses that -- I was particularly interested in the issues of grandfathering, the issues of nonconforming use, issues of many of those other issues which go to the heart of what I think your presentation was in presenting data and evidence from 1972.

I'd even say at this point since we have a stipulation and agreement, 21-A now is in, with those issues in front of the Board, I think we do have to listen to rebuttal on the same issues.

MR. ROMADKA: All right.

MR. MARR: All right.

(By Mr. Marr) Mr. Kovalski --

THE CHAIRMAN: Would you repeat the question?

MR. MARR: I forgot the question, but I will frame another one.

(By Mr. Marr) What, if anything, began --

I think you had testified about a small amount of activity commencing on a pier that was adjacent to or abutting to Lot 16, which was where 704 Asher Road is.

Who was engaged in that activity, and to what

extent was that activity engaged in?

A Tom Lamar was by himself. He had a small runabout, and he would go out with maybe one net or something. It was almost a -- it was a one-man situation.

Nobody was involved, not his family nor anyone else, and he would park the rowboat or runabout at the pier directly in front of his --

Q That was the pier that is adjacent to Lot 16?

A Well, this was the one at 704.

Q All right, okay.

A I think he'd come back maybe with a small tub of fish, hardly enough to sell unless he took them down to the corner store or something like that, but it was a small operation at that point.

Q Now then, you say it was sometime around 1970?

A Yes.

Q All right. Did that operation expand in scope at any time?

A Yes, when additional people came down, and they put a pier up. They pumped pilings in, and put the pier approximately, as I say, ninety feet out.

Q Where did they pump pilings and put the pier at?

A This would be the two vacant lots south of us.

Q The lots on Muddy Gut?

A Yes, sir.

Q What was the size of that pier as compared to the size of the pier that jutted out from Lot 16?

A Well, from Lot 16 the pier, just estimate -- it is close to thirty feet, and I believe the one they put up there, still currently there, is maybe ninety feet.

Q Now you are talking about the pier that is abutting to Lots 12 and 13?

A Yes.

Q Which would be to the south of your residence?

A Correct.

Q All right. Now when did these people come? -- and identify them if you will.

A They were the Maddox family, and it was a large group of them. I think at one point in the testimony we had in one of the zoning hearings where the elder Mr. Maddox stated he had eight sons, and they all engaged in that.

They all came down and utilized this property.

At one point they had a total of fourteen fishermen there.

As a matter of fact, in our very early hearing, we have a picture in the file -- I assume it is still there -- that very definitely shows fourteen identifiable people as human. As far as the names, I don't know.

Q Were they fishing off the property?

A They were taking fish out of nets, putting them in trucks. It was a very, shall we say, banner year, almost there were a lot of fish on the market but low prices.

Q What year was this?

A I would say it was '71. I would be flexible with it.

Q What, if anything, did you do in response to that commercial fishing activity which was encumbering the property adjacent to you?

A Well, we wrote a letter to Baltimore County because along with their fishing they had put some material known as crusher run along the side of our garage, which raised up their lot, diverting water into our garage, which was at the low point.

We wrote a letter to the Building Engineers, and

also to the zoning people in Baltimore County.

Q What, if anything, happened in connection with the letter that you wrote to the Building Engineers?

A They came down, and they gave him an order to alleviate it to some extent, the --

Q Alleviate what?

A Drainage problems we had in the garage the engineer was involved in.

Q To whom did they give the order?

A To Mr. Lamar.

Q Senior?

A That's correct.

Q What, if anything, was done in response to that order?

A They did nothing at all until the Zoning Building Inspector came down the second time, and they dug a little shallow ditch about two or three inches with no effect at all beneficial to us.

Then we had written additional letters, and we ended up going to court.

Q Has that been corrected?

A Yes, it has been corrected now after -- I think it took almost five years.

Q It's been corrected.

A Let's go to the zoning matter. What, if anything, happened in response to the letter you wrote to the zoning authorities in Baltimore County?

A We had a zoning hearing.

Q Who was that zoning hearing before?

A I think Eric DiNenna, that was the Zoning

Department at that point.

Q It was a hearing before him?

A Yes.

Q What, if anything, did Mr. DiNenna do as a result of this hearing?

A He ruled it illegal, the operation.

Q All right. What happened subsequent to that?

A The Lamars appealed.

Q Did the Maddoxes appeal also?

A They were not named in anything.

Q But the Lamars appealed?

A Yes.

Q And before whom did they appeal?

A The Board of Zoning Appeals.

Q All right. And what, if any, determination was made by the Board of Zoning Appeals?

A They overturned Mr. DiNenna's decision.

Q What, if any, action did you take when the Board of Zoning Appeals overturned Mr. DiNenna?

A Then we filed an appeal to the Maryland Court of Special Appeals in Annapolis.

Q Before you got to that stage, did you file an appeal to the Circuit Court here?

A Yes, we did. I am sorry.

Q Can you tell us -- do you recall why the Board of Zoning Appeals reversed Mr. DiNenna's decision?

MR. ROMADKA: I object. I think the order would speak for itself.

THE CHAIRMAN: I agree.

Sustained.

Q (By Mr. Marr) Did you then go before the Circuit Court for Baltimore County?

A Yes.

Q Do you recall whether or not Judge MacDaniel heard that case?

A I think so, yes.

Q What did he do?

A Sustained the decision that Baltimore County Board of Appeals -- Zoning Appeals made.

Q All right. What, if anything, was happening during this period of time? Were people still fishing?

A Yes, off and on.

Q This is now -- we are into '73, '74?

A That's correct.

Q So then from 1970 to that period of time there was fishing going on?

A That's correct.

Q Did you then take an appeal to the Court of Special Appeals for Maryland?

A Yes, we did.

Q All right. What was the result of that appeal to the Court of Special Appeals?

A The Court of Special Appeals ruled in our favor, and deemed this illegal, and gave them an order to cease and

1 dosist.

2 Q All right. And what, if anything, happened in
3 response to the Court of Appeals opinion?

4 A They stopped their fishing operation.

5 Q When you say they, who stopped?

6 A The whole group, Lamars, Maddoxes and all. As
7 a matter of fact, they had an extension on the pier. It was
8 a float.

9 Q What pier are you talking about?

10 A The one that is on Muddy Gut.

11 Q Ninety-foot pier?

12 A Yes.

13 Q They had an extension?

14 A This extension consisted of a pontoon, probably
15 twenty by ten feet, used to carry dredge soil to store when
16 the dredge is out there sucking this up.

17 Apparently they got ahold of this, and they used
18 this for an extension on the pier. It went up and down with
19 the tide.

20 They took that with them when the Maddoxes left.

21 Q What else did the Maddoxes take with them?

1 A Gear and fishing paraphernalia with them.

2 Q Any boats left on the property?

3 A No, rowboat and a runabout, I think.

4 Q Where was that left?

5 A There at the Muddy Gut pier.

6 Q How about the crabbing and fishing? I take it
7 they were engaged in both crabbing and fishing?

8 A Yes.

9 Q What happened to that gear?

10 A It all left.

11 Q All of it left?

12 A Yes.

13 Q Any gear at all left there?

14 A May have been residue of things he had hidden
15 behind plywood. He stands up four-by-eight sheets of plywood
16 to conceal things.

17 Q Who is that?

18 A Lamars, Mr. Lamar.

19 Q Did the commercial activity cease?

20 A Yes, it did completely.

21 Q Tell us the date when it ceased.

1 A It had to be around the end of April or very
2 beginning of May.

3 Q Of what year?

4 A 1975.

5 MR. NARR: The record will reflect the reported
6 Court of Appeals opinion in the case -- Special Appeals
7 opinion in the case of Kowalski vs. Lamar filed April 4, 1975.
8 I believe that is an exhibit in the case.

9 Q (By Mr. Narr) What happened to the balance of
10 1975? Did Tom Lamar or anybody else engage in any commercial
11 fishing activity in connection with the lots in question? --
12 that is, Lots 12, 13, and 16?

13 A No, not at all.

14 Q How about in 1976?

15 A Nope.

16 Q How about in 1977?

17 A No.

18 Q How about in 1978?

19 A That is, not in the beginning of the year. Down
20 near the end when we got to fall there started to be an occa-
21 sional taking a net out or something like that, and maybe

1 bringing it in later on when nobody was -- when it was dark,
2 coming in without lights on the boat, things of that nature;
3 but it was almost what you might consider a noncommercial
4 person going out, just catching the fish to put in the
5 freezer, very minimal.

6 Q What sort of a vantage point do you have in terms
7 of viewing whether or not there was an operation?

8 A Probably the greatest. My wife's sewing room
9 faces south. The window in her kitchen has three windows
10 facing south, and we were on the corner of the Point.

11 We could observe everything in three different
12 directions. The only thing that obstructs our view at all in
13 an easterly direction is part of the Lamars' house.

14 We could see most everything, day and night.

15 Particularly in the summertime we could hear; windows open,
16 things like that.

17 We got a very, very good view of everything that
18 goes on around us.

19 Q Now let me ask you this. What, if anything, hap-
20 pened after 1978? Did you notice any buildup at all in 1978?

21 A Yes, it started to get a little bit heavier

1 towards Christmastime, because it wasn't a big freeze I don't
2 remember that year; but still small, hardly enough to
3 complain about.

4 Q This is around Christmas in '78?

5 A Thereabouts, around the holidays.

6 Q Did there come a time when the properties in
7 question, Lots 12, 13, and 16, became encumbered by any
8 greater activity?

9 A Yeah, right after the first of the year in '79.

10 Q What happened then?

11 A Well, it would be more and more fishing, and it
12 would be a little more blatant.

13 Q What about equipment?

14 A Yeah, nets were making themselves obvious, and
15 they were putting them out.

16 Q How about crab pots? Did you see any of them?

17 A Not at that early stage. The crab pots don't go
18 out until possibly about the first of July.

19 Q When did the crab pots commence?

20 A About then.

21 Q How was there any odors associated with these

1 activities?

2 A Well, with dipping the crab pots, putting them in
3 the preservatives. They have a large tank about four feet or
4 three and a half feet cubed, and they filled it with some
5 type of extremely pungent type of preservative. I don't know
6 the name of it.

7 It is dipped, and it should hopefully, I guess,
8 give them another one, two, maybe three years, if everything
9 goes properly, of life for the crab pots.

10 Q When did this happen?

11 A Last year and year before.

12 Q 1980 and '79?

13 A Yeah.

14 Q Had it happened in '75, '76, '77, '78?

15 A No, not at all.

16 Q Any other odors associated with the activity?

17 A Other than the stench from nets and pulling the
18 boat up that had residue of fish scales and fish drippings
19 and so on; and anytime we'd get a south wind we'd get the full
20 benefit of that.

21 Q Did you experience that at all in '75, '76,

1 '77, '78?

2 A No, not at all. If so, we would have certainly
3 registered complaints those years.

4 Q Did you register any complaints in those years?

5 A No, sir.

6 Q Did there come a time in 1979 that you registered
7 a complaint?

8 A Yes, in the fall when it started up I called the
9 Zoning Commissioner.

10 Q Now I am talking about '79. Did you register any
11 complaints in '79?

12 A Yes.

13 Q How about '78 when it started up in the fall?

14 A Maybe once just to go on the record that they are
15 starting up again and alert the Zoning Commissioner to the
16 fact that the order was being circumvented really.

17 Q What, if anything, do -- who did you complain to?

18 A Eric DiNenna.

19 Q What did he do?

20 A He sent Jim Thompson down to look the place over.

21 Q He sent Jim Thompson down?

1 A Yes, he was apparently in the Enforcement
2 Division. I am certain he was an inspector of the Zoning
3 Office.

4 Q What, if anything, happened after that?

5 A He took pictures, and then he went back and
6 reported to Mr. DiNenna.

7 Q And then what, if anything, did you do?

8 A Well we waited, and we took pictures on our own
9 on Mr. DiNenna's recommendation, as a matter of fact.

10 When we initially complained and Mr. Thompson went
11 back, we waited for some results with Mr. DiNenna.

12 Q Okay. Then did anything happen? Did Mr. DiNenna
13 do anything?

14 A Well, next thing we got -- I don't know if it was
15 in the Planning Department envelope. It showed us Mr. Lamar
16 had been awarded a permit for this in, I think, '78.

17 Q October 10, 1978, or thereabouts?

18 A I think so.

19 Q What, if anything, did you do when you got that
20 permit?

21 A When I got -- when I was aware of it?

Q Yes, aware, got a copy of the permit.

A Well, then I called Mr. DiMenna, talked to him about it.

Q What did he say?

A He was shocked. He didn't remember signing anything like that.

MR. ROMADKA: I object.

THE CHAIRMAN: Sustained.

Q (By Mr. Marr) What, if anything, did you do then?

A Well, then we filed.

Q Did you seek assistance of counsel at that time?

A Yes, we did.

Q That is when you came to see me again?

A Yes.

Q I handled the case before the Court of Special Appeals?

A Yes.

Q Then can you tell us what happened after that?

A Well, we went to -- we had a hearing.

I talked also to -- it is -- first I must say this, that when this took place that Jim Thompson came down,

this was right at the very end of Mr. DiMenna's career as Zoning Commissioner.

He was being replaced, and at the same time I want to point out Eric was the Zoning Commissioner, and he had a deputy, George Martinak.

I talked to Mr. DiMenna and Mr. Martinak twice at various times prior to this permit being issued to see if there was any chance that quite possibly through the back door or how you may describe it, an application for a special use or special exception may have been put in there.

Q Why did you do that?

A Because I didn't think we would be properly notified in a lot of ways.

It is supposed to be posted, I understand, if such an application is made.

Q Were you keeping a vigilant eye on the matter?

A Very much so, yes; and each time I would check with people in the Zoning Office, no application had been made that they made me aware of.

Q Were you making these checks prior to October of 1978?

A Yeah, that's correct.

Q Continue.

A There was an injunction applied for and received that the department sheriff brought down to stop this fishing operation.

Q When was this now?

A I don't have the date in my mind.

Q Would this be in 1979?

A Yes.

Q Would this have been in July of 1979?

A Probably, yes.

Q I want to show you -- what purports to be a true test copy, Elmer H. Kahline, Jr., Clerk, Circuit Court for Baltimore County in Equity, signed by Judge Buchanan.

It is hereby ordered this 18th day of July, 1979, by the Circuit Court of Baltimore County that John Lamar is enjoined from allowing any commercial fishing operations to be conducted or allowing any equipment used in said commercial operation to be placed on certain real property known as lots 12, 13, and 16 designated on a plat of Bangles Farm Beach, Baltimore County, Maryland, said order to be effective until

the 30th day of July, 1979.

Is that the order you are referring to?

A Yes, sir.

Q You saw the sheriff come down?

A Yes.

Q He posted that order?

A Yeah. He made a little sign. I think he might have carried it with him in the trunk of his car for just that reason.

Apparently that's the only one he put out. It must have been a list of these things.

He hammered it into the ground at the very east end of those two lots, the unimproved lots; and tacked this notice to that.

Q Did there come a time after that when there was a hearing before the then Commissioner Hammond?

A Yes.

Q That would have been sometime in August of 1979?

A Yes, approximately.

Q What is meant -- well, did John Lamar continue to fish then after the injunction expired?

A After it expired, yes.

As a matter of fact, the very next morning -- this notice was posted at about 6:00 or 7:00 in the evening, and the very next morning as I drove to work it was gone.

Q All right. Now how about during the balance of 1979 and 1980, did the commercial fishing operation continue?

A Yes.

Q Did you continue to contact your attorney with a view towards getting the ball rolling?

A Yes, I did.

Q And it took some time -- time passed and --

A Yes, I guess at least six months.

Q And that pretty much brings us up to date?

A Yeah.

MR. ROMADKA: Let me have just a moment's indulgence. (Discussion off the record.)

Q (By Mr. Marr) Let me ask you this. Did you ever see any crab baits put in bushel baskets on piers?

A Definitely.

Q What kind of stench, if any, did that cause?

A Exactly what you'd expect.

MR. ROMADKA: I object.

THE CHAIRMAN: Sustained. We have had that.

MR. HARR: I have no further questions.

MR. BOLLINGER: I have no questions.

THE CHAIRMAN: Any questions?

MR. ROMADKA: Just a few, if I may.

CROSS-EXAMINATION BY MR. ROMADKA

Q Mr. Kowalski, you had mentioned that at the time this injunction was first obtained and some notice was posted that you noticed when you drove to work you didn't see the sign.

Where did you work, sir?

A I worked for a shipping concern. I worked out of the International Longshoremen's Association as a steamship checker.

Q Steamship checker?

A Yes.

Q How long have you been doing this work?

A About thirty-two years.

Q Is this full time?

A Uh-huh.

Q You had mentioned that where you now reside next to Mr. and Mrs. Lamar, that that is your residence, been your residence since 1954.

A That's correct.

Q Do you use this property for anything else, Mr. Kowalski?

A Currently nothing else.

Q All right. Have you used this property for anything else?

MR. HARR: I am going to object now.

THE CHAIRMAN: Can you tell me where you are going with this?

MR. ROMADKA: Well, if the Board would let me --

THE CHAIRMAN: Give us some indication where you are going. I don't follow you at all where you are leading.

MR. ROMADKA: Because what I think Mr. Kowalski is going to say is that it required him to do other things offsite of the property.

THE CHAIRMAN: I am not following you.

MR. ROMADKA: That would not allow him to be on

the premises at different times.

THE CHAIRMAN: We have had testimony that -- of his observations.

MR. HARR: I have no objection to that. I thought he said what else did he do on the property.

MR. ROMADKA: I asked him what else did you use the property for other than your residence.

MR. HARR: I object to that question.

THE CHAIRMAN: The objection is sustained in regard to any questions as far as the property is concerned, his use of the property, that do not lead directly to his observations and powers of observations.

Please continue on.

MR. ROMADKA: I don't know if I understand the Board's ruling. Are you sustaining or overruling my objection?

THE CHAIRMAN: We will sustain the objection as to the use of the property, other uses of the property.

However, I clarify that in regard to any questions that you have as to his powers of observation. That would certainly be allowed.

Please continue in that vein if you care to.

Q (By Mr. Romadka) Because of the other uses of this property that you use the property for, didn't that require you to go off the property because of the business you operated there?

A As a result of -- define other uses if you want me to answer that.

THE CHAIRMAN: Let's see if he had other uses.

Q (By Mr. Romadka) Isn't it true that you were using this property as a printing company?

A Wrong.

Q Isn't it true that you have printing equipment in your home?

A Not true.

MR. ROMADKA: May I see Exhibits 1 and 4? I am sorry, it is 1 and -- I mean Defendants' Exhibit 1. I am sorry, that is County's Exhibit.

MR. NARR: Mr. Chairman, while Mr. Romadka is looking, I got a message here to call my office. Could I just slip out?

(Whereupon, a short recess was taken.)

Q (By Mr. Romadka) Mr. Kowalski, you testified before the Zoning Commissioner, Mr. Hammond, in 1979 that you had mentioned when he had his hearing, is that true?

A Uh-huh.

Q At that time isn't it true that you testified that the Lamars owned and operated a slough box which is used for -- for soft crabs?

A Correct.

Q And this slough box is located on Lot 16, which is the Lamar -- where the Lamar home is located?

A Yes.

Q I believe it is located right up front by the waterfront, isn't that true?

A Yes.

Q Isn't it true that that slough box has been there since 1974?

A No, sir.

Q All right. When did the slough box first appear as you recall?

A The exact year I don't have at my fingertips, but it has been about maybe four years at the very most it seems

to me, and the second one was added a year or so ago.

Q So the first slough box appeared in 1976, four years ago?

A No, even later than that. As a matter of fact, I believe there was one way back, and I think one was maybe two years ago back or something of that nature.

Q When was the one way back?

A Way back in '70, a smaller scale.

Q '70?

A Back in 1970. That was only a smaller scale. I don't know what happened to that one. It apparently disappeared or let's say I lost track of it.

Q Where was that located?

A About the same location.

Q Same location?

A Generally, may have been moved a little further back.

Q After 1970 there was a period of time when a second slough box appeared or replacement?

A That was maybe last year.

Q Last year. In addition to the one that was

already there?

A Well, let me -- let me get this question straight.

It was two slough boxes. Right now there are two slough boxes.

One was there about, I think, last year that was added to the existing one, and the one that I guaranteed as existing was there maybe, oh, a year before that one.

Now prior to that back in 1970 there was another slough box. It wasn't quite as elaborate because there wasn't the magnitude of crabs.

Whatever happened to that I don't know.

There was a period of a few years where that was missing or something or --

Q Were all three of these slough boxes located in the same place as they are today?

A As far as I know, yes. I don't remember them being anywhere else.

Q The slough box that you say that you remember back in 1970, was that slough box there in 1974?

A I don't think so, no. It may have been -- no later than that.

Apparently it wasn't made out of an enduring type

of wood. They don't have too long a life unless they are treated.

Q Do you recall when you testified before Mr. Hammond you stated that there was a slough box there in 1974 up until the present date that Mr. Tom Lamar used?

A I don't recall that. It may have been, but if it was, it was not being used.

Q Isn't it a fact that the Lamars have used this slough box since 1974 up until the present date?

A No, because there was this period of inactivity that there was no crab activity whatsoever.

Q When do you first recall seeing that slough box, or -- I am sorry -- when did you recall that slough box not being used? What years?

A The years of inactivity, which apparently were from '75, as close as I can recall, to '79.

Q '75, '76, '77, '78?

A Yes.

At one point I think I remember seeing it in the back yard during the off season or whatever, and I am not too certain -- it may have been driven away in the back of

a pickup truck.

It is a little vague in my memory there, but during those years there was no activity whatsoever that I could ascertain. We have got a good view of that.

Q You say you have a very good view of the slough box?

A Yes.

Q Is there anything that separates your property from where the slough box is located?

A A fence.

Q What kind of fence?

A A wire-type fence.

Q Anything else?

A Some sparse shrubbery.

Q Sparse shrubbery?

A Yes. No problem there, it is not a great wall of concealment.

Q Anything else?

A He has an upturned rowboat in the yard for about the last, I guess, ten years at least.

Q Would that block your vision from the slough box?

A No.

MR. ROMADKA: Exhibit 6, I think it is another group of pictures.

Q (By Mr. Romadka) I show you a group of pictures that have already been put into evidence, Mr. Kowalski. I believe it is Exhibit 6, Defendants' Exhibit 6.

Can you identify that property? I believe the testimony was it was the front of the Lamar -- I am sorry -- the back of the Lamar.

The front is waterfront, right? Isn't that --

A But this is the side on the road.

Q Okay. But so we don't misunderstand each other, when we make reference to the front of the property we are talking about waterfront?

A This is the back then.

Q This is the back?

A Agreed.

Q And that is Lot 16, isn't that correct?

A Yes.

Q What does this picture show?

A It shows the rear of the Lamars' house, picnic

table, and in the northerly direction toward the front of the house slough boxes located right up here (indicating).

Q It also shows trees and shrubbery on the property?

A Um-huh.

Q All right. I show you --

And that's Exhibit 6-2.

I show you Exhibit 6-3. Could you identify that, sir?

A Yeah, this is apparently looking from our eastern side of our house looking towards the waterfront in a northerly direction, and the slough boxes are right behind this table here (indicating).

You can see one here (indicating). If you look very closely you will see a couple boxes.

Q Okay. There is also a series of trees in that picture, is that true?

A Yes.

Q Which is over -- located around and over the slough boxes?

A Um-huh.

Q Then this picture here, Exhibit 6-4 --

A Yes, this is taken from the end of his pier that I described as being a thirty-footer there, whatever.

This is a slough box. This is the drain coming out of it or intaking going into it, one or the other. The water from the creek circulates through there.

Q There is also a very large tree that is located to the right of that slough box, is that not true?

A This one (indicating)?

Q Yeah.

A It is located to the right of it and this way of it (indicating).

Q Right, and that's in the direction of your home, is it not?

A Not being that way of the slough box (indicating).

MR. MARR: Let the record reflect the witness took his hand and pushed it out as coming away from the picture in towards the water.

A (Continuing) This is to the right and forward of it.

Q (By Mr. Romadka) Your property to the -- further right of the slough box?

A Yes.

MR. ROMADKA: Let me show these to the Board.

MR. MARR: When were they taken, the day before a hearing?

MR. ROMADKA: They are marked July 29, 1979.

MR. MARR: Right before the hearing; that is,

hearing before Mr. Hammond the record will reflect.

Q (By Mr. Romadka) Here is a fourth picture, if you can identify it, sir.

A This is a picture of two of the Lamars' slough boxes taken from behind. This picture may -- apparently was taken from inside the front yard, front being toward the water.

Q Okay. And then this final picture marked

Exhibit B, No. 6?

A This shows our property line, our house being here, and the Lamar property being here. The pipe is actually at the end of the fence that separates our property.

Q And the shrubbery there, is that the sparse shrubbery that separates your property from the Lamars'?

A That is it, even though it doesn't look like it from the angle you have taken the picture from, like the end

of a row of corn element.

Q Mr. Kowalski, I show you a site plan which is referred to as Exhibit 1. It is part of the John and Alice Lamar zoning file that has already been introduced.

Have you had an opportunity to see this site plan before, sir?

A No, I haven't.

Q All right. Do you want to take a moment and look at it?

Just look at the site plan, if you will, Mr.

Kowalski. Then I will ask you some questions, and you can make any comments you wish to make.

(Witness reviewing document.)

Q This site plan, I believe, shows the lots of Mr.

and Mrs. Lamar. I believe it also shows your two lots on the site plan, does it not? The Lamar property being Lots 12, 13, and 15?

A Um-hum.

Q Then your lots are 14 and 15, correct?

A That is correct.

Q And the site plan, I believe, tends to show the

location of various improvements or items that are located on these three lots, is that correct?

A (No response.)

Q For example, it shows the Lamar house?

A Um-hum.

Q As being on Lot 15?

A Yes.

Q It shows the garage of the Lamars located in the rear of that property? Is that the approximate location of the garage?

A Yes.

Q Would you say that is the approximate location of the house?

A Yes, approximate.

Q Where is your house in proximity to the Lamar house? Is it pretty much in line, or is it back or in front of it?

A It would be just about like so (indicating).

Q Indicating that it is in front of it?

A Partially, yes.

Q Partially?

A In other words, we extend -- we would be in front of it. As a matter of fact, it would be like so (indicating).

Q Could you estimate how far it is in front of --

A Maybe six feet.

Q Fine. You also have shown on the --

A In other words, what I am saying now is the southernmost limits of our house are probably six feet from the northernmost limits of his. Okay.

So we have maybe six feet.

MR. MARR: Let the record reflect the witness is referring to Lot 15, which is adjacent to Lot 16.

A (Continuing) We more or less straddle.

Q (By Mr. Romadka) Your house is on Lots 14 and 15?

A Yes.

Q The site plan also shows the location of the slough box we were talking about earlier.

A Yes.

Q That is on Lot 16 up by the waterfront.

Is that the approximate location of the slough box?

A Yes.

Q And the site plan also shows the location or

storage of a boat --

A Yes.

Q (Continuing) -- on the front -- in front of the Lamar property.

A Yes.

Q It is in dry storage, is that correct?

A That is the upturned runabout I mentioned previously.

Q Okay. Now in the garage it is indicated that there is a freezer for bait located in that garage, is that correct?

A It does.

Can I clarify something with you? You showed me shrubbery right here (indicating).

Q Well the pictures --

MR. MARR: Show us what you are talking about.

A (Continuing) On the northernmost edge of Lot 16, you showed shrubbery on a picture that you showed me there.

Q (By Mr. Romadka) Let me get the picture you are talking about.

A The one that has the shot taken in a southern --

southerly direction. Apparently this one now (indicating).

MR. MARR: Which one are you talking about?

MR. ROMADKA: That is 8-6.

THE WITNESS: Right.

Q (By Mr. Romadka) That is a picture taken from --

A This is --

Q (Continuing) -- the water looking in.

A Picture taken from this pier, okay; and it is taken right here where there is a shrub. Okay.

MR. MARR: Indicate for the record what you are talking about.

A (Continuing) Near the northern -- that would be to the northwest extreme of the Lamar Lot 16, there is shrubbery shown on this picture here.

As I indicated, our house sits back in a southerly direction here (indicating). So apparently the inference is that that shrubbery, which I previously mentioned, blocked the view of this from our house.

MR. MARR: What is this, the slough box?

THE WITNESS: This is the slough box.

A (Continuing) And what I am trying to clarify is

that we have a clear view looking -- when you mentioned to the right of our house being right here (indicating), we can see this whole situation very clear without being in the least blocked by this view or this shrubbery here (indicating).

MR. MARR: Other than the boat being stored there?

THE WITNESS: You can look over top the boat. The boat is only, I think, about at the most four feet high, if it is that high. It is probably -- it is inverted on top of a couple blocks.

Q (By Mr. Romadka) I don't mean to contradict you. Again, looking at Picture 8-6, since you brought it up,

doesn't it appear that the shrubbery that begins at the water-front continues and runs all the way back along the Lamar property?

A No. It appears to, but that's not true.

Q I see. Does the picture also show a portion of your property?

A Yes, this is our house (indicating), you can see here.

Q Isn't it true that your house appears to be greatly obscured by shrubbery?